

The Legitimacy of Electronic Trading Contracts According to the Civil Code

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ABSTRACT

The rapid development in the world of technology has made many changes in every country, especially for the business world in the trade sector. With today's technology, a lot of trade is carried out through the internet or electronic media, so the procedures for trade are also developing in establishing a cooperative process such as an agreement between the parties to agree to hold a transaction. Electronic contracts are one of the new forms of contracts that receive special protection in Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), especially through Article 1 number 17. The research method used is the normative method, which examines and analyzes the subject matter with the substance of the legislation. The approach method used is a statutory approach and a deductive approach, namely an approach by reasoning from general circumstances to special circumstances. The results and discussion, namely the Validity of Electronic Trading Contracts according to the Civil Code and the Legal Consequences of Illegally Made Electronic Trading Contracts, is that in principle the validity of an agreement is not determined by the physical form of the agreement.

Keywords: legitimacy, legal consequences, e-commerce, e-contracts, and the ITE Law

Received: 03.11.2022	Revised: 15.11.2022	Accepted: 21.11.2022	Available online: 20.12.2022
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Suggested citations:

Siregar, D., & et al. (2022). The Legitimacy of Electronic Trading Contracts According to the Civil Code. *International Journal of Community Service*, 01 (02), 160-167. DOI: 10.55299/ijcs.v1i2.186

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<https://ejournal.ipinternasional.com/index.php/ijcs/OpenAccessPolicy>

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INTRODUCTION

1. Background

Indonesia is a developing country in this world technology moment this has experience great progress fast. one use technology also could seen in field trade. With the selling process buy goods or service usually conducted with meeting direct or stare advance Among para party good seller nor buyer called trade ². With exists technology on period now so many trades carried out through via the internet or electronics, so system method from trading also experience development that is on agreement Among para agreed parties stage transactions in it arranged about right and obligation second split party. Contract electronic is wrong one form contract just got _ protection in a manner special in Constitution Number 11 of 2008 concerning Information and Transaction Electronics (next called UU ITE), in particular through Article 1 point 17, contract electronic is agreement para party made through an electronic system. Whereas system electronic that alone is series device and procedure working electronics prepare, collect, process, analyze, store , display , publish , transmit , and or spread information electronics. This is regulated in Article 1 number 5 of the Electronic Information and Transaction Law.

Prior to the enactment of the Electronic Information and Transaction Law, people who had used this type of electronic contract were guided by the Civil Code (hereinafter referred to as the Criminal Code) as their legal protection. The definition of a contract or agreement in the Criminal Code is an act by which one or more people bind themselves to one or more other people. This definition is contained in Article 1313. The Republic of Indonesia in the national scope has recognized the existence of electronic contracts in Article 18 paragraph 1 Law number 11 of 2008 concerning information and electronic transactions (hereinafter referred to as the ITE Law) which has been amended by Law number 19 of 2016 concerning amendments to Law number 11 of 2008 concerning information and electronic transactions. Based on the recognition of this electronic contract, the electronic contract in Indonesia is considered a valid and binding contract for the parties.³

Technological advances in the trade sector can be seen in the existence of *electronic contracts* , hereinafter referred to as *e-contracts* , which are trade contracts made electronically ⁴. The role of the internet as a means of information technology in the world of economy and business is believed to bring enormous profits, with the acceleration generated by the internet in the actual data search process, economic activities such as searching for household goods, ordering tools electronics, buying clothes from an electronics store as well as several other benefits such as saving time, no transportation problems, as well as time efficiency and so on.

2. Problem Formulation

Based on the background of the problem above, the formulation of the problem is obtained as follows

- a. How is the validity of electronic trading contracts according to the Civil Code?
- b. What are the legal consequences if an electronic trading contract is invalidated?

3. Purpose of Writing

This writing aims to determine the validity of electronic trading contracts in the Civil Code and find out the legal consequences if electronic trading contracts are made invalid.

METHOD

The research method used is the normative method, which examines and analyzes the main issues with the substance of the laws and regulations. The approach method used is a statutory approach and a deductive approach, namely an approach by reasoning from general situations to special circumstances, both from rules and general principles. The legal materials used are primary and secondary legal materials, secondary legal materials, namely laws and regulations and the Civil Code and law number 19 of 2016 concerning amendments to law number 11 of 2008 concerning electronic information and technology, secondary legal materials, namely supporting books related to electronic contracts.

RESULTS AND DISCUSSION

1. The Legitimacy of Electronic Trading Contracts According to the Civil Code

Electronic agreements or electronic contracts according to the Electronic Information and Transaction Law are agreements between parties made through an electronic system. Electronic agreements are made when you carry out electronic transactions or legal actions through computers, computer networks or other electronic media. Electronic transactions can be carried out based on electronic contracts or other contractual forms as a form of agreement between the parties. fintech lending or peer to peer lending such as loans, which must use funding agreements in the form of electronic documents. An electronic contract is an agreement between parties made through an electronic system. While the electronic system itself is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and or disseminate electronic information. This is regulated in Article 1 number 5 of the Electronic Information and Transaction Law.

