LEGAL ANALYSIS OF CONSUMER PROTECTION
RELATED TO BREACH OF CONTRACT BY E-COMMERCE

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DECLARATION OF ORIGINALITY

I declare that this paper, entitled "The Legal Analysis of Consumer Protection Related to Breach of Contract by E-commerce" is, to the best of my knowledge and belief, an original piece of work that has not been submitted either in whole or in part, to another university to obtain degree.

Cikarang, Indonesia, 24 January 2017

Bella Jelita Nediawati
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ABSTRACT

The aim of the research is to analyze and describe two identification problems such as: firstly, the law protection for consumer through business breach of e-commerce contract; secondly, the way in solving the problem of business breach of e-commerce contract.

The method for this research is normative-empirical, the combination between the law research of normative and empirical law. It is selected because of norm analyzing regarding to the consumer protection through breach business contract of field research. The approach for this research is the Constitution and case study. The law analysis procedure uses descriptive qualitative research; it is not only investigating the right fact but also giving the understanding about the consumer protection through business breach of e-commerce.

The result of this research found that: firstly, UUPK is not already yet to protect the consumer through business breach contract of e-commerce. UUPK only gets the internal problem (local) and the limited transaction only as a conventional. Secondly, the law effort for disadvantaged consumer of business breach contract of e-commerce (Lazada) is solving the non litigation dispute ADR. The mechanisms of ADR that can be choose are ADR because of range scope and offer the effective solution, efficient and fast.

Key words: Consumer Protection, Breach, e-commerce
ABSTRAK

Penelitian ini bertujuan untuk menganalisa dan mendeskripsikan dua identifikasi masalah, yakni: pertama, perlindungan hukum bagi konsumen terhadap wanprestasi pelaku usaha dalam perjanjian e-commerce; dan kedua, mendeskripsikan cara penyelesaian sengketa wanprestasi dalam perjanjian e-commerce.

Metode dalam penelitian ini adalah normatif-empiris, yakni kombinasi antara penelitian hukum normatif dan penelitian hukum empiris. Jenis tersebut dipilih karena penelitian ini akan menganalisis norma yang berkaitan dengan perlindungan konsumen atas wanprestasi oleh pelaku usaha dalam perjanjian e-commerce mengkomparasikan kejadian di lapangan. Pendekatan yang dilakukan adalah pendekatan undang-undang dan studi kasus. Prosedur Pengolahan dan Analisis Bahan Hukum menggunakan deskriptif kualitatif, tidak hanya akan mengungkap kebenaran, akan tetapi juga untuk memberikan pemahaman tentang kebenaran tentang aturan perlindungan konsumen atas wanprestasi yang dilakukan pelaku usaha dalam e-commerce.

Hasil penelitian ditemukan bahwa: Pertama, UUPK belum dapat melindungi konsumen atas wanprestasi oleh pelaku usaha dalam perjanjian e-commerce. UUPK hanya dapat menjangkau persoalan internal saja (lokal), terbatas pada transaksi yang bersifat konvensional saja. Kedua, upaya hukum yang dapat ditempuh bagi konsumen yang dirugikan atas wanprestasi oleh pelaku usaha dalam perjanjian e-commerce (Lazada) adalah penyelesaian sengketa non litigasi ADR. Mekanisme ADR yang dapat dipilih adalah ODR karena jangkauan ruang lingkup yang luas dan menawarkan solusi efektif, efisien dan cepat.

Kata Kunci: Perlindungan Konsumen, Wanprestasi, e-commerce.
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CHAPTER 1
INTRODUCTION

A. Background of Research

The development of technology and information makes the need to get goods and / or services are more easily. Selling and purchasing are usually done traditionally, where buyers and sellers meet to find a matching price and goods and now it can be done through the power of information media calls internet.

The process of selling and purchasing transactions electronically through the internet media are generally calls e-commerce that is how to shop or trade online or direct selling which is utilize the internet facility where there are websites that can provide services "get and deliver". Therefore, E-Commerce is a dynamic set of technologies, applications, and business processes that connect corporate, consumer, and certain communities through electronic transactions and trade in goods, services, and information that will be conducted electronically.¹

The existence of e-commerce is conceptually very easy for consumers to obtain the goods and / or services to be expected. They do not need to leave home and can save time daily activities and easy process. However, the reality with e-commerce transactions often occur the breach that is done by the

¹ Onno W.Purbo dan Aang Arif Wahyudi, Mengenal e-Commerce (Jakarta: Elex Media Komputindo, 2001), hal.1-2.
business actor. It means that the consumer's position has always been the aggrieved party. The Consumer are the parties who are in a weak position as a marketing object among manufacturers to get benefit as much as possible through the various promotional efforts, sales through offline and online advertisements and another agreements which make a harm for consumers. According to Happy Susanto, consumer as a user of the goods or services that is available in the community to be used instead not to be purchased which is most disadvantaged relationship for the consumer.

The proof although it has been set on the rights of consumer and the party whose responsible for the provision of consumer protection, the consumer still often receives the unfair treatment from the businesses actor. The rights and responsibilities are not uncommon wronged and become the victim is the consumer. Consumers sometimes do not get the goods that have been bought as his or her imagination through advertisements, for illustration, get the goods which could not be used.

In addition, there are still many cases of breach that occurred related to the selling and purchasing through e-commerce. The transactions through online shops are often scams and poor service. Such as late delivery, lack of information, and so on. This is because the system is built only believer and difficult to control both seller and buyer. This relationship is the cause of breach.

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2 Eli Wuria Dewi, Hukum Perlindungan Konsumen, Cet ke I (Yogyakarta: Graha Ilmu, 2015), hal. 2
3 Happy Susanto, Hak-hak Konsumen Jika Dirugikan, Cet ke I (Jakarta: VisiMedia, 2008), hal. 22
The examples of these cases occurred when Omir Syahlan on July 24th 2013 did buying one package of tea Nakami brand for IDR. 305,000; and he got voucher IDR. 50000. After the package arrived at home, Omir Syahlan felt there are many irregularities, such as:

1. Omir Syahlan must still pay IDR. 305,000; as stated on the invoice carried by the courier. Whereas in the box of Lazada has listed price of IDR. 255,000; The Courier said that she/he did not know about the case, because the courier was just following the order.

2. Receiving damaged package.

3. While sending email reports and photos of items that complain, the admin of Lazada did not giving a response until a week. After trying to connect, Lazada stated that the complaint is not listed in the form of photos of goods complained. After sending photos, Omir Syahlan asked to fill out a complaint form again.

4. After that, the Lazada stated that the replacement item will be shipped once the defective goods will be taken. Then, the Lazada send e-mail with the content is requested Omir Syahlan to ship the broken items to the address of Lazada.

Similar incident was experienced by Hengky. Hengky is from Central Jakarta who buyed Nike Mercurial Vortex and Cavallero Louis on sale Lazada anniversary event with the order number 392235122. When shipping, it only sent out Nike Mercurial Vortex, while Cavallero Louis was not sent. The

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4 Pelayanan Lazada.co.id Buruk, diakses dari http://www1.kompas.com/suratpembaca/read/40897, tanggal 19/01/2017
Cavallero Louis did not receipt number seri of JNE, so Hengky can not perform the tracking of delivery status. When the incident complained to Lazada, Lazada provides confirmation that goods have been delivered and accepted by the person named Hendra. Whereas at Hengky’s home there is no one named Hendra. Hengky tried to contact Lazada back, but Lazada only give answers that Hengky needed to wait.\(^5\)

Not only Omir Syahlan and Hengky are being Lazada’s consumers who received poor service from Lazada. It has also been experienced by Ekomarta, Citizens Industry Rungkut in Surabaya. Ekomarta buyed Swiss Army Men’s SA 2013 M worth IDR.98,520 from Lazada.co.id and It was already made payments, but the purchased goods did not come. After trying to contact the Lazada, It parties claim that the transaction has been canceled by the system and the money will be refunded. However, the refund has not been received.\(^6\)

Examples of other case such as get the things which could not be used as some cases explosion of some Smartphones. It was burning iPhone that belonged to a resident of Sydney, Australia named Gareth Clear on Tuesday (02/08/2016) where the case of burning iPhone's was already happened several times.\(^7\) Burning Smartphone of iPhone is something that is very surprising

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\(^5\) Pesanan Belum diterima, Respon Lazada Tanpa Kepastian, diakses dari http://suarapembaca.detik.com/read/2015/05/01/110936/2903244/283/pesanan-belum-diterima-respon-lazada-tanpa-kepastian, tanggal 19/01/2017

\(^6\) Pesanan Lazada Dibatalkan Sepihak, Refund Belum Diterima, diakses dari http://suarapembaca.detik.com/read/2015/05/01/100210/2903180/283/pesanan-lazada-dibatalkan-sepihak-refund-belum-diterima, tanggal 19/01/2017

\(^7\) iPhone Terbakar di Paha Pesepeda, http://tekno.kompas.com/read/2016/08/02/12473717/iphone.terbakar.di.paha.pesepeda, diakses pada tanggal 19/01/2017
considering the advertising launch, the brand has a very good specification compared to the others or even no there was no warning or explanation should be accepted by consumers.

Another case, burned of the Smartphone Galaxy A3 which owned by Vera Denova on September 19th 2016 around 18.30 that was currently being played by her on the mattress that nearly burned triggered by the burning of the Smartphone Galaxy A3 or the case of burning smartphone Samsung Galaxy Note 2 in India airline, Indigo 6E-054 from Singapore to India on Friday (23/09/2016).

The case above is strengthened by the results of interviews with a number of consumers who are in breach, for example Marrietta ever bought a portable mouse on the online site Lazada, but the time until the goods ordered was not in the package sent. After complains, eventually the money in the refund.

In line with Beni, he buyed shoes online at sites of Shoope with size 42. After the shoes received then did not match with the size (it was too big). Finally, in the shoes was returned goods and money refund. The same thing happened to Sella, she buyed clothes at online shop that there was no legal entity. The result of the clothes was not same according to the photos on

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display. Finally, Sella regreted because of the clothes could not be purchased. And there are still many similar cases of breach in e-commerce businesses those consumer losses.

The high level of complaints by consumers in Indonesia related to scam in selling and purchasing online would needs to get attention. It means that consumers in online transactions require a legal protection if there is a problem that happens. Although the legitimacy of the transaction described in the Book of the Law of Civil Law (Civil Code) in Article 1458 stated that: "Selling and purchasing deemed to have occurred between the parties, immediately after people have reached agreement on material that and price is not already paid.

A transaction conducted electronically is essentially an engagement or a legal relationship that is done electronically by combining the networks of electronic systems. In general, the meaning of the transaction is often reduced to a purchase agreement between the parties agree to it, but in a juridical perspective, the transaction terminology basically is the existence of a contract or legal relationship that occurs between the parties. The meaning of juridical transactions is basically more emphasis on the material aspects of the law formally. Therefore, the existence of legal provisions concerning the engagement remain binding even if there is a change in media or changes in procedures for transactions.

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12Sella, Wawancara dengan Konsumen, pada tanggal 12 Januari 2017.
In the civil sphere of particular aspects of the contract, the transaction would refer in particular aspects of civil contract, the meaning transactions electronically law itself will cover the purchase, license, insurance, auction and bonding the other born-contract in accordance with the development of trade mechanisms in society. In the public sphere, then the legal relationship will include the relationship between citizens and government as well as the relationship among members of society that are not intended for commercial purposes.

The importance of consumer protection is because many consumers are harmed by arbitrary of businesses actions. The businesses action stigma that considers itself as a party in degrees and higher social strata of consumers, making consumers often become victims of hegemony.

The 2nd article of Law No. 8th of 1999 on Consumer Protection (hereinafter abbreviated as UUPK) determined that the granting of consumer protection based on the benefit, justice, equity, security and safety of consumers, as well as legal certainty. While the purpose of consumer protection is defined in the preamble of UUPK In mentioned that producers should have responsibility for its products:

That in order to increase the value and dignity of consumers needs to increase awareness, knowledge, awareness, ability and independence of the consumers to protect themselves and to develop the attitude of responsible business’ action behavior.

The legal arrangements is necessary to provide legal certainty through actions that is undertaken by the legal subject of using information
technology, the action is allowed and not allowed. The agreement which is passed related to aspects of the electronics is the Law of the Republic of Indonesia Number 11\textsuperscript{th} in 2008 about Information and Electronic Transactions (hereinafter abbreviated as UU ITE).

The UU ITE mentioned that the legal and regulatory infrastructure needed as part of efforts anticipatory action through the abuse that would harm the certain parties. This is because of various items into objects of buying and purchasing over the internet, selling and purchasing transaction are based on a sense of trusting each other, because of there is noconventional contract of buying and purchasing transactions. This condition would impact the legal law and the consequent, because the legal relationship between two parties are referred not directly opposite. Therefore, the legal issue in the field of e-commerce is very important, especially in providing a protection against to the parties whom conduct transactions over the internet.\textsuperscript{13}

Based on this background above, it has been clear that the contract of e-commerce transaction often happens as breach and it happens with bigger e-commerce of Lazada. So, it is very important to do the analysis standard of contract that has been owned by Lazada based on the fulfillment and protection the consumer.

According to huge cases, the agreement contract gives the disadvantage for consumer. The disadvantage is caused of breach contract. As the principle, there are the differences between breach with deed that contrary

\textsuperscript{13}Ahmad M. Ramli, \textit{Cyber Law dan HAKI dalam Sistem Hukum Indonesia} (Bandung: PT. Refika Aditama, 2004), hal. 1
to the law (PMH). It sees from 1) the basic of law: Breach according to section 1243 of Civil KUHP arise from the agreement, whereas the PMH regards to the section of 1365 of Civil KUHP arise from people’s deed. 2) The onset of claim rights: the claim rights of compensatory of breach arise from section 1243 of Civil KUHP which the principle needs the somasi statement, the claim rights of compensatory because of PMH does not need somasi. Whenever of PMH happens, the parties that get the disadvantage get the claim rights of compensatory. 3) The guidance of compensatory: KUHP has arranged about the duration that is able to be required on breach. While PMH and KUHP er do not arrange how does the form and the compensator in detail. So that, it is able to be sued the real compensatory and immaterial disadvantaged.

On Civil KUHP is also determined that everyone is not only has the obligation through the disadvantage which caused from their own deed, but also through the disadvantage that may rise from accounted people. Based on the cases above, the researcher interests in conducting further research about "THE LEGAL ANALYSIS OF CONSUMER PROTECTION RELATED TO BREACH OF CONTRACT BY E-COMMERCE"

B. The Identification of Problem

Based on the description of the background above, the identification of this research describes the legal analysis of consumer protection related to
breach of contract by e-commerce. Therefore, formulated the following research questions:

1. How is the legal protection for consumers related to breach in e-commerce contract?
2. How does the problem solving of the breach contract in e-commerce?

C. The Aim of Research

1. Describing the legal protection for consumers through breach of businesses contract of e-commerce.
2. Describing how does the problem solving of breach contract in e-commerce.

D. The Benefits of Research

1. Theoretical Benefits
   a. For science
      The results are expected to provide benefits of the developing and enriching the knowledge of civil law, especially in the legal protection of breach contract of e-commerce.
   b. For other researchers
      The result of this research is expected to be a reference, a basic of reading materials, a basic resource and a source of comparison for similar researchers.
2. Practical Benefits
   a. In practical results of this study are expected to provide guidance for governments, employers, lawyers and other parties who will enter into agreements or contracts e-commerce.
   b. It is expected to provide an additional collection of scientific papers related to civil law, especially on consumer protection of selling and purchasing online (e-commerce).

E. The Scope of the Study
   Because of the discussion of e-commerce is very extensive research, the researcher gives a boundary problem regarding to the legal framework for e-commerce on the legal aspects of the contract, the consumer protection aspect, and breach.

