

Children's Legal Competence in Electronic Transactions: An Analysis of Normative Gaps from the Perspective of Indonesian Civil Law

Aina Tasya Maharani Samaila¹, Muh Arfandi¹, Andi Azka Azkia Laelita Harun¹, Andi Faizah Aulia Putri¹, Agung Darwis¹, Cahaya Amanda Azis¹, St Alifyani Zahra¹

¹ Universitas Negeri Makassar, Indonesia

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ABSTRACT

The rapid technological developments in the current era are also changing various types of human interactions, one of which is economic interaction. Nowadays, many things can be searched for and purchased online or through fully digital e-commerce platforms. This phenomenon cannot be separated from the active role of minors in online transactions. However, the involvement of children in this digital pattern has particular urgency in civil law, related to the legal capacity of a child in the context of making agreements. Based on Articles 1320 and 1330 of the Civil Code, children who have not reached adulthood do not have the capacity to independently make valid agreements. Research results indicate a normative gap (recht vacuum) in the Electronic Information and Transactions Law (UU ITE), which has not specifically regulated the minimum age and legal capacity regarding subjects in electronic transaction phenomena. Thus, transactions carried out by minors can be canceled due to the failure to meet the subjective requirements. And if a dispute occurs, it will be borne or transferred to the parents or guardians as the responsible party. This research provides the idea for the need to upgrade regulations regarding strong money and be stricter to provide legal certainty and protection for children, business actors, as well as digital platform organizers.

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Corresponding Author:

Muh Arfandi
Universitas Negeri Makassar, Indonesia; muharfandiyy@gmail.com

1. INTRODUCTION

The rapid development of information technology in the past decade has brought about fundamental changes in the pattern of economic interactions in Indonesian society. The presence of digital platforms such as marketplaces, e-commerce applications, and electronic wallets has shifted the way transactions are conducted from conventional methods to entirely online. What draws attention from a legal perspective is the fact that active users of these platforms are no longer limited to adults. Children and teenagers are now also actors in the digital economy ecosystem, both as buyers and sellers. In fact, according to PayPal research cited in various legal studies, around 9% of sellers on Indonesia's e-commerce platforms are under 20 years old, a figure significant enough to attract serious attention from

academics and legal practitioners. This phenomenon actually contains legal issues that are not simple, especially from the perspective of civil law. Indonesian civil law, through the Civil Code (KUHPerdata), has long regulated that not everyone has full capacity to perform legal acts, including making agreements. Article 1320 of the Civil Code stipulates four conditions for the validity of an agreement, consisting of two subjective conditions, namely the consent of the parties and legal capacity, and two objective conditions, namely a specific object and a lawful cause. Furthermore, based on Article 1330 of the Civil Code, those who are declared incompetent to make agreements include minors. This provision directly raises fundamental questions regarding the legal status of every transaction conducted by children through digital platforms, as well as who should bear the legal consequences if a dispute or loss occurs. This issue is becoming increasingly complex considering the unique characteristics of digital transactions that are very different from conventional transactions. In conducting online buying and selling transactions or e-commerce, a person cannot be certain whether the parties involved are legally competent as regulated in Article 1320 of the Civil Code, and one of the legal issues that has not yet been regulated is the minimum age limit for conducting transactions in e-commerce. This situation is exacerbated by the fact that national regulations regarding age restrictions for using digital platforms have not been fully effective in providing legal protection, creating a legal vacuum that has the potential to harm various parties, especially children themselves as parties who are legally considered not yet capable of acting independently. On the other hand, the phenomenon of click agreement emphasizes that consent in digital transactions is often given without substantial understanding of the contract's contents, a condition that is certainly much more likely to occur in users who are still children. Nevertheless, civil law does not leave this issue completely unresolved. Agreements in online sales transactions made by minors are based on Articles 1320 and 1331 of the Civil Code, where even if the element of capacity is not fulfilled, the agreement can be canceled, and in the event of a dispute or problem, the responsibility is borne by their guardian. This indicates that the Indonesian civil law system has actually provided a protection mechanism, namely through the transfer of responsibility to the parents or guardians. However, this mechanism is not yet sufficient to address the complexities that arise in current digital transaction practices. Therefore, an in-depth study regarding the legal accountability of children who conduct transactions through digital platforms from a civil law perspective becomes an urgent necessity, in order to provide adequate legal certainty for children, parents, business actors, and platform operators digital itself. Therefore, the purpose of our research is to discuss 'The Legal Accountability of Children Who Conduct Transactions Through Digital Platforms from the Perspective of Civil Law'

