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Principles of Buyer's Responsibility on Bid and Run Actions in Online Auction Buying and Selling Practices

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Abstract

Introduction: The development of the internet causes the practice of buying and selling auctions can not only be done conventionally but can also be done online, one of which is by using Instagram media. This online auction transaction not only provides benefits and convenience for consumers but also has weaknesses and in fact in online auction buying and selling transactions , losses can not only be experienced by consumers, but business actors can also experience losses due to non-fulfillment of achievements that should be done by consumers. One of the consumer actions that harm business actors is Bid an Run in the practice of buying and selling online auctions on Instagram social media.

Purposes of the Research: The purpose of this article is to find out the application of the principle of buyer's responsibility for bid and run actions as a form of legal protection for business actors.

Methods of the Research: The research method used in this research is normative juridical or known as legal research which is carried out by studying and analyzing the substance of laws and regulations on the subject matter or legal issues in consistency with existing legal principles.

Results of the Research: The results show that Legal liability for buyers who in bad faith deliberately do not pay or take bid and run actions can be sued based on Article 1243 of the Civil Code, Article 21 paragraph (2) letter a and paragraph (4) of the ITE Law, and Article 6 letter a and b of the Consumer Law, as well as electronic agreements that have been agreed between business actors (auction account owners) and consumers (auction bidders). Business actors in this case can also sanction directly to consumers who have committed violations by blocking the consumer's account and being blacklisted so that consumers cannot bid with auction business actors anywhere.

Keywords: Responsibility; Online Auction; Bid and Run.

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7			

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INTRODUCTION

Electronic Commerce or better known as *E-Commerce* is a business activity that can be described as buying and selling goods or services and spreading marketing of goods, and others that are carried out by using the internet and electronic media as a channel for dissemination and communication in carrying out business activities.¹ *E-Commerce* is a modern business model that does not present physical business people and does not use original signatures.² *E-Commerce* is regulated in Law Number 19 of 2016 concerning

Batulis Civil Law Review

¹ Ria Sintha Devi and Feryanti Simarsoit, "Legal Protection for E-Commerce Consumers According to Law Number 8 of 1999 Concerning Consumer Protection," *Jurnal Rectum* 2, no. 2 (2020): p.119-128, https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v2i2.644.

² Andhika Mediantara Primayoga, Hendro Saptono, and Rinitami Njatrijani, "Legal Protection for Consumers Who Receive Goods Not According to Order in Online Buying and Selling Transactions," *Diponegoro Law Journal* 8, no. 3 (2019): p.1732-1743, https://doi.org/https://doi.org/10.14710/dlj.2019.24558.

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Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter abbreviated as ITE Law). Article 1 Number 2 stipulates that "Electronic Transaction is a legal act carried out using a computer, computer network, and/or other electronic media". Buying and selling transactions through social media are one form of this provision.

Social media is a forum for the development of internet-based web technology, which aims to make it easier for many people to access social interactions globally, both participating, sharing information and also forming an *online* network, so as to disseminate their content to public audiences.³ Various types of social media that are developing and used in Indonesia include: Twitter, Instagram, Tik-Tok, Facebook, and others. All of which are always trying to make developments both in the features offered and also in the way of use.

The emergence of these social media was originally only intended to facilitate many people in interacting socially. But along with the development of the times and developments in social media at this time, social media is also used as a means for business promotion and is also a means of buying and selling *online*. One of the social media used to offer goods belonging to business actors or services controlled to other users is through the upload system on Instagram social media. Instagram is used as a place or media to make buying and selling transactions between sellers and buyers who have various facilities that are very supportive. In addition, Instagram has the potential to bring together a seller with thousands or even millions of potential buyers to get to know each other or be friends with each other without having to meet face-to-face to make transactions but easily accessible anytime and anywhere.

According to the *We Are Social* report as of January 2023, the number of active Instagram users worldwide reaches 1.32 billion and Indonesia is the country with the 4th highest number of Instagram users in the world, which is 89.15 million users.⁴ Seeing the number of Instagram users who are starting to grow shows that Indonesian people have begun to accept the development of technology, especially in the business sector. One of the transaction systems practiced today is the online auction buying and selling system.⁵ Auctions, which are usually carried out face-to-face and in one place, are now carried out *online* by utilizing social networking sites, one of which is Instagram.⁶ Many use this Instagram, because this media provides benefits in the form of auction transactions can be accompanied by detailed images or videos of an item (product) offered by the auctioneer. Products auctioned on Instagram also vary, including: electronic devices, *smartphones*, bags, shoes, clothes and much more.

