



Legal Protection of Goods Auction Prices Through Instagram in Review of the Law on Consumer Protection of Goods and Services

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Abstract: The purpose of this study is to determine the legal protection of the auction price of goods through Instagram in a legal review of the Law on Consumer Protection of goods and services. The research method used in this research is normative research method with a qualitative approach. The results of this study indicate that selling or conducting auction activities through Instagram social media is invalid because there are no regulations governing and not in accordance with the regulations for the implementation of auctions in Indonesia. Both through class I auction officials and class II auction officials who do not use auction houses are still invalid. If this phenomenon occurs, there is a risk of losing legal protection because auctions through Instagram social media do not provide legal certainty. In the Minister of Finance Regulation on Guidelines for the Implementation of Auctions, no legal protection can be given to Instagram auction accounts. In this case, the perpetrator clearly violates consumer rights, one of which is stated in Article 4 of the Consumer Protection Law "the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised and the right to obtain correct, clear, and honest information about the conditions and guarantees of goods and/or services." In Article 7 of the Consumer Protection Law "Provide correct, clear, and honest information about the conditions and guarantees of goods and/or services and provide explanations for use, repair, and maintenance, treat or serve consumers correctly and honestly and non-discriminatorily, and provide compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement."

Keywords : Legal Protection; Auction; Instagram

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1. Introduction

The development of science, technology, communication and information in the current era of globalization is running very rapidly along with the pace of development in all fields, especially the economy. In fact, every country has various economic sectors that support the life of the country.¹ This requires fast, efficient and easy human mobility so that all needs can be met immediately. The globalization of information in the political, economic, social and cultural fields is well developed due to the speed of information networks. This has an impact on the development of national economic development which has progressed and changed in a positive form, which allows the opening of opportunities to encourage the implementation of development in the expected direction, although it cannot be denied that it has a negative impact as well. The rapid development in all fields encourages an increase in the mobility of human movement that is fast and dynamic, forcing the delivery of information that is fast and dynamic as well.

Changes and consumptive behavior will have a negative impact if done excessively, while from the other side, among the positive changes are the opening and availability of jobs and employment opportunities in various fields, the availability and fulfillment of various facilities and necessities of life. Another impact that can be observed is the opening up of the prevailing social system and the opening up of social mobility opportunities that occur in society. Meanwhile, among the negative changes are the increasing consumptive lifestyle and the emergence of increasingly sharp social gaps in various layers of society. Various media with advances in technology, communication, transportation, information, bring changes in human life. Through information, humans can find out the events around them, expand their knowledge horizons and understand their position and role in society. The development of mass media as a means of information in Indonesia, one of which is through the media, is inseparable from the course of national development in all sectors of people's lives. As a communication medium, the internet is utilized for various activities, including browsing news and searching for data, exchanging messages via e-mail, interacting through various social media, sending pictures and videos to each other, making calls and online meetings, and trading activities. The existence of the internet really helps human activities. In fact, there are not a few people who make rupiah coffers through the internet combined with their talents.

Judging from the fact that the increase in internet users in Indonesia has increased significantly, of course this has become a magnet for business people to try online business and trade with electronic transactions. This transaction is done without a physical meeting between the seller and the buyer. This is made easier by the availability of payment methods such as using mobile banking or digital wallets.

¹ Agus Suprijanto, "Dampak globalisasi ekonomi terhadap perekonomian Indonesia," *CIVIS: Jurnal Ilmiah Ilmu Sosial dan Pendidikan Kewarganegaraan* 1, no. 2 (2011), <http://journal.upgris.ac.id/index.php/civis/article/view/592>.

Sellers and buyers do not need to hesitate anymore because these payment tools are legal and under the supervision of OJK.

The rapid development of internet technology has provided many benefits to society. The internet has presented a vast world, without the limitations of time, distance, and space, thus facilitating community activities. The internet also has many positive impacts, especially in the trade and buying and selling sector. The internet can facilitate and accelerate buying and selling transactions between buyers and sellers without the limitations of space and time. One of the buying and selling transactions carried out via the internet is buying and selling with an auction system.²

Auction is the sale of goods open to the public with written and/or oral price offers that are increasing or decreasing to reach the highest price preceded by an auction announcement. The definition of an auction has been regulated in the main rules of the auction, namely the *Vendu Reglement Staatsblad 1908* number 189 Article 1 which reads: "Public sale (*openbare verkopenen*) is an auction or sale of goods made to the public by offering prices that increase or decrease or by entering prices in a closed cover, or to people who are invited or previously notified of the auction or sale, or allowed to participate, and given the opportunity to bid a price, agree to the price offered or enter the price in a closed cover."

