CHAPTER I

INTRODUCTION

A. Background

The development of technology and communication cannot be avoided in the current era of globalization because the development of technology and communication will run in accordance with the development of science. The development of information and communication technology must be interpreted as a motivation for humans to evaluate and study this technology as a basis for lifetime learning.

Changes in technology and telecommunications cause the world to be borderless and cause significant social changes to take place rapidly. However, even though it was created to produce positive benefits, it also enables for negative things.

The Internet is a tool for disseminating information globally, a mechanism for disseminating information and a medium for collaborating and interacting between individuals using computers without being hindered by geographical boundaries[1]. Then within this context, the inherent legal aspect of the e-commerce mechanism is interacting with internet network applications used by parties who conduct transactions through e-commerce systems.

[1] Riyeke Ustadiyanto, Framework E-Commerce, Yogyakarta : Andi, 2002, hlm. 1

The term "conventional legal system" refers to the current legal system that has not considered the effects of using the internet. The use of the internet has influenced contemporary modern business.

> One of the developments in information and communication technology, among others, is virtual world technology or commonly called the internet (interconnection network). The Internet as a medium of information and electronic communication has been widely used for various activities, including browsing, searching for data and news, sending messages via email, communicating through social networking sites, and trading.[2]

Trading activities by utilizing internet media are known as electronic commerce or abbreviated as e-commerce. E-commerce is a process of buying and selling goods or services through a computer network, namely the internet.

Furthermore, Electronic Contracts (E-Contracts) can make it effective and efficient to make buying and selling transactions with everyone anywhere and anytime. All buying and selling transactions through the internet are carried out without face to face between the parties, they underlie the buying and selling transactions on mutual trust, so that the sale and purchase agreements that occur between the parties are carried out electronically.

> The most recent development, a very innovative and creative business transaction model or system have emerged following high-tech improvement in the field of communication and information. The sophistication of today's modern technology and the opening of a global information network that is completely transparent. This is marked by the emergence of the internet, Cybernet, or the world wide web (www), a

[2] Ahmad M. Ramli, Cyber Law Dan HAKI Dalam Sistem Hukum Indonesia, Jakarta : Refika Aditama, 2004, hlm. 1

> technology that allows the rapid transformation of information throughout the virtual world.[3]
>
> Through e-commerce all formalities commonly used in conventional transactions are reduced, in addition, obviously, consumers also can collect and compare information such as goods and services more freely without being limited by boundaries (borderless).[4]

E-commerce not only provides convenience for consumers, but this development makes it easier for producers to market their products which effect on cost and time savings. In today's internet world, there are many sites that accommodate people to trade goods.

There are sites that require users to become members first, but some do not. One of the advantages of sites that require users to become members is that they offer all kinds of goods from cheap to expensive ones that are still new or used for trading by members.

Items sold on sites that require users to become members include books, antiques, paintings, baby gear, clothing, shoes, motor vehicles, electronic devices, computers, tickets (concerts and planes), equipment household, musical instruments, food, flora, fauna and others.

Trading transactions via the internet is different from shopping or trading transactions in the real world. Through e-commerce, the buyer accesses the internet to the website, and then the buyer looks for the desired item. If you have

[3] M. Arsyad Sanusi, Transaksi Bisnis dalam E-comerce: Studi Tentang Permasalahan Hukum dan Solusinya, Jakarta: Fakultas Hukum Universitas Islam Indonesia, 2001, hlm. 11.
[4] Didik M. Arief Mansyur & Elisatris Gultom, Cyber Law (Aspek Hukum Teknologi Informasi), Bandung : Refika Aditama, 2005, hlm. 144

found the desired item, the buyer sends an offer on the seller's page, calls, or sends a short message to the seller.

After biding and an agreement is reached, the seller and buyer will determine the payment mechanism. The payment mechanism commonly used is that the buyer transfers a certain amount of money to the seller. After the buyer makes a money transfer, the seller sends the goods to the buyer.

Some of the advantages that can be obtained by using the internet as a trading media, namely[5] :

1. Advantages for buyers:
   a. Lowering the selling price of the product;
   b. Increase the competitiveness of sellers;
   c. Increase buyer productivity;
   d. better information management;
   e. Reducing the cost and time of procurement of goods;
   f. better inventory control.
2. Advantages for sellers:
   a. better identification of target customers and market definition;
   b. better cash flow management;
   c. Increase the opportunity to participate in the procurement of goods or services (tender);
   d. Improve efficiency;
   e. Opportunity to expedite the payment process for goods orders;
   f. Reduce marketing costs.

   Some of the weaknesses obtained by using the internet as a trading medium, namely: [6]

   a. Security issues.
   b. Credit card piracy, stock exchange, banking fraud, intellectual property rights, illegal access to information systems (hacking), website destruction and data theft.
   c. Non-conformance of the type and quality of the promised goods.
   d. Inaccurate delivery of goods.

[5] Riyeke Ustadiyanto, Op. Cit., hlm. 138
[6] http://haryadi17fh.blogspot.co.id/2014/09/makalah-e-commerce.html

e. No cash payments.
f. Indonesia is not yet owned a legal instrument that accommodates the development of e-commerce.
g. The problem with culture is that some people are less satisfied if they don't see goods to be bought directly.

In Indonesia, this e-commerce phenomenon has been known since 1996 with the emergence of the http://www.sanur.com/ site as the first online bookstore. Although not yet very popular, in 1996, various e-commerce sites began to appear. Throughout 1997-1998 the existence of e-commerce in Indonesia was slightly neglected due to the economic crisis, but in 1999 until now it has again become a phenomenon that attracts attention although it is still limited due to a minority of Indonesian people who are familiar with technology.[7]

E-commerce can be understood as a trade transaction activity for both goods and services through electronic media that provides convenience in consumer transaction activities on the internet. The advantages of e-commerce lie in its efficiency and easeness, discussing e-commerce law cannot be separated from internet law (cyber laws).[8]

According to Bajjaj in his book entitled E-commerce: The cutting edge of business mentions a number of advantages that can be obtained from this e-commerce, among others:[9]

1. Time saving. Business transactions between countries that usually take a few days in conventional business can be shortened to just a few minutes by using internet services.
2. Reducing the possibility of making mistakes in typing and so on because a standard model has been prepared that has never been retyped.
3. Business time can be used as efficiently as possible, so it is possible to get more information about the business so as to support the effectiveness and efficiency of a company or business.

[7] http://www.oecd.org/dsti/sti/it/infosoc/, bahan diakses tanggal 3 Februari 2017
[8] Michael Neng, Understansing Electronic Commerce From A Historitical Perspective, http://www.oecd.org/dsti/sti/it/infosoc/, bahan diakses tanggal 3 Februari 2017
[9] Nindya Pramono, Revolusi Dunia Bisnis Indonesia Melalui E-commerce dan EBussines: Bagaimana solusi hukumnya, Jakarta: Universitas Islam Indonesia, 2001, hlm 2

> The implementation of buying and selling online in practice raises several problems, for example, buyers who should be responsible for paying a certain price for the products or services to be bought, but they do not make payments. Parties who do not carry out their responsibilities in accordance with the agreed agreement can be sued by the party who feels aggrieved for compensation.[10]

Article 1320 of the Civil Code, hereinafter referred to as the Civil Code, stipulates that an agreement must fulfil the conditions for a valid agreement, namely approval statement, skill, certain matter and lawful causes. If the four conditions for the validity of the agreement are fulfilled, then the agreement is valid and binding on the parties.

If you look at one of the conditions for the validity of the agreement in Article 1320 of the Civil Code, namely the existence of skills, it will be a problem if the party who buys and sells via the internet is a minor, this may happen because finding the correct identity through internet media is not easy.

Article 1 point 6a of Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, stipulates that “Electronic System Operator is any Person, state administrator, Business Entity, and community that provides, manages, and/or operates Electronic System, either individually or jointly to Electronic System users for their own needs and/or other party’s needs."

[10] Zein Yahya Ahmad, Kontrak Elektronik & Penyelesaian Sengketa Bisnis E-Commerce. Bandung : CV.Mandar Maju, 2009, hlm. 43

The recommended electronic payment system is through a joint account (rekber). Article 15 paragraph (1) of the ITE Law stipulates that "every electronic system operator must operate an electronic system safely and be responsible for the proper operation of the electronic system".

Based on the Internet Security Threat Report from Symantec, Indonesia was one of the countries with the most cybercrime activity throughout 2011.[11] The report states that an increase in online activity is the cause of the increase in cybercrime in Indonesia.[12] The state, in this case the Government, is obliged to provide support in the use of IT through legal infrastructure and its regulations in order to create a climate for online activities and electronic transactions and be able to prevent security threats in the implementation of electronic transaction systems. In the Electronic Transaction System Operation (PSTE), there are four elements of Information Security and Electronic Transactions, including: Confidentiality; Authenticity (Authentication); Integrity (Integrity); Non-denial (non-repudiation).[13]

In relation to the prevention of Cybercrime in Indonesia, the four elements must be carried out by the State. In this case, through government regulations (PP) No. 82 of 2012 (PP No.82/2012), the state regulates the operation of the electronic system by regulating four basic elements, among others, namely

[11] Kompas Online, "Indonesia Masuk 10 Besar Penyumbang Cybercrime Terbanyak', http://tekno.kompas.com
[12] Ibid
[13] Saiful Hidayat, "Pemanfaatan PSRE dan LSK Sebagai Trusted Third Party Dalam Rangka Meningkatkan Keamanan Transaksi Elektronik", Sosialiasasi PP No. 82 Tahun 2012 tentang PSTE.

the regulation of hardware and software, regulation of supervision, arrangements regarding experts as well as arrangements related to the certification of feasibility for the electronic transaction system operation.

Government regulations (PP) No. 82/2012 it is stated that those who can operate the Electronic Transaction System are Persons, State Administrators, Business Entities and the public who provide, manage and/or operate the Electronic Transaction System. Electronic both for its own needs and the party's needs.[14] The Electronic Transactions in question must meet subjective and objective requirements as well as transactions carried out in conventional activities. Article 1320 BW states that the subjective conditions are: 1) Agreement, in this case the existence of an agreed electronic system; 2) Skills, namely mature or not under forgiveness. While the objective conditions are: 1) Certain things, namely the existence of valid information; 2) The cause is lawful, namely in accordance with the law, morality and public order.

These subjective and objective requirements in PP No. 82/2012 is regulated in Article 20, namely the Transaction is deemed to have occurred when the transaction offer sent by the Sender has been received and approved by the Beneficiary.[15] That furthermore, the approval of the offer must be made with an

[14] Bab Ketentuan Umum PP No. 82/2012.
[15] Pasal 20 (1) PP No. 82/2012

electronic acceptance statement.[16] In addition, electronic transactions can be carried out through a proxy or an electronic agent.[17]

In PP No. 82/2012, Article 12 states: Electronic System Operators are required to guarantee: a) the availability of service level agreements; b) the availability of an information security agreement for the IT services used; and c) security of information and means of internal communication held.

Furthermore, in Articles 13, 14 and 15 it is stated: a) Electronic system operators are required to apply risk management to the resulting damage or loss. b) electronic system operators are required to have governance policies, operating work procedures, and audit mechanisms that are conducted periodically on electronic systems. c) Electronic system operators are required to maintain the confidentiality, integrity and availability of personal data they manage; guarantee that the acquisition, use, and utilization of personal data is based on the consent of the owner of the personal data, unless otherwise stipulated by laws and regulations; and guarantee that the use or disclosure of data is carried out based on the consent of the owner of the personal data and in accordance with the objectives conveyed to the owner of the personal data at the time of data acquisition.

Regarding the responsibility for the operation of the information system, in article 28 states that the operator of the electronic system is responsible for securing and protecting the facilities and infrastructure of the electronic

[16] Pasal 20 (2) PP No. 82/2012
[17] Pasal 21 (1) PP No. 82/2012

system. If there is a failure of an information system that causes the system to not work as it should, then of course there will be a 'loss' both material and immaterial which may not only be suffered by the organizer directly but also by other parties (third parties) as users of existence of the system. As a consequence, there will be a legal responsibility for a claim for compensation due to damage to the system

Regulations regarding agreements or trade that exist in the legislation are more flexible in dealing with e-commerce transactions, as in conventional trade, buying and selling online through electronic media or e-commerce creates an engagement between parties to provide an achievement. The implication of the engagement is the emergence of rights and obligations that must be fulfilled by the parties involved. Along with the development of e-commerce, the problems that arise due to the rise of e-commerce are also increasing. One of the problems that arise is the existence of a default by one of the parties involved in the e-commerce.

There are several cases that occurred in these electronic transactions, an example of a case experienced by Bandung students who wanted to make a sale and purchase with a service provider at one of the online shopping sites, namely Kaskus.com where the buyer had negotiated in making payments with businessmen who posted goods merchandise in one of these online shopping sites.

After both agree to the agreement they entered into, the rights and obligations received by each party arise, but on the other hand there has been a default where the business actor does not carry out his obligations in the agreement that has been made to the consumer, and in this case if the consumer

has received an act of violation committed by the businessmen then how the legal force that arises in the agreement entered into by both parties.

The entry of internet media in the world of trade/business, many things have changed, such as the closeness of the parties in transactions becoming increasingly tenuous, because each party does not know each other closely (introduction is only known through computer media), Unclear regarding goods offered, especially if the goods offered require physical identification (such as perfumes and medicines). Certainty that the goods sent are in accordance with the goods ordered, even though we know that the relationship that arises between consumers and businessmen is always intended in order both parties enjoy profits.

As happened in the case decision Number 1391 K/Pdt/2011 which examined the civil case between Hastjarjo Boedi Wibowo as the plaintiff and PT Indonesia AirAsia as the defendant, the Plaintiff purchased 2 (two) AirAsia flight tickets online through the website, namely for flights from Jakarta to Yogyakarta on December 12, 2008 at 06.00 WIB with AirAsia flight QZ7340 and for flights from Yogyakarta to Jakarta, December 14, 2008 At 16.30 WIB on AirAsia flight QZ7345 whose booking was paid for by the Plaintiff using a visa credit card from Citibank Bank, after the Plaintiff purchased AirAsia flight tickets online, the Plaintiff then received a confirmation status stating that the Plaintiff was the Defendant's passenger for the flight schedule.

