

LEGAL CERTAINTY OF ELECTRONIC CONTRACT AGREEMENTS IN THE PERSPECTIVE OF THE DATA CUP

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Abstract: *Right now, sellers and buyers can conduct business transactions without ever meeting. These exchanges of money are frequently referred to as electronic exchanges. Electronic contracts are agreements that involve the use and exploitation of technology. This study aims to assess the legal certainty of electronic agreements and to look at the legal provisions of those agreements from the Civil Code's perspective. This study is normative legal research or secondary data-based literature. The study's findings indicate that electronic contracts and agreements have the same weight in court as those signed by the parties. Electronic contracts that, in the event of a dispute between the parties, may be cited in court as electronic proof. The legal prerequisites for an agreement are governed by Article 1320 of the Civil Code. They include the consent of the parties who will be legally bound, the capacity to enter into an engagement, a specific subject matter, and a reason that is not prohibited. This study concludes that it can serve as a community resource for information on the provisions and certainty of electronic work agreement laws.*

Keywords: *Civil Code, Agreements, Electronic Transactions, Electronic Contracts*

1. INTRODUCTION

Indonesian law has various components. Implementation of the law is based on the principle of legality (Sinapoy, 2012), which involves various parties. There are many people in the legal profession.

Together, we can see that Indonesia is still working on developing its technology to enable the growth of the internet there. This is based on already existing data, according to which Indonesia is one of the Asian nations with the highest percentage of internet users. The rising sales of electronic products, including laptops, PCs, cellphones, and other items that may be used to access the internet directly, indicate this (Ade et.al., 2021).

A worldwide computer network system that links to one another using the common Internet Protocol Suite is known as interconnection-networking (Internet). The 1990s saw the emergence of internet history in Indonesia. Information technology, including the internet, has exposed people to a new world of interactions, markets, and markets and a global corporate network without borders. Cyberspace is another name for the internet-based universe. The existence of the internet as a network and infrastructure has aided in the effectiveness and efficiency of a company's operations, particularly in light of its use as a platform for publication, communication, and the acquisition of a variety of necessary information (Alcianno, 2020).

The advancement of information technology has the power to alter workplace culture, boost productivity, and ensure that a variety of office procedures are carried out efficiently, openly, and simply. The development of information technology facilitates the growth of electronic and internet-based services and other forms of activity. In the same way, that e-government is used in government, e-commerce is used in business (Rosidah, 2018). The rise of numerous marketplaces for service providers and customers, such as Freelancer (www.freelancer.co.id), Sribulancer (www.sribulancer.com), Projects.co.id (www.projects.co.id), and others, demonstrates that advancements in the service sector are occurring just as quickly (Arif, 2019).

Selling and purchasing goods and services online is possible through electronic commerce, also known as e-commerce (Rehatalanit, 2021). Right now, sellers and buyers can conduct business transactions without ever meeting. These exchanges of money are frequently referred to as electronic exchanges. The question of the validity of the transaction system is one of the issues that result from this electronic transaction system. Validity specifically refers to whether trade agreements or trading

contracts created via electronic systems are valid. Every commercial transaction agreement is typically covered in a contract or agreement (Emilda, 2011).

It is indisputable that the advent of the internet has diverse effects on all facets of human life, including the agreement itself. Whereas the agreement was initially conventional (written and oral), a new type of agreement has now evolved, namely an electronic agreement or contract. (Wahyu et.all., 2018). An electronic contract is a binding agreement between the parties stored in an electronic system. The contract is identical to a traditional contract even though it is in the form of an electronic system. Electronic contracts differ from written contracts in that they are stored in an electronic system. (Ridwan et.all., 2019) The introduction of e-commerce, a relatively new type of trade, is still ongoing. The legality of e-commerce contracts (online contracts or e-contracts), establishing the contract in a court of law in the event of a dispute, and electronic papers that differ from traditional documents are issues that come up throughout the adoption of e-commerce. E-commerce transactions also strongly rely on mutual trust between the parties. This occurs because e-commerce transactions occur virtually and require electronic (paperless) evidence of the letter (Rizki, 2019).

The problems that arise in online purchasing and selling transactions (ECommerce) are outlined in Sitorus (2015), including: the legality of contracts under Article 1320 of the Civil Code; the absence of a body ensuring the legitimacy of online retailers; transaction security concerns related to guaranteed legal certainty; the existence of consumers who are not clearly visible and diverse with regard to the laws and legal jurisdictions currently in effect that are binding on both parties (Daniel, 2016) According to Saparyanto (2021), specific guidelines for electronic contracts' legal requirements and legal effects are required because creating them differs from entering conventional agreements (Suparyanto, 2021). Thus, research is required to determine the legal certainty of electronic agreements and the legal requirements of those agreements from the perspective of the Civil Code. This study aims to explore the legal terms of electronic agreements from the standpoint of KHUPerdata and analyse their legal certainty. This study concludes that it can serve as a community resource for information on the provisions and confidence of electronic work agreement laws.

