

CONSUMER LEGAL PROTECTION ON THE IMPLEMENTATION OF E-COMMERCE USING INSTAGRAM WITH PRE-ORDER SYSTEM DURING THE COVID-19 PANDEMIC

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ABSTRACT

The implementation of e-commerce during the COVID-19 pandemic in Indonesia is growing very rapidly. This rapid development is widely used by the community to do trading business which is not only through the marketplace which is used for promotion but also using social media. One of the social media used by the public for transactions today is Instagram, and not a few of them use the pre-order system in carrying out these transactions. Not only the covid-19 virus is endemic, but the Korean Hallyu virus is also endemic with the number of merchandise per Kpop sold with a pre-order system. This situation creates a job opportunity during the current pandemic for business people by selling various merchandise and K-Pop albums using the pre-order system via Instagram. However, in this situation, many sellers abuse it to take advantage of themselves at the expense of other parties (consumers). Many consumers whose rights are not fulfilled and are harmed by business actors by not sending the ordered goods, goods that are not in accordance with the order, damaged goods, and not fulfilling the agreements that have been agreed upon by the parties. This action is very detrimental to many consumers who participate in e-commerce transactions on Instagram using the pre-order system so it is necessary for buyers to get legal protection rights.

Keywords: E-Commerce, Instagram, Pre-Order, Legal Protection.

INTRODUCTION

The rapid development of internet technology and the high interest in using the internet in society have an impact on various sectors, especially the economy and business. During the COVID-19 pandemic, many people use the internet to do business buying and selling online commonly known as e-commerce. The implementation of e-commerce in Indonesia is growing rapidly, many who use it ranging from children, teenagers, adults to parents who do online shopping activities in online stores (marketplaces). In general, seven marketplaces are used, namely buying and selling forums, social networks, blogs, messengers and currently many marketplaces are popping up such as Shopee, Tokopedia, Lazada, and others. However, the rapid development of technology is currently increasing the number of promotional media used, one of which is social media.

Social media is currently widely used by the public to interact, ranging from children to parents who also interact through social media, because social media facilitates communication between fellow users without knowing the boundaries of space and time. Currently, social media is still growing, starting from Instagram, Twitter, Facebook, Line, WhatsApp, and others. However, one of the social media that is currently widely used among young people is Instagram. As of July 2021, Instagram users in Indonesia are recorded at 91.77 million users with the largest percentage of 36.4% being users aged 18-24 years. Instagram is currently not only used to share photos, but people are also starting to use Instagram as a place to do business online. There are many businesses developed by business people through Instagram such as selling shoes, clothes, bags, food, accessories, and others.

E-commerce transactions with Instagram are currently mostly done using a pre-order system, where buyers have to make payments in advance and buyers have to wait for the production process of the goods ordered until the estimated time limit for the goods will come or have been finished. The pre-order system is widely used by online shop businessmen because the product or item purchased is not yet available.

The Covid-19 pandemic that has emerged since 2019 has resulted in the implementation of e-commerce being carried out through Instagram with a pre-order system increasing in the community, such as pre-ordering clothes, pre-orders, hijabs, pre-ordering shoes, and what is currently booming. among teenagers is the pre-order of merchandise per Kpop. Not only the covid-19 virus is endemic, but the Korean Hallyu virus is also endemic and is getting more and more familiar among teenagers today. This situation is widely used by people who want to start a business by making it a job during the current pandemic.

At the end of 2020, the Korean Hallyu virus was getting more and more widespread with a lot of K-Pop merchandise being promoted, causing teenagers to be enthusiastic about buying the merchandise. This situation is exploited by business people by opening pre-orders through their Instagram accounts. However, from the author's observation, not a few sellers abuse this situation to take advantage of themselves to the detriment of the consumer.

Many sellers take advantage of this situation by opening a pre-order for merchandise sales via Instagram where buyers are required to pay advance payment to the seller, and the goods will be sent after the goods have been produced, but in reality, after the goods are finished in production, many sellers do not continue. transactions to buyers so that the goods do not reach the buyer. This incident is currently rife, many Instagram accounts have started to open pre-orders for selling K-Pop merchandise, where many teenagers are easy targets for consumers to become consumers by the owners of these accounts, then the seller defaults on the buyer.

