

Child's Maturity and Responsibility Concerning a Breach of Electronic Commerce Contract

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ABSTRACT: This study aims to compare adulthood, the ideal regulation of adulthood of a child as a valid requirement in an e-commerce contract, and the child responsibility of a child who violates an e-commerce contract as a seller. This is normative legal research whose purpose is to analyze norms. It has been determined through library research that the minimum age for a child to enter into an e-commerce contract is 15 years. The party who creates the e-commerce contract is liable for any contract violations. Specifically, the individual's physical and psychological maturity must be established. Ideally, such a person can be held accountable without transferring the parents' liability.

KEYWORDS: Maturity, Child Responsibility, Breach, E-commerce Contract.

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I. INTRODUCTION

Article 1320 of the Civil Code includes competence as one of the conditions for the validity of the agreement. Article 1330 junction to 330 stipulates that those over the age of 21 are competent to enter into contracts. Capability is a condition that must be attached to the parties themselves, as autonomous individuals are able to form their own contracts. At the request of the parties to the agreement, the judge will nullify the contract if the qualification requirements are not met. However, as long as there is no request to cancel the agreement, the unconditional contract remains enforceable.

The purchasing and selling transaction system in Indonesia is becoming more complex as time passes. One of these modifications pertains to the technique or techniques used to conduct buying and selling transactions. Electronic buying and selling is currently the most prevalent method for conducting buying and selling transactions.

Electronic transactions are agreements made under conditions distinct from those of traditional agreements. Electronic agreements are reached without the physical presence of the parties. Nonetheless, the word "agreement" or "the principle of consensual" is still used as a reference for the agreement's validity and enforceability. It is implied in the agreement that the parties must fulfill their respective rights and responsibilities.

The development of an electronic sale and purchase agreement indicates that the Indonesian people desire this legal act. Several indicators demonstrate the interest of Indonesians in buying and selling electronically, including the acquisition of information about a traded item. It is possible to obtain information without asking and without purchasing a specific item. Items exchanged electronically can be viewed at any time by anyone. Electronic commerce is typically conducted with greater latitude than traditional purchasing and selling agreements.

The electronic sale and purchase agreement do not present the parties with an opportunity to enter into a contract. Thus, a priority is placed on the principle of trust between parties in an electronic sale and purchase agreement. Electronic buying and selling transactions have been in high demand, so it cannot be separated from the possibility that everyone is free to transact with others electronically, regardless of whether they have met the Article 330 qualification requirements.

Electronic agreements are made without bringing the parties together, making it difficult for the parties to evaluate one another's abilities. As a result, the majority of e-contracting is conducted by unscrupulous individuals. In accordance with Article 21 number (2) letter (a) of the ITE Law, a person who is not legally competent is liable for a breach of contract committed electronically. The party responsible for all legal repercussions in the implementation of electronic transactions, if conducted alone, is the party that transacts.

Article 1367 of the Civil Code states, contrary to the article, that if an incompetent person commits a default, the responsibility is transferred to the parents. This complicates the application of the law in Indonesia.

Based on the preceding description and legal foundation, it is evident that electronic buying and selling raises legal issues. One of them relates to the subjective requirements concerning the parties' skills. Regarding the child as a seller and the child's liability in the event of a breach of the electronic sale and purchase agreement.

II. METHOD

The method of research employed is normative legal research, which examines norms. This study employs a statutory methodology, a conceptual methodology, and a comparative methodology. The collection of data was conducted through library research. This study uses primary legal materials, secondary legal materials, and tertiary legal materials as secondary data. All obtained and collected data are compiled into a comprehensive arrangement and then analyzed qualitatively, i.e., by descriptive, analytical, and prescriptive analysis. In this instance, it is guided by applicable legal principles and regulations.

