




Legal implications Parental Responsibility Due to Electronic Agreements Made by Minors

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Abstract

Introduction: The current era of globalization has resulted in very rapid technological developments, people are facilitated in meeting their needs through electronic transactions. However, the ease of conducting electronic transactions means that it can also be done by minors, this certainly has legal consequences from the electronic agreement made so that parents/guardians can be held accountable for the agreement.

Purposes of the Research: The purpose of this study is how to enrich the understanding of parental responsibilities in electronic agreements carried out by minors.

Methods of the Research: Normative legal research, with a statute approach and a conceptual approach.

Findings of the Research: Results study This show that agreement electronics that are done by children under age , no legitimate in a way law based on Article 1320 of the Civil Code and Article 46 of the Regulations Government Number 71 of 2019 concerning with condition legitimacy a agreement . Parents or guardians are responsible answer on agreement electronics that are done by child , responsibility answer the in law civil Indonesia known with draft vicarious liability (responsibility substitute) which is set in Article 1367 of the Civil Code , in matter this parents can do payment on purchased products or follow intrusion from the party perpetrator business For repair error (filing return goods).

Keywords: Liability; Electronic Agreements; Minors.

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INTRODUCTION

The current era of globalization has resulted in the development of technology becoming very rapid so that it easily affects every aspect of human life. The more technology develops, the more sophisticated the electronic transaction activities carried out by society.¹ Current technological developments have influenced methods of transacting and created new opportunities in conducting business transactions. The public is facilitated in meeting their needs through electronic transactions such as making agreements through electronic messages (Electronic Contracts) for example electronic commerce, renting, electronic work agreements and so on .

The activity of buying and selling goods and services carried out online through electronic media, better known as electronic commerce (*e-commerce*) is one example of an electronic agreement. Related to electronic transactions, it has been regulated in Article 1 Paragraph 2 of Law Number 19 of 2016 concerning electronic information and transactions, it is explained that "electronic transactions are legal acts carried out with the help of

¹ Farhah Almaas Shafa, "Tanggung Jawab Wali/Orang Tua Atas Tindakan Wanprestasi Dalam Kegiatan Jual Beli Yang Dilakukan Oleh Anak Di Bawah Umur Melalui Platform Digital Ditinjau Dari Hukum Positif Di Indonesia," *Bandung Conference Series: Law Studies* 4, no. 1 (2024): 462-67, <https://doi.org/10.29313/bcsls.v4i1.9937>.

computers, computer networks, and/or other electronic media".² The philosophical basis of an electronic sales and purchase agreement is based on trust. Trust is conceptualized as an acknowledgment or belief between the parties, where the parties trust each other that the seller will deliver the goods sold and receive money and the buyer believes that he will hand over the money and receive goods or objects from the seller.³

The valid conditions for an agreement must fulfill the requirements set out in Article 1320 of the Civil Code, which is not much different from Article 46 Paragraph (2) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, which includes: 1) There is an agreement between the parties; 2) The agreement must be made by a legal subject who is competent to carry out legal acts or who has the authority to represent him; 3) Certain objects and; 4) Halal causes that do not conflict with the law.

The development of technology today is very easy to access by anyone including minors, making access to conduct electronic transactions can also be done by minors without the knowledge and supervision of parents. If a minor conducts an electronic transaction, the action is not considered valid because it does not meet one of the subjective requirements for the validity of an agreement because a minor does not have the capacity according to Article 1330 of the Civil Code.

However, this ease of access to technology is what makes us still find cases related to electronic agreements made by minors, such as an example of a case in the city of Kediri, East Java, a minor who bought facilities in three online games, namely Mobile Legend, Free Fire and Minecraft. Resulting in the mother of the child having to pay a bill of IDR 11,000,000 (eleven million rupiah).⁴ Reported from a TikTok account upload with the name @tiaharyati, she told the story of her neighbor who received a package with a COD payment method worth IDR 16,000,000 (sixteen million rupiah). This amount is certainly quite a large amount, it turns out that after being traced, her own child who was still 5 years old accidentally made a purchase of a number of items, when the child's parents were negligent, then the package couriers came one after another to deliver the goods and collect money.⁵

