

Legal Analysis of the Sale and Purchase of Photo Idol

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ABSTRACT

Objective: This research discusses what events occur in the context of buying and selling photo idols and the purpose of this research is to examine how the government tackles various cases in the realm of buying and selling photo idols. **Method:** This research method uses normative juridical method. The research legal materials include primary and secondary. **Result:** The results state that the crimes that often occur are scammers and defaults. Perpetrators who intentionally commit scammer crimes can be sanctioned in accordance with Article 45 paragraph (1) of the ITE Law. Meanwhile, sellers who commit default can be sanctioned in accordance with article 62 paragraph (1) of the Consumer Protection Law. **Novelty:** To overcome these crimes, the government has made various efforts such as creating a complaint website, a website to check account numbers or telephone numbers, but the government still has several obstacles.

INTRODUCTION

Buying and selling photos is an activity carried out by fans of artists/idols in the form of small photo cards. This photo idol is usually obtained from buying albums sold by agencies, buying merchandise, or gifts from the brand's collaboration with the artist in question. Photo idols are the target of many fans to collect because it can be said to be an investment. Photo idols are divided into 2, namely photocards and photobooks, which are often sold and bought are photocards. Photocards are divided into 2 types, namely official and unofficial photocards, official photocards are photocards issued by agencies or collaboration brands and the price of official photocards is relatively expensive, while unofficial is a photocard printed by individuals and the price is cheap. With a long price difference and many enthusiasts, online shops or jastip often commit fraud [1].

The fraudulent buying and selling of photo idols is based on the fact that there are many enthusiasts. Fans consider that collecting photo idols is an investment in happiness and financial investment where photocards can be resold at varying prices. The consumptive factor of fans is also a trigger for fraud [2]. However, the important factor was the high price and the fans who were willing to spend their money to get the items they wanted. Photo idols that are the target of most rare photocards or can be called rare photocards (photocards that are printed on a limited basis) and photocards that have been signed by an idol [3].

Fraudulent incidents in buying and selling photo idols can be found in various countries, for example in Korea there has been a case of fraud in buying and selling photocards where the perpetrator made a profit of 544 million and was given a sentence of 1 year and 6 months in prison and 3 years of probation [4]. In the country itself, there

was also a similar case where the case ensnared a 16-year-old child in Sukoharjo. In that case, the perpetrator made a profit of 43 million. There are still many examples of cases that often occur in the scope of buying and selling photo idols [5].

According to a previous study entitled Legal Protection for Victims of K-pop Stuff Buying and Selling Fraud on Social Media (Study of Decision Number 1085/Pid.Sus/2020/PN Bdg) written by Anisa Indriani, it highlights the legal ambiguity related to compensation for victims in cases of violating ITE laws [6]. The second article entitled Legal Protection for Consumers of Photocard (PC) Purchases in Cases of Non-Conformity and Defects of Goods Through the Shopee Marketplace was written by Farihat Mumtaza emphasizing consumer protection dalam transaksi online, especially on the Shopee platform, including the procedure for returning goods and resolving disputes [7]. The third article entitled Legal Protection for Anteraja Expedition Consumers against the Loss and Damage of K-pop Merchandise Packages written by Putri and Shinta Amalia highlights the lack of protection for consumers related to damage and loss of goods, as well as violations committed by Anteraja [8].

In this study, the author focuses more on discussing what events occur within the scope of buying and selling photo idols. This study aims to examine how the government handles various cases regarding photo idol buying and selling events so that the perpetrators get a deterrent effect and the victims get compensation. This is important to ensure that fraudulent acts in buying and selling photo idols are not ignored and receive serious handling from the government.

The reason why the author took up this discussion is because currently the efforts that can be made by the victims are only limited to boycotting the bank accounts and numbers of the perpetrators without getting compensation for the losses obtained. Most victims do not dare to report the fraud because they are afraid that the problems they face will only be seen as magnifying the problem because of the small amount of losses. This is very unsettling because the perpetrator can still carry out his actions with a new identity.

RESEARCH METHOD

The research method used in this study is normative juridical with a legislative approach and existing legal theories. Primary legal materials include the Civil Code, the Criminal Code, Law No. 11 of 2008 jo Law No. 01 of 2024 concerning Electronic Transaction Information and Law No. 8 of 1999 concerning Consumer Protection. Secondary materials can be in the form of books, journals, seminars, results of previous research, scientific papers, etc. The analysis of the legal material used is deductive analysis.

