

Urgency of Guarantee in Cancellation of Payment of Goods Price in Sale and Purchase Agreement through *Marketplace*

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ARTICLE INFO

Keywords:

Guarantees;
Buying and Selling;
Marketplace;

Article history:

Received 2025-04-22

Revised 2026-05-26

Accepted 2026-06-30

ABSTRACT

This study analyzes the legal vacuum in the legal arrangement of sale and purchase agreements on the existence of guarantees. Meanwhile, in the era of digital transformation, it is increasingly complex. In transacting, the development has used non-conventional methods such as buying and selling online through a marketplace with a Cash On Delivery (COD) system. This phenomenon requires the law to be more adaptive in responding. So the purpose of this study is to analyze and examine in depth the urgency of a guarantee in the legal relationship of the sale and purchase agreement on the cancellation of the payment of the price of goods made online through the marketplace. The type of research used is normative juridical. The results of the study show that legal reconstruction is needed to meet the urgency of guarantees. This can be expressed in giving rise to the legal concept of guarantee in the legal relationship of the sale and purchase agreement because there is a loss experienced by the seller for default committed by the buyer by deliberately not paying and canceling the price of the goods that have been agreed. Prof. Satjipto Rahardjo's progressive legal theory is considered very relevant in supporting this concept outside the concept of the use of collateral which is still limited to credit agreements or debts and receivables. Given the complexity of onrechtmatige daad in online buying and selling agreements, it is quite common.

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1. INTRODUCTION

The development of information technology has brought major changes in people's lifestyles, including in trade activities. This change can be seen from the shift in buying and selling transactions that were previously more conventionally carried out to electronic-based transactions. Trade today is not only carried out through direct meetings between sellers and buyers, but also through a digital system known as electronic commerce or e-commerce (Setyawati, 2017).

The internet as part of the development of information technology provides convenience for people to obtain information, communicate, and make transactions. In the field of commerce, the internet allows sellers and buyers to have a legal relationship without having to meet physically. Every electronic transaction carried out by the parties can still cause legal consequences, especially in the form of the birth of rights and obligations between the seller and the buyer.

E-commerce is not only understood as an online buying and selling activity, but also includes all trading activities that use electronic media (Rizka & Attirmidzi, 2022). One form of e-commerce that is growing rapidly is the marketplace. Marketplace is a digital platform that brings together sellers and buyers in one electronic system. Through the marketplace, buyers can choose various types of goods, while sellers can offer their products to consumers more widely.

Marketplace can be understood as part of e-commerce because it includes the activities of offering, purchasing, paying, and shipping goods through electronic media. The Alliance for Global Business explains that e-commerce encompasses all value transactions that involve the transfer of information, products, services, or payments through electronic networks (Punto Quarter, 2008). Thus, the marketplace is one of the concrete manifestations of the development of electronic transactions in modern trade activities.

Legally, a sale and purchase agreement through a marketplace is in principle no different from a conventional sale and purchase agreement. The difference only lies in the media used, namely electronic systems or marketplace applications. The sale and purchase agreement itself is regulated in Book III of the Civil Code on Engagement (Pamila et al., 2020). Article 1457 of the Civil Code explains that buying and selling is an agreement when one party binds to hand over an item, while the other party binds itself to pay the agreed price.

Purchase and sale agreements through marketplaces must still meet the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely the agreement of the parties, the competence of the parties, the existence of certain objects, and halal causes. In addition, Article 1458 of the Civil Code emphasizes that buying and selling is considered to have occurred when the parties have agreed on goods and prices, even though the goods have not been handed over and the price has not been paid (Government of the Republic of Indonesia, 1848). This provision shows that agreement is the main element of the birth of legal relations in the sale and purchase agreement.

In marketplace practice, the payment methods used are increasingly diverse. Payments can be made through bank transfers, mobile banking, minimarkets, joint accounts, paylater, or Cash On Delivery or COD (Sri Anggraini Kusuma Dewi, 2015). The variety of payment methods provides convenience for buyers and sellers. However, on the other hand, this convenience can also cause legal problems if one of the parties does not carry out its obligations.

One of the payment methods that causes a lot of problems is Cash On Delivery or COD. In the COD system, the buyer makes a payment when the goods have arrived through the delivery service. This system provides convenience for buyers because payment is made after the goods are received. However, the COD system also poses a risk to the seller, especially if the buyer refuses to pay for the item, unilaterally cancels the transaction, is not present when the item is delivered, or rejects the item for an unjustifiable reason.

Unilateral cancellation of payments in the COD system can result in losses for the seller. These losses can be in the form of packaging costs, labor, time, application administration costs, handling costs, the risk of damage to goods during delivery, and loss of opportunity to sell goods to other buyers. This loss is even greater if the goods being traded are perishable goods, such as food, liquid objects, plants, or other items that have a limited shelf life.

