

# THE LEGAL POWER OF ELECTRONIC CONTRACTS AND AS EVIDENCE IN DEFAULT DURING THE COVID-19 PANDEMIC IN INDONESIA

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## THE LEGAL POWER OF ELECTRONIC CONTRACTS AND AS EVIDENCE IN DEFAULT DURING THE COVID-19 PANDEMIC IN INDONESIA

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**ABSTRACT** An agreement is a legal act that will create a legal relationship between one legal subject and another to fulfill an achievement. In Indonesia, in general, people carry out business activities accompanied by a written agreement or what is commonly referred to as a contract. At this time, Indonesia is being affected by the Covid-19 virus and has become a national disaster. With this national disaster, it has greatly affected the lives of the Indonesian people, especially in the business sector, in which the implementation transaction must be accompanied by a contract where each business transaction will certainly experience a decline and setback which will result in many parties involved in the contract unable to fulfill their achievements. Especially when the current conditions of many parties agree to their agreement by using electronic contracts to anticipate the possibility of the spread of the corona virus. This study aims to (1) find out how the implementation of electronic contracts during the pandemic, and (2) how the validity and strength of electronic contracts. This research is very interesting to study because electronic contracts are new in the world of contract law, and it examines more deeply how the proof will be and its legal strength when there is default in the implementation of the electronic contract. The method used is juridical normative. This study will provide an explanation of the legal strength of electronic contracts, and how the strength of proof is in case of default.

**KEYWORDS :** Covid-19 Pandemic, Contracts Electronics, Legal Power,

### INTRODUCTION

Since the Corona Virus entered Indonesia at the beginning of 2020, making major changes to the activities of the Indonesian people. This outbreak greatly affects the lives of Indonesian people, due to the dangers that make life worse, the fear of people to carry out activities outside the house. This pandemic is a disease that can spread quickly because it can develop through air. The problems caused by this corona virus are very diverse, not only health problems, but this has the potential to potentially change the economic order of the Indonesian people. Because it can lead to the jammed business activities in Indonesia. This is because the community rarely does activities outside the room, shop for necessities as needed and

buy the need to use the online shop system. Likewise, business actors in conducting business activities and works are held at home or who are won by Work From Home, to anticipate the spread of the Corona virus. Impacts like this cover the entire space of various sectors that make several sectors have difficulty carrying out their business activities. Among them are a decrease in the activities of the hospitality, transportation, tourism and so on.

With a major influence brought by the Corona virus to business activities in Indonesia, this can result in failure in fulfilling promises in business space which results in one of the representative parties in the fulfillment of the promise. Business people who should continue to develop their business business rotate strategies so that their business activities continue to develop. In the case of difficult to travel outside the city and even outside the province, business actors develop and invite their business relations and make electronic deals.

Like agreements in general agreements in the business world can be poured in the form of emails that provide internet or also called electronic contracts. Electronic contracts include a very important element in e-commerce activities because in commercial activities the parties in business activities depend on contracts as a container or legal certainty in pouring the contents of their agreement which is one of the conditions in the legitimate agreement (Subekti:2002). which will give birth to engagement. According to Subketti, the mixture <sup>9</sup> is a legal relationship between two parties where the one can demand something from other parties to fulfill its achievements and other parties are obliged to fulfill the achievement. Achievements are an absolute requirement for an agreement because achievement is the core of the agreement. How to implement each form of achievement where the goods are done by submitting, energy or skills done by doing something and do nothing. (Ahmadi Miru, Sakka Pati : 2014)

If the achievement is not fulfilled, the debtor can be considered to make a promise or is also called default, where default is an appointment injury that occurs because one of the parties does not have an obligation so that other parties who is harmed cannot enjoy its rights based on the contracts

agreed upon (Budiono Kusumohamidjono : 2001). But this is very unfortunate because the setting of electronic contracts has not been specifically regulated in Indonesia, where this electronic contract will be increasingly in demand and will be rapidly developed in the business world, especially in the Corona Covid-19 pandemic period as it is today. The problem in writing is how the implementation of electronic contracts in Indonesia at the time of the pandemic and how the legal force of this electronic contract is against business people.

## **METHODOLOGY**

In this legal research using the normative juridical method, a problem approach by walking and examining a legislation that regulates the provisions of the contract used as a basis for examining the problems that will be examined. The data collection technique used is library data collection techniques. Where by retrieving data from documents, and books and journals related to collected, identified, classified and analyzed the data is then recorded or quotation against the data. The analysis chosen in this study is qualitative analysis and described in descriptive form.

