

THE LEGAL IMPLICATIONS OF BREACH OF CONTRACT IN E-COMMERCE TRANSACTIONS

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Abstract

This study, titled The Legal Consequences of Breach of Contract in E-Commerce Transactions under Law No. 19 of 2016 on Electronic Information and Transactions, addresses the legal framework governing online buying and selling activities in Indonesia, with particular focus on the consequences that arise when a seller fails to fulfil their contractual obligations. It examines how such transactions are regulated by the Electronic Information and Transactions Law and investigates the legal implications of breach of contract (*wanprestasi*) within that context. The research adopts a normative juridical approach, concentrating on the analysis of legal norms and principles within positive law. This doctrinal method relies primarily on written legal sources, including statutory provisions, academic literature, legal theories, and expert opinions relevant to the research topic. Data collection was conducted through library research, by reviewing and compiling both primary and secondary legal materials. These materials were then analysed using a qualitative normative method, which involves interpreting the law in a systematic and logical manner to evaluate its application to e-commerce transactions. The study ultimately aims to provide a comprehensive understanding of the legal process surrounding online commerce and to clarify the specific legal outcomes when a seller breaches their contractual duties under the prevailing legal framework.

Keywords: Default, Transaction, E-Commerce

INTRODUCTION

The advancement of technology and information is progressing rapidly across most countries around the world. This progress is not limited to the fields of technology and information alone, but is also evident in the economic, social, cultural, and legal sectors, all of which have seen significant development. One clear example of technological and informational progress is the evolution of the internet. Nowadays, the internet is no longer considered a novelty or a luxury accessible only to certain groups, such as the upper-middle class. Instead, it has become a common and widely accessible tool for people from various walks of life. In today's era, the internet is no longer limited to fulfilling specific needs; it has become an essential part of daily life for people across all levels of society. Easy and fast access to the internet is no longer the privilege of those living in developed countries alone, but has also become increasingly widespread among the general population in various parts of the world.

Trade and purchases conducted via the internet are more commonly known as electronic commerce (e-commerce). E-commerce refers to the process of buying, selling, or exchanging goods, services, and information through computer networks, including the internet. E-commerce is one of the forms of commercial transactions most significantly influenced by the advancement of information technology. Through this mode of trade, the traditional market concept—where buyers and sellers meet physically—has shifted to a telemarketing model, involving long-distance transactions via the internet. E-commerce has also transformed the way consumers obtain the products they desire, making the purchasing process more efficient, flexible, and accessible without the need for direct physical interaction. E-commerce represents a form of trade with distinct characteristics, such as the ability to transcend regional and even national boundaries, the absence of direct physical interaction between buyer and seller, the flexibility to conduct transactions anytime and anywhere, and the use of internet-based platforms. While these features offer significant advantages to consumers—particularly the convenience of accessing a wide range of products without leaving their homes—they also present considerable risks. One of the main concerns is the heightened potential for violations of consumer rights, which may arise due to the unique and often less regulated nature of e-commerce transactions.

There are at least several major e-commerce platforms currently expanding rapidly in Indonesia, serving a wide range of consumer needs. These include Lazada, Tokopedia, Bukalapak, OLX, Shopee, and many others. The presence of these online marketplaces has, on the one hand, significantly eased public access to goods that may not be available in local shops near their homes. Moreover, these platforms often offer products at relatively affordable prices, further enhancing their appeal and convenience for consumers across different regions.

The model of electronic transactions, or e-commerce, is fundamentally similar to that of conventional transactions. However, the key difference lies in the fact that agreements in electronic transactions are made electronically, using computers connected to the internet. These are referred to as electronic agreements or electronic contracts. Such electronic contracts must contain several essential elements that must be fulfilled. These elements are regulated under Article 48(3) of Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. These requirements are intended to provide legal certainty and serve as one form of legal protection in electronic transactions. Nevertheless, in practice, business actors often use standard form contracts in their electronic dealings. The use of such standard clauses is strictly regulated by law. Article 48(3) of the same regulation underscores this, particularly in the context of consumer protection, which refers to Article 18 of Law No. 8 of 1999 on Consumer Protection. This provision aims to safeguard the rights of consumers from standard terms unilaterally set by business actors, where consumers are generally considered the weaker party in the agreement. Consumer rights are explicitly

protected under Article 4 of Law No. 8 of 1999, which outlines various entitlements intended to ensure fair and equitable treatment in commercial transactions.

