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Legal Protection for Parties in the Sale of Preloved Goods in Indonesia

¹Ratna Nabila Nur Laili, ²Zulfan Thariq Muhammad, ³Ratih Yulistiya Rahman
^{1, 2, 3}Master of Law Study Program, Faculty of Law, University of Jember, Indonesia

Corresponding Author: **Ratna Nabila Nur Laili**

Abstract

Trade is an activity of goods and services transactions with the aim of transferring rights over goods and services to obtain rewards or compensation. Transactions in trade must be in accordance with what is mandated by the law that regulates them. Buying and selling used or preloved goods is a form of transaction that is mostly carried out by modern society. This study discusses legal protection for parties in buying and selling preloved goods in Indonesia. This study aims to analyze the position of the parties in the sale and purchase of preloved goods according to positive law in Indonesia, including the responsibilities and rights and obligations of the parties in the sale and purchase of preloved goods. This type of research uses a normative

juridical method that emphasizes the analysis of legal theories and laws and regulations that are still valid. The data obtained from this research is secondary data obtained through library research, then the data obtained is analyzed qualitatively through legal and conceptual approaches. The results of the study show that the position of the parties in the buying and selling of preloved goods is one party as a seller acting as a business actor, and the other party as a buyer acting as a consumer. The rules regarding the rights and obligations attached to the parties are regulated in Law no. 8 of 1999 concerning Consumer Protection, and the implementation of buying and selling activities using the Civil Code as the legal basis.

Keywords: Legal Protection, Rights and Obligations, Preloved

1. Introduction

To meet their daily needs, humans are required to work hard to meet all the needs they need. There are many ways that people do to be able to fulfill all their needs, one of which is buying and selling activities. Buying and selling is exchanging an item for another item in a certain way. The Civil Code provides an understanding of buying and selling as an agreement in which one party binds himself to surrender something material, and the other party to pay the price promised. Buying and selling can also be referred to as a transaction between the seller and the buyer in one assembly in which both of them enter into a contract and generate mutual or voluntary feelings so that an agreement is reached between the two.¹

In life, humans have instincts to meet their needs. Increasing population has an impact on increasing the demand for goods. Therefore, the government has an important role to maintain a balance between the amount needed and the existing supply.² Therefore, to stabilize the domestic market with an ever increasing population, the government faces a difficult problem.³ Buying and selling transactions are carried out for every item that is useful, including the sale and purchase of used goods which is currently quite a lot done, some are carried out in public markets, special markets for used goods, even in online markets with various types of applications such as shopee, lazada, and others. so on. The emergence of a trend among young people who like to shop for branded used goods, apart from wanting to be on par with social attention, is another reason because the prices are cheap. The affordability of goods at low prices and at the same time branded, sometimes makes consumers not care about the quality of goods. Consumers of used goods from among teenagers, apart from wanting to align themselves with the growing trend, also have their own opinions about why they choose used goods as their fashion items.⁴

¹ Khusnul Khotimah, *Perlindungan Konsumen dalam Jual Beli Barang Bekas ditinjau dari Hukum Islam dan UU No. 8 Tahun 1999 tentang Perlindungan Konsumen (Studi Kasus di Pasar Loak Shopping Centre Salatiga)*, Skripsi, Fakultas Syariah IAIN Salatiga, 2015, h. 16

² Zamroni Salim dan Ernawati, *Info Komoditi Pakaian Jadi* (Jakarta: AMP Press, 2015), h. 28

³ *Ibid*, h. 29

⁴ Khoirum Makhmudah dan Moch. Khoirul Anwar, *Perspektif Ekonomi Islam Pada Jual mBeli Pakaian Bekas Impor (Studi Kasus @ Calamae)*, *Jurnal Ekonomika dan Bisnis Islam*, Vol. 5, No. 3, 2022, h. 248

Used goods that are traded are generally different from the characteristics of the sale and purchase of new goods, such as in terms of product quality, used goods generally do not have an identity book (catalog) of goods, insurance cards, even a complaint time lag for goods not provided. The transaction model of buying and selling preloved goods with the identity of the goods as they are, both in terms of quality and originality of the goods, will in turn have a negative impact on the aggrieved party because there is no means or place to defend and protect. The buying and selling of preloved goods has been going on for a long time and is quite massive in society for various pragmatic reasons, such as relatively cheap prices, being able to bargain openly, and being able to choose goods from a variety of different shops at competitive prices. This phenomenon characterizes the buying and selling of used (preloved) goods, which in turn can create loopholes for fraud and losses for each party in buying and selling activities.⁵

