

Transaction Agreements Through Internet Media Electronic Systems (E-Commerce) in the Perspective of Civil Law and Islamic Law

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Abstract

E-Commerce or what is known as electronic commerce is a product in the digital era. E-Commerce Agreements have become a new color in the economic world, especially in providing convenience in making an agreement in a transaction. Like an agreement in general, but the difference is that the contract is not in one assembly. It is urgent to get a factual answer related to its validity in the dimensions of civil law and Islamic law. This study is normative research with literature study. The results of this study indicate that: (1) Even though there is one of the legal conditions of the agreement that is not fulfilled, namely the qualification requirements of the parties, the agreement made by the merchant and customer remains valid and binding and becomes a law for merchants and customers because the skill requirements are included in subjective conditions where a condition is not fulfilled in the agreement. does not cause the agreement or contract to be invalid, but the agreement or contract can be requested for cancellation. Meanwhile, according to the Islamic perspective, it is permissible as long as it does not contain elements that can damage it, such as tyranny, fraud, cheating, containing usury, forbidden cases and the like and fulfilling the pillars and conditions of buying and selling. (2) Then, problems in the implementation of E-Commerce can actually be overcome by using technology assistance, including cryptography and digital signatures that are useful for providing guarantees of data authenticity, data confidentiality, and data validity using SSL (Secure Socket Layer) on the browser engine to provide security against eavesdropping. data in the process of electronic transactions. Cooperation between merchants and banks and account and credit card issuers to ensure the accuracy of the data submitted, especially regarding skills. Good faith from the merchant by using software that has been tested to always update the information submitted in order to provide correct information about the existence of the goods.

E-Commerce atau yang dikenal sebagai perdagangan elektronik merupakan produk di era digital. Perjanjian *E-Commerce* menjadi warna baru dalam dunia ekonomi, khususnya dalam memberikan kemudahan dalam melakukan suatu perjanjian dalam transaksi. Layaknya perjanjian pada umumnya, namun yang menjadi perbedaan adalah dalam akadnya tidak dalam satu majelis. Hal itu urgen untuk mendapatkan jawaban factual terkait dengan keabsahannya dalam dimensi hukum perdata dan hukum Islam. *nik*. Kajian ini merupakan penelitian normatif dengan studi kepustakaan. Hasil penelitian ini menunjukan bahwa: (1) Meskipun ada salah satu syarat sahnya perjanjian yang tidak dipenuhi yaitu syarat kecakapan para pihak perjanjian yang dibuat oleh merchant dan customer tetap berlaku dan mengikat serta menjadi Undang-Undang bagi merchant dan customer karena syarat kecakapan termasuk dalam syarat subyektif dimana suatu syarat meskipun tidak dipenuhi dalam perjanjian tidak menyebabkan perjanjian atau kontrak menjadi tidak sah, namun perjanjian atau kontrak tersebut dapat dimintakan pembatalan. Sedangkan menurut perspektif islam diperbolehkan selama tidak mengandung unsur-unsur yang dapat merusaknya seperti kezhaliman, penipuan, kecurangan, mengandung riba, perkara yang diharamkan dan yang sejenisnya serta memenuhi rukun dan syarat jual beli. (2) Kemudian Permasalahan dalam pelaksanaan *E-Commerce* sebenarnya dapat diatasi dengan menggunakan bantuan teknologi, diantaranya kriptografi dan digital signature yang berguna untuk memberikan jaminan keaslian data, kerahasiaan data, serta keabsahan data penggunaan SSL (Secure Socket Layer) pada browser engine guna memberikan keamanan terhadap tindakan penyadapan data dalam proses transaksi elektronik. Kerjasama antara merchant dengan bank dan penerbit rekening dan kartu kredit guna menjamin kebenaran data yang disampaikan khususnya mengenai kecakapan. Itikad baik dari merchant dengan menggunakan software yang telah teruji untuk selalu melakukan update informasi yang disampaikan guna memberikan informasi yang benar mengenai keberadaan barang.

Key words: *Agreement; transaction; E-Commerce; civil law; Islamic law.*

Introduction

The development of the internet creates the formation of a new world commonly called the virtual world. The existence of cyberspace causes every individual to have the right and ability to connect with other individuals without any restrictions that prevent it. These developments also have an impact on the

social aspect, where the way people relate to each other also changes. This indirectly affects the business sector¹.