F. Research Framework
   Nowadays, online transactions (e-commerce) becomes social chooses because it has advantages, including more practical and easy and it can be done any time as long as the internet connection. On the other hand, it has negative impacts, such as the onset of legal issues that may cause the disadvantage for the consumer. The possibility of breach is very big case. This is because of various items into objects of selling and purchasing over the internet, it is based on a sense of trusting each other, because of there is no conventional contract of selling and purchasing transactions. Although the
legitimacy of the transaction has described on section 1458 of the Civil KUHP stated that "Selling and buying deemed to have occurred between the parties, immediately after people have agreed to the contract on the material and its cost, and the price has not been paid."

In other words, the contract should provide security and comfort for both parties, but the fact of complaints by consumers in Indonesia related to breach in selling and purchasing of e-commerce is still high. It certainly needs to be addressed. It means that the consumer of e-commerce transactions requires legal protection if there is problem that may happens and the dispute solving of the breach contract of e-commerce.

G. The Research Method

1. Types of Research

The type of this research is Normative-Empirical\(^{14}\) are the combination of normative and empirical legal research, for example testing and reviewing the provisions of the law on consumer protection in e-commerce transactions in accordance with the provisions of Law No. 8\(^{th}\) in 1999 on Consumer Protection Law. Therefore, this research has two elements, such as a) Normative element of this research that analyzes about the legal protection of the consumer in accordance with the provisions of Law No. 8\(^{th}\) in 1999 and b) Empiric element derived from data gathered by researchers in the field as supporting data to

\(^{14}\)Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Pranada Media Group, 2008), hal. 32
determine how is the protection of consumers who get breach of e-commerce transaction. This research uses an online site of Lazada. This site chooses because there are many consumer whom complaints of the purchasing products on the site.

2. Approach of the Problem

The approach of this research problem is the approach of legislation and conceptual approaches:

a. Legislation Approach

Approach legislation is analyzing the legislation relating to the cases in this research. The legislation of this research is the Constitution of the Republic of Indonesia (Constitution of NRI) in 1945, and Law No. 8th of 1999 on Consumer Protection and UU ITE

b. Case Approach

The case approach is an approach to compare the occurrences in the field with the norms or rules of law.15

3. Source of Law Material

a. Material Primary Law

Primary legal material consists of legislation relating to the cases in this research. The legislation is the Constitution of the Republic of Indonesia (Constitution of NRI) in 1945, and Law No. 8th of 1999 of Consumer Protection and Law ITE. The primary legal materials is normative research.

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15 Anwar, Yesmil & Adang., *Pengantar Sosiologi Hukum*, (Bandung: Grasindo, 2008), hal. 128.
b. Secondary Legal Materials

Secondary law is made up from books, journals, news, articles, and other literature. Secondary law is a law that became the foundation material in the analysis of the legislation.

4. The Collection Procedure of Legal Law

The collection of legal material in this research is conducted by collecting legal law. The collection is done by tracking all legal law that is collected and organized. Arikunto\(^\text{16}\) called this research as documentation.

5. The Law Procedure and Analysis

The legal materials have been collected and organized that will be processed by evaluating them according to the type of research. After reviewing, the legal materials will be analyzed using three knives analysis, such as the classification, comparison, and connection. The analysis procedure is called by qualitative descriptive method\(^\text{17}\), which will be not only revealing the truth, but also providing the understanding of the truth.

6. Systematics Writing

The Systematic of writing on this research in order to provide the general overview and outline suggested in order giving facilitation of understanding. So that, to get a clear picture of the general content

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\(^{16}\)Arikunto, *Metodologi Penelitian* (Jakarta: PT. Rineka Cipta, 2002), hal. 158

\(^{17}\)Mahfud MD dkk, *Op.cit*, hal. 232
of writing of this law, the systematic writing can be divided into (four) chapters systematically as follows:

Chapter I : Introduction consists of: background of research, identification of problem, the aim of research, the benefits of research, the previous study, the scope of research, the research framework, the research method and the systematic writing.


transactions and The Comparison of E-commerce UU in Malaysia and Indonesia with the cases example.

Chapter IV: In this chapter the researcher gives the theme "The Legal Protection through Consumer Electronic Transactions" which consists of two discussions of Legal Protection through Consumer Transactions of E-commerce and dispute settlement if there is breach from the businesses actor of e-commerce contract along with the illustrative case.

Chapter V: In this chapter represents the closing chapter that contains conclusions and suggestions.
CHAPTER II
REVIEW OF RELATED LITERATURES

A. General Review about Consumer Protection

1. The Definition of Consumer

The term of consumer comes from Dutch: konsument. The legal experts generally agree that the meaning of consumers is: "The end users of goods and services (Uiteindelijke Gebruiker van Goederen en Diensten) were handed to them by the businessman (ondernamer)."\(^{18}\)

According to Az. Nasution, the definition of consumers is "Everyone that gets a legal time to use the things or services for a particular purpose"\(^ {19}\)

Another term that is closer to the consumer is the "buyer" (suitcase). This term can be found in the Book of the Civil Law. According to 1st section 2nd article of the Consumer Protection Act stated that "The consumer is any person user of goods and / or services available in the community, both for self, family, other people, and other human beings and they are not being purchased".

Based on the explanation of 1st section 2nd articles it is noted that in the literature of economics known as end and between consumers. The end consumer is the end user or beneficiary of a product, while consumers between the consumers that use of a product as part of a production


\(^{19}\) Az. Nasution, *Mengenal Hukum (Suatu Pengantar)*, (Yogyakarta: Liberti, 1995), h. 69
process of other products. The definition of consumers in the Act - this legislation is the end consumer.

2. The Definition of Law Protection for Consumer

The consumer protection is an integral part that could not be separated from the concept of legal protection in Indonesia. The consumer protection is actually rooted in 1\textsuperscript{st} section (3\textsuperscript{rd}) of NRI in 1945 Constitution which stipulated that "Indonesia is a country of law". The state of laws that uphold the rule of law in order to uphold the justice and order in the society, which was done by setting a clear organization of states, governments and society.}\textsuperscript{20}

Aim Abdulkarim mentioned that the characteristics of a constitutional state are as follows\textsuperscript{21}:

1. The respect and protection of human rights lies in one legal entity
2. The principle of the rule of law (unity based law) in order to uphold the law
3. The existence of understanding stateis not standing above or outside the law, but shall be subject, implement and protect laws
4. The existence of legal certainty and the rule of law in the society, the nation and the state
5. The existence of interest that countries devote to the folk (national)

The legal protection is a guarantee enforcement of rights and obligations by the state to the community\textsuperscript{22}, including the issue of

\textsuperscript{20}Andi Mappetahang Fatwa, \textit{Potret Konstitusi Pasca Amandemen UUD 1945}(Jakarta: Buku Kompas, 2009), hal. 47-48
\textsuperscript{21}Aim Abdulkarim, \textit{Kewarganegaraan} (Bandung: Grafindo Media Pratama, 2011), hal. 77-78
consumer protection. The consumer protection set in UUPK. 1st Section(1st) Article of UUPK determined that "consumer protection is all the effort that guarantees the legal certainty to provide protection to consumers". The consumer protection is granted by guaranteeing legal certainty. Rocky gives the definition of the assurance as a condition where all the dynamics of society and government based on law. The legal protection is expected to occur by providing the legal certainty.

The parties in consumer protection are:

1. Consumers
2. Business Actor
3. Government

3. The Principles and Objectives of Consumer Protection

As a reference in the provision of consumer protection, the principles and objectives required as a basic reference. The principle of consumer protection is set out in 2nd Section of UUPK is "consumer protection as benefits, justice, equity, security and safety of consumer as well as legal certainty". The principles were formulated in order to achieve the objectives of consumer protection that is provided for in 3rd Section of UUPK which specifies that:

a. Raising awareness, abilities and independencies of the consumers to protect themselves

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22Koerniatmanto Soetoprawiro, Pengaturan Perlindungan Hak-Hak Perempuan dan Anak-anak Dalam Hukum Kewarganegaraan Indonesia, (Dalam Kisi Hukum, Jurnal Ilmiah Hukum Universitas Katolik Soegijapranata, Tahun 2010), hal 8
23Rocky M. et al, Kamus Hukum Lengkap(Jakarta: Visimedia, 2012), Hal. 22
b. Raising the dignity dissuade consumer by leaving the negative excess consumption of things and / or services

c. Improving consumer empowerment in selecting, specifying and demanding your rights as a consumer

d. Creating a consumer protection system that contains elements of legal certainty and transparency and access to information

e. Raising awareness of businesses actor about the importance of consumer protection so that the growing attitude of honest and responsible in trying

f. Improving the quality of things and / or services that guarantee the continuity of the production of things and / or services, health, comfort, security, and safety of consumers.

4. The Rights, Obligations and Responsibilities of Consumers Protection

As an application, principles and objectives of consumer protection must be expressed with the technical rules. Technical provisions about the application of the principles and achievement of the objectives of consumer protection, then it arranges on the rights and obligations and also the responsibilities of the parties about the protection of consumer. Granting those rights and obligations are to provide a balanced position between consumers and businesses. This is so that businesses are not arbitrary in making economic relations with consumers. Granting rights
and obligations also gives consumers the right to sue if their rights are dissapointed\textsuperscript{24}

The consumer rights in the UUPK is set by adjusting to the rights recognized internationally. Those rights are enshrined in 4\textsuperscript{th} Section of UUPK as follows\textsuperscript{25}:

\begin{enumerate}
\item The right of comfort, security, and safety in consumption of things and / or services;
\item The right for chooseing the goods and / or services and obtain things and / or services in accordance with the exchange rate and conditions and guarantees promised;
\item The right for information is correct, clear and honest about the condition and guarantee of the goods and / or services;
\item The right to be heard about opinions and complaints on things and / or services used;
\item The entitlement to get advocacy, protection and mediation in consumer protection should;
\item The right to receive guidance and consumer education;
\item The right to get treatment or service properly and honestly and not discriminatory;
\item The right to obtain compensation, compensation and / or reimbursement, if the things and / or services received are not in accordance with the agreement or not as it should be;
\end{enumerate}

\textsuperscript{24}Happy S., \textit{Op.cit}, hal. 4-5

\textsuperscript{25}\textit{Ibid}, hal. 23-24
While consumers are the obligations as stipulated in 5th article of UUPK as follows:

a. Reading or following the instructions and procedures for the using of the information or the using of things and / or services, for security and safety;

b. Acting in good intention to make purchases of things and / or services;

c. Paying according to the agreement of exchange rate;

d. Following efforts to resolve the legal dispute should consumer protection.

It is not only consumers who have rights and obligations, but also businesses actor who also have rights and obligations as stated in UUPK. The right of businesses actor governed by 6th Section of UUPK as follows:

a. The right to receive the payment in accordance with an agreement on the conditions and the exchange rate of the things and / or services which are traded;

b. The right to get legal protection of consumer action that has not good intention;

c. The right to do self-defense is fitting in the solving of consumer disputes;

d. The right to get rehabilitation if it is able to be proved on law that has disadvantaged consumer is not caused from the things and / or services traded;

e. The rights that is stipulated in other laws and regulations.
While the obligation of entrepreneur is governed by 7th Section of UUPK as follows:

a. Having good intention in conducting the business activities;

b. Providing the right information, clear and honest about the condition and guarantee of the things and / or services and explain the using, repairing and maintaining;

c. Treating or serving customers properly and honestly and not discriminatory;

d. Guaranteeing the quality of things and / or services which is produced and / or trading under the provisions of the quality standards of things and / or services are applicable;

e. Giving a chance for consumer to test, and / or try the things and / or services and giving guarantee and / or warranty on things manufactured and / or traded;

f. Giving compensation, compensation and / or reimbursement of disadvantage due to the use, consumption and utilization of things and / or services traded;

g. Giving compensation and / or replacement if the things and / or services that is received or used are not same with the agreement.

The responsible parties for the development and implementation of consumer protection are the government. It is as mandated in 29th-30th Section of UUPK as follows:
29th Section

(1) Pemerintah bertanggungjawab atas pembinaan penyelenggaraan perlindungan konsumen yang menjamin diperolehnya hak konsumen dan pelaku usaha serta dilaksanakannya kewajiban konsumen dan pelaku usaha.

(2) Pembinaan oleh pemerintah atas penyelenggaraan perlindungan konsumen sebagaimana dimaksud pada ayat (1) dilaksanakan oleh Menteri dan/atau menteri teknis terkait.

(3) Menteri sebagaimana dimaksud pada ayat (2) melakukan koordinasi atas penyelenggaraan perlindungan konsumen.

(4) Pembinaan penyelenggaraan perlindungan konsumen sebagaimana dimaksud pada ayat (2) meliputi upaya untuk:
   a. terciptanya iklim usaha dan tumbuhnya hubungan yang sehat antara pelaku usaha konsumen;
   b. berkembangnya lembaga perlindungan konsumen swadaya masyarakat;
   c. meningkatnya kualitas sumberdaya manusia serta meningkatnya kegiatan penelitian dan pengembangan di bidang perlindungan konsumen.

(5) Ketentuan lebih lanjut mengenai pembinaan penyelenggaraan perlindungan konsumen diatur dengan Peraturan Pemerintah.

30th Section

(1) Pengawasan terhadap penyelenggaraan perlindungan konsumen serta penerapan ketentuan peraturan perundang-undangannya diselenggarakan oleh pemerintah, masyarakat, dan lembaga perlindungan konsumen swadaya masyarakat.

(2) Pengawasan oleh pemerintah sebagaimana dimaksud pada ayat (1) dilaksanakan oleh Menteri dan/atau menteri teknis terkait.

(3) Pengawasan oleh masyarakat dan lembaga perlindungan konsumen swadaya masyarakat dilakukan terhadap barang dan/atau jasa yang beredar di pasar.

(4) Apabila hasil pengawasan sebagaimana dimaksud pada ayat (3) ternyata menyimpang dari peraturan perundang-undangan yang berlaku dan membahayakan konsumen, Menteri dan/atau menteri teknis mengambil tindakan sesuai dengan peraturan perundang-undangan yang berlaku.

(5) Hasil pengawasan yang diselenggarakan masyarakat dan lembaga perlindungan konsumen swadaya masyarakat dapat disebarluaskan kepada masyarakat dan dapat disampaikan kepada Menteri dan menteri teknis.
5. The Resources of Consumer Law

Besides UUPK, sources of consumer law contained in the various laws and regulations that apply, includes:

a. Constitution and Decree

The consumer law, particularly the Law of Protection of customers in getting the legal basis in the Constitution in 1945, the opening of the fourth paragraph: "Kemudian daripada itu untuk membentuk suatu Pemerintahan Negara Indonesia yang melindungi segenap bangsa Indonesia". Generally, until now people are rely on the word "all nations" so that it is taken as the principle of the unity of the entire nation of Indonesia (the principle of national unity). However, in addition, of the word "protect" according to AZ.Nasution it is also contained the principle of legal protection to the entire nation. The law on the protection of the entire nation would be indeed for all nations without exception. Other legal basis contained in the provisions of 27th Section on 2nd article of Act of constitution in 1945. The provision states that "Every citizen is entitled to a decent livelihood for humanity". In a real, if a person's life depends or other party, then the tools of the state will intervene, whether requested or not, to protect and or prevents the occurrence of

26Az.Nasution, Loc Cit, hal.69
the disorder. A decent living let alone a decent livelihood for humanity is the right of citizens and the rights of all people. It is the basic right of the people as a whole.

b. Consumer Law in The Civil Law

With the civil law for the purpose of civil law in the broadest sense, including civil law, commercial law and civil rules are contained in various laws and other crustaceans. All of them are either in the written law or unwritten of civil law (customary law).

The rules of civil law are generally contained in the Book of the Law of Civil Law (Civil Code). In addition, the rules of the civil law tradition which is not written but was appointed by the court in specified cases. It should bear in mind about the fact that in the implementation of the norms of the civil law. There are some court decisions on issues relating to consumer data is still visible. Beside that, the relationships or issues between business actor sand consumers from many different countries or the same laws that apply to them, it may be used as international law and the principles of international law, in particular with the International Private Law is also contain a variety of provisions of civil law for consumers.

