

Juridical Analysis Comparison of Electronic Civil Code

The Role of the Land

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ABSTRACT

The purpose of this research is a comparative juridical analysis of buying and selling electronic commerce with the Civil Code. The research method uses a normative juridical research method, which focuses on the study starting from the provisions of the applicable laws and regulations, accompanied by legal theories and principles related to the problems studied. Research results For people to buy goods online to be more careful so that there is no fraud or deception that occurs in online buying and selling transactions. holding a registration of all activities related to the public interest in electronic traffic, including the registration of electronic businesses in the form of virtual shops or other virtual services and the obligation to register a buyer in a payment system operating company so that the transaction process can run smoothly and not neither party feels disadvantaged. For parties who do not carry out their responsibilities in accordance with the mutually agreed upon agreement, the aggrieved party may be sued civilly to obtain compensation payments as stated in Article 12 of the ITE Law.

Keywords: electronic, buying and selling, KUH, Law

1. INTRODUCTION

Humans are social creatures, namely creatures who have a nature to live in society. As social beings, in their lives, humans need other humans who live together in society. In social life, humans are always in contact with one another, whether they realize it or not, to fulfill their needs (Flynn, 2008). One of the developments in information and communication technology, among others, is virtual world technology or commonly called the internet (interconnection network). The Internet as a medium of information and electronic communication has been widely used for various activities, including browsing, searching for data and news, sending messages to each other via e-mail, communicating through social networking sites, and including trading. Trading activities by utilizing internet media are known as electronic commerce, or e-commerce for short (Robinson et al., 2019).

E-Commerce is a process of buying and selling goods and services through a computer network, namely the internet (Goel, 2007). Buying and selling online can streamline and streamline time so that someone can make buying and selling transactions with everyone anywhere and anytime. All buying and selling transactions via the internet are carried out without face to face between the parties, they base the sale and purchase transactions on mutual trust, so that the sale and purchase agreements that occur between the parties are carried out electronically (Sholikhin & Amijaya, 2019).



Transactions are carried out in a conventional way, namely a trading system where sellers and buyers meet directly. The goods to be sold are near the buyer, switching to an online system which is the opposite of the usual (conventional) buying and selling where the buyer and seller do not meet in person and the goods being traded are only in the form of pictures or writings that explain the specifications of the goods to be sold (Pantelimon et al., 2020). In transactions through e-commerce all formalities commonly used in conventional transactions are reduced, besides of course consumers also have the ability to collect and compare information such as goods and services freely without being limited by boundaries (borderless). An entrepreneur, trader (vendor) or corporation can display or post advertisements or information about their products through a website or website, either through their own website or through other commercial website service providers (Rizaldi & Madany, 2021). If interested, consumers can contact through the website or guestbook available on the site and process it through the website by pressing the 'accept', 'agree' or 'order' buttons. Payments can also be submitted immediately by writing a credit card number on the site.

However, in addition to some of the benefits offered as mentioned above, e-commerce transactions also pose a number of problems, both psychological, legal and economic (Akter & Wamba, 2016). Psychological problems, for example, most prospective buyers from an online store feel less comfortable and safe when making online purchasing decisions for the first time. There are doubts about the veracity of data, information or message because the parties have never met in person. Therefore, the issue of trust and good faith is very important in maintaining the continuity of the transaction (Sinaga et al., 2020).

There are several things that often appear in the sale and purchase agreement through this electronic media that arise as an obstacle, including agreements, taxation, payment procedures, justice, legal protection, electronic signatures, dispute resolution formed in a direct network system. . These problems give rise to legal problems, among others, regarding the legal aspects of the agreement which are very much needed in proof in order to fulfill legal certainty, in this case tangible or written documents as occurs in conventional buying and selling. Meanwhile, the electronic sale and purchase agreement is carried out in a virtual world (virtual world), in the absence of real written documents such as deeds, both authentic deeds and private deeds, such conditions will cause difficulties in proving in the event of a dispute over the sale and purchase. electronically. However, one of the Indonesian internet experts, Budi Raharjo quoted by Marcella, assessed that Indonesia has quite promising potential and prospects for the development of e-commerce. Various obstacles faced in the development of e-commerce, such as limited infrastructure, absence of laws, guarantees of transaction security and especially human

resources, can be pursued at the same time as efforts to develop e-commerce institutions (Sinaga et al., 2020).

