
Legal Protection of Consumers Due to Default in Online Buying and Selling Transactions

Raplin Jauhari¹

¹ Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail:

ARTICLE INFO	ABSTRACT
<p>Keywords :</p> <p><i>Criminal Acts, Theft, Children.</i></p> <p>How To Cite :</p> <p>Jauhari, R. (2020). Legal Protection Of Consumers Due To Default In Online Buying And Selling Transactions. <i>Estudiante Law Journal</i>. Vol. 2 (1): 53-71</p> <p>DOI :</p>	<p>This research aims to find out the legal protection of consumers due to default in online buying and selling transactions and to know the responsibility of business actors due to default in online buying and selling transactions. This research uses a statutory approach with a type of research that is normative legal research. The results showed that (1) Legal protection of consumers due to default in online buying and selling transactions is intended to protect their rights that business actors do not fulfill. The protection of the law against consumers can be measured by how the law protects the rights of the rights of consumers, while the rights of consumers are regulated in the Civil Code Article one thousand two hundred and thirty-five, Article one thousand four hundred seventy-four, Article one thousand four hundred fifty-eight, article one thousand four hundred seventy-four, Article one thousand five hundred and thirteen, One thousand five hundred and fourteen. Consumer protection law Article forty-five, Article forty-six and Article forty-seven, as well as in the law on information and electronic transactions Article seventeen paragraph two, Article thirty-eight. (2) The responsibility of business actors due to default in online buying and selling transactions is to compensate consumers. Indemnity includes returning money, replacing it according to its value.</p>

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1. Introduction

Online buying and selling transactions are increasingly in demand, especially because there are many online buying and selling sites available, including shope, bukalapak, traveloka, lazada, tokopedia, OLX Indonesia site and many more. This online buying and selling site provides a variety of used goods and / or new goods according to their needs. Searchable items ranging from mobile phones, computers, household devices, property cars and motorcycles, to job openings, and other services.

The transaction of buying and selling itself is regulated in Article 1457 of the Civil Code, which means an agreement with which one party binds himself to submit a material and the other party to pay the promised price. In a treaty there shall arise a right and obligation of the parties bound by the treaty as a result of its law.

The Seller reserves the right to receive payment of the goods in accordance with the agreement with the buyer, and is obliged to hand over the goods sold to the buyer, and the goods traded are goods that really belong to the seller himself that are free from a burden or demands from others. While the buyer is entitled to obtain the goods as the object of the agreement with the seller, and is obliged to pay the purchase price in accordance with the price agreement agreed by both parties.¹

The rights and obligations of the seller and the buyer above must be carried out properly by both, so that nothing untoward happens in the future. If one of the parties does not exercise its rights and obligations as described above, it is called default. According to Subekti² default means not fulfilling the obligations as stipulated in the engagement or agreement. While the form of achievement according to Article 1234 of the Civil Code is.

1. Give something away
2. Doing something
3. Didn't do anything.

According to Article 1235 paragraph (1) of the Civil Code, the understanding of giving something is to give real power over an object from the debtor to the creditor. In an engagement whose object "does something", the debtor is obliged to perform certain actions that have been specified in the engagement. Whereas, in an engagement whose object "does not do anything", the debtor does not do the deeds specified in the engagement.

Forms of wanprestasi carried out by business actors or sellers in transactions through e-

¹ Subekti, *Aneka Perjanjian*, (Bandung : PT Citra Aditya Bakti, 2014), hal. 8.

² Djaja S. Meliala, *Hukum Perdata dalam Perspektif BW*, (Bandung : Nuansa Aulia, 2012), hal. 175.

commerce, among others.³:

1. In an *e-commerce* transaction, the seller has an obligation to hand over the goods sold to the buyer and the obligation to bear the serene pleasure and bear hidden defects. If the seller does not carry out his obligations, then the seller can be said to be wanprestasi.
 2. Carry out what is promised, but not in accordance with what is promised In this form the true seller has given up the goods sold but not as promised.
 3. Carrying out what is promised but late means that if the ordered goods arrive late but can still be used then this can be classified as a late achievement, if the achievement cannot be used again then it is classed as not carrying out what has been promised, namely as in the first form.
 4. For the last wanprestasi, for example, the seller is obliged not to disseminate to the general the identity and personal data of the buyer, but it turns out that the seller did.
- Default or non-fulfillment of obligations by buyers and sellers as stipulated in the agreement can also occur in online buying and selling transactions. Many legal events cause harm to one party because the other party does not fulfill its obligations, or defaults. examples of cases of wanprestasi that occur in online buying and selling⁴ with the verdict number 82/Pdt.G/2013/PN/Yk.:

Suhartatik Karuniawati added a friendship in *Blackbaerry Messenger* in mid-2011 against Rosita Vidiastria, because Rosita Vidiastria did not have prejudices then the friendship request was accepted, then Suhartatik Karuniawati offered accessories in the form of necklaces from Korea through Broadcast Blackberry *Messenger*, after getting broadcast. Rosita Vidiastria bought accessories offered by Suhartatik Karuniawati and eventually continued until the business offerings of smartphones and gadgets brand Blackberry, Aple and Samsung.

Rosita Vidiastria is interested in the offers offered by Suhartatik Karuniawati which include the price of easy goods. Money is sent first through an account in the name of Suhartatik Karuniawati, there is accelerated money for orders requested to be accelerated, the postage is borne by the buyer, if the goods do not come then Suhartatik Karuniawati will return the payment money completely.

Rosita Vidiastria is interested in buying smartphones and gadgets as many as 1140 units with total payments (goods, speeding money and postage) that are sent to the collectors according to orders from December 19, 2011 to May 22, 2012 gradually amounting to Rp. 2,809,000,000,000,-, while the goods that have been sent amount to 146 units with a total price of Rp. 259,625,000 and goods that have not been shipped as many as 944 units.

With the proposition that the goods ordered by Suhartatik Karuniawati from China have

³Edmon Makarim, *Kompilasi Hukum Telematika*, (Jakarta : Raja Grafindo Persada, 2003), hlm.238.

⁴<https://newsmetropol.com/polres-barru-ungkap-kasus-penipuan-transaksi-jual-beli-online/>

not come in accordance with the agreement, Suhartatik Karuniawati must return the payment money completely. But in fact Suhartatik Karuniawati only returned money to Rosita Vidiastria amounting to Rp. 372,757,000, so that the total rosita Vidiastria only got goods amounting to 146 units with a total price of Rp. 259,625,000 and a refund of Rp. 372,757,000, then the total refund amounted to Rp.632,382,000, so Suhartatik Karuniawati still has dependents to Rosita Vidiastria amounting to Rp. 2,176,618,000.

2. Method

The type of legal research that researchers use is the Type of Normative legal research. In this study, researchers used *a type* of case approach and a *Statute Approach*. The case approach is related to this study on verdict number 48/Pdt.Sederhana/2018/PN/Mks and verdict number 82/Pdt.G/2013/PN. Yk. The technique of analisis used is to use descriptive analysis, which is to conduct an analysis by describing or explaining existing rules, especially related to the verdict.

3. Analysis or Discussion

3.1 Legal Protection of Consumers Due to Default in Online Buying and Selling Transactions

Buying and selling is an agreement, by which one party commits itself to surrendering a material, and the other party to pay the promised price.⁵ From this understanding, it can be seen that there are parties who have an obligation to hand over an item and there are parties who are obliged to pay the price of an item that has been promised, the obligations of these parties indirectly also cause rights for the parties.

The rights of consumers themselves have been regulated in consumer protection laws, namely:

Article 4

Consumer rights are:

1. The right to comfort, security and safety in consuming goods and/or services;
2. The right to choose goods and/or services and obtain such goods and/or services in accordance with exchange rates and conditions and guarantees promised;
3. The right to correct, clear, and honest information about the condition and guarantee of goods and/or services;
4. The right to be heard of his opinions and complaints about the goods and/or services used;
5. The right to appropriate advocacy, protection, and dispute resolution efforts;

⁵Pustaka Yustisia, 2014, *Kitab Lengkap KUHPer, KUHAper, KUHP, KUHAper, KUHD*, Yogyakarta : Penerbit Pustaka Yustisia, hal.342.

