

Critical Analysis of Consumer Protection in “Lootbox” Virtual Transaction System in Indonesia

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ABSTRACT

Purpose of this research is to determine consumer protection regulation for virtual (Lootbox) transactions in Indonesia. The research method is normative legal studies. Results of the study is that virtual transactions are easily carried out, such as loot box virtual transactions that is affected to financial loss for both consumers and countries. Regulations that have made by several countries need to be further analyzed and examined in order to be implemented and regulated as in the country of Belgium issuing rules that require the (Lootbox) to be banned or be subjected to sanctions for violations of the Gambling Law in that country. So that Indonesia should make (Lootbox) regulation even though the regulation is unspecified in KUHP and Bill of Act on Electronic Information and Transaction that can make consumers protection is more guaranteed.

Keywords: *Consumer Protection; Lootbox; Regulation.*

INTRODUCTION

Technology is a tool that used to ease or comfort men’s life. It is used in almost all life aspects from work, education, information to entertainment. For example in the field of information, before modern technology arrived distance communication only conducted through letter which cannot be directly connecting people. However, through inventions such as laptop, cellphone and even smart watch, sending message or letter can be done real time. Similar to that, verbal communication which in the past could only be conducted

via public phone service or home phone, nowadays can be done face to face through chat or messenger application.

In contrast with the above benefits, negative effects especially related to legal aspects are frequently occurred. Since almost everyone are able to access the inventions, illegal used of it also inevitable. For example, a few decades ago, listening to recorded song could only be able through radio, compact disc or television, but today it can be freely heard and downloaded in the Internet. Not everyone aware that those songs are protected under copy right law and any act of illegal downloading and commercializing is against law number 28 of 2014 concerning Copy Right. Legal development is demanding adjustment to technological advance in order fulfill the need of modern state.

The emerging issues in the field of technology is the law basis of *lootbox* feature as this feature enable consumer to buy a prize box (lootbox) in an application or game which can be exchanged with real currency. The amount contain in lootbox are random and uncertain depend on the developer of the application or game. Lootbox is more often found in a game application because lootbox usually containing skin character, power up, currency, et cetera which sold in the form of voucher or coupon.

As this application resemble gambling, legal issue is arranged in Article 303 KUHP as follow:

“What described as gamble is every game which generally gain winning based on luck, also due to the skill of its player. It also included any kind of betting in a competition or game where the better is not playing, as well as other form of betting”

It can be said that gambling is a luck-based game which similar to the lootbox system. Since there is no certainty that customers will get their desired item which triggers them to re-purchasing until they earn the desired item.

The *lootbox* is a predatory application, as not only mature can access it but also under age children who are unaware about their purchasing through gadget such as cellphone and laptop. As if children accessing this paid application without parent’s approval, it will lead to parent’s financial lost.

Legal arrangement on digital item transaction is unfavorable the costumer side. Since the developer or seller obliged customer to agreed terms of service prior to download game or application and if it does not agreed, seller entitle to banned user as well as entitle to submit lawsuit on illegal use or download. In Indonesian law such an agreement is known as “take it or leave it” contract where one party is disable to negotiate contract’s content. This type of contract commonly found in the agreement between bank and its costumer.

Therefore, to overcome legal issues related to lootbox, Indonesian government shall enacted customer protection regulations. The lootbox regulation has been set forth in several Asian countries such as China, Japan, South Korea and Singapore. As Indonesia need to adjust to this legal development in order to respond technological advancement as well as to provide security and conformity for Indonesian citizen.

According to the above background, several questions can be formulated as follow: 1. What is regulation on prize box (lootbox) application in Indonesia? 2. What the regulation on subject matter in other states?

METHOD

In order to address the formulated questions, normative legal research method is applied. This method is taking statutes, conceptual, analysis and cases approach.¹ Primary legal materials that are used including Book of criminal law (KUHP), Book of civil law (*KUHPerdata*), consumer protection law and electronic information and transaction law. Meanwhile, secondary materials are in the form of articles, journal and websites.

ANALYSIS AND DISCUSSION

1. *Lootbox* in Indonesia

Grammatically, consumer refers to (opposite of producer) everyone who uses goods. The purpose of usage determines the type of consumer. Indonesian dictionary describes consumer as “user or customer”. As an Indonesian legal term, definition of consumer can be found in law number 8 of 1999 concerning consumer protection (UUPK).²

Public’s protection form is multi-dimensional, one of it is legal protection which aimed to minimize the existence of crash of interest. The right to be legally protected by the state is set forth in Indonesia’s 1945 constitution as it stated that every regulation formulated by legislative body shall provide protection for all Indonesians.

