

Juridical Study of E-Commerce Agreements In Terms of Civil Law Aspects

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Abstract

The parties involved in e-commerce transactions conduct legal relations as outlined through a form of contract that is carried out electronically. The problem that often arises in e-commerce transactions is that the seller or buyer does not know the identity of each party. Therefore, it is possible that those who carry out e-commerce transactions are minors, who are considered unable to be responsible for their actions. In addition, regarding the goods traded, for example, the goods sent do not match the specifications. These problems are related to the subjective and objective requirements in Article 1320 of the Civil Code, so it is necessary to study the validity of agreements in e-commerce transactions in more depth. In addition, consumers need to obtain legal protection because, in e-commerce transactions, there are still rampant things that harm consumers. The purpose of this study is to determine the validity of e-commerce agreements in terms of civil law and determine legal protection for consumers in the event of default in e-commerce agreements. This research uses the normative juridical method. The result of this research is the validity of e-commerce agreements, as long as they fulfill the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code, are valid, and have the same legal force as conventional agreements. Furthermore, regarding legal protection in the event of default in an e-commerce agreement, consumers should sue the seller to provide compensation based on Article 1239 of the Civil Code.

Keywords: *E-Commerce*, Validity of Agreement, Sale and Purchase Agreement

Introduction

Trade is an activity of exchanging goods or services on the basis of the agreement of both parties. The exchange is usually carried out through transactions by exchanging goods or bartering (Astarina and Angga Hapsila, 2015: 21). Trade culture continues to develop along with the growth of information technology. The process of buying and selling transactions were originally carried out conventionally through face-to-face; now, with information technology today, sellers and buyers can carry out trading activities via the internet or online transactions. (Romindo, 2019: 2). The process of buying and selling via the internet is commonly called electronic commerce or e-commerce.

E-commerce is a trade of goods and services electronically through the internet. (Wulandari, 2018: 200). In Indonesia, e-commerce or electronic transactions have been regulated in Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as ITE Law). Article 1 point 2 of the ITE Law states that electronic transactions are legal actions carried out using computers, computer networks, and/or other electronic media. The parties involved in an electronic buying and selling transaction conduct a legal relationship as outlined in a form of agreement or contract that is carried out electronically and in accordance with the provisions of Article 1 number 17 of the ITE Law. This is referred to as an electronic contract, namely the agreement of the parties made through an electronic system. (Heriyanti, 2021: 40).

In general, the validity of an agreement or contract is not determined by the physical form of the agreement. Agreements in printed or electronic form, oral or written, will have legal force and be recognized for their validity if they meet the conditions for the validity of the agreement stipulated in Article 1320 of the Civil Code (hereinafter referred to as the Civil Code), namely, the existence of an agreement between the two parties, the existence of capacity to perform legal acts, the existence of certain objects agreed upon, and the existence of a lawful cause (Syahrin, 2020: 106).

An agreement or contract by law is considered valid when it binds both parties, if it fulfills the conditions for the validity of an agreement based on Article 1320 of the Civil Code, namely the agreement of the will of the parties, carried out by parties who are legally considered capable of acting, performing certain achievements and those achievements that are permitted by law, decency, decency, public order and customs prevailing in the wider community (Sukarmi, 2008: 32).

The parties involved in e-commerce are business actors or called sellers and consumers or called buyers. When e-commerce occurs, the seller or buyer does not know the identity of each party. Sellers or buyers may come from minors to adults, because, in e-commerce, there is no age limit for the parties to make transactions. Problems occur if these minors conduct e-commerce transactions because minors are not considered capable of being responsible for their actions. The next problem

is about the goods being traded. For example, the goods sent do not match specifications, such as the goods do not match the picture, the size and color ordered are different when the goods arrive, the quality of the goods that come does not match the description given by the seller, the delivery is not on time, the goods sent are damaged, and the goods are fake when checked on the barcode. These problems are related to the subjective and objective requirements in Article 1320 of the Civil Code, so it is necessary to study the validity of the agreement in the e-commerce transaction in more depth.

