

NON-PRESTATION LAW AS THE FINAL SETTLEMENT FOR THE NEGLIGENCE OF ONLINE BUSINESS PLAYERS (E-COMMERCE)

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ABSTRACT; *Default is any form of activity that does not meet the requirements set out in all engagements, including engagements that occur in digital transactions such as e-commerce. Currently the regulation regarding default in e-commerce media is only regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The lack of a legal umbrella for perpetrators of e-commerce transactions in Indonesia has resulted in an increasing number of default cases. So that a new, stronger regulation is needed regarding the mechanism for resolving default cases in e-commerce media. This study aims to provide important knowledge regarding the flow of default lawsuits in e-commerce media. This research was written using a normative juridical method with a statute approach and a conceptual approach. This type of research was carried out qualitatively using secondary data in the form of literature studies and focused on the purpose of applying a norm in relevant positive law. The results of this study are compensation for business actors for default can be in the form of fulfillment of agreements, fulfillment of agreements and compensation, ordinary compensation, cancellation of agreements accompanied by compensation. Settlement of consumer disputes through court default lawsuits is only possible if it cannot be reached in a peaceful way to get compensation. This type of research was carried out qualitatively using secondary data in the form of literature studies and focused on the purpose of applying a norm in relevant positive law. The results of this study are compensation for business actors for default can be in the form of fulfillment of agreements, fulfillment of agreements and compensation, ordinary compensation, cancellation of agreements accompanied by compensation. Settlement of consumer disputes through court default lawsuits is only possible if it cannot be reached in a peaceful way to get compensation. This type of research was carried out qualitatively using secondary data in the form of literature studies and focused on the purpose of applying a norm in relevant positive law. The results of this study are compensation for business actors for default can be in the form of fulfillment of agreements, fulfillment of agreements and compensation, ordinary compensation, cancellation of agreements accompanied by compensation. Settlement of consumer disputes through court default lawsuits is only possible if it cannot be reached in a peaceful way to get compensation.*

Keywords: Default; Loss; E-Commerce.

INTRODUCTION

The existence of the internet has had a huge impact on the development of human life today.¹The emergence of the internet provides extraordinary benefits to the joints of human life in various fields such as education, health, communication, to the economy.²As a result of the rapid development and rapid advancement of technology and informatics, there has been a shift in media from conventional to digital. One of the areas that is most affected by this shift is the economic sector, which in this Global Trade Era requires the support of the Digital Economy, which is reflected in the birth of electronic trading activities.³Trading activities that have been combined with internet technology give rise to an electronic transaction which over time is called e-commerce.⁴

According to M. Suyanto, the notion of e-commerce is a new concept that is usually described as the process of buying and selling goods or services on the World Wide Web Internet or the process of buying and selling or exchanging products, services and information through information networks including the internet.⁵Another definition of e-commerce is an internet application that is used to carry out trade transactions.⁶Generally, e-commerce transactions are carried out through the means of a website which in this case acts as a kind of window for products to be sold so that buyers (customers) can see the shape and specifications of the product in question, complete with the price set.⁷With the existence of e-commerce, now people no longer need to go to stores offline to make a buying and selling transaction.

Based on data obtained from Google's e-Conomy SEA, during 2021, as many as 94% of the population in Southeast Asia admit that they prefer to carry out their daily activities via the internet, including using e-commerce for buying and selling activities.⁸This data is supported by the results of the We Are Social survey which states that Indonesia occupies the first position as the country that uses the most e-commerce services, namely as much as 88.1%.⁹This shows that from 2020 to 2021,

¹Muhammad Ngafifi, 2014, "Technological Progress and Patterns of Human Life in a Socio-Cultural Perspective", *Journal of Educational Development: Foundations and Applications*, 2(1). p. 80

²I Putu Wisna Dana, et al, 2020, "Responsibilities of Business Actors to Go Food Consumers in E-Commerce Transactions", *Journal of Legal Preferences*, 1(1). p. 163

³Priest Lucito, 2017, "Legal Challenges and the Government's Role in E-Commerce Development", *JIKH*, 11(3). p. 128

⁴Ramadhan Wardhana, and Dwi Desi Yayi Tarina, 2021, "Consumer Protection Online Purchase of Masks on the Facebook Marketplace." *Justitia: Journal of Law and Humanities* 8, no. 5, p.1259.