III. RESULTS

A. Comparative Analysis of Maturity in the Indonesian Civil Code, the Law on Information and Electronic Transactions (ITE), Customary Law, and Islamic Law

a. Settings for Maturity in the Indonesian Civil Code

Maturity is "the ability to do something; the capacity to act; the capacity and intelligence to act." The meaning of skill is closely associated with a person's capacity to consider the legal repercussions or consequences of his actions. Psychological and physiological factors affect this.¹

The term proficiency refers to a person's ability to act. Contract law defines the ability to act as the capacity to create, implement, and be responsible for agreements. Meanwhile, maturity in contract law relates to the age limit that governs the general conditions of capability for all Indonesians. This is done in an effort to attain legal certainty.

Article 1320 of the Civil Code outlines the terms of validity in the agreement, stating that competence is one of the four conditions of the agreement that must be met when entering into both conventional and electronic agreements. Capability is a subjective criterion, specifically a criterion associated with legal subjects. If the subjective condition of proficiency is not met, then the agreement can be terminated.²

In Indonesian law, competence and maturity are closely related. In Indonesian treaty law, maturity is defined as the capacity to enter into, carry out, and assume full responsibility for agreements. Generally speaking, in Indonesian law, a person's maximum age determines their maturity.

The regulation regarding maturity in contract law that is used, among other things, to determine a person's capacity to enter into an agreement is as follows:

Article 330 of the Civil Code states, "Adults are those who have attained 21 years of age and are married. They do not return to the status of minors if their marriage dissolves before they reach 21 years of age.

Article 330 of the Civil Code specifies that there are provisions for age-unrestricted adults. This phrase appears at the end of article 330 of the Civil Code, namely "already married." This means that married individuals are deemed capable of acting and accountable for their legal actions, and are therefore considered adults without age restrictions. Even if the marriage ends in divorce before the individual has reached adulthood, his marital status is used to determine his maturity, and he does not revert to being an immature individual.

In general, skill is a person's capacity to perform legal actions, which in this case is to negotiate a contract. In Indonesian treaty law, however, a person's ability to act is governed and limited by their age. So that it can be interpreted that, from the perspective of contract law, a person's ability is defined as the person's ability to enter into an agreement plus a certain age limit. Ideally, conditions such as these evolve from what was formerly known as "capable" to "adult."³

b. Regulation of Competency in the Law on Information and Electronic Transactions (ITE)

According to Subekti, "the person who enters into a contract must be legally competent. According to the law, every person who is mature or mature and of sound mind is capable in principle. Cakap, according to

¹Arifianto, Rato, dan Sriono, "Kecakapan Seseorang Dalam Melakukan Perbuatan Hukum Menurut Hukum Adat Suku Tengger". *Artikelllmiah*, Tahun 2014.

²Sena Lingga Saputra, Kekuatan Hukum Terhadap Perjanjian dalam Jual Beli Online yang Dilakukan oleh Anak di Bawah Umur, *Jurnal Wawasan Yuridika*, Volume 3, Nomor. 2, Tahun 2019.

³Subektidnan R. Tijrosudibo, *Kitab Undang-undang Hukum Perdata*, Bandung, PT. Pradnya Paramita, 2004, hlm. 90.

Subekti, entails the comprehension of action and awareness of its consequences. In other words, they have control over their actions and can assume responsibility."⁴

Proficiency is a condition for the validity of electronic agreements that are not specifically regulated by the ITE Law but is contained in Article 46 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereafter referred to as the Regulation of PSTE), which states that "(1) Electronic Transactions may be conducted based on an agreement between the parties. (2) Electronic contracts are valid if there is an agreement between the parties, executed by competent legal subjects if certain conditions are met, and if the subject of the transaction does not violate the law, morality, or public order."

The Regulation of PSTE includes the capacity to act as one of the conditions for the agreement's validity. However, it does not explain the minimum age requirement to enter into an electronic agreement. The terms of the validity of the electronic agreement are not significantly different from the terms of the validity of the agreement outlined in Article 1320 of the Civil Code. However, the distinction is evident in the section describing the required skills. Article 1320 of the Civil Code defines competent as those who meet the requirements of Article 330 of the Civil Code, namely those who are at least 21 years old or who are married. It is evident that the word "capable" has a precise definition. In accordance with Article 1320 of the Civil Code and Article 330 of the Civil Code, a person must be at least 21 years old in order to be able to make, implement, and be responsible for agreements. In contrast to the competent provisions of the Civil Code, the Regulation of PSTE specifies that one of the conditions for the validity of a contract is that the contracting party must be able to act.

