
THE JURIDICAL ANALYSIS OF DEFAULT ON THE JOINT ACCOUNT
SERVICE IN E-COMMERCE TRANSACTIONS

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Abstract

The research described and analyzed the problems; (1) whether the online transactions through joint account have been suitable with the law in Indonesia; and (2) how the law protection of buyer and seller on the online transactions was if Blackpanda joint account performed the breach of contract.

The research was descriptive-empirical law. The secondary data consisted of primary and secondary law materials. The collecting data techniques were by interviewing the users of Blackpanda joint account and by having literature study. Then, the data were analyzed in descriptive method.

The research results were (1) The online transactions through joint account has fulfilled the requirements for legally valid contract like acceptance, competency, consideration and legal intent; although based on the law no. 11 of 2008 on Electronic Information and Transactions, Blackpanda joint account was failed to be safety and reliability of programmable electronic system because it has performed the default like do not forward the money to the seller; (2) The law protection on the online transactions through Blackpanda joint account based on the law no. 8 year 1999 concerning Consumer Protection could not protect the joint account consumers on the transactions side and juridical guarantee on the use of joint account.

Keywords: *Breach Of Contract, Online Transactions, Joint Account, Consumer Protection.*

Abstrak

Penelitian ini mendeskripsikan dan mengkaji permasalahan, pertama Apakah pelaksanaan transaksi jual beli secara online melalui jasa rekening bersama telah sesuai dengan peraturan perundang-undangan di Indonesia. Kedua, Bagaimana perlindungan hukum para pihak penjual dan pembeli pada transaksi jual beli secara online apabila jasa rekening bersama Blackpanda Kaskus melakukan wanprestasi.

Penelitian ini adalah penelitian hukum empiris bersifat deskriptif. Jenis data sekunder meliputi bahan hukum primer dan sekunder. Teknik pengumpulan data yang digunakan adalah data yang diperoleh langsung dari lapangan dengan wawancara dengan korban pengguna Jasa Rekening Bersama Blackpanda Kaskus dan studi kepustakaan, selanjutnya teknik analisa data yang digunakan adalah metode deskriptif.

Hasil penelitian yang diperoleh penulis antara lain : (1) Transaksi jual beli secara online melalui jasa Rekening Bersama telah memenuhi syarat sahnya perjanjian yakni kesepakatan, kecakapan, suatu hal tertentu, dan sebab yang halal. Walaupun berdasarkan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan

Transaksi Elektronik Jasa Rekening Bersama Blackpanda di Kaskus gagal menjadi penyelenggara sistem elektronik secara handal dan aman karena telah melakukan wanprestasi yaitu tidak meneruskan sebagian uang yang dititipkan oleh pembeli ke penjual. (2) Perlindungan hukum pada transaksi jual beli secara online melalui Rekening Bersama Blackpanda Kaskus berdasarkan Undang-undang perlindungan Konsumen No.8 Tahun 1999 belum dapat melindungi konsumen pengguna Jasa Rekening Bersama dari sisi transaksi dan jaminan secara yuridis penggunaan Jasa Rekening Bersama tersebut.

Kata Kunci: *Wanprestasi, Transaksi Jual Beli secara Online, Rekening Bersama, dan Perlindungan Konsumen.*

A. INTRODUCTION

The development of technology and communication that is more easily accessed by the community has an impact on the ease of meeting the needs of goods and services. In the beginning the community fulfilled their needs one of them through trade. Trading (hereinafter referred to as sale and purchase) is carried out face-to-face between the two parties who agree to enter into a sale and purchase agreement wherein in that agreement regulates the rights and obligations of both parties.

One of the uses of technology and communication that influences buying and selling is the internet. The internet is a computer network that is connected globally. Through the use of internet technology, a person can exchange information without space and time. This significantly affects the business sector. The use of internet technology in the business world makes it easy for someone to make transactions, in this case someone without a meeting with his parties can still conduct transactions assisted through internet media, where this activity is better known as Electronic Commerce Transaction (E-Commerce).

Munir Fuady stated that what is meant by e-commerce is a business process using electronic technology that connects companies, consumers and the community in the form of electronic transactions, and the exchange / sale of electronic goods, services and information. Thus, in principle, business with e-commerce is a paperless trading business (Munir Fuady, 2008: 407).

Through e-commerce all formalities that are commonly used in conventional transactions are reduced, in addition, of course, consumers also have the ability to collect and compare information such as goods and services more freely without

being limited by borders (borderless) (Dikdik M. Arief Mansyur & Elisatris Gultom, 2005: 144). This makes it easy for the public to make buying and selling transactions online, so that the online buying and selling transaction model is in great demand.

