

LEGAL LIABILITY IN E-COMMERCE AGREEMENTS THROUGH THE CASH ON DELIVERY (COD) PAYMENT SYSTEM

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Abstract: The online sale and purchase agreement is in principle the same as the conventional sale and purchase agreement. The difference is only in the medium, where the seller and the buyer do not meet directly (face to face) and payment and delivery of goods is determined according to the agreement in the provisions of article 1458 of the Civil Code. The problem to be studied is the legal construction in online buying and selling with COD payments and the responsibilities of the parties involved in buying and selling online. The method used is normative juridical research with qualitative descriptive analysis. The results of the study can be explained that the legal construction of online buying and selling made in an electronic contract through an electronic system is a manifestation of the agreement of the parties as formulated in Article 47 PP PSTE Number 82 of 2012. With the validity of the electronic contract, the provisions of Article 1338 of the Civil Code will apply where the agreement made is valid will bind the parties, so that rights and obligations arise where the seller is to send the ordered goods and the buyer must pay the agreed price. Because it is done online, the delivery of goods requires the services of a third party, namely an expedition service. so that rights and obligations arise where the seller is obliged to send the ordered goods and the buyer must pay the agreed price. Because it is done online, the delivery of goods requires the services of a third party, namely an expedition service. so that rights and obligations arise where the seller is obliged to send the ordered goods and the buyer must pay the agreed price. Because it is done online, the delivery of goods requires the services of a third party, namely an expedition service.

Keywords: Cash on Delivery, Expedition, Electronic Transaction, Electronic Contract

1. INTRODUCTION

Law Number 11 of 2008 concerning Information and Electronic Transactions explains that the use of information, media, and communication technology has caused changes in behavior in society and human civilization globally, and has caused world relations to become borderless, as well as causing social, economic, and social changes. culture. One of them is in the field of civil law, where trading activities through electronic systems (electronic commerce) have become part of national and international commerce. Therefore, the role of law is very important which regulates the legal relationship between the parties involved and its legality so as to support business economic activities in order to create justice and balance.¹

For business people, e-commerce has a positive impact because it further reduces operational costs such as providing a place to sell, labor, promotions (advertising), and can even further expand the market network to market share, resulting in maximum profits. Meanwhile, consumers (buyers) feel more comfortable shopping anywhere because they only access one of the marketplaces available on the internet site either through computers, laptops, or smartphones, so that shopping opportunities are more flexible because they can be done anytime and anywhere, as well as convenience in transactions.²

The process of buying and selling online can be described briefly, namely the business actor promoting and offering his wares by uploading images and descriptions in the available marketplace. Consumers who are interested in the merchandise and match the type, price, shipping cost, and payment method listed, then the consumer buys the goods by pressing the buy button or what we know as check-out. Next, the business actor packs the goods that have been selected and checked out by the consumer and the business actor sends it to the address that has been stated by the consumer through an expedition service (goods delivery service). After the goods arrive at the consumer's address,³

Thus, buying and selling online is in principle the same as a conventional sale and purchase agreement. It's just that the parties do not meet each other directly or face to face, so the agreement between them is based on a sense of trust. As the formulation in Article 1457 of the Civil Code which essentially states that buying and selling is an agreement between two parties where one party is the seller who is obliged to deliver the goods and the other party is the buyer who is obliged to pay the price for the goods.⁴

In addition, in accordance with the principle of consensualism in the agreement, where when an agreement has been reached between the parties regarding the price and goods, immediately a sale and purchase agreement is born so that it is legally binding on the parties even though the delivery and payment of the goods that are the object of the agreement have not been made. Therefore, in this online sale and purchase agreement, there is no agreement file as in the conventional sale and purchase agreement.⁵

There is a shift in buying and selling transactions carried out online, so there is a risk of legal problems, for example prone to fraud, default and others. One of them is the case that occurred in Barru Regency, South Sulawesi Province in 2020, where a business actor offered

¹Endang Sutrisno, *Anthology of Law in Globalization*, Cirebon : In Media, 2019, page 132.

