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APPLICATION OF THE PRINCIPLE OF CONSENSUALITY AND ITS LEGAL IMPLICATIONS IN ELECTRONIC CONTRACTS AT SHOPEE

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Abstract:

This study aims to analyze the application of the principle of consensuality in electronic contracts at Shopee: and how the legal implications of the application of the principle of consensuality in electronic contracts at Shopee. The research method used is normative juridical with a statutory and conceptual approach, using secondary legal data and analyzed with a qualitative descriptive method. The results showed that in electronic contracts at Shopee, the principle of consensualism has been applied. In this case, the electronic contract is carried out by means of a click-wrap agreement, namely to determine the agreement in the e-contract is when the party receiving the offer "clicks" on the agreement section. E-contract in Shopee can be said to be an agreement between computer users (users) in interacting with producers or electronic service providers. The application of the principle of consensuality in electronic contracts at Shopee, raises several legal implications, namely: 1) the existence of consensualism gives birth to an electronic contract; 2) the enactment of the principle of Pacta Sun Servanda, meaning that the agreed electronic contract is fully binding and therefore must be obeyed; 3) and for the transfer of rights, consensualism must be followed by a material contract (zakelijke overeenkomst), with the concrete form of this material contract being the act of delivery (levering) of the object in question from the seller's hands to the buyer's hands.

Keywords: Application, Consensuality Principle, Electronic Contract, Shope
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INTRODUCTION

The development of this digital era is a development that occurs in society in a new life with the internet network, digital devices, digital applications/platforms, and social media, making it easier for all activities and work in various fields in everyday life. Technology plays a vital role in various activities of human life, one of which is in the economic field. Technology, especially the Internet, currently makes it very easy for humans to transact in order to meet their needs. In 2022, it is estimated that there will be 4.9 billion internet users worldwide, including 204 million internet users in Indonesia. There were 204.7 million internet users in Indonesia in January 2022. The penetration rate of internet users in Indonesia reached 73.7 percent of the total population at the beginning of 2022. The data shows that internet users in Indonesia increased by 2.1 million (+1.0 percent) between 2021 and 2022.

Buying and selling using the internet network is called online buying and selling, known as e-commerce. Online buying and selling or e-commerce is the process of buying and selling from offering goods and agreeing to buy online using the internet network so that sellers and buyers are not directly face to face or face to face. Online buying and selling thus provide convenience to humans to help meet their needs because it can save time without having to come to the store to buy the desired item.

Online buying and selling can be done through various media, both through social media such as Instagram and Facebook and through a place or digital application specifically for online buying and selling transactions. Marketplace is a website or application that provides a place for online business people who want to sell their merchandise. Buyers can find various types of goods through the marketplace from online shops. Through the marketplace, sellers can freely display their selling items, and buyers can search and select the items they need. Various marketplaces exist, including Shopee, Tokopedia, Lazada, Blibli, Bukalapak, etc.

Shopee is one of the online shopping platforms that is a medium for meeting sellers and buyers online. Shopee was launched 2015 in 7 countries in Singapore, Indonesia, Malaysia, Thailand, Taiwan, Vietnam, and the Philippines. You can find many shops in Shopee that sell various goods ranging from clothing, electronic devices, food, and more. In addition, Shopee users are very numerous; this can be seen based on Similar Web for App Performance data on e-commerce applications in Indonesia; Shopee has the number of daily active users (DAU) or daily active visitors that surpass Tokopedia. During December 2021, the number of Shopee daily active visitors reached 33.27 million.

Online buying and selling has become a trend or good habit that has grown due to the impact of technology. A sale and purchase transaction between a seller and a buyer is a legal event, namely a sale and purchase contract, which creates a legal relationship between the Seller and the buyer. According to R. Subekti, an agreement or contract is an event in which one person promises to another or the two people promise each other to carry out something; from this event, a relationship arises between the two people called "engagement ."Therefore, an agreement issues an obligation between the people who make it. Contracts made online through electronic media are known as electronic contracts. An electronic contract, according to Article 1 point 17 of Law Number 19 of 2016 Concerning the Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (from now on referred to as ITE Law), is an agreement between parties made through an Electronic System.

A contract is valid if it fulfills the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code, namely agreement, legal capacity, a sure thing, and a halal cause. A contract occurs if there is an offer from one party and then an acceptance from the other party. Accepting the offer is a form of agreeing to the contents offered. This is in line with the principle of consensuality, one of the principles of contract law.

Contract-making must pay attention to and use the principles of contract law. Legal principles are a philosophical foundation whose existence is a condition sine qua non for a legal norm in favorable legal rules, which aims to provide proper or appropriate direction according to the law (rechtmatig) regarding using or applying favorable legal rules. The principles of contract law also function as philosophical guidelines or philosophical orientation directions for the formation of legal norms in contracts made by the parties and guidelines in resolving complex contractual legal cases by using an interpretation approach to the legal norms contained in the rules of contract law in force in Indonesia and the legal norms contained in the contracts made by the parties themselves.

There are principles of contract law, including the principle of consensuality, the principle of Freedom of contract, the principle of pacta sunt servanda, the principle of balance, the principle of good faith, and so on. The consensuality principle comes from the Latin word "consensus," which means agreement. In making a contract, consensus is required; the parties agree or agree on the agreed performance. The principle of consensuality means that the contract is born or exists since there is an agreement between the parties regarding the subject matter. If the parties have agreed on every contract, it is binding on the parties who make the contract.