⁵Edi Haerulah, Sri Ismiyatih, 2017, "E-Commerce Application for Sales of Wedding Souvenirs at XYZ Stores", *PROSISKO Journal* 4(1). p. 44

⁶Arabella Yolanda, 2013, "The Influence of Perceived Benefit, Perceived Convenience, Perceived Convenience, and Subjective Norms on Interest in Using Electronic Commerce (E-Commerce)". *FEB Student Scientific Journal* 2 (2). p. 2

⁷*Ibid.*

⁸Anonymous, 2021, "Online With a Purpose: 9 Months On Technology Provides Continuity in The Face of Disruption", *economysea.withgoogle.com*, <https://economysea.withgoogle.com/online-with-a-purpose/>, Retrieved September 07, 2022 at 11.55

⁹Dimas Jarot Bayu, 2021, "10 Countries With the Highest Percentage of E-Commerce Usage in the World (April 2021)" *databoks.katadata.co.id*. <https://databoks.katadata.co.id/datapublish/2021/06/04/pengguna-e-commerce-indonesia-tertinggi-di-dunia>, Retrieved September 07, 2022 at 12.00

there will be an additional 15.5% or around 27 million of the population using the internet as a means of shopping.¹⁰

In Indonesia itself, the actual issue of e-commerce is still related to conventional agreements regulated in the Civil Code (KUHPer) to be precise in Article 1320 which regulates the terms of the validity of the agreement.¹¹ Other regulations that also regulate e-commerce in Indonesia are Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) to be precise in Article 6, Article 18 paragraph (1) and Article 9.¹² Even though it already has a legal umbrella, the implementation of e-commerce often has problems. This is evidenced by the data presented by the Directorate General of Consumer Protection and Orderly Commerce (Ditjen PKTN) of the Ministry of Trade (Kemendag) which noted that in 2021, there were as many as 95% or 4,855 consumers who made complaints related to e-commerce platforms with default category crimes being the most frequent crimes.¹³

Referring to this data, it can be seen that in general, there are still many business actors in e-commerce who still do not understand the legal consequences of default on e-commerce platforms. In addition, there are still many consumers or buyers who do not understand the mechanism for default claims for the negligence of business actors in e-commerce. Therefore, the author is interested in writing a paper entitled "Default Lawsuit as Final Settlement for Negligence by Online Business Actors (E-Commerce)".

PROBLEM

Based on the description of the background above, several problems can be drawn, namely:

1. What are the responsibilities of online businesses (e-commerce) in the event of default?
2. What is the mechanism for a default lawsuit as a final settlement for the negligence of online business actors (e-commerce)?

RESEARCH METHODS

In this study, the normative juridical method was used, with a statutory approach (statute approach) and a conceptual approach (conceptual approach). The normative

¹⁰Nurdian Graha, 2021, "Indonesia E-Commerce Data 2021 (Set Strategy in 2021)". *grahanurdian.com*, <https://grahanurdian.com/e-commerce-indonesia-2021/>, Retrieved September 07, 2022 at 12:10

¹¹Prime Afrilian, et al, 2014, "Settlement of Default in Sales and Purchase Agreements Through Electronic Media". *Journal of Postgraduate Law Studies at Syiah Kuala University*, 2(1), p. 52

¹²Emilda Kuspraningrum, 2011, "The validity of electronic contracts in the ITE Law is reviewed from Article 1320 of the Civil Code and the UNCITRAL Model Law on Electronic Commerce". *Legal Minutes*, 7 (2). p. 70

¹³Handoyo, 2021, "Ministry of Trade: 4,855 Consumers Complain about E-Commerce Transaction Problems During the Covid-19 Pandemic". *national.kontan.co.id*. <https://nasional.kontan.co.id/news/kemendag-4855-konsumen-adukan-hasil-transaksi-e-commerce-selama-pandemi-covid-19>. Retrieved September 07, 2022 at 12:28

juridical method is doctrinal legal research with the object of study in the form of literature studies. The statute approach is carried out by looking at and examining the legal issues that are being researched in statutory regulations. In this case, a statute approach is needed to examine the legal responsibilities of online business actors (e-commerce) in the event of default. Meanwhile, the conceptual approach is carried out by looking at using concepts related to the content of values and norms in laws and regulations. In this case, the conceptual approach is used to analyze the mechanism for lawsuits for default as a final settlement for the negligence of online business actors (e-commerce). This type of research was conducted qualitatively and used research specifications that are descriptive analysis in nature. The data used was obtained through library research, namely secondary data. Secondary data is data given to data collectors with indirect sources. Literature study is a secondary data technique by collecting and studying literature in the form of research results, study results, and laws and regulations. In this case the author's literature study focuses on positive law relating to the responsibility of online business actors due to default and default lawsuits for negligence of online business actors, including the Civil Code (KUHPer).