The transaction process carried out in the business world without any meetings between the parties using the internet is included in electronic transactions. Electronic transactions in the business world have various forms, including electronic systems or commonly referred to as E-Commerce. Electronic Commerce, hereinafter referred to as E-Commerce, can be interpreted grammatically as electronic commerce².

This development makes it easier for people and companies to carry out various kinds of business transactions, especially trade. The E-Commerce agreement made by the parties is not like an agreement in general, but the agreement can be made even without a direct meeting between the two parties, but the agreement between the parties is carried out electronically. The agreement between the parties is carried out by accessing the web page provided, containing a clause or agreement made by the first party (the seller), and the other party (the buyer) just pressing the button provided as a sign of approval for the contents of the existing agreement, without the need to affix a signature like an agreement in general, but using an electronic signature or digital signature. So that the parties do not need to meet in person to enter into an agreement.

Arrangements regarding agreements in Indonesia only regulate agreements in general, this is regulated in Article 1320 of the Civil Code which states the legal requirements of an agreement that binds the parties. According to Subekti, an agreement is considered valid if it meets the subjective and objective requirements. The fulfillment of these conditions results in the agreement that has been made valid. The agreement is also binding on the parties regarding their rights and obligations, so that the fulfillment of the legal requirements of an agreement is absolute to be fulfilled. This is later if in the future a problem or dispute occurs, the settlement can be based on the agreed agreement. E-Commerce Agreements with ordinary agreements are not very different, the only difference is the form and validity. The media in the agreement that is usually used is ink and paper and is made based on the agreement of the parties. After being made and agreed upon, the agreement is binding after being signed, while in E-Commerce the agreement uses electronic media, there are only forms or blank clauses of the agreement made by one party which are written and displayed in electronic media (web page) then

¹ Riska Ayu, *Faktor Pendukung Dan Penghambat Pelaksanaan Perdagangan Melalui Internet (E-Commerce)* (Palembang: Universitas Negeri Palembang, 2019).

² Herlina Panggabean, "Tinjauan Hukum Terhadap Jual Beli Barang Melalui Internet Ditinjau Dari Hukum Perjanjian," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 2, no. 2 (2022): 176-185.

the other party simply press the button provided to agree to bind yourself to the agreement. This of course raises various kinds of problems in the electronic agreement regarding the validity of the agreement. Although electronic transactions have undergone amendments in the legislation, namely Law Number 11 of 2008 concerning amendments to Law Number 19 of 2016 concerning Information and Electronic Transactions, it has not accommodated the legal requirements of an electronic contract specifically³.

Methodology

This research uses normative legal research or library law research, namely legal research conducted by examining library materials or secondary data consisting of primary and secondary legal materials as well as tertiary legal materials. These materials are arranged systematically, reviewed, and then drawn a conclusion in relation to the problem being studied. This is in accordance with Soerjono Soekanto's view that legal research conducted by researching library materials or secondary data can be called normative legal research or library law research⁴.

The data analysis technique used in this research is non-statistical. This non-statistical analysis was carried out qualitatively. Regarding the analysis activities in this research, it is to classify the sample document articles into the right categories, such as complete data analysis, then the results will be presented descriptively, namely by telling or describing what is in accordance with the problems studied and the data obtained.

Discussion

Legality of E-Commerce Transactions in Civil Law and Islamic Law

1. Civil Law Perspective

The legal basis for agreements in Indonesia is regulated in Article 1320 of the Civil Code. In Article 1320, there are 4 conditions for the validity of an agreement, namely:

- 1) the agreement of the parties,
- 2) Skills,
- 3) A certain thing
- 4) A lawful cause

³ Ika Atikah, "Pengaturan Hukum Transaksi Jual Beli Online (E-Commerce) Di Era Teknologi," *Muamalatuna* 10, no. 2 (2019): 1-27.

⁴ Sri Mamudji and Soerjono Soekanto, "Normative Legal Research (A Brief Overview)" (Jakarta: Rajawali Pers, 2001).

