

## **Analysis of Online Buy-Sell Agreement on Market Place With Cash on Delivery System**

**Furqaansyah**

Email: [furqaansyah@gmail.com](mailto:furqaansyah@gmail.com)

*Program Studi Magister Kenotariatan, Fakultas Hukum Universitas Sumatera Utara*

### **ABSTRACT**

*The validity of online buying and selling transactions through a marketplace with a Cash on Delivery system is principally regulated in Article 1320 of the Civil Code which contains the terms of the validity of an agreement based on an agreement between the buyer and seller or marketplace. However, in practice there are still deficiencies in fulfilling the legal requirements of the agreement which results in a sale and purchase agreement with the Cash on Delivery system in online buying and selling transactions not fulfilling the validity of the agreement in positive law in Indonesia. The responsibility provided by the Shopee Indonesia website manager for losses suffered by consumers has been fully regulated through the provision of consumer reporting facilities for losses experienced by consumers, blocking negative content, providing Shopee Indonesia guarantees, refunds to consumers, following up on fake accounts, sellers, as well as protection of consumer personal and credit card data. However, in practice sellers and buyers who use the Shopee platform have not fully obtained their rights when they experience losses due to buying and selling online.*

**Keywords:** *Buying and Selling Online, Marketplace, Cash on Delivery*

### **INTRODUCTION**

The agreement in an agreement is the main benchmark, if there is no mutual agreement that binds the two parties even though through online transactions the agreement can be canceled by law or can be canceled. Based on the terms of the validity of the agreement, especially regarding the requirement of "ability to make an agreement" the Civil Code mentions two terms, namely incompetent (*onbackwaam*) and not authorized (*onbevoegd*). Incompetent are people who are generally based on statutory provisions unable to make agreements with complete legal consequences, such as immature people, people who are placed under guardianship. Meanwhile, not having authority means that in principle the person is capable of acting but he cannot carry out certain legal actions, for example contained in Articles 1467, 1468, 1469, 1470, 1640 of the Civil Code. Article 1329 of the Civil Code reads, "Every person is capable of making agreements, if he is not declared incompetent by law.

Article 1330 of the Civil Code, which stipulates that: Incompetent to make agreements are people who are not yet mature, those who are placed under guardianship as well as women in matters stipulated by law and all people to whom the law has prohibited making certain agreements. In online buying and selling, in practice there are still many buyers and sellers who are underage, both buying and selling online which are carried out independently via Instagram, Facebook and buying and selling online managed by websites such as shopee, kaskus, OLX, Bukalapak and others. -other. In online buying and selling, because at the transaction stage it is not carried out directly, the seller cannot know who is the buyer. Therefore, the agreements that occur between sellers and buyers are carried out via the internet and the easier access to the world of the internet, online buying and selling transactions do not rule out the possibility that buyers

who are still underage can also do it.

Proficiency in a sale and purchase agreement is very important, because by knowing the subject of a sale and purchase transaction, it can be determined whether an act of sale and purchase can be canceled or null and void. A legal requirement in an agreement, including a sale and purchase agreement, is competent in carrying out legal actions. As time has progressed and access to the internet has become easier for all walks of life, not only skilled people currently have various accounts to carry out online transactions, but even children who are underage and not yet proficient already have social media accounts, so it does not rule out the possibility of transactions. buy online.

Besides that, consumer protection in e-commerce transactions is also very important. In this case, it is important to understand the rights and obligations of consumers in online buying and selling agreements with cash on delivery payment systems. This will certainly help protect consumers from loss or fraud in e-commerce transactions. Furthermore, online buying and selling agreements with cash on delivery payment systems can also have an impact on business growth. Therefore it is important to understand how these agreements can help businesses to maintain how these agreements can help businesses to maintain or improve their performance. Through an online buying and selling agreement with a cash on delivery payment system, it can also assist in the development of regulations and policies in online trading. This will certainly help create a fair and healthy business environment for all parties involved.

## **METHODS**

This type of research is normative legal research, namely research conducted based on legislation or law conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate. Normative legal research implies reviewing and analyzing the problem by using an approach by analyzing laws. While the nature of pThis research is descriptive analysis in nature, which reveals laws and regulations related to legal theories which are the object of research. Descriptive juridical analysis, is a method used to describe a condition or situation that is happening or is taking place in order to be able to provide as accurate data as possible about the object of research so that it is able to explore things that are ideal then analyzed based on legal theory or applicable laws and regulations.

