

Validity of the Evidence of the Agreement Through Electronics Reviewed from Article 1866 Civil Code

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ABSTRACT. The absence of a law that specifically regulates the agreement of users' personal data via electronic has resulted in frequent legal problems, either involving problems of originality, authenticity, or evidencing. This writing focuses on legal problems, they are first, the validity of an agreement via electronic in terms of Article 1866 of the Civil Code; second, what the legal consequences of an electronic agreement are as viewed by Article 1866 of the Civil Code. The purpose of this research is to find out the proof of agreements made electronically and to find out the validity of agreements made electronically in terms of Article 1866 of the Civil Code and to find out the legal consequences of agreements via electronic in terms of Article 1866 of the Civil Code. This study uses literature research, namely secondary data research in the form of primary, secondary and tertiary materials. The results show that agreements made electronically/digitally have the same evidencing power as agreements made manually. The law recognizes an agreement electronically means as legal as it is carried out manually.

Keywords: *Validity, Evidentiary, Agreement through electronic.*

1. INTRODUCTION

With globalization, especially in the field of electronic technology, today the use of the internet and business via the internet is growing very rapidly. Seeing such a phenomenon, the rule of law is required to intervene, so that in conducting electronic transactions the word order and certainty and justice can be achieved for the parties in conducting transactions via electronic whatever the form of the transaction.

In making the agreement, the elements as stated in Article 1320 of the Civil Code must be fulfilled that "For the validity of the agreement, four conditions are needed:

- to agree that those who bind themselves;
- the ability to make an engagement;
- a certain thing;
- a cause that is lawful.

If the agreement has fulfilled the legal requirements of the agreement, the agreement binds both parties and must be based by good faith

Law No. 19 of 2016 concerning Electronic Information and Transactions, hereinafter referred to as (UUITE) Article I paragraph (2) states that "Electronic Transactions are legal acts carried out using computers, computer networks, and / or other electronic media. Meanwhile, electronic evidence can be found in Law Number 11 of 2008 concerning Electronic Information and Transactions Article 5

paragraph (1) which has been amended to Law ITE Number 19 of 2016 states that: "Electronic Information and / or Electronic Documents and / or the printout is valid legal evidence".

But, what has been formulated in Law No. 19 of 2016 concerning Electronic Information and Transactions, hereinafter referred to as (UUITE) Article I paragraph (2), there is no legal certainty. In Article 1866 of the Civil Code (BW) and Article 184 of the Criminal Code, the regulation regarding this matter is uncertain, so the existence of electronic evidence is often still multiply interpreted, and inconsistent in its application when a dispute occurs [1].

The diversity of laws and jurisdictions that binds both parties raises doubts about the laws and legal jurisdictions that bind both parties in making electronic agreements. Until now, there are still those who argue that the agreement made electronically is invalid because it is considered unreal. It is still in cyberspace or in fantasy. Actually, the existence of an agreement via electronic means that there are two parties, who really exist, but not in cyberspace or in imagination [2].

Electronic transactions can be carried out directly by sellers and buyers or can also be done using intermediary applications available in cyberspace, for example Tokopedia, Shopee, and Bukalapak. In electronic transactions, of course it cannot be separated from the data that is given electronically; this is used to expedite the transaction itself. Of

course the data that has been provided to the provider of electronic transaction intermediary applications is data that must be protected by the provider, because if the data is known by other parties, the transaction will not be in accordance with what the transacting parties want. This case happened to the electronic transaction intermediary application provider Bukalapak, where 91 million application users data were leaked [3]. Then, Bukalapak was sued, the plaintiff was the Indonesian Consumer Community (KKI), with Defendant I, the Minister of Communication and Informatics (Menkominfo) and PT Tokopedia as Defendant II. In this session, KKI was accompanied by legal counsel Chandra Hutabarat. This case was registered at the Central Jakarta District Court on May 8, 2020 with Number: 235 / PDT.G / 2020 / PN.JKT.PST with a case classification of Unlawful Acts. There are six demands submitted by KKI to Defendants I and II. One of them is a request for the Minister of Communication and Information to revoke the "Electronic System Operation Registration Certificate" on behalf of PT Tokopedia. They also asked the Menkominfo to punish Tokopedia by paying an administrative fine of Rp. 100 billion which must be deposited into the state treasury no later than 30 calendar days after the verdict of the case is legally binding [4]. In this dispute, of course, it cannot be separated from the use of electronic evidence from both the plaintiff and the defendant.