Regulations governing auctions in Indonesia are contained in Ministry of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning amendments to Ministry of Finance Regulation (PMK) Number 213/PMK.06/2002 concerning Guidelines for the Implementation of Auctions. The definition of auction based on Article 1 of the Ministry of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Guidelines for the Implementation of Auctions, namely: "Auction is the sale of goods open to the public with written and/or oral price offers that are increasing or decreasing to reach the highest price, which is preceded by an auction announcement."³

Regulations regarding this auction have existed in Indonesia since the Dutch era. The prevailing auction regulation was the *Vendu Reglement*. Article 1 of the *Vendu Reglement* states that a public sale (*openbare verkopenen*) is an auction or sale of goods made to the public by offering prices that increase or decrease or by entering prices in a closed cover, or to people who are invited or previously notified of the auction or sale, or allowed to participate, and given the opportunity to bid prices, agree to the prices offered or enter prices in a closed cover. Although there is already

² Tasaria Utami, "Analisis yuridis lelang online di media sosial instagram dalam perspektif hukum perjanjian dan hukum perlindungan konsumen," 2023, <https://repository.unisma.ac.id/handle/123456789/6921>.

³ Fauziyah Intan Rizky Bahri, "Lelang barang di instagram menurut peraturan menteri keuangan nomor 213/Pmk. 06/2020 tentang petunjuk pelaksanaan lelang dan Hukum Islam" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2021), <http://etheses.uin-malang.ac.id/id/eprint/33419>.

an official website from the Ministry of Finance, there are also many online auctions that are developing in the community, one of which is currently becoming a trend⁴ in the community, namely online auctions via Instagram.

Instagram is a photo and video sharing application that allows users to take photos, take videos, apply digital filters, and share them to various social networking services, including the user's own Instagram account, the number of active Instagram users worldwide reaches 1.07 billion, and 354 million users are aged 25-34 years. Indonesia ranks as the fourth largest Instagram user in the world, with the number of users reaching 99.87 million by 2022. Many people use Instagram because this media provides benefits in the form of, auction transactions can be accompanied by detailed images or videos of an item or product offered by the auctioneer. Auction transactions through Instagram not only provide advantages and convenience for the community but also have disadvantages, because this transaction does not bring together sellers and buyers directly, resulting in several problems, especially for consumers, including goods received by consumers that do not match the photos or videos and information attached by the auctioneer, goods received in damaged or defective conditions, and goods not sent.⁴

In article 1 point 1 of PMK Number 213 of 2020 concerning Guidelines for the Implementation of Auctions, the definition of an auction is: "Auction is the sale of goods open to the public with written and/or oral price offers that are increasing or decreasing to reach the highest price, which is preceded by an Auction Announcement". Article 63 states that auction offers can be made by: a) Oral b) Written c) Written followed by oral, if the highest bid has not reached the limit.

In Article 1329 of the Civil Code (hereinafter referred to as the Civil Code) which states that: "Every person is authorized to enter into an agreement, unless he is declared incapable of doing so." In addition, there is also Article 1338 of the Civil Code which states "All agreements made in accordance with the Law shall apply as Law to those who make them." Law Number 8 Year 1999 on Consumer Protection Article 4 explains that one of the rights of consumers is the right to comfort, security, and safety in consuming goods and or services.⁵

Items auctioned on social media also vary, including electronic devices, smartphones, bags, shoes, clothes, and many more. Auctions through social media begin with the entrustment of goods from the owner of the goods to the auction account owner, then the auction account will post the item on its social media account with predetermined conditions, then the auction account will auction the item using the system, then

⁴ namira Putri Riyani, "Perlindungan Konsumen Dalam Transaksi Lelang Online Melalui Media Instagram," 2022, <http://digilib.unila.ac.id/id/eprint/65212>.

⁵ Munah Apriani Panjaitan, "Komparasi batas usia kecakapan dalam akad menurut kompilasi hukum ekonomi syariah dan Kitab Undang-Undang Hukum Perdata (BW)" (PhD Thesis, IAIN Padangsidempuan, 2019), <http://etd.uinsyahada.ac.id/id/eprint/2511>.

interested bidders will start bidding according to their wishes, and finally the auction winner will be announced by the auction account 1x24 hours.

Judging from the principle, auction transactions conducted through social media are no different from conventional auction transactions, because basically a transaction can be said to be an auction transaction if it fulfills the following elements: 1) Sale of goods; 2) Conducted in public by announcing it through mass media; 3) The buyer is not known in advance; 4) The bidder with the highest price will be appointed as the buyer; 5) Conducted by means of a special offer; 6) Conducted at a certain time and place.

