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Application of the Principle of Good Faith in Electronic Transactions (E-Commerce) by Consumers That Use the Cash on Delivery (COD) Method

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Abstract

This study examines the urgency of implementing cash on delivery system in electronic transactions and the good faith of consumers for goods ordered using the cash-on-delivery method. The formulation of the problem discussed is what is the basis for implementing the cash-on-delivery system, and how can consumers application of the principle of good faith to the cash-on-delivery system? The research method used is normative and literature study based on primary materials (laws), secondary materials (scientific works, journals, books, documents, and other literature), and tertiary legal materials (legal dictionaries). The results of the study, namely the urgency of the payment method with Cash on Delivery (COD), are considered very important to give consumer confidence to business actors for the products ordered and make it easier for them to make payments in cash when the product is received. The principle of good faith must be obeyed when implementing e-commerce agreements, especially for consumers who take advantage of the COD feature, so as not to act arbitrarily, which harms business actors.

K*eywords:* *Good Faith Principle; Electronic Transactions; Legal protection; Cash on Delivery System*

Introduction

The formation of law as a set of norms binds people to obey something and maintain their behavior in relationships with other people (Rahardjo, 1991:27). The legal relationship arises according to Article 1313 of the Civil Code (hereinafter referred to as the Civil Code), which explains, "An agreement is an act by which one or more persons bind themselves to one or more other persons." If an agreement is reached between the seller and the buyer, there is a sale and purchase.

The parties' position in buying and selling has been given a legal umbrella by the Government as contained in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). According to Article 1 paragraph (2) UUPK, the term buyer states, "Consumer is every person who uses goods and/or services available in the community, both for the benefit of oneself, family, other people, and other living creatures and not for trading." While the term seller, according to Article 1 paragraph (3) UUPK; "A business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to organize business activities in various economic fields. "

Technology benefits the community to receive and deliver information quickly and communicate without distance, space, and time boundaries. Rapid development has resulted in the world becoming borderless and social changes significantly. Therefore, people are forced to be able to keep up with every product of an increasingly advanced era. There are many benefits, not only to establishing communication but also to making a significant contribution, both for the community, companies, and the government, especially to the existence of a marketplace and an unlimited business network (Rokfa, 2022:162). Everything is starting to penetrate the internet-based cyberspace, including the economy entering a new world known as the digital economy or digital economy. The rise of internet-based economic activities as a communication medium gave birth to a unique buying and selling system, namely electronic transactions or electronic commerce (e-commerce) (Indrajit, 2001:33). This virtual business requires business actors to run their business with internet media without having to need a physical store, so e-commerce plays a significant role in changing the face of trade which was initially conventional, namely the direct buying and selling process between business actors and consumers who are both present on the spot, turning into electronic that is done indirectly or without meeting face to face on the place. This is because conventional systems are starting to be considered old-fashioned; thus, e-commerce is supposed to provide convenience for many parties, especially consumers, to be able to fulfill their needs without having to leave the house, access through devices that are connected to the internet network and then choose to use platforms or websites that are increasingly mushrooming.

Technological progress in this trade is like a coin with two sides; cheerful, providing various benefits for many parties, but also cannot be separated from the opposing sides that arise from it. Therefore, the implementation of e-commerce cannot be separated from the general principles known in contract law, one of which is the principle of good faith contained in Article 1338 of the Civil Code, namely, "Agreements must be executed in good faith." Based on the article's contents, the parties involved in the agreement must have good faith in carrying out their obligations.

E-commerce is regulated by the Government as contained in Law Number 11 of 2008 concerning Information and Electronic Transactions which was subsequently changed to Law Number 19 of 2016 regarding Amendments to Law Number 11 of 2008 (hereinafter referred to as UU ITE). The definition of electronic transactions in Article 1 paragraph (2) of the ITE Law reads; "Legal actions carried out using computers, computer networks and/or other electronic media."

