

**PROCEEDING OF INTERNATIONAL CONFERENCE ON
THE LAW DEVELOPMENT FOR PUBLIC WELFARE**

ISSN: 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

The Legality of Electronic Trading Contracts Is Reviewed in the Civil Code

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Abstract. The aim of this study is to understand and find out about the legality of electronic trading contracts in the Civil Code and the legal consequences if the electronic trading contract is made illegally. The research method used in this writing is a normative legal research method with a statutory and conceptual approach. The results of this writing show that the legality of electronic trading contracts is contained in the provisions of Article 1320 of the Civil Code, namely agreement between the parties; the parties' abilities to carry out legal actions; a particular subject matter; and the reasons are not prohibited and the legal consequences if a trading contract made electronically or e-contract is invalid is that it can be canceled and null and void if it does not comply with the provisions of Article 1320 of the Civil Code.

Keyword: Civil; Electronic; Trading.

1. Introduction

Indonesia is a developing country consisting of a diverse population. This population growth has also led to developments in various aspects of life in Indonesia. One of the prominent developments is developments in the field of technology. Various aspects of life in Indonesia have used technological advances in their application. One of the technological advances can also be seen in the field of trade.

The activity of buying and selling goods or services was initially only carried out by meeting directly or face to face between the buyer and seller, which was called trading¹. Along with the development of scientific and technological knowledge in Indonesia, nowadays much trade is

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carried out via the internet or electronic media². The procedures for trading are also experiencing development, namely through an agreement between parties who agree to enter into a transaction which in the agreement regulates the rights and obligations between both parties.

The term agreement can also be called an agreement because in an agreement, both parties must agree first³. The terms agreement and contract are the same, where in business practice the term contract is used, otherwise the terms agreement and agreement are used⁴. Furthermore, regarding the term contract, it can be seen that both are legal consequences (legal enforceability) if the contents of the agreement or contract are not implemented. Technological progress in the field of trade can be seen with the existence of electronic contracts, hereinafter referred to as e-contracts, which are trading contracts made electronically⁵.

Compared to trade contracts made conventionally (made by meeting directly or face to face) where the legal regulations are clear, e-contracts in Indonesia are still very new and therefore further study and research is still needed regarding their validity. This is because the law relating to contracts in Indonesia has been regulated clearly and specifically in Book III of the Civil Code (hereinafter referred to as BW).

As time progresses and is influenced by society's increasing need for technology, there has been a significant shift in the function of the internet, which was initially emphasized on research and research interests, then shifted to become a commercial media function. It is believed that the role of the internet as a means of information technology in the world of economics and business will bring enormous benefits. Information technology is considered very important in spurring the rate of world economic growth.

At least the thing that is very influential in economic activities is the acceleration produced by the internet itself in the process of searching for actual data, economic activities such as purchasing household goods, ordering electronic equipment, purchasing clothes from a shop, electronics, as well as several other benefits, for example time savings, no transportation obstacles, less chance of typos, and also time efficiency.

In every agreement, the contract becomes in every agreement, the contract becomes something very important for the parties involved in it. The contract has the following functions, among others:

1. A contract is a medium used by the parties to express what will be agreed in writing in accordance with the terms of the validity of the agreement:

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2. The contract is a control tool for both parties, namely whether a performance has been carried out or whether there has been a default;
3. The contract is also evidence that will be used by interested parties as a basis for filing a claim or compensation. Influenced by the freedom that each individual has to make an offer for an item with the aim of owning it, the Court also provides an opportunity for the parties to make a contract. Therefore, this contract is very important in the realization of an agreement.

Based on the background that has been explained, the problem formulation is obtained as follows:

1. What is the legality of electronic trading contracts in the Civil Code?
2. What are the legal consequences if an electronic trading contract is made illegally?

2. Research Methods

The method used in this research is a normative research method, which examines and analyzes the main issues with the substance of the Legislative Regulations. In supporting the research process, the types of approaches used are the statutory approach (Status approach) and the conceptual approach (Conceptual approach), which in the context is carried out by examining the legal issues that are to be answered with all relevant laws and regulations.

3. Results and Discussion

3.1. Legality of Electronic Trading Contracts in the Civil Code

An agreement as stated in article 1313 BW is "an act by which one or more people bind themselves to one or more other people"6. In Article 1233 of the Civil Code, it is stated that "every agreement is carried out either by agreement or by law". This formulation states that an engagement is a relationship between two or more people in which one party's performance is entitled and the obligations of one party's performance are fulfilled. In its form, an agreement is a string of words that contain promises or promises that can be spoken or written concretely. A legal relationship that arises from an agreement in an event which is then outlined in a contract, then the agreement is not just limited to words containing promises but is a promise made in writing intentionally so that evidence is available to the parties.

