
Juridic Review Of The Implementation Of The Principle Of Good Faith In Online Buying Transactions

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ABSTRACT

This study discusses the juridical review of the application of the principle of good faith in online buying and selling transactions. The objectives of this research are; To find out how the juridical review of the application of the principle of good faith To find out what are the inhibiting factors for the application of the principle of good faith in online buying and selling transactions The method used in this research is empirical normative research, which means to analyze research based on library data and based on the state of variables, and the phenomena that occur when the research takes place and presents it as it is. The results of the study show that to realize the principle of good faith in online buying and selling transactions, the government has regulated it in Article 1338 of the Civil Code which reads "All agreements made in accordance with the law apply as law for those who make them. The obstacles in applying the principle of good faith in online buying and selling transactions are the internal factors consisting of the contents of the agreement that are not in accordance, the agreement factor where the agreed goods are drawn are not in accordance with what was sent, and the object of the agreement is not appropriate. The external factors are security in transactions, settlements outside the law, consumer knowledge, the last factor is space and time distance, data authenticity and finally the factor in the existence of goods.

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1. Introduction

It is realized that the development of information technology has had a positive impact on the development of business law, especially since the development of the internet, which is a connection between computer networks, which is used to support business activities, because of its contribution to efficiency, being fast, easy and practical. Slowly but surely, the business of using the internet began to be carried out by opening a business field.

The transaction process carried out in the business world without any meetings between the parties using the internet is included in electronic transactions. Transactions in the business world have various forms including e-commerce or often called electronic commerce, the purpose of this electronic commerce is trade that is carried out electronically using the internet as a medium. In addition, e-commerce can also be interpreted as a way of shopping or trading online or direct selling that utilizes internet facilities where there is a website that can provide get and deliver services. Current developments make it easier for people and companies to carry out various kinds of transactions, especially trade.

Therefore, in making an online sale and purchase agreement, it must be subject to Law number 19 of 2016 concerning amendments to Law number 11 of 2008 concerning information and electronic transactions as a special rule as well as in book III of the Civil Code on engagement. a contract arises based on what the parties can conclude from their statements or actions relating to reciprocal purposes and objectives (wills) and from legal consequences that can be held accountable to the parties as a result of their actions. Law Number 11 of 2008 concerning Information and Electronic Transactions, Article 19 of the ITE Law states that parties conducting electronic transactions must use an agreed electronic system. So before making an electronic transaction, the parties agree on the electronic system that will be used to carry out the transaction, unless otherwise specified by the parties, the electronic transaction occurs when the transaction offer sent by the sender has been received and approved by the recipient as specified in Article 20 paragraph (1) UU ITE. So, in this case, an electronic transaction only occurs if an offer is sent to the recipient and there is an agreement to accept the offer after the offer is received electronically. Article 20 paragraph (2) of the ITE Law states "Approval of an electronic transaction offer must be made with an electronic acceptance statement." The next stage after the parties have reached an agreement is making a payment. Payments can be made with 6 cash systems, transfers via ATM, credit cards, or third party intermediaries such as rekber (joint accounts).

But in reality, not a few in online buying and selling transactions there is a default, for example, the goods purchased do not match the images displayed or uploaded on the

online character page, this is certainly detrimental to the buyer, or else the buyer when receiving Consigned goods resulting from online purchases cannot check or inspect the purchased goods because the purchased goods have been packaged in such a way by the seller, and if the buyer checks or inspects the purchased goods, it is considered to have purchased the goods, so As a result of this provision, not a few online buyers receive goods that are damaged, and are no longer able to return the goods of course this can be called a default based on interviews conducted by researchers, with several people of Gorontalo Province, more specifically Gorontalo City, there are several problems found by researchers in online buying and selling transactions include the following:

Table 1:

Number of Online Transaction Cases in the Last Three Years in Gorontalo City.

NO	Year	Number of Online Transaction Cases
1	2018	3
2	2019	4
3	2020	5
	Total	11

Sumber data : Kantor JNT Kota Gorontalo 2020¹

The data above shows an increase in the number each year with a total of 12 cases over a period of three years. This is contrary to the provisions of Law No. 19 of 2016 and the principles of agreement in the Civil Code which include the five basic principles of agreement law contained in the Civil Code, namely the principle of freedom of contract, the principle of Pacta Sunt Servanda, the principle of consensualism, the principle of personality and the principle of Good Faith.

If we look at the incident as shown in the data table above, it can be concluded that the above provisions are in direct conflict with Article 1338 paragraph (3) of the Criminal Code which reads: "Agreements must be carried out in good faith." This principle is the principle that the parties, namely the creditor and debtor, must carry out the substance of the contract based on firm trust or confidence as well as the good will of the parties.

The principle of good faith is divided into two types, namely relative good faith and absolute good faith. In the first intention, a person 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.