In addition, consumers should also obtain legal protection because in e-commerce transactions, there are still rampant things that harm consumers, such as not getting compensation as a form of seller responsibility for their actions, which result in non-fulfillment of achievements.

Based on the description of the background above, the author is interested in discussing issues regarding the validity of e-commerce agreements when viewed from the aspect of civil law and legal protection for consumers in the event of default in e-commerce agreements.

Research Method

The type of research used in this research is normative juridical, which means that it is legal research conducted by examining library materials (Efendi, 2018: 129). This normative research is research on legal systematics, namely research whose main objective is to identify the notions or basis in law (Sunggono, 2016: 93). This type of research is used because researchers want to examine everything related to e-commerce agreements based on aspects of civil law in Indonesia.

The legal materials used in this research are obtained through legal material searches or literature studies on primary legal materials, which include the Civil Code, ITE Law and Law Number 8 of 1999 (hereinafter referred to as Law No. 8/year 1999), then secondary legal materials that provide explanations of primary legal materials consisting of literature and journals related to e-commerce agreements, as well as tertiary legal materials as legal materials that provide additional explanations or support data that already exist in primary legal materials and secondary legal materials. Tertiary legal materials used are internet searches.

Result and Discussion

The Validity of E-Commerce Agreements When Viewed from the Aspects of Civil Law

Agreement based on Article 1313 of the Civil Code is an act in which one or more people bind themselves to one or more people (Niru Anita, 2019: 6). An agreement will be binding and valid if the agreement is made legally based on the validity of the agreement stipulated in Article 1320 of the Civil Code (Wibowo et al., 2022: 8). The validity of the agreement stipulated in Article 1320 of the Civil Code, the first is the agreement of the two parties. Furthermore, the second is the

ability to perform legal acts, the third is the existence of an object, and the fourth is the existence of a *halal causa* (Salim HS, 2021: 33).

The first valid condition of the agreement is agreement, meaning that the parties who want to enter into an agreement must first agree or agree on the main matters of the agreement to be made and the agreement obtained is not due to oversight, coercion and fraud (Anggraeny and Sholahuddin Al-Fatih, 2020: 61). Furthermore, the second is capability, meaning that the parties can make an agreement (Prastya, 2021: 622). The word capable in this case is that the parties are adults, not under supervision due to unstable behavior, and not people who are prohibited by law from making an agreement. The third valid condition of an agreement is the existence of an object, meaning that there is something that is promised or an achievement that must be fulfilled (Mursid, 2022: 13). Furthermore, the last valid condition of the agreement is the existence of a *halal causa*, meaning that it concerns the contents of the agreement that do not conflict with public order, decency and law (Kosasih, 2021: 148).

The first and second conditions of Article 1320 of the Civil Code are called subjective conditions (Setiawan, 2021: 61). If one of the subjective conditions is not met, then an agreement can be requested by one of the parties to be canceled, while the third and fourth conditions of Article 1320 of the Civil Code are called objective conditions (Marilang, 2017: 263). If one of the objective conditions is not met, then the agreement is null and void, meaning that from the beginning it is considered that an agreement was never born, and there was never an obligation. (Hernoko, 2019: 161).

In principle, according to the Civil Code, an agreement is free, not bound to a certain form and along with the development of technology in the field of trade, electronic commerce appears, where the parties between the seller and the buyer no longer meet face to face but only through the internet media, so this is where the e-commerce agreement was born (Hidayat, 2023: 454). In essence, e-commerce agreements are the same as conventional agreements that are usually carried out by the community in general (Falahiyati, 2020: 8). The difference is that e-commerce agreements are made through the internet media using electronic systems so the parties do not meet or meet face to face. In contrast, in conventional agreements, the parties meet directly in a place to agree on what will be traded and what the price of the goods or services is (Priyono, 2019: 430). Likewise, with the agreement on the existence of an agreement to conduct trade transactions.

E-commerce as an impact of technological development has implications for various sectors, one of which impacts the legal sector; the regulation of e-commerce issues in Indonesia has no rules that specifically regulate these issues. The regulation of e-commerce still uses the rules in Book III of the Civil Code, especially the regulation of agreements that occur in e-commerce. Agreement in e-commerce occurs between the two parties in which one party promises to the other party to do something.

