LEGAL COMPARISON OF ELECTRONIC CONTRACT IN ELECTRONIC COMMERCE BETWEEN INDONESIA AND THE UNITED STATES BASED ON THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

a Pujiyono Suwadi, b Reda Manthovani, c Alizza Khumaira Assyifa

ABSTRACT

Objective: The importance of an electronic deal is the validity of the electronic information contained in it. The real reality that occurs in cyber activities is complex because such deeds are no longer limited to the territory of any other country.

Method: The United Nations Commission on Global Trade Law (UNCITRL) model law on electronic trade was established as a fundamental rule for regulating the validity, recognition, and results of electronic messages based on the use of computers in trade activities. Indonesia and the United States are among the member states of the UNCITRL state that can actively participate in the drafting of the UNCITRL Agreement and adopt model legislation. The aim of this learning was to compare the regulation of electronic contracts in Indonesia and the United States by referring to the UNCITRL model law on electronic commerce. The legal research methodology used in this study is the standard legal approach using statutory methods and conceptual methods.

Results: The results show that although both Indonesia and the United States have adopted some provisions of the UNCITRL Model Act in the field of electronic commerce, they have different legal implications.

Conclusions: The Electronic Information and Transaction Act - commonly known as UU ITE in Indonesia - focuses on the use of report technology and the Internet to ensure the security and privacy of electronic transactions, as well as to provide legal guarantees to technology users. UETA focuses on legalizing electronic communications, including electronic contracts, to remove as many barriers to electronic commerce as possible.

Keywords: electronic contract, e-commerce, legal comparison, Indonesia, United States.

Received: 01/05/2023
Accepted: 28/07/2023
DOI: https://doi.org/10.55908/sdgs.v11i3.714

a PhD in Law, Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia, E-mail: pujifhuns@staff.uns.ac.id, Orcid: https://orcid.org/0000-0002-5971-2446
b PhD in Law, Faculty of Law, Universitas Pancasila, Jakarta, Indonesia, E-mail: r_manthovani@yahoo.com, Orcid: https://orcid.org/0009-0003-4478-4716
c PhD in Law, Faculty of Law, Universitas Pancasila, Jakarta, Indonesia, E-mail: khumairaassyifaalizza@gmail.com, Orcid: https://orcid.org/0009-0007-3628-6046
COMPARAÇÃO JURÍDICA DE CONTRATOS ELETRÔNICOS EM
COMÉRCIO ELETRÔNICO ENTRE A INDONÉSIA E OS ESTADOS
UNIDOS COM BASE NA COMISSÃO DAS NAÇÕES UNIDAS SOBRE O
DIREITO COMERCIAL INTERNACIONAL

RESUMO

Objetivo: A importância de um negócio eletrônico é a validade das informações eletrônicas contidas nele. A realidade real que ocorre nas atividades cibernéticas é complexa porque tais atos já não estão limitados ao território de qualquer outro país.

Método: A lei modelo da Comissão das Nações Unidas sobre Direito Comercial Global (UNCITRL) sobre comércio eletrônico foi estabelecida como uma regra fundamental para regular a validade, o reconhecimento e os resultados de mensagens eletrônicas com base no uso de computadores em atividades comerciais. A Indonésia e os Estados Unidos estão entre os Estados membros do Estado da UNCITRL que podem participar ativamente na elaboração do Acordo da UNCITRL e adotar legislação modelo. O objetivo desta aprendizagem foi comparar a regulamentação de contratos eletrônicos na Indonésia e nos Estados Unidos, referindo-se ao modelo de lei da UNCITRL sobre comércio eletrônico. A metodologia de pesquisa legal utilizada neste estudo é a abordagem legal padrão usando métodos estatutários e métodos conceituais.

Resultados: Os resultados mostram que, embora a Indonésia e os Estados Unidos tenham adotado algumas disposições da Lei Modelo da UNCITRL no campo do comércio eletrônico, eles têm implicações legais diferentes.

