CRIMINAL LAW ASPECT IN CASES OF VIOLATION OF CONSUMER RIGHTS IN ELECTRONIC TRANSACTIONS

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ABSTRACT
The development of information technology currently affects people's behavior in transactions. The use of online transactions in Indonesia is growing rapidly. Without direct or face to face meeting in the transaction, the risk of crime in a transaction will increase. The transaction, which was originally a private legal activity, will intersect with the public aspect. Consumers who feel that their rights have been violated can take legal steps through criminal law instruments. As an effort to prevent the occurrence of criminal acts that harm consumers in online transactions, education is needed for the public regarding criminal law aspect in cases of violation of consumer rights. This article is the result of community service activities carried out using the public lecture method through virtual meeting or webinar. The result of this community service activity is an increase in public understanding of the various kinds of criminal acts that can occur in online transactions, the legal arrangements in the Indonesian legal system, and efforts can be made to prevent the emergence of consumer losses in online transactions.

KEYWORDS: criminal law, consumers, electronic transaction.
I. BACKGROUNDS

Law is a system. In a country that adheres to the Civil Law system, the classification of the legal field is carried out clearly. Law can be divided into the fields of public law and private law. Civil law regulates all cases that contain relations between fellow citizens, such as marriage, inheritance and agreements. Public law regulates the public interest, such as the relationship between citizens and the state.\(^1\)

Criminal law is part of public law, considering that in the event of a criminal act, the perpetrator will deal with the state that represents the interests of the victim. Violation of criminal law is a nuisance to the public interest. In its development, the separation of the legal field between private law and public law cannot be done absolutely. There are various conditions in which the application of the law must be carried out continuously, considering that basically, the law is a system in which the sub-systems are interrelated.

The internet is growing so rapidly as the culture of modern society, it is said to be a culture because through the internet various activities of cyber society such as thinking, creating, and acting can be expressed in it, anytime and anywhere. Its presence has formed a separate world known as the virtual world (cyberspace) or pseudo world, which is a world of computer-based communication that offers a new reality in the form of virtual (indirect and not real).\(^2\)

Technological developments that affect people's transaction patterns also affect how the law must be enforced. Buying and selling transactions in modern society are no longer limited to buying and selling tangible objects with the direct meeting method. Current transactions can take place through the marketplace, where through the electronic system, sellers and buyers can carry out activities without meeting in person. This creates the potential for fraud in transaction activities. Since January 2020, Ministry of Communication and Information has received at least 192,000 (one hundred and ninety-two thousand) account statements that are indicated to be related to criminal acts. Of this number, at least 110,000 (one hundred and ten thousand) account statements are indicated to be involved in online fraud.\(^3\)

The law enforcement process in Indonesia for online fraud cases still has to go through conventional procedures, starting with reporting the cases to the Police. This is one of the obstacles in law enforcement in Indonesia. What is happening now is that when the perpetrator and the victim are in different locations, the victim must report it through the police nearby.

The criminal law process has to be based on the rules in the Criminal Procedure Code. This law enforcement process will face many obstacles, among which the whereabouts of the perpetrators are unknown due to the lack of data held by the victims as a basis for reporting. The victims usually only have data related to social media accounts used as a means of committing fraud, and bank account numbers of recipients of funds. Social media accounts can be deleted any time for the purpose of eliminating traces, as well as the account of the recipient of funds may not be the account of the perpetrator. Based on cases of fraud that harm consumers in electronic transactions, the Faculty of Law, Maranatha Christian University, conducts legal education for the community in webinar format with the topic of discussion of Criminal Law Aspects in Cases of Violation of Consumer Rights in Electronic Transactions.

II. LITERATURE REVIEW

As a basis for presentation to the audience, a description of the conceptual basics related to the legal issues discussed is required as follows:

1. Private Law and Public Law Aspects in Electronic Transaction

In the Indonesian legal system, the definition of Electronic Transactions is contained in Article 1 number 2 of Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law no. 19 of 2016 (hereinafter referred to as ITE Law). Electronic Transaction is a legal act carried out using a computer, computer network, and/or other electronic media. In this definition there is an element of legal action, meaning that an electronic transaction is an action that can lead to legal consequences, both from the point of view of private law and public law.

