



The Model of Online Shopping Regulation based on Freedom of Contract and Good Faith Principle

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Abstract— This research aims to determine the regulatory model of the principle of good faith in freedom of contract in online buying and selling that is constitutional and guarantees legal protection. Apart from that, this research also aims to discover the obstacles and alternative solutions to implementing the principle of good faith. This research was done with empirical legal research. The approach used in the study is legal and conceptual. The results show that the reports from deceived buyers were reported to the police, but there was no follow-up because the police assumed it was a civil case involving buying and selling, and the value of the loss was not considered much. The Law of Consumer Protection does not contain a figure for the nominal rupiah value for trading—business actors whose products harm consumers in bad faith. The little value of goods established by the legislators of the House of Representatives in consumer law is necessary to prevent bad faith in the constitutional freedom of contract from sellers and buyers in the online buying and selling marketplace in Indonesia. Small nominal goods are transacted many times with other buyers, so many people are cheated because the buyers are not careful.

Keywords— Good Faith, Freedom of Contract, Online Buying and Selling.

I. INTRODUCTION

Europe's Industrial Revolution fostered a liberalization of industrial rivalry. A classical economist, Adam Smith, wrote "The Wealth of Nations," that concepted the ideas regarding the freedom of the person in commerce. A free market is operating without intervention from the government. The Adam Smith School of Classical Economics emerged due to the teachings of these influential figures in classical economics.[1] Smith employs verifiable clarifications and a logical process in his hypothetical reasoning. He presents plans to support economic development and development concerns in a concise analysis. However, Jeremy Bentham's analysis of the likelihood of agreement also grew out of the ideas of German moral philosopher Immanuel Kant. Smith inspired his aspirations from the ontological ideas of David Hume, Cicero, and Isaac Newton, three of the most significant natural law theorists. In the context of free market economics, Smith believes that the free market reflects true freedom and justice or natural law (nature), much like Isaac Newton's law of gravity.[2]

Smith adheres to the epistemology of Isaac Newton's "gravity" law, which describes the gravitational attraction between objects in the sky that happens in balance spontaneously and without intervention from outside parties. Smith also yearned for social order in the world due to his passion with Isaac Newton and the law of gravity. Liberal trade economies keep other parties out of the free market economic process, much like the gravitational pull of celestial bodies in Newton's direction.

It expands on the ideas of control and freedom as taught by Jeremy Bentham. This Utilitarian sect figure, according to Khairandy (2003), has already been vocal about views on justice, particularly concerning the legal principle of control freedom without intervention from all parties—a general principle that promotes free market competition (*laissez-faire*). Space of control turns into how free market concepts are expressed legally. Indeed,

PS Atiyah (1998) asserts that there is no question about the strong relationship between Bentham's utilitarian understanding and the traditional political economic theory developed by Adam Smith. The two are complementary when it comes to facilitating the flow of individualistic freedom. This can also be seen in Jeremy Bentham's utilitarianism and Adam Smith's classical economic (political) ideas.[3]

Based on the theory above, the existence of the internet to support the fulfillment of daily needs quickly and without expending much effort can be justified. To conduct buying and selling transactions using the internet in e-commerce and online. This is not strange considering the number of internet users, which continues to increase and become a market (marketplace) in e-commerce that has the potential to be entered, such as Shopee, Lazada, Tokopedia, Bli-bli.com, Zalora, and Tik-Tok so that business people and buyers carry out shopping which occurs very quickly, comfortably, and can be done anywhere and anytime and simply by using a cellphone. Online transaction agreements require the seller to exercise good faith when providing specific information about the goods, so the seller must uphold the principle of good faith in their explanations. Law No. 1337, paragraph (3) of the Civil Code, which addresses the notion of good faith, mandates that an agreement be implemented in good faith. It says, "An agreement must be carried out in good faith." [4]

One of the most critical components of contract law, according to Zimmerman (1992), is the good faith requirement. This requirement stems from the development of the consensual principle *in lex bonafides*, an ancient Roman legal system that established the need for contracts to be based on good faith. (2017) claims that the judge has the authority under the civil law legal system to oversee the execution of all contracts, not to transgress morality or justice. However, since good trust is an observable interior condition, it isn't easy to forecast. Rudolf von Jhering, who first proposed the idea of *culpa in contrahendo*, further clarified his viewpoint in 1991.