Juridically, losses due to acts that harm other parties can cause legal consequences in the form of an obligation to compensate. The compensation can be in the form of material or immaterial losses, depending on the form of loss experienced by the aggrieved party (Mantili, 2019). In the context of COD transactions, the seller experiences more material losses when the buyer refuses to pay for the goods that have been delivered according to the order.

The problem of COD transactions is also seen in several cases that occur in the community. One case shows that there are consumers who scold the courier because they feel that the goods received are not in accordance with expectations. In fact, in the COD mechanism, there is a provision that goods that have been opened must still be paid according to marketplace procedures (Bramasta & Wedhaswary, 2021). Another case shows that there are consumers who refuse to pay for COD packages after the goods are opened, even to the point of stabbing the courier (Dzulfaroh & Nugroho, 2021). These cases show that the COD problem does not only involve sellers and buyers, but also other parties such as couriers and marketplace platform providers.

In the perspective of civil law, a buyer who refuses to pay for the goods without a valid reason can be qualified to commit a default. Article 1513 of the Civil Code emphasizes that the buyer's main obligation is to pay the purchase price at a predetermined time and place. In the COD system, the time and place of payment is when the goods reach the buyer through a delivery service. If the buyer deliberately refuses to pay for the goods that have been ordered and delivered according to the agreement, then the act can be seen as a violation of contractual obligations.

The legal consequences of the default can be attributed to Article 1266 and Article 1267 of the Civil Code. The seller can request the cancellation of the agreement or demand the fulfillment of the achievement along with compensation, fees, and interest. However, in the practice of marketplace transactions, these legal remedies are not always easy to do. This is because the value of the transaction is often relatively small, the parties do not know each other directly, and the dispute resolution mechanism has not fully provided balanced protection for the seller.

These problems show that there is a need for clearer regulations regarding collateral in buying and selling transactions through marketplaces, especially in the COD system. So far, the concept of guarantees in civil law is more widely known in debt-receivables relationships, both in the form of material guarantees and individual guarantees (Finda Rudiana, 2022). Meanwhile, in online buying and selling transactions, especially COD, there is no guarantee mechanism that concretely protects sellers from the risk of unilateral payment cancellation by buyers.

The legal void regarding guarantees in COD transactions is important to study because the development of electronic transactions has given rise to an increasingly complex form of legal relationship. It is not enough for the law to rely only on conventional transaction patterns, but also to adapt to the development of the digital society. In this context, progressive legal thinking is relevant because law must be able to respond to human needs and social changes, not just fixated on formal legal texts (Aulia, 2018).

Several previous studies have discussed online buying and selling agreements and COD payment systems. The research of Akhmad Nurkholis and Eka Arilia Nandasari discusses the binding power of buying and selling agreements in the Shopee marketplace with the COD payment system. The research emphasizes more on the binding power of agreements and when agreements are considered completed in the COD system (Nurkholis & Nandasari, 2022). Another research conducted by Yonisha Sumual and Danang Wahyu Muhammad discusses the legal construction in online buying and selling agreements through the Shopee marketplace platform. The research explains the legal relationship, rights, and responsibilities of the parties in electronic transactions (Sumual & Muhammad, 2022).

Different from previous research, this study focuses on the urgency of guarantees in the legal relationship of sale and purchase agreements through the marketplace, especially on the cancellation of payment of the price of goods by buyers in the COD system. The novelty of this research lies in the effort to place collateral as an important legal instrument to provide protection for sellers. Thus, the main issue in this study is how the position of the guarantee is needed to provide legal certainty for sellers who are aggrieved by the unilateral cancellation of payments by buyers.

Based on this description, this study aims to analyze the urgency of guarantees in the legal relationship of sale and purchase agreements through the marketplace in the case of cancellation of payment of the price of goods by the buyer in the COD system. This research is expected to make a

conceptual contribution to the development of treaty law and guarantee law in digital transactions, especially in creating more balanced legal protection between sellers and buyers.

2. METHODS

The approaches used in this study are a legislative approach and a conceptual approach. The legislative approach is carried out by examining various regulations related to franchises, agreements, defaults, legal protection, and dispute resolution. Some of the legal provisions that are the basis for the analysis include the Law Book, this research is a type of normative juridical legal research. Normative juridical law research is interpreted as research that focuses on a certain part of the object, which is only in the norm of a regulation. Furthermore, the definition according to J.J.H. Bruggink in his book entitled *Rechts Reflectief* is as follows: "The definition put forward by them refers to normative legal research whose research objects are in the form of legal norms, legal concepts, legal principles and legal doctrines" (J.J.H Bruggink 1996). The norm in the regulations of sale and purchase agreements that are carried out online through the marketplace is the occurrence of a legal relationship between the seller and the buyer which gives rise to rights and obligations between the two parties. The problem approach used is a statutory approach and a conceptual approach.

