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## **Legal Protection Of International Business Transactions On Electronic Commerce (Ecommerce) Transaction Contracts**

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**ABSTRACT**

*Along with the demand for international trade which is quite a lot, the technology and means of electronic communication are also developing. E-commerce is an electronic transaction that is very supportive in the economic field, especially international business transactions. International business transactions are a civil law study that provides greater opportunities for each party to make, agree on, and implement the contents of the agreements they make. With various technological advances, the world provides opportunities for the international community to establish relations between them. In line with these advantages, it is possible that there will still be deficiencies which will cause disputes between the contract makers. These problems can arise because of differences between them, such as in terms of culture, legal perspective, and so on. Therefore, parties from different countries must understand the contracts they make and pay attention to the laws in force in other countries before entering into certain contracts. To prevent unwanted legal consequences, a clear understanding of legal protection is required. This research method is a legal normative research with a statutory approach.*

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## Introduction

As the realities of trade significantly increased, many parties began to enter into international sale and purchase agreements. Many people have started to realize that what they need cannot be fulfilled in their own environment, this is due to the different geographical conditions in each country which causes differences in natural resources and natural wealth, which causes the capabilities possessed by each country. it varies. Not only humans who carry out international buying and selling, countries also do the same thing to fulfill their country's needs.

Along with the demand for international trade which is quite a lot, the technology and means of electronic communication are also developing. The developments that are happening are very fast which is made easy in this era of globalization so that the parties begin to enter into international buying and selling contracts through electronic means which make the world seem as if there are no boundaries between one country and another. This phenomenon is one example of the result of increasingly modern information and technology development, the emergence of various types of

communication technology facilities that provide convenience for its users.

Globalization is a progress to eliminate control over barriers to movement in the world of commerce and is the beginning or capital to merge worldwide reach. Developments in information and technology end with world relations without boundaries which result in significant changes in the social, economic and cultural fields that are taking place so rapidly.<sup>1</sup> It is because of this that people are never worried about getting something because of the benefits they have experienced as a result of this fairly rapid technological development. We have entered the era of modernization where people cannot be separated from the internet, many people are very dependent on convenience in this era of globalization.

The business world has also felt the impact of this era's development, which is marked by the rise of electronic transactions. This does not only apply in the domestic sphere, but has become widespread and is also used in international buying and selling transactions. As the author stated above, this development has had the effect of facilitating various fields, including in the field of trade which has felt facilitated since the development of telecommunications. Therefore, with the

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<sup>1</sup> Undang-Undang Nomor 11 Tahun 2008 sebagaimana yang telah diubah dengan

Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik

development of information technology in particular, it also has a very positive impact on the world of trade, especially in international trade, including new rules or policies that cannot be separated from the development of this information technology.

According to Kotler & Armstrong (2012), e-commerce is an activity of buying and selling transactions of both goods and services carried out with computers as a means of disseminating information so that consumers get information about the goods or services being sold, where in practice a seller will provide several choices regarding the product. It sells and buyers can make their own choices. Electronic transactions are currently being carried out in international buying and selling, not only carried out by developed countries, developing countries are also participating in showing the development of this very significant electronic transaction. Because in buying and selling electronically there is no need for a physical store, this has resulted in the emergence of opportunities for new entrepreneurs who feel facilitated by the progress of this era.

Currently, e-commerce is recognized to have a very large influence on international trade, due to the nature of e-commerce which is easy to run and very efficient, this is also believed to have reduced operational

costs which are felt to have a large influence on international trade transactions so that it also has an impact on reducing operational costs compared to when conventional trading.

Along with technological developments and the emergence of e-commerce which has a positive impact and ease in international buying and selling, of course this does not rule out the possibility that this development will also bring new problems because the reach is wider and more differences and disputes arise when conducting international trade.

In trade, no restrictions are imposed, in this case international trade which is included in the scope of private law gives freedom to each party who will make an agreement that will apply to those who are bound according to the clauses they promised and carried out in good faith.

