



Juridical Review the Principle of Online Buying and Selling Trust Perspective of Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE)

Arief Budiono; Anggun Rahmawati

Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia

E-mail: ab368@ums.ac.id, C100190095@student.ums.ac.id

<http://dx.doi.org/10.47814/ijssrr.v6i2.1034>

Abstract

Advances in technology have resulted in mushrooming online buying and selling transactions (e-commerce) through social media. The ITE Law is the first legal umbrella that regulates online buying and selling transaction activities in Indonesia. This study aims to understand and analyze: (i) The validity of online buying and selling agreements through electronic media and the perspective of the ITE Law; and (ii) Describe the legal consequences that arise in e-commerce in the event of a default. The problem approach used in writing this research consists of 3 (three) approaches, namely the statutory approach (statute approach), conceptual approach (conceptual approach) and case approach (case approach). The data source used is secondary data with data collection methods using library research. The data were analyzed using qualitative analysis techniques. The results of the study show that regulation in e-commerce transactions is an electronic contract based on the ITE Law which is valid legal evidence according to procedural law in force in Indonesia. Sellers and buyers automatically bind themselves to each other in a legal action after trust has been formed between the parties. The trust factor is very important for both parties in conducting online buying and selling transactions through electronic media because it really supports and helps both parties achieve achievements. Default is a contract failure carried out by one of the parties who cannot fulfill the performance according to the agreement and agreement.

Keywords: *E-commerce; Trust Principles; Electronic Contracts; Default*

Introduction

National regulations governing the management of information and electronic transactions are urgently needed so that advances in information technology can be utilized efficiently and evenly at all levels of society in order to educate people's lives. The internet will have an impact on many aspects of human life, especially the business sphere.

E-commerce buying and selling online is one of the many types of electronics used in the business sector with a concept that allows businesses and customers to make transactions without meeting physically. This activity is one of the advantages of technological advances that have been used effectively by business people

Consumer behavior that began to like buying and selling online gave rise to online shops (online shops). The positive response to the establishment of online shops has increased the number of people who buy and offer services online. The ease of accessing the internet and conducting financial transactions at online stores also helps maintain the trend of online shopping¹

The formation of information technology in Indonesia has been stipulated by Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, hereinafter abbreviated as UU ITE. The ITE Law is the first legislative framework in Indonesia that regulates electronic transaction activities and provides legal updates, with the aim of protecting the public interest and ensuring legal clarity for media transactions. electronic. 3 Agreements or legal relations are created as a result of electronic transaction activities through computer-based networks with communication systems, international networks, or the internet.²

Trust is one of the most important factors to consider when buying and selling online. Trust rules have significant benefits for transaction procedures. Because the concept of "good faith" is subjective and ambiguous, trust in practice requires many specific anchor points in good faith.

The risk of fraud or other misunderstandings can occur when both parties in an online transaction are not present in person. Problems arise when one of the parties involved in e-commerce fails to fulfill its obligations according to agreements and contracts³

Issues or problems that arise in buying and selling agreements via the internet are very vulnerable to default. Default, namely failure to fulfill or neglect to carry out obligations as specified in the agreement made between the seller and the consumer. Parties who commit negligence or negligence, for example, the goods sent are not appropriate, payments are not made according to the agreement and other cases of default can cause legal consequences that are detrimental to other parties.⁴

Based on the description above, the researcher intends to conduct further research with the title "JUDICIAL REVIEW OF THE PRINCIPLE OF ONLINE BUYING AND SELLING TRUST Perspective of Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE)".

Based on this background, the authors formulate the problem which is the main material for research, including: How is the validity online buying and selling agreements through electronic media in the perspective of the ITE Law and the legal consequences that arise in buying and selling transactions through the online system if a default occurs.

¹Widiyanto & Prasilowati, 2015. *Perilaku Pembelian melalui Internet*, dalam Jurnal Manajemen dan Kewirausahaan, vol. 17, no. 2, <https://doi.org/10.9744/jmk.17.2.109-122>.

