

What is the Role of the Consumer Protection Agency in Leveraging and Obligatoir Systems?



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ABSTRACT: Along with technological developments, buying and selling of goods according to Islamic law and buying and selling of goods with a levering and obligatoir system in the Civil Code often cause losses to the buyer or consumer. Therefore it is necessary to protect consumer rights. This article aims to find out first, the sale and purchase agreement of movable goods that are obligatory in nature with those that are levering in the Civil Code and Islamic Law. Second, to find out the role of consumer protection agencies in the sale and purchase of movable goods from the perspective of the Civil Code and Islamic Law. The results of the discussion show The Civil Code adheres to the system that the sale and purchase agreement is only " obligatory ", while Islamic law does not adhere to the principle of obligatoir . The results of the discussion show, First, in Islamic law when the seller of goods and the buyer reach an agreement, then there must be levering simultaneously. Unlike the Civil Code, goods may be handed over at any time, as long as the buyer and seller agree. Second, the Consumer Protection Agency can play an important role well if law enforcers have high integrity, laws that are made have legal certainty, and are in accordance with the legal culture of society.

KEYWORDS: Consumer Protection Agency; obligatoir ; leverage ; Buy and sell

A. INTRODUCTION

Civil Code adheres to the system that the sale and purchase agreement is only " obligatory ", meaning that the new sale and purchase agreement places reciprocal rights and obligations between the two parties of the seller and the buyer . The sale and purchase agreement in the Civil Code has not transferred property rights. The new property rights are transferred by levering or surrender (Muhammad , 2018) . In the Civil Code system, levering is a juridical act to transfer ownership rights in three ways, depending on the type of goods. By Dutch scholars, levering was actually constructed as a zakelijke overeenkomst , namely an agreement again (second stage) between the seller and the buyer which specifically aims to transfer property rights from the seller to the buyer. The nature of buying and selling according to the Civil Code as " obligator only" is very clear from Article 1459 of the Civil Code which states: "Property rights to the goods being sold do not transfer to the buyer as long as the delivery has not been made according to Articles 612, 613 and 616 of the Civil Code (Syahrani , 2019) .

According to Islamic law, there are four pillars of buying and selling: there is al-muta'qidain (seller and buyer) as a person who has a contract, there is a lafaz consent granted (shigat) , there is an object, namely the goods purchased, there is an exchange rate for the replacement of goods (Haroen, 2019) . But don't forget, there is one of the conditions that must be met in a buying and selling transaction, namely the fulfillment of special shihah requirements , namely the prohibition of containing elements of usury, namely in the form of unusual additions in payments (Mas'adi, 2017) . In the Sharia Economic Law Compilation (KHES), Article 76 KHES: The conditions for the object being traded are that the item being traded must already exist, and the item being traded must be able to be delivered. Article 81 KHES reads: After the contract is made, the buyer is obliged to pay the price and the seller is obliged to deliver the goods.

In Islamic law, all agreements to buy and sell goods are not distinguished from agreements to buy and sell goods which is its nature obligatoir with the levering. This means that when the seller of goods and the buyer reach an agreement, then at the same time there must be levering (delivery of goods to the buyer). Unlike the Civil Code, goods may be handed over at any time, the important thing is that the buyer and seller agree (Djamil, 2019) . Based on this information, the theory used in this article is the theory of the legal system (three elements law system) from the perspective of Lawrence Meir Friedman, and the theory of legal purposes (theory of three basic legal values) by Gustav Radbruch .

As for the Civil Code, the sale and purchase agreement has not transferred property rights. The new property rights are transferred by levering or surrender. As a result of the sale and purchase agreement in the Civil Code has not transferred property rights, the Civil Code allows people to buy goods, then the buyer submits the payment/price, while the delivery of the goods can be tomorrow, the day after tomorrow, even next month (Subekti, 2018) . If at the due date, for example, it turns out that the goods

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delivered by the seller/business actor are not in accordance with the agreement, then this condition causes the consumer or buyer to be harmed, from this situation it is also necessary to protect consumer rights. Consumer protection is needed to create a sense of security for consumers in completing their life needs. The need for consumer protection must also be impartial and fair. As the basis for legal determination, the principle of consumer protection is regulated in Article 2 UUPK 8/1999.

