

# The Principle of Good Faith in the Cash on Delivery Payment Method as a Basic of Consumer Liability

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**Abstract:** Nowadays, electronic transaction payments using the Cash on Delivery system are often done and have become popular. Consumers think that the Cash on Delivery system makes it easier for consumers to avoid goods that do not match their orders. However, the main problem in the Cash on Delivery payment system is that consumers are reluctant to make payments after the goods have arrived as agreed. This unilateral cancellation by the consumer can cause losses for the seller, application and even the courier. So, the aim of this research is to examine the responsibility of consumers who have unilaterally cancelled to prevent losses. This research uses normative methods and uses secondary data from primary, secondary, and tertiary legal material. The results found in this research are that agreements must be made based on good faith, which can be interpreted as subjective good faith or honesty and objective good faith or propriety and justice, this is based on Article 1338 Paragraph 3 of the Civil Code. Judges also have the right to assess an agreement and terminate it if the agreement contains something inappropriate or acts unfairly. Before making a purchase, consumers or buyers are expected to have studied the description of the goods to be purchased well, after which they can make transactions using the Cash on Delivery system. The buyer will be deemed to agree to all specifications of the goods and will make payment when the goods arrive. Because in the Cash on Delivery payment method, it is not permitted to make unilateral cancellations without a clear reason, because this is something that has been deemed agreed upon by both parties.

**Keywords:** Cash on delivery, good faith, e-commerce

## 1. Introduction

Buying and selling is an activity that is very inherent and a priority in society, because this activity is used to meet the daily needs of the community. The development of the era has resulted in this buying and selling activity being affected, which has become more developed since technological advances. This is indicated by the existence of online buying and selling behavior (Alfani et al., 2021). Online buying and selling provides convenience to customers so that they do not have to come and make transactions directly. Shopee, Tokopedia, Lazada, Bukalapak, Blibli, JD.ID, and other market-based applications are examples of places where people buy and sell online in Indonesia. The massive growth of electronic transactions must be accompanied by a reliable payment system that creates a sense of security in the field of e-commerce. One of the variations of payment methods that are often used by the public is the Cash On Delivery (COD) system (Fuadi & Diniyanto, 2022).

E-commerce (electronic commerce) is part of e-business (electronic business), which deals with the buying and selling of goods and services using the internet as a platform that connects vendors and customers (Ayu & Lahmi, 2020). Prospective buyers or consumers can place an order for a product that they feel is suitable through the buying and selling platform provided and make payments via bank transfer, e-money or credit card. provided and make payments via bank transfer, e-money or a Cash On Delivery system or better known by the abbreviation Cash on Delivery (Fuadi & Diniyanto, 2022). In the development of e-commerce, the Cash on Delivery payment method has become one of the popular options for consumers who want to buy products online. On e-commerce platforms such as Shopee, this method allows buyers to pay when the goods have been received. However, although Cash on Delivery provides convenience benefits to consumers, it should be noted that in the implementation of Cash on Delivery transactions, there is the potential for default, both from the seller and the buyer. E-commerce functions as a facility based on big data and internet networks to buy, sell, transport or exchange data, goods or services (Suparnyo et al., 2023).

Online buying and selling has a legal basis in Indonesia, which is stated in Law Number 19 of 2016 concerning Information Technology and Electronic Transactions. Basically, online buying and selling practices have the same

contract as buying and selling in general (Putra et al., 2020). The development of e-commerce in Indonesia is classified as very fast in the last 4 years where the growth has reached 500%, this has been shown in Google's research that the e-commerce business in Indonesia has occurred transactions that reached 27 billion US dollars or the equivalent of 391 trillion rupiah (Retnowati et al., 2022). This rapid development has resulted in frequent online transactions, and because of this, there are also frequent doubts between buyers and sellers. These doubts are based on the character of online buying and selling transactions or e-commerce where sellers and buyers do not need to meet face to face. Article 1338 Paragraph (3) of the Civil Code explains that an agreement needs to be made in good faith. With the intention that an agreement needs to be agreed upon by both parties. In addition, the principle of good faith is again mentioned in Law Number 11 of 2008 concerning Information Technology and Electronic Transactions, which explains that the use and utilization of electronics and technology must be based on good faith and prudence (Retnowati et al., 2022).