Used goods that are traded are generally different from the characteristics of the sale and purchase of new goods, such as in terms of product quality, used goods generally do not have an identity book (catalog) of goods, insurance cards, even a complaint time lag for goods not provided. The transaction model of buying and selling preloved goods with the identity of the goods as they are, both in terms of quality and originality of the goods, will in turn have a negative impact on the aggrieved party because there is no means or place to defend and protect. The buying and selling of preloved goods has been going on for a long time and is quite massive in society for various pragmatic reasons, such as relatively cheap prices, being able to bargain openly, and being able to choose goods from a variety of different shops at competitive prices.⁶ This phenomenon characterizes the buying and selling of used (preloved) goods, which in turn can create loopholes for fraud and losses for each party in buying and selling activities.⁷

Basically, the parties in buying and selling, each has rights and obligations. The seller's obligation in a sale and purchase agreement is to surrender ownership rights to the goods being traded. While the rights of the seller, one of which is the right to obtain legal protection from consumer actions that are not in good faith, and so on as regulated in laws and regulations.⁸ In addition to the seller, other parties as buyers also have rights and obligations. The rights referred to in general are the right to safety, the right to be informed, the right to choose and finally the right to be heard.⁹ Meanwhile, the obligation of a buyer is to have good faith in interacting during the transaction.¹⁰

Legal protection for parties in buying and selling preloved goods is a strong legal basis for the government as an effort to empower and protect all buying and selling activities

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Suci Hayati, *Perlindungan Konsumen dalam Jual Beli Barang Bekas Tinjauan Hukum Ekonomi Syariah*, Jurnal Hukum dan Ekonomi Syariah, Vol. 7, No. 2, 2019, h. 261

⁸ Edmon Makarim, *Kompilasi Hukum Telematika* (Jakarta: Gravindo Persada, 2008), h. 77.

⁹ Shidarta, *Hukum Perlindungan Konsumen* (Jakarta: PT Grasindo, 2000), hlm. 16

¹⁰ Setia Putra, *Perlindungan Hukum Terhadap Konsumen dalam Transaksi Jual beli Melalui E-Commerce*, Jurnal Ilmu Hukum, Vol. 4, No. 2, 2014, h. 298

through a number of existing laws and regulations. The aim is to prevent losses between the parties, as well as other negative impacts that can affect the order of socio-economic life both at the individual and community levels.

Based on the background described above, the issues that will be discussed in this study are related to the position of the parties in the sale and purchase of preloved goods according to Indonesian positive law, namely how the rights and obligations of the parties are regulated in it, as well as the implementation of the existing regulations.

The approach method used in this study is a normative juridical approach with the method of collecting library research data obtained through laws and regulations, books, official documents, publications, and research results. Based on the nature of this study, the research method used is descriptive analytical with a qualitative approach to primary data and secondary data which includes the content and structure of positive law, namely an activity carried out by the author to determine the content or meaning of legal rules which are used as a reference in resolving legal issues that arise. become the object of study.

2. Main Discussion

Trading or buying and selling according to the etymological term has the meaning of replacing or selling. Meanwhile, according to Article 1457 of the Civil Code, buying and selling is an agreement by which one party binds himself to deliver an item and the other party to pay the promised price. From this understanding, there are essential elements of a sale and purchase agreement, including the parties, goods, and price.¹¹ The parties in question are sellers as business actors and buyers as consumers.

