

## CONSUMER LEGAL PROTECTION ON THE IMPLEMENTATION OF E-COMMERCE USING INSTAGRAM WITH A PRE-ORDER SYSTEM DURING THE COVID-19 PANDEMIC

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### Abstract:

The implementation of e-commerce in Indonesia is growing rapidly and has its own online sales place, which is commonly called a marketplace. However, the current rapid technological developments that are used to promote not only use the marketplace but can also be done on social media. The social media that is widely used is Instagram which in carrying out sales transactions uses a pre-order system. The covid-19 virus is endemic. The Korean Hallyu virus is also endemic with the number of merchandise per Kpop sold with a pre-order system. This situation is widely used by people who want to start a business by making it a job during the current pandemic by selling various merchandise and albums for Korean idol groups. But not a few of the seller's abuse this situation to take advantage of themselves to the detriment of others. Many take advantage of the comebacks of each idol group by opening pre-orders for the album and merchandise sales where buyers are required to pay an advance to the seller, but after the goods are finished being produced, the account does not continue the transaction to the buyer, so the goods do not reach the buyer. This action is very detrimental to many buyers who participate in e-commerce transactions on Instagram using the pre-order system, so buyers must get legal protection rights.

Keywords: E-Commerce, Instagram, Legal Protection, Pre-Order

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## INTRODUCTION

The rapid development of internet technology and the high interest in using the internet in society impact various sectors, especially the economy and business. During the COVID-19 pandemic, people are increasingly using the internet for business, which is commonly referred to as buying and selling online or e-commerce. E-commerce is a trading process carried out through an online intermediary site through the internet. E-Commerce provides easy-to-use services for buyers by providing detailed information on each product to product quality. The implementation of e-commerce in Indonesia is growing rapidly; many who use it, ranging from children, teenagers, adults to the elderly, are doing social media activities to shop at online stores.

In general, seven places are used to sell online, namely buying and selling forums, social networks, blogs, messengers, and currently, many marketplaces are popping up, such as a shop, tokopedia, lazada and others. However, with the rapid development of technology today, the promotion media used is increasing, one of which is social media.

Social media is currently widely used by the public to interact, ranging from children to parents who also like interaction through social media, because social media can facilitate communication between fellow users without knowing the boundaries of space and time. Currently, social media is still growing, starting from Instagram, Twitter, Facebook, Line, WhatsApp, and others. However, one of the social media that is currently widely used among young people is Instagram. As of July 2021, there are 91.77 million Instagram users in Indonesia, with the largest percentage of 36.4% being users aged 18-24 years. Instagram is currently not only used to share photos, but people are also starting to use Instagram as a place to do business online.

Many businesses developed by business people through Instagram, such as shoes, clothes, bags, food, accessories, and others.

E-commerce transactions with Instagram, which are widely carried out today, use a pre-order system in their implementation, where buyers must make payments in advance and buyers have to wait for the production process of the goods ordered until the estimated deadline for goods that will come or have been completed. Online shop businesspeople widely use the pre-order system because the product or item purchased is not yet available.

The Covid-19 pandemic that has emerged since 2019 has resulted in the implementation of e-commerce being carried out through Instagram with an increasing pre-order system in the community such as pre-orders of clothes, pre-orders, hijab, pre-orders. Shoe orders are booming right now. among the world's teens are album pre-orders per Kpop's. Not only the covid-19 virus is endemic, but the Korean Hallyu virus is also endemic and increasingly familiar among teenagers today. Besides actors and artists popular in the community, Korean Boyband and Girlband, commonly called idols, are also popular from children to adults. The number of young people like this makes fan groups called fandoms very fanatical about their idols, so any goods or merchandise related to their idols must be purchased. This situation is widely used by people who want to start a business by turning it into a job during the current pandemic.

