

Contemporary Agreement Law Discussing Electronic Agreements in Electronic Media Transactions on The Aspect of Their Legitimacy

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Abstract. This study analyzes the validity of the electronic agreement. The purpose of this study specifically will dissect and analyze aspects of the agreement in the Civil Code and explore the legality of electronic agreements in the practice of electronic media transactions. The research method used is normative juridical research, because in parsing and discussing the use of applicable regulatory instruments along with library materials as primary sources in research, the research approach is by taking a statutory approach, by looking at the phenomenon of technological developments, it is also necessary to look at the regulatory instruments by analyzing regulations related to contract law according to positive law as the foundation in conducting electronic agreement practices. Based on the results of the study, it can be concluded that the electronic agreement already has adequate legal instruments. 19 of 2016 concerning information and electronic transactions. Therefore, the legal structure used to make electronic agreements can be applied in Indonesia, although in the author's opinion, there are still some regulatory improvements in the midst of the development of virtual transactions in order to provide legal certainty to the public.

Keywords: Electronic agreement, Legal agreement, Electronic media transactions.

1 Introduction

An increasingly dynamic life brings a civilization into an era that we call the era of digitalization. Humans are basically creatures that are strongly influenced by change, as we all know that change leads humans to go through several phases of life, from a very conventional pattern of life, namely by using steam power in production, then finding electricity to increase production, entering the computerization phase, and to the ability to create artificial intelligence.

The transition to change in every era force human to continue to adapt to the conditions of space and time, from the way they socialize, both in the economic, cultural, social, political and legal sectors, which also experience disruption to global developments that are advancing so fast. In this context, when humans as actors in the acceleration of change are indifferent, it is certain that they will be crushed by the times.

As we all know and experience together, the rapid development of the internet has implications for the formation of a new vehicle which we commonly refer to as cyberspace. Communities as social beings can then be divided into two types, namely people who are active in the real world and people who socialize in cyberspace or commonly referred to as "virtual communities".

The virtual world is an implication of the development of digitalization. The freedom to surf in cyberspace is an opportunity for every individual to carry out economic activities. Not a few have responded to these opportunities by creating online businesses and not a few of our people are using online business services so that our consumptive level is very high compared to being an online merchant. Therefore, every individual has the right to relate to other individuals freely. Higher connectivity makes human behavior change.

In line with technological developments, trading activities also experience changes from time to time, both in the aspect of commodities to be traded and trading mechanisms. The presence of technology as a means and trade as a necessity creates a new forum for the digital community, namely electronic commerce. In electronic commerce, transactional activities change from very conventional to electronic transactions, where the parties between the seller and the buyer can make transactions without having to meet face-to-face, so the payment process is no longer direct but uses virtual money by transfer or media transfer. Other payment platforms that have cooperated with the seller.

The transaction process carried out between the seller and the buyer of course begins on a valid basis through an agreement and then contained in an

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agreement that binds both parties. With the emergence of an agreement through electronic media, it can be simplified that the agreement is an electronic agreement.

Basically the validity of an agreement refers to the Civil Code Article 1320 which consists of subjective conditions, namely the agreement of the parties and the skills of the parties while the objective conditions consist of certain things and for lawful reasons, but the agreement is a conventional agreement in which the parties can meet in person, making it easy to identify the parties and the payment process can be done in cash, while in electronic agreements the transaction mechanism which is much different from the conventional model raises questions regarding its legitimacy. Therefore, if it becomes urgent to discuss in more depth to provide legal certainty to the public in conducting virtual transactions.

2 Research Methods

Research is a scientific activity that is closely related to the analysis and construction of thinking which is carried out methodologically, systematically and consistently. (Soerjono Soekanto, 1984) In this journal the method used is a normative juridical research method, because in parsing and discussing it uses applicable regulatory instruments. Along with library materials as primary sources in research [1]. A research approach by taking a statutory approach, by looking at the phenomenon of technological development, it is also necessary to look at the regulatory instruments by analyzing regulations related to contract law according to positive law as the foundation in practicing electronic agreements. The research conducted in this study is a descriptive study, aiming to explain how legal certainty is to the practice of electronic agreements used by technology users in conducting virtual contractual transactions.

3 Result and Discussion

3.1 Disruption of the Covenant Law Field

The field of business law is an unavoidable part of technological disruption, transactional activities that used to be done conventionally are then transformed into transactions carried out electronically. This is inseparable from the information technology revolution that is growing so fast. The explosion of digitization using internet access has led to changes in all lines of people's lives, both aspects of education, trade, entertainment, government, and communication.

