

## **Analysis of Electronic Agreements Made by Minors in Ecommerce Transactions in The Perspective of Indonesian Positive Law**

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### **Abstract**

Validity agreements entered into by minors in e-commerce transactions from an Indonesian legal perspective. The current development of technology as we know it is increasingly rapid and pampers all its fans, in this case in digital business activities commonly known as E-commerce. Activities that can be carried out using an internet computer network make it easy for anyone who can do it, including children who are not yet legally capable. This research will discuss the validity of agreements made by children who are not yet able to carry out electronic transactions, whether they are considered valid or not, and the legal consequences for children who are not yet able to carry out e-commerce transactions. The purpose of this research is to find out whether minors agreeing can be considered valid in e-commerce transactions. The method used in this research is a literature review that examines and analyzes library materials using a statutory and conceptual approach. The results of this research will show us that the validity of agreements made by children who are not yet legally competent in e-commerce transactions can be considered valid as long as the agreement does not cause harm to the parties.

**Keywords:** Minors; E-commerce; Online Transactions

### **1. Introduction**

The rapid development of technology and science in the current era of the Industrial Revolution 4.0 has made tremendous changes to human civilization. Computer technology, the Internet, and telecommunications have changed the world of transactions from traditional face-to-face to digital transactions. These changes have both positive and negative impacts on technology enthusiasts. Civilization today changes from time to time depending on the rapid development of technology [1].

One of the changes in this Era of Society is in digital businesses that utilize technology. Business activities that used to be carried out in real or offline can now be done online through electronic channels using the internet network. Activities that can be carried out through electronic channels like this make it easier for business actors and consumers not to need to leave the house to see, sell, and buy goods. Business actors and consumers only need to open social media or online stalls e-commerce to be able to carry out their activities in digital business activities using electronic channels known as E-commerce transactions [2]. In this case, there are characteristics of e-commerce: without written documents and geographical boundaries, sellers and buyers do not need to meet face to face, and without age restrictions, meaning that all people who understand the use of technology can do it. According to Article 1

Point 2 of the Information and Electronic Transactions law (*in Indonesian called as ITE Law*), e-commerce transactions are "legal actions carried out using computers, computer networks, and other electronic media." E-commerce transactions result in a sale and purchase agreement called an electronic contract and have been regulated in the ITE Law. Electronic contracts refer to the principles implied in the Civil Code (KUHPer). In general, the operational concept presented in electronic contracts is "Terms and Conditions." The purpose of this concept is a standard agreement that is carried out unilaterally by business actors in shopping applications. So when consumers and business actors click on online buying and selling activities on shopping applications, it means that they have agreed to the contract/binding made electronically [3].

The development of businesses that utilize this technology causes the impact of e-commerce users in Indonesia to increase rapidly every year. The rapid development of this digital business certainly brings a problem to underline. In this case, the problem in question is that every group can access e-commerce activities without any age limit. Any person who is underage or of unsound mind will be disqualified by law from making a contract and cannot enter into a contract. The current reality is that minors freely make contracts without any restrictions on e-commerce websites, in this case, the practice of buying and selling carried out online. Of the 100% of e-commerce actors, 42% are dominated by 21-30-year-olds, then minors follow 13% the data was published in 2019 by one of the online stalls where e-commerce activities are carried out [4].

The problem alludes to the competence of the parties who contract through electronic channels. The competence of the parties in question is a party that is not of legal age in contracting through electronic channels. Based on the explanation of Article 1320 of the Civil Code concerning the validity of an agreement, one of which is about competence. If one of the parties is said to be legally incapable of performing an obligation, whether the obligation can be justified or not [5]. However, when referring to Article 1338 of the Civil Code, which states, "All agreements made legally, apply as Law for those who make them," e-commerce activities carried out by children without the consent of their guardians can raise question marks about the validity of contracts made in e-commerce transactions. It has to do with the meaning of the ambiguity of an agreement [6]. Then, based on Article 1313 of the Civil Code reads, "An agreement is an act by which one or more people bind themselves to one or more other people." The explanation of the article causes multiple interpretations of an unclear definition because all actions can be called an agreement [7]. The brief description above regarding the competence of underage parties in conducting e-commerce transaction activities raises questions about the validity of an agreement made by a child who is not yet legally capable of e-commerce transactions, considering that until now, there are no rules that explicitly regulate age limits in the implementation of online transactions.

## **2. Research Methods**

In this research, the authors used normative juridical research. Research was conducted to examine and analyze library materials using both a statutory conceptual approach [8]. To support this research, writing using primary legal materials, binding legal materials such as Law No. 11 of 2008 concerning Electronic Information and

Transactions, from now on abbreviated as the ITE Law and the Civil Code (KUHPerdata), as well as primary legal materials such as journals, articles, official websites that can provide explanatory reading in this study. Then, the results of data collection from primary legal materials will be examined and analyzed descriptively to discuss the issues in this study.