The problem to be answered from the role of consumer protection agencies related to the levering system (delivery) and the obligatoir system in the sale and purchase of movable goods is whether Islamic Law and the Civil Code distinguish between obligatoir and levering movable goods sale and purchase agreements? How are the similarities, differences, advantages and disadvantages in the Civil Code and Islamic law related to the levering and obligatoir systems in the sale and purchase agreement of movable goods? What is the role of consumer protection agencies in the levering and obligatoir system in the sale and purchase agreement of movable goods from the perspective of the Civil Code and Islamic law?

The interesting thing about this article is that first it should (*das sollen*) with Law no. 8 of 1999 concerning Consumer Protection, consumers are protected, but in reality (*das sein*) consumer rights have not been fully protected. Even though the original purpose of the formation of Law no. 8 of 1999 concerning Consumer Protection, namely protecting consumers in Indonesia. The second gap is that the buying and selling system in the Civil Code and Islamic law should not be opposed but rather complement and complement each other, but in reality there are some people who think that the two legal systems are contradictory and have no similarities, so here the role of consumer protection institutions is needed to protect consumers. consumer rights that use two different legal systems when receiving consumer complaints or complaints.

Complaints or consumer complaints are meant, for example the consumer gets the item not in accordance with the conditions promised. Even though in Article 4 of Law no. 8 of 1999 concerning Consumer Protection of the Republic of Indonesia explains that consumer rights include the right to comfort, security and safety in consuming goods and or services; the right to choose goods and or services and obtain said goods and or services in accordance with the exchange rate and the conditions and guarantees promised; the right to be treated or served properly and honestly and not discriminatory; the right to obtain compensation, compensation and or compensation, if the goods and or services received are not in accordance with the agreement or not as they should be; etc.

The importance of this article is because buying and selling is a familiar thing in the life of Indonesian people, every day there are people who carry out buying and selling activities. Buying and selling can be interpreted as a transaction carried out by two parties, namely the seller as a business actor and the buyer as a consumer. In buying and selling activities, sometimes one of the parties is harmed, especially the consumer. Because of this, Indonesia issued a consumer protection law. Not a few Indonesian people do not know the importance of consumer protection law, especially for buying and selling activities. Based on this, the purpose of this article is to find out why consumer protection law is important to be understood by sellers as business actors and buyers as consumers.

There are several previous studies that discuss consumer protection, for example, first, Yustina's article Dhian Novita and Budi Santoso who focused on "The Urgency of Reforming Consumer Protection Regulations in the Digital Business Era" (Novita and Santoso, 2021) . Second, the article by Aminudin Aziz, et al , which focuses on "Legal Protection of Consumers of Refill Drinking Water by the Health Service in Slawi District " (Aziz, 2019) . Third, Nabila Emy Mayasari's article , which focuses on "Legal Protection in Cases of Food Supplements Containing Pork" (Mayasari, 2019) . Fourth, Mulyani Zulaeha's article focuses on "Responsibility in Leveraging Online Purchase Agreements". Fifth, Rafael La Porta's article , which focuses on " Investor Protection and Corporate Governance " (La Porta, 2017) . None of the five previous articles discussed the role of the Consumer Protection Agency in the levering and obligatoir system in the sale and purchase agreement of movable goods from the perspective of the Civil Code and Islamic Law.

B. DISCUSSION

1. Agreement For Sale and Purchase of Movable Goods That Are Obligatory In Nature With Those Who Are Leveraged In The Civil Code And Islamic Law

The Civil Code adheres to the system that the sale and purchase agreement is only " obligatory ", meaning that the new sale and purchase agreement places reciprocal rights and obligations between the two parties of the seller and the buyer. According to the Civil Code, the sale and purchase agreement has not transferred property rights. New property rights move by levering or handing over (Subekti, 2018) . The difference that occurs in the engagement process between Islamic Law and the Civil Code is at the stage of the agreement. In Islamic Contract Law, the first party's promise is separated from the second party's promise (which is in two stages), only then is the agreement born. Whereas in the Civil Code, the agreement between the first party and the second party is one stage which then creates an agreement between them. According to A Gani Abdullah, as quoted by Gemala Dewi et al ., in the Islamic Law of Engagement, the starting point that distinguishes it the most is the importance of the elements of the pledge (consent and consent) in each transaction. If the two promises between the parties are agreed upon and followed by a pledge (consent and consent), then an ' aqdu (agreement) occurs (Dewi, 2020) .