RESULTS AND DISCUSSION

1. Events that occur within the scope of buying and selling photo idols

Idol fans have a culture, namely collecting photocards where photocards according to the general public are ordinary paper and have no value, but for them photocards are

valuable and in great demand. Photo idol buying and selling activities are more often carried out among K-Pop fans because in Indonesia itself, K-Pop fans dominate more than other idol fans. The item that fans often buy is albums that contain photocards. Many fans are willing to buy as many albums as possible to get the photocard they want [9]. Fans are more inclined to look at photocards because they consider them to be a long-term investment item compared to other items. The longer the photocard edition, the higher the price will be, while other items, even though they are no longer printed, will remain the same or even decrease. The rarity and popularity of an idol, as well as each different pose, can affect the selling price of a photocard. Fans often use Japanese web media or twitter as a platform for buying and selling photocards. In Indonesia itself, fans not only use Twitter but also use e-commerce such as Shopee and Tokopedia [10].

The high interest of fans to collect photocards is one of the opportunities for some individuals to commit crimes. The influence of FoMO (Fear of Missing Out) from fans is also used as a lure by scammers, FoMo occurs because of three things, the first is panic, fear, and uncertainty. From these three sources, the action of buying photocards arose so as not to be left behind from the others [11]. Every fan must have a photocard that they want so they are willing to spend money just to get their desired item. From these factors, the crimes that are often found among fans are scammers and defaulters. The crime of default occurs because the seller does not deliver the goods according to the agreed conditions, for example, the goods are not original (official), the goods come in a damaged state, etc. Meanwhile, scammers occur because of an individual who uploads a photocard at a price below the market so that it invites fans to buy it but at the time of delivery, the goods are not sent and the seller disappears without providing certainty.

A. Wanprestasi

In a journal entitled "IMPLEMENTATION OF K-POP MERCH PURCHASE AND SALE AGREEMENT THROUGH TWITTER MEDIA" written by Raudya Tuzzahra, et al, a case of default was found on Twitter media. The case discusses a buyer who wanted to buy a BNW Mark photocard and several other photocards but the seller did not send the goods, the seller argued that the goods in question had not reached the seller's hands due to expedition constraints and would be sent after the goods arrived. However, the seller did not send the goods and gave the reason that the seller's account had been hacked by hackers. In the end, the case was resolved by non-litigation, where the seller paid compensation to the buyer in the amount of the price of the undelivered photocard [12].

The reason for default often occurs due to several factors, namely:

- a. Incompatibility of goods, in this factor usually the goods traded are not in accordance with the description or initial agreement so that it can trigger default.
- b. Delay in delivery, in this factor usually the seller does not deliver the goods according to the initial delivery schedule so that it causes losses for the buyer.
- c. Not making payments, this factor usually happens because the buyer deliberately does not want to make the payment according to the agreement. Usually they use the excuse of not feeling that they ordered the package so that the package will be returned to the seller. This can be detrimental to the seller.

From the example of the case above, the seller has violated article 1243 of the BW where the seller does not meet the achievement in accordance with the initial agreement. According to article 1267 of the Criminal Code, if the seller does not pay compensation, the buyer can file a lawsuit against the seller. To file a lawsuit, it can be done by registering a lawsuit with the court, paying the case fee, providing the case file, waiting for the determination of the trial panel, and following the trial from the beginning until the judge's decision is made [13].

In the Civil Code, buying and selling activities are an agreement where one party has the obligation to hand over the goods and the other party has the obligation to pay the price of the goods. The activities of the sale and purchase agreement are regulated in articles 1457 to 1540 of the BW. A sale and purchase agreement is declared to have occurred at the time both parties have agreed on the goods even though the goods have not been delivered and have not been paid. According to the Civil Code, a sale and purchase event can be said to be valid if it meets the following conditions:

- a. The existence of goods that are traded
- b. The existence of the price of goods
- c. An agreement
- d. The existence of an event of handing over goods

The seller's obligations according to the Civil Code include:

- a. The seller is obliged to bear the cost of delivery unless there is a change in the agreement
- b. The seller is obliged to hand over the goods according to the initial agreement
- c. The seller is obliged to hand over the goods in their intact condition to the buyer
- d. The seller is obliged to bear the goods safely and avoid hidden defects
- e. The seller is obliged to refund the price of the goods if the buyer cancels the purchase

As for the buyer's obligation according to the Civil Code, it is to make payments in accordance with the agreement, if the buyer does not make the payment, the seller can demand the cancellation of the agreement. This is stated in article 1517 of the BW.