6. The right to consumer coaching and education;
7. The right to be treated or served properly and honestly and not discriminatorily;
8. The right to compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as appropriate;
1. Rights stipulated in the provisions of other laws and regulations.⁶

While the consumer obligations are:

Article 5

Consumer obligations are:

- a. Read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety;
- b. Good faith in making transactions to purchase goods and / or services;
- c. Pay in accordance with the agreed exchange rate;
- d. Follow efforts to resolve consumer protection disputes properly.⁷

In addition to consumers, business actors are also given rights and obligations in consumer protection laws, namely as follows:

Pasal 6

The rights of business actors are:

- a. The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services;
- b. The right to legal protection from acts of bad faith;
- c. The right to self-defense appropriately in the legal settlement of consumer disputes;
- d. The right to defame rehabilitation if it is not legally proven that consumer losses are not resulting from traded goods and/or services;
- e. Rights stipulated in the provisions of other laws and regulations.⁸

Article 7

The obligations of business actors are:

- a. Good faith in doing his business activities;
- b. Provide correct, clear and honest information about the condition and guarantee of goods and/or services, and provide explanations of use, repair and maintenance;
- c. Treat or serve consumers properly and honestly, and is not discriminatory;
- d. Ensuring the quality of goods and/or services produced and/or traded under the provisions of applicable standards of quality of goods and/or services;

⁶ “Undang-Undang No.8 Tahun 1999 Tentang Perlindungan Konsumen” (1999): 1–46.

⁷ Ibid.

⁸ Ibid.

- e. Provides consumers with the opportunity to test, and/or attempt certain goods and/or services, and to provide warranties and/or warranties on goods made and/or traded;
- f. Compensation, indemnification and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services;
- g. Compensate, indemnify and/or reimbursement if goods and/or services received or utilized are not in accordance with the agreement.⁹

The above rights and obligations must be fulfilled by both parties so as not to happen things that are not desirable and do not cause new legal problems. Similar to buying and selling transactions in the real world, online or electronic buying and selling transactions must also pay attention to the rights and obligations of each party.

The difference between real or face-to-face buying and selling transactions and online buying and selling transactions is that the parties process buying and selling through online. The implementation steps are offer, acceptance, payment and delivery.

The process or steps of buying and selling online is a process that should occur in every online buying and selling transaction, but not a few problems that often occur such as the existence of broken promises or defaults made by one party both by sellers and buyers. According to Subekti¹⁰ default means not fulfilling the obligations as stipulated in the engagement or agreement

Forms of wanprestasi carried out by business actors or sellers in online buying and selling transactions include:

- (1) Not doing what is expected to be done, the seller has an obligation to hand over the goods to the buyer and is responsible for bearing hidden defects.
- (2) Do what is promised, but not in accordance with what is promised. In this form the correct seller has handed over the goods sold but not as promised.
- (3) Carry out what is promised but too late, in this case if the goods ordered late arrive but can still be used then this can be classified as a delay in the implementation of achievements, if the implementation cannot be reused then it is classified as not carrying out what has been promised, namely as in the first form.
- (4) Carrying out something that according to the agreement it shall not do, the seller is obliged not to publicly disclose the identity and personal data of the buyer, but it turns out that the seller has done so.¹¹

As a result of default or the lifting of promises by business actors, it can provide losses

⁹ Ibid.

¹⁰ Djaja S. Meliala, *Op.Cit.*, hal. 175.

¹¹ Edmon Makarim, *Kompilasi Hukum Telematika* (Jakarta: Raja Grafindo Persada, 2003).

that are not small to consumers, both material or non-material losses, material losses are losses in the form of property or property for someone who can measure with money, while non-material losses are not located in one's wealth.¹²

Victims who suffer losses should get legal protection, which is certainly an effort to protect the rights of victims from everyone who violates them. Legal protection of consumers in buying and selling transactions is realized in the form of regulations, namely:

a. Civil Law Code

Buying and selling is an agreement, by which one party commits itself to surrendering a material and the other party to pay the promised price.¹³ In buying and selling transactions that become the most important thing is the agreement between the parties, namely sellers and buyers. This is explained in chapter 1458:

Buying and selling is thought to have taken place between the two parties, as soon as the men reached an agreement on the item and its price, although the item has not been handed over and the price has not been paid.¹⁴

Article 1320 of the Civil Code has specified four conditions that must be fulfilled in the agreement, so that the agreement is considered valid. The conditions are:

Article 1320

In order for a valid agreement to occur, four conditions are necessary:

1. Their agreement that binds them;
2. The ability to make an engagement;
3. A particular subject matter;
4. A reason that is not forbidden.¹⁵

Agreed those who bind themselves are two parties who do the contract agree on the main things in the contract. The ability to make a contract or covenant, i.e. everyone who makes a covenant must be able to do legal deeds or have a mature and healthy mind. A certain thing can mean that something promised must be a thing or a clear thing. While a halal reason is that the contract carried out must not violate the laws and regulations.

