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Online Shopping Protection in Indonesia: A Social & Legal Discourse

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ABSTRACT: In this modern era, Electronic Commerce or business transactions today's generation called it the online shopping loved everybody in terms of its use, because it is very effective and can efficiently time so that one can conduct transactions wherever and whenever. It turns out it is very bersiko. Internet is an open network that can trigger the occurrence of data manipulation factors which would harm the party. Finally, emerging form of software security solutions, which did not give full guarantee to be free from loss, it certainly can reduce public confidence. Based on the relevant legislation, namely Law No. 40 of 20014 any emerging risks and capable of causing the loss can be the object of insurance. This means that all forms of transactions in e-commerce should be insured in order to ensure certainty and security in the transaction. The rules regarding insurance with respect to electronic commerce should be regulated specifically in a chapter in the Law No. 40 of 2014 on insurance, so as to provide clear regulation about insurance sehubungannya with e-commerce. Through normative legal research methods are expected to be able to prove how a clear legal basis to the problem in question, especially in the perspective to businesses as well as the Insurance Act itself.

KEYWORDS: Online Shop, Electronic Commerce, Protection

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I. INTRODUCTION

The development of communication technologies and the Internet, which grew rapidly in this era of globalization brings about a change of culture in human life. Currently the electronic media to be one of the very diandalakan media for communication and business. The small, medium, and large, many of which use and exploit the technological advances of the Internet as a means to win and advance their business. According to the latest data were taken from the Internet world statistics, the number of Internet users in Indonesia by the end of 2012 reached 55 million, or approximately 22.4% of Indonesia's population.¹

Trading business activities through the Internet known as Electronic Commerce is becoming a new hobby for all Internet users in all walks of life. Because of its usefulness that streamlines energy and time

¹ Mahir Pradana, "Klasifikasi bisnis e-commerce di Indonesia." *Modus* 27, No. 2 (2015): 163-174; Bimo Harsandi, et al. "Internet user trust measurement analysis towards e-commerce system in Indonesia." *2013 International Conference on Advanced Computer Science and Information Systems (ICACSIS)*. IEEE, 2013; I. Gusti Bagus Rai Utama, and Dermawan Waruwu. "Investigation of internet user behaviour in Indonesia." *Soshum: Jurnal Sosial dan Humaniora* 9, No. 2 (2019): 163-177; Nanang Husin, "Internet user behavior analysis in online shopping on Indonesia." *2011 International Conference on Advanced Computer Science and Information Systems*. IEEE, 2011.

compared to a conventional purchase. Even this trading activities do not require their face to face between the parties concerned, only based on a sense of trust. It turned out that these transactions give rise to the risk of loss is quite high. Unfortunately, this is only underestimated. In fact, if more attention, losses can arise from electronic commerce can lead to disputes that it can have an impact on the development of law.²

As a solution, set up a security system in the form of programs such as Digital Signature, Key Cryptographic and Secure Electronic Transaction (SET), which was created by the website provider. Unfortunately, such solutions are not going well that led to a reduction of public confidence as consumers. New programs are applied, such as Cash on Delivery (COD) also remains in doubt by consumers.

Considering Indonesian Commercial Code (KUHD) and insurance legislation, we will know that all things that cause harm can be the object of insurance. That is, e-commerce is an object that can be insured. With this it can reduce the acceptable losses. It was proved that the importance of the use of insurance law against e-commerce transactions. Unfortunately, the current regulations have not set any specific to the insurance law in connection with e-commerce transactions. In fact, if we look at the facts that occurred in the field, many disputes e-commerce arising from losses obtained the parties

² Chusnul Qotimah Nita Permata, Qotrun Nada, and Muhammad Iqbal Baiquni. "Kajian Tarif Pembebasan Bea Masuk E-Commerce Berdasarkan Peraturan Menteri Nomor 112/PMK. 04/2018." *Lex Scientia Law Review* 3, No. 2 (2019): 143-154. *See also* Raphael Haganta, "Legal Protection of Personal Data as Privacy Rights of E-Commerce Consumers Amid the Covid-19 Pandemic." *Lex Scientia Law Review* 4, No. 2 (2020): 77-90.