People are currently using online buying and selling applications such as Shopy, Lazada and various online applications, this in recent years has had consequences for the community in terms of online buying and selling transactions, such as online transactions for buying and selling goods, but sometimes the goods do not match the order. or goods arrive not according to the agreement or not on time.

Based on the background above, the problems to be solved by the researchers in this study include the following:

1. How is the juridical review of the application of the principle of good faith in online buying and selling transactions?
2. What are the inhibiting factors for applying the principle of faith in online buying and selling transactions?

2. Method

In this study, the authors conducted two types of legal research, namely normative and empirical legal research. Meanwhile, the research approach carried out by the researcher is a statutory approach in normative legal research and a qualitative approach in empirical legal research.

3. Analysis or Discussion

Juridic Review On The Application Of The Principle Of Good Faith

The principle of good faith is contained in Article 1338 of the Civil Code which reads "All agreements made in accordance with the law apply as law for those who make them. This agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be carried out in good faith.

The principle of good faith can also be interpreted that each party in an agreement to be agreed has an obligation to provide complete information or information that can influence the decision of the other party in terms of agreeing to the agreement or not. In Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) it also requires business actors to provide complete and correct information. This obligation is contained in Article 9 which reads:

"Business actors who offer products through electronic systems must provide complete and correct information regarding the terms of the contract, the manufacturer, and the products offered".

The Indonesian government has issued Law Number 11 of 2008 concerning Information and Electronic Transactions, or better known as the ITE Law. The ITE Law regulates electronic transactions, one of which is about buying and selling activities / transactions carried out online (online shop).

Regarding online buying and selling agreements, consumers in Indonesia in conducting transactions get protection in Law Number 8 of 1999 concerning Consumer Protection (UUPK), namely in the form of consumer rights contained in Article 4. one of them states related to consumer rights to correct, clear, and honest information regarding the conditions and guarantees of goods offered by business actors. Based on the provisions of the article, it implies the obligations of the online shop in terms of providing clear information about the goods offered because this is the right of the consumer. More detailed provisions are regulated in Article 49 paragraph (1) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) which confirms that business actors who offer products through electronic systems are required to provide complete and correct information relating to contract terms, manufacturers, and products offered. Then in the next paragraph, it is further emphasized that business actors are obliged to provide clarity of information regarding contract offers or advertisements

In the implementation of online buying and selling agreements through online media, there are still many violations of the principle of good faith committed by the parties, or it can also be said that there has been a default in the agreement. Some examples of violations of the principle of good faith committed by online shops (experienced by consumers) in online buying and selling agreements, include:

- a. Goods that are not sent after payment has been made by the consumer;
- b. The goods received are not in accordance with what was ordered both in terms of form and quality of goods;
- c. There is a defect/ damage to the goods received by the consumer;
- d. Inaccuracy of delivery of goods (delay);

From some of the examples above, it shows that there is a violation of the principle of good faith committed by the online shop (online business actor) in fulfilling the agreement's performance as agreed. However, it is not uncommon for online buying and selling transactions to violate the principle of good faith committed by the consumer,

namely when the consumer defaults by canceling the purchase of goods that have been ordered, even though an agreement has been reached by the parties. This not only violates the principle of good faith but also contradicts another principle in the agreement, namely the principle of consensualism (agreement). This provision is in accordance with the contents of Article 20 of the ITE Law which is in accordance with the principles of civil law, the agreement is declared to occur when an agreement is reached. Therefore, after the seller and buyer agree to enter into a sale and purchase agreement, the seller and buyer are bound and have an obligation to comply with the agreement.

Of the many violations of the principle of good faith that occurred, violations related to the incompatibility of the form and quality of the goods ordered with the goods received by consumers became the most frequent violations. Such violations are expressly prohibited in accordance with the provisions in Article 8 Paragraph (1) letter f of the UUPK which states that business actors are prohibited from producing or trading in accordance with the promises stated in the label, etiquette, description, advertisement or promotion of the sale of the said goods and/or services. In the event that if it turns out that the goods received by the consumer do not match the photo on the online shop advertisement (as a form of offer), the consumer can sue the online business actor in a civil manner on the pretext of a violation of the principle of good faith or default on the online sale and purchase agreement that has been signed. agreed.

Consumers who feel aggrieved by business actors who do not have good faith in fulfilling their achievements in accordance with the agreements that have been agreed based on Article 45 Paragraph (1) of the UUPK can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through a court located in general court environment (litigation). However, based on the provisions of Article 45 Paragraph (2) consumers are also given a choice in resolving their disputes, namely through non-litigation or outside the court. Settlement of disputes outside the court can be in the form of peaceful dispute resolution by the parties themselves and dispute resolution through an authorized institution, namely through Consumer Dispute Settlement Agency (BPSK). In resolving disputes outside the court (non-litigation), the UUPK facilitates consumers who feel aggrieved can file a lawsuit through the Consumer Dispute Settlement Agency (BPSK), this applies to individual lawsuits (consumers or their heirs), while lawsuits in groups (class action) can only be carried out through a general court.