²Ramadhani, AN, Fasa, MI, Suharto, *Analysis of Payment Methods in Increasing Consumer Buying Interest in E-Commerce: A Review of Islamic Economic Perspectives*, *Journal of Bina Bangsa Ekonomika*, Vol. 15 No. 01, February 2022, pages 111-117

³Rama Dhianty, *Responsibilities of Couriers in Electronic Trading Transactions (E-Commerce) with Cash On Delivery (COD) Payment Methods in the Perspective of Agency Relations*, *Syar'I Social and Cultural Journal*, Vol. 9 No. 1, 2022, pages 213-225

⁴Code of Civil law.

⁵Dermawansyah, TT, Polindi, M., *As-Salam Contracts in the Online Buying and Selling System (Online Shopping Case Study at Lazada.co.id)*, *Journal of Aghinya Stiesnu Bengkulu*, Vol. 3 No. 1, January-June 2020, pages 20-37.

goods on his Facebook account to which someone responded by buying the offered goods. After the consumer made a payment by transfer, it turned out that the consumer received the goods that were not in accordance with what was offered in the business actor's Facebook account posting.⁶

In addition to the occurrence of fraud, the case has also violated the provisions of the legal terms of an agreement as regulated in Article 1320 of the Civil Code. Therefore, consumers are advised to be more aware of business actors who offer their products through personal accounts when they want to make an agreement to purchase an item. It will be safer to conduct online buying and selling transactions through widely known marketplaces such as Shopee, Tokopedia, Bukalapak, Lazada, and others that already have a neatly structured and organized system so that they tend to be safer.

Moreover, the marketplace usually has provided a cash payment system facility at the consumer's place or commonly known as COD. This COD facility is an added value for the marketplace that prioritizes the safety of consumers in online transactions and removes consumer doubts that buying and selling is not fraudulent, thereby increasing consumer confidence in business actors. In addition, it is realized that not all consumers have an electronic wallet or sufficient bank account, so that this COD facility can reach consumers in all walks of life.

Based on the description above, it attracts the attention of the author to find out more about buying and selling online with the COD payment system, because there are many events that cause legal problems such as cases of goods received by consumers not in accordance with what was ordered so that the sender of the goods (courier) the target of consumer anger. Or another case when a consumer who has paid the purchase price turns out to only contain an empty package, thus threatening the courier to return the payment.

Not to mention the losses experienced by entrepreneurs who have sent their merchandise to consumers or buyers by using a delivery service (courier) but the goods are returned by consumers on the grounds that they are not in accordance with what is being offered so that the business actor must bear the costs for the cost of shipping the goods. . Or when a business actor sends goods using the COD payment method to the expedition, where the expedition sends the goods/merchandise to the consumer/buyer via courier, when the courier has arrived at the address stated by the consumer, but at that address the consumer does not respond nor responsible for the goods, even the courier called and sent messages to consumers many times and there was no response,

Considering that there are no rules that specifically regulate online buying and selling transactions so that it returns to the principle of buying and selling as an agreement between two parties, then in accordance with article 1338 paragraph (2) of the Civil Code, an agreement made legally will be binding as law. Invite both parties to make it, so the author is interested in knowing the responsibilities of the parties involved in buying and selling online with direct payment on the spot or COD.

2. RESEARCH METHODS

The research method used is a normative method where research is carried out by examining library materials related to the responsibilities of the parties involved in buying and selling online with direct payments on the spot or COD and using an approach to legal principles and related laws. with regulations that support online buying and selling transactions.

⁶ <https://newsmetropol.com/polres-barru-Revelation-case-penipuan-transaksi-jual-beli-online/#>, accessed on April 24, 2022, at 04.58 WIB

Judging from the nature of the research, the preparation of this journal uses descriptive research methods,⁷ which seeks to reveal problems in accordance with the position of the parties involved in online buying and selling transactions as well as legal responsibilities arising from electronic contracts carried out in electronic systems.

The analysis technique is used qualitatively by outlining legal concepts related to the validity of online buying and selling agreements so that they can provide a constructive picture of the responsibilities of the parties involved in the sale and purchase so that they can answer the problems they want to know.