From the example of this case, in this case the author will dissect Article 1320 of the Criminal Code regarding the validity of the agreement, Law Number 19 of 2016 concerning Electronic Information and Transactions, then Article 163 HIR in conjunction with Article 1866 of the Civil Code regarding types of evidence.

Formulation of the problem

Based on the background that has been described above, the main problem in this paper is the first, how is the validity of the agreement via electronic in terms of Article 1866 of the Civil Code. And second, what are the legal consequences of electronic agreements in terms of Article 1866 of the Civil Code.

2. RESEARCH METHOD

In accordance with the research objectives, the type of research used is descriptive normative juridical research, which is research aimed at finding and formulating legal arguments in the analysis of the subject matter. Normative legal research can be defined as research used to study legal principles and principles. The data used in this sociological legal

research (socio-legal research) is secondary data and is strengthened by primary data or field data. The primary data is the result of interviews from officials of the Ministry of Communication and Information and the Tangerang District Court.

3. RESULT AND DISCUSSION

3.1 *The validity of the Agreement through Electronic Viewed from Article 1866 of the Civil Code.*

Law on Telecommunication Number 36 of 1999 concerning Telecommunication in Article 2 states that telecommunication is carried out based on the principles of benefit, fairness and equality, legal certainty, security, partnership, ethics, and self-confidence. Article 3 states that telecommunication is carried out with the aim to support the unity and integrity of the nation, improve the welfare and prosperity of the people in a just and equitable manner, support economic life and government activities, and improve relations between nations.

In Indonesia itself, even though it does not yet have a separate Personal Data Protection Law, it already has a Law on Electronic Information and Transactions which regulates the use of information through electronic media. This law, among other things, regulates the use of information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned, as stated in Article 26 paragraph (1) of the Law on Information and Electronic Transactions which states that: "Unless otherwise stipulated by laws and regulations, the use of any information through electronic media relating to a person's personal data must be done with the consent of the person concerned. Therefore, if any personal data is violated, such as the case of leaking of personal data, the party who feels that their rights are being violated can file a lawsuit.

Electronic contracts have been recognized in Article 8 paragraph (1) of the United Convention on the Use of Electronic Communications in International Contracts as legal contracts and binding on the parties. Therefore, business actors often use the ease and efficiency of electronic contracts in trading activities [5].

According to Arif Budiman, a judge at the Tangerang District Court when being interviewed explained Article 5 paragraph (1) of the Electronic Information and Transaction Law, stating that: "Electronic Information and / or Electronic Documents and / or their printouts are valid legal evidence ". In addition, electronic evidence opens up space for judges to accept other evidence and be recognized as evidence [6].

Josua Sitompul as the Coordinator for Law and Cooperation of KOMINFO in his answer to our Research and Research questions stated that there are several legal innovations that can be seen from the regulation of the ITE Law and PP 71/2019, for example:

Recognition of information and electronic documents as valid evidence, as regulated in Article 5 and Article 6 of the ITE Law; and

Recognition of electronic signatures that have functions such as valid signatures, as regulated, for example in Article 11 of the ITE Law and Article 59 PP 71/2019

In the trial, to provide certainty to the judge, both parties must be able to prove something that has actually happened so that the judge feels sure that what is being proven is true. This is what is called proof.

