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## PalArch's Journal of Archaeology of Egypt / Egyptology

### THE ONLINE BUSINESS TRANSACTIONS IN PERSPECTIVE POSITIVE LAW IN INDONESIA

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#### ABSTRACT

Online business or buying and selling online, apart from providing convenience and several advantages, also contains several weaknesses which sometimes cause problems for sellers or buyers (consumers), including: a. The product cannot be tried, b. Sometimes the standard or quality of goods is not appropriate, c. Shipping costs are expensive and charged to consumers, d. Vulnerability or risk of fraud, so that it has the potential to harm consumers. This research is a normative legal research using a statute approach and a conceptual approach. This research is descriptive analytical using qualitative data analysis. The conclusion of this research is that the implementation of online business is generally guided by the provisions of the agreement law as stipulated in the Civil Code. Meanwhile, the legal provisions that specifically regulate (lex specialis) regarding online business as an electronic transaction are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Furthermore, online business as a form of PMSE is regulated in Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems. Forms of online business that occur in society are possible in 4 legal relationships, namely: a. Business actors and Business Actors; b. Business actors and consumers; c. Personal with person; and D. State administering agencies and business actors. Online business mechanisms that are commonly carried out in society, namely by using: websites, e-mails, other electronic media using the internet network and various applications, such as *Facebook*, *WhatsApp*, and others. The legal provisions in conducting online business or PMSE have accommodated legal protection for consumers, namely by having an obligation for business actors to protect consumer rights in accordance with the provisions of the Consumer Protection Law.



## INTRODUCTION

Information technology, which includes developing along with the discovery and development of the internet, is very helpful for society and provides many conveniences in all aspects of people's lives, especially in the midst of the development of the global community. The development of information technology and the internet is believed to be able to unite all information systems in various parts of the world. Through information technology and the internet, everyone can easily receive and obtain information that occurs in various regions, both at the national and international levels. So that existing systems, such as the financial system, economic, social and cultural systems, security and even politics, become global. This is due to the openness of information that is interconnected and dependent on one another.

The benefits obtained from technological developments and the internet are not only easier to communicate. More than that, the development of information technology and the invention of the internet have also had a positive impact in encouraging the people's economy through trade or electronic transactions or in society commonly called online transactions. The internet has changed the way and means of business transactions in modern society. Through the internet, the public, especially business people, can carry out various business transactions which so far can only be done in the real world by meeting in person and recording these transactions on paper. The development of information technology and its utilization has encouraged the public to carry out various transactions using electronic means.

The use of electronic means in various relationships between individuals and individuals or between individuals and the government, especially in business and trade transactions, is called electronic transactions. It can be said that the development of internet facilities is indirectly beneficial to encourage the growth of the people's economy by trading using electronic means. (Barkatullah, 2005; Oktaviani, 2016; Kustina et al., 2019). Electronic transactions are commonly referred to in English as electronic transactions or e-commerce. The narrow meaning of e-commerce includes buying and selling transactions of goods or services, or sharing information between business partners using internet facilities. Whereas in a broad sense, it includes services such as electronic contracts on government-owned goods / services procurement, customer service, trade promotions or advertisements, relationships between business partners and so on. (Fuady, 2008; Vattel, 1834; Marshall, 2014). The rapid development of e-commerce in the community is a necessity that will occur along with the development of information technology and the wide reach of the internet network, which currently covers remote villages in various regions in Indonesia. In addition, trading using electronic means is based on economic considerations, namely achieving efficiency, both time and costs incurred in trading transactions, when compared to traditional transaction patterns which require traders and buyers to meet and meet face to face. (Utomo, 2003; Dusuki & Abozaid, n.d.; Adib, 2003; Asmani, 2007).

In general and simply, online business can be defined as trading goods or services using electronic means and internet networks. In other words, the main means of



online business are electronic means and the internet. Online business is impossible without electronic means and internet networks. Where various applications (software) available on electronic means can function as a means of carrying out various commercial business transactions. (Sanjaya & Sanjaya, 2009). For example, the Facebook, Instagram and so on. For example, selling various products through website-based applications. For example: the www.tokopedia.com application, through this application it makes it very easy for technology-based company players to offer various products and services. Likewise, people as consumers can easily see various product offerings and at the same time make buying and selling transactions for various goods and services offered.