Conclusões: A Lei de Informações e Transações Eletrônicas - comumente conhecida como UU ITE na Indonésia - concentra-se no uso de tecnologia de relatórios e da Internet para garantir a segurança e a privacidade das transações eletrônicas, bem como para fornecer garantias legais aos usuários de tecnologia. A UETA centra-se na legalização das comunicações eletrônicas, incluindo os contratos eletrônicos, a fim de eliminar o maior número possível de barreiras ao comércio eletrônico.


1 INTRODUCTION

Globalization has created a process to transform technology from analog to digital. The rapid use of technology has greatly affected the pace of trade around the world were buying and selling activities between sellers and buyers can be conducted without space and time limits (unlimited). This business model is known to the public, such as electronic commerce (e-commerce). Electronic commerce allows the behavior change of conventional trading where sellers and buyers meet directly into telemarketing transactions where trading can be done remotely via the internet (Hauliani, et.al., 2022). Another change is that if conventional transactions are carried out without going through an electronic system, then the transaction is outlined in a paper-based contract. Meanwhile, electronic transactions are accepted out through an electronic system and do
not need the physical occurrence of the parties, the transaction is outlined in a paperless contract or known as an electronic contract (Stead & Gilbert, et.al., 2001).

It is important to pay contemplation to the validity of the electronic news implied in the electronic contract. The implementation of electronic commerce through electronic systems must pay attention to aspects of security, reliability, and efficiency. Despite its virtual nature, activities through electronic system media can be considered as real legal activities or deeds. Therefore, legal difficulties that are often faced are connected to the transmission of news, communiqué, and/or dealings automatically, particularly in terms of proof and materials connected to legal acts carried out through electronic systems (Mamitoho, et.al., 2014, Pujiyono, et.al, 2017).

The reality that occurs in cyber activity is complex because its behaviors are no longer limited to other countries. Especially due to the increase in interaction between commercial sector parties in the field of civil rights which was previously limited to locals to be part of global trade. So in 1966, the UNCITRAL which is a subsidiary of the United Nations (UN) adopted the Model Law on Electronic Commerce which will provide a basic legal framework as an instrument that facilitates but does not regulate electronic business.

The UNCITRAL Model Law was established as a basic control to adjust the legality, respect, and results of electronic messages founded on the use of computers in the commercial sector. The purpose of this is to homogenize legal rules in the use of computer networks for commercial transactions (Syahrin, et.al.,2020). UNCITRAL has supporter states chose by the General Congress to represent various geographical regions of the world and their main economic and legal systems. Indonesia and the United States are member states of UNCITRAL where both are authorized to play an active role in drafting UNCITRAL instruments through annual conferences. It is aimed to provide national legislators with an internationally acceptable set of rules to minimize or even eliminate legal barriers and Build a safer legal atmosphere for electrical business (Sorieu et.al., 2001, Riyanta, 2020).

The UNCTRL model law on electronic commerce has an important impact on the growth of laws to achieve the above objectives. This effect is supported by the Performance of the United States through the General Conference of Officers on Uniform State Loss (NCCUSL), which adopted the UNCTRL Model Act on Electronic Commerce in the form of the Uniform Electronic Dealing Act(UETA) in 1999. The
UETA is a comprehensive law that focuses on all types of electronic transactions and is shared between the federal and state governments. Indonesia also has its own legal products that regulate electronic dealings, namely Electronic Report and Deal Law (hereinafter referred to as the UU ITE) which also refers to the UNCITRAL Model Law on Electronic Commerce. The enactment of the UU ITE has at least regulated two important substances, which are the respect of electronic dealings and electronic papers in the licit connection of engagement and evidentiary law (Hapsari et al., 2019).

The principles of the UNCITRAL Model Law on Electronic Commerce are driven to achieve harmonization of laws on electronic transactions that are globally acceptable. This poses a global challenge, which is to unite countries with different economic capabilities, legal heritage, telecommunications infrastructure, and needs (Sorieu et al., 2001). To do this, the impact of the UNCITRL model law on electronic trade law that is being recognized or advanced about the auxiliary states and the world can be examined.

Considering the previous description, the author would like to further examine the comparison of electronic contract regulations in electronic transactions among Indonesia and the United States with reference to the UNCITRAL Model Law on Electronic Commerce.

