

Digital Authenticity of Trade Agreements in the Era of Globalization

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ABSTRACT

Digital systems can ease the sellers and buyers worldwide and conduct the buying and selling transactions from electronic devices based on the communication. Information technology give impacts to the validity of agreement in digital trade and the factors of the obstacles to the validity of agreements. Article 1320 in the Civil Code is about the principal basis to make the legality of the agreement made by the parties. The article has four conditions of agreement's validity: agreement, the ability to make alliances, a sure thing, and also lawful reason. Agreements that do not fulfill the agreement and proficiency, resulting in the agreement can null and void, if there is the agreement that does not fulfill the requirements of particular object is not allowed, resulting in the agreement is null and void.

Keywords: *Authenticity, Covenants, Digital.*

1. INTRODUCTION

Information technology and telecommunications development have resulted in various telecommunication facilities and sophisticated information technology products that can become one with all information media. During this era of globalization of communication networks, cyberspace becomes popular and makes the world closer while fading its borders and sovereignty and order of society.¹ Technological advance have brought rapid changes and shifts in an infinite life in this era of globalization. Globalization is a process of simplification of various controls that hinder the movement of trade and capital performance to stretch the reach as wide as the globe.

Cyberspace and information technology are innovations in human civilization that impact the human life. Human activities alterate through taking advantage of efficiency, effectiveness, and also mobility. The advancement of this technology also has problems when it is used inappropriately. Cybercrime is about an unprecedented new form of the threat to the world community. Hacking, Cracking, Defacing, Carding, Phishing, Spamming, Scam refer to a series of cybercrime that is certainly dangerous and can cause actual harm to many parties. There has been born a ba-ru legal regime known as the cyber law. Cyber Law is used for the legal terms related to the utilization of information technology. Cyber activities as the actual legal actions and actions.

So far, especially among jurists, there is a tendency to put forward some aspects of the law in every discussion of efforts to face high-tech crime. In the spreading of cybercrime in Indonesia, for instance, the failure to uncover the perpetrators is due to Indonesia's lack and imperfect cyber law. In comparison, social, economic, political, and cultural aspects are rarely worked on.

The Government considers the Law on Information and Electronic Transactions necessary for Indonesia because currently, Indonesia has used information technology widely and efficiently. Thus, the government, on April 26th, 2008, passed the enactment of the Information and Electronic Transactions Act. The Information and Electronic Transactions Act is used to provide many benefits, like ensuring legal certainty for people who conduct electronic transactions, encouraging economic growth, preventing the occurrence of information technology-based crimes, and also protecting the public by utilizing information technology.

The establishment of the Information and Electronic Transactions Law is a form of "Legal Renewal" as the influence of 7 aspects of law reform, such aspects of science and technology, which as known eight aspects of law reform, among others, aspects of globalization, political aspects, economic aspects, educational aspects, aspects of science and technology, aspects of legal supremacy and aspects of Islamic law perspective. The Law on Information and Electronic Transactions was established to maintain the pace with science and

technology in the information technology and electronic transactions. There is no legal vacuum in the case of unlawful acts.

Digital systems conduct trade transactions from the back of computers connected to the virtual world network. With Electronic Funds Transfer technology, remittances between economic actors in distant parts of the world can be carried out in seconds. The development of digital transactions shows the increase in developed countries and developing countries, especially Indonesia. Based on this background, the author is interested in discussing the legality of agreements in the digital trade and the elements that become the obstacles to determine the validity of agreements in the digital trade.

2. RESULT AND DISCUSSION

2.1 The Authenticity of Agreements in Digital Trade in the Era of Globalization

The characteristics of information technology development are characterized by the following signs: speed, capacity, alignment, ease, capability, range, and openness. In the field of speed, intra-system transmission is accelerating using superconductors and fiber optics.

Information technology successfully synchronizes various technologies and digital media into what is popularly called telematics. Cyber technology has made companies do business activities such as online marketing, distance selling, and the digital world.

Centre established by the Melbourne Institute of Technology, The Electronic Trading Opportunities. The establishment of a provider in cyber communication for international trade is directed to facilitate trade transactions. Starting from an agreement/relationship via cyberspace gives birth to an agreement or transaction between accessors. Organization for Economic Cooperation and Development, efforts that have been made are the implications of the digital world on various things, including framework, economic information, content, security, privacy, cryptography, access, telecommunications policy, enterprises, policies on consumers, taxation, and also tourism.