Unfortunately, the various regulations of constitution law is apparently also contains the legal rules that affect and/or included in the field of civil law. For example who was intended as a legal subject in a relationship of consumer law, the rights and obligations of
each element and the procedures for the settlement of problems that occur in disputes between consumers and providers of things and / or service providers in the legislation.

Some of (the latest) is the Law on Legal Metrology (Law No. 2\textsuperscript{nd} of 1981), the Act constitution on the Environment (Act No. 4\textsuperscript{th} of 1982), Act on Provisions of Basic Press (Law No. 21\textsuperscript{st} of 1982), Act industry (Act No. 5\textsuperscript{th} of 1984), Law on Housing (Act No. 16\textsuperscript{th} of 1985), the Law on Road Traffic and Road Transportation (Act No. 14\textsuperscript{th} of 1992), the Law on Health (Act No. 23\textsuperscript{rd} of 1992), Law on Food (Act No. 7\textsuperscript{th} of 1996), and last Consumer Protection Act (Act No. 8\textsuperscript{th} of 1999; the State Gazette of 1999 No. 42).

So, if we conclude all the legal rules governing to the relationship and legal issues between business actors whom suppliers / things and / or service providers with consumers each elements contained in: The Book of the Law of Civil Law, especially in second, third and fourth edition; The Book of the Law of Commercial Law, Book first and second book; The various legislation and which contains the rules of civil law is about legal subjects, legal relationship.\textsuperscript{27}

c. Consumer Law in a Public Law

With public law means that the law governing to the relationship between the state and scientific equipment or the

\textsuperscript{27} Celina Tri Siwi Krstiayanti, \textit{Hukum Perlindungan Konsumen} (Jakarta: Sinar Grafika, 2011), hal. 40-62
relationship between state and individual. Including public law and especially within the legal framework consumer and / or legal protection consumers is the administrative law, criminal law, civil procedure and / or criminal law and civil law especially in international civil law.

So, all the rules of law and principles of law to all branches of the public law so far relates to the legal relationship consumer and / or problem with a provider or providers of things and services, it can also be applied. In this regard, among other things business licensing requirements, certain criminal provisions, the provisions of procedural law and conventions and / or civil provisions International.28

Among all of the public laws, the administrative law seems referred to administrative law, criminal law, international law, particularly as international and civil procedure law and criminal procedure law at the most influence in the formation of consumer law.

6. The General Principles of Consumer Protection Efforts

Basically, there are a lot of regulation on UUPK about businesses actor and prioritize the protection of consumer rights as basic rights to justice which is expected to enhance the dignity of consumers, which in turn will increase the awareness, knowledge, awareness, ability and independence of consumers for protect himself, on the other hand will foster business operators responsible.

28Ibid
In accordance with 2\textsuperscript{nd} Section of Law No. 8\textsuperscript{th} of 1999 on consumer protection, consumer protection organized as a joint effort by five principles that are relevant to national development, as follows:

a. \textit{The principle of benefit}

This principle is intended to mandate that all efforts in the implementation of consumer protection should give the biggest benefit to the interests of consumers and businesses as a whole.

b. \textit{The principle of fairness}

This principle is done to participate to the entire community that can be proved optimally and provide the opportunity for consumers and businesses to obtain their rights and perform its obligations equitably.

c. \textit{The principle of balance}

This principle is intended to provide a balance between the interests of consumers, businesses and government in the sense of material and spiritual.

d. \textit{The principles of security and safety of consumer}

This principle is intended to gives safety guarantees for the safety of funds to consumers in the use, consumption and utilization of things and / or services that is used.

e. \textit{The principle of legal certainty}

This principle is intended to both businesses actor and consumers obey the laws and obtain a justice in the implementation of consumer protection, in the state that the matter helps ensure certainty in the law.
B. The Overview about Contract

1. The Definition of Contract

Contract is an agreement between two or more parties related to a case. The contract could lead to a legal relationship between the parties entered into a contract. The meaning of legal relationship is dependent both parties with their rights and obligations. The fulfillment of rights and obligations is an achievement for another party. The actual definition contract is under the Section of 1313 of the Civil Code which states that "A contract is an act in which one or more persons bind himself to one or more other people".

Contract is a legal relationship between two or more parties agrees to give rise to legal consequences. The theory does not just look purely into a contract, but also to be seen actions that preceded it. Contract is a legal relationship between two or more parties based on an agreement to give rise to legal consequences. That is, both parties agreed to specify rules or rights and obligations, so that when the contract was violated, there will be legal consequences or sanctions for the offender.

Looking at the various definitions and purposes, so it can be concluded that the contract is a legal act between two or more parties based on an agreement to give rise to rights and obligations.

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29 Sukarmi, *Cyber Law: Kontrak Elektronik dalam Bayang-Bayang Pelaku Usaha*. (Bandung: Pustaka Sutra, 2008), hal. 26
30 Salim HS, *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Sinar Grafika, 2003), hal. 161.
Based on the terms of the contract under the Section of 1313 of the Civil Code, together with a contract. The similarity between the agreements with the contract is located the rising from the agreement, the rights and obligations.

a. Elements of the Contract

The contract contains certain elements, namely:

1) Essensialia

The absolute element in the contract of the presence or absence of things. Suppose in the purchase contract should mention the price, the absence of the price in the purchase contract could make the agreement invalid.

2) Naturalia

The Element that is not agreed specifically, but by it is presumed to exist because it is inherent in the contract. This element is set in the legislation, but other contracts can be made by the parties. It could serve as an example of this element is on the 1276 Civil Code, which stipulates that: If in the matters mentioned in the section and the choice is submitted to creditors and only one item that is missing, then if it happens outside the fault of the debtor, the creditor must obtain things that are still there; if the loss of any of the goods had occurred due to his fault debtor, the creditor can demand the delivery of goods which are still there or the price

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32Much. Nurachmad, *Buku Pintar Memahami dan Membuat Surat Perjanjian* (Jakarta: VisiMedia, 2010), hal. 4
33*Ibid*, hal. 20
of goods that have been lost. If these two items disappear, so if the loss of the goods, any one else, occur because of errors the debtor, the creditor may demand the payment of the price of one item according to the choice.

In that article, it was determined that the cost of delivery is borne by the seller, while making cost borne by the buyer. If the contract is not mentioned, automatically the seller pays all cost of delivery. However, with the contract of both parties, the delivery costs can be borne by the buyer.

3) Accidentalia

The elements written contract by that has been added by the parties as of laws do not regulate it. This is because it is not regulated by law, then these elements must be included explicitly in the contract.

b. The legal term of Contract

Terms of the contract valid, there are four things that under Section of 1320 of the Civil Code, namely:

1) The contract for those who bound themselves
   a) Mistake
   b) Force
   c) Fraud

2) Ability to make a relation

3) A specific case
4) A lawful cause.

Terms of the contract are valid four things, which are divided in terms of subjective and objective conditions. The first two conditions are valid subjective terms, this is because the first two conditions are set associated with the person or subject doing the contract which must be agreed and capably. Besides, the two terms that both objective conditions, as set with existing objects in the agreement itself. The classification of the contract leads to different legal consequences.\textsuperscript{34}

If the subjective requirement is not has fulfillment yet, the contract may be canceled by the judge at the request of the parties are not able, or are on a deal is not free. During the request is not canceled yet, then the treaty remains binding. Meanwhile, if the objective conditions are not fulfilled, the contract is null and void which means of all has never been considered so that there is no basis to sue each other in front of a judge (court)\textsuperscript{35}.

The confirmation that the encounter will (consensus) was measured with statements on a reciprocal basis has been declared. Based on the statements of reciprocity, it is considered that it was born of a contract that gave birth to such a binding contract law\textsuperscript{36}.

The deal means the conformity of the will of the parties to the contract, so that the conduction of a contract should not be any

\textsuperscript{34}bid, hal. 133-134

\textsuperscript{35}Ibid

\textsuperscript{36}Subektji, \textit{Aneka Perjanjian}, (Bandung: Penerbit PT Citra Aditya Bakti, 1989), hal. 7.
compulsion and fraud. A cause that is legitimate, meaning the contract made must be based on good faith. Pursuant to Article 1335 of the Civil Code a treaty without cause have no power. Because in this case is the purpose of the contract.

c. **The Principles of Contract**

The principles contained in the agreement are as follows:\(^{37}\):

1) The principle of legal contract. The terms of validity of the contract is set go-between Article 1320 of the Civil Code, as already described in the previous section

2) The principle of good intention. The principle of good intentionon theSection 1338 of the Civil Code as already described in the previous section

3) The principle of *pacta sunt servanda*. This principle is also provided for in the Section of 1338 of the Civil Code. *Pacta sunt servanda* principle or also called the principle of legal certainty. This principle relates to the result of the contract. The principle of *pacta sunt servanda* is a principle that a judge or a third party must respect the substance of a contract made by the parties, as befits a law. Judges are not allowed to intervene in the substance of a contract made by the parties. *Pacta sunt servanda* principle can be summed up in Section of 1338 article (1) of the Civil Code

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\(^{37}\) Sukarmi, *Op.cit*, hal. 28-31
which claims: "All the contracts are made in accordance with an applicable laws for those who make it. The contract can not be withdrawn in addition to the contract of both parties, or for reasons of work reasons specified by law. The contract must be implemented in good intention".  

4) The principle obligator. Contracts or agreements with rights and obligations.

5) The principle of trust. The principle of this trust is made both parties bind themselves and for both these contracts have binding force as a law.

6) The principle of binding force. The binding of the parties not only in contract, but also against to some other elements that is required by customs and decency and morals.

7) The principle of equilibrium. This principle is a continuation of the principle of equality. One party has the obligation to submit the achievements, and the other party has the right to receive the achievement.

8) The principle of legal certainty. The contract as a legal figure must contain legal certainty. The certainty is revealed from the binding force of the treaty is a law for the perpetrator.

According to Abu Sopian whom adds the principle of the principles of the treaty is the principle of personality. Personality

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38 Abu Sopian, Loc. Cit.
principle is the principle which determines that a person would do or make contracts only for personal interests only. This can be seen in article 1315 of the Civil Code. Section 1315 of the Civil Code writes that "In general, someone can not hold a commitment or contract except for for himself".\textsuperscript{39}

2. Buying and Purchasing

a. The Definition of buying and purchasing

According to the Section of 1457 of the Civil Code, buying and purchasing is a contract where one party to bind himself to submit a material and the other party pays the price that has been promised. According to Indonesian Dictionary (KBBI) on 366 pages about purchases are mutually binding contracts between the seller, the party submitting the goods and the buyer as the party that pays the price of goods sold.\textsuperscript{40}

The words show that buying and purchasing of one party called purchased, while from the other party is called the buyer. A term that encompasses both of which had opposite sides it is in accordance with the Dutch term "Koop en verkoop" which also implies that the other person "verkoopt" (sell) while others "koopt" (buy). In English, buying and purchasing simply called the "sale" only means "sales" (only seen from the angle of the purchaser), as well as in French is called simply "Vante" which also means "sales".

\textsuperscript{39} Ibid
\textsuperscript{40} Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, \textit{Kamus Besar Bahasa Indonesia} (Jakarta: Balai Pustaka, 2000), hal. 366.
whereas in German wore the words "Kauf" meaning "purchasing". The things which become the object of the purchase contract must be reasonably certain. At least, the form and amount can be determined at the time he would be handed over his property to the purchaser. Buying and purchasing is done by trial or on things that usually tried first, always deemed to have been made with a tough requirement (Section 1463 of the Civil Code).

b. The Occurrence of Buying and Purchasing Contract

Principal elements (essentialia) purchase contract is goods and price. In accordance with the principle of "konsensualisme" that animates the Civil Code contract law. Purchasing contract had been born on the second achievement of "agree" regarding things and prices. Once both parties have agreed to goods and prices, then gave birth to a legitimate purchasing and buying agreement.

The consensual nature of the sale and purchase is confirmed in Section 1458 which claims: "Buying and purchasing is considered to have occurred for both sides immediately after they reached contract on things and prices, even though the things were delivered or unpaid". Konsensualisme came from the word "consensus" means the agreement. With the contract, it means that among the parties concerned reached an accordance of the will that is desired by others. Both will meet in the words"agree". Achieving agreed this was expressed by both parties to be expressed by both parties to
pronounce the words for example, agree to join a signature on the bottom of the statements written as a sign (proof) that the two sides have agreed all that printed above the article.

As we known that the legal contract of the principles of the Civil Code konsensualisme means that it was adhered to a principle that to deliver sufficient contract with the agreed course and that the contract (and thus "relation" have caused) it has been born at the time or the second achievement of konsensualisme contemplated above. In the second contract has been made and binding, rather than at any other moment later or earlier. This principle concludes from Section 1320, the Section governing the terms of the validity of the contract of Section 1338 (1st) which reads: "All the contracts made legally valid as law for those who make it" and it was intended to imply on the strength of the contract, which is the same strength as a law. Such power is given to "all treaties made legally", is a legal contract that there is a role in Section 1320 enumerates about the terms of validity of the contract. Terms requirements are: 1. agree, 2. prowess, 3. certain things and 4. Causal (cause, content) is lawful. It just mention of "agree" without some demand form of way (a formality) of any kind, such as writing, marking and so forth, we can conclude that if the contract has been already reached, then the valid contract is done through law for those who make it.
The existence of "formal" contract or also called the contract "real" it is an exception. A formal contract is for example a contract "peace" under (2nd) Section 1851 of the Civil Code must be made in writing (if it is not then it will not valid too, whereas the real contract is for "borrowing-using" which according to Section 1740 of newly achieved by handing over the goods widened object or contract "care" according to Article 1694 occurred with the deposit of the goods are entrusted.

These contract is are not enough with just the agreement, but also it treats a formality or an act of real (real). *Konsensualisme* principle contained in Section 1320 of the Civil Code (if desired: on Section of 1320 in relation to Section of 1338, 1st article), it is also apparent from the formulations of a wide variety of agreements. If we take; the main contract, such as buying and purchasing, then *konsensualisme* it stand out all of its formulation on Section 1458 of the Civil Code, which claims: "Buying and purchasing was considered to have occurred between the parties, immediately after these people reach agreement about the item and its price, although it has not delivered the things and the price is not paid too".

The Rights and Obligations in buying and purchasing as follows:

1) The rights granted to the seller to urge buyers to pay the price, but the seller is also obliged to transfer the things to the buyer.
2) The rights granted to the buyer to urge the seller to hand over the goods that have been bought, but the buyer is also obliged to pay the purchase price.

3. Breach
   
a. Definition of Breach

   The contract contains rights and obligations born of an agreement of the parties. The agreement in the contract should be fulfilled by one party to the other. That obligation is called accomplishments. While those who do not do according to the contract referred to by breach\textsuperscript{41}. It is stipulated in Sectionof 1234 of the Civil Code which provides that "Relation is intended to give something, to do something or not do something."

   Based on this case, the breach stems from the contract of the parties to make agreements, with a clause that contains a number of rights and obligations of both parties (in a reciprocal contract). The whole clause was submitted, negotiated and finally arranged in a balanced manner based on mutual contract of both parties made it. In the process of talks or negotiations during the preparation of the contract each party filed a set of rights that is expected from the opposition by offering a set of obligations that exist to be given to the opposing party as compensation for the rights requested\textsuperscript{42}.

