



INDONESIA-MALAYSIA'S LEGAL PROTECTION FOR BUSINESSES UNDER THE COD (CASH ON DELIVERY) PAYMENT SCHEME IN THE MARKETPLACE

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ABSTRACT

The COD (Cash on Delivery) can impact cash flow due to payment delays, especially for businesses with tight margins. In order to address the issue of business actors' legal protection when using COD as a payment mechanism in the marketplace, this paper seeks a solution. Research on laws and other relevant legal literature is done by the author as part of the normative juridical legal research approach used to write this publication. To make corporate operations more productive and efficient, Marketplace aims to reduce their unnecessary complexity. With the marketplace emerging, everyone may now purchase and sell goods and services with ease, at a low cost, and in a timely manner, as there are no restrictions on location, time, or distance. There are

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numerous payment methods available in the marketplace, one of which is COD (Cash on Delivery), which allows customers to pay directly on the spot when they receive the things they ordered. However, in practice, the parties who transact in the Marketplace frequently suffer significant losses, necessitating the existence of legal protection for the parties that transact in the Marketplace, both consumers and business entities, in order to protect their rights.

Keywords: Legal Protection; The COD (Cash on Delivery); Transactions; Law

INTRODUCTION

The global growth of technology and information has a variety of effects on human life, one of which is the introduction of extremely quick changes. The distance between one city, region, or even country is no longer an impediment to information sharing or trade. This growth has inspired advances in multiple industries, one of which is the rapidly increasing business sector, where diverse information can be accessed remotely and transactions may be carried out without the need to meet in person.¹

Geographical barriers no longer prevent people from collaborating and interacting with one another through the Internet, which serves as a worldwide instrument for information distribution as well as a method for it.² The good effects of the internet's emergence extend beyond the sectors of industry and information technology, affecting the economics, fashion, and other domains as well.

Computers and mobile phones can be used for a variety of transactions. The internet has become a common tool for electronic

¹ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Sinar Grafika, 2022).

² David M Boush, Marian Friestad, and Peter Wright, *Deception in the Marketplace: The Psychology of Deceptive Persuasion and Consumer Self-Protection* (Routledge, 2015).



information and communication for a wide range of purposes, such as searching for news and data, browsing, surfing, email correspondence, and business transactions.³ Electronic commerce, or E-Commerce, is the term used to describe trading transaction activities via online media.⁴ The global community, particularly the people of Indonesia, is greatly impacted by the use of e-commerce in commercial transactions. The significance of legal issues in the area of e-commerce, one of which is related to giving parties that deal via Internet media legal protection, is something that the Indonesian people find extremely significant.⁵

The expansion of E-Commerce has recently seen considerable developments, especially as people's lives move from buying and selling offline to buying and selling online. Furthermore, the Covid-19 epidemic in early 2020 has had an impact on society's ability to meet its basic requirements.⁶ Life is like shopping. In anticipation of the spread of the Covid-19 virus, the government recommends that study, work, and worship activities be carried out at home. Other efforts to prevent the spread of the Covid-19 virus include not traveling to public or crowded places such as malls, markets, and so on.⁷ This condition causes people in the future to have to do activities only at home, as well as in terms of shopping. With social restrictions, people reduce their shopping routine to shops and markets. Considering that shops and markets are the two

³ Jony Wong, *Internet Marketing for Beginners* (Elex Media Komputindo, 2013).

⁴ Rizka Syafriana, "Perlindungan Konsumen Dalam Transaksi Elektronik," *De Lega Lata: Jurnal Ilmu Hukum* 1, no. 2 (2016): 430–47.

⁵ Boush, Friestad, and Wright, *Deception in the Marketplace: The Psychology of Deceptive Persuasion and Consumer Self-Protection*.

⁶ Antonius Budisusila, *Transformasi Ekonomi Indonesia Pasca Pandemi Covid 19* (Sanata Dharma University Press, 2021).

⁷ Utami Maulida, "Marketplace Shopee Sebagai Alternatif Mengembangkan Ekonomi Kreatif Di Masa Pasca Pandemi Covid-19," *Madani Syariah* 5, no. 1 (2022): 33–42.



places most frequently visited by many people, many people choose to shop online.⁸

The increasing value of transactions over the last five years indicates that online trade has a very bright future in Indonesia and Malaysia. The potential for the national digital economy is represented by the internet users' rapid growth. This has led to the emergence of online transportation and buying and selling, which are two ways to take advantage of the digital world's expansion and generate new business opportunities, jobs, and worker absorption. The establishment of a marketplace is one of the new business prospects that come with leveraging the rise of the digital world.