Another example can be seen in the application service www.gojek.com, which is a technology-based company. It offers a variety of service products, ranging from online gojek services, which are online transportation services that serve shuttle passengers, GoFood services, namely food ordering services, services GoSend is a delivery service for goods and various other service products provided through the www.gojek.com application, which is easily accessible to the public (consumers). (Shofie, 2002). Online business as trade-in goods or services in it is indeed inseparable from legal aspects. From a legal perspective, in general, a trade will involve two or more people, namely traders, and consumers. The legal relationship between merchants and consumers in online business transactions is an agreement relationship, namely a reciprocal agreement. Contract law in Indonesia generally refers to the provisions of the Civil Code. Regarding electronic agreements/contracts, positive law in Indonesia regulates this in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. (from now on referred to as the ITE Law).

In online business or buying and selling online and providing convenience and several advantages, it also contains several weaknesses that sometimes cause problems for sellers or buyers (consumers). The product cannot be tried, b. Sometimes the standard or quality of goods is not appropriate, c. Shipping costs are expensive and charged to consumers, d. Vulnerability or risk of fraud, so that it has the potential to harm consumers. Move on from the above background, the formulation of the problem is determined as follows; How is the online business legal arrangement in a clear legal perspective in Indonesia?, What are the forms and mechanisms of online buying and selling that are common in the community?, and How is the protection for consumers in online business transactions?

## RESEARCH METHOD

According to its purpose, this research is classified as normative legal research. While seen from its nature, this research is descriptive. The method approach used in research is adjusted to the problem to be studied by using a statutory approach and a conceptual approach, including legal principles. (Amiruddin, 2008). Collecting data in this study using a literature study. A literature study is conducted to collect secondary data from various legal materials used as the basis for analyzing each research problem. Secondary data collection is carried out by



carrying out document studies or literature reviews by tracing various relevant legal materials, especially regarding the regulations, forms and mechanisms, and implementation of positive online buying and selling agreements in Indonesia. Data collection in library research (library research) is commonly done by studying documents or reviewing the literature. The study of legal research documents includes the study of traditional materials, including primary, secondary and tertiary legal materials. The data collected from the literature research is then analyzed using qualitative methods, namely by deciphering the data in the form of structured sentences. Systematically. Then, the means or tools for analyzing the data are using the interpretation of the meaning of the law according to the occurrence by examining the history of the formation of a law. (Marzuki, 2017).

## RESEARCH RESULTS

Online business in the form of trading in goods or services is an event or legal act of buying and selling. In the event or legal act of buying and selling in it, it can be ascertained that the occurrence will cause a legal relationship, namely the sale and purchase agreement relationship. In legal doctrine, every agreement made legally will create rights and obligations and are binding on the parties who agree to it. The ITE Law regulates online business or electronic trading in Indonesia. Article 1 paragraph (2) of the ITE Law states that: "Electronic transactions are legal acts carried out using computers, computer networks, and other electronic media." According to Mariam Darus Badruzaman et al., as quoted by Ria Shinta Devi, she explained that the main elements in an engagement include: 1). legal relationship, 2) wealth, 3) parties, and 4) achievement. A legal relationship is a relationship against which the law places "rights" on one party and attaches "obligations" to the other. (Muhammad, 2017; Tutik, 2015). Concerning trading practices using electronic means (online business), it can be said that the legal relationship that exists between the parties is a sale and purchase agreement, whether it is the sale and purchase of goods or services. According to Article 1457 of the Civil Code, buying and selling is an agreement. As a legal consequence arising from the sale and purchase agreement, the parties (seller and buyer) will arise rights and obligations for both. The seller is obliged to deliver the goods to the buyer, otherwise, the buyer is obliged to make payment for the goods that have been or will be delivered by the seller. (Subekti & Tjitrosudibio, 1980).

In the doctrine of contract law, every legal event, of course, includes a legal relationship. In a legal relationship, especially in a legal relationship, then between each party bound by the agreement, there will be rights and obligations that are obliged to be carried out according to what has been mutually agreed in the agreement. Following the opinion expressed by R. Soeroso, that a legal relationship will have two consequences is right. First, it will give rise to power (bevoegdheid) or rights that are the opposite of obligations (plicht) that must be carried out by other parties. Thus, it can be understood that in every legal relationship, there are parties who have the right to demand achievement, and on the other side, are obliged to carry out achievements. (Soeroso, 1993; Is, 2017).



