



## **CONSUMER PROTECTION IN INDONESIA ON SELLING BUY TRANSACTION THROUGH E-COMMERCE**

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### **Abstract:**

*In the e-commerce process many cases are detrimental to consumers, so consumers should get legal protection. This study will discuss about the form of agreement used in e-commerce and the forms of legal protection against consumers who do e-commerce. The original of this study lies in consumer protection in e-commerce based on e-contract. Based on the results of the discussion can be concluded: first, the form of agreement used in the contract of sale and purchase of e-commerce in Indonesia can be divided into two categories, namely e-contract which has the object of transactions in the form of goods and or services. Second, the form of legal protection against consumers is the settlement of consumer disputes; consumer dispute resolution process is done if in an online transaction violation of consumer rights. The consumer dispute resolution process can be done through court or out of court.*

### **Keywords:**

Consumer Protection, e-contract, e-commerce

### **1. Introduction**

The existence of internet technology is characterized by the increasing number of trading activities both small, medium and large scale that utilize the internet as a medium of communication called e-commerce.

Alvin Toffler in his book *The Third Wave* (1980) has predicted that in the third millennium era, technology will play a significant role in human life. The development of modern science and technology will imply changes in human performance. One of telecommunication technology innovation product is internet (inter connection networking) that is a connection between computer network. Today's internet applications have entered various segments of human activity, both in the political, social, cultural, and economic and business sectors (Sigit, 2017).

E-commerce today has destroyed the classic business paradigm with the development of a virtual-based business paradigm. The system used in e-commerce is designed to conduct electronic sale and purchase without having to meet the sellers and buyers and cross the borders of the State and the nation.

The new paradigm can grow very rapidly because, everyone nowadays has used the internet as part of his life, not the exception of the people of Indonesia. The whole side of life is done by using internet technology, and now all life activity is highly dependent on internet access.

Currently, in trading life, almost all products can be traded through the internet, either through social media such as face-books, WhatsApp, instagram, and tweeters. By using the internet, the cost incurred by the seller is only the cost of internet access which is very cheap. Such conditions, will be very encouraging for the expansion of sales-based business.

Changes in the way business transactions from the real world to the virtual world have generated a variety of new legal issues for consumers in ecommerce, where consumers often do not have a strong bargaining position and put consumers in a weak position. From the data analysis is known that the growth of sales value of online business in the country each year increased by 40 percent. There are approximately 93.4 million internet users and 71 million smart phone device users in Indonesia. Not just to seek information and chat, people in big cities now make the internet for e-commerce activities as part of their lifestyle. The value of e-commerce in Indonesia in 2016 is estimated to reach 30 billion US dollars or equivalent to Rp 395 trillion. The figure is predicted to rise to 130 billion US dollars or equivalent to Rp 1.714 trillion in 2020 (Bernada, 2017).

Some issues related to online shopping. First, many people are afraid of the fraud that occurs when shopping online. Credit cards that can be accessed by naughty hands, items that are not up to the wishes or stores that are hard to reach when the consumer has paid. Indonesia is still minimal with its security concerns. The highest factor today is the fear of fraud. Such as payment fraud, fraud by using a rogue account, as well as an account takeover. Second, the buyer can only guess how the goods. But we do not know whether the goods will be sent the same goods in the picture. Third, the price offered is more expensive than buying by coming to his shop directly. Fourth, most goods sold are not guaranteed or warranty cannot be proven.

Law No. 8 of 1999 on Consumer Protection, and Law No. 11 of 2008 on Information and Electronic Transactions which was later revised into Law no. 19 of 2016 on Amendment to Law No. 8 of 2011 is the main legal basis for e-commerce in Indonesia. The significance of this ITE Act for e-commerce transactions are: a) Recognition of transactions, information, documents and electronic signatures in the legal framework of engagement and law of evidence, so that the legal certainty of electronic transactions can be guaranteed; b) the classification of measures that include qualification of law violations related to misuse of information technology accompanied by criminal sanctions (Wariati and Susanti, 2014).