3. RESULTS AND DISCUSSION

3.1. Agreement

Based on the Civil Code (KUHPerdata), the agreement is regulated in Book III (Article 1233-1864) regarding engagement. *Bergerlijk Wetboek (BW)* uses the terms contract and agreement for the same meaning. This can be seen clearly from the title of Chapter II of Book III *Bergerlijk Wetboek (BW)*, which is about engagements born of contracts or agreements. From the title it can be concluded that contracts and agreements are interpreted with the same meaning.⁸

In Book III of the Civil Code, there are five kinds of legal principles, namely the principle of freedom of contract, the principle of consensualism, the principle of *pacta sunt servanda* (principle of legal certainty), the principle of good faith, and the principle of personality. Of the five legal principles, which have a very close relationship with the drafting of the contract, namely the principle of freedom of contract and the principle of *pacta sunt servanda*.⁹

1. The principle of freedom of contract (Freedom of Contract).
2. The principle of consensualism (consensualism).
3. The principle of *pacta sunt servanda*.
4. The principle of good faith.
5. The principle of personality (personality).¹⁰

The following can be concluded various things that need to be considered and fulfilled in making an agreement, namely:

- a) Contract law regulatory system. Article 1338 paragraph (1) of the Civil Code.
- b) Conditions for the validity of an agreement. These conditions are regulated in Article 1320 of the Civil Code which contains four legal requirements in an agreement.
- c) The principle of the agreement.
- d) Forms and types of agreements. The form of the agreement can be divided into two kinds, namely written and unwritten.
- e) Terms and conditions that must be considered in making an agreement include achievement, default, subpoena (regulated in articles 1238 and 1243 of the Civil Code), compensation, coercive circumstances, and risks.

⁷Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory, and Practice)*, PT Rajagrafindo Persada, Depok City, 2020, page 133 states that descriptive research aims to describe or describe problems that exist in certain areas/regions or at certain times. and the researcher will try to reveal the facts completely as they are.

⁸Niru Anita Sinaga, *The Role of Covenant Law Principles in Realizing the Purpose of the Agreement*, *Binamulia Hukum*, Vol. 7 No. 2, December 2018, page 110

⁹Salim, Abdullah, Wiwiek Wahyuningsih, *Contract Design and Memorandum Of Understanding (MoU)*, Jakarta : Sinar Graphic, 2019, page 1

¹⁰Ghea Kiranti M. Shalihah, Max Sepang, Josina E. Londa, *Op. Cir.*, pp. 8-10

- f) Things that must be considered by the parties who will enter into an agreement such as the legal authority of the parties, taxation, legal rights, agrarian issues, choice of law, dispute resolution, termination of the agreement, and the form of standard agreements.¹¹

3.2. Payment Types

Payment in general can be interpreted as the transfer of a sum of money from the payer to the recipient. Technology-based payments are known as digital payments. In digital payments, money is stored, received, and processed in the form of digital information and the transfer process is initialized through electronic payment instruments. The main components of this digital payment system are, among others, money transfer applications, network infrastructure, regulations and procedures that dictate the use of the system.¹²

These various types of goods and services require payment technology that supports transactions in cyberspace. The current payment system is divided into several categories, namely:

1. Bank transfer. Buyers usually transfer (this transfer can be done by cash deposit or transfer via ATM).
2. Debt System. This system requires consumers to first have an account at a bank. If he is going to make a payment, the payment will be taken from the account by debiting, some examples of this system are Bank Internet Payment System (BIPS), FHTC, Electronic Check (E-Check), and so on.
3. Credit card. After the order is completed and the consumer chooses to pay by credit card, the consumer will be connected to the Bank as the payment gateway. This system transfers payment obligations to a 3rd party (credit) and then this credit will be billed to the person concerned.
4. Digital Money (E-Money). This system is one of the most recent developments in Internet Payment.

In its use, this system is similar to the use of cash in daily activities or activities in general.¹³ Some examples of digital money are:

- a. OVO
 - b. GO-PAY
 - c. FUND¹⁴
5. *Cash On Delivery*(COD)
Cash On Delivery(COD) or payment at this place is one method of electronic transaction payments.¹⁵

3.3. Mechanism of Buying and Selling Online

One of the merchants used as the object of this research is the online shop ghanimi which is engaged in the fashion retail trade business with its official website ghanimiofficial.com. Buying and selling techniques at the ghanimi online shop can be done by means that consumers must first enter the official ghanimi website page and are advised to first read the terms and conditions set by ghanimi by clicking on the "terms & conditions" option. The next step for consumers to create an account by entering a cellphone number. After obtaining an account, consumers can browse and choose the products sold by ghanimi. If there is a product that is of interest, then just click on the image of the product so that consumers get all the information