On December 11, 2008 At 14.00 WIB, the Defendant suddenly cancelled the flight unilaterally via Short Message Service (SMS) to the Plaintiff without any reason and prior notification from the Defendant to the Plaintiff.

After the Plaintiff received information via SMS stating that the Plaintiff's flight was cancelled, the Plaintiff immediately contacted the Defendant's call centre to inquire about the cancellation of the flight, and the Defendant's employee could only explain that the AirAsia QZ7340 plane that the Plaintiff was going to board was damaged without any clear explanation, after the Plaintiff contacted the Defendant's call centre without a clear explanation regarding the cancellation of the flight, the Plaintiff then asked the Defendant to change the flight to another aircraft on the same day and time, but the Defendant stated that he was not willing to provide such accountability to the Plaintiff.

Based on what has been described above, the title of this research will discuss "Analysis for the Electronical Contracts Law according to Indonesia Business Law."

B. Formulation of Problems

Based on the background of the problem above, the formulation of the problem in this research are:

1. To find out and analyse the protection of Electronical Contracts Law in Indonesia.

2. To find out and analyse what hinders the validity of electronical contract to serve as evidence in court.
3. To find out and analyse the legal considerations of judges in disputes over the validity of electronical contracts based on the decision of the Supreme Court Number 1391 K/Pdt/2011.

C. Research Objectives

The objectives of this research are:

1. To find out and analyse the legal protection of the electronical contract in Indonesia.
2. To find out and analyse what hinders the validity of the electronical contract to serve as evidence in court.
3. To find out and analyse the legal considerations of judges in disputes over the validity of the electronical contract based on the decision Number 1391 K/Pdt/2011 of the Supreme Court

D. Research Benefits

1. Theoretical benefits, can contribute ideas for develop insight and especially in the field of civil law and legal knowledge in general and can be used as reference for further research.

2. Practical benefits, can provide input for the community about legality and legal protection in online contract, so that people can make online transactions with safe.

E. Research Authenticity

This type of research is normative legal research that focuses on research on legal principles and legal systems. Based on observations and searches of the titles of the research types mentioned above, as long as the information and data obtained by the researcher, whereas there are no other researchers who have set the title of their research as follows: "Electronic Contract Legal Review According to Indonesia Business Law. ".

That based on previous literature searches, it was found about Electronic Contracts, but the title of the research, the formulation of the research problem is different from the research that will be carried out by the researcher, following research includes:

1. Wahyu Honggoro Suseno, Sebelas Maret University, Surakarta E 0003327, Contracts for Trading Over the Internet (Electronic Commerce) Reviewed from the Law of Treaties

   Formulation of the problem:

How about trading contracts over the internet (e-Commerce) if reviewed from Indonesia contract law?

What are the supporting factors for commerce via the internet (e-commerce)?

What is the solution if there are problems in the trading implementation over the internet?

2. Elysa Sinaga, Atmajaya University Yogyakarta, 070509738, Legal Evidence in Sale and Purchase Contracts Through Electronic Transactions.

   Formulation of the problem :

   Whether a conventional sale and purchase contract can be used as a benchmark for electronic transactions?

   How to do legal proof in a sale and purchase contract through electronic transactions if there is a dispute?

3. Silvia Diana, Andalas University Padang, 0921211068, Validity of Electronical Trading Contracts (E-Commerce), Reviewed from Law of the Republic of Indonesia Number 11 of 2008, concerning Information and Electronic Transaction.

   Formulation of the problem:

   When an electronic commerce contract is considered valid according to Law Number 11 of 2008 concerning Information and Electronic Transactions?

   How the evidentiary force of an electronic contract?

F. Theoretical Framework and Conception

1. Theoretical framework

The theoretical framework is a framework of thought or points of opinion, theory about a case or problem that for the reader becomes a subject of comparison, a theoretical pair, which he may agree with or disagree and this is an external input for the reader.[18]

According to Kaelan M.S, the theoretical basis for research is the operational basics of research. The theoretical basis in research is strategic, namely providing the realization of research implementation.[19]

In line with this, it is known that e-commerce transactions are basically an online contract, so in this case e-commerce transactions are no longer limited by the legal territorial boundaries of a country.

a. Legal Certainty Theory

According to Kelsen, law is a system of norms. Norms are statements that emphasize aspects of "should" or das sollen, by including some rules about what must be done. Norms are the product of deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in society, both in relation to fellow individuals, and in relation to society. These rules

[18] M. Solly Lubis, Filsafat Ilmu dan Penelitian, Bandung : Mandar Maju, 1994, hlm. 80

[19] Kaelan M.S, Metode Penelitian Kualitatif Bidang Filsafat (Paradigma bagi Pengembangan Penelitian Interdisipliner bidang Filsafat, Budaya, Sosial, Semiotika, Sastra, Hukum dan Seni, Yogyakarta : Paradigma, 2005, hlm. 239

become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.[20]

According to Gustav Radbruch, the law must contain 3 (three) values identity, which are as follows:[21]

1) The principle of legal certainty (rechmatigheid). This principle reviews from a juridical point of view.
2) The principle of legal justice (geretigheld). The principle reviews from a philosophical point of view, where justice is equal rights for all before the court.
3) The principle of legal benefit (zwechmatigheld or doelmatigheld or utilities

The legal goals that are close to realistic are legal certainty and legal benefits, while functionalists prioritize legal benefits and if it can be expressed that "summum ius, summa injuria, summa lex, summa crux" which means that harsh laws can hurt, except justice can help them, thus even though justice is not the only goal of law but the goal of law that most substantive is justice.[22]

According to Utrecht, legal certainty contains 2 (two) meanings, namely first, the existence of general rules that make individuals know what actions may or may not be done. Second, in the form of legal security for individuals from

[20] Peter Mahmud Marzuki, Pengantar Ilmu Hukum, Jakarta : Kencana, 2008, hlm. 158.
[21] Dwika, Keadilan dari Dimensi Sistem Hukum
[22] Dominikus Rato, Filsafat Hukum Mencari : Memahami dan Memahami Hukum, Yogyakarta : Laskbang Pressindo, 2010, hlm. 59.

government arbitrariness because with the existence of general legal rules, individuals can know what the state may burden or do to individuals.[23]

Legal certainty is not only in the form of articles in the law but also consistency in the judge's decision between the decisions of one judge and the decisions of other judges for similar cases that have been judged.

This teaching of legal certainty comes from the Juridical-Dogmatists teaching which is based on a positivist school of thought in the legal world which tends to see the law as something autonomous, independent, because for adherents of this thought, the law is nothing but a collection of rules. For adherents of this school, the purpose of law is nothing but guaranteeing the realization of legal certainty.

The certainty of the law is realized by the law with the nature that only makes a rule of law that is general in nature. The general nature of the rules of law proves that the law is not intended to bring about justice or usefulness, but solely for certainty.[24]

According to article 1320 of the Civil Code, the agreement must meet 4 (four) conditions in order to have legal force and bind the parties who made it, it is the agreement of the parties, the ability to make an agreement (for example: old age, not under pardon, etc.), concerning certain, the existence of a legal cause.

[23] Ridwan Syahrani, Rangkuman Intisari Ilmu Hukum, Bandung : Citra Aditya Bakti, 1998, hlm. 23.
[24] Achmad Ali, Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis, Jakarta :Toko Gunung Agung, 2002, hlm. 82-83

Based on the description of the theory of legal certainty above, in this study the theory of legal certainty is used to explain whether or not the law enforcement of electronical contracts has provided legal certainty.

b. Legal System Theory

The legal system theory was put forward by Lawrence M. Friedman, as quoted by Otje Salman and Anton F. Susanto, the legal system includes:

First, the legal structure, that is, the parts operate in a system mechanism or facilities that exist and are prepared in the system. For example, the police, prosecutors, courts.

Second, legal substance, namely the actual results issued by the legal system, for example the judge's decision based on the law.

Third, legal culture, namely public attitudes or values of moral commitment and awareness that encourage the operation of the legal system or the overall factors that determine how the legal system obtains a logical place within the framework of the community's culture.[25] Thus, in order to be able to operate the law properly, the law is a unity (system) which can be emphasized as follows:

1). Structural includes the container or form of the system which includes the order of formal legal institutions, the relationship between these institutions, rights and obligations.

[25] Otje Salman dan Anton F. Susanto, Teori Hukum Mengingat, Mengumpulkan dan Membuka kembali, Bandung : PT. Refika Aditama, 2004, hlm. 153-154

2). The substance includes the content of legal norms and their formulation as well as the method of enforcement that applies to law enforcement and justice seekers.

3). Culture basically includes values that underlie applicable laws, values which are abstract conceptions regarding those are considered good and bad. These values are usually a pair of values that reflect two extreme conditions which must be harmonized.

Regarding the legal system, Otje Salman said that needs a mechanism for integrating law where legal development must cover the three aspects above, which scientifically run through strategic steps, starting from legislation planning. The law-making processes up to law enforcement which are built through public law awareness.[26]

Implementation of law enforcement Soerjono Soekanto also said there are several factors that affect the enactment of the law. These factors are as follows:

a. The legal factor itself;

b. Law enforcement factors, namely the parties that form and apply the law;

c. Factors of facilities and facilities that support law enforcement;

d. Community factors, namely the environment in which the law applies or is applied;

[26] Ibid, hlm. 154

e. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.[27]

These five factors are closely related, because they are the essence of law enforcement, and are also a measure of the effectiveness of law enforcement. Based on these factors Gunnar Myrdal as quoted by Soerjono Soekanto, wrote as Soft Development where certain laws that formed and applied were not effective. Such symptoms will arise when certain factors become obstacles. These factors can come from law makers, law enforcers, justice seekers (jasitabeken) and other groups in society.

Based on the description of the legal system theory above, in this study the theory of the legal system which includes first, the legal structure which explains that the law has the first elements of the legal system, including legal structures, institutional arrangements and institutional performance to resolve disputes regarding electronical contracts by the parties. Second, legal substance which is used to explain rules or norms which are behavioural patterns of the parties who enter into electronical contracts. Third, legal culture which is used to explain attitudes and values related to the legal culture of the parties in making contracts that are carried out electronically.

Furthermore, in this study only discusses the problem of legal substance used to resolve electronic contract disputes according to the Civil Code, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law

[27] Soerjono Soekanto, Faktor-Faktor yang Mempengaruhi Penegakan Hukum, Jakarta ; PT. Raja Grafindo Persada, 2004, hlm. 8

Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 8 of 1999 concerning Consumer Protection, Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions and the judge's decision Number 1391 K/Pdt/2011 of the Supreme Court.

c. Legal Protection Theory

Basically, every human was born as a creature created by God Almighty who naturally gets basic rights, namely freedom, the right to life, the right to be protected, and other rights. This is in line with the principles of natural law in the 18th century, namely individual freedom and the primacy of ratio, one of the adherents of which is Locke. He also teaches on the social contract.

According to Locke, these rights were not handed over to the authorities when the social contract was executed. Therefore, the power of the ruler given through the social contract, by itself cannot be absolute. If so, the existence of such power is precisely to protect these natural rights from dangers that may threaten, both inside and outside. Thus, the laws made in any state are also tasked to protect these basic rights.[28]

A more explicit thought about the law as a protector of the rights and freedoms of its citizens, was put forward by Immanuel Kant. For Kant, humans are intelligent beings and free will. The state is in charge of upholding the rights

[28] Bernard L Tanya, Yoan N. Simanjuntak dan Markus Y. Hage, Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi), Semarang : Genta Publishing, 2013, hlm. 72-73

and freedoms of its citizens. The prosperity and happiness of the people are the goals of the state and the law; therefore, these basic rights should not be hindered by the state.[29]

The basic rights inherent in humans are natural, universal, and eternal as a gift from God Almighty, including the right to life, the right to have a family, the right to develop oneself, the right to justice, the right to freedom, the right to communicate, the right to security, and the right to welfare, which therefore should not be ignored or taken away by anyone.

Referring to the right to security for each individual, Article 7 of Human Rights explains that every human being before the law has the right to receive protection from the same law without discrimination. All are entitled to equal protection against any form of discrimination contrary to this statement and against any incitement leading to such discrimination.

According to Fitzgerald, he explained Salmond's theory of legal protection that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other parties.[30] The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests need to be regulated and protected.[31]

[29] Ibid., hlm. 75
[30] Satijipto Raharjo, Ilmu Hukum, Bandung : PT. Citra Aditya Bakti, 2000, hlm. 53
[31] Ibid., hlm. 69

Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which are basically a general agreement to regulate behavioural relations between public members and between individuals and the government which are considered to represent the public interests.

According to Satijipto Raharjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the public so that they can enjoy all the rights granted by law.[32]

According to Lili Rasjidi and I.B Wysa Putra, the law can function to realize protection that is not only adaptive and flexible, but also predictive and anticipatory.[33] Sunaryati Hartono's opinion said that the law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.[34]

According to Phillipus M. Hadjon's opinion that legal protection for the people is a preventive and repressive government action.[35] Preventive legal protection aims to prevent disputes from occurring, which directs government

[32] Ibid., hlm. 54
[33] Lili Rasjidi dan I.B Wysa Putra, Hukum Sebagai Suatu Sistem, Bandung : Remaja Rusda karya, 1993, hlm. 118
[34] Sunaryati Hartono, Politik Hukum Menuju Satu Sistem Hukum Nasional, Bandung : Alumni, 1991, hlm. 55
[35] Phillipus M. Hadjon, Perlindungan Hukum Bagi Rakyat Indonesia, Surabaya : PT. Bina Ilmu, 1987, hal. 2

actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including their handling in the judiciary.[36]

It should be noted that efforts to obtain legal protection, of course, what humans want is order and regularity between the basic values of the law, namely the existence of legal certainty, the usefulness of law and legal justice, even though in practice the three basic values are in conflict, efforts must be made for the three basic values altogether.[37]

Based on the description of the theory of legal protection above, in this case the theory of legal protection is used to explain the legal protection of the parties in making electronical contracts in order to enjoy all the rights granted by law.

