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A New Challenge on Consumer Protection with Disclaimer Inclusion in E-Commerce Sites in Indonesia

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**Abstract**

The development of information and technology has brought the economy to a new stage known as e-commerce. The presence of e-commerce also presents a new problem in society, namely the presence of a disclaimer. To examine these problems, this research uses normative legal research methods. This research shows that the disclaimer is a form of standard clause. As a form of e-commerce consumer protection, the standard clause must comply with the provisions regarding standard clauses as stipulated in statutory regulations. In Indonesia, e-commerce is regulated in Law No. 19 of 2016 concerning Electronic Information and Transactions. So, the implementation of the disclaimer in e-commerce transactions must be adjusted to the existing laws in Indonesia.

Keywords: E-Commerce; Disclaimer; Consumer Legal Protection.

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Introduction

In the era of rapid development of information technology, change and development is something that cannot be avoided.¹ Changes and developments in information and technology have become something that is considered important because it can facilitate and also make all activities of human life easier.^{2 3} The

¹ Alfis Setyawan dan Deeky Agus Sufandy, 'Analisis Perlindungan Hukum terhadap Konsumen Pengguna Jasa Ojek Online di Kota Batam' (2018) 20 Journal of Judicial Review.[17-34].

² Hari Sutra Disemadi dan Paramita Prananingtyas, 'Perlindungan Hukum terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine)' (2019) 8 Jurnal Magister Hukum Udayana. [386-402].

³ Febri Jaya, 'Tinjauan Yuridis terhadap Pemasaran Kosmetik Ilegal Secara Online di Indonesia' (2020) 22 Journal of Judicial Review.[98-111].

impact of the development of information and technology has also brought the world economy into a new era, better known as the digital economy.⁴

Electrical commerce or known as E-Commerce (electronic commerce) is part of the electronic lifestyle (e-lifestyle) which makes buying and selling transactions can be carried out online wherever the person is.^{5 6} E-commerce is a connection (contact) of trade transactions between buyers and sellers using digital media devices in the form of the internet, where ordering, payment and payment systems are communicated and carried out through internet media.^{7 8} The existence of e-commerce is considered as a promising commercial alternative to be applied in this digitalization era.

The influence of the development of information technology is so great that nowadays consumers simply access online websites or shopping applications, then consumers can easily see and determine what products they want to buy in a short time.⁹ However, despite the rapid development of information technology, there are many consumers or users of e-commerce systems who up to this moment do not realize that every e-commerce site must include a legal disclaimer template which is usually found on certain pages such as the terms of use and privacy policy, or also in other parts of the layout of the websites visited.^{10 11}

⁴ Yudhi Priyo Amboro dan Agustina Christi, 'Prospek Pengaturan Cryptocurrency sebagai Mata Uang Virtual di Indonesia (Studi Perbandingan Hukum Jepang dan Singapura)' (2019) 21 *Journal of Judicial Review*. [14-40].

⁵ Margaretha Rosa Anjani dan Budi Santoso, 'Urgensi Rekonstruksi Hukum E-Commerce di Indonesia' (2018) 14 *Law Reform*. [89-103].

⁶ Hari Sutra Disemadi, Mochammad Abizar Yusro, dan Wizna Gania Balqis, 'The Problems of Consumer Protection in Fintech Peer to Peer Lending Business Activities in Indonesia' (2020) 3 *Sociological Jurisprudence Journal*. [91-97].

⁷ Margaretha Rosa Anjani dan Budi Santoso, 'Urgensi Rekonstruksi Hukum E-Commerce di Indonesia' (2018) 14 *Law Reform*. [89-103].

⁸ Andi Aina Ilmih dan A. Zulkarnain, 'Ideal Electronic Contract Model as a Form of E-Commerce Disputes Settlement' (2019) 6 *Jurnal Pembaharuan Hukum*. [77-89].

⁹ Ardiana Hidayah dan Marsitiningih, 'Aspek Hukum Perlindungan Data Konsumen E-Commerce' (2020) 20 *Kosmik Hukum*. [56-63].

¹⁰ Basri Effendi, 'Pengawasan dan Penegakan Hukum terhadap Bisnis Digital (E-Commerce) oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam Praktek Persaingan Usaha Tidak Sehat' (2020) 4 *Syiah Kuala Law Journal*. [21-32].