¹¹Iriyadi, Muhammad, Principles of Balance in Covenant Law, Hermeneutics, Vol. 5 No. 1, February 2021, pp. 103-105

¹²Jefry Tarantang, Annisa Awwaliyah, Maulidia Astuti, Meidinah Munawaroh, the development of digital payment systems in the era of the industrial revolution 4.0 in Indonesia, Al Qardh journal. Vol. 4, July 2019, p. 65

¹³Abdul Halim Barkatullah, Electronic Transaction Law as a guide in dealing with the digital era of e-commerce business in Indonesia, Bandung : Nusa Media, 2018, pp 75-80

¹⁴Jefry Tarantang, Annisa Awwaliyah, Maulidia Astuti, Meidinah Munawaroh, Op.Cit, pp. 65-67

¹⁵Abdul Halim Barkatullah, Op.Cit, page 74

about the product in question, starting from the price, type, color, size and so on. After matching and in accordance with the products offered, consumers can contact ghanimi via the available WA chat in order to be more sure of the product they want to buy. Then the consumer fills out the order form according to the available draft. However, consumers are advised to re-examine the products purchased to be more certain of the products they buy. After that, just fill out the order form for the delivery of goods by writing some inputs including the address to send the goods that have been ordered. The final step is to determine the shipping method and payment method, each of which has been determined by the seller as stated in the terms & conditions. consumers can contact ghanimi via the available WA chat in order to be more sure of the product they want to buy. Then the consumer fills out the order form according to the available draft. However, consumers are advised to re-examine the products purchased to be more certain of the products they buy. After that, just fill out the order form for the delivery of goods by writing some inputs including the address to send the goods that have been ordered. The final step is to determine the shipping method and payment method, each of which has been determined by the seller as stated in the terms & conditions. consumers can contact ghanimi via the available WA chat in order to be more sure of the product they want to buy. Then the consumer fills out the order form according to the available draft. However, consumers are advised to re-examine the products purchased to be more certain of the products they buy. After that, just fill out the order form for the delivery of goods by writing some inputs including the address to send the goods that have been ordered. The final step is to determine the shipping method and payment method, each of which has been determined by the seller as stated in the terms & conditions. However, consumers are advised to re-examine the products purchased to be more certain of the products they buy. After that, just fill out the order form for the delivery of goods by writing some inputs including the address to send the goods that have been ordered. The final step is to determine the shipping method and payment method, each of which has been determined by the seller as stated in the terms & conditions. However, consumers are advised to re-examine the products purchased to be more certain of the products they buy. After that, just fill out the order form for the delivery of goods by writing some inputs including the address to send the goods that have been ordered. The final step is to determine the shipping method and payment method, each of which has been determined by the seller as stated in the terms & conditions.

From the description above, it can be deduced that the official website called ghanimiofficial.com which can only be accessed via the internet either by smartphone or computer, where this is called the "electronic system". Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter UU ITE) and Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions (hereinafter PP PSTE) both state that the electronic system can be in the form of applications, computers, or smartphones, used to manage electronic information which is the substance or content of an electronic document. In brief, electronic documents owned by the online shop ghanimi in the form of product images uploaded by the owner or manager. While the information about each product image is called electronic information.¹⁶

3.4. Online Purchase Agreement

Electronic information displayed on the ghanimi online shop, when it has attracted the attention of potential consumers, will be continued by the consumer by ordering or buying the

¹⁶Komang Frisma Indra Prastya, Ni Ketut Sari Adnyani, Si Ngurah Ardhya, Juridical Review on the Implementation of Online Sales and Purchase Agreements Through E-Commerce According to Article 1320 of the Civil Code and Law Number 19 of 2016 Regarding Information and Electronic Transactions, Singaraja: Journal of the University's Yustisia Community Ganesha's Education, Volume 4 Number 2, August 2021, page 621.

products offered. Thus, it can be said that an electronic transaction has occurred, which is a legal act carried out using electronic media such as computers, the internet or others in accordance with Article 1 number 2 of the ITE Law. Furthermore, what is meant by "legal action" in the sense of electronic transactions in Article 1 of the ITE Law is a sale and purchase agreement. The ITE Law states that an electronic contract is an agreement made by the parties through an electronic system. Furthermore, the formulation of Article 47 paragraph (1) PP PSTE states that electronic transactions are carried out based on an electronic contract or other contractual forms/types which are a manifestation of the agreement of the parties. The electronic contract held by the online shop ghanimi is in accordance with the provisions of Article 48 PP PSTE which makes a standard clause on the official website page (ghanimiofficial.com) stating the terms and conditions as well as an explanation of how to shop on their site.