II. METHODS

To identify and explain their everything related to the subject matter required a study guide called research methods, namely, how to describe something by using a carefully thought to mencapai a purpose.³ The method used in this paper is a normative legal research methods by linking the issue with the provisions contained in the legislation concerned. Also used other written materials, such as journals and articles related to the implementation of the e-commerce insurance. Guba and Lincoln define a paradigm as a set of basic beliefs or metaphysical relating to fundamental principles. These beliefs are basic in the sense simply to be accepted solely on faith alone, it is because there is not a way to determine an ultimate truth.⁴ Paradigm is a perspective to understand the complexities of the real world.⁵

The paradigm that we use is the paradigm of qualitative research which is descriptive and accurate analysis to achieve the purpose of writing. Various theoretical basis is used as a reference in solving problems. Examining the issue that is expected to find a major foundation conducted a literature study, which collects materials in the form of reliable literature. Followed by systematically analyzing activity journals, legislation, scientific articles, and other materials related to the material covered in this paper.

³ Cholid Narbuko, and Abu Achmadi. *Metode Penelitian*. (Jakarta: Bumi Pustaka, 1997).

⁴ Hermawan Sunarto, *Metodologi dalam Penelitian Komunikasi*. (Jakarta: ASPIKOM, 2011).

⁵ Deddy Mulyana, *Metodologi Penelitian Kualitatif*. (Bandung: PT. Remaja Rosdakarya, 2003).

In this paper allows for diversity of thought, and so we need accurate data, in the form of the draft Trade Law and Law No. 40 of 2014 on Insurance. Data were then collected from several law journals, and credible scientific articles. Qualitative analysis method by selecting the material and the articles contained in the selected literature sources, and then linked to the material covered, so as to produce an answer to the problems raised.

III. E-COMMERCE & BENEFIT CARRIERS' CONSUMER INTERESTS

Use of the Internet in the business has evolved, from the exchange of information electronically to the application of the business strategy, such as: marketing, sales, and customer service. Internet support global communication and collaboration between employees, customers, vendors, and other business partners. The Internet allows people from different organizations or locations to work together as a single virtual team to develop, produce, market, and maintain the product or service. With the Electronic Commerce internet enabled applications which can be used on a global network, and are usually equipped with Online order processing application, Electronic Data Interchange which serves to send business documents, and security of Electronic Funds Transfer payment system.

As a result of the internet, marketing on the company, products, and service into an interactive process at this time. The company Web site is not just a catalog presents the product and media campaigns, it is used for dialogue, discussion, and consultation with the consumer, so that consumers can be directly involved in the design, development,

marketing, and sales of the product.⁶ E-Commerce digs up all the information needs of each business process, so that the model application and procedure commerce sites have compatibility with conventional business processes. Formulating with business owners about the functionality of the virtual market activities using web sites, including defining the essential requirements in the form of user interaction with the coverage. It can bring the benefit as well as a solution of several conventional business problems. The target yields commercial digitizing systems to bring together buyers and suppliers /sellers online without longer have to depend on the location and time bound in the process of business transactions. Scope of business process analysis of the demand, the validation processes the information until the acceptance by the consumer (customer). Then the interaction and the ability to manage all elements of the stimulus can be a support system is the most important for the success of a relationship with customers and prospective customers.⁷

IV. INSURANCE LAW IN THE BUSINESS OF ELECTRONIC TRANSACTIONS VIA THE INTERNET (E-COMMERCE) IN THE PERSPECTIVE OF THE DRAFT TRADE LAW

⁶ Subianto Resky Ferdian, "Peran Internet dalam Bisnis", *Jurnal Ilmiah INFOKAM: Informasi Komputer Akuntansi dan Manajemen* 7, No. 1 (2011): 7-15. <https://doi.org/10.53845/infokam.v7i1.38>

⁷ Diana Laily Fithri, Andy Prasetyo Utomo, and Fajar Nugraha, "Pemanfaatan E-Commerce Populer untuk Optimalisasi Pemasaran Produk pada KUB Bordir Kurnia Kudus", *Jurnal SIMETRIS* 8, No. 2 (2017): 819-824. *See also* Thomas S. Kaihatu, and Mark T. Spence. "The relationship between shopping mall image and congruity on customer behaviour: Evidence from Indonesia." *Australasian Marketing Journal* 24, No. 2 (2016): 141-145; Rinto Syahdan, "Factors influencing Gen-Z customer perception online shopping in Indonesia." *International Journal of Communication and Society* 3, No. 2 (2021): 99-111.

