Problematics of Cyber Law in International Trade Contracts

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ABSTRACT

The use of electronic in transactions can be more efficient and effective and penetrate the jurisdictional boundaries of a certain country without having to move, but can cause issues related to the authenticity of data and the jurisdiction of courts. This problematic is the reason for research on these problems. This research is a normative legal so that the method of analysis of library materials is used with inductive thinking techniques. The results, show that the authenticity of information and documents is determined by the existence of the data that can be accessed, and its integrity is guaranteed. In the settlement of disputes in international trade, it is based on the will of the parties, but Indonesia does not yet have specific regulations regarding international electronic agreements so that Indonesian law is still not an option in international electronic agreements, as a result it cannot provide legal certainty for parties.

Keywords : Authenticity, electronic system, jurisdiction, problematic, international trade.

I. INTRODUCTION

A. Background

Electronic trading transactions are no longer only carried out nationally but have also been carried out internationally. Electronic transaction activities carried out through internet media can penetrate the jurisdictional boundaries of a particular country. This raises the existence of international electronic agreements in transactions, which of course can lead to various legal problems. Electronic agreements are more legal in nature, even though the two contracting parties adhere to a different legal system according to their country. The first thing that must be done is that the parties need to agree on the applicable law in electronic agreements made in international electronic transaction agreements.

Trading through an electronic system contains certain transactions as outlined in a contract called an electronic contract (e-contract) which has the characteristics of occurring remotely and even across countries, the parties do not meet each other and may never even meet.[1] Thus, if at first it was understood that for a contract to occur the parties had to meet physically, then with the development of technology and information, negotiation and contract signing no longer need to require the parties to meet in person, it is enough through an electronic system.

In Indonesia electronic transactions are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Concerning Electronic Information and Transactions, hereinafter referred to as the Information and Electronic Transaction Law The Information and Electronic Transaction Law adheres to the principle of freedom of contract which gives the parties the authority to determine choice of law for international electronic transaction agreements made. If the parties do not determine the choice of law in the international electronic transaction agreement, then the applicable law is based on the principle of international private law. Likewise with dispute resolution, the parties are given the freedom to determine the dispute resolution forum. However, if the parties do not determine a dispute resolution forum, then the dispute settlement uses the principle of international private law.

The character of the internet or cyber space is global or universal, so that the problems that arise also have a tendency to have a global and universal character. A legal system is always very closely related to their specific area which is completely defined by boundaries. However, the presence of the internet and e-

[1] I Gede AB Wiranata, *Hukum dalam berbagai Dimensi* (Lampung : Universitas Lampung), 2012, p. 111.

contracts or international electronic agreements have made the physical boundaries of time and space no longer meaningful because their presence was designed for that.

The use of the internet as a transaction medium like this can indeed make trade transactions more efficient and effective, but on the other hand this can cause problems in the future. Because it relates to the determination of the agreement as one of the legal requirements of the agreement specified in Article 1320 of the Civil Code. The definition of agreement is described as a statement of the will of the party offering the offer and accepting the offer.[2] When an agreement occurs between the two parties, it is very important to know when the contract occurred so that default can be determined. These problems can be categorized as data authenticity problems and problems with the jurisdiction of this court are also reasons for conducting research on these problems.

B. Problem Formulation

Based on the description above, the problems to be discussed in this problem are formulated as follows:

1. How to assess the authenticity/validity of data in international electronic transaction agreements?
2. How to determine the jurisdiction of the court if a dispute arises in the future in an international electronic agreement?

II. RESEARCH METHODS

This research is normative research, namely research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Normative legal research is usually called doctrinal legal research or also called library research. It is called doctrinal law research, because this research is only aimed at written regulations so that this research is very closely related to libraries because this normative law will require secondary data from libraries.[3]

Basically processing and analysis of data depends on the type of data. In normative legal research, processing and analyzing primary legal materials, secondary legal materials and tertiary legal materials cannot be separated from various legal interpretations known in legal science. The data analysis technique used in this legal research uses an inductive mindset/logic.[4]

III. DISCUSSION

A. Data Authentication and Integrity

With regard to transactions using electronics, in addition to fulfilling the requirements for making agreements, it is also related to the authenticity of the information used in transactions. Trading through electronic media is also referred to as an online contract which is defined as an agreement or legal relationship carried out by integrating a network of computer-based information systems with a communication system based on telecommunication networks and services (telecommunications based) which is further facilitated by the presence of a global computer network (international networking).[5]

Law Act Number 8 of 1999 concerning consumer protection in buying and selling transactions through internet media (E-Commerce) also has a role to provide protection for the rights of consumers who make transactions. Online buying and selling transactions are recognized as legal and accountable electronic transactions, the object of the transaction must not conflict with laws and regulations, decency and public order.