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Article 63 KHES (Compilation of Sharia Economic Law): (1) The seller is obliged to deliver the object of sale and purchase according to the agreed price. (2) The buyer is obligated to hand over money or objects equivalent in value to the object of sale and purchase. Article 76 KHES: The condition for the object being traded is that the item being traded must already exist; Items being traded must be delivered immediately.

Islamic law does not regulate exactly how to lever movable and immovable goods. Islamic law fully surrenders to the agreement between the parties. Why doesn't Islamic law regulate the way of leveraging movable and immovable goods? According to Fathurrahman Djamil in Islamic law (Islamic fiqh) relates to the delivery of movable and immovable goods, there is no definite arrangement regarding the form of delivery . This is due to the fact that the need for a form of surrender at the time the formation of the law has not been considered a real need in society. The validity of a transaction is considered sufficient to be seen from the process of fulfilling the elements of a transaction. Even so, even though it does not explain the details of the method and form of delivery of movable and immovable goods, according to Islamic law everything that will bring good to the contracting parties can be recognized by fiqh (Islamic law) as provisions that can be carried out and are binding on the parties . those who run it (Djamil, 2019) obligatoir and leveraging agreements . In Islamic law, all agreements to buy and sell goods are not distinguished from agreements to buy and sell goods which are obligatory to those who are leveraging. This means that when the seller of goods and the buyer reach an agreement, then at the same time there must be leveraging (delivery of goods to the buyer). Leveraging (delivery of goods to the buyer) cannot be postponed, it cannot be later. If the goods are not immediately delivered then the sale and purchase is considered invalid or cancelled.

Unlike the Civil Code, goods may be handed over at any time, as long as the buyer and seller agree. Thus, the Civil Code distinguishes between agreements for the sale and purchase of goods which are obligatory to those who are leveraging. This means that when the seller of goods and the buyer reach an agreement, then at that time the goods do not have to be delivered right away.

The concept of buying and selling in Islamic law can be said to have been valid in Indonesia. There are already guidelines for this, namely in the Compilation of Sharia Economic Law (KHES). In CHAPTER IV (Bai' /Buying and Selling) and CHAPTER V (Consequences of Ba'i /Buying and Selling) KHES regulates the concept of buying and selling (al-bai'). Even so, what is used by Indonesian people regarding buying and selling uses the Civil Code, a concrete example is buying and selling online.

2. Leveraging and Obligatory Systems in the Sale and Purchase of Movable Goods Perspective of the Civil Code and Islamic Law

Along with technological developments, buying and selling of goods according to Islamic law and buying and selling of goods with a leveraging and obligatoir system in the Civil Code are not spared from the situation where there are buyers or consumers who are harmed by business actors. Therefore it is necessary to protect consumer rights (Sukarna , 2018) .

Technological developments change the order of values and human life, one of which is business development. The need for laws that can guarantee the rights of parties in business in the digital era, especially consumer protection, is increasing rapidly as problems become more complex (Novita and Santoso, 2021) . When we pay attention to the condition of consumers in Indonesia today, it appears that the position of consumers is still very weak compared to producers, so it is necessary to empower consumers so that their position is not always on the disadvantaged side. Consumer empowerment can be carried out through the application of adequate consumer protection laws, where consumer protection is relevant at the three stages of consumer transactions, namely pre-purchase , during purchase, and after purchase (Aziz, 2019) .

In Indonesia, currently consumer protection is getting attention from the public because it involves rules for creating prosperity, namely by having a balance between business actors and consumers so that it can create prosperous and prosperous people. Globalization and an increasingly developing economy have produced various types and variations of goods and/or services that can be consumed by the public (Apriani, 2019) . The most prominent issue in globalization is the application of the free market system which is currently accelerating. The entry and exit of goods and services across national borders has benefits for consumers, namely consumers have the freedom to choose the goods and services offered. However, on the other hand, a negative impact arises, namely consumers will become the target of business actors to get the maximum profit (Mayasari, 2019) .