The original trading transaction mechanism using paper media turned into a digital-based transaction mechanism. Based on the technological developments that occurred, there were two aspects that were very significantly affected, first on the economic aspect and second on the legal aspect. In the economic aspect, the internet gives birth to an ease by increasing transparency, effectiveness and efficiency. Meanwhile, in the legal aspect, it tends to bring up new, very substantial problems. [2] If you look at the current

condition of Indonesia, it is true that the main problem is in the regulatory aspect, not in the technological aspect, and if examined more deeply, one of the main focuses is the agreement aspect.

3.2 Validity of the Agreement Based on the Civil Code

Understanding the field of contract law, it would be better if we first understand the ins and outs of conventional agreements that refer to the Criminal Code. Agreement is one part of civil law, as stated in book III of the Criminal Code. The explanation of the agreement is also regulated in Article 1313 of the Criminal Code which explains that an agreement is an act by which one or more people bind themselves to one or more other people. Seeing from the explanation of the agreement, it creates a legal relationship between the parties which is called an engagement, with the existence of a legal relationship, it gives rise to the rights and obligations of each party. Where these rights and obligations must always be fulfilled in order for a perfect agreement to occur, in this case both written and oral agreements.

Agreements are activities that are generally carried out by the community to meet their daily needs, therefore the freedom of each individual to carry out legal actions depends on the legal subject, while fulfilling the requirements to do so, Therefore the legal requirements of the agreement have been regulated in Article 1320 of the Criminal Code.

Before we enter into the terms of the validity of the agreement, it is important for us to know together that in making an agreement we must meet several elements, namely: (Ridwan Khairandy) [3]

1. Essential elements, which are elements that should exist in an agreement, meaning that when this element is not fulfilled in the agreement, it can be ascertained that the agreement is not formed, because the agreement requires the existence of legal subjects and objects.
2. Naturalia elements, namely elements that have naturally been regulated by law, but the parties can override these rules by replacing them according to the agreement of the parties. This means that in this case the law is a complement to the relevant agreement with the principle of Pacta Sunt Servanda where the agreement becomes law for the parties, the law only works when the parties fail to regulate it then the rule will enter.
3. Accidental elements, namely elements added by the parties, meaning that this is only a complement if needed by the parties, considering that the parties are free to make any agreement as long as they do not conflict with the law, decency, and public order.

Next, we need to understand what conditions make an agreement valid, because the formation of an agreement depends on the fulfillment of the legal conditions or not, therefore the legal terms of the agreement will be described as follows:

First, there is an agreement between the two parties, where the agreement is a conformity between the statements and the will of the parties. As for the

indicator of 'accordance' is the statement, because that will cannot be seen or known to others. Declaration of agreement can be done expressly or tacitly. Firm statements can be in the form of oral, written or with signs/signs. Mariam Daruz Badruzaman describes outlining the notion of agreeing as a requirement of the will that is agreed between the parties. [4] Secret statements often occur in everyday life. For example, a passenger who rides public transportation pays the cost of transportation to the conductor, then the conductor receives the money and is obliged to take the passenger to their destination safely. In this context, an agreement has occurred even though it is not stated.

To determine when an agreement occurs, it can be seen based on four theories that explain the acceptance of the agreement:

1. Speech theory (uitingstheorie)

According to the theory of speech, agreement (toesteming) occurs when the party who accepts the offer states that he accepts the offer. So, from the point of view of the receiving party, that is, when you drop the ballpoint pen to declare acceptance, an agreement has already taken place. In view of the absence of a definition of the offer, Rutten defines an offer as a proposal to close an agreement which is addressed to the party against the promise, so that the acceptance of the proposal immediately results in an agreement [5]. The statement of will must be a statement that he wants a legal relationship to arise. The compatibility of the will between the parties has not yet given birth to an agreement, because the will must be expressed through speech and if the opposing party to the agreement also expresses acceptance or approval by speech, an agreement arises.

2. Delivery theory (verzendtheorie)

According to the delivery theory, an agreement occurs when the party receiving the offer sends a telegram.

4. Theory of knowledge (ontvenemingstheorie)

The theory of knowledge states that an agreement occurs when the offer knows that there is an acceptance.

