

The Politics of Electronic Agreement Law Based on Pancasila Justice

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Abstract

In the Electronic Information and Transaction Law, it is clearly conceptualized that agreements made electronically must have the same legal force as conventional agreements. The purpose of this research is to analyze the Concepts in Electronic Agreements and discuss the Legal Politics of Electronic Agreements in Indonesia based on Pancasila Justice. The type of research used in this research is normative or library legal research or doctrinal legal research, namely legal research by examining library materials and secondary materials. Electronic agreements are widely used to make agreements between producers and consumers and license agreements for software use. However, in developed countries many electronic agreements are carried out as well as conventional agreements. Pancasila teaches that there must be harmony and balance between the use of human rights and human obligations in other words, in freedom there is a responsibility. So an electronic agreement can optimize its role in the business world, and must pay attention to the right legal aspects.

I. Introduction

Jasa The rapid development of information technology and telecommunications has resulted in an increasingly diverse range of services that utilize existing telecommunications facilities as well as increasingly sophisticated information technology products that are able to integrate all information media. An agreement is an event where one person promises to another person or where two people promise each other to carry out something.¹ In the business world, agreements are very important, because agreements are an integral part of business transactions, both large and small, both at home and abroad. This agreement acts as a regulatory link in business. The subject explains that an

¹ Manap, Marina Abdul. "Kontrak Elektronik: Isu dan Penyelesaian Undang-Undang." *Journal of Law and Governance*, Edisi No. 1 Vol. 1, 2018, Page. 64.

agreement is a bond between one or more people based on the fact that if one party requests something from the other, the other party is obliged to fulfill its obligations. Legal consequences arise from the agreement in the form of rights and obligations, if the rights of one party to the agreement are obligations to the other party.²

Basically, the legal requirements of an agreement are regulated in Article 1320 of the Civil Code.³ To be more specific, an electronic agreement or electronic contract is considered valid if it meets the following requirements, including (Article 46 paragraph (2) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions): There is an agreement of the parties, meaning that there is a free accord of will between the parties regarding the main matters desired in the agreement; Conducted by a legal subject who is capable or authorized to represent in accordance with the provisions of laws and regulations; There are certain matters; The object of the transaction must not conflict with laws and regulations, decency, and public order.

Everyone can provide and obtain information about everything, including information on the sale of a good or service using this information technology, from this information, if someone is interested in having something offered, an electronic transaction will occur. The equal position between legal protection, reliability, and security of information technology will create trust in its users, without this trust electronic transactions and electronic commerce will not develop. This trust can be obtained by giving legal recognition to electronic writing. Digital signature (Digital Signature) is a signature made electronically that functions the same as a regular signature on a regular paper document. A signature is data that, if not falsified, can serve to justify the actions of the person whose name is printed on a document he signs. In another sense, the recognition of signatures in the realm of law that a new deed can be said to be an authentic deed if a writing is deliberately made to serve as evidence of an event signed.⁴ The law of contracts or agreements adheres to several principles, first the principle of consensualism, namely that a contract is declared to have been born if there has been an agreement between the parties. Second, freedom of contract means that the parties are given the freedom to form and content a contract.

² Moch Ilham Nurdiansyah, Penggunaan Bahasa Indonesia Dalam Perjanjian Elektronik Di Media Sosial, *YURIJAYA, Jurnal Ilmiah Hukum*, Vol 4 No. 3, 2022, Page. 272-283

³ Dian Samudra, Studi Komparasi Sahnya Perjanjian Antara Pasal 1320 K.U.H.Perdata Dengan Pasal 52 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, *Jurnal Res Justitia: Jurnal Ilmu Hukum*, Vol 1 No 1, 2021, Page 26-39

⁴ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Cahaya Atma Pustaka, Yogyakarta, 2013, Page. 28

Third, the principle of the binding force of the contract. The existence of an agreement gives rise to the binding force of the contract (*pacta sunt servanda*). This principle states that the contract adopted by the parties legally binds both parties like a law. What has been agreed by both parties becomes law for the parties. Freedom of contract and its binding force, among others, are limited by good faith.⁵

Along with the development of science and technology, the field of economics and business which was originally carried out by meeting directly and face to face between the parties has also changed. These technological developments include the discovery of the internet, which is a technology that allows us to exchange information with anyone and wherever that person is located without being limited by space and time. So that contracts can be made through electronic media or often called virtual contracts or sometimes e-commerce.⁶

The Electronic Information and Transaction Law clearly conceptualizes that agreements made electronically must have the same legal force as conventional agreements. This then shows, electronic agreements must bind the parties. The equation has an obvious legal consequence, that the parties also have the freedom to choose the law that applies to electronic transactions that are international in nature. Therefore, the parties clearly have the authority to determine the dispute resolution forum.