However, in this international trade, two or more different countries are involved. Because of the freedom to carry out this contract, the parties will of course make an agreement based on the law of their country of origin which creates an unequal willingness of the parties. This difference can be in the lines of differences in juridical systems which certainly very influential in establish policies for conducting international trade.

Because of the legal differences that provide obstacles for each party that will carry out international trade, a rule is needed that can provide legal certainty to protect and clarify the rights and obligations of international trade actors.

Seeing the background that has been explained by the author above, the writer is interested in learning more about:

1. How is the legal protection of international business transactions against e-commerce transaction contracts?
2. What are the juridical implications of using the internet in the offer and acceptance regulated by CISG?

#### **A. Research Methods**

Research is a container used to develop a science with regulatory approaches and specifically concretize or deepen specifically about a topic. The research method used is the normative legal research method using secondary data sources or data taken from library materials using research data types in the form of primary legal materials, secondary legal materials, and tertiary legal materials. This writing was carried out using the applicable statutory approach related to the topic to be discussed by the author.

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### **1. Results And Discussion**

#### **A. Contract**

In essence, the contract is a binding regulation that has been agreed upon by the parties who make it and has legal consequences for the parties involved.

Understanding contract law if it is based on the opinion of Van Dunne (1990), there are three stages in making an agreement, namely:

1. pre-contractual stage where one people will make an offer and if agreed the other party will approve or accept it.;
2. the contractual stage which is the conformity of the statements and the will of the parties; and
3. the post contractual stage which is the implementation of the agreement.

In a contract there are several elements :

#### **1. Rule Of Law**

Contract law rules are divided into 2 parts, namely written and unwritten contract law rules. For the legal rules of written contracts contained in laws and regulations, treaties and jurisprudence; while unwritten contract law rules exist and arise in people's lives which are concepts of customary law.

#### **2. Legal Subject**

that the legal subject is defined as the holder of rights and obligations. In contracts, the legal subjects are

creditors and debtors. The creditor is the person who owes money, while the debtor is the person who owes.

### 3. Performance

that performance in a contract is a legal object. The creditor has the right to an achievement and it is an obligation for the debtor to carry it out. In terms of achievement, it is mentioned in Article 1234 of the Civil Code.

### 4. Agreement

agreement is mentioned in Article 1320 of the Civil Code which is listed therein as one of the legal requirements of an agreement. The contract is the suitability of the statement of the the wishes of the parties involved.

### 5. Consequence

Legal consequences are the emergence of rights and obligations made in each agreement by the parties. Rights are a pleasure, while obligations are a burden.<sup>2</sup>

In making and preparing a business contract, careful planning is required, in practice, of course, there is a negotiation process between the parties to reach an agreement regarding what will be

included in the agreement made. After reaching an agreement on the negotiation of the parties, it will proceed with the signing stage.

In international business transactions, making contracts made by the parties, it is very important to choose the legal domicile or positive law that applies to the parties to comply with the choice of law. This is because it concerns the method of resolving disputes or disputes that may or may arise without ever being imagined by the parties.

In international contracts, the legal basis for compliance with or compliance with contracts is international conventions which are one of the sources of international law.

According to Mochtar Kusumaatmadja, International Conventions are agreements made between nations that have a goal that creates a certain result. In general, the source of law in an international agreement or contract consists of the Contract for the International Sales of Goods (CISG) and the principle of UNDROIT.

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<sup>2</sup> Mertokusumo Sudikno, *Hukum Acara Perdata Indonesia*, edisi keempat, PT. Liberty Yogyakarta, 1993.

CISG itself is an international treaty which until now has not been ratified by Indonesia. CISG is the main source of law that is binding on the parties who carry out an agreement with the scope of buying and selling with places of business in different countries. Its scope is limited only for commercial purposes, not for personal purposes or government interests related to the government, such as executions, auctions, or infrastructure, so the validity of CISG does not apply to the sale and purchase of goods for personal use, family interests or household needs but there are also exceptions to the description above if a contract is made between the parties where the seller does not know the use of the goods then it can or is permissible.

