

The Principle of Balance E-Contracts in Paylater features in E-Commerce

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Abstract

The development of digital technology makes a lot of changes against people behavior, one of which are buying and selling activities in e-commerce. This study aims to analyze a implementation the principle of balance in e-contracts specificities a paylater payment feature contained in e-commerce. The existing of e-commerce makes a people shift from a conventional contracts (physical) to electronic contracts (e-contracts). Behind the conveniences and sophistication from e-contracts, there is a weakness and significant impact such as imbalance from that clauses and then makes the users (society) not more paying attention against that clauses, even that contracts. This study uses doctrinal legal research method with statutory and conceptual approach. Based on the analyze, between a company (e-commerce) and users (societies) there is imbalance in a contracts, because a company always feels superior than users, so that users only follow anything provisions which made by a company without notice a principle of balance in a contracts. the company should be able to provide several options in the clause, so that users can really understand the legal actions carried out by the parties.

Keywords: Principle of Balance; E-Contracts; E-Commerce; Paylater.

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Published in Notaire. Published by Universitas Airlangga, Magister Kenotariatan.



Introduction

Industrial revolution era 4.0 made a development of technology is rapidly and massive.¹ The development a digital technology makes a lot of changes against people behavior, almost in all sector has changed include buying and selling activities. Currently, a lot of buying and selling activities utilizing a digital technology as a infrastructure. Digital is replacing paper and manual processes.² One of which is electronic contract.³ In disruption era, many people or company

¹ Banu Prasetyo et al, 'The Industrial Revolution 4.0 and the Challenges of Social Change' (2018) 3 Journal proceedings of Semateksos.[22].

² Sophia Adams Bhatti et al, *The Legaltech Book, The Legal Technology Handbook For Investors, Entrepreneurs and Fintech Visionaries* (Wiley 2020).[8].

³ M. Alvi Syahrin, 'Konsep Keabsahan Kontrak Elektronik Berdasarkan Hukum Nasional Dan Uncitral Model Law On Electronic Commerce' (2020) 9 Jurnal Repertorium.[107].

running a business by utilizing the development of digital technology such as start up tech and/or e-commerce,⁴ and then they transforms from the kind of services until the product to digital, so that digital processes give a consumer the convenience and fastness from every transactions. However, behind the sophistication and development of the technology,⁵ there is a massive and significant impact such as imbalance from that clauses and then makes the users (society) not more paying attention against that clauses, even that contracts.

The phenomenon of increasing e-commerce in Indonesia because rapidly development of digital technology and then generation Z (Gen-Z) who had born in Internet era,⁶ and then e-commerce have a technology standard so that a users can access to buy and sell a products with quickly and easily.⁷ However, a legal consequences from buying and selling activities in e-commerce is a transformation a contracts, so that a users and company should be adapt the already existing rule to the specificities of e-commerce and electronic information transaction.⁸ On the other hand, a payment feature from e-commerce namely "paylater" widely used by users.⁹ Moreover, currently paylater feature become a one of favorite services,¹⁰ so that a users should be aware of the impact, mechanism and every standard clauses contained in that e-contract.

This study aims to examine and analyze the principle of balance in e-contracts in e-commerce specificities of paylater payment method. The more e-commerce that provides paylater features, the more people who want to use that service.

⁴ Halifa Haqqi and Hasna Wijayanti, *Revolusi Industri 4.0 di tengah Society 5.0: Sebuah Integrasi Ruang, Terobosan Teknologi, dan Transformasi Kehidupan, di Era Disruptif* (Quadrant 2019).[133-134].

⁵ Rizaldy Anggriawan et al, 'Passenger Name Record Data Protection under European Union and United States Agreement: Security over Privacy?' (2022) 8 Hasanuddin Law Review Journal.[96].

⁶ Eri Yanti Nasution et al, 'Perkembangan Transaksi Bisnis E-Commerce terhadap Pertumbuhan Ekonomi di Indonesia' (2020) 3 Jurnal Ekonomi & Ekonomi Syariah (JESYA).[509].

⁷ Y.L.R Rehatalanit, 'Peran E-Commerce Dalam Pengembangan Bisnis' (2016) 5 Jurnal Teknologi Industri.[67].

