

BAB III

PENUTUP

A. KESIMPULAN

Bahwa asas kebebasan berkontrak dalam aspek kontrak standar dalam E-Commerce tidak bertentangan dengan KUHPerdata (Kitab Undang-undang Hukum Perdata) dan sesuai dengan Aturan Umum Pasal 3 UNCITRAL Model Law on Electronic Commerce, dalam arti kontrak standar dalam E-Commerce dapat diterapkan atau dilaksanakan oleh para pihak khususnya bagi hukum Indonesia, selama perjanjian tersebut dilaksanakan dengan itikad baik dan sesuai dengan asas pacta sunt servanda serta mengacu pada asas konsensualitas dimana kesepakatan sebagai suatu hal yang menjadi dasar adanya perikatan dalam perdagangan dengan model transaksi elektronik menjadi hukum dan mengikat bagi para pihak walaupun belum secara konkrit diatur oleh undang-undang.

B. SARAN

1. Pemerintah lebih proaktif dalam melihat perkembangan teknologi informasi yang berkembang pesat saat ini. Agar bangsa kita tidak jauh ketinggalan, terutama dalam bidang hukum.
2. Agar segera diberlakukannya peraturan yang mengatur mengenai transaksi elektronik di Indonesia untuk menjamin kepastian hukum
3. Perlunya disosialisasikan kepada masyarakat luas tentang keabsahan transaksi elektronik.
4. Tingkat keamanan dalam kontrak melalui media elektronik haruslah mempunyai aturan-aturan yang melindungi antara pembuat kontrak dalam E-Commerce

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Perundang-undangan

Kitab Undang-undang Hukum Perdata

Rancangan Undang-undang Tanda tangan Digital dan Transaksi Elektronik

UNCITRAL Model Law on Electronic Commerce Tahun 1996



UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE 1996

With additional article 5 bis as adopted in 1998

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UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE

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**UNCITRAL MODEL LAW ON ELECTRONIC
COMMERCE**

Bagian satu. Electronic commerce secara umum

Bab i. Aturan umum

Pasal 1. Ruang lingkup

Hukum/peraturan ini berlaku bagi setiap jenis/bentuk informasi yang berbentuk data messages yang digunakan dalam ruang lingkup komersial/ perdagangan

Pasal 2. Definisi

Definisi yang dipergunakan didalam peraturan ini adalah:

- a. "Data messages" adalah suatu informasi yang diciptakan (*generated*), diterima, disimpan secara elektronik, optik atau cara-cara yang sejenis termasuk tetapi tidak dibatasi oleh karenanya adalah EDI, e-mail, telegram, telex, telecopy,

- b. "EDI" adalah suatu transfer informasi secara elektronik dari suatu komputer ke komputer yang lainnya dengan menggunakan suatu standar yang telah ditetapkan sebelumnya dalam menyusun atau mempertukarkan informasi tersebut;
- c. "Originator" dari suatu data messages adalah seseorang yang melakukan atau melakukannya atas dasar suatu kuasa, suatu data messages secara umum dianggap telah dikirim atau telah diciptakan dengan maksud untuk disimpan, atau dapat juga/dimungkinkan tetapi tidak terbatas terhadapnya, jika ada, seorang yang lain yang berfungsi sebagai perantara yang berfungsi sebagai perantara dalam hubungannya dengan data messages;
- d. "Addressee" dari suatu data message adalah seseorang yang dimaksud atau dituju oleh originator untuk menerima suatu data messages, tetapi hal ini tidak termasuk seseorang yang berfungsi sebagai perantara dalam hubungannya dengan data messages tersebut;
- e. "Information system" adalah suatu sistem yang digunakan untuk membuat, mengirim, menyimpan ataupun memproses suatu data messages;

Pasal 3. Interpretasi

1. Dalam menafsirkan aturan ini, didasarkan atau dimaksudkan dalam konteks bahwa aturan ini pada dasarnya mengandung unsur internasional dan dibuat untuk memenuhi kebutuhan akan adanya suatu kesatuan (uniformity) dan dalam penerapannya menggunakan prinsip itikad baik.
2. Setiap pertanyaan yang tidak secara eksplisit diterangkan yang berhubungan dengan aturan yang terdapat di dalam peraturan ini akan diselenggarakan atau akan merujuk pada prinsip-prinsip umum yang terkandung dalam peraturan ini.