Meanwhile, the UNIDROIT principle which has been ratified by Indonesia is a principle that applies in general to international commercial contract activities that can be applied in the national legal rules of a country with the aim of making contracts to regulate international transactions as a choice of law. The principles in the UNIDROIT principles that can be applied in articles to be written by the author are as follows:

1. The Principle of Freedom of Contract;

2. The Principle of Good Faith;
3. Principles of Agreement Through Offer and Acceptance;
4. Confidentiality Principle;
5. The principle of using standard clauses;
6. The principle of Gross Disparity;
7. Principle of Force Majeure.

The principles in UNIDROIT explain that just reaching an agreement from the parties is enough to create a contract. Point 4 of a UNIDROIT principle explains that the concept aims to provide information that the parties have reached an agreement with an offer from a seller and acceptance from a user as a buyer in international business transaction activities.

### **International Business Transactions ;**

International business transaction activity is a private law that is given freedom to the parties to make agreements which will be an achievement in an agreement. This freedom of business transactions can be carried out with citizens of different countries, if so, it must remain subject to the rules of international law regarding their business transactions or to national laws made by each country. International business is a transaction activity between parties consisting of

more than one country. The legal subjects of international business transaction activities are between one country and another, international governmental and non-governmental organizations, and one individual to another (multinational companies and banks).

Activities carried out by international business transactions can be reached in various ways, namely:

1. Importing and exporting

Importing is the activity of buying goods from abroad; while exporting is the activity of selling goods and sending goods abroad

2. International investment

- a. FDI

assets, property, companies located abroad and the global economy need to be actively controlled, this is one of the functions of investment.

- b. As for short-term investments in financial components, some prefer to sell certificates of deposit and buy investment portfolios rather than control.

3. Licensing

Legal regulation whereby a company licenses the practice of its intellectual property to a company in a second country in exchange for a honorarium payment. It is usually the licensee who grants or tries foreign articles because the foreign market offers a larger market size than the domestic market.

4. Franchising

a side of the system in which the franchisor pays fees and royalties to the franchisor's Indonesian company in exchange for the right to use its trademark to sell products or services and use its business draft and system. Compared to licenses, franchise contract tend to be longer and if licensing involves intellectual property matters, then this franchise agreement is limited to trademarks and business operational knowledge.

5. Management contract

A company that provides strategy rules and management rules in one or all places to other companies.

The means of payment used for export-import activities are of various kinds, namely :

1. Full Bodied Money

The payment system with physical money directly pays in the currency the seller wants.

2. Telegrafik Transfer / Cable Order

Payment systems made with domestic banks to overseas customers usually use the seller's domestic check, the buyer will pay to the domestic bank to make a check to the seller.

3. Bill of Exchange

This payment system will be carried out by a domestic bank which will issue a payment order to an overseas bank with the amount of money to be paid, and the name of the person written on the money order..

4. Letter of Credit (L/C)

In this payment system, because there is no courage to release goods before payment occurs, the bank becomes an intermediary party between the seller and the buyer or grants credit.

5. cheque

This payment system is carried out by the buyer sending a check through the seller's bank. Usually the bank to which the check is sent is a bank that chooses a branch in the buyer's

country to make it easier for the seller to cash the check.

6. Gold

This payment system is done by giving gold to the seller according to the value of the item you want to buy. This payment system is usually used for goods of sufficient value and are quite valuable.

7. Financial Technology

Due to the current developments, the current payment system can be done using electronic money digitally. Because it has developed rapidly, now you can pay with this payment system in international transaction activities, for example with paypal. International private law is one of the rules that determines whether an international business contract uses foreign law rules or uses national law rules.

The globalized business world has diversity in regulating various ways of transaction. The freedom of contract that occurs begins with a process of bargaining between the parties to reach a decision that is desirable and fair for both parties. So that a legal certainty in freedom of contract even though there is a principle of freedom of contract is still with certain limitations and must be balanced



with elements of justice for both parties to the contract.

### **Internet and CISG.**

The correlation between law and economics is so close and influences each other to meet human needs in their social life. The linkage between law and the economy will always be seen in interactions between people as the needs of human life develop, both for goods and services. Economic developments will affect the legal landscape, as well as developments in international business transaction law.

