

The Legality of Electronic Contracts, Linked to the Validity of the Agreement in Article 1320 of the Civil Code

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ABSTRACT

Along with the development of technology, trading activities have also developed from time to time, both in terms of commodities and the trading mechanism itself. This type of commodity trade is strongly influenced by the development of increasingly complex and diverse needs of human life as well as technological advances that continue to develop rapidly. With the development of technology in the field of commerce, there are those related to electronic commerce. Where the parties between the seller and the buyer are no longer face to face, but only through internet media, namely the world wide web, a public network with an open system. This is where the birth of electronic contracts or e-contracts. Electronic contracts are one of the new forms of contracts that get special protection in Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), particularly through Article 1 number 17, electronic contracts are agreements between parties made through electronic system. While the system itself is the desire of electronic devices and procedures that work to prepare, collect, process, analyze, store, display, announce, transmit, and electronically disseminate electronic information. This is regulated in Article 1 number 5 of the ITE Law.

Keywords : Electronic Contract, Legalitas, Private Law

A. Introduction

The rapid development of the internet has led to the formation of a new arena commonly known as the virtual world. Here every individual has the right and ability to relate to other individuals without any restrictions that hinder it. This is globalization which has basically been implemented in cyberspace, which connects all digital communities or those who often use the internet in their daily activities. These developments also have an impact on the social aspect, where the way people relate to each other also changes.

Along with technological developments, trading activities have also developed from time to time, both for the commodities traded and the trading mechanism itself. The trade in the types of commodities traded is strongly influenced by the development of the needs of human life which is increasingly complex and diverse as well as the advancement of technology which continues to grow rapidly. With the development of technology in the field of commerce, the so-called electronic commerce emerged. Where the parties between the seller and the buyer are no longer face to face, but only through the medium of the internet, namely the world wide web, a public network with an open system. This is where the birth of an electronic contract or e-contract Electronic contracts are one of the new forms of contracts

that get special protection in Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), particularly through Article 1 number 17, electronic contracts are agreements between parties made through 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 ITE Law.

To make a contract, there are several conditions that have been regulated in Article 1320 of the Civil Code, namely: ¹;

1. Agree on those who bind themselves;
2. The ability to make an engagement;
3. A certain thing;
4. A lawful cause.

Against these four conditions, academically it can be said that the first (agreement) and second (skills) conditions are referred to as subjective conditions. And the third (certain) and fourth (halal) conditions are called objective conditions.

It can be seen that the legal consequences of the two conditions above have different purposes. If a child is not old enough to enter into an agreement, the child's parents can cancel it, or it can also be done by the child himself after the child matures, and no later than five years after the child becomes an adult (Article 1446 and Article 1454 of the Criminal Code). Meanwhile, if the objective conditions are not met, then the agreement is null and void or in other words, it is canceled by itself.

Electronic contract signing of Electronic Information that is attached, associated or related to other Electronic Information used as a means of verification and authentication. The signer registers with the certification provider. If necessary, the electronic certification operator may secretly delegate the identity data of the signer to other electronic certification providers with the approval of the signatory.

B. Focus of Problem

From the description of the background above, the problem is formulated as follows:

1. How is the validity of the agreement in the contract made electronically?

¹ Subekti, "Kitab Undang-undang Hukum Perdata," Ctk. Keduapuluhsembilan, PT. Pradnya Paramita, Jakarta, 1999, hlm. 339

2. What are the barriers to implementing electronic contractual agreements in the future?

C. Research Methology

1. Research Model

The data analysis method used a qualitative approach. According to Soerjono Soekanto, the qualitative research model is a research method based on post-positivist philosophy, used to examine the condition of natural objects where the researcher is the key instrument..²

2. Types of research

The type of research used is descriptive analytical research from the point of view of its nature. This study aims to accurately describe a particular individual, condition, symptom or group, or to determine the frequency of a symptom..³

3. Research approach

The research approach uses three approaches, namely the statutory approach, the conceptual approach and the case approach..⁴

4. Research Data

The research data used is secondary data which consists of: (a) Primary legal materials, namely binding legal materials, namely statutory regulations related to research, (b) Secondary legal materials, namely those that explain primary legal materials in the form of results. research results, works from legal circles and others, (c) tertiary legal materials include materials that provide instructions or explanations for primary legal materials and secondary legal materials, namely dictionaries, web etc..⁵

D. Finding & Discussion

1. Literacy

Electronic Transaction is a legal act carried out using a computer, computer network, and/or other electronic media. Electronic Signature is a signature consisting of Electronic Information that is attached, associated or related to other Electronic Information which

² Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : 2007, Universitas Indonesia). Hlm 99

³ Sri Mamudji, Et.Al. *Metode Penelitian dan Penulisan Hukum*. (Jakarta : 2005. Fakultas Hukum Universitas Indonesia). Hlm 30

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*. (Surabaya: 2013, Prenada Media Group).Hlm 29

⁵ Sri Mamudji. Et.Al. Op.Cit

is used as a means of verification and authentication. Agreement is a translation term from the word *overeenkomst* (Dutch) or *contract* (English). Agreement is a translation term from the word *overeenkomst* (Dutch) or *contract* (English .).).⁶

In general, electronic contracts have complied with the conditions for making contracts contained in Article 1320 of the Civil Code. Basically the form of an electronic contract is the same as a conventional contract. It's just that electronic contracts are made through internet media, so the parties do not meet or face to face during the manufacture until the signing of the contract. This is where several legal issues arise regarding the validity of electronic contracts, namely the determination of the competence between the parties. This is difficult to identify because the parties do not see each other. In addition to the skills of the parties, the timing of the agreement is also difficult to identify.