Furthermore, Josua Sitompul said that "One of the" problems with the authenticity, authenticity and integrity of the electronic agreement "is to prove that the information or document is authentic, for example: how to prove that the parties have given consent electronically with an electronic signature? Article 5 paragraph

of the ITE Law strictly regulates that Information or Electronic Documents and / or their printouts are valid legal evidence. What is meant by Electronic Information is what is meant in Article 1 point 1 of the ITE Law. Meanwhile, what is meant by Electronic Documents is as regulated in Article 1 number 4 of the ITE Law. Electronic information and documents can be distinguished but cannot be separated. In simple terms, the difference between Electronic Information and Electronic Documents is that Electronic Information is data while Electronic Documents are a format of data. For example, in files in the form of .doc, .pdf, .mp3, and .jpg, Electronic Information is the words or writings, letters, numbers contained in the file. While the Electronic Documents are .doc, .pdf, .mp3, .jpg." [8]

Furthermore, Josua Sitompul said that "Then, Article 5 paragraph (2) of the ITE Law regulates that Electronic Information and / or Electronic Documents and / or their printouts are an extension of valid evidence in accordance with the applicable procedural law in Indonesia. This arrangement is an innovation in the ITE Law to bridge the old rules and principles regarding evidence (which must be in physical form) and technological developments. The expansion of valid evidence in the Civil Procedure Code implies:

1. to expand the scope or scope of evidence provided for in Article 1866 of the Civil Code, namely to expand written evidence or letters. In this case, the expansion is a print out of information or electronic documents.
2. constitutes other evidence, namely increasing

the number of evidence provided for in Article 1866 of the Civil Code, namely information or electronic documents and is referred to as electronic evidence. [9]

According to Sudikno Mertokusumo that "Proof contains logical, conventional and juridical meanings. In a logical sense, it is to provide absolute certainty. In the conventional sense it means certainty only not absolute certainty. In a juridical sense, it is proof that provides the truth that applies only to the parties in a case" [10].

Evidence in civil procedural law varies, as stipulated in article 164 HIR and Article 1866 of the Civil Code, namely:

- 1) Writing
- 2) Witnesses
- 3) Prejudices
- 4) Confession
- 5) Swearword

Josua Sitompul, Koordinator Hukum dan Kerjasama, Kementrian Komunikasi dan Informatika Direktorat Jenderal Aplikasi Informatika Sekretaris Direktorat Jenderal Aplikasi Informatika, Jakarta, 11 September 2020

The development of electronic evidence in good practice in the form of information or electronic documents and other computer outputs, the use of teleconferences in witness examinations, as well as the use of other electronic devices in evidence, if linked to the reform of the national civil procedural law, have not been accommodated in the civil procedural law that will be established, because the Civil Procedural Law Bill does not explicitly regulate such electronic evidence. The existing arrangements for electronic evidence are only at the level of material law, including in the Law on Information and Electronic Transactions [1].

Josua Sitompul said that "The Civil Code is a product of Dutch law that has been accepted as law in the Indonesian legal system. In this case, the principle applies that for the regulation of the same thing, a law which then overrides the previous law. The Civil Code was a colonial product, which at that time did not yet develop information and communication technology, especially the internet. If the principles or rules that are not in accordance with the times are maintained, progress in the implementation of e-commerce is difficult to achieve. If the Civil Code regulates that what can be used as evidence is a letter, while the ITE Law regulates that electronic information and documents and their printouts are valid evidence and extends valid evidence in accordance with procedural law in Indonesia, then there must be changes both paradigmatically and practical regarding the receipt of electronic evidence in courts in Indonesia. The problem of the difficulty or expense of digital

forensics cannot negate the vital role of digital forensics in proving electronic evidence. Various community activities have shifted from physical to electronic. Therefore, proper handling is needed by using electronic-based paradigms and methods.¹²

3.2 Legal Consequences of Agreements Via Electronic Viewed From Article 1866 of the Civil Code.

Legal action is an act of a legal subject (human or legal entity) that is done deliberately to create rights and obligations. The result of this action is regulated by law, because it can be considered as the will of the one who carries out the law. Legal action only occurs when there is a statement of will. The existence of a statement of will requires that person's will to act, to issue / cause consequences regulated by law¹³.

In general, the definition of an agreement is the act of two or more people, in which the two people promise to do what has been agreed upon, and will result in the legal consequences of the agreement, the legal consequence is that the agreement must be carried out in good faith and cannot be canceled by either party.

