

Juridical Analysis of Legal Protection Against Disadvantaged Sellers in E-Commerce Transactions on the Tokopedia Online Shopping Site

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ABSTRACT

This study aims to analyze the legal protection of sellers who suffer losses due to consumer actions and legal actions that can be taken by sellers on the Tokopedia e-commerce platform regarding the return of goods that are not carried out by buyers after the refund is returned, which has an impact on seller losses. The research method used in this research is the normative juridical method, by collecting data from literature studies, including laws, regulations, and related court decisions. The results show that legal protection for sellers is contained in Law Number 8 of 1999 concerning Consumer Protection, which protects the rights of sellers and emphasizes the importance of consumer good faith in transactions. In addition, buyer fraud is also protected by Article 378 of the Criminal Code. In resolving disputes, sellers can choose out-of-court settlement and report disputes to Tokopedia through the "Seller Protection Guarantee" policy. In terms of legal actions that can be taken by sellers, they can refer to the provisions stipulated in Law Number 8 of 1999 concerning Consumer Protection and the Criminal Code. This study also identifies several obstacles faced by online sellers in obtaining adequate legal protection. Some of these obstacles include limited access to relevant legal information, complicated dispute resolution processes, and high costs. To improve legal protection for online sellers on Tokopedia, the author recommends several steps. These recommendations include providing easier access to relevant legal information, increasing the clarity and transparency of Tokopedia's return policy, and providing an effective and efficient dispute resolution mechanism.

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I. INTRODUCTION

Humans are social creatures who interact throughout their lives to fulfill personal interests or needs that must be met. Humans cannot live alone because they are designed to live with others. The fulfillment of needs in society is very important and becomes the main thing. One method that is often used by the community in fulfilling these needs is through buying and selling transactions.

In principle, buying and selling is a form of agreement that has been regulated in the Civil Code. Online buying and selling is a form of modern buying and selling transactions that adopt technological innovations such as the internet as a transaction medium. In accordance with the principle of freedom of contract described in Article 1338 Paragraph (1) of the Civil Code jo. 1320 of the Civil Code jo. Article 18 of Law Number 11 of

2008 concerning Electronic Information and Transactions, in practice, various new agreement models emerge, one of which is an online sale and purchase agreement conducted via the internet, known as electronic commerce or e-commerce.¹

Tokopedia, as one of the leading e-commerce platforms in Indonesia, has become a popular place for sellers to sell their products online. Tokopedia gives sellers the opportunity to open their own online store on the platform. Sellers can promote their products, manage inventory, offer discounts, and interact with customers through the features provided. In addition, Tokopedia also provides a variety of additional services, such as online payments, goods delivery, and customer support services.

The Tokopedia e-commerce platform provides various advantages that make it easier for users to conduct online buying and selling transactions. However, as with every e-commerce platform, there are potential weaknesses that can result in losses for consumers. Through the internet, buying and selling transactions can be carried out without direct meetings between consumers and business actors, but this also opens up opportunities for fraudulent actions.

Law Number 8 Year 1999 on Consumer Protection or (Consumer Protection Law) was issued by the Indonesian government as an effort to provide protection to consumers who often suffer losses. This is due to the unbalanced position between consumers in general and business actors who have greater power in various matters. In this context, consumers who need goods and/or services offered by business actors are required to comply with the rules set unilaterally by the seller.²

But in reality, in conducting online transactions, losses can not only befall consumers. Currently, there are often losses suffered by business actors due to actions on the part of consumers. The buying and selling system on Tokopedia is based on trust between the seller and the buyer. After the buyer makes a payment, the seller sends the goods as ordered. However, in some cases, after the funds are returned to the buyer for various reasons or another term is "refund", the seller faces difficulties in getting back the goods that have been sent.

Legal violations related to the buying and selling system on Tokopedia where funds are returned to the buyer but the goods are not returned can have a negative impact on the seller. Sellers can experience financial losses because they not only lose revenue from the sale of goods, but also have to bear shipping costs and other losses. In addition, this can also lead to seller distrust of the buying and selling system on Tokopedia and damage the business relationship between the seller and the e-commerce platform.

