

## The Implementation of Good Faith Principles in Online Sale and Purchase

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### Abstract

Good faith is a basic principle in conducting a sale and purchase agreement. The activity of proceeding financial transaction in advance to receiving a purchased goods in a sale and purchase activity can be done online without the presence of both the customer and the seller in a face to face meeting or without first making physical verification on the goods to be purchased by the customer. In Indonesian such phenomenon dominates the online marketing activity and it is protected by the law with the term of good faith principles that must be applied in making a purchase agreement. The issue addressed in the present study is to highlight the important role of the online sale and purchase agreement and the legal consequences resulted from breaking the rules on it. The basic applicable law regulation on e-commerce in Indonesian is the one prescribed in the Civil Code, that is in the Law Number 8 of 1999 concerning Consumer Protection (Indonesian term is UUPK) and the Law Number 19 Year 2016 Law Number 11 Year 2008 concerning Information and Electronic Transactions (the Indonesian term is UU ITE). To achieve the objectives of the study, normative research approach is applied in analyzing the data. The results showed that the application of the principle of good faith in electronic commerce was realized by the existence of true and honest information by the parties who transacted, in this case the seller of a particular product offering a product of goods or services provided information about the actual condition of the goods without guile, does not provide misleading information while buyers who use or buy goods and or services used fulfill their obligations, namely making payments. Violations of good faith in the agreement can be criminalized according to the provisions of Article 62 UUPK and aggravated by the provisions of article 45 paragraph (2) of the ITE Law. The implementation of the principle of good faith in the online sale and purchase agreement covers all stages of the agreement, namely the pre-agreement stage, the agreement phase, and the post-agreement stage.

**Keyword: Good Faith Principle, Online Sale and Purchase Agreement**

### I. INTRODUCTION

The contemporary age that uses technology in all fields is no longer an option but is already a necessity of life in society. Fulfillment of needs can be done anywhere without having to go to the destination but online. Increased social and economic activities in the community have entered an information-oriented society (Rosaci & Sarnè, 2013). Information and technology systems have been used in many sectors of life, ranging from trade/business (electronic commerce or e-commerce), education (electronic education), health (tele-medicine), telework, transportation, industry, tourism, environment, and the sector of entertainment (Supangkat, 2000). One of the problems raised after the emergence of online sale and purchase transparency is left out that fraud of occurs (Smedinghoff, 2012; Junhu, et al., 2012;

Amin, 2015). Even it was once revealed that WTO, as an obvious organization to advance the agenda of multilateral disciplines, was not in a position to deliver quick results with respect to e-commerce (Braga, 2005). Hence government seems to have to take it into a good consideration to anticipate the worse effect of bad will of the actors of e-commerce business. The idea is to ensure that consumers have information about all things that affect their interests: or, in other words, the idea is that certain things must be transparent to consumers (Willett, 1999).

As came to Indonesia, the existence of good faith in an agreement in Indonesian rules of law is contained in Article 1338 paragraph (3) of the Civil Code, which states that the agreements must be carried out in good faith. Unfortunately, the article does not explicitly state what is meant by

"good faith". As a result, people often find it difficult to interpret and because it is an abstract understanding that relates to what is in the human mind. Indeed in reality it is very difficult to define good faith (Gordley, 1991). According to the classical theory of contract law, the principle of good faith can be applied in situations where the agreement has fulfilled certain conditions, as a result of this teaching does not protect those who suffer losses in the pre-contract stage or negotiation stage, because at this stage the agreement has not fulfilled certain conditions (Gordley, 2013). The application of good faith principles in business contracts must be considered especially when conducting pre-contract agreements or negotiations, because good faith is only recognized when the agreement has fulfilled the requirements for the validity of the agreement or after the negotiations have been carried out.

The nature of good faith can be subjective because the act, when it comes to establishing a legal relationship or implementing an agreement, is the mental attitude of a person. Many Indonesian legal experts consider good faith to be subjective. However, as claimed by Hofmann & Micheau (2016) that in addition to the existence of subjective goodwill understanding, there was also objective goodwill, by them they were nothing but propriety (*billikheid, redelijkheid*). The implementation of good faith in an agreement can be said to raise problems, because it is very difficult if it is understood subjectively (Klein, 1993). Therefore good faith can only be seen objectively, namely the implementation of obligations under the agreement. This good faith is very subjective because its size cannot be determined but the subjective value can be seen from the implementation of the agreement.

In this present study, nature of good faith as an underlying handhold in proceeding transactions of online sale and purchase is viewed from the perspective of Indonesian law on contract agreement in and law on Information and Electronic Transactions (or as termed in Indonesia *ITE*). Thus, specifically this papers addresses the discussion on (1) the standards that can be used to determine the principle of good faith in sale and purchase online; (2) the implementation of the principle of good faith in online sale and purchase; and (3) criteria of misconducts that violate the principle of good faith in online sale and purchase.