The sources of legal materials used include primary legal materials, which consist of a set of laws and regulations related to sale and purchase agreements. Secondary legal materials consist of literature sourced from law books, legal journals, and research results in the field of law in the spade of discussion of sale and purchase agreements. Meanwhile, the method of collecting legal materials is carried out by literature study or library research, which is the examination of all legal materials that have been obtained by means of literature analysis. The method of processing legal materials is carried out through the stages of systematization, collaboration, and intensification. The systematization stage is carried out to provide a separation that is specialized in the regularity of legal materials, namely those obtained from laws and regulations, books or literature, and from the results of other scientific research. The collaboration stage is carried out to connect legal materials that have been systematically sorted according to their classification to be combined with a careful analytical examination. The intensification stage is carried out to increase the results of collaboration of legal materials with each other so that the processed results of legal materials are ready to be analyzed at the final stage so that they can answer problems.

The analysis of legal materials is carried out by a deductive method where the author in conducting an analysis to answer the problem is departing from things of a general nature and then withdrawing and concluding in a special result. This research is also carried out with a qualitative descriptive concept, which is to describe the social reality being researched to become the object of research that occurs broadly, comprehensively, and deeply. The level that focuses on legal phenomena within the scope of the sale and purchase agreement through the marketplace so that it creates a legal relationship, namely the arising of rights and obligations from the party making the agreement.

3. FINDINGS AND DISCUSSION

3.1 Legal Relationship of the Parties in the Marketplace Sale and Purchase Agreement

A sale and purchase agreement through a marketplace is basically still a sale and purchase agreement as known in civil law. The difference lies in the media used. If in conventional buying and selling the seller and buyer meet directly, then in buying and selling through the marketplace, the legal relationship occurs through an electronic system. Even though it is carried out online, the transaction still gives birth to a legal relationship between the seller and the buyer.

Based on Article 1457 of the Civil Code, buying and selling is an agreement when the seller binds itself to deliver the goods, while the buyer binds itself to pay the agreed price. Thus, the core of the legal relationship in buying and selling is the agreement on goods and prices. In marketplace

transactions, the deal occurs when the buyer selects the item, agrees on the price, chooses a payment method, and places an order through an app or platform.

Sale and purchase agreements through marketplaces are also subject to the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely the agreement of the parties, the competence of the parties, the existence of certain objects, and halal causes. If these elements are met, the online sale and purchase agreement has binding force for both sellers and buyers. This is in line with the principle of consensualism, which is that an agreement is born from the agreement of the parties.

In such a legal relationship, the seller and the buyer have rights and obligations reciprocated. The seller has the right to receive payment according to the agreed price, while his obligation is to deliver the goods according to the order, provide correct information about the goods, and act in good faith. On the other hand, the buyer has the right to receive the goods according to the information and agreement, while the obligation is to pay the price of the goods according to the transactions that have been made.

In addition to the Civil Code, buying and selling transactions through marketplaces are also related to the Consumer Protection Law, the Electronic Information and Transaction Law, and Government Regulations on the Implementation of Electronic Systems and Transactions. These regulations affirm that electronic transactions must be conducted with the principles of good faith, prudence, transparency, accountability, and fairness. Therefore, the marketplace is not just a buying and selling space, but also a legal space that gives rise to rights, obligations, and responsibilities for the parties.

In practice, transactions through the marketplace involve more parties than ordinary buying and selling. In addition to sellers and buyers, there are also marketplace platform providers, payment service providers, and delivery services. However, the primary relationship remains with the seller and the buyer as parties to the sale and purchase agreement. The marketplace acts as an electronic system provider that brings parties together and facilitates transactions.

3.2 Legal consequences if the parties fail to perform their obligations

Failure to carry out obligations in the sale and purchase agreement through the marketplace may have legal consequences. In civil law, a situation when one of the parties fails to fulfill its obligations is called default. Default can occur if one of the parties does not do what has been promised, performs obligations but does not comply with the agreement, is late in performing the obligations, or does something prohibited in the agreement.

In marketplace transactions, defaults can be committed by both sellers and buyers. The seller may be considered in default if it does not deliver the goods, delivers goods that are not in accordance with the order, provides incorrect information, or does not meet the obligation to replace if the goods are defective or non-conforming. On the other hand, the buyer can be considered a default if he does not pay the price of the goods, cancels the payment unilaterally without a valid reason, or refuses to accept the goods that have actually been ordered to be delivered.

