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## Good Faith as a Basis for Consumer Liability in Cash on Delivery (COD) Transactions

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### Abstract

Cash on Delivery (COD) is a popular type of transaction in online buying and selling. However, the implementation of the COD feature creates the issue of consumers being reluctant to make payments after the goods have come as agreed. This unilateral cancellation may result in losses for the seller, the application, and the courier. The aim of this research is to examine the legal liabilities of consumers who make unilateral cancellations to prevent losses. This normative research that employs secondary data from primary, secondary, and tertiary legal materials. The gathered data is then qualitatively analyzed and related with the core problem. According to the findings, the agreement must be made in good faith, which can be defined as subjective good faith (honesty) and objective good faith (propriety and justice) under Article 1338 paragraph 3 of the Civil Code. Judges have the right to evaluate an agreement and terminate it if it contains improper or unfair details. Before the transaction, where the seller and buyer must be honest, good faith plays a significant part in online transactions using the COD method. Buyers are expected to carefully study the description of the items to be purchased because placing an order indicates that the buyer has agreed to the specifications of the goods and will pay when the goods are received. The COD payment method does not allow customers to cancel unilaterally without providing clear reasons and is therefore considered a default.

## 1. Introduction

<sup>47</sup> E-commerce (electronic <sup>48</sup> mmerce) 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) Marketplace is an e-commerce strategy that is gaining traction in Indonesia today by employing the internet as their primary business activity. Shopee, Tokopedia, Lazada, Bukalapak, Blibli, JD.ID, and other application-based markets are available in Indonesia.

The marketplace acts as an intermediary, bringing together <sup>16</sup> sellers and buyers to conduct buying and selling transactions without the necessity for face-to-face meetings. Furthermore, the marketplace connects both parties with products delivery services (expeditions) that facilitate these trade activities. The buying and selling activities on this marketplace are also supported by a variety of payment methods such as bank transfer methods, balance top-ups, and cash on delivery (COD). One sort of payment that is now popular in Indonesia is the COD feature. COD is a type of order payment made when the order arrives at the recipient's address and is paid through the courier. (Retnowati et al., 2022)

However, the adoption of the COD feature generates issues because customers refuse to pay even when the products have arrived as agreed upon at the time of the order. This affects the application, the merchant, and the expedition courier who delivers the order to the customer. Consumers' unwillingness to pay has even resulted in violence in some circumstances. As was the case in Malang City, when the courier was harassed by customers who refused to pay for the products delivered. (Perdana, 2023)

The buyer and seller reach an agreement in online transactions with COD payment when the buyer submits a <sup>30</sup> order to the seller and the seller approves it. Similarly to traditional trans<sup>13</sup>actions, the agreement in online buying and selling is a contract between the parties. According to Article 20 paragraph 1 of Law Number 11 of 2008 on Electron<sup>29</sup> Information and Transactions, an electronic transaction happens when the sender's trans<sup>6</sup>action offer is accepted and approved by the recipient. In relation to these rules, Article 1338 of the Civil Code states that legally binding agreements shall apply as laws to the parties who established them, cannot be annulled unilaterally without the approval of both parties, and must be carried out in good faith.

The phenomenon of consumers making unilateral cancellations in transactions using the COD payment method will be investigated. The method is popular because buyers regard it as a pretty practical transaction because they can pay after the order arrives at the destination. Furthermore, COD is an option for purchasers

who do not have a credit card or a bank account, allowing buyers to complete transactions without having a bank account. The risk involved in online buying and selling transactions using this COD method, on the other hand, is unilateral cancellation, which has the potential to affect the seller, the courier, and the marketplace. As a result, the obligation of consumers as one of the parties in the online buying and selling agreement in the event of unilateral cancellation in COD transactions must be examined, particularly in light of the principle of good faith in the agreement. The specific goal of this research is to examine the legal implications of consumers who make unilateral cancellations in order to prevent losses.

