



## Juridical Analysis of Minors' E-Commerce Transactions Are Related To Article 1320 of the Civil Code's Agreement Terms

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**Abstract:** The purpose of this study is to determine the validity of the Terms of Agreement on Transactions through e-commerce conducted by minors, which is divided into two sub-discussions, namely first how the validity of agreements in e-commerce transactions according to Article 1320 of the Civil Code and second how the legal protection of the parties in conducting e-commerce transactions conducted by minors. This type of research is a qualitative literature research with a juridical-normative approach. The results of this study show that agreements through e-commerce are declared valid and declared born when an agreement is reached regarding the object being promised, and cannot be separated from what has been basically stated by Article 1320 of the Civil Code by using electronic media so that the contract is not realized in writing. E-commerce transactions are carried out by parties, one of which is under age, the agreement is considered valid as long as it does not harm both parties, and the underage party understands the agreement that must be fulfilled and is responsible for what has been agreed upon.

**Keywords :** E-Commerce; Agreement; Sale; Purchase

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## 1. Introduction

The development of Information and Communication Technology in this era of globalization is moving very fast and cannot be avoided. The development of information and communication technology will continue to go hand in hand with human understanding of science. Humans as the subject of the application of information and communication technology must make this a motivational whip to continue learning and innovating. The development of information and communication technology has an impact on unlimited world access and significant social changes in society.<sup>1</sup> Even so, the existence of information and communication technology has a positive impact but certainly does not avoid negative impacts as well. The development of information and communication technology that is developing today is very much and almost fulfills all aspects of people's lives. One of them is the use of the internet (interconnection network), information and communication that is most commonly utilized in various activities easily, such as browsing, obtaining valid data, downloading and uploading, exchanging messages through various applications, to buying and selling transactions.<sup>2</sup>

Indonesia itself is ranked the 6th country with the largest internet users in the world with a growth space for the number of internet users reaching double digits every year.<sup>1</sup> This makes all current community activities very dependent on the internet, for example in the trade sector. Along with the times, information technology is supported by increasingly sophisticated computer technology, making information technology today a means of supporting the dissemination of information in every corner of the world through internet media. The internet as a global communication network (network), is able to create connectivity between devices, both personal and public. Business or trade activities based on internet technology are referred to as electronic commerce (e-commerce) and currently in the Indonesian sense has been known as "electronic commerce" which has been widely used by the public.<sup>3</sup>

The existence of the internet in the trade sector has also resulted in the emergence of a revolution in payment systems from conventional (cash) to electronic (non-cash) systems. This is then utilized by some people, especially for business actors to carry out a trading system. Business actors utilize this technology to generate revenue streams or sources of income for businesses that may not be obtained in conventional ways. One of them is realized by means of buying and selling transactions via the internet or called e-commerce, where the buying and selling transaction process can be carried out between sellers and buyers without having to meet face to face. The

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<sup>1</sup> Rahmi Ayunda dan Melvina Octaria, "Kedudukan Anak Dibawah Umur Sebagai Subjek Hukum Dalam Transaksi E-Commerce Di Indonesia," *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 9, no. 1 (2022): 231-44.

<sup>2</sup> Aulia Fajriani Kamaruddin dan Istiqamah Istiqamah, "Menilik Keabsahan Transaksi E-Commerce Yang Dilakukan Oleh Anak Dibawah Umur," *Alauddin Law Development Journal* 2, no. 3 (2020): 401-12.

<sup>3</sup> I. Putu Merta Suadi, Ni Putu Rai Yuliartini, dan Si Ngurah Ardhya, "Tinjauan yuridis subyek hukum dalam transaksi jual beli online/e-commerce ditinjau dari kitab undang-undang hukum perdata," *Jurnal Komunitas Yustisia* 4, no. 2 (2021): 668-81.

legal basis for the implementation of e-commerce or electronic transactions in Indonesia has been regulated in Law No. 11 of 2008 concerning information and electronic transactions as amended by Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning information and Electronic Transactions (ITE Law), which has then been promulgated in the State Gazette of the Republic of Indonesia in 2008 Number 58, and additional State Gazette of the Republic of Indonesia number 4843. Article 1 point 2 of the Electronic Information and Transaction Law states that: Electronic transactions are legal actions carried out using computers, computer networks, and other electronic media.<sup>4</sup>

The form of e-commerce or online buying and selling transactions is moving wider for people in choosing goods/services. The fourth generation industrial Era is closely related to the utilization of the internet. The online store business as a carrier of change in transactions that initially consumers had to come directly to store outlets until now it was enough to access the internet through their smartphones to be able to shop. The percentage of businesses/sellers / creative economy companies that develop in today's era implement e-commerce and access it is also easier than conventional ways. Based on Article 1457 of the Civil Code mentioned sale and purchase is an agreement by which one party commits himself to deliver a material, and the other party to pay the price that has been agreed<sup>5</sup>.