Shofie (2003: 3) explains that during this distance selling and mail order marketing is a consequence of free trade, where consumers simply use communication technology in conducting the transaction goods or services desired. Conditions like this, the consumer feel very aggrieved, because business actors offering goods with interesting pictures, while consumers if you want to buy must pay first. After the proof of payment (copy it) sent to the business consumer, then the goods will be shipped later with shipping costs charged to consumers. Thus, the consumer has not earned his right, but has fulfilled all his obligations. When the goods received are not in accordance with speech, the consumer cannot claim. Generally, consumers can only take for granted.

In the general explanation of Law No. 8 of 1999 on Consumer Protection a factor that often occurs in the exploitation of e-commerce consumers is the lack of consumer knowledge of legal awareness of consumer rights, in addition to the public perception that the legal affairs will greatly make the complicated affairs increasing, there is no guarantee that if claimed consumer affairs will be completed as expected. Dealing with the law is like doing a job in vain. Consumer difficulty to contact the parties who can help the business of rights as a consumer. In addition, the cost is not small if contacting the consumer protection agency. Standard agreements that are ready to be signed on e-commerce are made by business actors with standard provisions that are not informative and non-negotiable. This makes e-commerce transactions like roads in place (Wariati and Susanti, 2014).

According to news released by hukum-online.com it is learned that: 1) the weakness of regulation and policy and not yet optimum of good faith of producer, digital era can be a serious threat for consumer; 2) still weak sectoral regulations that protect consumers. Manufacturers of e-commerce including application providers have not fully had good faith in transactions; 3) In addition, there is no protection of personal data of consumers. Almost all operators may use consumer personal data for other purposes with their trading partners; 4) many providers insert standard agreements that are very difficult for consumers to understand and harm consumers; 5) aspects of literacy and consumer empowerment are still low. Consumer empowerment in Indonesia has not dared to complain / complaint. Until 2017, the level of complaints related to electronic transactions in YLKI rose sharply, occupying the 3rd largest of total complaints of 781 complaints by mail / coming directly, and from 10,038 complaints by phone.

From these characteristics it is clear that basically e-commerce is the impact of the development of information technology and telecommunication, and significantly change the way humans interact with their environment, which in this case is related to the trade mechanism (Mantri, 2007).

The sale and purchase transactions through e-commerce, usually will be preceded by selling offer, buy and sell offer acceptance or buy receipt. Prior to that there may be an online offer, for example through website sites on the internet or through posting on mailing lists and newsgroups or through invitations to customers through the business to business model (Mantri, 2007).

This study intends to discuss two original problem formulations, namely, first, how is the agreement form used in e-commerce? Second, how are the forms of legal protection in Indonesia against consumers who do e-commerce? It is hoped that with these two original problem formulations, there is a novelty in this study, since the majority of the previous studies only discussed the forms of legal protection of consumers, have not touched on e-commerce, and did not relate to the form of electronic agreements made.

## 2. Reasoning the Need for Consumer Protection

There are at least four main reasons why consumers need to be protected:

- 1) to protect consumers is to protect the whole nation as mandated by national development objectives according to the Preamble of the 1945 Constitution;
- 2) protect consumers need to avoid consumers from the negative impact of the use of goods and services; and
- 3) to protect consumers need to produce healthy spiritual and physical persons as agents of development, which also means to maintain the sustainability of national development (Wariati and Susanti, 2014).

Another reason why consumers need to be protected is because consumers actually have rights, both nationally and internationally. Consumer rights nationally are contained in Article 4 of UUPK, where it is mentioned, the consumer has the following rights:

- 1) the right to choose goods and / or services, and to obtain the goods and / or services in accordance with the exchange rate and conditions, as well as the promised guarantee ;
- 2) the right to be heard of opinions and complaints on goods and / or services used;
- 3) the right to education and consumer education;
- 4) the right to compensation, compensation and / or reimbursement, if the goods and / or services received are not in accordance with the agreement or not as they should;
- 5) rights set forth in the provisions of other legislation (Wariati and Susanti, 2014).

Law No. 8/1999 on Consumer Protection provides a strong legal basis for the Indonesian government and non-governmental consumer protection agencies to make efforts to empower consumers through consumer education (Sofie, 2003).