Even if it poses a risk, ignoring the development of technological capabilities will have a negative impact in the future, so that openness, being proactive and anticipatory are alternatives that can be chosen in dealing with the dynamics of technological development (Sui & Rejeski, 2002). This is because Indonesia has in fact become part of the global e-commerce market. The implementation of buying and selling online in practice raises several problems, for example, buyers who should be responsible for paying a certain price for the products or services they buy, but do not make payments. Parties who do not carry out their responsibilities in accordance with the agreed agreement can be sued by the party who feels aggrieved for compensation. Article 1320 of the Civil Code stipulates that an agreement must fulfill the conditions for a valid agreement, namely an agreement, skill, a certain matter and a lawful cause. If the four conditions for the validity of the agreement are fulfilled, then the agreement is valid and binding on the parties (Rudianto & Roesli, 2019).

In an effort to respond to legal developments related to buying and selling via the internet, the government has issued Law Number 11 of 2008 concerning Information and Electronic Transactions, considering that national development is a continuous process that must always be responsive to various dynamics that occur in society; that the globalization of information has placed Indonesia as part of the world's information society, thus requiring the establishment of regulations regarding the management of Information and Electronic Transactions at the national level so that the development of information technology can be carried out optimally, evenly, and spread to all levels of society in order to educate the nation's life; that the rapid development and advancement of Information Technology has led to changes in the activities of human life in various fields which have directly affected the birth of new forms of legal action; that the use and utilization of information technology must continue to be developed to safeguard, maintain and strengthen national unity and integrity based on laws and regulations for the national interest; that the use of information technology plays an important role in trade and national economic growth to realize public welfare. Therefore, the government needs to support the development of information technology through legal infrastructure and regulations so that the use of information technology is carried out safely to prevent its misuse by taking into account the religious and socio-cultural values of the Indonesian people (Simpson & Docherty, 2004).

Realities like this are things that must receive attention and thought to find a solution, because buying and selling transactions carried out via the internet cannot be stopped, even every



day the latest technology is always found in the internet world, even though now there is Law no. 11 of 2008 concerning Information and Electronic Transactions, but the protection and legal certainty for internet users who want to buy and sell goods on the Internet is still not sufficient.

2. RESEARCH METHODS

In this paper, the author uses a *normative juridical*, which focuses on the study starting from the provisions of the applicable laws and regulations, accompanied by theories and legal principles related to the problems studied. Thus, this research refers to the laws and regulations with a descriptive analytical discussion, which focuses on solving actual problems by collecting legal materials, compiling, classifying, and then analyzing them. Legal materials for this research were obtained through library research in order to obtain various materials related to the problem being studied, books and scientific works, papers, newspapers and field studies which are expected to provide an overview of the problems being studied. and The data collected was processed in order to obtain legal material that is ready to be analyzed. The analysis of the legal material is carried out deductively in accordance with the problem approach in this study. With this kind of analysis, it will be able to provide conclusions to the problems discussed in this study.

3. RESULTS AND DISCUSSION

Comparison of legitimacy between electronic commerce buying and buying of electronic commerce and civil code

Buying and selling transactions through electronic commerce, usually will be preceded by selling offers, buying offers and acceptance of sale or receipt of purchase. Prior to that, it was possible to offer online offers, for example through websites on the internet or through social networking media such as Facebook, Twitter, yahoo messenger and even messenger. Transactions through this website are usually carried out for those who do not know each other. However, transactions made through social networking media such as facebook or yahoo messenger are carried out through chat and usually these sellers and buyers already know or have transacted before, so trust has grown (Merryman & Pérez-Perdomo, 2018).

The transaction model through a website or site is in this way the seller provides a list or catalog of goods being sold accompanied by a description of the product that has been made by the seller. For more details, the model is described as follows: Shopping using an order form is one of the most frequently used shopping methods in electronic commerce. In this way the merchant provides a list or catalog of goods sold. When the order stage is carried out, usually the

products sold are not visualized in the form of images, but in the form of product descriptions. In an order form page, the product offering session is divided into four parts, namely:

- a. A check box that is made to provide an opportunity for customers to have the products offered by clicking on the box so that it is marked with a check
- b. Explanation of the products offered
- c. The quantity of goods ordered
- d. Price for each product.