Pasal 4. Variasi dari kesepakatan

1. diantara para pihak yang menciptakan, mengirim, menerima, menyimpan atau dapat juga mereka yang memproses data messages, selain apabila sudah diatur secara terpisah, aturan yang terdapat bab III pada prinsipnya dapat dilakukan penyimpangan terhadapnya dengan melakukan suatu perjanjian terlebih dahulu.
2. Paragraf (1) tidak mempunyai implikasi terhadap setiap hak yang timbul karena adanya suatu perubahan

Bab II. Aplikasi terhadap persyaratan yuridis dari suatu data messages

Article 5. Pengakuan secara yuridis terhadap suatu data messages

Terhadap suatu informasi tidak dapat dikatakan tidak mempunyai implikasi hukum, validitas, tidak dapat dijalankan (*enforceability*) hanya karena didasarkan pada bentuknya yang berupa suatu *data messages* .

Pasal 5 bis. Incorporation by reference

(seperti diadopsi oleh komisi dalam sesi ke-31, bulan Juni 1998)

Suatu informasi tidak dapat dikatakan tidak mempunyai kekuatan hukum , validitas, tidak dapat dijalankan (*enforceability*) hanya didasarkan pada kenyataan bahwa didalam data messages tersebut tidak terdapat hal-hal yang secara umum menimbulkan implikasi hukum, tetapi data messages tersebut hanya berisikan perintah untuk merujuk pada suatu bahan rujukan tertentu.

Pasal 6. Writing

1. Apabila terdapat suatu peraturan yang menghendaki/mensyaratkan suatu informasi harus berbentuk tertulis, maka persyaratan tersebut dapat dipenuhi oleh suatu data messages apabila informasi yang terkandung didalamnya dapat diakses/dibaca sehingga dapat digunakan sebagai bahan rujukan.
2. Penerapan dari paragraf (1) adalah apabila terdapat peraturan yang mempersyaratkan sebagai suatu kewajiban atau atau terdapat peraturan yang memerintahkan atau memberikan konsekwensi apabila suatu informasi tertentu tidak berbentuk secara tertulis.
3. Aturan dalam pasal tidak berlaku untuk hal-hal sebagai berikut: [...].

Pasal 7. Signature

1. Apabila terdapat peraturan yang membutuhkan adanya tandatangan dari seseorang, maka persyaratan tersebut dapat dipenuhi oleh suatu *data messages* apabila:
 - a. Terdapat suatu metode yang dapat mengidentifikasi seseorang dan dapat memberikan indikasi bahwa informasi yang terdapat dalam suatu *data messages* telah disetujui olehnya; dan
 - b. Bahwa metode tersebut adalah dapat diandalkan atau dapat digunakan dalam membuat atau mengkomunikasikannya, dalam berbagai situasi, termasuk berbagai perjanjian.

2. Penerapan dari paragraf (1) adalah apabila terdapat persyaratan dalam bentuk keharusan atau peraturan tersebut mempunyai implikasi hukum tertentu apabila tidak terdapat tandatangan.
3. Aturan yang dimuat dalam pasal ini tidak berlaku dalam hal; [...].

Pasal 8. Original

1. Apabila terdapat suatu peraturan yang memepersyaratkan suatu informasi disampaikan atau diwujudkan dalam bentuk asli (*original*), persyaratan tersebut dapat dipenuhi oleh suatu data messages apabila:
 - a. Terdapat jaminan yang dapat diandalkan terhadap keutuhan dari informasi sejak ia pertamakali diciptakan dalam bentuk akhirnya sebagai suatu *data messages* atau bentuk lainnya; dan
 - b. Pada saat informasi itu dibutuhkan untuk ditunjukkan, informasi tersebut dapat ditunjukkan/diperlihatkan kepada orang yang membutuhkannya.
2. Paragraf (1) dapat diterapkan apabila terdapat persyaratan yang berwujud suatu keharusan atau terdapat peraturan yang memiliki berbagai konsekwensi tertentu apabila informasi tersebut tidak dapat ditunjukkan atau diperlihatkan dalam bentuk asli (*original*).
3. Untuk maksud yang terdapat dalam sub paragraf (a) dari paragraf (1):
 - a. kriteria untuk dapat menentukan keutuhan (*integrity*) adalah apabila informasi tersebut adalah tetap komplit/lengkap dan tidak pernah dikutak-katik, juga terhadap adanya setiap *endorsement* dan setiap perubahan yang timbul sebagai akibat yang biasa terjadi saat melakukan komunikasi, penyimpanan dan penampakaanya (*display*); dan
 - b. standar dari *reability* (kehandalan) haruslah diterapkan berdasarkan tujuan dari suatu informasi itu diciptakan dan dalam hubungannya dengan keadan yang ada.
4. Setiap aturan-aturan yang terdapat dalam pasal ini tidak berlaku dalam hal : [...]