The phenomena of digitalization in the economic aspect, which cannot be separated from legal issues, has prompted scholars to conduct a number of legal studies, including issues concerning the community's practice of online buying and selling using the COD system. Maisyura, Cut Sukmawati, Risna Dewi, and Arinanda previously did research on the practice of online buying and selling using the COD method under the title "Analysis Of Cash On Delivery (COD) Payment Methods In Online Shopping Transactions In Indonesia." This research yielded various conclusions, including the fact that more than half of all online buying and selling transactions now use the COD payment option, which boosts the sales numbers of online retailers. (Maisyura Cut Sukmawati Risna Dewi, 2021) Despite the fact that there are numerous issues with using this method, it remains a choice because the benefits outweigh disadvantages. (Maisyura Cut Sukmawati Risna Dewi, 2021) The other study, titled "Dispute resolution of the cash on delivery payment system in e-commerce media," was done by Afida Ainur Rokfa et al. According to the findings of this study, if a dispute arises or if customers suffer losses, they can file a lawsuit in court or use an alternative dispute resolution mechanism based on Article 45 paragraphs 1 and 2 of the Electronic Information Technology Law. (Rokfa et al., 2022) The parties participating in electronic transactions are bound by the principle of good faith in order to fulfil societal goals and avoid future losses. (Rokfa et al., 2022)

According to the data described above, the practice of COD transactions makes it easy for consumers on the one hand, but it also has numerous disadvantages. The above-mentioned research also discusses dispute settlement of COD-related issues. However, the subject of consumers rejecting or cancelling orders unilaterally even after the items arrive has not yet been studied. This consumer action could be detrimental to the merchant, the courier, and the application. The researchers are interested in exploring the features of consumer accountability in COD transactions that are examined based on the principle of good faith in the agreement due to a void or gap in earlier study. This research is becoming increasingly significant as the topic

of the buyer-seller interaction has been researched more from the buyer's or consumer's perspective. Consumer protection is more popular than seller protection, which should be given equal priority. This is due to the fact that many business players nowadays, particularly online enterprises, are from the middle to lower economic scales, and hence do not have a strong enough economic position.

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## Research Method

This research used normative research, which is legal research conducted through the examination of secondary data. Three legal materials were reviewed as secondary data. 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 encyclopaedias 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.

The collected data was then analysed qualitatively. Qualitative analysis is a method of conducting research that involves collecting, analysing, and then connecting the information obtained from document studies with the issues to be discussed. The descriptive data analysis is the result of qualitative data analysis. The obtained results are then presented descriptively and discussed in the form of logical and systematic descriptions, and then linked with the findings of the literature review, which were then analysed to address the problem statement. The findings were reached by applying deductive logic or advancing from general to specific

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## Results and Discussion

### The Nature Of Good Faith For The Liability Of The Parties In The Agreement

A legal relationship that results in rights and responsibilities is referred to as an obligation. In civil law theory, obligations can be generated in two ways: by law and by agreement. Articles 1352-1353 of the Civil Code govern the obligation imposed by the law. The obligation arising from the law is one that occurs as a result of certain occurrences, independent of the will of the people involved. The obligation derived from the law is the result of the subject of law's activities. As a result, by engaging in a series of behaviours, the legal subject incurs legal consequences in the form of an

obligation to the relevant parties. The legal subject's behaviour may be an act that is permitted by law or an act that is prohibited (against the law). (Mardjadi, 2005) The second is an obligation that exists because of an agreement. An agreement is an occurrence in which one person promises another or two persons or parties commitment to do something. An 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. According to the preceding definitions, Subekti contends that a contract is also known as an agreement since the two parties involved agree to do something. The parties' binding agreement is regarded legal if it corresponds with the requirements outlined in the Civil Code. According to Civil Code Article 1320, the following are the prerequisites for a legal agreement:

- a. There is a consensus from those who carry out the agreement;
- b. There is a competency to conduct an agreement (obligation);
- c. The agreement must have an object of provision;
- d. What is being agreed upon is a lawful cause.

In addition to the legal requirements that must be addressed in the agreement, there are numerous principles that must be followed in order for an agreement to be enforced. These factors must be considered so that the goal of reaching an agreement is to provide justice, order, and legal certainty. (Sinaga, 2018) The principle of good faith is one of those mentioned. 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 becomes challenging because good faith is an abstract concept that pertains to human thoughts. (Hadi et al., 2017) However, Article 1338 paragraph 3 states that all agreements must be enforced on the basis of trust or belief and must be in accordance with the values of decency and justice. According to Subekti, the primary foundation of contract law is good faith. (Subekti, Pokok-Pokok Hukum Perdata (Jakarta: Intermedia, 2005). An agreement in good faith is to enforce an agreement by prioritizing societal decency values. Van Dunne's grammatical interpretation of good faith divides an agreement into three stages: before the contract (*precontractuale* phase), during the contract (*contractual* phase), and after the contract (*postcontractuale* phase). Each stage of the agreement must be governed by the principle of good faith. (Hernoko, 2014)

