

## Research Article

# Legal Liability of Minors as Perpetrators of Online Buying and Selling Fraud in Indonesia

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## ABSTRACT

The development of internet technology is directly proportional to the growth of online trade. Easy access to online buying and selling transactions is faced with the risk of fraud, including the fraud committed by minors. This paper discusses the criminal liability of minors who commit criminal acts of fraud in online buying and selling transactions. The research method used was a normative legal research method. The results of this study indicate that online buying and selling transactions carried out by minors based on legal principles of engagement are legal. Fraud of online buying and selling transactions carried out by minors can be subject to criminal penalties by taking into account the rights of children under the Child Protection Act. Although children are not free from legal bondage, keeping children away from the formal justice process can avoid stigmatization of children in conflict with the law.

Keywords: Legal Liability; Child; Buying and Selling Online; Criminal.

## A. INTRODUCTION

The development of time and technology makes activities that are usually carried out face-to-face at this time can be done via the internet, such as buying and selling online or e-commerce (Hayati, 2021). E-commerce is a business process using electronic technology that connects companies, consumers, and the public in the form of electronic transactions (Sudarmanto, 2020). Thus, in principle, a business with e-commerce is a scrippless paperless trading business (Fuady, 2002). At this time the internet and digital media have become an option for the community because they are considered easier and more practical in conducting online buying and selling activities (Setiawan, Ghufon & Mochtar, 2020). Long distance is no longer a reason for

someone not to get an item, with e-commerce transactions carried out quickly and easily. The goods will be sent directly by the seller to the buyer's address without having to meet (Anggraeni, & Rizal, 2019). In 2019, the number of public complaints related to online fraud reached 1,616 cases, one of the many online fraud cases that occurred was when 4 children who were still junior high school students were arrested for committing online fraud under the guise of buying and selling rare or limited edition items on the Instagram platform. . The number of conveniences in accessing the internet does not rule out the possibility of risks or unwanted things happening again, such as fraud against online buying and selling and so on.

Etymologically, buying and selling means exchanging property for property. Meanwhile, according to the terminology of buying and selling is a mutually binding agreement between the seller, namely the party who delivers or sells the goods and the buyer as the party who pays or buys the goods being sold. Sale and purchase is a reciprocal agreement in which one party (the seller) promises to give up ownership rights to an item while the other party (the buyer) promises to pay a price consisting of a sum of money in exchange for the acquisition of the property rights. In 2019, the number of public complaints related to online fraud reached 1,616 cases, one of the many online fraud cases that occurred was when 4 children who were still junior high school students were arrested for committing online fraud under the guise of buying and selling rare or limited edition items on the Instagram platform. According to Wirjono Prodjodikoro, buying and selling is an agreement in which a party binds himself to be obliged to deliver an item and the other party is obliged to pay a price, which is agreed upon by both of them (Prodjodikoro, 1991).

The definition of sale and purchase is "an agreement in which one party binds himself to deliver an item, and the other party pays the promised price". Based on the understanding in Article 1457 of the Civil Code, buying and selling includes an agreement. The conditions for the validity of the agreement in accordance with Article 1320 of the Civil Code, are the agreement of those who bind themselves, the ability to make an engagement, the existence of a certain thing, and a lawful cause. If the conditions regarding the agreement and skills

(subjective conditions) are not met, then an agreement can be canceled, meaning that the agreement remains until a decision is made by the judge. Meanwhile, if the conditions regarding a certain matter and a lawful cause (objective conditions) are not met, then an agreement is null and void, meaning that from the start it was considered that there was no agreement (Buana et al, 2020). From the explanation above, it can be said that buying and selling is a binding agreement between the seller and the buyer in which the seller submits the object of the goods while the buyer pays the price of the specified object (Kamran, Miru & Maskun, 2021).

The development of telecommunications technology and computerization has led to cultural changes in everyday life. In this highly developed era, electronic media has become one of the mainstay media for communication and business. Almost all modern companies today use the internet to market their products and services (Rachmawati, Tektona & Susanti, 2021). This development also changed the method of buying and selling. Currently the buying and selling method has switched to online or online buying and selling which is better known as e-commerce (Sudirman, & Haryati, 2017). E-commerce can be defined as an economic transaction when buyers and sellers together through electronic media from the internet form a contract agreement regarding the price and delivery of certain goods or services and complete the transaction through the delivery and payment of goods or services according to the contract (Disemadi, & Prasetyo, 2021).

