



## **LEGALITY OF BUYING AGREEMENT THROUGH *E-COMMERCE* ONLINE THROUGH *BARGAINING* FEATURES WHICH HARM THE SELLER**

**Bodhi Alivian**

(Achieving a Bachelor of Laws at the Faculty of Law, Tarumanagara University (2020), Masters Program Student , Faculty of Law, University of Indonesia )

(E-mail: [bodhial.vn@gmail.com](mailto:bodhial.vn@gmail.com))

**Raissa Arlyn Manikam**

(Achieving a Bachelor of Laws at the Faculty of Law, Tarumanagara University (2020) )

(E-mail: [raissaarlyn@gmail.com](mailto:raissaarlyn@gmail.com))

### **Abstract**

*The act of buying and selling is a common thing in society, in its development buying and selling can not only be carried out face-to-face, but with the development of technology and information, these activities can be carried out through online market applications . With this development, to attract public interest in the application , various features were added with a hope that these features could attach the community interest in online buying and selling activities. One of the features provided is the bargaining feature, where the seller and buyer can negotiate the price until a certain point that has been agreed by both parties. However, in practice, many irresponsible parties misuse d this feature by taking advantage of the Negligence of one other party, in this case the seller was the victim and by this action the seller was aggrieved in economic terms. Therefore, this journal will discuss the legality of the sale and purchase agreement which occurred based on the Negligence of a party that aggrieves the seller in the online market by using the bargaining feature.*

**Keywords :** *E-Commerce, Online Market Applications, Bargaining Feature.*

## **I. PRELIMINARY**

### **A. Background**

Humans as living beings have various needs that must be met in everyday life. Along with the development of the relevant era with the development of technology Advanced technology allows humans to be able to carry out legal actions in their actions to meet needs online or *online*. Buy and sell *online* due to

existence increase in people 's busyness and routines, thus causing time spare time to visit conventional stores to meet the growing needs reduce so that transactions through *e-commerce* are more practical tend to be used.

*Online* buying and selling transactions give rise to rights and obligations between the buyer and seller if both parties split party the have found mutual agreement, as well as *offline buying and selling transactions*. Buyer has the obligation to pay a sum of money and the right to own the goods that have been agreed upon, while the parties mandatory seller \_ \_ in hand over the goods as ordered described and entitled to receive payment on goods that . In other words, that the rights of one party are the obligations of the other party and the obligations of one party are the rights of the other party in the agreement.

According to article 1457 of the Civil Code, buying and selling is an agreement or agreement or contract in which one party binds himself to deliver an object and the other party binds himself to pay the price that has been agreed upon . An agreement is an act by which one or more people mutually bind himself to the other party . The above simply explains the meaning of the agreement which describes the existence of two parties who bind themselves together as stated \_ in Article 1313 of the Civil Code . <sup>1)</sup> Wirjono Prodjodikoro gave the opinion that an agreement is a legal relationship regarding assets between two parties, in which one party promises or is deemed to do something, while the other party has the right to demand implementation from the promise . <sup>2)</sup>

Referring to the Civil Code Article 1320, it is stated : there are 4 valid conditions an agreement , yes we agree to bind themselves, the ability of the parties to make an agreement, a certain matter, and a lawful cause. The first and

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<sup>1)</sup> Ahmadi Miru and Sakka Pati, *Law of Engagement (Explanation of the Meaning of Articles 1233 to 1456 BW)* , ( Jakarta : Rajagrafindo Persada, 2011 ) , p . 63.

<sup>2)</sup> Wirjono Prodjodikoro, *Civil Law Concerning Certain Agreements*, ( Bandung : Bandung Well , 1981) , p . 11 .

second conditions are subjective conditions, namely conditions that rely on the subject in an agreement, while the third and fourth conditions are objective conditions, the object of the agreement. have close relationship \_ with condition this . A sale and purchase agreement is considered invalid if the four conditions stated above are not fulfilled , this also applies to buying and selling by *on line*. *Previously, it should be understood that online* buying and selling transactions are not the same as conventional transactions.