A new type of business called a marketplace is emerging in tandem with the expansion of the information technology industry. Marketplace is made to reduce unnecessary complexity in corporate processes, making them more productive and efficient. The advent of the marketplace has made it possible for everyone to buy and sell goods and services with ease, at a low cost, and in a timely manner because there are no restrictions on location, time, or distance. A marketplace needs a virtual container to serve as a venue for transactions between sellers and buyers, just as a traditional market needs a physical market as a place for merchants and buyers to meet. An electronic means of facilitating commercial transactions, such as the online sale of goods, services, or information, is provided through marketplaces.⁹

In order to carry out business and facilitate transactions between buyers and sellers, marketplaces are internet-based online media platforms. A prominent participant in Indonesian e-commerce is Marketplace. According to Katadata's data, online trade transactions in

⁸ Estelle Derclaye, *The Legal Protection of Databases: A Comparative Analysis* (Edward Elgar Publishing, 2008).

⁹ Alrubaiee, H. Alshaibi dan Y. Al-Bayati. (2012). *Relationship Between B2B Ecommers Benefits, E-Marketplace Usage and Supply Chain Managemant*. Global Journal of Management and Bussines Research. Vol.12. No.9



Indonesia reached 108.4 (one hundred eight point four) billion rupiah in 2016, up from just 25.1 (twenty five point one) billion rupiah in 2014. It's true that in recent years, buying and selling online has become popular. The marketplace stands out as one of the most popular online trading platforms in Indonesia.¹⁰

Marketplace is an electronic product marketing stage where various company actors and consumers can transact with one other.¹¹ Business owners do not need to be perplexed and fight to sell online because the marketplace has offered a location to sell online; businesses and consumers simply need to register if they wish to transact in the marketplace. All processes have been carried out by the marketplace's staff; the seller simply needs to improve services and promotions when promoting the products to be offered on the marketplace.¹²

One of the benefits of the marketplace that attracts business people to market or sell their products on it is the possibility of selling more products than we would sell them traditionally or offline, because the marketplace is a place where business actors and consumers come together to look for or sell a product. A trader (vendor), entrepreneur, or corporation can display or publish product information via a website or marketplace site, whether it be their own or another commercial website. If interested, customers can contact the website or guestbook and complete the transaction by clicking the "Accept", "Agree", or "Order" buttons. After all of this is completed, the money can be submitted instantly via transfer to the seller's account.¹³

¹⁰ Ilham Mubarak, 2018, *marketplace pengertian jenis dan contoh*, accessed from <https://www.niagahoster.co.id> on October 19, 2023.

¹¹ Boush, Friestad, and Wright, *Deception in the Marketplace: The Psychology of Deceptive Persuasion and Consumer Self-Protection*.

¹² Dewi Irmawati, "Pemanfaatan E-Commerce Dalam Dunia Bisnis," *Jurnal Ilmiah Orasi Bisnis-ISSN 2085*, no. 1375 (2011): 161–71.

¹³ Joseph Blocher, "Institutions in the Marketplace of Ideas," *Duke LJ* 57 (2007): 821.



In the marketplace there are also various payment options apart from bank transfers, there are also payment systems using online credit/debit cards, COD (Cash On Delivery), hereinafter referred to as COD, Bri Direct debit, BCA OneKlik and you can also use Indomart or Alfamart. The COD payment system, if interpreted, is that the seller and buyer meet at an agreed place to process the payment, so that the buyer gets the advantage of being able to check the items to be purchased before making a payment. COD is a term commonly used in online buying and selling transactions, which is an abbreviation of English which means payment is made upon delivery. In this online buying and selling transaction, the COD payment system that is applied is that the seller and the buyer meet at an agreed place to make payments, because usually sellers and buyers are prevented by long distances, so in determining the place both parties agree to take place in the middle. middle ground between seller and buyer to be fair. However, in marketplaces such as Shopee, Bukalapak, Lazada and others, the COD payment system that is carried out between sellers and buyers is slightly different where in this case the marketplace appoints a third party, in this case a goods delivery service corporation, to represent the seller in conducting COD transactions with buyers.