The era of globalization is characterized by various aspects of change, one of which is developments in the field of technology.⁷ In connection with the development of

³ Danis Puntoadi, Creating Sales Through Social Media (PT Elex Komputindo, 2011), p.1.

⁴ Cindy Mutia Annur, "The 4th Highest Number of Indonesian Instagram Users in the World," accessed July 20, 2023, https://databoks.katadata.co.id/datapublish/2023/05/04/jumlah-pengguna-instagram-indonesia-terbanyak-ke-4-di-dunia.

⁵ Rizky Aditya Ramdhan and Khusnul Fikriyah, "Review of Islamic Business Ethics on Buying and Selling Betta Fish with an Online Auction System on Instagram Sidoarjo Area," *Sibatik Journal* 1, no. 8 (2022), https://doi.org/https://doi.org/10.54443/sibatik.v1i8.1631318.

⁶ Danuta and Krisnhoe Sukma, "Crowe's Fraud Pentagon Theory in Fraud Prevention on Procurement Through E-Procurement," *Journal of Accounting Studies* 1, no. 2 (2017): p.161-171, https://doi.org/https://doi.org/10.33603/jka.v1i2.826.

⁷ Fahmi Anwar, "Changes and Problems of Social Media," *Journal of Muara Social Sciences, Humanities, and Arts* 1, no. 1 (2017): p.137, https://doi.org/https://doi.org/10.24912/jmishumsen.v1i1.343.

⁹ Theresia Louize Pesulima. "Principles of Buyer's Responsibility on Bid and Run Actions in Online Auction Buying and Selling Practices" Batulis Civil Law Rev, 5 (1) March 2024: 8 - 16

communication and information technology, where goods or services can be traded to consumers across regional boundaries, consumer protection is an important thing that must be considered when sellers and buyers only have the principle of trust in conducting electronic⁸ commerce transactions. In this regard, consumer protection is more regulated than business actors. Given the unequal position of consumers with business actors, including in purchasing goods *online*, where the *bargaining position* owned by consumers is still low.

But in this case, both parties must be based on good faith in making online buying and selling transactions. In Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as UUPK), especially Article 6 is regulated regarding the rights of business actors to receive payments in accordance with agreements regarding the conditions and exchange rates of goods or services traded, the right to obtain legal protection and good faith from consumers, the right to defend themselves duly in the settlement of consumer legal disputes, The right to name rehabilitation if it is legally proven that the losses suffered by consumers are not from goods or services traded, as well as rights regulated in terms of other laws and regulations.

The UUPK was issued to protect aggrieved consumers, considering the weak position of consumers in general compared to the position of stronger business actors in many ways. In this case, consumers as parties who need goods and / or services offered by business actors are required to follow the rules that have been unilaterally determined by business actors. But the fact is that in online buying and selling transactions, losses can not only be experienced by consumers, but business actors can also experience losses due to non-fulfillment of achievements that should be done by consumers. One of the consumer actions that harms business actors is *Bid an Run* in buying and selling online auctions on Instagram social media. Therefore, legal protection and legal responsibility of consumers (auction bidders) for business actors (auction account owners) are very important to be discussed in this paper.

METHODS OF THE RESEARCH

According to Peter Mahmud Marzuki, legal research is a study to find the truth of coherence, namely the presence or absence of legal rules in accordance with legal norms and the presence or absence of norms in the form of orders or prohibitions in accordance with legal principles.⁹ The legal issues presented in this paper are normative descriptive legal research with *doctrinal research* types. Based on the above understanding, what is meant by research methodology is "a science that studies or talks about the methods used in an effort to find, develop and test the truth of a science in order to achieve a research goal. The type of research used in this study is normative juridical research, namely "research conducted to obtain data from literature materials, especially those related to legal issues that occur by examining primary and secondary legal materials. According to Soerjono Soekanto and Sri Mamudji, "legal research conducted by examining library materials or mere secondary data, can be called normative juridical research or literature (in addition to sociological or empirical legal research that mainly examines primary data). This research is descriptive,

⁸ Deky Pariadi, "Supervision of E-Commerce in Trade Law and Consumer Protection Law," *Journal of Law and Development* 48, no. 3 (2023): p.651-669, https://doi.org/10.21143/jhp.vol48.no3.1750.