²Lu Sudirman, Hari Sutra Disemadi. 2021. Legal Protection for Borrowers and Business Dispute Resolution in Fintech Lending Services. *Jurisprudence UMS*. Vol 11. No 2 Hal 189-190 <https://doi.org/10.23917/jurisprudence.v11i2>

³Muhammad Kamran & Maskun, 2021. *Penipuan dalam Jual Beli Online: Perspektif Hukum Telematika*, dalam *Balobe Law Journal*, 2021, <https://doi.org/10.47268/balobe.v1i1.501>

⁴Muh Farhan Fikran, 2019, *Asas Kepercayaan dalam Jual Beli Online*, Makassar: Skripsi Program Sarjana Universitas Islam Negeri Alauddin, hal. 19

Research Methods

Normative legal methodology was used in the making of this research, which consisted of 3 (three) approaches,⁵ namely the statute approach, the conceptual approach and the case approach. Type of study or normative legal literature found through literature or secondary data.⁶

This research was conducted with the aim of presenting legal reasons as a basis for assessing whether or not an event was right or wrong and the suitability of the event according to law. ⁷This strategic literature research was used to collect secondary data as a whole with the aim that the data obtained had a level of validity and reliability tall one. Data analysis is carried out thoroughly and comprehensively⁸

Research Results and Discussion

Business life and trading ventures have been given economic policy outlines which are highly valued and praised in Islam. Allah SWT loves honest trade and business and bestows His mercy on those who do it. Business and trading ventures can be carried out by individuals or more in a community of companies and various institutions.

Simply put, one of the most important aspects of a business is sales goods. Islam has set clear norms and principles including honesty because in general humans try to maximize profits but have to take a path that is not in accordance with the instructions of Allah SWT. Online buying and selling transactions must be carried out in accordance with Islamic law which has established the pillars of the buying and selling contract. Buying and selling online must be protected as strictly and fairly as possible so that sellers and buyers can carry out legitimate online buying and selling operations without worry.⁹

1. The validity of the online sale and purchase agreement

In this study, what is indicated by validity is whether or not a sale and purchase transaction is valid by utilizing electronic media or internet media. ⁸ An online agreement is said to be valid if:

- a. There is an agreement between the parties;
- b. Performed by legal subjects who are capable or authorized to represent in accordance with the provisions of laws and regulations;
- c. Specific objects or certain things; And
- d. The object of the transaction must comply with laws, decency and public order.

The mechanism for implementing the agreement can be revealed if it already has the elements listed in the terms of a valid agreement according to the ITE Law and the Civil Code. An agreement must have a legal relationship between the people who make it. The parties to the agreement are legal subjects

⁵Abdul Kadir Muhammad, 2004, *Hukum dan Penelitian Cet-1*, Bandung: PT Citra Aditya Bakti, hal. 5

⁶Khudzaifah Dimiyati & Kelik Wardiono. 2004. *Metode Penelitian Hukum*. UMS Press. Surakarta. Hal 16

⁷Mukti Fajar dan Yulianto Achmad, 2017, *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan IV, Yogyakarta: Pustaka Pelajar, hal. 36.

⁸Dyah Budiastuti & Agustinus Bandur, 2018, *Validitas dan Reliabilitas Penelitian*, Jakarta: Mitra Wacana Media, hal. 64.