Under the Consumer Protection Act, article 2, there are principles in the protection of consumers, namely: 1) the principle of benefit, This principle explains that all efforts in the implementation of consumer protection must provide the greatest benefit to the interests of the overall consumer business; 2) The principle of balance. This principle is intended to provide a balance between the interests of consumers, business actors, and governments in a material and spiritual sense; 3) The principle of consumer safety and security. This principle is intended to provide security and safety to consumers in the use, use and use of goods / services consumed or used. 4) The principle of legal certainty. This principle is intended for both business actors and consumers to obey the law and obtain justice in the implementation of consumer protection, and the state guarantee legal certainty (Wariati and Susanti, 2014).

Purpose of Consumer Protection In Consumer Protection Act article 3, it is mentioned that the purpose of consumer protection is as follows: 1) enhancing consumer awareness, ability and independence to protect themselves; 2) to raise the dignity of consumers by avoiding them from negative access to the use of goods / services; 3) to increase the empowerment of consumers in choosing, determining and demanding their rights as consumers; 4) creating a consumer protection system containing elements of legal certainty and information disclosure and access to legal information and information disclosure and access to information; 5) improving the quality of goods / services that ensure the continuity of the production of goods / services, health, convenience, and consumer safety (Wariati and Susanti, 2014).

## 3. E-Commerce in a legal Perspective

For many circles e-commerce is a new terminology that is not well known. Purbo and Wahyudi (2001: 1) describe e-commerce as a wide range of technologies, processes and practices that can transact business without using paper as a means of transaction mechanism. In this process, all of the activity is using internet service, no face to face, and no direct agreement on paper.

This can be done in various ways such as via e-mail or via World Wide Web (www). In general Mantri (2007) by quoting David Baum explains that "E-commerce is a dynamic set of technologies, applications, and business processes that link enterprises, consumer and communities through electronic transactions and the electronic exchange of goods, services and information. "In other words, e-commerce is a series of business activities that include trade in goods, services, and information that is done electronically based on technology, applications connecting companies, consumers and other communities involved in business activities through electronic transactions.

Indrajit (2001: 3) defines E-Commerce very well as it takes from various sources. According to him, e-commerce is the use of computer networks as a means of creating business relationships in which there is a process of purchasing and selling services or products between two parties via the Internet or the exchange and distribution of information between two parties in a company using the internet.

From this definition it can be understood that e-commerce is a mechanism or business process conducted by two or more people by using electronic means by focusing on business transactions using the Internet as a means of exchange of goods or services either in the form of business to business or business to consumer.

According to Mantri (2007) by taking the definition of ECEG-Australia (Electronic Commerce Expert Group) "Electronic Commerce is a broad concept that covers any commercial transaction that is effected via electronic means and would include such means as facsimile, telex, EDI, internet and telephone".

Ding (1999), as quoted by Mantri (2007) in great detail defines e-commerce as: "Electronic commerce or ecommerce as it is also known as a commercial transaction between a vendor and purchase or parties in similar contractual relationship for the supply of goods, services or acquisition of "right". This is the commercial presence of a communications network or system as opposed to a private network (closed system). The public net-work system must be considered on open system (e. g. the internet or world wide web). The transaction concluded regardless of nation boundaries or local requirements".

E-commerce is part of Electronic Business (business done through electronic media). Businesses provide a definition of e-commerce as any form of merchandise or service by using electronic media. Electronic media here is not limited to the internet, but because the use of the internet is very popular today the focus of discussion on this thesis is e-commerce on internet media (Wariati and Susanti, 2014).

The position of e-commerce in Indonesian law lies in the field of civil law as a subsystem of the treaty law, then e-commerce has the same principles as the general contract law such as: Principle of freedom of contract, Consensual principle, Good faith principle, Balance principle, propriety, customary principle. Principle of indemnity, Principle of coercion, Principles of legal certainty and others. Due to the enactment of the principles of the treaty law in e-commerce, the provisions on engagement remain in force, so that Article 1320 Civil Code shall apply to the conditions of the validity of a treaty, namely: agree them to commit themselves; able to make a commitment; a certain thing; a 'halal' cause (Wariati and Susanti, 2014).

From various definitions offered above, it can be concluded that e-commerce has a characteristic that the occurrence of electronic transactions between two parties, the exchange of goods, services or information, the Internet is the main medium in the process or the trading mechanism (Mantri, 2007).