## **RESULTS AND DISCUSSION**

### **Buying and selling transactions online with a cash on delivery system according to Indonesian laws and regulations**

Buying and selling is regulated in article 1457 of the Civil Code where buying and selling is an agreement in which one party binds himself to surrender an object and the other party to pay the price that has been promised. Article 1313 of the Civil Code states that an agreement is an act in which one or more people bind themselves to one or more people. If the buyer makes a word or agreement with the seller, then the sale and purchase occurs which is also stated in article 1458 of the Civil Code. It is stated in the article that buying and selling is deemed to have taken place between the two parties, as soon as these people reach an agreement regarding the goods and the price, even though the goods have not been delivered and the price has not been paid.

According to the consensual principle adopted by the civil code system in contract law in

the Civil Code, an agreement is born when an agreement is reached between the buyer and the seller. This means that when there is an agreement regarding prices and goods, there should also be a transfer of rights from the seller to the buyer. In this case the Civil Code is inconsistent. According to the Civil Code, the existence of an agreement does not mean that there is a transfer of property rights to the goods to the buyer. It turns out that the Civil Code adheres to the principle of obligatoir, which means that a new agreement gives rise to rights and obligations to demand delivery of goods and payment in cash. The occurrence of this agreement does not automatically result in a transfer of property rights. The new buyer becomes the owner of the goods he bought if the handover has been made.

Government Regulation Number 71 of 2019 Concerning the Implementation of Electronic Systems and Transactions states that the validity of contracts is regulated in Article 46 paragraph (2) which states that electronic contracts are considered valid if:

- a. There is an agreement between the parties;
- b. Performed by legal subjects who are capable or authorized to represent in accordance with statutory provisions;
- c. There are certain things;
- d. The object of the transaction may not conflict with laws and regulations, decency and public order.

The implementation of Electronic Transactions carried out by the parties must pay attention to matters in accordance with Article 45 paragraph (2) of Government Regulation Number 71 of 2019 which states that the implementation of Electronic Transactions carried out by the parties must pay attention to:

- a) Good intention;
- b) precautionary principle;
- c) Transparency;
- d) Accountability;
- e) Fairness.

If referring to this, then all the elements in matters that must be considered in carrying out online buying and selling transactions through the marketplace, are in accordance with the service standards that have been provided. One of the existing marketplaces in Indonesia is Shopee, as in the Policy Regulations in Shopee it is considered in accordance with the above. The first thing is Shopee Indonesia's good faith by providing the best service to its customers. Then in carrying out transactions, Shopee uses protection and maintains data privacy so that customer data will be safe even though the data provided is identity data, contact data, account data, transaction data, technical data, profile data, usage data, marketing data.

Transparency is also fulfilled by Shopee with the availability of a hotline number and Shopee's openness to criticism and suggestions from customers who feel aggrieved. Criticism and suggestions can be provided via e-mail and the Shopee website so that Shopee can correct its shortcomings. Shopee's accountability or responsibility, for example, is that if a buyer feels that the item purchased is not what is needed, or if the item purchased is damaged, then Shopee provides accountability for 14 days to return the item or replace it with a new one. And the last thing that must be considered in electronic transactions is fairness, in transactions at Shopee, the goods that are traded are goods in the form of daily needs and nothing that conflicts with laws

and regulations.

In addition, it is also stated that the online buying and selling contract must at least contain:

- a) Identity data of the parties;
- b) Objects and specifications;
- c) Electronic transaction requirements;
- d) Prices and fees;
- e) Procedure in the event of cancellation by the parties;
- f) Provisions that entitle the aggrieved party to be able to return goods and/or request a product replacement if there are hidden defects;
- g) Choice of law for settlement of Electronic Transactions.

The Cash On Delivery contract also contains electronic transactions that have obtained agreement from each party (Article 18 paragraph (1) of the Electronic Information and Transaction Law). Then also clarity regarding the law that will apply and be adhered to in this contract (choice of law). Regarding when there is a time for supply and demand, the Electronic Information and Transaction Law provides regulatory provisions. Apart from not being agreed otherwise by both parties, the delivery time is when the information has been sent to the destination address (Article 8 paragraph (1) of the Electronic Information and Transaction Law). While the time of receiving electronic information is when the information enters the information system under the control of the recipient. From this it can be concluded that differences in sending and receiving times are things that can happen in electronic transaction processes.