2. METHODOLOGY

This study is normative legal research or secondary data-based literature. Legal research investigating laws conceived as norms or rules that apply in society and serve as a guide for everyone's behaviour is called normative law research (Muhaimin, 2020). Legal primary sources, including books, decisions, and documents, create secondary data. Secondary legal sources include the Civil Code, research journals from earlier studies, Law 19 of 2016, amending Law 11 of 2008 relating to information and electronic transactions, and Government Regulation 71 of 2019, implementing electronic systems and transactions.

3. RESULT AND DISCUSSION

The advancement of information technology has successfully brought about new information infrastructure and the accessibility of internet data access services that offer effectiveness, alternate space, and an unlimited number of options for users to carry out many activities, including business. Electronic contracts are agreements that involve the use and exploitation of technology (Dyah et.all., 2020). An agreement between the parties through electronic technology is called a "electronic contract." In other words, the agreement is a relationship or agreement carried out electronically by integrating a network of computer-based information systems with a communication system based on telecommunications networks and services, further facilitated by a worldwide computer network known as the internet (Frans, 2020).

Definition of Agreement according to the Civil Code Article 1313 An agreement is an act in which one or more people bind themselves to one or more other people. Article 1314 emphasizes that agreements or contracts are carried out free of charge or not burdensome between the two parties. The provisions of the legal rules of electronic agreements in the perspective of the Civil Code refer to Article 1320 concerning the Conditions for a Valid Agreement to Occur. In order for a valid agreement to occur, four conditions need to be fulfilled according to the Civil Code, namely:



3.1 THE AGREEMENT OF THOSE WHO BIND THEMSELVES

This statement is clarified by the Civil Code's 1313, 1315 and 1321.

- a) Clause 1313
Which reads, "An agreement is an act in which one or more people bind themselves to one or more other people." This means an agreement or contract is valid if subjects are mutually bound to one another.
- b) Clause 1315
"Generally, a person cannot enter into a binding or agreement other than for himself." Subjects who are mutually bound can only make agreements or contracts only for themselves, not for other people.
- c) Clause 1321
"No agreement has any force if it is given due to an oversight or obtained by force or fraud." This means that the parties are bound to each other consciously of their own free will, not because of oversight, negligence, coercion, or fraud.

3.2 THE ABILITY TO MAKE AN ENGAGEMENT;

Based on Clause 1330, it is explained that those incapable of making consent are minors, people who are put under guardianship, married women in matters determined by the law, and, in general, all persons prohibited by law from making certain agreements. This means it can be competent and make an agreement or contract beyond what is mentioned.

Conditions number 1 and 2 can be regarded as subjective conditions. The legal consequence of non-fulfilment of emotional requirements is that interested parties can agree to continue or cancel the contract.

3.3 A CERTAIN SUBJECT MATTER;

This statement is clarified by Clauses 1332 and 1333, including:

- a) Clause 1332
"Only goods that can be traded can be the subject of the agreement." This means that only goods that have economic value can become the subject of approval.
- b) Clause 1333
"An agreement must have a principal in the form of an item of which at least the type is determined. The number of goods can be general if the amount can be resolved or calculated. This means that besides having economic value, the type and quantity of goods must be clear.

3.4 A CAUSE THAT IS NOT FORBIDDEN

The following clauses of the Civil Code clarify this statement:

- a) Clause 1335
"An agreement without cause, or made on the basis of a cause that is false or prohibited, has no force." This means an agreement may not be based on reasons or reasons that violate the law.
- b) Clause 1336
"If a cause is not stated, but there is a cause that is not prohibited, or if there are other causes that are not prohibited besides those stated, the agreement is valid." This means that if the agreement is made without including reasons, the contract is considered valid as long as it does not violate the law.
- c) Clause 1337
"A cause is prohibited if the cause is prohibited by law or if the cause is contrary to decency or public order." This clause explains Clause 1335 and 1336 that what is said to be a prohibited cause is a cause that is contrary to the norms and laws of decency or public order.
- d) Clause 1338
"All agreements made by the law apply as laws to those who make them. The contract cannot be withdrawn other than by the agreement of both parties or for reasons determined by law. An agreement must be carried out in good faith. This means the agreement is carried out without

prohibited causes and in good faith between the two parties based on the principle of honesty to reach a mutual agreement.