Cash on Delivery is one of the most widely used payment methods in online business. This method allows consumers to pay for their orders at the time the goods are received. While Cash on Delivery offers convenience and comfort to consumers, it also has its drawbacks. This is one of the problems in online buying and selling based on the Cash on Delivery payment method, where the specifications of the goods do not match, or delays in delivery are felt to be detrimental to many parties. Sometimes, the information obtained about the goods being sold is also not transparent and the seller is not honest about it, so this creates prejudice and the absence of good faith from both parties. So, the principle of good faith becomes very important and is implemented in online buying and selling. Based on this explanation, the researcher through this paper wants to explain what is meant by online buying and selling using the Cash on Delivery payment method and the implementation of the principle of good faith in the Cash on Delivery payment method.

## **2. Methods**

The research method used in this research is the normative juridical research method, which is a legal research method by focusing on laws or regulations that are written and apply to social life, with the intention that this legal science and its findings are not trapped in the poverty of relevance (John et al., 2012). The data source in this research is secondary data, three legal materials were reviewed as secondary data, they are: Primary legal materials, secondary legal materials, and tertiary legal materials are the three types of legal resources. Primary legal material consisted of binding legal materials derived from laws and regulations or binding norms relevant to the topics to be investigated. Books and past study results were used as secondary legal materials. Legal dictionaries and encyclopedias were employed as tertiary legal materials. Researchers came to conclusions that address the issues posed by employing legal materials and, where necessary, non-legal materials as additional support. Based on these data and materials, this research will focus on the principle of good faith in the use of the Cash on Delivery method in online buying transactions carried out by the community.

## **3. Results and Discussion**

### **3.1 Online Buying and Selling Using the Cash on Delivery Payment Method**

Buying and selling means exchanging assets for assets in the form of transferring ownership of an item. The goods traded will have a price value and cause one party to give ownership of the goods, while the other party provides a sum of money in lieu of the agreed goods. As for online buying and selling Cash on Delivery is a buying and selling transaction by making payments for goods purchased by the buyer when the goods have arrived at the buyer, in the delivery process generally using courier services with a purchase fee given to the owner of the courier service and will be sent to the seller (Prasetyo & Syafi'i, 2024).

Online buying and selling itself is regulated in Article 1 paragraph 2 of Law Number 11 of 2008 concerning Electronic Information and Transactions whether used through computer networks or other electronic media such as cell phones and so on. The main reason why online buying and selling is included in Law Number 11 of 2008 concerning Electronic Information and Transactions is because in its development, this online buying and selling practice includes the exchange of information, advertisements and transactions (Prematura, 2021).

Transactions that are currently became popular are online buying and selling accompanied by the Cash on Delivery payment method, where the seller delivers the goods indirectly to the buyer but through a third party, namely a delivery person (courier). This is permissible but still on condition not to harm other parties (Astuti, 2018). In online buying and selling using the Cash on Delivery payment method, the purpose is to provide confidence to the buyer that the goods purchased are free from defects and in accordance with the wishes of the buyer. So these two things show a good faith from both parties, both from the seller and the buyer's side (Haryanti, 2020).

The implementation of e-commerce can also guarantee several things, namely: 1) Confidentiality, transaction data carried out by consumers should be able to be carried out confidentially if it is the will of the buyer; 2) Validity and authenticity, in terms of validity with the intention that the buyer is a legitimate customer and the seller is a legitimate organizer of buying and selling. Generally this can be proven by an account that has been registered in the webstore (Saifudin, 2019). In Cash on Delivery-based online buying and selling has the aim of giving confidence to buyers that the goods purchased are free from defects and in accordance with their wishes. Then the buyer also has an obligation to

pay and receive goods in order to fulfill the rights of the seller. So that these two things show a good faith from both parties.

However, although COD provides convenience benefits to consumers, it should be noted that in the implementation of COD transactions, there is the potential for default, both from the seller and the buyer (Afifah et al., 2023). Basically, Cash on Delivery is used as an alternative to online payments such as bank transfers or through credit cards. However, there are still many people who are still not confident in using online payment methods, so Cash on Delivery is here as a safer and more convenient option for buyers who do not want to use online payments. The advantages of using the Cash on Delivery payment method include: 1) minimizing the Risk of Fraud, where the seller does not need to worry about the validity of the payment, because the payment will be made when the goods have been delivered by the courier and received by the buyer; 2) to reach customers who do not have credit cards, many consumers do not have credit cards or simply do not want to use their credit cards to shop online; 3) make it easy for consumers, so that buyers do not have to bother to make transfers or pay via credit card; 4) speed up the delivery process, because the seller can send the goods as soon as the order is received, because payment will be made on the spot; and 5) establish trust with customers, in this case consumers feel more comfortable and believe that the seller has integrity and good quality.

