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Legal Implications of Agreements in Digital Business: Comparative Analysis and Regulation

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Article	Abstract
<p><i>Received:</i> ; <i>Reviewed:</i> ; <i>Accepted:</i> ; <i>Published:</i></p>	<p>Dalam hal ini berbicara mengenai perkembangan teknologi, rupanya tidak hanya mengubah aspek sosial antar manusia tetapi juga berpengaruh terhadap kegiatan perdagangan yang hingga saat ini mengalami selalu perubahan, begitu pula pada pola transaksi yang digunakan dalam aktivitas perdagangan berkembang ke arah proses digitalisasi, perjanjian kontrak konvensional pun beralih ke perjanjian digital. Penelitian ini menggunakan analisis metodologi komparatif adalah penelitian yang bertujuan untuk membandingkan nilai satu atau lebih <i>variable</i> mandiri pada dua atau lebih populasi, dan penelitian ini dapat dilakukan untuk menganalisis perbedaan dan kesamaan antar <i>variable</i> yang kemudian dapat digunakan dalam Analisa hukum perjanjian dalam bisnis digital. Implementasi dalam perjanjian konvensional melibatkan beberapa Langkah kunci yaitu terdapat Negosiasi, Penyusunan Kontrak yang mencakup hak dan kewajiban masing-masing pihak, Penandatanganan oleh para pihak sebagai tanda persetujuan. Pada analisis komparatif terhadap hukum perjanjian bisnis digital menunjukkan bahwa meskipun kontrak elektronik diakui secara hukum, masih ada tantangan terkait hal tersebut, oleh karena itu pemahaman mendalam penting mengenai aspek ini terhadap regulasi yang berlaku maupun perancangan regulasi.</p>

Kata Kunci : Hukum Perjanjian, UU ITE, Bisnis Digital

In this case, talking about technological developments, it seems that it has not only changed the social aspects between humans but also influenced trade activities which until now have always changed, as well as the transaction patterns used in trade activities developing towards the digitalization process, conventional contract agreements have also shifted to digital agreements. This study uses comparative methodology analysis, which is research that aims to compare the value of one or more independent variables in two or more populations, and this study can be conducted to analyze the differences and similarities between variables which can then be used in the analysis of agreement law in digital business. Implementation in conventional agreements involves several key steps, namely Negotiation, Drafting a Contract that includes the rights and obligations of each party, Signing by the parties as a sign of agreement. In a comparative analysis of digital business agreement law, it shows that although electronic contracts are legally recognized, there are still challenges related to this, therefore a deep understanding is important regarding this aspect of applicable regulations and regulatory design.

Keywords: Agreement Law, ITE Law, Digital Business

INTRODUCTION

Over time, information technology has developed rapidly and created new practical breakthroughs. In the era of globalization, both Indonesia and the world are now enjoying online or electronic buying and selling transactions. The development of the Internet has changed the lifestyle and behavior of people around the world. Information and communication are usually done on paper rather than in electronic format. This does not rule out the possibility of transactions in the corporate sector. Furthermore, advances in information technology, in this case electronic commerce technology, have made it easier to carry out supply and demand transactions even though the parties are in different regions. The development of technology means that trading activities have also developed over time, both in the products traded and in the trading mechanism itself, with the emergence of what is called electronic commerce, along with the development of technology in the field of trade. Sellers and buyers no longer meet directly, but only through the internet, the World Wide Web, a public network with an open system. However, this is where electronic contracts or what are known as e-contracts were born (Hidayat, 2023).

Based on the data report from We Are Social entitled "Digital 2024", our 2024 digital report emphasizes everything you need to know about social media, Internet, mobile, and e-commerce trends around the world. In 2024 this extraordinary digital achievement, more than 5 billion social media users increased to 266 million in the previous year. The average social media user currently does various activities, ranging from shopping, interaction, entertainment, and brand information, and spends 2 hours 23 minutes per day on the selected social platform (Rukmana et al., 2024)

Based on Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 (Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, 2011) Concerning Electronic Information and Transactions, Article 1 number 2 states; "Electronic transactions are legal acts carried out using computers, computer networks, and/or other electronic media" (Wowor, 2022). In this case, talking about technological developments, it seems that it not only changes the social aspects between humans but also influences trading activities which until now have always changed, both in terms of trading commodities and the techniques and mechanisms of the trade itself. Commodities from this type of trade are basically greatly influenced by the needs of human life which are increasingly complex and diverse along with technological advances. So in this case, a new innovation has also emerged which is called electronic commerce (e-commerce) (Rahadjie et al., 2022)

