



Consumer protection law on the circulation of goods and services through electronic systems and law number 8 of 1999 concerning consumer protection

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Abstract

Consumer Protection Law (CPL) is expected to protect consumers from the deviant behaviour of business actors. Minister of Home Affairs Regulation Number 50 of 2020 is expected to be a condition of provisions for business actors in business licenses, advertising, and government guidance and supervision of Trading through electronic systems. The government's active role in enforcing CPL and Minister of Home Affairs Regulation Number 50 of 2020 will have an impact on consumers regarding the right to protection for the activities of business actors. The problems studied are: (1) How is consumer protection against the circulation of goods and services through electronic transaction systems and legal provisions in trade transactions based on Minister of Home Affairs Regulation Number 50 of 2020, and (2) How is the supervision of business actors in trading through electronic systems related to Law Number 8 the Year 1999 About Consumer Protection? The research method used in compiling this research is normative juridical, carried out by reviewing secondary data or library materials as basic materials in researching, namely by tracing regulations and literature related to the problem being studied. The results showed that the CPL Law and Minister of Home Affairs Regulation Number 50 of 2020 could complement each other in strengthening the law related to consumer protection for business actors. Provisions or rules imposed on business actors in Regulation of the Minister of Home Affairs Number 50 of 2020 In addition to disciplining business activities, it also impacts consumer rights, namely that the government supervises business actors for all their activities. It is because business actors must report data on their business activities. It means that the government can easily monitor business actors. If business activities work according to the provisions, it will indirectly impact consumers in getting protection.

Keywords: consumer protection law, circulation of goods and services, electronic systems, law number 8 of 1999

Introduction

Trading through the electronic system or e-commerce continues to grow and increase. According to Databoks, trading through an electronic system in the 2016 to 2020 period increases by 30% to 40% every year. Databoks predicts that by 2022 the value of Trading through electronic system transactions will reach US\$ 16 billion or 228 trillion rupiahs. The high trading through the electronic system is because internet users continue to increase. Research results from content management service HootSuite and social media marketing agency We Are Social in a report titled "Digital 2020". Currently, internet users in Indonesia are reported to have reached 175.4 million out of a total 272.1 million population in Indonesia, meaning that 64 per cent of the Indonesian people are connected to the internet ^[1]. This figure is an increase from last year's 17 per cent, or about 25 million". High internet users in Indonesia, as many as 96% use smartphones, while 5.3% still access the internet using feature phones. Then the average Indonesian in surfing the internet spends 4 hours 46 minutes every day" ^[2].

The increase in Trading through the electronic system is an opportunity for business actors. This opportunity must also be accompanied by government efforts to protect consumers. Based on data from the National Consumer Protection Agency, consumer complaints continued to increase in the period 2017 to 2020. In 2017 there were only 281 complaints. In 2018 it increased to 580. In 2019 it became 1,518; and in 2020, 1,176 complaints were collected" ^[3]. Based on this data, consumers feel aggrieved by the merchants, so they complain. Complaints made by consumers against business actors, in this case, problems or disputes will arise. If consumers want to solve their problems in the Consumer Protection Law, they can go through the Consumer Dispute Settlement Agency (BPSK) ^[4]. Settlement through BPSK, when business actors are defeated, will eventually lead to court ^[5].

Complaints against "BPSK can be made in writing and directing, where BPSK officers will make notes on a special form that has been affixed with a stamp. Dispute resolution can be pursued with three kinds of legal options: arbitration, mediation, and conciliation, which is efficient and effective and agreed upon by both parties ^[6, 7]. That is what is chosen. As referred to in Article 45, paragraph 2 of the CPL, dispute settlement can finally be resolved peacefully ^[8]. The main thing is that it does not conflict with the Act.

Complaints are the rights of consumers, and this is stated in Article 5 paragraph 4 of the CPL, that consumers have the "Right to have their opinions and complaints heard about the goods and/or services used". The number of consumer complaints heard/recorded at BPSK DKI Jakarta fluctuated. In 2016, there were 216 cases. In 2017, there were 128 cases, and in 2018 there were 162 cases. The number of cases that went through BPSK, cases of e-commerce or electronic transactions, only recorded 2 cases in 2017 and 2018 ^[9].

The number of complaints is small for electronic transactions, but the complaints have a place in the company that is being complained of. It is following Article 10 paragraph 2 of the Minister of Trade Regulation Number 50 of 2020, which reads: "Consumer complaint services in the form of contact numbers and/or electronic mail addresses (email)" (point c) and "Consumer complaint service containing contact information for consumer complaints of the Directorate General of Consumer Protection and Orderly Commerce" (point d)."