2 METHODOLOGY

The legal study process used in this writing is a normative licit study method Known as theoretical legal study that look at

Primary and secondary legal materials based on law as an ideal (Pujiyono, et al, 2022). This training also studies literature trainings using a statutory approach that is conducted by reviewing all laws and regulations related to the valid problems of the learning... This writing also uses a conceptual method, which is an approach that concentrates on emphasizing understanding through legal concepts and principles related to the subject material studied in this writing, which is regarding the comparison of electronic contract arrangements in electronic transactions in Indonesia and the United States with reference to the UNCITRAL Model Law on Electronic Commerce. The analysis is then presented in the form of a table that will be used as a recommendation for strengthening law enforcement regarding electronic contracts in the future, especially for Indonesia.
The data used is primary and secondary legal tools. The primary legal issues are laws and regulations relating to electronic contracts in Indonesia and the United States. Indonesia's electronic contracts are regulated in the UU ITE. While in the United States, electronic contract regulations are regulated under the Uniform Electronic Dealings Act (UETA) of 1999. The United Nations Commission on Global Trade Law on Electronic Commerce (UNCITRL) will also be mentioned. 1966. Therefore, the aim of this study is to analyze the regulation of electronic contracts in Indonesia and the United States based on the provisions of the UNCITRL Model Act on electronic commerce through relevant guidelines, journals, descriptions, and records.

3 FINDINGS AND DISCUSSION
3.1 THE CONCEPT OF ELECTRONIC CONTRACTS

One of the developments in contract law is the rise of electronic contract (e-contract) which were informed in the UNCITRAL Model Law on Electronic Commerce in 1966. Although UNCITRAL does not explain the form of electronic contracts, there is a direction in Article 4 that the parties involved can form an agreement based on agreement. Through the principle of agreement, celebrate can make a deal in any form as long as it is agreed upon by the celebrate. Starting from the difference in form, UNCITRAL regulates it as "variation by agreement" (Bambang Pratama, et. al., 2017). Agreement on an arrangement is one of a series in the process of making a contract. This refers to the process of offering and acceptance whose different forms must be accommodated by law (Pappas, 2002; Jain et al., 2021). The proposal and acceptance movement in electronic contracts is articulated through data letters or electronic new by electronic means or known as electronic data interchange (EDI) as described in Article 11 of UNCITRAL (Fauji, et.al.,2017).

The 1999 Uniform Electronic Transactions Act (UETA) in the United States which adopted the UNCITRAL model law also does not regulate the specific form of an arrangement (Fedchenko et. al 2023). UETA only emphasizes that agreements using electronic media for agreements are entirely at the discretion of the parties to determine (Rosas, et.al., 2004). Speaking of electronic contracts, Indonesia's UU ITE provides an understanding of electronic contracts. The general provisions of Article 1 number 17 define an electronic contract as an promise among celebrations made finished an electronic system. The form of the electronic contract is also not regulated specifically in
UU ITE, but the electronic contract is considered valid as long as the news checked therein can be edited, displayed, promised integrity, and can be accounted for so that it explains a condition (Indah, et.al.,2010).

3.2 REGULATIONS IN THE UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE

Technological innovations simultaneously provide benefits and challenges in trading activities. The characteristic of trading through electronic systems or the net is that it helps greater partaking of customers. This results in increased interaction among celebrations in the commercial sphere that was once limited to the limited to the global. Technological changes indirectly require the development of a regulatory structure that takes technology into account.

UNCITRAL is an organization formed under the auspices of the United Nations (UN). UNCITRAL was formed to continue the progressive coordination and integration of global trade law with the interests of all nations in mind; especially developing countries in developing broad international trade. In 1996, UNCITRAL adopted the Model Law on Electronic Commerce based on recommendations and observations made since the mid-1980s.

This model law was adopted in answer to the growing number of global job transactions conducted through electronic data interchanges (EDIs) and other means of communication, otherwise known as electronic commerce (e-commerce) (Lestari & Yuliartini, 2011, Pujiyono, et al, 2021). As a result, UNCITRAL believed that a set of principles was needed to provide a basic legal framework focusing on what is needed to facilitate, rather than regulate. To make electronic commerce acceptable to countries with changed legal, public and economic systems and to contribute significantly to the growth of consistent international economic relations. The result is that through the UNCITRAL Model Law on Electronic Commerce, any electronic report in the form of electronic data can be said to have licit result, legality, and enforceability (Legal implications, validity, or applicability will not be denied based solely on news in the form of data messages).

