

Validity of Electronic Signature on Buying Agreements in State Legal Perspective (Study of Sale and Purchase Agreements Between Pt. Juang Abadi Alam and Australian Rural Exports Pty Ltd)

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ABSTRACT

Electronic transaction agreement between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd in the perspective of the ITE Law is legal and has legal consequences, this is reinforced in Article 11 paragraph (1) of Law Number 19 Year 2016 concerning Amendment to the Second Law Number 8 Year 2011 concerning Information and Electronic Transactions which explains that: "Electronic Signatures have legal force and legal consequences." In another perspective, Article 1320 of the Civil Code sees that an agreement is only valid if it meets the subjective requirements and objective conditions which the parties will meet each other. In addition, the potential risks in electronic transactions are very contrary to the expected effectiveness, such as security aspects where the use of electronic information uses public networks, where everyone can find out information about the electronic transaction, besides when one party does not implement the transaction electronics that have been agreed with other parties, then this will have an impact on the loss of interested parties and parties that use information technology for the sale of an item or service.

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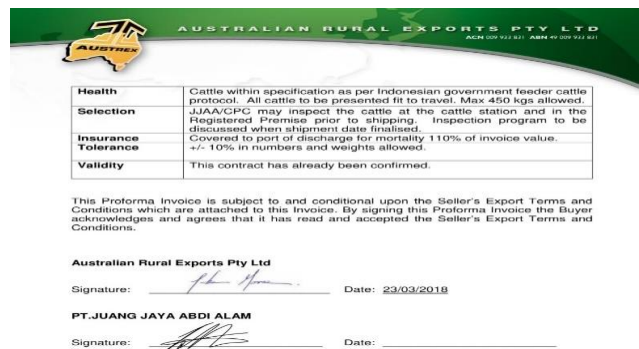
1. INTRODUCTION

E-commerce trading transactions occur because there is an agreement through a sale and purchase agreement between producers and consumers based on the Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Transaction Information (ITE). In the agreement the seller has proposed what conditions or clauses the consumer must fulfill. If the consumer agrees on the terms and conditions proposed by the seller, an agreement will occur even though the sale and purchase agreement is agreed upon through an electronic signature.[1] The existence of electronic contracts in Indonesia is still a matter of debate, especially regarding the extent to which the requirements for the validity of an electronic agreement are fulfilled and the authenticity of signatures as a means of verification in agreements made electronically.

In reality, an agreement is usually interpreted as an agreement that is written in paper-based form and if necessary, it is stated in the form of a notary deed so that the contract has perfect proof power. In Article 1320 of the Civil Code, an agreement is only valid if it meets the subjective and objective requirements. In conventional transactions where the parties will meet each other, it is certainly not difficult to see whether the agreement made has fulfilled these subjective and objective requirements. Explanation of Law Number 19 Year 2016 concerning Second Amendment to Law Number 8 Year 2011 concerning Information and Electronic Transactions explains that: "Electronic transactions are face-to-face, do not use

original signatures and without regional boundaries, so that someone can conduct electronic transactions with other parties even though they are in different countries using information technology. "For example, electronic transactions between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd which is agreed to using the electronic signature as follows:

Picture 1



Related to the example of an electronic agreement that was established between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd stated above, in the perspective of the ITE Law the validity and legal consequences of electronic signatures are valid and have legal consequences, this is confirmed in Article 11 paragraph (1) of Act Number 19 In 2016 concerning the Second Amendment to Law Number 8 Year 2011 concerning Information and Electronic Transactions, it has been explained that: "Electronic Signatures have legal strength and legal consequences as long as they fulfill the following

requirements: a. data on the manufacture of Electronic Signatures related only to Signatories; b. data on making Electronic Signatures during the electronic signing process are only in the power of the Signatory; c. any changes to the Electronic Signature that occur after the time of signing can be known; d. any changes to Electronic Information related to the Electronic Signature after the time of signing can be known; e. there are certain ways used to identify who the Signatory is; and f. there are certain ways to show that the Signatory has given approval of the relevant Electronic Information. "

But in its development, the security aspect in information in electronic transactions must be considered, when this information becomes corrupt, there will be risks that must be borne by one party, whether sending, requiring, or just looking at it, due to the use of electronic information, using public networks, where everyone can know the electronic information, or when one of the parties does not carry out the performance of an electronic transaction agreed upon by the other party, then this will have an impact on the parties concerned and those who use information technology for the sale of an item or services. The description of electronic information that covers a broad spectrum becomes essential in virtual activities, especially in e-commerce activities.