Gunarto Suhardi, cites a theory about the relationship between private law and public law as follows: Law exists in a systematic and hierarchical structure. This is what Ludwig Von Bertalanffy stated in The General System Theory and the theory put forward by Hans Kelsen in Lord Lloyd of Hampstead. The rationale of this statement is that it is impossible for a legal regulation to exist that stands alone in a vacuum because the object it regulates cannot be separated from the influence of other legal norms. These legal norms must cooperate and support each other in a legal system towards a common goal, namely—as stated by Thomas Aquinas in Lord Lloyd of Hampstead—in the form of the welfare of all members of society.\(^4\)

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The private legal aspect related to electronic transactions is the occurrence of legal acts of buying and selling. According to the provisions of Article 1457 of the Civil Code, buying and selling is an agreement, by which one party binds himself to submit an object, and the other party pays the promised price.

Meanwhile, aspects of public law, particularly criminal law related to electronic transaction activities, are regulated in: a. Article 378 of the Criminal Code:

Whoever with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by deceit, or a series of lies, moves another person to hand over something to him, or to give a debt or write off a debt, is threatened with fraud. with a maximum imprisonment of four years.

b. Article 28 paragraph (1) 

Article 45 paragraph (2) ITE Law:

Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions.

Everyone who fulfils the elements as referred to in Article 28 paragraph (1) or paragraph (2) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Online fraud is included in the group of “illegal contents crime”, regarding the misuse of information technology. Illegal content is a crime that inserts incorrect information or data into the Internet, besides that the information presented is also unethical and can be considered unlawful or disturbing public order.

2. Marketplace and social media as Mean of Electronic Transaction

Currently, buying and selling transactions can occur either through social media or through the marketplace. Marketplace is a place to conduct online buying and selling activities. Marketplace requires internet media and electronic devices, so that transactions can be carried out without requiring sellers and buyers to meet each other directly. Transacting through the marketplace can minimize the risk of consumer losses.

Advantages in e-commerce is the diverse and detailed information that consumers can get without having to bother going to many places. However, e-commerce also has its drawbacks. Electronic transaction methods that do not bring together business actors and consumers directly and the inability of consumers to see directly the ordered goods have the potential to cause problems that harm consumers.

Currently, there are various marketplaces that facilitate the existence of a "joint account" as a place to store funds, so that funds will be forwarded to the seller when the goods have been received by the buyer. Fraud is very likely to occur if the buyer does not pay to a joint account provided by the marketplace, and pays directly to the seller's or buyer's bank account. It commonly happens when the parties transacting directly through social media. Actually, social media platforms are not intended to carry out buying and selling transactions.

3. Legal Aspects of Consumer Protection

Indonesia has enacted Law Number 8 of 1999 concerning Consumer Protection. (Consumers Law). The Consumers Law regulates the obligations of business actors in Article 7. The point of the regulation is that business actors are prohibited from acting fraudulently, prohibited from taking actions / publishing information that is misleading / intended to deceive consumers.

In the event of a dispute between business actors and consumers, the Consumers Law provides alternative legal steps that can be taken by consumers who suffer losses, namely:

- a) Private law - non-Litigation: through the Consumer Dispute Settlement Agency
- b) Private law - litigation: a lawsuit to the court on the basis of an unlawful act.
- c) Criminal Law: consumers report violations of Articles Article 8 to Article 10 jo. Article 62 (1) of Consumers Law.

III. METHODS

This community service activity is carried out as a programmed activity where the Faculty of Law Maranatha Christian University carries out a legal education program for the wider community with the virtual meeting method. The application used is a zoom meeting, and this legal education activity was carried out on April 22, 2022, involving approximately 350 participants from various circles of society.

The material presented in this community service activity is the result of normative juridical research that focuses on the laws and regulations in force in Indonesia.

