

THE PHENOMENON OF "CLICK" AND THE PRINCIPLE OF GOOD FAITH IN ONLINE BUYING AND SELLING: A PHILOSOPHICAL PERSPECTIVE ON BUSINESS LAW

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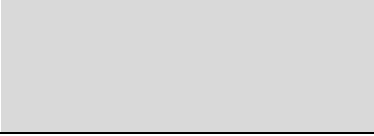
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Abstract

The development of information and communication technology has driven the growth of the increasingly popular phenomenon of online buying and selling, but it has also brought legal issues related to the principle of good faith in such transactions. In the context of online buying and selling, the action of "clicking" as an expression of intent to enter into a sales agreement has legal implications, but it is not yet clear whether it truly reflects free will and good faith considering the virtual nature of transactions which are vulnerable to issues such as lack of clarity in information or fraud. This research aims to examine the phenomenon of "clicking" in online buying and selling transactions from the perspective of the philosophy of business law and its relation to the principle of good faith in contract law, as well as to analyze the legal developments and regulations in Indonesia in accommodating this phenomenon along with the challenges faced in its implementation. This research uses a normative legal research method. A conceptual approach is used to understand the concepts and principles of law related to the phenomenon of "clicking" and the principle of good faith in online buying and selling in depth from the perspective of the philosophy of business law, by collecting data through literature review and analyzing the data qualitatively. The research findings show that the review of the philosophy of business law emphasizes that the action of "clicking" in online buying and selling transactions should be regarded as a manifestation of free will and good faith if based on complete and transparent information, and there is no imbalance in bargaining positions between businesses and consumers. Efforts to enhance transparency, strengthen consumer protection, and enforce the law rigorously are needed to create a fair and dignified online buying and selling ecosystem. Meanwhile, regulatory developments in Indonesia such as the ITE Law and the PMSE Regulation have not specifically accommodated the phenomenon of "clicking" and the principle of good faith, with the main challenges being the dynamic nature of digital technology, gaps with



conventional legal principles, and the need to ensure a balance of interests and enhance public education on safe online buying and selling transactions.

I. Introduction

The development of information and communication technology has transformed many aspects of human life, including in the business world. Online buying and selling has become one of the prominent phenomena and increasingly popular in the current digital era. Ease of access, transaction speed, and a variety of price offers are the main attractions of online buying and selling. (Ardiansyah, 2023) However, behind the profits gained, there are legal issues that need to be further examined, especially regarding the principle of good faith in online buying and selling transactions.

In the context of civil law, the principle of good faith is one of the main principles that must be firmly held by the parties in making agreements or contracts. This principle requires the parties to act with good intentions, honesty, and not to conceal important information that may harm other parties. In other words, the principle of good faith emphasizes the importance of honesty, openness, and good intentions in every business transaction. (Aprita & Adhitya, 2020) However, this phenomenon also poses its own challenges in terms of law enforcement and protection of the rights of the parties involved. One interesting issue to examine is the phenomenon of "clicking" in online buying and selling transactions and its connection to the principle of good faith from the perspective of the philosophy of business law.

In the context of online buying and selling, the transaction process often begins with a "click" or the act of clicking the "buy" or "agree" button on a digital platform. This simple action has significant legal implications as a form of expression of intent to bind oneself to a sales agreement. However, does this "clicking" action truly reflect free will and good faith? This question becomes important considering the virtual nature of online transactions, which are susceptible to misunderstandings, unclear information, or even fraud.

The principle of good faith is a fundamental principle in contract law and serves as the foundation for the creation of fair and dignified contractual relationships. (Ariyanto, 2016) However, the application of this principle in the context of online buying and selling becomes more complex and requires deeper interpretation. Can the action of "clicking" alone be considered a manifestation of good faith? What if there is an imbalance of information or misuse of bargaining power between the parties involved? These questions demand a thorough examination from the perspective of the philosophy of business law to understand the essence and limitations of the principle of good faith in a digital context.

To answer these questions, a review from the standpoint of the philosophy of business law becomes highly relevant. The philosophy of business law offers a deeper

perspective on legal principles and ethics in the business world, including in the context of online buying and selling. By examining the phenomenon of "clicking" and the principle of good faith through the lens of the philosophy of business law, it is hoped that a more comprehensive understanding and fair solutions can be obtained for the parties involved in online transactions. This research is important given the increasing activity of online buying and selling in Indonesia. Therefore, studying the phenomenon of "clicking" and the principle of good faith in online buying and selling is relevant to ensure legal certainty and protection for the parties involved in such transactions.

By examining the phenomenon of "clicking" and the principle of good faith in online buying and selling through the lens of the philosophy of business law, and considering relevant legislation, it is hoped that a deeper understanding and fair solutions can be obtained for the parties involved in online transactions. This study is also expected to contribute to the development of business law in Indonesia, especially in facing the rapid development of information and communication technology. The research problem formulation in this study is as follows:

- a. What is the philosophical perspective of business law towards the phenomenon of "click" in online buying and selling transactions and its relation to the principle of good faith in contract law?
- b. How has the law and regulation in Indonesia evolved to accommodate the "click" phenomenon and the principle of good faith in online buying and selling transactions, and what challenges are faced in its implementation?