5. Acceptance theory (ontvangstheorie)

According to the acceptance theory that toesteming occurs when the offering party receives an answer directly from the other party.[6]

Second, the ability to carry out legal actions, namely the ability to carry out legal actions where these actions will have legal consequences. In law there are two legal subjects, namely people and legal entities, meaning that both individuals and legal entities have the same rights and obligations, therefore because legal entities are legal subjects created by law based on the principle of legal fiction, legal entities can make agreements. Approval, has assets that are separate from members of the shareholders and can be held accountable for their actions. Therefore, legal subjects must be capable and authorized to carry out legal actions in accordance with applicable laws. Competent people are those who have been declared mature at the age of 21 years or are married. However, there are several classifications of people who are said to be legally incompetent, namely:

1. Minors, those who are not yet 18 years old according to Law No. 1 of 1974 concerning marriage, even though they are not yet 18 years old but have been married are considered legally capable. In the Common Law system, a person is said to be immature if he is not yet 18 years old for women and 21 years for men, while developments, generally the states of the United States have agreed that maturity is determined when a person is 18 years old which applies to both men and women. [7],
2. People who are under guardianship, namely people who are unable to manage their assets.
3. Women, in cases stipulated by law, have prohibited legal action. However, based on its development, women have been deemed capable of carrying out legal actions, based on article 31 paragraph (2) of Law no. 1 of 1974 Jo. SEMA No. 3 of 1963. [8]

Third, a certain matter, where what is meant by a certain thing is the existence of an object of agreement which is an achievement and a counter-achievement from both the creditor and the debtor. The achievements in question can be found in Article 1234 of the Criminal Code, including giving something, doing something and not doing something.

If it is described further, the object of the agreement should be something that can be determined in terms of the number, shape, and specifications of the object. Regarding the object of the agreement, we can understand that based on articles 1332 and 1333 of the Criminal Code, "only goods that can be traded can be the subject of the agreement (article 1332)". While article 1333 stipulates "an agreement must have as a subject an item of at least a specified type". "It is not a hindrance that the quantity of goods is uncertain, as long as the amount can then be determined or calculated". This means that the goods or objects of the agreement are appropriate which can be valued in money or have economic value.

Fourth, because it is lawful, lawful here means that the true purpose of the establishment of an agreement is something that does not conflict with the law, decency and public order. Deviations from the validity of the purpose of the agreement can have implications for the existence of an agreement when the agreement is based on something that is not justified either formally or sociologically.

The simplification of the four legal terms of the agreement can then be categorized into two parts, the first being subjective conditions [9] based on the terms of the agreement and legal skills. Then it can be interpreted that the subjective requirements are related to legal subjects where the subjective conditions are not fulfilled, the juridical consequence is that the agreement can be requested for cancellation by one of the parties who feel aggrieved through the court. Meanwhile, as long as the agreement is not requested for cancellation, it will still apply to the parties according to the mutually agreed agreement. Regarding the deadline for submitting an agreement to cancel an agreement, it is regulated in Article 1454 of the Criminal Code "if a claim for a declaration of the cancellation of an engagement is not limited by a special statutory

provision regarding a shorter period of time, then it is five years".

The second is objective conditions, where conditions regarding a certain thing and a lawful cause fall into the category of subjective conditions. So, the emphasis in this case is on the object of the agreement. The juridical consequence of not fulfilling the objective conditions is that the agreement is null and void and it is considered that the agreement never existed, without having to file for cancellation in court.

Based on academic construction, there are juridical requirements for an agreement to be considered valid, namely general legal requirements outside of Article 1320 of the Criminal Code: the agreement must be made in good faith, the agreement must not conflict with applicable customs, and the agreement must be based on the principle of propriety. Specific legal requirements are: written requirements for certain agreements, notarial deed requirements for certain agreements, certain official deed requirements for certain agreements, and permission requirements from authorized officials for certain agreements. (Handi Zulkarnain, in <http://rechthan.blogspot.co.id>, accessed on December 18, 2021).

So, all agreements or the entire contents of the agreement, as long as the making meets the conditions mentioned above, then the following provisions apply:

1. The agreement is valid as a law (*pacta sunt servanda* principle)
2. The agreement cannot be withdrawn unilaterally
3. The implementation of the agreement is based on good faith (*good faith* principle).

Therefore, a valid agreement will also have legal consequences, in the form of any agreement it is binding and must be carried out in accordance with the law. In other words,

The agreement has legal consequences that must be fulfilled by the parties concerned. Referring to the provisions of Article 1338 of the Criminal Code, agreements made legally valid as law for those who make them, cannot be withdrawn without the consent of the parties or for sufficient reasons according to law, and must be carried out in good faith.