The characteristics of an electronic contract are:

- a. It can occur remotely and even beyond the boundaries of a country via the internet;
- b. The parties to an electronic contract never meet face to face (faceless nature), maybe they will never meet.

Electronic *commerce* (*electronic commerce* or *e-commerce*) is the distribution, purchase, sale and marketing of goods and services through electronic systems such as the internet, television and other computer networks. Electronic commerce can involve electronic fund transfers, electronic data exchange, automated inventory management systems, and automated data collection systems. The information technology industry sees *e-commerce activities* as applications and applications of electronic business related to commercial transactions, such as electronic fund transfers, supply chain

management, electronic marketing, or online marketing, online transaction processing, and electronic data exchange. Electronic commerce is part of electronic business, where the scope of electronic business is broader, not just trading but also collaborating with business partners, customer service, job vacancies and more. In addition to World Wide Web (WWW) network technology, electronic commerce also requires database technology or databases, electronic mail, and other forms of non-computer technology such as goods delivery systems and payment instruments for electronic commerce.

Various different definitions have also been formulated by legal experts regarding *e-commerce*. One definition that is interesting and has a broad scope is the definition given by Ford Warwick and Michael S. Baum. According to them, electronic commerce is all business transactions that are carried out electronically and cover a wide range of fields, from ordering goods via electronic mail (*e-mail*) to shopping at online stores⁵. The use of the internet is chosen by most people today because of the conveniences that the internet network has:

- a. The Internet as a very large public network, like that of an electronic public network, is cheap, fast and easy to access.
- b. Using electronic data as a medium for storing messages or data so that information can be sent and received easily and briefly, both in the form of electronic, analog, and digital data.

To measure whether or not there is an agreement in electronic transactions, this can be done by accessing an offer via the internet, or it can be translated as acceptance or agreeing on a legal relationship, as also explained by Sukarmi that legal relations or electronic transactions are contained in a standard contract with the take it principle or leave it⁶. If an electronic contract uses standard clauses, then it must comply with the provisions of laws and regulations regarding standard clauses.

Electronic agreements or contracts must also contain at least:

1. identity data para party;
2. object and specifications;
3. electronic transaction requirements;
4. prices and costs;
5. procedure in Thing there is cancellation by para party ;
6. the provisions that provide right to aggrieved party for could return goods and / or ask replacement product if there is disabled hidden ; and
7. choice of law for electronic transaction settlement.

The characteristics of electronic contracts are:

1. The physical presence of the parties is not required,
 2. The contract takes place in a public network,
 3. Open system, namely the internet or the world wide web,
 4. Contracts can occur over long distances, even beyond the boundaries of a country⁷
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Electronic contracts based on the ITE Law are valid legal evidence, because electronic information and/or electronic documents are an extension of valid evidence in accordance with the applicable procedural law in Indonesia.

This includes electronic agreements that can be used as electronic evidence in court if a dispute occurs between the parties. Based on the provisions of the Civil Code and the ITE Law as described above, an electronic agreement or electronic contract as long as it fulfills the legal requirements of the agreement, the agreement is valid and has the same strength as a conventional agreement or one signed and attended by the parties directly.

Likewise with the strength of proof, electronic agreements have the same evidentiary power as agreements signed directly by the parties.

2. Legal Consequences of Illegally Made Electronic Trading Contracts

In positive law arrangements in Indonesia, agreements or contracts in Indonesia are clearly and specifically regulated in Book III of the BW. Regarding the validity of the terms of a contract or agreement, Article 1320 BW states that "in order for a valid agreement to occur, four conditions need to be met, namely;

1. the agreement of those who bind themselves
2. the ability to make an engagement
3. a certain subject matter
4. a cause that is not forbidden.

Based on the provisions in Article 1320 BW, it can be concluded that the legal requirements for a contract or agreement are as follows:⁸

1. There is an agreement of the parties

The first condition for the validity of a contract is the existence of an agreement from the parties which is expressly and clearly stated through the signing of the contract. Agreement is conformity of the statement of will between one or more people with other parties. The agreement or agreement must be carried out with free will, in the sense that it does not contain elements of coercion, oversight or fraud as stated in Article 1320 BW.

Related to the conditions for the agreement of the parties in the e-contract, in making an e-contract a signature must be required as a sign of agreement which in this case is an electronic signature so that the e-contract becomes valid.

2. The competence of the parties to carry out the legal action

According to Article 1329 BW, "the parties to the contract must be capable of carrying out legal actions." There are several classifications regarding people who are declared legally incompetent, namely as follows:

- a. Immature person

According to article 330 BW, "a minor is someone who has not even reached the age of 21 (twenty one) years and has never been married." If the marriage is dissolved before even 21 (twenty one) years, it does not mean that the legal status returns to being immature.