Buying and selling transactions carried out online are included as an agreement as regulated in Book III of the Civil Code concerning an engagement, which in principle, buying and selling is born from an agreement between the parties which is then realized into an agreement. Thus the emergence of an engagement between the parties involved in buying and selling here is based on an agreement, where this is in accordance with the formulation of the provisions of Article 1313 of the Civil Code which states that an act of one or more people to bind himself to one or more parties.¹⁷

It is further stipulated in Article 47 paragraph (2) of PP PSTE that an electronic contract is valid if it fulfills the following elements:

- a) agreement of the parties.
- b) the skills or authority of the legal subject in accordance with the provisions of the legislation.
- c) certain thing.
- d) the object of the transaction does not conflict with the law, decency, and public order.

3.5.Payment Methods in Buying and Selling Online

In principle, buying and selling online is the same as ordinary buying and selling which is carried out face-to-face directly between the seller and the buyer. The difference is that apart from not meeting face-to-face, there is also no price bargaining process. Regarding payments that are mostly made in advance or paid in advance, either transfers between accounts or using e-wallet, it can be illustrated that this is the same as when consumers buy electronic goods such as televisions or refrigerators, where consumers pay first and then the goods are delivered. Use the car belonging to the electronics store together with other goods that have been purchased by consumers.

At the ghanimi online shop, before the consumer determines the payment method, a confirmation will first appear regarding the shipping method to be used. This is related to the provision of shipping costs or shipping costs that are charged to consumers as buyers. Article 1458 of the Civil Code states that buying and selling has been born when an agreement has been reached even though the goods have not been delivered and the price has not been paid, becoming the basis for electronic transactions which give freedom to the parties to determine the method of payment and delivery after an agreement on goods and prices is reached. This means that the seller has determined in the standard clauses listed in the terms and conditions, while consumers are free to use the payment system and shipping method offered by the seller.

3.6.Shipping Methods in Online Selling

Article 584 of the Civil Code states that one way to obtain property rights is through surrender. Thus, buying and selling is not a way to get ownership of an object. The sale and

¹⁷Gusti Yosi Andri and Djuariah, Form of Pharmacy Business Entity Judging from Company Law, FH UGJ : Responsive Legal Journal Vol. 12 No. 2, August 2021, page 86.

purchase is only the basis of rights as a condition of delivery as referred to in Article 584 of the Civil Code. Subekti said that buying and selling has not transferred ownership rights to an object/goods, but by way of delivery or levering.¹⁸ The sale and purchase that has been carried out legally, requires the seller to hand over his object/goods to the buyer as a transfer of rights to the object/goods. In other words, buying and selling only creates reciprocal rights and obligations of each party. This is in accordance with Article 1459 of the Civil Code which contains the nature of the obligator in the sale and purchase agreement which stipulates that the ownership rights of the object/goods purchased do not automatically transfer to the buyer as long as the seller has not delivered the goods to the buyer.¹⁹

Online shop ghanimi has performed its obligations as a seller by including a delivery form. In fact, it provides a choice of recommendations for consumers according to what has been set on the form. Starting from the total weight of the package containing the selected products to be purchased, the shipping costs are also adjusted to the length of the delivery time, to the method of payment for the postage. This is in accordance with the nature of the obligator of the sale and purchase agreement, where ghanimi as the seller has the obligation to deliver the purchased goods as the basis for the right to deliver or levering.

In electronic transactions there is an obligation of the seller which requires sending the goods that have been selected by the buyer. This is based on the provisions of Article 1458 of the Civil Code, which states that after agreeing on the goods and the price, a sale and purchase has taken place even though the price has not been paid and the goods have not been received. Therefore, a new legal relationship arises as a result of such electronic transactions, namely the legal relationship between the seller or merchant and the shipping service. However, not all shipping companies carry out the process of sending goods for buying and selling online with direct payment or COD. For this, there is usually an agreement between the seller and the shipping company. If the seller has not made a cooperation agreement with the courier service, it is considered a user or consumer of an ordinary courier service, which must pay the tariff or shipping costs according to the weight, distance, and time chosen. For online shop ghanimi, it turns out that it has collaborated with the expedition service, so after the goods are packaged, they immediately come to the courier service office to ask for it to be sent according to the shipping form that has been filled out by the buyer. The basis of the cooperation is held by an oral agreement, where the merchant or seller gets a discount or discount on each delivery and payment with a due at the end of each month. For online shop ghanimi, it turns out that it has collaborated with the expedition service, so after the goods are packaged, they immediately come to the courier service office to ask for it to be sent according to the shipping form that has been filled out by the buyer. The basis of the cooperation is held by an oral agreement, where the merchant or seller gets a discount or discount on each delivery and payment with a due at the end of each month.