Generally, there are several advantages and disadvantages of this e-commerce system in which the advantages are varied products and services, shorten the distribution chain, easier payments, cost efficiency, brands are closer to consumers, and can shop anytime (Emerhub.ID, 2018). Behind these advantages, there are several drawbacks, including the vulnerability of online buying and selling transactions, loss of privacy such as self-identity, strong dependence on information and communication technology, and not knowing who is transacting in the sense that only through social media accounts owned by the seller or the buyer makes a transaction without knowing who is behind the account so that the risks that occur can also be in the form of several things, such as items that do not match, lack of explanation about an item, it can even be in the form of fraud. If these things happen then of course there are parties who are harmed, therefore problems begin to arise which are ultimately related to the law. The development of technology is also followed by the development of regulations regarding this matter, and as a result, like the things above, of course there are rules that regulate it.

Actions that can harm other people, even though they are carried out online, of course need rules that regulate them, because the development of technology and information demands that the rule of law also develops. Crimes in e-commerce have indeed occurred a lot, the number of reports of online fraud since 2015 has fluctuated, the details in 2015 were 1,494, in 2016 there were 1,570, and in 2017 there were 1,430. As for 2019 the number of public complaints related to online fraud reached 1,616

cases (Wardani, 2020), but what happens if the crime is committed by a minor and the crime committed is an act that can be categorized as a criminal act (Lee et al, 2015). Problems begin to arise when the injured person wants to ask for responsibility from the perpetrator, but when they find out that the perpetrator is a minor, then what action must be taken by the injured party (Rozaq et al, 2020). Of course, the legal responsibility of minors as perpetrators of criminal acts raises different perceptions, so this research is considered interesting for further study.

The formulation of the problem in this study questions the validity of online buying and selling transactions carried out by minors and questions how the criminal liability of minors in criminal acts of online buying and selling fraud is. The purpose of this research is expected to be useful for the general public, academics in particular and can contribute to legal scholarship related to criminal acts by minors as well as to answer the main problems that have been formulated in this study.

Previous research related to current research has been carried out by Muhammad Kamran, Ahmadi Miru and Maskun who studied fraud in online buying and selling transactions from the perspective of technology and information laws in Indonesia (Kamran, Miru & Maskun, 2021); by Hari Sutra Disemadi and Denny Prasetyo who reviewed the security of consumer data on electronic signatures in online buying and selling transactions (Disemadi, & Prasetyo, 2021); by Muhammad Kamran & Maskun who studied fraudulent actions in online buying and selling transactions based on the legal perspective of

telematics in Indonesia (Kamran, & Maskun, 2021); by Ayesha Haiqa Nurlette, Sufirman Rahman, and Ahyuni Yunus reviewing the legality of buying and selling cosmetics online (Nurlette, Rahman & Yunus, 2021); by Rizka Adi Nugroho and Prihati Yuniarlin who studied the implementation of online trading based on the perspective of civil law in Indonesia (Nugroho, & Yuniarlin, 2021); by Assafa Endeshaw who studies the regulation of e-commerce in Indonesia (Endeshaw, 2002); by Heejin Kim who studies the interaction of law and technology in e-commerce in Southeast Asia (Kim, 2019); and by Rolf H. Weber who examines the opportunities and challenges of digital trade in Asia-Pacific (Weber, 2015).

Based on several previous studies and the description above, this research is a more complex study on how the times and technology develop and their relationship to law, as well as their relationship to the behavior of minors who commit a crime through the internet, especially online buying and selling and how legal responsibility.

## B. RESEARCH METHODS

This research was part of the typology of doctrinal research, in which the method used was a normative legal research method. It was conducted by examining and interpreting theoretical matters concerning principles, conceptions, doctrines, and legal norms, as well as the Law. -Laws relating to the regulation of criminal acts in the context of e-commerce. The research approach used is a statutory approach by utilizing primary legal materials, secondary legal materials and tertiary legal

materials. These legal materials can be obtained through literature studies which are then classified according to the type of legal materials such as regulations related to e-commerce crimes, books and online editions of journals, as well as research articles related to the issues raised. Primary legal materials are data that have legal force such as legislation, while secondary and tertiary legal materials are supporting data for primary legal materials such as published previous studies, related books, and online articles (websites).