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If the online business actor does not have good faith in the online agreement, then he can be punished according to the provisions of Article 62 of the UUPK, which reads:

“Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 Paragraph (2), Article 15, Article 17 Paragraph (1) letter a, letter b, letter c, letter e Paragraph (2) and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

Regulations related to legal consequences arising from violations of the good faith principle of online buying and selling agreements can also be found in the provisions of Article 45 Paragraph (2) of the ITE Law which is threatened with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1 billion.

Factors Of Implementing The Principle Of Good Faith In Online Buying Transactions

Some examples of cases to prove the weakness of online transactions such as the results of an interview with a consumer who is a victim of online buying and selling. A resident of the Central City sub-district on behalf of Ana has ordered shoes at Tokopedia and after making payment 2 days later the item arrived but after opening it turned out that the item sent was very different from what was pictured, the quality was different from what was promised in the picture. Another confession also occurred to Lian's

mother, a resident of East City, who ordered shoes at Shope but after the goods arrived, it turned out that the number did not match the one requested. The next case was experienced by Mr. Yuyun, a Hulondalangi resident who ordered a motorbike where he saw pictures and a statement from the seller that the goods were ORIGINAL so he was sure and made the payment, but after the goods arrived at the location, it turned out that the goods were only imitation and not as promised. These cases are only a small part of the many that have occurred in the community.

Based on the case above, there are several factors that influence the application of the principle of good faith in online buying and selling transactions, basically divided into two, namely internal and external factors.

a. Internal factors

1. Contents of Agreement

In online transactions there are parts of job responsibilities, namely for offers, delivery payments. In the bidding process and the approval process for the type of goods purchased, the transaction between the seller and the buyer is complete. The seller receives approval for the type of goods selected and the buyer receives confirmation that the order or choice of goods has been known by the seller

Just like the validity of agreements/contracts in general, the validity of an electronic transaction actually does not need to be doubted as long as the terms of the contract are fulfilled. In the Indonesian legal system, as long as there is an agreement between the parties; say those who make it; on a certain matter; and based on a lawful cause, then the transaction should be legal, even though it goes through an electronic process.

The agreement that has been made above if it has been approved by the buyer, then the online sale and purchase transaction is immediately valid and the goods will be sent immediately. Another thing if it turns out that the goods sent do not match the images or advertisements offered while the agreement has been made and is valid. So the buyer has been trapped.

2. Juridical factors

The conditions for the validity of the agreement are regulated in Article 1320 of the Civil Code, namely:

a. Agreement (Toesteming) both parties

This agreement is regulated in Article 1320 Paragraph (1) of the Civil Code. What is meant by agreement is the conformity of the statement of will between one or more people with another party. What is appropriate is the statement, because that will cannot be seen/know by others. Ability to act. The ability to act is the ability or ability to carry out legal actions. Legal actions are actions that will have legal consequences. The people who will enter into the agreement must be people who are capable and have the authority to carry out legal actions, as determined by law. The ability to make an engagement is regulated in Article 1329 of the Civil Code, "Everyone is capable of making engagements, if he is not declared incompetent by law". In Article 1330 of the Civil Code it is stated that what is meant by legal incompetence to make an agreement are:

- 1) Minors;
- 2) Those who are put under custody; and
- 3) Wife. However, in its development, the wife can take legal actions, as regulated in Article 31 of Law Number 1 of 1974 concerning Marriage.

b. The existence of the object of the agreement

The object of the agreement is the achievement (principal of the agreement). Achievement is what is the obligation of the debtor and what is the right of the creditor. In the provisions of Article 1234 of the Civil Code, achievements consist of:

- 1) Give something;
- 2) Do something; and

3) Don't do anything.

In the online buying and selling transactions studied, of course, the object of the agreement becomes a big problem because the object being traded which is the basis of the agreement is not appropriate. So this can have legal consequences for the seller.

c. The existence of halal cause (*Geoorloofde Oorzaak*)

Article 1320 of the Civil Code does not explain the meaning of orzaak (halal causa). Article 1337 of the Civil Code only mentions a prohibited cause. A cause is prohibited if it contradicts the law, decency, and public order. For example, entering into a sale and purchase agreement for narcotics illicit goods, or an agreement on trafficking in persons/humans, etc. This kind of agreement is prohibited and does not fulfill the legal requirements of an agreement/contract.

So the agreement in online buying and selling that is not appropriate and like this research can be canceled because the first and second conditions are not fulfilled. So that the victims can raise problems to the authorities to get justice as guaranteed by the legislation.

