

The Legal Responsibilities of Criminal Offenders Buy and Sell Online

Anakletus Rumlus

Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia, E-mail: letusrumlus123@gmail.com

Abstract. *The aim of this research is to study and analyze factors causing the occurrence of fraud based buying and selling online and to review and analyze legal responsibilities of fraudulent actors based on buying and selling online. This study uses a juridical sociological approach. The results of this study indicate that the factors that lead to the occurrence of online buying and selling fraud are influenced by various factors including economic factors, environmental factors, socio-cultural factors, the ease of committing online buying and selling fraud, the lack of risk factor, caught by the authorities, push factors, pull factors, and the factor of the role of the victim. The criminal act of online buying and selling fraud, which is currently rife in cyberspace, is carried out by irresponsible individuals because of loopholes from these various factors and criminal liability for perpetrators of online buying and selling fraud must fulfill the elements of each article, so as to avoid misinterpretation in Article 378 of the Criminal Code and Article 28 paragraph (1) of the ITE Law and can determine the imposition of accountability in Article 28 paragraph (1) of the ITE Law which explains the disadvantages in terms of buying and selling in cyberspace.*

Keywords: *Buying; Fraud; Legal; Liability; Online.*

1. Introduction

Advances in technology have made it easier for people to browse, search for data, get news or information quickly and to send messages to each other through social media, including trading activities.¹ Trading activities have developed with the concept of telemarketing. Telemarketing is trade carried out remotely using internet media or commonly referred to as e-commerce

¹ Tata Taufik, 2013, *Dakwah of the Digital Age: History, Methods and Development*, Brass: Al Ikhlas Library, p. 111.

(Elect Commerce). The term e-commerce itself is a business activity consisting of selling and buying services via the internet.²

Conducting transactions online does provide convenience for humans, but the convenience and development of this technology also has a negative impact on human life, for example, the emergence of new crimes against buying and selling transactions carried out online, of course, with various *modus operandi*.³

The use of the online world to run a business makes social media create new things that are now in great demand in various circles. After Facebook grew rapidly and had more users as a place for buying and selling activities, Facebook had 100 million users in 2010.⁴ Another platform for social media is Instagram, which is now also a popular social media icon. Not a few Instagram users have two Instagram accounts on one device, one account is for the user's personal account and the other account is used as a business account to introduce and sell the goods they offer so that followers of Instagram accounts or other users are interested in buying goods which he sells.⁵

There are various kinds of fraud in the real world, but even in cyberspace, cases of fraud cannot be avoided. The perpetrators of this fraud use tactics by selling various types of attractive goods to bind potential buyers, because the prices are very cheap and far from market prices, which in the end after the money is sent, the goods that have been ordered cannot be accepted.

In buying and selling online, people can enter into online sales agreements through a leading e-commerce company in Indonesia, both Tokopedia, Lazada, Blibli.com, Bukalapak, Zalora, Shopee, Berrybenka, Kaskus and Traveloka, which are certainly leading online trading companies (e-commerce) or large marketplaces in Indonesia that already have a neatly structured system to prevent the occurrence of fraud prone so they tend to be safer, compared to buying and selling online either Facebook, messenger, telegram, WhatsApp, Instagram, Twitter, forums which of course have a very high risk of being vulnerable fraud because the online buying and selling site is not a leading e-

² Abdul Halim Barkatullah, 2019, *International E-Commerce Transaction Disputes*, Bandung: CV Hikam Media Utama, p. 2.

³ Raodia, "The Influence of Technological Developments on the Occurrence of Mayantara Crime (Cybercrime)", *Jurisprudentie Journal*, vol.6 (2019). url <https://journal.uin-alauddin.ac.id/index.php/Jurisprudentie/article/view/11399/7769>

⁴ Abdul Halim Barkatullah, 2019, *International E-Commerce Transaction Disputes*, Bandung: CV Hikam Media Utama, p. 27.