United Nations Commission on International Trade Law sees this digital issue as the urgent to be formulated immediately. In its development, the digital world issue is in academic discourse, especially Indonesia, and there is no regulation through the law. Transactions through the digital world have not been regulated, but the United Nations Commission on International Trade Law has done several efforts to formalize the United Nations Commission on International Trade Law Model Law on Electronic Commerce. This model law was held in addition to article 5 in 1998. The legal concept is used to respond and anticipate the modern business techniques using cyber-based electronic communications. The legal concept proposed by the United Nations Commission on International Trade law consists of two parts, namely part

I is the digital world in general (Article 1 to Article 15) and Part II of the digital world and the field of particular fields (Article 16 to Article 17).

World Trade Organization has emphasized the development of the digital world in the business world. With the presence of the digital world as the practical, efficient, fast, and also accurate alternative will lead to changes in industrial activities, like the insurance industry, banking, role-playing services, travel bureaus, telecommunications, advertising, also industries that provide medical and educational services. Even in the public sector, it will give the right solution in government services and investment. In addressing the digital world, the World Trade Organization, with several organs in it, conducts research, including the Committee for Trade and Development and the Council for Trade-Related Aspects of Intellectual Property Rights.

The digital world is increasingly popular in the information-based businesses, but it does not mean the digital world has no weaknesses. The law's success in playing role in the economic development, like in developed countries, is not as simple as developing countries. This is because of the still classic solid issues such as low levels of welfare and education.

2.2 Barriers to The Authenticity of Digital Trade Agreements

The elements of the agreement are essentialia elements that are part of the agreement without which the agreement cannot exist, for example, the price in the sale and purchase agreement, the naturalia element that is the part that by law is determined as a governing regulation, for example, Insurer, and accidentalia element that is the parts that the parties add to the agreement where the law does not regulate it, for example, the sale and purchase of houses and furniture. There are 4 terms of agreement (Article 1320 in the Civil Code): the agreement of those who tie themselves, the skill to ally specific thing, and a lawful reason. The first requirement for the validity of an agreement is that there must be an "agreement of those who bind themselves." An agreement, meaning that both parties to an agreement must have a free will to bind themselves, and that will must be expressed, and that statement can be made expressly or secretly.

The second condition for the validity of a covenant is the "ability to make a covenant." The meaning of proficiency is the authority to take legal action in general. According to the law, everyone can make agreements unless the persons who by law are declared incapable. Qualifications as incompetent people making a covenant are immature people, those placed under the guidance, and women who have married. The immature are those who are not even 21 years old and have not married yet. Adults are thus 21 years old. Article 330 in the Civil Code stipulates that person under 21 years of age but is married is an adult according to law. Persons placed under the care of are those in the care of their interests are taken care of and represented by others. The persons placed

under the cus to the civil code are every adult who is always in a crazy, ignorant, weak mind even if he is sometimes capable of using his mind and an extravagant adult.

As a result of the law, if an incompetent person agrees, the agreement may be annulled on the claim of the incompetent or by his representative. The legal consequence of canceling the agreement due to one of the parties being incapable is that the parties are restored in the circumstances as before the agreement was made, and the matters that have been promised/submitted must be returned. The third condition for the validity of agreement is there must be certain thing. The meaning of "a certain thing" is a specific thing meaning that the promised in a covenant must be a thing or an item that is quite clear or certain, i.e., at least determined type—for example, buying and selling rice in a warehouse. Only tradable goods can be the subject of an agreement.

The fourth requirement for the validity of an agreement is that there must be "a lawful cause." Furthermore, what the two parties intend to achieve by entering into a treaty. It is forbidden to make a covenant without a common purpose or made for a wrong or forbidden reason. As a result, if an agreement is made without any particular thing and a lawful reason, the agreement becomes null and void.

All digital world transactions that meet the requirements of Article 1320 in the Civil Code are as binding agreements for the parties. This article is related to Article 1337 in the Civil Code with regard to Prohibited Powers (contrary to decency and public order). In digital transactions, where the parties do not meet, proficiency will be the issue since the parties do not know the skills of the opponents of the agreement, including age. As stipulated in the Article 1330 on maturity.