At the end of 2020, the Korean Hallyu virus is increasingly widespread, with many idol groups making comebacks, making teenagers enthusiastic about buying albums from each group. Teenagers widely use this situation to start a business by opening a pre-order through their Instagram account. But not a few of the sellers' abuse this situation to take advantage of themselves to the detriment of others. Many take advantage of each group's comeback by opening album sales pre-orders from each group's agency via Instagram, where the buyer is required to pay an advance to the seller, but after the goods are finished production, the account does not continue the transaction to the buyer, so the goods do not arrive. To the buyer. This incident has occurred until now; many Instagram accounts have started to open pre-orders for the sale of K-Pop merchandise, where many teenagers are easy targets to become consumers by account owners, which then results in default by the seller to the buyer.

The seller mostly does default in this e-commerce transaction; if the seller defaults, the consumer can contact the seller to confirm the agreement that has been made regarding the goods he bought. In this case, the seller should fulfill his obligations as a seller, which obligations include:

1. Submit the ownership rights to the goods being traded, and
2. To bear the comfort of the goods and to bear the hidden defects.

The weak position of the buyer in terms of proving when a default occurs, where the seller should be fully responsible for the business activities carried out in e-commerce transactions so as not to harm the buyer. This action is very detrimental to many buyers who participate in e-commerce transactions on Instagram using the pre-order system, so that buyers must get legal protection rights. Therefore, the author will examine further the legal protection of consumers in implementing e-commerce transactions with a pre-order system through Instagram media as the basis for the engagement of two parties who enter into an engagement.

## **METHODS**

The author in this study uses qualitative research methods with normative juridical research types that refer to legal norms contained in laws and regulations and norms that develop and live in society using primary and secondary legal sources. This research is descriptive-analytical, which reveals the laws and regulations relating to legal theories that are the object of research and the law in its implementation in the community concerned as the object of research. To examine the problems to be studied, the authors use 2 (two) approaches, namely the statutory and conceptual approaches.

## **RESULT AND DISCUSSION**

The outbreak of COVID-19 in Indonesia and the implementation of Large-Scale Social Restrictions (PSBB) by the government have disrupted the economy in Indonesia, such as restaurants, tourist attractions, hotels, market traders, malls, and others affected by the outbreak. Many people are not ready to face these conditions because their sources of livelihood to survive are limited. However, over time, people began to rise during this COVID-19 pandemic. Coordinating Minister Airlangga explained that there was an increase in the use of digital technology, which was reflected in an increase in traffic of around 15-20%, where digitalization towards industry 4.0 became a necessity. One way that is used is to maximize digital marketing. During this pandemic, online stores have experienced a drastic increase due to the implementation of the PSBB by the government so that people stay at home so that the community uses online stores to meet primary and secondary needs.

E-commerce is a technology that is currently developing. Loundon describes e-commerce as the process of buying and selling products electronically by consumers and from company to company with computers as intermediaries for carrying out transactions. E-commerce has 2 characteristics, namely business to business and business to consumer. The criteria for goods traded through e-commerce are also regulated by the government, but are not regulated in detail and follow Government Regulation Number 2 of 2000 concerning National Standardization and Regulation of the Minister of Industry Number 29 of 2017 concerning Provisions and Procedures for Calculation of Domestic Component Level Values.

The implementation of e-commerce in Indonesia is growing rapidly. In general, seven places are used to sell online, namely buying and selling forums, social networks, blogs, messengers, and currently, many marketplaces are popping up, such as shopee, tokopedia, lazada and others. However, with the rapid development of technology today, social media is used as a tool for promotion; one of the social media that is currently widely used is Instagram. Data recorded that until July 2021, Instagram users in Indonesia reached 91.77 million users, with the largest percentage of 36.4% being users aged 18-24 years.

In the current pandemic, many Instagram users choose Instagram to conduct e-commerce transactions, because many see Instagram as an effective marketing communication medium. Most of the e-commerce transactions carried out through Instagram are currently implemented using a pre-order system. The number of Instagram users use this media to make buying and selling because with Instagram media can communicate questions and answers between sellers and buyers regarding the availability of goods, can be done anytime and anywhere, and with one upload can be directly connected to several other social media so that marketing can be wider quickly. . However, Instagram also has several shortcomings, such as the absence of an institution that guarantees the legitimacy of this online store, and the presence of consumers who are not visualized. However, with these shortcomings, it does not reduce the number of users and buying and selling transactions that occur on Instagram media as long as it can still benefit the parties. Several cases that often occur in the last year of the pandemic during the implementation of this transaction are sellers who are not responsible and do not fulfill their obligations in fulfilling the rights that buyers must obtain.