2. Conception

Conceptual framework legal research is obtained from legislation or to form legal understandings. If the conceptual framework is taken from certain laws and regulations, usually the conceptual framework also formulates certain definitions, which can be used as operational guidelines in the process of data collection, processing, analysis and construction.

a. Legal Analysis

[36] Maria Alfons, Implementasi Perlindungan Indikasi Geografis Atas Produk-produk Masyarakat Lokal Dalam Perspektif Hak Kekayaan Intelektual, Malang : Universitas Brawijaya, 2010), hal. 18.
[37] Ibid

According to the Indonesian Comprehensive Dictionary, what is meant by analysis is an investigation into an event (writing, deed, etc.) to find out the actual situation (cause, fact of the cases, etc.).[38] While what is meant by law is a regulation that is officially considered binding, laws, regulations and so on to regulate the social life of the community, rules or provisions.[39]

b. Electronic Contract

According to Law Number 11 of 2008 concerning Information and Electronic Transactions, what is meant by Electronic Contracts are agreement of the parties made through an electronic system.[40]

c. Business

According to the Big Indonesian Dictionary, what is meant by commercial business in the world of trade, business, trading business.[41]

G. Research methods

1.Types and Nature of Research

[38] Kamus Besar Bahasa Indonesia Pusat Bahasa Edisi Keempat, Jakarta : PT. Gramedia Pustaka Utama, 2008
[39] Ibid
[40] Undang-undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik
[41] Kamus Besar Bahasa Indonesia Pusat Bahasa Edisi Keempat, Jakarta : PT. Gramedia Pustaka Utama, 2008

This type of research uses normative legal research by researching legal norms regarding electronic contracts according to the Indonesian Law Civil Law, Law Number 11 Year 2008 concerning Information and Electronic Transactions, Law Number 19 of 2016 concerning Amendments Based on Law Number 11 of 2008 concerning Information and Transactions Electronic. Law Number 8 of 1999 concerning Protection Consumers, Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions and the decision of the Supreme Court judge Number 1391 K/Pdt/2011.

This research is analytical descriptive by using a normative juridical approach.[42] Descriptive nature is interpreted as an effort to describe thoroughly and in depth. According to Peter Mahmud Marzuki, "Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues are dealt with.[43]

2. Research Approach

The research approach used is normative research, which consists of a statute approach, a case approach, a comparative approach, and a conceptual approach.[44] The statutory approach is used to analyse legal aspects, while the conceptual approach is used to gain a true and in-depth understanding of electronic contracts.

3. Data Source

[42] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat, Edisi Satu, Jakarta : Raja Grafindo Persada, 2003, Cetakan Ketujuh, hlm. 63.
[43] Peter Mahmud Marzuki, Penelitian Hukum, Jakarta : Kencana, 2005, Cetakan ke I hlm. 35
[44] Ibid..hlm. 93

Assessing various research objects in the form of legal regulations/norms related to electronic contract law, the secondary data used in this research includes primary legal materials, secondary legal materials, and tertiary legal materials.

a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of the Civil Code, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 2008 concerning Information and Electronic Transactions. Law Number 8 of 1999 concerning Consumer Protection, Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions and the decision of the Supreme Court judge Number 1391 K/Pdt/2011.
b. Secondary legal materials, in the form of all publications on law that are not official documents. Publications on law include legal materials consisting of scientific works in the form of textbooks (textbooks), legal journals, written works published in print media, mass media, and electronic media, in addition to the opinions of scholars, legal cases and others. others related to the research topic.
c. Tertiary legal materials, namely legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, such as legal dictionaries, encyclopaedias that limit the etymological meaning of words or grammatically for certain terms, especially those related to the title variable

component, namely the term-terms that correlate with contracts made electronically (Electronic Contract).

4. Data Collection Techniques and Tools

The data collection technique used is by conducting legal research studies in the form of library research, namely by collecting and studying and analysing statutory provisions relating to electronical contract law.

Data collection tools using document studies, interview guidelines. Document study is a study that examines various documents, both related to laws and regulations and existing documents.[45] Guidelines are guides, instructions and references. Interview is a method of collecting data by getting information orally in order to achieve certain goals,[46] it means that data collection is by asking directly / face to face with respondents to get information about a problem that is carried out systematically based on guidelines that are arranged according to the research objectives and it is unlimited.

5. Data Analysis Techniques

To analyse the data, qualitative data analysis was used. Qualitative data is data presented in the form of spoken words not in the form of numbers.[47] Where the assessment of data results is not in the form of numbers, but emphasizes more

[45] Salim dan Nurbaini, Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, Raja Jakarta : Grafindo Persada, 2014, hlm. 19
[46] Burhan ashshofa, Metode Penelitian Hukum, , Jakarta : Rineka Cipta, 2001, Cetakan Ketiga, hlm. 95.
[47] Noeng Muhadjir, Metodologi Penelitian Kualitatif, Yogyakarta : Rakesarasin, 1996, hlm. 2.

on legal analysis in carrying out the process of taking deductive and inductive conclusions by using formal and argumentative ways of thinking.

The data obtained is then managed by systematizing legal materials. The data is processed by conducting an in-depth study using legal interpretation and legal construction methods that are common in legal science and then analysed in juridic qualitative, in the form of a normative juridical presentation.

CHAPTER II

LEGAL PROTECTION OF INDONESIA ELECTRONICAL CONTRACTS

A. General Overview of Regulations Relating to Legal Protection of Indonesia Electronic Contracts

1. Understanding Electronic Contracts

According to the general explanation of Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 on Information and Electronic Transactions Article 1 General Provisions, number 17 states that Electronic Contract is an agreement of the parties made through the Electronic System.[48]

According to Johannes Gunawan, "electronic contracts are standard contracts that are designed, created, determined, duplicated, and disseminated digitally through the internet site (website) unilaterally by the contract maker (in this case the businessmen), to be closed digitally by the closing of the contract (in this case the consumer).

In the electronic contract, besides containing the characteristics of a standard contract, it also contains the following characteristics of an electronic contract:

a. Electronic contracts can occur remotely, even beyond national borders via the internet.

[48] Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

b. The parties to an electronic contract generally never meet face to face (faceless nature), and may never even meet.[49]

> The UUPK does not prohibit businessmen from making standard clauses for every document and/or agreement on business transactions for trade in goods and/or services, during and as long as the standard agreement and/or standard clause does not include provisions as prohibited in Article 18 paragraph (1), and not "has a form of" as prohibited in Article 18 paragraph (2) of the UUPK.[50]

Edmon Makarim uses the term of online contract for electronic contracts (e-contracts) and defines online contracts as: Engagement or legal relations carried out electronically by combining the network of a computer-based information system with telecommunication based, which is further facilitated by the existence of a Internet global computer network, (network of networks).[51]

Electronic contracts use digital data instead of paper. The use of digital data will provide enormous efficiency, especially for companies that run online businesses through the internet network, in electronic contracts, the parties do not need to meet face to face and will never meet at all.[52]

Based on the above definition, it can be concluded that an electronic contract (e-contract) is an agreement between two or more parties which is carried out using computer media, gadgets or other communication tools via the internet network.

[49] Cita Yustisia Serfiani dkk., Buku Pintar Bisnis Online dan Transaksi Elektronik, Jakarta : Gramedia Pustaka Utama, 2013. hlm. 100
[50] Gunawan Widjaja dan Ahmad Yani, Hukum Tentang Perlindungan Konsumen, Jakarta:Gramedia Pustaka Utama, 2000, hlm. 57
[51] Sylvia Christina Aswin, Tesis, Keabsahan Kontrak Dalam Transaksi Komersial Elektronik, Program Pasca Sarjana Universitas Diponegoro, Semarang, 2006.
[52] Cita Yustisia Serfiani dkk., Op. Cit, hlm.101

1. Types and Forms of Electronic Business Contracts (e-contracts)

Types of electronic contracts (e-contracts) can be divided into two categories, that is:[53]

a. electronic contracts that have transaction objects in the form of physical or tangible goods/services, examples of goods in the form of books, or private tutoring services. In this type of contract, the parties (the seller and the buyer) communicate about making the contract through the internet. If an agreement has been reached, the seller will send the goods/services that are the contract object directly to the buyer's address (Physical delivery). Private tutoring services in this case are realized in the form of private tutor visits to consumers' homes, so they are not digital private lessons or in the form of online interactions.

b. electronic contracts that have an object transaction in the form of non-physical information/services. In this type of contract, the parties initially communicate via the internet network and then make a electronical contract. If the contract has been agreed, the seller will send the information/services that are the contract object via the internet (cyber delivery).

For example: a contract to purchase an electronic book (e-book), an electronic newspaper (e-newspaper), an electronic magazine (e-magazine), or a contract to take private English lessons via the internet (e-school).

[53] Ibid

Some forms of electronic contracts that are commonly carried out in online trading transactions are:[54]

1. Contract via electronic mail (e-mail) is a contract legally formed through email communication. Bids and receipt may be exchanged by email or in combination with other electronic communications, written documents or faxes.
2. A contract can also be formed through websites and other online services, namely a website offering the sale of goods and services, then the consumer can accept the offer by filling out a form displayed on the monitor screen and transmitting it.
3. Contracts that include direct online transfer of information and services. The website is used as a medium of communication and at the same time as a medium of exchange.
4. Contracts containing Electronic Data Interchange (EDI), an electronic exchange of business information via computers belonging to trading partners
5. Contracts via the internet accompanied by click wrap and shrink wrap licenses. Software downloaded over the internet is usually sold with a click wrap license. The license appears on the buyer's monitor at the first time the software will be installed and the prospective buyer is asked about his willingness to accept the terms of the license. Users are given an alternative "I accept" or "I don't accept". While shrink wrap is usually a software license that is sent in a package, such as a floppy disk or compact disc.

[54] http://mentarivision.blogspot.com/kontrak-elektronik.html diakses tanggal 19 April 2017

Electronic Commerce Transactions, according to the provisions of the Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions Article 1 General Provisions, number 2 states that Electronic Transactions are legal acts carried out using computers, computer networks, and/or other electronic media.[55]

Munir Fuady stated that what is meant by e-commerce is a business process using electronic technology that connects companies, consumers and the public in the form of electronic transactions, and the exchange/sale of goods, services, and information electronically. Thus, in principle, e-commerce business is a paperless trading activity.[56]

Vladimir Zwass defines electronic commercial transactions (e-commerce) as exchanging business information, maintaining business relationships, and conducting business transactions through communication networks. From this it can be seen that electronic commercial transactions (e-commerce) are trade transactions/ selling-buying of goods and services carried out by exchanging information/data using alternatives other than written media. What is meant by alternative media here is electronic media, especially the internet.[57]

Based on the above definition, it can be stated that what is meant by electronic commercial transactions or electronic trade transactions (e-commerce) is basically a legal relationship in the form of the exchange of goods and services

[55] Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
[56] Munir Fuady, Pengantar Hukum Bisnis, Menata Bisnis Modern di Era Global, Bandung : PT. Citra Aditya Bakti, 2008, hlm. 40
[57] Sylvia Christina Aswin, Op.Cit, hlm. 101

between sellers and buyers which have similarities with conventional transactions but are carried out by exchanging data through intangible media or virtual world (internet) so that the seller and buyer do not need to meet physically.

As a public network, the internet allows it to be accessed by anyone and from various circles. So that e-commerce activities using internet media can be done by anyone and for any purpose. Therefore Panggih P. Dwi Atmojo classifies the types of e-commerce transactions into three types, namely:

1. Business to business

Business to business is a business communication system between business people or in other words; electronical transactions between companies (in this case businessmen) that are carried out regularly and in large product capacity or volumes. E-commerce activities in this scope are intended to support the activities of the businessmen themselves.

Businessmen who enter into an agreement are, of course, the parties engaged in the business sector, which in this case binds themselves in an agreement to do business with other business parties. The parties to the agreement in this case are the Internet Service Provider (ISP) with the website or key base (electronic space), the ISP itself is the entrepreneur who offers access to the internet. While the internet is a way for computers to communicate, it is not a place but a path is passed.

2. Business to consumer

Business to consumer in e-commerce is an electronic business transaction carried out by businessmen and consumers to fulfil a certain needs and at a certain time. In this business transaction, the products traded starting from goods and services, both in tangible form and in electronic or digital form that are ready to be consumed.

3. Consumer to consumer (Consumer to consumer)

Consumer to consumer is an electronic business transaction that is carried out between consumers to fulfil a certain needs and at a certain time as well, this consumer to consumer segmentation is more specific because transactions are carried out by consumers to consumers that require transactions. The internet has been used as a means of exchanging information about products whether regarding price, quality and service.

The internet has made customers have a higher bargaining position against the company thereby demanding better company services. In practice, the transaction model that is widely used by consumers until now is Business to Consumer (B2C), which is an online communication system between businessmen and consumers use the internet in general.[58]

Buying and selling transactions carried out through electronic media (e-commerce) are basically buying and selling transactions that have the same basic principles as conventional buying and selling transactions. As with conventional

[58] Bagus Hanindyo Mantri, 2007, Tesis, Perlindungan Hukum Terhadap Konsumen Dalam transaksi e-commerce, Program Magister Ilmu Hukum Universitas diponegoro, Semarang

buying and selling transactions, buying and selling transactions through electronic media (e-commerce) also consist of the stages of offering and receiving.

1. Offer

According to Mariam Darus Badrulzaman, an offer is an invitation to enter into a binding agreement.

In e-commerce transactions, the offer is usually made by the merchant/seller and can be addressed to the e-mail address (electronic mail) of the prospective buyer or made through the website so that anyone can see the offer.

2. Reception

A receiption can be stated through the website or electronic mail. In transactions through the website there are usually containing stages that must be followed by prospective buyers, namely:

a. Search for items and view item descriptions.

b. Select items and store them in the shopping cart.

c. Make a payment after you are sure of the goods to be purchased.

By completing these three stages of the transaction, the prospective buyer is deemed to have accepted and thus an electronic contract (e-contract) has occurred.[59]

Confession of electronic contracts as a form of agreement in the Indonesian Civil Code (KUH Perdata) is still a complicated issue. Article 1313 of the Civil Code regarding the definition of an agreement does not stipulate that an

[59] 9 Sylvia Christina Aswin, Op.Cit, hlm. 121

agreement must be made in writing. Article 1313 of the Civil Code only states that an agreement is an act whereby one or more persons bind themselves to one or more other persons. Referring to this definition, an electronic contract can be considered as a form of agreement that fulfils the provisions of Article 1313 of the Civil Code. However, in practice an agreement is usually interpreted as an agreement that is written in paper-based form and if necessary, it is stated in the form of a notary deed.