In research conducted by Maya Indah with the title Aspects of Electronic Commerce Agreements and Their Implications for Evidence Law in Indonesia, the implementation of agreements in trade using E-commerce in Indonesia encounters obstacles related to the inability of the Civil Code to reach aspects of the validity of the agreement, because it has not been specifically emphasized. Conventional contract rules in the Civil Code have not been able to fully reach the electronic contract model, related to the validity of electronic contracts and digital signatures that have not been recognized as authentic evidence by the Civil Code. Then the research conducted by Nurhafni with the title Legal Protection of Consumers in Electronic Standard Agreements that the Consumer Protection Law mentions standard clauses as provisions and conditions that have been prepared and determined in advance unilaterally by business actors.⁷ The purpose of this research is to analyze the Concepts in Electronic Agreements and

⁵ Ridwan Khairandy, kewenangan Hukum untuk melakukan Intervensi Terhadap kewajiban Kontraktual Berdasarkan Asas Itikad Baik. *Jurnal Hukum*, No. 15 Vol.7. 2000, Page. 96

⁶ Lukman Santoso Az, *Hukum Perikatan*, Setara Press, Malang, 2016, Page. 3

⁷ Nurhafni, Perlindungan Hukum Konsumen Dalam Perjanjian Baku Elektronik, *Kanun Jurnal Ilmu Hukum*, Vol. 20, No. 3, 2018, Page. 473-494

discuss the Legal Politics of Electronic Agreements in Indonesia based on Pancasila Justice.

2. Research Method

The type of research used in this research is normative or library legal research or doctrinal legal research, namely legal research by examining library materials and secondary materials.⁸ According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues at hand."⁹

The research specification used is descriptive analysis research, because it only describes the object of the problem which then analyzes and finally draws conclusions from the research results. It is said to be descriptive because this research is expected to obtain a clear, detailed, and systematic picture, while it is said to be analytical because the material obtained from library research will be analyzed to solve problems in accordance with applicable legal provisions.

3. Results and Discussion

1. Concept of Electronic Agreement

According to Article 1313 of the Civil Code, an agreement is an act in which one or more people bind themselves to one or more people. The obligation that is born due to a binding agreement, namely giving rise to obligations and rights from the existence of the obligation can be legally enforced.¹⁰ According to R. Subekti, what is meant by an agreement is an event where one person promises to another person or where two people promise each other to carry out a matter. According to Wirjono Prodjodikoro, what is meant by an agreement is a legal relationship regarding property between two parties, with which one party promises or is considered to promise to do something, while the other party has the right to demand the implementation of the promise.

In the ITE Law, the definition of electronic agreement/contract is only given a general limitation. Electronic agreement/contract according to Article 1 number 17 of the ITE Law is defined as an agreement between parties made through an Electronic System. Meanwhile, what is meant by Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or distribute

⁸ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, PT. Jakarta :Raja Grafindo Persada, 2003, hal. 13.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada, Jakarta, 2010, hal. 35.

¹⁰ Subekti, *Aneka Perjanjian*, Intermasa, Bandung, 1995, Page 45

Electronic Information. Electronic Information as referred to above is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed which have meaning or can be understood by a person capable of understanding them.

In the provisions of the Civil Code, the general regulation of agreements in Indonesia is contained in Book III of the Civil Code concerning Binding. Book III of the Civil Code essentially adheres to an open system that gives the parties the flexibility to enter into agreements containing anything, as long as it does not conflict with the law, decency or public order. Meanwhile, with regard to the provisions of the articles of the Law of Treaties in Book II of the Civil Code, it is an *aanvaludenrecht* or complementary law, which means that the provisions of these articles may be waived by the parties if previously agreed upon.

In an agreement, the main principle is agreement. Although in principle the form of agreement in electronic transactions is generally the same, the form has differences. Starting from the difference in form, UNCITRAL regulates it as "variation by agreement". In the concept of agreement, the freedom to determine this agreement is part of the scope of the offer and acceptance process whose different forms must be accommodated by law. In e-contracts, the form of offer and acceptance is done using electronic networks, or known as electronic data interchange (EDI). With the existence of a new form of offer and acceptance, the designation of variation of the agreement stipulated by UNCITRAL becomes very reasonable.