The most basic cyber law issues relate to issues of authenticity, authenticity, and data integrity. Data messages are the main basis for the formation of an electronic contract, whether it is an agreement regarding the terms and conditions of the contract or its substance. The validity of information and documents is

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[2] Elisabeth Nurhaini Butarbutar, *Hukum Harta Kekayaan, menurut Sistematikan KUH Perdata,* Cetakan Pertama, (Bandung : PT Refika Aditama), 2012, p. 141.

[3] Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum. Langkah-langkah untuk Menemukan Kebenaran dalam Ilmu Hukum,* Cetakan Pertama, (Bandung : PT Refika Aditama), 2018, p. 78.

[4] Jhonny Ibrahim. *Teori dan Metodologi : Penelitian Hukum Normatif.*(Malang : Bayumedia Publishn). 2006. p. 249.

[5] Edmond Makarim, *Kompilasi Hukum Telematika* (Jakarta : Raja Grafindo Persada), 2003, p. 9.

determined by two things, namely as long as the information contained therein can be accessed, displayed and its integrity guaranteed. The validity of information and documents can be accounted for so as to explain a situation. Therefore, electronic information and data providers must guarantee that the information can always be accessed, displayed and guaranteed the integrity of the information.[6]

There are problems in cryptography that are both technical and juridical. Technical problems are problems with the reliability of electronic technology itself as core technology and its supporting tools in relation to its use as a commercial medium, while non-technical problems are problems related to the implications arising from the application of electronic technology in the world of commerce.

Other substantial issues in electronic trade agreements are issues related to the legitimacy of electronic documents used in forming electronic agreements as well as problems with the electronic contract itself. This problem is closely related to the form of documents and electronic signatures which tend not to be written directly on paper, but are more abstract (intangible) in nature.

Article 11 of the Information and Electronic Transaction Law stipulates that electronic signatures are recognized as valid evidence that has legal force and legal consequences as long as they meet the requirements specified by law, namely that the data for making electronic signatures is only related to and only resides in the power of the signatory. access to changes to electronic signatures as well as information about identifying who the signer is.

Signatures can also guarantee data authenticity, because a signature in general must be able to perform a number of functions identifying the signer, providing certainty about someone's involvement in the signing, associating a certain person with the contents of the document, and declaring ownership of the document to the signer. As for the characteristics of traditional signatures, they can be easily made by the same person, easily recognized by third parties, relatively difficult to forge by third parties, affixed and included in documents so that the two become one unit, involving a physical process (writing ink onto paper), the same for all documents signed by the same person and relatively difficult to erase without a trace.

When compared with electronic signatures, namely from a comparison of characteristics between traditional signatures, electronic signatures can be rejected for their validity, because they do not involve physical processes and are easy to erase. The creation of an electronic signature is completely invisible to the physical process and is also very easy to delete. However, according to some experts, electronic signatures should be accepted for validity as signatures on the grounds that electronic signatures are affixed by a person/several persons who wish and are legally bound. Electronic signatures can be created or affixed using mechanical equipment just like traditional signatures. However, the security properties are the same as traditional signatures, because the element of intent can be fulfilled by electronic signatures and electronic signatures can be placed anywhere in a document like traditional signatures.