The lack of protection against the parties conducting e-commerce transactions as a legal problem that most often occurs, for example in terms of agreements, which have been explicitly regulated in Article 1320 of the Civil Code. Article 1320 of the Civil Code provides that the agreement must fulfill the conditions of the validity of the agreement. If an agreement meets the terms of the validity of the agreement, then the agreement is valid and binding for the parties.<sup>6</sup>

In the implementation of online buying and selling transactions or e-commerce, one cannot know for sure whether the parties involved are legally competent as stipulated in Article 1320 of the Civil Code. Based on the study, the author has an interest in researching and analyzing further about the relevance of the laws and regulations of online buying and selling transactions related to the validity of the agreement on the age of the parties in Article 1320 of the Regional Criminal Codeta.

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<sup>4</sup> AABEP Putrid dan Edward Thomas Lamury Hadjon, "Perlindungan Hukum Terhadap Konsumen Dalam Melakukan Transaksi Elektronik di Indonesia," *Jurnal Ilmu Hukum* 6, no. 11 (2014): 2.

<sup>5</sup> Mohamad Kharis Umardani, "Jual Beli Berdasarkan Kitab Undang-Undang Hukum Perdata Dan Hukum Islam (Al Qur'an-Hadist) Secara Tidak Tunai," *Journal of Islamic Law Studies* 4, no. 1 (2021): 16-35.

<sup>6</sup> Desi Syamsiah, "Kajian Terkait Keabsahan Perjanjian E-Commerce Bila Ditinjau Dari Pasal 1320 KUHperdata Tentang Syarat Sah Perjanjian," *Jurnal Inovasi Penelitian* 2, no. 1 (2021): 327-32.

## 2. Method

This research method uses normative juridical research methods using a qualitative approach to literature.<sup>7</sup> The main purpose of this method is to reveal and explain the prevailing norms and understand the legal foundations of a particular issue or topic.

## 3. Analysis and Discussion

### 3.1. Analysis of the Validity of Sale and Purchase Agreement Performed by Minors According to the Civil Code

In general, agreements are born from the law of ties. The law of engagement is the provisions that regulate the rights and obligations of legal subjects in material legal acts. The term law of engagement is a translation of the word *Verbintenissenrecht* (Dutch), namely the entire legal regulations governing the engagement (*verbintenissen*) and regulated in Book III of the Civil Code. This means that agreements are one of the legal sources of agreement law in addition to laws and court decisions. In Book III, the law of engagement recognizes agreements of sale and purchase, exchange, lease, partnership, association, grant, entrustment of goods, borrowing, fixed or perpetual interest, profit, grant of power, debt guarantee, and peace. All of these are special agreements or known as nominate agreements, which are regulated in the Civil Code<sup>8</sup>.

The term agreement comes from the translation of the word *overeenkomst* (Dutch) or contract (English). In the Civil Code, the provisions regarding agreements or contracts begin with Article 1313 of the Civil Code, which is regulated in the second chapter of Book III of the Civil Code: "an agreement is an act by which one or more persons bind themselves to one or more other persons." However, the definition of agreement in Article 1313 is: (1) unclear, because any action can be called an agreement, (2) does not show the principle of consensualism, and (3) dualism. This definition is unclear because the formulation only mentions actions, so that what is not a legal act is also called an agreement.<sup>9</sup>

The formulation of Article 1313 of the Civil Code is about "contract or agreement". KRMT Tirtodiningrat, 64 gives the definition of an agreement as a legal act based on an agreement between two or more people to cause legal consequences that can be enforced by law. According to Setiawan, the formulation of the articles contained in Article 1313 of the Civil Code is not only incomplete but also very broad. Incomplete because it only mentions unilateral agreements. Very broad because the use of the word "act" also includes voluntary representation and unlawful acts. So there needs to be improvements, among others, in the definition of Article 1313:

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<sup>7</sup> S. H. I. Jonaedi Efendi, S. H. Johnny Ibrahim, dan M. M. Se, *Metode Penelitian Hukum: Normatif dan Empiris* (Prenada Media, 2018).

<sup>8</sup> Jeinal Bawarodi, "Penerapan perjanjian sewa beli di Indonesia dan akibat hukumnya," *Lex Privatum* 2, no. 3 (2014).