Article 46 PPPSTE's requirement of proficiency as a condition for the validity of an electronic agreement does not specify a minimum age at which a person must be able to enter into an electronic agreement. Not without reason, Article 46 of the Regulation of PSTE defines the ability to act as the ability to make, implement, and be responsible for electronically made agreements without age restrictions. This is due to the fact that electronic agreements do not bring the parties together to reach a consensus. Therefore, there is no need to determine a person's age limit when entering into an electronic contract.

Article 46 PPSTE on the word "capable" does not provide an explanation and expansion of meaning, so it can be understood that Article 46 the Regulation of PSTE requires or justifies every element of society who believes they have the ability to make, implement, and be responsible, to enter into electronic agreements. According to the provisions of Article 46 PPSTE, this is permissible

PPPSTE is clearly capable of serving as one of the conditions for the agreement's validity. However, neither the age restriction nor the ability to sign an agreement electronically are explained in detail. In addition to PPSTE, there are other regulations regarding maturity that do not specify an age limit, including Supreme Court Circular (SEMA) No. 4 of 2016 Concerning Amendments to Supreme Court Circular (SEMA) No. 7 of 2012 Concerning Formulation. The Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court stated, "The determination of the adult age limit for a person in carrying out legal actions cannot be determined at the same age, but is determined based on the law or legal provisions that govern it in the context of the case at hand"

The position of SEMA No. 4 of 2016 in determining skills as a condition for the electronic agreement's validity is as a supporting regulation for PPSTE in determining the ability to act without specifying an age restriction. A person's ability to create, implement, and be responsible for electronically made agreements without age restrictions is proportionally competent. This is due to the fact that electronic agreements do not bring the parties together to reach a consensus. Therefore, there is no need to determine a person's age limit when entering into an electronic contract.

c. Maturity in Customary Law

The definition of customary law proficiency is "a person who is self-sufficient and has a family is capable of carrying out all legal actions." On the other hand, individuals who lack independence and a family are incapable of carrying out all legal actions. If skills are associated with marriage acts, customary law recognizes that if a man marries a woman, they are considered adults despite the fact that they are only 15 years old."⁵

According to Ter Haar, adult men and women are considered to be acting-capable. When a man and a woman marry, a person is considered an adult. In addition, they have left their parents to live alone as men with new wives who already have their own families." According to Soepomo, people who are capable of acting and

⁴Ade Maman Suhermandan J. Satrio, *Penjelasan Hukum tentang Batasan Umur*, Jakarta, Nasional Legal Reform Program, 2010, hlm. 39

⁵*Ibid.*, hlm. 43

considered mature under customary law are those who have been able to work independently, manage, manage their own assets, and live a fully responsible social life.⁶

In practise, "if there are issues pertaining to the maturity of society, one must always consult the law." This is similar to what occurred in "its decision dated 18-10-1908 Raad Van Justitie (High Court) Batavia, which states that an Indonesian woman is legally competent and capable of expressing her own will at the age of 15, when she is mature enough to be a wife. and speak in his own manner."⁷

d. Maturity in Islamic Law

Ahmad AzharBasyir explained, "the perfect skills possessed by people who have attained puberty are emphasized on the existence of perfect reasoning, not on age; the number of years they have passed is approximately 15." However, the maturity requirement is not limited to 15 years, the age at which a person reaches puberty, but also includes the maturity of reasoning."⁸

In determining one's ability to act, Islamic law follows a principle that is similar to customary law, namely that one's skills can be determined by his or her physical appearance and social standing. For instance, "A Muslim male's skill is determined by the time he has wet dreams and vocal cord changes, which indicate he has reached puberty." As for women, proficiency is determined based on the onset of menstruation or menstruation. Obviously, individuals who reach puberty differ from one another."⁹