Legal protection of consumers can be seen from the regulation of the rights and obligations of consumers and business actors in the Civil Code, namely¹⁶ :

¹² Haryanto, *Pembuktian terjadinya kerugian immaterial dan criteria dalam menentukan besarnya ganti rugi dalam perbuatan melanggar hukum*, Skripsi, (Palembang : Universitas Muhammadiyah Palembang), hal.24.

¹³ "Kitab Undang Undang Hukum Perdata" (n.d.).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Asyikul Firdaus, 2015, *Tinjauan Yuridis Sengketa Hukum Akibat Adanya Transaksi Jual-Beli Online*, Universitas Jember : Fakultas Hukum, Skripsi, hal. 10-11.

1. Seller's Rights and Seller's Obligations

The right of the seller is to obtain or receive payment from the buyer under the agreement. While the obligation of the seller in buying and selling is contained in Article 1235 of the Civil Code, which reads:

In the engagement to give something, including the obligation to hand over the goods in question and to take care of them as a good head of household, until the time of delivery. The extent of the latter's obligations depends on certain agreements; as a result, it will be designated in the relevant chapters.¹⁷

In particular, there are two main obligations of the seller stipulated in Chapter Five part two of the obligations of the seller, namely in article 1474 which reads:

The seller has two main obligations, namely to give up the goods and bear them.¹⁸

The seller has three main obligations since the sale and purchase process as stipulated in article 1458 of the Civil Code. Under these terms, the seller is in principle obliged to:

1. Maintaining the goods before they are handed over to the buyer until the time of delivery;
2. Provide goods traded at the time of the agreement;
3. Bear the goods sold.

In addition to the above obligations, sellers are also charged in bearing the goods sold. This is as stipulated in the Civil Code, namely:

Article 1491

The insurer that is the obligation of the seller to the buyer, is to guarantee two things, namely: first, the safe and secure control of the goods sold; second, the absence of hidden defects in the item, or such a result as to cause grounds for the cancellation of the purchase.¹⁹

Based on the above article, it can be seen that the responsibility of the seller's insurance to the buyer is to guarantee two things, namely to ensure that the goods sold are safe and if the goods are found to be defective, the seller is obliged to cancel the sale.

1. Buyer's Rights and Buyer Obligations

The right of the buyer is to get the goods he has purchased, either juridically or in real terms. The main obligation for buyers is to pay for goods purchased according

¹⁷ “Kitab Undang Undang Hukum Perdata.”

¹⁸ Ibid.

¹⁹ Ibid.

to time and place under the agreement. This is as stipulated in the Civil Code, namely on:

Article 1513

The buyer's primary obligation is to pay the purchase price on time and in the place specified in the agreement.²⁰

Then in article 1514 it is explained, if at the time of the agreement has not been arranged about the time and place, then the buyer is obliged to pay at the time the submission is made.

b. Law No. 8 of 1999 on Consumer Protection

Consumer protection is any effort that ensures legal certainty to provide protection to consumers. Efforts made in providing legal protection in the law is to regulate what can and should not be done by business actors and consumers who are packaged in the rights and obligations of each as mentioned earlier.²¹

In addition to regulating the rights and obligations of both parties, the Law also regulates dispute resolution for every consumer who feels aggrieved, namely in article 45, article 46 and article 47 which explains:

Article 45

1. Any aggrieved consumer can sue a business actor through an institution tasked with resolving disputes between consumers and business actors or through the judiciary located in the general judicial environment.
2. Settlement of consumer disputes can be taken through the courts or out of court based on the voluntary choice of the parties to the dispute.
3. Settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal liability as stipulated in the Law.
4. If an effort has been selected to resolve consumer disputes outside the court, a lawsuit through the court can only be pursued if the effort is declared unsuccessful by one of the parties or by the parties to the dispute.²²

Article 46

1. Lawsuits for violations of business actors can be made by:
 1. an aggrieved consumer or the heir concerned;
 2. a group of consumers who share the same interests;
 3. qualified non-governmental consumer protection agencies, i.e. in the form of legal entities or foundations, which in their basic budget state unequivocally

²⁰ Ibid.

