



DOI: <https://doi.org/10.38035/sijal.v2i3>
<https://creativecommons.org/licenses/by/4.0/>

E-contract in the Aspect of Online Sale and Purchase Agreement Correlated with Article 1320 of the Civil Code

Risma Satriana Nilamjati¹, Albertus Sentot Sudarwanto², Yudho Taruno Muryanto³.

¹Universitas Sebelas Maret, Jawa Tengah, Indonesia, rismasatriana@student.uns.ac.id.

²Universitas Sebelas Maret, Jawa Tengah, Indonesia.

³Universitas Sebelas Maret, Jawa Tengah, Indonesia.

Corresponding Author: rismasatriana2@gmail.com¹

Abstract: When engaging in online transactions, it is highly challenging to guarantee adherence to the legal stipulations of the agreement. This challenge arises because online transactions occur via the Internet, meaning that the involved parties do not interact face-to-face, and the majority of online sales agreements are not documented in writing. The facets of "agreement" and "a specific object" will invariably be present in any online transaction, but the aspects of "skill" and "an unforeseen reason" cannot be assured. Consequently, it is essential to comply with the validity of electronic contracts in online purchasing agreements. In the author's view, this regulation represents the only legally valid approach. The goal of this article is to examine electronic contracts in the context of online sales agreements in relation to Article 1320 of the Civil Code. The methodology employed in this research is normative legal research, which investigates the legal systematics. This systematic legal examination is conducted utilizing laws and regulations or statutes pertinent to the topic being reviewed. The findings of the research indicate that the legal prerequisites of the online purchase contract are fulfilled.

Keyword: E-Contract, Agreement, Online Buying And Selling.

INTRODUCTION

The digital era is increasingly advanced by the rapid development of technology that encourages significant changes in various sectors of life, including in the world of trade. One of the forms of transactions that is increasingly developing is online sales and purchase agreements, indirectly with the existence of e-contracts that have replaced direct contracts in writing. E-contracts allow parties involved in online buying and selling transactions to agree and bind themselves without face-to-face, with terms and conditions agreed upon through digital media.

E-contracts offer ease and efficiency in transactions, which also poses new challenges, especially in terms of the validity and legal force of contracts made electronically. In the context of Indonesian law, the validity of e-contracts in online sales and purchase agreements must refer to existing legal provisions, one of which is Article 1320 of the Civil Code (KUHP).

According to a legal expert, Subekti "an agreement is an event in which one person promises to another person or where two people promise each other to carry out something". (Ricardo, 2018) Contract law in Indonesia is regulated in Articles 1320 and 1338 BW (burgerlijk wetboek) consisting of a written contract and an oral contract. Classically, the preparation of

business agreement contracts in Indonesia is a conventional contract (drafting is carried out by signature and face-to-face meeting) with all its own advantages and disadvantages in drafting. (Latianingsih, Nining, 2017)

Article 1320 of the Civil Code specifies four requirements for a contract to be valid: the existence of a contract, the jurisdiction of the parties involved, the presence of a halal subject matter, and the presence of a halal cause. These four requirements must also be fulfilled in a sales contract that is made online via an electronic contract. Hence, it is essential to investigate how electronic contracts can be accepted and regarded as valid in accordance with Article 1320 of the Civil Code, even if they are created through electronic means. The Explanation to the Electronic Commerce Law indicates: “Electronic transactions occur without face-to-face interaction, do not utilize original signatures (non-signature), and extend beyond territorial limits (a person can engage in electronic transactions with other parties even if they reside in different nations) by means of information technology.” (Listyana, Wati, Listinawati, 2014)

The existence of a contract or agreement concluded by traders is one of the most important points in trade, as the principle applies that a contract or agreement is a law for the parties who conclude it. Electronic contracts in online purchase and sale transactions can meet the requirements of an agreement (consensus) as an agreement exists between the buyer and the seller through a confirmed electronic system, either in the form of an electronic signature or other forms of consent regulated by law.

The primary challenge lies in confirming the jurisdiction of the involved parties and overseeing the traded items, which must comply with legal provisions and not breach the relevant regulations. Furthermore, there should be a clear understanding of the legal rationale behind the online purchase contract to ensure it does not contradict the applicable legal standards. A thorough comprehension of the connection between electronic purchase contracts and Article 1320 of the Civil Code is crucial both theoretically and practically. This study intends to analyze how the legal criteria of an agreement in Article 1320 of the Civil Code are implemented within the realm of electronic contracts in online purchases and sales, as well as to evaluate if the agreement is legally valid according to Indonesian law.