Viewed from a communication perspective, an electronic transaction is basically an activity of exchanging information through an electronic communication system that is intended to carry out a certain legal act, such as the civil relationship of the parties to carry out an electronic agreement or contract (Rahadjie et al., 2022). However, the term contract is more often used in business practice. Because it is rare for people to run their business carelessly, business contracts are usually made in writing, so that contracts can also be referred to as agreements made in writing with binding legal force (Surya & Fitriyantini, 2021). The law of contracts is the law that regulates matters relating to agreements, which are made by two or more people. Furthermore, the law of contracts not only regulates the validity of an agreement made by the parties, but also the consequences of the agreement, the interpretation and implementation of the agreement made (Sinaga et al., 2023). According to the explanation of Law No. 19 of 2016 concerning the Renewal of Law No. 11 of 2008 Concerning Electronic Information and Transactions Article 1 General Provisions, number 17 states that: "An electronic contract is an agreement between the parties made through an Electronic System"

The purpose of this study is to gain a deeper understanding of the differences between electronic contracts and traditional contracts, especially in adapting and implementing the law in the context of the rapidly growing dynamics of digital business. In this case, by providing a deeper understanding of electronic contract agreements, we hope to make an important contribution in understanding its legal implications in the context of digital business.

FOCUS OF PROBLEMS

Based on the background of the problem above, the researcher provides the following problem focus:

1. How is the Comparative Analysis of Digital Business Agreement Law?
2. How is the Effectiveness of Legal Implications in Digital Business?

RESEARCH METHODS

The legal research method used in this study is the normative juridical method. This method is also defined by Johnny Ibrahim with normative juridical research, this study is the result of collecting data from primary, secondary, tertiary legal sources. And primary law includes official laws and regulations, while secondary includes books and scientific articles that discuss legal issues. (Johnny Ibrahim, 2012) This study also uses comparative methodology analysis, which is defined by Sugiyono who states that the comparative method is research that

aims to compare the value of one or more independent variables in two or more populations, and this research can be done to analyze the differences and similarities between variables which can then be used in the Analysis of agreement law in digital business.

With the normative legal research method, this study can focus on the analysis of the validity of the law of agreements in digital business, based on Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). This study refers to the evaluation of how the law regulates electronic contracts and whether these provisions meet the requirements for the validity of the agreement in accordance with the Civil Code (KUHPerdata). In the evaluation process, this method is used in analyzing the evidentiary power of electronic evidence and how this is regulated in positive law in Indonesia. It should be underlined that this study explores aspects of consumer protection in digital transactions, including an analysis of how consumer rights protection regulations interact with social contracts, and can be a recommendation for improving regulations based on an analysis of the shortcomings and challenges faced in the implementation of digital contracts in Indonesia

FINDING & DISCUSSION

Literacy References

Article 1313 of the Civil Code (KUHPerdata) states that: "An agreement is an act by which one or more persons bind themselves to one or more other persons. Based on this formulation, it can be seen that an agreement is:

- a. An act.
- b. Between at least two persons.
- c. The act gives rise to an obligation between the parties who made the promise.

The act mentioned in the initial formulation of the provisions of Article 1313 of the Civil Code explains to us all that an agreement is only possible if there is a real act, either in the form of speech, or physical action, and not only in the form of mere thoughts.

According to Abdulkadir Muhammad, the provisions of Article 1313 are actually not quite right because there are several weaknesses that need to be corrected, namely:

- a) Only concerns one party. This can be seen from the formulation of the verb "to bind oneself", its nature only comes from one party, not from both parties.
- b) The formulation should be "to bind oneself", so there is a consensus between the two parties. The word act also includes without consensus. In the sense of "act" also includes actions to organize interests (zaakwaarneming), unlawful actions

(onrechtmatigedaad) that do not contain a consensus. The term "agreement" should be used.