Through electronic transactions or so-called *e-commerce* , the buyer could To do internet access to the website or through the application, then the buyer can looking for the desired item, the buyer can also send an item offer on the seller's page, call or send a short message to the seller. Through this electronic transaction, it is necessary to know that some applications or *online stores* already has a bargaining feature that can be used as *a platform* for buyers and sellers to discuss reach a price agreed upon and accepted by both parties. After bargaining, an agreement occurs, the seller and buyer will determine the payment mechanism. Through *e-commerce* all the formalities normally used in conventional transactions are reduced, in addition to that consumers have the ability to collect and carry out comparison information regarding goods and services more freely without being limited by boundaries (*borderless*) .<sup>3)</sup>

In online buying and selling transactions ( *e-commerce* ) , the parties involved have a legal relationship later poured through a form of agreement or contract that is carried out electronically and in accordance with Article 1 point 17 of Law Number 19 of 2016 concerning Information and Electronic Transactions ( UU ITE ) as an amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions . Information and Electronic

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<sup>3)</sup> Dikdik M. Arief Mansur & Elisatris Gultom, *Cyber Law (Legal Aspects of Information Technology)*, (Bandung: Refika Aditama, 2005) , p . 144 .

Transactions. Through chapter the definition from electronic contract declared that is as agreements contained in electronic documents or other electronic media.

*online* buying and selling transactions provide a lot of convenience to consumers for selling buy the not done face to face, the presence of a bargaining feature in *online buying and selling* can cause losses for sellers if they encounter irresponsible buyers. This happens on various websites and existing applications . This thing could given example through a buyer makes an offer for Rp. 10,800 for the item that should be sold for a value of Rp. 11,000,000, so of course this causes a big loss for the seller if in see price relevant offer \_ seller doesn't see with thorough .

It has repeatedly happened through transactions in various *E-commerce* , where in the end it was the seller who suffered losses due to very unequal prices and errors in the assumptions about the price that had been agreed upon through the feature, while the buyer said that the transaction they were doing was legitimate, This is because the buyer does not feel that he is forcing the seller to accept a certain amount of money price which they have agreed and do not want to cancel the agreement whose implementation has been completed.

Referring to Article 1321 of the Civil Code , an agreement that is not based on free will or is imperfect if it is based on an oversight (*dwaling*), coercion (*geveld*), and fraud (*bedrog*). Thus, it can be said that the element of agreement in the terms of the validity of the agreement is not fulfilled and the seller should get legal protection.

Based on various background description that has been declared above, the author is interested in bringing up the article entitled: "Legalty of Sales and Purchase Agreements Through Online *E-commerce* Through Bargaining Features That Are Harmful to the Seller" with reference to the Civil Code and the ITE Law.

## **B. Formulation of the problem**

Through the background described above , the problems that will be conducted study is : How legal protection for sellers who are not aware of their negligence in seeing prices when bargaining through features in *e-commerce* that are offered by the buyer?

## **C. Research methods**

Finding sources that are intended as predictions about what will be done so that it can be seen what actions can be taken is destination from held a research .

<sup>4)</sup> Regarding with the main issues to be studied , the research method that the author applies in this study is a normative legal research method.

### **1. Types of research**

In this study the method study law normative will used as method for answer the formulated problems, normative legal research methods is a research method carried out by doing study to library legal materials and other written regulations. <sup>5)</sup> which includes research on legal principles, research on legal systematics, research on the level of legal synchronization, research on legal history, and research on comparative law. <sup>6)</sup> Related to legal protection for sellers who are not aware of their negligence in seeing prices when bargaining through features in *e-commerce* that are offered by the buyer. The results of interviews with the parties concerned will also be used as support in this study.

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<sup>4)</sup> Peter Mahmud Marzuki, *Legal Research* . Revised Edition. (Jakarta: Kencana Prenada Media Group, 2009), p.57.

<sup>5)</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Review* , 11th Issue . (Jakarta: PT Raja Grafindo Persada, 2009), p. 13–14.

<sup>6)</sup> Bagir Magnan, *An Authoritative Judicial System A Search* , (Yogyakarta: FH UII Press, 2005), p. 90.

