



## Responsibility of The Parties in Electronic Transactions

Muhammad Yunus Idy<sup>1\*</sup>, Abdul Rauf<sup>2</sup>

<sup>1</sup>Faculty of Law, Islamic University of Makassar, Indonesia

<sup>2</sup>Faculty of Law, University of DIPA Makassar University

\*Correspondence: [muhyunusidy.dpk@uim-makassar.ac.id](mailto:muhyunusidy.dpk@uim-makassar.ac.id)

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### ABSTRACT

Indonesia is still classified as a country that is in a position of corruption based on the results of the release of Transparency International Indonesia. Even in cases of criminal acts of corruption have reached remote areas. To suppress this rate, the central government to the regions then formed a Task Force for Sweeping Illegal Charges (Satgas Saber Extortion). Has a role to take action against and prevent the occurrence of criminal acts of corruption in the community. This study aims to determine the role of Saber Pungli in eradicating corruption. The research method used is normative-empirical legal research. The results of the study show that Saber Pungli is not yet optimal in carrying out corruption eradication work in the regions.

**Keywords:** Saber Extortion, Corruption, Criminal Acts.

## 1. Introduction

The 1945 Constitution does contain the idea of political democracy and at the same time economic democracy. That is, in the highest power holder in our country is the people, both in the political and economic fields (Salam et al., 2021). Electronic trading is a form of trading that has its own characteristics, namely trade that is not only local, but can cross national borders. In addition, sellers and buyers do not meet in person, while the media used as a means of information and data transformation is the internet. Transactions carried out electronically are basically engagements or legal relationships that are carried out by combining computer-based electronic network systems with communication systems, which are further facilitated by the existence of a global computer network or internet (Permana Shidiq et al., 2021). However, in the Electronic Information and Transactions Act it is not explained in detail regarding the fields or types of electronic transactions. In general, the term electronic transactions is used for every trading activity, which uses *electronic systems (electronic commerce)*, both nationally and internationally (Ade Putri & Neltje, 2020).

A legal relationship arising in an electronic transaction is a relationship between two or more parties that have legal consequences, in the sense of giving rise to rights and obligations for the parties and regulated based on the provisions of applicable law. In this case, the right is the authority of a person or a party to do something, otherwise an obligation is something that must be fulfilled by someone to the other party (Rizka & Attimidzi, 2022). This legal relationship is usually expressed in a form of agreement or agreement called a contract term.

An electronic contract is an agreement of the parties made through an electronic system. In this case the electronic document must be understood as a form of agreement between the parties, which is not only formulated in the form of an electronic agreement, but also in the form of the features provided, such as "*I agree, I accept*" as a form of agreement or agreement. The legal relationship in an electronic contract is the embodiment of the principle of *freedom of contract* or "*freedom of contract*" (Santoso & Pratiwi, 2008). In the provisions of Article 1338 of the Civil Code it is stated that any agreement or contract made, applies as a law to those who make it. Furthermore, in Article 20 paragraph (1) of the UUITE it is stated that unless otherwise specified by the parties, electronic transactions occur when the transaction offer sent by the sender has been received and

approved by the receiving party and approval of the electronic transaction offer must be done by electronic acceptance statement as well. It was at this time that the rights and obligations of both parties were born.

Based on the provisions of Article 19 of Law No.11 of 2008 on Electronic Information and Transactions (UUITE) it is stated that "the parties who make electronic transactions must use the agreed electronic system". Therefore, before making a transaction, the parties must agree to determine the electronic system to be used in making the transaction. After the parties agree, the buyer must have sufficiently studied the *terms of condition* (the provisions required) by the seller. If the *term of conditions* has been approved and fulfilled by the buyer, then the next step is to click the "SEND" button or by marking "√" by the buyer as a sign of approval to the agreement offered by the seller. In this *e-commerce* transaction, payment can be made using a credit card (credit card), debit card (*debit card*), personal check (*personal check*), or transfer between accounts (Kiswanto, 2011).

Based on the description above, it can be understood that electronic transactions or trade contracts carried out through electronic media are multidisciplinary, covering various aspects such as network and telecommunication techniques, security, storage and data collection, marketing, sales, payments, and other aspects such as making agreements according to applicable law. Juridical problems that often arise in electronic transactions are about the accountability of the parties involved in it including ways of settlement that can be taken when a dispute arises.

