

REGULATIONS FOR E-COMMERCE AGREEMENT ACCORDING TO ICT ACT AND TITLE III OF INDONESIAN CIVIL CODE

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Abstract

As a fruit of technological telecommunication prowess that is the internet, e-commerce has unveil the barrier that obstructs economic growth due to the unnecessarily complicated conventional procedures of bureaucracy. Technological deveopment in telecommunication has a great contribution to the economic growth for which we should be thankful. Yet at the same time, it needs to be regulated in order to construct a condusive and viable climates for economic growth. This article intends to disclose the availability of regulations that can ensure the safety and stability of the economy and keep the investors, consumers and entrepreneurs in accordance with the Title III of Indonesian Civil Code. The research method of this paper is normative approach that is based on secondary data. The outcome of the research is we found out that e-commerce practices shall be subjected under paragraphs 1320, 1321, 1337, 1338 and 1339 of Indonesian Civil Code.

Keywords: *Regulations; E-commerce; ICT; Indonesian Civil Code*

1. Introduction

Electronic Commerce or E-Commerce as it is also known, is a commercial transaction between avendor and purchaser or parties in similar contractual relationship for the supply of goods, services or acquisition of "rights". This commercial transaction is executed or entered into electronic medium (or digital medium) where the physical presence of parties is not required, and medium exist in a public network or system as opposed to private network (closed system). The public network system must considered on open system (e.g the internet or world wide web). The transaction concluded regardless of national boundaries or local requirement".¹ E-commerce is a business mechanism of individual agreement conducted through electronic mediums which to deliver goods and services between two institutions (B to B) or between institution and consumer (B to C).²

¹Barkatullah, Abdul Halim, Teguh santoso, *Bisnis E-Commerce studi sistem Keamanan dan Hukum di Indonesia, (E-commerce Business, Study of security system and Indonesian Law)* Pustaka Pelajar, Jogjakarta, 2006, p.2

²Shahriari Shahrzard, Mohammadreza S, Saeid Gheiji, *International Journal of Research-Granthaalayah : E-commerce and it impacts on Global Trend and Market*, Vol 3 (iss4) April 2015, p. 50

Through e-commerce all formalities commonly used in conventional agreements are reduced, e-commerce not only provides convenience for consumers, but this development makes it easier for producers to market products that have an effect on cost and time savings.³

E-commerce is essentially an ordinary trade agreement, except that the media agreement is not a real market, but a "virtual market" or virtual market. As an agreement in general, then the E-commerce agreement must comply with the contents of book three of the Civil Code, especially in the general section. This is strictly regulated in Article 1319 of the Civil Code which explains Article 1338 paragraph 1 of the Civil Code.

This means that the E-commerce agreement must fulfill the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code, Do not violate the restrictions on the implementation of the principle of freedom of contract (Article 1337 of the Civil Code), not contrary to the principle of good faith and decency (Article 1338 Civil Code), no violates the contents of Article 1339 of the Civil Code. In addition, the E-commerce agreement is closely related to Law No. 8 of 1999 concerning Consumer Protection and the arrangements contained in Law No. 11 of 2008 concerning Information and Electronic Agreements (UUITE).

This paper tries to describe the arrangement of the E-commerce agreement in the form of a standard agreement Based on the provisions of Book III KUH Perdata dan UU No.11 Year 2008 concerning Information and Electronic Agreements.

2. Method

This paper is structured based on secondary data, both in the form of primary legal material and secondary legal material in the frame of study or normative legal research. In the context of Normative legal research, the analysis of laws and agreements and principles of agreement is a measuring instrument (*das Sollen*) while the object studied is measured (*Das Sein*) is a contract document in e-commerce transactions.