In each agreement, according to the legal provisions of the agreement, whether it is a sale and purchase agreement or other agreement, it must be based on an agreement or agreement. In an agreement, the agreement is the first and foremost element that must be fulfilled. This is under the provisions of the legal terms of the agreement regulated in Article 1320 of the Civil Code, which determines the 4 (four) legal conditions of an agreement, namely: 1. Agree to those who bind themselves, 2. Competent in carrying out legal actions, 3. A specific thing, and 4. A cause is lawful. All of the conditions mentioned above must be fulfilled in the formulation and implementation of the agreement to be considered valid. Likewise, in buying and selling transactions, including online business transactions, are so essential. According to the provisions stipulated in the Civil Code, the essence of an agreement's validity is an agreement. Therefore, an agreement is not considered valid if there are errors in it, and there is an element of coercion or fraud. In the practice of buying and selling, whether it is carried out conventionally or in technology-based buying and selling, before the seller and the buyer reaches an agreement, usually a bargaining process is carried out between the buyer and the seller. This process aims to determine when the sale and purchase agreement occurs. If an agreement is reached regarding the price between the buyer and the seller, since then, the sale and purchase agreement is declared valid and binding. Therefore the agreement is obliged to be carried out by each party, be it the seller or the buyer. (Simanjuntak, 2017).

Apart from the terms of the agreement, for the agreement's validity, the person agreeing must take legal actions. According to the provisions of Article 1330 of the Civil Code, qualified persons are incapable of committing legal actions, including 1. Minors or minors; 2. Those under interdiction; and people deemed by law to be incapable of committing legal acts, such as crazy people.

Agreement and the ability to take legal actions are subjective conditions for the validity of an agreement. Failure to fulfill these conditions has legal implications that the agreement can be canceled or cancellation is requested to the court.

For example, a minor who purchases chips for online games using the credit card number of his parents, according to the law, the agreement may be canceled or requested for cancellation in court. However, because parents also have the responsibility for providing internet access to their children, in this case, the parents' mistake of not supervising the use of internet access on their children has resulted in legal consequences, namely illegal acts committed by their children. So that here people are indirectly obliged to bear the risks arising from the actions of their children. The third condition is the validity of a transparent agreement object of the agreement. This requirement concerns an item and its type. For example, suppose Person A sells the car to Person B for IDR. 80,000,000 (eighty million). The agreement between Person A and Person B must be clear regarding the car brand, type, color, and price. Provisions regarding the clarity of the agreed object as stipulated in Article 1333 of the Civil Code.

The last condition for the validity of an agreement is a legal cause. These terms relate to the cause of the agreement. An agreement must not be against the values of decency or the law. Therefore, the narcotics sale and purchase agreement are invalid because it is against the law.



Several actions must be carried out by each party (seller or buyer). First, there is an agreement between the seller and the buyer to make a sale and purchase statement. This can be indicated by the buyer's purchase price agreement for the price offered by the seller. It is also possible to agree on a price by the seller for the buyer's bid price. Second, after obtaining an agreement regarding the price, the buyer will then make a payment according to the agreed price. Third, if the buyer makes the payment, the next step is the delivery of the goods from the seller to the buyer, as the end of the sale and purchase agreement, because the rights and obligations of each party have been implemented. (Simanjuntak, 2017).

Apart from being regulated in the ITE Law, the legal provisions regarding online business transactions are also regulated in Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems (hereinafter abbreviated as PP. No. 80/2019). PP. No. 80/2019 is a regulation that explicitly regulates trading through an electronic system (PMSE). According to Article 1, number 2 PP. No. 80/2019, trading through an electronic system (PMSE) is a trade whose transactions are carried out through electronic devices and procedures.

Based on PP. No. 80/2019, there are several parties seen in electronic commerce, namely business actors, traders (merchants), Trade Operators through Electronic Systems and consumers. The objects of trade in electronic transactions include: digital goods and goods, digital services and services. In the PMSE there are at least 4 (four) parties that may be involved and several types of construction of legal relationships that will be formed, namely; Business actors and Business Actors, Business actors and consumers, Personal with person and State administering agencies and business actors.

The various parties that will conduct the PMSE must have the conditions specified in the laws and regulations. The first requirement is to have and attach or convey a clear identity. For example, an online Gojek technology-based company that uses a website-based application: [www.gojek.com](http://www.gojek.com), clearly conveys information about its identity and address of the company and consumer services. The clarity of information regarding the subject's identity in the PMSE is essential to provide legal certainty for consumers or third parties involved in the transaction process.

The second requirement is to convey accurate and honest information regarding the specifications of the products offered, including the types of electronic media and applications that will be used in the transaction process. In addition, in the implementation of trade promotions or advertisements, business actors must also comply with business ethics and advertising. Business actors who trade through electronic systems also should pay attention to the provisions of business competition law as regulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Besides, it is also obliged to protect consumer rights following the provisions stipulated in Law Number 8 of 1999 concerning Consumer Protection. After knowing the legal provisions regarding the requirements for business actors to trade through electronic systems described above, the next discussion is about the mechanism for implementing trade through electronic systems (online business).