Regarding electronic information and data used, it has been determined in the Electronic Information and Transaction Law by stating that electronic information is legal evidence. This provision does not conflict with the principles of evidentiary law in civil procedural law as an extension of the valid evidence in the applicable civil procedural law in Indonesia, in this case the evidence contained in Article 1866 of the Civil Code.[7]

Several techniques to guarantee data authenticity and data message integrity, namely cryptographic techniques (cryptography) and electronic signatures (electronic signature). Cryptography is a field of science that studies application techniques that can guarantee data relating to authenticity, integrity, confidentiality and access control.[8]

Data authentication occurs when the recipient of the message must know who the sender of the message is and must be absolutely sure that the message came from the sender. Integrity, in terms of the recipient must be sure that the message has never been altered, or falsified by a party in good faith. Cryptography is

[6] Janus Sidabalok, *HUKUM PERDAGANGAN. Perdagangan Nasional dan Perdagangan Internasional,* (Medan : Yayasan Kita Menulis), 2020, p. 164.

[7] Elisabeth Nurhaini Butarbutar, *Hukum Pembuktian, Analisis terhadap Kemandirian Hakim sebagai Penegak Hukum,* Cetakan Pertama, (Bandung : Nuansa Aulia), 2016. hlm. 194.

[8] W. Onno dan A.A. Wahyudi, *Mengenal e commerce,* (Jakarta : Elex Media Komputindo), 2010, p. 12.

used as a science and art to maintain the security of messages by encoding them into a form that the meaning can no longer be understood.[9] Confidentiality, in the sense that the message must not be read by unauthorized parties. It is undeniable, the sender cannot deny that he is not the one who sent the message, and access control where the cryptographic system has the ability to authorize or prohibit any access to these messages.

Cryptography is a technique of securing and guaranteeing the authenticity of data consisting of two processes, namely encryption and description. Cryptography can maintain data validity, data confidentiality, data credibility, data integrity, and data authentication.[10] However, not all aspects of information security can be overcome with cryptography.

Encryption is a process carried out to make data unreadable by unauthorized parties because the data has been converted into coded language or certain codes. Encryption is the process of processing plaintext (readable messages) into ciphertext (unreadable random messages). Description is the opposite of Encryption, which is the process of making encrypted data or information readable by the rightful party. Decryption is a process of processing ciphertext into plaintext, where this process takes place using the same key and a reverse algorithm.

The development of internet technology has also led to the emergence of a crime called cyber crime (crime through the Internet network). In conducting electronic trading transactions, it often creates problems, especially public trust in producers (sellers) of goods via the internet. Sometimes what consumers have purchased does not match what is seen through the internet (online shop) which is one example of a crime that occurs on the internet in electronic commerce transactions.[11] In the event of a crime occurring, Article 28 paragraph (1) of the Information and Electronic Transaction Law only stipulates, every person intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions is a prohibited act.

B. Jurisdictional Issues

A legal system is always very closely related to their specific "territory" which is completely defined by boundaries. However, the presence of the internet and e-contracts has made the physical boundaries of time and space no longer meaningful because their presence was designed for that. The existence of jurisdiction based on the existence of the server location and/or the nature of the website is also inappropriate with respect to the determination of jurisdiction.

Problems that are procedural in cyber law are jurisdictional issues, namely judicial jurisdiction, which refers to the power of the court to adjudicate certain cases, in this case cases related to transactions in electronic commerce and electronic agreements. Jurisdictional issues are crucial and complex issues in the context of e-contracts or electronic agreements.

In connection with these problems, the United States recognizes the existence of two types of jurisdiction, namely absolute competence and relative competence. The United States already has The Long Arm Statute which allows this country to put emphasis on the applicability of its national legal system so that it can apply extra-territorially to other nations or countries. However, in the event that there is no choice of law in an agreement or electronic contract, the most important thing is to find the law that applies to the agreement. The parties need to agree on the law that applies in electronic contracts made in international electronic transaction agreements.

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[9] Dian Wirdasari, "Prinsip Kerja Kriptografi dalam Mengamankan Informasi," *Jurnal Saintikom* Vol. 5 No. 2, (August 2008) : 174, https://prpm.trigunadharma.ac.id/public/fileJurnal/42481-OK-Jurnal6-DW-Comsec2-174-184.pdf.