<sup>9</sup> Sena Lingga Saputra, "Status Kekuatan Hukum Terhadap Perjanjian Dalam Jual Beli Online Yang Dilakukan Oleh Anak Dibawah Umur," *Jurnal Wawasan Yuridika* 3, no. 2 (2019): 199-216.

1. The act must be defined as a legal act, that is, an act aimed at causing legal consequences;
2. Adding the words "or binding to each other " in Article 1313 of the Civil Code;
3. So the formulation becomes, "a covenant is a legal act, in which one or more persons bind themselves or mutually bind themselves to one or more persons. Similarly, according to Suryodiningrat, the definition of article 1313.

The Civil Code is opposed by some parties for several reasons such as:

1. The law has nothing to do with every agreement, and also nothing to do with every source of agreement, because if interpreted broadly, every promise is an agreement.
2. The wording of the law, if interpreted broadly, can lead to unintended legal consequences (for example: actions that cause harm as a result of unlawful acts).
3. The definition of Article 1313 BW is only regarding unilateral agreements, one party as the party who performs while the other party does not perform (for example schenking or grants). The agreement should have a two-party dimension, where the parties perform mutually;
4. Article 1313 of the Civil Code only covers obligatory agreements (giving birth to rights and obligations for the parties), and does not apply to other types of agreements (for example: liberatoir/release agreements; agreements in the field of family law; property agreements; evidentiary agreements).<sup>10</sup>

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<sup>10</sup> Ida Hanifah dan Ismail Koto, "Perjanjian Elektronik Yang Dibuat Oleh Anak Dibawah Umur," *Legalitas: Jurnal Hukum* 14, no. 2 (2023): 187-92.

<sup>11</sup> Taufik Hidayat Lubis, "Hukum Perjanjian di Indonesia," *SOSEK: Jurnal Sosial dan Ekonomi* 2, no. 3 (2021): 177-90.

### 3.2. Analysis of the Legal Protection of the Parties in E-Commerce Transactions

In carrying out sales and purchase transactions in e-commerce, it can be carried out based on electronic contracts as a form of agreement that has been carried out and agreed upon by the parties. An electronic contract is considered valid when it has fulfilled the elements:

- a) There is an agreement of the parties
- b) Carried out by a capable or authorized subject of Law representing in accordance with the provisions of the legislation.
- c) There is a certain thing, and
- d) The object of the transaction must not be contrary to the rules of law, morality, and public order.

The validity of an agreement or contract depends on the fulfillment of the terms of the contract. When fulfilled, the main thing is the agreement or agreement between the parties.<sup>12</sup> Where in the elements that must be fulfilled in its validity electronic contract is also in line with Article 1320 of the Civil Code. The most prominent in e-commerce transaction is the close relationship in the agreement with the receipt of the data message containing the agreement.

Therefore, to anticipate and eliminate legal obstacles for consumers in e-commerce transactions in Indonesia, all e-commerce transactions as long as they meet the conditions contained in 1320 of the Civil Code are recognized as contracts that bind the parties. Furthermore, it is known that there has been a legal umbrella with the enactment of special regulations regarding the implementation of electronic transactions, namely Law Number 19 of 2016 concerning information and Electronic Transactions (ITE). Based on Article 1 number 17 on information and Electronic Transactions, it has been regulated that electronic contracts regulate agreements that bind the parties.

In Article 18 of the ITE Law, it is also determined that:

- a. Electronic transactions set forth in electronic contracts are binding on the parties
- b. The parties have the authority to choose the law that applies to the international electronic transactions they make.
- c. If the parties do not make a choice of law in International Electronic Transactions, the applicable law is international civil law.
- d. The parties are authorized to establish a judicial forum, arbitration, or other alternative dispute resolution institution that is authorized to handle disputes that may arise from the International Electronic Transactions they make.

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<sup>12</sup> Muhammad Bagus Setiawan, "TINJAUAN YURIDIS TERHADAP PERJANJIAN JUAL BELI E-COMMERCE YANG DILAKUKAN SUBJEK HUKUM DIBAWAH UMUR" (Universitas Islam Sultan Agung, 2020).

- e. If the parties do not determine the choice of forum, the determination of the authority of the court, arbitration, or other alternative dispute resolution institution authorized to handle disputes that may arise from these transactions, is based on the principles of International Civil Law.
- f. Moving on from the contents of the provisions of Article 18, it can be stated that every electronic transaction must be made in the form of an electronic contract that binds the parties<sup>13</sup>.