Terms 1 and 2 are called subjective conditions because they involve the individual who made the agreement, while terms 3 and 4 are objective conditions. Failure to fulfill one of the above conditions in an agreement will have different legal effects depending on which conditions are not met. If conditions 1 and 2 are not met, the legal consequence is that the agreement can be canceled, while if conditions 3 and 4 are not met, the legal consequence is that the agreement is null and void. In principle, everyone is capable of entering into an engagement/agreement, unless he is declared incompetent by law. According to the Civil Code, incompetent people are those who are immature (even 21 years old or those who are not yet 21 years old but are married) and those who are under pardon (crazy, stupid, dark eyes, weak of mind and extravagant).

However, in E-Commerce transactions, it is very difficult to determine whether someone who makes a transaction has matured or is not under custody because the offer and acceptance process is not done physically but through an electronic media that is prone to fraud. In E-Commerce transactions, it often happens where immature consumers make purchases and the order is processed by the seller even though the seller knows that the consumer is not yet an adult.

In the Law on Information and Electronic Transactions (ITE), this has been regulated. Article 2 of ITE regulates the legal requirements for an electronic transaction, these conditions are:

- a) Performed by legal subjects who are capable or authorized to represent them in accordance with the provisions of laws and regulations;
- b) The object of the transaction must not conflict with the law;
- c) Done by electronic contract;
- d) Implemented with an agreed electronic system.

Based on the above requirements, it is clear that if the skills requirements are not met, the electronic transaction is invalid/has no legal force so that based on article 1320 of the Civil Code the agreement can be canceled. Then in Article 3 of the ITE Law, it is stated that the obligation of electronic transaction operators to take adequate steps to test the authenticity of the identity and authority of consumers who carry out electronic transactions with various possible methods⁵.

With the arrangement as mentioned above, it is clear that in order to conduct electronic transactions, one must meet the skills requirements as stated in Article 1320 of the Civil Code.

Transactions in trade agreements through (E-Commerce) have not been regulated in the Civil Code, transaction arrangements through (E-Commerce) can

⁵ Ahmadi Miru, "Hukum Perikatan Penjelasan Makna Pasal 1233 Sampai 1456 BW" (2020).

be used in general rules, contracts in E-Commerce are binding and apply to the parties when the contract is agreed upon by both parties. On the other hand, this happens because of the open nature of the Civil Code. Even though there is one of the legal conditions of the agreement that is not fulfilled, namely the qualification requirements of the parties, the agreement made by the merchant and customer remains valid and binding and becomes law for merchants and customers because the skills requirements are included in subjective conditions where a condition is not fulfilled in the agreement. does not cause the agreement or contract to be invalid, but the agreement or contract can be requested for cancellation. In addition, the agreement in E-Commerce has also fulfilled the principles in the agreement so that with the fulfillment of the conditions for the validity of the agreement according to the Civil Code and the principles of the agreement, the contract in E-Commerce is valid and can be subject to the rules of the Civil Code as a setting.

2. Islamic Law Perspective

In general, it can be seen that Islamic trade explains the existence of transactions that are physical in nature, by presenting the object during the transaction, or without presenting the ordered object, but with the condition that the nature of the object must be stated concretely, either directly or later until a certain time limit. , as in *alsalam* transactions and *al-istisna'* transactions.

The transaction *alsalam* is a form of transaction with a cash/immediate payment system but the delivery of goods is suspended. While the *al-istisna* transaction is a form of transaction with a payment system that is hastily or suspended according to the agreement and the delivery of goods is suspended⁶.

Alsalam transactions also called *alsalaf* as well as other models of buying and selling transactions, has existed even before the arrival of the Prophet Muhammad (pbuh). *Alsalam* transactions are allowed based on the Qur'an and al-Sunnah. Ibn Abbas said: "I bear witness that the salaf, which is guaranteed for a certain time, has been made lawful by Allah in His Book and is permitted by Him"⁷. Then he read the word of Allah in Surah al-Baqarah verse 282 which translates as "O you who believe, if you do not pay in cash for a specified time, then you should write it down"⁸.

⁶ Muhammad Taufiq Ramadhan, "Al-Buyu 'al-Shai 'ah, 1st Print," Beirut: Dar al-Fikr 140 (1998).

⁷ Abu'Abdullah al-Qurtubi and Ahmad al-Ansari, "Tafsir Al-Qurtubi: Al-Jami'Li-Ahkam Al-Qur'an" (Kairo: Dar Ihya' at-Turas al-,Arabi, tt, 2013).

⁸ RI Kementerian Agama, "Al-Qur'an Tajwid Dan Terjemahnya," Bandung: PT. Sygma Examedia Arkanleema (2010).