Auction transactions through social media not only provide advantages and conveniences for the community but also have disadvantages, because these transactions do not bring together sellers and buyers directly, resulting in several problems, especially for consumers, including goods received by consumers that do not match the photos or videos and information attached by the auctioneer, goods received in damaged or defective conditions, and goods not sent.

The government as the party authorized to make a policy has issued a regulation on consumer protection, namely Law Number 8 of 1999 concerning Consumer Protection. Based on Article 1 point 1 of Law Number 8 Year 1999 on Consumer Protection, "Consumer protection is all efforts that ensure legal certainty to provide protection to consumers." Consumer protection has a broad scope, covering consumer protection of goods and services, which starts from the stage of activities to obtain goods and services to the consequences of using these goods and / or services. In addition to the GCPL, there is also a law that regulates legal protection in electronic transactions, namely Law No. 11/2008 on Electronic Information and Transactions (hereinafter referred to as ITE Law).⁶

Another example of a case occurred with Indonesian YouTubers Ken and Grat, it was reported on Sunday (15/10/2023). Ken took part in an online auction held by the Instagram account @snoopdog.auction. He managed to win a laptop with a price of IDR 3.4 million. Ken then transferred money with a nominal value of IDR 3.445 million because it included shipping costs. Unexpectedly, Ken was asked for a guarantee by the account with a nominal value of Rp2.85 million. The reason is because there is an item custody tax. Even though he was suspicious, Ken still transferred the money. Not long after, Ken was asked for IDR 3.25 million for insurance costs on the expedition.

⁶ RONI RAJAGUKGUK, "TINJAUAN YURIDIS TINDAK PIDANA PENJUALAN MELALUI OBRAL ATAU LELANG DENGAN MENYESATKAN KONSUMEN DITINJAU DARI UNDANG-UNDANG NOMOR 8 TAHUN 1999 TENTANG PERLINDUNGAN KONSUMEN," 2023, <https://repository.uhn.ac.id/handle/123456789/9574>.

Ken again transferred some money, this being the third time. An hour later, Ken was asked to transfer another Rp3.65 million for the cost of importing goods. Ken had requested that the laptop purchase process be canceled. Ken even said that he had given up Rp3.4 million, as long as the money transferred the second and third time could be returned. Unfortunately, the @snoopdog.auction account was not willing. The laptop was not sent and the money was not returned.

The case certainly brought huge losses to the victim. This is only a small example because there are other victims but they are not written here. From these incidents, they also admit that they do not get legal certainty and can only share their experiences on social media. Therefore, it is necessary to handle seriously the issue of auctions through Instagram.

2. Method

The type of research used in the method used in this research is the normative law research method (normative law research) using normative case studies in the form of legal behavior products the subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law.⁷

3. Responsibility Of Business Actors For Auction Prices Of Goods Through Instagram In The Perspective Of Consumer Protection

Auction as a legal institution, there has been a regulation in the legislation since the Dutch East Indies Colonial Government era, the regulation is contained in the *Vendu Reglement* or VR announced in *Staatsblad* 1908 number 189 and changes that are still valid today. According to Polderman, what is meant by auction is a tool to enter into the most favorable agreement or agreement for the seller by gathering enthusiasts. The main requirement is to gather enthusiasts to enter into a sale and purchase agreement that is most favorable to the seller.⁸

Auction activities in Indonesia are still rarely used by the public voluntarily, this is because Indonesian people have a negative view of auctions. Indonesian people think that auctions are always related to the court, although in reality it cannot be denied that most of the auction process is carried out due to a decision from the court against the losing party in a case. The reluctance of the Indonesian people to conduct auctions resulted in what the government hoped that the community would utilize the auction

⁷ S. H. I. Jonaedi Efendi, S. H. Johnny Ibrahim, dan M. M. Se, *Metode Penelitian Hukum: Normatif dan Empiris* (Prenada Media, 2018).

⁸ Andilo Sinaga, "Prosedur Pelelangan Objek Jaminan Perbankan Secara Elektronik di KPKNL Pematang Siantar," *Locus Journal of Academic Literature Review*, 2 Januari 2023, 66-75, <https://doi.org/10.56128/ljoalr.v2i1.127>.

institution was not achieved, so that the benefits of the auction could not be felt by the community.

Conducting sales by auction has several benefits. The benefits that can be obtained from the auction are fast and efficient, safe, fair, realizing a fair price because it uses a bidding system and provides legal certainty because it is carried out by an auction official and minutes of the auction are made as an authentic deed used for the transfer of name to the auction winner. Fast and efficient, because before the auction process is carried out it is always preceded by an auction announcement so that participants can gather when the auction is held. Safe, because the auction process is witnessed by the leadership and carried out by Public Officials appointed by the Government who are independent. Fair, this is because it is open or transparent and objective. In the implementation of the auction there are several parties involved in it, namely the Buyer, Seller, Auction Officer (formerly called the Auctioneer), and Auction Supervisor (formerly called Superintendent).