In addition to the product table, payment types are also offered. The types of payments offered vary according to the services provided by the seller, such as by credit card, bank transfer, check and others (Zuppi, 2006). At the time of filling out the form, the buyer is asked to fill out a form containing contact information for the buyer. In this section a security system is installed, such as SSL (Secure Sockets Layer) to protect against fraud. Furthermore, if the information sent by the buyer meets the requirements or is declared valid, the seller will send confirmation news to the buyer in the form of an e-mail.

After all the conditions and the buyer has made payment and is accepted by the seller, the next process is the seller's obligation for the goods purchased by the buyer. If the product is in the form of services or instructions that can be sent via the internet, the seller will immediately send it. However, it is different if the product is in the form of goods. Delivery of goods is of course adjusted to the order as stated in the catalog in electronic commerce. Delivery is usually done through expeditions or goods delivery services such as Pos Indonesia, Tiki Online, JNE and so on. The period of delivery of goods is usually stated in the agreement by each party and in general is according to the geographical distance between the seller and the buyer (Lerner, 2002).

Method of Transaction in the Civil Code

The sale and purchase agreement is regulated in Articles 1457-1540 of the Civil Code. In Article 1457 of the Civil Code the definition of buying and selling is an agreement that binds the seller to promise to deliver an item/object (*zaak*), and another party acting as the buyer commits himself to promise to pay the price. The sale and purchase is included in the group of named agreements, meaning that the law has given its own name and provides special arrangements for this agreement. The arrangement of named agreements can be regulated in the Civil Code and the Commercial Code. As for how to transact in the Civil Code, the main elements in a sale and purchase agreement are goods and prices, where between the seller and the buyer there must be an agreement on the price and the object being the object of sale and purchase.

A valid sale and purchase agreement is born if both parties have agreed on the price and goods. The consensual nature of the sale and purchase agreement is emphasized in Article 1458

of the Civil Code which reads "a sale and purchase is considered to have taken place between the two parties immediately after they have reached an agreement on the goods and the price, even though the goods have not been delivered nor the price has been paid." .

Transactional Parties in electronic commerce

In the world of electronic commerce, there are two actors, namely merchants/business actors who make sales and buyers/customers/consumers who act as buyers. In addition to business actors and consumers, buying and selling transactions through internet media also involve providers as internet network service providers and banks as payment facilities.

Consumer Rights and Obligations

a. Consumer Rights

When talking about consumer protection, it also talks about consumer rights. In an electronic commerce agreement, the party most prone to suffer losses or have their rights violated is the consumer. This is because the role of consumers tends to be passive and only follows the rules of the game or follows an agreement that is actually from the seller. So in everyday electronic commerce, consumers are often found suffering from losses, both incompatibility of goods ordered, delays in delivery and even fraud.

Therefore, there is a need for legal protection that accommodates the interests of consumers.

b. The rights of consumers according to Article 4 of Law Number 8 of 1999 concerning Consumer Protection are as follows:

1. The right to comfort, security, and safety in consuming goods and/or services.
2. The right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees.
3. The right to correct, clear, and honest information regarding the conditions and guarantees of the goods and/or services
4. The right to have their opinions and complaints heard on the goods and/or services used.
5. The right to receive guidance and consumer education.
6. The right to be treated or served correctly and honestly and not discriminatory.
7. The right to receive compensation, compensation, and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly
8. Rights regulated in the provisions of other laws and regulations.

If it is related to consumer rights in the electronic commerce sale and purchase agreement, then in fact all consumer rights who are concerned about the presence of buying and selling through electronic commerce have basically been regulated in this consumer protection law. Starting from the right to information correctly, clearly and honestly related to the product

and quality listed in the internet media. Until compensation if the consumer has been harmed by a product that is not in accordance with the agreement, everything has been guaranteed in article 4 of the consumer protection law.

c. Consumer Obligations

Article 5 of Law Number 8 of 1999 states the obligations of consumers, namely:

1. Read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety.
2. Have good faith in making transactions to purchase goods and/or services.
3. Pay according to the agreed exchange rate.
4. Follow legal efforts to settle consumer protection disputes properly.