It is known that responsibility is an obligation that is owned by someone who has committed an act that causes a loss, whether it is done by the person himself or by a person under his authority, ⁶ Article 1367 of the Civil Code Paragraph (2) states that "Parents and guardians are responsible for losses caused by children who are not yet adults, who live with them and over whom they exercise parental or guardian authority." So if a child who is still a minor cannot be held responsible for his mistakes, then the parents or guardians of the child can be held responsible or held accountable for the mistakes made. Based on the background of the problem, it is very interesting to study regarding how parents are responsible for electronic agreements and the legal consequences of electronic agreements made by minors.

² Desy Ary Setyawati, Dahlan Ali, and M. Nur Rasyid, "Perlindungan Bagi Hak Konsumen Dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik," *Syiah Kuala Law Journal* 1, no. 3 (2017): 46-64, <https://doi.org/10.24815/sklj.v1i3.9638>.

³ HS Salim, *Hukum Kontrak Elektronik (E-Contract Law)* (Jakarta: Raja Grafindo Persada, 2021), p. 44.

⁴ Ignasius Christian Sompie, "Anak Di Bawah Umur Sebagai Subjek Hukum Kontrak Elektronik Dalam Transaksi Game Online" (Fakultas Hukum Universitas Airlangga, 2020), p. 7.

⁵ Mardella Savitri Murtisari, "Viral Lalai Awasi Anak Main HP, Paket COD Terus Berdatangan Hingga Senilai Rp 16 Juta," *Liputan6.com*, 2021, <https://www.liputan6.com/hot/read/4600799/viral-lalai-awasi-anak-main-hp-paket-cod-terus-berdatangan-hingga-senilai-rp-16-juta>.

⁶ Roscoe Pound, *An Introduction to the Philosophy of Law*, Terjemahan (Jakarta: Bhatara Niaga Media, 1996), p. 90-94.

METHODS OF THE RESEARCH

The purpose of this study is to determine and explain the legal consequences of electronic agreements made by minors and to determine and explain the form of responsibility that must be fulfilled by parents regarding electronic agreements made by minors. The approach used in this study is the statute approach and the conceptual approach. The legal materials that are the author's sources in conducting this study include primary legal materials, secondary legal materials and tertiary legal materials. The procedure for collecting legal materials used in this study is document or literature study. After collecting legal materials (primary legal materials, secondary legal materials and tertiary legal materials), based on the conceptual approach and the applicable statutory regulatory approach, then using qualitative analysis of the research results, interpretations are made to build a legal argument and draw conclusions on the results of this study which aim to understand the problems presented.

RESULTS AND DISCUSSION

A. Legal Consequences of Electronic Agreements Entered Into by Minors

The definition of an agreement in the Indonesian legal system can be seen in Article 1313 of the Civil Code which states "An agreement is an act in which one or more people bind themselves to one or more other people". Article 1 Paragraph 17, namely "an electronic contract is an agreement between parties made through an electronic system". Electronic contracts are born based on the principle of freedom of contract, as regulated in Article 1338 of the Civil Code, indicating that everyone can make the contents of the agreement as desired so that the agreement is binding as a law for those who make it.⁷

Article 45 paragraph 1 of Government Regulation Number 71 of 2019 explains that "electronic transactions carried out by the parties have legal consequences for the parties". Based on this provision, it can provide certainty and legal protection to the parties who enter into electronic agreements that agreements made electronically bind the parties and have the same legal consequences as conventional agreements.

The consequences of the cancellation of the agreement are regulated in Article 1451 and Article 1452 of the Civil Code. It can be explained that the legal consequences of the cancellation of the agreement are the return to the original position as before the agreement was made. The consequences of the cancellation of the agreement can be seen from two aspects. First, the cancellation that occurs in the agreement because it does not meet the subjective requirements required for the validity of the agreement, so that the agreement can be canceled. Second is the cancellation of the agreement because it does not meet the objective requirements which cause the agreement to be null and void by law.⁸

The legal consequences of a voidable agreement are that one party can request the cancellation of the agreement. However, the agreement will remain binding on the parties if it is not canceled by the judge at the request of the party entitled to request cancellation. The right to request cancellation of the agreement, file for recovery and even the right to file for compensation are the rights of the parties who feel aggrieved, on the other hand, the

⁷ Veronica Andriani, "Batas Usia Kedewasaan Dalam Transaksi E-Commerce," *Sapientia Et Virtus* 4, no. 2 (2019): 155-77, <https://doi.org/10.37477/sev.v4i2.193>.