3.7. Electronic Transactions Through Marketplace

Unlike the electronic transactions described previously, electronic transactions conducted through the marketplace will involve a minimum of four parties, namely marketplace service providers, sellers, buyers, and shipping services. However, the basic

¹⁸Subekti, *Various Agreements*, Bandung: Citra Aditya Bakti, 1995, page 11.

¹⁹Abdulkadir Muhammad, *Engagement Law*, Bandung: Citra Aditya Bakti, 1990, page 106.

principle is still the same as electronic transactions carried out through personal sites as the electronic system.

One of the marketplaces that is often touted as a resource for online purchases is Shopee. Shopee is an online platform where you can search and buy products from well-known brands and find new merchants. Find daily necessities at the Shopee mall, or browse a wide selection of products in categories such as health, care and beauty, electronics, fashion, home appliances, mothers and babies, and so on.²⁰This is also a difference from independent online sales such as what is done by ghanimi, where the products offered through the marketplace are more diverse because the marketplace is likened to a mall in cyberspace, so that it accommodates various products from various segments and categories.

To become a seller or the term open a shop at Shopee, as an electronic system, Shopee determines several ways that prospective sellers must do in the Shopee marketplace. Quoted from the official Shopee website, how to open a shop on Shopee is as follows:²¹

- a. Prospective sellers or shop owners must have the Shopee application installed on a smartphone, computer or gadget. Then immediately create a Shopee account by clicking “register” and follow the next process until the account is verified as active (connected to the electronic system).
- b. After successfully logging in, select the "me" menu in the lower right corner. Then click the “start selling” command on the “me” page. Click “start registration”, then continue by filling in some important information from the online shop as needed (insert electronic information).
- c. After creating a shop or online shop, you can then directly upload photos or pictures of the products being sold along with a description of each product (loading electronic documents).

With regard to the on-site payment system or COD, the following mechanism is determined in the Shopee marketplace:

- a. Choose a delivery service that provides a payment method on the spot.
- b. Consumers are required to pay the price in cash according to the order along with the shipping cost (if any) at the agreed place to the courier or other expedition service according to the total cost recorded on the check-out page.
- c. Consumers can use filters with the option of “on-the-spot payment” when searching for and selecting a product.
- d. Consumers are required to pay in advance all costs according to the bill at the time of handing over the goods or are not allowed to open the package before payment is made.
- e. If a consumer cancels an order with on-site payment or COD and/or rejects it, twice in a row within 60 days (two months) counting from the second cancellation of the order, the on-site payment method will automatically be deactivated. Consumers can use the COD facility after 60 days.
- f. Shopee users who use the on-site payment method or COD are subject to a handling fee.²²

One of the parties that is also involved in electronic transactions through the marketplace is the expedition service. Some shipping services that support the Cash On Deliver (COD) payment system are J&T Express, J&T Economy, Shopee Xpress Standard, Shopee Xpress

²⁰ <https://katadata.co.id/intan/digital/6195c7b43cc43/cara-jual-di-shopee-with-easy-dan-praktis> accessed on July 2, 2022, at 21:45.

²¹ Shopee Official Site, Open Shop at Shopee, https://shopee.co.id/m/buka-toko-di-shopee?gclid=Cj0KCQjwuaiXBhCCARIsAKZLt3m449iCrDkl5jsjRc9jFNH-BHqUhQWqdLPfv5I0ZomUK6cbe_TM_qEaAIMDEALw_wcbe_TM_qEaAIMDEALw_wc., accessed on August 3, 2022, at 15.30 WIB.

