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The Good Faith of the Parties in Buying and Selling Goods Online with Cash on Delivery (COD) Payment: A Critical Analysis

Zainuddin Zainuddin and Andi Risma

ABSTRACT

This paper explores the good faith of the parties through the Cash on Delivery (COD) payment method, which is a payment system method done at the destination place. Good faith is basically a universal principle that emphasizes the responsibility and honesty of the parties in conducting transactions. The parties involved in buying and selling online through COD payment are based on good faith. In purchasing with COD, the parties (seller, buyer, marketplace, expedition service, and courier) must fulfill their respective obligations honestly as a form of the implementation of good faith. The implementation of the principle of good faith by the parties will certainly give confidence to each party so that it has an impact on the development of buying and selling online with the COD payment method.

Keywords: buy-sell, cash on delivery, good faith.

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I. INTRODUCTION

The fast development of technology has made the digitization of various aspects of life that have led to changes in lifestyle into a new lifestyle that has made electronic devices a major need, including in the economic field which is the most dynamic field of life. Fulfilling human needs with technology is a must to make it easier for humans to carry out any activities that ultimately change human civilization towards the digital era. Massive changes due to the digital era have had a positive impact on human life which, on the other hand, the digital era also has a negative impact that at the same time also causes new challenges in various fields of life including the economic field (Wiryawan, 2021).

According to the perspective of the general public, buyers are more and more often disappointed in Cash on Delivery (COD) transactions. In fact, it is not only buyers who become the victims of the seller's dishonesty. Sellers can also be victims of the negligence of the buyers. Many buyers incorrectly use the COD payment method in e-commerce applications. Many cases occur where the buyer cancels the order for the goods when COD is being done so that the courier who delivers the goods does not receive the cash that has been agreed before. Therefore, the seller will suffer a loss. Here, it can be seen that the buyer has defaulted. The buyer has broken his promise or did not comply with his obligations (Adnyani & Putu Sri Bintang Sidhi, 2021)

COD is a payment method that is carried out directly on the spot after the order from the courier is received by the buyer. This payment system has been used by several business actors who have buyers in the same city as the sellers, but the sellers do not have an offline store. The purpose of the COD payment system is to make it easier for the buyers to make payments without having to have a bank account or a credit card, and when they are not located close to several outlets that work with the E-Commerce companies, such as Alfamart and Indomaret. COD allows customers to make cash payments when the products are delivered to their homes or to a location that they choose. This is sometimes called a "post-payment" system because the customers receive the goods before making payments (Halaweh, 2018).

In the case of COD, it is sometimes found that there are many mistakes that can harm the buyers and also the person who delivers the goods. If this is not given *khiyar* then, of course, we can find the absence of the principle of good faith in the COD system. As happened a few days ago, there was a customer who sued a delivery person due to the business owner's mistake in fulfilling the buyer's order. This should be avoided because it will damage the principle of good faith in buying and selling online and can also harm many parties. Of course, this system is not free from problems, until recently, there have been several viral cases where consumers feel cheated and ultimately do not want to pay for the goods purchased in e-commerce (Lumaris, 2021).

II. METHOD

This study is normative or doctrinal research, namely research on secondary data in the legal field, whose objects are statutory regulations and library materials. By examining the concept of mediator's good faith. This research data comes from secondary data sourced from primary legal materials namely Indonesian Civil Code (*Burgerlijk Wetboek* voor Indonesie). Secondary legal materials include legal materials that provide explanations of primary legal materials, such as research results, books discussing, good faith and cash on delivery. The data obtained from the results of the literature study was processed using qualitative methods. A qualitative method is a research procedure that produces analytical, descriptive data.

III. THE PRINCIPLE OF GOOD FAITH IN THE E-COMMERCE AGREEMENT

The principle of good faith comes from the Latin word *bonafid* which means honest and sincere efforts. The National Law Development Agency (BPHN) at the National Civil Law Symposium in 1981 defined good faith as: a) being honest when entering into a contract; b) An agreement between the parties is deemed to be in good faith if it is made in contract. the presence of officials at the verification stage (although objections have been raised to this); c) It is appropriate to review the behavior of the parties in the implementation of the contractual agreement during the implementation phase with the aim of preventing malpractices in its implementation. agreement (Priono 2017).