The implementation of E-Commerce business transactions, at a glance, is almost similar to *al-salam* transactions in terms of payment and delivery of commodities that are used as transaction objects. Therefore, to analyze clearly whether the transactions in E-Commerce via the internet can be aligned with the principles of transactions that exist in *al-salam* transactions, each of them can be observed through the parties involved in the transaction, the transaction agreement statement process and through the transaction object⁹.

In *al-salam* transactions, the presence of witnesses and representatives is not a must, but if necessary, it will not damage or cancel the transaction, even the presence of witnesses is highly recommended in *al-salam* transactions. Because it is feared that there will be disputes in the future, whether intentional by one party or because of forgetting. Also every transaction will always be related to the circumstances and conditions that surround it. In transactions carried out in a more formal form, they are bound and contain high risks, for the benefit of the parties involved, it is highly recommended that there be administration and witnesses when conducting a transaction.

In the case of E-Commerce, *fiqh* views that buying and selling transactions in cyberspace are allowed because they are *mashlahah*. *Mashlahah* is taking advantage and rejecting harm in order to maintain the goals of *syara*. If E-Commerce is seen as like trading in Islam, it can be analogous that first the seller is a merchant (Internet Service Provider or ISP), while the buyer is familiarly called the customer. Second, objects are goods and services offered (there is an order such as *al-salam*) with various information, profiles, including prices, involved pictures of goods, as well as the official company. And third, *Sighat (ijab-qabul)* is carried out with a payment gateway, namely a supporting system/software (authority and monitor) for acquirers and is useful for online services.¹⁰

Barriers and Solutions in Sales and Purchase Transaction Agreements Through Internet Media

Transactions of buying and selling agreements that are carried out electronically or via the internet (E-Commerce) in addition to having supporting factors in their implementation, they also have factors that hinder the implementation of the trade. These barriers can not be released just like that, because it will provide obstacles to the development of E-Commerce which can

⁹ Freddy Haris, "Aspek Hukum Transaksi Secara Elektronik Di Pasar Modal," Jakarta: tnp (2000).

¹⁰ Sugeng Santoso, *Sistem Transaksi E-Commerce Dalam Perspektif KUH Perdata Dan Hukum Islam* (State Islamic Institute of Tulungagung, 2016).

then affect various other fields. Barriers that occur are only on the technology side, but also on the legal side¹¹.

These obstacles of course give a doubt for people to implement or implement and use E-Commerce to conduct trade transactions, despite the many conveniences and advantages offered and provided by E-Commerce. These obstacles include:

a. Data Authenticity

The basis for the occurrence of a contract can be seen from the existence of an agreement that can be proven. Proof of the agreement in general is the existence of written evidence, both in the form of an authentic deed and a deed under the hand, in the deed it is clearly stated the identity of the parties along with their original signatures and stamp duty, the next reinforcement is the witness who is also stated in the agreement deed in general.

Meanwhile, in E-Commerce contacts, the agreement deed is generally unclear. The identity of the party making the agreement can be faked seeing the parties transact in cyberspace that cannot be known or seen to be proven in real terms.

The solution to the problem of data authenticity can be used technological assistance, the results of technological developments have found a tool that can provide or is considered capable of providing authentication for data messages, which is called cryptography (cryptography). Cryptography is a process that discusses the security of data communication from snooping or piracy by people.

b. Validity

The validity of the data is one of the most important things in the formation of a contract, where with the validity of the agreed contract, it is binding and applies as law for the parties who make it. Because contracts in E-Commerce are different from conventional contracts that use paper as the medium and affix a signature on a stamp that promises to be valid. Contracts and E-Commerce include electronic contracts that use digital data so that it is not possible to affix a signature on stamp duty. So that in the absence of a signing between the parties, the validity of a contract that has been made is doubtful. This of course provides its own obstacles for contracts in E-Commerce. The solution to this problem is, as long as those who make the transaction do not violate the legal terms of the agreement, the transaction is considered valid.

¹¹Dewi Arnita Sari, *Transaksi E-Commerce Dalam Hukum Perdata* (Makassar: Cendekia, 2022).

c. Confidentiality/privacy

Confidentiality is one thing that is no less important in drafting a contract. Confidentiality is meant in this case regarding the confidentiality of data. Confidentiality is very important in the preparation of contracts. Data in E-Commerce is digital data that is very different from data in conventional contracts.