¹¹ Muhammad Alvi Syahrin, 'Refleksi Teoretik E-Contract: Hukum yang Berlaku dalam Sengketa Transaksi Bisnis Internasional yang Menggunakan E-Commerce' (2017) 3 *Lex Librum*. [475-494].

The website disclaimer generally states that the content in a site page is only as an information or general description that cannot be accounted for.¹² It is not intended as professional advice or advice and that users/readers/people who access the page can seek professional advice or advice from other more competent parties. The website disclaimer statement also generally indicates that the owner or provider of the website is not responsible for any losses that may arise or be experienced by users/readers/people who access the website.¹³

As information and communication technology in Indonesia has been clearly regulated in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (*Undang-undang Informasi dan Transaksi Elektronik/ITE Law*). The ITE Law, a specific provision (*lex specialis derogat legi generali*) which regulates transactions based on electronic media due to its scope in cyberspace which is generally called cyberspace.¹⁴ However, in the ITE Law there is no firm regulation regarding the protection of consumer rights. Article 19 of the ITE Law, Chapter V concerning electronic transactions, stipulates that “the parties conducting electronic transactions must use the agreed Electronic System.” Article 18 paragraph 1 of the ITE Law also states that “Electronic Transactions as outlined in Electronic Contracts are binding on the parties”, so that consumers who transact with electronic media/in cyberspace are considered to have agreed and agreed to all the terms and conditions attached to the transaction.

The disclaimer contained in the website or e-commerce site can have an impact on a one-sided position between consumers and business actors. Business actors seem to be able to easily set a disclaimer statement on the website page which is intended as a form of self-protection against the law that applies to business actors. Based on the description above, the objectives of this study are 1) to analyze the

¹² Ni Putu Ria Dewi Marheni, ‘Perlindungan Hukum Bagi Konsumen Berkaitan dengan Pencantuman Disclaimer oleh Pelaku Usaha dalam Situs Internet (Website)’ (2014) 3 Jurnal Magister Hukum Udayana.[1-18].

¹³ *ibid.*

¹⁴ Melani, Hari Sutra Disemadi, dan Nyoman Serikat Putra Jaya, ‘Kebijakan Hukum Pidana Dibidang Transaksi Elektronik sebagai Tindak Pidana Non-Konvensional’ (2020) 15 Pandecta: Jurnal Penelitian Ilmu Hukum (Research Law Journal).[111-120].

regulation regarding the inclusion of disclaimers in e-commerce sites in Indonesia; and 2) Analyzing legal protection for consumers with the inclusion of a disclaimer on e-commerce sites in Indonesia.

Method Research

The preparation of this research uses normative juridical research methods or what is commonly called normative legal research, because data collection and data research were data taken from library research, which is secondary data.¹⁵ Normative legal research refers more to legal norms, so this research is more focused on sources in the form of secondary materials, both in the form of statutory regulations and legal theories, in addition to discussing legal guidelines that are theoretical in nature and can be used in analyzing a problem formulation. studied.¹⁶

By analyzing or reviewing secondary data, it establishes an understanding that the law acts as a set of rules (positive norms) in a system of laws and regulations that regulate all patterns of people's lives. Therefore this research produces a detailed and more systematic explanation regarding the implementation and enforcement of law in Indonesia regarding the inclusion of a disclaimer in e-commerce transactions. Analysis of the processing of research study materials obtained was discussed and examined in order to produce an answer to the formulation of the problem under study.

Regulations regarding Disclaimer Inclusion in E-Commerce Sites in Indonesia

E-Commerce transactions occur based on buying and selling on online sites between business actors and consumers so that it is regulated in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) as well as in Government Regulation No. 71

¹⁵ Kornelius Benuf dan Muhamad Azhar, 'Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer' (2020) 7 Gema Keadilan.[20-33].

¹⁶ Suteki dan Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)* (Rajawali Pers 2018).

of 2019 concerning the implementation of Electronic Systems and Transactions (*Peraturan Pemerintah tentang Penyelenggaraan Sistem dan Transaksi Elektronik/ PP PSTE*). Article 9 of the ITE Law clearly states that “business actors who offer products through the Electronic System must provide complete and correct information relating to contract terms, producers, and products offered”. In this case, it states that the business actor (seller) must be responsible for the information regarding the services and/or products listed on the e-commerce site. In this regard, Article 28 of the ITE Law also states that “the act of intentionally and without rights spreading false and misleading news that results in consumer losses in Electronic Transactions is one of the prohibited acts.” In Article 45 paragraph (2) which states that “everyone who fulfills the elements in the prohibited matters as referred to in Article 28 paragraphs (1) and (2) may be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000 (one billion rupiah)”.

