

When Goods Are Defective, Should Sellers Be Relieved of Liability in E-Commerce?

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Abstrak: Penelitian ini bertujuan untuk menjelaskan dan menganalisis tanggung jawab penjual terhadap risiko kerusakan atau kehilangan barang dalam transaksi *e-commerce*, serta untuk mengkaji faktor-faktor yang mempengaruhi tanggungjawab penjual terhadap resiko kerusakan atau kehilangan dalam transaksi *e-commerce* menurut perspektif Hukum Perdata. Metode penelitian yang digunakan adalah penelitian hukum Normatif. Kabaharuan dari penelitian ini terletak pada fokus penelitiannya terhadap resiko kerusakan ataupun kehilangan ketika melakukan transaksi di *e-commerce* serta mengkaji lebih dalam terkait dengan faktor-faktor yang mempengaruhi tanggung jawab penjual dalam melakukan transaksi *e-commerce*. Hasil penelitian menunjukkan bahwa tanggung jawab penjual dalam transaksi *e-commerce* pada prinsipnya didasarkan pada ketentuan perjanjian antara pihak, ketentuan Kitab Undang-Undang Hukum Perdata, Undang-Undang Perlindungan Konsumen, serta kebijakan platform *e-commerce* yang digunakan. Penjual wajib menyerahkan barang dalam keadaan baik dan sesuai kesepakatan. Apabila barang rusak atau hilang sebelum diterima pembeli, maka penjual pada umumnya tetap bertanggung jawab memberikan ganti rugi berupa penggantian barang atau pengembalian dana. Faktor-faktor yang mempengaruhi tanggung jawab penjual antara lain perjanjian atau kesepakatan para pihak, penggunaan jasa pengiriman, sistem pembayaran, ketentuan *platform e-commerce*, asas itikad baik, serta ketentuan hukum perdata dan perlindungan konsumen yang berlaku. Kesimpulannya bahwa . Pelaku usaha bertanggung jawab memberikan ganti rugi atas kerusakan atau kehilangan, pencemaran, dan/atau kerugian konsumen akibat mengkonsumsi barang dan/atau jasa yang dihasilkan atau diperdagangkan. Serta terdapat beberapa factor yang mempengaruhi tanggung jawa penjual mulai dari perjanjian para pihak, waktu peralihan risiko, peran jasa pengiriman, karakteristik barang, ketentuan peraturan perundang-undangan, kebijakan *platform e-commerce*, hingga itikad baik para pihak. Oleh karena itu penentuan tanggung jawab penjual harus dilakukan secara menyeluruh dengan mempertimbangkan seluruh faktor tersebut.

Kata Kunci: Penjual E-Commerce, Risiko Kerusakan Barang, Hukum Perdata

Abstrak: This study aims to explain and analyze the seller's responsibility for the risk of damage to or loss of goods in *e-commerce* transactions, and to examine the factors influencing the seller's liability for such risks from the perspective of Civil Law. The research method used is normative legal research. The novelty of this study lies in its focus on the risk of damage or loss occurring in *e-commerce* transactions and in its deeper analysis of the factors that influence the seller's

responsibility in conducting e-commerce transactions. The results of the study indicate that the seller's responsibility in e-commerce transactions is fundamentally based on the contractual provisions agreed upon by the parties, the provisions of the Civil Code, Consumer Protection Law, and the policies of the e-commerce platform used. In general, the seller is responsible for the risk of damage to or loss of goods. It can therefore be concluded that the seller is liable for losses resulting from damage to or loss of goods until the goods are received by the buyer in good condition, unless otherwise stipulated in the agreement. The factors influencing the seller's responsibility include the agreement or mutual consent of the parties, the use of delivery services, the payment system, the provisions of the e-commerce platform, the principle of good faith, and applicable civil and consumer protection laws. In conclusion, business actors are responsible for providing compensation for damage, loss, pollution, and/or consumer losses resulting from the consumption of goods and/or services produced or traded. Several factors influence the seller's responsibility, including the agreement between the parties, the time of transfer of risk, the role of delivery services, the characteristics of the goods, statutory regulations, e-commerce platform policies, and the good faith of the parties. Therefore, determining the seller's liability must be carried out comprehensively by considering all these factors.