- c) The definition of an agreement is too broad. The definition of an agreement also includes a marriage agreement regulated in the field of family law. In fact, what is meant is the relationship between the debtor and creditor regarding assets. The agreement regulated in Book III of the Civil Code actually only includes agreements that are material in nature, not personal.
- d) Without mentioning the purpose. The formulation of the Article does not mention the purpose of making an agreement, so that the parties are not clear about what they are binding themselves for.
- e) According to Article 1867 of the Civil Code, it is also stated that written evidence is carried out with authentic writings or with private writings. From written evidence, there is a very valuable part to be proven, namely evidence of deeds. A deed is a form of writing that is deliberately made to be used as evidence of an event and signed sufficiently. (Larasati, D. A., & Idayanti, S. (2023))

In running a business, of course, it is inseparable from the existence of buying and selling transactions. In a buying and selling transaction, there are various methods of agreement, some are verbal, some are through PO (Purchase Order), and not infrequently if the value is large and is considered a significant service work, sometimes a buying and selling agreement (contract) is made. One of the technologies that is currently being widely discussed and also supports a paperless system is digital signature technology (Hudzaifah, 2015). By changing the pattern of relations from using paper to paperless, it can cause legal problems, such as the validity of an electronic/digital document that is paperless, what legal remedies can be taken if there is a dispute related to a digital signature. In practice, there are still many people who do not really understand technology and still use manual methods in handling agreements. What the author means by manual methods, for example, until now there are still many who print the physical conventional buying and selling agreement then sign it wet and then scan it.

. This agreement is certainly not paperless and less efficient when compared to directly implementing a digital signature. Several PSEs (Electronic Certification Organizers) that have been permitted by the Ministry of Communication and Information to issue electronic certifications, namely PrivyID, Solusi Net, Peruri, Vida, BPPT, BSrE, and DTB. With the permission of these PSEs, it certainly makes it very easy for people to make transactions using digital signatures. Apart from this convenience, the author feels that until now there are still many people who are still doubtful about the validity of digital signatures if there is a default

in the future, questions often arise in society, how can digital signatures be a means of verification and authentication and become a valid evidence? (Dahlia, M., & Susetio, W. (2023).

Comparative Analysis of Conventional and Digital Business Agreement Law

In a comparative analysis of conventional business agreements and digital agreements, the focus will be on how the developments and comparisons between the two agreements. In conventional agreements, agreements made between two or more parties are regulated by law according to Article 1313 of the Civil Code (Adisasmitta et al., 2023), an agreement is an act by one or more people binding themselves to one or more people. With conventional conditions that include the Agreement of the parties stated in the agreement, the Ability to make a contract that has legal capacity, A certain thing such as the object of the agreement must be clear and can be determined, then the lawful Cause must also be the purpose of the agreement must be valid and not contrary to the law. Implementation in conventional agreements involves several key steps, namely Negotiation, Drafting a Contract that includes the rights and obligations of each party, Signing by the parties as a sign of agreement, Implementation by the parties who carry out obligations in accordance with the contents of the contract, and Dispute Resolution if a dispute occurs so that deliberation can be carried out or through legal channels.

With the advancement of technology and digitalization, business agreements are shifting to digital or electronic forms, electronic contracts are also regulated by the Electronic Information and Transactions Law (UU ITE) in Indonesia. The transformation from conventional to digital agreements also has characteristics, namely Electronic Form which can be in the form of documents signed electronically without requiring a physical form, Efficient process with the process of making and implementing it being faster and more efficient than conventional methods, then Electronic signatures which are then recognized as valid but the challenges arise in terms of validation and security of the signature. The challenges in digital agreements are mainly from the Validity and Legality which are often questioned even though the ITE Law has regulated that electronic contracts are valid if they meet certain requirements. Protection of personal data and information security are also crucial issues in digital transactions and cyber attacks threaten data integrity and information leaks that are detrimental to the parties involved. Then the handling of disputes with dispute resolution procedures in the context of digital agreements can be more complex than conventional ones, the legal system also needs to adapt to handle disputes arising from this electronic contract.