Technological developments in the last two decades have made it possible to use electronic media as a way of bidding. Therefore, the formulation of the auction in the Decree of the Minister of Finance Number 27/PMK.06/2016 concerning the guidelines for the implementation of the Auction formulates that what is meant by the Auction is the sale of goods open to the public either directly or through electronic media by means of oral and or written price offers preceded by an effort to gather enthusiasts.

The development of technology that opens up opportunities for online auctions in addition to having a positive impact on society is enough to open a cellphone to see the pictures and videos provided by the auctioneer so that people can choose according to what they like. But in its development, not all auctioneers are honest because there are many cases that include photos that do not match the actual state of the goods, for example, cars are sold at low prices with the lure of cars in good condition but after arriving at the auction winner it turns out that the car has problems in the engine such as leaking oil, or the car suddenly dies. Now this kind of thing is certainly detrimental to consumers. For more details, the author provides a concrete example of the case below which happened to Syahril Lilipaly from Yogyakarta.

The launch of the internet auction application (e-auction) initiated by the Directorate General of State Assets (DJKN) - Ministry of Finance of the Republic of Indonesia on November 7, 2014, was felt to be an appropriate step in accommodating the development of business and marketing in the digital era. On the other hand, Indonesia is also quite ready to accommodate the progress of the internet era and apply it in the world of trade through e-commerce and e-auction mechanisms.

Internet auctions according to Article 1 point 1 of the Decree of the Minister of Finance Number 90/PMK.06/2016 dated June 1, 2016 concerning Guidelines for the

Implementation of Auctions with Written Bids Without the Presence of Bidders via the Internet, namely: "Auctions with Written Bids Without the Presence of Bidders via the Internet, hereinafter referred to as Internet Auctions, are sales of goods that are open to the public by bidding prices in writing without the presence of bidders to achieve the highest price, which is carried out through internet-based auction applications", hereinafter referred to as e-auctions. There are 2 (two) types of bidding methods carried out in e-auctions, namely: closed bidding, and open bidding.⁹

Closed bidding, is an offer submitted by a Bidder that can only be known by other Bidders after the auction bid list is opened by the Auction Officer. Open bidding is an offer submitted by a Bidder that can be known by other Bidders who have submitted bids. But this is an auction that is recognized by the government because there are parties that have been regulated by the legislation in it, now the problem is the auction through Instagram media.

A clear and complete definition of internet auction (eauction) is explained in Article 1 point 1 of the Regulation of the Minister of Finance of the Republic of Indonesia No. 90/PMK.06/2016 concerning Guidelines for the Implementation of Auctions by Written Bidding Without the Presence of Bidders via the Internet, which reads as follows: "Auction with Written Bidding Without the Presence of Bidders Through the Internet, hereinafter referred to as Internet Auction, is the sale of goods open to the public by bidding prices in writing without the presence of bidders to achieve the highest price, which is carried out through an internet-based auction application."

Auctions have a public function and a private function. In the case of internet auctions, more emphasis is placed on the public function, which is reflected when the auction is used to carry out the sale of goods in the context of law enforcement, on the implementation of court decisions / decrees and the implementation of statutory provisions against collateral goods. Internet auction of collateral is an effective step taken by creditors in overcoming non-performing loans. Auction in general is the process of buying and selling goods and services by offering to bidders, offering higher price bids, and then selling goods to the highest price bidder. The online auction itself is an auction or bidding conducted online. This online auction method is a concept that brings together two parties who need each other through internet media, one party offers something and the other party needs something or is interested in the offer.

Clearly as an example, the researcher took one example of an Instagram account that held an online auction, namely the Instagram account @hobiauction.

The auction conditions on the @hobiauction Instagram account can be explained as follows:

⁹ Astrid Amidiaputri Hasyati dkk., "Penerapan Pre-Sale Disclosure sebagai Perlindungan Hukum Pembeli Bentuk Bisnis â€œBusiness Opportunity Venturesâ€ Ditinjau melalui Undang-undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen," *JURNAL MERCATORIA* 13, no. 1 (2020): 1-14.