The practice of e-commerce transactions has given rise to numerous issues that often tend to disadvantage consumers and lead to various legal problems in the course of such transactions. These problems may include breaches of contract, misleading information, lack of accountability, and difficulties in enforcing consumer rights, all of which highlight the need for stronger legal safeguards and clearer regulatory frameworks in the realm of electronic commerce. Legal issues concerning the protection of consumer rights have become increasingly urgent, particularly when a consumer engages in an e-commerce transaction with a merchant either within the same country or across national borders. In online buying and selling, fraudulent practices are not uncommon. Such fraud may involve the identity or legitimacy of the business operator, the quality or existence of the purchased goods, the accuracy of the pricing, or the payment made by the consumer. These issues highlight the vulnerability of consumers in e-commerce and underscore the importance of effective legal mechanisms to safeguard their rights.

E-commerce transaction practices often give rise to various issues that tend to disadvantage consumers and lead to a range of legal complications. These problems may stem from unclear contractual terms, lack of transparency, disputes over product quality or delivery, and difficulties in obtaining legal remedies. As e-commerce continues to grow rapidly, the legal challenges surrounding consumer protection in this digital environment have become more complex and pressing^[6]. Legal issues related to the protection of consumer rights are becoming increasingly urgent, particularly when consumers engage in e-commerce transactions with merchants either within the same country or across international borders. In online buying and selling, fraudulent activities are frequently encountered. These may involve deception concerning the existence or legitimacy of the seller, the authenticity or condition of the goods purchased, the accuracy of the stated price, and even the processing of payments made by consumers. Such practices highlight the vulnerabilities faced by consumers in digital transactions and emphasise the need for stronger legal protections and regulatory oversight in the e-commerce sector. The negative impacts of e-commerce also tend to disadvantage consumers, particularly in cases where the product received does not match what was advertised or agreed upon. A common example is when a consumer purchases an item online, only to find that the delivered product differs from the one shown in the promotional photos. Such situations raise important questions: does this constitute a violation of consumer rights? Can the buyer demand a refund or request a replacement for the item purchased?

Under consumer protection laws, especially those outlined in Law No. 8 of 1999 on Consumer Protection in Indonesia, this kind of discrepancy is indeed considered a breach of the consumer's rights. Consumers have the legal right to receive goods that match the promised description, quality, and condition. If the seller fails to deliver a product in accordance with the original agreement or advertisement, the consumer is entitled to seek legal remedies, including a full refund or an exchange of the item. This principle is in line with the obligation of business actors to provide accurate information and ensure fairness in their transactions with consumers.

In another example, within the context of an agreement, the debtor may commit a breach of contract (*wanprestasi*), meaning they fail to fulfil their obligations as agreed. According to Subekti, breaches of contract can be classified into four types: complete failure to perform, delayed or untimely performance, imperfect or incomplete performance, and performing an act that is expressly prohibited in the agreement. The consequences of such breaches typically result in compensation, which may take the form of costs, damages, or interest, and in some cases, may also lead to the termination of the contract.

The development of online buying and selling is regulated under Law No. 11 of 2008 concerning Electronic Information and Transactions, commonly referred to as the ITE Law. As

consumers, it is essential to be cautious and discerning when purchasing goods online. Typically, an online sale and purchase transaction involves an agreement between the business actor and the consumer. According to Article 19 of the ITE Law, parties engaging in electronic transactions must use an electronic system that has been mutually agreed upon. Therefore, before conducting an electronic transaction, both parties must agree on the electronic system to be used—unless otherwise specified in their agreement. Furthermore, as stipulated in Article 20(1) of the same law, an electronic transaction is considered to have occurred when the offer sent by the sender has been received and accepted by the recipient. This legal framework underscores the importance of mutual consent and system reliability in ensuring the validity and enforceability of electronic transactions.