Insurance is a form of agreement which must be fulfilled requirements as in Article 1320 of the Civil Code, but with the characteristic that the insurance agreement is speculative as stated in Article 1774 of the Civil Code.⁸

The existence of the insurance law in Indonesia is rooted in the codification of civil law (Civil Code) and commercial law (Code de Commerce) at the beginning of the 19th century during Emperor Napoleon in the French government. At that time, the Dutch commercial law only includes provisions regarding marine insurance until the enactment of the draft Law Book Trade Act (Wet Boek van Koopenhandel) 1838 which contains regulations concerning fire insurance, crop insurance, and life insurance. This system was also adopted for the former Dutch East Indies, which is still valid in Indonesia.⁹

Furthermore, the insurance law in connection with business transactions of electronic commerce, we should discuss it starts with looking at the notion of Insurance in the Book of the Law of Commercial Law, Commercial code article 246, which reads¹⁰:

"Insurance or coverage is an agreement by which a binding to an insured, to receive a premium, to provide reimbursement to him for a loss, damage or loss of expected profit, which may be experienced as an event that is not certain."

If we look at Article 1, paragraph (25) of Law No. 40 of 2014 on Insurance, which reads¹¹:

⁸ Deny Guntara, "Asuransi dan Ketentuan-Ketentuan Hukum yang Mengaturinya." *Justisi Jurnal Ilmu Hukum* 1, No. 1 (2016).

⁹ Wirjono Prodjodikoro, *Hukum Asuransi di Indonesia*. (Jakarta: Intermasa, 1986).

¹⁰ *Kitab Undang-Undang Hukum Dagang*.

¹¹ *Undang-Undang No. 40 Tahun 2014 Tentang Perasuransian*.

"Insurance Objects are objects and services, body and soul, human health, legal responsibility, as well as all the other interests that could be lost, damaged, or loss, or decrease in value."

Then e-commerce is the object of insurance, proof of which occurred in the field, all activities in the transaksi e-commerce is likely to cause a loss.

The party most responsible for the loss in e-commerce transactions is the Institute Certificate Authority. Because he is obliged to provide full protection against e-commerce website. This is why the Institute is an initiative Certificate Authority transferred the risk to the insurance.¹² Insurance agreement between the two must be stated¹³:

- 1) Day made Insurance
- 2) The names of those insurance to cover the expense of their own or at the expense of a third person
- 3) A fairly clear description of the insured
- 4) The amount of money for what is held insurance
- 5) The dangers incurred by the insurer
- 6) When danger comes into force for a dependent person and the expiration of the danger in question
- 7) Insurance premiums and insurance premium amount depends on the object insured.
- 8) All the circumstances that it is important for the insurer to know, and all the terms agreed upon between the parties.

¹² Agung Sunawarman, Acep Rohendi, and Iwan Sofyan. "Membangkit Spontanitas Belanja Pada Supermarket Melalui Promosi, Pramuniaga dan Atmosfer Toko." *Jurnal Ecodemica Jurnal Ekonomi Manajemen dan Bisnis* 2, No. 1 (2018): 1-11.

¹³ Elisatris Gultom, "Perlindungan Transaksi Electronic Commerce Melalui Lembaga Asuransi." *Jurnal Legislasi Indonesia* 5, No. 4 (2018): 53-73.

Things being the object of the insurance under section 268 Commercial code which reads:

"An insured can about all the interest that can be assessed with money, can be threatened by something hazard, and not excluded by law."

So, it can be seen that the object of the insurance is all of interest: Can be assessed with a sum of money; Can be threatened by danger; Not excluded by law.

In essence, there are other things that can be the object of insurance e-commerce, the network security system.¹⁴ However, the insured herein are the responsibility of the Institute Certificate Authority to replace the losses if it protects e-commerce result in losses.

C. The importance held special regulations governing insurance in electronic transactions via the Internet (e-commerce) in Indonesia

E-commerce transactions are basically not regulated explicitly and in detail, there are a set of international rules that govern business transactions using e-commerce is still common that in the settlement of disputes still occur vagueness of the law. It can be seen from the absence of a clear legal rules resulting in the inability to run the functions of law enforcement.¹⁵

In the Book of the Law of Commercial Law, Article 247 states that:

"Assured that among other things can be about: a fire hazard; dangers that threaten agricultural products that have not

¹⁴ Benny Kurniawan, "Hukum Asuransi", Online <https://id.scribd.com/document/89548577/Hukum-Asuransi>

¹⁵ Frederic Hamonangan Tumanggor, "Analisis Yuridis Tentang Hukum Asuransi dalam Transaksi Electronic Commerce Melalui Perspektif Kitab Undang-Undang Hukum Dagang", *Thesis*. (Malang: Universitas Brawijaya, 2013).

dipanen; soul; one person or several people; marine hazards and enslavement; danger to the transport on land, in rivers and in the inland waters. Regarding the two types of insurance the latter, will be set in the next book."