At the beginning of the formation of international buying and selling contract law regulated by the CISG, the term internet was not yet known and transactions made between countries could only be carried out through the communication tools known at that time, namely telegram or telefax. This tool has a significant difference with other types of electronic messages known today. Telegraph is a tool used to convey messages to recipients, while the contents of the message are known as telegrams. Usually telegrams can be used to convey information over long distances. Telegram was first coined by Samuel F.B. Morse, the American who popularized sending telegrams around 1800-1900. Delivery of messages is also fast, less than one day, the message sent will arrive in the hands of the

recipient. This telegram contains certain codes that are sent via telegraph. In addition, this tool can reach areas inside and outside the country because it uses undersea cables. This cable connects one location to another near or very far away.

The electronic means known today did not appear at the time of the preparation of the CISG. The opinion of CISG Article 1 clearly states that the "place" of an e-mail must be understood in a purpose and not a physical way. As a result, to "reach" the recipient, it is enough to notify that the e-mail has entered the recipient's server. Meanwhile, in an agreement agreement, it is important to know that the person has actually read it in the hope that he will understand it too. Another possibility that arises is that the recipient is unable to read the message due to a technical problem, because it is within the "neighborhood" of the affected recipient and does not provide adequate means to ensure its internal communication functions are satisfactory.

Looking at the regulation of the Indonesian state in Article 1 Chapter I of Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter written the ITE Law), as a positive law that regulates information technology, in number 1 it states that e-mail is a form of electronic information.

actually telegram and e-mail are a type of electronic information that can be classified in the same type, namely "instant communication". Regarding this understanding, the author conducts several analyzes of the ongoing contract in CISG based on offer and acceptance. This influence simultaneously has a major impact on the sustainability of the clauses listed in the CISG, specifically regarding offer and acceptance. Offer and acceptance in the CISG have an important role and share, because a contract is said to have been formed as a result of an agreement that occurred at the time an acceptance appeared. Acceptance provides a clear picture of the origins of the contract. This provision is indeed more identical in use in countries that adhere to the common law system, whereas for countries adhering to the civil law system it is more synonymous with the word "agreed" in determining the occurrence of a contract.

CISG provides some important points in terms of offer and acceptance. An absolute contract is said to be binding when the offer and acceptance has occurred, and there are no formal considerations and provisions other than this. The most important thing is that the provisions regarding offer and acceptance comply with the provisions contained in the CISG. There are 3 conditions that must be met when making an offer.

The CISG dictates that in face-to-face or telephone negotiations, the communication must be heard by the recipient. In other cases, it must be delivered in person or to a physical address. By means of an analogical interpretation, it may be concluded that, similar to the post and telex which have been specifically mentioned, in the case of sending electronic communications to a valid address where the recipient would expect to receive the message must sufficiently comply with the requirements of the Convention.

Supra note CISG only confirms the Principle main and assists its translation, is the principle that any communication may received by the recipient himself or it should be placed effectively in the place where a person normally receives the communication or where one should expect the communication in normal business trip. Therefore, messages sent to the e-mail address or facsimile number or address provided by the recipient must meet the requirements for validity proposed by CISG.

Offer and acceptance made via e-mail or other types of electronic communication can be categorized as instantaneous communication and UNCITRAL provisions apply regarding agreement in an agreement. To show acceptance from the party receiving the offer, the party must show approval of the

offer. Mere notification of information regarding the receipt of the offer, mere expression of interest in the offer is not sufficient. Approval must be given unconditionally, meaning that this agreement must not depend on the conditions that must be met either by the party offering or by the party being offered. In other words, the contents of the acceptance may not contain variations or types of terms from the offer or materially change these terms.

An expert in European law firmly stated that CISG can keep abreast of technological and information developments and accommodate the use of electronic devices in making contracts, especially when acceptance occurs. Moreover, this has also been regulated by additional rules that we know as the UNCITRAL Model Law on Electronic Commerce. that actually the use of the internet in terms of offer and acceptance can be used and practiced in the world of international trade business transactions. However, what has not been accommodated so far is how the use of the internet in terms of offer and acceptance regulated by the CISG can be applied in the practice of international goods trading activities.