Preventively it will become a problem then when the validity of a signature in a business transaction is still under debate, which is when the transaction is carried out without a meeting between the parties as applied by PT. Juang Abadi Alam with the Australian Rural Exports Pty Ltd mentioned above has the potential to risk the security aspects of business information contained in it. Respectively buying and selling transactions conducted by PT. The Juang Abadi Alam with the Australian Rural Exports Pty Ltd which only relies on trust between parties certainly does not require a real meeting, when disputing, it will be a problem in civil procedural law, because the aspect of proof of electronic signatures is difficult to prove in legal civil law recommends that the signing be carried out in paper and if necessary, be written in the form of an authentic deed so that the contract has the power of proof that is perfect.

2. RESULTS AND DISCUSSION

A. *Validity of an Engagement Made by Using Electronic Signatures in the Perspective of Civil Law*

Electronic signatures are the result of the application of computer techniques to information, whereas in general, while the function of signatures in a letter is to ensure identification or determine the truth of the characteristics of the signatory, in addition, the guarantee guarantees the existence of the contents contained in the agreement.

Electronic signature in business transactions conducted by PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd made using cryptographic techniques. Electronic signature between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd is an effective way to guarantee the authenticity of an electronic document and keep the sender of the document at a time unable to deny that he has sent the document.

The use of digital signatures conducted between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd requires two processes, namely from the signatory and from the recipient. In detail the two processes can be explained as follows:

1. Formation of digital signatures using hash values generated from documents and private keys that have

been previously defined. Hash is an algorithm used to make a fingerprint type. One hash can usually only be used in one document. To ensure the security of hash values, there should be a very small possibility that the same digital signature can be generated from two different documents and private keys.

Digital signature verification is the process of checking digital signatures by referring to the original document and the public key that has been given, in this way it can be determined whether the digital signature is made for the same document using the private key corresponding to the public key.[2]

2. To sign a sale and purchase agreement between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd, the signatory first limits exactly which parts will be signed. The restricted information is called a message. Then the digital signature application will form a hash value into a digital signature using the private key. The digital signature that is formed is unique both for messages and also private keys. Generally, a digital signature is included in the document and also stored with the document as well. However, digital signatures can also be sent or stored as separate documents, as long as they can be associated with the document.[3] Because digital signatures are unique to the document, the separation of digital signatures like that is unnecessary. The process of establishing and verifying digital signatures fulfills the most important elements expected in a legal purpose, namely:

1) *Signer Authentication*

If the public key pair and private key are associated with the legitimate owner that has been defined, then the digital signature will be able to connect / associate the document with the signatory. Digital signatures cannot be faked, unless the signer loses control of his private key.

2) *Document Authentication*

Digital signatures also identify signed documents with a much higher degree of certainty and accuracy than signatures on paper.

3) *Affirmation*

Creating a digital signature requires the use of the private key of the signer. This action can confirm that the signatory agrees and is responsible for the contents of the document.

4) *Efficiency*

The process of establishing and verifying digital signatures provides a high level of certainty that the signature is a valid and authentic signature of the owner of the private key. With digital signatures, there is no need for verification by looking carefully at the signatures contained in the document with the original signature example as is usually done in manually checking the signature.[4]

In connection with the legal terms of the electronic sale and purchase agreement that was carried out between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd, based on the provisions of Article 1320 of the Civil Code does not really matter about the media used in the transaction, or in other words Article 1320 of the Civil Code does not require the form and type of media used in transactions. Therefore, it can be done

directly or electronically. However, an agreement can be said to be valid if it has fulfilled the elements referred to in Article 1320.