DISCUSSION

Responsibilities of Online Business Actors (E-Commerce) in the Event of a Default

Default comes from the original term in Dutch, namely default, which means not fulfilling something that is required as specified in the engagement.¹⁴ According to Prof. Subekti in his book *Law of Agreement*, a debtor's default can be in the form of:

1. Not doing what he is willing to do;
2. Carry out what it promises, but not as promised;
3. Did what he promised but was too late; and
4. Doing something according to the agreement is not allowed to do.¹⁵

In e-commerce transactions, there are many things that can cause a loss as mentioned above which can reduce consumer confidence in the e-commerce system, so an effective and efficient dispute resolution mechanism is needed.¹⁶ The consequence of not fulfilling the agreement that occurs in e-commerce is that the aggrieved party can ask for compensation.¹⁷ However, until now, the responsibility of business actors towards consumers in e-commerce transactions in the event of a default has not been specifically regulated either in Indonesian laws and regulations.¹⁸ For this reason, the responsibility of business actors towards

¹⁴I Made Aditia Warmadewa, I Made Udiana, 2017, "Legal Consequences of Default in Standard Agreements", *Kertha Semaya: Journal of Legal Studies* 5(2). p. 4

¹⁵Oktriadi Kurniawan, Aria Zurnetti, Suharizal, 2020, "Settlement of Default Dispute in Online Sale and Purchase Agreements (E-Commerce) Leading to Fraud", *Journal of Syntax Transformation* 1(7). p. 356

¹⁶*Ibid.*

¹⁷Zuni Rusviana, Adi Suliantoro, 2018, "Sales and Purchase Agreements Through the Internet (E-Commerce) Viewed from the Aspect of Civil Law", *Legal Dynamics* 21(2). p. 66

¹⁸Chrisai Marcelino Riung, 2015, "Responsibility of Business Actors for Consumer Losses in Transactions Through E-Commerce". *Lex Private* III(2). p. 64

consumers of e-commerce transactions is currently still using Law Number 11 of 2008 (UU ITE) as a legal basis in resolving related problems.¹⁹

In e-commerce transactions, the principle that applies in the event of default is the principle of absolute responsibility, which means that all responsibility when carrying out e-commerce transactions rests with the business actor.²⁰ Article 21 paragraph (2) letter a Law Number 11 of 2008 which has been amended by Law Number 19 of 2016 concerning Information and Transactions (UU ITE) states that all legal consequences in carrying out electronic transactions are the responsibility of the transacting parties.²¹ Thus, in the event of default by business actors in e-commerce transactions, the responsible party is the business actor.²²

In civil law, the legal consequences of default are regulated in Article 1365 of the Civil Code which states clearly that a person who commits an act of default is obliged to compensate for his actions against the injured party.²³ Forms of compensation resulting from acts of default can be classified into four, namely:²⁴

1. Pay for losses suffered by the buyer (stipulated in Article 1243 of the Civil Code);
2. Termination of the agreement;
3. Fulfillment of the agreement or cancellation of the agreement is accompanied by payment of compensation (stipulated in Article 1267 of the Civil Code); and
4. Transfer of risks (stipulated in Article 1237 paragraph 2 of the Civil Code).²⁵

Claims for compensation based on default are as a result of the application of the clauses contained in the agreement, this means that the form of compensation made is not regulated by law but has been determined by the parties who are bound to each other.²⁶ If the legal subject is not responsible for his default, then the injured party can take legal action in accordance with the provisions of Article 38 and Article 39 of the ITE Law.