⁵ Syaifuddin Zuhri et al, 2020, *Mass Communication Theory and changes in Malang Society: Media Intelligence*, p. 72.

commerce company in Indonesia which of course does not have a neatly structured system to prevent the occurrence of prone to fraud so that it tends not to be very safe against fraud.⁶

Viewed from the level of norms, the crime of fraud is formulated in the Criminal Code, in CHAPTER XXV concerning fraudulent acts in Article 378 of the Criminal Code, Article 383 of the Criminal Code. In *lex specialis*, regulations regarding fraud using electronic goods are also prohibited in Article 28 paragraph (1) of the ITE Law. Actions that are prohibited in conventional transactions, namely Article 10 of Law No. 8 of 1999 concerning Consumer Protection (Consumer Protection Law) which contains a prohibition on offering, producing, advertising, making untrue or misleading statements, trading goods/or services incorrectly. The elements of these articles are: Article 378 of the Criminal Code, namely: 1) The act of moving, 2) being driven by a person (*naturalijk* person), 3) the purpose of the act is to hand over objects, give and write off receivables. Article 28 paragraph (1) of the ITE Law namely,⁷ although the ITE Law and its amendments do not specifically regulate criminal acts of fraud, Article 28 paragraph (1) of the ITE Law regulates the prohibition of spreading false and misleading news that results in consumer losses in electronic transactions.

As is known, the legal arrangements that have regulated the problem of fraud in online buying and selling agreements in Indonesian positive law are both arrangements regarding electronic transactions regulated in Law no. 11 of 2008 concerning Information and Electronic Transactions and Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions as the main basis for online buying and selling arrangements, Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions. However, with the existence of these legal arrangements, the facts in society are still found to be prone to fraud in buying and selling online. This is because law enforcers have not been able to properly implement these legal arrangements to anticipate,

Based on the description above, this study aims to study and analyze Legal Responsibilities of Fraudulent Actors Based on Buying and Selling Online

2. Research Methods

⁶ Dewi Setyowati, Candra Pratama Putra, and Ramdhan Dwi Saputro, "Legal Protection for E-Commerce Crimes," *Legal Perspective* 18, no. 2 (2019): 215–46, <https://doi.org/10.30649/phj.v18i2.160>, p. 220.

⁷ Rizki Dwi Prasetyo, 2014, *Criminal Accountability for Online Fraud Crimes in Indonesian Positive Law*, *Journal of the Faculty of Law, University of Brawijaya, Malang*. p. 5 – 6 url: <http://Hukum.studentjournal.ub.ac.id/index.php/Hukum/article/view/726>

This study uses a Juridical Sociological approach, the specifications in this research are analytical descriptive, the data used are primary data and secondary data, using data collection by interviews and literature studies, qualitative data analysis, problems are analyzed by theory, law enforcement and legal certainty.

3. Results and Discussion

Buying and selling online is one of the most attractive alternatives for consumers to shop besides physical shopping. For business people, buying and selling online is considered attractive because it does not require large capital, because the internet can be accessed by consumers from all over the world. Meanwhile, for consumers, shopping online is considered more attractive because the price offered is usually cheaper than shopping physically. Shopping online is very helpful for sellers or buyers who are separated by distance and can also remove the constraints of spending time shopping. Simply by contacting the seller, agreeing on a price, the buyer pays (usually a transfer) then the seller sends the goods, the buyer can get the desired item.⁸

There are several factors that cause a person to commit a criminal act of online buying and selling fraud, namely:⁹Economy; Environment; Socio-cultural; It's easy to commit the crime of fraud; and minimal risk of being caught by the authorities.

According to Iptu Suyana, the main factors for the occurrence of criminal acts of fraud in online trading The needs of living in urban areas are very complex and not all people/individuals are able to fulfill them, so for some individuals then they decide to take actions that are contrary to societal norms, namely in this case committing the crime of online buying and selling fraud.