[10] W. Onno dan A.A. Wahyudi, *Loc Cit.*

[11] Sadino, "Internet Crime dalam Perdagangan Elektronik."*Jurnal Magister Ilmu Hukum* Vol. I No. 2 (July 2016) : 15, http://dx.doi.org/10.36722/jmih.v1i2.732

As a result of international treaty indicators, namely different nationalities, different legal domiciles of the parties, there is a choice of law, one of the country's rules will become the choice of law in the event of a dispute over the international contract, the signing of the contract is carried out abroad, the object of the contract is abroad , and the language used in the contract is a foreign language and the use of foreign currency in the contract has the potential for conflict between parties of different nationalitieProblems arise if one of the parties is a foreign party who has a different legal system from the applicable law in Indonesia, because Indonesia does not yet have legal instruments that regulate cyberspace, e-commerce, especially electronic transactions.

The problem in the settlement is whether it is resolved through a judicial body or arbitration in Indonesia or a foreign judiciary. According to Article 18 paragraph (3) and (4) of the Electronic Information and Transaction Law, if the parties do not determine the choice of law and the choice of forum that will apply to the parties, then the principles of international private law will apply in the implementation of electronic transactions, including settlement dispute between the parties

International contracts which are national contract laws that have foreign elements. In national contracts there are principles that are generally general in nature because they are contained in every contract law of each country. International contract law can be interpreted as provisions governing matters relating to agreements made by two or more parties relating to the application of the legal basis and legal requirements, procedures, techniques for forming, implementing and completing which as a whole there are foreign elements to the contract. which are made. So the essence of the international contract is an agreement. International contract law was originally a national law that was used as the basis for regulating international contracts, so that every country has its own international contract law, meaning that there are a lot of international contract laws, depending on the number of countries around the world, so a unification of contract law is needed. International.

Several forms of agreements in the field of international trade are Cooperation in the World Trade Organization (WTO) Forum, the World Trade Organization Forum Asean Free-Trade Area (AFTA), Asean Free Trade Cooperation. Asia Pacific Economic Cooperation (APEC) Forum and Asia Pacific Economic Cooperation. As the legal basis for law enforcement processes in electronic and computer facilities in Indonesia, is the Law on Electronic Information and Transaction Law. Indonesia is currently in dire need of a law that will regulate the legality of electronic business contracts (business e-contracts), electronic signature verification, regulation of cyber crimes, and so on. The perpetrators of these crimes can easily escape the law because there are no legal rules and regulations that regulate these problems in Indonesia.

The Indonesian legal system has not been able to resolve cases arising from international electronic transaction agreements. In fact, it often happens that due to the absence of legal and statutory provisions, courts in Indonesia are of the view that because Indonesia does not yet have a specific law prohibiting cybersquating as an unlawful act, the accused must be acquitted. This has led to an increase in the number of cybercrimes, in which the perpetrators have become free from prosecution. Article 9 of the Electronic Information and Transaction Law stipulates that business actors offering products through electronic systems must provide complete and correct information regarding contract terms, producers and products offered. According to Article 26 paragraph (2) of the Electronic Information and Transaction Law, everyone whose rights have been violated may file a lawsuit for the losses incurred. Furthermore, Article 38 of the Information and Electronic Transaction Law stipulates that anyone can file a lawsuit against the party operating the electronic system and/or using information technology that causes harm.

In international agreements several principles apply, namely the principle of national legal sovereignty, the principle of freedom of contract, the principle of pacta sunt servanda, the principle of good faith and the principle of reciprocity. The principle of freedom of contract which gives authority to the parties to determine the choice of law for international electronic transaction agreements made. If the parties do not determine the choice of law in international electronic transactions, then the applicable law is based on international private law principles.

Likewise with dispute resolution, the parties are given the freedom to determine the dispute resolution forum. However, if the parties do not determine a dispute resolution forum, then the dispute settlement shall use international private law principles. This is due to the absence of laws that specifically regulate

international electronic transaction agreements.[12] Nationally, the settlement of civil cases is regulated in Article 58 of Law Number 48 of 2009 concerning Judicial Powers which determines that efforts to resolve civil disputes can be made outside the state court through arbitration or alternative dispute resolution. This means that the parties are free to determine whether they will choose a state court or through arbitration or alternative dispute resolution in resolving civil cases if a dispute arises in the future.

Settlement of disputes in district courts is based on the principle that anyone who feels their rights have been violated can file a claim in court (point d'interet point d'action). Settlement of disputes outside the court is based on Article 59 jo. Article 60 of the Law on Judicial Powers, which stipulates, arbitration is a method of settling civil disputes based on an arbitration agreement made in writing, and institutions for resolving disputes or differences of opinion through procedures agreed upon by the parties by way of consultation, negotiation, mediation, conciliation or expert judgment . The decision set forth in a written agreement is final and binding on the parties to be implemented in good faith.

