

E-Commerce Transactions Regulation In Indonesia



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ABSTRACT: Electronic commerce is a transaction model with different characteristics from conventional transaction models, especially with a reach that is not only local but also global in character. This new method can create a business directly or often online. Through this trade transaction, the existing trading concept can be changed to a telemarketing concept, namely remote trading using the internet. Electronic Transaction activities that are attempted through the internet media can penetrate the jurisdictional limits of a certain country. The parties need to agree on the applicable laws in Electronic Contracts made in International Electronic Transactions. Since it was approved in 2008, Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) has at least regulated two important things, namely the recognition of electronic transactions and electronic documents in the law of engagement and the law of evidence, as well as clarity on the classification of prohibited legal acts. related to the misuse of IT (Information Technology) and its criminal sanctions

KEYWORDS: Electronic Commerce; Electronic Contracts; Law Number 11 of 2008;

I. INTRODUCTION

The growth in the use of electronic media does not only have a positive effect in the form of convenience for users to conduct various activities, but also has a negative impact, for example the widespread problem of obscene images that are captured by using cellphones. The growth in the use of electronic media has also brought about a very striking attitude transformation, for example the habit of people to convey the words "Happy Eid Al-Fitr" if in the past they used Lebaran Cards with various beautiful patterns, especially distinguished by photos to be sent to people who are older than those who are older. sent to peers, but at this time, they can send "SMS" via mobile phone.

Law No. 11 of 2008 concerning Information and Electronic Transactions has been promulgated since it coincided on April 21, 2008. The existence of this Law is highly expected by certain groups, among others, to provide a legal basis for electronic transactions so that in this case there is a need for proof of transactions made has been tried, information in electronic media and the printouts can be used as legal evidence. The requirements for electronic transactions in the ITE Law and PP PSTE are still partial because they have not yet reached the main cases in electronic transaction activities, among others, are conditions for overriding the legal provisions of state boundaries (jurisdiction) and harmonization of the legal system for parties carrying out International Electronic Transactions. (Margaretha and Budi 2018)

Thus, the types of factual instruments that have been regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code have experienced an accumulation and expansion of interpretation, this is due to advances in the fields of science and technology. (Hariningsih 2018) Various life zones already use data systems, such as the field of business commerce (e-commerce), the field of learning (electronic education), health (telemedicine), transportation, industry, tourism and the field of government (e-government). The scope and system of data technology, including collection, storage, production process and delivery to and from industry and society is fast and efficient.

The agreement of sale and purchase using the internet network is called Electronic Transaction. (Arsenius 2009) Electronic Transaction is a modern business model that is non-faced (does not introduce business actors physically) and non-sign (does not wear original signatures). (Abdul H. 2007) In the field of trade, technology can also be utilized as the main medium for business activities because of its contribution to efficiency. Trading activities through internet media are known as electronic commerce (e-commerce) or also known as electronic transactions. (Wibowo)

Electronic commerce is a transaction model with different characteristics from conventional transaction models, especially with a reach that is not only local but also global in character. This new method can create a business directly or often online.

Through this trade transaction, the existing trading concept can be changed to a telemarketing concept, namely remote trading using the internet. Electronic Transaction activities that are attempted through the internet media can penetrate the jurisdictional limits of a certain country. The parties need to agree on the applicable laws in Electronic Contracts made in

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International Electronic Transactions. (Anthonius and Dicky 2019) Enni Soerjati Priowirjanto argues that Electronic Transactions are actions of the parties, which are attempted with the aim of giving rise to rights and obligations that must be fulfilled, as a legal consequence of conventions between consumers and business actors that are attempted through electronic media. (Enny 2014)

Data technology crimes are no longer tried individually, but it is in an organized group of people with a wide network and both at the national and international levels. In order to avoid and eradicate the misuse of data technology, which is tried individually or in groups that extend beyond national boundaries, law enforcement efforts are needed through increased cooperation between countries, whether bilateral, regional, or international.

The rapid growth of data and communication technology has given rise to various opportunities and challenges. Advances in science and technology in telecommunications and information technology have contributed to the expansion of the space for transactions for goods or services to cross regional boundaries of a country. (Hendy 2015) One area that is affected by the growth of data technology is the formation of active interactions (relationships) between people or individuals. Data has introduced a new ethic if every party who has data has an instinct that continues to disseminate it to other parties. Likewise, the opposite is the willingness not to expand the data to other parties, it is thought that it does not come from the data community. (Shinta 2009) Nowadays, data exchange has become global, data communities from various parts of the world, talk intensively with each other. Bonds between communities are tried through virtual or cyber data technology (virtual world).