1. The goods to be auctioned will go through a verification process by the auction organizer, sent by the seller to the auction organizer and stored by the auction organizer;
2. Bidders must have an Instagram account, if not, participants can first create an Instagram account by using an email address and password. After creating an account, participants can directly open the auction organizer's Instagram account and select auction items displayed on the auction organizer's Instagram account.
3. Item photos, item descriptions, starting prices, and price multiples are listed on the organizer's Instagram account, so that participants can choose the desired items and their purchasing abilities. Then participants who have found the desired item, can take part in the auction bidding by writing the desired price multiple in the comments column on the photo of the desired item on the organizer's Instagram account. The bidding time is determined by the organizer, namely the bid will be closed by the organizer writing a "close" comment on the organizer's Instagram account item photo every 15.00 WIB every day;
4. The auction winner or buyer is a participant who writes the highest bid or price above the "close" comment by the organizer in the comments column on the organizer's Instagram account item photo, which will then be contacted by the organizer via Instagram message. Then the winner can make payments by bank transfer method. Payment can be made through the online auction organizer's account or the organizer's Tokopedia account.
5. After the payment is confirmed, the seller is obliged to send the auction item to the auction winner's address. The delivery of this auction item uses a general goods delivery courier service such as JNE or TIKI, or can be through instant goods delivery by online motorcycle taxis such as Gojek or Grab.

The mechanism of following the e-Auction should be according to Minister of Finance Regulation No.90/PM K.06/201647

Account registration currently, all auctions conducted by the auction house are conducted through auction. Before registering, participants must have an e-mail.

- 1) Participants must register through the domain www.auction.go.id by including scans of KTP, NPWP and bank accounts. After scanning KT P and NPW P, prospective bidders need to wait a maximum of 3 working days for verification. If KT P and NPW P are declared valid, prospective bidders will receive a notification.

- 2) Furthermore, you can choose which auction to participate in. Apart from being a private person, prospective bidders can also register an account as a legal entity.¹⁰

The interest in this online auction site is increasing because it is easy (not limited by time and place), faster, more practical, does not have to meet directly or face to face, and there is transparency in the price of goods that are the object of the auction. The definition of an auction according to the provisions of Article 1 of the *Vendu Reglement*, that what is meant by public sale is an auction or sale of goods held in public, with an increasing, decreasing bid, or with price registration, or where people who are invited to those who have previously been notified of the auction or sale or who are allowed at the auction or sale are given the opportunity to bid prices by increasing, decreasing, or with price registration.

Based on the definition of the auction, it is known that the auction is a fairly simple process and is a market mechanism led by an auction official by means of oral bidding, increasing or decreasing, and or closed to obtain the optimal price. Arrangements regarding the auction are also in the Minister of Finance Regulation No. 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions, Minister of Finance Regulation No. 158/PMK.06/2013 concerning Class I Auction Officers and Minister of Finance Regulation No. 159/PMK.06/2013 concerning Class II Auction Officers.

Article 2 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 states that every auction must be conducted by and or in front of an auction official, unless otherwise specified by the regulations. Along with the increasingly widespread and sophisticated use of internet media, auctions can be conducted online through the internet, internet auctions whose implementation is regulated in Minister of Finance Regulation Number 90/PMK.06/2016 concerning Guidelines for the Implementation of Auctions with Written Offers Without the Presence of Bidders Through the Internet. In the implementation of online auctions, the seller as the owner of the goods must guarantee that the offer actually meets the legal requirements of the auction, in other words, the auction application submitted has fulfilled the formal legality of both the subject and the object of the auction and the online auction participants are deemed to have agreed to the auction offer to be carried out.¹¹ The implementation of online auctions must at least meet several provisions, namely using special software for organizing online auctions, authorized bidders will get auction participant numbers

¹⁰ Markus Lanteng dan Jumarpati Jumarpati, "Pengaruh Harga Dan Penjualan Terhadap Respon Masyarakat, Lelang Barang Milik Negara/Daerah Melalui Lelang Internet (E-Auction) Pada Kantor Pelayanan Kekayaan Negara Dan Lelang (Kpknl) Palopo," *Jurnal Mirai Management* 8, no. 1 (2023): 95–103.

¹¹ Tomy Indra Sasongko, "Kewenangan Notaris Dalam Pembuatan Akta Risalah Lelang Pasca Berlakunya Peraturan Menteri Keuangan Nomor 90/PMK. 06/2016 Tentang Pedoman Pelaksanaan Lelang Dengan Penawaran Secara Tertulis Tanpa Kehadiran Peserta Lelang Melaui Internet," *Lex Renaissance* 3, no. 1 (2018): 9–9.

and passwords, bidding is carried out continuously from a predetermined time until the closing of the bid, as will be stated in the auction announcement, the limit value of open / non-confidential goods must be included on the site, online bidders can find out the highest bid submitted by other online bidders, and the Auction Officer certifies the highest bidder as a buyer based on the printout of the recapitulation processed by the online auction software at the time of closing the bid. Online auctions have several distinguishing characteristics in accordance with developments.