It's just that, Article 8 paragraph (3) of the Information and Electronic Transaction Law gives responsibility to the recipient of the information to carry out system monitoring initiatives over the electronic system whether it has been received or not. It can be seen that the validity of electronic transactions carried out and organized by marketplaces in Indonesia is in accordance with and does not conflict with laws and regulations, both the Electronic Information and Transaction Law and the Civil Code. It's just that the homework for perpetrators and organizers of electronic transactions is about supervision of subjects who must be legally competent. Article 8 paragraph (3) of the Electronic Information and Transaction Law gives responsibility to the recipient of the information to carry out system monitoring initiatives over the electronic system whether it has been received or not. It can be seen that the validity of electronic transactions carried out and organized by marketplaces in Indonesia is in accordance with and does not conflict with laws and regulations, both the Electronic Information and Transaction Law and the Civil Code.

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Agreements in online buying and selling transactions are born because of a buying and selling contract that occurs electronically between the seller and the buyer. As long as the online contract made has fulfilled the 4 legal terms of the agreement referred to in Article 1320 of the Civil Code, the online buying and selling contract can be considered valid and binding on the parties. Process buying and selling transactions online into the hands of consumers through the distribution process, both direct distribution and indirect distribution. In the indirect distribution process, the distributor distributes the goods to consumers through a general distribution chain, such as through a retailer.

According to Article 1 number 8 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 22/M-DAG/PER/3/2016 concerning General Provisions for the Distribution of Goods, it states that Distributors are commercial companies with citizenship acting on their own behalf based on agreements that make purchases, sales, storage and marketing of goods. and services owned/controlled, while Article 1 point 14 states "Retailers are distribution business actors whose main activities are marketing goods directly to consumers". However, not all goods in circulation that are received by retailers are of prime quality and sometimes the types of goods ordered are not in accordance with what has been agreed upon in advance. For a distributor, good relations with retailers are as important as good relations between companies and consumers.

The rules regarding legal protection for retailers are not yet complete. An indicator of this can be observed from the legal provisions governing retailers, which until now have only been regulated in the Regulation of the Minister of Trade. Arrangements regarding the protection of retailers are determined by agreements made by both parties. While the distribution of goods between distributors and retailers begins with an agreement made by both parties. In this case, pRetail companies are business actors who sell products or goods directly to end consumers or users of goods. In essence, retail companies only act as distributors of goods or products from producers to consumers, to make it easier for consumers to obtain goods from producers, which usually can only be obtained by purchasing in large quantities. Even though it is only as an

intermediary between producers and consumers, retail companies should not be fully responsible for the products they sell, especially when there are errors during the production process, but in practice consumers always hold accountable retailers or retailers whose status is only as a distributor of goods from producers to consumer or supplier of goods,

The first aspect of consumer protection is the issue of the responsibility of producers and distributors for losses as a result of their products. In short, this problem is commonly referred to as product liability. Historically, producer responsibility (product liability) was born because of an imbalance in position and responsibility between producers and consumers. Therefore, producers who initially apply a product-oriented strategy in marketing their products must change their strategy to consumer-oriented marketing, where producers must be careful with the products they produce. In general, the business relationship with the name of the agency and with the name of the distributor is different, but in daily practice the two can be combined. If a person/entity acts as an agent, it means that he is acting for and on behalf of the principal. Meanwhile, if a person/entity acts as a distributor, it means that he is acting for and on behalf of himself.

So the main criterion for being able to say that there is an agency is the authority possessed by the agent acting for and on behalf of the principal. Meanwhile, a distributor does not act for and on behalf of the party who appointed him as a distributor. A distributor acting for and on behalf of himself. So the main criterion for being able to say that there is an agency is the authority possessed by the agent acting for and on behalf of the principal. Meanwhile, a distributor does not act for and on behalf of the party who appointed him as a distributor. A distributor acting for and on behalf of himself. So the main criterion for being able to say that there is an agency is the authority possessed by the agent acting for and on behalf of the principal. Meanwhile, a distributor does not act for and on behalf of the party who appointed him as a distributor. A distributor acting for and on behalf of himself.

The distributor is responsible if the product defect that occurs is entirely the distributor's fault as the business agent, the distributor's responsibility can be in the form of compensation for the same product. Compensation with money equivalent to the price of the product and shipping costs. In making claims for product defects, the distributor has a procedure for carrying out warranty claims, which the end consumer must comply with. End consumers who will make warranty claims must bring proof of product purchase, completeness on the product, product buyer's identity card, and bring products that have product defects. This procedure is very mandatory because it makes it easy to identify the product against the losses experienced by the end consumer. If the end consumer does not fulfill one of the procedures as notified by the shop, the shop cannot process the complaints experienced by the end consumer.