The meaning of the principle of good faith can be viewed theoretically in two ways: subjective good faith, which is related to honesty, and objective good faith, which is related to decency and fairness. To begin, subjective good faith in relation

to honesty requires the parties to be honest prior to the implementation of the agreement. Subjective good faith is frequently present at the *precontractuale* stage, when the parties declare truthfully their identities and other details that may affect the agreement to be made. Second, there is objective good faith, which is associated with propriety and fairness. During the implementation of the agreement (contractuale phase), objective good faith is frequently present. In terms of what is meant by decency and fairness, no clear limitation has been identified as a basis for determining whether an agreement has been carried out properly and fairly. However, according to Subekti, good faith allows judges the right to evaluate an agreement and to disregard the agreement if illegal or unjust details are discovered. (Priyono, 2017) As a result, until now, judging whether an agreement has met the principle of good faith has been left to the court as an adjudicator. In his work, Gordley contends that "fairness, reasonable standards of dealing, and a common ethical sense" are always related with "good faith in practice." (Gordley, 2000) This opinion is consistent with one of the judges' decisions in civil case no. 341/K/Pdt/1985, Mrs. Boesono and R Boesono against Sri Setianingsih, dated March 14, 1987.

The Judges in this case determined that the interest rate of 10% per month was excessive and unjust. As a result, the judges decided to lower the 10% interest rate to 1% per month. The judge changed the contents of the parties' agreement in the decision on the grounds that there was a reasonable standard of dealing that generated unfairness in the agreement. It indicates that the judges have the authority to amend the contract if its implementation contradicts the parties' sense of justice (*recht gevoel*). (Arifin, 2020) Good faith is important in achieving a fair and balanced agreement for the parties. A fair and balanced agreement is the key to the parties' satisfaction with the agreement's implementation and results. The agreement is deemed to have been successfully implemented if the parties are satisfied with it. However, if one of the parties fails to act in good faith, as defined in Article 1338 paragraph 3 of the Civil Code, this cannot affect the parties' fundamental rights and obligations as agreed upon in the agreement. (Turangan, 2019) As a result, the absence of the essence of the principle of good faith in an agreement is not a basis to remove the parties' rights and obligations, nor is it a justification to dissolve the agreement

### Consumer Liability In Cod Transactions Viewed From The Principle Of Good Faith

A COD, or Cash on Delivery, is a popular payment method right now. This

strategy is commonly employed in online buying and selling transactions, where buyers place orders using applications or third-party platforms that connect vendors and buyers without requiring direct communication. Payments were typically made via the transfer technique at the start of the development of online buying and selling via applications. So, the customer pays a payment to the application, and the seller delivers the products to the buyer via shipping service. After the customer receives the items and confirms that they are the same goods that were ordered, the payment previously accommodated by the application will be given to the seller. This strategy is aimed to avoid losses, particularly from the buyer. If the payment is collected directly by the seller at the start of the order, there is a risk that the items will not be delivered by the seller or that the goods sent will not be the same as those bought by the customer. However, it turns out that this strategy did not reach everyone. One of the most significant challenges is that many people do not have bank accounts because the transfer method relies on bank services to send money. Furthermore, for persons who reside in quite rural places, it can be difficult to find ATMs or transfer counters. Despite the availability of application-based mobile banking technology, many consumers are still hesitant to adopt mobile banking applications. As a result, applications are increasingly using the COD method to reach a wider group of users.

Buyers do not need to make payments via transfer when using the COD option. They merely wait for the order to arrive and pay the courier when it arrives. Given the benefits, this practice is increasingly gaining popularity. The buyer benefits from reduced fraud because payment is done after the buyer receives the products, and the supplier benefits from being able to access a larger consumer base. (Nisa et al., 2021) However, the difficulty is that buyers believe that by using this method, they have the right to see the goods first and cancel it if they dislike it. Many individuals misunderstand this concept. The genuine agreement is created when the customer agrees to order and the supplier accepts the order. As a result, if the goods come as specified in the application, consumers have no cause to decline the order. There are numerous theories about agreement. The statement theory (*Uitingstheorie*) believes that an agreement is made when there is a statement to accept an offer. (HS, 2021) The delivery theory (*verzendtheorie*) states that an agreement is made when there is a statement to make a delivery. (HS, 2021) The third theory is the knowledge theory (*Vernemingstheorie*), which argues that an agreement occurs when the one making the offer is already aware that the offer has been accepted. (HS, 2021) The acceptance theory (*ontvangstheorie*) argues that an agreement is made when the offering party receives an answer from the second party. (HS, 2021) Based on the theories presented above, it is possible to establish an agreement depending on the



legal events and the parties' will.