3. Results and Discussion

Electronic commerce, or e-commerce, is the buying and selling of goods and services on the Internet. Other than buying and selling, many people use Internet as a source of information to compare prices or look at the latest products on offer before making a purchase online or at a

³Severin Borenstein and Garth Saloner, *Economics and Electronic Commerce*, Journal of Economic Perspectives—Volume 15, Number 1—Winter 2001—Pages 3–12. Herniwati, *Penerapan Pasal 1320 KUHPERdata Terhadap Jual Beli Secara Online (E-commerce)*, Jurnal Hukum, Vol. XIX, No. 19, October 2010:17-32

traditional store. Ebusinessis sometimes used as another term for thesame process. More often, though, it is used to define abroad process of how the Internet is changing the waycompanies do business, of the way they relate to theircustomers and suppliers, and of the way they thinkabout such functions as marketing and logistics. For thepurpose of this study e-commerce is taken to meandoing business electronically.⁴

The sale and purchase agreement, even though it is done online, is based on Law No. 11 of 2008 concerning Information and Electronic Agreements (ITE) and Government Regulation No. 82 of 2012 concerning the Implementation of Systems and Electronic Agreements (PSTE), still recognized as electronic agreements that can be accounted for. The e-commerce agreement is also inseparable from the fundamental concept of buying and selling as stated in Article 1457 of the Civil Code which confirms that buying and selling is an agreement, with one party binding itself to submit a material, and the party others to pay the price promised. Basically, e-commerce agreements are the same as buying and selling agreements in general, where an agreement between the seller and the buyer is made regarding the goods or services being traded and the price of the goods or services. The difference is only on the media used, if the conventional buying and selling parties must meet directly in a place to agree on what will be traded and what the price of the goods or services is. Whereas in e-commerce, the agreement process that occurs requires internet media as its main media, so the process of buying and selling agreements occurs without the need for direct or face-to-face meetings between the parties. The price bargaining agreement process can also be done anywhere without having to bring together the seller and buyer in the same place to agree on the price of an item or service.

Electronic Transactions according to Article 1 point 1 of the ITE Law are "legal actions carried out using computers, computer networks, and / or other electronic media", thus electronic transactions are no different from transactions in general, only those used as transaction facilities are network computers Computers, and / or other electronic media, this is different from transactions in general which meet directly between parties or through their power. Transactions using computer facilities or through computer networks are better known by using internet facilities, better known as E-Commerce.⁵

⁴Abdul Gaffar Khan, *Electronic Commerce: A Study on Benefits and Challenges in an Emerging Economy* Global Journal of Management and Business Research: B Economics and Commerce Volume 16 Issue 1 Version 1.0 Year 2016

⁵Evi Retnowulan, Regina Hernani, *Jurnal Hukum*, Vol. XIX, No. 19, October 2010:17-32, ISSN 1412 - 0887

According to Book III of the Purchase Code of the Civil Code, the form of an agreement is free, not bound to a certain form. For e-commerce arrangements, the Civil Code is applied by analogy, in which the provisions of e-commerce are applied to the provisions of Book II concerning Contract Law and the Commercial Code. The online sale and purchase agreement through a joint account uses Article 1313 of the Civil Code as its basic rule, so that the legal terms of the agreement in the Civil Code can be applied and validity can be recognized where the legal terms of the agreement are listed in Article 1320 of the Civil Code, namely:

a. Consensualism

According to the principle of consensualism, an agreement is born at the moment of reaching an agreement or agreement between the two parties regarding the principal matters of what is the object of the agreement. Thus, to find out whether an agreement has been born and if born, it must be ascertained whether an agreement has been reached. Agree is a conformity of understanding and will between the two parties. What is desired by one party is also what the other party wants, even though it is not in line but reciprocally.⁶

Different from the general agreement, the online sale and purchase agreement is carried out without having to bring together the parties, because this agreement in its manufacture only uses electronic media.⁷ Agreements generally occur when there is an agreement between the two parties. The agreement is also one of the subjective requirements for the validity of an agreement according to the Civil Code. By agreement, it is intended that among the parties concerned is achieved a conformity of will, meaning: what is desired by one is also desired by the other.⁸