The main disadvantage of buying and selling online is the level of security that is difficult to guarantee security. Along with the many fraudulent actions that occurred in the FJB Kaskus, the idea emerged to appoint a third party as an intermediary for funds between the seller and buyer to minimize the actions that could harm each party. But the problem of using Rekber services in online buying and selling transactions is legal protection for users of Rekber services. This is due to the fact that Kaskus is not affiliated with Rekber services, so that if things happen that harm the Rekber service users, the Kaskus cannot be held responsible.

The joint account system was created to guarantee the safe running of online transactions, but the problem that arises is if the Rekber service defaults on the obligations that should be made to Rekber service users. One of the defaults that occurred in the Rekber service was the Blackpanda Rekber service which performed a default by holding the sale and purchase transaction funds online through a joint account, in which case the transaction value that had been transferred to the Blackpanda Rekber service was not forwarded by the Blackpanda Rekber. As reported by Solopos.com, "Based on the monitoring of Solopos.com on the Kaskus forum, Thursday (09/17/2015), the number of reports of lost funds has now reached 184 reports with a total of money in the Blackpanda account of Rp 553. 689. 499. (Himawan Ulul, 2015, <http://www.solopos.com/2015/09/18/ption-di-kaskus-korban-blackpanda-bertambah-dana-nyuntung-jadi-rp553-juta-643798>, accessed on 6 December 2016). This is very detrimental to the account service user, if in the transaction the buyer has received the goods, the party injured by the default account service is the seller because the seller does not accept the transaction value that has been transferred to the account service.

Based on the description above, the author is interested in discussing "Analysis of Legal Performance of Joint Account Services in Buying and Selling Transactions Online (Case Study of Joint Account Services in Buying and Selling Transactions Online)".

B. RESEARCH METHOD

This research is a type of empirical legal research that is descriptive. The type and source of data used are data obtained directly in the community in the form of information on the object of research, namely information related to defaults made by the joint account of Blackpanda and interviews with respondents. Secondary data is data obtained from the literature. Primary legal material in the form of the basic norms of Pancasila, the 1945 Constitution, Laws and various laws and regulations. Data collection techniques in this study were carried out by conducting question and answer directly between researchers and respondents or informants or informants to obtain information, namely the seller of online trading transactions that suffered losses due to defaults made with Blackpanda joint account and lawyers as legal experts who understand the case of default.

C. RESEARCH RESULTS AND DISCUSSION

1. The Conformity of the Implementation of Online Sale and Purchase Transactions through Joint Account Services with Indonesian Laws and Regulations

Online sale and purchase transactions through the Joint Account Service is basically not much different from buying and selling in general, the obvious difference is that there is a payment intermediary in this case the joint account or better known by Kaskus users with the term Joint Account. Joint Accounts are intermediaries or third parties who assist in the process of buying and selling online transactions that act as payment intermediaries in their transactions. The Joint Account is a determinant of success in buying and selling online through a Joint Account, this is due to the very influential role of the Joint Account in the process of carrying out the sale and purchase transaction online through the Joint Account.

Joint accounts as a third party in the process of buying and selling online transactions are expected to be neutral in a transaction, but basically anyone who has been registered as a member of Kaskus can become a service provider of the Joint Account. A Kaskus member if he is going to become a Rekber service provider should meet other requirements, namely that the account has high popularity and has a high rank on the Kaskus website so that the account can provide security guarantees for transactions at the Kaskus sale and purchase forum.

Buying and selling transactions made through a Joint Account are reviewed based on the regulations are as follows:

1) According to the Civil Code (KUHP)

Online sale and purchase agreements can't be separated from the basic concept of the agreement in Article 1313 of the Civil Code which formulates an agreement is an act where one or more people commit themselves to one or more other people. The use of joint accounts in online trading transactions requires an agreement to regulate the transaction process. In the agreement there is a legal relationship between two or more people in the form of an agreement, which explains the rights and obligations between one party and another party. The agreement involves three parties, namely buyers, sellers and joint accounts as intermediaries (Roesli, Sarbini & Nugroho, 2019).