Agreements in e-commerce can be subject to Article 1313 of the Civil Code as a regulation. So the validity of an agreement contained in the Civil Code must be considered so that the imposition of agreement rules in Indonesia, which generally use the Civil Code, can be applied and agreements in e-commerce can be recognized as valid, where the validity of an agreement listed in Article 1320 of the Civil Code, namely:

1. Agreed Those Who Bind Themselves

Conventional sale and purchase agreements based on Article 1458 of the Civil Code are considered to have occurred immediately after the parties reach an agreement regarding the object and the price for the goods, even though the object has not been delivered, and the price has not been paid (Umar, 2020: 39). All agreements must be the result of an agreement between the two parties, there must be no force, misrepresentation, and fraud (*dwang, dwaling, bedrog*). The agreement in the agreement is basically a meeting between the conformity of the will between the parties to the agreement. A person is said to give his consent and agreement if he really wants what is agreed upon. This is in accordance with the principle of consensualism in an agreement that a contract that has been made is valid and fully binding for the parties who make it.

Meanwhile, an e-commerce agreement based on Article 20 paragraph (1) of the ITE Law occurs when the agreement offer sent by the sender has been received and approved by the recipient (Rokfa et al. 2022: 164). So the agreement on the e-commerce agreement occurs when there is an offer and acceptance and arises because of the awareness of the parties to bind themselves to each other. If there is no agreement between the seller and the buyer on the product offered by the seller, then what happens is only a bargaining event. If the buyer agrees to the offer from the seller contained in the contract clause regarding goods and prices, then at that moment, the agreement on the e-commerce agreement is born and comes into force (Purwoko and Laksamana Varelino Zeustan Hartono, 2021: 167). This contract clause is usually provided, and the buyer just has to agree to it by checking the box provided or pressing the accept button as a sign of approval. The agreement in e-commerce transactions is a 'take it or leave it' agreement. So, if the buyer agrees, then he will agree to the agreement; if not, then the buyer does not need to make an agreement, and the transaction process is canceled or does not occur.

This is also confirmed by Article 49 paragraph (1) of Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as GR No. 71/2019), which states that electronic transactions occur when parties reach an agreement. Thus, the author gives the opinion that the offer and acceptance are very important elements to determine the birth of an agreement because with the birth of an agreement, the agreement has fulfilled the subjective requirements in Article 1320 of the Civil Code and is considered valid and binding on the parties. Thus, the author gives the opinion that the offer and acceptance is an element of the

occurrence of an agreement in e-commerce transactions is very important to determine the birth of an agreement because with the birth of an agreement, the agreement has fulfilled the subjective requirements in Article 1320 of the Civil Code and the agreement from the point of view of the agreement is considered valid and binding on the parties.

2. Capacity to Enter into an Agreement

The development of the internet has led to the formation of a new arena commonly referred to as cyberspace, where every individual has the right and ability to relate to other individuals without any restrictions. With the freedom to make relationships or do something, it does not rule out the possibility that each individual also has the freedom to enter into an agreement or agreement with other individuals. Likewise, in e-commerce, everyone also has the right to enter into an agreement.

To make an agreement, it is necessary to fulfill the conditions for the validity of an agreement, and one of these conditions is the ability to make an agreement. Basically, every person who is an adult or *akilbaliq* and of sound mind is capable of making an agreement, where this is stated in Article 1329 of the Civil Code; namely, everyone is capable of making obligations if the law is not declared incapable. The requirements or benchmarks for determining whether or not a person is capable of entering into an agreement according to Article 1330 of the Civil Code are immature people, those placed under guardianship, women, in matters stipulated by law, and, in general, all people to whom the law has prohibited making certain agreements.