Online auctions eliminate geographical restrictions meaning that participants can be from anywhere can participate in this online auction process, bidders do not have to follow the auction process simultaneously with face-to-face, the duration of online auctions lasts in just a few days (usually approximately one week), more flexible, lower operational costs, and of course attract many auction enthusiasts. Some time ago, I participated in an online auction / auction on the pillowauction id Instagram account. I followed several bids for items that were auctioned, the period January 05 - 06, 2023, where the bid ended on January 06, 2023 at 21.00 WIB.

On January 06, 2023, I was informed by the pillowauction id account admin that I won the bid for 2 watch items. Previously, I had browsed and found several complaints from previous winners, that they received KW items, whose prices did not match the prices in the auction item descriptions in the account. Then I tried to ask the admin, he said they had been established for almost 3 years and there were no other new complaints. I tried to bid even though I was worried, just to make sure. There were 2 watch items that I was declared the winner of, the details of which they put the buy it now price at around Rp2 million, but I only dared to bid at 175 thousand and 150 thousand. That night I transferred the value with shipping, around Rp390 thousand for the 2 watch items. Here's the proof;

After a few days, the goods arrived, the same type as what was won. It's just that the goods, as expected, are true KW items whose value if we look at online stores is only tens of thousands of rupiah and does not match the description of the value they include.

Likewise, the recognition of others "I last year participated in several auctions in several IG accounts, and the results were indeed the goods sent were fake / CW goods. The quality is very visible. From speakers, watches, cellphones, rings, etc.. There are those who deliberately use tokped with more confirmation than specified by Tokped, so it is automatically canceled by Tokped. But the auction account owner said that the goods had been sent, and we argued in WA. Finally the goods that came were KW goods. The winners also rarely respond to my DM, so my advice is to stop participating in the auction on IG ".

Therefore, we need to discuss further about the legal protection of consumers in online auctions through Instagram, as for legal protection in this case, namely preventive legal protection and repressive legal protection, for more details discussed below;

a) Preventive Legal Protection

Protection is given by the government with the intention of preventing violations before they take place. The issue is in the statutory provisions with the aim of warding off a violation to provide certain signs or limits in carrying out a responsibility. In auctions through Instagram social media, the legal protection given is the information given in the product description on the Instagram auction account, about the condition of the goods to be auctioned so that bidders or potential auction winners can find out clearly about the condition of the object to be auctioned.

b) Repressive Legal Protection

Repressive legal protection is the final protection in the form of penalties such as fines, imprisonment, and additional sanctions given if a dispute has occurred or a violation has been committed.

The protection given can be in the form of carrying out the return of goods if the goods received are obtained not in accordance with the description of the goods to be auctioned on Instagram or are not original. The results of the research in the implementation of the auction through social media instagram did not provide legal protection to the winner of the auction. This is because the auction through social media instagram in its implementation is not carried out by the Auction Officer I, Auction Officer II and not through the official auction hall. As in the case of Muhammad Trizqi Farlanda as an online auction participant through Instagram social media, it is known that he received goods that Kw did not match the description of the goods at the time of the auction. The item he won was 1 JBL speaker for Rp.150,000, at the market price listed on the auction for Rp.800,000 which shows the authenticity of the item, when the participant contacted and wanted to return the goods to the auction account as the auction organizer, there was no answer or response at all.

Selling or conducting auction activities via social media instagram is not valid because there are no regulations governing and not in accordance with the regulations for the implementation of auctions in Indonesia. Whether through class I auction officials or class II auction officials who do not use the auction hall remains invalid. If this phenomenon occurs, there is a risk, if the loss is no legal protection because the auction through social media instagram does not provide legal certainty. In the Minister of Finance Regulation No. 213 / PMK.06 / 2020 concerning Guidelines for the Implementation of Auctions, there is no legal protection that can be given to Instagram auction accounts.

This case clearly violates consumer rights, one of which is stated in Article 4 of the Consumer Protection Law "the right to choose goods and / or services and to obtain

these goods and / or services in accordance with the exchange rate and the conditions and guarantees promised and the right to correct, clear and honest information about the conditions and guarantees of goods and / or services". In Article 7 of the Consumer Protection Law "Provide correct, clear and honest information about the conditions and guarantees of goods and / or services and provide explanations for use, repair and maintenance, Treat or serve consumers correctly and honestly and non-discriminatory, and provide compensation, compensation and / or replacement if the goods and / or services received or utilized are not in accordance with the agreement." In Article 8 of the Consumer Protection Law "Business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the label, etiquette description, advertisement or sales promotion of the goods and/or services.

Based on the provisions of the legislation, consumers have obtained legal certainty. In the articles above, the rights, obligations and prohibited things of each legal subject have been explained. However, the actions of business actors violate consumer rights. Business actors do not fulfill consumer rights.