## 2. Research Approach

In terms of its nature, this research is a descriptive study, which means that this research is a study that describes a certain object and explains things related to or systematically describes facts and/or characteristics of certain populations in certain fields factually and carefully. .<sup>7)</sup> Through this study the author will explain about legal protection for the seller who is not aware of the negligence in seeing the price when bargaining through features in *e-commerce* that the buyer offers .

## 3. Types of Legal Materials

Primary legal materials in the form of laws and court decisions , then secondary legal materials in the form of journals and legal books as well as non-legal materials that provide guidance for legal materials and support this research. is the type of legal material that will be used.

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records, minutes of making legislation and judges' decisions. <sup>8)</sup> Through this research, the primary legal materials used are:
  - 1) Civil Code (KUHPerdata);
  - 2) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE).

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<sup>7)</sup> Sarifuddin Azwar, *Research Methods* , (Yogyakarta: Student Library, 1998), p. 7.

<sup>8)</sup> Peter Mahmud Marzuki, *Op.Cit.*, p. 141.

b. Secondary legal materials are textbooks because textbooks contain the basic principles of legal science and classical views of scholars who have high-level qualifications. <sup>9)</sup> Through this research, the secondary legal materials used are:

- 1) Scientific books;
- 2) Legal papers;
- 3) Legal journals;
- 4) Scientific articles.

c. Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study the tertiary legal materials used include:

- 1) Big Indonesian Dictionary (KBBI);
- 2) Internet sites related to online buying and selling transactions .

#### **4. Data Specification**

Descriptive analysis that provides information regarding the suitability of legislation and legal theory (*das sein*) with actual conditions (*das sollen*) which is the object of this research is type specification of the data used.

#### **5. Data analysis technique**

The data analysis technique applied in this research is that the available legal materials are analyzed descriptively using the deductive method,

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<sup>9)</sup> *Ibid.*, p. 142.

namely general data regarding legal conceptions in the form of legal principles, doctrines and opinions of experts which are systematically arranged as an arrangement of facts. legal facts. <sup>10)</sup> This analysis technique is used to answer the existing problems.

## II. DISCUSSION

The agreement is a activity always \_ related with daily human life, through agreement one can carry out various activities with each other in the business and non-business fields. In general , engagement is a base from formation a agreement , where in \_ a engagement located right nor obligation for binding parties \_ themselves to each other parties present in the a agreement that , strength tie this in accordance with Article 1338 of the Civil Code Becomes a the law must obeyed and parties in the agreement bow down under agreement that .

Agreement Buy and sell by general is one \_ type from Miscellaneous form agreement . Along with change and development of the times, implementation from a agreement nor engagement also changes and follows the flow of time , especially when this our has enter the era of revolution industry 4.0. in harmony with Thing the above , the development of technology , information and industry naturally give influence for aspects of life and interact fellow human and also related to increase advances in science and technology that has take us to the development of the transaction system in various shaped more agreement advanced regarding to information and communication technology .

Through development technology information globally , in particular that is internet network , make development agreement buying and selling between the parties the more easy for accessed and enjoyed by various party nor circles , the internet network makes interaction Among man Becomes *borderless* ( without resistance ) in

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<sup>10)</sup> Mukti Fajar and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research* , (Yogyakarta: Pustaka Pelajar, 2016), p. 319.



other words, with existence internet network makes it easy somebody for access , download , share and connect with a other without limit time , country or region. Development this internet network if connected with activity transaction buy and sell will expand transaction and spread range sale for seller .

Based on expansion the first transaction no using the internet, but through method conventional like transactions made \_ with stare face and so on which in principle set on Book Third Civil Code about Engagement with existence transaction through the virtual world using internet network , then needed something regulation legislation for fill in emptiness the law that happened for protect rights , obligations nor ban for the parties who will tie self in the something the agreement that will formed , and give certainty law and guarantee protection law for the parties concerned , then \_ be born Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Economic Transactions (UU ITE). This law is enacted to provide anticipation over emergence bad possibilities in use network the internet by the general public in its use in activity daily. Bad possibilities that can be caused namely , *online* fraud , default *online* , and more.