A trade, whether carried out conventionally or using an electronic system, means a business actor needs the means to market the goods or services to be offered. In



conventional transactions, marketing for goods or services can be in the form of traditional markets or modern markets. As for trading using electronic systems, of course, the means used are an electronic device and an electronic system built into it (hardware and software). Electronic devices consisting of hardware and software only function and can trade electronically if there is internet access. Therefore, electronic systems must be understood as a set of electronic devices and procedures that serve to prepare, collect, process, analyze, store, display, announce, transmit and disseminate electronic information.

Offerings of goods or services in trade through electronic systems can be done using various applications available on electronic systems. Such as website-based applications, email, and social media applications available in electronic devices and systems. For example, Facebook, Instagram, and so on.

In the offering of goods or services by a business actor through an electronic system, at least contains the following:

1. A specification of the goods or services offered;
2. The price of the goods or services offered;
3. Approval of Terms and Offer;
4. Payment system and estimated time of payment.

Example: Payment using the on the spot payment system, known as cash on delivery (COD), The process of sending goods. For example: using JNE, JNT, or other shipping companies, Various unexpected conditions. For example, a delay in delivery time that is not under the agreed estimated time, There is a limit to the parties' liability, be it the seller or the buyer, concerning unforeseen risks.

In online business or trading via electronic systems 8. is declared to have occurred, if the other party has accepted. Where every acceptance of an electronic offer cannot be canceled unilaterally, unless obtaining approval from the party receiving the offer. As an example of an online business, namely online loan services or using an electronic system, technology-based loan services are a pattern of providing loan funds to people who need funds or borrowers, either to individuals or business entities in the form of trading businesses or companies. In online loan fund services, there are at least three parties, namely: the organizer of the electronic system, the owner of the fund, and the borrower. The application administering company functions to connect the fund owner or lender with the borrower in the online loan fund service application is essential. The business activities carried out by the loan program provider are operating information technology-based loan services from the lender to the recipient of the loan, the source of which comes from the online lender. Thus, there are at least three parties involved in online loan fund transactions, namely: 1). owner of funds, 2). electronic system operators, and 3). Fund borrower.

The legal relationship between the parties can be described through the following scheme:

Scheme. 1 Online Fund Loan Mechanism



Based on the scheme above, it can be seen that there are three parties involved in online loan services. Where in the online loan fund, transaction activities do not involve the bank at all. In the implementation of online loan fund transactions, only an electronic system organizer is needed that functions as an intermediary that connects fund owners with prospective borrowers through electronic system-based offers, whether through websites, social media, and various other applications.

Electronic offers are not much different from trade offers in general, which require promotion through advertisements of various products that will be offered to the public or consumers. Various advertisements offered to the public can be accessed or entered automatically on the electronic system available in various applications. Based on this advertisement, people who are interested in buying goods will place an order through the application channels that have been offered. After the order is made, the next step is the acceptance (acceptance), which indicates the approval of the recipient of the offer.

In the PMSE, which is common in society, it is predominantly carried out between individuals and between traders and consumers. The electronic means used are social media applications and other communication channels, such as Facebook, Instagram, and WhatsApp. For example, entrepreneurs or traders make electronic offers through the market place available on the Facebook application or through the WhatsApp application.

The important thing that needs to be considered in online business transactions is legal protection for parties, especially consumers, in Article 26 letter a PP. No. 80/2019, emphasized that: "business actors are obliged to protect consumer rights under the provisions of laws and regulations. Therefore, the PMSE deals with the protection of consumer rights as regulated in the Consumer Protection Act. Also, in Article 27 PP. No. 80/2019 determines that business actors are also obliged to provide complaint services for consumers. About promotions or offers to consumers through advertising, according to Article 33 PP. No. 80/2019 requires business actors to comply with laws and regulations. Thus, normatively, the protection of consumers in the PMSE has been accommodated in various existing laws and regulations currently in force in Indonesia.



## CONCLUSION

1. Online business transactions generally refer to the agreement law stipulated in the Civil Code. Meanwhile, regulated explicitly in the ITE Law and jo. PP No. 80 of 2019 concerning Trade Through Electronic Systems jo. PP. No. 80/2019 concerning Trading Through Electronic Systems.
2. Forms of online business in society are possible in 4 legal relationships, namely: a. Business actors and Business Actors; b. Business actors and consumers; c. Personal with the person; and D. State administering agencies and business actors. The online business mechanism commonly occurs in society by using various available electronic system tools and applications for example, Facebook, WhatsApp, and so on.
3. Protection of consumers in online business transactions or PMSE has been accommodated in various legal provisions currently enforced in Indonesia. In the electronic transaction legal regime, consumers' rights still receive serious attention to realize comprehensive protection for consumers in every PMSE transaction.

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