Based on the description above, the author is interested in reviewing and analyzing more deeply the legal protection for sellers on Tokopedia who feel let down regarding the buying and selling system where funds are returned to the buyer but the goods are not returned in a legal research entitled "Juridical Analysis of Legal Protection Against Disadvantaged Sellers in E-Commerce Transactions on the Tokopedia Online Shopping Site". By understanding the background of this problem, research can be conducted to identify causative factors, evaluate existing mechanisms, and provide recommendations to improve legal protection for sellers on Tokopedia in the face of similar cases.

II. RESEARCH PROBLEMS

The formulation of the problem in this research is two questions related to legal protection for sellers who suffer losses due to consumer actions and legal actions that can be taken by sellers on the Tokopedia e-commerce platform related to the return of goods that are not carried out by buyers after the refund is returned, which results in losses to the seller. The first question covers how forms of legal protection exist to protect sellers from losses arising from actions taken by consumers. Meanwhile, the second question focuses on what legal remedies are available to sellers in cases of non-return of goods by buyers after refunds have been returned, resulting in losses incurred by sellers. By investigating these issues, this research will explore the relevant legal aspects to explain the existing legal protections and legal actions that can be taken by sellers on the Tokopedia e-commerce platform in the face of such situations.

III. RESEARCH METHODS

This research uses the Normative Juridical approach method, which is a legal approach that relies on library material research or secondary data.³ In the context of normative legal research, library materials are considered the main source categorized as secondary data, which relates to the legal protection of sellers on the

¹ Arya Putra Perdana, Azhar Muttaqin, and Sofyan Arief, "Perlindungan Hukum Konsumen Dalam Jual Beli Online Dengan Jasa Escrow," *Notari Law Jurnal* 1, no. 2 (2022): 100-115.

² Chory Ayu Sugesti, Si Ngurah Ardhya, and Muhammad Jodi Setianto, "Perlindungan Hukum Terhadap Pelaku Usaha Online Shop Yang Mengalami Kerugian Yang Disebabkan Oleh Konsumen Di Kota Singaraja," *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum* 3, no. 3 (2020): 166-75.

³ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan ke (Jakarta: PT Raja Grafindo Persada, 2009).

Tokopedia e-commerce platform in the refund system made by buyers but when the funds have been returned the seller faces difficulties in getting back the goods that have been sent.

IV. RESULT AND DISCUSSION

1. Legal protection for sellers who suffer losses due to consumer actions

E-commerce is a form of agreement made through an online contract which is basically the same as an agreement in general, but realized in the form of electronic media. In online shop transactions, there is an interrelated relationship between several things. First, there are legal subjects consisting of business actors and consumers. Second, the two legal subjects conduct transactions through information technology media using internet services, which results in a sale and purchase agreement that is documented using electronic evidence and creates responsibility for both parties. Electronic evidence in the form of electronic documents is important to prevent abuse of electronic commerce or criminal acts in electronic commerce.⁴

Before engaging in an online buying and selling transaction, the parties need to understand the requirements of the agreement as stipulated in Article 1320 of the Civil Code, which includes:

- 1) The agreement of both parties;
- 2) Capacity to perform legal acts;
- 3) The existence of an object or a certain thing;
- 4) The existence of a *halal causa/cause*.⁵

Indonesia as a country based on law guarantees the recognition and protection of fundamental rights for all its citizens, including in conducting transactions both traditionally and through online platforms. Law Number 8 Year 1999 on Consumer Protection Law was issued by the Indonesian government as an effort to provide protection to consumers who often experience losses. This is due to the unbalanced position between consumers in general and sellers who have greater power in various matters. In this context, consumers who need goods and/or services offered by business actors are required to comply with the rules set unilaterally by sellers.