The term good faith has a broad concept that is not limited to contract law but also relates to property law, family law, inheritance law, and company law. In the American Restatement (Second) Contract, Section 205 states: Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. This means that each contract requires that each party is obliged to have good faith and fairness in their work and implementation.

Good faith has two meanings, namely: (1) good faith in an objective sense, that an agreement made must be carried out by heeding the norms of propriety and decency which means that the agreement must be carried out in such a way that it does not harm one of the parties. The consequence is that the judge may conduct a review of the contents of the agreement that has been made by the parties if the implementation of this agreement would be contrary to good faith; (2) good faith in a subjective sense, namely the notion of good faith which lies in one's inner attitude. In the law of matter, good faith is usually defined as honesty (Innaka et al., 2012).

The application of good faith in a contract is an important factor so that parties with good intentions will receive reasonable legal protection, while parties who are not in good faith deserve to feel the consequences of their dishonesty. Good faith can also be seen when the legal action comes into effect or when the rights and obligations contained in the legal relationship are exercised (Jasmaniar & Zainuddin, 2022)

Good faith is not the same intention, but good faith is the use of fair and just agreement. E-commerce contracts arise when one party accepts what the other party offers. Before consumers agree to conduct business transactions the terms of use or the terms of use are generally known to potential buyers to know and understand the terms of use set forth by the providers. Therefore, good faith in the form of honesty is necessary to maintain the norms such as the age limit for transactions (for children are not allowed to make transactions). Likewise, business operators must promptly fulfill their obligations to ensure that the goods sold are provided according to the conditions desired by the customers. In this way the fullness of the principle of good faith can be seen (Widaningsih, 2019)

Honesty or good faith can be seen in two ways. That is when the legal relationship begins to take effect or when the rights and obligations inherent in the legal relationship are enforced. Honesty, at the time, started in the heart of the person concerned, that all the conditions needed for the entry into force of the legal relationship had been fulfilled, while later it turned out that there were conditions that were not fulfilled. In this case, the honest party is considered as if all of the conditions were fulfilled, in other words, the honest party must not be harmed as a result of the non-fulfillment of the conditions referred to in the agreement (Juanda Sitorus, 2021)

Wijono Projodikoro (Manery, 2018) divides good faith into two types, one of which is good faith when a legal relationship comes into force. Good faith here is usually in the form of someone's estimation or assumption that the conditions needed for the start of a legal relationship have been fulfilled. Meanwhile, good faith can be distinguished into subjective good faith and objective good faith. Good faith that is subjective is essentially honesty being applicable at the pre-contract stage while good faith that is objective is essentially decency/fairness that applies at the stage of the implementation of the contract.

The principle of good faith is stated in Article 1338 paragraph (3) of the Indonesian Civil Code which determines: "The agreement must be carried out in good faith." This principle implies that the parties,

namely creditors and debtors, must carry out the substance of the contract based on firm trust or confidence as well as the goodwill of the parties.

The principle of good faith is divided into two types, namely relatively good faith, and absolute good faith. In the first intention, one pays attention to the real attitude and behavior of the subject. In the second intention, the assessment lies in common sense and fairness and an objective measure is made to assess the situation (impartial assessment) according to objective norms (Kunarso & Sumaryanto, 2020).

The parties will comply with the contents of the agreement, which will be seen in the practice of implementation which of course must be based on the good faith of the parties. An agreement that was born as a result of an agreement and is a meeting between the will of the parties, will not be able to achieve the will of the parties if, in its implementation, it is not based on the good faith of the parties to carry out the agreement as intended.

Article 1339 of the Indonesian Civil Code Civil Code also explains the implementation of the principle of good faith which is closely related to etiquette which stipulates that an agreement is not only binding on matters that are strictly determined in the agreement but also on everything that has been agreed upon. According to the nature of the agreement etiquette and customs are required, and the law.

According to Wirjono Projodikoro, honesty (good faith) in Article 1338 Paragraph (3) of the Indonesian Civil Code, does not lie in the state of the human soul but lies in the actions taken by both parties in carrying out promises, so honesty is dynamic. Honesty in the dynamic sense of propriety is rooted in the nature of the role of law in general, namely the effort to balance the various interests that exist in society. In a legal system, it is essentially not allowed to fulfill one's interests entirely with the result that the interests of others are completely pressured or ignored. Society must be a balance that stands upright in a state of balance.