The Compilation of Islamic Law (hereinafter referred to as KHI) and the Compilation of Sharia Economic Law (hereinafter referred to as CSEL) contain Indonesian regulations pertaining to proficiency in Islamic law (hereinafter referred to as KHES). Article 98 number (1) KHI states that "the age limit for a child who is able to stand alone or as an adult is 21 years, provided that the child is not physically or mentally handicapped and has never been married."¹⁰

In addition, the provisions for legal competence in KHES are outlined in Book I regarding Law and Amwal. The KHES regulates legal subjects in Articles 2 through 16. Article 1 point 2 states that "legal subjects are individuals, partnerships, or business entities that are legal entities or are not legal entities and possess legal expertise to support rights and obligations." Legal competence is the capacity of legal subjects to carry out legally valid actions. This legal subject has requirements, as stated in Article 2, which states: a person is deemed to have the capacity to engage in legal actions if he is at least 18 years old or is married."¹¹

Given the preceding description, it is evident that the arrangements governing the ability to act under various Indonesian treaty laws are extremely diverse. Thus, in accordance with SEMA No. 4 of 2016, the age limit cannot be determined generally but is instead tailored to the applicable law in a contract.

If the regulation on the ability to act is compared to some of the literature described above, the Civil Code and KHI have the highest age limit for skills, which is 21 years. Acting skills are governed by Article 46 number (2) of PP PSTE, which states that "Electronic contracts are considered valid if there is an agreement between the parties, carried out by competent legal subjects, there are certain things, and the object of the transaction must not be in conflict with laws and regulations, decency and public order."

B. The Optimal Organization of Children's Abilities as a Prerequisite for the Legality of an Electronic Sale and Purchase Agreement

In an ideal situation, the ability to act in an electronic agreement is determined by the special provisions of an electronic agreement contained in Article 46 of the PP PSTE, which states that "the conditions for the validity of an electronic agreement include, among other things, that the agreement must be entered into by a legally competent person." The competence referred to in this article is that a person is considered capable of entering into agreements, carrying out agreements, and taking full responsibility for agreements made, and the age limit does not affect competence in this article. According to the explanation of Article 46 of PP PSTE, this article is quite clear, so the definition of the word "capable" in question is not expanded.

In the event that no interpretation of the word "capable" is found in the special provisions of the electronic agreement (UU ITE and the Regulation of PSTE), it is also inappropriate to interpret competently in the electronic agreement with the meaning contained in Article 330 of the Civil Code as a general provision in contract law, namely "Proficient are those who have reached the age of 21 years and one day." This is the oldest

⁶TolibSetiady, *IntisariHukumAdat Indonesia*, Bandung,Alfabeta, 2009, hlm. 189.

⁷SoerjonoSoekanto, *HukumAdat Indonesia*,Jakarta, PT Raja GrafindoPersada, 2010, hlm. 36.

⁸Ahmad Azhar Basyir, *Asas-Asas Hukum Muamalat (Hukum Perdata Islam)*, Yogyakarta, UUI Press, 2004, hlm

⁹ Ade MamanSuhemandan J. Satrio, *Op.Cit.*, hlm. 50.

¹⁰InstruksipresidenRepublik Indonesia, Nomor. 1, Tahun 1991, tentangKompilasi Hukum Islam.

¹¹PeraturanMahkamahAgungNomor. 2, Tahun 2008, tentangkompilasihukumekonomisyariah.

age limit permitted by any form of Indonesian treaty law. 21 years of age as a requirement for entering into electronic agreements is irrelevant in contemporary Indonesian society.

The age requirement of 21 years is deemed excessive and inconsistent with the special provisions of the electronic agreement's competent intent. Ideally, the ability to act in an electronic agreement corresponds to the true meaning of the term proficient, as an ability to act rather than an age restriction.