According to Article 330 of the Civil Code, the conditions for a person to be said to be immature are that he has not reached the age of 21 years and has not previously been married. However, every person who is an adult is not necessarily of sound mind. Article 433 of the Civil Code states that every adult who is always in a state of imbecility, cerebral palsy, or dark eyes must be placed under guardianship, as well as if he is occasionally capable of using his mind. In addition, an adult may be placed under guardianship because of their extravagance. The third condition is based on the development of the times and according to Supreme Court Circular Letter No. 3/1963 dated August 4, 1963, which is no longer valid, where the authority of a wife to perform legal acts and to appear before the court without the permission or assistance of her husband as stipulated in Articles 108 and 110 of the Civil Code is no longer valid according to the Supreme Court Circular Letter No. 3/1963. Thus, the requirement for a person to be capable of entering into an agreement or engagement according to the Civil Code is a person who is an adult, both male and female, has reached the age of 21 years or has been married and is of sound mind and not under guardianship.

Agreements or contracts in e-commerce also require certain conditions for parties who will enter into an agreement, where, according to the results of research on several sites engaged in e-commerce (marketplace) that have been carried out

by the author, most of them found that a requirement for customers to make transactions must be someone who is at least 17 years old and has a Resident Identity Card. This requirement can be found when the customer verifies the account's personal data in the Tokopedia marketplace <https://www.tokopedia.com/help/article/cara-verifikasi-data-diri> where it is written in the provisions for personal data verification:

"Make sure the ID you use is your national ID card. Currently, other identity cards (driver's license, student card, passport, etc.) cannot be used for verification."

This can be interpreted as a person is not entitled to make transactions in the Tokopedia marketplace if they are not capable or competent to make contracts according to the law and are under 17 years of age.

In addition, the Shopee marketplace <https://help.shopee.co.id/portal/article/71187> in the terms of service policy section also states that:

"If you are under the age of 17 or unmarried and under guardianship, you must obtain permission from a parent or guardian to open an account and the parent or guardian must agree to the terms of this agreement. If you do not understand this section, please do not create an account until you have sought the assistance of your parent or guardian. If you are the parent or guardian of a minor creating an account, you must accept the terms of this agreement on behalf of the minor and you will be responsible for all use of the account or company services using the account, whether the account is opened now or created in the future."

This can be interpreted a "a person under 17 years of age may only use the Shopee marketplace with the involvement of a parent or guardian". This shows that to be able to transact with Shopee services, a person must be 17 years of age or older, and if he is under 17 years of age, he must be represented by his parents or guardian.

The similarity between Tokopedia and Shopee regarding the age requirement of a person who has the right to enter into a contract and transact in e-commerce indirectly shows that the requirement for a person's ability in e-commerce is 17 years old. This is, of course, different from what is expected or regulated in the Civil Code, which requires 21 years of age, so that contracts in e-commerce can still be valid even though the fulfillment of this requirement is difficult to prove, namely by the trust between the parties regarding what is stated in the transaction process. So that the contract remains valid even though the maturity requirement according to the Civil Code cannot be fulfilled in the e-commerce contract.

Although the maturity requirement cannot be fulfilled in an e-commerce contract, according to the Civil Code, this does not cause the contract to be invalid but only gives consequences to the agreement or contract that can be requested for cancellation by one of the parties because the ability to make an obligation is included in the subjective requirements. So, based on this description, it can be

concluded that the contract in e-commerce transactions remains valid so that it is binding and becomes law for the parties who make it as long as the parties do not question the non-fulfillment of one of the conditions for the validity of the agreement according to Article 1320 of the Civil Code, and the parties continue to carry out the agreement they have made.

3. A Certain Thing

An agreement must be about a certain matter, meaning that what is agreed must be clear, and can be determined and calculated in the type and amount (Hanafi, 2019: 45). In conventional agreements, the agreed object is tangible and can be touched, there is physical distribution and a place for transactions between sellers and buyers, while in e-commerce agreements, even though the agreed object cannot be physically seen, the seller provides product information through descriptions and includes product photos (Zulaeha, 2019: 180). Both have similarities in that the validity of conventional agreements and e-commerce agreements must meet the requirements of a certain thing, as stipulated in Article 1320 of the Civil Code. A certain thing in the agreement is the object of the agreement's performance. The content of the achievement must be certain or at least determinable. So that what is promised must have goods and their number and type as the subject of the agreement that has been made.