Under conventional contracts, the agreement occurs when both parties meet and express agreement and then sign the agreed contract. Whereas in electronic contracts, it does not go through a face-to-face stage, so it is difficult to identify when the agreement takes place. Likewise in terms of identifying the skills of the parties. With the existence of several legal issues regarding the validity of the electronic contract, the validity of the electronic contract before and after the enactment of the ITE Law is interesting to study and investigate further. The signing of digital contracts according to Article 1 paragraph (12) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions ("UU ITE").

Contracts in the form of e-commerce can be in the form of offers sent to a person or many people who are members of a mailing list, as well as receipts and notifications of acceptance which are all sent via electronic mail (e-commerce).⁷

In general, the contract is born at the time of acceptance of the offer made in this case the emergence of an agreement between the two parties. Likewise for electronic contracts, electronic contracts are born in the same principle as conventional contracts. However, in analyzing the birth of an electronic contract, it must be seen from the media used to produce the contract.⁸

2. Electronic Signature.

⁶ Sutan Remy Sjahdeny, 1993, *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia*, Institut Bankir Indonesia, Jakarta, hlm:160

⁷ Endang Purwaningsih, 2010, *Hukum Bisnis*, Ghalia Indonesia, Bogor, hlm:65

⁸ Rosa Agustia, 2008, *Kontrak Elektronik /E-Contract Dalam Sistem Hukum Indonesia*, Gloria Juris, Jakarta, hlm:10

Electronic Signature is a signature consisting of Electronic Information that is attached, associated or related to other Electronic Information which is used as a means of verification and authentication.

Electronic signatures include:

a. Certified electronic signature, which must meet the requirements:

1. Fulfill the validity of the legal force and legal consequences of electronic signatures as referred to in Article 59 paragraph (3) PP No. 71 of 2019 concerning the Implementation of the Electronic Transaction System (PP PSTE);
2. Using an electronic certificate made by an Indonesian electronic certification provider; and
3. made using a certified electronic signature generator

b. Uncertified electronic signature, made without using the services of an electronic certification provider

In electronic contracts, the ITE Law provides regulatory provisions regarding the timing of supply and demand. As long as it is not agreed upon other than by both parties, the delivery time is when the information has been sent to the intended address (as regulated in Article 8 paragraph (1) of the ITE Law). While regarding the time of receipt of the information enters the electronic system under the control of the recipient. It can be concluded that the difference in the time of delivery and receipt is something that can occur in the process of engagement transactions or the formation of contracts. However, in Article 8 paragraph (2) of the ITE Law, it is the responsibility of recipients of information to carry out oversight initiatives over the recipient's electronic system.

- Electronic system operator is every state administrator, business entity, community that provides, manages and/or operates electronic system individually or jointly to users of electronic system for their own needs and/or needs of other parties. The operator of an electronic system in the private sphere is the operation of an electronic system by people, business entities, and the public. Electronic Certificate is an electronic certificate containing an Electronic Signature and identity indicating the status of the legal subjects of the parties in the Electronic Transaction issued by the Electronic Certification Operator.

Before signing the e-contract is used, the organizer must ensure the initial identification of the signer by means of:

- The signer conveys his identity to the electronic certification operator;
 - Signatories register with the certification provider; and
 - If necessary, the electronic certification operator can delegate confidentiality of the signer's identity data to the electronic certification operator
 - others with the agreement of the signatory.

Business actors who carry out electronic transactions can be certified by a reliability agency. This reliability institution is formed by professionals, at least including:

- a. IT Consultant
- b. IT Auditor
- c. IT Legal

Consultant Certification agencies must be registered in the list of reliability certification bodies issued by the Minister. The mechanism for using contract signature data, namely:

- a. Apply a combination of at least 2 (two) authentication factors
- b. The process of verifying the signed electronic information can be done by checking: electronic signature verification data to track every signature change hand signed data.

Because electronic transactions are growing so that contracts can be executed electronically via the internet network, responding to the development of e-contracts the Ministry of Finance issues an e-stamp, dated October 1, 2021. Fulfillment of the seal on e-contracts based on Law no. 10 of 2020 concerning Stamp Duty (Stamp Act). Article 1 paragraph (1) of the Stamp Act states:

“Stamp duty is a tax on documents”

The document according to the Stamp Act in article 1 paragraph (2) states:

"Document is something written or written, in handwritten, printed, or electronic form, which can be used as evidence or information".

Article 3 of the SEALS LAW stipulates that stamp duty is imposed on: documents made as a means to explain an incident of a civil nature. Civil documents here include:
(i) agreement letter, statement letter, statement letter, other similar letters and their copies
(ii) notarial deed.

In accordance with the Civil Code, namely fulfilling the legal requirements of an agreement 1320 of the Civil Code. In accordance with Article 18 of the ITE Law, electronic transactions contained in Electronic Contracts are binding on the parties, if the parties agree to use e-contracts

In accordance with Article 59 paragraph (3) PSTE, has legal force and legal consequences as long as it fulfills:

- a. related electronic signature creation data only the signer
- b. the electronic signature maker's data at the time of the electronic signing process is only in the power of the signer
- c. Any changes to the electronic information related to the signature after the time of the signer can be noticed
- d. Any changes to the electronic information related to the electronic signature after the signing time can be noticed
- e. There are certain methods used to identify who the signer is;
- f. There are certain ways to indicate that the signer has provided approval of related electronic information

E. Conclusion

Current digital developments require us to keep up with technological developments, trading activities also experience development from time to time so that it is necessary to use electronic contracts. The use of electronic contracts has legal protection so that there is legal certainty for contract electronic users as long as they fulfill Article 1320 regarding the validity of an agreement and must comply with Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions and Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.

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