Building on the objects of the study elaborated above, this study provides a number of benefits to academics and the general public, in that it adds to the repertoire of law in terms of sale and purchase online, as well as contributing information to certain institutions such as legal practitioners and wider community.

## **II. METHOD**

This study is designed by applying normative method to address essence of good faith principles and their implementation in the online sale and purchase in Indonesia. To add more, important related literature, that is results of academic researches and review of literature on good faith and online sale and purchase are also brought in the discussion to determine to what extent this study place its findings and advantageous aspect to the wider community. Indonesian civil code is also collected to provide empirical evidence of the Indonesian government regulation on e-commerce implementation with the good faith principles. These literature and legal sources are then compared to find the process of implementing the good faith principles, the standard legal rules applied, and the criteria of misconducts realized in the transaction of online sale and purchase that are violating the prescribed rules. The conclusions are drawn after the objectives are thought to have been encountered and then some useful recommendations are provided.

## **III. DISCUSSION**

### ***The standards Usable to determine the principle of good faith in Online Sale and Purchase***

The existence of contract clauses in e-commerce agreements can directly be a proof that the agreement or contract is not different from the contract or agreement in general. Likewise, the existence of the validity requirements of an agreement is also not free to be fulfilled in an e-commerce agreement or contract. The agreement or contract in e-commerce that is offered by the merchant must fulfill these requirements in accordance with Article 1320 of the Civil Code, so that the customer who will make an agreement can read and understand the contents of the contract or agreement whether it is true and does not deviate from existing or not.

E-commerce is located in the field of civil law, as a system of treaty law. E-commerce has the same principle as treaty law, namely, among others: the principle of freedom of contract,

consensual principle, good faith principle, propriety principle, and habitual principle, principle of compensation, principle of binding strength, moral principle, and international principle (Alif, 2001). In the Civil Code the recorded covenant arrangement is named, in Chapters V to Chapter XIII. E-commerce that develops outside the Civil Code, based on doctrines included in the category called nameless extracts. Regarding the sale and purchase agreement online, in Article 1313 the Indonesian Civil Code is regulated: "An agreement is an act, in which one or more people tie themselves to one or more people".

A reason that is lawful, means that the said agreement must be carried out in good faith. Based on Article 1335 of the Civil Code which reads: "An agreement without cause, or that has been made because of something that is false or forbidden, has no power".

Therefore, an agreement without cause does not have power, because in this case the purpose of an agreement is made. The purpose of the agreement means the contents of the agreement itself are made by both parties, while the contents of the agreement are expressly stated by both parties regarding the rights and obligations arising from the relationship of the law (agreement) made by both parties. Explanation of an action that is prohibited by law in positive law is that if the law does not allow the existence of the act and if it is violated then the action will get strict sanctions, for example is a crime such as sale and purchase drugs, sale and purchase swag, and so on.

Decency is the norm that lives within the community. Norms include unwritten law which contains deeds that should be done and actions that are not appropriate to do. So that all agreements or contracts made must meet the norms of decency, violations of these norms are social sanctions from the community considering morality is an unwritten law in people's lives.

#### ***The Implementation of Good Faith Principles***

Article 3 of Law Number 11 Year 2008 concerning Information and Electronic Transactions, in its explanation stated: "The

principle of good intention means the principle used by the parties in conducting Electronic Transactions does not aim intentionally and without rights or against the law resulting in losses to other parties without the knowledge of the other party."

The principle of good faith is also regulated in Article 1338 of the Civil Code. The principle of good faith is to act as a good person. Good intentions in a very subjective sense can be interpreted as honesty of someone who is at the time of holding a legal act. While good faith in an objective sense is that the implementation of an agreement must be based on the norms of propriety or what is considered in accordance with propriety in the community.

The formulation of Article 1338 of the Civil Code identifies that in fact good faith is not a legitimate requirement for a contract as the conditions contained in Article 1320 of the Civil Code (Fuady, 1994). The element of good faith is only required in terms of "implementation" of a contract, not in the "making" of a contract. Because the element of good faith in making a contract can already be covered by the legal clause element of Article 1320 of the Civil Code (Gordley, 1991).

Good faith is not the same as intention, but good faith is the implementation of an agreement that is fair, appropriate and feasible. Contracts in e-commerce occur when one party agrees with what the other party offers. Before the customer agrees to make a trade transaction, they are required to read about the requirements or commonly known as the user agreement or conditions of use, so that when the customer has read and understood what is required, then good faith and honesty are needed to fulfill what is required, like about age restrictions. Likewise with merchants, after an agreed agreement must immediately carry out its obligations to deliver goods that have been purchased in accordance with the conditions intended by the customer, of course with the provision that there has been payment in full from the customer. When this has been fulfilled, it can be seen that there is a fulfillment of the principle of good faith.