Unlawful acts, which bring harm to another person, oblige the person who, for his fault to issue the damages, reimburse the damages. The parties to the harm in the e-commerce transaction, but that element is not provided for in the agreement, may still use Section 1365 for filing a lawsuit. A person who postulates that she/ he owns right must prove the existence of right or event. This article needs to be harmonized or revised if it is associated with digital transactions. It will be tough for those who do not master technology as an example of bank customers harmed through the transaski Mandri Cash Platform.

The concept or strategy of the validity of agreements in electronic trade (digital world) in the era of globalization, to support a trustable or trustworthy digital world requires several things, namely authenticity; concerning the truth of one's identity, integrity; concerning the correctness of the message content, Non-reputation; concerning the proof of action, confidentiality; concerning confidentiality, i.e., where a message cannot be read by others, if even if it is read and changed, then the recipient of the message knows that there has been a change and thus prevents losses.

3. CONCLUSION

The development of information technology on the validity of agreements in electronic trade (digital world) in the era of globalization is all digital world transactions that meet the requirements of Article 1320 of the Civil Code are recognized as an agreement and binding for the parties. In digital transactions where the parties do not meet directly, the element of proficiency becomes an issue in itself. Often, the parties do not know the opponents' agreement skills, including age/maturity.

The element that becomes an obstacle in the development of information technology to the validity of agreements in electronic commerce (digital world) is not uncommon for identity fraud, password breach of credit card owners or known as carding to order a product when the concerned does not have a dime bank account.

REFERENCES

- [1] Alif, Rizal Decommerce Transaction Perspective in the era of Free Trade Globalization in Treaty Law in Indonesia, *Journal of International Law*, Volume 5 Bank, Volume 5.
- [2] Djaja, Ermansiah. 2010, *Information Technology Dispute Resolution and Electronic Transactions (Juridical Review of Non- Litigation Settlement through Arbitration and Alternative Dispute Resolution)*, Yogyakarta : Pustaka Timur;
- [3] Hardjowahono, Bayu Seto. "Principles of Autonomous International Trade Law and Harmonization of Regional International Treaty Law in asean region", *Pro Justitia Law Journal*, Volume 26 Number 3, July 2008 Faculty of Law Parahyangan University Bandung;
- [4] Hasan, Dahliana. *The Impact of E- Commerce on Cross Border Taxation*, *The Journal of The Pulpit of Law*, Volume 18 Number 1, February 2006, Faculty of Law Gajah Mada University Yogyakarta;
- [5] Hata. 2001. *Understanding Cyberspace According to the Supreme Court of America*, in a paper seminar on cyber law at STHB Bandung on April 9, 2001;
- [6] Iriansyah. *Payments In International Trade Transactions*, *Respublica Legal Journal*, Volume 3 Number 2,;
- [7] Legal Directorate Team, "Discussions With Uncitral And Electronic Evidence &E-Discovery Forum", *Banking Law Bulletin And Central*
- [8] Mantri, Bagus Hanindy. *Legal Protection of Consumers in E- commerce Transactions*, *Journal MMH*, edition 37 Number 4, December 2008;
- [9] Priyono, Herry, *Marginalization a la Neoliberalism*, *BASIS Magazine*, Number 05 – 06, 53rd year, May – June 2004;
- [10] Purwanto, Harry. *The Existence of Pacta Sunt Servanda Principle in International Treaties*, *The Pulpit of Law* Volume 21 Number 1, February 2009.

- [11]Raharjo, Sumarsono. The Importance of Electronic Information Legal Protection in Online Transactions, *Justitia Et Pax*, Volume 26 Number 1, June 2006;
- [12]Sanusi, Arsyad. , Effectiveness of Information and Electronic Transactions Act in E-Commerce Regulation, *Journal of Business Law*, 29 (1), 2010;
- [13]Setiawati, Wenny. Elektronik Commerce in The International Trade and The Impact on Indonesia, *Journal of Law and Development* year 38 Number 3, Juli-September 2008 Faculty of Law Indonesia University Jakarta;
- [14]Simatupang, Taufik H. Law and Economic Development, *Scientific Journal of Legal Policy*, Volume 1 Number 1, April 2007;
- [15]Susanto, Joko. Theoretical Studies on the Influence of Globalization on the Democratization Process, *Society, Culture and Politics*, Th XIII, No 2, April 2000