Regarding the issue of dispute resolution in electronic transactions, there is a tendency to choose arbitration forums. It is aimed to protect the reputation of the disputing parties because the arbitration forum's verdict is final and binding and is considered in accordance with the motto of electronic transactions, namely cheap, effective and instant as asserted by Ester Dwi Maghfirah in her article entitled Consumer Protection in Electronic Transactions. (Ester 2007)

II. RESEARCH METHOD

The Normative Method, with a statutory approach, was used to write this article, which shows that a problem will be seen and investigated through a study of the literature and applicable laws and regulations.

III. RESULT AND DISCUSSION

1. The Position of E-Commerce in the Perspective of Law Number 19 of 2016 concerning Information and Electronic Transactions

a. Comparison of E-Commerce

Comparison of e-commerce in the ITE Law of 2008 with the 2016 ITE Law, where the description of Article 5 paragraph (1) and paragraph (2) of the 2008 ITE Law only says "quite clear" and is not described in more detail. On the other hand, the 2016 ITE Law provides a description of the article, namely, paragraph (1) if the existence of Electronic Data or Electronic Documents is binding and recognized as legal evidence to provide legal certainty for the Implementation of Electronic Systems and Electronic Transactions, especially in evidence and related matters. relating to legal actions attempted through the Electronic System. (Dita and Hendro and Herni 2019)

Verse (2) Exclusive for Electronic Data or Electronic Documents in the form of interception or wiretapping results or recordings that describe part of the wiretapping must be tried in the context of law enforcement at the request of the police, prosecutors, or other institutions whose authority is authorized by law. In Article 45 of the 2008 ITE Law, it is regulated regarding the amount of fines from sanctions contained in Articles 27, 28 and 29. Where Article 28 paragraph (1) relates to consumer losses. In contrast, in the 2016 ITE Law, Article 45 was replaced and 2 articles were inserted, namely Article 45A and Article 45B, where Article 45A deals with consumer losses, namely Paragraph (1) Any person who deliberately and without rights spreads false and misleading news that causes consumer losses in Electronic Transactions as defined in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (6) years and or a maximum fine of Rp. 000. 000. 000, 00 (one billion rupiah). Since it was ratified in 2008, Law No. 11 of 2008 concerning Electronic Data and Transactions (UU ITE) has controlled at least 2 important things, namely the recognition of electronic transactions and electronic documents in the law of engagement and the law of evidence, and clarity of classification of legal acts involved. prohibited related to the misuse of IT (Data Technology) and its criminal sanctions.

With the recognition of electronic transactions and electronic documents in the ITE Law, e-commerce has guaranteed legal certainty. On the other hand, the regulation of legal actions that are prohibited in the use of IT has provided signs to avoid crime in the digital world. After undergoing changes by the Government and DPR RI in October and enacted in November 2016, there have been several significant changes in the new ITE Law (UU Number 19 of 2016). However, the change in the law is considered insignificant for the business world, especially e-commerce. There is only an accumulation of descriptions that confirm Article 5 paragraph (1) of the ITE Law that electronic data, electronic documents, and their printed results are legal facts. (Abdul and Teguh 2006)

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b. The Power of Evidence on Electronic Information, Electronic Documentation And Digital Signatures

Evidence is defined as the process of proving a case accompanied by facts that can be analyzed from a legal point of view to give the judge confidence in making a decision. According to article 1 number 1 of the ITE Law of 2008, Electronic Information is one or a set of electronic data, including, but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDJ), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or it can be understood by people who are able to understand it.