⁹ Peter Mahmud Marzuki, *Legal Research*, 1st ed. (Kencana Prenada Media Group, 2019), p.47.

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namely: "a method used to describe an ongoing condition or condition whose purpose is to provide data about the object of research so that it is able to recognize things that are ideal, then analyzed based on legal theory or applicable laws and regulations.

RESULTS AND DISCUSSION

A. Bid and Run Actions in Online Auction Trading Practices

The term auction was first lively in the Netherlands, which in Dutch is called *Vendu*, while in English it is called *Auction* which means auction or sale in public where in its implementation there are increasing price fluctuations.¹⁰ According to the Big Indonesian Dictionary (KBBI), the definition of auction is a sale in front of a crowd with bids that continue to increase and led by auction officials. Definition of auction in accordance with the Minister of Finance Regulation

Online auctions are known as a form of selling goods carried out in public with written and/or oral price bids that increase or decrease to reach the highest price, which is preceded by the announcement of the auction.¹¹The announcement of the auction is made by the seller during a live broadcast and provides an opportunity for buyers who make an auction in the comment column to bid on the auction object in the form of merchandise from the seller. When the order is in the hands of the business actor and the consumer does not make payment, the order will cause losses because the business actor who should benefit from the order does not even get it.

Online auctions on Instagram social media trade various electronic goods, clothing and well-known goods (*branded*) at prices that are quite affordable below the market price. The auction begins with the custody of goods from the owner of the item to the owner of the auction account, then the owner of the auction account will post the item on his Instagram account with predetermined conditions, then the item is auctioned using a system (*open bid*),¹² then interested bidders will bid as they wish and finally the winner of the auction will be announced by the auction account 1x24 hours.

Every auction sale and purchase transaction carried out on Instagram social media has rules that must be considered and obeyed by prospective buyers. The rules and conditions of the auction that have been made have many similarities between one Instagram account and another. Here are the rules for participating in auctions on Instagram social media: ¹³ 1) The items to be auctioned will go through a verification process by the auction organizer, sent by the seller to the auction organizer and stored by the auction organizer; 2) Bidders must have an Instagram account, if there is no one, participants can first create an Instagram account by using an *email* address and *password*. after creating an account, participants can directly open the auction organizer's Instagram account; 3) Photos of goods, item descriptions, starting prices and multiples prices are listed on the organizer's Instagram account, so that

11 Theresia Louize Pesulima. "Principles of Buyer's Responsibility on Bid and Run Actions in Online Auction Buying and Selling Practices" Batulis Civil Law Rev, 5 (1) March 2024: 8 - 16 P-ISSN: 2722-4465, E-ISSN: 2746-8151

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¹⁰ Rachmadi Usman, Auction Law (Jakarta: Sinar Grafika, 2017), p.19.

¹¹ Article 1 Number 1 of the Minister of Finance of the Republic of Indonesia Number 113, PMK.06 of 2019 concerning Auction Hall ¹² Ibid Astra, "Auction Terms," accessed March 15, 2023, https://blog.ibid.astra.co.id/detail/buat-kamu-yang-belum-paham-yukkenalan-sama-istilah-istilah-yang-ada-di-lelang-wYI.