⁸ Anabela Susana De Sousa Goncalves, 'The E-Commerce International Consumer Contract In The European Union' (2015) 9 Masaryk University Journal of Law and Technology.[8].

⁹ Rahmatika Sari, 'Pengaruh Penggunaan Paylater Terhadap Perilaku Impulse Buying Pengguna E-Commerce di Indonesia' (2020) 7 Jurnal Riset Bisnis dan Investasi.[47].

¹⁰ Andi Pratiwi Yasni Putri et al, 'Praktik Penyalahgunaan Fitur Kredit (Paylater) oleh Pihak Ketiga melalui Aplikasi Belanja Online' (2020) 28 Amanna Gappa Journal.[105].

However, the company as a creditor provide e-contract draft by itself without involving users as a debtor, and then the e-contract can't be accessed properly, so that a users often not paying attention about a contents and that clauses. Therefore, this entails a concept for enforce the principle of good contract drafting, although that contract run into transformation via electronic contract (e-contract).¹¹

Method Research

This study uses a doctrinal legal research method. Legal research according to Cohen is the process of finding laws that regulate activities/actions in people's lives,¹² while Mahmud Mz states, that legal research is a process to find the rule of law, legal principles and doctrines with the result of argumentation, theory or new concepts as a prescription to answer the existing problems.¹³ And then for support arguments and results, this study uses statutory and conceptual approach. The Statutory approach as primary legal sources in legal research is carried out by collecting and analyzing a relevant laws and regulations with research topic. The conceptual approach is carried out if in a study there are no applicable regulations and/or in its implementation there are still discrepancies and there are no instructions or guidelines that guide a problem-solving concept. the conceptual approach provides ideas, overviews, and conceptions of a research but of course it has limitations so as not to deviate from the applicable provisions and norms.

The Legal Basis in Contract

According Article 1313 BW, contract is an act by which 1 (one) or more persons bind himself to 1 (one) or more other persons. The contracts becomes an instrument to accommodate or bring together different interests between 2 (two) or more parties.¹⁴ An contracts, whether made unwriting or in writing, must be

¹¹ Deviana Yuanitasari and Hazar Kusmayanti, 'Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual' (2020) 3 Jurnal Acta Diurnal.[296-297].

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group 2022).[57].

¹³ *ibid.*[35].

¹⁴ Sri Istiawati, 'Kedudukan Perjanjian Dalam Kitab Undang-Undang Hukum Perdata Dalam Sengketa Konsumen' (2022) 4 Jurnal Institusi Politik Ganesha.[210].

able to express the general will of the parties and become a provision for further actions to realize a goal.¹⁵ As for a legal requirement in contract according Article 1320 BW are : 1). Consent of the individuals who are bound thereby; 2). Capable to conclude an agreement; 3). Specific object; and 4). Admissible cause. Contracts is a private action from the parties, so the parties have a freedom in determining the contents, however must remain within the corridor of applicable regulations and norms.¹⁶ According Article 1339 BW states, a freedom in determining the contents of contract have a limitation such as : propriety, customs, and the law.

Contracts becomes a important things, besides being a main instrument in legal action the parties, contracts can serve as evidence, if in the future there will be a dispute.¹⁷ The contracts is a reciprocal relationship as a exchange of rights and obligations of the parties, so that it is expected to take place properly, fairly, and proportionately according to the agreement of the parties.¹⁸ Therefore, even though there are currently many types of contracts, the parties should be remains to obey against applicable general provisions.¹⁹

The Transformation of E-Contracts in E-Commerce Development Era

The contracts activities currently has grown rapidly,²⁰ One of the reasons is because the development of e-commerce.²¹ e-commerce is a container or place

¹⁵ Wahyuni Safitri, 'Perlindungan Hukum Kontrak Bisnis di Indonesia Dalam Perspektif Keadilan' (2020) 4 Jurnal Legal Standing.[79].

¹⁶ Hartana, 'Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara)' (2016) 2 Komunikasi Hukum Journal.[164].

¹⁷ Niru Anita Sinaga, 'Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian (Hereinafter Reffered to as Niru Anita Sinaga I)' (2019) 10 Jurnal Ilmu Hukum Dirgantara.[14].