Referring to the formulation of Article 1320 of the Civil Code, it is stated that "a contract is said to be valid if it fulfills the following conditions, including the agreement of those who bind it;

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ability to carry out legal acts; a certain thing; and a lawful cause." An agreement or contract creates an engagement between the parties thereto, so in other words the agreement or contract is the main and most important source of an engagement⁷.

In R. Subekti's opinion, an agreement is "a legal relationship between two people or two parties, based on which one party has the right to demand something from another party, and the other party is obliged to fulfill that demand"⁸. Based on the definition of this agreement, it can be concluded that a contract is "a legal relationship between one subject and another subject in the field of property, where one legal subject has the right to claim performance and likewise another legal subject is obliged to carry out its performance in accordance with which he had agreed to."⁹ In electronic trading, a contract that arises is not just on paper but is carried out digitally or what is known as an e-contract. Electronic trading means all information is contained and the form of all data that the parties relate to is in the agreement. E-contracts arise because technology offers services or goods as a medium. According to the explanation of the ITE Law, article 1 number 17 states that "an electronic contract is an agreement between the parties made through an electronic system." From another party, and the other party is obliged to fulfill that demand". Based on the definition of this agreement, it can be concluded that a contract is "a legal relationship between one subject and another subject in the field of property, where one legal subject has the right to claim performance and likewise another legal subject is obliged to carry out its performance in accordance with which he had agreed to." In electronic trading, a contract that arises is not just on paper but is carried out digitally or what is known as an e-contract. Electronic trading means all information is contained and the form of all data that the parties relate to is in the agreement. E-contracts arise because technology offers services or goods as a medium. According to the explanation of the ITE Law, article 1 number 17 states that "an electronic contract is an agreement between the parties made through an electronic system."

According to Johannes Gunawan, electronic contracts are "standard contracts that are designed; created, determined, duplicated and disseminated digitally via an internet site (website) unilaterally by the contract maker (in this case the business actor), to be closed digitally by the contract closer (in this case the consumer)." Furthermore, regarding electronic systems, it is stated "a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit and/or disseminate electronic information (Article 1 point 9 of the ITE Law)", in essence, this electronic contract is "an agreement agreed by the parties that makes it only the medium or advice is very different, using an electronic

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system." An electronic contract (e-contract) is "a form of electronic transaction regulated in article 17 paragraph (1) jo. Article 18 paragraph (1) Chapter V of the ITE Law.

3.2. Legal Consequences of Electronic Trading Contracts Made Illegally

Furthermore, in terms of positive legal regulations in Indonesia, agreements or contracts in Indonesia are clearly and specifically regulated in Book III 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 fulfilled; their agreement that binds them; the ability to create an agreement; a particular subject matter; a cause that is not forbidden."

Based on the provisions in Article 1320 BW, it can be concluded that the conditions for the validity of a contract or agreement are as follows:

1) There is an agreement between the parties. The first condition for the validity of a contract is that there is an agreement between the parties which is stated expressly and concretely through signing the contract. An agreement is a statement of will between one or more people and another party. The agreement or agreement must be made with free will, meaning that it does not contain elements of coercion, error or fraud as stated in Article 1320 BW. Regarding the requirement for an agreement between the parties in an e-contract, when 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 is valid.

2) Competence of the parties to carry out legal acts. According to Article 1329 BW, "parties making a contract must be competent to carry out legal acts." There are several classifications regarding people who are declared legally incompetent, namely as follows:

a. Immature people According to article 330 BW, "immature people are those who have not reached the age of 21 (twenty one) years and have never been married." If the marriage is dissolved before 21 (twenty one) years of age, it does not mean that the legal status returns to a state of immaturity.

b. People who are under pardon. People who are under pardon cannot act freely with their assets, whose legal position is equivalent to being a minor. Article 433 BW states that "every adult who is always in a state of stupidity, brain disease, or dark eyes, and is wasteful must be pardoned."

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c. Women, in certain cases, according to Indonesian law, are prohibited from entering into certain contracts. However, a wife can carry out legal actions, in accordance with Article 31 paragraph (2) of Law of the Republic of Indonesia Number 1 of 1974 in conjunction with SEMA number 3 of 1963. Regarding the requirements for the parties' skills in carrying out legal actions. So, in order for an e-contract to be valid, it must be accompanied by the inclusion or deposit of the parties' personal identities which at least clearly contain the name, address/domicile, nationality, age, gender and occupation of the parties.

3) Contains certain things stated in the clauses. The contents of the clauses in a contract can be interpreted as the legal object of the contract. The things that are promised must be something or an item that is quite clear. According to Article 1332 BW, "only objects that can be traded can be the subject matter of the agreement in the contract." Furthermore, Article 1333 BW states that "an agreement must have as its subject an object whose type can at least be determined." Regarding the requirements for making certain things in order for an e-contract to be valid, then when making an e-contract it must be clearly stated regarding the contents or main points of the matters to be agreed regarding the objects to be traded.