According to the formulation of Article 1313 of the Civil Code, it is defined as: "an agreement is an act by which one or more people bind themselves to one or more other people". As described in the definition, it can be seen that buying and selling is one form of agreement. The conditions for the validity of an agreement are listed in the Civil Code in article 1320, which are as follows:

- 1) The agreement of those who bind themselves;
The agreement in the agreement is basically a meeting or conformity of wills between the parties to the agreement. A person is said to give his consent or agreement (Toestemming) if he really wants what is agreed upon.
"According to Mariam Darus Badruzaman, an agreement is a requirement of an agreed will (Overeenstemmande Wilsverklaring) between the parties. The statement of the party offering is called an offer (Offerte) and the statement of the party accepting the offer is called acceptance (Acceptatie)."
- 2) Capacity to enter into an agreement;
Article 1329 of the Civil Code states that every person is authorized to enter into an agreement, unless he is declared incapable of doing so. Then article 1330 states that those who are incapable of making agreements are:
 - a) Immature child
 - b) Person placed under guardianship
 - c) Married women in cases specified by law and generally all persons who are prohibited by law from entering into certain agreements.
- 3) A specific subject matter;
Article 1333 of the Civil Code stipulates that an agreement must have a subject matter in the form of an item of at least a specified type. The amount of the

goods does not need to be certain, as long as the amount can then be determined or calculated.

- 4) A cause that is not prohibited;
According to Article 1335 of the Civil Code, an agreement without a cause, or made based on a false or prohibited cause has no force. Article 1337 KHUPerdata a cause is prohibited, if the cause is prohibited by law or if the cause is contrary to decency or public order.

In civil law, conditions 1 (one) and 2 (two) are classified as subjective conditions, meaning that they depend on the subject who binds himself, while conditions 3 (three) and 4 (four) are classified as objective conditions, namely conditions for the occurrence of an agreement.

The implementation of buying and selling transactions through social media is generally carried out online and not face-to-face. Consumer transaction is a process of transferring ownership or enjoyment of goods or services from business actors providing goods and/or services to consumers. The stages of consumer transactions that commonly occur are:

1. Consumer Pre-Transaction Stage

The consumer pre-transaction stage, the transaction has not yet occurred. Consumers are still looking for information on where the goods or services they need can be obtained, at what price and what conditions must be met, and considering the various facilities or conditions of the desired transaction. In this case, business actors as providers or sellers, must provide honest and not misleading information relating to the goods and / or services offered. Therefore, this information will be a material consideration for consumers before deciding to make a purchase.

The importance of conveying correct information to consumers about a product, so that consumers are not wrong about the description of a particular product. The delivery of information to consumers can be in the form of representations, warnings, or instructions.

2. Consumer Transaction Stage

At this stage, the transaction of transferring a good or service from business actors to consumers has occurred. In this case, consumers are already bound by various requirements in order to obtain the goods or services concerned, for example regarding prices, payment terms, and so on.¹²

¹² Endi Suhadi dan Ahmad Arif Fadilah, "Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Jurnal Inovasi Penelitian* 2, no. 7 (2021): 1967-78.

Another factor that also affects consumers at this stage is some business practices carried out by entrepreneurs to maintain or increase the marketing of their business products or the absorption of products by the community.

Problems that often arise in the consumer transaction stage are in the agreements that have been agreed upon by business actors and consumers. There are agreements with standardized terms, especially agreements with standardized terms determined unilaterally. Regarding this situation, Article 18 of GCPL specifically regulates the limitations in the inclusion of standard clauses in an agreement that are prohibited by the GCPL. In the elucidation of the article, it is stated that the prohibition is intended to place the standardized clause in the agreement.

The rights of the parties involved in the agreement must be fulfilled, especially in this study, namely consumers who get goods that are not in accordance with what is advertised. This protection has been discussed by Philip Hadjon who argues that legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Furthermore, Hadjon classifies two forms of legal protection for the people based on its means, namely preventive and repressive protection.

In this regard, the Consumer Protection Law provides regulations on the actions that must be taken by business actors in the post-transaction stage, among others:

- a) Article 7 of the Consumer Protection Law
Letter f:
Business actors are obliged to provide compensation, compensation and/or reimbursement for losses due to the use, consumption and utilization of goods and/or services traded.
Letter g:
Business actors are obliged to provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.
- b) Article 19 paragraph (1) of the Consumer Protection Law states that business actors are responsible for providing compensation for damage, pollution and/or loss to consumers as a result of consuming goods and/or services produced or traded.
- c) Article 25 paragraph (1) of the Consumer Protection Law states that business actors who produce goods whose utilization is sustainable within a time limit of at least 1 (one) year must provide spare parts and/or after-sales facilities and must fulfill the warranty guarantee as promised.
- d) Article 26 of the Consumer Protection Law states that business actors who trade services must fulfill the agreed and/or promised guarantees and/or warranties.