Default Lawsuit Mechanism as Settlement for Negligence of Online Business Actors

Online buying and selling transactions do not rule out the possibility of default by business actors. The default that is often committed by business actors is that many

¹⁹Gunawan Widjaja, et al, 2019, "Default, Transaction Failure and Consumer Protection in Electronic Transactions". *Cross-Border* 2(1). p. 198

²⁰*Ibid.*

²¹M. Arsyad Sanusi, 2001, *E-Commerce: Law and Solutions*, PT. Mizan Graphic Facilities, Bandung, p. 18

²²*Ibid.*

²³Zuni Rusviana, Adi Suliantoro. *Op. Cit.*

²⁴Dwi Aryanti Ramadhani, 2012, "Default and its Legal Consequences." *Juridical Journal* 15(17), p. 13

²⁵*Ibid.*

²⁶Chrisai Marcelino Riung. *Op. Cit.*

business actors set aside consumer rights.²⁷ There are nine consumer rights regulated in Article 4 of the Consumer Protection Act (UUPK), namely: the right to comfort, security and safety in consuming goods and/or services; the right to select and obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised; the right to correct, clear and honest information regarding the conditions and warranties of goods and/or services; the right to have their opinions and complaints heard about the goods and/or services used; the right to obtain proper advocacy, protection and efforts to resolve consumer protection disputes; the right to obtain consumer guidance and education; the right to be treated or served properly and honestly and not discriminatory; the right to obtain compensation, compensation/compensation, if the goods and/or services received are not in accordance with the agreement or not as they should be; the rights regulated in the provisions of other laws and regulations.²⁸

Basically the UUPK has been very effective in regulating consumer rights, so that if there is a default by business actors, consumers can carry out several dispute resolutions to get their rights.²⁹ In the Consumer Protection Act, settlement of consumer disputes is regulated in Chapter X which consists of 4 (four) articles, starting from Article 45 to Article 48.³⁰ Meanwhile, in the Electronic Information and Technology Law (UU ITE) dispute settlement is regulated in Chapter VIII which consists of 2 (two) Articles, namely Article 38 and Article 39.³¹ Based on the dispute resolution provisions stipulated in the Law, there are two types of dispute resolution, namely litigation and non-litigation. According to article 38 of the ITE Law, the litigation route refers to the civil procedural law in force in Indonesia. Litigation is a mechanism through the courts, namely the process of filing lawsuits through general court institutions, from the District Court level to cassation to the Supreme Court.³²

The settlement of litigation and non-litigation disputes has the same objective, namely to obtain accountability for the negligence of business actors in online buying and selling transactions. In this case, business actors can be held accountable through contractual liability relating to losses suffered by consumers and product liability if it turns out that the products offered by business actors are defective and harm consumers.³³ Settlement of consumer disputes through the courts is only

²⁷ Desy Ary Setyawati, Dahlan Ali, and M. Nur Rasyid, 2017, "Protection of Consumer Rights and Responsibilities of Business Actors in Electronic Transaction Agreements." *Shia Kuala Law Journal* 1(3), p. 46-64.

²⁸ Wahyu Simon Tampubolon, 2016, "Legal Protection Efforts for Consumers Viewed from the Consumer Protection Act." *Advocacy Scientific Journal* 4(1), p. 53-61.

²⁹ Abdul Halim Barkatullah, 2019, *Consumer rights*. Nusamedia, Jakarta, p. 73.

³⁰ Arfian Setiantoro, Fayreizha Destika Putri, Anisah Novitarani, and Rinitami Njatrijani, 2018, "The Urgency of Consumer Legal Protection and E-Commerce Dispute Resolution in the Era of the Asean Economic Community." *Rechts Vinding Journal: National Law Development Media* 7(1), p.1-17.

³¹ Reza Nurul Ichsan, Sarman Sinaga, and SEI Lukman Nasution, 2020, *Solving Business Problems in Electronic Transactions (E-Commerce)*, CV. Sentosa Deli Mandiri, Malang.

³² Muhammad Alvi Syahrin, 2018, "Determination of Authorized Forums and Dispute Resolution Models for International Business Transactions Using E-Commerce: A Study of Legal Certainty in National Economic Development." *Rechts Vinding Journal: National Law Development Media* 7(2), p. 207-228.