Based on Thing above , then \_ \_ writer will describe analysis and results from research that has been researched with detailed under this .

#### **A. Agreement Sell Buy According to Civil Code**

Sell Buy is something agreement with which party \_ \_ tie herself for deliver something goods and other parties for pay promised price . \_ This thing in accordance with the view declared through chapter 1457 Civil Code . Through explanation the on our could see 2 elements in a agreement , that is mutually exclusive parties tie herself as well as rights and obligations from each party .

Next in Article 1458 of the Civil Code said that sell buy has considered occurred between the parties , after \_ parties in agreement the has reach an agreement \_ about goods and prices goods that , though not yet conducted submission nor conducted



the payment . Then about condition valid agreement could our see article 1320 of the Civil Code , where something agreement need four conditions , namely the first is agreement between the parties , \_ \_ this mean that existence agreement between the parties \_ required for birth something the agreement that will made . The second condition related with skills the law of the parties for make agreement , terms this state must for the parties in something agreement for status competent legal and not under forgiveness based on decision court . Condition third , is about something Thing certain indicating \_ that in the something agreement required for existence something promised object . \_ Condition fourth , regarding with something lawful cause , that object in agreement already should is something that is lawful and not contrary with regulation legislation whatever applies in Indonesia.

Condition first and conditions second related with condition subjective inside \_ something agreement , if condition first and conditions second no fulfilled so the agreement that has been made status " Can " Submitted Cancellation ”, whereas condition third and conditions fourth relate with condition objective in something agreement , if condition third and fourth no could fulfilled so the agreement that has been made by automatically " Cancel By Law".

## **B. Agreement Sell Buy According to the ITE Law**

Agreement Sell Buy by *on line* according to UU ITE categorized as Transaction Electronics according to Article 1 paragraph 2 of the ITE Law states as deed the law carried out with use computer , network computer and/ or electronic media other . Agreement Buying and selling carried out through the internet network in electronic transactions, has been should have the same legal force strong with with the contract made by conventional in front of law . That thing on could said in tune with

provision P origin 18 paragraph (1) UU ITE which states that " electronic transactions that are poured into Electronic Contracts are binding on the parties" .<sup>11)</sup>

In general condition legitimate agreement sell buy through transaction electronic in same internet network with Settings condition valid something agreement in Civil Code , will but more set by details , for example just about something Thing certain as condition valid the third agreement , because transaction electronic conducted with use internet network , which in principle candidate buyer no could see goods or object to be bought by physical and direct , then there is obligation from seller goods the for include and describe goods that is traded by detailed , in meaning type the item what , related with brand and quality nor picture from goods the by real and genuine , so candidate buyer could see items to be bought and not will feel Tricked or not enough satisfied on items to be received if no in accordance with quality nor the hope that he think will obtained .

### **C. Offer Features Bidding and Modus Operandi**

Agreement Sell Buy through internet network , in general use something application *e-commerce* that can download and use by free all over the world without limitation . Through application that , as buyer our could look for about information the things we interested for conducted purchase , for example about brand , quality , difference price , insurance guarantee damage and so on . Whereas as seller our could spread information about the things we want to sell to other people free , of course permanent bow down based on regulation governing legislation . \_

Development technology in cyberspace also has an impact on sophistication and convenience transact through application *e-commerce*, of course just apps the

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<sup>11)</sup> Hero Kuswanto , " The Validity " Agreement Sell Buy Moving Objects Through the Internet ( Overview from Book III of the Civil Code and Laws Number 11 of 2008)" , *Journal of Law*, Volume XX, Number 20 ( April 2011 1) , p. 58 .



each other compete be the best with offer features newest and easiest as well as To do promotion price by competitive . Features \_ the expected Becomes means make it easy seller nor buyer in To do transaction electronic in application .

one \_ features is the Bargain Feature . Bargain Features this present as one \_ solution in transaction sell buy electronic , where in the transaction sell buy conventional because come and meet by physique could conducted offer price from buyer nor seller until the end get favorable price \_ for second split party , will but because conducted through app and not could To do offer by conventional , then be present feature bargaining this as one \_ feature for give comfort and convenience shop for the parties .