- b. People who are under pardon
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People who are under amnesty cannot act freely with their assets where their legal status is equated with minors. Article 433 BW states that "every adult who is always in a state of dumbness, brain pain, or dark eyes, and is wasteful must be pardoned."

c. Woman

Women in certain cases based on Indonesian laws and regulations are prohibited from entering into certain contracts. However, a wife can take legal action, in accordance with Article 31 paragraph (2) of the Law of the Republic of Indonesia Number 1 of 1974 juncto SEMA number 3 of 1963.

Related to the existence of requirements for the ability of the parties to carry out legal actions, then related to making an e-contract to become valid must be followed by the inclusion or depositing of the parties' personal identities which at least contain name, address/domicile, nationality, age, sex, and the work of the parties clearly.

3. Containing certain matters contained in the clauses The content of the clauses in a contract can be interpreted as the legal object of the contract. The things that are agreed upon must be something or an item that is quite clear. According to Article 1332 BW, "only objects that can be traded can become the main points of the agreement in the contract." Furthermore, Article 1333 BW states that "an agreement must have the subject matter of an object whose type can be determined at least." Regarding the conditions for making certain things so that the e-contract becomes valid, then the making of an e-contract must be clearly exposed regarding the contents or main points of the things to be agreed upon regarding the objects to be traded.

4. There is a cause (*causa/zaak*) that is lawful

The reason that is not allowed in a contract is if the content of the object of the agreement is contrary to laws and regulations, norms of decency and public order. Related to the existence of requirements for loading certain things that are lawful or may not conflict with laws and regulations, norms of decency and also public order; In order for e-contracts to be valid, in making e-contracts, attention must be paid to the rules and norms that apply in the area or country of origin of the parties to the contract.

Based on the description regarding the validity of a contract in Article 1320 BW above, related to the legal consequences of an invalid e-contract can be described as follows⁹:

1. If the subjective conditions in Article 1320 BW, namely the terms of agreement and competence of the parties to the contract are not met, then one of the parties can request that the agreement or contract be cancelled. However, if none of the parties object, then the agreement or contract is still considered valid.
2. If the objective conditions in Article 1320 BW are the conditions for loading certain things and there are reasons why these things are not fulfilled, then the agreement or contract becomes null and void by law.

If all the legal terms of the agreement or contract have been fulfilled, then according to Article 1333 BW, the e-contract is legal and has strong law that is equal to the strength of a statutory rule.

CONCLUSION

Conclusion Based on the results and discussion described above, it can be concluded that the legality of electronic trading contracts is contained in the provisions of Article 1320 of the Civil Code, namely that there is an agreement from the parties; the ability of the parties to carry out legal actions; a certain subject matter; and a cause that is not forbidden. The legal consequences if a trading contract made electronically or an invalid e-contract can be canceled and null and void if it is not in accordance with Article 1320 of the Civil Code provisions. The parties in making contracts, especially e-contracts, are expected to use the provisions in Article 1320 of the Civil Code so that the contracts made by the parties become legal and legal. The competent government should make separate rules regarding electronic contracts so that there are stronger rules to regulate these e-contracts.

Thank-you note

We thank God Almighty for His mercy and guidance. We were able to finish writing this journal about "**The Legitimacy of Electronic Trading Contracts According to the Civil Code**" to completion. Greetings we always pour out to God Almighty.

Journal writing is still not perfect. Because the writer is also still in the learning process. Therefore, the authors expect useful criticism and suggestions. Sorry if there are still mistakes in writing this journal. Hopefully the contents of this journal can be useful for all of us.

REFERENCES

3. Akhmaddhian, Surawin, and Asri Agustiwin, "Legal Protection of Consumers in Electronic Buying and Selling Transactions in Indonesia" . UNIFICATION: Journal of Law Science 3. No.2 (2018), p. 40-60
4. Asfandi, "Skripsi-commerce, " <http://indokripta.com/assignment-makalah-judul-kripta/mata-kuliah/Hukum-pidana>. April. 10. 2010.
5. Faye FangFei Wang , *Law of Electronic Commercial transactions Contemporary Issues in the EU US and China, Second Edition* , New york:2014, p . 41
6. Hanimi , Latifah . " Influence Development Technology Information To Validity Agreement In Trading kindly Electronics (E-Commerce) in the Era of Globalization ." Dynamics of the Journal of Law 11 (2011): 56-66.
7. <https://www.hukumonline.com/klinik/a/keabahan-perjanjan-elektronik-dan-conditions-lt54e1cbb95f00f>
8. Statutory regulations of the Civil Code
9. Prayogo, Sedyo . "Implementation of Default Limits and Unlawful Actions in Agreements." *Law Journal Update* 3, no. 2 (2016): 280-287.
10. Romadhoni , Ridwan , and Dona Budi Kharisma. "legal aspects of electronic contracts (E-CONTRACT) in E COMMERCE transactions that use bitcoin as a means of payment." *Journal of Private Law* 7, no. 1 (2019): 49-54.
11. Suarno , Diyon P. Kencana , and S. Kom. "Electronic validity of business contract agreements in Indonesia"

12. Tektona, Rahmadi Indran. " *Consumer Protection in E-Commerce Transaction Contracts Based on International Trade Law*". *Journal Supremacy* 6, no.2 (2016), p . 2

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