\textsuperscript{41} Rocky M. Kiat Jitu Menelesaikan Kasus Hukum (Jakarta: VisiMedia, 2011), hal. 201

\textsuperscript{42} Nyoman S.K, Konsep Wansprestasi dalam Hukum Perjanjian dan Konsep Utang Dalam Huum Kepailitan (Jurnal Universitas Udayana, Denpasar, Bali, 2013), hal. 8
On the other hand, one of the parties will also offer a number of obligations to be fulfilled by the counterparty to offset the number of rights that is requested by the other party or to have offered a number of rights to the opposing party as compensation to offset a number of obligations which might be expected agreed to met the opponent. It means that in the negotiations, a process of understanding and respect for the opponent so that each can find an agreement on any rights and obligations will be specified in the contract. In a reciprocal contract that is good, there should be a balance between the weight of the rights and obligations agreed by each party. The balance is the basis of the willingness of the parties to accept and agree on any clause of rights and obligations in terms of the contract known as the achievements. Each achievement should be implemented as an integral part of the balance.\textsuperscript{43}

\textbf{b. The occurrence of Breach}

In general, breach could be\textsuperscript{44}:

1) Absolutely it is not fulfil the achievement criteria;
2) Conducting achievement promised, but only half part;
3) Conducting achievement promised, but doing too late;
4) Conducting achievement promised, but mistakenly meet achievement (not as it should be)
5) Doing what should not be done under the contract.

\textsuperscript{43}Ibid, hal. 8-9
\textsuperscript{44}Ibid, hal. 9
c. **The Form of Breach**

Breach or refuse is an act does not undertake the obligation in accordance with the agreements that has been made. The realization of breach could be:

1) It is not doing the affordable to be done
2) It is carrying out things that is not as agreed
3) Too late to be the agreed
4) Doing something according to the agreement.\(^{45}\)

d. **The Punishment for Breach**

A result that could be caused by the presence of one of the parties in breach as follows\(^{46}\):

1) Paying compensation
2) Cancelling contract
3) Risking transition
4) Paying of court fees

The legal consequences for debtors who have been in breach as a penalty or sanction as follows\(^{47}\):

1) The debtor is required to pay for damages that have been suffered by the creditor (Section 1243 Civil Code). This provision applies to all contracts.

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\(^{45}\) Much, Nurachmad, *Op.cit*, hal. 20-21

\(^{46}\) *Ibid*, hal. 21

\(^{47}\) Abdulkadir Muhammad, *Perjanjian Baku dalam Praktek Perusahaan Perdagangan*, (Bandung: PT. Citra Aditya Bakti, 1992), hal.24
2) In a reciprocal agreement, breach of one party gives rights to other party for canceling or terminating contract through the judge (Section of 1266 of the Civil Code).

3) Risking is transferred to the debtor since the breach happens (Section 1237, 2nd Article of the Civil Code). This provision applies for all contracts.

4) Paying the court fee upfront when sued the judge of the provision for all the engagement.

5) Fulfilling a contract if it can be doing or canceling the contract which is accompanied by payment of compensation (Section 1267 Civil Code). This provision applies to all contracts.

   Based on the legal consequences above, the creditor can choose among several possible claims against the debtor, whether demand or the fulfillment of the contract are accompanied with replacement damages or any damages or demand cancellation of the contract through a judge along with the damages.

C. General Review of Business Actors

1. Definition of Business Actors

   Explanation of 1st Section (3rd) Article of the Law on Consumer Protection, which includes the businesses actor are "businessactors are included in this sense is a company, corporation, state enterprise, cooperative, importer, trader, distributor, and others."
2. The Rights and Obligations of Business Actor

Manufacturers as the party that undertakes the production of things has rights that must be fulfilled. The rights are 4 (four) types, such as:\(^{48}\)

a. Rights of payment  
b. Rights of protection  
c. Rights of the defense  
d. Right to rehabilitation

Meanwhile, the right of producers according to the positive law in Indonesia is regulated in 6\(^{th}\) Sections of UUPK. The article explained that there are five producers’ rights below:

a. The right to receive payment in accordance with the agreement on the conditions and the exchange rate of the things and / or services traded  
b. The right to legal protection of consumer action that has not good intention  
c. The right to self-defense is fitting in the legal settlement of consumer disputes  
d. The right to rehabilitation of legally if it is proved that the consumer loss is not caused by the goods and / or services traded  
e. The right regulated in other regulations of constitution.

\(^{48}\)Didin Hafidhuddin dan Hendri Tanjung, Manajemen Syariah Dalam Praktik, Cetaka ke I., (Gema Insani Press, Jakarta, 2003), hal. 95
Based on the explanation above, the producers are guaranteed to get the legislation for their rights. Therefore, it is very important for manufacturer to fulfil their obligations for consumer.

The inherent right of manufacturers also been accompanied with the obligation that must be carried out as a consequence of the rights. Furthermore, the producers` obligation under 7th Section of UUPK which states that there are 7 producers`obligations that must be implemented, namely:

a. Acting in good faith in conducting business activities
b. Providing true, clear and honest about the condition and guarantee of the things and / or services and gives explanation about the usage, repairment and maintenance
c. Treating or serving customers properly and honestly and not as discriminatory
d. Guaranteeing the quality of things and / or services that are produced and / or traded under the provisions of the quality standards of things and / or services are applicable
e. Giving a chance for consumers to a test, and / or try the things and / or services as well as the guarantee and / or warranty on things manufactured and / or traded
f. Giving compensation, compensation and / or reimbursement of losses regarding to the use, consumption and utilization of things and / or services traded
g. Giving compensation, compensation and / or replacement if the things and / or services received or used not in accordance with the agreement.

Other obligation that must be done by the manufacturer is to ensure products to be safe and comfortable as well as the absence of hidden defects, as defined in Section 1491 of the Civil Code. It means that the manufacturers have an obligation to ensure that the products which will be sold to consumers and it can be used safely and comfortably and it does not have hidden defects that become things could be used.

D. Overviewing about E-Commerce

1. Definition of E-Commerce

Definition of e-commerce can be defined as the process of buying and purchasing transactions electronically through the Internet. E-commerce as a way to shop or trade online or direct selling that utilize internet facilities where there is a website that can provide services "get and deliver" that connect company, consumer, and certain communities through electronic transactions and trade in goods, services, and information that will be conducted electronically.^[49]  

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E-commerce can involve electronic funds transfer, electronic data interchange, automated inventory management systems, and automated data collection systems.\textsuperscript{50}

In general, the meaning of the transaction is often reduced to a purchasing contract between the parties that agree to do it, but in a juridical perspective, the transaction terminology basically is the existence of a contract or legal relationship that occurs between the parties. Juridical meaning transactions are basically more emphasis on the material aspects of the law formally. Therefore, the existence of legal provisions concerning the contract remain binding even if there is a change in media or changes in procedures for transactions. This of course there are exceptions in the context of legal relationships concerning the object does not move, because the context of actions is already specified by the law, which is must be done in a "light" and "cash".

In the civil sphere in particular aspects of the contract, the transaction would refer in particular aspects of civil contract. The meaning transactions electronically law for itselfs will cover the purchase, license, insurance, auction and bonding based on the development of trade mechanisms in society. In the public sphere, the legal relationship will include the relationship between citizens and government as well as the relationship among members of society that are not intended for commercial purposes.

\textsuperscript{50} Rika Bherta, \textit{Electronic Commerce (E-Commerce) Ditinjau Dari Hukum Perjanjian Dan UUITE Di Indonesia}, 2015, (\http://lppm.akmi-baturaja.ac.id/?p=219), hal. 4
With a simple contract that has the same binding force by law for those who make the appointment. The definition applies to parties on the contract that has consequences for only the party to perform the contract that is applicable to the agreement. Thus, the third parties or outsiders cannot claim a right under the contract that is committed to the parties who agree to the agreement.

2. The Principle of E-Commerce transactions

The status of e-commerce in Indonesian law lies in the field of civil law as a subsystem of the law of contract, then the e-commerce has the same principles to the law of treaties in general such as: 1) The principle of freedom contract; 2) The principle of consensual; 3) The principle of good intention; 4) The principle of equilibrium; 5) The principle of propriety; 6) The principle of habit; 7) The principle of compensation; 8) The principle of the state; 10) The principle of legal certainty.

The applicability of the principles through contract law in e-commerce, so the terms of engagement are still available valid, so the terms of Section 1320 of the Civil Code it concerns the validity of a contract, such as:

a) They agree to bind themselves
b) They make a proficient contract
c) A specific case
d) A lawful cause.
3. Types of E-Commerce Transactions

Basically, e-Commerce transactions can be grouped into two (2) major parts: trade Business to Business (B to B) and Business to Consumer (B to C).51

a. Business to Business (B to B)

Business to business is a business communication system between businesses or in other words of the electronic transaction between the company (in this case the businesses) are carried out routinely and in capacity or large product volumes. The party that hold into the contract is the Internet Service Provider (ISP) with website or keybase (electronic space). Based on the characteristics, transactional e-Commerce B to B, has the following characteristics:
1) Trading partners who already known each other and already intertwined relationship that lasts long enough. The exchange of information is done on the basis of need and trust; 2) Exchanging data is done repeatedly and large-scale data format that has gathered; 3) Some of the actors do not need to wait their partner to send the data; and 4) the processing intelligence model commonly is used as peer to peer that can be distributed among business actors.

b. Business to Consumer (B to C)

Business to consumer e-Commerce is a business transaction electronically that is conducted through business operators and

51Esther Dwi Magfirah, Komputer No. 175 edisi juli 2000, hlm.4
consumer to fulfil a particular need. In other words, the Business to Consumer (B to C) is trading transactions via the Internet between the sellers of things to the consumer (end user). In this business transaction, the traded products ranging products and services either in tangible form or in electronic or digital form that is ready for consumption.52

The transactional characteristics of e-Commerce Business to Consumer are follows: 1) Open to the public, where the information is distributed in general as well; 2) Service that is performed generally, so that the mechanism can be used by many people; 3) Service is given based on consumer demand initiative while producers should be preparing to respond to an initiative of the consumer; and 4) Often doinga client-server approach, where consumers in the client uses minimal system (web-based) and the provider of things or services (business procedure) are on the server side.

52Jay MS. ”Peran E-Commerce dalam Sektor Ekonomi dan Industry” pada seminar sehari ed. aplikasi internet di era millenium ketiga, (Jakarta 2001), h.7
CHAPTER III

A LEGAL TRANSACTION OF E-COMMERCE REGARDING TO THE LAW

A. E-Commerce in A Legal Transaction Regarding to The Law

1. The Contract Concept about selling and purchasing of E-Commerce

   Basically, selling and purchasing through e-commerce is same with general trading, it will be happened when there is an agreement about the things or services which are traded based on the price. The different part is only on the media that is used, if in the conventional trading both of the parties must meet directly in one place to agree about the trade and also the price of the things or services it selves. However, the process in e-commerce happens need an internet for the basic media, so the transaction process will be happened without directly meeting between both parties. It also happens with the contract to do the transaction.

   The status of e-commerce in Indonesian law states on the field of civil law as part of the legal contract, so it is available on Section 1320 of the Civil Code on the terms of validity contract, such as:

   "So, if it will be a legal approval, it also need to be fulfilled for four conditions: 1. Their agreement to bind them selves for a contract; (Civil Code. 28, 1312, etc.), 2. The ability to make agreement; (Civil Code. 1329, etc.), 3.
A specific issue; (Civil Code. 1332, etc.) And 4. The reason that is not forbidden (Civil Code. 1335 etc).53

The legality of e-commerce transactions refers to Section 1320 of Civil Code, namely:

a. Agreement for those who bind themselves

In transaction of E-commerce, the party whose provide an offer is the seller through the website that is designed interestingly to be visited. All parties internet users (netter) have a freedom to enter and view the virtual shop or buy items which is needed or interested. If the buyer is interested in purchasing an item so he only needs to click on items in accordance with her wishes. Finally, there is an agreement.

b. Skills To Make A Contract

In e-commerce transaction is very difficult to define someone who conduct transactions whose been adult or not under remission, because the bidding process and acceptance do not directly but it is only through virtual media that will be prone to get scam. If someone who d the transaction is an incapable person then the injured party may demand that the contract would be canceled.

c. Something certain things

Certain thing according to the law is an achievement that the subject of the agreement is concerned. There are certain items that should

53Acep Rohendi, Perlindungan Konsumen Dalam Transaksi E-Commerce Perspektif Hukum Nasional Dan Internasional (Ecodemica. Vol III. No.2 September 2015), hal. 475-476
not be purchased and sold in E-commerce transactions, such as trade in animals.

d. Something For Halal things

Because something which is halal is the content of the contract and it is not because the parties who enter into a contract. The contents of the contract must based on with the law and it is not contrary to a good moral and public order.

2. Principles of Law Contract of E-Commerce

The position of e-commerce in Indonesian Law stays on Civil law as subsystem from the law contract, so e-commerce has the same principle with the general law contract, such as:

a. The Freedom Principle of Contract

The civil law that valid in Indonesia recognizes that there is a freedom of contract, it can be concluded from the provision on Section 1338 (1st) Civil Code claims that all contracts that have been made as a legal validation as constitution for them who make it. The source from the freedom contract in individual freedom that is an individual needed too.

b. Konsensualism

Consensual means that contract has been happened or existed since the occurrence of an agreement between the parties and it can be interpreted that the contract is valid and has a legal effect since the agreement between the parties regarding the content of a
contract intended. In e-commerce contracts that happens between the merchant with the customer is not only just a contract that is pronounced orally, but also a contract is written where the written contract in ecommerce unlike konvensional contract that use of paper, but use form of writing with digital data or digital message or contract paperless which will to bind/join themselves from the parties represents from the similar willingness. The contract of e-commerce occurs when a merchant gives a form that contains the contract and the customer have an agreement to the contents of the contract by giving a check mark (√), or press the button of accept as a sign of approval. So, it shows the similarity between the merchant with the customer.

c. Principle of Good Intention

Good intention is not only the same with justonly intention, but also good intention is an implementation of the agreement that are fair, appropriate, and well worth it. The contract in e-commerce occurs when one party agrees with what is offered by the other, before the customer agrees to trade transaction, they were required to read about the requirements or commonly known as the user agreement or conditions of use, so that when the customer has read and deeply understand about the requirement, so it takes a good intention and honesty to fulfill the requirement, such as the
limitation age, when it has been fulfilled, it can be seen the fulfillment of good intention.

d. The Principle of Trust (vertrouwensbeginsel)

To give the trust for customer, the merchant gives a service of warranty or guarantee stated in section A-to-Z Guarantee protection Amazon website, and thus it is expected to provide confidence to customers on what has been agreed.

e. The Principle of Binding Strength (principle of Pucta sunt servanda)

The Contract of e-commerce occurs because of an agreement between merchant with the customer, it means that the agreement will cause legal law that can not be circumvented by the parties. That obligation binds the parties to carry out their achievements, with a contract that has been agreed by the customer to the merchant then the contract is binding for both parties, and apply as legislation for both

f. The principle Rule of Law

On the issue of legal certainty, for example the eBay party has insisted on Your User Agreement in Resolution of Disputes that for solving if there is a dispute in another day on can be done in a way. Firstly, Law and Forum for Disputes which uses in this way then resolving disputes is using the law of the state of California, United States. Secondly, Arbitration Option, if with this option so the
settlement of disputes using arbitration lines (alternative dispute resolution), with their choice of course this law gives legal certainty to the parties of e-commerce.

g. The Principle of Balance

In e-commerce, the customer is required to meet the requirement that is specified by the merchant, because it has been conducted then the merchant will do their obligations to serve all customer along with the requirement, it certainly shows the balance.

3. Recognition Law on E-Commerce Transaction Contract

One of important aspect on electronic transaction contract is the importance of legal recognition of an electronic transaction. That is, the law can not be displayed directly, but it just the evidence of electronic transactions in the trial. It happens because this contract is not an obligator and dispositif but declarative (explaining, stating).

The contract of e-commerce contract is an agreement to take it or leave it. So, if the buyer agrees that he/she will approve the agreement, or if the buyer did not need approval and the transaction was canceled or did not happened.

The contract that happens in e-commerce can be subject to Section 1313 of the Civil Code as the setting, so the condition of the validity of a covenant contained in the Civil Code must be observed through imposition of the rules on the contract in Indonesia is generally using the Civil Code that can be applied on e-commerce valid contract.
So, there are two important things in perspective ecommerce law contract: Firstly, the recognition of electronic transactions and electronic documents in the legal framework of contract and the evidence law, so that the legal certainty of electronic transactions can be guaranteed. Secondly, the classification actions including qualifying law violations related to the abuse of IT (Information Technology) that is accompanied by sanctions.