¹⁸ Agus yudha Hernoko, *Urgensi Asas-Asas Hukum Kontrak Sebagai Landasan Hubungan Kontraktual Para Pihak, Contained In the Book Chapter, Full Text See: Y. Sogar Simamora and Ghansham Anand, Perkembangan Hukum Keperdataan di Indonesia: Persembahan HUT ke-80 tahun Prof. Dr. Mochammad Isnaeni, S.H., M.S.,* (Setara Press 2022).[63-64].

¹⁹ Sri Lestari Poernomo, 'Standard Contract in Legal Perspectives of Consumer Protection' (2019) 19 Jurnal Penelitian Hukum De Jure.[116].

²⁰ Desi malinda, 'e-Contract Pada PT. Go-jek Indonesia Dalam Perjanjian Dengan Mitra Usahanya Menurut Syirkah 'Inan: (Analisis Klausula Eksenorasi Dalam Kontrak Baku)' (Skripsi, Fakultas Syari'ah Dan Hukum UIN Ar-Raniry Darussalam-Banda Aceh 2019).[34].

²¹ Selbi B. Daili, 'Perjanjian Jual Beli Melalui Internet Dan Akibat Hukumnya Apabila Terjadi Wanprestasi' (2015) 3 Lex Privatum Journal.[38].

for selling and buying activities via online/internet systems.²² Because of all the activities conducted via online/electronic systems, then the contracts has transform to the online systems too, therefore it is often referred to as an “e-contracts”. Basically, the difference between a conventional contracts and electronic contracts only of media or container. e-contracts not written on paper like the conventional kind²³ but e-contracts write in electronic systems with utilizing internet technology.

The development of e-commerce makes a people tend to like a shopping via online systems. Moreover, a lot of e-commerce currently provide a paylater payment method features, so that it makes people more enthusiastic.²⁴ In disruption era, almost in all aspect has transform to digital mechanism or services, include a contract activities. With utilizing a digital technology, currently contract can be made electronic via online system. With e-contract mechanism, the parties can have made a contracts without held a physical meeting. According Article 1 Number 17 Law No. 11 of 2008 about Information and Electronic Transaction and the Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, electronic contract is agreement of the parties which made via electronic systems. Currently, many people started to shifted shopping method from conventional to online shopping.²⁵

A number e-commerce users in Indonesia are always increasing significantly every years, in 2021 a users of e-commerce arround 148,5 million users, and then in 2022 increase to 166,1 million users, and projected continue to increase every years.²⁶ This is due to the massive development of internet users in Indonesia,

²² Monalia Mariana, ‘Apa itu e-Commerce?’ (Universitas Pasundan Online Article, 2022) <<https://www.unpas.ac.id/apa-itu-e-commerce/>>.

²³ Rory Unsworth, *Smart Contract This! An Assessment of the Contractual landscape and the Herculean Challenges it Currently Present for “Self-Executing” Contracts*, Contained In the Book Chapter, Full Text See: Marcelo Corrales, et al, *Legal Tech, Smart Contracts and Blockchain: Perspectives in Law, Business and Innovation* (Springer 2019).[20].

²⁴ Rahmatika Sari (n9).[45].

²⁵ *ibid.*[46].

²⁶ Firdhy Esterina Christy, ‘Prediksi Angka Pengguna E-Commerce di Indonesia 2024’ (*Tempo Online*, 2022) <<https://data.tempo.co/data/909/prediksi-angka-pengguna-e-commerce-di-indonesia-2024>>.

which has reached around 210,67 million users on 2022.²⁷ Currently, paylater features users in Indonesia has reached around 56% of total e-commerce users in Indonesia,²⁸ of course the consequences of that greatly affect the contract activities between a company (e-commerce) and a users (society).

The e-commerce allow conveniences in shopping activities with offering one click buying systems.²⁹ However, e-contracts in e-commerce sometimes not accessible properly, because a users need a few steps to can open e-contract access, therefore, e-contract are often referred to as "Wrap Contract".³⁰ On the other hand, a hidden position of e-contract in e-commerce make a users ignore the importance of e-contract, because users only open a home of e-commerce, selected the products, and if a users wanna use paylater payment method they can choose a time period they needed, and finish.³¹ Many users not aware if that legal action have a consequences, not only in main page, but in hidden contract contained in that e-commerce.³²

Basically, e-contract same with other contract which is as a exchange of rights and obligations of the parties, however the contrast difference is on contract drafting process and the media. If a conventional contract the parties can better understand the contents of the clause and can intervene that contents, but in e-contract especially in e-commerce, only the first party makes a contents of contract without involving the second party. Based on that process which seems

²⁷ Hanadian Nurhayati, 'Number of Internet Users in Indonesia from 2017 to 2020 with Forecasts Until 2026' (*Statista*, 2022) <<https://www.statista.com/statistics/254456/number-of-internet-users-in-indonesia/>>.