As an effort to protect consumers, business actors related to business licensing are regulated in the Minister of Trade Regulation Number 50 of 2020, namely Article 6, that: "If domestic traders are Micro and Small Businesses, the application to obtain a Business License is submitted directly to the OSS Institution following with the provisions of laws and regulations or through facilities that inform and/or link to the OSS Institution website facilitated by the ministry, agency, Regional Government, or Trading through the electronic system."

The government is slowly moving towards a business license which is mandatory for business actors, both individuals and/or legal entities, in the form of IUMK or other business licenses where the OSS Institution issues the business license as a sign of legality to do business through trading through an electronic system. It shows that the government has started implementing this social engineering through the Minister of Trade Regulation Number 50 of 2020. Business licenses become a legal function directed to change the pattern of legal disobedience in society to become obedient evenly, including micro-enterprises.

Thus, problems can arise in the phenomenon that exists in trading, namely electronic transactions. Problems afflict consumers, so by registering business actors at the business licensing stage, the law can side with consumers. It means that consumer protection begins early before business actors carry out transactions in their business.

Of course, the increasing number of consumers with online transactions who complain need protection. Efforts are needed to provide legal certainty, which has been stated in the CPL, that to obtain consumer protection, there must be: "efforts that guarantee legal certainty to protect consumers" ^[10]. Thus, it is necessary to supervise business actors in trading through an electronic system that can be reviewed/linked to Law Number 8 of 1999 concerning Consumer Protection. The form of early supervision of business actors is by facilitating business actors in obtaining business licenses at the OSS Institution. So that the government has access to business actors' data, this condition has an impact on consumer protection how the laws and regulations in consumer protection against the circulation of goods and services through the electronic transaction system and their legal provisions can then be reviewed based on the Minister of Trade Regulation Number 50 of 2020.

Literature Review

Benefit "is the most important thing in a legal purpose. The law purpose can be seen in its function as protecting human interests, and the law has a target to be achieved" ^[11]. The theory of "benefit related to economic law emphasises efficiency analysis, namely, cost and benefit analysis in every decision making and also public policy. All efforts in carrying out activities related to economic law must provide the maximum benefit for the interests of every actor in economic activity in a balanced manner because the law was established to provide the greatest benefit to the community" ^[12].

In "economic law analysis, it is known that the theory of Economics Analysis of Law is the application of economic principles as rational choices for analysing law" ^[13]. This theory starts from utilitarianism's foundation, which prioritises the principle of expediency, which Jeremy Bentham developed. This thinking is a middle ground when the law is faced with two contradictory thoughts, namely justice and legal certainty" ^[14]. In "economic law analysis, a regulation is said to have benefits in the elaboration of economic analysis if it fulfils the following elements" ^[15]: a) Has the usability or function to seek benefits or benefits from economic activities that generate profits, even broadly. can be interpreted welfare, and b) The gains achieved can be monetary and/or non-monetary."

The theory of "legal protection comes from the theory of natural law or legal schools. The law comes from God, which is universal and eternal, and that law and morals cannot be separated. That law and morals are a reflection and regulation internally and externally of human life, which is realised through law and morals" ^[16].

Protection "law must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which are an agreement by the community to regulate behavioural relations between community members and between individuals and the government which are considered to represent the interests of the community. Fitzgerald explains Salmond's theory of legal protection that the law aims to integrate and coordinate various interests in society because, in traffic of interests, protection of certain interests can only be done by limiting various interests on the other side" ^[17].

Legal protection is all efforts made consciously by every person and government and private institutions aimed at securing, controlling, and fulfilling the welfare of life following existing human rights as regulated in Law Number 39 of 1999 concerning Human rights ^[18]. Legal protection is a description of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace.

In "legal protection, place is needed in its implementation, which is often referred to as a means of legal protection. Means of legal protection are divided into two types, namely as follows ^[19]: a) Means of Preventive Legal Protection. In this preventive legal protection, legal subjects are allowed to submit objections or opinions before a government decision gets a definitive form; and b) Means "Repressive legal protection, repressive legal protection aims to resolve disputes."

Research Method

The type of research is normative juridical research, whereby reviewing secondary data or library materials is the basic material in research. Sources of data in writing are collected through library research or library research to obtain primary legal material, secondary law, and tertiary law. The main data sources as primary legal materials are the Minister of Trade Regulation Number 50 of 2020 and Law Number 8 of 1999 concerning protection. Analysis of data with qualitative methods, namely research data processed and analysed based on the quality and correctness of the data. Then it is described using words, and a discussion or explanation is obtained in a systematic and understandable sentence, then a conclusion is drawn.

Discussion

Compliance and "awareness of the law, as well as community participation in consumer protection efforts, following CPL Article 29 paragraph 1, that: "The government is responsible for fostering the implementation of consumer protection which guarantees the acquisition of the rights of consumers and business actors as well as the implementation of obligations of consumers and business actors " .