## **2. Methodology**

This study examines the responsibilities of the parties in electronic transactions. The discussion in this study is based on theories and laws and regulations related to the responsibilities of the parties in electronic transactions. The research results will be presented clearly and systematically. Based on the foregoing, this research includes research in the field of civil law. This research is a type of normative research whose studies include statutory provisions (in abstracto). The type of legal research is descriptive, which is to explain in full, detailed, and systematic in accordance with the problems being discussed.

## **3. Result and Discussion**

### **3.1 Responsibility of The Parties in Electronic Trading Transactions**

Terms that refer to accountability in the dictionary of law, namely *liability* and *responsibility*. *Liability* is a broad legal term and refers to almost any character of risk or responsibility, which includes all actual or potential character rights and obligations such as loss, threat, crime, cost or condition that create the duty to carry out the law. *Responsibility* means what can be accounted for an obligation, and includes judgment, skills, abilities and proficiency including the obligation to be responsible for the law. In a practical sense and use, the term *liability* refers to legal liability, i.e. responsibility for mistakes committed by legal subjects, while the term *responsibility* refers to political accountability (Hadi et al., 2021).

If a person is legally responsible for a particular act, then it indicates that the person concerned may be subject to a sanction in the case of an opposite act. Normally, the sanction imposed on a person is because of his own actions that make the person must be responsible. According to traditional theory, there are two types of accountability: *responsibility based on fault* and *absolute responsibility*, (Makarim, 2009). In its application, the losses incurred are also adjusted to the mistakes made, whether it is a severe mistake or a mild error, where the weight and lightness of an error have implications for the responsibility to be borne the principles of responsibility in law can be divided into (Shidarta, 2006):

#### **a. Principle of Responsibility Based on Error Elements**

The principle of liability based on fault (*liability based on fault*) is a principle that is quite common in criminal and civil law. In the Civil Code, in particular articles 1365, 1366, and 1367, this principle is firmly held. This principle states that a new person can be held legally accountable if there is an element of guilt committed. Article 1365 of the Civil Code, commonly known as the article on acts against the law, requires the fulfillment of four main elements, namely:

- 1) The existence of deeds;
- 2) The existence of an error element;
- 3) There are losses suffered;

4) There is a causality relationship between error and loss.

The error in question is an element that is contrary to the law. The understanding of the law is not only contrary to the law but also propriety and decency in society.

#### **b. Principles of Presumption to Always Be Responsible**

This principle states that the defendant is always held responsible (*presumption of liability principle*), until he can prove his innocence. The word "considered" on the principle of "*presumption of liability*" is important, since there is a possibility of the defendant absolving himself of responsibility, that is, in the event that he can prove that he has "taken" all necessary measures to avoid the occurrence of losses. The burden of proof based on this principle is on the defendant. In this case it appears that the burden of proof is reversed (<http://www.blogger.com/post-create.g?blogID=8092365910558388529> - [ftn4omkering van bewijslast](#)).

#### **c. The Presumption Of Not Always Being Responsible**

This principle is the opposite of the second principle, the presumption of not always being responsible is known only in the very limited scope of consumer transactions. An example of applying this principle is to the law of carriage. Loss or damage to cabin baggage or hand baggage, which is usually carried and supervised by the passenger is the responsibility of the passenger. In this case the carrier (business actor) cannot be held accountable. The party charged to prove the wrong is with the consumer.

#### **d. Principle of Absolute Responsibility**

The principle of *absolute liability* is often identified with the principle of absolute *liability*. However, there are also experts who distinguish the two terminology above. There is an opinion that states, *strict liability* is a principle of responsibility that establishes mistakes not as a determining factor. However, there are exceptions that allow to be relieved of responsibility, for example in force *majeure* circumstances. In contrast *absolute liability* is the principle of responsibility without error and there are no exceptions. According to E.Suherman, *strict liability* is equated with *absolute liability*, in this principle there is no possibility to absolve oneself of responsibility, unless the loss arises due to the fault of the harmed party itself. Responsibility is absolute (Suherman, 1979).