The scope of e-commerce includes 3 sides namely: a). Business to Business (B2B), is a business communication system between business actors or in other words electronically between companies conducted routinely and in large capacity or volume of products. b) Business to Consumer (B2C). Business to Consumer in e-commerce is an electronic business transactions conducted by business actors and the consumer to meet a particular need and at a certain moment; c) Consumer to Consumer (C2C) is an electronic business transaction conducted between consumers to meet a particular need and at a certain moment. This C2C scope is more specialized because transactions are conducted by consumers to consumers who need transactions (Wariati and Susanti, 2014).

In an e-commerce system there are at least four components required in online transactions, i.e. store / marketplace, seller and buyer, payment gateway, and shipping services. First, the store / marketplace is the sale of goods needed by the consumer. However, there is a difference between marketplace and online store, that is marketplace is a place on the internet where many parties get together to make the process of buying and selling transactions, there is a want to find a good and there are other parties who want to sell goods. While online store allows buyers can directly order to the seller, and can be interpreted that this is only one store that sells. Both are sellers and buyers. The seller is the one who sells his / her goods to the consumer, whereas the buyer is the one who buys the goods for sale. Third, Payment gateway is a system that authorizes payment process from buyer to seller. Fourth, delivery service. If there is no this, how can the items we order up. Company or online shopping service provider, must provide courier / delivery service. Packing / Packaging Goods, type and strength of packing is very influential on the goods you will send, whether the goods can be saved without significant damage or not.

#### 4. Agreement used in e-commerce

Law number 11 of 2008 on Information and Electronic Transactions is a law that regulates information and electronic transactions or information technology in general.

The sale and purchase agreements used in e-commerce transactions are essentially no different from those made in conventional transactions, except that the agreements used in e-commerce are categorized as electronically-created agreements or electronic contracts. Electronic contracts are standard contracts that are designed, manufactured, assigned, duplicated, and digitally disseminated via the website unilaterally by contract makers (in this case the undertaking), to be closed digitally by the contract cover (in this case the consumer) (Mantri, 2007).

Electronic contracts are made during the transaction period. As is known, that in e-commerce there are two periods to be passed, namely: a) pre-transaction period. In the present time an online consumer needs as much information as possible, before finally deciding to buy the product online. This is very important, if later there is a problem then an online consumer will be easier to make a complaint. Such information usually revolves around: price certainty, buying and selling mechanisms, type of goods classification or also the problem of timely delivery. b) the post-transaction period. There are things that an online consumer must do after the goods purchased online are received, for example on the issue of warranty, whether there is a warranty period, what matters are included in the warranty guarantee or until when the warranty is valid (Wariati and Susanti, 2014).

Article 1 paragraph (17) of the Law on the Utilization of Information Technology, clearly states that electronic contracts constitute agreements contained in electronic documents or other electronic media.

Article 10 Paragraph (1) stipulates that electronic transactions set forth in electronic contracts are binding and have legal force as an engagement.

From the above understanding, it can be concluded that the agreement electronically is an agreement between the two parties is done electronically, where the parties in the implementation of the agreement does not require face-to-face directly. In an electronically contracted contract there are features of the standard contract and also contained features of electronic contracts that are characterized as: can occur remotely, made over the internet, and may extend beyond state boundaries.

The type of electronic contract according to Mantri (2007) can be divided into two categories, namely: 1) e-contract which has transaction object in the form of goods and or service. In this type of e-contract, the internet is a medium in which the parties communicate in contracting. But it will end with the delivery or delivery of objects and or services that become physical contract object (physical delivery). 2) E-contract having transaction object in the form of information and or service. In this type of e-contract, the internet is a medium to communicate in the form of contracting and also as a medium for sending or submitting information and or services that are subject to contract.

The Electronic Contract itself must at least include: the identity data of the parties; objects and specifications; Electronic Transaction requirements; price and cost; procedures in the event of cancellation by the parties; provisions granting the rights of the disadvantaged party to be able to return the goods and / or request the replacement of the product if there is a hidden flaw; and the choice of Electronic Transaction settlement law (Khotimah and Chairunnisa, 2014).

In relation to consumer protection, it is affirmed that Business Actors offering products through Electronic Systems shall provide complete and correct information relating to the terms of the contract, the manufacturer and the products offered. In the next paragraph further reaffirmed that Business Actors are obliged to provide clarity of information about contract offerings or advertisements (Khotimah and Chairunnisa, 2014)

Business actors have an obligation to give a time limit to the consumer to return the goods received if not in accordance with the agreement or there is a hidden defect that is felt to harm consumers. In addition, if the goods received are not in accordance with the existing photos on online store ads, then the seller can be said to have wanpretasi on sale and purchase transactions are done on-line. (Khotimah and Chairunnisa, 2014).