Inequality of access to technology can create injustice towards certain parties, the need for accessibility and digital literacy to minimize barriers to effective participation in electronic

agreements. The challenges that are the pros and cons of distrust of technology in the use of digital contracts due to the uncertainty of security and transparency of the process, this has hampered the widespread adoption of digital agreements. In the dynamics of international trade, there are several regulatory openness regarding legality, for example the UNCITRAL Model Law on Electronic Commerce, which is a legal model designed by the United Nations Commission on International Trade Law (UNCITRAL) in 1996, which provides a framework for the recognition and validity of electronic contracts and regulates aspects such as the validity of electronic signatures and the delivery of information electronically. Indonesia can adopt the principles of this model to help strengthen the validity of electronic contracts, especially in the context of consumer protection and dispute resolution (Hasanah & Basarah, 2023)

The E-SIGN Act of the United States makes the law recognize the validity of electronic signatures and electronic documents in commercial transactions, and under the E-SIGN Act, contracts cannot be voided simply because they are made electronically. The Electronic Communications and Transactions Act (ECTA) of South Africa, ECTA regulates aspects of electronic transactions including the validity of contracts, consumer protection, and the liability of service providers. The Act also includes provisions on data retention and protecting consumer rights in digital transactions.

With the challenges in digital agreements, to reduce these challenges and conflicts, there are steps that can be applied such as the Use of Blockchain Technology for Smart Contracts that automatically implement the terms of the agreement when certain conditions are met and increase transparency to minimize the risk of disputes. The preparation of a clear Dispute Resolution Clause including a jurisdiction clause and dispute resolution method such as arbitration and can reduce uncertainty and accelerate the resolution of cross-border problems. Compliance with data protection regulations by complying with laws such as GDPR or the PDP Law in Indonesia that protect sensitive information in electronic/digital agreements

Digital Agreements often receive skeptical responses in practice due to the need for adjustments and strengthening of applicable laws for digital business agreements. However, there are benefits and positive impacts of digital agreements, namely time and cost efficiency with a faster process and no need for face-to-face or sending physical documents. The global business scale can also be reached by becoming a wider market so that transactions are easier to carry out with digital contracts as easy access. Reducing the carbon footprint also by reducing the need for physical documents in the form of paper, and transportation in conventional footprints can also have a positive impact on the environment.

Regulation of Legal Implications in Digital Business in Indonesia

In this case, there are several regulations related to Legal Protection for Consumers and Business Actors, including the following: "a) Civil Code; b) Criminal Code; c) Law Number 8 of 1999 concerning Consumer Protection d) Law Number 19 of 2016 Amendment to Law Number 11 of 2008 Information and Electronic Transactions e) Law Number 7 of 2014 concerning Trade (Government, 2019) f) Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (Government of the Republic of Indonesia, 2019) g) Government Regulation Number 80 of 2019 concerning Trade through electronic systems h) Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services" UUPK and KUHPerdata are regulations that have existed long before technology and digitalization developed so rapidly

So that now, when digital business becomes a real thing in people's lives, UUPK and KUHPerdata have many shortcomings in balancing new problems that have not been previously regulated. Virtual transactions that occur in online buying and selling use banks as payment intermediaries, considering that sellers and buyers can come from different locations so that sellers and buyers do not need to face each other directly (Susanti, 2017). However, there is a legal relationship that occurs between the seller and the buyer as a result of the buying and selling process, so that regulations related to buying and selling can be applied to it as stipulated in Articles 1474 to 1540 of the Civil Code. Article 1457 of the Civil Code defines buying and selling as "Buying and selling is an agreement by which one party binds himself to hand over an object to another party to pay the promised price". Furthermore, Article 1458 of the Civil Code states that "Buying and selling is considered to have occurred between the two parties, immediately after these people reach an agreement on the object and its price, even though the object has not been handed over and the price has not been paid.

Based on these provisions, it is known that the sale and purchase process also applies to the provisions of the agreement in Book III of the Civil Code. "Sale and purchase is a consensual agreement, namely it has been formed since there was an agreement regarding the goods and their price, the rights and obligations of the parties have occurred since there was an agreement even though the price has not been paid and the goods have not been delivered (Khalish Aunur Rahim et al., 2023).