### **3. Results and Discussion**

#### **3.1 The validity of an agreement made by a child who is not yet legally competent in an e-commerce transaction**

Electronic Commerce, commonly abbreviated as E-commerce, is a business activity carried out using a computer network, namely the Internet, which involves consumers and business actors in these business activities [9]. This transaction is a contract model that is the same as a conventional buying and selling contract that is carried out for everyone in general [10]. In this case, electronic contracts can be described as contracts that are formed, executed, changed, or notified using communication over the internet network using computer-based devices [11]. In e-commerce activities, there are smart contracts, which, according to Thomas Heiz Meitinger, have the purpose of initiating actions without having to be agreed upon in the contract, as one example described. Agreed payments can be completed automatically. No intermediary, such as a bank or virtual marketplace, is required to guarantee the transaction [12].

The ITE Law regulates E-commerce in Indonesia. In this case, of course, there are regulations relating to the responsibilities, rights, and obligations of e-commerce organizers. If reviewed in the provisions of the ITE Law in Article 15 paragraph (1), which states, "Every electronic system organizer must operate the electronic system reliably and safely and is responsible for the operation of the electronic system as it should." In this case, "reliable" means that the electronic system has the ability according to the needs of its use, "safe" means that there is physical and non-physical protection in the electronic system, while "operating as it should" means that the electronic system has the ability according to its specifications [3].

In all agreements in e-commerce transactions, the forms made are usually poured electronically, and the terms and conditions contained in the agreement are made for one party, namely the seller. So that prospective buyers can only choose to accept or refuse to buy the desired item on the seller's online site [13], [14]. The provisions regarding e-commerce transactions also refer to the rules contained in the Civil Code, which in transactions like this are the same as conventional transactions, so they have differences in their use of computer networks, which can be called electronic agreements.

E-commerce transactions have no differences related to the validity of an agreement, which is the same as the validity of a conventional agreement based on the provisions of Article 1320 of the Civil Code. These conditions include: 1) the existence of the word 'Agreement' for those who will agree; 2) Legal capacity in agreeing; 3) A certain thing; and 4) A lawful cause.

An agreement that is made and fulfills all the absolute conditions contained in Article 1320 of the Civil Code is valid. However, if the four conditions are not fulfilled, the agreement will be invalid and void.

Article 1338, paragraph (1) of the Civil Code states that "All agreements made legally and apply as laws for those who make them." So, the provisions of this article contain a principle, namely the principle of freedom of contract in an agreement that is made (*beginsel der contracts vrijheid*). In this case, freedom of contract means that every agreement that binds the parties means that everyone is free to make any agreement and does not conflict with public order or decency. In contracting, freedom does not mean free and unlimited. Still, it is limited by the responsibilities of the parties, which are as follows: freedom of contracting can provide an equal position for the parties.

Age in the practice of e-commerce transactions is not an absolute requirement to carry out these activities so minors can carry out these activities. Juridically, there are currently no rules in Indonesia prohibiting immature people from conducting e-commerce transactions. Neither the ITE Law, PP-STE (Completion of Electronic Systems and Transactions), nor PMSE (Trading Through Electronic Systems) provide concrete limits. It is very clearly prohibited because every subject who performs an agreement should be said to be capable of performing legal acts. Everyone is a subject in an agreement, but in an agreement, only people who fulfill the elements of an agreement can become parties to the agreement because there are special rules that frame the validity of an agreement regarding the legal subject in an e-commerce transaction directed at Article 1320 of the Civil Code [3]. In this provision, there are two basic conditions of an agreement, subjective conditions, and objective conditions. Subjective conditions regulate two things: an agreement related to the principle of consensuality. The agreement is explained as an agreement that takes place due to the existence of subjects who bind themselves to each other, and in an agreement, there are at least two parties who bind themselves to each other. Then the second thing that is regulated in subjective conditions is capability [15].

Capability is defined as a sense of responsibility and awareness in every action, so to create this, it is necessary to have the ability of someone who acts. Generally, a person who is considered legally capable is an adult, so the provisions regarding the benchmark for the age of maturity stated in Article 330 of the Civil Code explain that "the immature are those who have not reached the age of even 21 (twenty-one years) and have not married before, if the marriage is dissolved before their age is even 21 (twenty-one years), then they do not return to the status of immature". Meanwhile, in legal action, a person must have the ability to act and legal capacity. Someone who is said to be incapable according to the law is 1) Someone who is said to be immature; 2) People who are under guardianship, such as children, people who are not of sound mind or have mental disorders; 3) The parties mentioned in the Law for people who are limited in their ability or incapacity to agree, such as a wife when agreeing to a certain transaction so that it is obliged to get the consent of her husband [16].