But in reality, in conducting online transactions, losses can not only befall consumers. Currently, there are often losses suffered by sellers due to the actions of consumers. Losses in law can be separated into two classifications, namely: First, material losses, namely losses that can be calculated based on nominal amounts, this loss usually occurs in cases of Default; Second, immaterial losses, namely losses that cannot be calculated based on nominal amounts, this loss usually occurs in cases of action against the law.⁶

If consumers actually violate the agreement that has been set, this can be considered a violation of the law which results in consumers violating the right of sellers to receive payment in accordance with the agreement on the conditions and exchange rate of goods and services traded, as stipulated in Article 6 of the Consumer Protection Law. In this case, consumers also violate Article 5 of the Consumer Protection Law which emphasizes that consumers must have good intentions in conducting transactions to purchase goods or services, and are obliged to pay in accordance with the agreed exchange rate. Although the Consumer Protection Law does not specifically explain the sanctions imposed on consumers in this situation, consumers who make defaults may be subject to sanctions such as paying for losses suffered by business actors, canceling the agreement, transferring risks, and paying court costs in the event of litigation.⁷

Disputes between sellers and buyers can basically be resolved in accordance with the provisions contained in the Consumer Protection Law. Article 45 paragraph 2 of the Consumer Protection Law gives the parties to the dispute the option to resolve the dispute through the court or through an out-of-court settlement based on voluntary agreement. If the parties agree to go to court, then the court used is a court within the scope of general justice.⁸

If the seller suffers a loss due to a violation of the law committed by the buyer, the seller can file a claim for compensation against the buyer. The Consumer Protection Law provides a legal basis for suing buyers based on Article 6 and the provisions of Article 5, which require consumers to pay in accordance with the agreement and act in good faith in carrying out the agreement that has been made.

⁴ Adi Kristian Silalahi, Elisatris Gultom, and Susilowati Suparto, "Perlindungan Hukum Terhadap Penjual Pada Transaksi Online Shop Dengan Menggunakan Sistem Pembayaran COD Dalam Perspektif Hukum Perlindungan Konsumen," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 3 (2022): 1334-43.

⁵ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107-20.

⁶ Si Ngurah Ardhya, "Tinjauan Yuridis Bentuk Ganti Kerugian Terhadap Konsumen Perusahaan Listrik Negara (Pt. Pln Indonesia)," *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 2 (2020): 157-67.

⁷ Nindyo Pramono, *Hukum Komersil* (Jakarta: Pusat Penerbitan UT, 2003).

⁸ Silalahi, Gultom, and Suparto, "Perlindungan Hukum Terhadap Penjual Pada Transaksi Online Shop Dengan Menggunakan Sistem Pembayaran COD Dalam Perspektif Hukum Perlindungan Konsumen."

In conducting online transactions, the parties involved must pay attention to the provisions contained in Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), because transactions are carried out via the internet and electronic media. If the buyer orders goods using a fake account or data, the perpetrator can be prosecuted in accordance with applicable provisions. Article 45 A paragraph 1 of the ITE Law states that the dissemination of false news that harms consumers in electronic transactions is subject to criminal sanctions with a maximum imprisonment of 6 years and/or a maximum fine of Rp. 1,000,000,000.00.

For violations committed by buyers, which are not regulated in the Consumer Protection Law, criminal law provisions apply if the buyer's actions meet the elements of a criminal act. For example, false orders as a form of fraud by buyers are regulated in Article 378 of the Criminal Code on fraud. This criminal provision applies if the buyer's actions fulfill the elements of fraud. However, if the fraud committed by the buyer causes a loss to the seller of less than Rp. 250,000.00, then the fraud is considered a minor fraud that is subject to a maximum imprisonment of 3 months or a maximum fine of Rp. 900,000.00, as stipulated in Article 379 of the Criminal Code. Regardless of the extent to which the criminal act is considered minor or the loss suffered by the seller is relatively small, it is important for the perpetrator to receive punishment as a deterrent effect.