¹³ instagram.com/hobiauction. "Rule:s Bidder". Click to view: <u>https://wwwinstagram.com/</u> s / aGlnaGxpZ2h0OjE3ODUxOTk2NzA1OTMzMzA1?story_media_id=2272519423871358879&utm_medium=copy_link. Retrieved March 15, 2023

participants can choose the desired items and their purchasing ability. Then participants who have found the desired item, can follow the auction offer by writing the desired price multiple in the comment column on the photo of the desired item on the organizer's Instagram account. The bidding time is determined by the organizer, namely the offer will be closed by the organizer writing a "*close*" comment on the photo of the item on the organizer's Instagram account every 15.00 WIB every day; 4) The winner of the auction or buyer is a participant who writes the highest *bid* or price above the "close" comment by the organizer in the comment column on the photo of the item on the organizer's Instagram account, which will then be contacted by the organizer via Instagram message. Then the winner can make a payment made by interbank transfer method. Payment can be made through the online auction organizer's account or the organizer's account; 5) After payment is confirmed, the seller is obliged to send the auction item to the address of the auction winner. The delivery of this auction item uses courier services for delivery of goods in general such as JNE or TIKI or can be through sending instant goods by online motorcycle taxis such as gojek or grab.

There is a problem that occurs related to this online auction system, namely prospective buyers who participate in bidding then disappear or do not continue the transaction after being declared the winner of the auction or the person entitled to get the item. Actions like these are often referred to as *Bid* and *Run actors*. The purpose of *Bid and* Run *is an* act of an auction winner who has submitted a bid and is not responsible for his bid, namely not paying to the person in charge of the auction in accordance with the predetermined time limit. The winner of the auction then blocks the access of the person in charge of the auction to contact the irresponsible winner and removes any traces of identity so that the identity of the *bid* and *run* perpetrator is not exposed. The above actions certainly violate the provisions of Article 5 of the Law which stipulates that consumers must have good faith in making goods and/or services purchase transactions and are obliged to pay in accordance with the agreed exchange rate.

Every auction sale and purchase transaction carried out on Instagram has regulations that must be considered and obeyed by sellers and buyers who will make transactions, one of which is through the enforceability of the ITE Law. This is so that when the auction has taken place and ended, no party will be harmed. With the rules made by the auction account owner and must be obeyed by all auction participants, all matters that regulate the process of conducting the auction must be agreed upon by prospective buyers if they want to follow the auction buying and selling process on Instagram. The agreement refers to Article 1338 of the Civil Code which confirms that: "all consents made are valid as law for those who make them. The Agreement is irrevocable except on the basis of an agreement between the parties and the Agreement must be executed in good faith. Furthermore, Article 18 Paragraph 1 of the ITE Law also confirms that "Electronic transactions poured into electronic contracts are binding on the parties".

The provisions mentioned above are instruments that can be used as a basis for liability in online auction transactions in the event of default by one of the parties, in this case it is a *bid and run action* carried out by prospective buyers. Actions like this still often occur during the online auction process, namely consumers who make price offers but are not serious about buying. So when he won the auction, he actually ran away and was not responsible for paying the price of the goods he had won. Thus, the owner of the auction account

(business actor) can sanction directly to prospective buyers as stipulated in the auction account regulations through Instagram.

Default is a condition where the non-achievement of performance or non-performance of obligations in the agreement agreed by both parties whether it is purely due to purely intentional error or negligence that causes losses. According to J. Satrio, default is a situation where the debtor cannot fulfill his promise or does not fulfill as it should or has been promised, all of which is blamed on him.¹⁴ Default cases committed by buyers in online auction transactions often occur because they do not meet each other directly between the parties.

B. Consumer Responsibility for *Bid and Run Actions in* Online *Auction Buying and Selling Practices*

Consumers (auction bidders) who bid and *run actions in* online auctions via Instagram have violated important principles in the agreement, namely the principle of good faith contained in Article 1338 Paragraph 3 of the Civil Code and the right of business actors to receive payments in accordance with the agreement as stipulated in Article 6 of the Law and also contrary to the obligations of the consumers themselves where Article 5 of the Law has clearly stipulated that consumers must have good faith in making goods or services purchase transactions and are obliged to pay in accordance with the agreement as stipulated to propriety as stipulated in Article 1339 of the Civil Code which stipulates that "An agreement is not only binding for things expressly stated in an agreement, but also binding on everything that by the nature of the agreement is required by propriety, custom and law.