## **RESULTS AND DISCUSSION**

### **1. Implementation of Electronic Contracts in Pandemi Covid-19**

The term contract comes from English, namely **Contracts**. Whereas in Dutch, it is called **Overenkomst** (agreement). The contract is an agreement written and the contract is considered a narrower understanding than the agreement. So the contract is a media made in writing and the contract is said to be narrower because the agreement is not written while the contract is written. In other words the contract is legal relations between two parties based on the word agreement which causes the law where the legal consequences will lead to rights and obligations on each party that makes the contract.

Contract law is section of civil law (private), this law focuses on a self-imposed obligation. Referred to as part of civil law due to violation to the

obligations specified in the contract, purely bethe affairs of the contracting parties. ( M.Muhtarom : 2014).

In the time of the Covid-19 business contract a business contract was designed to realize legal certainty for the parties who made contracts and for the third party related to the contract. This really helps the parties in getting legal certainty. Even though on the other side the contract does not guarantee a sense of justice even though it is guaranteed its legal certainty. The business contract made by the parties that made the contract really implement the contents of the contract or someday ignore it. But the legal capacity of the contract can provide a guarantee to be demanded by legal responsibility for the parties. The contract function is basically divided into two types, namely juridical functions and economic functions. The juridical function of the contract is to provide legal certainty for the parties. Where this juridical function is (1) regulate the rights and obligations of the parties; (2) securing business transactions; (3) regulate the pattern of dispute resolution that arises between the two sides. While economic functions are moving (property rights) resources from lower use values to be higher. Among other things (1) the contract guarantees that the hope that is mutually be promised among the parties will be fulfilled, you will still have compensation which is paid if there is a default; (2) Contracts make the future business transaction plan from various adverse possibilities. (3) Contracts are the implementation standards and responsibilities of the Parties; (4) The contract allows more appropriate business risk allocation (minimizing the business risk of the parties); (5) The contract provides a dispute settlement for the parties.

During the covid-19 pandemic period made by the parties in the business of business bonded between each other. It is based on the presence of a principle that applies in the law of the contract, namely the Pacta Sunt Servada principle which means that each agreement made by the Parties is in effect as laws for those who make it. In addition, in Article 1320 civil code, the Criminalization has been explained the termination of an agreement. Where in determining the legitimate or not the agreement is :

- a. there is an agreement of both parties,

- b. skills to commit legal actions,
- c. the existence of objects, and
- d. there is a *halal causa* (R.M Panggabean : 2010)

The first and second requirements mentioned above are called subjective requirements, because it concerns the people who enter the agreement, while the third and fourth requirements are called objective requirements because it concerns the object of the ever being promised.

1) Both side agreement

The agreement is needed in an agreement, this means that the two parties must have freedom of will, meaning that each party does not get a pressure that results in defective in realizing his will. Although contracts made using an electronic contract, the agreement really must arise from both parties. Agreement is also called consensus on the party who has an agreement. The agreement is regulated in Article 1320 civil code paragraph (1) of the Civil Code. Agrees to be depicted as a statement of will approved by both parties. The party offering is called the offer (*offerte*), while the party receives an offer called acceptance (*acceptasie*). Given the agreement is given freely then in the Civil Kuh mention there are three because the agreement is not given voluntarily, namely due to coercion, mistakes and fraud.

Coercion (*Dwang*), in this case in the form of psychologized coercion, for example, as threatened or feared. Mistakes, concerning the main things from the promised. *Machilaft* about the person is called an error in *persona* and mistakes about the item is called an error in *substantia*. Fraud (*Bedrog*) is set in Article 1328 Civil Code "is a reason to issue an agreement, if the deception used by one of the parties, is in such a way that is clear and real that the other party has not made a trick if no trick does These. Fraud is not across, but must be proven." Basically, the most ways are done by parties, namely with the perfect language verbally and in writing. The aim of making an agreement in writing is to provide legal

certainty for the parties and as perfect evidence, if there is a dispute in the future.

2) Commitment

The parties in making an agreement must be capable according to law. The skills in acting are skills or ability to commit legal actions. Legal actions are acts that will cause legal consequences. People who will enter the agreement must be capable people and have the authority to commit legal actions, as stipulated and determined by the law.

3) The object of the agreement

The third requirement for an agreement is there must be an object of the agreement. Where the object regulated in the contract must be clear, at least can be determined, it should not be vague. It is important to provide guarantees or certainty to the parties and prevent the emergence of fictitious contracts. For example in buying and selling motorbikes must be clearly the brand of the motorbike, what machine number, what year's output and so on. The object of the original agreement is also called achievement. Achievements are regulated in Article 1234 Civil Code.