Regulations on Electronic Contracts (e-contracts) are set out in Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions Article 47 and Article 48. In Article 47 paragraph (1), Electronic Transactions can be carried out based on Electronic Contracts or other contractual forms as a form of agreement made by the parties. Then in paragraph (2) it is explained that an Electronic Contract is considered valid if:

1. There is an agreement between the parties;
2. Conducted by a competent legal subject or authorized to represent in accordance with the provisions of the legislation;
3. Containing certain things; and
4. The object of the transaction must not conflict with the laws and regulations, decency, and public order.

Suppose it is paid attention to the provisions of Article 47 paragraph (2) above. In that case, it is in accordance with the provisions of the Code of Civil Law (KUHPERDATA) regarding the terms of the validity of the agreement, there are in article 1320 of the Code of Civil Law, namely:

1. Agreement is the conformity of the statement of will between one or more parties with another party. An agreement always begins with an offer by one party and acceptance by another. If the offer is not respond with acceptance then the deal will not happen. In conventional electronic commercial transactions, the occurrence of an agreement is easy to know because the agreement can be directly given orally or in writing. In contrast, in electronic commercial transactions, the agreement is not given directly but through electronic media (especially the internet). In electronic commercial transactions, the party making the offer is the merchant or producer/seller who in this case offering goods and services through the website.
2. Having skills

   The parties who make the agreement must be competent and authorized to carry out legal actions. The proficiency at here means being an adult (having reached the age of 21 years or being married even though you are not yet 21 years old. In electronic commercial transactions it is difficult to determine a person's skills, because transactions are not carried out physically, but through electronic media. In an interview with one of the judges at the District Court Medan, it is also said that contracts in electronic commercial transactions cannot be said to be valid, especially because it is difficult to see the skills of the parties because in commercial transactions because in electronic commercial transactions, there is no

meeting between the parties.[60] For electronic actors, due to there is no meeting between the parties, the issue of proficiency is not important. One consumer said that while conducting electronic commercial transactions, he never worried about whether the other party was capable and authorized to perform legal actions. He further said that he has only carried out electronic commercial transactions with trusted parties, so that the other party is automatically capable and authorized to carry out legal actions. [61] A similar thing said by one of the practitioners of electronic transactions who confirms that he only conducts electronic commercial transactions with trusted parties so that the other party's authority to take legal action does not need to be questioned.[62]

3. Existence of certain matter

According to the law, what is meant by certain things are achievements that are the subject of the agreement in question. Although the law does not require that an item exists or does not exist at the time of the agreement, the type of goods intended in the agreement must at least be determined. Furthermore, Article 1234 of the Code of Civil Law states that each engagement is to give something, do something, or not do something.

4. Existence of lawful cause

[60] Wawancara dengan Johny Simanjuntak, salah seorang hakim Pengadilan Negeri Medan, hari Selasa, tanggal 18 Juli 2017

[61] Wawancara dengan Tuti Ramadhani, pelaku transaksi komersial elektronik (sebagai pembeli), di Jalan Letda Sudjono, Medan, tanggal 13 Juli 2017.

[62] Wawancara dengan Denny Nasution, pelaku transaksi komersial elektronik (sebagai pembeli), di Jalan Jermal III, Medan, tanggal 14 Juli 2017

Because what is lawful here is related to the agreement's content and not because the parties agreed. Article 1335 of the Code of Civil Law states that an agreement made due to the forbidden ones have no power. Further in Article 1337 of the Code of Civil Law, what is included in the prohibited causes are those prohibited by law or contrary to decency and public order.

The first two conditions are subjective because they are conditions regarding the parties who hold the agreement. While the latest two conditions are objective conditions because they are conditions regarding the object of the agreement. If the subjective conditions are not met, the agreement can be cancelled at the party's request entitled to a cancellation. However, if the parties do not object, then the agreement is considered valid. If the objective conditions are not met, the agreement can be null and void, which means that from the beginning it was deemed that such agreement was never held.

In order for a contract that occurs as a result of an electronic commercial transaction can be said to be valid according to Indonesian civil law, the contract must also meet the legal requirements of the agreement according to Article 1320 of the Code of Civil Law. Unfortunately, contracts that occur as a result of an electronic commercial transaction do not meet the provisions of Article 1320 of the Code of Civil Law, mainly because of the difficulty in determining the skills of the parties and the absence of regulations regarding when an agreement occurs

in electronic commercial transactions.[63] The practitioners of electronic commercial transactions give different opinions. One of the practitioners of electronic commercial transactions said that because he always conducts electronic commercial transactions with trusted parties, he assumes that the contracts that occur in transactions electronic commercial is legal.[64]

Electronic contracts (e-contracts) are included in the category of "unnamed contracts" (innominaat), namely agreements that are not regulated in the Civil Code but exist in society due to the times and demands of business needs. However, this kind of contract must comply with Article 1320 of the Code of Civil Law which regulates the conditions for the agreement's validity. Electronic contracts, like conventional contracts, also have legal force like law for the parties who make them. (Article 1338 Code of Civil Law).[65]

Electronic contracts are an important element in electronic commerce. An electronic trading agreement is a sale and purchase agreement with the same legal force as a conventional agreement, where evidence of electronic transactions is recognized as equivalent to written evidence. UNCITRAL guidelines (one of the commissions under the United Nations that specifically discuss international trade law) in presenting the principle of functional equivalence between written and electronic documents is appropriate to be applied as an acknowledgment of legal evidence for electronic trading transactions.

[63] Wawancara dengan Johny Simanjuntak, salah seorang hakim Pengadilan Negeri Medan, hari Selasa, tanggal 18 Juli 2017.
[64] Wawancara dengan Tuti Ramadhani, pelaku transaksi komersial elektronik (sebagai pembeli), di Jalan Letda Sudjono, Medan, tanggal 13 Juli 2017.
[65]Cita Yustisia Serfiani dkk., Op. Cit, hlm.103

Electronic contracts, agreements are very important because the parties did not meet in person, so arrangements are needed on when the agreement is considered to have occurred in Indonesia, to determine the agreement can be used several theories as follows:

1. The theory of will which teaches that the agreement occurs when the will of the recipient is stated.
2. Delivery theory which states that the agreement occurs when those are stated is sent by the party who accepts the offer.
3. The theory of knowledge which states that the bidder should already know that his offer has been accepted.
4. The theory of belief teaches that an agreement occurs when the statement of will is deemed worthy of acceptance by the offering party.[66]

Electronic contracts (e-contracts) are generally made in the form of a standard contract by the seller so that the buyer does not have the right to change the contents of the standard contract. The buyer only needs to read the contents of the standard contract, and if he does not agree, there is no need to sign. Standard contracts are common in the business world because of considerations of necessity and practicality. However, the standard contract may not conflict with the Code of Civil Law and the Consumer Protection Law.[67]

The making of standard contracts or standard agreements is not prohibited but must not conflict with Law Number 8 of 1999 concerning Consumer Protection. Businessmen are prohibited from including standard clauses

[66] Cita Yustisia Serfiani dkk., Op. Cit
[67] Ibid

whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand. Every standard clause that violates the prohibition is declared null and void, and businessmen are obliged to adjust the standard clause to Law Number 8 of 1999 concerning Consumer protection.[68]

The implementation of Electronic Transactions carried out by the parties must be carried out by taking into account good faith, the principles of prudence, transparency, accountability, and fairness. Electronic Transaction Operators are required to provide correct data and information and provide services and resolve complaints, Electronic Transaction Operators are also required to provide legal options for the implementation of Electronic Transactions.

A contract/agreement/commitment can be terminated or terminated for various reasons. The termination of a contract/agreement/commitment can be classified into 12 (twelve) kinds of causes, namely:

1. Payment
2. Novation or renewal of debt;
3. Compensation or debt settlement;
4. Confucian or mixed debts;
5. debt relief;
6. Cancellation;
7. Cancellation conditions applies;
8. The term of the contract has expired;

[68] Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen

9. Implementation of the agreement object;

10. The agreement of both parties;

11. Termination of the contract unilaterally;

12. Existence of court decision.[69]

Likewise, an electronic agreement/contract (e-contract) will end if it fulfils the conditions or reasons as happened in a conventional contract.

2. Legal Protection

Contract law protection carried out electronically provides more explanation to consumers regarding things that must be considered by consumers in conducting legal relations with businessmen. The legal relationship created between consumers and businessmen is a legal relationship that provides benefits for both parties. In general, consumers must be able to know about a consumer, business actor, and the rights owned by consumers and businessmen

The Consumer Protection Law in Article 1 number (1) states that, "Consumer Protection is all efforts that guarantees legal certainty to protect consumers"[70]. Although this Consumer Protection Law aims to protect the interests of consumers, it does not mean ignoring the interests of businessmen who have an important role in the world of trade and meeting the needs of the public.

Consumer protection law is also part of consumer law which contains principles or rules that are regulating. It protects the interests of consumers from businessmen who act arbitrarily and irresponsibly that put the position of

[69] Salim HS, Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak, Jakarta : Sinar Grafika, 2006, hlm. 165

[70] Undang-Undang Perlindungan Konsumen No 8 Tahun 1999.

consumers as objects of the business they do. This means that any efforts to provide legal protection to consumers are regulated by the consumer protection law as contained in the consumer protection law. [71] As explained, consumers are in a weak position in knowledge about goods and/or services made by businessmen.

Based on this, in conducting transactions or legal relations between businessmen and consumers, both in buying and selling goods and/or services, the principle of good faith has been instilled in these businessmen. Not only taking their own profits at the expense of other parties, because consumers in this case are business partners of businessmen where both parties need each other.

Based on the formulation of Article 1338 of the Code of Civil Law, we can know that an agreement must be made in good faith. In other words, the agreement is not valid if it is carried out in bad faith to harm other parties or related third parties, which were obtained from coercion, fraud or error. Businessmen should not take advantage of these urgent consumer needs.

Article 3 of the Consumer Protection Law also explains the objectives of consumer protection, namely:

a. Increase consumer awareness, ability, and independence to protect themselves
b. Raising the dignity of consumers to prevent them from the negative excesses of using goods and/or services

[71] Ahmadi Miru, Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia, Jakarta: Rajawali Pers, 2011, hlm. 9.

c. Increase consumer empowerment in choosing, determining, and demanding their rights as consumers
d. Creating a consumer protection system that contains the legal certainty law and disclosure of information and access to obtain information.
e. Raising awareness of businessmen regarding the importance of consumer protection would emerge an honest and responsible attitude in business.
f. Improving the quality of goods and/or services, health, comfort, security and consumer safety.[72]

B. Legal Relations of the Parties within the Electronic Contract

Transactions carried out electronically are engagements or legal relationships that are carried out electronically by combining a computer-based electronic system network with a communication system, which is further facilitated by the existence of a global computer network or the internet (see Article 1 number 2 Amendment to the Information and Economic Transactions (ITE) Law).[73]

Legal relationship is a relationship between two or more parties (legal subjects) that have legal consequences (causing rights and obligations) and are regulated by law. In this case the right is the authority or role that exists in a person (the holder) to act on something that is the object of that right to others. While an obligation is something that must be fulfilled or carried out by a person to obtain his rights or because he has obtained his rights in a legal relationship.

[72] Gunawan Widjaja dan Ahmad Yani, Op. Cit, hlm. 99
[73] Transaksi Elektronik adalah perbuatan hukum yang dilakukan dengan menggunakan komputer, jaringan komputer, dan/atau media eketronik lainnya

Legal object is something that is useful, valuable, valuable for legal subjects and can be used as the subject of legal relations. While legal subjects are everything that can support their rights and obligations or have legal authority (rechtsbevoegdheid).

In the private sphere, the legal relationship will include the relationship between individuals, while in the public sphere, the legal relationship will include the relationship between citizens and the government as well as the relationship between fellow members of society that are not intended for commerce purposes, which includes public services and information transactions between government organizations.[74]

Commercial activities, transactions have a very important role. In general, the meaning of the transaction is often reduced to a sale and purchase agreement between the parties who agree to it, whereas in a juridical perspective, the terminology of the transaction is basically the existence of an engagement or legal relationship that occurs between the parties. The juridical meaning of the transaction is basically more emphasized on the material aspects of the legal relationship agreed upon by the parties, not the formal legal action. Therefore, the existence of legal provisions regarding engagements remains binding despite changes in media and changes in transaction procedures. Of course, there are exceptions in the context of legal relations concerning immovable objects, because

[74] Draft Penjelasan Umum RUU Informasi dan Transaksi Elektronik (ITE), sebelum disahkan menjadi UU ITE

in that context the actions have been determined by law, which must be carried out in a "clear" and "cash" manner.

The civil scope, especially the engagement aspect, the meaning of the transaction will refer to civil matters, especially the engagement aspect, the meaning of legal transactions electronically itself will include buying and selling, licensing, insurance, rental and other engagements that are born in accordance with the development of the mechanism trade in society. In the public sphere, the legal relationship This will include the relationship between citizens and the government

as well as relationships between members of the community that are not intended for commercial purposes. Regarding the definition of public, in Black Law Dictionary states that public is relating or belonging to an entire community, state, or nation. [75]

C. Legal Protection for Parties in Electronic Contracts

With the ease of communicating electronically, trade at this time has begun to spread to the electronic world. Transactions can be carried out with the convenience of information technology, without distance barriers.

Legal subjects, in this case merchants and customers, conduct trade transactions through information technology in the form of the internet so that it brings forth an agreement. In the agreement there are electronic documents that can be used as electronic evidence to avoid misuse by irresponsible people in the

[75] Black's Law Dictionary, Seventh Edition, Bryan A. Garner, West Group, St Paul, Minn, 1999

form of electronic trading crimes. For this reason, legal protection is needed to protect legal subjects who carry out trade transactions over the internet.

The following will explain the legal protection in terms of agreements, electronic evidence, and the responsibilities of the parties based on research:

1. Legal Protection of the Agreement for the Parties in the Electronic Contract

In the electronic document agreement, usually the document is made by the merchant which contains the rules and conditions that must be obeyed by the customer but the contents are not burdensome to the customer. These rules and conditions are also used as legal protection for both parties. Legal protection for both parties are:[76]

a. Legal protection for merchants is especially emphasized in terms of payments, merchants require customers to make payments and then confirm payments, only after that the ordered goods to be delivered.
b. Legal protection for customers lies in the guarantee in the form of returning or exchanging goods if the goods received are not in accordance with what was ordered.
c. Privacy, the personal data of electronic media users must be protected by law. The provision of information must be accompanied by the consent of the owner of the personal data. This is a form of legal protection for parties conducting e-commerce transactions, which is contained in Article 25 of the ITE Law "Electronic information and/or electronic documents that

[76] Lia Catur Muliastuti, Tesis, Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Melalui Media Internet, Program Pasca Sarjana Universitas Diponegoro, Semarang, 2010

compiled into intellectual works, internet sites, and intellectual works contained in them are protected as intellectual property rights based on the provisions of laws and regulations".