The importance of the law on product responsibility that adheres to the principle of absolute responsibility in anticipation of the tendency of today's world to pay more attention to protecting consumers from losses suffered due to defective products. This is because the current legal system is seen as too favorable to business actors, while business actors have a stronger economic position. Moreover, in e-commerce transactions, the application of absolute responsibility provides more legal protection for consumers in transactions. Regarding the product liability law, the victim or this consumer who will demand compensation is basically only required to show three things. First that the product has been defective at the time submitted by electronics in an e-commerce transaction. Electronic evidence must be recognized as valid and legally enforceable, and must be set forth in law-level regulations<sup>14</sup>.

Business actors will be more careful in producing goods before they are thrown into the market or this site so that consumers both at home and abroad will not hesitate to buy them. The application of the principle of absolute responsibility in law does not mean that business actors do not receive protection. Business actors can also insure their responsibilities so that they do not suffer significant economic losses.

In addition to the protection as mandated by the Consumer Protection Law, the existence of legal validity and protection of transactions coupled with the enactment of the Electronic Information and Transactions Law, this law has regulated what are the rights and obligations of consumers and violations in cyberspace using the e-commerce system. Anyone can file a lawsuit against a party that organizes an electronic system and/or uses information technology that can cause harm. Based on the Consumer Protection Law, the public can file a lawsuit on a representative basis against a party that organizes an Electronic System and / or uses Information Technology that results in harm to the public.

A matter of jurisdiction or place where the transaction takes place, a matter of choice of law or choice of forum, an electronic transaction does not define the place where the transaction takes place. This is of great juridical importance, as it relates to the jurisdiction of the competent court in case of disputes and issues of choice of law. Because the parties to this transaction are in different countries or cities, while the

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<sup>13</sup> Niru Anita Sinaga dan Muhammad Ferdian, "Pelanggaran Hak Merek Yang Dilakukan Pelaku Usaha Dalam Perdagangan Melalui Transaksi Elektronik (E-Commerce)," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020).

<sup>14</sup> Sahuri Lasmadi, "Pengaturan Alat Bukti Dalam Tindak Pidana Dunia Maya," *Jurnal Ilmu Hukum Jambi* 5, no. 2 (2014): 43274.

contents and conditions when an online agreement is made do not expressly and clearly designate or contain legal options, it becomes a matter of state law or which judge has the authority to judge, if in the future there is a dispute between the parties to the agreement e-commerce.

### **3.3. Liability of the Seller in the event that the buyer (consumer) suffers a loss in an online sale and purchase transaction.**

Electronic contracts have the following characteristics: a) There are contracts that are mixed in nature (*contractus sui generis*) relating to buying and selling or providing goods and services or acquiring rights, b) The contract is made and implemented through an electronic system or electronic media and c) The contract is made and implemented through an electronic system or electronic media, d) The making and implementation of the contract does not require the physical presence of the parties. Because electronic contracts as "unnamed" contracts are basically the same as contracts in general. The difference is because the electronic contract is made or occurs through electronic media. Therefore, the making and implementation of electronic contracts, apart from being subject to Law No. 22 of 2008 as a special rule (*lex specialist*), is also subject to the Civil Code Book III concerning Binding as *lex generalis*.<sup>15</sup>

From this description, it can be concluded that electronic buying and selling transactions are legal relationships that are carried out by combining networks of computer-based information systems with communication systems based on telecommunications networks and services. In relation to the above, Article 12 Paragraph (3) of the ITE Law explains that "Every person who violates the provisions referred to in Paragraph 1 is responsible for all losses and legal consequences arising". This means that the parties are responsible for all losses arising from violations committed against the provision of security in the online buying and selling agreement. The legal liability of sellers in online transactions through a consumer protection law approach as stipulated in Article 4 of Law No. 8 of 1999 concerning Consumer Protection (PK Law) that consumer rights are:

- a. the right to comfort, security, and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
- c. the right to correct, clear, and honest information regarding the conditions and guarantees of goods and / or services;
- d. the right to have their opinions and complaints about the goods and / or services used heard;

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<sup>15</sup> Arfianna Novera dan Sri Turatmiyah, "Analisis Hukum Kekuatan Mengikat Jual Beli Online (E-Commerce) dalam Perspektif Perlindungan Hukum Bagi Para Pihak," dalam *Sriwijaya Law Conference*, vol. 1, 2020.



- e. the right to obtain compensation, compensation and / or replacement, if the goods and / or services received are not by the agreement or not as they should be.