The capacity of the parties conducting e-commerce activities is stated in Article 46 paragraph (2) letter b of the Government Regulation on electronic transactions, which explicitly states that "Electronic contracts are considered valid if they are made by legal subjects who are capable or authorized to represent in accordance with the provisions of this legislation." Article 1320 of the Civil Code contains the element of "Capacity" and is used as one of the subjective elements of the validity requirements of an agreement.

Thus, transactions made by minors in e-commerce have, in principle, violated one of the conditions specified by the Civil Code [17]. However, in the ITE Law, there is an explanation related to a person who is not an adult who can carry out e-commerce transactions regulated in Article 15 paragraph (2) concerning electronic system organizers, which states that "electronic system organizers are responsible for the implementation of their electronic systems." From the fragment of the word "responsible," it means that there are legal subjects who will be legally responsible for the electronic system organizer. Article 19 of the ITE Law states that "the parties to an electronic transaction must use an agreed electronic system." The meaning of the word "agreed" means that there is an agreement between the parties to the electronic system [3].

An agreement that uses e-commerce transactions for children who are underage or do not have the legal capacity to agree is still considered valid as long as it does not cause harm to the parties. In conventional agreements only, children who agree to buy and sell goods as long as it does not cause harm to both parties, the sale and purchase agreement is still considered valid. It applies to e-commerce transactions. A person who is not yet an adult conducting an e-commerce transaction is still considered valid as long as the consumer and business actor do not meet directly and do not cause any harm.

### **3.2 Legal Consequences for Minors in Conducting E-commerce Transactions**

Usually, in an agreement, the requirements for the ability of each party, such as sellers or business actors and consumers, are not considered, which, in the view of the law, buying, and selling must be carried out by people who are considered adults so that they can be held accountable [18] because basically every action or action taken by someone will have an impact. It can show us how important the ability to perform a legal action is so that the action can be accounted for [19].

Children abroad are also affected not only in Indonesia but also by today's technological sophistication. Abroad, the target of business actors who sell their products using e-commerce transactions is children, who are used as the right target to become consumers. So, it becomes a problem and causes concern for minors when buying a product. Other problems arise for a child who becomes a consumer. This problem occurs when the child buys an item, but the payment method uses Cash On delivery, known as COD. When the ordered goods arrive, many underage consumers who make e-commerce transactions do not pay for them. The result will cause losses to business actors [20].

On the other hand, there is also a child who positions himself as a business actor. There are business actors who are still underage who open online stalls to sell there. Of course, it is also a problem. The problems that occur are usually many that are received not according to what is offered in the advertisement of the product being sold. Things like triggering bad responses to business actors but still ignored by business actors.

In cases like this, referring to the provisions of the Civil Code, all forms of agreements are always subject to the provisions of the Civil Code. In this regard, the capacity described in Article 1320 is a subjective requirement for the validity of an agreement. If there is a denial in an agreement, then based on the subjective requirements, it gives legal consequences in the form of canceling an agreement. So, if a



minor conducts an e-commerce transaction activity, the result is that it can be canceled. The cancelability of an obligation in an e-commerce transaction carried out by someone who is not of sufficient age only occurs when there is a problem related to the transaction being carried out. E-commerce transactions carried out by children who are not yet of age are transactions without a case, so it does not cause a cancellation of the agreement [7].

However, if there is a problem that results in a large loss to resolve, the parties to e-commerce transactions are minors. Generally, the responsibility of a person whose actions cause a loss will be transferred to someone under his guardianship. The liability of a minor is based on the act that caused the loss, regardless of the element of intent. However, it is difficult to determine whether it is the child's parents/guardians or the child himself because of legal responsibility for a person who is not yet of age currently still has differences of opinion from experts [15].

#### 4. Conclusions

Based on the research analysis, it is known that the legal position of minors who carry out e-commerce transactions can be considered legal. Article 15, paragraph (2) of the ITE Law is used as the basis for parties carrying out e-commerce transactions, including minors, which are in accordance with the explanation of the article. The parties must be responsible for and agree between the agreements that have been made. Even though competence is the basis for making an agreement based on Article 1320 of the Civil Code, it does not rule out the possibility that minors can also make agreements legally. The legal consequences for minors who carry out e-commerce transactions are that an Agreement can be canceled if one of the parties cancels. In this case, because one of the parties is a minor, the person who cancels is the child's guardian or parent.

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