Probment consists of:

- a) Give something
- b) Do something
- c) Don't do anything

4) the existence of halal causa

The halal causa in question is the contents of the contract may not conflict with laws that are forcing, public order or decency. Such contracts do not have legal force. The above requirements apply to both the subject and object of the agreement. The first and second terms are with respect to the subject of the agreement or subjective terms. The third and fourth terms pertain to the object of the agreement or the

objective terms. The difference between the two requirements is also associated with the issue of void for the sake of law (nieteg or null and ab initio) and can be void (vernietigbaar = voidable) an agreement. If the objective conditions in the agreement are not met then the Agreement is void for the sake of the law or the agreement that has since been void, the law considers the agreement never existed. If the subjective conditions are not met then the Agreement may be terminated ( Retna Gumanti : 2012)

In the Civil code it is not clearly mentioned about the momentum of the contract. In Article 1320 of the Civil Code only mentioned enough with the consensus of the parties. In various literature mentioned empas theory discusses the momentum of the contract, namely the theory of statement. Shipping, knowledge, and fourth receipts are explained below.

a) Theory of statement (Untilstheorie)

According to the theory of statement, the agreement (toesteming) occurred when the party received the offer stated that he received the offer. So, judging by the receiving party, namely when he just dropped the ballpoint to declare accepting, the agreement had occurred. The weakness of this theory is very theoretically because it is considered an agreement automatically.

b) Shipping theory (Verzendtheorie)

According to shipping theory, the agreement occurs if the party receives the offer sending the telegram. Criticism of this theory, how it can be known. It could be, even though it was sent but it was not known by the party offering. This theory is also very theoretically, considered an agreement automatically.



c) Knowledge theory (VernmingStheorie)

Knowledge theory argues that the agreement occurs if the party offers aware of the presence of acceptatie, but the acceptance has not received it (not known directly). Criticism to this theory, how he knows the contents of the acceptance if he has not accepted it.

d) Acceptance theory (Ontevangtheorie)

According to the acceptance theory that Toesremiug occurred when the offer party received a direct answer from the opponent. In addition to the four theories, Pitlo revealed a fifth theory of the momentum of the contract, namely Geobjectieerde BernemingStheorie, which determines the sender of the letter Redelijkerwijs, can assume that the address has known the contents (Salim.H.S : 2006).

From the above conclusions it can be said that the implementation of the covid-19 pandemic agreement still must be in accordance with the ignition of the legal requirement of an agreement and by taking into account the principles that exist in the contract law so that the momentum of the contract, is at the time the incarnation between the statement and the will between creditors and will debtor. But in reality at the time of Covid-19 pandemic which has a very extraordinary impact on business activities in Indonesia certainly has obstacles to meet an achievement. As in the state of the Covid-19 pandemic, the obstacles that are often found are forcemajure. Usually this forcemajure is associated with the causes of debtors blocking the circumstances so they cannot carry out their achievements due to unexpected events when the agreement is made, so that in the implementation of the debtor cannot be held

accountable because there is an event beyond the willingness of each party like a Pandemic Covid-19 that hinders a person's business activities So the increase in default in the contract.

According to R. Setiawan that a circumstances that forced to stop the performance of engagement and raise some consequences because creditors can no longer request the fulfillment of achievement, the debtor can no longer be declared negligent, and therefore it is not required to pay compensation; the risk of not turning to debtors; At Timal Approval back, creditors cannot request cancel. (Rosanty Qory : 2021)

But in reality the Covid-19 pandemic that happens at this time is not enough to be qualified to be a non-natural disaster because it takes time and further statement from the government and the authorities regarding the current situation to declare Covid-19 including non-natural disaster pandemics. Very relevant for now to use affirmations from the World Health Organization (WHO) stating the Covid-19 virus has been classified as a pandemic outbreak. This is confirmed by the issuance of Presidential Decree Number 12 of 2020 which determines the Covid-19 outbreak as a national disaster (rizkyana : 2021). It can be concluded that the situation is forced by the need for this pandemic because it makes the pace of the business in fulfilling the achievements of one of the parties and there is no element of intentional or negligence from the hindered party so it can be concluded that Covid-19 arises and has penetrated throughout Indonesia can be categorized as outside events Ordinary.

When one of the parties experienced a forced state and the other party knew about the situation but did not be can't be caught in the agreement they made, the mechanism of both parties could conduct deliberations to resolve delays or delays in meeting the achievement. Lovers for fulfillment of achievement can be carried out because forcemajure that occurs in the debtor is temporary or relative where the object is promised Lost or destroyed, then the agreement will continue but the process of fulfilling its achievements will be temporarily delayed until normal conditions.