In this context, an electronic transaction is only considered to have taken place when an offer has been sent to the recipient and the recipient has agreed to accept the offer after receiving it electronically. Article 20 paragraph (2) of the Electronic Information and Transactions Law states: "Acceptance of an electronic transaction offer must be given through an electronic statement of acceptance." The next stage following mutual agreement between the parties is the payment process. Payment may be made in various ways, including cash, ATM transfer, credit card, or through a third-party intermediary such as an escrow service (commonly referred to in Indonesia as *rekening bersama* or *rekber*). Given the various issues that frequently arise in online sale and purchase transactions (e-commerce), it becomes essential to examine such transactions from a legal perspective, particularly in reference to Law of the Republic of Indonesia No. 19 of 2016 on Electronic Information and Transactions. This legal scrutiny helps to ensure the protection of consumer rights and the proper conduct of electronic agreements in an increasingly digitalised marketplace.

RESEARCH METHODS

The legal research method is a crucial component in conducting research and producing academic work. It serves to clearly demonstrate how a particular study is carried out. This research adopts a normative juridical approach. Normative legal research is a type of study focused on examining the application of legal norms or rules within the framework of positive law. It involves analysing legal principles, statutory regulations, and legal doctrines to understand how the law is applied in practice or how it should be applied in specific legal contexts. The normative juridical method, as explained by Suratman and Phillips Dillah, is also referred to as doctrinal legal research, and is often categorised as library-based (documentary) research. It is termed *doctrinal* because it focuses exclusively on written regulations or legal materials, rather than empirical data. This approach is also known as *library research* because it primarily relies on secondary data sources, such as legislation, legal literature, court decisions, and scholarly commentary, to examine and analyse legal issues.

In normative juridical legal research, the sources of data consist of primary, secondary, and tertiary legal materials. These include key legal documents such as the *Civil Code (Kitab Undang-Undang Hukum Perdata)*, Article 48 paragraph (3) of Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, Law No. 8 of 1999 on Consumer Protection, and Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions. Additionally, other relevant laws and regulations that support the subject matter of the research are also utilised. These legal sources form the foundation for the analysis and interpretation carried out in this study.

The legal material collection technique in this research involves reading, exploring, and gathering relevant sources. This process is carried out through literature or library study, by identifying and compiling both primary and secondary legal materials. It includes the search for and inventory of legal norms or principles, concepts, theories, expert opinions, and previous findings that are directly or indirectly related to the central issues addressed in this study.

Legal Material Analysis. Once the legal materials have been collected, they are analysed to draw conclusions. The form of analysis used is qualitative normative, where the gathered legal materials are first examined, then organised systematically, and presented in descriptive sentences that reflect the nature of the issues being studied. This method involves interpreting the data to portray the legal problems accurately. The compiled materials are then analysed in accordance with applicable laws, scholarly opinions, and general legal principles, which are gradually directed towards more specific matters aligned with the structure of the discussion. Ultimately, this process leads to the formulation of final conclusions.

RESULT AND DISCUSSION

The Process of Online Buying and Selling According to Law Number 19 of 2016 on Electronic Information and Transactions.

The procedure for conducting online sale and purchase transactions differs from that of conventional transactions, particularly in terms of the interaction between business actors and consumers, who may or may not meet face-to-face. In online transactions, the buyer and seller do not engage in direct physical contact; instead, the transaction is carried out using digital signatures or other electronic instruments as tools for conducting the trade. Typically, the parties involved in such internet-based transactions are professionals—both business operators and consumers—who are familiar with digital platforms. Online transactions are generally chosen because of the significant physical distance between the parties and the complexity of the transaction itself, which would otherwise be more costly and time-consuming if conducted in person.