The responsibility given by the distributor refers to Article 19 concerning the responsibilities of business actors. The following will explain how the forms of responsibility provided by the distributor to the final consumer are at a loss. Whereas the responsibilities of business actors where business actors are responsible are as follows: Business actors are responsible for providing compensation for damage, pollution and/or consumer losses as a result of consuming goods and/or services produced or traded; the said compensation is in the form of a refund or replacement of goods of the same kind or equivalent in value; compensation is carried out within a period of 7 (seven) days after the transaction; compensation does not apply if the

business actor can prove that there was a fault with the consumer.

The responsibility of retail companies for consumer losses according to Law Number 8 of 1999 concerning Consumer Protection in Article 1 number 3 is not clearly stated regarding retail, but the business actors referred to in Law Number 8 of 1999 include all business actors, namely traders, companies, distributors, cooperatives, importers and other business actors, both legal entities and non-legal entities. Because the definition of a business actor referred to in Law Number 8 of 1999 has a broad meaning to make it easier for consumers to sue for losses, because many parties can be sued, be they producers, distributors or retailers where consumers obtain goods or products. The responsibilities of business actors according to Law Number 8 of 1999 are specifically regulated in one chapter,

Therefore it can be concluded that the validity of online buying and selling transactions through marketplaces with the Cash On Delivery system according to applicable laws and regulations is in principle the same as conventional buying and selling in general as stipulated in Article 1320 of the Civil Code which contains the terms of the validity of an agreement based on an agreement between the buyer and seller or marketplace. However, in practice there are still deficiencies in fulfilling the legal requirements of the agreement, namely the existence of a discrepancy in the condition of the goods in the description at the time of ordering with the goods received, the packaging of goods that takes too long until finally the order is canceled and the submission of returns for goods that do not comply. Of course things like this can be detrimental.

### **Legal Protection for Buyers and Sellers who are disadvantaged in buying and selling online through Marketplaces with a Cash on Delivery System**

The meaning of protection is a place of refuge or things (actions and so on) protect, while the law is regulations that are coercive made by official bodies that are obligatory which also determine human behavior in the community environment, violations of these regulations end when they are taken legal action. Legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of authority or as a collection of arrangements or rules that will be able to protect one thing from another.

The legal protection provided by the government to the public is an implementation of the principle of a rule of law based on Pancasila. The Ministry of Communication and Informatics (Kemkominfo) said that protection in digital transactions has been regulated in Law Number 19 of 2016 concerning Electronic Information and Transactions (UU ITE) and Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions (PP PSTE). PP PSTE itself is a derivative of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Elements in the online sale and purchase agreement are regulated in article 48 paragraph (3) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. The elements above have the aim of providing legal certainty as one of the legal protections in buying and selling online. However, in the implementation of online buying and selling carried out by business actors, they often use standard agreements in conducting transactions. With regard to consumers, it means that the law provides protection for

the rights of customers from something that results in non-fulfillment of these rights.

The protections provided to buyers are:

1. Legal Protection for Shopee Consumers based on Law Number 8 of 1999 concerning Consumer Protection.

Legal protection is a protection given to legal subjects in accordance with the rule of law, either those who are preventive or coercive in nature, both written and unwritten in the context of enforcing the rule of law.”

Forms of legal protection for consumers *Shopee* based on the Consumer Protection Act in accordance with the above disadvantages include several things, namely:

- a. Consumer rights to optimize services
  - b. Consumer Right to Claim Compensation
  - c. Consumers' Right to Report Concerns
2. Legal Protection for Consumers in Online Buying and Selling Transactions through Marketplaces with a Cash on Delivery System based on Law Number 19 of 2016 concerning Information and Electronic Transactions.

Recognizing that there are several weaknesses in the Consumer Protection Act (UUPK), several articles in Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE) is trying to close the weaknesses of UUPK in terms of protection of consumer rights. It can be seen from Article 9 of the ITE Law: "Business actors offering products through an electronic system must provide complete and correct information regarding contract terms, manufacturers, and the products offered". Then Article 10 states the reliability certification requirements for business actors as well as Articles 2 and Article 18 which provide solutions to the problem of choice of law and the choice of trial forum if electronic transactions involve parties with legal domiciles in other countries.

Along with developments, several things emerge that must be considered, for example in contracts / agreements that occur in online buying and selling transactions, which in this case occur in buying and selling transactions through the online shopping site Shopee. As an electronic transaction actor, Shopee is subject to the legal regulations that apply in the ITE Law. There is a rule in article 17 of the ITE Law which states that: "Parties conducting electronic transactions must have good faith in interacting and/or exchanging electronic information and/or electronic documents during the transaction."