E-commerce creates rights and obligations as a legal consequence of the parties' agreement based on electronic media (Priowirjanto: 2014:287). The agreement is in the form of consumer approval for goods and/or services offered by business actors through the display on the website page so that business actors should fulfill the promises in the offer. The system recognizes an electronic signing process designed during purchase, inspection, and delivery (Barkatullah and Prasetyo, 2005:vii). Furthermore, various forms of e-commerce have emerged regarding payment methods, one of which is Cash on Delivery (COD), a system for purchasing goods by cash when consumers receive the goods (Halaweh, 2018). This method makes it easier for consumers to pay for orders without transferring through bank accounts or outlets with facilities to make payments, such as Alfamart or Indomaret. The advantage of this method is that it is expected to be able to avoid fraud committed by business actors because consumers often feel worried and have evil thoughts if the goods are not sent so that their position is much safer because they have not spent money to pay and the risk of loss is very minimal (Kiranaa and Ayunda, 2022:71). Another advantage for consumers is that they can check their ordered goods delivered by couriers to check whether they are appropriate or not, as well as losses that can be experienced, namely the goods ordered, do not arrive, are received in damaged/defective conditions, or the goods do not match the description in the catalog. Examples of losses for business actors are if the order has been sent, but the consumer is not responsible for paying it, in this case, using the COD method.

Based on the explanation above, the author wants to examine more deeply about these problems in a study entitled "The Application of Good Faith Principles in Electronic Transactions (E-Commerce) by Consumers Using the Cash On Delivery (COD) Feature." The formulation of the problems discussed, namely; 1) What is the basis for the implementation of the cash-on-delivery system? 2) How is consumers' application of the principle of good faith to the cash-on-delivery system?

Research Methods

The method used in this research is the normative method and literature study; the study of research objects based on sources of legal materials that are still relevant, both primary such as related laws and regulations, secondary such as literature and other reading materials, as well as tertiary namely legal dictionaries. Furthermore, these materials are inventoried and researched using positive laws in force in Indonesia (Waluyo, 1991:14). This research is based on the statute approach and descriptive qualitative approach. The qualitative approach creates descriptive data such as written or oral from the informant and attitudes that are considered and not stated in the form of variables or hypotheses (Moleong, 2000:2).

Discussion

1. Urgency of Application of Cash on Delivery (COD) Payment Method

Article 1457 of the Civil Code explains, "A sale and purchase is an agreement in which one party binds himself to deliver an object, and the other party pays the promised price." A sale and purchase agreement is an agreement in which the seller transfers or agrees to transfer ownership of the goods to the buyer in exchange for a sum of money called the price (Muhammad, 2014:243). Electronic Commerce (e-commerce) is the process of buying and selling or exchanging products, services, and information through computer networks, also requiring databases, electronic mail (e-mail), and other non-computer technology such as; delivery systems and payment methods. The definition of a payment method is a way that consumers can pay for goods or services to get the product's benefits.

E-commerce was born based on electronic buying and selling contracts between business actors and consumers. Electronic transaction activities are required to have legal force as in conventional contracts (Rantung, 2017:89). Article 1 number (17) of U ITE explains that; "Electronic Contract is an agreement of the parties made through the Electronic System." Furthermore, it is also regulated in Article 47 paragraph (3) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as PP PSTE), which at least contains; identity data of the parties; objects, and specifications; electronic transaction requirements; prices and fees; procedures in the event of cancellation by the parties; provisions that give the injured party the right to be able to return the goods and/or request a replacement of the product if there is a hidden defect; and choice of law for electronic transaction settlement."

The ITE Law has not accommodated the legal requirements for electronic contracts, so it still refers to Article 1320 of the Civil Code; agreement, skill, a specific thing, and a lawful cause. According to Subekti, the sale and purchase agreement was born when an agreement was reached on goods and prices (Subekti, 1995:2). Agree is a critical point contained in the principle of consensual; if it is associated with e-commerce, it can be seen in Article 20 paragraph (1) of the ITE Law; "Unless otherwise specified by the parties, electronic transactions occur when the transaction offer sent by the Sender has been received and approved by the Recipient."