Therefore, as the author has described above, in practice, general principles adopted by countries can be used

and some are contained in the country's national laws, one example is the state of Indonesia which has applied them in the ITE Law. Article 1 number 2 of the ITE Law has emphasized that electronic dealings are legal actions perform using computers, computer networks, and/or other electronic media. The use of the internet, for example, can only be accessed by using a computer.<sup>31</sup> According to the provisions of Article 17 paragraph (1) of the ITE Law it is also stated as a legal norm that the application of electronic transactions can be perform in the public or private sphere.

From the provisions above it is very clear that law in the field of information technology in Indonesia has shown its responsiveness to the development of international business transactions that use electronic communication media. Electronic progress must not hinder the development of a trading system that makes it easier for every legal subject to carry out buying and selling transactions. This convenience can actually be accommodated by national laws and basic principles that can be applied if legal issues arise in the use of new communication tools.

The author also believes that this arrangement applies universally to various other types of communication applications that can be used in making

offer and acceptance, for example, Facebook, Whatsapp, Skype and various other types of personal applications that can become operators of communication between the offeror and the recipient. The most important thing that needs to be considered is that it does not conflict with the provisions of the articles regulated by the CISG regarding the general conditions that apply.

### **International Business Transaction Legal Protection**

In international business transaction activities, of course we must understand all the regulations regarding what is prohibited internationally by international institutions as well as provisions regulated by countries. Such as import-export tax or duty rates, provisions regarding what types of goods may not be entered or traded, insurance provisions, provisions regarding transaction conditions, as well as methods and so on.

As it is known that Indonesia adheres to the civil law legal system, so it must carry out a process of legal transformation or legal ratification before being able to carry out an international

convention or international agreement. One source of international business transaction law that has been ratified in Indonesia is the Statute of the International Institute for the Unification of Private Law into the Presidential Regulation of the Republic of Indonesia Number 59 of 2008.

This international institution in carrying out civil law unification aims to create a uniformity and coordination of civil law between countries and prepare for legal submission by various countries regarding harmonious civil law rules in stages.<sup>3</sup>

The certainty of international business contract law can be seen from the general guidelines of international private law. However, these guiding principles will be difficult to apply, especially in dispute resolution because it takes a long time to pay attention to the points of connection contained in these international business contracts.<sup>4</sup> The legal source of international business transactions that has not been ratified by Indonesia to date is the Contracts for the International Sale of Goods (CISG) or Contracts for the International Sale and Purchase of Goods. Even though it has not yet been ratified, BPHN has issued an

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<sup>3</sup> Indonesia, Peraturan Presiden tentang Pengesahan Statute Of The International Institute For The Unification Of Private Law (Statuta Lembaga Internasional Untuk Unifikasi Hukum Perdata), Perpres Nomor 59 tahun 2008, psl 1

<sup>4</sup> Wiwin Dwi Ratna dan Zulvia Makka, et. al., *"Perlindungan Hukum Transaksi Bisnis*

*Internasional pada Era Perdagangan Bebas"*, Universitas Borneo Tarakan, 2018, diakses tanggal 16 Desember 2022. (<https://media.neliti.com/media/publications/296577-perlindungan-hukum-transaksibisnis-inte-2cfe3438.pdf>)

Academic Paper on the Ratification of the UN Convention in 2013.

The text states that if the CISG has been ratified by the Indonesian government, there will be legal certainty for business people in Indonesia who wish to enter into contracts internationally which are based on a clear rule of law and on this basis automatically improve the provisions of positive law in Indonesia. especially regarding international sale and purchase contracts. The ratification of the CISG is also intended to have a positive impact on the legal uniformity of buying and selling contracts in the ASEAN region and to enhance ASEAN's efforts to form the ASEAN Economic Community in 2015.

Next, to determine references to legal sources in interpreting unclear contract terms, UNIDROIT principles, the International Institute for the unification of civil law, can be used. The UNIDROIT Principles are aimed at harmonizing commercial contract law against countries that wish to implement them. This principle has also referred to the CISG so that it is flexible. This then becomes a solution if there is a source of law that is irrelevant to the law in force in that country.