However , in \_ development is also a feature bargaining this has abused by some party in transaction deep electronics \_ the process To do transaction electronic that , as has been writer spread out before . One of them experienced by someone as peddler \_ \_ goods the merchandise in the form of *smartphone* in one *marketplace* famous and active feature bargaining that , where goods the original merchandise valued worth Rp. 5.700.000,- (five million seven hundred thousand rupiah) is offered by the buyer with price Rp. 5,500, - (five thousand five hundred rupiah), which in the end approved and sent order the to buyer without realized that proposed \_ offer by buyer nominal far from Which is the estimated price ? seller consider that done \_ offer is of Rp. 5.500.000,- (five million five hundred thousand rupiah), where action buy and sell has done carried out and harm seller because much nominal difference that .

That thing on has many occur in feature bargain in various application *e-commerce* , where Thing this naturally harm one \_ party in transaction electronics in general harmful party seller because very low price could accepted and far from price market . This thing used by " person " buyer naughty ” for profitable herself alone and many from case this no could canceled transaction electronics , because said that price has agreed by the parties in transaction that , as well as party seller



new realize negligence or the mistake he made do after transaction the completed and accepted by the " person " buyer naughty ” and quibble that transaction sell buy has conducted legally .

Next , thing This is what " persons " do buyer naughty " can " said as the modus operandi, because method this by general used and also with utilise negligence and oversight from the seller . Modus operandi means method or someone 's method \_ \_ or group party in To do his crime .

In case like this , according to view writer could linked with declared fraud \_ based on Article 378 of the Criminal Code, which states : that " *Whoever* " with meaning for profitable self alone or other people directly oppose law with use name false or false dignity ( *hoedanigheid* ) ; with trick trick , or Suite lies , move others to deliver goods something to him , or so that give debt nor abolish receivable , threatened , because fraud , with criminal maximum prison four year .".

Then , can look at the article listed above linked \_ with case inside \_ transaction sell buy *online* via feature bargain , can said existence similarities and elements criminal acts , including the first with meaning for profitable self alone , second is with trick trick for move others to surrender goods to him . According to writer second element this has fulfilled by the actions of " persons " buyer naughty " in To do his deeds .

#### **D. Mistakes and Elements Subjective**

Element subjective in agreement meant on the terms first and second Article 1320 of the Civil Code , namely: about agreement between the parties and \_ \_ law for doing something agreement . mistake alone set in Articles 1321 and 1322 of the Civil Code . In Article 1321 of the Civil Code declared that agreement between the parties \_ no could declared valid , if an agreement between the parties \_ \_ for tie



each and every one of them inside something agreement given because existence mistake , or obtained with something coercion or fraud .

mistake no result in cancel something agreement if occur because reality goods made \_ tree agreement and mistake no Becomes something because cancel , if mistake occur only about himself a person with who a mean make something agreement , except agreement that made because remember himself that person , according to the stated Civil Code through Article 1322 paragraphs (1) and (2).

From both chapter that , can said that mistake could Becomes something reason cancel agreement , if mistake the based on element subjective , where the party who did mistake at first no realize action taken \_ impact harmful herself or no could see with clear what is tied in something agreement .

If connected with case concrete in study this , the action taken binding seller \_ herself with the other party as buyer on something object certain , where seller no have awareness full to tied price \_ in meaning existence misunderstanding related provision price , can said that seller has To do mistake so that buying and selling carried out by the parties could canceled in accordance with view author .

mistake alone the meaning has large in accordance with development problem law in Indonesia and also based on jurisprudence other . The seller 's thoughtful actions that buyer bid price no far with price post , make seller with his negligence accept offer from feature bargaining from buyer could categorized as as something mistakes that can cancel agreement , though already agreed upon by the parties .