In Indonesia, the ITE Law is a specific statutory rule (*lex specialis derogat legi generali*) that regulates electronic media-based transactions due to its scope in cyberspace. In addition to the ITE Law, the Government has also issued Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems (*Peraturan Pemerintah tentang Perdagangan Melalui Sistem Elektronik/ PP PMSE*) on November 24, 2019. The establishment of the PP PMSE has indeed been mandated since the issuance of Law No. 70 of 2014 concerning Trade, precisely regulated in Article 66 of the PP PMSE is a form of commerce in which transactions occur through a series of media, devices, and electrically based procedures or better known as e-commerce. The PP PMSE regulates the points in e-commerce transactions both from within and outside the country, including business actors, licensing, and payments.

The issuance of these laws and regulations is a form of preventive legal protection described by Philipus M Hadjon’s theory which aims to provide legal boundaries and protection before a legal problem occurs. The setting for a disclaimer on an E-Commerce site is actually still not specifically regulated in the laws and regulations in Indonesia. However, if it is seen from the purpose of the disclaimer

that is used as the basis or as part of an engagement or agreement that limits the responsibilities of a particular party, then this can arise because there are parties who are bound in an agreement that has been agreed or at least is considered to have agreed at the time of implementation. rights and obligations of an engagement or agreement. The transfer or disclaimer of responsibility with the inclusion of a disclaimer on a site or terms and conditions is clearly a form of inclusion of a standard clause. The inclusion of a disclaimer is made unilaterally by the website owner or seller and the existence of website users or buyers is limited to being passive, namely they are only given the option to freely choose to agree or not without being able to change the terms or conditions.

According to Law No. 8 of 1999 concerning Consumer Protection (*Undang-Undang Perlindungan Konsumen/UUPK*) in Article 1 Number 10, the standard clause is defined as “any rule or provision and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement binding and must be fulfilled by consumers. In Article 47 paragraph (2) of the PP PSTE also states that “Electronic contracts made with standard clauses must be in accordance with the provisions regarding standard clauses as regulated in laws and regulations”. The rules of law as referred to in Article 47 paragraph (2) include, among others, the UUPK.

The inclusion of standard clauses in the agreement is also regulated in Chapter V of the UUPK Article 18 regarding Provisions for the Inclusion of Standard Clauses, which in paragraph (1) contains arrangements for prohibiting the inclusion of standard clauses while in paragraph (2) contains setting the form and format of writing standard clauses, are prohibited.” There are no laws and regulations that specifically regulate how the inclusion of a disclaimer is allowed, but if the inclusion of a standard clause on the part of a business actor or website owner has violated the provisions of Article 18 paragraphs 1 and 2 of the UUPK, then all the standard clauses have been followed by the business actor in the agreement or bond is said to be null and void. Therefore, business actors are obliged to make adjustments to the contents of the standard clause statements that contradict the laws and regulations.

The standard clauses stipulated must not override the obligations of both the seller and the buyer and are based on good faith.

Legal Protection for Consumers with the Inclusion of a Disclaimer on E-Commerce Sites in Indonesia

The law has the power that is enforced and recognized and obeyed by the community.^{17 18} Legal protection can be defined as legal protection through the use of legal means and institutions.^{19 20} Law enforcement also acts as a form of protection for the public interest. The interests of the community can be protected, only if the implementation of the law can be upheld. To achieve legal certainty, there must be a certainty about what is allowed and what is prohibited by law. Law enforcement can be done naturally, peacefully, normally, but it can also be due to violations of the law.^{21 22 23} This shows that the actual law enforcement that has been violated must still be carried out. By enforcing the law, the law can become something that can be accounted for.