In conducting buying and selling transactions via the internet, consumers must also be observant, thorough and alert to the offers made by businessmen. It is not uncommon for businessmen to offer fictitious products, which are sold cheaply to attract consumers. Consumers must make sure before ordering goods, make sure the merchant includes a telephone number that can be contacted and the complete address.

If interested in the goods are offered, then communicate first, usually the buyer will contact directly by telephone, to make sure whether the goods really exist, after that the new buyer asks about the specifications of the goods to be purchased. If agree, then the buyer immediately pays the price for the goods, then the goods are shipped. Operational activities of consumers to be always communicate or ask questions about the goods to be purchased to businessmen will be able to reduce loss impact on consumers.

2. Electronic Evidence used for Legal Protection for Parties to an Electronic Contract

Indonesia's evidentiary law still bases its provisions on Code of Civil Law. It is determined that the evidence that can be used and recognized before a civil court trial is still very limited.

In Article 1866 of the Code Civil of Law (KUH Perdata) is stated that the evidence in Civil cases consist of:

a. written evidence,

b. witnesses,

c. conjectures,

d. Confession, and

e. Oath

In Indonesia, there are actually several things that lead to the use and confession of electronic documents as legal evidence, for example:[77]

a. The introduction of online trading in stock exchange activities; and
b. Micro film regulation as a medium for storing company documents that has been given the position as authentic written evidence in Law Number 8 of 1997 concerning Corporate Documents.

Internet users are now relieved because on the day of Last Tuesday, March 25, 2008, the House Representatives (DPR) has passed the Electronic Information and Transaction Law.

Regarding electronic evidence, it has been mentioned in Article 5 paragraph (1) of the UUITE which states that electronic information and or documents and or their printed results are legal evidence and have legal consequences. Since the ITE Law was ratified, the law of evidence in Indonesia no longer stipulates limited evidence.

Evidence can be trusted if it is done by the following manner:[78]

a. Use computer equipment to store and produce Print Outs;

[77] Ahmad M. Ramli, dkk., Menuju Kepastian Hukum di Bidang Informasi dan Transaksi Elektronik, Jakarta : Departemen Komunikasi dan Informatika Republik Indonesia, 2007, hlm. 46
[78] Lia Sautunnida, Skripsi, Jual Beli Melalui Internet, Fakultas Hukum Universitas Syiah Kuala, 2008, hlm. 66

b. Process data as in general by entering initials in a computerized archive management system; and
c. Testing the data in a timely manner, after the data is written down by someone who knows the legal events.
   Other conditions that must be met:
   a. Review the information received to ensure the accuracy of the data entered;
   b. Data storage methods and data retrieval measures to prevent data loss during storage;
   c. The use of truly accountable computer programs to process data;
   d. Measuring the program accuracy taking test; and
   e. Computer print-out model time and preparation

Based on research, electronic documents signed with a digital signature can be categorized as written evidence. However, there is a legal principle that makes it difficult to develop the use of electronic documents or digital signatures, namely the requirement that these documents must be viewable, sent and stored in paper form. Another problem that can arise with regard to electronic documents and digital signatures is the problem of how to determine the original document and the copy document. In this regard, it has become a general legal principle that:[79]

a. The original document must be in the form of a written agreement signed by the parties implementing the agreement;
b. There is only one original document in each agreement; and
c. All reproductions of the agreement are copies.

The law of evidence regulated in the Laws must be specific, as is the case in bankruptcy proceedings. Other legal fields such as Civil Procedure Law (in BW, HIR/RBg), UUPT, and so on that regulate evidentiary issues are still

79

recognized as general law. This means that existing laws are left to regulate in general before the revocation of the provisions of the law and the new law as special law will comply with the principle of *lex specialis derogat lex generalis.*[80]

The person who submits electronic evidence must be able to show that the information in his possession comes from a trusted electronic system. One of the tools that can be used to determine the authenticity or validity of an electronic evidence is an electronic signature. According to this, it is related to Article 11 UUITE which states that "electronic signatures must be legally recognized because the use of electronic signatures is more suitable for an electronic document". One of the tools that can be used to determine the authenticity or validity of an electronic evidence is an electronic signature. In order for an electronic signature to be recognized as having legal force, the conditions that must be met are:[81]

a. Signature creation data only relates to the signer;
b. Signature creation data is only in the power of the signatory at the time of signing;
c. Changes to the electronic signature that occur after the time of signing can be noticed;
d. Changes to electronic information related to electronic signatures can be known after the time of signing;
e. There are certain methods used to identify who the signer is;
f. There are certain ways to show that the signer has given consent to the electronically signed information.

[80] Ibid., hlm. 37
[81] Departemen Komunikasi dan Informatika Republik Indonesia. Menuju Kepastian Hukum di Bidang Informasi dan Transaksi Elektronik, Jakarta : 2007, hlm. 16.

Person who use electronic signatures or are involved in them have an obligation to secure the signature so that the sign cannot be misused by unauthorized persons. Basically the electronic certification body is a third party that guarantees the identity of the parties electronically. In the world of information technology, such as the Internet, one can easily create another identity (e.g. chat name, e-mail address). Therefore, the government or the community must be able to establish a trusted certification body, so that businessmen can conduct business using electronic means safely.

Recalling that electronic transactions are very easy to be infiltrated or changed by unauthorized parties, the security system in transactions is very important to maintain the authenticity of the data. Therefore, it is necessary to have reliable security systems and procedures, in the context of using a communication system with an open network (such as the Internet), in order to create user confidence in the communication system.

In Indonesia, although e-commerce activities are virtual, they are categorized as real legal actions and actions. Juridically for cyber space, it is no longer in place to categorize something only with conventional measures and qualifications to be used as objects and actions, because if this method is taken, there will be too many difficulties and things that escape from the snares of the law. E-commerce activities are virtual activities but have a very real impact even though the evidence is electronic, thus, the subject of the practitioner must also be qualified as having committed a real legal act.

3. Responsibility for Legal Protection for Parties in Electronic Contract

Electronic buying and selling transactions are carried out by related parties, even though the parties do not meet each other directly, but communicate via the Internet. In buying and selling electronically, the parties involved include:[82]

a. A seller or merchant who offers a product via the Internet as a businessmen.
b. Buyers are people who are not prohibited by law, who accept offers from sellers or businessmen and wish to conduct buying and selling transactions for products offered by sellers.
c. Banks as distributors of funds from buyers or consumers to sellers or businessmen/merchant, because buying and selling transactions are carried out electronically, sellers and buyers do not face to face, because they are in different locations so that payments can be made through intermediaries in this case, namely the Bank.
d. Provider as an Internet access service provider. Basically, the parties in the electronic buying and selling mentioned above, respectively, have rights and obligations, the seller/business actor/merchant is the party who offers the product via the Internet; therefore, the seller is responsible for providing true and honest products offered to buyers or consumers.

In addition, the seller must also offer products that are permitted by law, meaning that the goods offered not goods are contrary to laws and regulations, are not damaged or contain hidden defects, so that the goods offered are worthy to be traded. The seller is also responsible for the delivery of products or services that have been purchased by a consumer.

[82] Edmon Makarim, Kompilasi Hukum Telematika, Jakarta : PT. Raja Grafindo Perdasa, 2000, hlm. 365.

The sale and purchase transaction does not cause any loss to anyone who buys it. On the other hand, a seller or business actor has the right to get payment from the buyer/consumer for the price of the goods sold and also has the right to get protection for the actions of the buyer/consumer who have bad intentions in carrying out this electronic buying and selling transaction. So, the buyer is obliged to pay a certain price for the product or service ordered from the seller.

A buyer has an obligation to pay the price of the goods he has purchased from the seller according to the type of goods and the price that has been conveyed between the seller and the buyer, in addition to filling in the real identity data in the acceptance form. On the other hand, the buyer/consumer has the right to obtain complete information on the goods to be purchased. Buyers are also entitled to legal protection for actions of sellers/businessmen who have bad intentions.

Banks as intermediaries in buying and selling electronically, are obligated and responsible as distributors of funds for the payment of a product from the buyer to the seller of the product because it is possible that buyers/consumers who wish to buy products from sellers via the Internet are located far from each other so that the intended buyer must using Bank to facilitate making payment for the price of the product purchased from the seller, for example by transferring from the buyer's account to the seller's account (account to account).

As a person's responsibility regarding electronic signatures, Article 12 paragraph (1) of the ITE Law states that "everyone involved in electronic signatures is obliged to provide security for the electronic signatures used".

In Article 21 paragraph (2) of the UUITE it is explained that "the security of electronic signatures as referred to in paragraph (1) at least" include;[83]

a. The system cannot be accessed by unauthorized persons
b. The signer must apply the precautionary principle to avoid unauthorized use of data related to the creation of electronic signatures
c. The signer must without delay, use the method recommended by the electronic signature organizer if;
    1) The signer acknowledges that the electronic signature creation data has been compromised; or
    2) Circumstances that are known to the signer may pose a significant risk, possibly due to the breach of the electronic signature formation data; and
d. In the event that the certification is used to support the electronic signature, the signatory must ensure the correctness and usefulness of all information related to the electronic certification.

Article 12 paragraph (3) of the ITE Law also explains that "everyone who violates the provisions as referred to in paragraph (1) is responsible for all losses and legal consequences that arise. This means that everyone is responsible for all losses arising from violations committed against the provision of security for the electronic signature."

Considerations to ensure the confession and respect for the rights and freedoms of others and to fulfil fair demands in accordance with considerations of security and public order in a democratic society, the government deems it necessary to make changes to Law Number 11 of 2008 concerning Information

[83] Departemen Komunikasi dan Informatika Republik Indonesia, Op. Cit., hlm. 16-17

and Electronic Transactions in order to realize justice, public order and legal certainty.

Based on these considerations, the government has established and ratified a Law regarding amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The Law is contained in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

There are several provisions in Law Number 11 of 2008 concerning Electronic Information and Transactions which are amended as contained in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

CHAPTER III
OBSTACLES TO THE VALIDITY OF THE CONTRACT ARE HELD ELECTRONICALLY TO BE MADE AS EVIDENCE IN COURT

A. Review on the General Rules relating to Evidences according to the Civil Procedure Code in Indonesia

Evidence in civil procedural law is regulated in Article 1865-1945 of the Civil Code jo 282 R.Bg/162 H.I.R-314 R.Bg/117 H.I.R. In the formulation of these articles, there is no explicit mention of the meaning of evidence. This can be seen in the formulation of the first article of the provisions governing civil procedural law.

Article 1865 of the Civil Code, reads: "Everyone who argues that he has a right, or to confirm his own right or to refute a right of another, refers to an event, is obliged to prove the existence of that right or event".

Article 283 R.Bg/163 H.I.R, reads:

"Whoever says having a right or proposes an act to confirm his right, or to refute the rights of others, must prove the existence of that right or the existence of that act."

The sound of 2 (two) Articles above tends to describe parties who have to prove, not the meaning of evidence. The definition of evidence itself can be seen from the opinions of experts, legal dictionaries or language dictionaries. Here are some definitions of evidence, namely:

1. Evidence can be defined “as everything that can be used to prove the truth of an event in court”.[84]
2. Evidence is "anything that according to the law can be used to prove something, meaning everything that according to the law can be used to prove whether or not an accusation/claim is true".[85]
3. The Indonesian Comprehensive Dictionary, in formulating the meaning of evidence, uses the term of evidence which means "various kinds of materials needed by the judge, whether known by the judge himself and submitted by witnesses to justify or thwart an indictment or lawsuit".
4. Evidence (bewijsmiddel) is "a variety of forms and types, which are capable of providing information and explanations about the problems litigated in court".[86]
5. James Fitzjames Stephen said “Evidence may be given in any proceeding of any fact in issue, and of any fact relevant to any fact in issue unless it is

[84] Eddy O.S. Hiariej, Teori dan Hukum Pembuktian, Jakarta:Erlangga, 2012, hlm. 52
[85] Sudarsono, Kamus Hukum, Jakarta: PT. Rineka Cipta, 2007, hlm. 28
[86] M. Yahya Harahap, Hukum Acara Perdata, Jakarta : Sinar Grafika, 2005, hlm. 498.

here in after declared to irrelevant, and of any fact here in after declared to be deemed relevant to the issue: provided that the judge may exclude evidence of facts, which, though relevant or deemed to be relevant to the issue, appear to him too remote to be material under all the circumstances of the case".[87]

(Evidence is the things that can be given in any trial against a fact and all the facts relevant to each fact in the matter at trial but provided that the judge can exclude the factual evidence, which, although relevant or deemed relevant to the matter, seems too far to be material in all circumstances of the case may be excluded).

From some definitions above, it is clear that evidence are materials submitted by the parties to prove an indictment or lawsuit filed in court and can also be in the form of materials used to refute an indictment or lawsuit. Thus, in nature, the litigating parties must maximally prove the materials used as evidence in the trial process, all of which will be assessed by the judge who leads the case.

There are things need to be understood in the submission of evidence. The evidence justified to be submitted in court, namely it is determined by law, otherwise:[88]

1. Not valid as evidence;
2. Therefore, it does not have the value of evidentiary power to strengthen the arguments or rebuttals put forward.