The recognition of electronic transactions and documents at least the e-commerce activities have a legal basis and provide a protection to the consumer of e-commerce.

**B. E-Commerce of Law in a Commitment Perspective**

**1. Regulation Act Regarding E-Commerce**

The arrangements regarding to e-commerce is still use the rules at III Book’s rule III of the Civil Code in particular regarding to the problem that occur in e-commerce contract. The contract in e-commerce occurs between two parties which one party has a promise the other party about something to do. This is in accordance with Section 1313 of the Civil Code, which stated: "A contract is act with one or more persons who bind their selves or more increasing person".

The legal relations in the E-commerce represents as the embodiment principle of freedom in the contract which binds the parties. It has been set in "textbook" rules of civil law in Indonesia, namely Section 1338 Book of the Law of Civil Law (Civil Code) which states that all contract which has made
applicable as valid as law for those who make it. Nevertheless, freedom of contract in the E-commerce continues to have restrictions in Civil Code.

The regulation law of binding agreement contract of e-commerce, namely:

a. Law on Trade

Electronic trading system on Act No. 7th in 2014 about trade is arranged in Section 1st(24th), 65th, and 66th. These laws regulate the obligations and penalties for traders who trade electronically as well as dispute resolution.

The parties trader shall provide the data correctly, a minimum includes:

1) The identity and legality as business actor
2) The technical requirements of things offered
3) The technical requirements or qualification services offered
4) The price and payment terms
5) How to give the things

b. The Law about Information and Electronic Transaction

Law on Information and Electronic Transactions (UU ITE) No. 11th in 2008 is the main legal basis for e-commerce in Indonesia. The ITE Law was adopted on April 21st in 2008 and has been entered on the date of promulgation (54th Section 1st Article of UU ITE). ITE Law applies to any person whose conduct legal action, either in Indonesia or outside Indonesia.

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54 Resa Raditio, Aspek *Hukum Transaksi ElektronikPerikatan,Pembuktian, dan Penyelesaian sengketa*, (Jakarta: GrahaIlmu, 2014), hal. 86
55 *Ibid*, hal. 8-9
Thus, the expanding to reach the law is not only locally but also internationally (2nd Section of ITE). Similarly, e-commerce contains a wider problem occurs in the field of civil cases for electronic transactions on trading activity through the electronic system (electronic commerce) has become part of commerce national and international. As judicial activities on cyber space can not be approached with the size and qualifications of conventional law if there are troubles and things that pass from the law of the way (General Description of UU ITE). 56

UU ITE is related to the power problem in the authentication system of Information, Document and Electronic Signature. Setting The Information, Document and Electronic Signatures sets on 5th Section on 1st and 2nd Articles which stated that "Electronic Information and / or Electronic Document and / or the printout evidence are valid law" (5th Section on 1st Article), "Information Electronic and / or Electronic Document and / or printout referred to in 1st subsection is an extension of the valid evidence in accordance with the Law of Procedure applicable in Indonesia " (5th Section on 2nd Article) of 12th Section on 1st Article about Information Electronic Transaction which stated that "Every person whose involvs in the Electronic Signature has an obligation to provide safety for the used of Electronic Signature". In general, it is stated that that the Electronic Information and / or Electronic Document and / or prints with a validatevidence

56Ibid, hal 476
which are the extension of the valid evidence based on the Law of Procedure applicable in Indonesia.

Regarding to licensing and legalities, business actors are required to have a register marks as business actor or entreprenuer by the minister; They required to have a permit trading; They organizers services except getting benefit or not directly involved in the contractual relations of the parties.

Selling and purchasing transactions, even if it is done online according to UU ITE and PP PSTE have been recognized as an electronic transaction to be accounted. The agreement of consumers to purchase things online by clicking the approval of the transaction is a form of receipt that indicates approvals deal in electronic transactions. The act of acceptance is usually preceded by a statement of acceptance in terms and conditions of selling and purchasing online that it can say also as a form of Electronic Contract. Electronic contract pursuant to 47th Section on (2nd) Articles of PP PSTE considered valid if:

a. There is an agreement between the parties;

b. The subjects of law is capable or authorized to represent in due to the provisions of the legislation;

c. There are certain things; and

d. The transaction object must not get conflict with the laws and regulations, morality and public order.
Electronic contract according to Section 48th Article (3rd) PP PSTE should at least contain the following below:

a. The identity data of the parties;

b. The objects and specifications;

c. The requirements of Electronic Transactions;

d. The prices and costs;

e. The procedures if there is cancellation by the parties;

f. The provision which entitles the injured party to be able to return the things and / or request a replacement product if there is a hidden defect; and

g. The selection electronic transaction settlement laws.

c. Consumer Protection Act

Section of 3rd UUPK states the objective of consumer protection are as follows:

1) Raising awareness, ability and independence of the consumers to protect themselves;

2) Lifting the value and dignity of consumers by leaving from from the negative access of things and / or services;

3) Improving the empowerment of consumers in selecting, specifying and demanding their rights as consumers;

4) Creating a consumer protection system that contains elements of legal certainty and transparency of information and access to get the information;
5) Growing awareness of business actor about the importance of consumer protection so that the growing attitude of honest and responsible in the terms of having business;

6) Improve the quality of things and / or services that guarantee the continuity of the production of things and / or services, health, comfortable, security, and safety for consumer.

2. The Position of Standard Clause in E-commerce

In the business world, there is a standard clause or agreement that put unbalanced position between businesses and consumers. Finally, a contract was born that harm one of the parties (consumer). UUPK is not formulate as a covenantal sense of raw but using the term standard clause according to Section 1st (10th) of UUPK which is formulated as follows: Clause raw are any rules or terms and conditions that have been prepared and determined previously by business actor as outlined in a document and / or a binding contract and that must be fulfilled by consumer.

The use of standard clauses in e-commerce transactions obviously is a must. Because in e-commerce the parties do not interact directly but through electronic media, one of the media is internet. When consumers want to purchase an item on a website, the seller or merchant will show a contract (terms and conditions) which contains the requirements like purchasing and selling contract in general. The
contract (terms and conditions) can be categorized as a standard clause, because the contents of the contract are set unilaterally. UUPK does not prohibit business actor to create a standard clause on any documents and transaction trading contract of things and or services during the contract or a standard clause which does not include provisions as prohibited on Section 18\textsuperscript{th}Articles (1\textsuperscript{st}), as well as amorphous as prohibited on Section 18\textsuperscript{th} Articles (2) of the UUPK.

Thus, the principle of UUPK is not prohibit a business actor to create standard contract that contain standard clauses of a contract, during and throughout the standard contract does not include provisions as prohibited on Section 18\textsuperscript{th} point (1\textsuperscript{st}) based on the amorphous as prohibited in Section 18 points (2\textsuperscript{nd}) in this law.

But the things that should be worried about are the inclusion of the exoneration clause (exemption clause) in the contract. Exoneration clause is a clause which contains a limit condition, or even removing the responsibility for the the producer / distributors of products (sellers).\textsuperscript{57}

The aim of using standard clauses in the actual business activities is to save time in any trading activities and it is very inefficient when each transaction of selling and purchasing between the seller and the buyer that talks about the content of the contract.

\textsuperscript{57}Shidarta, 2006, Op Cit, hal. 147
Therefore, in a standard contract included clauses are commonly used in the selling and purchasing contract.

3. The Procedure for Standard Clause in E-commerce

Selling and purchasing is considered have occurred between the two parties immediately after reaching an agreement on things and prices, although it has not delivered or the things and prices which have not been paid before. In E-commerce transactions, there is no bargaining process for the selling and purchasing transactions directly. The things and the price that are offered limited and pre-determined by the seller. If the buyer do not agree then the buyer is free to discontinue the transaction.\(^{58}\)

In the case of non-fulfillment of the first and the second element then the contract can be canceled. As if the non-fulfillment of the third and fourth element, then the contract null and void.

If there is a broken promise and how does the compensation if a debtor must be reimburse the costs of damages and interest, if they can not provides that therealization of contract is caused by an unexpected cases which can not be accounted although there is no bad intention (Section 1244 Book of the Law of Civil Law). Reimbursement of damages and interest due to non-fulfillment of contract that begins if the debtor has been declared negligent

\(^{58}\)Endom Makarim, Komliasi Hukum Telematika (Jakarta: PT. Raja Grafindo Perdasa), hal. 234-237
and still inattentive being given or done in a time that exceeds a predetermined time (Section 1234 Book of the Law of Civil Law).

Although UUPK as clear on the procedures for the manufacture of standard clauses, but in practice it still occurs irregularities especially in e-commerce transactions where all activities are carried out with the process of "click" without bargaining process. Eksenorasi clause in ecommerce is widely available in terms of:

a. Choice of law (choice of law)

Clause concerning the choice of law is generally occurs on cross-border ecommerce of the State. The legal options concerning the law of the country which will be used if there is a dispute, in this case disputes between consumers and business actor in another country.

UUPK has a weakness, which can not reach a business actor in another country. This can be seen in the formulation of Section 1st point 3rd UUPK which states:

“Pelaku usaha adalah setiap orang perorangan atau badan usaha, baik yang didirikan dan berkedudukan atau melakukan kegiatan dalam wilayah hukum negara Republik Indonesia, baik sendiri maupun bersama-sama melalui perjanjian penyelenggaraan kegiatan usaha dalam berbagai bidang ekonomi”.

Based on the understanding of business actors above, the scope of UUPK is only a business in the legal territory of the Republic of Indonesia. UU ITE has been set regarding to the choice of law which is included in Section 18th Article (2nd) which stated that the parties have the authority to choose the law applicable to electronic international transactions that has
been made, but the UU ITE does not regulate the subject of the standard clauses as stipulated by UUPK, so inevitably consumers should obey to the provisions issued by business actor.

b. Unbalanced risk sharing

Unbalanced risk sharing is happens in e-commerce, especially in the payment transaction. Usually, consumer must pay first (by credit card or bank transfer) on things purchased, and then the order will be processed by the business actor or seller. This is certainly a high risk for opening delayed delivery of ordered things, content and quality of the things do not appropriate with the order even the things donot reach the to the consumer’s hands too. Standard clause concerning the division of risk is widely used for reasons to protect businesses from consumers who are not responsible, but in the other hand, this clause could harm the interests of consumers as a guarantee that orders will be processed after payment from business actor.

C. Disclaimer Contract of Lazada

Actually, it has not been known exactly when the history about the inception disclaimer (terms and conditions) used basic or as part of a contract or agreement. The terms and conditions contained in the site as a fundamental rule that must be adhered together, either by the seller, buyer or site owner. It can be
found that the contents of the terms and conditions that are published by certain sites are only regulating the security of the site owner and ignoring the interests of consumers.

This research analyzes the focus on disclaimer / provision limits of the responsibility of the owner (the site manager). It comes because the research has not found yet the specifically and depth research about the origins of the using clauses that limit the liability of one particular party. Whereas the provisions on limitation of liability can be an ultimate remedy that is a form of a waiver to a stateas a burden for the other party. Expenses that are contextually interpreted as party to a transaction has been agreed or at least deemed to have been agreed upon exercising the rights and obligations of a contract / appointment.

If it is related to the topic of this research, the provisions concerning limits of responsibility of the owner / manager of the site into a golden rules (basic rule) that is absolutely agreed for anyone who access and use the site. The clause that governs the limits and responsibilities are closely related to the application of exemption clause (clause exoneration) and it is alreadybeen known by the public as a standard clause.

There are some examples of disclaimer / Lazada Contract provisions:

1. General Rule

Terms of Use Lazada

Terms of Use Lazada in this research were taken as the important points of contract which are relevant to the discussion. In general regulation below:

a. Terms & Conditions of Use

_Syarat Penggunaan ini mengatur penggunaan dan akses Platform dan penggunaan layanan. Dengan mengakses Platform dan / atau_

Akses atas password dan penggunaan password dilindungi dan/atau area tertentu yang diterlindungi pada Platform dan/atau penggunaan Layanan dibatasi hanya untuk Pelanggan yang memiliki akun saja. Anda tidak diperbolehkan memperoleh atau berusaha memperoleh akses tidak sah ke area Platform dan / atau Layanan ini, atau ke area informasi lain yang dilindungi, dengan cara apapun yang tanpa ijin penggunaan khusus oleh kami. Pelanggaran terhadap ketentuan ini merupakan pelanggaran yang didasarkan pada hukum Indonesia dan / atau undang-undang dan peraturan yang berlaku.

Jika Anda berusia di bawah 18 tahun: Anda harus memperoleh persetujuan dari orang tua atau wali Anda, penerimaan atau persetujuan orang tua/wali terhadap Persyaratan Penggunaan ini beserta persetujuan mereka untuk mengambil tanggung jawab untuk: (i) tindakan Anda; (ii) biaya yang terkait dengan penggunaan setiap Layanan atau pembelian Produk; dan (iii) penerimaan dan kepatuhan Anda sesuai dengan Syarat & Ketentuan Penggunaan ini. Jika Anda tidak memiliki izin dari orang tua atau wali, Anda harus berhenti menggunakan / mengakses platform dan berhenti menggunakan Layanan ini.

b. Terms and Conditions of Trade

5. Pernyataan dan Jaminan

Pengguna setuju untuk mengganti rugi, membela dan membebaskan Lazada Group, para pejabat, direktur, agen dan karyawannya, dari dan terhadap setiap dan semua kerugian, tanggung jawab keuangan, tuntutan, gugatan, proses hukum, penyelidikan, investigasi, interogasi, tuduhan dan biaya (termasuk biaya dan ongkos pengacara yang wajar) yang timbul dari atau dengan cara apapun terkait dengan Posting yang disediakan oleh Pengguna, termasuk tanpa batasan tuntutan untuk iklan yang menipu, pencemaran nama baik, pelanggaran hak publisitas dan/atau privasi, hak cipta atau pelanggaran merek dagang. Sepanjang diizinkan oleh hukum, platform disediakan sebagaimana bentuknya, tanpa jaminan akses, atau penggunaan tanpa gangguan oleh pengguna, atau jaminan apapun. Saran atau informasi apapun, baik lisan atau tertulis, yang didapatkan dari Lazada atau situs Lazada tidak memberikan jaminan apapun yang tidak dinyatakan secara tegas dalam kebijakan ini. Lazada menyandarkan semua jaminan, baik tersirat maupun tersurat, sehubungan dengan platform dan/atau Kanal, termasuk namun tidak terbatas pada, jaminan tersirat mengenai hak, bias diperdagangkannya, kinerja, kesesuaian untuk tujuan tertentu dan tidak adanya pelanggaran. Dalam keadaan apapun, Lazada tidak
bertanggung jawab atas kerugian yang bersifat konsekuensi, tidak langsung, tidak disengaja, atau khusus apapun juga, termasuk namun tidak terbatas pada, kerugian akibat hilangnya laba, gangguan kegiatan usaha, niat baik, hilangnya atau akses tidak sah ke informasi, dan kejadian serupa, bahkan jika Lazada telah diberitahukan mengenai kemungkinan kerugian tersebut, dan terlepas dari bentuk tindakan, baik menurut kontrak, undang-undang ganti rugi, atau lainnya.

Dengan menggunakan Kanal, Pengguna dengan ini setuju bahwa Lazada tidak bertanggung jawab atas transmisi yang salah, kegagalanteknis, perangkat keras atau perangkat lunak komputer, hilangnya, terganggunya atau tidak tersedianya koneksi jaringan, atau transmisi komputer yang gagal, tidak lengkap, rusak, menempuh rute yang salah, kacau atau tertunda, atau kesalahan atau masalah lainnya, baik yang disebabkan oleh faktor mekanis, manusia, elektronik atau lainnya, yang dapat membatasi kemampuan Pengguna untuk berpartisipasi dalam Kanal.

