

Implementation of the Principle of Good Faith in Online Buying in Connection with the Case of Buying and Selling Fashion Products Beteng Trade Center (BTC) Surakarta

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ABSTRACT: Online buying and selling agreements in Indonesia are very vulnerable to occur because in the implementation of online buying and selling, the parties do not meet directly (face to face) but only through online media, it is possible for problems related to the principle of bad faith to cancel. unilateral transactions to consumers. One of the cases related to the application of the principle of good faith in the online sale and purchase agreement, namely in the wholesale and retail shopping center for fashion products Beteng Trade Center (BTC) Surakarta, namely there are several traders in BTC who have not implemented the principle of good faith optimally because they have not fully met the requirements. indicators in exchanging information. Therefore, it is interesting to analyze the implementation of the principle of good faith in online buying and selling related to the case of buying and selling fashion products at the Beteng Trade Center (BTC) Surakarta and the settlement of legal consequences of violating the principle of good faith in the online sale and purchase agreement in the case of BTC Surakarta Fashion Products. The specifications of this research are descriptive, the type of research is normative juridical, the method of approaching the law. Data collection techniques through document studies, as well as analysis carried out in a qualitative normative manner. Based on the results of the analysis, it is concluded that the implementation of the principle of good faith in online buying and selling is associated with the case of buying and selling Fashion Beteng Trade Center (BTC) Surakarta products based on the benchmark indicator of an agreement that always begins with an offer between traders and buyers, and there are words "agreed", namely offers made by traders through internet media such as BBM, WA, Instagram, and Facebook received acceptance from prospective buyers in the form of information regarding names, addresses, contact numbers, and items ordered. The settlement of the legal consequences of violating the principle of good faith in the online sale and purchase agreement in the case of BTC Surakarta Fashion Products, which can result in prosecution of parties who have bad intentions not only in a civil manner but can also be brought into the realm of criminal law. The process of resolving disputes related to violations of the principle of good faith can be through the general court environment (litigation) or through non-litigation or outside the court. If online business actors do not have good faith in the online agreement, they can be punished according to the provisions of Article 62 of the Consumer Protection Act and aggravated by the provisions of Article 45 paragraph (2) of the ITE Law.

Keywords: Good Faith Online Sales and Purchase Agreement

I. INTRODUCTION

The development of buying and selling online is because online business actors in marketing their wares do not need a physical store only through a web address or with other social media, so that it will save expenses or capital from online business actors. However, it is undeniable that, behind the many conveniences

offered by online trading, there are still some problems. Disputes between the parties are very vulnerable to occur because in the implementation of buying and selling online, the parties do not meet directly (face to face) but only through online media, so that in some cases there are often discrepancies related to the goods ordered by the consumer due to bad faith from the online shop when explaining the product details. In addition, the problem is caused by the principle of bad faith from consumers who cancel orders for goods unilaterally and this has the potential to cause losses for online business actors.

Therefore, the issue of trust and the principle of good faith is very important in maintaining the continuity of the transaction.

According to Asril Sitompul:

“These problems give rise to a legal problem, among others regarding the legal aspects of the agreement which are very much needed in proof in order to fulfill legal certainty, in this case tangible or written documents as occurs in conventional buying and selling. Meanwhile, the electronic sale and purchase agreement is carried out in a virtual world (virtual world), in the absence of real written documents such as deeds, both authentic deeds and private deeds, such conditions will cause difficulties in proving in the event of a dispute over the sale and purchase. electronically.”¹

Online transactions in Indonesia are based on Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, but for their validity they are still based on the rules in Book III of the Civil Code, especially the regulation regarding the terms of the validity of the agreement, namely Article 1320 Civil Code. An agreement can be executed if the agreement is valid. According to the law, an agreement can be said to be valid if in its implementation it has fulfilled the four conditions for the validity of the agreement contained in Article 1320 of the Civil Code, namely:

- “1. Agree on those who bind themselves;
2. Able to make an agreement;
1. A certain thing; and
2. A lawful cause”.

One of the cases related to the application of the principle of good faith in online buying and selling agreements, namely in the wholesale and retail shopping center for fashion products in Surakarta, where traders and buyers apply e-commerce, namely Beteng Trade Center (BTC) Surakarta. BTC is the largest and most comprehensive wholesale and retail shopping center in the city of Surakarta and its surroundings. The online sale and purchase agreement in BTC is one of the legal acts that occur between the merchant and the buyer. Therefore, in its implementation it cannot be separated from the inherent principles and must be obeyed. One of the principles applied is the principle of good faith. The provisions regarding the principle of good faith are contained in Article 1338 paragraph (3) of the Civil Code.