Profits pursued by business actors open up the possibility of ignoring consumer rights, for example when buying and selling goods, it turns out that the promised movable goods are not in accordance with the agreement. This is understandable because BW (Civil Code) adheres to the system that the sale and purchase agreement is obligatory only, meaning that the new sale and purchase agreement places reciprocal rights and obligations between the two sides of the seller and the buyer, namely placing the seller on the obligation to handing over the ownership rights to the movable property that he sells, as well as giving him the right to demand payment of the agreed price. Likewise, placing an obligation on the buyer to pay the price of the movable property in exchange for his right to demand the transfer of ownership rights to the movable property he purchased (Muhammad, 2018) .

The role of consumer protection institutions such as the Non-Governmental Consumer Protection Agency (LPKSM), which is engaged in consumer protection is very much needed in society, its role which is recognized by the government has the opportunity to play an active role in realizing consumer protection. This non-governmental consumer protection institution was established by law and is recognized for its existence and has activities (Sukarna, 2018) as formulated in Article 44 of Law no. 8 of 1999 concerning consumer protection, including: a. disseminate information in order to increase awareness of the rights and obligations and prudence

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of consumers in consuming goods and/or services; b. provide advice to consumers who need it; c. cooperating with relevant agencies in efforts to realize consumer protection; d. assist consumers in fighting for their rights, including receiving consumer complaints or complaints; e. carry out joint supervision of the government and the public on the implementation of consumer protection.

In an effort to carry out consumer protection activities, institutions or agencies are needed that become a forum for consumers. Institutions or agencies in consumer protection, including: 1. The National Consumer Protection Agency (BPKN) 2. The Non-Governmental Consumer Protection Agency (LPKSM) 3. The Indonesian Consumers Foundation (YLKI) (Susila, 2017) obligatory sale and purchase agreements with a levering system (Kornelius Benuf, 2020) . The need for consumer protection must also be impartial and fair. This is as stated by Gustav Radbruch who is famous for the theory of legal purposes (the theory of three basic legal values). Gustav Radbruch, although he did not form a school, has much in common with Hans Kelsen's views , in his stance which is called relativism (Rasjidi, 2018) . Radbruch , a German politician and legal scholar, experienced influence from the Marburg neokantian school , but also from the Baden school of neokantianism (Huijbers, 2018) . Gustav Radbruch argues that the purposes of law include: justice, usefulness and legal certainty (Salman, 2018) . Radbruch's opinion can be used as a basis for further optimizing the role of the Consumer Protection Agency in line with people's expectations.

The Consumer Protection Agency can play an important role properly if law enforcers have high integrity, the laws that are made have legal certainty, and are in accordance with the legal culture of society. This legal system theory is appropriate for disclosing law enforcement against consumer protection laws starting from law enforcers, the contents of the law, and the legal culture of society in Indonesia. As is well known, according to Lawrence Meir Friedman, the legal system consists of three elements, namely structure or legal structure, substance and legal culture (Friedman, 2015) . The structural elements of a legal system include various institutions created by the legal system with various functions in the framework of the functioning of the legal system. One of these institutions is the court. Meanwhile, the substance component includes everything that is the result of structure , including legal norms in the form of regulations, decisions, and doctrines (Saifullah, 2018) .

Apart from structure and substance , elements of legal culture are still needed for the functioning of a legal system (Rahmayani , 2018) . Legal culture includes people's attitudes or the values they hold that determine the functioning of the legal system in question. It is these attitudes and values that will have a positive or negative influence on behavior related to law. So that legal culture is an embodiment of people's thinking and social forces that determine how the law is used, avoided or abused (Saifullah, 2018) .

The importance of legal protection for consumers regulated in law is to prevent problems from arising in the future because everyone, both individually and collectively under any circumstances, must become a consumer for a particular product or service. In general, there are four basic consumer rights that must be protected, namely: the right to safety, the right to be informed ; the right to choose and finally the right to be heard . Legal protection for consumers can be carried out before the transaction (no conflict/pre purchase) and/or after the transaction (conflict/post purchase) occurs (Zakki , 2013) .