Pengguna mengakui dan setuju bahwa Lazada bebas untuk menggunakan komentar, informasi atau gagasan yang diajukan oleh Pengguna kepada kami, tanpa perlu menyampaikan pemberitahuan, kompensasi atau pengakuan kepada Pengguna, untuk tujuan apapun, termasuk namun tidak terbatas pada modifikasi dan pengembangan kanal atau jasa Circle.

6. Keterbatasan kami atas tanggung jawab dan kewajiban
6.1 Tidak ada pernyataan atau jaminan:
Layanan, Platform dan Material yang tersedia adalah berbasis "sebagaimana adanya" dan "sebagaimana tersedia".Semua data dan/atau informasi yang terkandung dalam Platform, Layanan atau Material yang disediakan ditujukan sebagai informasi saja. Tidak ada pernyataan atau jaminan apapun, yang tersirat, tersurat maupun diatur, termasuk jaminan non-pelanggaran (non-infringement) atas pihak ketiga yang meliputi: hak, kepemilikan, kelayakan jual (merchantability), kualitas yang memuaskan atau kesesuaian untuk tujuan tertentu, sehingga dengan Platform, Layanan atau Material. Tanpa mengesampingkan ketentuan lain yang berlaku, kami tidak menjamin:
(a) akurasi, ketepatan waktu, kecukupan, nilai komersial atau kelengkapan dari semua data dan/atau informasi yang terkandung dalam Platform, Layanan atau Material;
(b) bahwa Platform, Layanan atau bahwa setiap Material selalu tersedia tanpa gangguan, aman atau bebas dari kesalahan atau kelalaian, atau setiap cacat yang ditemukan akan langsung diperbaiki;
(c) bahwa Platform, Layanan atau Material selalu bebas dari virus komputer atau kode berbahaya lainnya, merugikan, merusak, agen, program atau macro; dan
(d) keamanan atas informasi apapun yang dikirim oleh Anda atau untuk Anda melalui Platform atau Layanan, dan dengan ini Anda menerima risiko bahwa informasi apapun yang dikirim atau diterima.
melalui Layanan atau Platform dapat diakses oleh pihak ketiga yang
tidak sah dan / atau diungkapkan oleh kami atau petugas, karyawan atau
agen kepada pihak ketiga yang mengaku Anda atau mengaku bertindak
di bawah otoritas Anda. Transmisi melalui Internet dan surat elektronik
dapat dikenakan gangguan, transmisi pemadaman, tertunda transmisi
karena lalu lintas internet atau transmisi data yang tidak benar karena
sifat publik dari internet.

6.2 Pengecualian pertanggungjawaban: _Lazada tidak bertanggung
jawab kepada Anda untuk Kerugian apapun atau apapun penyebabnya
(dalam bentuk apapun) yang timbul secara langsung atau tidak
langsung yang terkait atas:

(a) Akses, penggunaan dan/atau ketidakmampuan untuk
menggunakan Platform atau Layanan;
(b) Ketergantungan Anda (mengandalkan) pada data atau informasi
yang tersedia melalui Platform dan/atau melalui Layanan. Anda tidak
seharusnya bertindak hanya mengandalkan data atau informasi tanpa
terlebih dahulu secara independen/mandiri memverifikasi isinya;
(c) Sistem, server atau koneksi yang gagal, kesalahan, kelalaian,
gangguan, keterlambatan dalam transmisi, virus komputer atau kode
berbahaya, merugikan, merusak lainnya, agent program atau macros;
(d) Setiap penggunaan atau akses ke website lain atau halaman web
yang ter-link dengan Platform atau terdapat link –nya di Platform,
walaupun jika kami atau petugas kami atau agen atau karyawan kami
telah diberitahukan, atau mungkin telah diantisipasi, atas
kemungkinan yang sama.

6.3 Risiko Anda sendiri: Setiap risiko kesalahpahaman, kesalahan,
kerusakan, biaya atau Kerugian yang diakibatkan dari penggunaan
Platform, adalah sepenuhnya risiko Anda sendiri dan Lazada tidak
bertanggung jawab untuk itu.

10. Pembatasan Tanggung Jawab

10.1 Remedi: Remedi yang ditetapkan dalam pasal 6 adalah Remedi
atas ketidaksesuaian atau cacat pada produk yang berlaku satu-satunya
dan eksklusif.

10.2 Tanggung Jawab Maksimal: Kewajiban maksimum penjual kepada
anda atau pihak lain untuk semua kerugian, yang timbul dari atau
berhubungan dengan penjualan produk dalam setiap kontrak pelanggan,
tidak akan melebihi jumlah yang anda bayar dalam kontrak pelanggan
tersebut.

10.3 Pengecualian Tanggung Jawab: Lazada tidak bertanggung
jawab kepada anda untuk setiap kerugian apapun atau apapun
penyebabnya (apapun bentuknya) yang timbul langsung maupun tidak
langsung berhubungan dengan: (i) piutang pengguna lain dalam
platform yang berkaitan dengan pembelian produk apapun; (ii)
penjualan produk oleh penjual vendor ketiga untuk anda, atau
penggunaan produk, atau penjualan kembali produk oleh anda; dan
(iii) setiap cacat timbul dari keausan, kerusakan yang disengaja,
penyalahgunaan, kelalaian, kecelakaan, penyimpanan abnormal dan
atau kondisi penggunaan, perubahan atau modifikasi produk atau
kegagalan mematuhi instruksi penjual (atau instruksi di deskripsi
produk atau di manual) terhadap penggunaan produk (baik lisan
ataupun tertulis).

Based on the bold writing, it appears that the site of lazada.co.id is
also determining the limitation of liability for transactions which has been made
through the website. The restriction of lazada seems that they determine entirely
free from a variety of claims, without exception, both lawsuit and demands
though.

The customer will sell their things through lazada.co.id and also determine
to fulfill some requirements beforehand. After completing these requirements they
can display the items which will be sold. Similarly, the buyers are given guidance
before they shop on Lazada.co.id. The transactions process is conducted directly
between the seller and buyer through the participation of lazada.co.id, especially
to the payment process, where prospective buyers are determined to make a
payment through the way which is available based on the company name as a legal
entity and then there are the stages of verification before sending the things. But
the process of delivery and receipt of things are made by the seller and the buyer.
The warranty on the goods is directly provided by the seller. After all the
processes have been implemented based on the time, then the customer will be
contacted by a call center representative from lazada.co.id which ensures whether
the things have been received well, whether there are defects in the packaging or
product, whether things are received within a quite long time, whether the things have been received is appropriate with the order, how long the delivery period from the date of order.

It can be claimed that the limitation provisions that is arranged by Lazada is a standard clause of unilaterally. The understanding of the case is that not all standard clauses must be included in a draft contract and signed by the party who made it, but in this context, it is enough to access the website and conduct transactions.

It is very remarkable, when the party who access the site does not read the provisions on limitation about the obligation, it seems deemed, agreed and fully comply with the requirements. It is known as the domination by one party, so that a pattern of take it or leave it will be valid in this situation.

Another problem that arises is the knowledge and ability to be a difference of standard clauses that can be applied is not an obstacle. This situation also helped force of insight how far businesses must participate and take responsibility for the products dihasilkannya. Mengingat site owners also do promotions through various kinds of media to encourage people to access the site has.

2. Choice of Law (choice of Law) Terms of Use Lazada
In this research, choice of law respects to the valid law which applies for the contract with more law from different countries. A legal options contract of Lazada can be seen in the following quote:

11.7 Hukum yang Berlaku: Syarat & Ketentuan Penjualan akan diatur dan ditafsirkan sesuai dengan hukum Indonesia dan Anda dengan ini tunduk pada yurisdiksi eksklusif Pengadilan Negeri Jakarta Selatan.

Based on these quotes, it can be stated that the Lazada includes the choice of law in Terms of Use. It means that if there is a dispute, they use Indonesian law. It means that the choice of law is based on the place where the contract is made (lex loci contractus). In other words, the choice of this law certainly gives a legal certainty to the parties in e-commerce.

Thus, it can be said as the Proper Law of Contract as the valid law is most often used when making the contract. For example, the language that is used is bahasa, then the currency that is used in IDR, and the transaction that is used is BANI, then the choice of the law is the law of Indonesia.

3. The Forum Options (choice of Forum) Terms of Use Lazada

Choice or option can be called as forum or ordinary jurisdiction in this research is the body which is authorized to investigate or adjudicate disputes. Lazada based contract, as in the following passages:

11.7 Hukum yang Berlaku: Syarat & Ketentuan Penjualan akan diatur dan ditafsirkan sesuai dengan hukum Indonesia dan Anda dengan ini tunduk pada yurisdiksi eksklusif Pengadilan Negeri Jakarta Selatan.
11.8 Kecuali sebagaimana diatur dalam Klausul 11.7, sengketa, perselisihan atau gugatan yang timbul dari atau berhubungan dengan kontrak ini, atau pelanggaran, penghentian atau cacat daripadanya harus diselesaikan melalui arbitrase sesuai dengan Aturan Arbitrase Dewan Nasional Indonesia arbitrase (Badan arbitrase Nasional Indonesia - "BANI"). Sidang arbitrase harus terdiri dari arbiter tunggal, yang ditunjuk oleh Ketua BANI.Tempat arbitrase adalah Jakarta.Setiap keputusan oleh pengadilan arbitrase bersifat final dan mengikat para pihak.

Based on those quotes, it can be stated that the jurisdiction which is used is the exclusive jurisdiction from the South Jakarta District Court. If there is a dispute, controversy or claim that arises from relating to this contract, or the breach, termination or defect it shall be settled by arbitration based on the Rules of BANI. The arbitral conference must consist of a sole arbitrator that is appointed by the Chairman of BANI. The place of arbitration is in Jakarta.

Based on the choice of law and forum selection on Lazada's contract it has actually been better for choice of law based on place where the contract is made (lex loci contractus). In other words, the choice of this law has been already provides the legal certainty for the parties in e-commerce. The jurisdiction was selected according to the most common areas in the country of contract and the most relevant legal entity in Indonesia, so if there is a dispute there will be a choice of law and choice of forum that will be used to resolve the disputes. However, the choice of law and forum are still considered to be harmful for consumers because it determines a choice of law would be used not based on achievement. If this is done, it can give protection for the party to provide the most
achievement to prevent damages to the party, so that the law that is used is the law for one party whom get highest achievement.
CHAPTER IV
THE PROTECTION FOR CONSUMER THROUGH LAW AND SETTLEMENT OF DISPUTES IN E-COMMERCE TRANSACTIONS

a. The Legal Protection Against through Consumer of E-Commerce Transactions

UUPK has not been able to protect the consumer in e-commerce transactions because of the provisions that contain in UUPKis not fully accommodate the rights of consumers in e-commerce transactions. That is because e-commerce has its own characteristics which is compared to conventional transactions. These characteristics are: there is no meeting between sellers and buyers, the media used is the internet, the transaction can occur across the boundaries of jurisdiction of a country, the things which are traded may be services or digital products such as software.

According to 4th Section of UUPK, the consumer rights have been violated by a big risk for businesses of e-commerce transactions. The right to be violated is risky, namely:

a. The right to comfort, secure and safety in consumption of things and / or services. This is because consumers do not immediately identify, see and touch the items to be ordered because they do not face directly. The right to get secure is also very less, there is no guarantee data, credit card numbers, adequate password given by merchant located in Indonesia because there is no guarantee agency (Certification Authority) for the
validity of an online shop, so the convenience and safety of consumers in the transaction is not yet assured.

b. The right to get information is correct, clear and honest about the condition of an item (thing). This is because business actor and consumers do not meet face to face so there is not active communication between consumer and business actro, so that information about the product is very less.

c. The right to be heard for the opinions and complaints on things and services which is used. Because the seller and the buyer does not meet directly, the communication takes place through e-mail or telephone or online shop that do not include addresses in the real world clearly, so it will be difficult to deliver any complaints.

d. The entitlement to advocacy, protection and mediation in consumer protection is worth. As it happened to the respondents who does not receive the things from merchants who stay in another country. That is happened because the location is so far and the lack of mechanism in ecommerce transactions because these transactions over the limit - the limit of a country, so it will be hard to determine the law.

Thus, the consumer's right to obtain a clear information on the identity of the company-owned in the transaction is necessary, as a legal address in the real world and the name of the owner. But it still has less realization in ecommerce transactions, because the website of business actors often do not
given the full address of the company and it is usually displayed on the website only telephone numbers and e-mail address.

This is according to the researcher is very detrimental to the consumer if there is a problem in the transaction, such as the delivered things do not correspond with the things ordered, things ordered have not arrived to consumers on time. So that consumer will get trouble if there is complain to business actor. In addition, consumers do not know clearly with whom to trade.

Therefore, the consumer rights are normatively regulated by UUPK and it just limited to conventional as trading activity. The limitations of UUPK to protect consumers in ecommerce transactions also appear on the limited scope of understanding businesses. 1st Section(3rd) of UUPK mentiones that business actors are "Any individual or business entity that is a legal entity and not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or collectively throughcontract of business activities in the economic field ".

Meanwhile, according to the explanation of 1st Section (3rd) of UUPK the business actors are "business actor are included in this sense is a company, corporation, state enterprise, cooperative, importer, trader, distributor, and others.

Based on the definition above, it can be concluded that scope of definition of businesses regulated by UUPK is very narrow which a
business actors are regulated in this legislation are business people whose jurisdiction in the territory of the Republic of Indonesia. In fact, when seeing from the characteristics of e-commerce, one of the trades that crosses in the country boundaries, the sense of efforts in this UUPK can not reach if business actor are not located in the territory of the Republic of Indonesia. However, UUPK still reach out to business actorwhom do business in the territory of Indonesia.

The agreement in a transaction raises a promise that one party promises to do something, while the other party get the right to demand the implementation of that promise. It needs to be emphasized because if one of the parties have agreed on the content of the agreement may not comply, the parties can be said to be in default. One of the risky case of contract breach in e-commerce transactions is consumer ignorance or impartiality of standard clauses that made entrepreneurs against consumer.

In the business world, there is a standard clause / standard contract that puts an unbalanced position between business actors and consumers. Finally, the contract was born that harm one of the parties of this case (consumer). The UUPK is not formulate the definition of standard clause which according to 1st Section (10th) of UUPK formulated that: "Standard clause is any rules or terms and conditions which have been prepared and determined in advance unilaterally by business actor as outlined in a document and / or a binding agreement and shall be fulfilled by the consumer"
Regarding to the case, Gunawan Widjaja and Ahmad Yani states that\textsuperscript{59};

"UUPK does not prohibit businesses to create a standard clause on any documents and / or the transaction agreement trade of things and / or services, as long and as long as the contract / or a standard clause does not include provisions as prohibited in 18\textsuperscript{st} Section (1\textsuperscript{st}) Article, and not "shaped" as prohibited in 18\textsuperscript{th} Section (2) of the Basic Forestry Law ".

In e-commerce, the uses of standard clauses are an absolute as a must, because in e-commerce the parties do not interact directly but interact using electronic media. When consumers want to purchase an item on a website, the seller / merchant will be offering a contract (terms and conditions) which contains the requirements like purchasing and selling contract in general. A contract (terms and conditions) is what can be categorized as a standard clause, because the contents of the agreement are unilaterally determined by the seller / merchant. In this case, the consumer can not protest the contents of the contract, because the websites featuring these contracts do not have the option to amend the contract. Then, the consumer has only two options such as accept or cancel the order.

UUPK uses the standard clauses in principle are not prohibited, but nothing to worry about the inclusion of the exoneration clause (exemption clause) in the contract. The exoneration clause is a clause which contains

\textsuperscript{59} Gunawan Widjaja dan Ahmad Yani, \textit{Hukum Tentang Perlindungan Konsumen}, (Jakarta: GramediaPustaka Utama, 2000), hal. 57.
conditions limiting, or even removing entirely the responsibility that should be borne by the producer / distributors of products (sellers).\textsuperscript{60}

Their exoneration clauses that is freedom the responsibility of business actors and the consumer can not do anything. Supposedly businesses responsible for the products and things that are marketed if these products cause harm to consumers in the future, so business actor should not avoid the responsibility by taking refuge under clause exoneration contained in a standard contract or the memorandum or the sales invoice. Usually business actor always dodged when there are consumers who return the items that had been bought because they are damaged, for example, on the grounds that the purchase note has been the inclusion of the clause which reads: "any damage to items purchased is not the responsibility of the seller after leaving the store."