Beberapa argumen yang dapat dijadikan sebagai alasan dalam menentukan pengaturan yang ideal dalam perjanjian secara elektronik, antara lain.

First, the ideal set of skills as a condition for the validity of electronic contracts must be adapted to the needs of the community and the times. This is due to the fact that anyone, anywhere, and at any time can enter into an electronic contract.

Second, the age of 21 is too high to be used as a benchmark for determining the ability to act as a condition for the electronic validity of the agreement. These provisions are irrelevant to the current state of Indonesian society, and their implementation will elicit a negative response from the public.

In contract law, 21 years of age is one of the age limits used to determine the ability to act. In the preceding subchapter, it was explained that the age limit for acting in accordance with various Indonesian treaty laws is 18. In some of these provisions, the term "adult" is used to describe proficiency. The adult is a term used to generalize proficient social conditions by establishing specific age limits, such as 21 years, 18 years, 15 years, etc.

Article 330 of the Civil Code stipulates a minimum age of 21 years, whereas a number of Indonesian treaty laws stipulate a minimum age of 18 as the age of competence. In fact, the age of 18 is not the lowest age limit for determining legal capacity under Indonesian treaty law. However, other provisions state that the age of legal maturity for entering into an agreement is 15. The formulation of these provisions is based on customary law and Islamic law. It can be concluded that the age of 15 is more relevant to the current conditions of Indonesian society and more ideal for use as a condition for the validity of an agreement in an electronic sale and purchase contract.

Customary law and Islamic law concur that 15 is the age at which a person is deemed competent to carry out all legal actions and to assume full responsibility. This provision is also widely considered by judges when deciding particular cases.

The following court decision uses customary law and Islamic law to determine a person's qualifications: "Decision of the Kerta District Court in Singaradja No. 82/Sipil- Besar dated September 27, 1950, in conjunction with the Mataram High Court Decision No. 94/1951/P.S/Pdt dated March 17, 1952 jo. RI Supreme Court Decision No. 53 K/Sip/1952 dated August 24, 1955."¹² Where a 17-year-old is permitted to file a lawsuit regarding his father's inheritance, according to customary law, a 15-year-old is typically considered an adult. Thus, in his decision, the judge concludes that a person attains the legal capacity to initiate legal proceedings at the age of 15, including being a party in a dispute over an unclaimed inheritance."

"A condition of a minor will be related to the concept of competence and authority to act," according to the law. In the decision containing considerations regarding the authority to act based on age limits, it appears that at age 15, a person can be delegated the authority to defend his inheritance rights in court as a party. This demonstrates that at the age of 15, a legal subject is capable of being granted the authority to act."

From the preceding explanations, it is evident that, ideally, the regulation of skills as a condition for the validity of an electronic sale and purchase agreement should correspond to the actual meaning of the term "capable" as defined in Article 46 of the the Regulation of PSTE. Given the significance of the age limit in determining the ability to act as a condition for the validity of an electronic sale and purchase agreement, 15 years is the minimum age at which a person should be considered capable. To achieve legal certainty, the minimum age for entering into an electronic sale and purchase agreement must be determined.

C. Children's Responsibility for Breach of the Electronic Purchase and Sale Agreement

To determine the responsibility of the minor as the seller for the breach of the electronic sale and purchase agreement, it is necessary to conduct an analysis based on the relevant theoretical literature. The theories constructed are those described in the preceding subchapter. The theory of proficiency, the theory of electronic agreement, and the theory of default are all utilized theories.

Based on the study of the theory of proficiency, the term "child" in this context refers to a person who lacks the ability to create, implement, and assume full responsibility for an electronic sale and purchase agreement. According to Article 330 of the Civil Code, a "child" is a person under the age of 21 who cannot bring legal action, unless the law specifies otherwise. Nonetheless, some legal experts concur that the age limit

¹² Ade Maman Suhermandan J. Satrio, *Op.Cit.*, hlm. 124

in Article 330 of the Civil Code is no longer appropriate given the physical and psychological development of contemporary Indonesian society.