Based on this, the seller should fulfill his obligations as a seller, which obligations include:

1. Submit the ownership rights to the goods being traded, and
2. To bear the comfort of the goods and to bear the hidden defects.

The weak position of the buyer in terms of proving when a default occurs, where the seller should be fully responsible for the business activities he carries out in e-commerce transactions so as not to harm the buyer. This action is very detrimental to many buyers who participate in e-commerce transactions on Instagram using the pre-order system so it is necessary for buyers to get legal protection rights. Therefore, the author will examine further the legal protection of consumers in the implementation of e-commerce transactions with a pre-order system through Instagram media as the basis for the engagement of two parties who enter into an engagement.

METHOD

The author in this study uses qualitative research methods with normative juridical research types that refer to legal norms contained in laws and regulations as well as norms that develop and live in society by using primary and secondary legal sources. This research is descriptive-analytical which reveals the laws and regulations relating to legal theories that are the object of research, as well as the law in its implementation in the community which is concerned with being the object of research to examine the problems to be studied, the author uses a statutory approach (statue approach) by using primary legal sources from various applicable regulations relating to consumer legal protection and secondary legal sources from various existing research and articles.

RESULTS AND DISCUSSION

The outbreak of COVID-19 in Indonesia and the enactment of Large-Scale Social Restrictions (PSBB) by the government have disrupted the economy in Indonesia, such as restaurants, tourist attractions, hotels, market traders, malls, and others being affected by the outbreak. Many people are not ready to face these conditions because their sources of livelihood to survive are completely limited. However, over time, people began to rise in the midst of this COVID-19 pandemic. Coordinating Minister Airlangga explained that there was an increase in the use of digital technology which was reflected in an increase in traffic of around 15-20% where digitization towards industry 4.0 was a necessity. One of the methods used is by maximizing digital marketing. During this pandemic, online shops have experienced a drastic increase due to the implementation of the PSBB by the government so that people stay at home so that online shops are used by the community to meet primary and secondary needs.

The rapid development of internet technology and the high interest in using the internet in society have an impact on various sectors, especially the economy and business. During the COVID-19 pandemic, many people use the internet to do business buying and selling online commonly known as e-commerce. E-commerce is a technology that is growing at this time. London describes e-commerce as a process of buying and selling products electronically by consumers and from company to company with computers as intermediaries for carrying out transactions. E-commerce has 2 characteristics, namely business to business and business to consumers. The criteria for goods traded through e-commerce are also regulated by the government, but are not regulated in detail and follow Government Regulation Number 2 of 2000 concerning National Standardization and Regulation of the Minister of Industry Number 29 of 2017 concerning Provisions and Procedures for Calculation of Component Level Values domestic.

The implementation of e-commerce in Indonesia is growing rapidly, many who use it ranging from children, teenagers, adults to parents who do online shopping activities in online stores (marketplaces). In general, seven places are used as places for selling online, namely buying and selling forums, social networks, blogs, messengers and currently many marketplaces are popping up such as shopee, tokopedia, lazada, and others. However, with the rapid development of technology today, many online business people use social media as a tool for promotion, and one of the social media that is currently widely used is Instagram. The data is recorded that until July 2021, Instagram users in Indonesia reached 91.77 million users with the largest percentage of 36.4% being users aged 18-24 years.

Many Instagram users choose Instagram to conduct e-commerce transactions because many judge Instagram as an effective marketing communication medium. Most of the e-commerce transactions carried out through Instagram are currently implemented using a pre-order system. Many Instagram users use this media to make buying and selling because with Instagram media they can communicate questions and answers between sellers and buyers regarding the availability of goods, it can be done anytime and anywhere, and with one upload it can be directly connected to several other social media so that marketing can be wider quickly. However, Instagram also has several shortcomings, such as the absence of an institution that guarantees the legitimacy of this online store, and the presence of consumers who are not clearly visualized. However, with these shortcomings, it does not reduce the number of users and buying and selling transactions that occur on Instagram as long as it can benefit the parties. Several cases that often occurred in the last year of the pandemic during the implementation of this transaction were sellers who were not responsible and did not fulfill their obligations in fulfilling the rights that buyers had to acquire.