If the above explanation is corresponded with UU-ITE, the regulation on offer and acceptance is regulated in article 8 of UU-ITE, which is about the "sending time" and "receiving time" of electronic information. It needs to be said that the parties who want to make an agreement can determine the provisions regarding the time above themselves. After an agreement is reached, the *essentialia* formulation of the agreement can be read by one of the parties until finally the agreement is completed.¹¹

In practice, electronic agreements are widely used to make agreements between producers and consumers and software usage license agreements. However, in developed countries, many electronic agreements are carried out as well as conventional agreements.

¹¹ Kosmas Dohu Amajihono, Kekuatan Hukum Kontrak Elektronik, *Jurnal Panah Keadilan*, Vol 1 No. 2, 2022, Page 128-139

Regarding the validity of the electronic agreement/contract itself, the ITE Law is only implicitly formulated.¹² Article 18 paragraph (1) of the ITE Law states that Electronic Transactions as outlined in the Electronic Contract are binding on the parties. When analyzed, the formulation of this article refers to the argument that an electronic agreement / contract binds the parties who make it as if it were a law if the electronic transaction that precedes the birth of an electronic agreement / contract is made legally (according to the law) and has fulfilled the legal requirements of an agreement as known in the Civil Code.

Even though Electronic agreements are a new phenomenon, all countries apply existing treaty law arrangements by applying universal principles regarding the making of an agreement such as the principle of consensual,¹³ the principle of freedom of contract, the principle of good faith and the validity of the agreement. Electronic agreements are included in the category of unnamed agreements, namely agreements that are not regulated in the Civil Code but exist in society, but the birth of the agreement is still based on an agreement or party autonomy and applies Article 1338 of the Civil Code regarding the validity of an agreement. Likewise, regarding the validity of electronic agreements, Article 1320 of the Civil Code still applies, reflecting the principle of consensualism. electronic agreements are generally made in the form of standard contracts (standard contracts) by the seller so that the buyer has no right to change the contents of the standard contract. The buyer only has to read the contents of the standard contract, and if he does not agree, he does not need to sign it. Standard contracts are common in the business world due to considerations of necessity and practicality. However, the standard contract must not conflict with the Civil Code and the Consumer Protection Law.¹⁴

2. Legal Politics of Electronic Agreements in Indonesia based on Pancasila Justice

The politics of law in Indonesia, including contract law, which has directed legal development towards sustainable economic growth,¹⁵ seems to

¹² Wardatul Fitri, FX Djoko Priyono, The Juridical Review On Legal Position Of Illegal Online LoansBased On Article 1320 Of The Civil Code(Burgerlijk Wetboek), *Baltic Journal Of Law & Politicsa Journal of Vytautas Magnus University*, Vol 15, No 07, (2022), Page 356-367

¹³ Kusworo Wibowo, Budi Santoso, Balanced Legal Protection For Parties To Electronic Business Transactions, *The Seybold Report*, Vol 18 Issue 7, 2020, Page 1008-1022

¹⁴ Purnomo, Serfiyani, I Hariyani. *Pasar uang & Pasar valas*, PT. Gramedia Pustaka Utama. Jakarta, 2013, Page 103

¹⁵ Rian Saputra, Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law, *Journal of Human Rights, Culture and Legal System* Vol. 2, No. 1, March 2022, Page. 1-13

be very urgent to be realized with a real program by the Government. However, what deserves attention is not to be trapped by the numbers of economic growth, without paying attention to economic equality for the poor, as was done in the New Order era.

The implementation of democratic governance, using the law as an instrument to plan and implement a comprehensive development program,¹⁶ will lead this country to a society with the desired level of welfare. The development of contract law still requires progressive thinking with an emphasis on present to future orientation. For this reason, it is necessary to constructively identify the opportunities and obstacles that occur. In accordance with the rapid development and economic development, careful planning is needed, in addition to requiring the skills and involvement of stakeholders in a progressive economic legal system.

Agreements are born from agreements made by two or more people or groups and involve themselves in the agreement. One fundamental principle in making agreements is freedom of contract. The Civil Code provides various general principles which are guidelines or benchmarks and become boundaries or signs in regulating and forming agreements that will be made until they eventually become an obligation that applies to the parties. The principles of agreement law are general principles (principles) that must be heeded by everyone involved in an agreement. In Electronic Agreements, all conditions contained in Article 1320 of the Civil Code must be met, including:¹⁷ The agreement of those who bind themselves in the agreement, the agreement is not given directly but through electronic media in this case is the internet, unlike what is obtained in a direct agreement. Capacity to Make an Agreement, it is difficult to determine whether a person conducting a transaction is an adult or not under forgiveness because the offer and acceptance process is not directly carried out, but only through virtual media which is prone to engineering and fraud.