Law No. 1338 of the Civil Code upholds the concept of good faith: "All agreements are made by applicable regulations and the legal basis for those involved." This agreement cannot be transferred unless both parties agree to do so or for legally mandated purposes. Contracts have to be signed with sincerity." Article 1475 of the Civil Code states that all sale and purchase agreements are kept current. Book III of the Civil Code, Chapter II, Part Three, which deals with the implications of a contract, is where the concept of good faith originates. It is found in Law 1338, paragraph three, which says, "An agreement must be done in good faith." Law 1457 of the Civil Code specifies that "Trade is an agreement where one party binds himself to provide an item and the other party pays according to the agreed price," this is where Book III, Chapter V begins.[5]

As stated in Article 1313 of the Civil Code, "An altitude called out by one or more parties binds himself to one or more states, in training transactions are also related to Law Number 19 of 2016 once information and Electronic transactions," online transactions are inextricably linked to the fundamental idea of agreement. The Law of Consumer Protection's Article 9, paragraph (1), which prohibits business actors from providing consumers with fair quality, price, usefulness, guarantees, and presents for their items, is usually where the ban on making mistakes begins.

II. RESEARCH METHOD

This research uses an empirical and doctrinal approach (law as social, cultural, and *das sein facts*) because this research uses primary data obtained from the field. The type of research in this research is descriptive research. This study was carried out in a number of places, including Sukoharjo District Court, Surakarta, Resort Police, Sukoharjo Regency District Attorney, and actual stores that serve internet retailers. Kind and origin of dental Law No. 8 of 1999 concerning Consumer Protection, Law No. 19 of 2016 concerning Electronic Information and Transactions, the Republic of Indonesia Government Regulation No. 82 of 2012 concerning Implementation of Electronic Systems and Transactions (SEMA), Supreme Court Regulation No. 2 of 2012, and Pancasila, basic norms of the Republic of Indonesia, the 1945 Constitution of the Republic of Indonesia, the Civil Code, are among the primary legal material used as secondary data in this research. Primary data information was gathered in the meantime from interviews with internet buyers, sellers, and connected parties. Three stages of analysis are included in data analysis using interactive analysis (interactive research model): data reduction, data presentation, and inference. Additionally, a cyclical procedure is used in between steps to connect all the data in a methodical manner.

III. FINDINGS AND DISCUSSION

Even though many reports were filed, only the words were accepted due to limited operational funds, and no follow-up was taken. First, legal considerations: Article 1320 Civil Code, which outlines the requirements for all sales and buy contract agreements, and Article 1338 Civil Code, paragraph (3), which states that arrangements must be carried out in good faith—a requirement that parties engaging in online e-commerce do not fully understand. It is also challenging if there are buyers who are not yet legally adults and are still in school, even if the seller is acting in bad faith. Article 1320 of the Civil Code states that agreements are only made by individuals who are already capable. In addition, the existence of Supreme Court Regulation No. 2 of 2012 presents a barrier for cases that have been tried to be settled through negotiation or non-litigation because the

value of the goods is limited to IDR 2.500.000 (two million five hundred thousand rupiah) by Law of Consumer Protection. If the consumer does not record the nominal value of the loss in rupiah, they may be sued in district court or, if fraud was the cause of the failure, reported to the resort police.

Second, non-juridical factors, people still don't understand the security of online transactions, so it's easy to make purchases without worrying about issues or disputes arising from goods that don't match the promised quality because they were purchased fraudulently or because the buyer canceled the order without a valid reason. Because the nominal value or price of the items is so small, there are instances of contract violation or illegal actions of fraud in sales and buying contracts that perplex the parties to report to the Police.[6]

Regarding instances involving internet transactions, the Sukoharjo and Surakarta Police use repressive tactics, but only against those who come clean and file online reports. However, if the loss from the online transactions is less than IDR 2.500.000 the Police cannot conduct this settlement. This also began with the Supreme Court Regulation No. 2 of 2012 issued by the SEMA, which dealt with the Criminal Code's Maximum Penalties and the Limits for Determining Minor Crimes. This Perma protested the Criminal Code's regulation of money's nominal value. Both parties deliberate while working for restorative justice or reconciliation. To ensure that the community maintains the essence of Pancasila, the Indonesian ideology, actions to enforce this include anticipating circumstances in which talks are held to create community behavior.