METHOD

This research utilizes the characteristics of prescriptive and normative studies. Prescriptive research pertains to legal science aimed at addressing arising issues, the consistency between legal rules and norms, and the relationship between individual actions and legal standards. Normative research is characterized as a systematic research approach to discovering truths grounded in the scientific reasoning of normative law, which relies on the academic discipline and techniques associated with normative law, specifically legal science, which focuses on the law itself. This research is the first to adopt the Statute Approach as it evaluates the legitimacy of facets of online purchase agreements and investigates electronic signatures in e-contracts involving online buying and selling, and it employs a Case Approach as it assesses the legal repercussions when a wrongdoing occurs by one of the parties in the online purchasing and selling process.

RESULTS AND DISCUSSION

A. Application of E-contract in Online Sale and Purchase Agreement

Online buying and selling activities result in electronic legal bonds or relationships through the integration of computer-based networks and communication systems, with the integration facilitated by the Internet. (Santoso, Agus, Pratiwi, 2018) The term "agreement" is often equated with the term "contract". However, there are some legal experts who differentiate between the two terms. If we refer to the laws and regulations contained in Chapter II of Book III of the Civil Code entitled "Alliances arising from contracts or agreements", it is clear that the law treats contracts and agreements as equivalent. Based on this understanding, it can be said that an agreement and a contract are interpreted more or less the same. Therefore, all provisions that

refer to contract law also apply to contract law.

E-contracts in buying and selling usually use the type of standard agreement as the form of the Application for Credit Account contract. There are two options to choose from, namely agree and disagree that can be pressured by consumers regarding whether or not the consumer agrees or disagrees with the content of the agreement offered. This type of contract is chosen by business actors with the argument that the clause contained is for practical purposes in the agreement. The use of the type of standard contract is actually more beneficial to one party and tends to apply a hierarchy between the parties. Those who are in the upper position tend to have a strong position and can cause discrimination against those below them. As a result, the party below can only choose between accepting or rejecting the standard agreement that has been made. There is no direct contact between the seller and the buyer.

Online purchasing and sales activities lead to electronic legal transactions. The transactions occur through a network connected via mobile phones, computers, tablets, and other devices. The subject matter of online purchasing and sales is no different from that of traditional purchasing and sales, i. e. , merchants as sellers who offer their goods and buyers as consumers who pay for the goods. The subject matter of online purchasing and sales is no different from that of traditional purchasing and sales, i. e. , merchants as sellers who offer their goods and buyers as consumers who pay for the goods. The subject matter of online purchasing and sales is no different from that of traditional purchasing and sales, i. e. , merchants as sellers who offer their goods and buyers as consumers who pay for the goods. The subject matter of online purchasing and sales is very different from that of traditional purchasing and sales, i. e. , the goods or services are acquired by consumers, but the goods or services are not immediately perceived by the buyer as the subject matter of online purchasing and sales.

In purchase and sale transactions over the Internet, the parties involved enter into legal relationships outlined by an electronically concluded agreement or contract, which is called an electronic contract, i. e. an agreement contained in an electronic document:

1. Offer, which is the seller offering goods or services on an online buying and selling platform, which contains information about prices, descriptions of goods, and other terms and conditions. These offers can be open to the public or to specific individuals.
2. Acceptance, i.e. interested buyers will accept or accept the offer by clicking on the "Buy Now" button or taking other actions that indicate the intention to buy.
3. Agreement, which is an electronic agreement between the seller and the buyer in an e-contract agreement, can be identified through actions taken on the platform, such as clicking confirmation or payment.

The application of e-contracts in online buying and selling is supported by digital signatures, several platforms use digital signatures to ensure the authenticity and identity of the parties involved in the transaction. In addition, user authentication through login or additional verification can ensure that the agreement is carried out by the authorities. Payment system The payment system integrated with the online buying and selling platform serves to confirm that the payment has been made, which is also proof of the transaction agreement, this confirmation also serves as authentic proof for a valid transaction. Providing electronic evidence, after the transaction is completed, usually the buyer and seller will receive proof of the transaction in the form of email or electronic documents as valid evidence.