The existence of weaknesses that appear on the internet as a medium in E-Commerce of course affects the confidentiality of the data. Where with the weakness in the internet, someone who is not entitled to steal transaction data in E-Commerce the data can be in the form of a credit card number. So this of course gives its own concerns to the customer to make transactions in E-Commerce.

The solution to these problems is a technical solution that can be in the form of providing technology and systems that cannot be opened and known by parties who are not authorized to the data messages in the E-Commerce contract, the use of SSL (Secure Sicket Layer) technology embedded in the browser engine, such as google chrome can provide security against theft of information related to contracts in E-Commerce. Even now there is a public key issuing agency and this key is issued by a body called C.AS (Certification authority), E-trust and Versign as part of the use of digital signatures. With the use of digital signatures, confidentiality of one digital data can be provided, as well as the existence of an institution that provides security and confidentiality in providing data regarding credit card numbers to make payments in E-Commerce transactions.

d. Availability

The availability of goods which is one of the determining factors in E-Commerce transactions, which with large information regarding the availability of certain goods only makes the customer confident for him to carry out the transaction, but this becomes impossible when the information submitted turns out to be incorrect, because there is no good faith on the part of the merchant. This of course affects the fulfillment of the legal requirements of a contract. So that the solution to the problem of the existence of goods is to include the goods and their number on the E-Commerce website which is always up-to-date or updated at any time, and the use of software that has been tested for reliability, so that the information submitted to the customer is the latest information.

e. Proof of the proficiency of the parties

The proficiency of the parties in E-Commerce transactions is difficult to prove, because these transactions occur via the internet in a virtual world that does not bring together the parties directly, thus allowing fraud to occur. This of course provides obstacles to the fulfillment of the legal requirements of an agreement which of course results in the validity of the contract, where it is possible for

differences to occur regarding what is stated with the actual situation. Proof of proficiency in E-Commerce can actually be overcome by implementing registration procedures with a bank account (account) or credit card number, meaning that when a person registers to become a member of a webstore he is required to provide real data, along with a bank account or credit card number. Then the merchant will match the prospective customer's personal data with the bank account or credit card number entered by the prospective customer with the help of application software that matches the data contained in the data base of the credit card issuing bank and account, so it will be known whether the data entered is correct or not, especially regarding skills in accordance with the bank account data or credit card numbers used. This can be done if there is work between the merchant and the company or bank issuing credit cards or accounts.

A bank account or credit card can be owned by a person when he/she provides correct personal data with a valid ID card during the registration process to become a customer of a bank or credit card issuer, thus information regarding the age and address of the customer can be proven authentically and whose existence is then by the bank or credit card issuer used as a database of information about its customers.

f. Jurisdiction

Contract implementation in E-Commerce generally occurs between parties domiciled in different countries. While each country of course has its own legal system. So this of course creates a legal uncertainty, when a dispute occurs between parties who are different from the State, it will cause obstacles in the selection of which State law should be used. This of course cannot be ignored, because juridical issues are an important factor in the formation of contracts.

These juridical problems can be overcome by having a prior agreement between the parties. Where when they want to carry out a sale and purchase agreement transaction via the internet, the parties can determine which legal options are the basis for implementing E-Commerce and become an agreement for both parties in the event of a dispute in the future. Determining the choice of law at the beginning of the agreement avoids any legal problems which will be used when a dispute occurs. The contract agreed by the parties will become a law that binds both parties and the agreement in determining the choice of law can be used as a strong basis for the legal validity of the agreement.

Conclusion

Transactions in trade agreements through (E-Commerce) have not been regulated in the Civil Code, arrangements for transactions through (E-Commerce) can be used in general rules, contracts in E-Commerce are binding and apply to the

parties when the contract is agreed upon by both parties. On the other hand, this happens because of the open nature of the Civil Code. The implementation of E-Commerce uses technology assistance, including cryptography and digital signatures that are useful for providing guarantees of data authenticity, data confidentiality, and data validity using SSL (Secure Socket Layer) on browser engines to provide security against data interception in electronic transaction processes. For this reason, business transactions in cyberspace (E-Commerce) are allowed because of their benefit, the considerations are that they provide benefits, convenience in the process of secure transactions, and in principle the same as *al-salam* transactions.

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