

PROTECTION OF CONSUMER E-COMMERCE

Introduction

Track or way of trading is now changing and evolving very rapidly. One of it is about how trading is not done anymore through conventional trade, that is transactions between sellers and buyers who are meeting each other personally. The transaction always requires a physical presence with certain border limits and locations, nevertheless it is now already done by modern commerce ie transactions between sellers and buyers via the internet. The presence of the Internet has made five fundamental changes to the world of economy, business and trade, it is executed whether in countries that embrace the common law system and *civil law*¹ as well

Modern trade through the Internet is finally growing into a trend in society such as the buying and selling or trading transaction through electronic media and social networking such as websites, facebook, blackberry. The trade of electronic transactions in English is commonly referred to Electronic Commerce or shortened by e-commerce. Quoting the opinion of David Baum in the writing of Onno W Purbo and Aang Wahyudi saying: "E-commerce is a dynamic set of technologies business processes and applications, that link enterprises, consumers, and communities through electronic transactions and the electronic exchange of services, goods and information

Considering the special characteristics where buyers and sellers can not directly meet face to face, the identity of the seller and the location of his business cannot be detected, therefore it is required specific legal protection which in this case is e-commerce consumer. Protection toward e-commerce consumer is necessary because of the weak consumer position and also the compensation can not be directly justified because of the absence of the direct businessmen. This resulted in a lot of fraud committed by business operators to the e-commerce consumer. Cheating on e-commerce transactions can occur because business operators do not have the identity and location of their proper business.

The absence of data/information on the identity, legality and business location can be used as a loophole for the business operator in e-commerce transactions to commit fraud. The opportunity of cheating would be enormous if the data/information on the identity, legality, and the business location is not included by the business operator. The obligation on providing a clear identification of the business operator is expectedly to ensure that the goods purchased are proper and can be used, or otherwise the consumers are able to obtain compensation or getting compensation directly whether in the form of products or goods that have been purchased or in the form of money replacement as well.

Not only stop on the obligation of providing the identity concerning to the business operator of the e-commerce, yet the truth of the identity is also becoming a very important thing. Because by obtaining the truth identity of the business operator, the protection toward the consumer e-commerce can be manifested by itself. Thus with the truth identity of the business operator, the e-

¹*Ibid*, hlm.143

commerce consumer can directly claim the accountability from the business operator of the e-commerce.

Research Method

Consumer protection is a part that can not be separated from a healthy business activity. Therefore to get a healthy business activity, it is required balance protection laws between consumers and producers. If there is no balance protection, it can be ensured that the consumer is in a weak position. In order to maintain the balance, legal certainly is required regarding to consumer protection. Consumer protection has several important principles to note namely²:

1. The principle of Utility

Implementation of consumer protection should provide benefit as much as possible for the benefit of business operators and the consumers as a whole.

2. The principle of Justice

Realization of the whole society participation optimally and also to provide an opportunity for the business operators and consumers to get their rights, as well as to implement its obligations in a fair and balanced state. Consumer Protection Law expectedly setting a number of rights and obligations of consumers and business operators.

3. Principle of Balance

The balanced occurrence between the interests of business operators, consumers, and governments in the material or spiritual senses. Interests between business operators, consumers and governments should be equally realized in accordance with their rights and obligations.

4. The principle of the Consumer Safety and Security.

This principle is intended to provide safety and security of the consumers in applying or consuming, as well as utilizing the goods and services used. This principle is expected to provide a legal guarantee that consumers get the benefit from the product that is being used and do not get the loss.

5. The principle of Law Certainty.

This principle expects that business operators and consumers will be able to comply the law. With the UUPK (Consumer Protection Law) governing the rights and obligations, it is expectedly to realize justice in everyday life. It also expects consumers protection, regarding to the countries that can guarantee legal certainty.

The principle of consumer protection mentioned above is the basis for the legal guarantees to meet the expectations of consumers and producers as a whole in any transaction.

In addition to consumer protection, Pound said that the law is the most important institutions in carrying out social control. Therefore, Roscoe Pound who is known as the originator of the idea of "law as a tool of social engineering" or law as an instrument of social control have a view that:

"Law is the sense of the legal order has for its subjects relations of individual human beings with each other and the conduct if individual so far as they affect others or affect the social or economic order. Law is the sense of the body of authoritative grounds of judicial decisions and

² Ahmadi Miru dan Sutarman Yodo, *Hukum Perlindungan Konsumen*, (Jakarta: PT.Raja Grafindo Persada), hlm.5

administrative action has for its subject matter the expectation or claims or wants held or asserted by individual human beings or groups of human beings which affect their relations or determine their conduct.”