The UNCITRAL Model Law on Electronic Commerce contains three key principal approaches on which the instrument is based. The three principles are (Sorieu et al., 2001):
1) Functional Equivalence, is the functional equivalence approach that electronic communications and documents serve the same function and purpose as conventional communications and documents.

2) Media/Technology Neutrality, is a technology-neutral approach that does not differentiate the type of technology applied in the movement and packing of all types of news.

3) Party Autonomy, is the party autonomy approach that this legal model provides freedom for the parties to regulate electronic commerce contracts between themselves.

Although the last point of the above principle emphasizes that the UNCITRAL model law does not require any exact type of agreement, it provides the minimum requirements for an agreement to be considered an electronic contract.

The first term is explained in Clause 6 of the UNCITRAL Model Law on Electronic Commerce that the information in an electronic contract must be in written form so that the information in it can be used as evidence if needed.

Article 7 explains the second requirement, namely the need for a signature in an electronic contract. That signatures are deemed necessary to:

1) Identify the parties using a particular method to commit the news covered in the electronic communication; and

2) The particular process above is reliable and applicable for the agreement made including the relevant contract.

The third requirement is specified in UNCITRAL Article 8, namely the originality of the contract form, with evidence of a reliable guarantee of the integrity of the electronic information from the time it was first produced to its final form, and the contract contains information that can be re-accessed by any party wishing to access the news contained in it. It is important to note this to prove a legal act included in an electronic contract.

Furthermore, in the context of contract creation, offers and acceptances can be disclosed through electronic data interchanges unless otherwise agreed upon. An offer is electronic information sent to the address by the originator.

An offer transmission occurs when electronic information enters an information system beyond the control of the originator. Where the recipient has designated an information system for the purpose of receiving the offer, the receipt occurs:

1) When electronic information enters the prescribed information system;
2) When electronic information is retrieved by the recipient, if electronic information is sent to the recipient's information system which is not the designated information system; Or
3) When electronic information enters the recipient's information system, the recipient's information does not designate the system.

The existence of a contract relating to the proposal and acceptance of electronic agreements constitutes a valid contract.

3.3 REGULATION IN INDONESIA

Long before Indonesia passed the Electronic Information and Transaction Act (UU ITE), electronic transactions attracted serious attention from the global community. UU ITE was created with the aim of ensuring the security and privacy of electronic transactions, as well as providing legal guarantees for users of such technology. According to Article 1 Point 2 of the UU ITE, electronic transactions are legal activities conducted using computers, processor systems, and/or other electronic media.

UU ITE has five ethics that form the basis for implementing the use of news technology and electronic trade, which are:

1) The principle of legal certainty, meaning that the legal basis and everything that supports the implementation of the utilization of news technology and electronic transactions are legally recognized inside and outside the court;
2) The principle of benefit, meaning that the utilization of news technology and electronic transactions is sought to help the activity of news so as to improve the welfare of the community;
3) The principle of prudence means that the basis for the parties concerned must pay attention to all aspects that have the potential to cause harm;
4) The principle of good faith, meaning that the principle used by the celebrations does not aim to intentionally and without rights or unlawfully cause harm to the other coalition without the other party's knowledge; and
5) Whatever the technology or technology, the principle of freedom of choice means that the use of news technology and electronic transactions does not focus on the use of specific technology so that it can keep pace with future changes.

Chapter 3 of the UU ITE states that facts, documents, electronic signatures, and their printouts are valid legal evidence. The provisions contained in it are an early part of
the legal relationship event where consumers must have an offer process from business actors at the beginning of building a legal relationship. (Syahrin, et. al., 2020). If the proposal activity receives an agreement from the celebrations, the next stage of the electronic transaction is bound by an electronic agreement.