In essence, online sale and purchase transactions share similarities with conventional buying and selling mechanisms. The primary difference lies in the system or tools used—online transactions are conducted digitally, while conventional ones are carried out manually or offline. According to Janus Sidabalok, such transactions can be distinguished into three distinct phases: the pre-transaction phase, the actual transaction phase, and the post-transaction phase. Each phase plays a crucial role in ensuring the transaction proceeds smoothly and in accordance with legal and commercial expectations. In general, the process of a sale and purchase transaction involves at least one binding agreement between the buyer and the seller. According to Subekti, and as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata), there are four essential elements required for the validity of an agreement: (1) mutual consent between the parties, meaning that the agreement must be made voluntarily, consciously, and without coercion, mistake, or fraud; (2) the legal capacity of the parties to engage in a legal act; (3) a specific subject matter that is clearly defined; and (4) a lawful cause or legal purpose. These four requirements constitute the legal basis for the enforceability of a contract, whether in conventional transactions or in the context of e-commerce.

The first and second requirements are referred to as subjective conditions; if these are not fulfilled, either party may request the annulment of the agreement that has been made. Meanwhile, the third and fourth requirements are known as objective conditions; if these are not met, the agreement is considered null and void by operation of law. In the context of online agreements, the contract is formed through an electronic communication process that takes place between the sender and the recipient of an electronic message. To ensure that the message sent by the sender is indeed received, the recipient must respond by sending a return message to confirm receipt. This notification is crucial, as without it, the sender cannot be certain that the electronic message has reached its intended recipient. The time of sending an electronic message is considered to be the moment it enters an information system that is essentially beyond the control of the sender. Meanwhile, the time of receipt is deemed to occur when the message enters the recipient's information system.

The process of offering and accepting in online sale and purchase transactions is essentially the same as in conventional transactions. The only difference lies in the medium used; in e-commerce, the internet serves as the platform for conducting the transaction. Article 19 of Law No. 19 of 2016, which amends Law No. 11 of 2008 on Electronic Information and Transactions, states that parties engaging in electronic transactions must use an electronic system that has been mutually agreed upon. Therefore, before the transaction takes place, both parties must agree on the electronic system that will be used, unless otherwise stipulated. An electronic transaction is deemed to occur once the transaction offer sent by the sender has been received and accepted by the recipient, as regulated in Article 20 paragraph (1) of the same law. This means that an electronic transaction only comes into effect when there is an offer sent to the recipient and an explicit acceptance of that offer, following its receipt via electronic means. Article 20 paragraph (2) further states that “Acceptance of an electronic transaction offer must be given through an electronic statement of acceptance.”

Furthermore, if a prospective buyer is interested in a product offered by the seller, they may inquire about any details related to the item and make a price offer through the contact number provided by the seller in the image or photo of the listed product. Alternatively, the prospective buyer may also ask questions or submit offers through the comment section available on the online marketplace platform where the item is being advertised.

The next stage after mutual agreement has been reached between the parties is the payment process. Payment can be made in various ways, including cash, ATM transfer, credit card, through a third-party intermediary such as an escrow service (known as *rekening bersama*), or by using the Cash On Delivery (COD) method. Once the payment is completed, the seller will proceed to deliver the goods to the buyer using a courier or delivery service.

Delivery costs in online transactions may be borne either by the buyer or the seller, depending on the agreement between the parties. Based on the author's research, the process of online buying and selling generally consists of four stages. First is the offer, where the seller or business operator promotes products and services through a website, allowing visitors to view and consider the goods on offer. An offer is deemed to occur when another party accesses the seller's website. Second is acceptance, which depends on how the offer is made; if done via email, acceptance is also given via email. In cases where the offer is made publicly through a website, any interested individual may respond and form an agreement with the seller. The third stage is payment, which may be made through various methods such as cash, ATM transfer, credit card, escrow service (*rekening bersama*), or Cash On Delivery (COD). The final stage is delivery, where the seller dispatches the purchased goods to the buyer. Delivery can be carried out directly through COD arrangements or via courier services such as TIKI or JNE. Delivery fees are usually separate from the item price and are agreed upon in advance by both parties.