2. METHODS

This study employs a normative juridical research method, focusing on the analysis of legal norms, principles, and doctrines related to electronic transactions and the legal capacity of minors under Indonesian civil law.

2.1. Research Approach

The research applies:

- a. Statutory Approach, by examining relevant regulations such as the Civil Code (Articles 1320, 1330), the ITE Law, Consumer Protection Law, Child Protection Law, and Marriage Law.
- b. Conceptual Approach, by analyzing legal concepts including legal capacity, validity of agreements, electronic contracts, and *recht vacuum*.

2.2. Sources of Legal Materials

The study uses secondary data, consisting of:

- a. Primary legal materials: legislation and official legal documents;
- b. Secondary legal materials: books, journal articles, and expert opinions;
- c. Tertiary materials: legal dictionaries and supporting references.

2.3. Data Collection and Analysis

Data are collected through library research, by reviewing relevant legal sources and literature. The analysis uses qualitative juridical methods, including interpretation of legal norms, legal reasoning, and normative evaluation to identify regulatory gaps and formulate legal recommendations.

3. FINDINGS AND DISCUSSION

3.1. *The Legal Position of Children in Online Transaction Agreements.*

Humans in natural fact as individuals or as part of members of society have very strong relations with one another, in this context arising the binding relationships that must be carried out within certain legal rules which are called the law of obligations. An obligation is a legal relationship between two parties, based on one party having the right to receive something from the other party and the obligated party being required to fulfill it in accordance with the agreement. A contract is the source of an obligation, and a contract gives rise to an obligation. In a purchase and sale, both parties make a mutually binding agreement. Buying and selling can be done anywhere, one of which is through social media or online. Online buying and selling refers to the purchase and sale of goods and services conducted online through electronic media, which can be done over long distances or across countries. In civil law, buying and selling is regulated under Article 1457 of the Civil Code, which states: 'Buying and selling is an agreement whereby one party binds itself to deliver a good, and the other party to pay the agreed price.

In the world of buying and selling, the term e-commerce is certainly not unfamiliar. It is a place to conduct transactions or buy and sell on social media that are carried out online. Generally, e-commerce has 3 characteristics:

- Transactions between two or more parties
- Availability of goods and services as well as information
- The Internet as the main medium.

Among these three characteristics, what we need to discuss is about the parties who sometimes become one of the issues in online transactions or buying and selling. The issues we need to know about concern contracts in online transactions, which consider the ages of maturity as people who are legally competent.

According to Civil Law, an agreement is declared valid if it meets four conditions listed in Article 1320 of the Civil Code, namely: (1) there is mutual consent, (2) the parties have the capacity to act, (3) the object of the agreement is specific, and (4) the purpose of the agreement does not conflict with the applicable legal norms. The first two elements fall under the category of subjective conditions, while the next two elements fall under the category of objective conditions. The failure to fulfill the subjective conditions opens up the possibility for the aggrieved party to file for annulment, whereas if the violated condition is objective, the agreement is automatically considered as having never existed from the beginning. In online transaction practices, the aspect of legal competence of the parties, particularly sellers and buyers, is often simply overlooked. Generally, a person is only considered legally competent after reaching the age set as the threshold of adulthood. However, the problem is that various laws and regulations in Indonesia, both within the framework of positive law and Islamic law, set different age limits and there is no single regulation that governs it comprehensively. This issue is not only experienced in Indonesia but has become a global phenomenon alongside the increasingly widespread access to the internet. In various countries, children who are underage are even intentionally targeted in online product marketing strategies, a condition that certainly raises serious concerns regarding the protection of children as consumers. From the perspective of legal consequences, online buying and selling transactions involving minors have essentially created a legal relationship that is formalized in the form of an electronic agreement, as referred to in Article 1 number 17 of the Information and Electronic Transactions Law (ITE Law). It should be understood that buying and selling activities no longer require direct meetings between buyers and sellers, because transactions can now be carried out