⁸ Agus Yudha Hernoko, *Hukum Kontrak Tentang Prinsip Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Kencana Prenada Media Group, 2010), p. 294.

other party who has already received the performance from the other party is obliged to return it. Meanwhile, the legal consequences of an agreement that is void by law are that the agreement is considered void or even the agreement is considered non-existent and never happened from the beginning. The further consequence of the cancellation of the agreement is that if after the cancellation one party does not fulfill its obligation to return what it has received, then the other party can file a lawsuit. This is done solely to carry out the purpose of the cancellation, namely to restore the situation as before the agreement was made.⁹

The legal consequences of transactions carried out by a minor in e-commerce are clearly not fulfilling one of the subjective requirements, namely incompetence, resulting in weak legal force against the agreement. An agreement made by an incompetent person can be canceled based on the will of the party who feels aggrieved by the agreement made. This is due to the validity of electronic agreements involving minors as one or both parties have violated the provisions of the validity of the agreement according to law. However, the agreement will remain in effect and the parties remain bound to fulfill it as long as there is no objection from the parties to one of the valid requirements of the agreement that is not fulfilled. Therefore, the electronic agreement must continue and be implemented according to the agreement. However, fulfilling the requirement of adulthood is still considered necessary to ensure legal certainty in carrying out transactions in e-commerce.¹⁰

B. Parental Responsibilities Towards Children Who Enter into Electronic Agreements

Hans Kelsen in his theory of legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means he is responsible for a sanction in the event of a conflicting act". According to Hans Kelsen, the theory of responsibility is closely related to duty, but not identical. The obligation comes from legal norms that regulate and impose obligations on a legal subject. The legal subject who is obliged must fulfill the obligations regulated by the laws and regulations. where if a violation occurs, there are sanctions which are coercive measures from the rule of law, so that the legal subject can fulfill his obligations properly. According to Hans, it is said that the legal subject who is subject to sanctions is "responsible" or legally responsible for the violations committed by him. obligations under the threat of sanctions, if the obligation is not fulfilled this type of responsibility can also be called legal responsibility because it arises from the sequence of provisions of the law and the sanctions determined are also sanctions determined by law.¹¹

Civil law studies related to Liability are divided into two, namely fault and risk. Where a person is obliged to be responsible (or born with an obligation to be responsible) because he is guilty, either in the form of a mistake or negligence. This is what is called responsibility based on fault. In addition, civil law allows a person to be responsible not because he is guilty, but because he takes a risk in his legal position in such a way that requires

⁹ Yulia Dewitasari and Putu Tuni Cakabawa Landra, "Akibat Hukum Terhadap Para Pihak Dalam Perjanjian Apabila Terjadi Pembatalan Perjanjian," *Kertha Semaya: Journal of Legal Science*, 2015.

¹⁰ Aldan Syaifullah Alulu, Almoravid Dunga Weny, and Abdussamad Zamroni, "Akibat Hukum Yang Ditimbulkan Terhadap Perjanjian Keabsahan Hukum Pada Perjanjian Jual Beli Elektronik Yang Dilakukan Anak Dibawah Umur Menurut Hukum Kontrak Dan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 4 (2024): 125-36.

¹¹ Raphaellee Peters Putra Usman and Moody Rizqy Syailendra Putra, "Akibat Hukum Dan Pertanggungjawaban Terhadap Perjanjian Elektronik Yang Dibuat Oleh Anak Di Bawah Umur," *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 4 (2024): 1014-21, <https://doi.org/10.38035/rrj.v6i4.960>.

responsibility, this is what is called responsibility based on risk. Both have very different consequences and consequences.