It is told as a social control only if the law can carry out their functions very well. If the legal function is implemented properly as a social control, it will have the function of resolving disputes, integrating function, simplifying function, renewal function, welfare function and others more. In conclusion, the main function of law is to protect all interests that exist in society.

Discussion

E-commerce was born because of the public demands of quick services, practical and easy, and it requires a better quality³. E-commerce is part of the information technology development in the form of trade transactions which is the most demanded. Through trading e-commerce concept of traditional markets (buyers and sellers meet physically), it is then transformed into the concept of telemarketing that is a remote trading using the internet⁴. At the last ten years, the use of information technology is highly desirable and becoming a huge business opportunity, but it also raises new problems encountered in world trade, especially in e-commerce. Problems in e-commerce transactions need a special handling as there is no meeting between consumers and business operators in this transaction. Some of the cases that appeared are fraud, cheating, business operators do not compensate directly, these all demand granting legal protection for the e-commerce consumer. The case that has been filed through litigation is caused by the absence of clear information about the name or identity of the business operator, a complete domicile, and therefore accountability can not be demanded. Truth Identity and the accounted business location needed on e-commerce transactions due to the different characteristics which is no meeting between consumers and businesses, and also the goods are not seen directly.

Viewing from the legal protection of consumers, the Indonesian already has several laws that are closely related to e-commerce transactions, namely the Law on Information and Electronic Transactions, Law on Trade and Consumer Protection Act, yet all the three of it have not been able to realize the necessary legal certainty of e-commerce consumer, then in providing legal protection to the consumer e-commerce it is necessary to have a preventive legal protection avoiding a lot of fraud and deception. These preventive protections required government intervention in order to provide legal certainty. Government intervention which is expected to be able to realize the protection of consumer e-commerce is to provide special policy. The specific policies should be organized with the help of those who can relate and interact directly with entrepreneurs. Considering that the business operators and consumers are not in direct contact, there must be a mediator to meet both the business operators and consumers. The Mediator is an institution related directly to the entrepreneurs. Among some of the appropriate Government Institutions which

³Alinafiah dan Prasetyo, *“Kesiapan Infrastruktur dan Sistem Antaran Tepat Waktu dalam Mendukung E-Commerce”*, (Bandung: makalah pada seminar E-Commerce Revolusi Teknologi Informasi dan Pengaruhnya pada Peta Perdagangan Global, diselenggarakan KM ITB Bandung, 2000).

⁴Albarda, *“Sistem Informasi untuk Kegiatan Promosi dan Perdagangan”*, (Bandung: makalah pada seminar Informasi ITB, 1997)

have certain characteristics associated with entrepreneurs in the world of trade is the Directorate General of Taxation.

The Directorate General of Taxation. authorities may relate to business operators because according to the Law of the Republic of Indonesia Number 6 of the year 1983 on the General Rules of Taxation as Amended By Act No. 16 of the year 2009 article 1, paragraph 2 which states that the taxpayer is an individual or entity, including tax payers, withholding, and tax collectors, who have rights and tax obligations in accordance with the provisions of tax legislation. While in article 1, paragraph 3 on General Rules of Taxation it was explained that the Board is a group of people and/or capital as a union, whether conducting or unconducting business that includes limited liability companies, limited partnerships, other companies, state-owned enterprises or regionally owned enterprises with the name and in any other form, firm, partnership, cooperative, pension funds, partnerships, associations, foundations, mass organizations, social political organizations, or other organizations, institutions and other bodies including collective investment contract and permanent establishment. Article 1, paragraph 4 of General Rules of Taxation is said that employer is an individual or entity in any form which in the course of business or work, produces goods, import goods, export goods, trade, utilizing the intangible goods from outside the customs area, do a business of services, or take advantage of services from outside the customs area. Whereas the meaning of business operators in the Trade Act is that each individual of Indonesian citizen or business entity that form as a legal entity or non-legal entity established and domiciled in the territory of the Republic of Indonesia that conducting business activities in the field of trade. The above explanation can be concluded that business operator is one part of the Taxpayer that can be shaped as body or a private person. Considering the agency of Tax Directorate General is an institution that is closely related to the business players both legally and administratively so that all forms of business activities can be verified and supervised on an ongoing basis.