2. Research Method

This research employs the normative legal research method, which focuses on the study of legal norms, legal principles, and legal doctrines that are applicable. This method is chosen because the research aims to examine the phenomenon of "click" and the principle of good faith in online buying and selling from the perspective of the philosophy of business law, which is a conceptual and theoretical study. The approach used in this research is a conceptual approach. This approach is chosen to understand the concepts and principles of law related to the phenomenon of "click" and the principle of good faith in online buying and selling. The conceptual approach allows researchers to explore and analyze these concepts deeply from the perspective of the philosophy of business law.

The legal sources used in this research include primary, secondary, and tertiary legal materials. Primary legal materials consist of relevant legislation, such as the Civil Code, the Electronic Information and Transactions Law, the Trade Law, and Government Regulations on Trading Through Electronic Systems. Secondary legal materials include books, journals, scientific articles, and other literature discussing related topics. Tertiary

legal materials include legal dictionaries and legal encyclopedias.

The data collection technique in this research is conducted through library research. Researchers will gather and review various relevant literature sources, such as books, journals, scientific articles, legislation, court decisions, and other literature related to the research topic.(J. Moleong, 2017) This technique is carried out to obtain comprehensive data and information regarding the phenomenon of "clicks", good faith principles, and online transactions from the perspective of the philosophy of business law.

The data analysis technique used in this research is qualitative data analysis. Data and information obtained from the literature study will be analyzed in-depth using content analysis methods and textual interpretation.(Sugiyono, 2019) This analysis aims to understand and interpret the concepts, principles, and legal norms related to the phenomenon of "click" and the principle of good faith in online buying and selling from the perspective of the philosophy of business law. The results of this analysis will then be presented in the form of logical and systematic descriptions and arguments.

3. Results And Discussion

A. A Philosophical Legal Analysis of the "Click" Phenomenon in Online Buying and Selling Transactions and Its Relation to the Principle of Good Faith in Contract Law.

The phenomenon of "click" in online buying and selling transactions is an interesting phenomenon to be studied from the perspective of the philosophy of business law. The act of "clicking" or clicking the "buy" or "agree" button on a digital platform is often considered a manifestation of the will to bind oneself to a sales agreement. In contract law, the principle of good faith is a fundamental principle that must be fulfilled by the parties involved. This principle serves as the foundation for the creation of fair and dignified contractual relationships.(Suryana et al., 2019) As regulated in Article 1338 paragraph (3) of the Civil Code (KUHPPerdata), agreements must be carried out in good faith. However, the application of this principle in the context of online buying and selling becomes more complex and requires deeper interpretation.

From a legal philosophy perspective, the "click" action in online buying and selling transactions can be seen as a form of expression of will that has legal consequences. However, this will must be genuinely formed freely, without coercion, and based on clear and complete information. In this context, the principle of good faith plays an important role in ensuring that the parties act with good intentions, honesty, and openness in the transaction process.(Mulisi, 2018)

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions recognizes the validity of electronic transactions, including "click" actions in online buying and selling. Article 20 paragraph (1) states that "In addition to provisions regulating Electronic Transaction Management,

unless otherwise agreed, the Parties are also obliged to explain the terms and conditions that will apply in Electronic Transactions." (Martinelli et al., 2024) This indicates the importance of providing clear and complete information before the "click" action is taken, so that the intention to bind oneself to the agreement is truly formed with good faith. Furthermore, Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems regulates the obligation for businesses to provide complete and accurate information to consumers. Article 7 paragraph (1) states that "Business Actors must provide adequate, honest, and true information regarding Goods and/or Trading Services offered to Consumers." This provision emphasizes the importance of good faith in providing transparent and accurate information, so that consumers can make decisions that are truly desired and based on good faith as well.(N, 2021)

In the perspective of business law philosophy, the action of "clicking" in online buying and selling should be regarded as a form of declaration of intent that has legal consequences. However, this intent must be formed freely, without coercion, and based on clear, complete, and transparent information from the parties involved. The principle of good faith becomes a principle that must be upheld in the transaction process, from the provision of information, negotiation, to the execution of agreements.(Hutami, 2021) Therefore, parties involved in online buying and selling must act with good faith, honesty, and openness in providing information and expressing their intentions. The mere action of "clicking" cannot be considered as a manifestation of free will and based on good faith if there is an imbalance of information or abuse of bargaining power among the parties involved. In situations like this, the validity of the "click" action can be questioned from the perspective of the philosophy of business law.