It is clear that KUHD not recognize the existence of insurance relating to e-commerce. Even the regulations governing the insurance-matter, namely Law No. 40 of 2014 on Insurance does not specifically regulate insurance relating to electronic e-commerce transactions. Can be seen from Chapter 2: Scope of insurance business which consists of Articles 2 through Article 5. In the previous Act, that Act No. 2 of 1992 on Insurance Business also does not include e-commerce as an object that can be insured. This is according to the authors of an article of Law, namely Frederic Hamonangan Tumanggor, is reasonable. Because Act No. 2 of 1992 recently passed by the Government on February 11, 1992 at which time, the electronic e-commerce transactions are not in Indonesia.

One of the advantages of e-commerce transactions is that consumers can access it anytime anywhere without any restrictions, diverse and detailed information can be obtained compared with conventional trade without having to bother to go to many places. Through the Internet, for example, consumers can get a variety of information on goods and services from various sites and in a variety of brands, complete with price specification, method of payment, delivery way, even the service facilities track and trace that allow consumers to trace the stages of delivery of goods ordered.

But on the other hand, business with e-commerce also has a lot of risk. Keeping in that the Internet is a network of free, open networks which can be accessed by anyone, anywhere. The security system on the Internet also becomes difficult/complicated for anyone who has the

expertise in it. The problem, many Internet sites burglary which is one of the illegal acts (unlawful) done by the hackers. Of course, not rule out the possibility that the e-commerce business can avoid the risks of losses, so that e-commerce can not yet be regarded as a safe business line. Everything can definitely cause a risk, whether it be small or big risk.

In connection with the business activities of e-commerce, possible risks that may arise, such as: wiretapping, fraud, duplication of transaction information, theft of confidential information, and so on.¹⁶ Anything that raises the risk of loss, must be followed up further in order to achieve the well-being.

On the other hand, especially in Indonesia, in the context of legal vagueness cyber insurance (a type of insurance that is used to protect Internet-based business and individual users of the risk), should not make the problems that cause law enforcement to not settle a problem.¹⁷ If law enforcement does not settle a problem for refusing to resolve a dispute, then it means there will be protection for the benefit of mankind. Then there will be no justice, prosperity, rule of law, and social benefit are realized.

In any case, as set forth in Article 10 paragraph (1) of Act No. 48 of 2009 regarding Judicial Power, requiring:

¹⁶ Rizqiya Windy Saputra, "A survey of cyber crime in Indonesia." 2016 *International Conference on ICT For Smart Society (ICISS)*. IEEE, 2016. See also Peter Grabosky, and Russell Smith. "Telecommunication fraud in the digital age: The convergence of technologies." *Crime and the Internet*. (London: Routledge, 2003), pp. 41-55.

¹⁷ Mulhadi Mulhadi, *Dasar-Dasar Hukum Asuransi*. (Jakarta: Rajawali Pers, 2017).

"The court banned refuse to examine, hear and decide a case filed on the grounds that the law does not exist or is less clear, but is obliged to examine and hear."

Insurance disputes in an undesirable state by the parties. Disputes in e-commerce that could be caused by the default of the parties. For example, if an insurance claim filed by the insured is late or not paid by the insurer, or the insured person who does not want to pay insurance premiums according agreed upon at the time of filing insurance in e-commerce transactions. Any disagreement or dispute within business transactions using e-commerce in principle may involve several different countries so that the dispute settlement or dispute, there will be some issues relating to the law in force.¹⁸

Electronic transactions discussed rampant public, in particular on the millennial generation. Who is not tempted by the ease of transaction without having to spend energy? Now the phone is like a primary need that people can not live without it. Internet is available in a mobile phone, laptop, ipad, and others actually make something that people can not turn away from it. The influence of globalization is now completely changing the personality masyarakat now only bent on an object named handphone. In spite of it all, of the factors that employers take the initiative to make progress on the say buying and selling using the electronic transaction business model with a variety of names and goods and services are traded.