A joint account is a payment system for buying and selling goods or services that uses third-party facilities (joint account service providers) to assist in the security and convenience of buying and selling transactions (Indrayanto, 2015). In an effort to secure this, the seller and buyer have made an agreement to use the services of an intermediary. The next step, the buyer transfers the agreed amount of money with the seller to the joint account. The intermediary party is a joint account providing nominal related information that must be received by the seller in accordance with the agreement. The seller can immediately send the goods that have been agreed. After the ordered goods arrive at the buyer, then the joint account sends the nominal to the seller.

In the online sale and purchase agreement through joint account services, the legal requirements can be reviewed in Article 1320 of the Civil Code, namely:

- a. Agree those who bind themselves
- b. The ability to make an engagement
- c. A certain thing
- d. A lawful cause

Based on the discussion above, if the four legal conditions for the agreement are fulfilled in the online trading agreement through the Blackpanda joint account at the Kaskus sale and purchase forum, an engagement has

resulted in a legal relationship. So that rights and obligations arise for each party.

- 2) According to Law Number 11 of 2008 concerning Information and Electronic Transactions Jo Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions.

Based on Law Number 11 Year 2008 concerning Electronic Information and Transactions, Joint Accounts can be categorized as Electronic System Provider because it is stated in Article 1 number 6 of Law Number 11 Year 2008 concerning Electronic Information and Transactions states that "Electronic System Operation is the utilization Electronic system by state administrators, persons, business entities, and/or the public ".

Blackpanda's joint account is in the Kaskus media which can be accessed by the public through internet services. The account with Blackpanda is a member of the Kaskus media. Where, members of Kaskus also take advantage of the joint account services offered by Blackpanda in online trading transactions. This transaction was carried out with the use of computer-based electronic media or mobile phones that were able to access Kaskus. So that buying and selling transactions are done online (Wahyu and Ahmad, 2016).

The use of Joint Accounts in Buying and Selling Transactions online also complies with the provisions of the Principle and Purpose of Law Number 11 Year 2008 regarding Information and Electronic Transactions, which is contained in Article 3 which reads that "Utilization of information technology and electronic transactions is carried out based on the principle of legal certainty , benefits, caution, goodwill, and freedom of choice of technology or technology neutral, the use of the Joint Account Service is a manifestation of the principle of prudence in conducting Online Sale and Purchase Transactions as a media liaison between the perpetrators of Sale and Purchase Transactions conducted on the Kaskus Website. The selection of the use of online transactions shows that there is a high level of public trust in the use of electronic media in meeting people's needs. That is because online transactions are considered more practical for both buyers and sellers (Sidharta & Suzanto, 2015).

Implementation of online transactions must pay attention to the conditions in conducting transactions using electronic media. Assumptions that must be met include caution, transparency, accountability and fairness. This is due to the ease of online transactions that can be connected to a computer or smartphone with an internet connection without any time limit within 24 hours. In online transactions the principle of honesty is very vulnerable because the sellers and buyers do not meet in person. This is a risk factor for the insecurity of transactions conducted online (Pekerti & Herwiyanti, 2018).

The Kaskus website is able to provide clear information and security. This causes Kaskus website users to be more interested in using the website in online trading transactions. It is also an opportunity for Blackpanda accounts that offer joint account services to increase security in buying and selling transactions. The existence of website security is the main foundation for many service users to use the services offered on the website (Siagian & Cahyono, 2014).

Article 9 of Law Number 11 Year 2008 concerning Information and Electronic Transactions which states that "business actors offering products through the Electronic System must provide complete and correct information relating to the terms of the contract, manufacturer, and product offered", reviewed based on these provisions the use of the Joint Account Services must be based on the provisions of the Joint Account Service, the procedures for the use of the Joint Account Services at Kaskus are as follows:

- a. The Buyer and Seller agree on the description of the goods, price, guarantee, insurance, shipping cost and others and agree to use a Joint Account.
- b. Buyers transfer to the Joint Account, confirmation via posting in this thread according to the format to facilitate transactions then the Joint Account will confirm the funds entered in the thread and to the seller via Private Message and SMS (Short Message Services).
- c. Seller can process the transaction (send goods) if there is confirmation from the Joint Account.

- d. The seller sends his bank data to the PM (Private Message Kaskus) the holder of the Joint Account in question. (To facilitate the release of funds later).
- e. The goods arrive at the buyer, check whether the goods are in accordance with previously agreed upon, if yes the buyer confirms the disbursement of funds to the Joint Account.
- f. Funds disbursed to the seller, the transaction is complete.

However, if the ordered goods do not match or are not shipped, the procedures that can be taken on the Joint Account Service namely:

- a. After the goods are returned to the seller according to the initial conditions, then;
- b. The funds deposited are returned intact (after the Joint Account fee is deducted) to the Buyer.