In addition to having the rights regulated in the consumer protection law, consumers also have an obligation to a sale and purchase agreement. In principle, good consumers are consumers who have good faith or good intentions before entering into a sale and purchase agreement. Especially in electronic commerce agreements, the good faith of consumers in purchasing must of course be accompanied by following information instructions to using goods correctly so that there is a balance between the buyer and the services provided by the seller.

In addition, consumers must prioritize the principle of propriety in resolving disputes with the seller (producer) in the event of a dispute. Namely prioritizing the interests of each party, where consumers immediately get answers and compensation if consumers have suffered losses and producers are also protected from things that harm their name in the eyes of other consumers.

Transaction Parties in the Civil Code

According to Salim HS, a sale and purchase agreement is an agreement made between the seller and the buyer. In the agreement, the seller is obliged to hand over the object of sale and purchase to the buyer and is entitled to receive the price and the buyer is obliged to pay the price and has the right to receive the object.

The elements contained in the definition are:

- a. The existence of legal subjects, namely sellers and buyers
 - b. There is an agreement between the seller and the buyer regarding the goods and prices
 - c. The existence of rights and obligations that arise between the seller and the buyer
2. Comparison of conventional buying and selling According to electronic commerce and the Civil Code
- A. legitimacy of conventional buying and selling According to electronic commerce and the Civil Code

E-commerce buying and selling transactions are the impact of technological developments that have implications in various sectors. One of these implications has an impact on the legal sector. Although the regulation regarding electronic commerce issues in Indonesia is based on the Electronic Information and Transaction Law, for its legitimacy it also relies on the rules in Book III of the Civil Code, in particular the regulation regarding the issue of legal terms of agreements that occur in electronic commerce. However, this research will also reveal that in the Electronic Information and Transaction Law there are several provisions that also regulate the validity of an electronic commerce contract. The provisions governing the validity of the electronic commerce contract are special provisions than Article 1320 of the Civil Code as a general provision. In other words, here it can be interpreted that in general to measure the validity of an electronic commerce sale and purchase contract, it must be based on the provisions of Article 1320 of the Civil Code and the Law on Information and Electronic Transactions.

In Article 1320 of the Civil Code, the conditions for the validity of the agreement are regulated where in general there are 2 (two) main requirements as elements or elements of contract formation, namely subjective conditions (agreement and skills of the parties) and objective conditions (certain things and lawful causes). If this subjective requirement is not met, then the legal consequence is that the electronic commerce sale and purchase contract is threatened to be canceled (*vernietigbaar*). Through the conditions for the validity of the contract in Article 1320 of the Civil Code which is applied and integrated into the electronic commerce sale and purchase transaction, it will be possible to measure the extent of the validity of the electronic commerce sale and purchase transaction.

In this sub-chapter the author will describe the conditions for the validity of the contract in terms of subjective conditions, namely the terms of agreement and the skills of the parties. First, the terms agreed by the parties. Article 1320 to 1 of the Civil Code requires an agreement as one of the conditions for the validity of the contract. The agreement implies that the parties express their respective will to close an agreement or statement of one party in accordance with the statement of the other party. The statement of will does not always have to be stated explicitly but can be with behavior or other things that reveal the statement of the parties' will. The terms of the agreement which are a reflection of the principle of consensualism, where an agreement has been born a contract, turns out to be in such a complex legal traffic that it also creates a complicated problem regarding the question of when the contract was born. Determining the date of birth of the contract becomes an obstacle, especially if the offer and acceptance is made through correspondence or correspondence.