²¹ "Law No.8 of 1999 on Consumer Protection."

²² Ibid.

that the purpose of the organization is in the interests of consumer protection and has carried out activities in accordance with its basic budget;

4. government and /or related agencies if goods and / or services consumed or utilized cause large material losses and / or casualties that are not small.
2. The lawsuit filed by a group of consumers, non-governmental consumer protection agencies or the government as referred to in paragraph (1) letter b, letter c, or letter d is submitted to the general court.
3. Further provisions regarding large material losses and/or casualties are not small as referred to in paragraph (1) letter d regulated by Government Regulations.²³

Article 47

Out-of-court settlement of consumer disputes is held to reach an agreement on the form and magnitude of the damages and/or regarding certain actions to ensure there will be no reoccurring or will not be repeated losses suffered by consumers.²⁴

From the above article it is seen that consumers are given access to dispute resolution if harmed by business actors, this dispute resolution can be done by a lawsuit to the court or an institution that has the authority to resolve disputes between consumers and business actors.

c. Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions

The arrangement of online buying and selling transactions is also regulated in Law No. 19 of 2016 on changes to Law No. 11 of 2008 on Information and Electronic Transactions. This can be seen in chapter 1 number 2 which reads:

"Electronic transactions are legal acts committed using computers, computer networks and/or other electronic media."

Everyone in online buying and selling transactions is required to always do it in good faith, so that transactions made by the parties will run smoothly so as not to cause problems that can harm one of the phak. Obligations of good faith in electronic transactions are regulated in the Information Law and electronic transactions, namely:

Article 17 paragraph 2

"The parties conducting Electronic Transactions as referred to in paragraph (1) shall be in good faith in the interaction and/or exchange of Electronic Information and/or Electronic Information during the transaction."²⁵

²³ Ibid.

²⁴ Ibid.

²⁵ "Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (2016).

But there are still many who in doing online buying and selling transactions do not pay attention to the norms in the above article so as to cause problems that include wanprestasi as the case outlined above. This is certainly very detrimental for one of the parties who are mostly victims are consumers or buyers. In this Law, victims who are harmed due to online buying and selling transactions are provided with protection by providing legal efforts for victims in the form of lawsuits against parties who cause harm, namely in article 38 which reads:

Anyone can file a lawsuit against the party who organized the electronic system and/or used information technology that caused harm.²⁶

The above article gives the right to consumers who feel aggrieved as a result of default, by filing a lawsuit to the Court or by outside the court. The resolution of consumer disputes through litigation, the party burdened to prove the exist or absence of elements of error is the burden and responsibility of business actors.

Here are some examples of cases related to the wanprestasi of online buying and selling:

1. This case occurred on Thursday, February 27, 2020, the victim named Fadilla (20) a resident of Gempungge, Pare-pare City, was interested in buying Sensi brand masks that the Perpetrator posted through Marketplace diakun on behalf of Sinta Putri owned by the Perpetrator on the Facebook Medsos application. Then the perpetrator and the victim began to bargain with each other through massanger application. Then the Victim and the Perpetrator agreed on the price of Rp. 170,000 / box, the Victim also ordered a mask of 15 boxes at a price of Rp. 2,550,000. After reaching a price agreement, the Perpetrator sends the BRI Bank account number, to the Victim through the Whatsup application. Then the perpetrator made a packaging similar to the mask box and brought it to the office of J&T express freight forwarding service, Pare Pare city, to be delivered to the Victim. This unsuspecting victim then transferred Rp. 2,550,000 to the perpetrator's account. But after the money reached the perpetrator's hands, the perpetrator blocked the victim's facebook number and account.²⁷
2. Suhartatik Karuniawati added a friendship in *Blackbaerry Messenger* in mid-2011 against Rosita Vidiastria, because Rosita Vidiastria did not have prejudices then the friendship request was accepted, then Suhartatik Karuniawati offered accessories in the form of necklaces from Korea through Broadcast *Blackberry Messenger*, after getting *broadcast*. Rosita Vidiastria bought accessories offered by Suhartatik Karuniawati and eventually continued until the business offerings of smartphones and gadgets brand Blackberry, Aple and Samsung. Rosita Vidiastria is interested in the offers offered by Suhartatik Karuniawati which include the price of easy goods. Money is sent first through an account in the name of Suhartatik Karuniawati, there is

²⁶ Ibid.