Therefore, it can be emphasized that age restrictions do not completely determine acting ability. Because a person's ability to act is closely tied to legal actions and legal repercussions he takes.

As special provisions in the electronic sale and purchase agreement, the ITE Law and the Regulation of PSTE do not specifically regulate the age restriction as a condition for the validity of the electronic sale and purchase agreement. Because electronic agreements do not bring the parties together as effectively as other agreements. So that the parties are unable to identify the individual who made the agreement with him. In other words, the ITE Law and the Regulation of PSTE make it possible for all Indonesians, in particular, to utilize electronic media as a medium that facilitates the fulfillment of people's needs through electronic media agreements.

In practice, no one can guarantee that the parties to an electronic contract are individuals who have met the requirements for acting. This is due to the fact that the agreement reached through electronic media does not require a meeting between the parties.

As a result, numerous contracts are executed electronically by individuals who, according to the Civil Code, are incompetent because the minimum age requirement is insufficient. In practice, a contract entered into by a minor is valid so long as it does not result in adverse legal consequences for the other party. It is founded on the trustworthiness of electronic contracts. It is possible for a non-competent party to an electronic contract to cause problems, whether he is the victim or the perpetrator of a default. Therefore, parties to an electronic sale-and-purchase agreement must be certain of their responsibilities if a party defaults.

The following are common forms of default in electronic sales and purchase agreements: "(1) Failing to carry out the terms of the agreement. (2) Deliver the promised goods, but not in accordance with the promise. (3) Deliver what was promised but belatedly. (4) Engage in conduct that is prohibited by the contract."¹³

If a person who lacks legal capacity enters into an electronic contract and subsequently causes a loss due to an act of default, that person must compensate for the loss in accordance with the terms of the contract.¹⁴This is in accordance with the provisions of Article 21 number 2 letter (a) of the ITE Law and Article 3 paragraph (1) of the Regulation of PSTE, which states that "the party responsible for all legal consequences in the implementation of Electronic Transactions is regulated as follows: (a) if it is carried out alone, all legal consequences in the implementation of Electronic Transactions are the responsibility of the parties to the transaction;

As the ITE Law and the Regulation of PSTE do not specifically regulate the ability to act in making electronic agreements, Article 1331 of the Civil Code states that "people who are declared incompetent to make agreements, may demand the cancellation of the engagement." However, it must be understood that the meaning of cancellation is only applicable if the agreement has not caused any harm or benefit to the person who is considered incompetent, and in the event that the agreement has caused harm or benefit to the person who is considered incompetent, cancellation

The person who has the right to cancel is the incompetent person, not someone else. As long as the agreement is not detrimental and cancellation is not requested, the agreement remains valid.

Articles 1243 and 1267 of the Civil Code apply because the ITE Law and the Regulation of PSTE as special provisions in electronic purchasing and selling agreements do not specifically regulate the form of responsibility that must be carried out against defaults in electronic purchasing and selling agreements.

According to Article 1243 of the Civil Code, "Reimbursement of costs, losses, and interest due to non-fulfillment of an engagement becomes mandatory if the debtor, despite having been declared negligent, fails to fulfill the engagement or if something that must be given or done must be given or done within a specific time frame."

In accordance with Article 1267 of the Civil Code, "The non-performing party has the option of compelling the other party to fulfill the agreement, if it is still possible, or cancel the agreement with reimbursement of costs, losses, and interest.