According to Janus Sidabolok, consumer protection law is holistic principles and norms that regulate and protect consumer in relation and dispute with goods and services provider.³ On the other side, Ahmadi Miru and Sutarman Yodo emphasizes that consumer protection law is principally protecting rights and obligations of both consumer and business actors. Based on Article 1 UUPK supported with the above opinion, related regulation provide mainly to protect consumer’s interest, especially the implementation of consumer’s right as regulated in Article 4 of UUPK.⁴ According to this Article, consumer’s rights are including:

- a. Right on convenience, security and safety in consuming goods and/ or services;
- b. Right to choose goods and/ or services as well as to obtain goods and/or services compatible with promised exchange value, condition and guarantee;
- c. Right to get valid, clear and honest information concerning condition and guarantee of goods and/or services
- d. Right to be heard its opinion and complain regarding goods and/or services that being used;
- e. Right to be advocated, protected and get appropriate dispute settlement;
- f. Right to obtain consumer’s coaching and education;
- g. Right to be treated and serviced properly and truthfully and un-discriminatively;
- h. Right to obtain compensation, indemnification, and/or substitution as if the received goods and/or services not match with the agreement or inappropriate;
- i. Other right as set forth in other laws.

¹ Amirudin Dan Zainal Asikin. (2020). *Pengantar Metode Penelitian Hukum*. Jakarta:PT. RajaGrafindo Persada, p. 118.

² Kurniawan. (2017). *Hukum Perlindungan Konsumen*. Mataram : Pustaka Bangsa, p.29

³ Janus Sidabalok. (2010) . *Hukum Perlindungan Konsumen*. Bandung : PT. Citra Aditya Bakti, p.46

⁴ Rahman Agus Ramadhan. (2015). *Perlindungan Hukum Terhadap Pengguna Jasa Provider Seluler Sebagai Konsumen atas Promo Yang Dikeluarkan Oleh Pelaku Usaha Melalui Media Iklan Di PT. Indonesai Satelite (Skripsi)*. Purwokerto: Universitas Jenderal Soedirman, p.67

Article 8 of consumer protection law regulated certain prohibition for business actors to produce goods and/or services which:

- (1) Business actors are prohibit to produced and/or traded goods and/or services which:
 - a. Not meet or not in accordance to required standard and laws;
 - b. Not in accordance with the mentioned weight, content and amount in label or goods trade mark;
 - c. Not in accordance with valid size, measure and amount;
 - d. Not in accordance with condition, guarantee, specialty or efficacy as mentioned in label or goods trademark;
 - e. Not in accordance with quality, level, composition, production process, style, mode or particular use as mentioned in label description of goods and/or services;
 - f. Not in accordance with promise declared in label, trade mark, description, advertisement or selling promotion of goods and/or services;
 - g. Not putting out expiry date or best usage/ utilization time limit on certain goods;
 - h. Not following halal production regulation while including “halal” in product’s label;
 - i. Not installing label or including goods’ description which declare product’s name, size, contain, composition, usage instruction, production date, side effect, name and address of producer and other obliged description;
 - j. Not including information and/or instruction of product usage in *Bahasa* Indonesia according to existing regulation
- (2) Business actors are prohibited to trade broken, defective or thrift and contaminated without clear and complete information on the product;
- (3) Business actors are prohibited to trade pharmaceutical and food stock that are broken, defective or thrift and contaminated with or without providing complete and clear information
- (4) Business actors who violate verse (1) and (2) are prohibited to trade such goods and/or services and are obliged to withdraw them from market.

Responsibilities of business actors arranged in Article 19 of consumer protection law, as follow:

- a. Business actors responsible to provide compensation on the damage, contamination, or loss of consumer caused by consuming their produced or traded goods and/or services;
- b. The compensation is allowed in the form of cash back or goods and/or services fair replacement or health care and/or compensation as arranged in existing regulation;
- c. Compensation shall be provided within 7 days prior to transaction date;
- d. Compensation granting do not terminate the possibility of law suit based on further vindication on violation element;
- e. First and second points are inapplicable as if business actor managed to proof that the misconduct is due to consumer’s fault.

Currently, in Indonesia there is no particular regulation concerning lootbox that included in an application or game. However, there are several laws that can be referred to as if the subject matter is harm its buyer or consumer such as consumer protection law, book of civil

law, book of criminal law and law on electronic information and transaction. Each of these laws containing several articles related to virtual transaction and purchase of digital items. Consumer protection law, for example arranged the rights of consumer in a transaction as well as the book of civil law contain regulation on selling-purchasing agreement.

Further, Article 303 of the book of criminal law can be used as reference on the description of gamble. According to that article the lootbox contain gamble element and therefore can be categorized as gambling practice. Meanwhile, Law on electronic information and transaction viewed lootbox as a practice of information and online gambling due to the fulfillment of the element game winning depend on uncertain luck which also stated in the book of criminal law.

