

The Legal Protection for Parties in Electronic Purchase Agreements with Cash on Delivery System

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Abstract. *This study aims to find out and analyze the legal position of electronic sales agreements with the cash on delivery system, as well as legal protection for the parties in electronic sales agreements with the cash on delivery system. This study uses a normative juridical approach that is analytical descriptive. The data used is secondary data, which is then analyzed qualitatively. Based on the research, it was concluded that: (1) the legal position of the electronic sale-purchase agreement with the cash on delivery system is valid as an agreement that fulfills the legal requirements according to the provisions of Article 1320 of the Civil Code and Article 46 of Government Regulation Number 71 of 2019, so that an agreement that creates a legal relationship that results in the emergence of rights and obligations for the parties; (2) legal protection for the parties to electronic buying and selling agreements with a cash on delivery system, both for sellers (merchants), buyers and expediting services (courier) in a preventive manner by forcing the implementation of obligations as stipulated in the Civil Code, Act No. 8 of 1999, Act No. 11 of 2008 jo. Act No. 19 of 2016, Government Regulation Number 71 of 2019, Government Regulation Number 80 of 2019, as well as in the Criminal Code, while in a repressive manner it is carried out by filing a claim from the aggrieved party through litigation or non-litigation.*

Keywords: Buy; Protection; Sell.

1. Introduction

Advances and developments in technology, especially telecommunications, multimedia and information technology (telematics), the positive impact is that it facilitates everyone's activities from conventional methods to more effective and

efficient electronic ways,¹and has also changed human behavior in interacting with other humans, thus giving rise to new norms and values,²one of which is changing the form of the agreement into an electric form or an electronic contract,³which is an integral part of e-commerce activities, thus with information technology there has been a change in transaction patterns and patterns of community outreach.⁴

Transactions in e-commerce between sellers and buyers via computer networks, such as using the internet, are the most commonly used transactions via the internet which enable the creation of global markets, even though sellers and buyers have never physically met.⁵

Over time, the implementation of e-commerce transactions has developed in its payment system, which was originally done by making a transfer, now it can be done using the cash on delivery (COD) system, which then involves other parties, namely delivery services (expedition).

Cash on delivery is a product payment system that is paid in cash when the product reaches the buyer. Of course this provides benefits for the buyer, one of which is to grow the buyer's trust in the seller, even though the use of the cash on delivery system is not the least that causes conflict between the seller and the buyer, because one of the parties does not carry out the achievements as the contract stated agreed (default).⁶

Sale and purchase agreements with payments through the transfer payment system and the cash on delivery system oblige sellers and buyers to carry out achievements, but not a few unscrupulous sellers and buyers do not carry out these achievements, resulting in defaults. Each individual must carry out and

¹Bawono, Bambang Tri. Gunarto & Hafidz, Jawade. (2022). "The Efforts to Prevent & Eradicate Criminal Acts of Spreading Fake News and Hate Speech". in the Sovereign Law Journal, Vol. 5 Issue 1, March 2022, p. 12. url: <http://jurnal.unissula.ac.id/index.php/RH/article/download/20205/6776>.

²Effendi, Marwan. (2012). Discretion, Legal Discovery, Corporations and Tax Amnesty in Law Enforcement. First Print. Jakarta: Reference, p. 45.

³Bawono, Bambang Tri. (2020). "The Validity of Electronic Contracts in Software Applications". in the Deed Journal, Vol. 7 No. 1, March 2020, p. 120, url: <http://jurnal.unissula.ac.id/index.php/deed/article/view/10556/pdf>.

⁴Simbolon, Arise Mangaratua. Gunarto & Ma'ruf, Umar. (2018). "Criminal Law Policies Against Criminal Acts Of Insult Or Defamation Through The Internet In Indonesia As Cybercrime". in the Sovereign Law Journal, Vol. 1.No. 1, March 2018, p. 14. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2560>.

⁵Santos, Eddy. (2018). The Influence of the Era of Globalization on Business Law in Indonesia. First Print. Jakarta: Kencana Prenada Media, p. 145.

⁶Sitompul, Verawati Br. (2017). Books Teaching Civil Law. First Print. Tangerang: Independent Library, p. 63.

understand his rights and obligations. Violation of these rights and obligations will cause problems.⁷

Buying and selling electronically with the cash on delivery system does indeed facilitate business activities, but there are not a few problems in its implementation, even though an agreement has been made between the seller and the buyer, but there are still parties who violate the agreement from both the seller and the buyer, so it is not only detrimental to both parties, but also the delivery service (expedition), it is very important to have legal protection for perpetrators of electronic sale and purchase agreements using the cash on delivery system.

Based on this description, the purpose of this study is to find out and analyze the legal position of electronic sales agreements with the cash on delivery system, as well as legal protection for the parties in electronic sales agreements with the cash on delivery system.