Pasal 9. Admissibility and evidential weight of data messages

(dapat dilakukan pembuktian secara hukum terhadapnya dan kekuatan pembuktian dari data messages)

1. Dalam setiap peristiwa hukum (*legal proceeding*), bahwa setiap aturan yang terkait dengan pembuktian tidak dapat tidak diterapkan dalam hal pembuktian dari suatu *data messages* dalam pembuktian:

- a. hanya didasarkan karena bentuknya yang berupa suatu *data messages*; atau,
 - b. apabila hal ini adalah merupakan bukti yang terbaik yang dapat diajukan oleh seseorang yang melakukan pembuktian yang dapat dibuktikan, berdasarkan kenyataan bahwa hal tersebut adalah bukan dalam keadaan yang asli (*original*)
2. informasi dalam bentuk *data messages* adalah mempunyai kekuatan pembuktian. Dalam melakukan atau menentukan kekuatan pembuktian dari suatu *data messages* harus didasarkan pada tingkat kehandalan/ kemampuan/ *reliability*. Pada saat *data messages* diciptakan, disimpan atau dikomunikasikan, kehandalan tersebut dalam hubungannya dengan kemampuan mempertahankan keutuhan informasi, juga dalam hubungannya dengan kemampuan mengidentifikasi *originator* dan berbagai faktor lain yang relevan.

Pasal 10. Retention of data messages

(dokumentasi dari *data messages*)

1. apabila terdapat peraturan yang mengharuskan berbagai dokumen, *records* atau informasi didokumentasikan/disimpan, aturan tersebut dapat dipenuhi dengan mendokumentasikan *data messages*, apabila dapat dipenuhinya aturan-aturan yang terdapat dibawah ini:
 - a. Setiap informasi yang terkandung didalamnya adalah dapat diakses atau dapat digunakan sebagai referensi; dan
 - b. Informasi tersebut tetap dipertahankan dalam format yang sama dengan format pertama pada saat ia diciptakan dikirim atau diterima atau dalam suatu format yang sudah dapat dibuktikan kehandalannya dalam membuat, mengirim dan menerima; dan
 - c. Setiap informasi, jika ada, adalah sebisanya dipertahankan sehingga dapat dilakukan identifikasi terhadap asal dan tujuan dari *data message* dan hari dan tanggal pada saat ia dikirim dan diterima.
2. Keharusan untuk melakukan dokumentasi atas suatu dokumen, *record*, atau setiap informasi yang berhubungan dengan paragraf (1) tidak akan diperluas terhadap setiap informasi dalam hubungannya dengan kemampuan suatu *message* dikirim atau disimpan.
3. Seseorang agar dapat memenuhi aturan yang terdapat dalam paragraf (1) dengan menggunakan jasa dari orang lain, sehingga kondisi-kondisi yang terdapat dalam subparagraf (1) dapat terpenuhi.

BAB III Komunikasi atas data messages

Pasal 11 Pembentukan dan keabsahan kontrak

1. Dalam hubungan dengan pembentukan kontrak, kecuali sudah ditentukan lain sebelumnya, suatu *offer* dan *acceptance* dapat diterapkan juga terhadap suatu data messages. Apabila suatu *data messages* digunakan dalam pembentukan suatu kontrak, kontrak tersebut tidak dapat dikatakan tidak mempunyai validitas atau *enforceability* hanya didasarkan pada digunakannya *data messages* untuk maksud tersebut.
2. Aturan yang terdapat dalam pasal ini tidak berlaku dalam hal: [...]

Pasal 12. *Recognition of parties of data messages*

1. Dalam hubungannya diantara *originator* dan *addresse* dari suatu *data messages*, suatu *declaration of will* atau *statement* yang lain tidak dapat dikatakan tidak mempunyai kekuatan yuridis, validitas dan *enforceability* hanya didasarkan karena bentuknya sebagai data messages.
2. Aturan yang terdapat dalam pasal ini tidak berlaku dalam hal :[...]