## C. RESULTS AND DISCUSSION

### 1. The legitimacy of online buying and selling transactions carried out by minors

Online buying and selling is a practical shopping option at this time, supported again by the covid-19 pandemic which requires people not to meet in person or make physical contact in order to minimize the spread of covid-19 virus. Buying and selling online has become an option for many people because of the fast and easy transactions that can be done. It is also necessary to have sufficient understanding in this online transaction. The most basic knowledge about how to shop and how to make payments will support good decision making for both sellers and buyers when buying and selling via the internet (Firmansyah, 2014). With knowledge and understanding of buying and selling online, at least a little more is a provision and is more careful in conducting transactions via the internet. Even though they have been completely careful in making transactions, still no one knows who and what the

real intentions of the people who make these transactions are.

Online buying and selling transactions can be done by anyone, even by minors or minors, therefore it is necessary to know what a minor or an immature person is. The definition of minors or what is meant by "minors" is those who are not yet 21 years old and not yet married. If a person marries and divorces before the age of 21, he is still considered an adult. Understanding of minors has differences in each law, as in "Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection" in Article 1 number 1 says, "a child is someone who has not 18 (eighteen) years, including children who are still in the womb". Then according to Article 330 of the Civil Code (KUHPerdata), it is stated that the minors are those who have not reached the age of twenty-one years and have not been married before. Then, according to "Law No. 16 of 2019 as an Amendment to Law No. 1 of 1974" concerning Marriage, child in question is one who has not yet reached 19 years of age. Focusing on the subject matter, which is related to the validity of the transaction, what will be used in this case is the Civil Code.

Engagement is a legal relationship between two or more people, in which one party has the right to demand something from the other party, and the other party is obliged to fulfill these demands (Hakiki, Wijayanti & Kharismasari, 2017). An agreement or engagement which in this case is a transaction, then of course the reference to the legal terms of the agreement goes back to Article 1320 of the Civil Code. Article 1320 of the Civil Code stipulates that

there are 4 (four) conditions for the validity of an agreement, namely: First, there is an agreement for those who bind themselves, Second, the ability of the parties to make an engagement, Third, A certain thing, and Fourth, A cause (causa) which is lawful (Sari, 2017). The first and second conditions are categorized as subjective conditions and the third and fourth conditions are objective conditions. If the subjective conditions are not met, the agreement can be canceled, and if the objective conditions are not met, the agreement is null and void or is considered to be completely non-existent (Hidayani, & Pohan, 2020). In buying and selling online, the agreement is agreed in a transaction that occurs without face-to-face but only agrees on an agreed-upon online agreement. Buying and selling via the internet is a contract that is agreed upon by determining certain characteristics by paying the price first while the goods are delivered later (Phan, 2021). Buying and selling transactions carried out by minors based on the legal terms of the agreement above may be carried out, because the terms of competence are subjective requirements, which consequently can be canceled, not null and void. Therefore, between the two parties, even though there are those who are not competent, the agreement is legal to do either online or not (Aswari, 2018).

Online buying and selling that is developing at this time has also become more advanced where there are many companies or online buying and selling shops that are already very popular, such as Shopee, Lazada, Tokopedia, and so on. With the popularity of the online business, of course, even in the system, companies working in this field have

several terms and conditions that apply to ensure the parties involved. As well as asking for a clear and complete identity so that things do not happen that are not desirable, then regarding the terms of the goods being sold or promoted, they must not conflict with the law and other provisions. However, not all shops or parties in this online buying and selling business have regulations that have been arranged in such a way, there are still several cases related to online buying and selling that often occur because there is still leeway for irresponsible people to take actions that harm others, like fraud. Fraud is an act with malicious intent carried out by one party before the agreement is made (Trisnamansyah, 2017). If the sale of goods online is intended to deceive consumers, then this can be categorized as fraud. Of course, this problem can lead to legal problems, where the party who gets the loss can sue the perpetrator. But what if the person doing this turns out to be a minor, which if viewed from the legal terms of the agreement is allowed.