According to Law No. 8 of 1999 concerning Consumer Protection (hereinafter referred to as the UUPK), business actors are any individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly, through agreements to carry out business activities in various economic fields.¹² Meanwhile, consumers are all users of goods and/or services available in society, both for the benefit of themselves, their families, other people and other living things and not for trading.¹³

The definition of "goods" is the object of the sale and purchase agreement. According to Article 1333 of the Civil Code, the object of the agreement must be certain, or at least it can be determined. Furthermore, according to the provisions of Article 1334 (1) of the Civil Code, the new object of the agreement that will exist in the future can become the object of the agreement. Furthermore, what is meant by goods in UUPK are every object, both tangible and intangible, both movable and immovable, consumable or non-consumable, which can be traded, used, utilized or exploited by consumers. Elements of goods in the sense of buying and selling is an object of sale and purchase. This study focuses on the analysis of sales of preloved goods. For this reason, before discussing the rights and obligations of

¹¹ Djaja S. Meliala, *Penuntun Praktis Hukum Perjanjian Khusus Jual-Beli, Sewa-Menyewa, Pinjam-Meminjam* (Bandung: Penerbit Nuansa Aulia, 2012), h. 3

¹² Law No. 8 of 1999 concerning Consumer Protection, Article 1 point 3

¹³ *Ibid.*, Article 1 number 2

the parties in the sale and purchase of preloved goods, it is necessary to know about the preloved goods themselves.

The government in dealing with buying and selling activities of imported used goods allows buying and selling of used goods as long as the goods are local products or what is commonly referred to as Preloved. Preloved goods are used goods that are considered suitable for use with certain characteristics. Preloved itself has several benefits including reducing waste, maintaining local products so that they continue to exist among the community, and introducing local products to the general public.

Apart from preloved, there are still many ideas for doing business with local used goods. Among them are garage sales, thrift stores, and antique shops by collecting items from people closest to you or hunting products, then determining the profit margin percentage that you want to take from each category of goods and taking photos of these products, then selling them offline or online via e-commerce. Commerce actively conducts advertising and consignment promotions with anyone who wants to sell their used goods. In addition, also determine the brand differentiation. The types of products can vary, ranging from branded shoes, branded bags, branded clothes, or other accessories. Of course, the items being sold are still usable, have value, and are unique. This makes buyers always interested in coming back to see the collections offered because they are always different.

In fact, both preloved and thrift have their respective benefits, depending on individual preference and situation. However, in general, preloved can be considered better than thrifting because:

1. Easier to Find

Preloved items can be found in specialty stores or online stores that stock used items that are still in good condition. Meanwhile, for thrifting, consumers have to look for shops that sell used goods, and sometimes they have to dig deeper to find really high-quality goods from abroad. Which if the sale and purchase transaction of thrifting goods originates from abroad (imports) it can be against the law if it is done illegally.

2. More Guaranteed Quality

Preloved goods that are sold in specialty shops usually have gone through a selection process and quality check before being sold. Thus, consumers can be sure that the goods purchased are still in good condition. Meanwhile for thrifting, because the goods being sold usually have not gone through a selection process, consumers must be more observant in choosing goods so as not to get damaged or defective goods.

3. More Practical

Consumers do not need to spend time and effort to find used goods with good quality. With preloved, consumers can choose the goods they want easily and quickly when compared to thrifting which takes a long time related to the import process of these goods.

The government has taken several ways to suppress the buying and selling of imported used goods. Among them, the government has issued a policy that is expected to be obeyed by the community. This is stated in several regulations. Among them:

- a. Law Number 7 of 2014 concerning Trade Article Article 35 paragraph (1) letter d, Article 36, and Article 47 paragraph (1).

- b. Law Number 8 of 1999 concerning Consumer Protection Article 8 paragraph (2)
- c. Regulation of the Minister of Trade Number 18 of 2021 concerning Export Prohibited Goods and Import Prohibited Goods Article 2 paragraph 3 letter d
- d. Regulation of the Minister of Trade Number 40 of 2022 concerning Amendments to Regulation of the Minister of Trade Number 18 of 2021 concerning Export Prohibited Goods and Import Prohibited Goods.
- e. Law Number 17 of 2006 concerning Customs which regulates Smuggling. There are Articles 102A and 102B which regulate criminal sanctions for smuggling.

In addition to making existing regulations, other efforts by the government in dealing with buying and selling activities of imported used goods are the government together with e-commerce actors who are members of the Indonesian E-Commerce Association (iDEA), Tokopedia, Lazada, Shopee, Blibli, and Tiktok committed to eradicating the practice of buying and selling imported used goods on their platform. There are 3 (three) agreed commitments, namely:

1. All platforms require sellers to comply with laws and regulations;
2. The government requests warnings regarding the decline in imported used goods products as of March 16, 2023;
3. If there is a warning but the seller still doesn't comply, the government requests that the account or seller be blacklisted.