At the agreement stage, some traders in BTC have not implemented the principle of good faith optimally because they have not fully met the indicators in exchanging information. At the time of bidding, some traders have not provided information that contains an indicator of a picture of the goods because they use images taken from the internet, not from the actual goods, so that it can cause discrepancies between the images offered and the actual goods. These discrepancies can include colors, models, or stitches. Meanwhile, buyers in BTC have implemented the principle of good faith because at the time of receipt, the buyer has provided information that includes indicators of name, address, contact number, and ordered goods.

Based on the description above, it is interesting to study about:

1. How is the implementation of the principle of good faith in buying and selling online related to the case of buying and selling fashion products at Beteng Trade Center (BTC) Surakarta?
2. How are the legal consequences of violating the principle of good faith in the online sale and purchase agreement in the case of BTC Surakarta Fashion Products?

¹Asril Sitompul, *Internet Law: An Introduction to Legal Issues in Cyberspace* (Bandung: Citra Aditya Bakti, 2004), p. 59 .

II. METHOD

The problem of this research which is also an important object of research is described, considering that its actuality has a significant correlation with the phenomena that occur in the present. The specification which is also the nature of this research is descriptive. According to Moh. Nazir, the descriptive method is:

“A method of examining the status of a group of people, namely an object, a set of conditions, a system of thought, or a class of events in the present. While the purpose of this descriptive research is to make a systematic, factual and accurate description, picture or painting of the facts, characteristics, and relationships between the phenomena being investigated”.²

This type of research is juridical normative and philosophical, therefore the type of data used is secondary data obtained from the literature, so that the type of data is sourced from library materials, in the form of primary, secondary and tertiary legal materials. In order to solve the research problem, a statutory approach is used. The legislation referred to as has been mentioned in the secondary data types of primary legal materials.

In this study, the data collection method was carried out by literature study, because the research was normative legal research or library law research, namely research carried out by researching library materials.³The data analysis method used is qualitative, meaning that the data obtained which leads to a theoretical study in the form of principles, conceptions, legislation, legal doctrines and the content of legal rules are first described systematically, then analysis is carried out qualitatively.

III. DISCUSSION

Implementation of the principle of good faith in online buying and selling is linked to the case of buying and selling Fashion Products at Beteng Trade Center (BTC) Surakarta

The principle of consensualism underlies the birth of an agreement from the agreement that arises between the two parties who enter into an agreement, in addition to the principle of consensualism there is also the principle of freedom of contract which regulates the formation of the agreement. According to Ridwan Syahrani:

"The principle of freedom of contract is a principle which states that basically everyone is allowed to make a contract (agreement) that contains and of any kind as long as it does not conflict with the law, morality and public order".⁴

According to Ridwan Syahrani:

"In a sale and purchase agreement, the principle of freedom of contract is considered important for the parties in buying and selling because this means that there is freedom for them to determine the content (causa) of the sale and purchase they make. - the conditions for the validity of an agreement as contained in Article 1320 of the Civil Code, because a legally made agreement applies as law for those who make it (Article 1338 paragraph (1) of the Civil Code)".⁵

The conditions for the validity of the agreement in article 1320 of the Civil Code are as follows:

- “1. Agree on those who bind themselves;
2. Able to make an agreement;
1. A certain thing; and
2. A lawful cause”.

²Moh. Nazir, *Research Methods* (Jakarta: Ghalia Indonesia, 2003), p.54.

³Soerjono Soekanto and Sri Mamudji, *Normative Legal Research An Introduction* (Jakarta: Raja Grafindo Persada, 2001), p.14.

⁴Ridwan Syahrani, *The Intricacies and Principles of Civil Law* (Bandung: Alumni, 2000), p.212.

⁵*Ibid*, p. 212.

"Furthermore, that the person who will make the agreement must be done in good faith. Good faith in a subjective sense can be interpreted as someone's honesty, namely what lies with a person at the time of legal action."⁶

Meanwhile, good faith in an objective sense is that the implementation of a legal agreement must be based on compliance norms or what is deemed appropriate in society. This principle is contained in Article 1338 paragraph (3) of the Civil Code. In the process of making an agreement, including an online sale and purchase agreement or electronic transaction, it must be based on the good faith of each party in the agreement, both from the online business actor and the consumer.

According to Subekti "the principle of good faith is one of the most important joints in contract law".⁷ The principle of good faith is important in making an online sale and purchase agreement, because basically the consumer must obtain clear information related to the goods offered by the online shop and the online shop must in good faith explain in detail related to the goods to be purchased. purchased by the consumer.