Good faith in the performance of a contract means compliance, which is a measure of the behavior of the party performing the promised action and is intended to prevent improper and arbitrary behavior on the part of one of the parties. J. M. van Dunne divides contract making into three stages namely the pre-contract period, the contract execution period, and the post-contract period. Integrity must exist from the pre-contract stage from the beginning of negotiations between the parties through the contract and the execution of the contract. Good faith at the pre-contract stage is an obligation to notify or explain and examine material facts for the parties relating to the object being negotiated. In this regard, the decisions of the Hoge Raad state that the negotiating parties each have good faith.

Subjective good faith is associated with the law of objects (*bezit*). Here, we find the term holders with good faith and so on as opposed to people with bad faith. A buyer with good faith is someone who buys goods and believes that the seller is really the owner of the goods that he sells, the buyer does not know that he is buying goods from people who are not the owner. The buyer is an honest buyer. In the law of matter, good faith is defined as honesty. A buyer with good faith is an honest person who is not aware of any inherent defects in the goods that he purchased, meaning defects regarding its origin. In this case, good faith is a subjective element. This subjective good faith is related to mental or psychological attitudes, namely whether the person concerned is aware of or knows that his actions are contrary to good faith or not.

In this case, good faith has three functions. The first function, all contracts must be interpreted in good faith, and the second function is to add (*aanvullende werking van goedetrouw*). With this function, the judge can add to the contents of the agreement and add words to the laws and regulations relating to the agreement. The third function is limiting and eliminating (*beperkende en derogende werking van de goedetrouw*).

Actualization of the implementation of the principle of good faith from an agreement, among others, as follows: (1) The parties must carry out the provisions of the agreement in accordance with the content, spirit, intent, and purpose of the agreement itself; (2) Respect the rights and obligations of each party and third parties who may be granted rights and/or burdened with obligations (if any); (3) Not take any actions that can hinder efforts to achieve the aims and objectives of the agreement itself, either before the agreement applied or after the agreement applied.

Basically, good faith contains elements such as 1) Honesty, in the formation and implementation of obligations; 2) Propriety, which is the awareness and intention in the parties to do or not do something because something is realized as a good action, in accordance with moral obligations and for the sake of moral obligations themselves; 3) Not arbitrary, in the sense that there are no facts that show the intention and awareness of the party with a stronger bargaining position to take advantage of that position to obtain an unreasonable advantage from other parties who have a lower bargaining position (Ainiyah & Santoso, 2018).

Good faith does not only refer to the good intentions of the parties but must also refer to the values that develop in society. There are different types of good faith, namely: good faith can be used for 2 (two) purposes, namely the first is to find out whether the agreement is binding or not and the second is to find

out what the obligations of the parties are, and whether the parties have fulfilled their obligations (Chumaida, 2014).

Consumer protection laws have principles that remind buyers. This means that when it comes to buying and selling the consumer/buyer should be careful with all buying and selling transactions. It is the consumers responsibility to exercise due diligence when reading and studying the meaning of the provisions contained in these terms.

IV. THE PARTIES' GOOD FAITH IN COD PAYMENT TRANSACTION

The development of the COD payment system has not been in spite of advantages and disadvantages that make COD more attractive to the buyer. One of the advantages of COD is the assurance that the goods purchased get to hand before the payment, thereby giving rise to the security guarantees of the fraud. While one of the disadvantages is that potential buyers refuse to pay as a form of complaint because of inappropriate goods (Wiryawan, 2021).

Regarding the COD mechanism, the marketplace in Indonesia does not only consist of buyers and sellers. COD mechanism in the marketplace in Indonesia consists of at least several parties, including sellers or business actors, buyers or consumers, service providers in the marketplace, expedition or delivery service providers, and couriers (Pardede & Sujanto, 2021).