Forms of legal protection for consumers in buying and selling transactions on the Shopee shopping site, which are regulated in the ITE Law are:

- a. Compensation for losses
- b. Legal subject intensity

Furthermore, according to the Criminal Code, the result of default by the buyer/debtor in executing the agreement will result in a loss for the seller. The legal consequences arising from the buyer's default are:

- a. The buyer is obliged to pay compensation for losses suffered by the seller who has the right to get achievements (Article 1243 of the Civil Code);
- b. The buyer is required to obtain termination of the agreement and payment of compensation (Article 1267 KUH Per);

- c. The buyer is required to obtain a risk transfer when a default occurs (Article 1237 paragraph (2) of the Indonesian Criminal Code);
- d. The buyer is obliged to pay the court fee when the case is filed in court (article 181 paragraph (1) HIR).

A buyer who defaults has an obligation to compensate the seller. However, compensation can be made if it meets the following conditions.

- a. Proven negligent in default
- b. No longer in a state of coercion
- c. Does not fight or defend against claims for compensation submitted to him by parties who feel aggrieved
- d. Have received a subpoena or negligent statement

If the buyer who defaults does not have good faith to be responsible for his actions, then the seller as the injured party can take the settlement method according to the legal realm in accordance with the ITE Law in articles 38 and 39 concerning dispute resolution. In this article, it is explained that everyone can file a lawsuit against the party that harms them in online payment channels and dispute resolution by arbitration or alternative dispute resolution agencies. Because electronic evidence is recognized as valid evidence during a trial in court later.

### **Marketplace Accountability Due to Default in Online Buying and Selling Transactions with the Cash on Delivery System**

Shopee's responsibility as a marketplace in buying and selling online in terms of and their obligations as a third party may vary depending on the contractual agreements that have been agreed upon, Shopee policies, and applicable laws in Indonesia. As a marketplace platform, Shopee has the authority to take internal action against users who violate the policies or rules set out in using their platform. This includes taking steps such as:

1. Account Suspension or Freezing: Shopee may suspend or freeze accounts of users who violate platform policies or rules. This aims to protect the security and integrity of the platform and prevent unlawful activity.
2. Removal of Infringing Products: If any product violates intellectual property rights or other policies, Shopee has the authority to remove that product from the platform. This step is taken to maintain compliance with the law and protect the rights of the original owner.
3. Access Prohibition: Shopee may prohibit access to users who are proven to violate the law or take actions that harm other users or Shopee itself. This action was taken to maintain security and trust in the use of the platform.

As a marketplace for online buying and selling, it is important to note that Shopee as a marketplace platform does not usually act as a substitute for the formal justice system. They do not have the direct authority to take legal action beyond the limits set by applicable laws and regulations. If there is a serious breach of law, it is advisable for the aggrieved party to report the matter to the appropriate law enforcement authorities.

### **CONCLUSION**

Based on the descriptions and discussion of the results of the research conducted, several

conclusions can be drawn as follows:

1. The validity of online buying and selling transactions through marketplaces with the Cash on Delivery system according to applicable laws and regulations is in principle the same as conventional buying and selling in general as stipulated in Article 1320 of the Civil Code which contains the terms of the validity of an agreement based on an agreement between the buyer and seller or marketplace . However, in practice there are still deficiencies in fulfilling the legal requirements of the agreement, namely the existence of a discrepancy in the condition of the goods in the description at the time of ordering with the goods received, the packaging of goods that takes too long until finally the order is canceled and the submission of returns for goods that do not comply. Of course things like this can be detrimental.
2. Legal protection for buyers and sellers who are disadvantaged in online buying and selling transactions through the online shopping site Shopee with the Cash on Delivery system based on the Consumer Protection Act Number 8 of 1999 (UUPK) and the Electronic Information and Transaction Law Number 19 of 2016 (UU ITE) as seen from the regulations regarding the protection of consumer rights and the provision of compensation. Buyers and sellers who are disadvantaged can file claims that are in line with UUPK and UU ITE so as to provide legal certainty for consumers.
3. The responsibility given by the parties S site manager *Shopee* Indonesia the losses suffered by consumers have been fully regulated through the terms and conditions for using services that can be accessed on the S shopping site *Shopee* Indonesia. This form of accountability is through providing consumer reporting facilities regarding losses experienced by consumers, blocking negative content, providing *Shopee* Indonesia guarantees, refunds to consumers, following up on fake seller account accounts, and protecting consumer personal data and credit cards. *Shopee* Indonesia fully responsible for consumer losses. The form of compensation given can be in the form of a refund or replacement of damaged goods. However, in practice p the sellers and buyers who use the *Shopee* platform have not fully obtained their rights when they experience losses due to buying and selling online.

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