### 3.2 The Principle of Good Faith in The Cash on Delivery Payment Method as a Basic of Consumer Liability

Legal relationships that result in rights and responsibilities are called obligations. In civil law theory, obligations can arise in two ways: by law and by agreement, this is regulated in Articles 1352-1353 of the Civil Code. Obligations arising from law are obligations that arise as a result of certain events, regardless of the will of the people involved. Obligations originating from law are the result of the activities of legal subjects. This will result in conditions such as by performing a series of behaviors, the subject of law causes legal consequences in the form of obligations to related parties. The behavior of the subject of law can be in the form of actions permitted by law or actions that are prohibited (against the law) (Muljadi & Widjaja, 2005).

An agreement is an event where one person promises to another person or two or more people promise each other to carry out something. Agreement is defined in Article 1313 of the Civil Code as an act by which one or more people bind themselves to one or more other people. Based on the previous definitions. Zahro and Mursid (2023) argues that a contract is also known as an agreement because both parties involved agree to do something. An agreement that binds the parties is considered valid if it complies with the requirements outlined in the Civil Code. According to Article 1320 of the Civil Code, the following are the conditions for the validity of an agreement: 1) there is a consensus from those who carry out the agreement; 2) there is a competency to conduct an agreement (obligation); 3) the agreement must have an object of provision; 4) what is being agreed upon is a lawful cause.

In addition to the legal requirements of the agreement, there are many principles that must be followed so that the agreement can be enforced. These principles must be considered so that the objectives of an agreement to provide justice, order, and legal certainty can be achieved (Sinaga, 2018). One of them is the principle of good faith, in the Civil Code states that "agreements must be carried out in good faith" in Article 1338 paragraph (3). The definition of good faith is not expressly stated in this article. As a result, finding its meaning is difficult because good faith is an abstract concept related to the human mind (Hadi et al., 2017). However, Article 1338 paragraph (3) states that all agreements must be enforced on the basis of trust or confidence and must be in accordance with the values of decency and justice. The main basis of contract law is good faith, an agreement in good faith is to carry out the agreement by prioritizing the values of decency in society. Van Dunne's grammatical interpretation of good faith divides the agreement into three stages: before the contract (pre-contractual stage), during the contract (contractual stage), and after the contract (post-contractual stage). Each stage of the agreement must be governed by the principle of good faith (Hernoko, 2014).

While the principle of good faith theoretically can be seen in two sides, namely: subjective good faith, which relates to honesty, and objective good faith, which relates to decency and fairness. Subjective good faith relating to honesty requires the parties to be honest before the execution of the agreement. Subjective good faith also often arises at the pre-contractual stage, namely when the parties honestly state their identities and other matters that may affect the agreement to be made. Meanwhile, objective good faith, which is related to decency and fairness. During the implementation of the agreement (contractual stage), this objective good faith often arises. In terms of what is meant by propriety and fairness, there are no clear boundaries that can be used as a basis for determining whether an agreement has been implemented properly and fairly (Priyono, 2017). As a result, until now the assessment of whether an agreement has fulfilled the principle of good faith has been left to the court as an assessor.

Good faith is important in reaching a fair and balanced agreement for the parties. A fair and balanced agreement is the key to the parties' satisfaction with the implementation and results of the agreement. An agreement is considered to have been successfully implemented if the parties are satisfied with the agreement. However, if one of the parties does not act in good faith, as defined in Article 1338 paragraph 3 of the Civil Code, then this cannot affect the fundamental rights and obligations of the parties that have been agreed upon in the agreement (Turangan, 2019). Thus, the absence of the essence of the principle of good faith in an agreement cannot be used as a basis for removing the rights and obligations of the parties, nor can it be used as a justification for dissolving the agreement.

Knowledge theory can be used as the basis for agreements in online transactions. In app-based commerce, an agreement occurs when a buyer places an order and is followed by payment. The application then sends a notification to the seller's account, and the seller accepts the order. In Cash on Delivery transactions, the prepayment obligation is replaced by payment via courier along with the delivery of the order. This shows that whether the online buying and selling method is done by transfer or Cash on Delivery, the agreement is considered to have been reached. This is in accordance with Article 20 paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions, which states that "an electronic transaction occurs when the transaction offer sent by the sender is received and approved by the recipient." The formation of an agreement signifies the formation of an obligation based on the agreement, giving rise to rights and obligations for the parties. According to Article 1338 of the Civil Code, "agreements made legally and binding shall apply as law to the parties who make them, cannot be cancelled unilaterally without the consent of both parties, and must be carried out in good faith." In Indonesia, the principle of good faith is the basis for the validity of agreements, including electronic transactions. Article 3 of the Law on Electronic Information and Transactions emphasizes that good faith is the foundation for the use of information technology and electronic transactions. This is underlined by article 45 of Government Regulation Number 71/2019 on the implementation of electronic transactions which underlines the need for good faith, the principles of prudence, transparency, accountability and fairness in electronic transactions.