Under these conditions, according to the author one of the regulatory system that has been owned by the Tax Directorate General can be used to overcome the problem of the need for legal protection of e-commerce consumer that is about the truth identity and location of business operators as described above This issue is emphasized with the Regulation of the Minister of Finance of the Republic of Indonesia Number: 132/PMK./2006 dated December 22, 2006 on Organization and Work Procedure of Vertical Institutions Directorate General of Taxation that is Pratama Tax Office services (KPP) which has the tasks of counseling, care, and supervision Mandatory Taxes in the field of Income tax, Value Added tax, Sales tax on Luxury Goods, Other Indirect Taxes in the area of jurisdiction based on the legislation in force. In carrying out the tasks referred to above, the following functions:

- a. Collecting, searching and data processing, observing the potential taxation, presentating taxation information;
- b. Determinating and publishing taxation law products;
- c. Administrating documents and taxation files, reception and processing of the Notice Letter, and the reception of other letters;
- d. Taxation counselling;
- e. Implementation of the Taxpayer registration;
- f. Implementation of the extensification;
- g. Administration of tax receivables and the implementation of tax collection;

- h. Implementation of tax audit;
- i. Supervision of compliance to tax obligations of Taxpayers;
- j. Implementation of the taxation consulting;
- k. Implementation of the intensification;
- l. The correction of tax provision;
- m. Refund of excess tax payments (restitution);
- n. Implementation of office administration.

The above explanation shows that the task of the Pratama Tax Office Services (KPP) as a Vertical Institutions Directorate General of Taxation can be apparently that toward the taxpayer will always be done the supervision and registration, so that the identity, business location and legality of their business venture will always be maintained. The taxation system is bound by the obligations taxpayer to have a TIN (Taxpayer Identification Number). TIN is a primary means of taxation, and taxation is one of the tools of fiscal policy owned by the government. TIN in which there are elements of identity, legality and business location are merged into one. A complete and correct data and/or information (identity, legality and business location) can be provided by using a TIN. It is clear that the TIN obligation as legal certainty in generating the truth identity, legality and business location can be a format/shape of e-commerce consumer protection.

Through TIN, this truth identity, business location and legality of operations of the business operators will always be verified and supervised by the tax authorities (*Fiskus*), so that TIN can be used as a trustmark or confidence logo in e-commerce transactions as a form of preventive legal protection. Taxpayer Identification Number is a number given to the taxpayer as a means of taxation administration that is used as personal identification or identity of the taxpayer in carrying out their rights and obligations. TIN is given to every entrepreneur in carrying out its obligations in taxation. Every business operator (or also commonly called taxpayer) is given one TIN so that the TIN is attached, can not be transferred and is valid for along lifetime. TIN can only be removed if the Taxpayer dies. From this point it can be seen that every e-commerce business actor is required to have TIN in accordance with the regulations imposed by the Directorate General of Taxation (DGT), so that every business actor will be detected its business location, identity and business carried on, as the TIN function following:⁵:

1. Taxpayer Identification Number is a tool in the taxation administration, used as personal identification or identity of the taxpayer, and therefore each taxpayer is only given one Taxpayer Identification Number.
2. Taxpayer Identification Number is also used to maintain order in the tax payment and in the supervision of the taxation administration as well. In the case of documents relating to taxation, taxpayers are required to include their Taxpayer Identification Number.

The above TIN function is to regulate the taxation administration, and besides the TIN is also the identity of a taxpayer. Taxpayers who are required to register and obtain TIN are⁶: Firm, individual who has income above the minimum tax payment, as well as administrators, commissioners, and the shareholders of

⁵ Erly Suandy, *Hukum Pajak*, (Salemba Empat, Jakarta, 2011) hlm 109

⁶ Erly Suandy, *Ibid*, hal 109

the company. Taxpayers are required to register as referred to in Article 2 paragraph (3) of Law No. 6 of the year 1983 on General Provisions and Tax Procedures as amended by Act No. 16 of the year 2009 (hereinafter referred to as the Act of General Rules of Taxation) or Taxpayer referred in Article 2 paragraph (6) of the Act of General Rules of Taxation: "Mandatory apply for registration of a Taxpayer Identification Number using Taxpayer Registration Form". Conditions with the mandatory word implies that the TIN is something that is required and complied by a Taxpayer or business actors.

Taxpayer Identification Number (TIN) is a tool in administration taxation used as personal identification or identity of the Taxpayer. Therefore, to each Taxpayer is only given one Taxpayer Identification Number. In addition, the Taxpayer Identification Number is also used to maintain order in the payment of taxes and in the supervision of the tax administration. In the case of documents relating to taxation, Taxpayers are required to attach the Taxpayer Identification Number they have. The Taxpayers who do not subscribe to get a Taxpayer Identification Number will be sanctioned in accordance with the provisions of tax legislation.