One of the drawbacks of buying and selling online is that the related parties cannot clearly and directly know who and who is transacting, therefore harmful and risky things can happen. Even though those who carry out online buying and selling transactions are minors, it is legal, but unfortunately in online conditions like this, choosing to cancel the agreement with the related party is a bit difficult because it assumes that both those who sell or buy are equally capable of "the Law No. 8 of 1999 concerning Consumer Protection" has also regulated consumer rights and things that are prohibited for business actors, but if there is indeed a criminal act

that occurs in online buying and selling, both parties are capable or not of suing for something that is violated, even from some of these violations can be subject to criminal sanctions. This deficiency will later cause problems or disputes which can eventually lead to the court.

## 2. Criminal Liability of Minors in Criminal Acts of Online Buying and Selling

Online Fraud is in principle the same as conventional fraud. The difference is only in the means of action, namely using Electronic Systems (computers, internet, telecommunication devices) (Arifyadi, 2019). Fraud can be charged with several laws, according to Article 378 of the Criminal Code (KUHP) which states "Anyone with the intent to benefit themselves or others unlawfully, by using a false name or false dignity, by deception, or a series of lies, inducing another person to hand over something to him, or to give a debt or write off a debt, is punishable by fraud with a maximum imprisonment of four years". then can also be charged with Article 28 paragraph (1) "Law Number 11 of 2008 concerning Information and Electronic Transactions" as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) Article 28 paragraph 1 (Arifyadi, 2019). The content of article 28 paragraph (1) is that every person intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions. The criminal provisions of article 28 are regulated in Article 45A which reads "Everyone who intentionally and without rights spreads false and misleading news that results in

consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR. 1,000,000,000 (one billion rupiah)". In addition, "Law Number 8 of 1999 concerning Consumer Protection" (UUPK) also regulates what is prohibited by business actors, especially as referred to in Articles 9 and 10 where the criminal provisions are regulated in Article 62 which says; (1) Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000,000,000 (two billion rupiah).

There are still shortcomings or can be called legal conflicts in the regulation of online fraud, because the threats in each law have their own differences and there is still a blurring of meaning from the elements of criminal acts contained in several articles above which causes a lack of harmonization of related laws. Legal conflicts can cause legal dysfunction, which means that the law cannot function to provide behavioral guidelines to the community, social control, and dispute resolution to create justice and legal certainty in society. However, in fact, the act of fraudulent online buying and selling can still be followed up with reference to the articles above.

Focusing on crimes committed by minors, article 69 "Law No.11 of 2012 concerning the Juvenile Criminal Justice System" (UU SPPA) states

that "(1) Children can only be sentenced or subject to action based on the provisions of this Law. (2) Children who are not yet 14 (fourteen) years old can only be subject to action." Based on the contents of this article referring to the criminal act of fraud that has been described previously above, a minor or minor may be charged with criminal provisions that have been regulated in the Act.

Fraud committed by minors in online buying and selling can be prosecuted for the articles above, but this criminal prosecution is not the only way that the victim or the injured party can take. Dispute resolution through litigation (court) is not the only dispute resolution method that can be taken by the disputing parties. In addition to litigation, there is dispute resolution out of court (non-litigation), namely dispute resolution through negotiation (deliberation), mediation, arbitration, and conciliation (Rosita, 2017). Article 7 of the SPPA Law states; "(1) at the level of investigation, prosecution, and examination of a child's case in a district court, diversion must be sought. (2) Diversion as referred to in paragraph (1) is carried out in the event that a criminal act is committed: a. threatened with imprisonment under 7 (seven) years and b. does not constitute a repetition of a crime." The diversion model is intended to avoid and keep children away from the formal judicial process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment naturally (Hambali, 2019). In carrying out diversion, which is an obligation to be carried out at every level of examination, investigators, public prosecutors, and judges must consider the crime, the results of

research on children from the Penitentiary, as well as support from the family and community. This provision is an indicator that the lower the criminal threat, the higher the diversion priority (Hambali, 2019).