⁹Ayu Pebrinurpina, 2017, *Keabsahan Perjanjian Jual Beu Dengan Menggunakan Media Elektronik Menurut Kfiab Undangundang Hukum Perdata Dan Undang-Undang No 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*, Palembang: Skripsi Universitas Muhammadiyah Palembang, hal. 7.

other than legal entities. Agreement participants share the relationship with what was agreed in the agreement.¹⁰

Referring to Article 19 of the ITE Law that: "Parties conducting Electronic Transactions must use the agreed Electronic System". This explains that "agreed" in this article also implies approval of the processes provided in the electronic system concerned.¹¹

While the ITE Law mentions in Article 20 paragraphs (1) and (2), as follows:

- "(1) Unless otherwise specified by the parties, Electronic Transactions occur when the transaction offer sent by the Sender has been received and approved by the Recipient.*
- (2) Approval of Electronic Transaction offers as referred to in paragraph (1) must be made with an electronic statement of acceptance."*

This illustrates how electronic transactions can occur when two parties reach an agreement, which can be in the form of checking data, identity, or a personal identification number (PIN).

The term "reliability certification agency" is used in the ITE Law and is defined in Article 1 Number 11 as an Independent Institution established by professionals who are recognized, authorized and supervised by the government with the authority to audit and issue reliability certificates in e-commerce.

Risk is included in the trust. The definition of trust is very important for both parties because the agreement is binding and can be converted into law. The binding of the parties based on trust in the agreement assists the parties in achieving their goals.¹²

According to the research results, the principle of trust in the Civil Code demonstrated by the notion of trust which implies that the buyer believes in the capabilities of the online seller. The fact that online buying and selling transactions are safe means they can be trusted. The higher the level of buyer trust in an online shopping website, the more popular the online shopping website is. Buyers will also have more confidence in the reliability of the website.¹¹

Electronic contracts are legal evidence according to the ITE Law because electronic information and/or electronic paper are an extension of legal evidence according to Indonesian procedural law. Electronic agreements can be used as electronic evidence in court if one party does not fulfill its achievements.

Based on the provisions of the Civil Code and the ITE Law as described by the author, an electronic agreement or electronic contract is valid and has the same power as a conventional agreement or one signed and attended by the parties directly as long as it fulfills the legal requirements of the

¹⁰ Setiawan I. Ketut Oka, 2018, *Hukum Perikatan*. Jakarta: Sinar Grafika, hal-5

¹¹ Rina Arum Prastyanti, Istiyawati Rahayu, Eiad Yafi, Kelik Wardiono, Arief Budiono. 2021. Law and Personal Data: Offering Strategies For Consumer Protection In New Normal Situation In Indonesia. *Jurisprudence UMS*. Vol 11. No 1. Hal 84 <https://doi.org/10.23917/jurisprudence.v11i1>

¹² Ingrid Wahyuni Sinaga & Resty Mely, 2016, *Pengaruh Trustmarks dan Kualitas Layanan terhadap Kepercayaan Pelanggan Online Shop*, dalam *Jurnal Akuntansi Ekonomi dan Manajemen Bisnis Prodi Administrasi Bisnis Terapan Politeknik Negeri Batam*, vol. 4, no.1, hal. 22

agreement. Electronic agreements have the same evidentiary power as agreements signed directly by the parties in terms of their evidentiary strength¹³

2. Law for the Parties in the Online Buying and Selling Agreement

Legal protection in agreements is a defense given to legal subjects in accordance with legal principles, which can be preventive (prevention) or repressive (coercion), both written and unwritten in carrying out legal requirements.

Consumers and business actors are equally entitled to legal protection. The legal position for consumers is generally weaker when compared to the position of business actors in the business world. The relationship between consumers and business actors is in a position where they want each other and are sufficiently dependent on one another so that in terms of the legal system it must be fair.

Business actors and consumers have an obligation to carry out achievements. Parties who fail to fulfill their obligations are declared in default, so the aggrieved party can sue through legal channels regulated in Articles 38 and 39 of the ITE Law. Efforts to recover compensation for losses incurred as a result of the failure to settle sale and purchase transactions through electronic media can be carried out through litigation or non-litigation.¹⁴

Anyone can file a lawsuit against a party that harms them in online payment channels and dispute resolution by arbitration or dispute resolution institutions because of the recognition of an electronic evidence. The electronic evidence is in the form of proof of transfer, notification or e-mail stating the purchase agreement, as well as the identity of the business actor and consumer, such as name, address, telephone number and e-mail address.¹⁵