Documents required as the completion of the application registration for Taxpayer Identification Number as referred to in Article 4 paragraph (4) and Article 5 paragraph (3) of General Rules of Taxation Act includes:

a. For an individual Taxpayer, who does not run a business or do independent services as referred to in Article 2 paragraph (3) letter a:

1. copy of Identity Card for Indonesian citizens; or
2. copy of passport, copy of Limited Stay Permit Card (KITAS)
3. The Permanent Residence Permit Card (KITAP), for foreigners.

b. For an individual Taxpayer, who runs a business or independent services as referred to in Article 2 paragraph (3) letter b shall be:

1. copy of Identity Card for Indonesian citizens, or
2. copy of passport, copy of Limited Stay Permit Card (KITAS) or Card
3. The Permanent Residence Permit (KITAP), for foreigners; and documents
4. Business activity license issued by the competent authority or a certificate of business activities location or independent services of Local Government Officials at least Lurah or Village Chief.

c. For Taxpayer entity referred to in Article 2 paragraph (3) letter c shall be: 1.

1. Copy of the deed of incorporation or founding documents and changes to the corporate Taxpayer domestic entity, or a letter of appointment from the central office to the permanent establishment;
2. Copy Card of Taxpayer Identification Number of one board;
3. Copy of passport and certificate of Local Government Officials residence at least Lurah or Village Chief in terms of the responsible is a foreign citizen;
4. Documents of business license and/or activity issued by the competent authority or a certificate of business activities of Local Government Officials at least Lurah or Village Chief.

d. For Taxpayer entity referred to in Article 2 paragraph (3) letter d in the form of:

1. copy of the Partnership Agreement/Deed of Establishment as a form of Joint Operation;
2. Copy Card of Taxpayer Identification Number of each member of cooperation operations (Joint Operation) which is required to have a Taxpayer Identification Number;
3. Copy Card of Individual Taxpayer Identification Number of one board company's member joint operation form, or a copy of the passport and certificate of Local Government Officials residence at least Lurah or Village Chief in case

the person in charge is a Foreign Citizen; document business license and/or activity issued by the competent authority or a certificate of business activities of the competent agency at least Lurah or Village Chief.

e. For Treasurer Taxpayer the withholding and/or a tax collector as referred to Article 2 paragraph (3) letter e in the form of:

1. The letter of appointment as Treasurer; and
2. Identity Card

f. For taxpayer with a branch status and the individual Taxpayer Specific Entrepreneur in the form of:

1. Copy of center or main Tax Identification Number card;
2. The certificate as a branch for the Body Taxpayer;
3. Document of business activity issued by the competent authority or a certificate of business activity location or independent work of the Local Government Officials at least Lurah or Village Head.

g. In the case of an individual Taxpayer is a married woman who is taxed separately because it requires a written separation agreement which is based on income and property, and a married woman who chooses to exercise the rights and obligation separately, the petition must be accompanied by:

1. Copy of husband's TIN card;
2. Copy of family card;
- 3 Copy of the income and property separation agreement, or statement letter requires to implement the rights and fulfill the tax obligations separately from the rights and obligations of husband's taxation.

Documents required as the completion of the application request for registration of Taxpayer Identification Number (TIN) mentioned above states clearly that the application request for registration can not be made arbitrarily based on simple data, but an accurate data which is legalized by government agencies. One of the important documents is business license and/or activity issued by the competent authority or a certificate of business location activities of the competent agency at least Lurah or Village Chief. Making TIN must have a sound legal basis, such as letters or documents as already included above. The documents are to make TIN as a proof of ownership of the businesses owned by entrepreneurs.

Any other benefits of TIN, namely⁷:

1. To obtain a loan from a bank.
In terms of capital lending in a bank, it is required to have a TIN as evidence that the person has income so that the banks can provide loan capital.
2. Make Current Account
If you want to make a checking account, the important condition that the banks could process it namely to have a TIN. Checking account just like a savings book is intended for a business entity or company, are not issued to individuals.
3. License Manufacture
One of the requirements of License manufacture or trade business license is to have a TIN.
4. Passports Manufacture

⁷ Erly Suandy, Op.cit., hlm. 113

If you want to make a passport as a sign of a person's identity to go abroad, the TIN is also useful to be manufacturing requirements.

5. To facilitate dealing with agencies that require to include TIN, such as Immigration Office, Customs and s Office, KPKN office, PLN office, Telkom Office and so on.

The author argues that to find a good reputation in a company or individual in e-commerce transactions, consumers should be aware that companies or individuals surely have a TIN, as part of the element in which the company is really exist or not fictive. The existence of TIN is a form of legal certainty that can give confidence to the consumers.