Marketplace management is thoroughly carried out by the platform provider, while business actors only take care of ordering goods or services (Silviasari, 2022:152). Currently, many emerging marketplaces compete to provide the best promos and offer to attract consumers, which usually become references, namely, Shopee, Tokopedia, and Lazada, as online marketplace providers (hereinafter referred to as "OMP"). OMP is an application or site that provides e-commerce facilities from various existing sources (Utomo, et.al.,:2020: 348).

The easiest way to conduct transactions electronically is for business actors to upload product catalogs accompanied by detailed descriptions on the site or marketplace. Consumers choose products to be included in the shopping cart; after that fill in their data and address clearly in the order format, then make payments using the various methods offered; credit card, bank transfer or electronic wallet (e-wallet), Cash on delivery (COD) or Pay later (pay later). If a consumer submits an offer and places an order into a shopping cart, then an agreement is reached, even if not directly, and the business actor is obliged to send the ordered goods or do what is their obligation. According to Munir Fuady, e-commerce needs to be divided into several types; (Fuady, 408)

a. Business to Business (B2B): consumers and business actors are companies, not individuals. Usually, this transaction is done to establish cooperation between these companies.
b. Business to Consumer (B2C): transactions between companies and consumers. Usually use the website is commonly used by the public.
c. Consumer to Consumer (C2C): transactions between individuals and individuals who sell goods to each other.
d. Consumer to Business (C2B): transactions that allow individuals to sell goods to companies.
e. Non-Business Electronic Commerce
f. Intrabusiness (Organizational) Electronic Commerce

Seeing that cases are often found related to e-commerce fraud in which consumers are harmed because they do not receive the product ordered, it could be due to an error in product delivery or even the product was not sent by business actors, so that new ideas about payment systems were created to protect the rights of consumers, namely the Cash on Delivery (COD) system. The agreement occurs when the consumer chooses the COD payment method. The product will be sent to the destination, and the consumer must pay according to the product's total price to the sending courier as a third party. Even though the COD method benefits consumers, this also opens a gap for business actors who send their products for free without getting paid first, relying on trusting consumers to pay when they receive their products. Therefore, the urgency of the COD payment method is considered necessary because it provides convenience, especially for consumers to protect their rights to obtain products and are not afraid of being harmed if something unwanted happens, so this form of e-commerce is legal because it fulfills the legal requirements of the agreement according to Article 1320 of the Civil Code. Although the payment and delivery of goods have not been carried out simultaneously, the agreement is binding, and both are required to fulfill performance.

2. Application of the Principle of Good Faith by Consumers on the Cash on Delivery Method

E-commerce on the marketplace usually offers a variety of payment methods that are expected to provide legal protection for consumers so that transactions become more secure, effective, fast, and reliable. One of them uses banking services as a channel of funds for product payments through transfers from consumer accounts to business actors' accounts or called account to account (Makarim, 2008:78). The transaction transfers ownership rights from the provider of goods/services to the consumer (Nasution, 1995:37). Business actors are required to send products paid for by consumers to fulfill achievements on e-commerce agreements. However, there is an understanding that consumers must be ready to bear the consequences of the choices made in buying goods/services offered by business actors (Samsul, 2004:4).

The rights owned by consumers are contained in Article 4 of the UUPK, including; the right to comfort, security, and safety in consuming goods and/or services; the right to choose goods and/or services, and to obtain such goods and/or services following the exchange rate and the promised conditions and guarantees; the right to correct, transparent and honest information regarding the situation and security of goods and/or services; the right to have their opinions and complaints heard on the goods and/or services used; the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes; the right to be treated or served correctly and honestly and not discriminatory; the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not following the agreement or not correctly.

The rights of business actors are contained in Article 6 of the UUPK; "the right to receive payments by the agreement regarding the conditions and exchange rates of traded goods and/or services; the right to obtain legal protection from consumer actions with bad intentions; the right to conduct appropriate self-defense in the legal settlement of consumer disputes; the right to rehabilitate reputation if it is legally proven that traded goods and/or services do not cause consumer losses; rights regulated in other laws and regulations."