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 law for those who make them". This agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be executed in good faith. The definition of good faith has 2 (two) meanings, namely:

1. Objective meaning, that the agreement made must be carried out with due regard to the norms of propriety and decency.
2. Subjective meaning, namely the notion of good faith which lies in one's inner attitude.⁸

The purpose of the implementation of the agreement in good faith is for the parties to the agreement there is an obligation not to do anything that does not make sense, that is, it does not conflict with the norms of decency and decency, so that it will be able to create justice for both parties and not harm one of the parties. party.

In Law Number 11 of 2008 concerning Information and Electronic Transactions it also requires business actors to provide complete and correct information. This obligation is contained in Article 9 which reads:

"Business actors who offer products through electronic systems must provide complete and correct information regarding contract terms, manufacturers, and products offered".

The online sale and purchase agreement at the Beteng Trade Center (BTC) Surakarta must be carried out in good faith, as stipulated in Article 1338 paragraph (3) of the Civil Code. The principle of good faith covers all stages of the agreement, including the pre-agreement stage, the agreement stage, and the post-agreement stage. The following is the implementation of the principle of good faith in the online sale and purchase agreement on BTC:

1. Pre-Agreement Stage

The benchmark for the existence of the principle of good faith at the pre-agreement stage is that the parties exchange information with each other.

a. Offer

The information provided at the time of bidding includes indicators of the merchant's business identity, pictures of goods, prices and methods of payment for goods, as well as the method of delivery of goods. Offers by traders in BTC are made through internet media such as BBM, WA, Instagram, and Facebook.

⁶Ridwan Khairandy, *Philosophical Basis for the Binding Power of Contracts* (Jurnal Hukum, No. 241, Special Edition, Vol. 18, 2011), p. 44

⁷R. Subekti, *Principles of Civil Law* (Jakarta: Intermasa, 2003), p. 41.

⁸*Ibid*, p. 41.

Based on the results of the author's research, some traders in BTC in providing information have not met the goods image indicators, because these traders do not use images of actual goods, but use images taken from the internet.

b. Reception

The information provided at the time of receipt includes indicators of the prospective buyer's name, address, contact number, and the goods ordered. Acceptance from prospective buyers in BTC is done by sending private messages via BBM, WA, or Line internet media. In acceptance, prospective buyers in BTC have met all four indicators. At the pre-agreement stage, some traders in BTC have not implemented the principle of good faith optimally because they have not fully met the indicators in exchanging information.

2. Agreement Stage

Article 20 paragraphs (1) and (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions states "Unless otherwise specified by the parties, electronic transactions occur at the time of the offer. The transaction sent by the sender has been received and approved by the recipient (paragraph 1), and Approval of the electronic transaction offer as referred to in paragraph (1) must be made with an electronic acceptance statement (paragraph 2). Therefore, the indicator of the existence 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 the internet media.

Traders and buyers in BTC have met both indicators, including 2 (two) parties, namely traders and buyers, and there is the word "agree", namely offers made by traders through internet media such as BBM, WA, Instagram, and Facebook received acceptance from prospective buyers in the form of information regarding the name, address, contact number, and the goods ordered. At the agreement stage, traders and buyers at BTC have implemented the principle of good faith because it meets the benchmark of the principle of good faith, namely the existence of an agreement between the parties with the indicator that there are 2 (two) parties, namely the trader and the buyer, and there is the word "agree", namely Offers made by traders through internet media such as BBM, WA, Instagram, and Facebook received acceptance from prospective buyers in the form of information regarding names, addresses, contact numbers, and items ordered.

3. Post-Agreement Stage

The benchmark for the principle of good faith at the post-agreement stage is that the parties carry out their obligations, the buyer pays for the goods and the merchant delivers the goods. The implementation of the principle of good faith at the post-agreement stage is carried out by buyers and traders in BTC by:

a. Buyer pays for goods

Indicators of the buyer carrying out his obligations in paying for the goods, namely the payment is made at the agreed time and place, the payment is made with an amount of money, and the payment is made using the payment method determined by the merchant.

In the online sale and purchase agreement in BTC, some buyers have not met the payment indicators at the agreed time and place, because the buyers did not come to the merchant kiosk to pay and pick up the goods until the time of unloading the goods or until 15.00 WIB. In addition, some buyers have not met the payment indicator with a certain amount of money because the buyer confirmed the payment by sending a photo of a fake payment proof.

b. Merchants hand over goods

The indicator of the trader carrying out his obligations in delivering the goods is that the delivery is carried out at the agreed time and place and the trader bears the goods delivered. In the online sale and purchase agreement on BTC, some traders have not met the delivery indicator at the agreed time and place, because the merchant sells the agreed goods before the specified time limit or before unloading the goods (15.00 WIB) to other people.