4) The existence of a lawful cause (causa/ozaak). The reasons that are not permitted in a contract are if the contents of the object of the agreement conflict with statutory regulations, norms of decency and public order. Concerning the existence of requirements for the inclusion of certain things that are halal or must not conflict with laws and regulations, norms of decency and public order; In order for an e-contract to be valid, when making an e-contract, attention must be paid to the rules and norms that apply in the region 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, the legal consequences of an invalid e-contract can be described as follows:

1. If the subjective requirements in Article 1320 BW, namely the terms of agreement and skills of the parties to the contract, are not fulfilled, then one of the parties can request that the agreement or contract be cancelled. However, if the parties do not object, then the agreement or contract is still considered valid.
2. If the objective requirements in Article 1320 BW, namely the conditions for containing certain things and the existence of a lawful cause, are not fulfilled, then the agreement or contract will become null and void by law.

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Based on the discussion and results of the analysis above, regarding the validity of an e-contract, all the requirements of Article 1320 BW must be fulfilled without exception by the parties wishing to make an e-contract.¹³ If all the conditions for the validity of the full agreement or contract are met, then according to Article 1333 BW, the e-contract is valid and the law has the same strength as a statutory regulation.

4. Conclusion

Based on the results and discussion presented above, it is 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 between the parties; the parties' ability to carry out legal actions; a particular subject matter; and a reason that is not forbidden. The legal consequences if a trading contract made electronically or an e-contract is invalid is that it can be canceled and null and void if it does not comply with the provisions of Article 1320 of the Civil Code. The parties when 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 are legally valid and legal. The competent government should make separate regulations regarding electronic contracts so that there are stronger rules to regulate these e-contracts.

5. References

Journals:

Akhmaddhian, Suwarin, and Asri Agustiwin. "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Secara Elektronik di Indonesia." UNIFIKASI: Jurnal Ilmu Hukum 3, no. 2, 2018 hlm.40-60.

Anggraeni, RR Dewi, and Acep Heri Rizal. "Pelaksanaan Perjanjian Jual Beli Melalui Internet (E-Commerce) Ditinjau Dari Aspek Hukum Perdataan." Jurnal Sosial dan Syar-it Budaya, no. 3, 2019, hlm 223-238.

Dewantara, Gede Eka Prasetya, and I. Wayan Novy Purwanto. "Keabsahan Kontrak Perdagangan Secara Elektronik (E-CONTACT) Ditinjau Dari Pasal 1320 Burgelijk Wetboek." Kertha Semaya: Journal Ilmu Hukum 8, no. 1, hlm. 13.

Hanafi, Yayan. "Penyelesaian Kontrak Perdagangan Melalui Internet: Perspektif Hukum Perjanjian." Celebes Cyber Crime Journal 1, no. 1, 2019, hlm. 38-49

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Hanimi, Lathifaha. "Pengaruh Perkembangan Teknologi Informasi Terhadap Keabsahan Perjanjian Dalam

Panggabean, R. M. "Keabsahan Perjanjian dengan Klausul Baku." *Jurnal Hukum Iuis Quiat lustum* 17, no. 4, 2010, P. 651-667.

Pebriarta, I. Kadek Ari, and AA Ketut Sukranatha. "Keabsahan Kontrak Elektronik Dalam Kaitan Dengan Kecakapan Melakukan Perbuatan Hukum Oleh Para Pihak." *Kertha Semaya: Journal Ilmu Hukum* 3, no. 3, P. 1-13.

Perdagangan Secara Elektronik (E-Commerce) Di Era Globalisasi." *Dinamika Jurnal Hukum*, 2011, P. 56-66.

Poernomof, Sri Lestariy. "Standar Kontrak dalam Perspektif Hukum Perlindungan Konsumen." *Jurnal Hukum Penelitian De Jure* 19, no. 1, 2019, P. 109-120.

Prayogo, Sedyo. "Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum dalam Perjanjian." *Pembaharuan Jurnal Hukum* 3, no. 2, 2016, P. 280-287.

Salim, H. S. *Hukum Kontrak Teori Dan Teknik Penyusunan Kontrak*, Cetakan keempat. Jakarta, Penerbit Sinar Grafika, 2006, hlm. 30

Sastrawidjaja, Man Suparman. *Perjanjian Baku Dalam Aktivitas Dunia Maya, Cyberlaw: Suatu Pengantar*, Cetakan I. Jakarta, Elips II, 2002, P. 14.

Tektona, Rahmadi Indran. "Perlindungan Konsumen Dalam Kontrak Transaksi E-Commerce Berdasarkan Hukum Perdagangan Internasional." *Jurnal Supremasi* 6, no. 2, 2016, P. 2.

Books:

Ajeng, P., and Andi Tenri. "Tinjauan Hukum Perjanjian Jual-Beli Melalui ECommerce." PhD diss., Universitas Islam Negeri Alauddin Makassar, 2017. P. 15.

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