[87] Solomon E. Salako, Evidance, Proof And Justice : Legal Philosophy And The Provable In English Courts, UK: Ventus Publishing, 2010, hlm. 11
[88] M. Yahya Harahap, Loc.Cit

Evidence is a tool submitted by the parties to provide information and explanations of the problems are litigated in court, which in civil procedural law cannot be seen as only applicable to civil procedural law in general courts, but also applies to civil procedural law in religious courts. [89]

So that the evidence in civil procedural law in general courts and procedural law in religious courts is similar. Civil procedural law that exists in the religious courts are a reflection of Islamic Law. Islamic law as one of legal system in Indonesia has its own view of evidence that applies in Indonesian civil procedural law.[90]

In Indonesian civil procedural law, the arrangement of evidence is regulated in Article 1866 of the Civil Code (KUHPerdata) in conjunction with Article 164 H.I.R/284 R.Bg, consisting of::

1. Letter or written evidence;
2. Witness; .
3. Presumption;
4. Confession;
5. Oath

The following will describe the evidence that applies in civil procedural law in Indonesia in terms of the Civil Code, H.I.R/R.Bg and Islamic law, namely:

[89] Hukum acara yang berlaku pada pengadilan dalam lingkup peradilan agama adalah hukum acara perdata yang berlaku pada pengadilan dalam lingkup peradilan umum, kecuali yang telah diatur secara khusus dalam undang-undang ini. Lihat Pasal 54 Undang-Undang No. 7 Tahun 1989 yang telah diubah dengan Undang-Undang No. 3 Tahun 2006 Tentang Pengadilan Agama

[90] Di Indonesia berlaku 3 (tiga) sistem hukum : hukum adat, hukum islam dan hukum barat dengan segala perangkat dan persyaratan siapa saja dan dalam aspek atau esensi apa saja yang harus mematuhi hukum dari ketiga sistem tersebut. Lihat A. Qodri Azizy, Eklektisisme Hukum Nasional, Yogyakarta: Gama Media, 2002, hlm. 111

1) Letters or Written Evidence of letter evidence is regulated, namely: :
    1) Article 163, 164, 285-305 R.Bg except article 295 R.Bg has been revoked by stbld 1927 No. 576;
    2) Articles 137, 138, 165 and 167 H.I.R;
    3) Articles 1867-1894 of the Civil Code except Article 1882 of the Civil Code have deleted.

Letters or written evidence, according to Sudikno Mertokusumo, are "everything that contains reading signs intended to pour out one's heart or convey one's thoughts and used as evidence".[91]

The definition of written evidence or letters according to Sudikno Mertokusumo above is slightly different from that expressed by M. Yahya Harahap which states that the meaning of writing from a juridical perspective in relation to evidence must meet several aspects, namely: If a letter or writing only contains reading signs, does not contain thoughts or does not contain the outpouring of one's heart or contains one's thoughts or outpourings of one's heart but does not contain reading signs, a letter or writing cannot be used as evidence, it can used as evidence if it fulfils all the elements stated by Sudikno Mertokusumo above.

1) Have reading marks, in the form of letters;
2) Arranged in the form of a statement sentence;
3) Written on the writing material;
4) Signed by the making party;

[91] Sudikno Mertokusumo, Hukum Acara Perdata Indonesia, Yogyakarta : Liberty, 2006, hal. 149

5) Photos and maps are not written;

6) Include the date.

However, it should be understood that even though there are differences in providing the definition of written or written evidence, it is still the main evidence in civil procedural law compared to other evidence. Evidence of letters or writings can be divided into 2 (two), namely: deed and other documents that are not deed (ordinary letters).[92]

1) The deed which is part of the written or written evidence is divided into 2 (two), namely: authentic deed and underhand deed.[93]

   a) Authentic deed is a deed or letter made in the form determined by law, made by or in the presence of authorized public officials where the deed was made.[94]

From the definition above, the authentic deed can be divided into 2 types (two) kinds, namely: deed made by public employees (acte ambtelijk) and deed made before by public employees (acte partij).

(1) Deeds drawn up by public officials (acte ambtelijk) are deeds made by authorized officials. That is, the initiative to make the deed comes from the person whose name is listed therein. For example, the minutes made by the substitute clerk.[95]

[92] M. Yahya Harahap, Op.Cit, hlm. 559-560
[93] Ibid
[94] Pasal 1868 KUHPerdata
[95] Ridwan Syahrani, Op.Cit, hlm. 84

(2) The deed made before by public officials (acte partij) is a deed made on the proposal of the interested parties before the authorized public officials. For example, the notarial deed of the release of compensation and so on.[96]

In the evidence at the court, the authentic deed, whether in the form of a deed made by public officials (acte ambtelijk) and deed made before by public officials (acte partij) is similar, namely:[97]

1) If the formal and material requirements are met then:
    a) The authentic deed immediately fulfils the minimum limit of evidence so that it does not have to be accompanied by other evidence;
    b) Immediately valid as evidence;
    c) In itself directly attached the value of the power of proof: perfect (vooledig) and binding (bindende)
    d) Judges are obliged and bound:
        (1) Assuming the authentic deed is true and perfect;
        (2) Must assume that what is postulated or stated is sufficiently proven;
        (3) The judge is bound by the truth as evidenced by the deed, so that it must be used as a basis for consideration in making a decision on dispute resolution.

[96] Ibid
[97] M. Yahya Harahap, Op.Cit, hlm. 583-584

2) The quality of the strength of proof of an authentic deed, not coercive (dwingend) or decisive (beslissend) and against it can be submitted opposing evidence is called the strength of external evidence.

b) Underhand deed is a deed made by the interested parties themselves without the assistance of a public official.[98] The strength of proof of an underhand deed is lower than an authentic deed because the nature of the proof must only meet material and formal requirements. However, a private deed has the same proving power as an authentic deed if the contents of the private deed are acknowledged by the people or parties who signed the deed but if the parties who signed the deed deny it, the judge ordered that the authenticity of the deed to be checked.

2) Other documents that are not deed (ordinary letters) consist of letters on household affairs, registers and records affixed by a creditor on a basis of rights held.[99] The strength of evidence from other documents, not a deed (ordinary letter), depends on the judge's consideration.[100]

While a copy of a letter or written evidence can be said to be in accordance with the original, that is in the process of submitting evidence at the trial, the proposed copy must also submit the original form of the copy but if it cannot submit the original form then the copy as evidence can be rejected.[101]

[98] Sudikno Mertokusumo, Op. Cit, hlm. 158
[99] Pasal 1881 KUHPerdata
[100] Bambang Waluyo, Sistem Pembuktian Dalam Peradilan Indonesia, Jakarta: Sinar Grafika, 1996, hlm.35
[101] Sudikno Mertokusumo, Op. Cit, hlm. 166

Submission of a copy as evidence must also be affixed with a stamp duty of Rp. 6000, - (six thousand rupiah).[102]

In the civil procedural law applicable in Indonesia, it is clear that letters or written evidence have the main position as evidence. However, written evidence or letters in Islamic law cannot be said to be the main evidence, it depends on the conditions and circumstances. This is illustrated by the opinion of Ibn Qayyim al-Jauziyah, namely:[103]

1) Written evidence in it by the judge is considered to have something that can be used as a basis for legal considerations in making a decision against someone, so that it is imperative as crucial evidence. The theologian on this matter have disagreed, there are three narrations from Ahmad, one of which states that if the written evidence is believed to be his writing, it is seen as valid evidence even though he forgot its contents;
2) The written evidence is not considered as valid evidence, until he remembers it;
3) The written evidence is considered as valid evidence if the archive is found and he has kept it, otherwise it cannot be used as valid evidence.

In Islamic law, there is no division of letter or written evidence at all. This is different from the civil procedural law that applies in Indonesia. However, it should be understood that in the trial process of the religious courts, documentary evidence should not overstep Islamic Material Law, because Islamic Material Law

[102] Efa Laela Fakhriah, Bukti Elektronik Dalam Sistem Pembuktian Perdata, Bandung: Alumni, 2009), hlm. 21
[103] Anshoruddin, Hukum Pembuktian Menurut Hukum Acara Islam Dan Hukum Positif, Yogyakarta: Pustaka Pelajar, 2004, hlm. 66-67

has certain rules that must not be violated. For example, before he dies, a Muslim makes a deed of grant before a notary with the contents of giving his adopted child an asset of 2/3 of the total amount of his property.

Then due to feeling unfair about this, the heir's biological son sued the religious court. In the procedural law applicable in Indonesia, the grant deed has the power as an authentic deed, that is the verification is perfect, but in the decision of the religious court judge, precisely won the claim of the heir's biological child on the grounds that the adopted child only entitled to receive 1/3 of his property.

b. Witness

Witness evidence is regulated, namely:

1) Articles 165-176 R.Bg, 178-179 R.Bg, and 306-309 R.Bg;

2) Articles 139-148 H.I.R, 150-152 H.I.R and 169-172 H.I.R;

3) Articles 1895-1912 of the Civil Code except Articles 1896-1901, 1904, 1913-1914 of the Civil Code are deleted.

The definition of witness in the regulation of the article above is not found at all. However, Sudikno Mertokusumo gave an understanding of witness by adding the affix - ke and the suffix - an at the word “saksi” (witness) so that it became the word “kesaksian” (testimony). Testimony is "certainty given to the judge at trial regarding the disputed event by way of verbal and personal

notification by a person who is not a party to the case, who is summoned at trial".[104]

Witness or testimony may not only be 1 (one) person because the testimony of a witness alone, with no other evidence is unacceptable in the law called *unus testis nullus testis*.[105] In addition to the nature of the witness, there are other things that need to be considered in the testimony, namely:[106]

1) Witness in giving information must be based on the events experienced by himself;
2) Witness in giving information is not opinion or conjecture;
3) Testimony obtained or heard from others is unacceptable as witness statement is called *testimony de auditu*

In the process of witnesses testimony or testimony in court, any person who experiences a disputed event can provide information, but the law provides otherwise. In the law, in general, there are 2 (two) groups that have their own specialties.

These groups are:[107]

1) The first group is those who cannot be heard as witnesses, consisting of:
   a) Blood family and family due to marriage according to descent straight from one of the parties;
   b) Brothers and sisters of mother and nephew in Bengkulu, West Sumatra and Tapanuli areas are regulated according to local custom (R. Bg);

[104] Sudikno Mertokusumo, Loc. Cit
[105] Ibid, hlm. 170
[106] Ibid, hlm. 167-168
[107] Pasal 172 R. Bg/145 H.I.R. Lihat dalam K. Wantjik Saleh, Op. Cit, hlm. 31

c) The wife or husband of one of the parties even though they are divorced;

d) Children who cannot be identified or are not yet 15 years;

e) Crazy people even though sometimes their memory is bright.

2) The second group is those who can resign as witnesses, consisting of:[108]

a) Brother and sister and brother and sister-in-law from one of the parties;

b) Blood family according to straight descent from the brother and sister of the husband or wife from one of the parties;

c) People who due to their legitimate dignity, work or position are obliged to keep secrets, in matters that are solely about that which are entrusted because of their dignity, work and position.

In the process of proving the witness or testimony has its own evidentiary power, namely:[109]

1) Qualified as free evidence (vrij bewijskracht) in the sense that the judge is free to accept or reject it;

2) Not qualified as evidence that has perfect or coercive proving power (*dwingende bewijskracht*).

The above shows that the witness or testimony in the power of evidence is not based on the information given but is based on the judge's consideration.

[108] Pasal 174 R. Bg/ 146 H.I.R. Ibid, hlm. 32
[109] M. Yahya Harahap, Op.Cit, hlm. 683

In Islamic law, witness evidence is known as as *shahadah*. or *Bayyinah*. [110] Witnesses in Islamic law are not complementary as in civil procedural law in Indonesia, they are in the same position as written evidence or letters that are submitted not required. This clearly gives an understanding that the power of witness evidence in Islamic law is based on the judge's consideration. In addition, in Islamic civil procedural law it is permissible for witnesses "tertimonium auditu" to be justified, where this is in contrast to Indonesian civil procedural , which does not allow this.[111]

c. Allegations are regulated, namely:

1) Article 310 R.Bg;

2) Article 173 H.I.R;

3) Article 1915-1922 of the Civil Code.

Allegations are conclusions drawn by law or by judges from a well-known event to an unknown event.[112] The definition of suspicion above explains that in general an assumption can be divided into 2 (two) parts, namely:

1) Prejudice by law

Allegations by law or what are called *wettelijke or rechtsvermoedens*, *praesumptiones juris* are suspicions based on a special provision of the law, associated with certain actions or certain events.[113]

The assumptions above include:[114]

[110] Basiq Djalil, Peradilan Islam, Jakarta: Amzah, 2012, hlm. 44-45
[111] Ibid, hlm. 80-82
[112] Pasal 1915 KUH Perdata
[113] Sudikno Mertokusumo, Op.Cit, hlm. 179
[114] Ibid, hlm. 179-180

a) An act which is declared null and void by law, because solely for the sake of its nature and form, is deemed to have been carried out to conceal a statutory provision;
b) Matters where it is stated by law that property rights or debt relief are inferred from certain circumstances;
c) The power that is given by law to a judge's decision that has obtained absolute power;
d) The power that is given by law to the confession or to the oath of one of the parties.

Sudikno Mertokusumo divides allegations by law into 2 (two), namely:[115]

a) *Praesumptiones juris tantum*, namely a suspicion based on law that allows for proof of the opponent;
b) *Praesumptiones juris et de jure*, namely an assumption based on law that does not allow the opponent proof.

2) Prejudice by judge

A judge's suspicion or what is called *feitelijke or rechterlijke vermoedens, praesumptiones facti* is an assumption made by a judge. after examining the case.[116] In Islamic law, suspicion is called *qarinah*. Not much different from the Indonesian civil procedural law, suspicion or *qarinah* has similarities in terms of classification, where the suspicion by law is called *qarinah qonuniyyah* and the suspicion by the judge is called *qarinah qodloiyyah*. In terms of the definition of

[115] Ibid, hlm. 178-179
[116] Ibid, hlm. 178

suspicion by judges, there is no clear definition in the arrangements contained in the law. Only in Article 1922 of the Civil Code and Article 310 R.Bg/173 H.I.R, it is stated that suspicions that are not regulated by law but left to the judge's conviction and at the time of making a decision by the judge, the judge must be thorough and in accordance with the disputed case.

Based on the description above, it is clear that the suspicions, both by law and by judges, are based on the judge's considerations.