The principle of good faith must underlie every stage of the implementation of the agreement, both conventionally and online. The importance of good faith before the transaction is very important in online transactions with the Cash on Delivery method. As in modern contract law which emphasizes the principle of good faith, its implementation must begin before the agreement is signed and must exist since the negotiation stage (Pre-contractuale) (Yuanitasari & Kusmayanti, 2020). The idea of good faith should arise before the transaction is directly related to the personality between the parties. Both sellers and buyers should be honest during the pre-contractual stage. But in reality, good faith cannot be predicted because it is a state of mind that cannot be measured (Harun et al., 2019). However, certain actions for sellers and buyers can be considered as good faith, especially in internet trading transactions. Where the seller must accurately describe the details of the product offered through the application in question, including the brand, type of goods, use, and physical characteristics of the goods. This is confirmed in Article 48 paragraph (1) of the Law on Electronic Information and Transactions, which states that "business actors who offer products through electronic systems must provide complete and correct information related to the terms of the contract, the manufacturer, and the products offered."

A debtor is said to be negligent if he does not fulfil his obligations or fulfils them late but not as agreed (Soavi et al., 2022). Default actions can take the following forms: 1) failure to fulfil the obligations at all; 2) fulfilling the obligations imperfectly; 3) failure to fulfil the obligations on time; and 4) doing what is prohibited in the agreement.

If proven, the party who commits default will be held liable for costs, losses, and inherent interest. According to Civil Code article 1243, "reimbursement of costs, losses, and interest for non-fulfilment of an obligation will only begin to be required if the debtor, after being declared negligent to fulfil his obligation, continues to neglect it, or if something that must be given or made, can only be given or made within the time that has passed."

The Cash on Delivery payment method itself, in the practice of its transactions, found many mistakes that can harm the buyer and the delivery person (courier) who delivers the goods being transacted. If in this case there is no confidence between each other, namely between the seller, the buyer and the delivery person (courier), it means that there is no principle of good faith in the transaction. Buyers who use the Cash on Delivery transaction method show good faith by being honest and providing clear information about their identity on the application, such as name, telephone number, and correct address. Before making a transaction, buyers are expected to have carefully studied the description of the goods to be purchased. So that by placing an order, the customer is deemed to have agreed to the specifications of the goods and will pay when the product is delivered. It is very important to understand that this Cash on Delivery payment method is not a transaction where the buyer can refuse payment and return the product for any reason. As a result, if the buyer unilaterally cancels after the product arrives, the buyer is deemed to have defaulted or breached the agreement. Failure to fulfill or neglect to perform the responsibilities stated in the agreement signed between the creditor and the debtor is referred to as a default.

#### 4. Conclusion

Online buying and selling agreements made with the Cash on Delivery payment method must be based on the principle of good faith, which is regulated in Article 1338 paragraph (3) of the Civil Code, namely "agreements must be carried out in good faith.". Buyers who use the Cash on Delivery transaction method show good faith by being honest and providing clear information about their identity on the application, such as name, telephone number, and correct address. Before making a transaction, the buyer is expected to have carefully studied the description of the item to be purchased. So that by placing an order, the customer is deemed to have agreed to the specifications of the goods and will pay when the product is delivered. Sellers must accurately describe the details of the products offered through the application in question, including the brand, type of goods, use, and physical characteristics of the goods. This is confirmed in Article 48 paragraph (1) of the Law on Electronic Information and Transactions, which states that "business actors who offer products through electronic systems must provide complete and correct information related to the terms of the contract, the manufacturer, and the products offered." If there is a belief between the seller and the buyer, it can be said that the

transaction carried out by the two parties is based on the principle of good faith so that in the future it will not cause harm to the parties. So, it can be concluded that in addition to the fulfillment of the legal requirements of the agreement, it is also important that there is good faith from the parties, namely between the seller, the buyer as well as the delivery person, in this case the courier who delivers the goods.

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## Conflict of Interest

The authors declare no conflicts of interest.

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