Keywords: E-Commerce Seller, Risk of Damage Goods, Private Law

INTRODUCTION

Indonesia is classified as a developing country. Technological advancements have brought about various changes that are not always perceived as entirely positive. These developments have eliminated the constraints of distance and time, enabling various activities to be carried out more easily with the assistance of technology. Society has been facilitated in performing daily activities through the utilization of these technological advancements.[1] In the current digital era, online buying and selling have experienced rapid growth. Online commerce is widely recognized for its convenience, allowing individuals to shop without expending significant time and effort. Transactions conducted in the virtual marketplace are no longer limited by spatial and temporal boundaries, enabling more flexible interactions between buyers and sellers.

Online business transactions are fundamentally based on trust, as buyers and sellers do not engage in face-to-face interactions during the transaction process.[2] Online buying and selling facilitate both parties, particularly when they are located in different cities, across islands, or even between countries. Commercial transactions are no longer confined to domestic activities within Indonesia but extend to international trade. Consequently, technology plays a crucial role in enabling and supporting online commerce activities.[3]

Law Number 7 of 2014 on Trade regulates the manner in which sellers are expected to provide the best possible service to consumers and ensure that the quality of goods corresponds to what is offered.[4] Consumers are entitled to protection, including the safeguarding of their personal data and assurance of the quality of the goods purchased. Consequently, Law Number 8 of 1999 on Consumer Protection was enacted. In the field of e-commerce, a primary issue that arises is

the provision of adequate security and protection for parties engaging in online transactions, particularly for consumers as buyers.[5]

The process of online buying and selling is not without its drawbacks. The vastness of the virtual environment means that buyers and sellers often never meet or know each other. Buyers are unable to fully ascertain the nature or legality of the goods being purchased, including whether such goods are legitimately traded or, for instance, stolen or obtained through unlawful means. Meanwhile, sellers are also unable to verify the identity of the buyers, including whether they are engaging with legitimate customers or potential fraudsters .[6]

To ensure security in electronic commerce transactions, various solutions have been introduced, such as digital signatures, cryptographic keys, and Secure Electronic Transaction (SET) systems implemented by e-commerce providers on their platforms with the aim of protecting consumers. However, these security measures do not fully guarantee that e-commerce providers are free from potential losses. There is no absolute assurance that e-commerce transactions are immune from data breaches or manipulation, which may ultimately lead to a decline in public trust in the system. In fact, in business transactions within today's global era, certainty and security constitute essential pillars supporting the growth and sustainability of economic activities.

The liability of online business owners/sellers for losses arising from damaged goods purchased by consumers must be fulfilled in accordance with applicable laws and regulations, including the provision of compensation to consumers as a form of accountability. The enactment of Law Number 8 of 1999 on Consumer Protection and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Electronic Information and Transactions is intended to ensure the protection of consumers. However, based on the findings of this study, business actors are not assuming responsibility for the products they sell when such goods are damaged, nor are they providing compensation for the resulting losses.[7]

The provision of warranties is also necessary to reduce the risk of losses for consumers and to ensure the quality of goods being traded. Warranties are important because they influence product quality assurance, which in turn affects pricing and consumer interest in purchasing a product. Moreover, warranties can enhance customer satisfaction and trust.

One of the inherent weaknesses of online transactions is that buyers do not physically inspect the goods being traded and must rely solely on descriptions and images provided by the seller. Such conditions make online transactions particularly vulnerable to fraud. Cases of online shopping fraud are relatively common, including instances where the goods received differ from the images प्रदर्शित or arrive in a damaged condition.

This study differs from previous research that only examines seller liability in general terms. Based on this distinction, the present study specifically focuses on the risks of damage or loss occurring in e-commerce transactions and further analyzes the factors that influence seller liability in such transactions.

RESEARCH METHOD

This research is a normative juridical study that relies on library research, which serves as the primary method in normative legal research because it focuses on reviewing and analyzing written legal materials. In this study, the primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHPperdata), Law Number 8 of 1999 on Consumer Protection (UUPK), and Law Number 11 of 2008 on Electronic Information and Transactions (UU ITE) along with its amendments.

Furthermore, the secondary legal materials in this study include relevant legal books, scholarly articles, law journals, research findings, academic works such as undergraduate theses, master's theses, and dissertations, reports from institutions such as the National Consumer Protection Agency (BPKN) and the Ministry of Trade, as well as opinions from legal experts specializing in consumer protection.

In addition, this study also utilizes tertiary legal materials, which serve as supplements and support to provide guidance or clarification regarding primary and secondary legal materials. The tertiary legal materials in this research include legal dictionaries, the Great Indonesian Dictionary (KBBI), legal encyclopedias, and official online sources such as the Legal Documentation and Information Network.