In Indonesia, consumer protection is needed, among other things: that national development aims to realize a just and prosperous society that is materially and spiritually evenly distributed in the era of economic democracy based on Pancasila and the 1945 Constitution; that the development of the national economy in the era of globalization must be able to support the growth of the business world so as to be able to produce a variety of goods and/services that contain technology that can improve the welfare of society at large and at the same time obtain certainty over the goods and/services obtained from trade without causing harm to consumers (Bambang Eko Turisno, 2012) .

The similarities between the provisions of Islamic law and the UUPK (Law on Consumer Protection (UU No. 8 of 1999) are that business actors are prohibited from providing incorrect information about the products/goods being traded, prohibited from producing goods that are not up to standard, prohibited from hiding defects in the product. goods being traded, are prohibited from forcing consumers to buy their goods, are prohibited from promoting goods excessively so that goods are purchased, there may be no monopolistic practices, unfair competition, and unfair exchange rates, and business actors are obliged to provide compensation as a form of responsibility for consumers who feel disadvantaged for the product they buy Islamic law and UUPK both regulate consumer protection issues to create benefit, justice, balance, security and safety and guarantee legal certainty in trade traffic (Wigati, 2014) .

The differences in the provisions of Islamic law and the Consumer Protection Act are standard clauses, the prohibition of usury, al- tas'ir , khiyar rights , and protection from misuse of circumstances. In the Consumer Protection Act, standard clauses are standard buying and selling agreements that have been prepared in advance by business actors and consumers, whether they like it or not, have to accept it, whereas in Islam there is no standard contract term because business actors and consumers in carrying out buying and selling have the principle of freedom. , justice, willingness, and equality in buying and selling. In the UUPK there is no prohibition on excess exchange rates, because a liberalist economy frees business actors to take as much profit as possible in buying and selling, while Islam stipulates this prohibition which is known as the prohibition of usury (excess exchange rates).

In the UUPK there is no price fixing to overcome monopoly problems and unfair exchange rates, while Islam stipulates a price fixing known as al- Tas'ir (fixing price) . In UUPK there is no khiyar right, there is only compensation, whereas in Islam the right of khiyar and compensation are different things. Khiyar rights are the right to choose to cancel or continue buying and selling if

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there is an element of fraud, while compensation is a form of responsibility of business actors towards consumers who feel aggrieved due to fraud/damage to the trading being carried out. In UUPK, consumers do not have protection against misuse of circumstances due to consumers' lack of knowledge about the product purchased/price conditions on the market, whereas Islam stipulates this prohibition religious values without neglecting social and human values (vertical and horizontal relations/ *hablum minallah wa hablum minannas*), while the UUPK shows more social and human values (horizontal relations/ *hablum minannas*).

C. CONCLUSION

Based on the above analysis, it can be concluded that: obligatoir and levering agreements. In Islamic law, all agreements to buy and sell goods are not distinguished from agreements to buy and sell goods which are obligatory to those who are levering. Unlike the Civil Code, goods may be handed over at any time, as long as the buyer and seller agree. Thus, the Civil Code distinguishes between agreements for the sale and purchase of goods which are obligatory to those who are levering. This means that when the seller of goods and the buyer reach an agreement, then at that time the goods do not have to be delivered right away. The similarities: First, in the Civil Code and Islamic law, a sale and purchase agreement must be transparent (open, frank). Second, in the Civil Code and Islamic law, the principle of freedom of contract applies. The difference: in Islamic Law, buying and selling, the goods must be delivered and accepted by the buyer and other conditions. Whereas in the Civil Code, goods do not have to be surrendered. Islamic law does not adhere to the principle of obligatoir, the Civil Code adheres to it.

The Consumer Protection Agency can play an important role properly if law enforcers have high integrity, the laws that are made have legal certainty, and are in accordance with the legal culture of society. The Islamic Law equation and UUPK both regulate consumer protection issues to create benefit, justice, balance, security and safety and guarantee legal certainty in trade traffic. The difference is that Islamic law shows more religious values without neglecting social and human values (vertical and horizontal relations/ *hablum minallah wa hablum minannas*), while the UUPK shows more social and human values (horizontal relations/ *hablum minannas*).

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