In the case of this study, ordered goods have been received or have arrived at the purchaser, but the funds have not yet been received by the seller because the funds are still being held on the part of the intermediary namely the Blackpanda Joint Account.

According to an interview with Lawyer Mr. Sugiarto, S.H. explain that in those cases where the seller has not received the agreed funds in an online sale and purchase transaction, it is included in the default. Based on Article 1365 in the Civil Code explains that "Any act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to replace the loss." The default made by the Blackpanda account as a joint account with Kaskus is that Blackpanda does not give money to sellers in online trading transactions, even though the buyer has paid and received the goods sent by the seller. As a joint account that complies with established rules, the Blackpanda account should transfer the nominal amount agreed in the online transaction.

Anwar (2017) explains that defaults can take the form of four types, namely:

- a. Not doing what he is promised will do
- b. Carry out what he promised, but not as promised
- c. Doing what was promised but too late.

d. Doing something according to the agreement can't be done.

In this study, identifying cases of default carried out by Blackpanda joint account accounts is carrying out what was promised but not as promised. Where, the Blackpanda joint account does not proceed with the transfer of funds from the payment made by the buyer to the seller's account of the goods transaction. In addition, the Blackpanda joint account also defaulted by doing what was promised but it was too late. This is felt by the seller who suffered losses, where the goods have been sent to the buyer, but the transaction is not completed so that the seller does not receive payment from the online transaction.

2. Legal Protection of Sellers and Buyers of Online Transactions When Blackpanda Kaskus Joint Account Services Perform Default

Buying and selling online is a convenience obtained by the existence of internet technology that provides many benefits for consumers in determining the choice of goods and services easily and efficiently. One of the innovations made is the use of joint accounts in payment transaction methods. Joint accounts as a solution to the rampant fraud online buying and selling transactions on the Kaskus site. Joint accounts offer solutions in the form of payment service providers between buyers and sellers in conducting transactions on the Kaskus website. Buyers who use joint account services will feel safer if payment is deferred first through joint account services before the ordered goods are received by the buyer.

The use of joint account services that has been increasingly developing in online trading transactions on the Kaskus website turns out to create new legal problems. Joint accounts which were originally a solution to the problem of payment security between sellers and buyers increasingly handle the number of transactions that enter through the buying and selling forums on the Kaskus website. One of the concerns in the use of joint account services is that the joint account party defaults on the contract of sale and purchase transactions using joint account services.

Based on interviews with respondent A., that A. as a seller made a sale and purchase transaction online with the object of a camera worth Rp 3,550,000.00 on the Kaskus website buying and selling forum. After an agreement with the buyer, the

seller and the buyer decide to pay using the Blackpanda Joint Account service at Kaskus. The buyer who has agreed to the electronic contract has transferred the nominal amount of the purchase and purchase object to the Blackpanda Joint Account. However, when it is confirmed that the purchase order has been received, the Blackpanda Joint Account does not immediately resume the payment it has received to the seller.

Funds that should have been received by the seller after confirmation of receipt of the goods finally settled on the Blackpanda Joint Account. Based on data collected on the Kaskus website, it turns out that not only A. has experienced bad funds in the joint account of Blackpanda Kaskus. The insistence of victims demanding compensation for loss of funds that were not forwarded by the Blackpanda Kaskus joint account service was finally responded to by the Blackpanda Kaskus joint account, namely by starting to restore the rights of users of the joint account services of Blackpanda Kaskus. According to Andi's interview as a respondent I said that he had received a portion of Rp.440,000.00 out of the total Rp3,550,000.00 that Andi should have received.

Munir Fuady (2011: 87) defines default (default or non-fulfillment or also referred to as the term breach of contract) which means that the performance or obligations that are not supposed to be imposed by the contract against certain parties as mentioned in the contract concerned. The joint account service provider Blackpanda Kaskus performs a default in the form of carrying out what was promised but not as promised and doing what was promised but it was too late.