An agreement can be said to be valid if it meets several conditions (article 1320 BW), including:

- a. The existence of an agreement between the parties, referred to in these conditions is an agreement that is not caused by coercion, fraud, and to error.
- b. Ability to make alliances

A person can be said to be legally competent if he is not in custody, does not have a psychiatric disorder, is even 21 years old, but for someone who has married under that age, he is still declared an adult. This is stated in article 330 of the Civil Code.

In article 1330 of the Civil Code, a person is declared legally incompetent if:

- a. Immature, in article 330 of the Civil Code, a person is declared an immature if the person is not even 21 years old.
- b. A person who is placed in custody,

- c. Women who have been married, for this requirement according to the Supreme Court fatwa Number 3 of 1963 states that they have the authority to perform legal acts without the permission of their husbands.
- d. The existence of goods that are traded
If an agreement does not meet certain conditions, then the agreement is not valid in the eyes of the law.

In the event of buying and selling there is a case of non-fulfillment of the agreement in accordance with the initial agreement, it is declared as default. Default is an act where the debtor is unable to fulfill his obligations in accordance with the agreement that has been made, both an agreement born due to an agreement and an agreement born due to the law. According to the Civil Code, a debtor can be declared in default if:

- a. Not carrying out its obligations
- b. Default in executing the agreement
- c. Loss suffered by creditors

In the event of default, the agreement can be canceled along with compensation or fulfillment of a contract where the creditor asks the debtor to fulfill the achievement as promised. The compensation that can be claimed by the creditor consists of the losses that he has suffered and the profits that should have been obtained, which is stated in article 1246 of the BW [14]. In article 4 of the Consumer Protection Law, buyers have several rights that can be fought for, including:

- a. The right to obtain clear, honest, and correct information on the condition/warranty of goods
- b. Right to consumer protection protection, advocacy and dispute efforts
- c. The right to be heard and his complaints regarding the goods he uses
- d. Right to get compensation if the goods received are not suitable, etc.

According to the Consumer Protection Law, sellers have an obligation to:

- a. Provide correct, good, and honest information regarding the goods traded
- b. Serve buyers in a non-discriminatory manner
- c. Ensuring the quality of goods
- d. Provide a warranty on the goods traded
- e. Provide compensation if the buyer suffers losses due to the non-conformity of the goods

According to the Consumer Protection Law, buyers have an obligation to:

- a. Read and follow the instructions that have been given to maintain safety and security
- b. Good faith in conducting buying and selling transactions
- c. Pay according to the agreed price
- d. Follow the efforts to resolve the law of Consumer Protection disputes appropriately

If the seller does not carry out his obligations in accordance with the Consumer Protection Law, the seller can be subject to a maximum of 5 years in prison and pay a maximum fine of 2 billion rupiah, the provision is stated in article 62 paragraph (1) of the Consumer Protection Law [15] [16].

A chronological example of a case of default can be seen in figure 1, where in the image there is an account that writes a thread on Twitter. The account tells the chronology of how he felt disadvantaged by an admin who did not send goods according to his promise and was long-winded in delivering goods.

The following is the chronology of the alleged default event



Figure 1. Chronology of Alleged Default.

B. Scammer

Scam or fraud cases often occur due to the actions of someone who deliberately uses photos of other people's products or counterfeits their merchandise, then uploads photos of the product on e-commerce platforms or social media at a very low price compared to the market price. This aims to entice potential consumers to make purchase transactions. After the consumer makes the payment, the seller often delays the delivery for unclear reasons or even disappears without providing an explanation about the status of the goods that have been purchased. This action clearly violates the provisions in article 28 paragraph (1) of the Electronic Information and Transaction Law (ITE Law) which states that "Every Person deliberately distributes and/or transmits Electronic Information and/or Electronic Documents that contain false notices or misleading information that results in material losses for consumers in Electronic Transactions." Article 45A paragraph (1) of the ITE Law also emphasizes that such violations can result in criminal penalties with a maximum prison term of 6 years and a maximum fine of 1 billion rupiah. This shows the seriousness of the punishment that can be received by scammers who deceive consumers in electronic transactions [17].

Acts that are prohibited for business actors are listed in articles 8 to 17 of the Consumer Protection Law. According to the Consumer Protection Law, the seller can be considered to have committed fraud when his actions meet the following conditions:

- a. The seller does not deliver the goods according to the information stated in the product description, advertisement, or promotion. This is stated in Article 8 paragraph (1) letter f.
- b. Sellers fake promotions, offers, and advertising products as if they are discounted, have special prices, etc. This is stated in Article 9 paragraph (1) letter a.
- c. The seller states the use of an item incorrectly or misleadingly. This is stated in Article 10 letter b.