Their exoneration clauses in the standard contract is very harmful for the consumers who have a weak bargaining position than a business actor, because the consumer did not come to negotiate the content of the standard contract and it is usually become the agreement for the proposed condition of business actor.

The examples of the use of a standard clause on legal options such as lazada.co.id\textsuperscript{61} which determines the limitation of liability for transactions that has been made through the website and appears on the website is

\textsuperscript{60} Shidarta, \textit{Hukum Perlidungan Konsumen Indonesia}, (Jakarta: GramediaWidiasaranaIndonesiaGrasindo, 2006), hal 147

\textsuperscript{61}http://www.lazada.co.id/terms-of-use/, Diakses 6 Februari 2017
something real. So the lazada.co.id site does not give a statements or warranties of any kind that will get risk and responsibility who access the site.

Customers will sell things through lazada.co.id and also determined to fulfill some requirements beforehand. After completing these requirements they will be able to show the things to be sold. Similarly, the buyers are given guidance before they shop on the site. The transactions process is conducted directly between the seller and buyer through the participation of lazada.co.id, especially to the payment process, where the prospective buyers are determined to make a payment through an available company as a legal entity and then there are the stages as final verificiation prior before delivering the item (thing). But the process of delivery and receipt of goods made by the seller and the buyer. The warranty on the things in this case also provides by the seller. After all the processes have been implemented and in a period of time the customer will be contacted by a call center representative lazada.co.id which ensures whether the things have been received well, whether there are defects in the packaging or product, whether things are received within a quite long time, whether the things have been received in accordance with the order, how long delivery period from the date of ordering things.62

Lazada.co.id is doing communication information includes customer service if there is a complaint and the customer is given the information and the addresses of email, facebook and twitter and so on. Furthermore, it will be

62Ibid.
given live chat forum if there are things to be communicated with customers.63

The restrictions on the provisions is stipulated in any site selling online is a standard clause standards determined unilaterally by the owner of the site concerned. The basic problem of these limits is if the party accessing the site did not read the provisions on limitation of liability the owner of the site in question, deemed to have been subject, agreed and fully comply with the requirements which have been plastered in it. This makes many consumers suffer a loss on limitation of liability clauses of the standard.

One example is the case whose experienced by Achmad Supardi who has been being a victim of e-commerce site of Lazada. Achmad Supardi confession that Lazada has already unilaterally cancel the transaction that was paid and refund to the consumer in the form of shopping vouchers that can only spent in Lazada. Unilaterally, Lazada refund all process by providing shopping vouchers according to the amount of money spent on buying 4 units of motorcycles and replace with 2 vouchers fund amounting to IDR 4.2 million. But it can not be cashed voucher.64

A similar case experienced by consumers who buy a mobile phone of Iphone 6 in Lazada. However, it comes from a soap bar. Other case was experienced by Budi whopurchased Nike shoes on price of IDR. 570Kand got discount from the original price of IDR. 1.2M turned out to be fake Nike shoes for IDR. 150K, so he sent a letter of complaint to Lazada through email

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63Ibid.
and requested that Lazada would replace it with the same Nike shoes based on his order, but such complaints were not addressed by the management Lazada so finally he wrote letters to the Kompas daily, and then the problem was solved by the Lazada.65

The above figures clearly violates the terms defined in UUPK. The 18th Section on article (3rd) of UUP-PK specified that "Any standard clause that has been set by the business actor on the document or contract ..." the words on the document have the meaning that is not as the standard clause should be shaped into a contract. This step was taken by the legislators because it could be a standard clause contained in a receipt that claimed "items purchased can not be exchanged for any reason as well .."

Not only that even in media promotion and advertising, as well as the brochure can also contain provisions elements of standard clauses. In principle which is prohibited if it found any violation of the provisions of 18th Section of UUPK, which contains standard clauses prohibited and solely benefit the businesses.

One of the breach may harm to the consumer. Indeed e-commerce transaction is selling and purchasing contract as stipulated by the Civil Code because it is a contract that also called as the achievement which is the obligation of a party to carry out the things that exist in a contract. Their achievements allow a breach or non-performance achievements or obligation

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duly imposed by the contract to the parties. Breach is committed by the seller is a loss for the consumer.

According Subekti, breach is negligence or omission may have four kinds of conditions, namely:

a. It is not doing the affordable to be finished;
b. Implementing what is the promise, but not as the promised;
c. Doing what is the promised but it is too late;
d. Doing something that should not be done according to the contract.

If one of the four kinds of these conditions occur, then the consumer can sue civilly online sellers with the pretext of breach (eg, items (things) received is not in accordance with the specifications of goods loaded in the display home page / web site).

M. Arsyad Sanusi\textsuperscript{66} added in the form of a breach committed most often by businesses are due to "Not Doing Any of affordable Will Do". This form is illustrated for e-commerce transactions, the seller has the obligation to hand over the things to be sold for the buyer and the obligation to bear the serene enjoyment and bear the hidden defects. If the seller does not implement both these obligations, the seller can be said inbreach. The example of breach is buying a Nike shoes at Lazada.co.id. According to the picture and description of items contained in the advertisement stated that Nike shoes with a price of IDR. 570Kis already got discount from the original price of IDR. 1.2 million. But after arriving at the buyer’s house, it was

\textsuperscript{66} M. Arsyad Sanusi, \textit{E-commerce: hukum dan solusinya}, (Jakarta: PT Mizan GrafikaSarana,2007), hal. 34
obtained a fake Nike that shoes which commonly sold at roadside for IDR 150K or not as like the advertisement. Thus, it is obviously that the seller has been in breach for exercising his achievements appropriately.

This shows the unequal sharing of risks. The unbalanced risk sharing much happens in e-commerce transactions. The standard clause concerning the division of risk is widely used for reasons to protect business actor from consumers who are not responsible, but on the other hand this clause could harm the interests of consumers as a guarantee that orders will be processed after payment only from businesses only.

Indeed, under Article 16 of UUPK, contains a provision regarding to the obligation of businesses to fulfill the promise in terms of offering things or services through an order, which stated that the business actors are prohibited from:

- **c. Do not keeping the order or contract settling time than promised.**
- **d. Not keeping promises on a services or achievements**

With the Section 16 of UUPK, then the implementation of the promise made by businesses can be more assured. Indeed, the responsibility of business actors mentioned in 19th Section of UUPK is particularly in 1st Article stated that "business actor are responsible for providing compensation for damage, contamination, and / or loss of customers due to the consumption of things and / or services produced or trafficked".

If the observed substance of 19th Section (1st) Article it is known that the responsibility of business actor includes the responsibility of
compensation for damage, pollution and loss of customers. It is seen that the responsibilities of business actors that cover all the losses suffered by consumers.

The principle of this responsibility is very important thing in consumer protection law that has been given for some formal legal source and standard contracts in the field of civil law often provides limitation of liability that should be imposed by the violators of consumer rights.

In general, the principles of responsibility in the law can be distinguished among other things:67

a. The principle of responsibility based on the element of fault (liability fault or liability based on fault).

The principle of responsibility based on these errors is generally applies in civil and criminal law. This is regulated in Section 1365, Section 1366 and Section 1367 of the Civil Code. This principle stated that a person can only be held responsible in law if there was an element of error which was contrary to law, decency and morality.

b. The principle of the presumption is always responsible.

This principle states a defendant is always do consideration responsible (presumption of liability principle), until they can prove his innocence. So the burden of proof is on the defendant, meaning that the obligation to prove that there was error on the part of businesses being sued. The defendant must present evidence of his innocence. However,

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consumers will not be able to file a lawsuit, but the consumer's position as the plaintiff whom always open being sued forth by the business actor, if the plaintiff fails to show a defendant's guilty.

c. The principle of the presumption is not always be responsible (the presumption of non-liability principle)

This principle is known only within the scope of consumer transactions are very limited. Examples of application of this principle is happening on the transportation law; for example: loss of or damage to baggage / hand luggage, which usually brought and supervised by passengers (consumers) are the responsibility of the passenger; so that business actor can not hold the account.

d. The principle of absolute liability (strict liability).

The principle of absolute liability under consumer protection laws are generally used to "ensnare" business actors, especially manufacturers of things, which products which harm for consumers. This principle is known as product liability. According to this principle the manufacturer shall be liable for damages suffered by consumers on the use of the marketed product.

e. The principle of responsibility with restrictions (limitation of liability principle)

This principle is well-liked by the business to be listed as an exoneration clause in the standard contract. Therefore, this principle is very detrimental to consumers when applied unilaterally by businesses,
so business actors should not unilaterally determine the clause which harm consumers, including limiting the maximum responsibility.

In connection with the foregoing, there is a principle in UUPK that govern product liability, product responsibility is basically refers to the responsibility of the manufacturer of the products on the market / circulation, causing losses due to defects inherent in these products. The Product of responsibility is a legal concept that basically meant to provide protection to the consumer. The 19th Section on (1st) article in UUPK mentioned above for more specifically defines the responsibilities of the product.

Thus, in the context of the cases examined in this research, the analysis of the law on consumer protection for the breach committed by Lazada. Based on the case above, Lazada has already in breach that did not perform as promised. Breach of occurrence does not perform the obligations in accordance with the contract that has been already made in the form of not doing that is affordable to do and not as implementation in the contract.

This is contrary to Article 1313 of the Civil Code, which stated: "A treaty is an act for one person or binds them self to one or more persons ". Therefore, the use of standard clauses in e-commerce transactions is things absolutely because the e-commerce the parties do not interact directly.

The contract in e-commerce transactions if it is the reviewed by the Law of Treaties in Indonesia which is based on the Civil Code is invalid because it has qualified that the terms both objective and subjective terms. Accordingly, contracts in e-commerce indirectly must meet various principles
of contract in the Civil Code, among others the principle of good intention, and contract (Pacta Sun servanda).

Talking about Lazada, shopping websites online that offer various types of products ranging from electronics, books, toys and baby supplies, medical devices and beauty products, household appliances, fixtures traveling and this sport started up in Indonesia since 2012 and Lazada retail's branch network in Southeast Asia. Besides Indonesia, Lazada also present in the State Malaysia, Vietnam, Thailand and the Philippines.

As in UUPK, rights and obligations of consumers are protected. In 4th Section (b) The law stated that consumers have the right to choose the things and / or services and obtain things and / or services in accordance with the exchange rate and conditions and guarantees promised. After doing his duty as stipulated in 5th Article (b) and (c) that consumers acting in good faith to make purchases of things and / or services and pay according to the agreement exchange rate.

Based on examples of the cases that the consumer in this case whose name is Budi has already fulfill his obligations to pay a nominal amount in accordance with the listed price so that he should get the rights of the selling and purchasing activities. Consumer rights is to get goods to the money paid and guarantee that has been promised. In purchasing Nike shoes in Lazada, it is mentioned that Nike shoes sold are genuine products but obtained are counterfeit Nike products are usually sold by street vendors at a price below that paid to Lazada.
It thus does not fulfill the terms "Agreed those who bind themselves". This contract does not contain an agreement if there will be defects (wilsgebrek). The defects will form an oversight / error can occur because of erroneous against the things. That is, the contract can be canceled, and one of those who feel aggrieved right to demand cancellation of the contract in advance of judges.

This violates the principle of responsibility with restrictions. This principle is usually states in a contract between producers and consumers that outlines the boundaries of responsibility to do the consumers of the products manufacturers are detrimental to consumers.

In the context of producer responsibility that based on flawed product (objective liability) and the risk or loss suffered by consumers (risk based liability). 68

According to M. Ali Bhutto that principle in the UUPK is a form of legal shortcomings that should be improved. It shall, the principle of accountability that apply in the UUPK is libaility without fault, known as strict liability. 69

Manufacturers should thus be responsible for any product defects or risks and losses suffered by consumers. In relation to the case of the previous which harm consumers, the producers should be responsible by the way, one of which would pay damages suffered by consumers. Lazada has good

68 Yudha Hadiah Nur dan Dwi Wahyuniarti Prabowo, Penerapan Prinsip Tanggung Jawab Mutlak (Strict Liability) Dalam Rangka Perlindungan Konsumen, (Buletin Ilmiah Litbang Perdagangan, Vol. 5 No. 2, Desember 2011), hal. 183
69 M. Ali Bhutto, Telaah Kritis atas Undang-Undang Perlindungan Konsumen, www.hukumonline.com, diakses pada tanggal 05/02/2017
intention that required in this regard, although Lazada is as an intermediary or do not sells products directly to consumers, but there are other traders who use Lazada as a place to sell, but Lazada regarded by consumers as the "seller". As set forth in UUPK, consumers have a right to compensation, compensation and / or reimbursement, if the things and / or services received are not in accordance with the contract or not appropriate (4th Section on letter (h)).

Based on the description, the data can be concluded that the aspects of the legal protection given related to the clause exoneration in the contract standard which were created by the business actor, such as if the purchased things are hidden defects / things that are not visible, then the consumers who consume or use things are to be received a legal protection. In the practice of legal protection received by consumers is usually only limited to product liability, which consumers will only receive compensation in the form of products or things in accordance with the purchase. Thus, consumers need to get legal protection to give legal certainty to all consumer needs and maintain or defend their rights if harmed by the behavior of businesses.

Agreement in contract of Lazada can be subject to Section 1313 of the Civil Code as setting it up, so what is the condition of the validity of a covenant contained in the Civil Code must be observed that the imposition on the rules of the contract in Indonesia is generally use the Civil Code that can be applied as well as the contract in the contract Lazada be recognized, where fulfillment condition of validity of a contract, namely:
a. They agree to bind themselves

The first requirement that any contract must be as a result of an agreement between the two parties should not be forced, forget, and fraud (dwang, dwaling, bedrog). Contract in the agreement is basically a meeting between the concordances of wills between the parties to the contract. A person is claimed to give the approval and the deal if they did the agreement. This is in accordance with the principle of konsensualisme in an agreement that a contract has been made it has been fully valid and binding for the parties who made it.

In regard to Lazada contract, the contract clause provided when registering early when the contractual clause have been provided by the seller. This contract clause has been provided and the buyer agrees to stay with how to check the appropriate box or press the acceptance as a sign of approval. That is, if the buyer agrees that they will approve the agreement, otherwise the buyer does not need approval and the transaction was canceled or did not happen.

Based on the research conducted, the contract clause is only given the first-time registration, was not given anytransaction purchase and most consumers do not read the details of the contract clause. As stated in the Terms of Use Lazada explained that:

The bold quote above confirms that Lazada has already warned to the
consumers to read the terms carefully and considered to be agreed if
consumers leave a check mark (√) in the column contents that he agreed with
what was required, and when consumers fill out a form that contains the Data
self. Apart consumers read carefully or not, the fulfillment of agreements
between the parties in making agreements or contracts Lazada can be met, so
that the agreement from the standpoint of the agreement shall be valid and
binding the side.

b. Skills for Creating A Contract

Terms of capable to hold a contract or agreement by the Civil Code is
an adult men and women who have been 21 years or has been married and
healthy mind and not under guardianship.