Researchers see a gap due to the blurring of norms and the absence of any new challenges to the laws currently in effect, such as the Law of Consumer Protection; researchers observe a gap, even with the existence of SEMA No. 12 of 2002. A model technique was discovered by researchers studying legal restrictions. Therefore, the research findings are helpful to the government and will be consulted when drafting Indonesian constitutional legislation about online sales and purchases.

Richard Posner states that economic laws are developed using the "Economic analysis of law" technique to quantify the damages to society resulting from bad faith acts (bad faith) clauses. Lawmakers might consult it for guidance.[7] Suppose the goods and services are not as expected or do not meet the terms of the agreement. In that case, the consumer is entitled to replacement or reimbursement under Article 4 letter h of Law No. 8 of 1999 concerning Consumer Protection. These standards are lacking in that they do not include any bars that list the nominal value of losses as determined by the legislators. If an issue arises, customers won't know whether to file a report or lawsuit because the slight problem with the goods won't affect them much. If they do report the issue to the police, they'll still be scared and anxious, and the expenses will be substantial. As a nation of laws, Indonesia must uphold this fundamental right since its citizens are entitled to legal protection under the constitution. John Austin (1790–1859) asserts that the legislator is a sovereign ruler whose shape is associated with the law and which is imposed upon the party in power. Austin, thus, wrote two well-known books: "Lectures on Jurisprudence" and "The Province of Jurisprudence Determined." In the latter work, Austin asserts that "the lawgiver's command is law." [8]

But according to Austin (1995) in his work "The Province of Jurisprudence Determinant," the fundamental component of law is "Positive." Second, all positive direction is an order issued by a sovereign. Third, sanctions are the most crucial aspect of positive law. Fourth, positive law must uphold charges, penalties, duties, and sovereignty. Fifth, all suitable laws are closed, logical systems. Moreover, John Austin claims that the ultimate objective of legal positivism is legal certainty. To achieve this (legal certainty), he contends, morality and the law must be kept apart.[9]

In his book "Pure Legal Theory, The Foundations of Normative Legal Science," Hans Kelsen (1881–1973), a fellow legal positivist and the man who first introduced the concept of "Pure" law, noted that Kelsen (2010) coined the term "Pure" law because he focused solely on explaining the law and made an effort to exclude anything unrelated to it. In Kelsen's words, the goal is to purge alien components from legal science. The methodological foundation of pure legal theory is this. According to Kelsen, the influence of legal norms makes legal positivism more and more rigid; in reality, the law needs to be cleansed of non-legal elements like philosophy, politics, psychology, economics, and society, as discussed in Irianto and Sidharta (2017), in addition to being freed from moral dilemmas. According to the following perspective, law is a regulation that establishes penalties and acts as a coercive order regarding human behavior.[10]

Tanya (2010) states that "law is a coercive order of human behavior; it is the primary norm which determines the sanctions." In other words, the law essentially consists of directives and restrictions supported by coercive measures; on occasion, the law may also include allowances for permits or specific exceptions. According to Kelsen's statement in the Constitution, the legal order is a hierarchy of legal bars with different degrees that depend on other models and culminate in essential bars rather than a system of coordinated standards that halves the same status. In their hierarchical structure, the bars that form a legal order are legitimate because of these fundamental principles. According to Peter M. Marzuki, a legislative strategy uses laws and regulations. Legislative approaches cannot be utilized for goods that are *besschikking* decrees, i.e., decisions made by administrative officials that are definite and concrete, such as ministerial regulations, regent's rules, and presidential laws.[11] Additionally, these requirements determine the categories and hierarchy of the Republic of Indonesia's legislation by Article 7 (1) of Law No. 12 of 2011. The Republic of Indonesia's 1945

Constitution. b). The People's Consultative Assembly's decree. The following are examples of regulations: c) Government regulations instead of Law; d) Presidential decrees; e) Provincial regional regulations; f) District/City regional regulations.[12]

In his book *Constitutionalism, Ancient and Modern*, Charles Howard McIlwain (1996) states that "in the Roman Empire, the word in its Latin form became the technical term for a lot of legislation by the emperor." To put it simply, a constitution is a set of legal rules carefully constructed to organize and control the significant structural elements and activities of government institutions, including the extent and limitations of their jurisdiction. In a more limited sense, the Constitution is "only" defined as all documents that have these clauses.