To prevent the consumer's loss, Article 9 of law on electronic information and transaction stated that business actor who offering their product through electronic system obliged to provide complete and right information related to contract's terms, producer and product. Thus, according to Article 28 Verse (1) of this law imposes responsibility on consumer's loss to those who intentionally and without right spreading false information and misleading which cause the consumer's loss in an electronic transaction.

The above laws are related in the settlement of consumer issue. However, since the lootbox has no particular arrangement as in other countries, dispute settlement has many escape gaps which enable developers or sellers to offer their fraudulent product to Indonesian consumer. Therefore regulation on this subject matter is an urgent necessity to prevent sellers deceiving their consumers. For example regulation that obliged *lootbox* provider to display certain numbers of item that possibly contain the prize based on level. For example in a lootbox game there are 4 levels of item namely legendary, epic, rare and common. As legendary is the highest level and common is the lowest, therefore winning possibilities are 10 percent in legendary item, 20 percent in epic, 30 percent in rare and 40 percent in common, total 100 percent. The question is whether there is guarantee that consumer will earn prize as above percentage since there is possibility that developer rigging hidden codes to make consumer do repetitive purchasing to get the desired item.

Arrangement of lootbox in other countries

Different from Indonesia, some countries has already imposing particular regulations on *lootbox*. It is necessary to analyze those regulations in order to be implemented as legal solution regarding the subject matter. Belgium and China are among countries that already arranged lootbox in special regulation which will be described below:

1. Belgium

Lootbox is considered as a serious legal issue, as it banned in some countries. Belgium is one of the countries that declared that a game which containing lootbox is an illegal business practice. Since lootbox provide random game items which can be generated by playing the game or paying a sum of money. Once the player did not get the desired items they will have to pay more money to get it. The fact that player paid real money to buy the game items without any guarantee to get the item they wanted. There is no declaration from game developer what item is available in the lootbox which leads to the player loss and therefore require legal protection in this gambling practice. Games that violated gamble regulation in Belgium such as FIFA 18, Overwatch, and Counter-Strike: Global Offensive, as it is evident that these games including lootbox which is the mix between

game and gambling. Further, lootbox can be harmful to one's mental health especially under age children which may force them to gain money in any possible way in order to buy the item. To emphasize, the game will be classified as illegal once it contain betting element that either lead to the loss or winning of it which is known as games of chance as poured in gaming act.

Based on the Act of 7 May 1999 on Games of chance, betting, gaming establishment and the protection of players, as amended in 2010, Games on chance are defined in Article 2, 1° of the Act as any game by which a stake of any kind is committed, the consequence of which is either loss of the stake by at least one of the players or a gain of any kind for at least one of the players, or organizers of the game and in which chance is an even ancillary element in the course of the game, the designation of the winner or the determination of the gain.⁵

According to Belgium's gambling act, if a game is containing lootbox, the developer is obliged to delete the lootbox feature otherwise they will be charged violates the country's gambling act. This act arranged sanction in the form of fine between 800-800.000 Euros or imprisonment between 6 months – 5 years or both. Sanction could be much harder as if the violation involves under age children.

The criminal sanctions applicable to illegal operators also apply to anyone who promotes the illegal operation of gambling activities or who facilitates in any way whatsoever that operation, or who advertises those activities or recruits for those operators, and even to players who participate in illegal gambling activities.⁶

2. China

China's ministry of culture established new regulation which specifically arranging online game and the use of *microtransactions* system in a game to generate benefits. This regulation also obliged game provider to terminate system that enable item purchasing through lootbox. Further, it also arranged points as follow:⁷

1. Online game developer shall immediately announce publicly information regarding name, property, content and amount of all item and the possible virtual services that can be withdraw from official website.
2. Online game developer shall announce publicly consumer's purchasing result in official website or game site as well as report it to the government as an investigation material. The report will be saved for more than 90 days.

CONCLUSION

Along with technological advances, virtual transaction is getting easier to conduct such as in the practice of lootbox which has detrimental consequence to the consumer and event to the country. Hence, Indonesia supposed to establish particular regulation on this practice in order to provide better consumer legal protection.

In several countries, the regulation has been made which is necessary to be analyzed and observed to be further implemented and regulated in Indonesia. Belgium as an example

⁵ Article 2, 1° of the Act of 7 May 1999 on Games of chance, betting, gaming establishment and the protection of players as amended by the Act of 10 January 2010

⁶ Article 4 of the Gaming Act

⁷ <https://neogaf.com/threads/china-to-force-online-games-with-loot-boxes-publicly-announce-item-probabilities.1323027/>

established Act of 7 May 1999 on Games of chance, betting, gaming establishment and the protection of players as amended in 2010. This Act obliged lootbox to be terminated otherwise the developer will be sanctioned under the country's betting act. Meanwhile in China, regulation on lootbox is forbidden people under the age of 18 to purchase this item issued by administrative office and Chinese newspaper in November 2019. Therefore, the regulation on lootbox shall consider consumer's detrimental elements.

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