To resolve disputes through the courts, competence or authority is known to adjudicate a court, which according to Article 18 of the Law on Judicial Power, judicial power is held by the Constitutional Court and the Supreme Court with four courts under them namely General Courts, Military Courts, State Administrative Courts and Courts of Justice. Religion. Problems in resolving cases through the four courts are related to absolute competence, the settlement of which is regulated in Article 25 paragraph (2) which determines that the general court has the authority to examine, adjudicate and decide on criminal and civil cases, paragraph (3) determines that the religious court has the authority to examine, adjudicate , decide and resolve cases between people who are Muslim, paragraph (4) states that the Military Court has the authority to examine, hear and decide cases of military crimes and paragraph (5) stipulates that the State Administrative Court has the authority to examine, try, decide and resolve state administrative disputes.

Meanwhile, the relative competence of each of the four courts is regulated in their respective procedural laws. For the authority to try civil cases, it is determined in Article 118 paragraph (1) HIR/142 paragraph (1) Rbg in accordance with the actor sequitor forum rei principle that the district court authorized to hear civil cases is the district court where the defendant lives with the exception that the defendant does not have a place residence that is real or unknown, claims regarding fixed objects, then the lawsuit is filed with the District Court where the object is located in accordance with the principle of forum rei sitae. There is a choice of law, so the lawsuit is filed with the District Court whose jurisdiction covers the chosen place of law.

Relative competence in solving criminal cases is based on Article 18 of the Judicial Power Law in accordance with the principle of locus delicti, namely the place where the crime was committed with the exception of the defendant's residence or the residence of most of the witnesses called, the defendant's last residence or where the accused was found. Civilly, in Indonesia a dispute will be resolved in the Indonesian judiciary (choice of forum) and with Indonesian law. Indonesian evidentiary law is contained in Book IV of the Burgerlijk Wetboek (BW). In civil proceedings, the evidence is more formal in nature, so that if there is evidence that is falsified, the civil trial will wait for the decision of the criminal case.

The international electronic transaction agreement that occurred on May 28, 2022, is one example where a legal event occurred in the form of an online loan agreement between Retno, an Indonesian citizen, and Afia, a Malaysian citizen, where Retno was the debtor and Afia was the creditor. The loan amount was RM 15,000, and it was agreed that the interest on the loan was 5% per month with a penalty of 20% per month for late payment, but the agreement did not include the office address and operational permits, and did not agree on the applicable law in the agreement.

The potential for legal violations that may occur is that the creditor deliberately does not activate the application so that the debtor has difficulty returning the loan on time, and there is also no address to address for direct loan repayments. A few months later the creditor can collect a large amount by calculating all the fines, threatening to spread the debtor's personal data if he does not make the payment as billed and make

[12] Agus Yudha Hernoko, *Hukum Perjanjian (Asas Proposionalitas Dalam Kontrak Komersial),* Kencana, Jakarta, 2010, p. 134.

various kinds of terror against the debtor. There are no legal remedies that can be taken because it turns out that Afia, as a creditor, does not have an operational permit, making it difficult to prevent legal problems from occurring.

As a result of the development of information technology and the ease of transactions provided, which do not always run smoothly, it creates new problems considering the diversity of the international community, both culturally, purpose of transactions, and so on. International business transactions are a private legal scope that provides broad freedom for each party to enter into agreements in accordance with the clauses that they mutually agreed to carry out in good faith. However, with this freedom, the parties will certainly involve or be based on the laws of their respective countries which create an inconsistency in the will of the parties, such as differences in the private and common law legal systems, which ultimately affect the implementation of the agreement.

To resolve this problem, legal harmony is needed that is not burdensome to each party, of course, rules that can provide certainty and legal protection for those who carry out international business transactions. Because the parties to international contracts involve countries with countries and international organizations with countries. Direct meetings between the two parties with law enforcement mediation in the Kingdom of Malaysia can be carried out to obtain an agreement through efforts to harmonize Indonesia's national contract law with the national contract law of the Kingdom of Malaysia so that the interests of both parties can be equally protected.