²⁷ <https://newsmetropol.com/polres-barru-ungkap-kasus-penipuan-transaksi-jual-beli-online/>

accelerated money for orders requested to be accelerated, the postage is borne by the buyer, if the goods do not come then Suhartatik Karuniawati will return the payment money completely. Rosita Vidiastria is interested in buying smartphones and gadgets as many as 1140 units with total payments (goods, speeding money and postage) that are sent to the collectors according to orders from December 19, 2011 to May 22, 2012 gradually amounting to Rp. 2,809,000,000,000,-, while the goods that have been sent amount to 146 units with a total price of Rp. 259,625,000 and goods that have not been shipped as many as 944 units. With the proposition that the goods ordered by Suhartatik Karuniawati from China have not come in accordance with the agreement, Suhartatik Karuniawati must return the payment money completely. But in fact Suhartatik Karuniawati only returned money to Rosita Vidiastria amounting to Rp. 372,757,000, so that the total Rosita Vidiastria only got goods amounting to 146 units with a total price of Rp. 259,625,000 and a refund of Rp. 372,757,000, then the total refund amounted to Rp. 632,382,000, so Suhartatik Karuniawati still has dependents to Rosita Vidiastria amounting to Rp. 2,176,618,000."²⁸

The above case went to court by Suhartatik Karuniawati by reporting Rosita Vidiastria and Rusdi, Suhartatik is a blackberry phone seller of all types and brands that sells to Rosita Vidiastria as defendant 1 and Rusdi as defendant 2. In accordance with the initial agreement if the plaintiff does not send the goods purchased by the defendants, the plaintiff will return the defendant's money in full, but the plaintiff still returns the purchase money worth 372,957,000, - as well as the handphne that has been sent to the defendants as much as 146 units worth 566,725,000.-. So that the total refund that has been given by the defendant is 939,682,000, but according to the plaintiff, the money that has been returned is not recognized by the defendant, therefore the plaintiff feels aggrieved.

But based on court facts, the defendants acknowledged the return and delivery of goods made by the plaintiff. And conversely, those who suffered losses from this case were the defendants because the defendant did not return the refund in accordance with the initial agreement. The court judge handling the case sentenced the plaintiff's lawsuit indible, this is because what the plaintiff sued was not proven in the trial.

From the two cases above it is seen that there has been a default in online buying and selling transactions, online buying and selling transactions themselves are included in the sense of electronic transactions as described in article 1 number 2 of Law No. 19 of 2016 concerning changes to Law No. 11 of 2008 on Information and Electronic Transactions, namely:

²⁸ Asyikul Firdasus, "Tinjauan Yuridis Sengketa Hukum Akibat Adanya Transaksi Jual-Beli Online" (Universitas Jember, 2015).

"Electronic transactions are legal acts committed using computers, computer networks and/or other electronic media."

Wanprestasi that occurs in the above cases is included in the default of online buying and selling or electronic transactions because the actions of both parties cause legal actions, namely the existence of agreements made using electronic media in the form of mobile phones that use the internet network.

In the second case, despite the rejection of suhartatik's lawsuit as a plaintiff by a judge, the lawsuit is a form of effort to seek protection using available legal devices, one of which is the court. As a subject of Suhartatic law entitled to protection against the will of legal devices, this is as understood as legal protection according to Philip M. Hadjon.²⁹ It is an act of protecting or providing assistance to legal subjects, using legal devices. Legal protection that is the right of Suhartati as a business actor is also guaranteed by the laws and regulations, namely Article 6 letter b of Law No. 8 of 1999 on Consumer Protection, namely the right to legal protection.

According to the author who must be a plaintiff are the defendants because they have been materially harmed by the plaintiffs who at the end of 2011, the defendants ordered blackberry phones of all brands and types as many as 1140 (one hundred and forty) units, while the goods received by the defendants were only 146 for 259,625,000,-, sent by transfer, this is not proportional to the amount of money sent by the defendant according to the plaintiff's order from 19 December 2011. December 2011 to May 22, 2012 was gradually 2,809,000,000.