Second, fenvironmental actors; In addition to economic factors, one of the factors that influence the occurrence of online buying and selling fraud is environmental factors, where there is no control from the community and family over the perpetrators so that the perpetrators often associate with people who often commit criminal acts, especially online buying and selling fraud.

Third, Socio-Cultural Factors. In addition to economic and environmental factors, there are also socio-cultural factors that influence the occurrence of online

⁸ Angga Bagus, [Http://hanggabagus21.blogspot.com/201406/modus-penipuan-dalam-online-shop-dan.html](http://hanggabagus21.blogspot.com/201406/modus-penipuan-dalam-online-shop-dan.html).

⁹ Anissa. Rise of Fraud in Cyberspace (Online Business Fraud). Accessed from <https://anisahaseena.wordpress.com/2013/03/18/maraknya-penipuan-bisnis-online-online-shop/>(download: 15 June 2022 at 10.00 WIB)

buying and selling fraud crimes. in Indonesia there is often a shift in culture from the old culture to a culture that is considered by society/individuals to be newer or modern. This is the cause of the frequent misuse of knowledge without regard to the responsibility of society or the individuals who do it. The crime of online buying and selling fraud is classified as a new type of fraud crime. This is an example of not only a developing area but also crime that can evolve following more modern developments.

Fourth, the easy factor is to commit a criminal act of buying and selling fraud online. In addition to socio-cultural factors, there are also other factors that support the occurrence of online buying and selling fraud, namely the ease of committing these fraud crimes. Only armed with a cellphone or going to a computer rental and offering certain products that are only copied on the internet, perpetrators can carry out fraud crimes.

Fifth, the minimum risk factor of being caught by the authorities. The next factor that Iptu Suyana put forward to the author is the minimal risk of being caught by the authorities. Furthermore, Iptu Suyana emphasized that by using social media and creating fake accounts, criminals can easily carry out their actions without being noticed by the authorities. This is because the media used by the perpetrator is only a fake account created by entering incorrect data.

Factors that cause online buying and selling fraud originate from ordinary criminal acts of fraud, namely the usual criminal acts of fraud that occur are direct meetings between the two parties. But technology that has no limits makes some people study it for negative things. These negative things are then used to commit crimes. Most people use banking services, it cannot be denied that banking services make transactions easier for someone. Transactions using banking services can be reached abroad.

By using banking services one does not need to be direct in terms of making agreements or objects and in terms of payments. Transfer which is a banking service in the form of delivery can send payments without the seller and buyer meeting. The absence of direct meetings between the two is a loophole for some people who are not responsible for committing crimes. The theory above says that crime can be studied with a crime technique and reasons supporting committing a crime. Furthermore, the factors causing the criminal act of online buying and selling fraud are low economic factors including the poverty line that can make a person commit crimes such as online buying and selling fraud.

The motives of the perpetrators of fraud are mostly carried out in buying and selling online because of the many benefits obtained:

- Buyers do not need to visit the seller's place, be it a figure, boutique, mall, and so on. Buyers only need to text or comment on social media where they shop and choose the desired item.
- Selection of goods can be done from home or office so that purchases can be made for hours without having to leave the house.
- Sellers can reduce the cost of opening a store because through online shopping, sellers simply market their products via the internet.

From the description above, it can be concluded that the motives of the perpetrators of fraud are mostly carried out in buying and selling online because of the many profits obtained. This makes someone abuse transactions that should be done. The desire to get the maximum profit will have an impact on the tendency of traders to act negatively and lie, cheat, manipulate, swear, take advantage of tight opportunities, and so on.

One of the perpetrators' motives for committing fraud, which is mostly done in buying and selling online, saves time. Because buying and selling fraud is easy to do and perpetrators can spend their time with other activities. As for the implementation of law enforcement against criminal acts of fraud buying and selling online (E-Commerce).

Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as guidelines for behavior in traffic or legal relations in the life of society and the state. Viewed from the point of view of the subject, law enforcement can be carried out by a wide range of subjects and can also be interpreted as law enforcement efforts that involve all subjects.