Regarding the responsibilities of "incompetent" children in default on electronic sales and purchase agreements, the Civil Code as a general provision in electronic agreement law and the ITE Law and PP PSTE as *lex specialis* in electronic agreements contain contradictory provisions. Article 1367 of the Civil Code stipulates that if incompetent child defaults on a contract, including an electronic contract, the parents are held accountable. In the meantime, Article 21 number (2) letter (a) in conjunction with Article 3 number (2) of the Regulation of PSTE ITE Law mandates that the party who initiates the contract be held liable for its breach. Especially if it can be demonstrated that the person is physically and psychologically capable of acting, but has

¹³EdmonMakarim, *KompilasiHukumTelematika*, Jakarta,Raja GrafindoPersada, 2003, hlm 238

¹⁴ Alfian Perdana, *Penyelesaian Wanprestasi Dalam Perjanjian Jual Beli Melalui Media Elektronik*, *Jurnal Ilmu Hukum*, Volume.2, Nomor.1, Tahun 2014.

not yet reached the age of 21 or 18 years. Ideally, the individual can be held accountable without having to delegate responsibility to his parents because he is under 21. Article 1340 of the Civil Code, on the other hand, states: "An agreement cannot cause harm to third parties, and third parties cannot benefit from it, except in the cases specified in Article 1317."

A review of the case of Hafid Hasan as reported by news and information on the *online source*,¹⁵ Hafid Hasan, a 15-year-old from Solo, was arrested by the Solo Police in 2013. Hafid Hasan was arrested for allegedly breaching an online sale and purchase agreement or committing a fraudulent act on the Kaskus online marketplace. Based on the examination and confession, Hafid Hasan provided kaskuser with gold and mobile phones (the name for visitors to the Kaskus online buying and selling site). However, without any good intentions, Hafid Hasan did not send his customers' ordered items. Whereas Hafid Hasan as the seller and the buyer have reached an agreement, and the buyer has fulfilled his obligation by transferring the agreed-upon amount of money to purchase the goods offered by Hafid Hasan, respectively.

Hafid Hasan was accompanied by his parents, the Child Observer NGO, and the Solo ATMA Foundation, which provides legal aid, during his examination by the Solo Police. individuals and losses estimated in the tens of millions of rupiah Taking into account the fact that Hafid Hasan is still deemed incapable of acting and the buyer's good faith, along with other factors, the case is settled without litigation.

Based on the preceding case example, it is clear that Hafid Hasan's electronic sale and purchase agreement is a legally binding contract. This is due to the fact that the conditions for the legality of the electronic sales and purchase agreement have been met. Article 46 number (2) of the Regulation of PSTE in conjunction with Article 1320 of the Civil Code states, "For the validity of an agreement, four (four) conditions are required, namely the agreement of those who bind themselves, the capacity to enter into an agreement, a specific subject, and a lawful cause." Article 9 of the ITE Law states, "Business actors who offer products through Electronic Systems must provide complete and accurate information relating to contract terms, manufacturers, and products offered."

Article 46 number (2) PP PSTE in conjunction with Article 1320 of the Civil Code, from the four conditions for the validity of the agreement, it was later discovered that the seller, Hafid Hasan, was legally incompetent because he was neither 21 nor 18 years old. However, the electronic agreement remains valid, and it is extremely difficult for the parties to determine their respective skill levels. If it is known that one of the parties lacks legal capacity, a request for cancellation may be made. Article 1331 of the Civil Code states that "people who are declared incompetent to enter into a contract may request the cancellation of the agreement they have entered into." It should be noted that the cancellation of the agreement due to a legally incompetent party should ideally take place before the legally incompetent party suffers losses and does not benefit from the agreement being canceled.

Hafid Hasan is a vendor of gold and mobile phones on the online marketplace Kaskus. Hafid Hasan is legally incapable because he is 15 years old; according to Article 1330 in conjunction with Article 330 of the Civil Code, those who are able to enter into contracts must be at least 21 years old. As a result, Hafid Hasan cannot be held accountable for his legal actions.

The application of competence theory to the case of Hafeed Hasan. Hafid Hasan is considered proficient because he is able to operate electronic media effectively, buy and sell electronically on the Kaskus online buying and selling site, and design sales information that will assist him in operating an electronic buying and selling business. Hafid Hasan is aware of the legal actions and legal consequences (positive and negative) of his actions, as well as the impact if his actions in buying and selling electronically harm others.