An electronic contract is considered valid under the UU ITE if it is written and original and can be counted as prescribed in Article 6 of the UU ITE Act. The information contained in the electronic contract must be complete and accurate so that the information in the electronic contract can be obtained, read and understood by the parties to the contract. Article 9 of the UU ITE Act explains that "complete and accurate information" (informasi yang lengkap dan benar) includes:

1. News that contains the identity and status of the legal subject and its expertise as a producer, supplier, organizer, or mediator;
2. Other News that explains certain matters subject to the validity of the contract and describes the proposed products and/or services, such as the name, scent and description of the product/service.

(1) Furthermore, the validity of electronic contracts can also be seen from the contracts of the parties. This agreement occurs through the offer and acceptance process. The offer and acceptance time is explained in Article 20 of the UU ITE which states:

(2) Unless the parties are otherwise determined, an electronic transaction occurs when the transaction offer sent by the sender is received and approved by the recipient.

(3) There must be an electronic acceptance statement accompanying the approval of the electronic transaction proposal referred to in paragraph (1).

A contract in an electronic contract occurs when the transaction proposal is sent by the sender and then received and approved by the recipient. Then, the recipient's approval must be made with an electronic statement of acceptance, resulting in an agreement between the parties. Agreements between parties to electronic transactions can also be in the form of checking data, identity, personal identification number (PIN) or password. (Kadly et al., 2021).

The provisions listed in Article 18 of the UU ITE stipulate that the electronic transactions referred to in the electronic contract are binding on the parties. This means
that an electronic contract applies as a law to the parties that make it, and if one party violates it, the other party can sue the party that violates the contract.

3.4 REGULATION IN THE UNITED STATES

The United States adopted some of the principles of the UNCITRL Model Act on Electronic Commerce under the Uniform Electronic Transactions Act through the National Conference of Commissioners on Uniform State Law (NCCUSL). (UETA) in 1999. The UETA is not a general contractual statute. This means that no particular state has binding power unless that state approves the UETA so that it becomes mandatory law. (Gabriel, et.al., 2000; Braga, et.al., 2005).

The UETA's initial note states that the purpose of UETA is to remove barriers to electronic trade by verifying and applying electronic information and electronic signatures to electronic transactions to reduce business uncertainty and legal risks using electronic transactions (Chechel et.al 2023).

The United States sought to strengthen self-regulation and economic rationality rather than impose rules on the development and use of electronic commerce through the UETA. (Kierkegaard, et. al., 2007). The Uniform Electronic Transaction Act 1999 has the principle that it is a minimalist and procedural law. This means that it can be applied as long as the general principles of law in electronic contexts can eliminate the biases and barriers to electronic transactions. This foundation is designed to ensure that electronic information and signatures apply in the same way as written information and signatures prevalent under existing law.

UETA strictly regulates the use of electronics, but according to Article 5 UETA 1999The law does not require electronic records or signatures unless the parties mutually agree to make transactions through electronic devices. This article shows that the UETA gives as much party autonomy as possible to form a contract.

An electronic contract is responsible for a legal act performed by a person, even if the work is performed by an electronic agent or device of that person. Article 9 ensures that an electronic contract automatically created by an electronic agent is not considered a machine act, but rather a valid legal act performed by an individual. This provision is possible because the UETA has a regulation regarding the Certificate Authority (CA) as part of the regulation regarding the validity and validity of electronic transactions. (Efraim Turban & King Jae Kyu Lee, et.al., 2015). UETA has introduced the CA concept as a
team that provides digital certificates to other parties to verify their identity in electronic transactions.

The law even allows notary and other authorised officers to work electronically. This is done when a law requires acting, recognition, verification, or swearing in an electronic contract (Kahane, n.d.). According to UETA 1999, an agreement occurs when there is an electronic action that qualifies as an acceptance of an offer. Section 8 of the UETA 1999 governs agreement and reads as follows: "A agreement may be formed by the interaction of an offer and acceptance over a computer network." This ensures that an electronic agreement can be formed through the interaction between offer and acceptance through a computer network. Therefore, a contract can occur through electronic activities such as email, online forms or electronic contract platforms.