Common claims issues experienced by consumers in the legal field in e-commerce transactions: 1) authentication of legal subjects making transactions via the Internet; 2) when the agreement is in force and has a legally binding force; 3) object of sale transaction; 4) the right transfer mechanism; 5) legal relations and liabilities of parties involved in transactions of both sellers, buyers, and supporters such as banking, internet service providers (ISPs), etc.; 6) the legality of electronic records documents and digital signatures as evidence; 7) dispute resolution mechanisms; and 8) choice of legal and judicial forums authorized for completion

According to Subekti (2000) wanprestasi is negligence or negligence that can be 4 kinds of conditions that is: a) Not doing what he is willing to do; b) Implementing what it promises, but not as promised; c) do what it promises, but it is too late; and d) to do something which the agreement shall not do. If any of these 4 kinds of circumstances occur, then you may be able to sue online sellers under the pretext of default.

According to the Indonesian Consumers Foundation (2017), in relation to agreements in e-commerce, the government needs to do five things: 1) review existing standard agreements in electronic transactions from all operators. Articles that harm consumers should be canceled; 2) encouraging online consumer dispute resolution; 3) to encourage and accelerate the birth of the privacy and privacy statement of personal data; 4) encouraging to speed up the regulation of electronic shopping; and 5) to educate and empower the consumers.

## 5. Legal protection

Results Bernada (2016) in his research concluded Legal protection of consumer rights in ecommerce transactions can not be provided by a single legal aspect but by a legal system capable of providing simultaneous and comprehensive protection.

According to Akhmaddhian and Agustiwi (2016) Legal protection against consumers in electronic sale and purchase transactions, can be done by filing a lawsuit wanprestastie, by reason of non-fulfillment law obligations of business actors in electronic contracts. The non-fulfillment of this obligation means that there has been a violation of the rights of the other party (the buyer) and the legal consequence is a loss. Legal protection is based on Article 38 and Article 39 of Law no. 11 of 2008 on Information and Electronic Transactions and Article 23 of Law no. 8 of 1999 on Consumer Protection. This regulation provides legal payments to people who feel aggrieved towards ecommerce activities. The ratification of the ITE Law in 2008 is a form of the seriousness of Indonesia to provide legal certainty to the public related to the disputes that occur through information technology media, which leads to the achievement of the value of justice and benefit.

According to Nugroho et al (2015) Legal protection is identical with the protection of consumer rights, consumer rights set forth in article 4 of Law No. 8 of 1999 on Consumer Protection. In addition, the form of legal protection against consumers is the settlement of consumer disputes; consumer dispute resolution process is done if in an online transaction violation of consumer rights. The process of resolving consumer disputes can be done through court or out of court, this provision is regulated in Law No. 8 of 1999 on Consumer Protection.

According to Akhmaddhian and Agustiwi (2016) explains that electronic transactions involving the parties from within the country namely the state of Indonesia, it is not difficult to establish the rule of law in force in case of problems. Automatically the applicable law is Indonesian law, so both Burgelijk Wetboek and Consumer Protection Act can be applied to resolve any dispute arising. However, for non-State cross-country trade transactions, dispute settlement will be conducted by forums chosen by the parties using the law that has been chosen by parties in the electronic contract, as described above in the discussion of the choice of law and the choice of forum. In Article 38 of Law no. 11 of 2008 on Information and Electronic Transactions itself stipulates that "Anyone may file a lawsuit against the party that administers the Electronic System and or use Information Technology that leads to losses ". According to this article, the public may file a lawsuit in a representative manner against the party that administers the Electronic System and or use Information Technology that adversely affects the public, in accordance with the provisions of the Laws and Regulations.