through internet-based electronic media. Referring to Abdulkadir Muhammad's view, there are four conditions that determine the validity of an agreement based on Article 1320 of the Civil Code:

a) Existence of mutual agreement

All parties involved in the agreement must share aligned intentions. In the context of an insurance agreement, for example, both the insured and the insurer must agree on the object being insured along with all its terms and conditions.

b) Legal capacity of the parties

Each party, including the insured and the insurer, must be legally recognized as a subject capable of performing valid legal acts.

c) Clarity of the agreement's object

The object being agreed upon must be clearly defined, for example, tangible assets, interests attached to them, or aspects of a person's life and health in the context of insurance.

d) Legitimate cause

The content of the agreement must not contradict the law, must not disturb public order, and must not violate the moral values prevailing in society.

If the electronic buying and selling mechanism is associated with these four conditions, it can be analyzed as follows:

a) Agreement of the parties Although the law does not provide an explicit definition of "agreement," substantively this term refers to the meeting of two corresponding wills. Since the law only recognizes actions that are manifested concretely, these wills must be expressed, either in writing in the form of an authentic deed or a private deed, verbally, through certain gestures, or implicitly without special formalities. An agreement is considered to be born and binding once the parties reach an agreement on essential matters, provided that the agreement is given voluntarily without duress, mistake, or elements of fraud, in accordance with Article 1321 of the Civil Code. In the realm of online sales, an agreement is formed when a prospective buyer reads and agrees to the applicable terms and then expresses their intention to transact.

b) Legal Capacity to Act

The Civil Code distinguishes between the concepts of "incapable" (*onbekwaam*) and "unauthorized" (*onbevoegd*). A person who is incapable, such as a minor or someone under guardianship, legally cannot enter into a fully binding agreement. Meanwhile, a person who is unauthorized still has general capacity but is prohibited from performing certain legal acts based on specific provisions in the Civil Code. Article 1329 of the Civil Code affirms the principle that everyone is basically capable of entering into agreements, except as otherwise provided by law. The parties exempted from this capacity are regulated in Article 1330 of the Civil Code. The problem is that, because online transactions take place without face-to-face interaction, the seller does not have the ability to directly verify whether the buyer has met the legal capacity requirements. Article 330 of the Civil Code sets the age of majority at 21 years or being married, whereas Article 39 of the Notary Act sets the minimum age at 18 years. This difference creates legal uncertainty, especially for Notaries in determining which regulation should be prioritized. The Marriage Law in Article 47 in conjunction with Article 50 also stipulates that a child is under the authority of parents or guardians until reaching the age of 18. It can be concluded that Indonesian contract law does not set a uniform age of majority, as it is regulated separately in personal law and family law. This situation makes the requirement of competence in Article 1320 of the Civil Code difficult to fulfill in the context of online transactions. Although Book III of the Civil Code is supplementary law (complementary law that can be deviated from), the provisions of Article 1320 are mandatory and cannot be simply disregarded. Empirically, online trading platforms generally do not implement strict buyer age verification mechanisms.

c) Specific Object

Every agreement requires a clear and measurable performance. In e-commerce transactions, this means that the goods or services being traded must be specifically mentioned and described. Online sellers generally provide complete product information as part of their offer.

d) Lawful Cause

The terms and conditions commonly set by platforms and online sellers include explicit provisions regarding what is allowed and what is prohibited. Thus, indirectly, agreements in online transactions have fulfilled the requirement of a lawful cause. Sellers, as business actors, and buyers, as consumers, are each bound by different rights and obligations, and platforms generally strictly prohibit the trade of goods or services that violate legal provisions.