The payment system via COD in the marketplace does not always work according to the terms agreed upon by the buyer and the seller and the terms set by the marketplace¹⁴, in practice not a few items that reach the buyer are not paid in advance before opening the package of goods purchased, but the seller opens (damages the package) in advance the package of goods it receives, which is not in accordance with the conditions previously agreed upon. Not infrequently it is also found in practice that goods sent to buyers are damaged or not in accordance with what was ordered. Cases like this are certainly

¹⁴ Irmawati, "Pemanfaatan E-Commerce Dalam Dunia Bisnis."



detrimental to several parties, both buyers and sellers.¹⁵ Therefore, it is necessary to have legal protection for parties who transact in transactions on this marketplace, especially for Business Actors, so that the rights of the parties in transactions can be properly fulfilled and also protected.¹⁶

METHODS

This analysis involves a series of well-defined steps. First, the researcher identifies a legal problem or question. Then, they meticulously search for relevant legal materials in libraries, online databases, and legal publications. Through careful examination and interpretation of these sources, the researcher builds a strong legal argument, reaching a conclusion that is grounded in established legal principles and precedents. Normative juridical research is vital for understanding the existing legal landscape, clarifying ambiguities in the law, and forming the basis for future legal developments.¹⁷ Normative juridical research methods, also known as doctrinal legal research, delve into the theoretical and legal framework surrounding a particular issue. Unlike empirical research that gathers real-world data, this approach focuses on analyzing legal materials like statutes, case law, and legal treatises. Researchers essentially conduct a deep dive into legal literature, dissecting the meaning and intent behind laws, identifying potential inconsistencies, and drawing connections between different legal sources.

RESULTS AND DISCUSSION

A Glimpse of Cash on Delivery (COD) in Indonesia and Malaysia

¹⁵ Blocher, "Institutions in the Marketplace of Ideas."

¹⁶ Consumer Protection, "Policies and Measures in the Financial Marketplace," *Centro de Investigaciones Jurídicas, Políticas y Sociales Universidad de Caldas/ Manizales, Colombia*, 2022, 165.

¹⁷ Tim Reality, *Kamus Terbaru Bahasa Indonesia Dilengkapi Dengan Ejaan Yang Disempurnakan (EYD)* (Surabaya: Reality Publisher, 2008).



According to the understanding of the COD payment method, the buyer and seller meet in an agreed place to make the payment process, so that the buyer gets the advantage of being able to check the goods to be purchased before making the payment. COD is a term commonly used in online buying and selling transactions, which stands for English, which means payment is made upon delivery. In online buying and selling transactions the COD payment system that is applied is that the seller and the buyer meet at an agreed place to make payments, because usually the seller and buyer are prevented by a long distance, so a place is determined that is in the middle between the seller and the buyer so that it is fair.¹⁸ From this understanding it can be seen that COD is a direct payment method in a place that has been agreed upon by the buyer and seller, but in the Marketplace the COD payment method has a slight difference even though it is not basic but more towards the technical implementation, namely in the Marketplace the Marketplace appoints a third party (in this is a goods delivery service) to represent the seller to deliver the goods to the buyer's house and receive payment from the buyer.¹⁹

Legal protection for business actors in this case has been regulated in the UUPK regarding the rights and obligations of business actors, which is stated in Articles 6 and 7 of the UUPK, and the ITE Law as well as the PSTE Law. In the ITE Law, legal protection for parties in electronic transactions is stated in Article 15 Paragraph (2) of the ITE Law which explains that "Electronic system operators are responsible for administering their electronic systems". Furthermore, in Article 21 Paragraph (2) it is also explained that "the party responsible for all legal consequences in the implementation of electronic transactions as referred to in paragraph (1) is regulated as follows: a. If done alone, all legal consequences in the implementation of electronic transactions

¹⁸ Oni Syahroni and M.Hasanudin, *Fikih Muamalah*, (Depok: Raja Grafindo Persada, 2007) p. 37

¹⁹ Kristiyanti, *Hukum Perlindungan Konsumen*.



will be the responsibility of the transacting parties. b. If it is done through the granting of a power of attorney, then all legal consequences in the implementation of electronic transactions will be the responsibility of the authorizer or, c. If it is done through an electronic agent, all legal consequences in carrying out electronic transactions will be the responsibility of the electronic agent.²⁰

Based on the description of the explanation of the articles above, if we relate the issues related to the implementation of the COD payment system in the Marketplace, we can conclude that the person responsible for the COD payment system in the Marketplace is the marketplace itself, because the Marketplace is included in an electronic agent as explained in the ITE Law which where the meaning of Electronic Agent is "A device from an electronic system that is made to take action on certain electronic information automatically held by people".²¹ If we associate the notion of an electronic agent with the notion of a Marketplace, in this case we can categorize a Marketplace into an Electronic Agent in the ITE Law, where a Marketplace is basically a device of an electronic system that is made to perform an action on certain electronic information automatically (in the case of this makes buying and selling transactions) and in practice the Marketplace is wrapped in an application that is run by people. Based on these descriptions, we can conclude that Marketplace is an Electronic Agent.²²

In accordance with the sound of Article 21 Paragraph (2) letter C, namely, "if it is done through an electronic agent, all legal consequences in carrying out electronic transactions are the responsibility of the

²⁰Republik Indonesia, "Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen," *Lembaran Negara RI Tahun 8 (1999)*.