The principle of absolute responsibility that applies in the event of default when a sale and purchase transaction is carried out using an electronic system by the seller and the buyer is the weak position of the buyer in electronic transactions. Absolute liability or entirely in the hands of sellers or online business actors where business actors are also responsible for the business activities they carry out¹⁶

Article 21 paragraph (2) letter a of the ITE Law states, "if done alone, all legal consequences in the implementation of Electronic Transactions will be the responsibility of the parties to the transaction". In electronic transactions, those who fail to pay must bear the costs. Buyers or sellers who do not receive rights and/or carry out obligations properly and do not fulfill these achievements can file claims for compensation. Disputes can generally be resolved in good faith by the parties and set aside settlement through litigation or legal channels.¹⁷

¹³ Riski Rosdiana, dkk., 2019, *Pengaruh Kepercayaan Konsumen terhadap Minat Beli Produk Pakaian secara Online*, Jurnal Pendidikan Ekonomi Undiksha Jurusan Pendidikan Ekonomi Universitas Ganesha Singaraja, vol. 11, no. 1, hal. 321.

¹⁴ Edmon Makarim, 2000, *Kompilasi Hukum Telematika*, Jakarta: PT. Gravindo Persada, hal. 314.

¹⁵ Fadhly Ridwansyah, 2021, *Wanprestasi dalam Sistem Jual Beli Online menurut UU No 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik*, Semarang: Skripsi Ilmu Hukum Fakultas Hukum Universitas Islam Sultan Agung, hal. 72 – 73.

¹⁶ Ida Ayu Maharani Chintya Anjani & Ida Ayu Maharani Chintya Anjani, dkk., 2020, *Tanggung Jawab Pelaku Usaha terhadap Pencantuman Klausula Eksonerasi pada Nota Laundry*, dalam Jurnal Kertha Semaya, vol. 8 no. 3, hal. 446.

¹⁷ Satria Trilaksana Akbar, 2020, *Perlindungan Hukum bagi Para Pihak dalam Aplikasi Shopee Ditinjau dari Asas Iktikad Baik dan Hukum Perikatan*, Surakarta: Naskah Publikasi Program Studi Strata 1 pada Jurusan Ilmu Hukum Fakultas Hukum UMS, hal. 6.

Conclusion

The parties involved in electronic transactions directly or indirectly have entered into legal relations as outlined through a form of agreement or contract in accordance with the provisions of Article 1 Number 17 of the ITE Law which very clearly explains "Electronic Contracts are agreements between parties made through the Electronic". The legal requirement for electronic documents by using an electronic system in accordance with statutory provisions in the ITE Law is an agreement between the parties.

Legal consequences that may arise, namely First, the sale and purchase agreement is binding and applies as law for the parties if the agreement meets the terms of the agreement. Based on the principle of freedom of contract, the parties are allowed to enter into agreements with anyone, including unknown parties, as long as the parties agree. Second, the agreement can be canceled by parties who feel harmed because it does not fulfill the terms of the agreement in which there is a defect of will in the form of an oversight regarding the identity of the parties.