The implication of defaults performed by the Blackpanda Kaskus joint account service, namely the Kaskus joint account service, will be subject to sanctions as stipulated in Book III of the Civil Code Article 1243 which states that, "Reimbursement of costs, losses and interest due to non-fulfillment of an agreement began to be required, if the debtor, even though it has been declared default, is still failing to fulfill the engagement, or if something that must be given or done can only be given or done within a specified time. "

Provisions for payment of compensation are regulated in articles 1244 and 1245 of the Civil Code, according to article 1244 if it fails to prove that a default occurred due to an unexpected thing then the Blackpanda joint account service is

punished must pay for losses incurred due to the transaction. Whereas Article 1245 states that if a situation can be proven that causes joint account services in a state of compulsion that cannot perform, the joint account services are free from compensation payments for defaults. Substitution compensation according to Article 1246 is divided into 2 (two), namely losses that have been suffered and the benefits that can be obtained.

The legal protection of Blackpanda joint account service users is also seen in the Law Number 11 Year 2008 on Information and Electronic Transactions although it has not explicitly regulated efforts to settle disputes over joint account services.

Online sale and purchase transactions are one form of electronic contracts, in Article 1 number 17 states that Electronic Contracts are agreements of the parties made through the Electronic System. Furthermore, Article 18 paragraph (1) states that electronic contracts are binding on parties conducting electronic transactions. An electronic contract is a legal contract, in accordance with the principle of consensualism where in principle a contract is not required by law to be in written form except for certain types of contracts (Munir Fuady 2008: 13).

One of the supports of Law Number 11 Year 2008 concerning Information and Electronic Transactions in the effort to settle disputes is in Article 18 where the parties conducting international electronic transactions are given the freedom to choose the law. If the parties do not make a choice of law, the applicable law is based on the principle of International Civil Law. Then in Article 18 paragraphs (4) and (5) the parties are also given an authority to determine a court forum, arbitration, or other alternative dispute resolution agency that has the authority to handle disputes that may arise from international Electronic Transactions that are made. Furthermore, if the parties do not make their choices, they will be based on the principle of International Civil Law.

Cases in this study that suffered losses due to defaults carried out by Blackpanda joint account accounts, namely the seller or in the Consumer Protection Act, the seller is referred to as a business actor. As a business actor it is necessary to know their rights so that they better understand what their rights are impaired in this default case. The following are the rights of business operators in accordance with Article 6 of the Consumer Protection Act:

- 1) The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of the goods and / or services traded.
- 2) The right to obtain legal protection from consumer actions in bad faith.
- 3) The right to conduct self-defense properly in the settlement of consumer dispute law.
- 4) The right to good reputation rehabilitation if it is legally proven that consumer losses are not caused by the goods and / or services traded.
- 5) Rights regulated in other statutory provisions.

As a business actor, the seller must also know the obligations that must be carried out so that the online sale and purchase transactions are carried out in accordance with the specified conditions. In addition, information related to the obligation is also important to be known by the seller so that this breach of contract can be resolved properly. Following are the obligations of business actors in accordance with Article 7 of the Law Protection Law:

- 1) Having good faith in carrying out its business activities.
- 2) Provide true, clear and honest information about the conditions and guarantees of goods and/or services and provide an explanation of the use, repair and maintenance.
- 3) Treat or serve consumers properly and honestly and not discriminatory.
- 4) Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services.
- 5) Provide opportunities for consumers to test and/or try certain goods and/or services and provide guarantees and/or that are traded.
- 6) Provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services.
- 7) Provide compensation for compensation and/or replacement services if the goods and/services received or utilized are not in accordance with the agreement

The seller can assist in the settlement of this default case if the obligations have been carried out in accordance with the regulations. Especially in relation to providing accurate and accurate information so that the problems presented are in accordance with the actual facts and conditions.

According to Languyu (2015), the Kaskus as a website that provides a media for meeting places between buyers, sellers and joint account accounts is obliged to supervise if things are prohibited in the Kaskus sale and purchase forum. However, Kaskus itself does not have data that can determine whether the identity is genuine or fake and Kaskus is not responsible if there are problems related to the use of joint account services. The use of joint account services that should guarantee security based on Article 15 paragraph (1) of UUIITE is still open to being violated. Trihastoto & Budiwati (2016) explained that legal protection efforts that can be carried out by the Kaskus if there are problems related to the use of rekber services in the sale and purchase transaction are blocking accounts that are proven to have defaulted.

D. CONCLUSIONS

Buying and selling transactions online through joint account services are in accordance with the laws and regulations in Indonesia, although they do not clearly regulate these transactions. The existing legislation, although it has provided legal protection, still has a legal loophole that results in a default in the sale and purchase transaction through joint account services.

E. SUGGESTION

The legal gap in buying and selling online through joint accounts should need to be revised efforts related to legal protection so that the general public as business people can get a sense of security and comfort in conducting transactions in the form of electronic contracts.

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