²¹ <https://paralegal.id/pengertian/agen-elektronik/> Accessed on November 08, 2023.

²² Shidarta Shidarta, "Teori Timbulnya Perjanjian Dalam Transaksi Konsumen Elektronik," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 12, no. 2 (2023).



electronic agent". So in terms of all legal consequences from electronic transactions related to the implementation of the COD payment system in the Marketplace, it is the responsibility of the Marketplace. However, Marketplace's responsibility in this case is also affected by the provisions in the next paragraph in Article 21 Paragraph (3) and (4) which basically explains that if an electronic transaction loss is caused by the failure of the Electronic Agent to operate due to negligence of a third party directly to the electronic system, then all legal consequences become the responsibility of the Electronic Agent and vice versa if electronic transaction losses are caused by the failure of the Electronic Agent to operate due to the negligence of service users, in this case Business Actors and Consumers, then the legal consequences that arise will be the responsibility of service users. So the responsibility for electronic transaction losses in this case depends on who caused the failure of the Electronic Agent to operate. While Cash on Delivery (COD) offers convenience in Malaysia's e-commerce landscape, legal protection for both buyers and sellers can be a complex issue.²³ Here's a breakdown of the key aspects and relevant legislation:

1. Consumer Protection Act 1999 (Act 599): This act forms the foundation for consumer protection in Malaysia. It applies to "all goods and services that are offered or supplied to one or more consumers in trade, including any trade transaction conducted through electronic means". However, it excludes certain sectors like healthcare and financial services. The act mandates clear descriptions, warranties, and delivery obligations from sellers. It grants consumers rights to return faulty or incorrectly delivered products and claim compensation in some cases. While Act 599 doesn't explicitly address COD transactions, its principles of fair trade and consumer protection apply indirectly.
2. Communications and Multimedia Act 1998 (Act 588): This act regulates electronic transactions in Malaysia. It covers aspects

²³ Joo Xun Loh, "The Legal Framework of E-Commerce in Malaysia," *Asian Journal of Law and Policy* 3, no. 3 (2023): 183–98.



like data privacy and security, which can be relevant to online COD transactions involving customer information.²⁴

Currently, there's no specific legislation directly governing COD transactions. This might create ambiguities in resolving disputes related to COD orders. Existing laws primarily focus on consumer protection. While this offers some safeguards for buyers, sellers might lack specific legal recourse for issues like fraudulent COD orders or damaged cash during delivery.²⁵

The Ministry of Domestic Trade and Consumer Affairs (KPDNHEP) or relevant authorities could introduce guidelines specifically addressing COD transactions in e-commerce. These guidelines could define best practices for sellers, couriers, and customer interactions during COD transactions. Establishing clear and streamlined dispute resolution mechanisms for COD-related issues would benefit both consumers and businesses. This could involve online platforms, consumer tribunals, or designated authorities. Enhanced collaboration between government agencies, e-commerce platforms, courier companies, and consumer protection organizations could lead to a more robust and secure COD ecosystem in Malaysia.²⁶

Cash on Delivery (COD) in Indonesia vs. Malaysia: A Comparative Analysis

The Marketplace's responsibilities in the COD payment method depend on the agreement of the parties (business actors, consumers and Marketplace parties) that have been agreed upon by the parties. Cash on Delivery (COD) remains a popular payment method in both Indonesia and Malaysia, offering a sense of security and convenience for online shoppers. While the core concept remains the same, there

²⁴ Yousef A Baker El-Ebiary et al., "E-Government and E-Commerce Issues in Malaysia," in *2021 2nd International Conference on Smart Computing and Electronic Enterprise (ICSCEE)* (IEEE, 2021), 153–58.

²⁵ Adeline Chua Phaik Harn, Ali Khatibi, and Hishamuddin Bin Ismail, "E-Commerce: A Study on Online Shopping in Malaysia," *Journal of Social Sciences* 13, no. 3 (2006): 231–42.