²² Shopee Official Site, What is Shopee, [https://help.shopee.co.id/portal/article/73401-\[Baru-di-Shopee\]-What-is-Shopee?previousPage=secondary%20category](https://help.shopee.co.id/portal/article/73401-[Baru-di-Shopee]-What-is-Shopee?previousPage=secondary%20category) accessed on July 4, 2022, at 00:28.

Save, Standard Express (delivery from overseas), ID Express, Anteraja Regular, and Anteraja Economy.²³

3.8. Responsibilities of the Parties in Online Buying and Selling Transactions with Direct Payment on the spot or COD

Article 1338 of the Civil Code states that every agreement made legally will bind the parties like a law. Likewise with electronic transactions, as regulated in Article 18 paragraph (1) of the ITE Law which states that electronic transactions are poured into electronic contracts²⁴ will bind the parties. An electronic contract is not a written contract which is then scanned and uploaded (digitized) but a contract or agreement made electronically through an interaction process between the parties on an electronic system.²⁵ Seeing the description above, the ghanimi online shop has implemented an electronic contract in accordance with the provisions of the ITE Law. Consumers fill out a form that has been provided on the ghanimi platform, which in the previous description is called a standard clause that contains terms and conditions that must be approved by the consumer. After that, consumers can shop according to the products offered.

The standard clause in an electronic contract is in the form of an offer that is stated in an electronic document (in the form of product images) and after clicking on the image, electronic information appears which is a description of the price, size, material, and even the stock of the product. This is called a click wrap agreement, which is a contract that is made based on the agreement of terms on buying and selling in an electronic system by clicking on the available options that say I Agree, I Agree, OK, or otherwise.²⁶

Meanwhile, evidence of buying and selling transactions conducted online can be taken from electronic documents in the form of track records of conversations or chats between sellers and buyers as formulated in Article 1 paragraph (4) which reads as follows:

“Electronic document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical or similar forms that can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sounds, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them.

It is added to the provisions of Article 5 of the Electronic Information and Transaction Law that the printed results of electronic documents contained in certain electronic systems can be used as legal evidence in accordance with the provisions of the procedural law applicable in Indonesia, unless according to the law it is determined that it must be made legally. written and authentic. For example, the sale and purchase of land must be made in writing by certain officials such as a Notary/PPAT. With the validity of an electronic contract, legal consequences arise in the form of rights and obligations and responsibilities for each party involved. According to Subekti, the seller is obliged to deliver an object or merchandise to the buyer and

²³Shopee Official Site What is COD Payment, [https://help.shopee.co.id/portal/article/72650-\[Pay-in-Place\]-What-is-payment-COD-\(Pay-in-Place\)?previousPage=secondary%20category](https://help.shopee.co.id/portal/article/72650-[Pay-in-Place]-What-is-payment-COD-(Pay-in-Place)?previousPage=secondary%20category) accessed July 3, 2022, 13:45

²⁴Article 1 number 17 of the ITE Law states that an Electronic Contract is an agreement between the parties made through the Electronic System.

²⁵Bambang Pratama, Knowledge of Electronic Contracts, Click-Wrap Agreements and Electronic Signatures, <https://business-law.binus.ac.id/2017/03/31/menkenal-contract-elektronik-click-wrap-agreement-dan-tanda-tangan-elektronik/>, March 2017, accessed on August 3, 2022, at 14.32 WIB.

²⁶Heylau Edu, With One Click, Is Your Agreement Valid? The following is an explanation of the Clickwrap Agreement, <https://heylawedu.id/blog/dengan-satu-kali-klik-apakah-percepatan-yang-kamu-buat-sah-berikut-pencepatan-clickwrap-agreement>, October, 2021, accessed on August 3, 2022, at 14:55 WIB.

the buyer is obliged to pay the price for the object or merchandise to the seller in accordance with the agreement.²⁷

The responsibility of business actors in online buying and selling transactions with the COD payment method if the goods sent are not in accordance with what was ordered are regulated in the Consumer Protection Law and the Electronic Information and Transaction Law and its derivative regulations. Article 19 paragraph (1) of the Consumer Protection Law stipulates that business actors are responsible for providing compensation for losses suffered by consumers. Paragraph (2) states that compensation can be in the form of a refund or replacement of goods. Within a period of seven days after making the transaction, the business actor is obliged to make compensation as stated in paragraph (3). Furthermore, paragraph (4) states that the provision of compensation does not eliminate the possibility of criminal prosecution. Finally, in paragraph (5) which says that the responsibility for proof is borne by the business actor and in the event that the business actor can prove that the error is in the consumer's fault, then the provisions in paragraphs (1) and (2) do not apply. So it can be concluded that business actors are obliged to be responsible for providing compensation in the form of refunds or replacing goods or services for damage, pollution.