An engagement born of an agreement or law creates a legal obligation that the parties must obey (Harahap, 1986:190). Consumers' responsibility in e-commerce is to find out and compare information on goods/services needed more freely without being limited by area (borderless) (Mansyur and Gultom, 2005:144). It must complete the payment of the price of the goods purchased. The legal terms and norms in the agreement must be following Article 1338 paragraph (3) of the Civil Code, which is dynamic, covering the entire process of the agreement (Syaifuddin , 1993:96); thus, the achievement is carried out adequately based on the principles of good faith and propriety.

The following are the obligations of consumers according to Article 5 of the UUPK; "read or follow instructions for information and procedures for the use or utilization of goods and/or services, for the sake of security and safety; have good faith in making transactions for the purchase of goods and/or services; pay according to the agreed exchange rate; follow the efforts to settle consumer protection disputes properly."

The obligations of business actors according to Article 7 of the UUPK are; "have good intentions in carrying out their business activities; provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance; treat or serve consumers correctly and honestly and non-discriminatory; guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services; provide opportunities for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded; provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services; provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement."

It is possible that when carrying out the contents of the agreement, one of the parties breaks the promise; the following four elements are contained in the default (Subekti, 2000:50); 1) Not doing what it's supposed to do; 2) Carry out something but not as promised; 3) Did what was promised, but it was too late; 4) Doing something that according to the agreement should not be done. Therefore, if there is a default, it must be a response by replacing costs, losses, and interest.

If there are parties who are harmed, then it is appropriate to be given legal protection, which is carried out by providing a sense of security to the victim and witness (Fajar and Achmad, 2017). One form of protection is provided by Article 38, paragraph (1) of the ITE Law; "Everyone can file a lawsuit against the party that operates the Electronic System and/or uses Information Technology that causes losses." Furthermore, Article 39, paragraphs (1) and (2) of the ITE Law explain that; "The provisions of the legislation carry out civil lawsuits. In addition to the settlement of civil lawsuits as referred to in paragraph (1), the parties may resolve disputes through arbitration or other alternative dispute resolution institutions by the provisions of the Laws and Regulations."

Consumers have a more vulnerable and weak position, because when shopping through e-commerce, they are only based on feeling and trust that the goods they receive will not disappoint and match the photos displayed in the product catalog. If it turns out that the goods received are unsatisfactory or even not as expected when buying at the beginning, then the consumer can submit a complaint accompanied by photo or video evidence when unboxing for the warranty claim process.

If, in this case, the consumer is harmed, the UUPK has made a particular article regarding the form of legal protection, as stated in Article 1 paragraph (1) of the UUPK; "Consumer protection is all efforts that guarantee legal certainty to protect consumers." The five principles that form the basis of consumer protection are a benefit, justice, balance, consumer safety and security, and legal certainty. Such legal protection is provided with the aim of; "Improving consumer awareness, ability, and independence to protect themselves; elevating the dignity of consumers by preventing them from the negative excesses of the use of goods and/or services; increasing the empowerment of consumers in choosing, determining, and demanding their rights as consumers; create a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information; raise awareness of business actors regarding the importance of consumer protection to grow an honest and responsible attitude in doing business; improve the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security, and safety of consumers." Legal protection can be done before the transaction (no conflict/prepurchase) and/or after the transaction (conflict/post-purchase): (Gunawan, 1999:3)

a. Legislation; consumer legal protection at the time before the occurrence of transactions through the establishment of laws and regulations. So it is hoped that the limits and provisions governing transactions between consumers and business actors can guarantee their implementation properly.
b. Voluntary Self Regulation; consumer law protection carried out at the time before the occurrence of a transaction, namely Business actors are expected to make regulations for themselves so that they are more careful in running their business.