Meanwhile, the definition of Electronic Document is contained in Article 1 point 4, namely any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, or heard through a computer or Electronic systems include but are not limited to writing, sounds, images, designs, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them. Electronic information or documents can be used as evidence. Electronic information or documents have the same legal force value as an authentic deed. (Margaretha and Budi 2018)

In Electronic Transactions, the parties can carry out activities without the need to meet each other and be hindered by the boundaries of space, time and geographical area, including in carrying out trading activities or business transactions without having to know each other and without direct meetings between the parties. sellers, buyers and products being traded. The society has a wider range of motion in choosing products in the form of desired goods and services with various qualities and in the desired quantity. (Arsyad 2010)

The Electronic Transaction Agreement undertaken by the parties is not like an agreement in general, but the agreement can be made even without a direct meeting between the two parties, but the agreement between the parties is carried out electronically. (Santhonius 2016)

2. How is e-commerce regulated according to Indonesian law?

a. Definition and Legal Basis of Electronic Transactions in Indonesia

The growth of international trade cannot be separated from the growth of this technology. Therefore, in the efforts of nations to achieve prosperity, technology cannot be separated from these efforts. In Indonesia, this e-commerce phenomenon has been known since 1996 with the emergence of the web <http://www.sanur.com/> as the first online novel store in Indonesia.

Although it is not very well known, in 1996 various websites began to appear that carried out e-commerce. During 1997-1998 the existence of e-commerce in Indonesia was slightly neglected due to the economic crisis, but in 1999 until now it has become a phenomenon that has attracted attention, although it has always been limited to a minority of Indonesians who understand technology.

The legal basis for electronic transactions has been confirmed based on Law No. 11 of 2008 concerning Electronic Data and Transactions (ITE) in April 2008 and it has been responded to the need for legal certainty in the field of electronic transactions. The government stipulates Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Electronic Transactions (PP PSTE).

PP PSTE is a mandate from the ITE Law which delegates some conditions to be regulated in Government Regulations. Enactment of the regulation of Law No. 11 of 2008 concerning Electronic Data and Transactions and Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Electronic Transactions so that management, use, and utilization can be carried out comfortably to avoid misuse by observing religious values, social, and cultural aspects of Indonesian citizens, and to protect, maintain and strengthen national unity and integrity based on laws and regulations for the national interest.

b. E-commerce Transactions in National Law in Indonesia

1. Validity of Transaction

The validity of Electronic Transactions when it is viewed from business law and it is returned to the validity of a contract (agreement) for the Civil Code (KUHPerdata), especially Chapter III concerning engagement. In relation to message information (electronic information), which is the basis for the creation of a contract. Discussing the validity of a transaction, people always want to base it on the requirements in Article 1320 of the Civil Code. In Article 47 paragraph (2) point b of PP No 82 of 2012 it is also stated that an electronic contract is deemed legal if it is attempted by a legal subject who is capable or authorized to represent in accordance with the requirements of the applicable legislation.

2. Binding Power of Electronic Data

Regarding the agreement in e-commerce that has binding power or not, it is also contained in Article 18 Paragraph 1 of Law No. 11 of 2008 concerning Electronic Data and Transactions, Based on Article 46 paragraph (1) of PP Number. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, Article 46 paragraph (1) "Electronic Transactions that are attempted by the parties to share legal consequences to the parties".

3. The Use of Electronic Signatures

Various technological advances are anticipated with the issuance of Law No. II of 2008 concerning Electronic Data and Transactions (ITE). Regulation of Data, Documents, and Electronic Hand Characteristics, is set forth in Article 5 to Article 12 of the ITE Law.

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4. Rights and Obligations of the Parties

The seller or merchant has the right in a transaction. Article 6 of Law No. 8 of 1999 explains the rights of business implementers. Consumers or card holders have the obligations of Article 5 of Law No. 8 of 1999.

5. Protection on Consumer

Nationally, the institution for distributing protection to consumers is Law No. 8 of 1999 concerning Consumer Protection. Indonesia already has laws that provide protection for intellectual property rights such as Copyrights, Patents and Marks, including enacting the Law on Consumer Protection. (Esthalia 2017)

3. What are the problems faced in E-Commerce in Indonesia

Furthermore, the internet does not only have the ability to function and has the ability to solve problems that can be difficult to solve given the complexity of the case as a result of the characteristics of the internet that do not understand national borders (borderless world) and computer technology itself which is very fast changing.

1. Cybertax

The United States does not control internet trade taxes with an alibi to increase business (Chou, 1999; Erickson, 1999). However, some OECD countries are planning to regulate taxes on the internet. They commented that it is unfair if all people, both capable and incapable of carrying out physical transactions (conventional) are taxed, while people who have access to the internet who have an average income of middle to high income are not taxed. Due to the nature of the internet, which does not understand state boundaries and cannot be controlled, the cases that arise regarding the imposition of taxes on e-commerce are quite complicated, including: who has the right to collect taxes? If there is a cross-border transaction of goods or services, it becomes unclear who is entitled to collect taxes.