UETA ensures that electronic contract agreements should not be rejected simply because they have the same legal powers as electronic and conventional contracts. However, in order to ensure the validity of an electronic contract agreement, the parties involved must meet the conditions set out in the contract law and applicable laws outside the UETA. The above comparison can be shown in the table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Comparison Substance</th>
<th>United Nations Commission on International Trade Law (UNCITRAL)</th>
<th>Indonesia</th>
<th>United States of America</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Purpose</td>
<td>A set of principles that provide a basic legal framework by focusing on what is needed to facilitate, rather than regulate, electronic commerce so that it is acceptable to countries with different legal, social, and economic systems and can make a significant contribution to the development of harmonious international economic relations.</td>
<td>A law established to regulate and protect the public in the use of information technology and electronic transactions. This law also aimed to ensure the security and confidentiality of electronic transactions, as well as providing legal guarantees for users of such technology.</td>
<td>The purpose of the UETA is to remove barriers to electronic commerce by validating and enforcing electronic information and electronic signatures in electronic transactions so as to reduce uncertainty and legal risks for businesses using electronic transactions.</td>
</tr>
</tbody>
</table>
3. **Principle**
   - a. Functional Equivalence;
   - b. Media/Technology Neutrality;
   - c. Party Autonomy

Out of the five principles used by UU ITE, only one principle from the UNCITRAL Model Law on Electronic Commerce is adopted by the UU ITE, namely the principle of technology neutrality listed in Article 3 of the UU ITE. This principle means that the use of information technology and electronic transactions is not focused on the use of certain technologies so that it can keep up with future developments.

The UETA has the principle that it is a minimalist and procedural law. This means that it can be enforced as long as the general principles of law in the electronic context can eliminate biases and barriers to electronic transactions. This premise is aimed at ensuring that electronic information and signatures are enforceable in the same way as conventional written information and signatures under existing laws.

4. **Validity Requirement of an E-Contract**

Firmly state that all electronic information in the form of electronic data including electronic contracts can be said to have legal effects, validity, and legal force by fulfilling the following conditions:
   - a. Written, listed in Article 6; and

The legal requirements for electronic contracts according to this law include:
   - a. Written and original (Article 6);
   - b. Contains complete and correct information (Article 9); and
   - c. There is an agreement between the parties (Article 19).

This law recognizes that electronic contracts are as legally enforceable as conventional contracts. However, this law does not provide for the legal conditions to ensure the validity of electronic contract agreements so the parties involved must fulfill the conditions specified in contract law and applicable laws outside the UETA.

5. **Formation of Agreement**

Offers and acceptances may be expressed through electronic data interchange unless otherwise agreed by the parties. An offer is electronic information sent by the originator to the addressee. The transmission of an offer occurs when electronic information enters an information system outside the control of the originator.

An agreement in an electronic contract occurs when the transaction offer is sent by the sender and then received and approved by the recipient. Then, the recipient's approval must be made with an electronic statement of acceptance, so that an agreement between the parties is reached.

Article 8 of the UETA only provides that electronic contractual agreements can be formed through a process of offer and acceptance over a computer network, without providing specific requirements on how the consent process can be proven.

Source: Prepared By the Author (2023)
4 CONCLUSION AND SUGGESTION

Through the Model Law on Electronic Trade, the United Nations International Trade Law Commission (UNCITRL) determines that electronic contracts must be accepted and recognized as valid as conventional contracts. It shows that international law shows that electronic contracts can be used as valid evidence in court. However, the strength of electronic contracts as evidence in court is highly dependent on the national laws of each country. The Uniform Electronic Transactions Act (UETA) of the United States also states that electronic contracts must be recognized as valid as long as they meet the same formal requirements as conventional contracts, so they have the same power as evidence in court as conventional contracts. Similarly, Indonesia, through the Electronic Information and Transactions Act, states that any electronic forms legalized and accepted by law, including electronic contracts, are legal and accepted by law. Although both Indonesia and the United States have adopted some provisions of the UNCITRL Model Law on electronic commerce, they have different legal implications. UU ITE focuses on the use of information technology and the Internet to ensure the security and privacy of electronic transactions, as well as to provide legal guarantees for technology users. Thus, UETA focuses on legalizing electronic transactions, including electronic contracts, to remove as many barriers to electronic commerce as possible.
REFERENCES