Consumer protection in Indonesia is regulated in Law No. 8 of 1999 concerning Consumer Protection (UUPK). One of the reasons for the enactment of the UUPK in its consideration is “that to increase the dignity of consumers on the importance of awareness, knowledge, care, ability and independence of consumers to protect

¹⁷ Az. Nasution, ‘Sekilas Hukum Perlindungan Konsumen’ (2017) 16 Jurnal Hukum & Pembangunan. [568-581]

¹⁸ Hari Sutra Disemadi, Mochammad Abizar Yusro, dan Ali Ismail Saleh, ‘Perlindungan Hukum Keputusan Bisnis Direksi BUMN Melalui Business Judgement Rule Doctrine’ (2020) 10 Jurnal Jurisprudence.[127-145].

¹⁹ Zeehan Fuad Attamimi, Hari Sutra Disemadi, dan Budi Santoso, ‘Prinsip Syariah dalam Penyelenggaraan Bank Wakaf Mikro sebagai Perlindungan Hak Spiritual Nasabah’ (2019) 9 Jurnal Jurisprudence.[117-132].

²⁰ Rizka Syafriana, ‘Perlindungan Konsumen dalam Transaksi Elektronik’ (2016) 1 De Lega Lata: Jurnal Ilmu Hukum.[430-447].

²¹ Ardiana Hidayah dan Marsitiningasih, ‘Aspek Hukum Perlindungan Data Konsumen E-Commerce’ (2020) 20 Kosmik Hukum.[56-63].

²² Asiyah Jamilah, Hari Sutra Disemadi, dan Nyoman Serikat Putra Jaya, ‘Pertanggungjawaban Korporasi terhadap Kandungan Non-Halal pada Produk Makanan sebagai Upaya Perlindungan Konsumen’ (2020) 3 Nagari Law Review.[14-31].

²³ Rizka Syafriana, ‘Perlindungan Konsumen dalam Transaksi Elektronik’ (2016) 1 De Lega Lata: Jurnal Ilmu Hukum.[430-447].

themselves and develop the attitude of responsible business actors”.

There are two kinds of legal protection facilities, namely preventive and repressive legal protection.²⁴ Preventive legal protection gives legal subjects the opportunity to submit objections and opinions before the government’s decision becomes final. The purpose is to prevent the occurrence of a conflict (dispute). Preventive legal protection encourages governments to evaluate their policies, preventive legal protection means that many government actions are based on freedom of action. Repressive legal protection is aimed at resolving cases. The treatment of legal protection by the Indonesian District Court and Administrative Court is included in this form of legal protection.^{25 26}

In accordance with the protection theory above, the presence of the UUPK is also a form of preventive protection for consumers, that the UUPK is to provide protection for the rights of every consumer rather than something that can cause the consumer’s rights not to be fulfilled. Consumer protection is indeed considered as a form of effort to ensure that the law can provide protection for consumers.²⁷ Consumer protection is based on safety and security, justice, benefits, and consumer balance, as well as legal certainty.

The enactment of laws in Indonesia which acts as preventive legal protection as mentioned above, aims to prevent violations by business actors by providing border rules for business actors in carrying out an obligation. The stipulation of a disclaimer statement where on average contains a clause on the disclaimer of responsibility for business actors is of course detrimental to the consumer, but the presence of preventive legal protection has a function in preventing the consumer’s position from being on the unequal or disadvantaged side related to the existence

²⁴ Hari Sutra Disemadi dan Paramita Prananingtyas, ‘Perlindungan Hukum terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine)’ (2019) 8 Jurnal Magister Hukum Udayana. [386-402].

²⁵ Margaretha Rosa Anjani dan Budi Santoso, ‘Urgensi Rekonstruksi Hukum E-Commerce di Indonesia’ (2018) 14 Law Reform.[89-103].

²⁶ Alfis Setyawan dan Deeky Agus Sufandy, ‘Analisis Perlindungan Hukum terhadap Konsumen Pengguna Jasa Ojek Online di Kota Batam’ (2018) 20 Journal of Judicial Review.[17-34].