The Role of E-Contract in Online Buying and Selling: E-Contract is the legal basis for buying and selling transactions made on e-commerce platforms, websites, applications, or marketplaces, considering that most transactions are now carried out without face-to-face. The application of E-Contract in online sales and purchase agreements has many advantages, especially in simplifying the transaction process and increasing efficiency. However, its success is highly dependent on the fulfillment of the conditions for the validity of the agreement regulated in civil law, especially Article 1320 of the Civil Code. A valid and secure E-Contract will provide

protection for both parties in online buying and selling transactions.

B. Rules and Regulations Governing E-contracts in Indonesia

Current advancements in technology primarily influence the utilization of the Internet, which has both beneficial and detrimental consequences. The advantageous facet is that the Internet provides various conveniences and a significant degree of efficiency in the realm of online commerce. The definition of an electronic contract in Indonesia is supported by the Electronic Information and Transaction Law, detailed in Article 1, Number 17: An electronic contract is an agreement between the parties established through an electronic system. The Explanation to Article 3 of the ITE Law explicitly indicates that electronic contracts are founded on the principle of legal certainty, signifying that the legal foundation for employing information technology and electronic transactions, along with everything that aids their execution, is legally acknowledged both within and outside the judicial system.\

Article 2 further clarifies that the ITE Law is applicable to any individual who engages in the legal actions governed by this Law both within Indonesian territory and outside it, which yield legal repercussions in Indonesian territory and/or outside it and are harmful to Indonesia's interests. It is evident that the article seeks to guarantee that foreign nationals also obtain the same legal protection as Indonesian nationals in legal actions concerning electronic contracts. An electronic contract (e-contract) can be defined as an agreement or legal relationship that is formed electronically by integrating a network of computerized information systems with an electronic system executed by two or more individuals utilizing computers or internet-based networks. (Irmawati, 2011)

According to the explanation of Article 1313 of the Civil Code, a contract is an action by which one or more individuals express themselves to one or more individuals. Consequently, an electronic contract may be regarded as a type of agreement that fulfills the requirements of Article 1313 of the Civil Code. The governing rules for electronic contracts (e-contracts) are specified in Article 1, paragraph 17 of the ITE Law, which states that electronic contracts are agreements made between the parties via electronic systems.

In Indonesia, the use of E-Contract in online buying and selling transactions is regulated by various regulations that recognize and facilitate electronic transactions. Here are some of the relevant rules and regulations in regulating E-Contracts in Indonesia:

1. Law No. 11 of 2008 on Electronic Information and Transactions (ITE)

The ITE Law governs electronic transactions broadly, covering the use of e-contracts in the commercial sector and digital transactions. The ITE Law offers a legal framework for transactions carried out electronically, such as online buying and selling activities.

2. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE

Amendments to the ITE Law: Law No. 19/2016 is a revision of the ITE Law which covers important aspects related to electronic transactions, including E-Contracts. In this law, it introduces legal strengthening against the abuse of electronic transactions, as well as further regulations on the protection of personal data and user privacy.

3. Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PSTE)

Regulation of Electronic Service Providers: This regulation regulates the implementation of electronic systems used for transactions, including E-Contracts, as well as the obligations of electronic system operators to maintain data security and integrity. Security and Obligations of Operators: This regulation requires electronic system operators to ensure the security of data transmitted and received during transactions, so that the resulting E-Contract is safe and legal according to the law.

4. Regulation of the Minister of Communications and Information of the Republic of Indonesia No. 20 of 2016 regarding the Protection of Personal Data in Electronic Systems

Personal Data Regulation: This Regulation governs the safeguarding of personal data in electronic transactions, encompassing the handling and preservation of personal data utilized in e-contracts. **Responsibilities of users of electronic systems:** According to the e-contract, the organizer is required to uphold the privacy and protection of personal data gathered during transactions and to acquire the consent of the involved parties prior to using the data.

5. Law Number 8 of 1999 concerning Consumer Protection

Consumer Rights Protection: This law provides protection to consumers in all types of transactions, including those carried out electronically. In the context of E-Contracts, this law ensures that consumers obtain clear information about the products purchased, their rights, and the obligations of sellers. Article 4 paragraph (2) regulates the obligation of business actors to provide true, clear, and non-misleading information related to products offered in electronic transactions.