³³ Desy Ary Setyawati, Dahlan Ali, and M. Nur Rasyid, *Ibid*.

possible if the parties have not opted for efforts to resolve consumer disputes outside the court and efforts to resolve consumer disputes outside the court have been declared unsuccessful by one of the parties or by the parties to the dispute.³⁴

Like the following case example, Andrio Prijaya as a buyer bought a Lenovo Thinkshop Laptop for Rp. 4,614,000. After the goods reach the hands of the buyer, the buyer immediately checks the laptop he ordered. However, after checking the left touchpad cannot function properly and the business actor is not responsible for defective goods received by the buyer. In this case the business actor has violated the provisions stated in Article 8 paragraph (2) UUPK which states that business actors are prohibited from trading damaged and defective goods. In the case above, the problem was not resolved amicably, so it was the consumer who suffered the loss. The case above proves that consumers have lost their rights to obtain goods according to their wishes, do not receive compensation from business actors and their right to submit complaints to the marketplace is not properly responded to.

The buyer may sue through a consumer dispute resolution agency or submit to court at the consumer's domicile. Because it cannot be reached in a peaceful way, the consumer can sue the business actor.³⁵ As stated in Article 23 UUPK states that business actors who refuse and/or do not respond and/or do not fulfill the compensation as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3) and paragraph (4), can be sued through a consumer dispute resolution agency or submit to court at the consumer's domicile.³⁶

However, if the business actor's negligence can still be pursued amicably, then it can be resolved through non-court channels or out of court. Mechanisms for settlement of defaults in sale and purchase agreements through electronic media include settlement mechanisms out of court, which prioritize the settlement process using mediation, consolidation and also negotiations.³⁷ As in article 39 paragraph (2) of the ITE Law which explains that in addition to settling civil lawsuits, the parties can resolve disputes through arbitration, or other institutions. Settlement of disputes through non-litigation channels can be reached through non-governmental organizations, the Directorate of Consumer Protection, the Consumer Dispute Resolution Agency and business actors themselves as a family.³⁸

CONCLUSION

1. In civil law, the responsibility of online business actors (e-commerce) in the event of default is compensation, because the default has harmed other parties.

³⁴ Sarman Sinaga, 2019, "Reconstruction of Equity-Based Business Dispute Resolution in Electronic Transactions (E-Commerce)." *PhD diss.*, Sultan Agung Islamic University, p. 151

³⁵ Martin Bunga, 2021, "MECHANISM FOR SETTLEMENT OF CONSUMER DISPUTES ACCORDING TO LAW NUMBER 8 OF 1999 CONCERNING CONSUMER PROTECTION." *Gorontalo Law Review* 4(2), p. 331-347.

³⁶ *Ibid*

³⁷ Afrilian Prime and Mahfud Dahlan, "Settlement of defaults in sale and purchase agreements through electronic media." *Journal of Law Science* 2, no. 1 (2014).

³⁸ Putra Agung, 2014, "Legal Protection of Consumers in Buying and Selling Transactions Through E-Commerce." *Journal of Law Science* 5(2), p.197-208.

As stipulated in Article 1365 of the Civil Code which states that a person who commits an act of default is obliged to compensate for his actions against the aggrieved party. According to article 1243 of the Civil Code, compensation is due to non-fulfillment of an agreement. Compensation for these defaults can be in the form of fulfillment of the agreement, fulfillment of the agreement and compensation, ordinary compensation, cancellation of the agreement accompanied by compensation.

2. Final settlement of business actors who neglect e-commerce consumers, namely carrying out a default lawsuit through a consumer dispute settlement agency or submitting a court case at the consumer's domicile. Settlement of consumer disputes through court default lawsuits is only possible if it cannot be reached in a peaceful way to obtain compensation. As in Article 23 UUPK that business actors who refuse, do not respond, do not fulfill compensation as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3) and paragraph (4), can be sued through a dispute resolution agency consumer or submit to court at the consumer's domicile.

SUGGESTION

1. Legal certainty is needed regarding the responsibility of business actors for default on consumers in e-commerce transactions through the revision of the UUPK which delegates the establishment of implementing regulations regarding e-commerce transactions. This is because, the provisions that are not yet clear regarding engagement through e-commerce in Indonesia pose a high risk for consumers to become victims of defaults due to the negligence of e-commerce business actors. Considering that the Civil Code and the ITE Law cannot fully guarantee engagements carried out through online media or e-commerce.
2. A new regulation is needed regarding law enforcement which contains provisions on the claim mechanism and the jurisdiction of the court's authority in handling e-commerce disputes. This is because, the implementation of contracts in e-commerce generally occurs between parties who are domiciled in different countries or cities. Therefore, so that the implementation of the e-commerce agreement does not experience obstacles, the jurisdiction of the court's authority in handling these disputes must find a solution.

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