²⁷ Hari Sutra Disemadi, ‘Consumer Protection of Flight Services through Corporate Social Responsibility Implementation in Indonesia’ (2020) 4 Journal of Private and Commercial Law.[14-21].

of the disclaimer.^{28 29} Such protection is established in the form of a regulation in the law relating to the parameters of a content from a disclaimer in the form of a standard agreement and setting the location for the inclusion of the disclaimer so that consumers are aware before deciding to read the substance of the site visited or before carrying out an activity of buying and selling goods and/or services.^{30 31}

In Indonesia, the government has established the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen/BPSK*) in its efforts to improve consumer protection.³² The BPSK is a consumer justice institution as regulated under the UUPK whose main task is in resolving consumer cases outside the general court institution. The BPSK also has the authority to carry out an examination of the veracity of a report by requesting information from all parties involved in a dispute, checking and requesting proof of bills, proof of payment, receipts, or other evidence. The BPSK decisions have a binding nature and are the final solution for parties in cases.³³

Based on Government Regulation No. 59 of 2001 concerning the Non-Governmental Consumer Protection Agency (*Peraturan Pemerintah tentang Lembaga Perlindungan Konsumen Swadaya Masyarakat/ PP LPKSM*), the Indonesian government also legalized the LPKSM. Article 1 paragraph 9 of the UUPK also explains that “LPKSM is a non-government institution that is registered and recognized by the government. The LPKSM activities are handling consumer protection”. These institutions provide a repressive protection, namely providing

²⁸ Ni Putu Ria Dewi Marheni, ‘Perlindungan Hukum Bagi Konsumen Berkaitan dengan Pencantuman Disclaimer oleh Pelaku Usaha dalam Situs Internet (Website)’ (2014) 3 Jurnal Magister Hukum Udayana.[1-18].

²⁹ Heni Pratiwi, ‘Analisis Yuridis Klausul Disclaimer oleh Pelaku Usaha pada Situs Jual Beli Online (E-Commerce)’ (2020) 1 Indonesian Private Law Review.[37-48].

³⁰ *ibid.*

³¹ Rachmat Taibu, ‘Pencantuman Disclaimer dalam Transaksi E-Commerce Ditinjau dari Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen’ (2020) 17 Akademika Jurnal.[18-24].

³² Murni dan Sri Maharani MTVM, ‘Badan Penyelesaian Sengketa Konsumen sebagai Perwujudan Perlindungan Hak Konsumen’ (2015) 8 Arena Hukum.[203-216].

³³ Hanum Rahmaniar Helmi, ‘Eksistensi Badan Penyelesaian Sengketa Konsumen dalam Memutus Sengketa Konsumen di Indonesia’ (2015) 1 ADHAPER: Jurnal Hukum Acara Perdata. [77-89].

a form of protection for consumers who experience losses caused and/or caused by the purchase or use of goods/services in the form of non-litigation/settlement of cases outside the court. The way to resolve a case outside the court is through mediation, arbitration, or consolidation.

Chapter XIII of the UUPK also regulates what form of punishment will be given to business actors if they are proven wrong. These sanctions include administrative sanctions and criminal sanctions. The UUPK itself has functioned as a preventive tool where a series of concrete actions are taken by the BPSK and LPKSM, which aims to prevent the inclusion of standard clauses by sellers/business actors which burdens consumers, with continuous monitoring, both through received reports and not by the BPSK and LPKSM. The UUPK has also functioned as a means of repression well which can be seen from the set of actions taken by Civil Servant Investigators (*Penyidik Pegawai Negeri Sipil/PPNS*), with the scope of duties and responsibilities in the realm of consumer protection.

Conclusion

E-Commerce exists based on buying and selling bonds that are realized through electrical devices between business actors and consumers. This business transaction is regulated in the ITE Law as well as in Government No. 71 of 2019 concerning Electronic System and Transaction (the PP PSTE) operators. The disclaimer is basically the unilateral determination of provisions by the website owner or business actor. Hence, the disclaimer is a form of standard clause. As a form of e-commerce consumer protection, the standard clause must be in accordance with the provisions regarding the standard clause as regulated in the legislation.

Consumer protection in Indonesia is also regulated in the UUPK. In carrying out a transaction, both the consumer and the seller must clearly know the obligations and rights of each role that has been regulated in the UUPK. The UUPK also explains that the consumer who is harmed can obtain legal protection through litigation or non-litigation. The government has provided institutions such as the BPSK and recognized private institutions the LPKSM to help consumers who feel

aggrieved as an alternative to resolving disputes through non-litigation channels. Legal protection efforts for consumers have also been carried out in a preventive and repressive manner. By way of the preventive manner, the law aims to prevent the violations committed by business actors and by providing rules as limits to business actors in carrying out their obligations. By way of the repressive manner, it can be through the courts (litigation) and through dispute resolution outside the court (non-litigation).

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