On the other hand, the obligation for business actors (in this case, online sellers), according to Article 7 of the GCPL Law, must be in good faith in carrying out their business activities and provide correct, clear and honest information regarding the conditions and guarantees of goods and/or services as well as providing explanations for use, repair and maintenance and providing compensation, compensation and/or replacement if the goods and/or services received or utilized are not by the agreement.<sup>16</sup>

It is further emphasized in Article 8 of the GCPL which prohibits business actors from trading goods/services that are not by the promises stated by business actors to trade goods/services that are not by the promises stated in the label, etiquette, description, advertisement or sales promotion of the goods and/or services. Based on this article, if the goods ordered do not match the specifications of the goods received with the goods stated in the advertisement/photo offering the goods is a form of violation/prohibition for business actors in trading goods. So as stipulated in Article 4 letter h of the PK Law, buyers or consumers "are entitled to compensation, compensation and/or replacement if the goods and/or services received are not under the agreement or not as they should be. Meanwhile, the business actor itself according to Article 7 letter g of the PK Law is obliged to provide compensation, loss and / or replacement if the goods and / or services received or utilized are not under the agreement.<sup>17</sup>

Electronic Contracts and Consumer Protection based on the ITE Law and PP No. 82 of 2012 concerning PSTE, the sale and purchase transactions even though carried out online, based on the ITE Law and PP PSTE are still recognized as electronic transactions that can be accounted for. Your agreement to buy goods online by clicking approval for the transaction is a form of acceptance that agrees in an agreement on electronic transactions. The act of acceptance is usually preceded by a statement of agreement to the terms and conditions of online buying and selling, which we can also say is a form of Electronic Contract. Electronic Contracts according to Article 47 paragraph (2) of PP PSTE are considered valid if: a) there is an agreement of the parties; b) it is made by a capable legal subject or one authorized to represent by the provisions of laws and regulations; c) there are certain matters; and d) the object of the transaction must not conflict with laws and regulations, decency, and public order.

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<sup>16</sup> Wahyu Suwena Putri dan Nyoman Budiana, "Keabsahan Kontrak Elektronik Dalam Transaksi E-commerce ditinjau dari hukum perikatan," *Jurnal Analisis Hukum* 1, no. 2 (2018): 300-309.

<sup>17</sup> I. Putu Agus Dharma Wijaya dan I. Wayan Novy Purwanto, "Perlindungan Hukum Dan Tanggung Jawab Para Pihak Dalam Transaksi Bisnis Elektronik Di Indonesia," *Program Kekhususan Hukum Perdata Fakultas Hukum Universitas Udayana*, 2019.

Then it is emphasized in Article 5 paragraph (1) of the ITE Law that; "Electronic Information and / or Electronic Documents and / or their printouts are legal evidence. In paragraph (2): " Electronic Information and/or Electronic Documents and/or their printouts as referred to in paragraph (1) are an extension of legal evidence in accordance with the applicable Law of Procedure in Indonesia.

#### **4. Conclusion**

An agreement made by the parties is valid and declared born at the time of reaching an agreement. Likewise with electronic contracts, where in this case the Wasiat agreement does not require the two parties to meet in person and the contract is required to be made in writing. Electronic buying and selling agreements or online e-commerce are basically the same as conventional buying and selling, with reference to Article 1320 of the Civil Code, using electronic media so that the contract is not realized in written form. Article 333 of the Civil Code states that a competent person is an adult, either 21 years old or married, and children are considered incompetent. However, it is different from Article 47 of Law No. 1 Year 1974 which states that an adult is 18 years old or married. When an e-commerce agreement is made by parties, one of which is still underage, the agreement is considered valid as long as it does not harm both parties, and the underage party understands the agreement that must be fulfilled and is responsible for what has been agreed. The legal effect of an e-commerce agreement is valid as long as it fulfills the terms of the 1320 Civil Code agreement. Conditions one and two are called subjective conditions because they concern the person or person himself. If conditions 1 and 2 are not met, the agreement is still valid, it can only be canceled at any time in the event of default. The agreement is valid before the law. Conditions 3 and 4 of the agreement are objective conditions, regarding the objects or goods being traded.

Sale and purchase transactions in e-commerce can be carried out with electronic contracts as a form of agreement that has been carried out and agreed upon by the parties. To anticipate and eliminate legal obstacles for consumers in e-commerce transactions in Indonesia, all e-commerce transactions as long as they meet the requirements contained in 1320 of the Civil Code are recognized as contracts that bind the parties. There is a legal umbrella with the enactment of special regulations regarding the implementation of electronic transactions, namely Law No. 19 of 2016 concerning information and Electronic Transactions (ITE). And Government Regulation No. 82 of 2012 concerning the implementation of electronic systems and transactions, especially in Article 46 paragraph (1) of PP No. 82 explains that electronic transactions carried out by the parties have legal consequences for the parties.

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