Similarly, the principle of freedom of contract is adopted by the Civil Code, where parties can be free to determine and make an agreement or agreement in conducting transactions in good faith (Article 1338). So whatever the form and media of the agreement, it remains valid and binding on the parties because the agreement is the law for those who make it. Problems will arise from a transaction when one party breaks a promise. Settlement of the problems that occur, is always related to what is evidence in the transaction, including in the event that transactions are carried out electronically. This is because the use of electronic documents or data as a result of transactions through electronic media, has not been specifically regulated in the applicable procedural law, both in Civil Procedure Law and in the Criminal Procedure Code. Basically the material law has been expressly regulated in Article 15 paragraph (1) of Law Number 8 of 1997 concerning Company Documents which states that: "Company documents that have been published in micro films or other media and / or printed results are evidence that legitimate."

Furthermore, if we consider the provisions in Article 1 point 2 concerning the definition of documents and are related to the provisions of Article 12 paragraph (1) and paragraph (2) of Law Number 8 Year 1997 jo. Article 1320 of the Civil Code, transactions through electronic media are lawful.

The ITE Law has a principle including technology neutrality or freedom to choose technology, this includes choosing an electronic signature type that is used to sign an electronic information and / or electronic document. The neutral principle of technology in the ITE Law needs to be understood carefully, and the parties conducting electronic transactions should use electronic signatures that have legal force and legal consequences as stipulated in Article 11 paragraph 1 of the ITE Law.[5]

So that the validity of the electronic signature between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd has legal strength and legal consequences as long as it meets the following requirements under Article 11 of Law No. 19 of 2016 concerning Information and Electronic Transactions, namely:

- 1) Data on making electronic signatures related only to signatories.
- 2) Data on making electronic signatures at the time of the electronic signing process is only in the power of the signatory.
- 3) All changes to the electronic signature that occur after the time of signing can be known.
- 4) All changes to electronic information related to the electronic signature after the signing date can be known.
- 5) There are certain ways used to identify who is the signatory.
- 6) There are certain ways to show that the signatory has given approval of the relevant electronic information.

Indonesia has issued a Legal Basis for the use and legality of electronic Signatures. In addition to regulating the ITE Law, the electronic / digital signature is regulated in Government Regulation Number 82 of 2012 concerning Electronic Transactions as the implementing regulation of the ITE Law. This legal basis becomes important and synchronous and as a basis and reference that electronic documents signed between

PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd digitally is legal, just like conventional signatures in general.

B. The Legal Strength of Electronic Signatures in Engagement

Electronic signature organizers must have a system of security and reliability to prove that information attached via electronic signatures cannot be changed and cannot be rejected. When a dispute occurs, the electronic signature organizer must be able to prove the reliability of the system through expert verification.[4] That is, there needs to be a third party that certifies the electronic signature, which shows the status of the legal subject of the signatory, then ensures that the signatory subject does not reject the document he made later. The role of this certification is similar to the role of a notary who conducts face-to-face physical verification and keeps original documents to guarantee authenticity.

Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions has arranged two electronic signature models, namely: not certified (such as signature images which are then scanned and attached to documents) and certified. Certified signatures must be made using the services of an electronic certification provider and proven by an electronic certificate. Asymmetric cryptography technology through Public Key Infrastructure can be considered a digital signature, because it uses an electronic signature certification method that is able to provide the highest level of verification and authentication.

In addition to these methods, there are also various other verification methods, such as PINs, usernames / passwords that are equipped with authorization tokens, or biometric methods (fingerprint or retina). The requirement is at least two levels of authentication to prove "what you have", "what you know", or "who you are" (Article 39 of Government Regulation 82 of 2012). As explained in the previous section, the ITE Law has a neutral principle of technology or freedom of choice in technology. This includes choosing the type of electronic signature that is used to sign an electronic information and / or electronic document. The neutral principle of technology needs to be understood carefully, and the parties conducting electronic transactions should use electronic signatures that have legal force and legal consequences as stipulated in article 11 paragraph 1 of the ITE Law.