6. Law Number 2 of 2014 concerning Notary Positions

The Role of Notaries in E-Contracts: Although this law specifically regulates notaries in conventional transactions, it also affects the use of E-Contracts in terms of ratification and verification of contracts that require authentication. In practice, the use of digital signatures and electronic authentication can function as a substitute for notary signatures in legitimate online transactions.

7. Financial Services Authority (OJK) Regulations on E-Commerce and Fintech

Regulation on Fintech: The OJK has issued regulations regulating financial technology (fintech), which includes the use of E-Contract in online financial services platforms. Some of these regulations require fintech companies to ensure that contracts used in credit and investment transactions digitally comply with the principles set by the OJK. **The Importance of Information Security and Openness** OJK also emphasizes the importance of transparency and protection for consumers in electronic transactions involving digital contracts.

8. Decree of the Minister of Trade of the Republic of Indonesia Number 70 of 2019 concerning Trade Through Electronic Systems

E-Commerce Regulation, this decision regulates general guidelines in trade through electronic systems, including obligations that must be fulfilled by business actors in organizing online buying and selling transactions. In it, E-Contracts must comply with existing provisions, including the provision of clear information to consumers, consumer rights, and dispute resolution procedures.

The regulations governing E-Contracts in Indonesia involve various laws and regulations that support each other to create an electronic transaction ecosystem that is safe, legal, and protects the interests of all parties. With these rules, E-Contract in online buying and selling transactions can be carried out with a clear legal basis, and provides protection for both consumers and business actors.

C. Correlation between the Legal Conditions of the Agreement in Article 1320 and E-contracts in Online Buying and Selling

The requirements for the validity of the contract outlined in Article 1320 of the Civil Code are legal prerequisites that pertain to all contracts in general. The legal prerequisites of the transaction are still pertinent and need to be satisfied for the contract to be valid and legally enforceable. To address the matter of the validity of the online purchase agreement, the application of Article 1320 of the Civil Code in relation to online purchase transactions can be explained as follows:

1. Deal

The agreement of those who bind them, as long as it is proven that there are elements of consent in the online buying and selling transaction, then the online buying and

selling agreement is considered to meet the first condition, namely the terms of the agreement. Agreeing means that the seller and buyer have agreed on the certainty of the main thing and the amount of the price. (Isnaeni, 2016) Online buying and selling transactions on the buyer side expresses the consent of the will when the buyer sends acceptance of the offer given by the seller. The acceptance of the offer is carried out by fulfilling the obligations of the buyer, namely payment.

2. Proficiency

The ability to make an engagement is still difficult in the terms of the guarantee, if when registering on an online buying and selling *platform* there is a provision in registration, which is a minimum age of 17 years old and the provisions regarding age restrictions on each social media are also varied. Another difficulty in fulfilling the proficiency requirements in online buying and selling is caused by social media managers who provide freedom and features to their users to be able to do many things, including transacting or buying and selling on the given platform, on the other hand, the same as conventional buying and selling, online business actors will only focus on selling their products and do not care about the skills of their consumers. The above problems that cause the seller and the buyer to have difficulty proving the skills of the other party. (Ahmad, 1992)

3. Specific objects

The achievements contained in a contract are vague or indefinite, the fulfillment of the agreement cannot be measured or implemented. Online buying and selling transactions that fulfill the third condition of Article 1320 of the Civil Code occur with the acceptance of the buyer to the offer for the goods and prices provided by the seller.

4. Halal reasons

The fourth condition for the validity of the agreement regulates the content of an agreement must be halal according to the law, namely by not containing elements that are contrary to laws and regulations. (Muhammad, 1998)

Fourth, the aforementioned explanation of Article 1320 of the Civil Code regarding contracts for online purchases and sales indicates that the fundamental nature of electronic contracts in online buying and selling complies with the requirements for the agreement's validity. Even though meeting the four criteria for contract validity can be achieved in accordance with the law, it is essential to recognize that online buying and selling creates significant challenges in ensuring the legal conditions of the contract are fulfilled. An online purchase contract is a fictitious contract, meaning that the agreement lacks a tangible form and exists solely on the Internet; however, online purchase contracts can be substantiated, quantified, and ascertained based on the evidence available in cyberspace. In addition to the fact that the online purchase contract is not written, there is documented proof in the contract that can establish the contract's validity. (Syaifinuha, Bintang, 2015)