The principles of good faith of the parties can be described below:

A. *The Principle of Good Faith of the Seller or Business Actor*

The performance of good faith requires honesty of the seller, without any trickery, and the seller must be honest in uploading the photo without any editing and has to make sure that it is an original item, so that good faith is essential or becomes a ground for the sale online, the seller must also explain all the specifications of the items sold. The seller's mind must be based on good intentions of selling things that are worth selling and such items do not conflict with the norms of society. The seller actually sold the exact same items as the one offered without any defects.

The seller will first examine the goods to be sent so that there will be no defects that will harm the buyer. Delivering goods on demand is a form of good faith for the seller and an effort to build the trust of the buyer (Haryanti, 2021).

B. *The Principle of Good Faith of the Buyer or Consumer*

The advantage of the COD system, especially for buyers, is that buyers don't have to bother going to ATMs to make payments, by choosing the COD system the buyer simply just had to wait for the arrival of the expedition courier to deliver the ordered goods at home. As for business actors, the advantage of this COD system is to get more orders from buyers due to the ease of transactions (Iskandar & Rahardja, 2021).

The disadvantage of this COD system is that the buyer can refuse the goods sent for any reason, which is undeniable and has happened recently and has gone viral on social media. The reason that the goods are not as promised or damaged is normal if they have to be sent back, but if the reason is not that they do not have money to pay, they are lazy to receive the goods or the buyer just ordered a fad, but it didn't happen, the buyer can also do this. This is what can be called arbitrarily canceling an order (Iskandar & Rahardja, 2021).

Fulfillment of the seller's rights is a form of good faith carried out by the buyer. Therefore, the principle of good faith in buying and selling through COD payments requires a balance for the parties proportionally (Haryanti, 2021). The main problem with the COD system is the specification of an item, if the item's specifications are not appropriate, it will certainly harm many parties, not only the seller and the buyer but also the recipient of the courier service. If that happens, there must be a consequence that needs to be done as a form of good faith. One of them is by compensating for the cost of paying postage and the cost of paying for goods (Retnowati *et al.*, 2022).

In the complaint process for the buyer's actions that result in losses, there are several steps that the seller can take to complain about the buyer's actions, including using the shopee live chat feature. With this feature, sellers and buyers can make complaints about the quality of goods, refunds, and so on. The first step is for the seller to enter the shopee application, after that the seller enters the chat menu with shopee. Then the seller will be connected to a robot that will answer common complaints from shopee application users. At this stage, a chat menu with a live agent will appear, then the user will be asked to enter a choice, whether as a seller or as a buyer. Next, the seller can start a conversation with shopee to report the account name and buyer's actions. (Silalahi *et al.*, 2022).

C. *Principle of Good Faith for Marketplace Service Providers*

Marketplace service providers are online *platform* services that provide the space and opportunity required to sell goods between the buyer and the seller. In a *marketplace* application that provides the

space and opportunity required to sell goods between the buyer and the seller, there exist terms and conditions which are the policies of the *marketplace* to be obeyed by the users of the *marketplace*. These terms and conditions contain policies regarding the rights and obligations of the parties involved (Winarsih & Oktaviarni, 2021).

A few of the problems that have the potential to harm consumers in the *marketplace* among others are discounts that are not necessarily in line with reality, as well as issues of authenticity and mandatory product standards along with the quality of goods that do not match what the seller promised. Several cases occurred, for example, Lazada, during the National Online Shopping Day had committed a form of fraud. Lazada unilaterally cancels transactions of items that were mispriced due to a price entry error by the vendor caused by the large number of items that would be promoted during National Online Shopping Day. Then another case, Lazada unilaterally canceled a transaction as the consumer's domicile was outside the delivery range (Desiani *et al.*, 2019).

7 Marketplace sites have the characteristic of being Business Consumer (B2C). In B2C transactions, consumers can enter the internet and search for what to buy, find websites, and make transactions. In addition, consumers are presented with various and detailed information to choose between the various types and quality of goods or services in accordance with the wishes and financial capabilities of consumers in a relatively efficient time. In this case, it can be seen how important it is for the consumers to have a complete and correct set of information in conducting these *e-commerce* transactions.

Therefore, the *marketplace* must provide a trusted identity of vendors as a sign of good faith. As an electronic system operator, it has acquired several permits from the authorized agency in its business activities (Desiani *et al.*, 2019).