Pasal 13. *Attribution of data messages*

1. Suatu data messages berasal dari *originator* apabila ia dikirimkan sendiri oleh *originator*.
2. Dalam hubungannya antara *originator* dan *addresse*, suatu *data messages* dapat dianggap dikirimkan sendiri oleh *originator* apabila ia dikirim:
 - a. Oleh seseorang yang mempunyai kuasa untuk bertindak atas nama *originator* dalam hubungannya dengan *data messages* tersebut; atau
 - b. Oleh suatu sistem informasi yang telah terprogram sebelumnya, atau atas kuasa dari *originator* untuk beroperasi secara otomatis
3. Dalam mengadakan hubungan antara *originator* dan *addresse*, *addresse* mempunyai hak untuk meneliti/menelaah apakah suatu *data messages* berasal dari *originator* dan melakukan tindakan berdasarkan informasi yang didupakannya, apabila ;
 - a. dalam hubungannya untuk memastikan apakah suatu *data messages* adalah berasal dari *originator*, *addresse* dapat melakukan berbagai prosedur yang sudah ditentukan terlebih dahulu oleh *originator* untuk hal tersebut.
 - b. Suatu *data messages* pada saat diterima oleh *addresse* sebagai akibat dari tindakan dari seseorang yang mempunyai hubungan dengan *originator* atau dengan seseorang agen/wakil dari *originator*

sehingga orang tersebut dapat mempunyai akses terhadap metode yang digunakan oleh originator untuk mengidentifikasi data messagesnya sendiri.

4. Paragraf (4) tidak berlaku dalam hal;
 - a. pada saat *addressee* menerima suatu pernyataan dari *originator* bahwa *data messages* tersebut adalah bukan berasal dari *originator* dan ia mempunyai waktu yang cukup berdasarkan hal tersebut; atau
 - b. dalam hubungannya dengan paragraf (39 (b)), setiap saat *addressee* mengetahui, atau dengan setelah melakukan perlakuan yang hati-hati atau menggunakan prosedur yang sudah disetujui bahwa *data messages* tersebut bukan berasal dari *originator*.
5. Tempat dari *data messages* berasal dari *originator* atau dapat dianggap berasal dari *originator*, atau *addressee* yang berhak melakukan suatu tindakan berdasarkan asumsi tersebut, sehingga, diantara *originator* dan *addressee*, *addressee* dapat dianggap atau mempunyai hak (*entitled*) untuk meneliti dari *data messages* pada saat diterima apakah hal tersebut sesuai dengan apa yang dikirim oleh *originator*, dan melakukan tindakan berdasarkan asumsi tersebut. *Addressee* dianggap tidak mempunyai alas hak pada saat ia mengetahui atau harusnya mengetahui hal tersebut, harus bertindak dengan prinsip kehati-hatian atau berdasarkan prosedur yang sudah disetujui, bahwa....
6. *Addressee* adalah berkewajiban untuk meneliti dengan seksama setiap *data messages* yang diterima sebagai suatu satuan *data messages* yang terpisah dan melakukan suatu tindakan berdasarkan asumsi tersebut,

Pasal 14. Acknowledgement of receipt

(pengakuan terhadap keabsahan receipt)

1. Paragraf (2) sampai (4) dalam pasal ini dapat diterapkan apabila, pada saat atau sebelum mengirimkan suatu *data messages*, atau bersamaan dengan *data messages* tersebut, *originator* telah meminta atau telah membuat persetujuan dengan *addressee* bahwa receipt dari *data messages* akan di *acknowledgement*.
2. Apabila pihak *originator* tidak menyetujui secara bersama dengan pihak *addressee* bahwa *acknowledgement* itu dalam bentuk tertentu atau dengan metode tertentu, *acknowledgement* itu dapat dapat diberikan dengan
 - a. setiap komunikasi dengan *addressee*, baik secara otomatis atau dengan cara yang lain, atau