After conducting research on the Tokopedia and Shopee marketplaces, it is known that the marketplace offers a variety of products, where the products offered include electronic goods, clothing, books, and software, and there are also categories of offers for credit payments, data packages, electronic money, electricity bills, post-paid cards, insurance and transportation and accommodation tickets. In addition to displaying these products in the form of images, there is also an explanatory description of the products offered regarding information, specifications, and prices of these products.

A certain thing, in this case, is the existence of an object that is used as an object in an agreement, if it is connected to what is in e-commerce which provides a variety of objects or products offered, and the customer is free to choose one or several types of objects or products he wants. The research results found that after the customer selects the product, at the end of the transaction process, the merchant will display information about the goods and their prices for what was chosen, whether it is true or not, so what the customer chooses becomes the object of the agreement. Therefore, based on the description above, in e-commerce, there is also a certain thing that becomes the object of the agreement or contract as required in Article 1320 jo 1333 of the Civil Code for agreements in general.

4. Lawful Causation

The existence of contract clauses in e-commerce agreements can directly be proof that the agreement or contract is no different from contracts or agreements in general. Likewise, the existence of the conditions for the validity of an agreement

also does not escape to be fulfilled in an e-commerce agreement or contract. The agreement or contract in e-commerce offered by the merchant must meet these requirements to comply with Article 1320 of the Civil Code, so that the customer who makes an agreement can read and understand the contents of the contract or agreement, whether it is correct and does not deviate from the existing rules or not.

Making an agreement must be based on good faith based on Article 1337 of the Civil Code, which states that a cause is prohibited if it is prohibited by law or contrary to good morals or public order (Absi and Rusniati, 2022: 5). A lawful cause is absolute to be fulfilled in entering into an agreement. Meanwhile, the explanation of an act prohibited by law in positive law is if the law prohibits the existence of that act, and if it is violated, then the act is subject to strict sanctions, for example, the sale and purchase of drugs both online and conventionally.

Decency is a norm that lives in the community. Norms include unwritten law, which contains actions that should be done and actions that should not be done. So that all agreements or contracts made must meet the norms of decency, violation of this norm is a social sanction from the community considering decency is an unwritten law in community life. The e-commerce contract must fulfill the norms that live in society. Based on the results of the research, it was found that in the requirement to register a member as a condition for conducting transactions, the marketplace (Tokopedia) emphasizes and requires customers to read and pay attention to the policy and security section, which contains criteria for the types of products prohibited from being traded on Tokopedia.

The existence of clear rules regarding what things can and cannot be done, along with the sanctions mentioned by Tokopedia, gives an understanding that the contract that occurs in e-commerce has indirectly fulfilled the requirements of a lawful cause, that the contract or agreement made between the parties has a lawful cause as the basis for the agreement.

The validity of e-commerce agreements must fulfill the legal requirements of conventional agreements, as stipulated in Article 1320 of the Civil Code (Suadi et al. 2021: 679). The necessity for e-commerce agreements to meet the legal requirements of the agreement, as referred to in Article 1320 of the Civil Code, is reaffirmed by Article 46 paragraph (2) of GR No. 71/2019, which emphasizes that e-commerce agreements are considered valid if there is an agreement of the parties, carried out by capable legal subjects, there are certain things, and the object of the transaction must not conflict with laws and regulations, decency and public order. (Morris et al. 2021: 1138). Thus, e-commerce agreements have a legal umbrella regulated by laws and regulations so that they have binding force and legal consequences like conventional agreements. E-commerce agreements in Indonesia are based on the ITE Law, but for their validity, it still relies on the rules in Book III of the Civil Code, especially the regulation regarding the issue of the validity of agreements that occur in e-commerce.

Legal Protection for Consumers in the Event of Default in E-Commerce Agreements

The parties involved in e-commerce are business actors, called sellers and consumers or called buyers. Meanwhile, the government acts as a supervisor in enforcing consumer protection law. Problems that often occur in e-commerce transactions are generally related to the implementation of the agreement they made, so the party who does not carry out the performance in the agreement can be said to be in default (Sinaga and Nurlely Darwis, 2020: 51).