Overall, the relationship between business actors and consumers in the online trading ecosystem is bound by standard agreements whose clauses have been unilaterally designed by business actors. The position of consumers in this case tends to be passive, only able to accept or reject without room for negotiation. This imbalance of bargaining position is often the root of disputes between business actors and consumers in online transactions. However, upon closer examination, the ITE Law has fairly fundamental weaknesses in regulating the subjects of electronic transactions. Kuspraningrum (2011) points out that although the ITE Law aims to accommodate digital contract mechanisms, the law does not have specific provisions regarding legal capacity, particularly concerning underage participants, and does not fully integrate the legal criteria of Article 1320 of the Civil Code or the UNCITRAL Model Law on Electronic Commerce. This condition gives rise to what is known in legal studies as a norm vacuum (*recht vacuum*), which is a situation where there are acts or legal relationships that require regulation, but there is no adequate positive legal norm governing them. This norm vacuum can potentially harm various parties, especially children involved in online transactions without sufficient understanding of the legal consequences. To fill the gap of those norms, the principle applies that general law (*lex generalis*) remains in effect as long as there is no specific norm (*lex specialis*) regulating it. This is implicitly acknowledged in the Explanation of Article 18 paragraph (1) of the ITE Law, which emphasizes that the provisions regarding electronic contracts do not preclude the possibility of canceling an agreement based on the applicable law, in this case, the Civil Code. Thus, the provisions of Article 1320 in conjunction with Article 1330 of the Civil Code remain in effect as norms that fill the legal void of the ITE Law in terms of the capacity of the parties in electronic transactions.

3.2. Dispute Resolution

Legal protection for consumers in trade transactions through electronic systems is regulated within the framework of online sales agreements, both in terms of formal requirements and material requirements. These provisions still refer to the validity requirements of an agreement as stipulated in the legislation. Considering that there are no special regulations governing this separately, the current legal basis still comes from the General Provisions of Civil Law Book III. The elements contained therein are considered appropriate and can be applied in electronic trade transactions, especially through the information and explanations provided in the transaction system. Dispute resolution arising from electronic trade transactions can be pursued through two channels, namely out-of-court settlement and settlement through judicial institutions. The solution considered most appropriate and prioritizing a balance of interests is through an out-of-court route, such as negotiation or mediation. This method of resolution is considered more advantageous because it does not create the impression that one party loses or wins, the process runs faster, and it requires more affordable costs. Based on research on the civil legal responsibility borne by digital platforms for damages suffered by consumers, there are several important conclusions. First, the legal basis regulating this matter has experienced a shift in orientation: initially adhering to the conventional approach that requires proof of fault, it increasingly adopts the principle of strict liability, where responsibility applies regardless of fault, especially if the platform is directly and actively involved in the transaction process. Second, the responsibility that platforms must bear includes the obligation to provide compensation in the event of system failures,

negligence in supervising parties that cooperate with them, and failure to provide internal dispute resolution mechanisms that function properly and effectively. Third, for consumers, proving that they have actually suffered losses is not an easy task. Some common obstacles encountered are the difficulty of obtaining access to evidence in the form of technical data, weaker bargaining positions and legal standing compared to platforms, as well as difficulties in resolving disputes, either through the courts or through procedures provided by the platforms themselves. Fourth, strengthening legal rules and protection for consumers in the digital space becomes very urgent. This can be realized by clarifying the limits of platform responsibility, requiring them to have problem prevention systems and loss recovery procedures, and developing ways of dispute resolution outside of court that are fast, transparent, and fair for all parties.