Legal Consequences Arising When a Seller Commits a Breach of Contract in an Online Sale and Purchase Transaction.

In every reciprocal engagement, there are always two legal subjects, each bearing rights and obligations toward one another under the agreement they have entered into. If one of the parties fails to fulfil what has been agreed upon—specifically, the obligations set out in the contract—they are considered to be in breach of contract, or *wanprestasi*, meaning they have failed to perform the agreed-upon obligations within the scope of the contract.

Before discussing the legal consequences arising when a seller in an online sale commits a breach of contract, it is important to first explain the types of breach (*wanprestasi*) and the responsibilities of the online seller or business operator towards the buyer or consumer. Breach of contract can take four forms: (a) failing to carry out what was promised, (b) fulfilling the obligation, but not in the manner agreed upon, (c) fulfilling the obligation, but doing so late, and (d) performing an act that, under the terms of the agreement, should not have been done^[12].

Breach of contract is most commonly committed by business operators. For example, if a business operator fails to deliver goods on time and the items are delayed in reaching the consumer, the consumer has the right to contact the seller to confirm the status of the purchased goods. In some cases, the business operator may intentionally fail to fulfil their obligations, which may not only be categorised as a breach of contract (*wanprestasi*) but could also be considered an act of fraud, depending on the circumstances and intent behind the action.

Alongside this, there are fundamental obligations that apply to online sellers or business operators. These obligations include^[13]: Online sellers or business operators have key obligations that must be fulfilled in a sale and purchase transaction. Firstly, they are required to transfer ownership rights of the goods being sold, which involves carrying out all legal actions necessary to ensure that ownership is lawfully transferred from the seller to the buyer. Secondly, they must guarantee the buyer's peaceful enjoyment of the goods, meaning the buyer should be able to use the goods without any disturbance or interference. Additionally, the seller is responsible for any hidden defects in the goods, ensuring that the product is free from undisclosed faults that could diminish its value or usefulness.

One of the legal consequences arising from the seller's guarantee is the assurance given to the buyer that the goods being sold genuinely belong to the seller and are free from any encumbrance or claims by third parties. In relation to hidden defects, the seller is held responsible for any such defects in the goods sold, even if the seller was unaware of their existence—unless it has been previously agreed that the seller bears no responsibility whatsoever. A defect is considered “hidden” if it is not easily detectable by an average buyer during a normal inspection of the goods.

In online sale and purchase transactions, the principle of strict liability applies in cases of breach of contract. The weaker position of the buyer in e-commerce transactions places full responsibility on the online seller or business operator. The business actor is fully accountable for all commercial activities conducted through e-commerce. Article 21 paragraph (2)(a) of the Law on Electronic Information and Transactions states: "If carried out independently, all legal consequences arising from the implementation of electronic transactions shall be the responsibility of the transacting parties." Therefore, in the context of e-commerce, the party held responsible is the one who commits the breach of contract, which in this case is the online seller or business operator.

According to the Indonesian Civil Code (KUHPerdata), when a debtor or the party responsible for fulfilling a contractual obligation commits a breach of contract, it may result in losses to the creditor or the party entitled to receive the performance. The legal consequences for the debtor include several forms of liability: they must compensate the creditor for any resulting damages (Article 1243); they may face termination of the agreement along with an obligation to pay compensation (Article 1267); they bear the risk from the moment the breach occurs (Article 1237 paragraph (2)); and they are liable to pay court costs if the matter proceeds to litigation (Article 181 paragraph (1) of the HIR). These provisions ensure that the injured party has legal recourse and that the breaching party is held accountable for the failure to meet contractual obligations.