Furthermore, consumer legal protection after a transaction (conflict/post-purchase) can be carried out through negotiation, consultation, mediation, or assessment by experts, as well as litigation (court) or non-litigation (Consumer Dispute Settlement Agency/BPSK) which is adjusted to the agreement of the parties. disputing parties. The losing party can submit an objection to the District Court within 14 days of receiving notification of the BPSK decision. Thus, dispute resolution at BPSK is an alternative to resolving disputes quickly, easily, and cheaply (Nugroho, 2008:99). Fast, because the UUPK determines that within 21 working days, BPSK is obliged to give its decision. Easy, because the administrative procedures and decision-making are very simple. Cheap lies in the affordable cost of cases. The application of this law has not been maximized, because there is no awareness that consumers have about how to defend their rights, especially if goods are purchased at low prices, making them lazy to follow up and consider the problem trivial (Geriya, et.al.,:2016).

Trading in cyberspace is a transaction across geographical boundaries that connects consumers and business actors from various countries. If a dispute arises, the parties can choose the Online Dispute Resolution (ODR) or Arbitration and Alternative Dispute Resolution (ADR) method online to make it more practical and cost-effective. Cheap and effective (Khotimah and Chairunnisa:17). Arbitration and online ADR are not much different from conventional systems, which differ only in the use of electronic means and their implementation. In online arbitration, case registration, selection of arbitrators, submission of documents, deliberation of arbitrators in the case of an arbitration tribunal with more than one arbitrator, making decisions, and notification of decisions will be made online. APS has advantages; (Kiranaa and Ayunda: 74)

First, alternative dispute resolution is not carried out through the judiciary, so the costs are relatively low. Second, it is faster than court institutions that have to queue because many cases are handled, so it takes longer. Third, the aggrieved party will receive a settlement of compensation or compensation, meaning that a good relationship between business actors and consumers is restored. Fourth, confidentiality is guaranteed so as not to damage the good name of anyone, whether consumers, business actors, or e-commerce parties. Fifth, handled by parties who are experts in their fields and minimize injustice, such as siding with one party.

The rapid development of e-commerce has made a marketplace or website not only offer a cash payment method via account number transfer or virtual account but also provides an option for payment on the spot when the consumer receives the product; this method is known as Cash on Delivery (COD). . E-commerce with the COD method is detrimental to the consumer, then he is entitled to compensation, compensation and/or replacement if the goods and/or services received are not following the agreement or not as they should be. The ITE Law states that anyone can file a lawsuit against a party that operates an electronic system and/or uses information technology that causes losses (Burhanuddin, 2011:137). Generally, people as consumers think that by using the COD method, they can open and try the product without having to pay first to the courier, but the 'try first and then pay' policy is not enforced in all marketplaces or online shopping websites, so this is where it often happens. Problems between consumers, couriers, and business actors.

Consumers who order goods using the COD method, if they feel that the goods received do not match the product description or are inappropriate compared to the price paid, will refuse to make payment and return the goods to the courier. Not infrequently, consumers and couriers are involved in commotions caused by this unilateral cancellation, especially for business actors who are significantly disadvantaged in terms of time and energy used for packaging goods. The packaging requires capital such as duct tape, plastic, and paper to write the destination address. Not only that, if the goods ordered by consumers are pre-ordered or require time to produce, then business actors feel very disadvantaged. Although this often happens, regarding the resolution of this unilateral cancellation dispute, there is still no effective and efficient legal settlement; most business actors will accept the harsh reality when the product is returned to their hands. This unilateral cancellation can be categorized as an act of default because one party does not carry out its agreed obligations without the other party's consent. It can be seen if that party has not fully implemented the principle of good faith.

Conclusion

1. People who need products/services are now facilitated by technological advances that bring many benefits along with supporting features, especially regarding payment methods that are not only by transfer but also cash on delivery. If deceived by business actors.
2. The agreement agreed by the parties who make it should be based on good faith; in this case, e-commerce is carried out using the Cash on delivery method, and the consumer is obliged to make payments after receiving the goods and not refuse or return them to the courier so as not to harm the business actor.

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