In the Civil Code there are 3 (three) things that can be used as reasons for canceling a contract based on a defect of will, namely: a) misguidance or dwelling (Article 1322 of the Civil Code); b) coercion or dwelling (Articles 1323-1327); c) fraud or bedrog (Article 1328 of the Civil Code). Apart from being based on the provisions of Article 1320 to 1 of the Civil Code, the terms agreed to the electronic commerce sale and purchase contract are also found in the provisions of the Electronic Information and Transaction Law. The provisions in the Electronic Information and Transaction Law which regulates the terms of agreement in the electronic commerce sale and purchase contract, including: First, Article 6 where based on this provision the element of agreement intended in the electronic commerce sale and purchase contract is if in the bidding process, the seller or merchants have displayed their goods and/or services online in order to attract buyers or consumers by fulfilling the elements as mentioned in this article, namely that the products offered must be: accessible, displayed, guaranteed for their integrity, and can be accounted for so as to explain a situation.

B. Subject and Object of the Sale and Purchase Agreement According to electronic commerce and the Civil Code

purchase agreement is regulated in articles 1457-1540 of the Civil Code. According to article 1457 of the Civil Code, buying and selling is an agreement that binds the seller to promise to deliver an item/object (subject), and another party acting as the buyer commits himself to promise to pay the price (object).

a. The Subject of the Sale and Purchase

Agreement Basically, the sale and purchase agreement is a legal act. The subject of a legal act is a legal subject. Legal subjects consist of humans and legal entities. Therefore, basically any person or legal entity can be the subject of a sale and purchase agreement, namely as a seller and a buyer, provided that the person concerned is an adult and or married.

b. Objects of Sale and Purchase Agreement

Objects in the sale and purchase are all movable objects in this because they can be moved, for example cars, motorcycles and others and immovable objects based on objects that cannot be moved, either according to the pile, weight, size, and scale. . Meanwhile, what are not allowed to be traded are:

- 1) Other people's goods or goods
- 2) Goods that are not permitted by law such as illegal drugs.
- 3) Contrary to order, and
- 4) Good morality

Article 1457 of the Civil Code uses the term *zaak* to determine what can be the object of buying and selling. According to Article 499 of the Civil Code, *Zaak* is goods or rights that can be owned. This means that what can be sold and bought is not only owned goods, but also a right to an item that is not owned.

C. Similarities between conventional buying and selling and buying and selling of electronic commerce

Electronic commercial transactions (electronic commerce), is a form of modern business that is non-face and non-sign. Electronic commercial transactions (electronic commerce) have several special characteristics, including that these transactions are paperless (without written documents), borderless (without geographic boundaries) and the parties conducting the transactions do not need to meet face-to-face. Electronic commercial transactions (electronic commerce), refers to all forms of commercial transactions based on electronic processing and data transmission through electronic media.

Meanwhile, conventional buying and selling transactions are buying and selling processes that are carried out face-to-face between the seller and the buyer. In buying and selling transactions, both conventional and electronic commerce have similarities, it can be seen from the equality of rights and obligations of buyers and sellers in terms of buying and selling.

4. CONCLUSION

In the practice of electronic commerce and the Civil Code, the sale and purchase agreement is regulated in Articles 1457-1540 of the Civil Code. In Article 1457 of the Civil Code, the definition of buying and selling is an agreement that binds the seller to promise to deliver an item/object (*zaak*), and the other party acting as the buyer binds himself to promise to pay the sale and purchase price. has given its own name and provided specific arrangements for this agreement. Named agreement arrangements can be regulated in the Civil Code and the Commercial Code. As for how to transact in the Civil Code, the main elements in a sale and purchase agreement are goods and prices, where between the seller and the buyer there must be an agreement on the price and the object that is the object of sale and purchase. A valid sale and purchase agreement is born if both parties have agreed on the price and goods. The consensual nature of the sale and purchase agreement is confirmed in Article 1458 of the Civil Code.

In connection with Article 1320 concerning Article 1320 of the Civil Code, the conditions for the validity of the agreement have been regulated in which in general there are 2 (two) main requirements as elements or elements of contract formation, namely subjective conditions (agreement and skills of the parties) and objective conditions (certain matters and

causes). lawful). If these subjective conditions are not met, then the legal consequence is that the e-commerce sale and purchase contract is in danger of being canceled (vernietigbaar). Through the conditions for the validity of the contract in Article 1320 of the Civil Code which is applied and integrated into e-commerce buying and selling transactions, it will be possible to measure the extent of the validity of e-commerce buying and selling transactions.

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