2. Legal actions that can be taken by sellers on the Tokopedia e-commerce platform regarding the return of goods that are not carried out by the buyer after the refund is returned which results in losses to the seller

Tokopedia provides legal protection to sellers who experience losses due to refund issues that have been refunded but the goods are not returned through a protection policy for sellers called "Seller Protection Guarantee" or "Seller Protection".⁹ This policy aims to provide assurance to sellers in dealing with such situations. Under the Seller Protection policy, Tokopedia provides a dispute resolution mechanism involving buyers and sellers. If a seller experiences problems with the return of goods that are not made by the buyer after the refund has been returned, the seller can file a dispute report through the features available on the Tokopedia platform. The seller must provide evidence that supports their claim, such as proof of delivery of goods, proof of communication with the buyer, and proof of refunds that have been made.

Tokopedia will investigate the report. Tokopedia's dispute resolution team will investigate the report filed by the seller. If it is proven that the seller has suffered an unfair loss due to the buyer's actions, Tokopedia will take appropriate action, including blocking the account of the buyer involved in the action and refunding the loss to the seller. In addition, Tokopedia also provides guidance and advice to sellers to minimize the risk of transactions that could potentially result in losses. For example, sellers are advised to pay attention to the return policy, communicate with buyers actively, and use a trusted shipping service to track the delivery of goods.

Furthermore, legal action that can be taken in the context of e-commerce, when there is a violation or default by the buyer, the steps that must be taken by both parties are to settle out of court first. The initial stage that can be carried out by the seller and buyer in dispute resolution is through an out-of-court dispute resolution mechanism. Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration and APS Law), arbitration is a method of resolving civil disputes outside the public courts based on an arbitration agreement made in writing by both parties to the dispute. In this process, both parties can choose one or more arbitrators to resolve their dispute through arbitration. If the seller submits the dispute to the court, the court is required to first try the mediation process. This provision is stipulated in article 4 paragraph 1 of Supreme Court Regulation (Perma) Number 1 Year 2016. Mediation is a dispute resolution mechanism through negotiation with the assistance of a mediator, where if both parties reach an agreement to resolve the dispute, the results of the agreement will be made in the form of a peace deed containing the contents of the peace agreement and a judge's decision authorizing the agreement.¹⁰

If mediation does not result in an agreement between the two parties to resolve the dispute, the seller has the option to take legal action by filing a default lawsuit. This is in accordance with Article 1243 of the Civil Code which states that "Reimbursement of costs, losses and interest for non-fulfillment of an agreement is only required after the debtor, after being declared negligent to fulfill his agreement, continues to neglect it, or if something that must be given or done can only be given or done within the time limit that has been exceeded." Article 1244 of the Civil Code also expressly states that "The debtor shall be liable to reimburse costs, losses and interest, unless he can prove that the non-performance of the agreement or the timeliness in performing the agreement was caused by an unforeseeable event for which he cannot be held responsible, even without malicious intent on his part."

⁹ Tokopedia, "Tokopedia Pusat Edukasi Seller," <https://seller.tokopedia.com>, 2022.

¹⁰ Rochmani, Safik Faozi, and Wenny Megawati, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan Yang Cepat, Sederhana Dan Biaya Ringan," *Proceeding SENDIU*, 2020, 781-86.

The buyer, as the party that does not fulfill its obligations in completing the agreement, needs to prove that its non-fulfillment was caused by an unforeseen event so that it cannot be held liable. However, if the buyer cannot prove it, the buyer will be penalized by paying the costs, losses, and interest suffered by the seller. The Civil Code explains that losses to be reimbursed consist of three components, namely: (a) costs, which include all money (including fees) actually incurred by the injured party as a result of the default, (b) losses, which refer to the decrease in the value of the creditor's assets due to the default of the debtor, and (c) interest, which is the profit that should have been received by the creditor but was not obtained due to the default of the debtor.

The Civil Code also regulates the consequences of default. For example, Article 1243 requires payment of damages to the party entitled to receive the performance, Article 1267 requires cancellation of the contract with payment of damages, and Article 1237 requires the defaulting party to accept the risk of transfer. If the dispute is brought to court, the defaulting party, in this case the buyer, will be liable for court costs in accordance with Article 181 number 2 HIR.