Then let's look at what has happened in the field. Consumers today, especially teenagers who use a lot of electronic transactions in buying an item. Such as the use of applications, such as Shopee, Lazada, Tokopedia, and other online applications. Even when in need of a

¹⁸ Yahya Ahmad Zein, *Kontrak Elektronik dan Penyelesaian Sengketa Bisnis E-commerce*. (Bandung: Penerbit Mandar Maju, 2009).

service can be accessed via the internet and we can hire a web service via online. In buying tickets for transportation once we got to the place where the transport is located, we can now afford only by accessing it on the Internet. So sophisticated internet applications, especially electronic transaction business that transforms the tradition that has developed since ancient times.

Despite it all, do not we think that such could cause a loss? Do not we think that everything must have risks? And when that happens, do not we think about how proper and duly taken to minimize these risks? Already we know around us know many were hesitant to take advantage of this electronic transactions, many among those who feel aggrieved because he had cheated while trying to purchase goods through electronic transactions. Or not uncommon to hear the owner of an electronic transaction business suffered losses due to hacking critical data illegally carried out by parties who are not responsible. We already know that web security software now includes not safe. What a great solution to minimize them? Based on the elaboration of the above analysis, we should be able to answer that at this sort of use of insurance law is needed. Insurance law should play an important role in minimizing the risk of losses on the use of business using electronic transactions.

What if there are doubts insurance law effective in minimizing losses in said electronic transactions? It actually can be *wajari* because so far, we know that the role of the insurance law in the protection of electronic transactions and has not been enacted yet adopted formally. However, for those who doubt the existence of the role of the insurance law in the handling of legal risk insurance can we explain that based on the results of the analysis carried out, referring to the draft Trade Law and the Law of Insurance recently, that

everything that can be exposed to the risk of loss that may become the object of insurance. If it is no article in the law that regulates such, although the article in question was not specifically mentioned 'electronic transactions' but we know that what has happened with the electronic transaction business lately suffered losses. Then why do not we take advantage of the existing rules in the article? We should use it well, as long as there are no rules that exclude objects from electronic transactions as an insurance. Surely the public as consumers of everything crave made a special chapter on insurance legislation that actually regulates the relationship with the business insurance through an electronic transaction or that we usually brief with e-commerce. Then why do not we take advantage of the existing rules in the article? We should use it well, as long as there are no rules that exclude objects from electronic transactions as an insurance. Surely the public as consumers of everything crave made a special chapter on insurance legislation that actually regulates the relationship with the business insurance through an electronic transaction or that we usually brief with e-commerce. Then why do not we take advantage of the existing rules in the article? We should use it well, as long as there are no rules that exclude objects from electronic transactions as an insurance. Surely the public as consumers of everything crave made a special chapter on insurance legislation that actually regulates the relationship with the business insurance through an electronic transaction or that we usually brief with e-commerce.

Based on the above explanation can also be seen that the birth of e-commerce transaction model means to give birth in the transaction dispute. The importance of insurance law against the use of objects that is likely to cause a loss to the parties concerned need to be considered, especially in e-commerce business transakti. Because if

such things were underestimated, then certainly there will be no such thing as welfare. Such disputes like not be ignored, especially in this modern era. To that end, I agree that it is necessary to legislation on insurance, in which there is a special chapter, which provides insurance arrangements regarding transactions in connection with e-commerce. So that the parties relating to this case, for example, Bank, Institute of e-commerce service providers, Certificate Authority institutions, as well as consumers, obtain legal certainty. Until the end purpose of the law can be realized.

V. CONCLUSION

Article 246 Commercial code can be concluded that e-commerce is the object of insurance, because of all the activities in e-commerce can cause loss, damage, or no benefit to the parties therein. The party most responsible for the loss in e-commerce are the Organization Certificate Authority that acts as an electronic transaction security. Certificate Authority institutions were given responsibility for securing electronic business transactions of various kinds of damages that can be caused. Insurance in electronic commerce need to be regulated under the laws in Indonesia. Because as we know, turned out to be the development of information technology can have an impact on the development of law. With the birth of a new transaction model will inevitably arise in the transaction dispute. For that, we need specific regulations on the matter, or at least in the Law of Insurance, in it created a special section, which regulates the insurance to do with the transaction of electronic commerce, so that the risk of loss will reach minimum levels and for the interested parties can get legal certainty they deserve from the government.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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