Law enforcement is an attempt to realize ideas about justice, legal certainty and social benefits into reality. Criminal law enforcement is an attempt to realize ideas about justice in criminal law in terms of legal certainty and social benefits into legal reality in every legal relationship. According to Satjipto Rahardjo, law enforcement is an attempt to turn ideas and concepts into reality. Meanwhile, according to Soerjono Soekanto, conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship of values which are spelled out in solid principles and final attitudes to create, maintain and maintain social peace.

The requirement in imposing criminal liability on the perpetrators of the crime of online buying and selling fraud is that all the elements of crime are fulfilled and the intent of the purpose of the act can be proven that it was intentionally done with the conscious condition that the act would be violated by law.

Sudarto in his book Amiruddin and Zainal states that in order for a person to have an aspect of criminal responsibility in the sense that the perpetrator is convicted there are several conditions that must be met, namely:¹⁰

- There is a criminal act committed by the manufacturer.
- There is an element of error in the form of intentional or negligence.
- There is a responsible builder.
- No excuses.

The form of criminal liability for online fraud perpetrators can only be imposed using Article 28 paragraph (1) in conjunction with Article 45A paragraph (1) of the ITE Law. Article 378 of the Criminal Code cannot be used to ensnare perpetrators of online fraud to be held accountable for their actions. Even though Article 10 in conjunction with Article 62 of the Consumer Protection Law specifically regulates the prohibition of providing misleading information to consumers, it's just that there is no evidence of using electronic evidence in that article, because there are several obstacles in imposing criminal sanctions against perpetrators of crimes such as obstacles in terms of evidence where evidence is limited in the Criminal Procedure Code, in Article 378 of the Criminal Code only recognizes legal subjects and Article 10 j. o Article 62 of the Consumer Protection Law recognizes legal entity subjects but limitations in electronic evidence. If you look at the elements of Article 378 of the Criminal Code and Article 28 paragraph (1) of the ITE Law, there are differences and similarities in each of their actions, namely:

The form of criminal acts of fraud in the Criminal Code in Article 378 consists of elements, namely:

- With the intention of moving people
- The goal is to hand over the object and write off the receivables
- His actions were intended to benefit himself or others by breaking the law

The form of ITE crime in Article 28 Paragraph (1) consists of the following elements:

¹⁰ Hanafi Amrani, Mahrus Ali, 2015. Criminal accountability system: development and application, Rajawali Press. Jakarta. matter. 22

- Error: on purpose
- Against the law: without rights
- Action: spreading
- object ; Fake and misleading news
- Consequences of actions: resulting in consumer losses in electronic transactions.¹¹

Article 378 of the Criminal Code has an element of benefiting oneself and others, as a result, the delivery of objects by someone who has been tricked into moving according to the wishes of the perpetrator, in Article 378 of the Criminal Code has a deficiency in the important object of fraud crimes, namely electronic media facilities for committing online fraud. In contrast to Article 28 paragraph (1) of the ITE Law, it is not clear that fraud is aimed at and it does not matter who benefits (yourself or other people), the most important thing is that there are consumer losses from electronic transactions.

Judging from the differences and similarities in the elements of the two articles, Article 28 paragraph (1) of the ITE Law which can ensnare perpetrators of online fraud crimes, here are several cases of fraud and imposition of penalties: An online fraud perpetrator in West Java with a foreign exchange investment mode that promises profits great by using the website <http://www.pandawainvesta.com> as a means to commit the crime. The perpetrator's actions were charged with Article 28 paragraph (1) of the ITE Law in terms of spreading false and misleading news and causing consumer losses with a maximum prison sentence of 6 years and a fine of Rp. 1,000,000,000 and is subject to multiple articles, namely Article 372 and Article 378 of the Criminal Code with the threat of 4 years in prison.¹²The crime of ITE is completed perfectly if the consequences of his actions have arisen, then from the element of guilt the maker of this crime must be held accountable for his actions. There is difficulty in determining which law, and who has the right to punish perpetrators, because online fraud includes transnational crimes and cybercrime.