In addition, Article 1266 of the Indonesian Civil Code stipulates that in a reciprocal agreement, a breach of contract by one party grants the other party the right to request the termination of the contract through the court, even if the termination condition due to non-fulfilment of obligations is explicitly stated in the agreement. If no such termination clause is included, the court has the discretion to assess the circumstances based on the defendant's plea and may grant the defendant a period of time to fulfil their obligations. However, this grace period must not exceed one month.

In the event that the debtor, or the party responsible for fulfilling obligations under an agreement, fails to perform as agreed, the creditor has the right to choose and file a legal claim

in court based on the enumerative provisions set out in Articles 1267 in conjunction with 1266 of the Indonesian Civil Code. These legal remedies include: (a) the enforcement of the contract; (b) the enforcement of the contract along with compensation for damages; (c) compensation for damages alone; (d) termination of the contract; and (e) termination of the contract along with compensation for damages.

The obligation to pay compensation for damages by a debtor—or the party responsible for fulfilling a contractual obligation—who commits a breach of contract (*wanprestasi*) can only be enforced if four specific conditions are met: (a) the party has indeed been negligent in fulfilling their obligation; (b) the breach did not occur due to force majeure or circumstances beyond their control; (c) the party did not present a valid defence against the claim for damages; and (d) the party has received a formal notice of default or warning (*somasi*).

If an online seller or business operator fails to take responsibility for a breach of contract in an e-commerce transaction, the consumer may pursue legal action as stipulated in Articles 38 and 39 of the Law on Electronic Information and Transactions regarding dispute resolution. According to Article 39 paragraph (2) of the same law, aside from civil litigation, parties may settle disputes through arbitration or other institutions. However, no resolution was reached after negotiations, as the business operator offered compensation by refunding the money if the goods were returned to the seller, but the buyer refused and insisted on transferring the payment first before returning the goods. Both parties remained firm in their positions. The buyer claimed reluctance to send the goods first due to frustration with the seller and also refused to file a lawsuit in court, citing a desire to avoid complications.

The business operator has the right to take legal action against the party causing harm in court, as regulated in Article 38 of the Law on Electronic Information and Transactions, which states that anyone who suffers loss due to electronic transactions may file a lawsuit. Consumers seeking compensation for losses incurred in online sale and purchase transactions can pursue this through two main approaches: (a) Litigation, where according to Article 38, parties may sue if they are harmed by the conduct of electronic transactions. The law recognises electronic evidence as valid proof in court, as stipulated in Article 5 paragraphs (1), (2), and (3). Therefore, consumers can present evidence such as (1) proof of transfer or payment receipts, (2) SMS or emails showing agreement to purchase, and (3) the name, address, telephone number, and bank account details of the business operator. (b) Non-litigation, as stated in Article 39 paragraph (2), which allows parties to resolve disputes through arbitration or other institutions aside from civil litigation.

CONCLUSIONS

Online sale and purchase agreements are generally similar to conventional sales contracts; the main difference lies in the medium used. In conventional trade, the parties must meet face-to-face at a certain place to agree on the goods or services to be traded and their prices. In online sales, the transaction process relies primarily on the internet, allowing the trade to occur without direct physical meetings between the parties. Online sales agreements are governed by the provisions of the law of obligations (especially contracts) as set out in the Indonesian Civil Code (KUHPerdota), since such transactions are essentially a development of legal sales contracts. The responsibilities of the parties in online sales include the rights and duties where one party demands the offered goods, and the other party delivers the goods as agreed upon for the agreed price. Four key elements are essential for the formation of an online sales contract: (a) offer, (b) acceptance, (c) payment, and (d) delivery. Breach of contract (*wanprestasi*) in e-commerce transactions is generally committed by the online seller or business operator. In such cases, the online seller or business operator is obliged to compensate the consumer for any losses suffered. If the online seller fails to take responsibility for their breach, the consumer may pursue legal action by filing a claim against the online seller or

business operator in accordance with Articles 38 and 39 of the Electronic Information and Transactions Law (UU ITE) concerning dispute resolution.

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