According to article 62 paragraph (1) of the Consumer Protection Law, sellers who have met the above conditions can be subject to criminal sanctions of imprisonment for a maximum of 5 (five) years or pay a maximum fine of 2 billion rupiah. According to article 38 paragraph (1) of the ITE Law, everyone who suffers losses due to the occurrence of electronic transactions can file a lawsuit in accordance with the applicable law. Fraudulent acts are also regulated in article 492 of the Criminal Code which reads "Whoever with the intention of unlawfully benefiting himself or others, by using a false name or false dignity, by deception, or a series of lies, moves another person to hand over something to him or to give a debt or write off receivables, is threatened with fraud with a maximum prison sentence of four years"[18] [19].

A chronological example of a scam crime case can be seen in figure 2, where in the image there is an account that writes a thread on Twitter. The account tells the chronology of how he felt deceived by the photocard seller. In the thread he said that he had bought a JKT48 photocard from someone. However, when he had made the payment, the seller's account disappeared without providing a certainty, he also said that do not make a transaction with the person because it has taken many victims.

Here's the chronology of the alleged scammer event.



Figure 2. Chronological Alleged Scammer.

2. Government Protection and Efforts for Victims of Photo Idol Buying and Selling

In protecting the rights of victims to justice, the government has made several efforts such as providing a KOMINFO complaint website, providing a website for checking accounts or phone numbers, and providing a lapor.go.id website. Although the

government has made several of these efforts, the government still has several obstacles, namely:

1. The difficulty of tracking the whereabouts of the perpetrator

This can happen if the perpetrator often uses the identity of others to carry out his actions. Examples include using someone else's bank account, using someone else's phone number, using anonymous email or creating other new identities.

2. Limited facilities and tools

At this time, the government still lacks tools to help solve cases about cybercrime, so it will take a long time to investigate. From the limitations of existing tools, the government collaborated with various parties to help speed up the investigation process.

3. Slow bank account checking process

When the investigator wants to open an account, the investigator must wait for a license from POLDA that will be given to the bank. The process of waiting for an exit letter will take a long time because the bank has an obligation to protect the identity of the bank account owner. This is stated in article 1 paragraph 28 of Law No. 10 of 1998 concerning Amendments.

4. Lack of human resources that can handle digital crime

At this time, the government only has 15 investigators, of which 15 people are not experts in the field of ITE. The investigator who is not an ITE expert is also an investigator for other cases related to crime, so that at any time it can hinder the performance of other investigators to solve a case [20].

With some of the obstacles above, the government still has many loopholes in handling online fraud cases, so victims often do not feel satisfied with the performance provided by the government. To prevent online fraud, the government urges the public to be more careful in conducting online buying and selling transactions. Here are some efforts that can be made by the community to avoid fraud [21]:

- a. Check your account or phone number using the cekrekening.id website and get contact application.
- b. Carefully check testimonials and ratings of stores or individuals.
- c. Don't be easily tempted by below-market prices
- d. Request a video of the latest condition of the item to the seller
- e. Save chat receipts or proof of payment
- f. Check the seller's identity on various social media, such as Twitter, Instagram, or Facebook.

CONCLUSION

Fundamental Finding : From the research that has been studied, it can be concluded that the government's efforts in dealing with cases that occur in the realm of buying and selling photo idols are in the form of creating a KOMINFO complaint website, a website to check and report the account number or phone number of the perpetrator, and a lapor.go.id website. **Implication :** The government still has various obstacles such as a lack of tools and facilities, difficulty in tracking the whereabouts of perpetrators, and the

lack of an expert in the field of ITE in the investigation team. So the government still cannot solve the case optimally. **Limitation** : To reduce these cases, the government urges the public to be more careful in conducting online buying and selling transactions. Such as checking store ratings, requesting videos of the latest condition of goods, checking accounts, etc. **Future Research** : For victims of fraud, they are protected by article 45 paragraph (1) of the ITE Law where it is stated that the perpetrator will be given a maximum prison sentence of 6 years and pay a maximum fine of 1 billion rupiah. As for default, victims are protected by the Consumer Protection Law and the ITE Law. Where in article 62 paragraph (1) of the Consumer Protection Law, it is stated that the perpetrator will be sanctioned in the form of imprisonment for a maximum of 5 years and pay a maximum fine of 2 billion rupiah.

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