2. Research Methods

The type of research used in this study is normative juridical, which is descriptive analysis in nature. The data used is secondary data obtained through library research, which is then analyzed qualitatively.

3. Results and Discussion

3.1. The legal position of the electronic sale and purchase agreement with the cash on delivery system

Transactions carried out electronically are basically agreements or legal relations that are carried out electronically by integrating a network of computer-based electronic systems with a communication system, which is further facilitated by the existence of a global computer network or the internet. Legal relationship is a relationship between two or more parties (legal subject), which has legal consequences in the form of rights and obligations according to law.⁸

The value of the strength of proof of a transaction, the focus is not on the formal agreement, but on the material legal relationship. Therefore, the existence of legal provisions regarding contracts actually remains valid because they cover all

⁷Arsyad, Jawade Hafidz & Karisma, Dian. (2018). Centralization of Government Goods and Services Procurement Bureaucracy. First Print. Jakarta: Sinar Graphics, p. 64.

⁸Raditio, Resa. (2014). Legal Aspects of Electronic Transactions; Engagement, Evidence and Dispute Resolution. First Print. Yogyakarta: Graha Ilmu, p. 7-8.

the media used to carry out the transaction itself, both paper-based and electronic-based.⁹

Based on this, electronic transactions have the same status as transactions made directly. The only difference is in the media used, and it does not affect the validity of the agreement made, so that within the scope of e-commerce which involves communication science or communication system technology, the existence of a transaction is understood as an agreement or legal relationship between parties carried out by exchanging information to trade.

The requirements for the validity of an electronic contract depend on the essence of the electronic system itself, so that an electronic contract can only be said to be valid if it can guarantee that all components in the electronic system can be trusted and/or run as they should, or in other words, a transaction can be said to be valid if all communication channels must be guaranteed safe and agreed upon by the parties. That means, neither party is harmed in conducting transactions through this electronic media, and the good faith of the parties is the guideline.

The engagement of parties in electronic transactions must be carried out based on the principles of legal certainty, benefits, prudence, good faith, and freedom to choose technology or technology neutral, in order to provide a sense of security, fairness, and legal certainty for users and operators of information technology. . The agreement in using electronic systems aims to provide a sense of security, justice and legal certainty for users and providers of information technology. Electronic systems can be administered by the state, people, business entities and/or the community.¹⁰

Cash on delivery service is a form of implementing electronic contracts in e-commerce transactions that aim to change online buying and selling transactions to be more efficient, fast and secure. However, cash on delivery services are also inseparable from the existence of weaknesses in practice, thus allowing losses for sellers, buyers and expedition services (couriers).

The relationship between sellers (business actors), buyers (consumers) and forwarding services (couriers) in online buying and selling transactions on marketplace applications, such as Shopee, Tokopedia and so on that use cash on delivery services has created an agreement. The legal position for an online

⁹HS, Salim. (2021). *Electronic Contract Law, E-Contract Law*. First Edition. First Print. Depok: Raja Grafindo Persada, p. 42.

¹⁰Widijawan, Dhanang. (2018). *Legal Fundamentals of Business Contracts, Transactions & Electronic Systems (Change of ITE Law Number 19/2016)*. First Print. Bandung: Keni Media, p. 177.

buying and selling agreement with a cash on delivery system is said to have fulfilled the requirements as an agreement, when it fulfills the conditions as stipulated in Article 1320 of the Civil Code, which is also regulated in Article 46 of Government Regulation Number 71 of 2019.

Based on this, Article 1320 of the Civil Code as the basis for setting the legal terms of an agreement, then online purchase agreements with the cash on delivery system can be recognized as valid if the four terms of the validity of the agreement as stipulated in Article 1320 of the Civil Code are fulfilled in the sale and purchase agreement online with a cash on delivery system, thus there has been an agreement between them which gave rise to a legal relationship which resulted in the emergence of rights and obligations for each party. These four conditions are absolute conditions that must exist or be fulfilled from an agreement, without these conditions the agreement is deemed to have never existed.¹¹

Online buying and selling agreements with a cash on delivery system carried out by parties, both business actors and consumers, have legal consequences for the parties who have committed themselves to the transaction. This is stated in Article 45 paragraph (1) of Government Regulation Number 71 of 2019, which states that: "Electronic transactions carried out by parties give legal consequences to the parties", so that if one party, both consumers and business actors, cannot fulfill their obligations in online buying and selling transactions with a cash on delivery system, it is said to have committed a default.

Electronic agreements or contracts in online buying and selling transactions, along with their requirements, have guaranteed legal certainty for the parties to obtain their respective rights, as well as guarantees for the implementation of obligations for the parties. Because if the agreement is not implemented, and causes loss to one of the parties, then the party causing the loss must be responsible by providing compensation to the injured party.