The good faith referred to in article 1338 of the Criminal Code paragraph 3 emphasizes the implementation of the agreement, where in carrying out the agreement it must be in accordance with the norms of decency and decency. Good faith can be assessed based on actions in carrying out the agreement. The parties, both debtors and creditors, must carry out the substance of the agreement based on firm trust or confidence as well as the good will of the parties.

The field of contract law basically adheres to several principles, first, the principle of consensualism, that an agreement is declared to have been born if there has been an agreement between the parties. Second, freedom of contract, meaning that the parties are given the freedom to form and content an agreement. Third, the principle of the binding power of the agreement, with the agreement, it creates the power to bind the contract like a law. However, it should be emphasized that the freedom of contract and the binding power of

the agreement is limited by the principle of good faith, among others.

According to the author's opinion, contract law exists to be a medium of interaction between individuals and other individuals. Apart from that, contract law acts as a regulator or regulates the free meeting of personal interests, it aims to underlie every right and obligation to achieve the goals of each party. Therefore, the realization of the validity of an agreement becomes the fundamental basis in conducting transactional relationships.

The validity of an agreement that still uses paper media can be based on article 1320 of the Criminal Code, therefore it is not difficult to identify whether the agreement is valid or not, because interaction can be carried out directly between the parties, identification of the skills and authority to act legally is also easy to see and understand. The most important thing is the validity with the agreement that is poured on the paper using wet ink.

Today, technological developments have broken habits that should have been considered established, including in the field of contract law. Buying and selling transactions that have now evolved into online buying and selling are new things that must then have a place in a legal perspective. We know what is called a market place, namely as a place for sellers to open stalls virtually, then there is e-commerce as a transaction process where sellers and buyers meet virtually.

With these advances, the interaction process is not direct, so automatically the agreement process that is made also uses an electronic agreement. The question then is how we see the validity of electronic agreements. To find out, the author will describe several legal instruments that underlie an electronic agreement that can be used in the sense that the agreement is legal in the eyes of the law.

3.3 Electronic Agreement Legal Instruments (e-contract)

The changing pattern of transactions has forced the public to change their transaction interactions, which previously could be done directly through meetings, to the world of digitalization of electronic transactions. Electronic agreement is an important part to be analyzed more deeply.

To start, it is important to know what is meant by an electronic agreement based on the opinion of legal experts. According to Edmon Makarim, an electronic contract or e-contract is an agreement or legal relationship that is carried out electronically by combining a network (networking) of a communication system based on telecommunications networks and services which is further facilitated by the existence of a global computer internet (network of network).

In general, an electronic agreement is defined as an agreement made in electronic form. Electronic transaction activities result in an electronic engagement or legal relationship by combining a computer-based network with a communication system which is further facilitated by the internet network or a global network. Based on this knowledge, agreements that are digitized,

such as agreement letters, are scanned or typed into soft files, are considered as electronic agreements or e-contracts.

Departing from article 4 UNCITRAL (United Nation Commission International Trade Law):

“As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as other which provided, the provisions of chapter III may be varied by agreement”

(Such as between parties involved in generating, “Electronic system is a series of electronic devices and procedures that function to prepare, collect, process, analyze, prepare, display, announce, transmit and/or disseminate electronic information.”)

From the description above, the definition of an electronic agreement already has a rigid understanding as well as has a clear legal basis to be applied. Furthermore, Article 18 of the ITE Law describes the procedures for using the electronic agreement, namely:

1. Electronic transactions set forth in electronic contracts are binding on the parties;
2. The parties have the authority to choose the applicable law for the international Electronic Transactions they make;
3. If the parties do not make a choice of law in international Electronic Transactions, the applicable law is based on the principles of International Civil Law;
4. The parties have the authority to establish court forums, arbitrations, or other alternative dispute resolution institutions that are authorized to handle disputes that may arise from international Electronic Transactions they make;
5. If the parties do not make the choice of forum as referred to in paragraph (4), the determination of the authority of a court, arbitration, or other alternative dispute resolution institution authorized to handle disputes that may arise from the transaction, is based on the principles of International Civil Law.

From the description of Article 18 of the ITE Law, it can be concluded in several important points:

1. Electronic agreements can be used when carrying out legal actions using electronic transactions. as for what is meant by electronic transactions according to the ITE Law are legal acts carried out using computers, computer networks, and/or other electronic media;
2. In the event of a legal dispute as a result of the electronic contract made, the parties have the right to choose which legal option will be resolved, including choosing to be resolved through court forums in Indonesia or outside using international legal provisions as long as it is agreed upon. in the electronic agreement;
3. If the parties do not choose which legal option to settle disputes arising from the electronic agreement they have made, international civil law will prevail.