The theory of knowledge can be utilized as the basis for an agreement in online transactions. In application-based trades, the agreement occurs when the buyer placed an order and follows with payment. The application then sends a notification to the seller's account, and the seller accepts the order. In COD transactions, the advance payment obligation is replaced by payment by courier together with the order delivery. This demonstrates that whether the online trading method is transfer-based or COD-based, the agreement is considered to have been reached. This is consistent with Article 20 paragraph 1 of Law No. 11 of 2008 on 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, resulting in rights and responsibilities for the parties. According to Article 1338 of the Civil Code, "legally and binding agreements shall apply as laws for the parties who make them, cannot be unilaterally cancelled without the consent of both parties, and must be carried out in good faith." In Indonesia, the idea of good faith serves as the foundation for the enactment of agreements, including electronic transactions. Article 3 of the Electronic Information and Transaction Law 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 of 2019 concerning the implementation of electronic transactions, which underlines the need of good faith, the principles of prudence, transparency, accountability, and fairness in electronic transactions.

The principle of good faith must underpin every phase of the agreement's implementation, both conventional and online. The importance of good faith prior to the transaction is critical in online transactions using the COD method. As in modern contract law, which emphasises the principle of good faith, its execution must begin before the agreement is signed and must exist since the negotiation stage (*Pre-contractuale*). (Yuanitasari, 2020) The idea of good faith prior to the transaction is directly tied to the parties' personalities. Both the seller and the buyer must be truthful during the *pre-contractuale* phase. In reality, good faith is unpredictable because it is a state of mind that cannot be quantified. (Harun et al., 2019) However, certain actions for sellers and buyers are deemed to be in good faith, particularly in internet trade transactions. The seller has to accurately describe the details of the products offered through the application, including the brand, type of goods, use, and physical characteristics of the goods. It is emphasized in paragraph 1 of Article 48 of the Government Regulation on Information and Electronic Transactions, which

states that "business entities offering products through electronic systems must provide complete and correct information relating to the terms of the contract, the producers, and the products offered."

Buyers using the COD transaction method demonstrate good faith by being honest and providing clear information about their identity in the application, such as their name, phone number, and correct address. Furthermore, prior to initiating a transaction, the buyer is expected to have thoroughly studied the description of the item to be purchased. By making an order, the customer has agreed to the item's specifications and will pay when the products are delivered. It is critical to understand that this COD payment method is not a transaction in which purchasers can refuse payment and return the product for any reason. As a result, if the buyer cancels unilaterally after the products have arrived, the buyer is considered to have defaulted or violated the agreement. Failure to fulfil or neglect to perform the responsibilities indicated in the agreement signed between the creditor and the debtor is referred to as default. (HS, 2008) A debtor is said to be negligent if he does not fulfil his obligations or fulfils them late but not as agreed. (Miru, 2016)

Default actions can take the following forms:

- a. Failure to fulfil the obligations at all.
- b. Fulfilling the obligations imperfectly.
- c. Failure to fulfil the obligations on time.
- d. 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 absence of the principle of good faith in an agreement is not reasons for removing the parties' rights and obligations, nor is it grounds for invalidating an online agreement. This is due to the fact that the legitimacy of online trading through COD transactions is still dependent on the fulfilment of other valid agreement requirements outlined in Article 1320 of the Civil Code, including agreement, capability, specific object, and lawful cause. As a result, if an agreement is to be cancelled, it must be based on the absence of one of the agreement's four legal conditions. In practice, these conditions are difficult to fulfil completely, especially in terms of capability, because it is difficult to know whether the parties, particularly

the buyer, are <sup>37</sup> authorized to carry out legal actions, but the transaction is considered valid as long as it is not detrimental to both parties. (Lamber, 2018) There are at least five parties involved in online trading using the COD method: the seller, buyer, application/marketplace, expedition company, and courier. (Maisyura Cut Sukmawati Risna Dewi, 2021) This system starts with the customer placing an order on the marketplace, and then the order notification is sent to the seller. The seller then packs the products and uses the services of an expedition company to ship the goods to the seller. The expedition company then assigns a courier to deliver the products, which are often delivered to the buyer's residence.