#### **e. Principles of Responsibility With Restrictions**

Principle of responsibility with *limitations* (*limitation of liability principle*). This principle is very fond of business actors to be included as an exoneration clause in the standard agreement they make. According to Edmon Makarim, based on the existence of a legal obligation related to the occurrence of an indeterminate event (*accident*), then the legal liability is divided into: (i) responsibility before the occurrence of an event; and (ii) responsibility after the event. Responsibility before an event (*ex-ante liability*) is the responsibility to comply with all laws and / or regulations of the State administration in order to provide something worthy to the public, such as: *safety regulation*, *standard merchantability*, *quality of services*, and the application of good governance principles to the implementation of a company. While the responsibility after the incident (*ex-post liability*) is the responsibility to restore the situation for the aggrieved party to the original state represented by the payment of a certain amount of compensation in accordance with the loss suffered as a form of compensation from the act. This principle of legal accountability is the implementation of *the interactive justice* paradigm, where the basis for the existence of responsibility is to uphold the obligations that should be carried out by everyone in having relationships or interactions with others. Therefore, the scope of this legal accountability includes efforts to prevent the occurrence of risks (*preventive*) to risk management efforts (repressive).

In a trade relationship through electronic media, the responsibilities of the parties have existed both before the agreement and after. In general, each party is responsible for providing the other party with the correct information, especially in relation to the products offered. While the responsibility after the agreement is agreed is the responsibility to fulfill all clauses as contained in the agreement. The parties involved in a trade transaction through electronic media are:

1. Seller (*merchant*) as a business actor who offers products.
2. The buyer is the party who receives an offer from the seller and then makes a sale and purchase transaction.
3. Bank as a distributor of funds from buyers or consumers

#### 4. Provider as an internet service provider.

Each party as mentioned above, has its own rights and obligations. Sellers / business actors (*merchants*) are parties who offer products through the internet. Therefore, the seller is responsible for giving correctly and honestly the products offered to the buyer or consumer. In addition, the seller must also offer products that are allowed by law, meaning that the goods offered are not goods that are contrary to laws and regulations, not damaged or contain hidden defects, so the goods offered are goods that are worth selling. The seller is also responsible for the delivery of products or services that have been purchased by a consumer in accordance with the mutually agreed period of time. Thus, the product or service traded does not cause harm to anyone. 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 he sells and also entitled to get protection for the actions of buyers / consumers who have bad faith in carrying out this electronic buying and selling transaction. So, the buyer is obliged to pay a certain amount of price for the product or service he has ordered to 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 submitted between the seller and the buyer, in addition to filling in the actual personal identity data in the acceptance form. On the other hand, buyers / consumers are entitled to get complete information on the goods they will buy. Buyers are also entitled to legal protection for the actions of sellers / business actors who are not in good faith. The Bank as an intermediary in buying and selling transactions electronically, is obliged, and responsible as a distributor of funds for the payment of a product from the buyer to the seller, because it is possible that the buyer / consumer who wants to buy products from the seller through the internet cannot be directly related, so the buyer must use the bank's facilities to make payments on the price of the products he has purchased from the seller, for example, with the process of transferring from the buyer's account to the seller's account (*account to account*).

The provider is another party in electronic buying and selling transactions, in which case the provider has an obligation or responsibility to provide access services at any time to the parties to be able to conduct electronic buying and selling transactions through internet media. In this case there is cooperation between sellers / business actors and providers in running a business through this internet. Electronic buying and selling transactions are legal relationships that are carried out by combining networks (*networks*) of computer-based information systems with communication systems based on networks and communication services.

Each party as outlined above, may be burdened with responsibility based on the provisions stipulated in the ITE Law, especially in Article 21 which among others states that:

If done alone, all legal consequences in the implementation of electronic transactions are the responsibility of the parties to the transaction;

- a.) If done through the granting of power of attorney, all legal consequences in the implementation of electronic transactions become the responsibility of the authorizer; or
- b.) If done through an electronic agent, any legal consequences in the implementation of electronic transactions are the responsibility of the electronic agent organizer.
- c.) If the loss of electronic transactions is caused by the failure of electronic agents to operate due to the actions of third parties directly against electronic systems, all legal consequences are the responsibility of the electronic agent operator.
- d.) If the loss of electronic transactions is caused by the failure of electronic agents due to negligence of the service user, all legal consequences become the responsibility of the service user.