The analysis of legal materials in this study is conducted using a qualitative analysis method. This method was chosen because it aligns with the characteristics of normative legal research, which is not oriented toward numerical or quantitative data but rather toward a deep understanding of legal norms, legal principles, and applicable theories within the Indonesian legal system. All collected legal materials are then systematically processed by examining the correspondence between legal theory and its application in practice, thereby providing a comprehensive understanding of the legal liability of sellers toward buyers in e-commerce transactions.

RESULT AND DISCUSSION

1. Seller Liability for the Risk of Damage or Loss of Goods in E-Commerce Transactions

In today's increasingly advanced digital era, online buying and selling transactions have become an integral part of Indonesian society. However, alongside the convenience they offer, various challenges have emerged concerning consumer protection, particularly regarding seller liability for damaged or lost goods. Law No. 8 of 1999 on Consumer Protection serves as the primary legal foundation regulating this matter.[8] Article 5, Paragraph 1 of Law No. 7 of 2014 on Trade states that "every business actor trading goods and services through electronic systems is obliged to provide complete and accurate data and information. Electronic contracts are essential to facilitate electronic transactions so that they can proceed properly and correctly." [4]

Business actors are obligated to provide accurate and honest information regarding the products they offer. As stipulated in Article 9 of the Electronic Information and Transactions Law (UU ITE), business actors offering products through electronic systems must provide complete and correct information related to contract terms, the producer, and the products being offered.[9] Buyers are also given the freedom to inquire further about product availability or specifications from the seller via online chat features or email. If a buyer is interested, the product can be added to a shopping cart or similar online basket, similar to a supermarket, before payment. Prior to finalizing the transaction or placing the final order, buyers are given the opportunity to complete an order form containing product information, payment mechanisms, and the delivery address.

Article 13, Paragraph 1 of Law No. 7 of 2014 on Trade Through Electronic Systems states that in every transaction conducted through an electronic system, business actors are obligated to provide accurate, clear, and honest information regarding the condition and guarantees of the goods and services being traded, including the electronic system used, in accordance with its characteristics, functions, and role in the transaction.[4]

The Consumer Protection Law (UUPK) provides comprehensive protection for consumers, including in electronic commerce transactions. Article 4 of the UUPK emphasizes that consumers have the right to comfort, safety, and security when using goods and/or services. In addition, consumers are entitled to receive accurate, clear, and honest information regarding the condition and guarantees of the goods and/or services offered. These rights serve as a basis for consumers to hold sellers accountable if the goods received do not match what was agreed upon. In online transactions, where consumers cannot physically inspect products before purchase, the accuracy of information provided by the seller becomes crucial.

Furthermore, Article 7 of the UUPK regulates the obligation of business actors to act in good faith in conducting their business, provide accurate, clear, and honest information regarding the condition and guarantees of goods and/or services, and explain the procedures for usage,

repair, and maintenance. These provisions affirm that sellers must provide precise and non-misleading product descriptions.

If a consumer receives damaged or defective goods, Article 19 of the UUPK states that the business actor is obliged to provide compensation for the resulting losses. Such compensation may take the form of a refund, product replacement, or provision of healthcare and/or indemnity in accordance with the losses incurred. Consequently, sellers bear full responsibility for the products they market, including in online transactions.

If the goods delivered are defective due to packing errors by the seller, the consumer has the right to return the purchased item if the damage occurred through no fault of their own, within a specified time frame. Therefore, the consumer must promptly return the defective goods. If the consumer delays beyond the designated period, the goods are considered to have been accepted in good condition, without any defects.[10] Breach of contract by sellers often occurs in transactions conducted through e-commerce platforms, as the online buying and selling mechanism does not involve direct face-to-face interaction between the parties. Positive law places greater emphasis on consumer protection compared to business actors, considering that consumers generally occupy a relatively weaker position.

Breach of contract can be categorized into several forms. Subekti identifies four types of breach of contract: (1) failing to perform what was agreed upon, (2) performing what was promised but not as stipulated, (3) performing the obligation late, and (4) performing something that is prohibited under the agreement. Article 1267 of the Civil Code (KUHPerdata) provides legal remedies for the aggrieved party to reclaim their rights, including claiming compensation and, in reciprocal agreements, requesting the cancellation of the contract. The following are factors that influence the occurrence of breach of contract, including:

a. The Presence of Errors by the Business Actor

Errors that could have been avoided and whose consequences could have been anticipated by the business actor can render the actor liable. Such errors may result from negligence or intentional actions by the business actor in fulfilling their obligations, causing losses to the consumer and thereby obligating the business actor to take responsibility for their actions.

b. The Presence of Force Majeure

A seller cannot be held immediately liable if the inability to fulfill their obligations occurs beyond their control. Examples include natural disasters such as volcanic eruptions, floods, earthquakes, extreme weather or climate changes, loss, theft, or other events that prevent the performance of obligations. In such circumstances, which are considered

force majeure, the business actor may be exempted from the obligation to provide compensation for the unfulfilled performance.