Based on Article 18 paragraphs (3) and (4) of the Electronic Information and Transaction Law, if the parties do not determine the choice of law and the choice of forum that will apply to the parties, then the principles of international private law will apply in the implementation of electronic transactions, including settlement dispute between the parties. The generally accepted principle of international contract law is that everyone is subject to their own national law, known as the principle of nationality and the principle of respect for national law, which means that in working together, each country must respect the national laws of other countries.In connection with the problem of proof, in court practice in Indonesia, the use of electronic data as legal evidence is still not commonly used. Even though several countries such as Australia, Chile, Japan, China and Singapore already have legal regulations that provide recognition of electronic data as legal evidence. Example: Contract Law of The People's Republic of China 1999.

In the absence of special regulations governing the validity of electronic transaction agreements in Indonesia, the validity of electronic transaction agreements still refers to Article 1320 of the Civil Code, namely the agreement of the parties. the skills of the parties, a specific object or a certain thing and a lawful cause. In international trade, dispute resolution is principally based on the principle of good faith or the use of peaceful channels. As a fundamental principle in the settlement of international trade disputes. This is done to prevent the emergence of internal conflicts that can threaten peace between countries. If one of the countries as a party to the dispute does not show good faith in resolving the dispute, then it will be very difficult to settle the dispute. Therefore, the existence of international organizations that specifically deal with dispute resolution issues can be used as an alternative dispute resolution.[13]

One example of an international organization that regulates problem solving in cases of international trade disputes is the World Trade Organization, also abbreviated as WTO. The World Trade Organization is a rules-based organization which is the result of negotiations. The establishment of the World Trade Organization is based on regulating trade at the international level, one of which is to facilitate the settlement of disputes resulting from conflicts or disputes arising from international trade.

The principle of freedom to choose ways of resolving disputes is a principle in which the parties have the freedom to determine and choose the method or mechanism by which the dispute is resolved (principle

[13] Karel Wowor, dan Grenaldo, "Analisis Hukum Aternatif Penyelesaian Sengketa dalam Praktek Perdagangan Internasional," *Lex Crimen,* Vol.IX No. 2 (April-June 2020) : 207, https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/33973/32102

of free choice of means). This principle is contained in Article 7 of The UNCITRAL The principle of freedom to choose law is the freedom of the parties to determine for themselves what law will be applied if the dispute is resolved by a court or arbitration body. This freedom includes the freedom to choose decency and appropriateness (ex aequo et bono). The principle of good faith which is interpreted in dispute resolution, is reflected in two stages, namely the application of the principle of good faith which is required to prevent disputes from arising which can affect good relations between countries, and which is required when the parties resolve their disputes through dispute resolution methods. known in international (trade) law, namely negotiation, mediation, conciliation, arbitration, court or other ways of choice of the parties.

The principle of exhaustion of local remedies was born from the principles of international customary law. According to this principle, customary international law stipulates that before the parties submit their dispute to the international court, the dispute resolution steps available or provided for by the national law of a country must first be taken. Because data is the main basis for the formation of an electronic contract, agreement on the terms and conditions of the contract must always exist. Indonesia does not yet have laws that specifically regulate international electronic agreements so that Indonesian law is considered not yet an option in international electronic agreements, and Indonesian courts are deemed unable to adjudicate cases arising from international electronic agreements.

IV. CONCLUSION

Assessing the authenticity/legitimacy of data in international electronic transaction agreements as a cyber law issue is based on the existence of the information listed in it that can be accessed, displayed and guaranteed for its integrity. in the data can be accessed, and its integrity is guaranteed, in the sense that the recipient of the message must know who the sender of the message is and must be absolutely sure that the message came from the sender. In the settlement of disputes in international trade, it is based on the will of the parties to choose, but because Indonesia does not yet have specific regulations regarding international electronic agreements, Indonesian law is still not an option in international electronic agreements, as a result it cannot provide legal certainty for the parties. involved in international trade through electronic systems.

V. RECOMMENDATION

The government should immediately make laws that regulate international electronic transactions, so that they can be used as a basis for resolving legal issues that arise in international electronic agreements.

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C. Legislation

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