In the future, the government also proposes the existence of a special port for imported used goods to anticipate illegal smuggling so that these products cannot directly enter the market. The things mentioned above are some of the government's efforts to invite Indonesian people to love, buy and consume domestic products. However, keep in mind that even though preloved goods come from within the country, it does not mean that these goods do not have good value or quality. Preloved goods that are still in good condition and usable can be a good choice for consumers who want to shop more economically and environmentally friendly. Until now, buying and selling of preloved goods is still carried out by many business actors in Indonesia, both online and offline. Business actors who carry out buying and selling activities of preloved goods have rights and obligations that must be obeyed.

The right owned by business actors is the right to carry out business activities without discrimination and earn profits from the sale of the used clothes they sell. However, this right must be balanced with the obligation to provide goods of good quality and in accordance with the description provided to the buyer. In addition, business actors must also obtain a business license and carry out taxation in accordance with applicable regulations.

The role of business actors in obtaining preloved goods must be legal and not violate applicable laws. Therefore, the prohibition on the sale of imported goods in Indonesia has the aim of protecting the domestic industry and improving the national economy. If business actors in buying and selling used goods in Indonesia do not comply with regulations regarding the prohibition of the sale of imported goods, it will cause several problems that can harm the national economy and Indonesian consumers, including:

1. Reducing the Competitiveness of Domestic Products

If used imported goods are freely sold on the

Indonesian market, this can reduce the competitiveness of domestic products. This can cause domestic products to be unable to compete with the price and quality of imported used goods, thus making it difficult for domestic producers to sell their products.

2. Increasing Consumer Health and Safety Risks

Used imported goods that do not meet quality and safety standards can endanger the health and safety of consumers. Some second-hand imports may have been damaged or have been used for a long time, so they contain hazardous chemicals or may cause damage to the environment. For example, imported used goods that have passed their useful life for a long time or imported used goods that have not been properly tested before being sold can potentially pose a hazard to users or the surrounding environment. Therefore, business actors who sell imported used goods must pay attention to the quality and safety of the goods being sold so as not to harm consumers and the surrounding environment.

3. Does Not Guarantee the Quality and Safety of Imported Used Goods

The sale of unregulated imported used goods can lead to quality and safety problems of used goods. Imported used goods that are freely sold on the Indonesian market do not have the same quality and safety guarantee as domestic used goods. This can cause consumers not to have sufficient protection for the used goods they buy.

4. Detriment to the National Economy

If imported used goods are sold freely in the Indonesian market, it can reduce the income earned by the domestic industry. This can be detrimental to the national economy and reduce employment.

Business actors must also ensure that the preloved goods they sell are not the result of crimes such as theft or fraud. In addition, business actors also have an obligation to protect the environment and public health related to the activity of buying and selling preloved goods. Business actors must ensure that the pre-loved goods sold do not endanger the health of consumers and the surrounding environment. In addition, business actors must also pay attention to the processing of waste generated from their business activities so that it does not damage the environment.

Business actors also have an obligation to provide clear and accurate information related to the products they sell, such as the year of production, brand and condition of the goods. The obligation of business actors is a principle of business ethics that must be applied. This reflects the honesty and social responsibility of business actors in providing correct information to consumers. This principle can improve reputation and consumer confidence in business actors and the products they sell. Consumers need sufficient and accurate information about the condition of used goods being sold so as not to mislead before deciding to buy these preloved products. If the information provided is unclear or incorrect, consumers may feel disappointed and no longer trust the business actor. Business actors must also pay attention to consumers' rights to submit complaints and provide a fast and good response to these complaints.