From the case, it is seen that Suhartatik as a seller does not fulfill consumer rights as stipulated in article 4 paragraph 8 of Law No. 8 of 1999 on Consumer Protection, namely:

"The right to compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as appropriate"

Consumer rights that are not fulfilled by suhartatik as stated above are not to return refunds to Rosita Vildiasira and Rusdi as consumers in accordance with the agreement that has been agreed. The contents of the agreement are if the goods ordered by Suhartatik Karuniawati from China have not come according to the appointed time then Suhartatik Karuniawati must return the payment money completely.

In addition, the above case when viewed based on the forms of wanprestasi described by Edmon Makarim, it is included in the form of wanprestasi the first is not doing what is fulfilled, where the seller does not fulfill his obligation in giving something for sale to the

²⁹Philipus M. Hadjon, *Op.Cit*, hal.10.

buyer.

3.2. Responsibility of Business Actors Due to Wanprestasi in Online Buying and Selling Transactions

In the legal dictionary there are two terms that refer to accountability, namely *liability* and *responsibility*. *Liability* refers to the most comprehensive meaning encompassing almost every character of risk or liability, which is certain, dependent or possible while *responsibility* means the obligation to be responsible for the laws implemented and repair or otherwise compensate for any damages it has caused.³⁰

The principle of responsibility in law is divided into 5, namely: Element of error (liability based on fault), Principle of presumption of liability (presumption of liability).³¹

The element of error is a doctrine that says if a person can be held accountable, if there is an element of error. The principle of presumption of always being responsible is a doctrine that says that the defendant remains responsible until he can provide evidence that he is innocent. The principle of presumption of not always being responsible is a known principle within the limited scope of transactions and such restrictions are usually justified in common sense. *Strictliability* is the principle that determines that deeds can be punished on the basis of adverse acts by not debating whether there is intentionality or not. While the limitation of responsibility is a principle to limit the responsibility that should be shouldered by business actors.

The responsibilities of business actors are regulated in article 19, namely:

Article 19

- (1) Business actors are responsible for providing compensation for damages, pollution, and / or consumer losses due to consuming goods and / or services produced or traded..
- (2) Indemnity as referred to in paragraph (1) may be in the form of refund or replacement of goods and /or services of similar value or equivalent value, or health care and/or provision of compensation in accordance with the provisions of applicable laws and regulations.
- (3) Indemnity is carried out within a grace period of 7 (seven) days after the date of the transaction.
- (4) The awarding of damages as referred to in paragraphs (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence of the existence of an element of error.
- (5) The provisions referred to in paragraph (1) and paragraph (2) do not apply if the

³⁰ Ridwan, *Hukum Administrasi Negara* (Yogyakarta: UII Pres, 2003).

³¹ Mutia Ch Thalib and Ahmad Desiana, "Tanggung Jawab Hukum Pelaku Usaha Terhadap Peredaran Kosmetik Yang Tidak Memiliki Izin Edar," *Jurnal Legalitas* 12, no. 2 (n.d.): 100–109.

business actor can prove that the error is the fault of the consumer.³²

Based on the above article, it is seen that the responsibility of business actors to consumers includes the responsibility for compensation for damages, pollution and other consumer losses.

Based on the responsibility of business actors described above, the compensation that is the responsibility of business actors is not only for damage to goods or defects to goods sold, but includes all losses suffered by consumers, both material or imaterial losses.

In fact, compensation for losses suffered by consumers serves as a recovery of their rights that have been violated, recovery of material and immaterial losses that have been suffered, and recovery in the original state. The provisions regarding compensation due to default are stipulated in article 1243 of the Civil Code which reads:³³

Reimbursement of costs, losses and interest due to the non-fulfillment of an engagement begins to be required, if the debtor, even if he has declared, remains ialai to fulfill the engagement, or if something that must be given or done can only be given or done within a time that exceeds the specified time.³⁴

The above article explains that the obligation to reimburse and interest occurs if there is a default from an alliance between business actors and consumers. The responsibility of business actors in providing compensation to consumers is also an obligation of business actors regulated in consumer protection laws, namely:

Article 7 letter g:

"Compensation, compensation and/or reimbursement if goods and/or services received or utilized are not in accordance with the agreement."³⁵

The responsibility of business actors in providing compensation is also contained in article 19, namely:

Article 19

1. Business actors are responsible for providing compensation for damage, pollution, and / or consumer losses due to consuming goods and / or services produced or traded.
2. Indemnity as referred to in paragraph (1) may be in the form of refund or replacement of goods and / or services of similar value or equivalent value, or health care and / or compensation in accordance with the provisions of applicable laws and regulations.