Force majeure is one of the concepts in civil law and is accepted as a principle in law. Mochtar Kusumaatmadja stated that force majeure or vis major can be accepted as a reason for not fulfilling the obligations due to the loss/disappearance of the object or purpose which is the subject of the agreement. This situation is aimed at physical and legal implementation, not only because of difficulties in carrying out obligations. Mieke Komar Kantaatmadja gave a similar view, namely:

1. Changes in a situation did not occur at the time the agreement was formed.
2. The amendment concerns a condition that is fundamental to the agreement.
3. Such changes cannot be foreseen by the parties.
4. The effect of the change must be radical, so that it changes the scope of obligations that must be carried out according to the agreement.
5. The use of this principle cannot be applied to border agreements and also changes in

circumstances due to violations committed by the party making the claim. (Harry Puirwanto : 2011)

## 2. **Electronic contract legal force**

The theory of contract law was evident in the nineteenth century with his classical contract law theory, the formation of this new theory is reaction to and criticism of the medieval tradition of substantive justice. 19th century contract law scholars had a tendency to treat or place individual choice (individual choice) no only as an element of the contract, but as the jurists stated France is a contract in itself. They have a tendency identify that choice with freedom, and freedom to be the ultimate goal of individual existence (Agri Khairunnisa: 2015)

The explosion of technological and communication development in the 21st century has brought very rapid progress in all aspects of human life. One of the technological developments that is very important and has a big influence is the ease of the internet. (Marina Abdul Manab : 2018)

Electronic transactions are new in the field of beris and its development. Legal rules are made to regulate things or relationships that are being or have occurred so that they are rather static. One problem that arises is the legal force of this electronic contract. Electronic contracts can be grouped as engagement with the threat of punishment. Electronic contracts are included in the Agreement not named because the Legal Contracts are not regulated in the Civil Law Book (Ridwan Syahrani : 2010). Until now it is recognized that conventional contract law has not been able to reach fully electronically. (Ridwan Khairandy : 2001)

An agreement was formed when the parties reached an agreement. Agrees to love an offer received. In an electronic contract whose agreement is not given in a written form or writing as well as in conventional agreements in the real world. Discussing electronic contracts is inseparable from the concept of the agreement fundamentally as stated in Article 1313 Civil Code that confirms that an agreement is an act by which one person or more to tie himself against one or more people. Electronic contracts conducted can use or refer to article 1313 civil code as the legal basis. So that the conditions

specified in the legal requirement of the Article 1320 agreement also apply in an electronic contract.

Based on Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Technology, transactions carried out electronically are basically engagement or legal relations carried out electronically by combining computer-based electronic network system with a communication system. Furthermore, it is facilitated by the existence of global computer networks or the internet. (Emilda Kuspaningrum : 2011). Obviously in the development of the technology of technology and the existence of Covid-19 business people's pandemics to run their business and continue to develop when the pandemic, they found an effective choice by using this electronic contract.

In the regulation of this elektronik information and transaction law, which regulates information, documents, and electronic signatures is the beginning of the occurrence of legal relations where in the beginning of the creation of legal relations must have a process of bidding from business actors to his colleagues. If in the supply process it runs smoothly then it is continued at the stage of electronic transactions which are then tied with a direct contract.

The agreement document on an electronic contract can replace the existence of the actual agreement carried out conventionally. As in addition to referring to the Civil Law law, the validity of the electronic contract included:

a. Letter (written shaped)

According to Sudikmo Mertokusumo, a letter is everything that contains the signs of the reading intended to deliver a person's mind and can be used as a verification. In Article 6 ITE law mentioned in case there are provisions other than those regulated in Article 5 paragraph (4) which require that information must be written or original, electronic information is considered valid as long as the information listed in it can be accessed, displayed, guaranteed. The integrity and can be accounted for so as to explain

a situation. In other words it is regulated that a <sup>15</sup> information must be displayed in written and original form, so it can be accounted for it is considered legitimate in the eyes of the law.

b. Signed

<sup>14</sup> Electronic signature is a signature consisting of electronic information attached, associated or related to other electronic information that is used as a verification and authentication tool as stipulated in Article 1 paragraph 12 of the ITE Act.

c. Made for proof purposes

Like the deeds made on paper, the agreement document on a direct contract of electronic data transmission is also made for proof purposes.

d. Legal Contracts bind the parties

Party agreement in an electronic contract is poured in documents in the form of electronic data transmission. A electronic transaction binds interrelated parties in it, which means that an electronic contract is a law for the parties who make it. If there is one party who violates the electronic contract, the other party can file a lawsuit against those who violate the contract. If it has fulfilled the elements and conditions regulated in the Civil Law and Points above, the electronic contract basically has legal force.

## CONCLUSION

The implementation of the Electronic Contract in the Pandemic Covid-19 basically must refer to the arrangement of the agreement that has been regulated in the book III Civil code where there are regulations on the legal requirements of the agreement, and the principle of making an agreement. The legal force of a direct contract, if the contract is made and run with the provisions regulated in the Act, the electronic contract has legal legal force.

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