¹¹ H. Adami Chazawi and Ardi Ferdinan, 2015, Information & Electronic Transaction Crimes: Attacks Against Legal Interests Utilizing Information Technology and Electronic Transactions, Media Nusa Creative, Malang, p. 128.

¹² [https://sosmedkini.wordpress.com/example case iii,](https://sosmedkini.wordpress.com/example-case-iii/) URL:<https://sosmedkini.wordpress.com/exemplary-case-iii/> , accessed on the 15th_ Uni 2022 At 10.00 WIB.

These deficiencies are in the Criminal Code and the Consumer Protection Law, therefore, article 28 paragraph (1) in conjunction with article 45A paragraph (1) of the ITE Law, although it does not specifically regulate provisions regarding fraud crimes in different contexts, can be used to impose sanctions on perpetrators in holding them accountable for their actions. the crime of fraud through online, because basically that buying and selling online is the same as real buying and selling in general, in electronic transaction activities or it can be said buying and selling online considering the actual context of the existence of the Law on information and electronic transactions is as an extension of Law on consumer protection.

The system of proof against perpetrators of fraud via online using the Criminal Procedure Code as a basis for proving non-conventional crimes is very difficult to prove because of the limitations of valid evidence according to Article 184 of the Criminal Procedure Code, to more precisely prove the guilt of someone who committed a crime in the cyber/internet domain, then The ITE Law is used to prove someone's guilt in the proof because the ITE Law specifically regulates crimes in cyberspace.

Prove the fault of the person who committed the act the crime of buying and selling fraud through online, the article that is more appropriate to use is in Article 5 and Article 6 of the ITE Law which is an extension of documentary evidence and instructions on Article 184 paragraph (1) letters (c) and (d) of the Criminal Procedure Code. Even though there are limitations in the electronic evidence contained in Article 5 paragraph (4), namely letters which according to the law must be made in written form and letters along with their documents which according to the law must be made in the form of a notary deed or a deed drawn up by the making official deed.¹³

Electronic documents that can be used as evidence must be documents that can be maintained for their authenticity and can be accounted for for their veracity, electronic documents are very easy to manipulate so that not all electronic documents can be used as evidence. In article 6 of the ITE Law, it is explained that electronic information and/or electronic documents are considered valid as long as the information contained therein can be accessed, displayed, guaranteed for its integrity, and can be accounted for so as to explain a situation. the. According to Soerjono Soekanto, there are 5 (five) factors that influence law enforcement, namely:

- The legal factor itself, which is limited by law only;

¹³ Josua Sitompul, 2012, *Cyberspace, Cybercrimes, Cyberlaw: Review of Aspects of Criminal Law*, Tatanusa, Jakarta. p. 230

- Law enforcement factors, namely the parties that make up and apply the law;
- Factors of facilities or facilities that support law enforcement;
- Community factors, namely the environment in which the law applies and is applied;
- Cultural factors, as a result of work, creativity and taste based on human initiative in social life.¹⁴

4. Conclusion

Based on the results of the study it was concluded that the factors that led to the occurrence of online buying and selling fraud were influenced by various factors including economic factors, environmental factors, socio-cultural factors, the ease of committing online buying and selling fraud, the minimum risk of being caught by the authorities, factors push factors, pull factors, and victim role factors. Criminal liability for perpetrators of online buying and selling fraud must fulfill the elements of each article, so as to avoid misinterpretation in Article 378 of the Criminal Code and Article 28 paragraph (1) of the ITE Law and can determine the imposition of accountability in Article 28 paragraph (1) of the ITE Law which explains the disadvantages in terms of buying and selling in cyberspace.

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¹⁴ Soerjono Soekanto, 2013, Factors Influencing Law Enforcement, Rajawali Press, Jakarta. p. 8

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