The rapid development of the digital economy demands that the legal system continually adapt, so that it can maintain a balance between protecting consumers' rights on one hand, and supporting technological advancement on the other. Legal regulations that can respond to the nature and characteristics of electronic transactions are expected to make platforms more accountable, increase public trust in conducting online transactions, and ensure clear and reliable legal certainty for all digital economy actors in Indonesia. In accordance with Article 1320 of the Civil Code, the two main requirements for an agreement to be declared valid are the existence of consent between the parties and the legal capacity of the parties involved. Considering that information activities and electronic transactions often involve actions that violate regulations and carry legal consequences, the parties making an agreement must meet certain requirements, namely having sound judgment, being legally competent, and having reached a minimum age of 21 years. In addition, everyone who uses electronic services or systems is required to comply with the applicable regulations so as not to cause disruption to public order or the moral values prevailing in society. Therefore, firm legal regulations are needed regarding access to data and the implementation of electronic transactions in order to prevent losses to other parties. In this case, awareness of the importance of the law is also a very fundamental matter. If the requirements for a valid agreement that are subjective in nature are not met or are violated, the agreement falls into the category of being voidable. This means that, as long as there is no annulment decision from the court, the contents of the agreement remain binding on both parties, but one party has the right to submit a request for annulment to the court. In short, such an agreement does not automatically become void by law, but must first go through the annulment request process, and this is the legal consequence if the subjective requirements are not met.

Meanwhile, if the objective requirements of the agreement are not met, the legal consequence is that the agreement is null and void by law, which means that the agreement is considered to have never existed from the beginning. For example, in online shopping transactions with a cash-on-delivery system, the agreement is declared null and void by law if the order is made by a child under the age of 21 or who does not have the legal capacity to perform legal acts. (Rizky Sanjani Dalimunthe, "Online Purchases with a Cash on Delivery System by Minors According to Digital Transaction Law,"). In the implementation of sales and purchase agreements through electronic systems, there are no explicit provisions regarding the minimum age for parties authorized to conduct transactions. This becomes a crucial concern, especially when linked to the management and protection of electronic data as regulated in various laws and regulations, including Law Number 8 of 1999 concerning Consumer Protection, the Law on Information and Electronic Transactions, as well as Law Number 23 of 2002 as amended by Law Number 35 of 2014 on Child Protection. This condition opens up opportunities for everyone, regardless of age limits, to access and carry out electronic transactions easily and quickly, including for those who are still considered children or have not reached adulthood. However, it should be realized that most children do not yet have the adequate ability and maturity to utilize information and conduct electronic transactions with full caution. Generally, they do not fully understand the risks and legal consequences arising from their actions, so this has the potential to create fundamental problems in terms of consumer rights protection and personal data security. Based on this, a strengthening of legal regulations that is more stringent is necessary, accompanied by efforts for

guidance and providing adequate understanding, in order to ensure protection and security for children in conducting transactions in cyberspace and to foster a sense of responsibility in the use of technology. Considering the development of the times, which makes access to electronic transactions increasingly open, the participation and supervision of parents become very urgent and decisive. This is due to the tendency for disputes or breaches of contractual obligations to occur, particularly in purchase transactions based on pay-on-delivery systems, which are often carried out by minors through social media means.

4. CONCLUSION

The development of digital technology has drastically changed the patterns of economic interaction, where children now become active actors in e-commerce transactions. However, from the perspective of civil law, the involvement of underage children raises serious issues regarding legal capacity in making agreements. Based on Articles 1320 and 1330 of the Civil Code, a child who has not reached adulthood is considered to lack the legal capacity to make commitments or contracts independently. This causes transactions carried out by such children to have a legal status that can be annulled due to the failure to meet the subjective requirements in the agreement. If disputes or losses occur later, the legal responsibility is automatically transferred to the parents or guardians as the accountable parties.

This condition is compounded by the phenomenon of a normative vacuum (*recht vacuum*) in the ITE Law, which has not yet specifically regulated the minimum age limit as well as the competency standards of subjects in electronic transactions. The anonymous nature of online transactions makes it difficult for business actors to verify the maturity of consumers, making the principles of child protection and legal certainty vulnerable to neglect. Therefore, there is an urgent need to update regulations to be more assertive and comprehensive in providing protection for children, business actors, as well as digital platform providers. In addition to strengthening regulations, strict supervision from parents also becomes a key element to prevent the negative legal impacts of children's activities in cyberspace.

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