Furthermore, legal protection is provided when there is a violation of the law. The form of protection includes law enforcement through sanctions such as fines, compensation, imprisonment, additional penalties, as well as procedures used in dispute resolution in court. Buyers who do not act in good faith or do not fulfill the performance in accordance with the agreement that has been made can be required to pay compensation in accordance with the provisions of Article 1267 of the Civil Code, which states that "The party who does not fulfill the agreement can choose between forcing the other party to fulfill the agreement, if that is still possible, or demanding the cancellation of the agreement by paying compensation, costs, losses, and interest."

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- (a) costs, which includes all money (including expenses) actually incurred by the injured party as a result of the default,
- (b) loss, which refers to a decrease in the value of the creditor's wealth due to the debtor's default, and
- (c) interest, which is the profit that should have been received by the creditor but was not obtained due to the default of the debtor.¹¹

The Civil Code also regulates the consequences of default. For example, Article 1243 requires the payment of compensation to the party entitled to receive the performance, Article 1267 requires the cancellation of the contract with the payment of compensation, and Article 1237 requires the defaulting party to accept the risk of transfer. If the dispute is brought to court, the party in default, in this case the buyer, will be liable for court costs in accordance with Article 181 number 2 HIR.

The Consumer Protection Law mentions criminal sanctions that can be imposed on business actors or sellers. However, this does not mean that buyers are free from criminal sanctions. The criminal provisions applicable to buyers are *lex specialist derogant lex generalis*, which means that the provisions in the Consumer Protection Law do not specifically regulate criminal sanctions for consumers. However, if the buyer has fulfilled the elements of a criminal offense, legal sanctions can be applied using the provisions stipulated in the Criminal Code. Thus, buyers can still be subject to criminal sanctions if proven to have committed unlawful acts, even though they are not specifically regulated in the Consumer Protection Law.

V. CONCLUSION

Legal protection for sellers who suffer losses due to consumer actions is contained in Article 5 and Article 6 of Law Number 8 of 1999 concerning Consumer Protection. This article regulates the rights of business actors and protects sellers and emphasizes that consumers must have good faith in purchasing goods or services and are obliged to pay according to the agreed exchange rate. In addition, sellers who suffer losses due to fraud committed by buyers are also protected by Article 378 of the Criminal Code on fraud. To resolve disputes in e-commerce platforms, sellers can choose out-of-court settlement as the first step. Article 45 A of Law Number 19 Year 2016 on the amendment of Law Number 11 Year 2008 on Electronic Information and Transactions protects sellers who suffer losses due to the actions of buyers who use false data.

¹¹ Andreas Andrie Djatmiko, Fury Setyaningrum, and Rifana Zainudin, "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia," *Nomos: Jurnal Penelitian Ilmu Hukum* 1, no. 7 (2021): 1-10.

Legal actions that can be taken by sellers who are aggrieved by the return of goods that are not carried out by buyers after the refund has been returned can report disputes to Tokopedia through the "Seller Protection Guarantee" policy. Tokopedia investigates the dispute report filed by the seller and if it is proven that the seller has suffered an unfair loss due to the buyer's actions, Tokopedia will take appropriate action, including blocking the buyer's account and refunding the loss to the seller. In the context of e-commerce, dispute resolution can be done out of court first through an arbitration or mediation mechanism. If the out-of-court settlement is unsuccessful, the seller has the option to file a default lawsuit. The Civil Code regulates the consequences of default, where the party that does not fulfill its obligations may be required to pay compensation to the injured party. Buyers are not free from criminal sanctions even though the Consumer Protection Law does not specifically regulate criminal sanctions for buyers. If the buyer is proven to have committed an unlawful act, criminal sanctions can be applied using the provisions stipulated in the Criminal Code.

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Civil Code

Criminal Code

Law Number 8 of 1999 concerning Consumer Protection

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

Government Regulation Number 17 of 2019 concerning the Implementation of Electronic Systems and Transactions

Tokopedia. "Tokopedia Pusat Edukasi Seller." <https://seller.tokopedia.com>, 2022; diakses pada 4 Juni 2023