To ensure the application of the principle of good faith in online buying and selling, efforts are needed to enhance transparency of information, strengthen consumer protection, and ensure a balance of bargaining power between businesses and consumers.(Christian, 2023) This can be achieved through refining regulations, educating the public, and effectively monitoring online business practices. In this context, the role of government and law enforcement agencies becomes crucial in ensuring the creation of a fair, transparent, and dignified online buying and selling ecosystem. Firm and consistent enforcement of good faith principles in online transactions is key to building trust and ensuring legal protection for all parties involved.(Rambe et al., 2023)

Overall, the philosophical examination of business law towards the phenomenon of "clicks" in online buying and selling transactions and its relation to the principle of good faith in contract law emphasizes the importance of upholding the principles of justice, transparency, and balance of bargaining power. The "click" action should be seen as a manifestation of truly free will and based on good faith, taking into account the availability of complete, clear, and transparent information from the parties involved.(Mulisi, 2018) Only in this way, online buying and selling transactions can reflect dignified contractual

relationships and comply with applicable legal principles.

B. Perkembangan Hukum Dan Regulasi Di Indonesia Dalam Mengakomodasi Fenomena "Klik" Dan Asas Iktikad Baik Dalam Transaksi Jual Beli Online, Serta Tantangan Apa Yang Dihadapi Dalam Penerapannya

The development of digital technology and the growth of online buying and selling activities in Indonesia have prompted the government to formulate regulations that accommodate this new phenomenon.(Djulaeka & Jusmadi, 2013) However, the process of drafting and implementing these regulations faces its own challenges in relation to the phenomenon of "click" and the principle of good faith in online buying and selling transactions. One of the main regulations governing electronic transactions, including online buying and selling, is Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). This law recognizes the validity of electronic transactions and emphasizes the importance of good faith in its implementation.(Aji, 2022)

However, this law does not specifically regulate the phenomenon of "clicks" and its implications on the principle of good faith in the context of online buying and selling. Furthermore, the government has also issued Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (PP PMSE). This regulation provides more detailed provisions regarding trading activities through electronic systems, including the obligation for business actors to provide clear and accurate information to consumers.(Tofan & Trinaningsih, 2022) Meskipun demikian, peraturan ini belum secara eksplisit mengatur tindakan "klik" dan kaitannya dengan asas iktikad baik dalam konteks jual beli online.

The main challenge in accommodating the phenomenon of "clicks" and the principle of good faith in regulation in Indonesia is the dynamic and rapidly evolving nature of digital technology and online business practices. Regulators often face difficulties in keeping up with these developments and creating comprehensive and adaptive regulations.(Febriani & Pranoto, 2021) Furthermore, there are challenges in bridging the gap between conventional legal principles and new phenomena in the digital world. Legal concepts such as intention, good faith, and binding agreements often need to be reinterpreted in the context of virtual transactions and "click" actions in online purchases.(Lestari et al., 2023)

Another challenge faced is ensuring a balance between the interests of businesses and consumers in online buying and selling transactions. Regulators need to ensure that existing regulations not only protect the interests of one party but also guarantee fairness and equality for all involved parties.(Samsuri, 2013)

In an effort to address these challenges, the government has undertaken several initiatives. One of them is by drafting the Personal Data Protection Bill, which is expected

to provide better protection for consumers in online transactions. This bill is also expected to increase public trust in digital transactions.(Anggen Suari & Sarjana, 2023) In addition, the government also encourages the establishment of consumer protection agencies and dispute resolution bodies specifically handling disputes in online buying and selling transactions.(Yetno, 2022) It is important to ensure the existence of an effective and fair dispute resolution mechanism for the parties involved, especially in cases involving issues related to good faith and "click" actions.

Another challenge is to increase public awareness and understanding of rights and obligations in online buying and selling transactions. The government and other stakeholders need to make continuous efforts in education and socialization so that the public can engage in online transactions more safely and responsibly.(Rahman et al., 2023) In the future, close collaboration is needed between regulators, businesses, consumer organizations, academics, and society to develop more comprehensive and adaptive regulations regarding the phenomena of "clicks" and the principle of good faith in online buying and selling. This holistic and participatory approach is expected to produce balanced, fair, and legally certain regulations for all parties involved in online transactions in Indonesia.(Suminar et al., 2020)

4. Conclusion

A philosophical examination of business law towards the phenomenon of "click" in online buying and selling transactions and its relation to the principle of good faith in contract law emphasizes that the "click" action should be regarded as a manifestation of a genuinely free will and based on good faith, taking into account the availability of complete, clear, and transparent information from the parties involved. The "click" action alone cannot be considered a valid manifestation of will if there is an imbalance of information or abuse of bargaining power between businesses and consumers. Therefore, efforts are needed to enhance transparency, strengthen consumer protection, and ensure a balance of bargaining power through regulatory improvements, public education, and vigorous law enforcement to create a fair, transparent, and dignified online buying and selling ecosystem.

The development of law and regulations in Indonesia to accommodate the "click" phenomenon and the principle of good faith in online buying and selling transactions still face several challenges. Although there are already the ITE Law and the PMSE Regulation governing electronic transactions and trading through electronic systems, these regulations do not specifically address the "click" phenomenon and its implications for the principle of good faith. The main challenges include the dynamic nature of digital technology and evolving online business practices, as well as the gap between conventional legal principles and new phenomena in the digital world. Regulators must

also ensure a balance of interests between businesses and consumers, and enhance public education and understanding of safe and responsible online buying and selling transactions.

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