#### ***Indicators of a Sale and Purchase Agreement Based on Good Faith Principles***

Indicators of agreement between the parties include 2 parties. An agreement always begins with an offer by a party and continues with a

response in the form of acceptance by another party. If the offer is not responded to or responded to by another party, then an agreement will not be possible. Therefore two parties are needed to give birth to an agreement. The next indicator is the word "agree". Article 20 paragraph (1) and (2) Law Number 11 of 2008 concerning Information and Electronic Transactions, as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) states "Unless otherwise stipulated by the parties the electronic transaction occurs when the offer of the transaction sent by the sender has been received and approved by the recipient (paragraph 1), and the approval of the electronic transaction offer referred to in paragraph (1) must be carried out electronics (paragraph 2). Therefore, the indicator of the word "agree" is that the offer by the merchant through the internet media is accepted and approved by the prospective buyer and the approval of the merchant's offer by the prospective buyer with a statement of acceptance through internet media.

Furthermore, decency is the norm that lives within the community. Norms include unwritten law which contains deeds that should be done and actions that are not appropriate to be carried out. Therefore, all agreements or contracts that are made must meet the norms of decency, violations of these norms are social sanctions from the community because morality is an unwritten law in people's lives.

Therefore, good faith in an agreement must exist since the new agreement will be agreed, meaning that good faith is at the time of negotiating the agreement, good faith in an agreement must exist before the agreement, and when the agreement is reached the agreement.<sup>2</sup> Good faith has existed since the pre-contract phase where the parties begin negotiations until they reach an agreement and phase of the contract implementation. But in reality a person's good faith is difficult to guess, because good faith is a person's inner condition that cannot be seen in plain view.

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 laws for those who make them. This agreement is irrevocable other than by agreement between the two parties, or for reasons

determined by law. Approval must be carried out in good faith. "So when viewed from the provisions of the article, good faith is a principle that must be fulfilled by the parties to agree in the agreement.

The parties involved in sale and purchase online are: Sellers or merchants or entrepreneurs who offer a product through the internet as a business actor: (1) Buyers or consumers, that is, every person who is not prohibited by law who accepts offers from sellers or business actors and wishes to conduct sale and purchase transactions of products offered by pejual or business people/merchants; (2) The bank as the distributor of funds from the buyer or consumer to the seller or businessman/merchant, because in the electronic sale and purchase transaction the seller and the buyer are not in direct line of sight, because they are in a different location so the payment can be made through an intermediary in this case the bank. (3) Providers as providers of internet access services, in the Civil Code are regulated in the sale and purchase agreement (Article 1475 Indonesian Civil Code) and the principle of good faith which is regulated in the Book III of the third part of the Civil Code concerning the consequences of agreements namely Article 1338 paragraph 3 which states that "An agreement must be carried out in good faith".

Sale and purchase is regulated in Book III chapter V starting from Article 1457 of the Civil Code which states: "Sale and purchase is an agreement by which one party binds itself to deliver an item, and the other party to pay the promised price.

The definition of Information Technology according to Article 1 paragraph (2) of Law Number 19 of 2016 concerning Information and Electronic Transactions is "Legal acts carried out using computers, computer networks and or other electronic media."

Sale and purchase transactions via the internet, can not be separated from the basic concept of the agreement as contained in Article 1313 of the Civil Code which states that "An action by which one party or more ties itself to one or more people." Law Number 19 of 2016 concerning Information and Electronic Transactions, while the understanding of electronic information under Article 1 paragraph (1) states that "Electronic Information is one or a collection of electronic data, including but not limited to writing, voice, images, maps, designs, photos, electronic data

interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, numbers, access codes, cymbals, or processed perforations that have meaning or can be understood by people who are able to understand them. " The provisions of the Law regarding electronic information and transactions are for understanding information electronics based on Article 1 paragraph (2) states that "Electronic Transactions are legal actions carried out using a computer, computer network, and or other electronic media."

Online or internet sale and purchase agreements must also be carried out in good faith. In order for the whole series of sale and purchase processes to run smoothly and not harm one of the parties involved in the sale and purchase agreement. Good faith in an agreement must exist since the new agreement will be agreed, meaning that good faith is there when negotiating the agreement, good faith in an agreement must exist before the agreement takes place, and when the agreement is implemented until the agreement has been fulfilled.

