

THE LEGALITY OF TRADING THROUGH ELECTRONIC SYSTEMS IN INDONESIA

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Abstract

Technology develops and changes with the times. At this time, technology has even entered the fourth industrial revolution where the role of electronic media is very large in human life. One that is currently developing is trading through electronic systems in Indonesia. Contracts in trading through electronic systems have developed compared to existing written or oral contracts. Included here is the validity of the agreement made by electronic contract.

Keywords: *electronic contracts, trading through electronic systems, technology*

A. INTRODUCTION

Technology develops and changes with the times. At this time, technology has even entered the fourth industrial revolution where the role of electronic media is very large in human life. Indonesia itself has a very wide market and also since the COVID-19 pandemic hit Indonesia, trade through this electronic system has become very high and spread widely. Online shopping or e-commerce activities are one of the most popular things in this Covid-19 period.

The facts show that the level of internet users in Indonesia from year to year has increased quite rapidly. From the data released by the survey institute for e-marketers in 2014, it was stated that internet users in Indonesia were in the sixth position out of 25 (twenty five) countries in the world surveyed by the agency. The predictions of internet users in Indonesia in 2015 issued by e-marketers are not much different from the data released by the Association of Indonesian Internet Service Providers (APJII) which states that internet user data in Indonesia in 2015 reached 88.1 million users.¹

According to a report made by Google and Temasek entitled "e -conomy sea 2018 ," that the size of the e-commerce market in Indonesia in 2018 reached 12.2 billion US dollars. According to the report, consumers in Southeast Asia will increasingly rely on e-commerce to buy a wide variety of products that are not available in stores, as a result of the lack of modern retail networks outside the big cities. The growth of the e-commerce industry is predicted to more than quadruple by 2025, reaching 53 billion US dollars. In this regard, Indonesia leads far above other Southeast Asian countries. In comparison, Thailand, which is just below Indonesia, has a market size of US\$3 billion, followed by Vietnam with a market size of US\$2.8 billion.²

The development of information technology currently penetrates all aspects of human life, including in trading activities, especially in the territory of the Unitary State of the Republic of Indonesia. Information technology makes everything easier and will also be fast of course also at a relatively cheap price because the systems and methods used in e-commerce are different from conventional systems and methods. The role of information technology in business is also getting stronger, this is indicated by the activeness of large multinational companies to use the internet as a means of marketing their products. The use of the internet and the world wide web (www) for companies today is very necessary. Every company that wants to expand its marketing reach must have a website, which is a vehicle for promotion and transactions for the company.³

Buying and selling online is known as e-commerce. E-commerce can simply be interpreted as electronic transactions.⁴ This new type of transaction has a wider range of motion in choosing goods and/or services.⁵ E-commerce transactions play an important role in increasing sustainable economic growth, increasing the implementation of national development in order to realize equitable development and maintain national stability. One of the efforts that can be made to realize substantial economic growth in the trade sector, especially in the era of globalization, is through the application process between the trading system and Information Technology in facilitating e-commerce transactions. E-commerce is a business by exchanging data (data interchange) via the internet where both parties, namely the originator and addressee or called sellers and buyers of goods and services, can do bargaining and transactions.⁶

The weak position of consumers is often exploited by business actors to obtain the maximum benefit from consumers. The factor of consumer ignorance, unclear information on goods/services provided by business actors, lack of understanding of consumers in the transaction mechanism are factors that cause the weak position of consumers. Therefore, in order to create a healthy business climate for consumers in conducting e-commerce transactions, it is necessary to strive for a new and adequate form of legal arrangement that is able to regulate all their activities.⁷

One of the problems that occur that can make consumers lose money is regarding the validity of the agreement. The validity of this agreement is the most important thing in the implementation of e-commerce or trading through electronic

¹Ahmad Firmansyah. "A study of the obstacles to implementing E-commerce in Indonesia". in the journal of the telematics and information society. Vol. 8. No. 2. December 2017, p. 128.

²ign. L. Adhi Bhaskara, "Tax Enforcement for Online Stores: Is the Time Right?", <https://tirto.id/pemlakuan-pajak-for-toko-online-tepatkah-time-deuB>, accessed 4 July 2022

³Nuryanti. "The Role of E-commerce to Improve the Competitiveness of Small and Medium Enterprises (SMEs). accessed via https://www.academia.edu/23121102/jurnal_e_commerce. on July 4, 2022.

⁴Brenda Kienan, Small Business Solution, E-commerce for Small companies, Jakarta, PT Elex Media Komputindo, 2001, p. 4.

⁵Anugrah Perdana DS, "Juridical Review of Fraud in Online Transactions of Buying and Selling Electronic Goods in Samarinda City", thesis, Faculty of Law, Mulawarman University, Samarinda, 2013.