Defaults in e-commerce are categorized in several forms (Sridadi, 2019: 87). Among others, the first is not implementing the contents of the agreement at all, meaning that one party is clearly against the implementation of the agreement by not implementing the contents of the agreement (Barkatullah, 2019: 20). Furthermore, the second is to carry out part of the contents of the agreement, meaning that one or both parties carry out part of the contents of the agreement and leave the other part (Idayanti, 2022: 26). Furthermore, the third is carrying out the agreement but late, meaning that one party performs the performance but not at the time specified in the agreement (Saleh, 2022: 192). Furthermore, the last one is doing something that, according to the agreement, should not be done, meaning that one party or both parties do things contrary to how the agreement should be carried out (Wahid et al. 2022: 40).

In the event that the seller defaults, the result is a loss to the buyer, whether in small, medium or large amounts (Pohan and Sri Hidayani, 2020: 46). Buyers who suffer losses can sue sellers to provide compensation based on Article 1239 of the Civil Code (Alam et al. 2020: 117). The compensation in question can be in the form of replacement goods, compensation, cancellation of the agreement and a reduction in price or other things based on an agreement between the seller and the buyer (Bustomi, 2018: 160).

However, if the seller does not provide compensation to the buyer, then the buyer can take legal action through a civil lawsuit based on Article 38 paragraph (1) of the ITE Law as a form of legal protection for consumers (Rusviana and Adi Suliantoro, 2018: 66). Apart from civil lawsuits, based on Article 39 paragraph (2) of the ITE Law, buyers can also resolve disputes through arbitration or other alternative dispute resolution institutions based on the voluntary choice of the two parties to reach an agreement on the amount and form of compensation regarding the dispute experienced and guarantee that the mistakes that caused harm to the buyer will not be repeated in the future.

Legal protection for buyers is also provided by the Law No. 8/year 1999, Article 45 paragraph (1) of the Law No. 8/year 1999, which explains that an aggrieved buyer can sue the seller through an institution in charge of resolving disputes between buyers and sellers or through a court within the general court environment (Mahardika and Dewa Gde Rudy, 2018: 12). Furthermore, paragraph (2) provides options for consumers to choose litigation or non-litigation dispute resolution (Ardiyanto and Arikha Saputra, 2022: 102). The government also

established an institution called Badan Penyelesaian Sengketa Konsumen (hereinafter BPSK) for out-of-court settlement of consumer disputes (Senjaya, 2021: 729). The BPSK decision can be in the form of peace, the lawsuit is rejected, and/or the lawsuit is granted. If the lawsuit is granted, the obligations that must be carried out by the seller are in the form of fulfillment of compensation of a maximum of Rp 200,000,000 (two hundred million rupiah) (Tiffany and Anna Maria Tri Anggraini, 2018: 12). The BPSK decision is final and binding on the parties, and its execution can be requested to the District Court (Samosir, 2018: 140). However, if non-litigation dispute resolution does not find a bright spot, then the parties can bring the lawsuit through litigation.

Conclusion

The validity of an e-commerce agreement is valid and has the same legal force as a conventional agreement as long as it fulfills the legal requirements of an agreement, as stipulated in Article 1320 of the Civil Code. In addition, it is reaffirmed by Article 46 paragraph (2) of GR No. 71/2019, which states that e-commerce agreements are considered valid if there is an agreement of the parties, carried out by capable legal subjects, there are certain things and the object of the transaction must not conflict with laws and regulations, decency and public order. So, the legal basis for the validity of this e-commerce agreement is the Civil Code and the ITE Law.

Legal protection for consumers in the event of default in an e-commerce agreement is to demand the seller provide compensation based on Article 1239 of the Civil Code. However, if the seller does not provide compensation to the buyer, then the buyer can take legal action through a civil lawsuit based on Article 38 paragraph (1) of the ITE Law. In addition, legal protection for buyers is also provided by the Law No. 8/year 1999, namely in Article 45 paragraph (1) of the Law No. 8/year 1999, which explains that an aggrieved buyer can sue the seller through an institution tasked with resolving disputes between buyers and sellers or through a court within the general court environment. The government also established an institution called Badan Penyelesaian Sengketa Konsumen (BPSK) for out-of-court settlement of consumer disputes.***

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