²⁸ Cindy Mutia Annur, 'Paylater Pupoler, Konsumen Sudah Gunakan PayLater Lebih dari Setahun' (*Databoks*, 2022) <<https://databoks.katadata.co.id/datapublish/2022/06/03/paylater-kian-populer-mayoritas-konsumen-sudah-gunakan-paylater-lebih-dari-setahun>>.

²⁹ Michael Conrad et al, *A Lawful Framework For Distributed Electronic Markets* (Springer 2007). [235].

³⁰ Ayyappan Palanissamy and R. Kesavamoorthy, 'Digitalization of Transactions and Consumer Protection in Wrap Contracting' (2019) 8 *International Journal of Engineering and Advanced Technology* (IJEAT).[3993-3994].

³¹ Ruli, 'Cara Menggunakan Shopee PayLater Terbaru 2022, Belanja Dulu, Bayarnya Belakangan!' (*Jalan Tikus Online Article*, 2022) <<https://jalantikus.com/tips/cara-menggunakan-shopeepaylater/>>.

³² In Emy Prastiwi and Tira Nur Fitria, 'Konsep Paylater Online Shopping dalam Pandangan Ekonomi Islam' (2021) 7 *Jurnal Ilmiah Ekonomi Islam*. [427].

to be imbalanced.³³ The existing of e-contract has received legality from the laws and regulations in Indonesia, according Law No. 11/2008 about Electronic Information and Transaction; and Government Regulation No. 82/2012 about Electronic System and Transaction Operation, however, e-contract arranged like a general contract,³⁴ because government not set special standards about mechanism and e-contract placement location, therefore a company of e-commerce freely determine according to his own will.

Seeing the development, e-contract in e-commerce like no longer need a trust, because a company not care about agreement or opinion from one of a party, if the code is correct, it doesn't matter whether the other party is reliable or not, the e-contract will keep going,³⁵ despite the parties didn't sign it with a digital signature.³⁶ Therefore, e-contracts in e-commerce often referred to as "take it or leave it" concept, because only one of party determines the contents and clauses.³⁷

The Principles of Contracts

The topic related to the application and smart/electronic contract are the most popular overall and are increasing fastest in popularity and in impact.³⁸ Despite e-contract have a difference mechanism on processes, however e-contract have the same principle as conventional contracts,³⁹ so that we can see a principle of contract in general. The principle of contract contained in some provision in

³³ Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, 'Implementasi Asas Keseimbangan Bagi Para Pihak dalam Perjanjian Baku' (2019) 8 Udayana Magister Law Journal.[65].

³⁴ Wahyu Suwena Putri and Nyoman Budiana, 'Keabsahan Kontrak Elektronik dalam Transaksi E-Commerce Ditinjau Dari Hukum Perikatan' (2018) 1 Jurnal Analisis Hukum.[302-303].

³⁵ T.J. De Graaf, 'From old to new: From internet to smart contracts and from People to Smart Contracts' (2019) Computer Law & Security Review Journal.[7].

³⁶ Kai-Jie Yong et al, 'Application of Blockchain Smart Contracts in Smart Tenancies: A Malaysian Perspective' (2022) 8 Cogent Social Sciences Journal.[12-13].

³⁷ Fahdelika Mahendar and Christiana Tri Budhayati, 'Konsep Take It Or Leave It Dalam Perjanjian Baku Sesuai Dengan Asas Kebebasan Berkontrak' (2019) 2 Jurnal Ilmu Hukum Alethea. [106].

³⁸ Jeffrey C. Carver and Miroslaw Staron, 'Blockchain and Smart Contract Engineering' (2020) 37 Proceedings International Conference on Blockchain and Cryptocurrency (IEEE Software).[95].