- b. setiap perbuatan yang dilakukan oleh *addressee*, yang cukup untuk mengidentifikasi kepada *originator* bahwa *data messages* tersebut telah diterima.
3. Apabila *originator* telah membuat suatu pernyataan dalam *data messages* tersebut bahwa adanya *acknowledgement* adalah syarat sahnya *data messages* tersebut, *data messages* tersebut harus diperlakukan atau dianggap seperti layaknya belum dikirim, sampai *acknowledgement* tersebut diterima.
4. Apabila *originator* belum/tidak membuat pernyataan bahwa adanya *acknowledgement* adalah merupakan syarat sahnya *data messages*, dan *acknowledgement* tersebut belum diterima oleh *originator* dalam jangka waktu tertentu atau jangka waktu yang telah disetujui sebelumnya atau, tidak ada suatu jangka waktu yang telah ditentukan atau telah disetujui sebelumnya, dalam suatu jangka waktu yang wajar, *originator* :
 - a. dapat memberikan pemberitahuan kepada *addressee* pernyataan bahwa tidak/belum ada *acknowledgement* yang diterima olehnya dan memberikan jangka waktu tertentu bagi dikirimnya *acknowledgement* tersebut.
 - b. Apabila *acknowledgement* tersebut belum diterima dalam jangka waktu yang telah ditentukan seperti yang tercantum dalam subparagraf (a), dengan memberitahukan terlebih dahulu kepada *addressee*, untuk menjaga *data messages* dengan penuh kehati-hatian seperti *data messages* tersebut belum dikirim, atau melakukan berbagai tindakan/ hak yang dipunyainya.
5. Apabila *originator* menerima *acknowledgement* dari *addressee*, maka dapat dianggap bahwa *data messages* yang mempunyai hubungan dengan *acknowledgement* tersebut sudah diterima oleh *addressee*. Asumsi tersebut tidak mempunyai implikasi terhadap *data messages* yang mempunyai hubungan dengan *message* sudah diterima.
6. Apabila *acknowledgement* yang berhubungan dengan *data messages* tersebut telah diterima dan telah memenuhi standar teknis, baik berdasarkan standar yang telah disetujui atau berdasarkan standar yang sudah ada, maka dapat dianggap bahwa persyaratan tersebut telah dipenuhi.

Pasal 15. Time and place of dispatch and receipt of data messages

1. Kecuali diatur secara lain oleh *originator* dan *addressee*, saat suatu *data messages* dikirimkan (*dispatch*) adalah pada saat ia memasuki suatu sistem informasi diluar kontrol dari *originator* atau orang lain yang mengirimkan data tersebut untuk kepentingan *originator*.
2. Kecuali diatur secara lain antara *originator* dan *address*, waktu diterimanya suatu *data messages* ditentukan sebagai berikut:

- a. kalau seorang *addresse* sudah menentukan suatu sistem informasi sebagai tujuan dikirimnya *data messages*, saat diterimanya adalah:
 1. pada saat *data messages* tersebut memasuki sistem informasi tertentu (*designated system information*) yang dituju; atau
 2. apabila suatu *data messages* dikirimkan kesuatu sistem informasi yang bukanlah suatu sistem informasi yang tertentu (*designated system information*), maka waktunya adalah pada saat pesan tersebut diterima oleh *addresse*;
 - b. apabila *addresse* tidak mempunyai suatu sistem informasi tertentu (*designated system information*), maka saat diterima adalah pada saat *data messages* memasuki sistem informasi dari *addresse*.
3. Paragraf (2) dapat diterapkan meskipun tempat dari sistem informasi adalah berlainan dari tempat dimana suatu *data messages* dianggap telah diterima berdasarkan paragraf (4).
 4. Kecuali diatur secara lain oleh *originator* dan *addresse*, suatu *data messages* dianggap dikirimkan dari suatu tempat dimana *originator* mempunyai kedudukan hukum (bisnis), dan dianggap sudah diterima di tempat/alamat dimana *addresse* melakukan bisnisnya. Untuk maksud dari paragraf ini:
 - a. apabila *originator* atau *addresse* mempunyai lebih dari satu kedudukan hukum (bisnis), maka tempat kedudukannya adalah tempat yang mempunyai hubungan paling dekat dengan transaksi yang dimaksud atau, tempat yang tidak mempunyai hubungan dengan transaksi yang dimaksud, yaitu tempat kedudukan hukum yang utama;;
 - b. apabila *originator* atau *addresse* tidak mempunyai suatu kedudukan hukum yang tetap, maka acuan yang dipakai adalah tempat dimana mereka biasa berada.
 5. Aturan yang terdapat dalam pasal (article) ini tidak berlaku dalam hal: [...]

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- Boots Motocross Goggles
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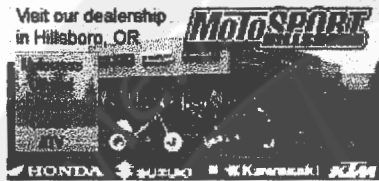
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