To protect the consumer from injustice. Legislation provides certain prohibitions to business actors in relation to their activities as business actors.

The prohibitions according to Article 8 of the Consumer Protection Law are:

- 1) Business actors are prohibited from producing and / or trading goods and / or services that:
 - a) Not meeting or not in accordance with the required standards and provisions of laws and regulations;
 - b) Not in accordance with the net weight, net or net contents, and quantity in the count as stated in the label or etiquette of the goods;
 - c) Not in accordance with the measurements, measures, scales and quantities in the count according to actual measurements;
 - d) Not in accordance with the conditions, guarantees, features or efficacy as stated in the label, etiquette or description of the goods and/or services;
 - e) Not in accordance with the quality, level, composition, processing, style, fashion, or specific use as stated in the label or description of the goods and/or services;
 - f) Not in accordance with the promises stated in the label, etiquette, description, advertising or sales promotion of the goods and / or services;
 - g) Does not include the expiry date or the period of best use/utilization of the particular item;
 - h) Not following the provisions of halal production, as stated in the "halal" statement included in the label;
 - i) Not putting up labels or making explanations of goods that contain the name of the goods, size, weight/net or net content, composition, rules of use, date of manufacture, side effects, name and address of the business actor and other information for use which according to the provisions must be put up/made;
 - j) Does not include information and / or instructions for the use of goods in Indonesian in accordance with applicable laws and regulations.
- 2) Business actors are prohibited from trading damaged, defective or used, and polluted goods without providing complete and correct information on the goods in question.
- 3) Business actors are prohibited from trading damaged, defective or used and contaminated pharmaceutical preparations and food, with or without providing complete and correct information.
- 4) Business actors who violate paragraphs (1) and (2) are prohibited from trading such goods and/or services and must withdraw them from circulation.

Based on the explanations above, there is already legal protection for consumers but it has not been able to fully reach the current problems which are in line with the times,

the problems are increasingly complex and various crimes are increasing, therefore the current laws and regulations are also unable to fully protect consumers, moreover related to buying and selling through online has not been specifically regulated so that in the opinion of researchers there must be a special rule governing this problem.

Legal certainty is a guarantee of a law that contains justice. Norms that promote justice must truly function as rules that are obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of the law. He argues that justice and legal certainty must be considered, legal certainty must be maintained for the security and order of a country. While the case under study does not provide a guarantee of legal certainty because the auction conducted through Instagram is not recognized by the government.

According to researchers based on the materials discussed above, the presence of online auctions using social media, especially through Instagram, is expected by the community, especially since people now prefer buying and selling activities with cellphones because it can be done anywhere without taking up a lot of time, no need to queue, the heat is also safe privacy because no one will know if he gets goods from the auction, also buyers can bid without having to be embarrassed because they are not face to face. However, all of these conveniences also have a negative impact that can be detrimental as the cases that have been described, because online auctions through Instagram do not have cooperation with the government so that supervision is also weak, people who want to benefit themselves take advantage of this by auctioning items that do not match what is described, for example, the goods auctioned are imitation goods even if the original goods, the damage is not conveyed in detail, for example a car auction which is said to be ready and there are no problems with the engine, but after the goods reach the buyer it turns out that the car has not been used for a long time, of course things like this are very disadvantageous to the people who take part in the auction.

Losses due to online auctions through Instagram must be avoided and prevented, of course there must be clear legal rules related to this, also the government must always educate the public about the dangers, and most importantly as a society must be careful in conducting all online transactions and choosing transactions that are clearly protected by law.

5. Conclusion

Case study verdict No. 177/Pid.Sus/2022/PN GTO, there are considerations of judges in determining the imposition of criminal sanctions against perpetrators of illegal mining. These considerations are based on the principles of justice, legal certainty, and effective law enforcement. Judges consider various factors, such as the amount of state losses due to illegal mining and the level of guilt committed by the perpetrator. Illegal mining has a detrimental impact, both for official permit holders and the environment.

Perpetrators of illegal mining can be subject to criminal sanctions in accordance with the provisions in Law Number 4 of 2009 concerning Mineral and Coal Mining. Criminal sanctions that can be given include imprisonment and fines. The factors that influence the decision of Decision Number 177/Pid.Sus/2022/PN Gto are laws and regulations, violation of the law, involvement of the defendant, absence of a valid permit, level of loss and environmental impact, and mitigation factors.

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