Fraud in the Criminal Code is punishable by a maximum of 4 years, then the ITE Law regarding fraud is also punishable by a maximum of 6 years, and the UUPK also contains a criminal provision with a threat of 5 years. If you look back at the perpetrators of minors, diversion can be carried out because considering that diversion efforts are carried out in terms of criminal acts that are punishable by imprisonment for under 7 (seven) years. Therefore, if a minor commits a criminal act of fraud in buying and selling online, diversion can be an alternative to resolving this case. The SPPA Law has determined that the diversion process is carried out at every level of examination, namely at the stage of investigation, prosecution and trial of children. This is explicitly stated in Article 7 paragraph (1) of the SPPA Law. However, if the diversion fails, the investigator makes a diversion report and is obliged to continue the investigation and delegate the case to the public prosecutor by attaching a diversion report and a community research report from the community advisory officer. Although the case continues until the trial, the criminal penalty for a child can only be imposed on a half of the threat for adults because it refers to Article 81 Paragraph (2) of the SPPA Law which states "The prison sentence that can be imposed on a child is a maximum of 1/2 (a half) of the maximum imprisonment for adults". For example, when the child is charged with Article 45A of the ITE

Law which reads "Everyone who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000 (one billion rupiah)." Then, for a child, the maximum imprisonment is 3 (three) years. Digging deeper into diversion, diversion is the possibility for judges to stop or divert/not continue the examination of cases and examination of children during the examination process before the trial (Haines et al, 2013). Considering the concept of diversion and restorative justice is an alternative form of settlement of criminal acts that are directed to an informal settlement by involving all parties involved in the crime that occurred (Nowakowski-Sims, & Rowe, 2017) and restorative justice is a form of settlement of criminal acts that have developed in several countries in tackling crime (Kretschmar et al, 2018).

The resolution of the problems chosen must be wise, and achieving peace is an expected goal for all those who have problems, especially in the cases above, between victims and children. Resolving child cases out of the judicial process can prevent children from depriving children of independence and encourage the community to participate and instill a sense of belonging, responsibility to children, legal protection for the community, whether underage or not, must remain equal. The principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights because historically in the West, the birth of concepts regarding the recognition



and protection of human rights was directed at the limitations and laying down of community obligations and government (Hadjon, 1987). This is done so that in the future the child is given understanding and guidance on how exactly actions are justified or actions that should not be taken, knowledge like this will be a provision for the child not to do the same thing in the future. Considering that children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, government, and the state. The implementation of child protection is based on Pancasila and is based on the 1945 Constitution and the basic principles of the Convention on the Rights of the Child which include the following (Prinst, 2003): 1) Non-discrimination, 2) The best interests of the child, 3) The right to life, survival and development, and 4) Respect for children's opinions.

Protection of children is not limited to acts that violate the regulations in the Criminal Code, but also violates regulations outside the Criminal Code, such as criminal provisions in the Narcotics Law, the ITE Law and so on. The losses obtained by the victim can be resolved amicably and through deliberation between the victim and the parents or guardians of the child, so that the victim is also responsible for the losses that have been obtained.

#### D. CONCLUSION

In principle, the validity of buying and selling both conventionally and online returns to the legal terms of the agreement as regulated in the law. The conditions for a valid agreement according to the Civil Code are (1) agreed, (2) competent, (3) the presence

of a certain thing, (4) and a lawful cause. Terms 1 and 2 are subjective terms which mean that the agreement can be canceled, and terms 3 and 4 are objective conditions in which the agreement is null and void. Referring to the discussion that has been described above, the validity of the sale and purchase agreement made by minors, even though they do not meet the subjective requirements, the agreements made are legitimate. Then, related to criminal acts of fraud committed by minors in online buying and selling activities, this action clearly violates the provisions of the existing laws and regulations. However, what is different is how the problem is solved. In the juvenile justice process, there are certain virtues that must be considered, such as the age limit of the child and efforts for reconciliation/diversion which must always be prioritized in any resolution of the problem although it does not rule out that a child may be subject to punishment such as imprisonment. The existence of the above virtues does not mean that children are always free from legal bondage, but avoid and keep children away from the formal judicial process so as to avoid stigmatization of children in conflict with the law. It is hoped that children can return to the social environment naturally with additional knowledge provided as lessons for learning. It is necessary not to repeat the same thing in the future.

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