This is due to the frequent occurrence of unilateral cancellations by several buyers by not paying and taking goods at the kiosk until unloading the goods. In addition, some traders in BTC do not control suppliers to

check whether the goods to be supplied have no problems and can be supplied on time, so that some traders are often late in delivering goods or even not delivering goods because the goods from the supplier do not arrive.

Settlement of Legal Consequences of Violation of the Principle of Good Faith in the Online Sale and Purchase Agreement in the Case of BTC Surakarta Fashion Products

Based on the many violations of the principle of good faith that occurred in the case of BTC Surakarta fashion products, violations related to the incompatibility of the form and quality of the goods ordered with the goods received by consumers became the most frequent violations. Such violations are expressly prohibited in accordance with the provisions in Article 8 paragraph (1) letter f of the Consumer Protection Act which states that business actors are prohibited from producing or trading not in accordance with the promises stated in the label, etiquette, description, advertisement or promotion of the sale of the said goods and/or services.

In the event that if it turns out that the goods received by the consumer do not match the photo on the online shop advertisement (as a form of offer), the consumer can sue the online business actor in a civil manner on the pretext of a violation of the principle of good faith or default on the online sale and purchase agreement that has been signed agreed.

Consumers who feel aggrieved in the case of BTC Surakarta fashion products who do not have good faith in fulfilling their achievements in accordance with the agreements agreed under Article 45 paragraph (1) of the Consumer Protection Act can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through the courts. in the general court environment (litigation). However, based on the provisions of Article 45 paragraph (2) consumers are also given a choice in resolving their disputes, namely through non-litigation or out of court through the Consumer Dispute Settlement Agency (BPSK). In resolving disputes outside the court (non-litigation), the Consumer Protection Act facilitates consumers who feel aggrieved can file a lawsuit through the Consumer Dispute Settlement Agency (BPSK), this applies to individual lawsuits (consumers or their heirs), while lawsuits in groups (class action) can only be carried out through a general court.

The provisions of Article 4 letter h of the Consumer Protection Act regulates the rights of consumers, stipulating that consumers are entitled to compensation, compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or not properly. This provision is reinforced by the sound of Article 7 letter g of the Consumer Protection Act which stipulates that business actors are obliged to provide compensation (compensation) or replacement if the goods received by consumers are not in accordance with the agreed agreement.

If the online business actor does not have good faith in the online agreement, then he can be punished according to the provisions of Article 62 of the Consumer Protection Act, which reads:

“Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

Regulations related to legal consequences arising from violations of the principle of good faith in online buying and selling agreements in the case of BTC Surakarta fashion products can also be found in the provisions of Article 45 paragraph (2) of the ITE Law which is threatened with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1 billion.

IV. Conclusion

The implementation of the principle of good faith in online buying and selling is related to the case of buying and selling Fashion Beteng Trade Center (BTC) Surakarta products based on the benchmark stage of the agreement, namely the agreement between the parties. Indicators of an agreement between the parties include 2 (two) parties, namely the agreement always begins with an offer by an agreement between the parties with the indicator that there are two parties, namely the trader and the buyer, and there is the word "agreement", namely the offer What traders do through internet media such as BBM, WA, Instagram, and

Facebook get acceptance from potential buyers in the form of information about names, addresses, contact numbers, and items ordered.

The settlement of the legal consequences of violating the principle of good faith in the online sale and purchase agreement in the case of BTC Surakarta Fashion Products, which can result in prosecution of parties who have bad intentions not only in a civil manner but can also be brought into the realm of criminal law. The process of resolving disputes related to violations of the principle of good faith can be through the general court environment (litigation) or through non-litigation or outside the court. If online business actors do not have good faith in the online agreement, they can be punished according to the provisions of Article 62 of the Consumer Protection Act and aggravated by the provisions of article 45 paragraph (2) of the ITE Law.

For the parties who enter into an online sale and purchase agreement, it is better to prioritize the implementation of good faith in fulfilling the agreement, both in terms of information disclosure and in terms of delivery and payment of goods ordered. Thus, it is hoped that there will be no more problems experienced by the parties who agreed in the online sale and purchase agreement. The government must play an active role in the protection of the parties in the online agreement, a complaint system is needed that is fast and easy in resolving the problems experienced by the parties in the agreement. It is better for law enforcement officials to also issue a blacklist for users of this online trade which has been proven to be detrimental to other parties. This aims to provide a deterrent effect for parties who have bad faith in online buying and selling agreements.

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