Legal certainty protects the parties in e-commerce transactions, including contracts, payments, privacy and jurisdiction. Without legal certainty for the protection of the parties, it is difficult for the internet to develop as a transaction and business medium.¹²Legal certainty is a justifiable protection against arbitrary

¹¹Putri, Dewi Kurnia & Purnawan, Amen. (2017). "Differences of the Sale Purchase Agreement in Settlement with the Unpaid Sale and Purchase Binding Agreement". in the Deed Journal, Vol. 4 No. 4, December 2017, p. 626. url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/2505/1868>.

¹²Renouw, Dian Mega Erianti. (2017). E-Commerce Legal Protection; Legal Protection for E-Commerce Business Actors & Consumers in Indonesia, Singapore and Australia. First Print. Jakarta: Taman Pustaka Foundation, p. 83.

actions.¹³ Legal certainty in buying and selling agreements online with a cash on delivery system creates accountability for the parties, which in this case are the seller and the buyer.

Each party (both sellers, buyers and expedition services) in an online sale and purchase agreement with the cash on delivery system must carry out their respective obligations as stipulated in the agreement, and if they violate the provisions of the agreement, the violating party is responsible for his actions are subject to sanctions, in the form of compensation.

3.2. Legal protection for the parties in electronic sales agreements with the cash on delivery system

Legal protection according to Philipus M. Hadjon, namely legal protection for the people as a preventive and repressive government action. Preventive legal protection aims to prevent the occurrence of disputes that direct the government's actions to be careful in making decisions based on discretion. Repressive legal protection aims to resolve disputes, including handling them in the judiciary.¹⁴

Legal protection is all the government's efforts to guarantee legal certainty in providing protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable laws and regulations.¹⁵

Based on the definition of legal protection according to Philipus M. Hadjon, legal protection actually consists of preventive legal protection and repressive legal protection. As is the case in online buying and selling agreements with a cash on delivery system, the rights of the parties involved must be protected, as one of the objectives of the agreement according to PS Atiyah is that promises that

¹³Rachman, Asep Iswahyudi. (2018). "Legal Protection With Workers' Rights At PT. GrabSemarang". in the Sovereign Law Journal, Vol. 1.No. 1, March 2018, p. 230. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2637>.

¹⁴Hadjon, Philip M. (1987). Legal Protection for the People in Indonesia. Surabaya: Science Development, p. 29.

¹⁵ Sutanti, Arini & Mashdurohatun, Anis. (2017). "Legal Protection for Consumers Giving Collateral in Credit Transactions at Bank Financial Institutions (Study of Imposition of Mortgage Rights) at PD BKK Susukan, Semarang Regency". in the Deed Journal, Vol. 4 No. 4, December 2017, p.686. url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/2511/1874>.

have been given must be carried out and provide protection against an appropriate expectation. ¹⁶

Preventive legal protection is carried out by forcing the parties involved to carry out their obligations, so that no party is harmed. If a loss occurs from one of the parties, the party causing the loss must provide compensation to the injured party, thus the parties will get legal certainty and justice by providing protection for the rights of the parties.

Talking about the obligations of the parties to the sale and purchase agreement, both offline and online, is actually at the same time discussing what is the right of the parties involved in the agreement. This is due to the nature of the sale and purchase agreement as a reciprocal agreement, meaning that what is the right, then for the opponent the promise makes it a burden or obligation. The obligations of the seller include: delivery of goods that are used as objects of sale and purchase [Article 612 paragraph (1) of the Civil Code], guaranteeing hidden defects in the goods sold (Article 1474 of the Civil Code), and guaranteeing legal security for the buyer from disturbance by other parties. (Article 1491 of the Civil Code)¹⁷

The rights and obligations of sellers and buyers are also regulated in Act No. 8 of 1999 concerning Consumer Protection. The rights of business actors are regulated in Article 6, while the obligations of business actors are regulated in Article 7. The obligations of business actors are also regulated in Article 13 paragraph (1) Government Regulation Number 80 of 2019 concerning Trading through Electronic Systems. In addition, business actors must provide correct information regarding the goods and/services being offered, as stipulated in Article 28 paragraph (1) of Act No. 11 of 2008 jo. Act No. 19 of 2016 concerning Information and Electronic Transactions. Article 17 paragraph (1) of Act No. 8 of 1999 also prohibits business actors from making advertisements that deceive consumers. The prohibitions aimed at business actors are regulated in Article 8 to Article 16 of Act No. 8 of 1999. Article 50 paragraph (1) letter b of Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions also mentions guarantees availability of facilities and services as well as complaint resolution as well as service features for requesting the return of goods available in buying and selling services on e-commerce by business actors. In the product return application feature, consumers can file a complaint with the condition that they must provide video evidence when

¹⁶Maslikan & Sukarmi. (2018). "Authorities of a Notary in Making Authentic Deeds Related to Cooperation Contracts". in the Deed Journal, Vol. 5 No. 1, March 2018, p. 14. url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/2526/1888>.