A Certain Thing, a certain thing is the subject of the agreement, which is an achievement that must be fulfilled in an agreement, is the object of the agreement. The achievement must be certain and at least its type can be determined, and what is promised must be clear enough. A Halal Cause, a cause is forbidden if it is prohibited by law or if it is contrary to the law with

¹⁶ Maciej_Kuziemski, Governance In The Public Sector: Three Tales From The Frontiers Of Automated Decision-Making In Democratic Settings, *Telecommunication Policy*, Vol 44 Issue 6, July 2020, Page 3

¹⁷ Raden Bethari Zahra Hidayat, Implikasi Hukum Dari Ketidakabsahan Suatu Perjanjian Elektronik Ditinjau Dari Hukum Perikatan, *Jurnal Ilmiah Wahana Pendidikan*, Vol. 9 No. (2), 2023, Page. 453-464

good decency or public order. The lawful cause referred to in Article 1320 of the Civil Code is the "content of the agreement" which describes the objectives to be achieved by the parties that do not violate the law, decency and public order.

Electronic agreements have been recognized in Article 8 paragraph (1) of the United Convention on the Use of Electronic Communications in International Contracts as valid contracts and are binding on the parties.¹⁸ Therefore, the ease and efficiency of electronic agreements are often used by businesses in technology-based transactions. Everyone can access this service from various distant places. This remote fact creates greater risks and uncertainties for consumers when there is a breach of the contracts they have agreed to compared to traditional face-to-face transactions between consumers and businesses in the same jurisdiction.¹⁹

Article 1320 of the Civil Code stipulates that an agreement must fulfill the conditions for the validity of an agreement, namely an agreement, capacity, a certain matter and a halal cause. If the four conditions for the validity of the agreement are met, then the agreement is valid and binding for the parties. If you look at one of the conditions for the validity of an agreement in Article 1320 of the Civil Code, namely the existence of capacity, it will be a problem if the parties to buying and selling via the internet are minors, this may happen because finding the correct identity through the internet media is not easy.

Article 1 paragraph 6 of Law No. 11 of 2008 concerning Electronic Information and Transactions (UUITE) stipulates that the implementation of electronic systems is the use of electronic systems by state administrators, individuals, business entities, and/or the public. Furthermore, Article 15 paragraph (1) of UUITE stipulates that every electronic system operator must organize an electronic system reliably and securely and be responsible for the proper operation of the electronic system.²⁰

The Electronic Transaction Information Law is a law that deals with the issue of the evidentiary power of information, electronic signatures and

¹⁸ Dimas Prasojo, *Hal-Hal Penting Dalam Perjanjian Elektronik*, diakses melalui <https://www.daya.id/usaha/artikel-daya/hukum-perizinan/hal-hal-penting-dalam-perjanjianelektronik-klik-wrap-agreement->

¹⁹ Lintang Cahyani Andira, Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, *Jurnal Ilmu Kenotariatan*, Vol 1 Issue 2 (2020), Page. 34-54

²⁰ Anggit Rahmat Fauzi, Analisis Yuridis Perjanjian Jual Beli Melalui Media Elektronik Berdasarkan Kuh Perdata Dan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, *Ar-Risalah: Media Keislaman, Pendidikan dan Hukum Islam*, Vol 18 No 1, 2020, Page 114-142

documents. This is outlined in Article 5 paragraphs 1 and 2 which states that electronic information and electronic documents or their printouts are valid evidence that can be used for proof. In article 5 paragraph 2 “electronic information and electronic documents or their printouts as referred to in article 5 paragraph 1 are the extension of valid evidence and in accordance with the procedural law that has been applied in Indonesia”.²¹

4. Conclusion

In an agreement, the main principle is agreement. Although in principle the form of agreement in electronic transactions is generally the same, the form has differences. In practice, electronic agreements are widely used to make agreements between producers and consumers and software usage license agreements. However, in developed countries, many electronic agreements are carried out as well as conventional agreements. the implementation of electronic systems is the use of electronic systems by state administrators, persons, business entities, and / or the public. In electronic agreements, all the conditions contained in Article 1320 of the Civil Code must be fulfilled, including the agreement of those who bind themselves in the agreement. Capacity to Make an Agreement. A Specific Thing, and a Halal Cause.

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²¹ Elisa Siti Widyastuti, Perlindungan Konsumen dalam Transaksi e-Commerce: suatu Perspektif Hukum Islam, *Milkiyah Jurnal Hukum Ekonomi Syariah*, Vol 1 No. 2, 2022, Page 43-50

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