## **Legality of Electronic Commerce Contracts based on International Trade Contract Aspects**

Transactions in e-commerce are transactions in the field of trade that are developing very rapidly, so that the governing rules must be made side by side so that this often triggers many problems, one of which is the legality of a contract in an e-commerce contract. The national law in a country is generally different from the national law in force in other countries so that this creates a serious gap or obstacle in international trade. Therefore, it is necessary to ratify international conventions that apply globally.

Contracts used in an international trade in the use of e-commerce are electronic contracts. According to expert Edmon Makarim and Delima, the notion of an electronic contract or e-contract is "an agreement or legal relationship that is carried out electronically by integrating the networking of a computer-based information system (computer-based information system) with a communication system based on network and telecommunications services which are further facilitated by the existence of global internet computers (network to network)".<sup>5</sup>

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<sup>5</sup> Edmon Makarim dan Delima, *Kajian Aspek Hukum Perikatan, dalam Edmond Makarim, Kompilasi*

*Hukum Telematika*, Raja Grafindo Persada, Jakarta, 2003, page 215-246

Based on the understanding described by the experts above, it can be concluded that a condition of the agreement is very dependent on an essence in the electronic system itself, so that if an electronic contract is made, then it can only be said to be valid or binding if the electronic contract consists of components in electronic systems that can be trusted or registered and or run as stipulated in the rules that bind them. In electronic transactions, which are generally enforced in the form of an acceptance of an offer where when a platform user or consumer will use an e-commerce platform, as we often encounter, there are electronic contract provisions that will appear when we create an account. (account) internet users and ask internet users to indicate whether the contract contains provisions or procedures and contains terms of rights and obligations in it to be approved by internet users by pressing a certain button option such as I AGREED or I ACCEPT or by how to verify with a verification code or number to accept the terms contained in the electronic contract clauses that have been provided by the e-commerce platform.

An imagination or a brief description of an acceptance of an offer in a contract or agreement in the sale and purchase of software (shrink wrap contract), by opening a plastic wrap on the packaging of the relevant software packaging product, the

buyer is deemed to have or has accepted the terms of the contract. This illustrates how rapidly the world of commerce is developing, but there are negative aspects in electronic contracts for internet users or e-commerce platforms that can harm internet users. This is because, not all internet users read the contents of the clauses contained in the contract as a whole before accepting the offer of the conditions described above. This can cause disputes between platform users and platform providers themselves.

Therefore, UNCITRAL plays a very important role in providing a legal basis for the consequences that may arise from the use of the internet in this world of commerce. In general, if you look at the legal requirements for making contracts or agreements, both contracts that arise conventionally and modernly, at this time e-contracts have the same thing. The validity of electronic contracts regulated in UNCITRAL in making contracts requires approval from the parties, bids and acceptance of bids by way of data messages as previously mentioned above

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## **Conclusion**

Based on the discussion that we have explained above, the conclusions we can draw are as follows:

Trading activities in a business transaction require a policy or regulation to guarantee legal certainty. Therefore, in a

business transaction an agreement or better known as a contract (overeenkomst) is needed. Contracts that are made legally and apply as laws that can be binding and have legal consequences for those parties who make them. Contracts in the national and international scope can be said to have the same principles, namely the need for a mutual agreement between the interested parties in good faith.

International business transaction legal protection for e-commerce transaction contracts is regulated by adopting international legal sources that regulate trading activities, namely the Contracts for the International Sale of Goods (CISG) and the principles in the UNIDROIT Principle of International Contracts (1994) which regulates provisions regarding international business transactions in general, as well as the UNCITRAL model law of Electronic Commerce which regulates e-commerce in general. In addition to these three things, the GUIDEDEC formed by the ICC also exists as a guide to support the development of e-commerce, namely for the use of a method that will guarantee the existence of an electronic document or data for international use, especially regarding legal certainty. to the signature in an electronic document. Therefore, a trade in the electronic world, especially transactions in international business involving between

countries, already has a legal umbrella that regulates it, so there is no need to worry about legal protection.

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