³⁹ Dyah Ayu Artanti and Men Wih Widiyanto, 'Keabsahan Kontrak Elektronik Dalam Pasal 18 Ayat 1 UU ITE Ditinjau Dari Hukum Perdata di Indonesia' (2020) 1 Jurnal Civitas Academika Universitas Esa Unggul.[94].

BW.⁴⁰ Moreover, some of the principles in the contract are as follows:

1) The Principle of Freedoms in Contracts

According Article 1313 BW, contract is an act by which 1 (one) or more persons bind himself to 1 (one) or more other persons. And then in contract process, the parties have freedom to determine the contents according to agreement.⁴¹ According Article 1338 BW, the parties freely to determine the contents and clauses, and then the parties may made the contract in writing and unwriting, and the parties freely to make anything contract,⁴² the important is, as long as the parties agreed, then, the contract is valid.

A provisions and principles about contract in BW also applies to e-contract mechanism. However, the principles of freedoms often intersect with standard contracts, because a company tend to determine a unilateral contents.⁴³ A requirements to fulfill a freedoms of contract are the parties should be obey a provisions in 1320 BW and do not violate a provisions in 1339 BW, because to carry out the contract there are minimum conditions, and then that conditions implies anything legal action in contract from the parties have a legal principle, so that their actions are accommodated by the legal basis. this also applies to electronic contracts.⁴⁴ in the context e-contract paylater features, therefore, a company from e-commerce can make the contents of the contract according to his own will without involving the other parties, moreover, there is a "take it or leave it" concept which makes the choice smaller for the other parties.

⁴⁰ Ridwan Romadhoni and Dona Budi Kharisma, 'Aspek Hukum Kontrak Elektronik (E-Contract) dalam Transaksi E-Commerce yang Menggunakan Bitcoin Sebagai Alat Pembayaran' (2019) 7 Jurnal Privat Law.[52].

⁴¹ Zulkhairi et al, 'Asas Kebebasan dan Keseimbangan Berkontrak Pada Akad Pembiayaan Perbankan Syariah: Perspektif Teori Hukum Ekonomi Islam' (2021) 15 Jurnal Prodi Magister Ilmu Hukum: Konstitusi.[14].

⁴² Niru Anita Sinaga, 'Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian (Hereinafter Referred to as Niru Anita Sinaga II)' (2018) 7 Jurnal Binamulia Hukum.[115].

⁴³ Dedi Harianto, 'Asas Kebebasan Berkontrak: Problematika Penerapannya Dalam Kontrak Baku Antara Konsumen Dengan Pelaku Usaha' (2016) 11 Jurnal Hukum Samudra Keadilan.[149].

⁴⁴ Emilda Kuspraningrum, 'The Legality of Electronic Contract in the Enactment of Information and Electronic Transaction Derived from Article 1320 Civil Code and UNCITRAL Model Law on Electronic Commerce' (2011) 7 Jurnal Risalah Hukum.[71].

2) The Principle of Consensualism in Contracts

The one of main conditions from a contract is agreed from the parties.⁴⁵ It is contained from Article 1320 BW, agreed is a formil requirement which is very important because if a one of party disagree, the contract can be voidable.⁴⁶ The principles of consensualism implies a contract unworkable if only agreed by one of party.⁴⁷ According Article 1313 BW, the principle of consensualism must be carried out by the parties who bind themselves to enter into a contract, so it must be carried out minimum by 2 (two) persons or more.

This principle of consensualism becomes important when in current practice, often the principle of freedom of contract based on an honest attitude of mind (in good faith) is not fully understood for the parties, thus giving rise to a tendentious impression of an unbalanced and one-sided contractual relationship.⁴⁸ In the context of paylater payment e-contract, implementation the principles of consensualism in that contract have a trouble, because a company apply “take it or leave it” concept, so that users/debtors deemed to have agreed to everything contained in the e-contract. Maybe a users can agree term and condtion in main page, but not necessarily in e-contract, because a users do not know in detail the contents of e-contract, therefore, the principle of consensualism in e-contract not going optimally.