Conditions number 3 and 4 are objective requirements. The legal consequences if objective conditions are not met are that the contract or agreement from the start is considered to have never existed.

According to the Civil Code's rules in Article 1320 on the legal certainty of electronic contracts, there is no issue with the medium utilized in the transaction because, in theory, an agreement's validity is not based on its physical form. If they satisfy the conditions set forth in Clause 1320 of the Civil Code, both written and oral, as well as print and electronic documents, they will be regarded as legally binding. The clauses governing the legality of contracts included in Civil Code Clause 1320 must comply with the ITE Law's electronic transaction rules and Government Regulation Number 71 of 2019 on the use of electronic systems and transactions.

Clause 1, paragraph (17) of the ITE Law states that what is meant by an electronic contract is an agreement between the parties made through an electronic system. In general, electronic agreements/contracts on the website are standard arrangements made by one party, namely the service provider or seller of goods, which must be agreed upon by the prospective buyer when making transactions via electronics. Based on PP No. 71 of 2019 Clause 46, paragraph 1 states, "Electronic Transactions can be carried out based on Electronic Contracts or other contractual forms as a form of the agreement made by the parties," and paragraph 2 states that "Electronic Contracts are considered valid if:

- a. there is an agreement between the parties;
- b. carried out by legal subjects who are capable or authorized to represent by the provisions of laws and regulations;
- c. there is a certain thing; And
- d. the object of the transaction may not conflict with laws and regulations, decency and public order."

In Clause 47, it is added that "Electronic Contracts and other contractual forms as intended for Indonesian residents must be made in the Indonesian language. Electronic contracts with standard clauses must comply with the provisions regarding standard clauses as regulated in laws and regulations. If it is related to online buying and selling transactions of all kinds of goods sent by business actors without explicit information from the business actors, if the goods are defective, then it will fall into the category of hidden defects. This is because consumers buying and selling online cannot see the actual condition of the goods the business actor chooses to send. Clause 1507 of the Civil Code states that in Clauses 1504 and 1505, the buyer can decide to return the goods while demanding the purchase price or will continue to own the goods while demanding a part of the purchase money back (Suparyanto, 2021).

Article 47, paragraph 3 states that "Electronic Contracts contain at least:

- a. party identity data;
- b. object and specification;
- c. electronic Transaction requirements;
- d. prices and costs;
- e. procedures in the event of cancellation by the parties;
- f. provisions that give the right to the aggrieved party to be able to return the goods and request a product replacement if there is a hidden defect; And
- g. choice of law for the settlement of Electronic Transactions."

Because electronic information and/or documents are an extension of admissible evidence under Indonesian procedural law, so electronic contracts based on the ITE Law are admissible as legal proof. This includes electronic contracts that may be cited in court as electronic proof if there is a disagreement between the parties. Every electronic commerce transaction must provide and store Proof of Transaction in compliance with applicable legal requirements so that it can be used as admissible evidence in court. Electronic information, electronic documents, and/or their printouts are what Clause 5 paragraph (1) of the ITE Law refers to as proof of transaction. If an electronic signature

must be added to the proof of the transaction using an electronic certificate, the proof of the transaction can then be used as genuine written evidence (Kosmas, 2022).

According to the Civil Code and ITE Law provisions, an electronic agreement or contract is valid. It has the same strength as a conventional agreement or one signed and attended by the parties in person so long as it satisfies the legal requirements of the agreement. Similar to how physical signatures have the same evidentiary weight as electronic signatures, so do electronic agreements. Indonesian laws and regulations and those from other countries have never firmly established the type of contract and its format. The form of the agreed-upon contract is left up to the parties, but they must adhere to all the provisions of the primary contract, which are governed by law and the Civil Code. Electronic agreements are legitimate and enforceable (David et.all., 2020).

4. CONCLUSION

Electronic contracts based on the ITE Law are valid legal evidence because electronic information and documents are an extension of good evidence by the applicable procedural law in Indonesia. Electronic agreements have the same evidentiary power as agreements signed directly by the parties. Electronic contracts can be used as electronic evidence in court if a dispute occurs between the parties. Electronic agreements or electronic contracts, as long as they fulfil the legal requirements of the deal, are valid and have the same strength as a conventional agreement. For an excellent value to occur, it is necessary to fulfil four conditions based on the Civil Code Clause 1320, including the understanding of those who are binding; the ability to make an engagement; a particular subject matter; and a cause that is not forbidden.

5. SUGGESTION

Suggestions for future researchers are to be able to study electronic contracts from the point of view of the Criminal Code and related to standard clauses that business actors always determine, and then offer to consumers. Consumers only have two choices: agreeing to all these clauses or not.

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