There are special rules that apply in electronic transaction agreements for consumers, when consumers make mistakes in making electronic agreements, so that the mistakes cannot be corrected. For example, the consumer is not responsible for any losses caused by mistakes if:¹² 1) Consumers report problems they experience to business actors; 2) The consumer returns copies of the computer information or follows the business's instructions for correcting the error; 3) Consumers do not gain any benefit from the transactions they make.

When a minor enters into an electronic agreement and causes a loss to the business actor, the action can be said to be an unlawful act. Article 1365 explains that "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his mistake to replace the loss." Minors are included as people who are not competent to make an agreement according to Article 1330 so that the responsibility can be transferred to parents or guardians. In Indonesian Civil Law, the concept of *vicarious liability* is known as an extension of a person's responsibility contained in the provisions. *Vicarious liability* or substitute liability can be understood as a substitute responsibility imposed on the party responsible for a person for the actions taken by the party who is his dependent.

Vicarious liability is regulated in Article 1367 of the Civil Code paragraph (1) which states that "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his responsibility or caused by goods under his supervision." Article 1367 of the Civil Code paragraph (2) states that "Parents and guardians are responsible for losses caused by minor children who live with them and over whom they exercise parental or guardianship authority."

when there is a transaction between a business actor and a consumer via e-commerce, the business actor only believes that the consumer who transacts with him is a consumer who is legally competent in determining and agreeing to the agreed price for the purchase of a product/goods, when a minor who is a consumer agrees to the product he wants to buy without his parents knowing and then when the product arrives at the home of the consumer who is not legally competent, the parents must make payment for the product and/or follow the instructions of the business actor to correct the error even though the transaction is without his knowledge.¹³

According to Article 299 of the Civil Code, it states that "Throughout the marriage of the father and mother, each child, until he or she becomes an adult, remains under their authority, as long as they are not released or dismissed from that authority". Power regarding the child's person is contained in Article 45 paragraph (1) of the Marriage Law which states that "both parents are obliged to care for and educate their children as well as possible". This power can be in the form of: child support, residence, education, direction of the child's future life, determining the child's marriage. The role of parents and family is also very important in guiding children as consumers. Parents are responsible for the care, supervision, education, and protection of children. Parents and family are obliged to provide consumer education to children, especially mothers must be able to provide

¹² Krista Yitawati, Anik Tri Haryani, and Sigit Sapto Nugroho, *Hukum Dan Teknologi: Perlindungan Hukum Jual Beli Melalui Transaksi Elektronik (E-Commerce)* (Solo: Pustaka Iltizam, 2017), p. 33.

¹³ Wijaya Natalia Panjaitan, "Pertanggungjawaban Orang Tua Akibat Transaksi Pembelian Secara E-Commerce Yang Dilakukan Oleh Anak Dibawah Umur," *Bacarita Law Journal* 4, no. 2 (2024): 149–54, <https://doi.org/10.30598/bacarita.v4i2.12835>.

consumer education and character education so that children become good and quality consumers.¹⁴

CONCLUSION

Based on the results of the research and discussion, the author can conclude that the first legal consequences of electronic agreements made by minors clearly do not meet one of the subjective requirements for the validity of an agreement, namely incompetence, resulting in weak legal force for the agreement. An agreement made by someone who is incompetent can be canceled based on the will of the party who feels disadvantaged by the agreement made and secondly, parents are responsible for the care, education, and protection of children. Parents and families are required to provide consumer education to children, especially mothers must be able to provide consumer education and character education so that children become good consumers. If online buying and selling transactions are carried out by minors, parents or guardians must be responsible for the buying and selling agreement, where parents or guardians of minors must make payments for the products purchased or follow the instructions of the business actor to correct mistakes.

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¹⁴ Enny Zuhni Khayati, "Pendidikan Konsumen Di Keluarga Dan Kontribusi Ibu Dalam Menyiapkan Generasi Emas Indonesia," *Prosiding Pendidikan Teknik Boga Busana* 10, no. 11 (2016): 125–34, <https://jurnal.uny.ac.id/index.php/ptbb/article/view/31901>.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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