D. Principle of Good Faith for Shipping Service Providers

The expedition service provider can be said to be the main party in the success of the COD mechanism in the marketplace in Indonesia. Considering that Indonesia is an archipelagic country, there needs to be an expedition and courier service provider to deliver and distribute goods that have been agreed upon by the seller and buyer through electronic transactions previously provided by the marketplace (Pardede & Sujanto, 2021).

In the case of a transaction in the Shopee marketplace, a seller complained about tracking shipments with Anteraja couriers not showing progress since May 16, 2022. Even though the estimate will arrive at the destination on May 18, 2022. On May 22, 2022, Anteraja said if the goods were indicated as missing/damaged, then directed to a claim for compensation. During the claiming process, Anteraja again informed that the claim was rejected of the shipment not meeting the shipping standards in the form of being fragile and that damaged goods cannot be returned (Konsumen, 2022).

Based on the case above, the embodiment of the principle of good faith by the expedition party is manifested in the responsibility to provide all clear and correct information regarding all important facts related to the object insured and the insured believes that the insurer will provide compensation in the event agreed upon by both parties. Transactions conducted electronically must be accompanied by good faith and a sense of trust between the parties, even if it is not stated in the agreement.

The shipping service provider can be released from legal liability related to the losses suffered by the consumers if the circumstances are within a *force majeure* situation so that they are free from the obligation to reimburse costs, losses, or interest. If due to a "compelling situation" or "coincidence", and hundred from carrying out its obligations in contract law (Risma & Zainuddin, 2021). It is said to be a *force majeure* if three conditions are met, namely, the parties did not foresee the event causing the Force Majeure, the event occurred outside the fault of the parties causing the force majeure, and there was no bad faith between the parties (Widiastiani, 2021).

E. Principle of Good Faith for Couriers

Couriers in online buying and selling transactions are a liaison between sellers and consumers, the courier's job is to deliver the ordered goods to consumers, and in online transactions with the cash on-delivery payment method the courier's job is also to receive payments from consumers. So, in the cash-on-delivery payment system, the courier still acts as someone who is appointed to replace the authority of the freight forwarder. However, the courier also acts as someone who is authorized to receive payments from buyers. Because in online buying and selling, the seller and buyer do not meet face-to-face, so cash payments cannot be carried out face-to-face (Koto & Asmadi, 2021).

A courier can be said to have good faith if; when sending goods to the right address and recipient, logs data on the delivery status of the goods so that they can be monitored, ensuring the goods' safety until they reach their destination, carrying out and complying with the applicable delivery company SOPs and maintaining the sender and the consignee's data on the label, accepts COD payments and transactions, and submits data and delivery reports to the company.

The problem that occurs is that there is no connection with the actions carried out by the courier or shipping company, but rather an error on the part of the seller, whether intentional or not, resulting in a loss for the buyer (Rokfa *et al.*, 2022).

As a result legal problems between the buyer and the courier with the COD payment method result in losses for the buyer, it can often lead to conflicts or disputes with the courier due to a lack of understanding of the COD mechanism and the procedures that couriers should obey in taking photos which often go beyond their duties (Herman & Kansil, 2021).

From the point of view of the validity of the sale and purchase on a cash-on-delivery basis, Article 1458 of the Indonesian Civil Code confirms that the sale and purchase are considered to have taken place between the two parties immediately after they have reached an agreement on the goods and the price, even though the goods have not been delivered or the price has not been paid. After the sale and purchase have occurred, the obligations of each party arise. The seller must deliver the goods and the buyer must pay the purchase price at the agreed time and place. If not specified, the buyer must pay on the spot and at the time of delivery of the goods (Kirana & Ayunda, 2021).

V. CONCLUSION

Cash on delivery (COD) is a system of payments made between seller and customer at a certain point, and the predetermined time has been agreed upon when the delivery is made. Those related to buying and selling online through COD payment are based on good faith. In the purchase of parties (vendors, buyers, suppliers, expedition-service, and couriers) are obliged to fulfill each individual's obligations honestly as a good faith execution measure. The principle of good faith would certainly give trust to each party to improve the development of buying and selling goods online using COD payment.

CONFLICT OF INTEREST

Authors declare that they do not have any conflict of interest.

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