CONCLUSION

The application of E-Contract in online sale and purchase agreements has a very important role in facilitating efficient and secure transactions in the digital world. E-Contract allows for legal engagement between the seller and the buyer even though there is no physical interaction, which is achieved through computer-based networks and the internet. However, for the electronic contract to be legitimate and legally enforceable, the consensus achieved must fulfill the legal requirements outlined in Article 1320 of the Civil Code. Besides aiding transactions, the electronic contract offers a strong legal framework for ensuring legal certainty in online purchases and sales, as long as the stipulations specified in civil law, especially Article 1320 of the Civil Code, are satisfied.

The use of e-contracts in online buying and selling activities in Indonesia is regulated by a

range of rules and regulations that offer a strong legal foundation and safeguard for all stakeholders involved. The primary regulation that oversees e-contracts in Indonesia is the Electronic Information and Transactions Act (UU ITE), which grants legal recognition to electronic transactions and contracts formed through electronic means. Furthermore, several ancillary regulations, including the Government Regulations on the Implementation of Electronic Systems and Transactions (PSTE) and the Protection of Personal Information in Electronic Transactions, enhance the security and reliability of data in e-contracts.

Regulations governing E-Contracts in Indonesia aim to create an ecosystem for electronic transactions that is legal, secure, and transparent, thus providing protection for both consumers and businesses in online transactions. With these regulations in place, E-Contracts can be executed legally and bindingly, in compliance with the laws currently applicable in Indonesia. The implementation of the fundamental components of a legitimate agreement as outlined in Article 1320 of the Civil Code regarding e-contracts in online sales demonstrates that, despite the difficulties and unique characteristics of electronic transactions, all four criteria for a valid agreement continue to be pertinent and can be satisfied.

REFERENCES

- Biondi, Glenn. "Analisis Yuridis Keabsahan Kesepakatan Melalui Surat Elektronik (E mail) Berdasarkan Hukum Indonesia." Dalam Jurnal *Premise Law Journal*. Volume 19, Tahun 2016, Halaman 3.
- Dewi Irmawati. "Pemanfaatan E-commerce dalam Dunia Bisnis". Dalam Jurnal *Ilmiah Orasi Bisnis*. Volume 4, Tahun 2011, Halaman 11.
- Dini Sukma Listyana, Ismi Ambar Wati, Lisnawati. "Kekuatan Pembuktian Tanda Tangan Elektronik Sebagai Alat Bukti Yang Sah Dalam Perspektif Hukum Acara Di Indonesia dan Belanda." Dalam Jurnal *Verstek 2*. Volume 2, Tahun 2014, Halaman 146-154.
- Isnaeni, M. *Perjanjian Jual Beli*. Refika Aditama, Bandung, 2016, Halaman 13.
- Kitab Undang-Undang Hukum Perdata, Pasal 1313-1320, Tentang Ketentuan-Ketentuan Umum.
- Latianingsih, Nining. "Prinsip Tanggung Jawab Pelaku Usaha Dalam Transaksi Elektronik Menurut Undang-Undang Informasi Dan Transaksi Elektronik." Dalam Jurnal *Ekonomi & Bisnis PNJ*. Volume 11, Tahun 2012, Halaman 73.
- Muhammad, A. *Hukum Perikatan*. Citra Aditya Bakti, Bandung, 1992, Halaman 24.
- Pasal 1 Ayat 17 Undang-Undang RI No. 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.
- Pradipta, A. 2016. "Implementasi Metode Caesar Chiper Alphabet Majemuk Dalam Kriptografi Untuk Pengamanan Informasi." *Jurnal Indonesian Journal on Networking and Security*, Volume 3, Nomor 1.
- Ridwan Khairandy. 2001. "Pembaruan Hukum Kontrak Sebagai Antisipasi Transaksi Electronic Commerce" *Jurnal Artikel Hukum*, Volume 8, Nomor 16.
- Simanjuntak Ricardo, *Teknik Perancangan Kontrak Bisnis*. PT. Gramedia, Jakarta, 2018, Halaman 14.
- Syaifinuha, Yusuf Bintang. "Perlindungan Hukum Transaksi E-Commerce." Dalam Jurnal *Privat Law*. Volume 7, Tahun 2015, Halaman 71-77.