Not only the covid-19 virus is endemic, but the Korean Hallyu virus is also endemic and is becoming more and more familiar among teenagers today, such as various kinds of K-Pop merchandise ranging from lightsticks, posters, key chains, albums, photo cards, and many others. . The number of young people who like it is then used by business people by making it a job field during the current pandemic. Many business people use Instagram to sell various K-Pop merchandise using a pre-order system.

Pre-Order commonly abbreviated as PO is a payment system that is carried out by making a payment first for the desired goods then payment is made at the end or after the goods already exist. According to Erwandi Tarmizi, a pre-order is a transaction made by one party who is ready to hand over the goods to another party at a certain time, where the object of the goods is sometimes still abroad. Meanwhile, according to Roms, pre-orders are orders made for products that have not been released and arise because people find it difficult to get popular items in stores because of their popularity. Then the store had the idea to allow customers to keep their private copies before they were released, which has been a huge success.

Orders made using the pre-order system were previously carried out through direct communication by the seller and the buyer where the two of them met in person or through communication tools such as letters or telephones. However, after the advent of the internet, many merchants used it and utilized it in making online stores and selling their products to those who frequently surfed the virtual world (internet). The existence of the internet makes it easier for customers to visit online stores and customers can make transactions anywhere. Online business activities are the same as conventional business activities in general, the difference with conventional business in online business is that all activities are carried out online using internet media.

Business people who use the pre-order system in the online shop sector in marketing their products always make standard agreements. A standard agreement is an agreement in which almost all of the clauses are standardized and the other party basically does not have the opportunity to negotiate or ask for changes. This agreement tends to substantively only spell out and highlight the existing rights of the party who has a stronger position while the other party is forced to accept the situation because of his weak position.

The COVID-19 pandemic that has emerged since 2019 has resulted in the implementation of e-commerce being carried out through Instagram with a pre-order system increasing in the community, especially world pre-orders per Kpop. Currently, the implementation of K-Pop album e-commerce on Instagram is booming using a pre-order system. Transactions are carried out by two or more people to order albums where the characteristics are not known to the buyer and the goods are not yet available directly by the seller, and the waiting period for the goods until the goods are available is unknown because the goods are imported from abroad and the buyer is obliged to pay the price written on the Instagram account posts that sell the album.

The systematic implementation of online album buying and selling transactions is widely used because of the increasing demand and the number of comeback seasons from Korean boy groups and girl groups as well as the number of new idol groups emerging during this pandemic, so that many online businesses use them to sell albums and merchandise per Kpop in every year. Korean boy group and girl group comeback season. However, many also abuse this situation to take advantage of themselves to the detriment of others. Many take advantage of each group's comeback by opening a pre-order for album sales from each agency of each group via Instagram where buyers are required to pay advance payment to the seller, but after the goods are finished producing the account does not continue the transaction to the buyers so the goods are not up to the buyer. This incident happened a lot in several Instagram accounts that opened pre-orders for album sales by giving prices that were much cheaper than the prices of other Instagram accounts to the delivery of goods that were quite fast than others and the target of the album selling business was none other than children, -teenagers, who then the seller defaults to the buyers. This is very detrimental to buyers because buyers lose a lot of money not in small amounts, some up to tens of millions of money are not returned and even the seller disappears without anyone notifying the buyer at all.

Based on the description of the case above, it can be seen that e-commerce transactions carried out through Instagram media with the Pre-Order system in practice are still lacking in terms of the legal protection of consumer rights and obligations to the parties, namely between the seller and the buyer. These rights and obligations are a realization of the rights and obligations in the form of buying and selling through Instagram media with a pre-order system. These rights and obligations must be carried out by both parties without harming either party. These rights and obligations are also a counter-achievement and achievement that must be implemented.