Agreement or contract of Lazada also requires certain conditions for
the parties will conclude a deal. As in the following quote:

*Jika Anda berusia di bawah 18 tahun: Anda harus memperoleh persetujuan
dari orang tua atau wali Anda, penerimaan ataupersetujuan orang tua/wali
terhadap Persyaratan Penggunaan ini beserta persetujuan mereka untuk
mengambil tanggung jawab untuk: (i) tindakan Anda; (ii) biaya yang terkait
dengan penggunaan setiap Layanan atau pembelian Produk; dan (iii)
penerimaan dan kepatuhan Anda sesuai dengan Syarat & Ketentuan
Penggunaan ini. Jika Anda tidak memiliki izin dari orang tua atau wali, Anda
harus berhenti menggunakan / mengakses platform dan berhenti
menggunakan Layanan ini.*

Lazada contract does including provisions to hold terms of agreement,
for example 18 years old and over. The age requirement is clearly different
skills with the terms of the Civil Code, which is 21 years, although the
Lazada already included must have the permission of parents / guardian if under 18 years old. But the requirement of age is still contrary to the Civil Code.

That is, the terms of skill set forth in Article 1320 of the Civil Code can not be fulfilled in the contract Lazada, this is because of Article 1320 of the Civil Code governing the terms validity of the agreement have the nature of force so it can not be ruled out even though the Book III of the Civil Code has the nature aanvulend recht or just complement it.

Given the terms and conditions in the contract of Lazada skills to follow international law. Thus, although the terms of maturity according to the Civil Code can not be fulfilled in the contract Lazada, this does not because the contract becomes invalid, but only gives a result of the agreement or the contract may be requested cancellation by either party, due to the ability to make an engagement included into the subjective terms.

Based on these descriptions, it can be concluded that the contract Lazada remain valid so that it binds and became law for the parties to make all the parties are not concerned about the non-fulfillment of a condition of validity of the agreement pursuant to article 1320 of the Civil Code as well as the parties continue to implement the agreements that have been made.

c. One thing Specific

One particular case related to the object of the contract means that the object must be clear, determined and taken into account the type and amount, allowed by legislation as well as possible to do the parties. A point of
contract was the object of the agreement achievement. The contents of these achievements must be certain or at least can be determined, so based on that definition, Lazada contract must mention the object of the contract either.

Through the website, Lazada has known to offer a wide variety of products, among other things, books, electronics, fashion, housewares, miscellaneous food, automotive, and even health and beauty products. Display products made there are pictures and descriptions of the products offered explanations regarding information, specifications, prices of these products.

Once consumers make product selection, at the end of the process merchant transactions will display information about the item and and the price above choose or not. So, customer becomes the object of the contract. Based on the description above, the contract Lazada the also certain things that are objects of agreement or contract as required by Article 1320 of the Civil Code in 1333 in conjunction with the agreement in general.

d. A Because the Halal

Because of halal means that the contract should be based on good intention because kosher is absolutely me into a contract, the manufacture of such agreements must be based in good intention to establish an agreement or contract (Article 1337 of the Civil Code).

Contract Lazada has already made to meet the norms of living in society. Based on the Terms of Use Lazada that has been mentioned before, the member registration as a precondition for the Merchant confirms the
transaction and require the consumer to read and pay attention to the terms of use carefully, which is the section governing the use and access and use the service platform.

Thus, the existence of clear rules on matters what may and may not do as well as the sanctions mentioned by Lazada gives the sense that the contract which occur indirectly has qualified a cause that is lawful, that the contract or agreement made between the it has a lawful reason as the basis for agreement because there is an element of good faith.

b. **Settlement of Breach In E-Commerce Contract**

1. **Settlement outside a justice**

   Implementation of the dispute out of court is made to reach a contract between the disputing parties, namely consumers with businesses. It is stipulated in Article 47 UUPK which specifies that:

   Consumer dispute resolution outside the court held to reach an agreement on the form and amount of compensation and / or on certain actions to guarantee it will not happen again or it will not happen again the losses suffered by consumers

   The deal is to be achieved related to the form and amount of compensation and guarantees that the violations will not happen again. The people in charge of accountability resolve disputes between consumers and business actor are the Consumer Dispute Settlement Board (BPSK). BPSK formed specifically by the government (as the party responsible for the implementation of consumer protection) to complete the accountability out of court.
This is stipulated in Section 49 UUPK which specifies that: "The government will establish a dispute resolution body of consumers in the Regional Level II for the settlement of consumer disputes out of court."

One of the duties and authority of BPSK is "Implementing the handling and settlement of consumer disputes, by way of mediation or arbitration or conciliation".

a. Mediation

Definition of mediation is not contained in Law No. 30 of 1999 on Arbitration and Alternative Settlement Sengekta (UU APS). Understanding precisely mediation contained in Section 1st, Article (6th) the Supreme Court Regulation No. 2 of 2003 on Mediation Procedure Court, which defines mediation with the following definitions "Mediation is a dispute resolution process of negotiations the parties with the assistance of a mediator".

However, mediation does not give a single model that can be described in detail and distinguished from other decision-making processes. Many of those who recognize that mediation is a process to resolve the dispute with any help of a third party. The role of the third party is involved to assist the parties in identifying issues in dispute and develop a proposal. The proposal is expected to be used as a reference to resolve the dispute.

Therefore, the primary responsibility to achieve a permanent peace is in the hands of the parties themselves. This is because a third party only as between to resolve any peace, do not have the authority to take action.
c. conciliation

A long with mediation, UUAPS also does not regulate and provide a clear understanding related to conciliation. Nevertheless, Elsi Kartika Sari and Advendi Simangunsong stated that conciliation is an attempt to reconcile the desire disputing parties to reach agreement and settlement.

However, UUAPS not give an explicit formula for understanding of conciliation. However, that formulacan be found in 1st Section and 9th and 10th Articles of the common explanations, namely conciliation are one of the institutions of alternative dispute resolution. Thus, conciliation is an alternative dispute resolution process and involves a third party who opted to settle the dispute.

Meanwhile, on conciliation mentioned in the book Black's Law Dictionary. However, what was mentioned in the Black's Law Dictionary, in principle, a peace conciliation before the court (litigation). Thus, the conciliators proceedings should have a significant role. Therefore, the conciliator obliged to express their thoughts on the problem stood. In resolving the dispute, the conciliator has the right and authority to express opinions openly and impartially to the dispute. In addition, the conciliator is not entitled to make a decision in the dispute for and on behalf of the parties.

70Elsi Kartika Sari dan Advendi Simangunsong, Hukum dalam Ekonomi (Jakarta: Grasindo, 2004), hal. 201

71Ibid, hal. 201-202
that the final decision is taken fully conciliation proceedings by the parties to the dispute are set forth in the form of an agreement between them.

d. arbitration

Settlement through arbitration court can be referred to as a businessmen. This is because the arbitrage yields decision. So it is almost similar to the court, despite still being done outside the court system is not the same with the court.

Basically the court settlement can be set based on the APS Act. Section 1 of Law APS distinguishing between arbitration settlement of disputes. Section (1st) and (10th) Article of the APS provides an understanding of the arbitration and alternative dispute resolution as follows:

Arbitration is a way of solving civil disputes outside the public courts based on the arbitration agreement made in writing by the parties to the dispute.

Alternative Dispute Resolution is an institution for settling disputes or differences of opinion in a procedure agreed upon by the parties, the court settlement by way of consultation, negotiation, mediation, conciliation or expert assessment.

Such provisions are still lacking unclear if connected with the goal of completion accountability out of court. As the case that have been already mentioned in the previous paragraph that the purpose of the settlement liability outside the court, which is to reach an agreement. Whereas, a contract can only be reached by the mediation and conciliation while arbitration can not produce the contract, but rather to produce a
decision. Such a provision would not be in accordance with the concept of court settlement.

Based on the meaning of 1st Section and 10th Article of the APS, then there is a difference between arbitration with other dispute resolution. Arbitration is an isolated settlement that resulted in the decision, whereas alternative dispute resolution is included in it, namely mediation, conciliation, negotiation, and evaluation of experts. Between arbitration with mediation and conciliation can not be used as a single entity because it is different and has different legal consequences.

Moreover, the setting of dispute resolution outside the court in UUPK also only limit on arbitration, mediation and conciliation only. Whereas, the dispute resolution outside the court because there are many kinds, namely negotiations, and expert assessment. The restrictions could certainly lead to selection of the parties will conduct accountability beyond accountability have little choice. Fewer choices in resolving disputes outside the courts could lead to disputes out of court can be difficult to solve the problems.

According to the provisions of Section 45 of UUPK, dispute resolution outside the court must be done first before finishing in court. That is more advisable dispute settled out of court. If the settlement method is narrowed, it hopes to resolve the dispute out of court will be difficult to achieve. An agreement is not obtained then the next action is performed penyelesaiaian in court.

72ibid, hal. 232-233
2. **Settlement inside a justice**

The settlement of in dispute in conformity with the law public court proceedings based on UUPK Section 48th stipulates that "consumer dispute resolution through the court refers to the provisions of the general court with regard to the provisions of Section 45th". This means that the procedural law in the court settlement liability related consumer loss has no procedural law of its own, but rather carried out in the public courts at common law court proceedings.

However, some ambiguity lies in the "general justice" is not clear, which is entitled to justice. This is because the general court consists of various kinds. Basically, the general court in question can be understood as the district court (PN).

Nevertheless, it remains in the court settlement has several advantages in its implementation, among others:

a. Applying public norms

Norms applied the norm of legislation that already exist and apply in general to all community. This is advantageous because there is legal certainty in dispute resolution guidelines.

b. There is a precedent

In a court settlement can be resolved in a way that has terhadi settlement during this time, with the same case. The existence of similar cases that have occurred and decided in the court settlement can be used as guidelines to the parties.
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b. There is precedent
In a court settlement can be resolved in a way that has been in a settlement during this time, with the same case. The existence of similar cases that have occurred and decided in the court settlement can be used as guidelines to the parties.

c. Uniformity
Among all litigants in court, all parties were tried with the same rules and settlement. This is because it comes in the legislation of the same. In the resolution of the Court there is no discrimination in the resolution, because it comes from the same law.

d. The independence
The Court is an independent institution and no intervention by other parties. This is a favorable situation because the decision will be taken without the hands of the other party.

e. Decision binding

Decisions given by the Court is a decision that is binding on all parties. All the parties listed in the Court

f. Openness

Court settlement in a settlement that is open because it can be witnessed by all of society. In addition, the court verdict was read in public.

g. can be executed

The court's ruling can be executed because there are people in charge to make the execution of the judgment. This means that the court decision is not just a decision that can not be executed.

h. institutionalized

The Court is an institution that is institutionalized. If the settlement in the first verdict is not accepted, then it could be settled in court the second level and so on.

i. Funding publicly

Settlement in court is funded with state funds and does not need to use money from the parties, whether to pay the judge and others.

Although it has advantages, other problems are related court settlement of consumer liability losses if implemented in courts of general jurisdiction is the process of resolving a long, costly (relatively
expensive); Wearing a lawyer so often is not controlled; The decision was not unexpected; Not experts substance; Procrastinate; Many take time; No compromise; and Tend hostile.

Thus, the old settlement would further add to the problem if the procedural law still wearing the procedural law on the public courts. In addition, some problems if the consumer dispute resolution is carried out in the public courts as berikut: 73:

1. Destructive business relationship between consumers and business actor

This arises because in a settlement in the public courts will decide which side is losing and which side wins. Damage to the relationship between consumers and businesses online store will undermine the confidence of the public as consumers to shop online businesses. Though online store business actor should continue to be developed although it must be balanced with the legislation is adequate.

2. The Court unresponsive

Reality on the ground shows that in the case of liability settlement of consumer disputes are often won by the business actor. This is because they are more dominant in finance.

3. The ruling court does not resolve the problem

The ruling court does not reconcile the parties, but rather determine which party is winning and losing. This raises concerns of some parties.

73bid, hal. 234-236
Limited ability of judges and public

Not all judges understand the economic problems. Judge mostly only understand the terms of the legislation, and does not know whether related to the economy. Such conditions could lead to a decision that is not right.

Suyud Margono as quoted by Nazarkhan Yasin74 justify the above statement by stating that the settlement in court is often too late, the cost is expensive, justice is not responsive, not resolve it complicates matters, and the last is the ability of generalist judges. Settlement of liability relating to consumer protection should be regulated separately. This is because the issue of consumer protection and the economy can not be equated with other cases that can be settled in court. Penyelesanaian liability consumer protection must be arranged separately in order to produce good decisions. Here are some important things to be done related to improvement of a dispute over consumer protection:

1. Creating own procedural law relating to consumer protection settlement accountability

2. Determine the criteria judges should be officers’ liability consumer protection settlement

3. Time of completion accountability must set a limit on its completion.

3. Settlement Regards to Lazada

Regarding the case in this study, Lazada has acted in breach. It lazm occurs because the e-Commerce transactions susceptible to the action of
breach. It processes transactions between consumers and businesses do not face to face directly. Lazada case shows that there is the realization of an electronic contract that does not comply with the promised. This is what causes problems. These problems arise as a result of customer dissatisfaction. Issues regarding consumers commonly called consumer disputes.

Consumer dispute resolution in this case may use the provisions of UUPK Article 23 that if businesses refuse and / or does not respond and / or do not meet the compensation for the demands of the consumer, then the consumer is given the right to sue businesses and resolve disputes that arise through Settlement Body consumer dispute or by filing a lawsuit to the court in the domicile of the consumer. This is similar to 45th Article on 1st Paragraph of UUPK: "Every consumer is harmed can sue businesses through the institution in charge of settling disputes between consumers and businesses or through judicial courts are in general".

Under these provisions, the consumer is guaranteed by the Act to be able to defend their rights to businesses, in addition to consumers are also given the option to determine the form of dispute resolution will be selected as specified in Section 45th on 2nd Article of UUPK namely "consumer dispute resolution can be reached through the courts or out of court based on the voluntary choice of the parties to the dispute ".

Given lazada is an e-commerce transaction system that is international, it can determine the legal / court which is used to resolve

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disputes and thus a dispute settlement mechanism that is effective and efficient.

Through the Term of Use, Lazada have determined the choice of law and forum. They have already described in the previous chapter that the choice of law set the place where the contract is made (\textit{lex loci contractus}), the Indonesian law. While the choice of forum is set to the exclusive jurisdiction, the South Jakarta District Court through litigation and non-litigation had to be settled by arbitration in accordance with the rules BANI. The arbitral tribunal shall consist of a sole arbitrator, appointed by the Chairman of BANI. The place of arbitration is Jakarta.
B. Conclusions

Based on the discussion above, it can be concluded as follows:

1. UUPK can be a reference to make a contract and to arrange it there should be non clause eksolerasi. Law in general is sufficient for the protection of consumer, but the most important thing in determining the breach is the "contract", as seen from the contract / terms of condition Lazada about the standard clause of breach which became the basis of the contract. It is also because there are choices of law and forum selections achievement which are used as the basic of e-commerce.

2. In general, essentially the solving dispute can be done in two ways, namely litigation and non-litigation. Litigation can be done through the courts, while the non-litigation conducted outside the court in the form of mediation, conciliation, and arbitration. In the case of breach contract in e-commerce, it will refer to the existing contract of Lazada such as the choise of law and forum that is mentioned coherently to avoid the issue of Law conflict.
C. Suggestions

1. Business actors (owner / manager of the site) is expected to contain terms and conditions regarding to the provisions of 18th Section of UUPK and it can use the Financial Services Authority regulation No. 1 / POJK.07 / 2013 about Consumer Protection Financial Services Sector as an example of a reference in formulating the terms and provisions that has standard before appearing in the official website of business actor. It is important to remember that in the field of property law parties is bounding a relationship of Section 1338 (1st) Article of the Civil Code only between the seller to the buyer. As a simply way, the owner / manager of the site basically can not get responsibility for selling and purchasing online, as long as can not be proved.

2. Business actor of e-commerce is forbidden to involve the third parties in the delivery. This is due to the settlement of problems arising in the delivery will be more complicated because it involves many parties and recommend that the government create an institution that ensures the validity of e-commerce by providing a certificate so that people can feel more secure in conducting e-commerce transactions.

3. It should be made a special procedural law relating to the protection of consumers. As the Indonesian government may file a Draft of Government Regulation (RPP) on the establishment of alternative institutions ODR to resolve disputes that occurs due to the increasing electronic transactions in Indonesia.
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