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IV. Results and Discussions

In this community service activity in the form of legal education, the resource persons explained several important points related to how the public should understand the trading system or electronic transactions, including:

1. Risks that can be faced by consumers in electronic transactions

   Business actors with bad intentions can take advantage of electronic transactions as a means to commit fraud. Some of the forms of fraud that occur include:
   a) The seller sells fictitious goods, the goods are not delivered even though the money has been paid.
   b) The seller sells and sends damaged goods and is not willing to accept complaints.
   c) The seller sells counterfeit goods, expired goods, goods whose weight/quality does not match the description, goods do not have a distribution permit
   d) The seller clicks the button "confirm the goods have been received", even though the goods have not been received by the consumer.
   e) Consumers do not get services in accordance with the agreement.

2. How to prevent losses in electronic transaction activities

   The public needs to be informed that social media is not a means to carry out buying and selling transactions. The risk of fraud is very high. Therefore, electronic transactions are better to be done through the marketplace. To minimize transaction risk, consumers need whether to examine the seller's status is in the trusted seller category, how the seller's response to the buyer is seen from the percentage of chats that are replied, how are reviews or previous buyer reviews on the quality of the products sold, speed of delivery, etc. The Marketplace is equipped with a joint account facility, so that the money deposited by the buyer is not sent directly to the seller. If the item is not sent, a return process can be carried out.

3. Obstacles in Enforcement of Criminal Law Against Fraud Cases to E-commerce Consumers

   a. The criminal procedure law process begins with a report: consumers are usually reluctant to report it to the police because the amount of loss they suffer is actually relatively small. If the loss is significant, usually the new victim makes a report.
   b. Consumers want funds that have been issued can be returned. To be able to do this, you must go through a process at the bank, namely blocking the recipient's account. This process must be followed up with a report to the police. The bank never promises a refund. The perpetrator usually withdraws the funds immediately, so the blocking does not have any impact on him.
   c. The law on the transfer of funds stipulates that as long as the transfer order is valid, the transfer of funds can be carried out. There are no rules governing how legal transfer activities are based on fraud.

4. Policy recommendations for the government

   The use of criminal law as a form of prevention and control of cybercrime is very relevant considering the dangers and losses that can arise from the risk of increasing development of information technology. Criminal law is called upon to save the losses suffered by the community because these crimes can hinder the activities of the socio-economic life of the community. As a form of effort to overcome online fraud in order to achieve protection of the interests of the community, criminal law is very necessary in order to be able to solve the problem of crime in the online world which incidentally can potentially become an obstacle to the development of community welfare.7

   Various recommendations that can be submitted in order to tackle fraud crimes against consumers in electronic transactions include:
   a. Crime prevention cannot stop as long as there is a threat of criminal sanctions in the legislation. Indonesia needs to establish policies in order to eradicate crime. In simple terms, criminal policy is a rational effort of a country to tackle crime. According to Barda Nawawi Arief, there must be an integration between crime prevention efforts using criminal law tools (penal policy), as well as non-penal policies.8
   b. The government needs to establish policies in the form of non-penal policies, including policies in the banking sector, account opening policies, and a mechanism for blacklisting the names of account owners whose accounts have been used as a means of committing fraud. Until now, in Indonesia, there is no such policy.
   c. Aspects of legal protection that are repressive in nature in order to protect the rights of victims must still be maximized by providing mechanisms and procedures for reporting crimes that are simple and easily accessible to the public.

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8 Dey Ravena dan Kristian, Kebijakan Kriminal, Jakarta: Kencana, 2017, page 1
V. CONCLUSION
The public needs to be educated related to how the laws and regulations in force in Indonesia regulate and protect consumer rights, besides that the community also needs to be educated about how to prevent fraud in online transactions and what steps can be taken to restore consumer rights if it has occurred. Given that there are many obstacles in processing online fraud cases through legal means, the government needs to update the applicable legal policies, especially regarding non-penal policies.

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[1] Indonesian Criminal Code
[2] Indonesian Civil Code
[4] Law Number 8 of 1999 concerning Consumer Protection

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