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 laws for those who make them. This agreement is irrevocable other than by agreement between the two parties, or for reasons determined by law. Approval must be carried out in good faith. "So when viewed from the provisions of the article, good faith is a principle that must be fulfilled by the parties to agree in the agreement (Subekti, 2006).

The parties involved in sale and purchase online are: Sellers or merchants or entrepreneurs who offer a product through the internet as a business actor a. Buyers or consumers, that is, every person who is not prohibited by law who accepts offers from sellers or business actors and wishes to conduct sale and purchase transactions of products offered by pejual or business people/merchants. B. The bank as the distributor of funds from the buyer or consumer to the seller or businessman/merchant, because in the electronic sale and purchase transaction the seller and the buyer are not in direct line of sight, because they are in a different location so the payment can be made through an intermediary in this case the bank. c. Providers as providers of internet access services, in the Civil Code are regulated in the sale and purchase agreement (Article 1475 KUH

Perdata) and the principle of good faith which is regulated in Book III of the third part of the Civil Code concerning the consequences of agreements namely Article 1338 paragraph 3 which states that "An agreement must be carried out in good faith". Sale and purchase is regulated in Book III chapter V starting from Article 1457 of the Civil Code which states: "Sale and purchase is an agreement with which one party binds itself to surrender an item, and the other party to pay the promised price (Syahmin, 2006)."

The definition of Information Technology according to Article 1 paragraph (2) of Law Number 19 of 2016 concerning Information and Electronic Transactions is "Legal actions carried out using computers, computer networks and or other electronic media." Sale and purchase online or sale and purchase transactions through the internet is a sale and purchase agreement that is carried out indirectly by the seller with the buyer. Sale and purchase through the internet is a modern transformation from the conventional sale and purchase process.

Sale and purchase transactions via the internet, can not be separated from the basic concept of the agreement as contained in Article 1313 of the Civil Code which states that "An action by which one party or more ties itself to one or more people." Law Number 19 of 2016 concerning Information and Electronic Transactions, while the understanding of electronic information under Article 1 paragraph (1) states that "Electronic Information is one or a collection of electronic data, including but not limited to writing, voice, images, maps, designs, photos , electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, numbers, access codes, cymbals, or processed perforations that have meaning or can be understood by people who are able to understand them. "

The provisions of the Law on electronic information and transactions as for the understanding of electronic information based on Article 1 paragraph (2) state that "Electronic Transactions are legal actions carried out using a computer, computer network, and / or other electronic media."

The definition of consumer protection law Based on the Consumer Protection Act in Article 1 paragraph 1. states that: "Consumer protection is any effort that guarantees legal

certainty to protect consumers. This means that the government provides legal certainty to consumers in terms of protection of their rights and interests. Even though the Consumer Protection Act aims to protect the interests of consumers in Indonesia it does not mean ignoring the interests of business actors who have an important role in the world of commerce and fulfillment of community needs. "Principles and objectives of consumer protection Based on the provisions contained in Article 2 of the Consumer Protection Act which are the principles of consumer protection are: a. The principle of benefit is that all efforts made by the implementation of consumer protection must provide maximum benefit for the benefit of consumers and the perpetrators as a whole. In other words, not only one party can get benefits while the other party gets a loss known as the term may not benefit from the loss of another person. b. Principle of justice Consumer protection law must be fair to consumers and business practices, so it does not only burden business actors with responsibility, but also protect their rights and interests. Not only pro to consumers. This is because not always the consumer dispute is caused by the mistakes of the business actor, but it can also be caused by the mistakes of consumers who sometimes do not know their obligations or hastily approve provisions that have a standard clause, for example without reading first so that when a dispute occurs effort that does evil to him. c. The principle of balance of principle of balance is intended to provide a balance between the rights and obligations of business actors, consumers and the government as supervisors of legal relations that occur in trade transactions between business actors and consumers. d. The principle of security and safety, this Principle aims to provide assurance and safety assurance to consumers in using products produced by business actors circulating in the market for consumption or use. e. The principle of legal certainty This principle aims to provide legal guarantees and certainty so that both business actors and consumers obey the law and carry out their

rights and obligations. Without having to charge someone.

#### **IV. CONCLUSION**

Online-based transaction activities are activities based on written laws, such as the Civil Code and unwritten law, such as decency. In its implementation in online transaction activities in Indonesia, the principle of good faith which initially constitutes an unwritten form of law but has been made into a written law is a fundamental principle which cannot be violated by any who bind themselves in an agreement on online transactions. The Law on Electronic Transactions or Law number 11 of 2008 and Civil Code are the basis for determining online transaction laws that regulate the security and convenience of transactions between product providers and merchants. Violation of illiteracy norms is a criterion of violation of the principle of good faith and obtaining civil sanctions.

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