The legal consequence of default is the incursion of liability for the party who violates the agreement. This responsibility can be in the form of fulfilling the agreement, canceling the agreement, compensating for losses, or other forms of settlement in accordance with the provisions of the law and the agreement of the parties. In the context of consumer protection, sellers as business actors are also obliged to provide compensation, compensation, or reimbursement if the goods received by consumers are not in accordance with the agreement.

The basis of good faith is an important principle in evaluating the implementation of a sale and purchase agreement through the marketplace. Article 1338 paragraph (3) of the Civil Code emphasizes that agreements must be implemented in good faith. This means that it is not enough for sellers and buyers to simply comply with formal transaction procedures, but also to act honestly, reasonably, and not harm other parties.

Problems often arise in transactions with the Cash On Delivery or COD method. In the COD system, the seller delivers the goods first, while payment is made when the goods are received by the buyer. If the buyer cancels the payment unilaterally without a justifiable reason, the seller may suffer a loss. These losses include packaging costs, application administration costs, handling costs, stock holds, and loss of opportunity to sell goods to other buyers.

Unilateral cancellation by the buyer in a COD transaction can qualify as a form of default if the goods have been delivered as ordered and there is no defect in will such as omission, coercion, or fraud. In such a situation, the buyer does not carry out his obligation to pay the price of the goods that has been agreed. Therefore, a legal mechanism and marketplace system are needed that are able to provide balanced protection, not only to buyers as consumers, but also to sellers as business actors.

3.3 The Urgency of Guarantee in Payment Cancellation on Marketplace Transactions

One of the important problems in buying and selling through marketplaces, especially with the COD system, is the lack of an adequate guarantee mechanism for sellers when buyers cancel payments unilaterally. In COD transactions, the seller's risk is greater because the goods have already been shipped, but the payment has not been received. If the buyer refuses to pay without a valid reason, the seller will bear more losses.

In civil law, the concept of collateral is generally known in the debt-receivables relationship. Articles 1131 and 1132 of the Civil Code stipulate that the debtor's assets are collateral for the repayment of his debts to creditors. However, in buying and selling transactions through marketplaces, especially COD transactions, there are no special regulations regarding guarantees for sellers for the risk of payment cancellation by buyers. This condition shows the need to develop a legal mechanism that is more in line with the development of digital transactions.

The urgency of collateral in COD transactions is not intended to unduly burden buyers, but rather to create a balance of legal protection. So far, consumer protection has been more directed at buyers, especially if the goods are not suitable, damaged, or not delivered by the seller. However, in marketplace practice, sellers can also be the aggrieved party, especially when the buyer is not in good faith.

Guarantees in marketplace transactions can be developed in the form of a system mechanism, not always in the form of material guarantees as known in classical guarantee law. For example, marketplaces may apply commitment money, administrative penalties, account restrictions for buyers who repeatedly cancel orders for no valid reason, or reputation systems that affect buyers' access to COD services. This mechanism can be a form of preventive protection so that transactions are carried out responsibly.

This approach is in line with the needs of progressive law. The development of digital transactions shows that the law should not stop at conventional buying and selling patterns. The law needs to respond to social and technological changes in order to remain able to provide certainty, justice, and benefits. In this context, the establishment of a guarantee mechanism in COD transactions is an effort to adapt the law of the agreement to the needs of the digital society.

Thus, unilateral cancellation of payments in buying and selling transactions through marketplaces can cause legal consequences in the form of default and compensation liability. To prevent recurring losses, it is necessary to reconstruct marketplace regulations or policies that provide balanced legal protection for sellers and buyers. This protection is important so that electronic transactions are not only easy and fast, but also fair, secure, and responsible.

4. CONCLUSION

The conclusion obtained from the results of the discussion on the formulation of the problem is the urgency of a guarantee in the legal relationship of the sale and purchase agreement on the cancellation of the payment of the price of goods made online through the marketplace based on the progressive legal theory of Prof. Satjipto Rahardjo found that there is a legal void in the provision of

guarantees in the legal relationship of the sale and purchase agreement. So that legal construction needs to be carried out to give rise to a new type of guarantee and can be used in the relationship of agreements, not only agreements within the scope of debt and receivables agreements. This urgency can be expressed in giving rise to the legal concept of guarantees in the legal relationship of the sale and purchase agreement because the losses experienced by the seller due to default are carried out by the buyer who deliberately does not pay and cancels the price of the goods that have been agreed. In addition, looking at the principle of consensualism and legal consequences if the parties do not carry out the obligations arising in the legal relationship of the sale and purchase agreement through the marketplace, there is the emergence of legal liability for the aggrieved party using the concept of strict liability. Based on the principle of good faith and also Article 1365 of the Civil Code regarding unlawful acts (*onrechtmatige daad*), the seller can ask the buyer for legal responsibility and vice versa if they feel aggrieved due to default.

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