In Islamic law, suspicion is called qarinah. Not much different from the Indonesian civil procedural law, suspicion or *qarinah* has similarities in terms of the classification, where the suspicion by law is called *qarinah qonuniyyah* and an assumption by the judge is called *qarinah qodloiyyah*.[117]

The strength of proof of *qarinah* in Islamic law if it has meet the above requirements, then it is binding. This can be seen when the Prophet Muhammad SAW used qarinah, which is to give lost items that are found and then given to person who can mention the main characteristics of the items.[118]

d. Confession

Confession is regulated in, namely:

1) Article 311-313 R.Bg;

2) Articles 174-176 H.I.R;

3) Article 1923-1928 of the Code of Civil Law

Confession is a statement from one of the parties regarding the truth of a certain event, condition or certain thing that can be done in front of or outside of

[117] Anshoruddin, Op.Cit, hlm. 88
[118] Ibid

the court session. [119] Based on the description above, confession can be carried out in front of a court or before a judge and outside the court

Confessions before a trial or before a judge cannot be separated in principle (onsplitsbare aveu) or the judge must accept it in full and the judge is not free to accept partially or reject partially of it, thereby harming the person who confess it. Within the scope of science, this kind of confession is divided into 3 (three), namely: [120]

1) Pure confession

Pure confession (*aveu pur et-simple*) is confession which simple in nature and fully suitable with the demands of the opposing party.

2) Confession by qualifications

Confession by qualifications *(gequalificeerde bekentenis, aveu qualifie*) is a confession accompanied by a denial of partial of the claim.

3) Confession by clause.

Confession by clause (*geclausuleerde bekentenis, aveu complex*) is a confession accompanied by additional information that is liberating. There are things quite interesting in this indivisible confession, namely that there are 2 (two) Supreme Court decisions which have legal force and remain different in determining the burden of proof for the confession. The decisions, namely:

[119] Pasal 1923 KUH Perdata
[120] Sudikno Mertokusumo, Op.Cit, hlm. 183-184

1) Decision of the Supreme Court dated May 24, 1951, No. 29K/Sip/1950 where the proof of the confession that may not be separated is borne to the plaintiff. [121]

2) The Supreme Court's decision dated November 25, 1976, No. 22K/Sip/1973, where the evidence that may not be separated, the judge is free to determine whether it is charged to anyone, whether the plaintiff or the defendant.[122]

Both decisions above clearly illustrate the difference. 22K/Sip/1973 which is more appropriate to be used as a source of law, namely jurisprudence and should be followed by other judges.

The proving power of this confession is perfect if it is said before a judge or in a trial, meaning that it is perfectly incriminating the person who said it either alone or with the help of others. While confessions made outside the trial, the strength of its evidence is left to the judge's consideration.[123]

In Islamic law, the confession is called a pledge. Pledge in Islamic law has perfect evidentiary power because it can be dropped a decision if the pledge has been made without the need for the help of other evidence.[124]

The strongest confession is the confession by the defendant. There are things that must be considered from those who give confessions, namely:

[121]

[122] Ropaun Rambe, Hukum Acara Perdata Lengkap, Jakarta: Sinar Grafika, 2004, hlm. 427
[123] Bambang Waluyo, Op.Cit, hlm. 40-41
[124] Anshoruddin, Op.Cit, hlm. 93

intelligent, mature, not forced and not under guardianship. [125] The conditions for the person giving the pledge are cumulative, thus, if one of the conditions is not met then he cannot make the pledge.

e. Oath

The oath is regulated, namely:

1) Articles 175-176 R. Bg, 182-185 R. Bg, 314 R. Bg;

2) Articles 147-148 H.I.R, 155-158 H.I.R, 177 H.I.R;

3) Article 1929-1945 of the Code of Civil Law.

An oath is a solemn statement given or uttered at the time of giving a promise or statement by remembering the almighty nature of God and believing that whoever gives an incorrect statement or promise will be punished by God.[126] According to Sudikno Mertokusumo, the definition of an oath above contains 2 (two) kinds of oaths, namely:[127] an oath to promise for doing or not doing something, which is called a *promissoir* oath. For example, witness oath and expert witness oath. An oath to provide information to confirm that something is true called an *assertoir* oath *or confirmatoir*.

In H.I.R/R.Bg and the Civil Code, it is known that there are 3 (three) oaths, that is:[128]

1) Suppletoir oath or supplementary oath is an oath ordered by a judge because of his position to one of the parties to complete the proof of the events that form the basis of his decision.

[125] Ibid, hlm. 95
[126] Sudikno Mertokusumo, Op. Cit, hlm. 187
[127] Ibid
[128] Kurdianto, Hukum Acara Perdata Dalam Teori Dan Praktek, Surabaya: Usaha Nasional, 1991, hlm. 71-76

2) An oath of appraisal or aestimoir or schattingseed is an oath ordered by a judge because of his position to the plaintiff to determine the amount of compensation.
3) A decisoir or breaker oath is an oath imposed at the request of one party to his opponent.

The strength of the proof of the three oaths above is different from each other except for the complementary oath and assessment. Both powers of proof of this oath are only limited to be perfect and binding, however not decisive so that against both oaths, opposing evidence can be submitted. While the oath to break the strength of the proof is perfect, binding and determining which the proofing of this proof oath clearly cannot be doubted. This means that the severing oath must not prove that the oath is false.[129]

All the evidence mentioned above, in civil procedural law, written evidence has the main place. In practice, an agreement must be in writing and signed. This is to make it easier to prove if there is a dispute regarding the agreement. However, for electronic commercial transactions carried out using electronic media without face to face between the parties, the evidence of the transaction (agreement between the parties) is stored in the form of electronic data recorded in a data storage system on a computer. From here arises a problem regarding the strength of the electronic contract as evidence in the event of a dispute between the parties.

Electronic commercial transactions require a written and signed contract to be difficult to meet. Electronic commercial transactions do not produce written documents that can be used as authentic evidence. In addition, there are certain

[129] M. Yahya Harahap, Op. Cit, hlm. 777-778

letters or documents that must be stamped and if not, then the judge is prohibited from accepting them as evidence. Electronic contracts do not allow stamping.

A consumer of electronic contract transactions said that the non-face and non-sign nature of an electronic contract should not prevent the use of electronic contracts as evidence in the event of a dispute. During his electronic commercial transactions, he has never had a problem with the seller. Furthermore, he suggested to be careful about the possibility of a dispute, it is better if a practitioner of electronic commercial transaction only conducts transactions with trusted and reputable parties and keeps or prints out all documents related to the transactions made.[130]

The same opinion was also expressed by an electronic transaction's practitioner, he said that an electronic document/contract should be able to be used as evidence in a trial, and he also suggested that the party acting as the seller should not send the goods until the payment has been received. However, this does not apply to payments made with a cash on delivery system (the seller sends the goods themselves to the buyer and the buyer makes the payment when the goods are received).[131]

A practitioner of electronic commercial transaction said that during the transaction he had never experienced a dispute with the seller. In his opinion an electronic contract and its print-out can be used as evidence in the event of a

[130] Wawancara dengan Tuti Ramadhani, pelaku transaksi komersial elektronik (sebagai pembeli), di Jalan Letda Sudjono, Medan, tanggal 13 Juli 2017.
[131] Wawancara dengan Ayu Maya Sari, pelaku transaksi komersial elektronik (sebagai penjual maupun pembeli), di Sei Mencirim, Deli Serdang, tanggal 13 Juli 2017

dispute. However, because there are no regulations that explicitly regulate the use of electronic contracts as evidence, he suggests that prospective buyers be more careful in choosing a seller, making print-outs of all documents/contracts related to the transactions they carry out.[132]

It appears that for the practitioners of electronic commercial transactions, an electronic contract and its print-out can be used as evidence in a trial in the event of a dispute, in interviews with the practitioners of electronic commercial transactions it was also known that they realized the importance of reading and understanding the provisions regarding how to ordering, payment, and delivery of goods provided on the seller's website. However, they rarely really read and understand these provisions. This is due to the lazy factor and the fact that the provision has become a standard clause. If they really want to buy the goods to be sold, they have no other choice but accept the terms found on the seller's website.

Some legal practitioners argue that documents sent by e-mail and then printed can be considered the same as the original letter because the letter sent by the sender of the e-mail will be similar in content as the letter received by the recipient of the e-mail. If the letter sent via e-mail will be used as evidence in court, the parties who show the original letter are in the proof stage.

Cases related to civil engagements; electronic evidence are still not acceptable. Cases that use electronic evidence are still very rare, in the Medan

[132] Wawancara dengan Denny Nasution, pelaku transaksi komersial elektronik (sebagai pembeli), di Jalan Jermal III, Medan, tanggal 14 Juli 2017.

District Court itself, there has never been such a case. [133] He also reminded that one piece of evidence cannot be accepted in court.[134]

B. Various Electronic Evidences

1. Definition of electronic evidence

Electronic evidence in the legal system of evidence in Indonesia is divided into two types, namely electronic information and electronic documents. This electronic information and documents are not only limited to information stored in the medium intended for it, but also includes transcripts or its printed results.[135] Information and/or electronic transactions as well as their printed results are valid legal evidence, as well as an extension of the types of evidence regulated in the previous legislation which is explicitly regulated in Article 5 of the ITE Law. Electronic information in Article 1 number (1) Amendment to the ITE Law is defined as follows:

> "Electronic Information is one or a set of electronic data, including but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them."

[133] Wawancara dengan Johny Simanjuntak, salah seorang hakim Pengadilan Negeri Medan, hari Selasa, tanggal 18 Juli 2017
[134] Wawancara dengan Johny Simanjuntak, salah seorang hakim Pengadilan Negeri Medan, hari Selasa, tanggal 18 Juli 2017
[135] M. Natsir Asnawi, Hukum Pembuktian Perkara Perdata di Indonesia, Yogyakarta: UII Press, 2013, hlm. 101

Meanwhile, in Article 1 Number (4) Amendment to the ITE Law, documents electronics is defined as follows:

> "Electronic Document is any Electronic Information that is created, forwarded, sent, received, or stored in analogue, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or definition or can be understood by people who are able to understand them."

Information and/or electronic transactions as well as their printed results are valid legal evidence, as well as an extension of the types of evidence regulated in the previous legislation, which is explicitly regulated in Article 5 of Law Number 11 of 2008 concerning Information and Electronic Transactions.

2. Classification of electronic evidence

Hakim Mohammed Chawki from the Computer Research Center classifying electronic evidence into three categories, as follows:[136]

a. Real evidence

Real evidence or physical evidence is evidence of tangible/tangible objects that can be seen and touched. Real evidence is also direct evidence in the form of automatic recordings produced by the computer itself by running the software and receipts of information obtained from other devices, for example computer log files.

[136] Melda Octaria Damanik, "Penerapan Bukti Elektronik Dalam Pembuktian Tindak Pidana Penipuan Melalui Transaksi Elektronik (Studi Kasus di Pengadilan Negeri Medan", Skripsi, Sarjana Ilmu Hukum, Universitas Sumatera Utara, 2009), hlm. 32.

Edmon Makarim stated that electronic evidence as a valid and independent evidence, of course, guarantees must be given that a data recording runs in accordance with applicable procedures (calibrated and programmed) in such a way that the print out of a data can be accepted in proving a case.[137]

b. Testamentary evidence

Testamentary evidence is also known as hearsay evidence where statements from witnesses or expert witnesses, namely statements from an expert can be given during the trial, based on individual experience and observations. The role of expert testimony is in accordance with the Criminal Code Procedures (KUHAP), that expert testimony is considered as evidence that has evidentiary power if the information given about something is based on special expertise in the field owned and in the form of pure statement "according to knowledge".

The development of science and technology has more or less an impact on the quality of criminal methods, forcing us to balance it with quality and proof methods that require knowledge and expertise. The position of an expert in clarifying the crime that occurred and explaining or very significant electronic evidence in deciding cybercrime cases.[138]

c. Circumstantial evidence

The definition of circumstantial evidence is detailed evidence obtained based on speech or observations of actual events that encourage to support a

[137] Ibid.
[138] Ibid., hlm. 33

conclusion, but not to prove it. Circumstantial evidence or derived evidence is a combination of real evidence and hearsay evidence.[139]

a. electronic mail (e-mail)

Electronic mail is an electronic document that generally contains about conversations, offers, notifications and forms other written communication.[140]

b. short message (short message service)

Short messages are messages or testimonials with a number of characters short and may contain everything that is possible in the world interpersonal conversation.[141]

c. Chat (chat room communications)

Conversion or in a more popular language known as Chat now has also become a trend in social traffic between people individual. The history and material of the chat will be saved in the media certain data storage at the provider and from that data, certain things are known as valuable information.[142]

d. Photography (digital photographs)

[139] Ibid
[140] M. Natsir Asnawi, Op.Cit., hlm. 103
[141] Ibid
[142] Ibid., hlm. 104.

Photography is often able to record certain events that unexpectedly turns out to contain a certain meaning. Record of results Photography can be submitted as evidence in certain cases if: the substance in the photography has useful information value for disclosure of the subject matter in the dispute being handled. Another derivation that might be a proof device with evidence value such as a video that contains recordings of certain events which can tell some important things related to the subject the problem of the case being handled.[143]

[140] *Ibid*.
[141] *Ibid*., hlm. 104.
[142] *Ibid*.
[143] *Ibid*, hlm. 105.

e. Websites or internet sites generally contain information that is associated with the owner of the site. Many people who take advantage of free blogging services to post their thoughts, outpouring of service or product information, advertising, and so on. Therefore, a lot of information or data can be obtained from the website or specific blogs.[144]

f. Status or postings on social media

Not a few cases where the parties submitted evidence in the form of transcripts of conversations or opponents' statuses on social media. Trend of some people nowadays are to publish their heart, mind, and feelings on social media that will be read and known by many people. This forces us not to just ignore this evidence, because in its development there are many

[143] Ibid
[144] Ibid, hlm. 105.

statuses disclosed in the social media that are valuable information and able to give instructions in the examination of a case.[145]

g. Data stored on computers and electronic media (computer generated and stored data)

Data stored on a computer or other electronic media can also be used as evidence in court. Data is generally stored on a hard disk device. Almost all types of data can be stored in the storage media which in the end can be evidence to clarify the subject matter in a case.[146]

The Indonesia civil law evidence, in a formal juridical manner, has not accommodated documents or electronic information as evidence in court. Based on the provisions of Article 164 HIR and 284 Rbg and Article 1886 of the Code of Civil Law. There are five pieces of evidence in civil cases in Indonesia, namely written evidence, witness evidence, presumptive evidence, confession evidence, and oath evidence.