The principle of good faith in question is not the understanding of good faith contained in the field of property law, but the understanding of the principle of good faith here is an objective understanding, which is related to public order and decency. So he understanding of the principle of good faith must be distinguished from the principle of good faith in implementation which means propriety with the understanding of good faith in the law of things which means honesty. The meaning of good faith refers to a reasonable standard of behavior which means nothing but that people must obey their promises or words under all circumstances, or an Act that reflects a standard of justice or societal decency as a respect for the purpose of the law. Such good faith does not only refer to the good faith of the parties, but must also refer to the values that develop in society.¹⁵

The existence of good faith in every relationship with society gives importance to public order. Good faith as an inner attitude not to hurt the rights of others is a guarantee for more orderly public relations. The existence of the principle of good faith itself essentially aims to create justice for the parties in the transaction.¹⁶ The implementation of the principle of good faith is not simple, it is important in every mutually agreed contract. The *bid and run action in this* online *auction* is focused on good faith which lies in the implementation of something, namely consumers who have bad intentions towards business actors.

¹⁴ Annisa Putri N, "Responsibilities of the Parties in Online Buying and Selling Transactions," *Journal Lex Privatum* IX, no. 6 (2021): p.21.

¹⁵ Sicilya Marthen, "Buyer's Good Faith in Online Buying and Selling Transactions through the Shopee Paylater Application" (2023), p.63.

¹⁶ Risqi Mumpuni Dyastuti, "Legal Effects of the Application of Good Faith Principles to International Investment Contracts in Indonesia," *Law Journal* 3, no. 2 (2023): p.125-139, https://doi.org/https://doi.org/10.30598/bacarita.v3i2.8962.

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In connection with this, consumers must be responsible for their *bid and run* actions. The legal responsibility of consumers (auction bidders) is expressly regulated in Article 21 Paragraph (2) Letter a of the ITE Law, namely: all legal consequences in the implementation of Electronic Transactions if carried out alone are their responsibility and if the violation is caused by the service user, then legal responsibility is imposed on the service user (Article 21 Paragraph 4 of the ITE Law). In this case, the service user in question is the buyer / consumer in buying and selling *online* auctions. Because the *bid and run* action is an error or negligence of the consumer, then of course the buyer / consumer is subject to legal consequences for the default he committed. The forms of default in buying and selling online auctions in terms of buyers include: a) Late payment. In this case, the delay in payment is usually the party who often does the delay is the buyer; b) Not making payments Every buyer is usually different, meaning that in making transactions *online* they have their own goals and intentions. In reality there are some buyers who do not perform their obligations properly; c) make payments but not in accordance with what is agreed / agreed. This is rare in buying and selling *online.*¹⁷

The tangible form of legal protection provided by the government to protect the rights of business actors has been regulated in the UUPK. Therefore, business actors in online auction buying and selling transactions must also get protection in terms of payment where consumers must pay in full and make repayment then confirm the payment after that the goods are sent. Business actors are also entitled to legal protection from consumer actions in bad faith.

In the case of default, in this case, *the bid and run* carried out by consumers in buying and selling online auctions, there are electronic documents that must be agreed upon by both parties, including a clause about responsibility for parties who break promises in the electronic agreement made. Before fulfilling the responsibility to the party who defaults, especially buyers who have bad faith deliberately do not pay the price of the auction item they have won, of course, there must first be proof of whether or not the party must be responsible for the default that occurs. For this reason, proof before giving legal responsibility to a legal subject is an important aspect.

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¹⁷ Yudha Sri Wulandari, "Legal Protection for Consumers Against E-Commerce Buying and Selling Transactions," *Journal of Adjudication* 2, no. 2 (2018): p.199-210.

responsible for the default that occurs. For this reason, proof before giving legal responsibility to a legal subject is an important aspect. **CONCLUSION**

From all the descriptions mentioned above, it can be understood that legal liability for buyers who have bad intentions deliberately not paying or taking *bid and run* actions can be sued based on Article 1243 of the Civil Code, Article 21 paragraph (2) letter a and paragraph (4) of the ITE Law, and Article 6 letter a and b of the Consumer Law, as well as electronic agreements that have been agreed between business actors (auction account owners) and consumers (auction bidders). Business actors in this case can also sanction directly to consumers who have committed violations by blocking the consumer's account and being *blacklisted* so that consumers cannot bid with auction business actors anywhere. For this reason, in terms of implementing online auction buying and selling transactions, both business actors and consumers should have good faith in implementing agreements from the pre-contractual, contractual and post-contractual stages so as not to cause losses to the parties.

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