Not only the covid-19 virus is endemic, but the Korean Hallyu virus is also endemic and is getting more and more familiar among teenagers today. Not only are actors and artists popular with the public, but Korean boybands and girl groups, commonly referred to as idols, are also widely liked by children to adults. The number of young people who like it has created a group of fans known as fandoms, where each fandom has its name.

The fandom of each group is known to be very fanatical about their idols, so whatever objects or merchandise related to their idols, they must buy such as lightsticks, posters, key chains with pictures of their idols, albums, etc. photo cards, and many others. This situation is widely

used by people who want to start a business by turning it into a job during the current pandemic. Many Instagram accounts open stalls to sell various merchandise and albums in every comeback season of each of these boybands and girl groups using a pre-order system.

The Covid-19 pandemic that has emerged since 2019 has resulted in the implementation of e-commerce being carried out through Instagram with a pre-order system increasing in the community, especially pre-orders for world albums per Kpop. However, the or more people implement e-commerce on Instagram with a pre-order system to order albums where the buyer does not yet know the characteristics. The goods are not yet available directly by the seller, and the waiting period for goods until the goods are available is unknown because the goods are imported from overseas. The buyer is required to pay the price that has been written on the Instagram account post that sells the album.

The systematic implementation of online album buying and selling transactions is widely used because of the increasing demand and the number of comeback seasons from Korean boy groups and girl groups as well as the many emerging new idol groups during this pandemic so that many online businesses use them to sell albums and merchandise per Kpop every year. Korean boy group and girl group comeback season. However, many also abuse this situation to take advantage of themselves to the detriment of others. For example, many take advantage of each group's comeback by opening a pre-order for album sales from each agency of each group via Instagram, where buyers are required to pay advance payment to the seller, but after the goods are finished production, the account does not continue the transaction to the buyers, so the goods are not up to the buyer. Many of these incidents occur in several Instagram accounts that open pre-orders for album sales by giving prices that are much cheaper than the prices of other Instagram accounts to deliver goods that are quite fast than others. The target of the album sales business is none other than children. -teenagers, who then the seller defaults to the buyers. It is very detrimental to buyers because buyers lose much money, not in small amounts; some up to tens of millions of money are not returned, and even the seller disappears without anyone notifying the buyer at all.

Based on the description of the case above, it can be seen that e-commerce transactions carried out through Instagram media with the Pre-Order system in practice are still lacking in terms of the legal protection of consumer rights and obligations to the parties, namely between the seller and the buyer. These rights and obligations are a realization of the rights and obligations in the form of buying and selling through Instagram media with a pre-order system. Both parties must carry out these rights and obligations without harming either party. Therefore, these rights and obligations are also a counter-achievement and achievement that must be implemented.

In general, in the practice of buying and selling with a pre-order system, the seller mentions the nature of the product first, starting from the characteristics of the goods, the price of the goods, the size, weight, quality, and quantity of the goods and the time of delivery of the goods even though the goods have not been produced. However, this also does not guarantee freedom from unwanted things, such as the occurrence of actions outside the agreement carried out by the seller, for example. Unwanted possibilities can occur where goods traded through Instagram media do not match reality. For example, it can happen, the buyer has placed an order and has paid for the goods he bought, but the goods received by the buyer are not following what was agreed. This act can be considered as an act of default.