¹⁷Setiawan, I Ketut Oka. (2017). Law of Obligations. Second printing. Jakarta: Sinar Graphics, p. 164-170.

opening the item, to then be used as evidence, then the business actor will provide a refund in the form of goods or money in accordance with the agreement of both parties party.¹⁸For consumer rights, they are regulated in Article 4 of Act No. 8 of 1999, while consumer obligations are regulated in Article 5 of Act No. 8 of 1999.

The implementation of the obligations by the parties will prevent disputes or defaults. The act of default has consequences for the rights of the aggrieved party to sue the party who committed the default to provide compensation, so that by law it is hoped that no party will be harmed because of the default¹⁹ because in the agreement it is possible not only to bind the person making the agreement, but also to bind other people or third parties.²⁰

Repressive legal protection for the seller if the buyer defaults, based on Article 1267 of the Civil Code, the business actor has the right to demand reimbursement of costs for the goods sold. Business actors can sue consumers by means of compensation or cancellation of purchases, as stipulated in Article 1266, Article 1267 and Article 1517 of the Civil Code. Buyers who feel aggrieved, based on Article 45 paragraph (1) of Act No. 8 of 1999, can file a lawsuit against business actors through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.

Repressive legal protection is also provided by Article 38 paragraph (1) of Act No. 11 of 2008 jo. Act No. 19 of 2016, in which the parties can file a lawsuit against the party operating the electronic system and/or using information technology which causes losses. Dispute resolution can also be carried out through non-litigation channels, regulated in Article 47 of Act No. 8 of 1999 and Article paragraph (1) of Act No. 11 of 2008 jo. Act No. 19 of 2016.

Legal protection for delivery or courier services is stated in Article 1708 of the Civil Code, which states that the courier does not have to be responsible for events that cannot be avoided, unless he fails to return the item entrusted to

¹⁸Hajjan, Nurul. Apriani, Rani. & Ramadhan, Luthfi. (2021). "Law Enforcement of Consumer Default Actions Through the Cash On Delivery (Cod) System, Enforcement Of Consumer Default Actions Through The Cash On Delivery (Cod) System", in *Supremacy: Journal of Thought and Research in Social Sciences, Law & Teaching*, Vol. XVI No. 2, October 2021, p. 323-324. url: <https://ojs.unm.ac.id/supremasi/article/view/22318>,

¹⁹Putri, Asrilia Baby Saka & Gunarto. (2017). "Legal Protection of Notary Employees in a Specific Time Work Agreement (PKWT)". in the *Deed Journal*, Vol. 4 No. 4, December 2017, p. 537. url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/2495/1859>.

²⁰Santosa, Keri & Hanim, Lathifah. (2017). "Legal Protection for Good Faithful Parties in the Cancellation of Land and Building Sale and Purchase Agreements (Case Study Number 29/Pdt.G/2014/PN.Wsb)". in the *Deed Journal*, Vol. 4 No. 2, June 2017, p. 168. url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/1780/1322>.

him, and Article 1809 of the Civil Code, in which the seller must provide compensation loss to the courier for losses experienced while the courier is exercising his power. Legal protection for the courier if his safety is threatened by the buyer,²¹ then the buyer can be charged with Article 368 paragraph (1) of the Criminal Code and Article 351 of the Criminal Code.

Legal protection for parties in e-commerce transactions is needed to give confidence to business actors and consumers, so that the government's task of making the people prosperous, educating the nation, and protecting e-commerce actors from risks of loss can be carried out.

4. Conclusion

The legal position of an electronic sale-purchase agreement with a cash on delivery system is valid as an agreement if it meets the requirements as an agreement, as stipulated in Article 1320 of the Civil Code and Article 46 of Government Regulation Number 71 of 2019, giving rise to legal relations that result in rights and obligations for each party. As for the legal protection for the parties in electronic buying and selling agreements with the cash on delivery system, it is preventively carried out by forcing the parties involved to carry out their respective obligations, which have been regulated in the Civil Code, Act No. 8 of 1999, Regulation Government Number 80 of 2019, Act No. 11 of 2008 jo. Act No. 19 of 2016, and Government Regulation Number 71 of 2019.

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²¹Lestari, Afifah Tri Indah. Diana, Rosida. & Saleh. Nurbaity. (2022). "Legal Protection of Parties in Sales and Purchase Agreements Via the Internet Using the Cash On Delivery (COD) System". in Law Dewantara, Journal of Law, Vol. 2 No. 1., March 2022, p. 10. url: <https://ejournal.unitaspalembang.com/index.php/ld/article/view/16/3>.

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