Basically, an electronic agreement is an agreement that is agreed upon by the parties who make it, only a medium or means that distinguishes it from a conventional agreement, because an electronic agreement uses an electronic system. By using this media, the parties do not need to meet or meet face to

face. The parties only need to fill in the fields listed in the agreement provided, and sent via the internet. In its implementation there are several ways of sending electronic documents in the form of electronic agreements, in the following ways:

1. Post on the WEB
2. Sending over the internet using FTP or email:
 - a. FTP (Internet File Transfer Protocol);
 - b. GEDI (Generic Electronic Document Interchange);
 - c. Adobe Acrobat;
 - d. Adobe Reader;
 - e. MIME (Multipurpose Internet Mail Extensions);
3. Contracts via chat and video conferencing.

In the European Economic community as an effort to respond to advances in information technology, they have provided signs as a guide to member countries to guarantee the implementation in an orderly manner and provide confidence in the process of fulfilling the acceptance offer in the agreement through electronic media. Where the prompts are known as the “3 clicks” system. First, after the prospective buyer sees on a computer screen or other gadget an offer from a potential seller (first click), the prospective buyer gives acceptance of the offer (second click). As confirmation and approval from prospective sellers to prospective buyers regarding receipt of receipts from prospective buyers (third click). Thus, there is an offer and acceptance through electronic media, the formation of an engagement through an electronic agreement.

Based on the explanation above, the mechanism for the formation of an electronic agreement can be done with the media application or website where the instructions in the transaction can be done by pressing or clicking the button provided, meaning that the buyer knows what goods are really wanted, if the goods are available then the seller will confirm the goods It also conveys an estimate of the goods and their delivery. Similar to the Business to Consumer mechanism, which is a buying and selling transaction via the internet between sellers of goods and consumers. Business to Consumer in e-commerce is relatively common compared to Business to Business. In e-commerce transactions type B to C almost anyone can make transactions with both small and large transaction values and no complicated requirements are needed. Consumers can enter the internet and search for what to buy, find websites, and make transactions. In transactions, consumers have a better burger position than conventional transactions because consumers get various and detailed information. This provides many benefits for consumers because the need for the desired goods and services can be met. In addition, there is also an opportunity to choose various types and quality of goods and services in accordance with the wishes and financial capabilities of consumers in a relatively efficient time.

The validity of electronic agreements has actually obtained clear and valid legal instruments, if assessed and analyzed through legal regulations, especially contract law, electronic agreements are not at all contrary to the provisions in making agreements.

Referring to the conditions for a valid agreement based on Article 1320 of the Criminal Code, namely the existence of an agreement, legal competence, a certain matter and a lawful cause. Meanwhile, in the digital context, it has also gained legitimacy based on Law no. 19 of 2016 concerning information and electronic transactions (UU ITE) article 1 number 17, article 1 number 5 and article 18. So, talking about the area of legitimacy it is clear that electronic agreements have legal and binding legal force. It's just that in an electronic agreement the potential for people who are not legally capable to make it is very possible compared to conventional agreements, so if this happens the agreement can be canceled, but as long as no one feels aggrieved, the agreement is still valid and binding on the parties according to the principle of *pacta sunt servanda*.

4 Conclusion

Technological progress as a signal of the entry of the digitalization era which has almost affected all lines of life, has not only entered the public sphere but has also disrupted the private sphere. In the context of civil law, technology has a significant influence on the aspects of the agreement, which previously could be done conventionally, has now been transformed into an electronic agreement using the internet network. On the one hand, this is a progress, but on the other hand it is a challenge in responding to changes, especially in the aspect of legal instruments in order to provide juridical certainty.

The agreement is a private area carried out to carry out buying and selling transactions and so on. In the Criminal Code, the conditions for the validity of the agreement are regulated in Article 1320 which consists of subjective conditions, namely agreement and legal skills, as well as objective conditions, namely certain things and for lawful reasons which then become the basis for making conventional agreements. Meanwhile, electronic-based agreements still refer to the legal terms of the agreement regulated in the Criminal Code.

Electronic agreements already have adequate legal instruments in addition to referring to the Criminal Code, they also get legitimacy from the ITE Law, namely Law no. 19 of 2016 concerning information and electronic transactions. Therefore, the legal structure used to make electronic agreements can be applied in Indonesia, although in the author's opinion, there are still some regulatory improvements in the midst of the development of virtual transactions in order to provide legal certainty to the public.

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