Article 20 paragraph (1) of the ITE Law states that "unless otherwise determined by the parties, the Electronic Agreement occurs when the agreement offer sent by the Sender has been received and approved by the Recipient". The acceptance statement referred to in Article 20 paragraph (1) of the ITE Law is carried out electronically. In the event that an agreement in an e-commerce agreement occurs when there is an 'Offer' and 'Acceptance'. The product is offered to consumers by the business actor, and before there is agreement, what happens is only an event of bargaining. If the consumer has received information and agreed to the specifications of the goods and the price of the goods offered, then at that time the agreement between the business

⁶Subekti. 2001. *Hukum Perjanjian*. PT. Intermedia: Jakarta, p. 26.

⁷Shahzad Shahriari, Mohammad Reza Shahriari, Saeid gheiji, *E-commerce and it impacts on global trend and market*, International Journal Of Research Granthaalayah Vol.3 (Iss.4): April, 2015

⁸ Stone, Richard *The Modern Law Of Contract*, fifth edition, Cavendish Publishing Limited, London, 2002, p.44

actor and the consumer occurs, so that the agreement is born between them. This concept is known as 'offer and acceptance concept'.⁹

Mariam Darus Badruzaman described the notion of agreeing as an agreed will requirement (*overeenstemende wilsverklaring*) between the parties. The statement of the party offering is called an offer (*offerte*). And the statement of the party receiving the offer is called acceptance (*acceptatie*).¹⁰ Gisler et al explain related to agreement; A contract as we understand today is that there are parties to create legal obligations between them. This assumes the mutual exchange of concordant declaratory acts. According to modern contracts this condition is fulfilled by acceptance of the offer. The offer is one of the essential elements of a contract. It expresses the willingness of one party to do something. This party is called the offeror. Such a declaratory act will not have any legal influences if there is not a person who receives the offer.¹¹

Thus it can be said that supply and acceptability are very important elements to determine the birth of an agreement. In addition, agreement can be expressed in various ways, namely: verbally; Written; with a sign; with a symbol; quietly. Based on the description above, the fulfillment of the terms of the agreement of the parties in making an agreement or contract in e-commerce can be fulfilled, so that the agreement from the point of view of the agreement is considered valid and binds the parties.

The agreement that has been reached above has the potential to be canceled if it turns out that there is one or all of the elements listed in Article 1321 of the Civil Code. No agreement has the power to be given due to oversight, or obtained by coercion or fraud. Article 1449. Contract made by coercion, deception or fraud, raises the demand to cancel it. Article 1859 But peace can be canceled if there has been an error regarding the person concerned or the subject of the dispute. Agreements that do not fulfill the element of agreement result in the agreement being canceled (*vernietig, voidale*), meaning that the agreement is valid but it is possible to cancel it if one of the parties does not agree.¹²

⁹ Ngobrolin Hukum, <https://ngobrolinhukum.wordpress.com/2013/01/20/kesepakatan-dalam-perjanjian/>, accessed 10 May 2015.

¹⁰ Badruzaman, Mariam Darus, *op.cit* 1994, p 24.

¹¹ Gisler, Michael, Katarina Stanoevska-Slabeva Markus Greunz, *Legal Aspects of Electronic Contracts*

¹² Priyono, Ery Agus, *Aspek Keadilan Dalam Kontrak Bisnis Di Indonesia (Kajian Pada Perjanjian Waralaba)*, Jurnal Law Reform Program Studi Magister Ilmu Hukum Volume 14, Nomor 1, Tahun 2018 Fakultas Hukum Universitas Diponegoro.

b. Capacity to Construct an Agreement

Article 1330 of the Civil Code determines that everyone is capable of making an agreement, unless the law stipulates that he is incompetent. Regarding those who are incompetent to make an agreement we can find it in Article 1330 of the Civil Code, namely:

1) Underaged people (below 17 years old)

Provisions regarding immature people are different between one law and another, namely:

Statutes	Article
Indonesian Civil Code (<i>Burgerlijk Wetboek</i>)	Article 330, “One is underaged if he/she has not reached 20 years old and unmarried.”
The Marriage Act (Law No. 1/1974)	Article 47, “A children refered in this Act is those who have not reached 18 years old.”
The Labor Employment Act (Law No. 13/2003)	Article 1 point 26, “A children refered in this Act is those who have not reached 18 years old.”
The Child Court Act (Law No. 3/1997)	Article 1, “Juvenile is a child whose age is in between of 8 to 18 years old and unmarried.”
The Human Rights Act (Law No. 39/1999)	Article 1 Point 5. “A children is any men aged below 18 years old and unmarried, including fetus if its matters involved.”

The results of the Indonesian Supreme Court National Working Meeting¹³ agreed that the right adult age limit is based on Law No. 1 of 1974 concerning marriage, namely the age of 18 years, because in accordance with the principle of *lex posteriori derogat lex priori* (the new regulation replaces the old regulation) and what is confirmed in Article 66 of Law no. 1 of 1974. In the case of an e-commerce agreement, the parties that held it did not meet so it was not known whether they had the ability to enter into an agreement. The inadequacy referred to here is in the context that the one who entered into the agreement is not yet an adult. In this case, the

¹³ Rumusan Hasil Diskusi Kelompok Bidang Perdata (I) pada Rapat Kerja Nasional Mahkamah Agung RI dengan Jajaran Pengadilan dari 4 (empat) Peradilan seluruh Indonesia di Jakarta pada hari Selasa tanggal 20 September 2011, p. 3.

agreement can be requested for cancellation (to the judge) by an incapable party including the guardian or the agent.¹⁴

In conventional agreements often found people who are incompetent but can still make a sale and purchase agreement. For example, elementary school children who are only 7 years old are told or asked for help by their mother or sister to buy crackers or other food in a shop near her house. This is certainly not prohibited by the shop owner as long as the agreement does not harm both parties, especially the buyer (elementary school child), then the agreement is still considered valid, because it does not violate objective objectives, meaning that the agreement does not violate objective conditions, even though the agreement has violated or does not fulfill the subjective conditions of the agreement remains valid.¹⁵ The above conditions also apply to online buying and selling agreements. It is very difficult to determine the physical condition of the parties making an online sale and purchase agreement. This is because the parties do not meet in person, besides it is not known whether the person who made the agreement is underage or is an adult.¹⁶ Inclusion of the full identity of the parties accompanied by the name, place of birth date, employment, nationality, number of KPT or other legitimate identification, on the part of the parties or comparisons will eliminate the conversation whether or not the parties are mature, thus avoiding the possibility the agreement was canceled by either party, unless a valid reason was found for that.¹⁷

c. Matters of the Agreement

Matters of the Agreement is the object of the contract or content of the contract, namely the achievement that must be performed by the debtor. The thing or achievement must be certain or can be determined according to an objective measure, for example the sale of certain items according to the price that has been measured.¹⁸ In an online sale and purchase agreement, we can see the form of the object of the agreement in the form of a picture or photo accompanied by a description of product information and other information. And of course, in the conventional sale and purchase agreement the form of the object of the agreement can be seen directly,

¹⁴Kuspriatni, Lista. 1998. *Hukum Perjanjian (Aspek Hukum dalam Ekonomi)*. Jakarta: Intermedia, p. 2.

¹⁵Priyono, Ery Agus, *Perlindungan Hukum bagi Para Pihak dalam Perjanjian Kemitraan*, *Doponegoro Private Law Review*, Vol 2 No.1 Tahun 2018, Fakultas Hukum Undip

¹⁶Naja, Daeng. 2006. *Contract Drafting – Seri Keterampilan Merancang Kontrak Bisnis*. Bandung: Citra Aditya Bakti, p. 345.

¹⁷Priyono, Ery Agus, op. Cit Buku Ajar.