Based on Law Number 11 of 2008 concerning Information and Electronic Transactions and related regulations and their derivatives, transactions using the direct payment method on the spot or COD can still be categorized as electronic transactions. Although this transaction is different from conventional transactions in general, business actors still have an obligation to protect consumer rights as regulated by the provisions of the Consumer Protection Law, in Article 26 of Government Regulation no. 80 of 2019. Business actors are also responsible for always providing correct and complete information, this is stated in Article 17 paragraph (1) letter c of the Consumer Protection Law, Article 9 of the Electronic Information and Transaction Law, Law Number 7 of 2014 Article 65 concerning Trade, along with Article 48 paragraph (1) Government Regulation no. 71 of 2019. The regulation concerns correct and complete information to protect consumers from business actors in selling their goods that do not match the information in the product description they include.

Based on the principle of responsibility in consumer protection law, it can be seen from the legal relationship between business actors and consumers who are involved in buying and selling transactions using the COD method. These legal relationships include:

a) Consumer relations with the marketplace

In this connection, the marketplace is only tasked with providing a platform for consumers to buy their needs. Where this relationship gives birth to contractual responsibility, because in the event that consumers want to become users of the marketplace, then the consumer must agree to the terms and conditions provided by the marketplace.

b) Marketplace relationship with business actors

Similarly, the relationship between consumers and the marketplace, which gives birth to contractual accountability. Because business actors are required to agree to the terms and conditions provided by the marketplace.

c) Relationship between business actors and delivery services

The delivery services in question include J&T Express, Standard Express, and other expeditions that support using the Cash on Delivery (COD) payment method.

This delivery service is an object that connects business actors with consumers. In the relationship between business actors and delivery services, this gives birth to professional liability. Which is divided into two, namely the achievement of the service provider is measurable or the service provider is not measurable.

²⁷Subekti, Various Agreements, Bandung : PT. Image of Aditya Bakti, 1995, page 5.

d) The relationship between delivery services and consumers

Because the object is a service, this relationship is the same as the relationship between shipping services and business actors.

In online buying and selling transactions using the Cash On Delivery (COD) payment system, the delivery service is responsible for delivering orders from business actors to consumers in a safe condition and receiving consumer payments. The consumer is also responsible for making payment for the goods to the courier in the delivery service before opening the package.

e) Consumer relations with business actors

This relationship gives birth to contractual responsibility. This shows that in the event that the consumer has agreed to buy the goods offered by the business actor and fulfills other conditions, an agreement has been created. This agreement arises when the consumer receives all statements regarding the products offered and the consumer clicks the "make order" button or checkout the goods.²⁸

4. CONCLUSION

The legal construction in online buying and selling transactions using the Cash On Delivery (COD) payment method is the same as other payment methods. And also in this method the agreement is the same as the sale and purchase agreement in general. This transaction is a civil legal action in which the parties create a contractual legal relationship in the agreement as long as the sale and purchase fulfills the legal requirements of the agreement based on article 1320 of the Civil Code. In this transaction there are business actors, consumers, and delivery services. The regulations governing this transaction can be seen in Law no. 19 of 2016 concerning amendments to law no. 11 of 2008 concerning information and electronic transactions.

The responsibilities of the parties arising from online buying and selling transactions with the Cash On Delivery (COD) payment method arise based on several possibilities that arise and are based on the legal relationship of the parties. That the delivery service is responsible for the damage to the goods that occurs in the delivery, it is the business actor who has the right to be held responsible for binding himself with the delivery service in an agreement. Business actors are also responsible for sending goods that are not as ordered by consumers, so that if this happens, consumers can sue business actors. and consumers are responsible for paying for goods ordered using the Cash on Delivery (COD) payment method, if the consumer refuses to pay, the consumer can be said to be in default.

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²⁸Stella Trixie Jane, Anna Maria Tri Anggraini, Responsibilities of Shopee Merchant in COD Transactions According to Consumer Protection Law. Trisakti law reform, Vol. 4 No. 1, 2022, pages 85-88.

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