Buy-sell action the on could categorized as as the modus operandi of buyers who do not have faith good from beginning implementation agreement . Seller with faith good for To do sale to traded goods \_ Required given protection law , moreover buy and sell meant for second split party accept price sell or profitable buy \_ for the parties by as a whole and as mover wheel economy people in Indonesia and around the world.

because of that , author give view that action buying and selling using feature bargaining and harm party seller , though party seller has tie herself based on categorized negligence and unconsciousness \_ as mistakes made \_ seller , then seller permanent entitled for get protection law on negligence and will good that he do , so that achieved function law for give justice for community and also regulate as well as supervise walking economy good in real world or through *e-commerce* and the creation peaceful , peaceful and prosperous society \_ especially in the field of *e-commerce* .

### **III. CLOSING**

#### **A. Conclusion**

Buy and sell is one \_ form from agreement where two party or more tie themselves with \_ the rights and obligations that must be accepted and accounted for by each party as well. Buy and sell mean that existence something agreement between the parties \_ about something thing and fit with development of time, action agreement buy and sell could conducted through electronic through internet network .

The act of buying and selling that is completed in a *e-commerce* use feature bad bargain \_ party seller because mistakes made \_ seller could requested cancellation , because no existence same deal \_ about something thing , in this relation with perception will price object buying and selling . Where the parties each have perception about price separately , and also with implementation action buy and sell this harmful party seller because the price given is very far under normal price of the object performed sale that .

Then mistake the meaning has expanded the object in question , in other words the action buy and sell the could said is something action mistakes made by sellers who can \_ requested cancellation agreement buying and selling , even though there are element buyers who don't mean good and take advantage existing situation \_ as already \_ writer spread out as a *modus operandi* because

Thing like this has often occurs in various *e-commerce* via the same features , namely feature bargain .

## **B. Suggestion**

So that , before implementation binding agreement whatever shape , especially buying and selling using feature bargaining in *e-commerce* , is expected for whole party , ok seller nor buyer for understand and know with full awareness \_ regarding with object what is being traded , regarding condition goods and specifications as well as agreed price \_ together with actually , so seller nor buyer You're welcome protected on action binding agreement through *e-commerce* , as well as for party *e-commerce* where agreement buy and sell done , in order to give support and effort law to seller have faith good do \_ something an error in the agreement , so real rights \_ must obtained by seller could fulfilled , so that create certainty law and guarantee protection law for the parties in the something agreement under shade *e-commerce* that , though agreement buying and selling done could considered no legitimate by law and can requested the cancellation . Then for Government specifically enforcer law , so that give implementation protection law for the parties in an agreement that has faith good in something agreement .

## **IV. BIBLIOGRAPHY**

### **A. Book**

Miru , Ahmadi and Sakka Pati . *Law of Engagement (Explanation of the Meaning of Articles 1233 to 1456 BW)* . ( Jakarta : Rajagrafindo Persada, 2011 ).

Prodjodikoro, Wirjono . *Civil Law Concerning Certain Agreements* . ( Bandung : Bandung Well, 1981).



- Mansur , Dikdik M. Arief and Elisatris Gultom . *Cyber Law (Legal Aspects of Information Technology)* . (Bandung: Refika Aditama, 2005).
- marzuki, Peter Mahmud . *Legal Research* . Revised Edition. (Jakarta: Kencana Prenada Media Group, 2009).
- Soekanto , Soerjono and Sri Mamudji . *Normative Legal Research A Brief Overview* . 11th printing. (Jakarta: PT Raja Grafindo Persada, 2009).
- Magnan, share . *The Authorized Judicial System A Quest* . (Yogyakarta: FH UII Press, 2005).
- azwar, Sarifuddin . *Research Methods* . (Yogyakarta: Student Library, 1998) .
- Fajar , Mukti and Yulianto Achmad . *Dualism of Normative and Empirical Legal Research* . (Yogyakarta: Student Library, 2016).

**B. Journal Articles**

- Kuswanto , Heru . “ Legacy Agreement Sell Buy Moving Objects Through the Internet ( Overview from Book III of the Civil Code and Laws Number 11 of 2008). *Legal Journal* . XX volumes. Number 20 (April 2011 ) : 58 .