¹⁸Patrik, Purwahid. 1994. *Dasar-Dasar Hukum Perikatan*. Bandung: Mandar Maju, p. 63.

checked directly, and can also deliver goods directly. Both conventional and online buying and selling agreements on fulfilling certain conditions.

In the online sale and purchase agreement there are various types of object agreements in the form of goods and services which are divided into several categories including motorized vehicles, clothing, mobile phones, musical instruments, medicines, jewelry, paintings, books, electronic goods, etc. other. Each of these categories displays a thread containing advertisements in which there is information about the image of the goods, the conditions regarding the goods, the specifications of the goods, the price of the item, the seller's mobile number and the method of payment for the item. Goods that are traded are not only new items, there are also used items. If the goods being traded are used goods, the seller generally notifies the defects or conditions contained in the item. And of course the buyer can make an agreement to the seller before the agreement that the buyer can do the return of goods if the goods received are not the same as the agreed upon items.

Based on the description above, the online sale and purchase agreement fulfills the legal requirements as stated in Article 1320 of the Civil Code number 3, namely certain things, which become objects in the agreement as stipulated in Article 1320 and 1333 of the Civil Code in general agreements.

Normatively related to indirect objects of engagement, namely objects which are objects of engagement stipulated in Article 1332: Only goods that can be traded can be the subject of agreement. (KUHPerd. 519 etc., 537, 1953; KUHD 599.), Article 1333: An agreement must have a substance in the form of an item which is at least determined by its type. The number of items does not need to be certain, provided that the amount can then be determined or calculated. (KUHPerd. 968 etc., 1272 etc., 1392, 1461, 1465.), Article 1334: Goods that are new in the future, can be the subject of an agreement.

This discussion regarding certain or minimum things can be determined to protect prospective buyers from things that can harm them, not even fulfilling this requirement makes the agreement null and void by law (nitiag, void). The seller who sells the item that is not clear, like selling a cat in a sack, is threatened by the agreement null and void, certain formulations and or can be determined to prevent speculative goods from arising.¹⁹

d. Permittable Cause

¹⁹ Priyono, Ery Agus, *op.cit.* Priyono, Ery Agus, *Aspek Keadilan Dalam Kontrak Bisnis Di Indonesia (Kajian Pada Perjanjian Waralaba)*, Jurnal Law Reform Program Studi Magister Ilmu Hukum Volume 14, Nomor 1, Tahun 2018 Fakultas Hukum Universitas Diponegoro.

The validity of a reason from an agreement is determined when the agreement is made. The agreement without a cause that is permissible is null and void, unless otherwise stipulated by law.²⁰ Article 1335 of the Civil Code determines that an agreement without cause, or which has been made for a false or forbidden reason, has no power. The point is that the contents of an agreement must not conflict with the law, public order and decency because it is contrary to Article 1337 of the Civil Code.²¹

This requirement has two functions, namely: the agreement must have because, without this condition the agreement is null and void by law, the reason must be allowed, otherwise the agreement is null and void.²² This refers to the provisions of Article 1335 of the Civil Code which basically states that an agreement made with *causa* is not permitted, false or even without any *causa* must be declared null and void.²³ Based on the discussion above, if the four valid conditions of the agreement are fulfilled in an online sale and purchase agreement, an agreement has been made from the agreement between them. As a result, legal relationships arise which result in the emergence of rights and obligations for each party.

The above analysis illustrates that the online sale and purchase agreement in the study of legal theory of agreement and legal norms of agreement as stipulated in Book III of the Civil Code is valid because it fulfills the four valid conditions of the agreement, namely agreement, skill, certain things, and a reason that is allowed. Not fulfilling the skill element due to lack of information from the agreement form offered by prospective sellers and must be filled by prospective buyers before mutually binding themselves to the agreement not to make the agreement itself null but can be canceled if one party submits to cancel.