According to Professor Subekti, S.H., there are four types of default, namely:

1. Not doing what he was promised to do;
2. Carry out what was promised but late;
3. Carry out what was promised, but not as what was promised;
4. Doing something that, according to the agreement, should not be done

The vulnerability of making transactions with the pre-order system through Instagram media is due to the increasing number of online businesses using the application so that many

individuals take advantage of the current pandemic situation. Hence, the occurrence of actions outside the agreement carried out by the seller or what is called default. In this case, whereafter the buyer places an order and then makes a payment, the owner of the Instagram account in the sale and purchase can immediately block the buyer's Instagram account so that the buyer cannot find the seller's Instagram account again. Actions like this result in the buyer not receiving his rights at all, and even the losses received are greater because the pre-orders are not only for one or two items. Furthermore, to prosecute also requires very strong evidence, while in Instagram media, if another account has blocked the account, then anything related to the blocking account will be lost, and the contents of the conversation related to buying and selling transactions that have been carried out are lost, making it difficult to prove the action.

The seller mostly does default in this e-commerce transaction; if the seller defaults, the consumer can contact the seller to confirm the agreement that has been made regarding the goods he bought. In this case, the seller should fulfill his obligations as a seller, which obligations include:

1. Submit the ownership rights to the goods being traded, and
2. To bear the comfort of the goods and to bear the hidden defects.

From the case described above, it will be very difficult for buyers to fulfill their rights in carrying out e-commerce transactions with this pre-order system. Because by using Instagram media, it is very easy for sellers to take these actions and can quickly eliminate evidence of buyers. So that if there is activity outside the agreement or a default in such circumstances, the buyer's position can be said to be weak. Due to the weak position of the buyer in terms of proving when a default occurs, the seller should be fully responsible for the business activities he carries out in e-commerce transactions so as not to harm the buyer. In Article 21, paragraph (2), letter an of the Law on Information and Electronic Transactions, it is stated: "if it is carried out alone, all legal consequences in the implementation of electronic transactions are the parties' responsibility to transaction". Thus, in e-commerce transactions, the party responsible is the party who defaults, which in this case is carried out by the online seller of business actors. Meanwhile, according to the Civil Code, default by the debtor or party who should carry out the achievements in the agreement, it can cause losses for creditors or parties who have the right to receive achievements. The legal consequences for parties who should carry out the achievements in the agreement but are in default, namely:

1. He must pay compensation suffered by creditors or parties who have the right to receive achievements (Article 1243 of the Civil Code);
2. He must accept the termination of the agreement accompanied by payment of compensation (Article 1267 of the Civil Code);
3. He must accept the risk transfer from the time the default occurs (Article 1237 paragraph (2) of the Civil Code);

In addition, according to article 1266 of the Civil Code, in a reciprocal agreement, a default of one party gives the other party the right to terminate the contract in court, even though the termination conditions regarding the non-fulfillment of obligations are stated in the agreement. However, suppose the terms of termination are not stated in the agreement. In that case, the judge in court is free to demand conditions on the defendant's claim to purchase a period from the defendant to allow the defendant to carry out his obligations, which period cannot be more than one month.

## **CONCLUSION**

E-commerce transactions carried out through Instagram media with the Pre-Order system in practice are still lacking in terms of the legal protection of consumer rights and obligations to the parties, namely between sellers and buyers, and it will be very difficult for buyers to fulfill their rights in the implementation of e-commerce transactions. With this pre-order system. Because by

using Instagram media, it is very easy for sellers to take these actions and can quickly eliminate evidence of buyers.

If there is an act outside the agreement or a breach of contract, under these circumstances, the buyer's position can be said to be weak. Due to the weak position of the buyer in terms of proving when a default occurs, the seller should be fully responsible for the business activities he carries out in e-commerce transactions so as not to harm the buyer. In Article 21, paragraph (2), letter an of the Law on Information and Electronic Transactions, it is stated: "if it is carried out alone, all legal consequences in the implementation of electronic transactions are the parties' responsibility to transaction". Thus, in e-commerce transactions, the party responsible is the party who defaults, which in this case is carried out by the online seller of business actors. Meanwhile, according to the Civil Code, due to default by the debtor or parties who should carry out the achievements in the agreement, it can cause losses for creditors or parties who have the right to receive achievements.

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