According to the information obtained from the case of Hafid Hasan, Hafid Hasan did not ship the goods ordered by his customers in good faith. Whereas Hafid Hasan as the seller and the buyer have reached an agreement, and the buyer has fulfilled his obligation by transferring the agreed-upon amount of money to purchase the goods offered by Hafid Hasan, respectively. Because Hafid Hasan has been deemed "capable," he must be held accountable for his actions that intentionally harm others via an electronic contract. Responsibility is the condition in which a person is required to bear the consequences of his actions due to the expectations of others.¹⁶

Hafid Hasan's liability as the seller is in default under the electronic sale and purchase agreement. According to Article 21 number 2 letter of the ITE Law in conjunction with Article 3 point (1) the Regulation of PSTE, "the party responsible for all legal consequences in the implementation of Electronic Transactions as referred to in number (1), is regulated as follows: (a) if carried out themselves, all legal consequences in the implementation of Electronic Transactions are the responsibility of the transacting parties." Typically, the

¹⁵www.solopos.com. Lihat juga di https://www.kaskus.co.id/thread/516e84ad552acf_0742000002/ penipuan-kaskuser-solo.

¹⁶Ina Nurhayati, "Pertanggungjawaban Produsen Terhadap Konsumen dalam Perspektif UU No.8 Tahun 1999", *Jurnal Hukum Bisnis*, Volume 30, Nomor 1, Tahun 2011, hlm. 27.

sanction imposed on the perpetrator (the offender) is the result of his own actions, which makes him accountable.¹⁷

Article 21 number 2 letter a of the ITE Law, in conjunction with Article 3 number (1) the Regulation of PSTE, reflects the error-based theory of individual responsibility and accountability. In accordance with Hans Kelsen.¹⁸ "Individual responsibility, meaning that each person is responsible for his or her own violations. In contrast, liability is based on error, meaning that a person is liable for a violation that he or she commits intentionally and with the intent to cause harm."

Article 1367 of the Civil Code stipulates that if a minor breaches a contract, including an electronic one, the parents are liable. This article illustrates the concepts of collective and absolute responsibility. In accordance with Hans Kelsen.¹⁹ "Collective responsibility means that an individual is responsible for an offense committed by another individual, whereas absolute liability means that an individual is responsible for an unintentional and unexpected violation."

Civil sanctions are "punishments imposed for errors caused by negligence or illegal acts (*onrechtmatigedaad*)."²⁰ The explanation based on the theory of responsibility emphasizes the actions of humans or the parties to the agreement, that "everyone must be responsible for their own mistakes in speech, writing, and attitudes or gestures." The principle of the theory is logical because anyone who makes a mistake and harms or harms others must be responsible. How many people will bear the loss if the party that caused the harm can be released from responsibility only for maturity reasons."

IV. CONCLUSION

The ITE Law and the Regulation of PSTE expressly do not establish an age limit for carrying out legal actions but require a proficient age limit in accordance with Customary Law and Islamic Law, which stipulates that a 15-year-old is competent. The optimal age to determine a child's skills as a condition for the validity of an electronic sale and purchase agreement is 15 years, in accordance with the provisions of Customary Law, Islamic Law, and a number of court decisions in determining a person's ability to act at 15 years of age. The party who created the agreement is responsible for any electronic defaults that occur within its terms. Especially if it can be demonstrated that the individual is physically and psychologically capable of acting. However, the age restriction has not yet reached the age of 21. Ideally, the individual can be held accountable without having to delegate the responsibility to his parents because he is under the age of 21.

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¹⁷Hans Kelsen, *Teori Hans Kelsen Tentang Hukum*, terjemahan Jimly Asshiddiqie dan M. Ali Safa'at, Jakarta, Konstitusi Press, 2012, hlm. 56.

¹⁸Hans Kelsen, *Teori Hukum Murni*, terjemahan Raisul Mutaqien, Bandung, Nuansa & Nusamedia, 2006, hlm. 140

¹⁹*Ibid.*

²⁰Sjaifurrachmandan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Bandung, Mandar Maju, 2011, hlm. 195.