³² "Undang-Undang No.8 Tahun 1999 Tentang Perlindungan Konsumen."

³³Aisyah Ayu Musyafah, "Consumer Protection of Freight Forwarding Services In The Event of Delays in Delivery of Goods," *Journal of Law Reform* 14, no. 2 (2018).

³⁴ "Kitab Undang Undang Hukum Perdata."

³⁵ "Undang-Undang No.8 Tahun 1999 Tentang Perlindungan Konsumen."

3. Indemnity is carried out within a grace period of 7 (seven) days after the date of the transaction.
4. The awarding of damages as referred to in paragraphs (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence of the existence of an element of error.
1. The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is the fault of the consumer.³⁶

Article 22

Proof of whether there is an element of error in the criminal case as referred to in Article 19 paragraph (4), Article 20, and Article 21 is the burden and responsibility of the business actor without closing the possibility for the prosecutor to prove.³⁷

Article 23

Business actors who refuse and/or do not respond and/or do not meet the compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), may be sued through a consumer dispute resolution body or submitted to a judicial body in the consumer's place of position.³⁸

Article 27

Businesses that produce goods are exempt from liability for losses suffered by consumers, if:

- a. such goods are proven not to be circulated or not intended to be circulated;
- b. defects of goods arising at a later date;
- c. defects arising from the adhered to provisions regarding the qualification of goods;
- d. negligence caused by the consumer;
- e. the delivery period of prosecution is 4 (four) years from the time the goods are purchased or through the promised period.³⁹

Article 28

Proof of whether or not there is an element of error in the compensation lawsuit as referred to in Article 19, Article 22, and Article 23 is the burden and responsibility of business actors.⁴⁰

Article 60

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

1. The consumer dispute resolution agency is authorized to impose administrative sanctions against business actors who violate Article 19 paragraph (2) and paragraph (3), Article 20, Article 25, and Article 26.
2. Administrative sanctions in the form of determination of compensation of at most Rp 200,000,000.00 (two hundred million rupiah).
1. The procedure for the establishment of administrative sanctions as referred to in paragraph (1) is further regulated in the laws and regulations.⁴¹

Based on article 19, business actors have a responsibility to consumers when in buying and selling transactions that have harmed consumers, namely in the form of compensation. This also applies to the default that occurs in online buying and selling transactions, where consumers are harmed by business actors because of the default carried out by not fulfilling their obligations as agreed. The compensation that must be done by the business actor is in the form of a refund or replacement of goods within a grace period of 7 days after the date the transaction is made

Article 23 then gives the right to consumers to hold business actors to the court or dispute resolution body if the business actor refuses or does not fulfill his obligation in fulfilling compensation to consumers. As for the existence and absence of the element of error, the proof is charged to the business actor as described in article 28, while if in the sale and purchase there is a criminal case then the prosecutor will prove as described in article 22.

This arrangement certainly strengthens the protection of consumers who experience losses caused by business actors. Business actors who are proven to harm consumers as described in article 19, are given administrative sanctions as stipulated in article 60, namely paying a maximum loss of 200,000,000,- (two hundred million rupiah).

4. Conclusion

Based on the results of the above discussion can be concluded, *First*, legal protection of consumers due to default in online buying and selling transactions is intended to protect their rights that business actors do not fulfill. Legal protection of consumers can be measured by how the law protects the rights of consumers, while the rights of consumers are regulated in the Civil Code Article 1235, Article 1474, Article 1458, article 1474, Article 1513, Article 1514. Consumer protection law Article 45, Article 46 and Article 47, as well as in the law on information and electronic transactions Article 17 paragraph 2, Article 38. *Second*, the responsibility of business actors due to default in online buying and selling transactions is to compensate consumers. Indemnity includes returning money, replacing it according to its value.

⁴¹ Ibid.

5. Recommendations

Based on the above conclusions, the author provides Rekomendaasi, namely: *First*, in order for the government to socialize to the public about the obligations and rights of business actors and consumers in online buying and selling transactions, thus the public can know their rights and obligations as consumers and business actors, so that things that can cause losses, especially losses to consumers can be anticipated. *Second*, so that consumers are always careful in making online buying and selling transactions, while for business actors so that in every online buying and selling transaction always have good intentions and pay attention to their obligations and consumer rights, so as not to cause harm to consumers.

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