E-commerce business between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd is a form of trading business with a wide range and can be done by crossing the borders of a country. Therefore, it should be regulated globally, especially with regard to contracts made in the process of carrying out the business. The ITE Law provides a legal basis regarding the legal strength of electronic evidence and the formal and material requirements of electronic evidence to be accepted at trial. Electronic Evidence is Electronic Information and / or Electronic Documents that meet the formal requirements and material requirements stipulated in the ITE Law. Article 5 paragraph (1) of the ITE Law stipulates that: Electronic Information and / or Electronic Documents and / or their printouts are valid legal evidence.[6]

Electronic Information and Electronic Documents that will become Electronic Evidence Tools (Digital Evidence). While the printed results from Electronic Information and Electronic Documents will be proof of the letter.

Article 5 paragraph (2) of the ITE Law stipulates that Electronic Information and / or Electronic Documents and / or their printouts constitute an extension of legal legal evidence in accordance with applicable procedural law in Indonesia. The

meaning of expansion here must be related to the type of evidence stipulated in Article 5 paragraph (1) of the ITE Law.[7]

The ITE Law also confirms that in all applicable procedural laws in Indonesia, Electronic Information and Documents and their printouts can be used as legal evidence. Electronic Information and Documents can be used as legal evidence as stipulated in the ITE Law that there are formal requirements and material requirements that must be fulfilled, such as: Formal requirements are regulated in Article 5 paragraph (4) ITE Law, namely that Information Electronics is not a document or letter that according to legislation must be in written form. While the material requirements are regulated in Article 6, Article 15, and Article 16 of the ITE Law, which in essence Information and Electronic Documents must be guaranteed the authenticity, integrity and availability. To ensure the fulfillment of the material requirements in question, in many cases digital forensics is needed.

Electronic documents made by PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd and signed with a digital signature can be categorized as written evidence in a business contract agreement, including in this case the commerce sale and purchase agreement. In tandem with the aforementioned explanation, the paperless transaction agreement on electronic transactions has fulfilled the legal requirements of the agreement or legal document, because on paperless transaction electronic transaction contracts there is an electronic signature which has the same function and purpose as the signature on a conventional transaction contract, namely as authentication and a sign of agreement or agreement. Compliance with the terms of the agreement in conventional transactions also applies to the making of electronic document agreements as stipulated in article 1320 of the Civil Code in conjunction with article 1338 of the Civil Code.

In addition, it can be concluded that electronic signatures on electronic documents have legal force as evidence according to civil procedural law, in addition to having fulfilled the material requirements and formal requirements in the agreement, a sale and purchase agreement with an electronic signature is an extension of evidence letters and can even be authentic letters because the use of electronic signatures is supported by the existence of a Certification Authority (CA) institution which is an independent third party and acts as an authority, as well as the existence of a Reliability Certification Agency.

3. CONCLUSION

The validity of a sale and purchase agreement between PT. Juang Abadi Alam with Australian Rural Exports Pty Ltd conducted using electronic signatures in the perspective of civil law is valid, this is based on Article 5 paragraph (1) of the ITE Law explaining that: Electronic Information and / or Electronic

Documents and / or the printouts are legal legal evidence. Electronic Information and Electronic Documents that will become Electronic Evidence Tools. While the printed results from Electronic Information and Electronic Documents will be proof of the letter.

Furthermore, the electronic signature in the sale and purchase agreement has contained the formal and material requirements of an agreement. The formal requirement is regulated in Article 5 paragraph (4) of the ITE Law, namely that Information or Electronic Documents are not documents or letters which according to the law must be in written form. Whereas the material requirements are regulated in Article 6, Article 15, and Article 16 of the ITE Law, which essentially means that information and electronic documents must be guaranteed authenticity, integrity and availability, in addition to supporting the material requirements of an electronic sale and purchase agreement also regulated in Article 15 paragraph (1) of Law Number 8 of 1997 concerning Company Documents stating that: "Company documents that have been published in micro films or other media and / or their printouts are valid evidence." Furthermore, if we pay attention to the provisions in Article 1 number 2 concerning the definition of documents and associated with the provisions of Article 12 paragraph (1) and paragraph (2) of Law Number 8 Year 1997 jo. Article 1320 of the Civil Code, transactions through electronic media are lawful.

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