After receiving and inspecting the requested items, the customer must complete his commitment to make payments via courier. Payments made through the courier will be handled by the application and paid to the seller. The advantage of this system is that the customer can inspect the products before making a payment. As a result, if the item or product is not as stated in the application, the customer has the option to return it. The description of the method of COD-based online trading leads to the conclusion that the obligation of the parties in this transaction is not as easy as a traditional trading agreement involving only two parties. In COD transactions, it is critical to understand which party is suspected of breaching the agreement and must consequently be held accountable. When customers refuse to pay for the things they have requested, the reason for the refusal must first be determined. If the consumer refuses to pay because the goods received do not match the description in the application, there is an authorized process to resolve the issue. If this occurs, the buyer must still accept the items and pay the courier. The buyer's claims that the products were not as described in the application cannot be used to <sup>38</sup> avoid payment responsibilities. It is also not a cause to terminate the agreement. (NR et al., 2022) Article 1266 of the Civil Code regulates the cancellation requirement, which provides that cancellation can be done if three conditions are met, namely a reciprocal agreement, default, and cancellation must be requested by a judge (court).

As a result, unilateral cancellation falls within the category of default. In response to the alleged default, the seller may later seek compensation or reimbursement under Civil Code articles 1266, 1267, and 1517. In the case of products received but not as ordered or described in the application, the buyer may request a refund of goods in line with the policies of each marketplace. If the products provided are not what was promised, the seller is the one who has the potential to default. As a result, the seller is required to provide a replacement to the buyer. According to article 48 paragraph (3) of the Government Regulation on Information and Electronic Transactions, "business actors are obliged to provide consumers

and/or contract recipients with time limits to return goods delivered and/or services provided if they are found to be different from what is stated in the contract or if there are hidden defects." Furthermore, if customers refuse to pay because the goods requested are as described in the application but have been damaged, the process that caused the damage must be investigated. If the goods were damaged from the start or had hidden defects, the vendor is obviously liable. However, if the damage is confirmed to occur during the expedition company's delivery of products and there is no force majeure in the process, the expedition company is responsible, unless the expedition company can prove otherwise. (Rahman et al., 2023)

According to the author, the issue of unilateral cancellation by the buyer is difficult to handle in practice due to a number of factors. One of them is the cost of the case, which will be higher than the cost of the products. The courier, as the party responsible for receiving payment, is equally in a difficult position in this case. Finally, if a buyer refuses to pay for a cash on delivery package for no obvious reason, the item can be returned to the seller or even paid for by the courier. In this instance, the seller would normally still cover the shipment or administrative charges to the expedition service in accordance with the agreed-upon terms. When this occurs, it is obvious that both the seller and the courier will incur losses.

#### 4. Conclusion<sup>4</sup>

The Civil Code underlines in Article 1338 paragraph 3 that "agreements must be carried out in good faith." There are two theoretical interpretations of the principle of good faith. First, subjective good faith relating to honesty normally occurs before the agreement when the parties honestly disclose their identities and other information that may affect the agreement to be made. Second, objective good faith in terms of propriety and fairness, which normally occurs throughout the agreement's implementation. Good faith grants the judge the authority to evaluate an agreement and to modify it if there are improper or unjust details in the agreement. As a result, good faith is important in achieving a fair and balanced agreement for the parties. However, the lack of good faith in the agreement is not a justification to remove the parties' rights and obligations, nor is it a reason to cancel the agreement.

In Indonesia, the idea of good faith serves as the foundation for the enforcement of agreements, including electronic transactions. Article 3 of the Electronic Information and Transaction Law emphasizes that good faith is the basis for the use of information technology and electronic transactions. The function of good faith before the transaction is critical in online transactions using the cash on delivery

approach. Both the seller and the buyer must be truthful during the pre-contractual process. Sellers must accurately write the specifications of items sold through applications, including brands, types of goods, uses, and the physical characteristics of the commodities. Buyers using the COD transaction method demonstrate good faith by being honest and providing clear information about their identities in the application, such as their name, phone number, and correct address. Furthermore, prior to initiating a transaction, the buyer is expected to have thoroughly studied the description of the item to be acquired. By making an order, the customer has agreed to the item's requirements and will pay when the products are delivered. It is critical to understand that this COD payment method is not a transaction in which purchasers can refuse to pay and return the merchandise for any reason. As a result, buyers who cancel unilaterally after the items have arrived may be considered in default or violation of contract. If the alleged default is proven, the seller has the right to seek compensation or replacement under Civil Code articles 1266, 1267, and 1517.

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