References

Books and Papers

- Akbar, S. (2020), *Perlindungan Hukum bagi Para Pihak dalam Aplikasi Shopee Ditinjau dari Asas Iktikad Baik dan Hukum Perikatan*, Naskah Publikasi Program Studi Strata 1 pada Jurusan Ilmu Hukum Fakultas Hukum UMS.
- Budiastuti, D. & Bandur, A. (2018), *Validitas dan Reliabilitas Penelitian*, Jakarta: Mitra Wacana Media, hal. 64
- Fajar, M. & Achmad, Y. (2017), *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan IV, Yogyakarta, Pustaka Pelajar.
- Fajar, M. & Achmad, Y. (2017), *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan IV, Yogyakarta, Pustaka Pelajar.
- Fikran, M. (2019), *Asas Kepercayaan dalam Jual Beli Online*, Makassar, Skripsi Program Sarjana Universitas Islam Negeri Alauddin.
- Dimiyati K., Wardiono K. (2004). *Metode Penelitian Hukum*. UMS Press. Surakarta.
- Oka, S. (2018), *Hukum Perikatan*. Jakarta, Sinar Grafika.
- Pebrinurpina, A. (2017), *Keabsahan Perjanjian Jual Beu Dengan Menggunakan Media Elektronik Menurut Kftab Undangundang Hukum Perdata Dan Undang-Undang No 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*, Palembang, Skripsi Program Sarjana Universitas Muhammadiyah Palembang.
- Makarim, E. (2000), *Kompilasi Hukum Telematika*, Jakarta, PT. Gravindo Persada.
- Muhammad, A. (2004), *Hukum dan Penelitian Cet-1*, Bandung, PT Citra Aditya Bakti.
- Ridwansyah, F. (2021), *Wanprestasi dalam Sistem Jual Beli Online menurut UU No 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik*, Semarang, Skripsi Ilmu Hukum Fakultas Hukum Universitas Islam Sultan Agung.
- Zulham (2013), *Hukum Perlindungan Konsumen*, Jakarta, Kencana Prenada Media.

Government Publishing

Republik Indonesia. Undang-Undang No. 11 Tahun (2008) juncto Undang-Undang No. 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik.

Articles and Journals

- Anjani, I., dkk. (2020), *Tanggung Jawab Pelaku Usaha terhadap Pencantuman Klausula Eksonerasi pada Nota Laundry*, dalam *Jurnal Kertha Semaya*, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/57489>.
- Kamran, M. & Maskun (2021), *Penipuan dalam Jual Beli Online: Perspektif Hukum Telematika*, dalam *Balobe Law Journal*, <https://doi.org/10.47268/balobe.v1i1.501>.
- Listyana, D., dkk. (2014), *Kekuatan Pembuktian Tanda Tangan Elektronik sebagai Alat Bukti yang Sah dalam Perspektif Hukum Acara di INDONESIA dan Belanda*, *Jurnal Verstek Bagian Hukum Acara Universitas Sebelas Maret*.
- Prastyanti, R.A., Rahayu, I., Yafi, E., Wardiono K., Budiono, A. (2021). Law And Personal Data: Offering Strategies For Consumer Protection In New Normal Situation In Indonesia. *Jurisprudence UMS*. Vol 11. No 1.
- Rizeki, D. (2022), *E-commerce adalah: Pengertian dan Contoh E-commerce*, dalam *Jurnal the Majoo Preneurs*, vol. 17, (27 Januari 2022), <https://majoo.id/solusi/detail/ecommerce-adalah>.
- Rosdiana, R., dkk. (2019), *Pengaruh Kepercayaan Konsumen terhadap Minat Beli Produk Pakaian secara Online*, dalam *Jurnal Pendidikan Ekonomi Undiksha Jurusan Pendidikan Ekonomi Universitas Ganesha Singaraja*.
- Sinaga, I. & Mely, R. (2016), *Pengaruh Trustmarks dan Kualitas Layanan terhadap Kepercayaan Pelanggan Online Shop*, dalam *Jurnal Akuntansi Ekonomi dan Manajemen Bisnis, Article History Prodi Administrasi Bisnis Terapan Politeknik Negeri Batam*.
- Sudirman, L., Disemadi. H.S, (2021). Legal Protection for Borrowers and Business Dispute Resolution in Fintech Lending Services. *Jurisprudence UMS*. Vol 11. No 2.
- Widiyanto & Prasilowati, (2015), *Perilaku Pembelian melalui Internet*, dalam *Jurnal Manajemen dan Kewirausahaan*, vol. 17, no. 2, (September 2015), <https://doi.org/10.9744/jmk.17.2.109-122>.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).