Further Article 39 of Law no. 11 Year 2008 on Information and Electronic Transactions explained that "Civil litigation is conducted in accordance with the provisions of the Laws and Regulations. In addition to civil settlement settlements, the parties may also settle disputes through arbitration, or other alternative dispute settlement institutions in accordance with the provisions of the Laws and Regulations. "

This is in accordance with the provisions of Article 23 of Law no. 8 of 1999 on Consumer Protection stating that business actors who refuse and or not respond and or do not compensate consumers' demands may be sued through consumer dispute resolution bodies or appeal to the judicial chart in the place of the consumer's position. (Akhmaddhian and Agustiwi, 2016).

Laws in Indonesia govern civil lawsuits that can be made on two grounds, namely wanprestastie and unlawful acts (onrechtmatigedaad). Book III article 1243 BW regulates wanprestastie and article 1365 BW regulates unlawful acts. Default occurs because of the agreement between the parties, resulting in legal rights and obligations. When

achievement is not met or not implemented or implemented is not as it should, then there is a default. If any interest of a particular party is harmed by the actions of the other party, then there is an unlawful act.

Case of consumer loss in e-commerce, the settlement can be done in civil, but if the violation contains criminal elements such as forgery, fraud, and embezzlement of goods can be processed criminally. This is stipulated in Article 19 paragraph (4) of the Consumer Protection Act stating that "Compensation does not eliminate the possibility of criminal prosecution on the basis of further evidence of an element of error".

Violation of e-commerce law that entered in the criminal domain has been regulated by Law no. 11 of 2008 concerning Information and Electronic Transactions, namely Article 30 as follows: (1) Everyone intentionally and without right or unlawfully access the Computer and or Electronic System owned by Others in any way. Article 46 regulates as follows: every person who fulfills the element as referred to in Article 30 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and or a fine of not more than Rp600.000.000,00 (six hundred million rupiahs) (Akhmaddhian dan Agustiw, 2016).

According to Shidarta (2000: 19-26; Nugraha, et.al. 2015) consumer rights include, first, the right to safety, consumers are entitled to the security and goods and services offered to them. Products of goods and services should not be harmful if consumed so that consumers are not harmed either physically or spiritually Consumption. Second, the right to be informed. Every product introduced to the consumer must be accompanied by correct information either orally, through advertisements in various media, or in product packaging. Third, the right to choose. The consumer is entitled to make his choice in consuming a product. Fourth, the right to be heard. Consumers are entitled to be heard by various complaints. If all such rights are not met then the consumer shall have legal protection as appropriate.

On the other hand, business actors have obligations as regulated in Article 7 of Law Number 8 Year 1999 concerning Consumer Protection, namely: (a) Have good intention in conducting their business activities; (b) Provide true, clear and honest information about the conditions and warranties of goods and or services and provide explanations of use, repair and maintenance; (c) Treat or serve consumers properly and truthfully and discriminatively; (d) Ensure the quality of goods and or services produced and or traded under the provisions of the applicable quality standards of goods and / or services; (e) Provide an opportunity for consumers to test and or try certain goods and or services and to provide warranties and or warranties on manufactured and or traded goods; (f) Provide compensation, indemnification and / or compensation for losses arising from the use and use of traded goods and or services; (g) Provide compensation, indemnity and / or reimbursement if the goods and or services received or utilized not in accordance with the agreement (Nugraha, et.al., 2015).

If all the obligations are not fulfilled by the business actor, then the business actor may be sued both civil and criminal, and the consumer shall have legal protection as described in the above explanation. As stated by Juniarti (2014: 41) which refers to Article 45 paragraph 2 of Law No. 8 of 1999 on Consumer Protection namely "consumer dispute resolution can be reached through court or out of court based on voluntary choice of the parties to the dispute".

## 5. Conclusion

General Based on the above description, the explanation of the two formulation of the above problems can be summarized as follows.

- 1) The form of legal protection of the consumer is the creation and enforcement of an online sale and purchase law that can protect the rights and obligations of consumers in online transactions so that they feel more secure and can take a lawsuit in case of crime in e-commerce transactions. In addition, if there is a consumer dispute, the process of consumer dispute resolution is done if in an online transaction violation of consumer rights. The consumer dispute resolution process can be done through court or out of court
- 2) The form of agreement used in the contract of sale and purchase of e-commerce in Indonesia can be divided into two categories, namely e-contract which has the object of transaction in the form of goods and or services and e-contract which has transaction object in the form of information and or service. Both forms of agreement can protect consumers in making online transactions so as to minimize the crime rate when making transactions online.

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