The Constitution's meaning is explained by Bryan A. Garner (2009) in the *Black Law Dictionary* as follows: "The fundamental and organic law of nation or state guarantees individual civil rights and civil liberties, stabilizes the institutions and apparatus of government, and defines the scope and governmental sovereign power." The codified version of this fundamental law, including all official revisions." Grammatically, all constitutions are defined by Garner (2009) as the fundamental organic laws of a country or nation that give autonomy and sovereignty to regulate the government machinery and the Constitution. Individual civil rights and liberties are ensured by state institutions, which also embody fundamental laws and official changes.

There are differences of opinion regarding whether the Constitution can be equal to the Constitution (*grundgesetz*). K. Cwhealre (2003) states that in political discourse, the term constitution is often used in two senses. First, the Constitution describes the entire constitutional system of a country, including all regulations that form and regulate or direct the wheels of government. Second, the Constitution refers to all documents or several documents that contain specific rules and provisions that are fundamental regarding the state administration of countries. According to Moh. Kusnardi and Harmail Ibrahim (1988) argue that the equalization of the meaning of the Constitution and the Constitution began with Oliver Cromwell (Lord Protector of the British Republic 1649-1660), who called the Constitution an instrument of government, where the Constitution was prepared as a guide for the government. Thus, it arises from identifying the meaning of the Constitution.

Tamanaha (2010) emphasizes that historical jurisprudence offers a broader view where social conditions, history, and law are connected in a way that explains community development as part of a more comprehensive historical and sociological story. Tamanaha believes that life reflects the values in society, and a good life is living a law that is in line with people's lives.[13]

The Law of Consumer Protection norms do not explain in detail the money or material value of losses, and to sue all groups of people must use class action, whereas in online shops, buying and selling only retail and individuals believe [14] Those producing it are home industries and even used goods (thrift) imported illegally and sold in marketplaces. The prices of goods are meager, excluding used goods imported by sellers, vials crossing the border from China, and using predatory pricing, which makes prices very affordable because the goods come directly from China and enter without customs & excise and do not pay VAT Tax. This results in Indonesian MSMEs being unable to compete with imported goods. Thus, it needs to synchronize the model between SEMA No.12 of 2002, regarding the value of losses of IDR 2.500.000 with the value of consumer losses in the Law of Consumer Protection No. 8 of 1999, so there is a legal certainty.

IV. CONCLUSION

Based on observations and interviews, implementing good faith in online buying and selling in Sukoharjo and Surakarta has not been able to run optimally. This is due to the lack of honesty of sellers in online buying and selling, so consumers are often harmed, such as whether the belief in the goods does not match the information provided or the goods ordered do not check the goods received. The main juridical factors obstacle to implementing online shopping is caused by the existence of unclear norms in the nominal value of goods prices between the Law of Consumer Protection, which does not cover the small limit of goods that can be sued at the District Court and if criminal cases such as fraud and embezzlement are reported to the Resort Police, they conflict with SEMA No. 2 of 2012, the value is IDR 2.500.000 the settlement is through deliberation or non-litigation. Obstacles in implementing the principle of good faith in online buying and selling with freedom of contract in Sukoharjo Regency and Surakarta Regency started from the police. Even though many reports have been submitted, due to limited operational funds, these reports are only received but not followed up. Moreover, another obstacle is non-juridical factors, such as the lack of public knowledge about the law, so if there is a case of bad faith from the seller, report it to the police to seek justice. This impacts the Sukoharjo District Court and Surakarta District Court, which have never received many cases of violations of good faith in online shopping.

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