The principles of legal liability can be categorized as follows :

a. The Principle of Liability Based on the Element of Fault

A person who commits a fault, or when the element of fault occurs, can be held accountable. Under this principle, an individual claiming a right must be able to provide proof of it.

b. The Principle of Presumed Liability

The defendant is always presumed to be liable until they can prove otherwise. The burden of proof rests on the defendant. When a breach of contract occurs in an e-commerce transaction, the business actor is obliged to demonstrate that they are not at fault. However, this does not mean that consumers can file claims arbitrarily, as the business actor has the right to file a counterclaim against the consumer if they can prove their innocence.

c. The Principle of Presumed Non-Liability

This principle is only recognized within a limited scope of transactions, such as in cases of loss or damage to goods in an airplane cabin under passenger supervision. In such instances, the responsibility rests with the passenger.

d. The Principle of Strict Liability

Business actors are required to be liable for any losses experienced by consumers without the need to prove fault. In e-commerce transactions, if the goods ordered arrive in a damaged condition, the business actor is obligated to provide compensation in the form of a refund or product replacement to the consumer.

e. Limitation of Liability

In e-commerce transactions, some business actors apply this principle by requiring consumers to include a video of the package being opened when filing a complaint. If a business actor or seller commits a breach of contract but does not take responsibility, and the consumer suffers a loss and does not receive their rights, the consumer may file a civil lawsuit. This is regulated under Article 38 of the Electronic Information and Transactions Law (UU ITE), which states that any person may file a claim against parties operating an electronic system and using information technology that causes losses. In an effort to enhance consumer protection, the Indonesian government has taken measures similar to those of Google and Apple by blocking certain e-commerce applications considered potentially harmful to local business actors. This step demonstrates the government's commitment to protecting consumers as well as local businesses from unfair competition.

In general, the Consumer Protection Law (UUPK), along with other supporting regulations, provides a solid legal foundation to protect consumers in electronic commerce transactions. However, the effectiveness of this protection largely depends on consistent enforcement and

the level of awareness among all parties involved. Consumers need to be more proactive in understanding and asserting their rights, while business actors are obliged to ensure compliance with applicable regulations to create a safe and trustworthy online transaction system.

2. Factors Influencing Seller Liability for the Risk of Damage or Loss of Goods in E-Commerce Transactions

In e-commerce transactions, the seller and buyer are not in the same location and do not meet face-to-face. The delivery of goods is carried out through a third-party intermediary, namely a shipping service. This condition shifts the traditional concept of delivery and risk transfer as understood in conventional sales transactions. While in conventional transactions the risk associated with the goods can be easily determined due to direct handover, in e-commerce transactions determining liability becomes more complex because it involves more than two parties.

Based on the research findings, seller liability in e-commerce transactions is neither absolute nor unconditional; rather, it is influenced by several interrelated legal and non-legal factors. These factors determine whether the risk associated with the goods remains with the seller or has transferred to the buyer, as well as the extent to which the seller can be held accountable in the event of damage or loss. The following are the factors that influence seller liability for the risk of damage or loss of goods in e-commerce transactions:

a. Agreement or Contract Between the Seller and the Buyer

The primary and most fundamental factor influencing seller liability is the agreement or contract established between the seller and the buyer. In e-commerce transactions, this agreement is not made in conventional written form but through an electronic contract, manifested in the terms and conditions on the e-commerce platform, as recognized in Article 18 of Law Number 11 of 2008 on Electronic Information and Transactions (UU ITE).

The agreement contains provisions regarding the rights and obligations of the parties, payment mechanisms, delivery methods, and the allocation of risk for the goods. Based on the principle of freedom of contract, the parties are generally free to determine the content of the agreement as long as it does not conflict with the law, public morality, or public order. Therefore, the agreement serves as the primary basis for determining whether the seller remains liable for the risk of damage or loss of goods.