In order to properly carry out the activities of buying and selling preloved goods in Indonesia, business actors must provide clear and correct information regarding the condition of the used goods being sold. This is not only to

comply with applicable legal requirements, but also to reflect the principles of good business ethics and meet consumer needs and satisfaction. By providing correct information, businesses can improve their reputation and consumer confidence in their products and business. The Consumer Protection Act (UUPK) is a law that also regulates consumer rights and obligations, including in the case of purchasing preloved goods. As a buyer of preloved goods, consumers have rights and obligations that must be obeyed in a purchase transaction, namely the right to clear and correct information regarding the condition of the used goods to be purchased. The seller must provide information regarding the condition of the goods, including damage, defects, and other deficiencies. Consumers also have the right to check directly the condition of the goods to be purchased before deciding to buy them.

In addition, consumers are also entitled to guarantee the preloved goods they buy. Sellers must provide guarantees regarding the condition of the goods being sold, so that consumers can feel safe and comfortable in making purchases. This guarantee can be in the form of a warranty or a refund if the item does not match the information provided or is damaged within a certain period of time after purchase. However, as buyers of used goods, consumers also have obligations. One of the main obligations is to pay the price of used goods that has been agreed with the seller. In addition, consumers are also required to comply with established purchasing procedures, including in terms of payment and collection of goods. Another obligation is to use used goods properly and according to their function. Consumers are not allowed to damage or change the condition of used goods that have been purchased. Consumers are also required to pay attention to the maintenance of used goods that have been purchased, so that they can be maintained and used for a long time.

In the event of a dispute between a consumer and a seller, UUPK provides the right for consumers to file a lawsuit through the Consumer Dispute Settlement Agency (BPSK) or through applicable legal channels. In addition, consumers can also report sellers who violate UUPK to authorized agencies, such as the Ministry of Trade or the National Consumer Protection Agency. In general, UUPK provides sufficient protection for consumers in purchasing used goods. However, to minimize the risk of buying used goods, consumers should always be careful in choosing the items they want to buy, and check the condition of the goods carefully before deciding to buy.

In addition to UUPK, business actors engaged in the sale and purchase of pre-loved goods in Indonesia are regulated by several laws and regulations that provide legal protection. Some of these regulations include Law no. 7 of 2014 concerning Trade, Government Regulation no. 22 of 2021 concerning Trade in Used Goods, as well as Regulation of the Minister of Trade No. 60 of 2017 concerning Used Goods Wholesalers.

Law No. 7 of 2014 regulates the protection of consumers and business actors in trade. Articles 15 and 16 state that every consumer has the right to obtain quality and safe goods and to receive clear and correct information about the goods to be purchased. Meanwhile, articles 53 and 54 state that business actors who violate these provisions may be subject to administrative and criminal sanctions.

Government Regulation no. 22 of 2021 concerning Trade in Used Goods more specifically regulates trade in used goods.

The regulation contains provisions regarding the requirements to become a used goods dealer, methods of transporting used goods, to the obligation to report and pay taxes. This regulation also regulates the sanctions imposed on business actors who violate the stipulated provisions.

Meanwhile, Regulation of the Minister of Trade No. 60 of 2017 concerning Used Goods Wholesalers also provides legal protection for business actors engaged in the trade of used goods. This regulation regulates the requirements to become a wholesaler of used goods, the method of transporting used goods, to the obligation to report and pay taxes. This regulation also regulates the sanctions imposed on business actors who violate the stipulated provisions.

With the existence of these laws and regulations, business actors engaged in the sale and purchase of used goods in Indonesia have clear legal protection. Business actors can ensure that they meet the requirements set by the government, so they can avoid administrative and criminal sanctions imposed in the event of a violation of the stipulated provisions. On the other hand, consumers also have rights guaranteed by law to obtain quality and safe goods.

3. Closing

Based on the explanation of the problems above, it can be concluded that the position of the parties in the sale and purchase of preloved goods is the seller as a business actor who has the rights and obligations as stipulated in Article 6 and Article 7 of the UUPK. Meanwhile, the buyer acts as a consumer whose rights and obligations are regulated in Articles 4 and 5 of the UUPK. Because business actors who carry out buying and selling activities of used clothes in Indonesia have rights and obligations that must be obeyed. In carrying out its business activities, business actors must comply with applicable laws and regulations, maintain product quality and the environment, and pay attention to good business ethics. By fulfilling these obligations, businesses can properly carry out their buying and selling of used clothes and support sustainable economic growth in Indonesia.

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