According to M. Yahya Harahap that "An agreement is a legal relationship between two or more people in an asset in which one party is entitled to something and the other is obliged for an achievement." [14].

According to Subekti that "An agreement is an event in which a person promises to another person or where two people promise each other to carry out something".^[15]

According to Article 1313 of the Civil Code says that "An agreement is an act whereby one or more people bind themselves to one or more other people".

Article 1320 of the Civil Code states that "For the validity of an agreement, four conditions are needed:

- to agree that those who bind themselves;
- the ability to make an engagement;
- a certain thing;
- a cause that is lawful.

The agreement from the validity of the agreement can be interpreted as a statement of the will, an agreement will only occur if there are two or more parties who mutually express their intention to do something.

There are 4 theories to say that an agreement has been reached, namely [16]:

- Pronunciation Theory
- Delivery Theory
- Knowledge Theory
- Acceptance Theory

The word competent in this case is a legal subject who is capable of taking legal actions or legal events who can be accountable for themselves without being represented and by other people. A legal subject that is

said to be competent is if the legal subject is a person, then that person is an adult. The adult limit is approximately 21 years old or has already married even though the person has not reached the age of 21 years.

The object of an agreement is achievement, in that achievement the object must be clear, the light can be determined, both in number and in kind. The object of the engagement must be certain and enforceable, this is what is called a certain thing. An example of a buying and selling agreement for clothes, the color, size, price and material must be clear.

An agreement whose object of achievement is contrary to law, decency and public order, then the agreement is null and void, the legal consequence of which does not result in legal consequences for both parties where the parties have committed a criminal act. For example, making an agreement where the object of achievement is gambling, the two parties cannot sue each other because they have violated public order.

In Article 1338 of the Civil Code it states that "All agreements that are legally made are valid as law for those who make them. An agreement cannot be withdrawn other than by the agreement of both parties, or for reasons which are stated by law to be sufficient for that. An agreement must be carried out in good faith".

According to Subekti, "In agreement law, a principle, which is called the principle of consensualism, applies. The meaning of the word as a consensualism is that basically the agreement and commitment that arises because of it has been born since the moment the agreement was reached. In other words, the agreement is valid if it has agreed on basic matters and no formalities are needed. [15]".

An agreement via electronic is an agreement made by two or more people via the internet, in which the parties are not directly dealing like an agreement made via manual, they are free to enter into an agreement regardless of time, day and place limits, both within countries and between countries.

According to Arif Budi Cahyono, a judge at the Tangerang District Court when being interviewed regarding the agreement via electronic said that: "With digital forensics. Digital forensics is a method used to identify, collect, analyze and test digital evidence for a legal case [6].

Furthermore, Arif Budi Cahyono, judge at the Tangerang District Court, when interviewed added that, "There is no legal rule relating to e-commerce. Currently using the standard agreement "terms of agreement" on the e-Commerce page. Once we click "I accept", it means that we automatically submit and bind ourselves to the agreements and regulations of the e-Commerce that we use.[19]

4. CONCLUSION

- An agreement made via electronic / digital has the same proof power as an agreement made via manual. If there is a dispute, it can be brought to legal channels, where if it comes to trial the judge can use a system of evidence with progress towards open evidence. Evidence obtained from anywhere as long as the truth can be accepted as long as it does not conflict with public order, considering that in transactions in today's digital era we will often use online media. So the validity of the printout of electronic information depends on the validity of the information and electronic documents.
- An agreement made via electronic is evidence of an action or event that has legal consequences for the parties. An agreement via electronic is valid in terms of article 1866 because it is recognized as valid evidence as done through a manual, as long as it meets the elements of the validity of the agreement, and causes legal consequences of the agreement. Evidence obtained from anywhere as long as the truth can be accepted as long as it does not conflict with public order, considering that in transactions in today's digital era we will often use online media.

5. SUGGESTIONS

- To the Legislative Institution, To protect personal data so that in electronic transactions there is legal certainty, it is necessary to have a Personal Data Protection Law.
- To the judiciary to provide legal certainty, especially for evidence other than those in Article 1866 of the Civil Code.

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