3) The Principle of Balance in Contracts

The principles of balance in contract aims to equalize the parties position in contract.⁴⁹ However, in the implementation not always as it should be. Imbalance often occurs in contracts that apply “take it or leave it” concept, one of the example is paylater payment e-contract in e-commerce. imbalance can arise as a result of

⁴⁵ Herlien Budiono, *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*, (Citra Aditya Bakti 2019).[5].

⁴⁶ Yulia Dewitasari and Putu Tuni Cakabawa L, ‘Akibat Hukum Terhadap Para Pihak Dalam Perjanjian Apabila Terjadi Pembatalan Perjanjian’ (2015) 3 Kertha Semaya Journal.[3].

⁴⁷ Herlien Budiono (n 45).[8].

⁴⁸ Siti Nurwullan and Hendrik Fasco Siregar, ‘Asas Konsensualisme Dalam Penambahan Klausula Kontrak Berdasarkan Prinsip Itikad Baik’ (2019) 1 Jurnal Prosiding Seminar Nasional Unpam.[5].

⁴⁹ Muhammad Irayadi, ‘Asas Keseimbangan Dalam Hukum Perjanjian’ (2021) 5 Jurnal Hermenutika Unswagati.[101].

the behavior of the parties or as a consequence of the substance (contents) of the contract or the implementation of the agreement.⁵⁰ Therefore, there's needs to be an arrangement related to the principle of balance in contract to create substantive *ad idem consensus*.⁵¹

In e-commerce, platforms intermediate transactions among users and enable very different relationships,⁵² this also applies to e-contract paylater payment features. Many users only know they obligation on the main page of e-commerce, therefore, many of them unrealize who do they contract with, what are the contract clauses, how much is the debt interest set, how to resolve disputes that if at any time arise in the future, etc. therefore, the contract must be made proportionally. The meaning of proportionally is equal in weight, comparable, worthy. In physics is defined as a condition that occurs when all the forces and tendencies that exist on any object or system are exactly neutralized or opposed by a force or tendency of the same magnitude but in the opposite direction.⁵³

In the rule of law framework, everyone is equal before the law,⁵⁴ this is also applies in contract activities. the clauses must be balance to accommodate the interest from the parties. The position of the parties must be equal/balance, therefore, in the event of an imbalance position which causes disturbances to the contents of the contract need the intervention of certain authorities (government) to balance it.⁵⁵ Therefore, to optimization the principle of balance in e-contract. This entails a role of government, it could be through a policy set out in the regulations, it could also be through a certain system concept.

⁵⁰ Subekti, *Hukum Perjanjian* (Intermasa 2010).[34].

⁵¹ Faizal Kurniawan et al, 'The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia' (2022) 6 *Lex Scientia Law Review Journal*. [131].

⁵² Alessandra Quarta, 'Narratives of the Digital Economy: How Platforms Are Challenging Consumer Law and Hierarchical Organization' (2020) 20 *Global Jurist "De Gruyter" Journal*. [3].

⁵³ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Kencana Prenada Media Group 2011).[75].

⁵⁴ Ahmad Ulil Aedil and FX Adji Samekto, 'Rekonstruksi Asas Kesamaan di Hadapan Hukum (Equality Before the Law): (Suatu Kajian Khusus Putusan Mahkamah Konstitusi Perkara 21-22/PUU-V/2007 Dalam Perspektif Filsafat Hukum)' (2013) 8 *Law Reform Journal*. [2].

⁵⁵ Agus Yudha Hernoko and Ika Yunia Ratnawati, 'Asas Proporsional Dalam Perjanjian Waralaba (Franchise)' (2015) 1 *Jurnal Hukum Bisnis*. [3].

The Preventive Legal Protection E-Contract in E-Commerce

In general, e-contract can be interpreted as a contract made in electronic form.⁵⁶ In the context of e-contract in paylater features, because that contract writing not on paper, a users often not paying attention about that contract, because a location from e-contract not at main page. On the other hand, the contract is a legal action of the parties that must be obeyed.⁵⁷ in this case the weak position is occupied by the users.⁵⁸ Although the provisions regarding standard contracts do not violate the rules, in the proper manner it would be better if certain limitations were given.⁵⁹ The legal basis of standard contracts contained in Article 1338 BW concerning the principle of freedoms in contract. however, there's no limitation regarding how far the limitations can give to the contents of contracts. Mostly, a company always provides standard contracts 100% (one hundred percent) because the company wants to have full control over the contents of contract. Therefore, to balance this condition, the government should be intervention to provide legal protection for the society.