⁶Niniek Suparni, "Cyberspace Problems and Anticipation of Its Arrangements", Jakarta, 2009, p. 28

⁷Elisatris Gultom, "Cyber Law : An Introduction to Protection Consumers in Trading Transactions Through Electronic Commerce", Ellipses, Bandung, p. 55.

systems. The validity of this agreement can protect consumers regarding what is the size of this electronic agreement can be said to be valid or not.

B. Trading Through Electronic Systems

Article 66 of Law Number 7 of 2014 concerning Trade states that further provisions regarding Trade transactions through Electronic Systems are regulated by or based on Government Regulations. Based on the mandate of Law Number 7 of 2014 concerning Trade, Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (PPPMSE) was made.

In article 1 number 2 of PPPMSE, it is explained that trading through electronic systems, hereinafter abbreviated as PMSE, is defined as trade whose transactions are carried out through a series of electronic devices and procedures. Trade itself in article 1 point 1 is defined as an activity order related to transactions of goods and/or services in the country and beyond the borders of the country with the aim of transferring rights to goods and/or services to obtain compensation or compensation. The scope of regulation of Trading Through Electronic Systems includes:

- a. the party conducting PMSE.
- b. PMSE requirements;
- c. PMSE implementation;
- d. obligations of business actors;
- e. proof of PMSE transactions;
- f. E- Advertisement;
- g. E- Offer, Electronic Acceptance, and Electronic Confirmation;
- h. E- Contracts;
- i. protection of personal data;
- j. payment in PMSE;
- k. delivery of Goods and Services in PMSE;
- l. exchange of Goods or Services and cancellation of purchases in PMSE;
- m. dispute resolution in PMSE; and
- n. coaching and supervision.

In article 1 number 6 in PPPMSE Trading Business Actors through the Electronic System, hereinafter referred to as Business Actors, are any individual or business entity in the form of a legal entity or non-legal entity which can be a Business Actor. Domestic and Foreign Business Actors and conduct business activities in the PMSE sector.

In order to provide protection to users of trading services through electronic systems, Article 3 of PPPMSE conducts PMSE, the parties must pay attention to the principles:

a. Good Faith;

The principle of good faith, namely that business actors and consumers in conducting trading through electronic systems must have good faith, where violations of this principle result in the cancellation of the agreement between the parties, without reducing or ignoring the rights of parties who have good faith in conducting trading through the system. Electronics (PMSE).

b. Prudence;

The precautionary principle is that Business Actors and Consumers are required to exercise caution in conducting Trading Through the Electronic System (PMSE), where all electronic information relating to Business Actors, Consumers, Goods and/or Services that are objects of Trade as well as the terms and conditions of Trade Goods or Services through Electronic Systems must be well understood.

c. Transparency;

The principle of transparency, namely that business actors and consumers are required to transparently convey all electronic information regarding business actors, consumers, goods or services that are objects of trade and the terms and conditions of the trade in goods and/or services through electronic systems must be well understood.

d. Trustworthiness;

The principle of trustworthiness is that the Business Actor is obliged to build a proper Electronic System that is worthy of being trusted in order to maintain the trust of system users in the Electronic System that it administers.

e. Accountability;

The principle of accountability, namely Trading Through Electronic Systems (PMSE) must be carried out by Business Actors and Consumers in an accountable manner by taking into account the provisions of laws and regulations and generally accepted ethics.

f. Balance; and

The principle of balance, namely Business Actors and Consumers are obliged to ensure that the legal relationship carried out is based on the spirit of mutual benefit in accordance with the expectations and sacrifices given by each party.

g. Fair and Healthy

The fair and healthy principle is that there is equality of opportunity and position in business activities among PMSE Business Actors to create a conducive business climate so as to ensure certainty and equal business opportunities .

C. Legality of Trading Through Electronic Systems

Law regulates relations between members of society and between legal subjects. The definition of a legal subject is who can have the right and is capable of acting under the law or in other words who is capable according to the law to have the right.⁸ Electronic Contract is the agreement of the parties made through the Electronic System.

In entering into an electronic contract, the parties to trading through the electronic system must have, include, or convey the identity of a clear legal subject. Every trading activity through an electronic system that is cross-border must comply with the provisions governing exports or imports and in the field of information and electronic transactions. In each PMSE, Business Actors are required to:

- a. provide true, clear, and honest information about the identity of legal subjects supported by valid data or documents;
- b. convey true, clear, and honest information regarding the conditions and guarantees of the goods and/or services traded including the electronic system used according to the characteristics of its function and role in the transaction; and
- c. comply with the provisions of advertising ethics in accordance with the provisions of the legislation.
The information referred to is true , clear, and honest at least regarding:
 - a. the truth and accuracy of the information;
 - b. conformity between advertising information and physical Goods;
 - c. feasibility of consumption of Goods or Services;
 - d. the legality of the Goods or Services; and
 - e. quality , price, and accessibility of goods or services.