Whereas consumer protection law in many aspects is closely correlated with civil engagement laws, it does not mean that consumer protection law exists solely in the area of civil law. There are aspects of consumer protection law in public law, especially civil law, criminal law, and state administrative law. So, precisely, consumer protection law is in the area of private law (civil) and public law" ^[20].

Law "can function to realise protection, and its nature is not only adaptive and flexible but also predictive and anticipatory. Law enforcement and justice must use the right line of thought with evidence and evidence to realise legal justice, and ethical beliefs must determine the content of the law and whether or not a case is fair. Legal issues become real if legal instruments carry out well and comply with standardised rules so that there is no systematic violation of rules and laws, which means using legal codification and unification to realise legal certainty and legal justice ^[21]. The need for consumer protection must also be impartial and must be fair, as the basis for the legal determination."

Some of the problems that occur in the transaction process with electronic transaction systems, products (goods and services) where consumers are all generations who are digitally literate are because consumers cannot immediately know, inspect and see the goods directly to be ordered. Then the product information is not clear, the status of the legal subject, namely the business actor who produces it is unknown, there is no guarantee of transaction security and privacy as well as an explanation of the risks associated with the system used, especially in terms of electronic payments either by credit card or electronic cash. And the release of unbalanced risks, because generally for buying and selling in electronic media, payments have been made in full in advance by the consumer, while the goods are not necessarily received or will follow later because the existing guarantee is a guarantee of delivery of goods not receipt of goods. Then transactions that are borderless raise questions about which country's legal jurisdiction should be enforced" ^[22].

Buying and selling "products that do not meet the requirements through online media is a way of buying and selling in which the transaction uses electronics. Electronic transactions are legal acts carried out using computers, computer networks, and other electronic media. Selling and buying products through online media is growing day by day due to a large number of digital media users, so that it becomes a ground for business actors to make as much profit as possible without considering the standard of the products offered."

Product offerings are generally initiated by advertising or promotional activities ^[23]. Article 16 of the Minister of Trade Number 50 of 2020 states: "(1) Business Actors can create and/or send Electronic Advertisements for marketing or promotion purposes, (2) Electronic Advertisements as referred to in paragraph (1) include information submitted through electronic media facilities and/or electronic communication channels, (3) Making Electronic Advertisements as referred to in paragraph (1) includes the creation, publication, and dissemination of Electronic Advertisements for marketing or promotion purposes."

Advertising "for marketing or promotion purposes, so as not to disappoint potential consumers, the information submitted must be clear and correct ^[24]. It must also be supported, namely when buying and selling transactions in online media for a product need to be done in good faith. This good faith also applies to sellers and buyers. Based on Article 39 of the Minister of Trade Regulation Number 50 of 2020, there are sanctions for violations in implementing trading through an electronic system for Business Actors who commit violations. Spreading fake news is a violation. News conveyed in advertisements, and does not match the reality of the products being traded, is considered a violation."

"Business actors who violate the regulations in the trading through the electronic system will get sanctions, so they must be held accountable for what has been done as a result of consumers being harmed ^[25]. Protection in Trading through electronic systems begins with consumers; namely, consumers must respond more carefully and thoroughly before ordering products and checking the correctness of the product. It is because purchase transactions are only carried out through online media using electronic transactions. Only seeing the product

from the picture cannot be tried and felt the ingredients. Online transactions for business actors and consumers each must have good intentions from the start ^[26]. Protection against consumers also comes from the side of business actors, namely in the guidance and supervision of business actors. Article 31 of the Minister of Trade Regulation Number 50 of 2020 explains that it is necessary to guide business actors, including a) Improving the competence of domestic business actors' human resources; b) Increasing the competitiveness of Domestic Business Actors in Trading through the electronic system; c) Facilitating the improvement of the competitiveness of domestic products in the trading through the electronic system; d) Facilitating the promotion of domestic products for the domestic and export markets; e) Promote and encourage the use of Trading through the electronic system; f) Improving public financial inclusion with trading through the electronic system; g) Provide a database of business actors and domestic products; and h) Strive to provide other facilitation following the provisions of the legislation."

This article (Article 31 of the Minister of Trade Regulation Number 50 of 2020) relates to Article 29 of the CPL, which carries out the function of guidance and supervision to ensure the implementation of consumer protection for goods being traded. The contents of Article 29 of the CPL ^[27], namely: a) The government is responsible for fostering the implementation of consumer protection which guarantees the acquisition of the rights of consumers and business actors as well as the implementation of obligations of consumers and business actors; b) Guidance by the government on the implementation of consumer protection as referred to in paragraph (1) is carried out by the Minister and/or related technical ministers; c) The Minister as referred to in paragraph (2) shall coordinate the implementation of consumer protection; and d) Fostering the implementation of consumer protection as referred to in paragraph (2) includes efforts to: 1) create a business climate and develop healthy relationships between business actors and consumers; 2) development of non-governmental consumer protection institutions; and 3) improving the quality of human resources as well as increasing research and development activities in the field of consumer protection."