²⁶ El-Ebiary et al., "E-Government and E-Commerce Issues in Malaysia."



are some interesting distinctions between how COD functions in these neighboring Southeast Asian nations.²⁷ It is delve into a comprehensive comparison.^{28,29}

	Indonesia	Malaysia
Market Penetration	COD enjoys a dominant position in Indonesia due to a relatively high unbanked population. Many Indonesians prefer the familiarity and security of cash transactions.	While still widely used, COD holds a less prominent role in Malaysia compared to Indonesia. Online payment methods like e-wallets are gaining significant traction due to a higher bank penetration rate.
Regulations and Fees	Regulations surrounding COD in Indonesia are less stringent compared to Malaysia. This allows for greater flexibility for both sellers and couriers, but might also lead to some inconsistencies in fees and procedures	The Malaysian Communications and Multimedia Commission (MCMC) imposes stricter regulations on COD transactions. This ensures transparency and consumer protection, with clear guidelines for fees and dispute resolution. COD fees in Malaysia are generally higher compared to Indonesia.
Payment Collection	The approach to cash collection varies between courier companies in Indonesia. Some might allow partial payment upfront with the remaining	COD transactions in Malaysia typically involve full payment upon delivery of the product. Inspecting the product before payment is not as widely

²⁷ Derclaye, *The Legal Protection of Databases: A Comparative Analysis*.

²⁸ El-Ebiary et al., "E-Government and E-Commerce Issues in Malaysia."

²⁹ Syafriana, "Perlindungan Konsumen Dalam Transaksi Elektronik."



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	balance collected on delivery. Additionally, some sellers might offer COD with additional service charges to inspect the product before payment.	offered compared to Indonesia.
Fraudulent Activity	The more relaxed regulatory environment in Indonesia might expose sellers to a slightly higher risk of fraudulent COD orders. This emphasizes the importance of choosing reputable couriers with established verification procedures	The stricter regulations and potential for legal repercussions help deter fraudulent activity in COD transactions within Malaysia. However, vigilance is still crucial for sellers.
Evolving Landscape	The Indonesian e-commerce landscape is rapidly evolving, with a growing focus on digital wallets and other online payment methods. However, COD is expected to remain a relevant option for a considerable period due to the unbanked population and cultural preference for cash transactions.	While COD remains popular, Malaysia is experiencing a faster shift towards online payment methods. The government actively promotes cashless transactions, and e-wallets are gaining considerable user base. COD might eventually become a niche option for specific product categories or customer segments.
Technology	Both Indonesia and Malaysia are witnessing an increased adoption of technology in COD transactions. Apps and digital verification tools are being developed to enhance security and streamline procedures.	



Logistics	Reliable and efficient courier services are crucial for the smooth functioning of COD in both countries. Competition in the logistics sector is driving innovation and improved service delivery.
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Cash on Delivery serves as a vital bridge between traditional cash-based transactions and the digital world of e-commerce in both Indonesia and Malaysia. While the specifics differ, both countries acknowledge the importance of COD in catering to a diverse customer base. As the e-commerce landscape continues to evolve, we can expect further advancements in COD services, with an emphasis on security, convenience, and adapting to changing consumer preferences.

CONCLUSION

The protection of business actors in the payment system through COD in the Marketplace has been regulated in statutory provisions, namely Law No. 8 of 1999 concerning Consumers and the ITE Law, where these laws not only regulate consumer rights and obligations but also regulates the rights and obligations of business actors as well as the Marketplace.³⁰ protection for business actors in electronic transactions is regulated in the ITE Law, which in its provisions explains that responsibility for electronic transactions depends on who causes losses in these electronic transactions. If the cause of the loss in the electronic transaction is the result of the negligence of the marketplace, then the marketplace is responsible for all legal consequences arising from the loss of the electronic transaction. Conversely, if the cause of the loss is the user of the service or in this case the business actor and the consumer, then the responsibility for all legal consequences that arise in the electronic transaction is the responsibility of the service user.

Although there's no dedicated legal framework for COD in Malaysia, existing consumer protection laws offer some level of protection. However, there's room for improvement. Establishing clear guidelines, dispute resolution mechanisms, and collaboration among stakeholders can enhance the security and trust surrounding COD

³⁰ Kristiyanti, *Hukum Perlindungan Konsumen*.



transactions for both buyers and sellers in the ever-evolving Malaysian e-commerce market.

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