However, in e-commerce practice in the form of standard clauses, the buyer does not have the opportunity to negotiate the contents of the agreement and can only accept or reject it. This

situation causes the buyer's position to be weaker compared to the seller. Therefore, if there is a clause in the agreement that unfairly shifts all the risk to the buyer.

b. Time and Mechanism of Risk Transfer for Goods

The next factor that has a significant influence is the timing and mechanism of risk transfer over goods. Under civil law, particularly Article 1460 of the Indonesian Civil Code (KUH Perdata), the risk in principle passes to the buyer at the moment of delivery of the goods. However, in e-commerce transactions, the delivery of goods is not carried out directly to the buyer but rather through a shipping service.

The research findings indicate that the determination of the timing of risk transfer largely depends on the agreement between the parties and the practices prevailing on the e-commerce platform being used. If the seller chooses and appoints the shipping service, the seller is generally still considered responsible for the risk during the delivery process. Conversely, if the buyer is given the freedom to select their own shipping service, the risk may be considered to transfer to the buyer earlier. Uncertainty regarding the timing of risk transfer is often the main cause of disputes between sellers and buyers in e-commerce transactions.

c. Role and Responsibility of the Shipping Service as a Third Party

The involvement of shipping services as a third party is an inseparable factor in e-commerce transactions. Shipping services are responsible for transporting and delivering goods from the seller to the buyer in good condition and on time. Any damage or loss of goods during the delivery process can be held accountable based on the transportation agreement.

However, in the legal relationship between the seller and the buyer, the seller is often still held responsible because the buyer conducts the transaction with the seller, not with the shipping service. This also shows that the seller cannot simply evade responsibility on the grounds of errors by the shipping service, especially if the seller was negligent in selecting a reliable shipping provider or failed to provide proper packaging.

Thus, while the role of the shipping service significantly affects the seller's liability, it does not necessarily eliminate that responsibility.

d. Types of Value and Characteristics of Goods Being Traded

The type and characteristics of the goods being traded also constitute an important factor in determining the seller's responsibility. Goods that are perishable, fragile, or

have high economic value require special handling in the packaging and shipping process.

The seller has an obligation to adjust the packaging method according to the characteristics of the goods. If damage occurs because the seller failed to provide adequate protection, the seller may still be held liable even if the damage happens while the goods are in the custody of the shipping service.

Conversely, if the damage occurs due to force majeure—circumstances that are unforeseeable or unavoidable—the seller’s liability may be exempted. Therefore, the characteristics of the goods become an important factor in determining whether there has been negligence on the part of the seller.

e. Applicable Laws and Regulations

In the context of e-commerce, sellers are required to provide accurate, clear, and honest information regarding the goods being traded and are responsible for any losses suffered by consumers. If the goods delivered are damaged or lost, the seller is, in principle, obliged to provide compensation, unless it can be proven that the loss occurred due to the fault of another party or as a result of force majeure.

These provisions indicate that the law tends to provide greater protection to consumers, who are considered to be in a weaker position in e-commerce transactions.

f. Policies and Protection Mechanisms on E-Commerce Platforms

E-commerce platforms have internal policies that also influence the seller’s responsibility. These policies include escrow systems, refund guarantees, and dispute resolution mechanisms.

In practice, e-commerce platforms often hold the buyer’s funds until the goods are confirmed to have been received in good condition. If damage or loss occurs, the platform may withhold the funds and facilitate dispute resolution between the seller and the buyer.

Thus, the seller’s responsibility is determined not only by civil law but also by the platform’s internal policies, which are binding on the parties involved.

g. Good Faith of the Seller and Buyer

The final and very important factor is the good faith of the parties. A seller acting in good faith will strive to resolve any issues that arise, even if the risk has legally transferred. Conversely, the buyer also has an obligation to act honestly and not to

misuse consumer protection mechanisms. Good faith serves as an important benchmark in assessing whether the seller has properly fulfilled their obligations or has acted negligently to the detriment of the buyer.

CONCLUSION

The seller's responsibility for losses due to damage or loss of goods purchased by consumers is regulated under Law No. 8 of 1999 on Consumer Protection, which governs the liability of business actors. Business actors are responsible for providing compensation for damage or loss, contamination, and/or consumer losses resulting from the consumption of goods and/or services they produce or trade. Compensation may take the form of a refund, replacement of goods and/or services of similar or equivalent value, healthcare, and/or the provision of appropriate restitution in accordance with the applicable laws and regulations.

The seller's liability for the risk of damage or loss of goods in e-commerce transactions is influenced by various complex and interrelated factors, including the agreements between the parties, the timing of risk transfer, the role of shipping services, the characteristics of the goods, applicable laws and regulations, e-commerce platform policies, and the good faith of the parties. Therefore, determining the seller's responsibility must be carried out comprehensively, taking all of these factors into account.

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