3. Selling Factor

The occurrence of inappropriate online buying and selling practices shows that the seller does not have good intentions because he intentionally sells inappropriate goods. Whether it's for economic reasons, bad sales character, or other reasons. When a person is proven that when he is about to make an agreement he is based on bad faith, it can result in the cancellation of the agreement. For example, someone who makes an online sale and purchase agreement with the aim of deceiving customers, it is clear that this is not based on good faith in making an agreement, as in the example above. So in an agreement there must be good faith from the seller himself. In Article 1338 of the Civil Code

which reads "All agreements made in accordance with the law apply as law for those who make them.

4. Skill on the part

Article 1320 of the Civil Code states that the conditions for the validity of an agreement are the agreement of the parties, the ability to make an agreement, a certain matter, and a lawful cause. It is difficult to prove the skill of the parties in an e-commerce contract, because the contract takes place via the internet in a virtual world that does not bring the parties together directly, thus allowing fraud to occur. Contract agreement occurs when the party who accepts the offer causes that he accepts the offer and an agreement occurs automatically. This of course poses an obstacle to the fulfillment of the legal requirements of a contract which of course results in the validity of the contract, where it is possible for differences to occur regarding what is stated with the actual situation.

b. External Factors

1. Security in transactions

Security in transactions is absolutely necessary to ensure the safety of consumers for their personal data as well as credit card numbers, password numbers, from misuse by unauthorized persons. From the results of online shop shops in Indonesia, the security system is inadequate compared to merchants who are abroad. Information security is a very important part of the e-commerce system.

2. Settlement outside the court outside the legal route

Most dispute resolutions in default in online buying and selling are resolved out of court. If a problem occurs that causes consumers to suffer losses such as loss of goods for example Rp. 200,000 (two hundred thousand rupiah) this will be difficult to resolve by the Indonesian Consumers Foundation which will process court business actors due to lack of funds, while if processing a judicial problem

requires large sums of money. quite a lot. So the method that must be chosen by the Indonesian Consumers Institute (YLKI) is to use an alternative dispute resolution method. Where alternative dispute resolution is more efficient than through the courts.

3. Consumer Knowledge

Limited information is an obstacle that many consumers face, especially correct information about the products and services being sold. Whereas the right of consumers to obtain information or the right to know consumers is the most essential right.

The lack of efforts to empower consumer education carried out by the government, especially in the general public regarding consumer protection it self.

4. Barriers due to elements of distance, space and time

This obstacle occurs due to the elements of distance, space and time. As the case has described. SE buys cosmetic equipment from rynacosmetics. After SE transferred the money, rynakosmetik began to not actively answer chats from SE and did not provide certainty when the goods would arrive. Dwi Sulistiono Isima, a resident of the city of Gorontalo. He was furious when he found out that he didn't get the VGA card he ordered, even though he had already transferred Rp. 2.9 million to an online seller. The agreement is that three days after being transferred the goods will arrive but after the promised time period the goods never arrive. So this case has been reported to the police.

Looking at the example above, the business actor should provide a certain period of time for consumers to be able to enjoy the benefits or benefits of the goods they have purchased.

5. Barriers to data authenticity

The basis for the occurrence of a contract can be seen from the existence of an

agreement that can be proven. Proof of agreement in general is the existence of written evidence, either in the form of an authentic deed or a deed under the hand. In e-commerce contracts, the identity of the party making the agreement can be faked seeing the parties transact in cyberspace that cannot be known or seen and proven in real terms.

6. Barriers in the existence of goods

The existence of goods is one of the determining factors in e-commerce transactions, which with correct information about the availability of goods of course makes consumers believe that they are making transactions, but in this case it becomes impossible when the information submitted turns out to be incorrect because there is no good faith from the seller.

4. Conclusion

Based on the application of the principle of good faith in online buying and selling transactions from a juridical point of view, it is first stated in Article 1338 of the Civil Code which reads "All agreements made in accordance with the law apply as law for those who make them, then Law Number 11 of 2008 concerning ITE mentioning that business actors who offer products through electronic systems must provide complete and correct information relating to contract terms, manufacturers, and products offered.) Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) also explains that business actors who offer products through electronic systems are required to provide complete and correct information relating to contract terms, producers, and products offered.

The factors that hinder the application of the principle of faith in online buying and selling transactions can be seen from internal and external factors. The current internal and external factors have not been able to provide impetus for the application of the principle of good faith and still look weak.

5. Recommendations

Based on the conclusions above, it can be put forward some suggestions from the author, namely the need for socialization from the government in order to realize the application of the principle of good faith in online buying and selling transactions. Then there is a need for strict laws and regulations to accommodate the implementation of the principle of good faith in online buying and selling transactions.

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