In the case of software, the seller in one country can sell and ship the software over the internet to consumers in another country. Buyers can pay using a credit card that is valid worldwide or using cyberscash. So if you use the basis of the seller's country, then the sellers want to move their physical position or it could be their home page domain to a tax haven country. If the tax collector is a consumer country, how will that country know if there is a sale and purchase transaction because what is tucked is a monthly credit card bill to the cardholder. As another reflection, readers of certain magazines or newspapers from outside the country can get it online by subscribing, it is often enough to say the type and credit card number we have been able to enjoy. Meanwhile, if we physically buy the magazine or newspaper, it may be taxable.

2. Audit Trail

Due to the nature of the internet cannot be controlled and it also enables the anonymity, it can be very difficult to keep track of the transactions that take place. Not only because the transaction process itself can be protected in such a way electronically either with encryption or a password so that not everyone can open it.

Even if there are parties who want to know about it, such as the government as a tax collector, there is another problem behind it, namely the absence of facts on physical transactions as inspection facts. This is possible because both ordering and payment are all done electronically. Even if printed, there is no guarantee that printed information is valid due to the nature of digital documents that can be replaced, duplicated, or even deleted without a trace (Ratnasingham, 1998).

3. Security or secrecy of e-commerce

Security is often interpreted as secrecy and vice versa. Meanwhile, security is not just a secret but has a broader meaning than the matter. Wilson (1997) argues that e-commerce security includes 4 things, namely: authentication, integrity, non-repudiation and confidentiality.

4. There is no global law that regulates the internet

The internet that describes global data facilities does not have regulatory features that are accepted by all users. This is due to differences in laws with a local character. For example, in Canada there are already laws that control the privacy issues of consumer information, so there is strict legal action against violators. The same thing is not certain to be found in other countries such as in countries in Asia. On the other hand, there are things that are free in one country but may be prohibited or tightly controlled in another. For example: some countries that carry out strict control over internet usage such as China, violations against it can be subject to punishment and even subversive charges for endangering national security. So the law in one country is not necessarily the same as in another country. Even if there are similarities, there are many gaps to avoid them.

5. Cartel or monopoly

The manufacturing industry can create a network between suppliers (EDI / intranet) by setting a standard or a certain application to carry out online transactions with it. By joining a system supplied by a particular industry, these suppliers are directly or indirectly "dependent" with the system owner's industry.

This dependence may lead to problems because the owner of the system (manufacturing industry) has the expertise to identify the ins and outs of the suppliers, moreover it could be down to the payment structure of the production. This data would be risky if used to squeeze or even monopolize product sales from suppliers. If we are not careful, this collaboration could turn into a kind of cartel that could limit the supplier from selling their products to other manufacturing industries.

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6. Privacy

Whose consumer information? Can it be traded? Oz (1998) thought of this as a gray zone. Canada and Europe have implemented Privacy Laws to protect consumer information, so no party can obtain someone's individual information without their knowledge and permission. Besides, those who have or put consumer information, they cannot disseminate it without the permission of the consumer (Hamblen, 1999).

We can observe this situation intertwined near us. For example, a prospective student who does not succeed in penetrating PTN immediately finds an "invitation" to register or even be accepted at a certain PTS. Where did the PTS know about the individual information of the prospective student? What if the information is misused? So far, this matter is considered normal because there are no regulations or laws that control the use of personal information. (Achjari 2000)

IV. CONCLUSIONS

It is necessary to carry out law enforcement efforts through increasing cooperation between countries, both bilaterally, regionally, and internationally because it is aimed to prevent and eradicate the misuse of information technology that is carried out individually or in groups that transcend national borders. The rapid development of information and communication technology has created various opportunities and challenges. One area that is influenced by the development of information technology, is the occurrence of active interactions (relationships) between individuals or individuals. Information has introduced a new ethic that every party who has information has an instinct that always spreads it to others. Likewise, the desire not to disseminate information to other parties is considered not to come from the information community. Today's information exchange is worldwide, information communities from various parts of the world communicate with each other intensively. Relations between communities are carried out through cyber information technology or cyber (virtual world).

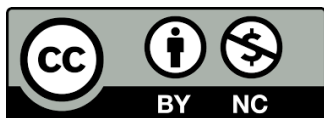
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