Legal protection can be provided preventively as well as repressively,⁶⁰ in the context of e-contract in paylater features, the users should be obtain a legal protection for achieve justice. The imbalanced position of the parties in e-contract implies a role of government be important,⁶¹ because government has a function to regulate and carry out surveillance against business development, especially in Indonesia. Certainly contract is private action from the parties, therefore, a legal consequences only applies to the parties who bind themselves. But a government can provide a

⁵⁶ David Herianto Sinaga and I Wayan Wiryawan, 'Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis' (2020) 8 Kertha Semaya Journal.[1388].

⁵⁷ Kartini Muljadi and Gunawan Widjaja, *Perikatan Pada Umumnya* (Raja Grafindo Persada 2003).[17].

⁵⁸ Hasanuddin Rahman, *Contract Drafting: Seri Keterampilan Merancang Kontrak Bisnis* (Citra Aditya Bakti 2003).[195].

⁵⁹ I Putu Dianda Ega Dinanda and I Nyoman Wita, 'Asas Kebebasan Berkontrak Dalam Perjanjian Baku' (2018) 6 Kertha Semaya Journal.[5].

⁶⁰ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia: sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi* (Peradaban 2007).[2].

⁶¹ Agus Yudha Hernoko and Ika Yunia Ratnawati (n 55).

preventive legal protection, because government have a power and authority to intervention the process of contract, not for the content, but for accessibility and percentage limitations contract standard. Therefore, a legal protection will produce a justice. Justice cannot be left to the society just like that because justice requires management.⁶² therefore, a role of government very important.

The e-contracting is the process of setting-up, negotiating, signing, and maintaining contracts purely in electronic form.⁶³ e-contract may either require electronic signatures, the problem on the availability of a signature as an obligatory condition for recognizing a contract concluded in writing is solved depending on the method specified in Art.⁶⁴ the digital signature is realize technically by applying the public key concept. in this, two keys, one open available to everyone and one private are used, one also refers to this type of encrypton as an asymmetric procedure.⁶⁵ In e-contract of paylater there's no signature but the second party deemed agreed for that. And then another problem is about accessibility and content balance. so a legal protection not only concerning for breach of contract,⁶⁶ but also on the initial terms of the contract, and this is one form of preventive legal protection.

In providing preventive legal protection to society, the government can make a regulation for instance: 1). placing the e-contract on the front page and/or which is easily accessible by the user; 2). requires companies in the e-commerce field to provide several options for e-contracts that are made so that users can choose; and 3). provide notifications about price details, debt interest, and products purchased by the user, sent in the application (e-commerce) or to the user's email. So that users know there are rights and obligations that must be carried out, so this can also provide education to the public about paylater.

⁶² Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti 2014).[193].

⁶³ Michael Merz, *XML-Based E-Contracting* (Springer 2004).[334].

⁶⁴ Renata Romanovna Lenkovskaya et al, 'Technology of Concluding Contracts via the Internet' (2019) 8 Journal of Engineering and Advanced Technology (IJEAT).[4598].

⁶⁵ Martin Schieg, 'The Development of an Electronic Systems for Contracts and the Execution of Building Work in Germany' (2006) 3 Verslas: Teorija Ir Praktika Journal.[184].

⁶⁶ Syantica S. Sulengkampug, 'Akibat Hukum Bagi Yang Melanggar Suatu Perjanjian Yang Telah Di Sepakati (Wanprestasi)' (2020) 8 Lex Privatum Journal.[33].

Conclusion

Based on the descriptions above, e-contracts in e-commerce specificities of paylater payment features, implemented without applying the principle balance of contracts. This is because the company always feels stronger so that in it's implementation, the available contracts always apply the "take it or leave it" concept which is always limited to the sentence "if the user or debtor doesn't want to use the e-commerce service, then please do not apply". However, the government can intervention with makes a regulation about percentage limitation contract standard, e-contract placement location in e-commerce apps, and the order provides clarity and detail of the e-contract information to users.

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How to cite: Giza'a Jati Pamoro, 'The Principle of Balance E-Contracts in Paylater features in E-Commerce' (2022) Vol. 5 No. 3 Notaire.