However, the provisions as referred to in points 1, 2 and 3 above do not apply in the event that it can be proven that there is a force majeure, error, and/or negligence on the part of the electronic system user.

### **3.2 Dispute Resolution arising in Electronic Trading Transactions**

Juridically, electronic transactions are in the field of civil law, therefore if a dispute arises, then the resolution of the case can be taken in two ways, namely the resolution of disputes in litigation, namely through the court line, and dispute resolution through *alternative (alternative dispute resolution)*. While the completion of this alternative dispute can be taken through arbitration or mediation institutions. The evidentiary process in the settlement of cases in court plays a very important role. Against the handling of civil cases, according to the

provisions of Article 164 HIR / Article 284 RBg / Article 1866 BW the evidence used to prove a pretext about the existence of rights and obligations is:

1. Written evidence
2. Witness evidence
3. Evidence of suspicion
4. Proof of confession
5. Oath proof tool

In civil procedure law, written evidence (letter) is the main evidence tool, because a letter is made to prove a circumstance, or events that have occurred or legal actions that must be done by someone later. This is different in the handling of criminal cases, where witness statements become the main evidence, because someone in committing a crime will certainly try to eliminate his traces, so that in criminal cases, proof will be focused on witness statements. Because written evidence (letter) is the main evidence tool, then in relation to electronic transactions, electronic documents will have an important role in the evidentiary process.

Electronic documents and/or electronic information are basically a form of expansion of meaning to written evidence or letters. At first, written evidence or letters are interpreted as a form of writing made on paper or other media that is physically tangible or concrete. However, electronic documents and/or electronic information are a form of writing made using electronic media, which is physically abstract. Documents like this are commonly used in cyberspace (*virtual world*). This is included as a form of expansion of evidence as intended in Article 5 paragraph (2) of the ITE Law which states that Electronic Information and/or Electronic Documents and/or prints are an extension of legal evidence in accordance with the applicable Event Law in Indonesia (W.Bintoro, 2011).

Based on the above, it can be said that the understanding of the meaning of written evidence has undergone an expansion of meaning. This is one form of development in handling civil cases, especially those related to the evidentiary aspect. Law enforcement officials are required to be able to improve their ability to understand every development that occurs, especially related to the evidentiary aspect in handling cases. Thus, difficulties regarding evidence that are often an obstacle in handling cases, especially those related to electronic trading activities, can be resolved properly. The validity of electronic documents and/or electronic information can be verified and guaranteed authenticity by using electronic signatures (*digital signatures*). In accordance with the provisions of Article 1 paragraph (12) that electronic signatures are electronic information related to or associated with other electronic information used or serves as a means of verification and authentication.

According to the provisions of Article 7 of the UUITE, it is stated that any person who declares rights, strengthens existing rights, or denies the rights of others based on the existence of electronic information and/or electronic documents must ensure that the electronic information and/or electronic documents contained therein comes from an electronic system that is qualified under the laws and regulations. This provision is intended that an electronic information and/or electronic document may be used as a reason for the occurrence of rights. In addition, it is also necessary to note the provisions in Article 163 HIR which asserts that the party who must prove is the party who claims to have a right, the party who raises an event (circumstances) to strengthen his rights and the party that denies the rights of others.

#### **4. Conclusion**

Based on the description in the discussion section, it can be concluded as follows the responsibility of the seller and the buyer in a trade transaction through electronic media has existed both before and after the agreement was agreed. In general, each party is responsible for providing the other party with the correct information, especially in relation to the products offered. While the responsibility after the agreement is agreed is the responsibility to fulfill all clauses as contained in the agreement and dispute resolution arising in an electronic trade transaction can be taken in two ways, namely the completion of disputes in litigation through the court, and dispute resolution through alternative (*alternative dispute resolution*). The resolution of this alternative dispute can be achieved through arbitration, mediation or conciliation institutions.

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