Business practices, known as online trading and microfilm as electronic documents and information. The increasing number of electronic activities causes evidence that can be used legally must also include information or electronic documents as well as other computer outputs to facilitate the implementation of the law. In addition, the printed result of the electronic document must also be

[145] Ibid
[146] Ibid., hlm. 106.

used as legal evidence. Therefore, in practice known and developed what is called electronic evidence.[147]

Electronic evidence in terms of electronic information and/or electronic documents can only be declared valid if it uses an electronic system that is in accordance with the applicable regulations in Indonesia. Electronic systems according to Article 1 Number 5 of the Amendment to the ITE Law, are a series of electronic devices and procedures with the function of preparing, collecting, processing, analysing, storing, displaying, announcing, transmitting, and/or disseminating electronic information. Electronic evidence can have legal force if the information can be guaranteed its integrity, accountable, accessible, and displayable, thus describing a situation. The person who submits electronic evidence must be able to show that the information in his possession from a trusted electronic system.[148]

Along with its development, various types of evidence emerged in the civil law relationships beyond those regulated in the procedural regulations civil law (HIR/RBg), namely:

Evidence in civil law that has been regulated in the regulations of civil event that is:[149]

No.	Evidence	Explanation

[147] Efa Laela Fakhriah, Op.Cit., hlm. 14
[148] Ibid., hlm. 15.
[149] H.P. Panggabean, Op. Cit., hlm. 164

No.	Evidence	Explanation
1	Photos and recordings	Used as evidence to test its authenticity by using certain technology
2	Print-out and facsimile machine	Can be considered as written evidence. The strength of proof as written evidence lies in its authenticity, so the fax must be in accordance with the original. If the original is lost, it must be accompanied by a statement legally stating that the fax is in accordance with the original.
3	*Microfilm*	It is used as legal evidence in a civil case, provided that the microfilm was previously guaranteed for authentication which can be traced back to registration and minutes.
4	E-mail	Letters that are created and communicated using a computer over an Internet network.
5	Video *teleconference*	This evidence is used in the examination witness is carried out in judicial practice. Witness can't attend, but the explanation is very need to be heard, then with video witness examination teleconference is carried out without his physical presence in the courtroom

No.	Evidence	Explanation
6	Electronic signature	Electronic information attached to an electronic information that can be used by the signer as his identity and status as a legal subject. The authentic guarantee in the electronic signature can be seen and the hash function, then the hash value comparison is carried out. same and appropriate.

Electronic evidence in civil cases can also be reviewed from Article 15 Paragraph (1) of the UUDP which has laid an important basis for receiving information or electronic documents. In Chapter III concerning Transfer of Document Forms and Legalization, Article 15 Paragraph (1) of the UUDP confirms that company documents that have been published in microfilm[150] or other media and/or their printouts are legal evidence.[151]

The transfer of company documents into the form of microfilm or other media must meet the requirements implicitly regulated in the UUDP. Furthermore, the UUDP also stipulates that if deemed necessary, in certain cases and for certain purposes, the legalization of printed company documents that have been published in microfilm or other media.[152]

[150] Yang dimaksud dengan "microfilm" ialah film yang memuat rekaman bahan tertulis, tercetak dan tergambar dalam ukuran yang sangat kecil. (Josua Sitompul, Cyberspace, Cybercrimes, Cyberlaw : Tinjauan Aspek Hukum Pidana, Jakarta : Tatanusa, 2012, hlm. 271.
[151] Ibid
[152] Ibid. hlm. 272

This arrangement has at least two conclusions that can be drawn. First, information or electronic documents must be legalized. Actually, this legalization is an attempt to guard or maintain the authenticity of the content of company documents. Through this process, company documents in the form of microfilm or other media are declared in accordance with the originals so that they can be accepted as legal evidence.[153]

Second, what is meant by valid evidence according to Article 15 Paragraph (1) UUDP is documentary evidence, especially private deed. In other words, the contents in microfilm or other media that have been legalized can be used as evidence in court documents. According to Article 1 point 2, Company Documents are data, records, and/or information made and/or received by the company in the context of carrying out its activities, either written on paper, or other means or recorded in any form that can be seen, read, or heard.

Based on this provision, what is meant by "Company Documents" are documents in original form (paper based) and documents that have been transferred to microfilm or other media. [154]

C. Barriers within the Electronical Contract Validity

The law, both in the actual aspect and in the conceptual aspect, actually has a separate order called the legal system. Lawrence Meir Friedman as quoted by

[153] Ibid
[154] Ibid

Esmi Warassih argues that law consists of several components, namely structure, substance and culture.[155]

1. Legal Structure

The legal structure is a legal institution created by the legal system with various functions in order to support the operation of the system. Lawrence Meir Friedman's theory is called the system Structural that determines whether or not the law is implemented properly. The legal structure based on Law no. 8 of 1981 includes; starting from the Police, the Prosecutor's Office, the Court and the Criminal Implementing Body (Correctional Facility).

Regarding the constraint of limited personnel such as IT experts and cyber forensics, even though this type of crime has increased in recent years, personnel should be thickened to anticipate the negative effects of this crime. 2012 only 781 reports. From such amount, only 86 reports were successfully completed. In 2013 the number of reports jumped to 1,347 reports with completion of 115 reports only. As for 2014, there were 1,324 reports with 307 case resolutions, while from January to October 2015, there were 1,325 reports with a total of 355 cases being resolved. The government plans to establish a national cyber agency and hopes that the establishment of the agency will involve the police as an important element.[156]

The ITE Law was passed in 2008, various problems began to emerge, one of which was the party stating that the ITE Law was not socialized in advance in

[155] Esmi Warassih, Pranata Hukum Sebuah Telaah Sosiologis, Semarang : Badan Penerbit Universitas Diponegoro, 2011.hlm 27-28
[156] http://nasional.kompas.com./read/Polisi.Cyber.Crime.RI diakses pada Tanggal 18 Agustus 2017

the public, causing turmoil, including for law enforcement officers as implementers in the field. Both the public and law enforcement officers are stuttering about the issuance of the ITE Law, in the field of civil law, especially regarding the understanding of evidence in court, it also creates problems.

Apart from the litigants themselves who interpret evidence according to their understanding, judges also have different perspectives in dealing with electronic evidence presented to them. Each judge must have reasons regarding perspective and method assessing/considering the electronic evidence submitted to him in civil cases, this is what the public has then disputed that the lack of uniformity of views by judges in assessing/considering electronic evidence submitted to him has created legal uncertainty.

With regard to legal relationships that occur through internet media, the problem of proof in terms of written evidence is very difficult to prove, because transactions made through internet media are not written on paper that can be stored and there is also not always a receipt as a sign of payment signed by the recipient. the payment.[157]

2. Legal Substance

Namely as the output of the legal system, in the form of regulations, decisions used by both the governing and the regulated parties. Substance also means the products produced by people who are in the legal system which

[157] Asril Sitompul, Hukum Internet (pengenalan mengenai masalah hukum di cyberspace), Bandung : PT. Citra Aditya Bakti, 2001, hlm. 88

includes the decisions are made, new rules are compiled. Substance also includes living law, not just the rules contained in the law books.[158]

There is also a problem when viewed from the civil law system, where the legality of buying and selling via the internet still cannot be said to be legal in one of the conditions for the validity of the agreement, namely the ability of the parties to carry out buying and selling transactions. Because in buying and selling online, a person does not know whether the person is legally capable as regulated in Article 1320 of the Code of Civil Law.

Electronic commercial transactions are difficult to determine a person's skills, because transactions are not carried out physically, but through electronic media. In an interview with one of the judges at the Medan District Court, it was also said that contracts in electronic commercial transactions cannot be said to be valid, especially because it is difficult to see the skills of the parties due to in electronic commercial transactions there is no meeting between the parties.[159]

Furthermore, Article 27 paragraph 3 of the ITE Law states that it is prohibited for anyone to intentionally and without rights distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents containing insults and/or defamation. Article 27 paragraph 3 of the revision of the ITE Law which regulates defamation from the beginning was considered problematic, because it was very flexible and had multiple interpretations. As long as the defamation article still exists, during that time has a potential for

[158] http://orintononline.blogspot.com. perdebatan-teori-hukum-friedman.html. diakses pada Tanggal 18 Agustus 2017.
[159] Wawancara dengan Johny Simanjuntak, salah seorang hakim Pengadilan Negeri Medan, hari Selasa, tanggal 18 Juli 2017.

criminalization of internet users will continue to occur. Some legal experts also have different opinions about whether or not it is necessary to make a law that makes rules about crime with the internet media. Some experts say there is no need to use a new law to criminalize someone, because clearly the Criminal Code (KUHP) is still relevant, so that the formulation of the Criminal Code is interpreted with an extensive interpretation of crimes that use internet media, this opinion was expressed by Mardjono Reksodiputro.[160]

Other legal experts have opinions that making rules regarding cyber law is necessary, considering that legal certainty in the realm of mayantara needs to be protected. Crimes involving computers must be handled specifically, because the methods, environment, time, and location of committing computer crimes are different from other crimes. This second opinion was among others expressed by J. Sudama Sastroandjojo.[161]

3. Legal Culture

Culture can also hinder the development of e-commerce in Indonesia. e-commerce does offer convenience and efficiency in shopping for people, the problem, it is not necessarily liked by Indonesians. The habit of making complicated product selections also causes Indonesians do not increase their interest in transacting in the world of e-commerce. The fear of buying a “cat in a sack” or buying without knowing exactly how the condition of the product bought is also a cause why Indonesians do not like shopping on the internet. For the practitioners of electronic commercial transactions, the issue of product condition

[160] H. Arsyad Sanusi, Cybercrime, Milestone, Jakarta, 2011, hlm. 405
[161] Ibid, hlm. 406

is an important issue. One of the consumers of electronic transactions said that he did electronic commercial transactions, in ordering the products to be bought, he never got goods in accordance with what expected, because it did not match with the catalogue offered, so he was not happy and afraid to buy goods or shop through the internet.[162] The solution is to make a product catalogue as attractive as possible like shopping in the real world and provide a very detailed description of a product so that it makes customers comfortable and happy in shopping via the internet and not afraid to buy goods without knowing the exact condition of the goods to be bought, and open telephone line or e-mail as a question and answer forum between customers and merchants regarding the products traded.

[162] Wawancara dengan Inal Syahputra, pelaku transaksi komersial elektronik (sebagai pembeli), di Jalan Perjuangan, Medan, tanggal 18 Agustus 2017.

CHAPTER V
CONCLUSIONS AND SUGGESTIONS

A. Conclusion

The conclusions that can be drawn in the discussion of this thesis are:

1. Legal protection for parties in conducting electronic contracts is that the validity of electronical contract are legal according to the Civil Code and the ITE Law along with electronic evidence as regulated in the ITE Law so as to protect the interests of consumers from businessmen who act arbitrarily and irresponsibly which put consumers as objects of their business. This means that efforts to provide legal protection to consumers are regulated by the consumer protection law contained in the consumer protection law.
2. Barriers related to the validity of contracts carried out electronically are legal structure barriers, namely the lack of socialization by law enforcement officers to the public regarding the ITE Law, legal substance barriers, namely regarding the validity of contracts in the Civil Code on the terms of the validity of the agreement, and legal cultural barriers, namely regarding people who often make complicated product selections because the products offered online are not necessarily in accordance with the public wishes.
3. The judge's consideration in deciding this civil case is that judex facti not wrong to apply the law, because there are no provisions of law prohibiting judex facti/ High Court from taking over consideration of the decision of the

District Court which is considered correct and properly considered so that it is taken into account in the decision High Court itself. Likewise, based on the evidence submitted in court in accordance with the provisions of applicable law It turns out that the Plaintiff succeeded in proving the Defendant's actions which were not so transporting the Plaintiff to Yogyakarta by plane No. Flight QZ7340 belongs to the Defendant and there are no coercive circumstances (force majeure) that occurred at that time, thus it was an act against the law conducted by the Defendant

B. Recommendation

Based on the conclusions above, the following suggestions can be made:

1. For consumers and businessmen to be more careful in doing e-commerce transactions, considering that consumers and businessmen do not face to face and do not know each other, then fraud will appear more, therefore it is necessary to be careful and alert from consumers or businessmen in making agreements in e-commerce transactions.
2. Legal arrangements regarding electronic transactions in Indonesia in conducting electronic transaction activities with people or Indonesian e-commerce entrepreneurs need to be emphasized regarding the legal rules that form the basis for the validity of electronic transactions in Indonesia, because Article 5 of the ITE Law has specifically regulated the validity of

an agreement that states that new evidence can be declared valid if it uses an electronic system is in accordance with applicable regulations applies in Indonesia.

3. The judge's consideration in this case is that the judex facti decision in this case does not conflict with the law and legislation, then the cassation application submitted by the Cassation Petitioner must be rejected and the plaintiff/defendant parties in this case should fulfil their respective obligations in good faith and carry out the agreements they have agreed upon so that later it will not cause new disputes between the parties.

PROOFREADING

1.	of a lawful cause	:	of a legal cause
2.	basically an public agreement	:	basically a general agreement
3.	form of verbal words	:	form of spoken words
4.	Active activities	:	Operational activities
5.	the true identity	:	the real identity
6.	as binding evidence	:	as crucial evidence
7.	communication is something that cannot	:	communication cannot
8.	was originally created	:	was created
9.	is used to refer to the current legal	:	refers to the current legal
10.	Contemporary modern business has been influenced by the use of the internet	:	The use of the internet has influenced contemporary modern business
11.	messages to each other via email,	:	messages via email
12.	effectively and efficiently so that someone can make buying	:	effective and efficient to make buying
13.	which is a technology	:	a technology
14.	also have the ability to collect	:	also can collect
15.	it is stated that Electronic Transactions	:	Electronic Transactions
16.	not an important issue	:	not important
17.	that so far he has	:	that he has
18.	item already exists	:	item exists
19.	the content of the agreement	:	the agreement's content
20.	the parties entered into an agreement	:	the parties agreed
21.	are subjective conditions	:	are subjective
22.	the request of the party	:	the party's request
23.	the validity of the agreement	:	the agreement's validity
24.	certainty to provide protection to consumers	:	certainty to protect consumers
25.	bad faith with the aim of harming	:	bad faith to harm
26.	consumers protection so that it would emerge	:	consumer protection would emerge an
27.	information as well as access	:	information and access
28.	are basically engagements	:	are engagements