Coaching "to improve HR competencies (Article 31 of the Minister of Trade Number 50 of 2020) is aimed at business actors to train or educate individuals and groups with actions and activities that support the achievement of the desired goals. Through coaching, business actors will be able to improve their competitiveness. Guidance and supervision by the government of business actors that will impact consumer protection efforts in Permendag Number 50 of 2020 require business activities of business actors to submit data and/or information ^[28]. With the regulation of these obligations, the government will have data that can be used as a basis for formulating and making policies related to Trading through the electronic system."

The provision "in Permendag Number 50 of 2020, besides relating to advertising, coaching, and supervising business actors, provision is business licensing. Business permits are required for business actors and are regulated in Article 6 of the Minister of Trade Regulation Number 50 of 2020, that: "If domestic traders are Micro and Small Businesses, the application for obtaining a Business Permit is submitted directly to the OSS Institution following the provisions of the legislation. invitation or through facilities that inform and/or link to the OSS Institution website facilitated by ministries, agencies, Regional Governments, or Trading through the electronic system."

Furthermore, based on Article 1 number 17 of the Minister of Trade Regulation Number 50 of 2020, "Business Permit is a permit issued by the OSS Institution for and on behalf of the minister, head of the institution, governor, or regent/mayor after the Business Actor registers and to start a business. and/or activities until prior to commercial or operational implementation by fulfilling the requirements and/or Commitments."

Business licenses for traders must follow the type of business being run, as is the case in offline business ^[28]. For traders who currently have a business license, for example, an industrial business license or a micro-small business license, and so on, there is no need to make a new business license. If domestic traders only carry out retail trading activities via the internet (online), then the business license uses KBLI 4791, retail trade through postal orders or the internet (Article 4 paragraph 1 of the Minister of Trade Regulation Number 50 of 2020). Based on the Minister of Trade Regulation Number 50 of 2020, which has been in effect since November 19, 2020, it states that micro-scale traders not only have to register and be registered but also have to have a business license from the OSS Institution."

Thus, "that the government is slowly moving towards where a business license is mandatory for business actors, both individuals and/or legal entities in the form of a business license in which the OSS Institution issues the business license as a sign of legality to do business through trading through the electronic system ^[30]. It shows that the government has started to implement this social engineering through the Minister of Trade Regulation Number 50 of 2020, so that business licenses become a legal function that can be directed to change the pattern of legal disobedience in society to become obedient evenly, including to micro-enterprises."

The benefits of having a business license, when viewed from the community's point of view, are as a means of protection or legal certainty to avoid dishonest business practices, as well as a requirement in various business improvement activities/participating in tenders/auctions, and also as a means to increase business credibility and promotional events ^[31]. In addition, by having SIU Trading through the electronic system, then for business actors, their business is not considered illegal. Those business actors with electronic systems are always obliged to guarantee the quality or quality of goods and/or services produced and/or traded following the applicable quality standards of goods and/or services."

Based on the explanation above, "according to the article explained in the Trade Regulation Number 50 of 2020 Minister, that consumers are protected from the business practices of business actors. It is because the

government, through the minister, has regulated provisions on advertising, coaching, supervision, and business licensing. Where all businesses are required to report business activity data as information, which can be used as a basis for the government to evaluate deviant business practices, consumers will not hesitate when deciding to transact through the electronic system because consumers will be protected from arbitrary actions; by business actors."

Conclusion

Based on the Regulation of the Minister of Trade Number 50 of 2020, supervisory control over business actors starts from business licensing. Business actors also receive training in order to have competitiveness. Provisions imposed on business actors in the form of business licenses and guidance to discipline business activities will impact consumer rights; namely, business actors are supervised by the government for all their activities. The provisions in the Minister of Trade Regulation Number 50 of 2020 have also been contained in Law Number 8 of 1999 concerning Consumer Protection, that the government is responsible for fostering the implementation of consumer protection, and this can be obtained by first bringing order to business actors through business permits and guidance such as which is contained in the Minister of Trade Regulation Number 50 of 2020. For this reason, it is recommended that this research can be developed, namely by analysing the rights of business actors based on CPL and Minister of Trade Regulation Number 50 of 2020, especially local business actors. Limitations of the rights of business actors can be developed, such as regarding the issue of legal responsibility of business actors in advertising products that do not violate ethics or others. In addition, the results of this study can be input regarding consumer rights in the protection provided by the government. The socialisation of the benefits of the results of this research can be provided by institutions that are on the consumer side so that people feel safe and protected in electronic system transactions.

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