Next is Article 28 of the ITE Law (Vinet & Zhedanov, 2011) which regulates prohibited acts in an online sales agreement, namely that sellers are prohibited from spreading false and

misleading news that can cause losses to buyers. Sellers who violate these provisions can be punished with a maximum imprisonment of 6 years or a fine of 1 billion rupiah as stipulated in Article 45A paragraph (1) of the ITE Law (SHELEMO, 2023). Provisions related to online sales transactions regulated in the ITE Law are divided into appeals regulated in Article 9, actions regulated in Article 28 paragraph (1) and criminal sanctions regulated in Article 45A paragraph (1) (Tumbel, 2020). Electronic information and documents and their printouts are valid evidence because they are an extension of the Evidence that has been regulated by the Civil Procedure Law, on the condition that the information or documents use an electronic system that has been determined in the ITE Law and PP No. 28 of 2012 (Akhmaddhian, 2016). In addition to the ITE Law, regulations related to digital buying and selling transactions can be found in the Trade Law and its implementing regulations. Articles 65 and 66 of the Trade Law and its implementing regulations apply and must be complied with by parties in every digital buying and selling transaction carried out by domestic and foreign business actors targeting the Indonesian community (Khalish Aunur Rahim et al., 2023).

Article 65 of the Trade Law requires business actors in digital buying and selling to provide complete and correct data and information to facilitate the tracing of the legality of transactions (Pariadi, 2018). Legal protection for consumers of electronic financial services or commonly called financial technology (fintech) also needs more attention. OJK is an institution that has the authority to supervise fintech companies. Supervision is guided by OJK Regulation No. 77/POJK01?2016 concerning Information Technology-Based Money Lending Services, but this regulation is considered to still have many shortcomings in being able to accommodate all forms of problems related to the activities of the fintech company so that there needs to be a more complete regulation that can be used as a guideline for OJK in order to supervise fintech companies and can balance the fairly complex problems in the implementation of financial technology (Financial Services Authority, 2016).

Effectiveness of Legal Implications in Digital Business in Indonesia

Several factors that can affect the effectiveness of the implementation of regulations related to consumer protection in the digital business era are: first, the legal structure. The government is a legal structure that affects the effectiveness of a regulation in its function as a policy maker. The government has provided legal certainty to guarantee consumer rights in digital business through the UUPK, UUITE, Trade Law, several related PPs, namely PP on the Implementation of Electronic Systems and Transactions and PP related to Trade through electronic systems, even OJK regulations on Information Technology-Based Money Lending

Services. However, there are still many provisions in the UUPK that are violated by business actors, for example Article 8 and Article 9 (Financial Services Authority, 2016)

Articles 8 and 9 regulate prohibited acts for sellers in producing or marketing their goods, such as the size or condition of the goods received by the buyer not being in accordance with what the seller describes in the item description. In reality, many buyers experience losses due to sellers who are dishonest in explaining the condition of the goods, the description of the condition of the goods is written very well, but after being received by the buyer, the goods are in a condition or size that does not match the description. Specifically related to digital business, the government is less responsive in following changes and technological developments, this can be seen from the absence of changes to the UUPK which has existed since 1999, long before the emergence of digitalization so that the UUPK has not technically regulated provisions related to consumer protection in conducting digital buying and selling, as well as the ITE Law and other regulations have not technically regulated consumer protection when making transactions using digital media (Novita & Santoso, 2021).

Second, legal substance. Regulations that can be the legal basis for consumer protection in digital transactions do not yet regulate technical matters. For example, in the case of digital buying and selling, where the buyer receives goods that do not match what the seller promised, resulting in losses for the buyer. Even though the seller provides a guarantee for the exchange of goods, losses still occur to the buyer considering that in some cases, the shipping costs for exchanging goods are still charged to the buyer (Novita & Santoso, 2021).

CONCLUSION

1. In a comparative analysis of digital business agreement law, it shows that although electronic contracts are legally recognized, there are still challenges related to this, therefore a deep understanding is important regarding this aspect of applicable regulations and regulatory design. Second, legal substance. Regulations that can be the legal basis for consumer protection in digital transactions do not yet regulate technical matters.
2. Several factors that can affect the effectiveness of the implementation of regulations related to consumer protection in the digital business era are: first, legal structure. The government is a legal structure that affects the effectiveness of a regulation in its function as a policy maker. The government has provided legal certainty to guarantee consumer rights in digital business through the UUPK, UUITE, Trade Law, several related PPs, namely PP on the Implementation of Electronic Systems and Transactions and PP related to Trade through electronic systems, even OJK regulations on Information Technology-Based Money

Lending Services. The law on digital business agreements in Indonesia, which is regulated by Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), recognizes contracts made electronically, although there are significant differences between digital contracts and conventional contracts, especially in terms of validity, proof, and law enforcement.

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