In general, in the practice of buying and selling with a pre-order system, the seller mentions the nature of the product first, starting from the characteristics of the goods, the price of the goods, the size, weight, quality, and quantity of the goods and the time of delivery of the goods even though the goods have not been produced. However, this also does not guarantee freedom from unwanted things, such as the occurrence of actions outside the agreement carried out by the seller, for example. Unwanted possibilities can occur where goods traded through Instagram media do not match reality. This can happen, the buyer has placed an order and has paid for the goods he bought, but the goods received by the buyer are not in accordance with what was agreed. This act can be considered as an act of default.

According to Professor Subekti, S.H., there are four types of default, namely:

1. Not doing what he was promised to do;
2. Carry out what was promised but late;
3. Carry out what was promised, but not as what was promised;
4. Doing something that according to the agreement should not be done.

The vulnerability of making transactions with the pre-order system through Instagram media is due to the increasing number of online businesses using the application so many individuals are taking advantage of the current pandemic situation. The occurrence of actions outside the agreement carried out by the seller or what is called default. In this case, whereafter the buyer places an order and then makes a payment, the owner of the Instagram account in the sale and purchase can immediately block the buyer's Instagram account so that the buyer cannot find the seller's Instagram account again. Actions like this result in the buyer not being

able to receive his rights at all, and even the losses received are greater because the pre-orders are not only for one or two items. To carry out a prosecution, very strong evidence is needed, while in Instagram media if the account has been blocked by another account, then anything related to the blocking account will be lost and the contents of the conversation related to buying and selling transactions that have been carried out are lost, making it difficult to prove the action.

Default in this e-commerce transaction is mostly done by the seller, if the seller defaults, the consumer can contact the seller to confirm the agreement that has been made regarding the goods he bought. In this case, the seller should fulfill his obligations as a seller, which obligations include:

1. Submit the ownership rights to the goods being traded, and
2. To bear the comfort of the goods and to bear the hidden defects.

From the case described above, it will be very difficult for buyers to fulfill their rights in carrying out e-commerce transactions with this pre-order system. Because by using Instagram media, it is very easy for sellers to take these actions and can quickly eliminate evidence of buyers. So that if there is action outside the agreement or a default in these circumstances, the position of the buyer can be said to be weak. Due to the weak position of the buyer in terms of proving when a default occurs, the seller should be fully responsible for the business activities carried out in e-commerce transactions so as not to harm the buyer. Article 21 paragraph (2) letter a of the Law on Information and Electronic Transactions states that "if it is carried out alone, all legal consequences in the implementation of electronic transactions are the responsibility of the parties to the transaction". This, in e-commerce transactions, the party responsible is the party who defaults which in this case is carried out by the online seller of business actors. Meanwhile, according to the Civil Code due to default by the debtor or parties who have the obligation to carry out the achievements in the agreement, can cause losses for creditors or parties who have the right to receive achievements. The legal consequences for parties who have the obligation to carry out the achievements in the agreement but are in default, namely:

1. He must pay compensation suffered by creditors or parties who have the right to receive achievements (Article 1243 of the Civil Code);
2. He must accept the termination of the agreement accompanied by payment of compensation (Article 1267 of the Civil Code);
3. He must accept the risk transfer from the time the default occurs (Article 1237 paragraph (2) of the Civil Code);

In addition, according to article 1266 of the Civil Code, in a reciprocal agreement, a default from one party gives the other party the right to terminate the contract in court, even though the termination conditions regarding the non-fulfillment of obligations are stated in the agreement. If the terms of termination are not stated in the agreement, then the judge in court is free to demand conditions on the defendant's claim to purchase a period of time for the defendant to give the defendant the opportunity to carry out his obligations, which period cannot be more than one month.

CONCLUSION

E-commerce transactions carried out through Instagram media with the Pre-Order system in its implementation there is no legal protection for the fulfillment of consumer rights by business travelers. The weak position of consumers when a default occurs, results in consumers not being able to demand accountability from the seller who should be fully responsible for the implementation of transactions carried out in e-commerce transactions.

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