The advantages brought by the presence of the E-Commerce business cannot be denied by anyone, from various circles. This does not mean that this new business does not save the problem, something natural that something new is certain always has a positive side and a negative side. The second discussion is related to legal protection efforts for parties, especially prospective buyers.

The legal relationship that occurs in conventional buying and selling only involves between two parties, the seller and the buyer. The relationship is in the form of an agreement that creates legal consequences, namely the rights and obligations of the seller as well as the rights

²⁰ Kuspriatni, Lista. Op. Cit., p. 2.

²¹ Patrik, Purwahid. Op. Cit., p. 64.

²² Ibid., p. 63.

²³ Agustina, Rosa, dkk. 2012. *Hukum Perikatan (Law of Obligations)*. Denpasar: Pustaka Larasan, p. 99.

and obligations of the buyer. Both conventional and online buying and selling agreements for buyers and sellers will be protected by Law Number 8 of 1999 concerning Consumer Protection. In this law, it regulates the rights and obligations of consumers and business actors. In the online sale and purchase agreement added by the existence of law number 11 of 2008 concerning Information and Electronic Transactions. In this law the rights and obligations of consumers and violations in cyberspace are regulated using electronics.

Meanwhile, enacted regulations regarding e-commerce protection, are:

a. E-Commerce Protection in the ICT act (Law No. 11/2008)

In general, Chapter III of Law Number 11 of 2008 concerning Information and Electronic Transactions, has provided limits on Information, Documents and Electronic Signatures. This is contained in Article 5, up to Article 12 of the Law. The security system in the computer world has begun to become a serious concern for information technology researchers and practitioners since the discovery of computer network technology. The security system is also included in Chapter VII of Government Regulation number 82 of 2012 concerning System Implementation and Electronic Transactions.²⁴ Information security systems have four very basic types of objectives, namely:²⁵

- 1) Confidentiality; guarantee whether the information sent cannot be opened or cannot be known by other unauthorized people. Especially for very important data, a very high level of confidentiality is needed, which can only be accessed by certain people (those who are entitled).
- 2) Integrity; ensure the consistency and integrity of the data in accordance with the original, so that the efforts of those who are not responsible for duplicating and damaging the data can be avoided.
- 3) Availability; guarantee that legitimate users can access their own information and resources. The aim is to ensure that people who are indeed not denied access to information that is indeed their right.
- 4) Legitimate use; ensure certainty that resources are not used (information not accessed) by irresponsible people (unauthorized people).

²⁴ Indrajit op.cit, p. 43.

²⁵ Ibid

b. Protection according Indonesian Civil Code

The first protection provided by the Civil Code III is the enactment of the provisions of Article 1320 which is about the immutable clause, which cannot be deviated, which if not fulfilled the agreement is threatened with cancellation, either null and void (*nietige*) or canceled (*vernietige*). Article 1321 affirms that the agreement is deemed to have no agreement if it is proven that the agreement was made up of elements of error, fraud, or coercion which resulted in the agreement being canceled.

Legal protection is also given by Article 1338 of the Civil Code which regulates the principles of the agreement, especially the principle of good faith violation of this principle can result in the agreement violating the norm which results in null and void.

Furthermore, in the implementation of the agreement, it is likely that one party cannot fulfill the performance properly. Civil legal protection that can be done is for the aggrieved party, can file a lawsuit on the basis of default and / or claim on the basis of illegal acts.²⁶

4. Conclusion

Online agreements are inseparable from the basic concept of the agreement stipulated in Article 1320 of the Civil Code. Online buying and selling is basically the same as buying and selling agreements in general, it's just using electronic media or called e-commerce. As long as 4 legal conditions of agreement are fulfilled as stipulated in Article 1320 of the Civil Code, then the agreement is valid. Legal protection in Book III of the Civil Code is explicitly given in Article 1320, Article 1321, Article 1337, Article 1338, Article 1339.

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²⁶ Subekti. 2001. Op. Cit., p. 45.

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