TIN as a form of legal protection of the consumer in e-commerce transactions are:

1. Establishing the regulations that the business operators who conduct e-commerce transactions must include/paste TIN at the page of business operators as a validity form of identity and the business actors.
2. The Directorate General of Taxation received complaints from e-commerce consumers in the form of a request identity so that it can help to provide the identity and the business location of business operators when in a dispute.
3. Directorate General of Taxes in this case as the institution that issued the TIN should make a list of the business operators that have the original TIN and business operators that are included in the black list, which in this case the business actor gets complaints or in the process of buying and selling a dispute over online.

CONCLUSION

No meeting between business operators and consumers directly, unknown of the business operators location and the lack of physical presence/form of goods raises many problems such as cheating and the occurrence of fraud from the business operators, so the e-commerce transaction requires setting up of a distinct legal on the deal. To overcome or minimize fraud occurring in e-commerce transaction required government intervention through special policies in e-commerce transactions.

Taxation is one part of the Fiscal policy tools which have a support system namely a TIN that can be used as a form of legal certainty in legal protection for the e-commerce consumer as a result of the truth identity, legality and business location, because the TIN contains:

1. Identity/name and Regristration Number of Employee (NIK)

At the time of TIN registration, the Taxpayer is required to attach a photocopy of ID card with Regristration Number of Employee (NIK), telephone number and Domicile Business Letter of the kelurahan/village office. For a TIN registration of an employee of one of the employers, he must attach a Certificate of Work from the Company.
2. Address of the business location

In a TIN registration requirements, to determine the address of the business location must be included a letter from kelurahan/the village office to explain the business of that address.
3. Classification of the business fields undertaking must be in accordance with the goods sold. On the TIN registration form, Taxpayers must fill in the

classification of Business Sector (KLU) ie business activities undertaken by the taxpayers and the Directorate General of Taxation (DGT) has made a grouping of all types of businesses by providing a code number.

4. Trademarks

On the registration form of TIN, Taxpayers who carry out business activities must also fill trademark name of their business and attaching Business License (SIUP) and Company Registration (TDP) of the Local Trade Department.

TIN shape as a form of legal protection of the consumer in e-commerce transactions are:

1. Establishing rules that applicable to the business actors conducting e-commerce transactions must include/attached TIN in the page of the business operators as a form of the validity and identity of it.
2. In case of a dispute the Tax Directorate General helped to receive complaints in demand for the accuracy of data / information on the identity, legality and business location of e-commerce transaction.
3. Tax Directorate General in this case as the institution that issued the TIN, should make a list of the business operators that have the original TIN and also business actors which are included in the black list; in this case the business actor gets complaints or in the process of dispute pn buying and selling online.

Traders shift from conventional models to modern models can also be categorized as a form of fraud tax evasion and this is also a legal issue that must be handled in order to prevent unfair competition and the loss to the country. Therefore, according to the research results, TIN is one solution that taxes can be indirectly increased as well as to provide input for the country, also to provide good common facilities and worthwhile to the society.

TIN of the business operators is intendedly for the consumer be able to get the data/information that is complete, clear and honest about the name of business actor, place of business and the validity of the business itself. The obligation of business actors is to include TIN (taxpayer identification number) in every transaction which is expected in the event of fraud the TIN will track the whereabouts of business operators as well as the validity of its business, accompanied by the identity of the business actors as the name and place of residence.

The TIN ownership is a form of binding legal force. It is said as a form of a binding legal force because the TIN is attached which only valid for once in a lifetime and can not be transferred. With the obligation of business operators to have a TIN, the consumers can find out the identity of the business actor clearly. In addition, consumers get clear information what business being carried on by the e-commerce business operator so that it can be concluded that the TIN can give legal force to the consumer. This means that by having a TIN, it can be funtioned as oversight of the identity, location of the business and whether the effort of e-commerce businesses is active or not. The activity of their business is visible from the tax payments, if they do not make the deposit the Directorate General of Taxation (DGT) will call them or the will make a verification of the business. It can be a preventive legal protection and sustainable access to consumers so that in case of a complaint, the identity, legality and business location of the actor of e-commerce may soon be known.

TIN participation in the page of every business operator or transaction is one form of preventive legal protection to the e-commerce consumer, because TIN is

one means to provide legal certainty and justice. It is said to give legal certainty because the parties in e-commerce transactions get the protection by TIN. The TIN that can provide the truth identity, legality and business location as well, will have a positive impact for all parties in e-commerce transactions. The positive impact for the consumer is able to determine the truth identity, legality and business location of the entrepreneur, so that when the consumer wants to make a complaint or seek compensation directly, it will be able to know the truth of identity, legality and business location of the business operators concerned. Without TIN in e-commerce transactions, the consumers can not be able to know the truth that should be provided by the business operators.