In responding to the Electronic Offer, the offer recipient must be responsive and follow the acceptance procedure as set out in the terms and conditions of the Electronic Offer. In the event that the bidder is unresponsive and does not follow the acceptance procedure , the Electronic Contract may be deemed to have never occurred. In the event that the Consumer's responsiveness is negligent, then all forms of loss resulting from the non-occurrence of the Electronic Contract are the full responsibility of the Consumer. Business Actors who make Electronic Offers must be responsive to Electronic Acceptance, and must fulfill Electronic Contracts according to the terms and conditions in Electronic Bidding.

In its implementation, electronic contracts have different arrangements from the Civil Code. In Article 59 of PPPMSE, Electronic Contracts are only said to be valid and binding on the parties if:

- a.in accordance with the terms and conditions in the Electronic Bidding;

Electronic Bidding is an act of offering through Electronic Communication from Business Actors to other parties. The Electronic Offer must contain at least the following information:

- a. specification of goods and/or services;
- b. the price of goods and/or services offered;
- c. terms of the agreement;
- d. payment mechanism and system as well as payment grace period;
- e. mechanism and system for delivery of goods and/or services;
- f. unexpected risks and conditions; and
- g. limitation of liability in the event of an unexpected risk.

Electronic offers are valid and have binding legal force if there is a clear and specific statement of intention or will in the offer as well as terms and conditions by means of an honest, fair and balanced offer, and with a certain time limit. The party making the Electronic Offer must explain the technical mechanism and the substance of the terms and conditions for granting electronic approval.

- b. the information contained in the Electronic Contract is in accordance with the information contained in the Electronic Bidding;

⁸Kansil, CTS *et al* , , Civil Law Module , 1995Jakarta, Pradnya Paramita, p. 82.

In the implementation of the electronic bidding, the party must provide the agreed terms in accordance with the information in the electronic offer, which is carried out correctly, clearly and honestly.

c. there is an agreement between the parties, namely the terms and conditions of the offer sent by the party submitting the offer, accepted and approved by the party receiving the offer;

There is an agreement between producers and consumers to bind themselves to each other by providing answers to express agreement. In responding to the Electronic Offer, the offer recipient must be responsive and follow the acceptance procedure as set out in the terms and conditions of the Electronic Offer. In the event that the bidder is unresponsive and does not follow the acceptance procedure, the Electronic Contract may be deemed to have never occurred. In the event that the Consumer's responsiveness is negligent, then all forms of loss resulting from the non-occurrence of the Electronic Contract are the full responsibility of the Consumer. Business Actors who make Electronic Offers must be responsive to Electronic Acceptance, and must fulfill Electronic Contracts according to the terms and conditions in Electronic Bidding.

Electronic Receipts from Consumers must be responded to by Business Actors within a certain period of time. The response must be in the form of Electronic Confirmation and/or non-electronic confirmation which can be stored and used as proof of agreement. Electronic Confirmation can be carried out by identifying, correcting or modifying the data entry or purchase order form, or providing a statement that it has obtained sufficient information and/or clearly conveys the intention to purchase. The contents of the Electronic Confirmation must be the same as the Electronic Offer information.

d. carried out by a competent legal subject or authorized to represent in accordance with the provisions of the legislation;

The requirements for "people" who are capable of law by Prof. Abdulkadir Muhammad in Indonesian civil law are:⁹

- 1) Someone who is an adult, the meaning of an adult is that he is 21 years old in civil law.
- 2) A person who is under 21 years of age but has never been married.
- 3) Someone who is not serving the law.
- 4) Healthy spirit and healthy mind.

e. there are certain things; and

This is as stipulated in Article 1333 of the Civil Code that an agreement must have conditions as the subject of an item, at least the type is determined. At least the type of object or achievement can be determined either in terms of tangible or intangible objects. The object of the agreement is an achievement, so the object of this agreement can be in the form of giving something, doing something or not doing something. Thus, the object of the agreement is not always an object.¹⁰

According to Article 1332 of the Civil Code, it is stated that only goods that can be traded can be the subject of an agreement. In Article 1334 paragraph (1) of the Civil Code it is also stated that goods that will only be available at a later date can also be the subject of an agreement. Thus it is clear that the main points of the agreement are goods or objects that already exist as well as goods or objects that will still exist.¹¹

f. the object of the transaction must not conflict with the laws and regulations, decency, and public order.

D. Conclusion

In its implementation, trading through an electronic system is a very good thing that can help make it easier for people to do business, especially during the pandemic. To be able to carry out properly, it is necessary to pay attention to the legal aspects in trading through the electronic system. One thing that needs to be considered is the validity of making an electronic agreement or contract so that at the time of its implementation it can avoid legal problems.

⁹Abdulkadir Muhammad, "Indonesian Civil Law", Bandung, PT. Citra Aditya Bakti, 2000, p. 27

¹⁰R. Subekti, "Various Agreements", PT. Citra Aditya Bakti, Bandung, 1995, p. 137

¹¹ Ibid., p. 102

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