The principle of consensuality is fundamental in the contract. Consensuality is also known as the principle of "offer and acceptance." A contract arises when there has been consensus or conformity of will between the parties. In other words, the agreement will only exist after the agreement is reached. An agreement may not be made by force, fraud, or mistake as stipulated in the provisions of Article 1321 of the Civil Code.

Agreement can be made expressly or impliedly, expressly done verbally or by signing a contract document. Meanwhile, it can be implied by using codes such as shaking hands, performing actions by paying, or doing what is specified in the contract. In electronic contracts widely used in online buying and selling, one of which is at Shopee, the sign, if the buyer agrees, is by clicking the agree button, and the Seller processes the order from the consumer.

The agreement in the online buying and selling contract at Shopee is carried out implicitly. Namely, the consumer clicks the checkout button on the Shopee application after the buyer has selected the goods, knows about the goods and their prices, and sets the address where the purchased goods will be sent. Clicking the checkout button is a form of agreement to what the Seller offers. After reaching an agreement, the Seller and buyer are bound by legal relations to carry out their respective rights and obligations agreed upon in the contract.

Online buying and selling provide convenience in transactions. However, several problems arise, such as goods not being sent, goods not according to what is stated in the offer, and difficulty in refunding or returning goods. In 2021, complaints about problems in transactions in e-commerce ranked as the second most complained about, namely 17.2 percent, consisting of online shopping and online transportation. Based on the description above, it is interesting to study the application of the consensuality principle and its legal implications in electronic contracts. This is because a contract is born if there is a conformity of will or agreement between the parties.

In that context, this research aims to examine and analyze the application of the principle of consensuality in electronic contracts at Shopee and the legal implications of applying the principle of consensuality in electronic contracts at Shopee. This research is expected to provide a clearer understanding of online buying and selling carried out through various media, based on buying and selling contracts through marketplaces such as Shopee, a type of electronic contract.

METHODS

This research is normative juridical research, namely a process for finding legal rules, principles, and doctrines to answer the legal content faced. The approach method in this research uses a statutory approach, case approach, and conceptual approach. The research object of this study is the application of the principle of consensuality in electronic contracts at Shopee and the legal implications of applying the principle of consensuality in electronic contracts at Shopee. The data sources used in this research are secondary data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Data analysis is descriptive qualitative by grouping and selecting the data obtained, then arranging systematically and describing by deductive thinking method, which will produce conclusions that will answer the problem formulation in this study.

RESULT AND DISCUSSION

Application of the Principle of Consensuality in Electronic Contracts at Shopee. Shopee is an online shopping platform that serves as a medium for sellers and buyers to meet online. Shopee was launched 2015 in 7 countries in Singapore, Indonesia, Malaysia, Thailand, Taiwan, Vietnam, and the Philippines. Shopee is a platform tailored to each region that provides customers with an

easy, safe, and fast online shopping experience. Shopee also expanded its wings to the American continent, and Brazil was the first country to launch Shopee in America.

Online buying and selling has become a trend or good habit that has grown due to the impact of technology. Many marketplaces have sprung up in the world; in Indonesia, there is more than one marketplace, namely Shopee, Tokopedia, BukaLapak, etc. The marketplace brings together sellers and buyers online or without meeting face to face; both parties only access the marketplace application and conduct online buying and selling transactions. Online buying and selling is a legal relationship called a sale and purchase agreement, where the agreement is an electronic agreement or contract.

More and more people are using the marketplace to buy and sell because it is based on several reasons. Some of the reasons Electronic Commerce is the choice of business transactions compared to conventional transactions, namely: Efficient and effective, product marketing on a global scale, both business to business and business to customer, and the procedure is more accessible with the support of information technology (Internet), can be accessed from anywhere (cross-border), payment mechanisms and transactions can be done at any time quickly.

The sale and purchase transaction between the Seller and the buyer is a legal event, namely the sale and purchase contract, which creates a legal relationship between the Seller and the buyer. According to R. Subekti, an agreement or contract is an event in which one person promises to another or the two people promise each other to carry out something; from this event, a relationship arises between the two people called "engagement." Therefore, an agreement issues an obligation between the people who make it. Contracts made online through electronic media are known as electronic contracts. According to Article 1 number 17 of the ITE Law, an electronic contract is an agreement between parties through an Electronic System.

Agreement and contract are two terms with the same meaning, namely a legal relationship between two or more parties that bind themselves and cause legal consequences. Agreement and contract are the same, as in Chapter II, Book III of the Civil Code (KUHPperdata), which equates the term contract with agreement. This can be seen from the title of Chapter II, Book III of the Civil Code, namely "Obligations arising from contracts or agreements."

A contract is valid if it fulfills the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code, namely agreement, legal capacity, a sure thing, and a halal cause. A contract occurs if there is an offer from one party and then an acceptance from the other party. Accepting the offer is a form of agreeing to the contents offered. This is in line with principle entity, one of the principles of contract law.

Contract-making must pay attention to and use the principles of contract law. What is called legal principles are general principles contained in legal rules, and general principles are something that contains ethical values. Law is a concrete rule about how to act in social life. Law is the concretization of legal principles. According to Satjipto Rahardjo, legal principles are defined as essential truth or fundamental truth because it is through legal principles that ethical and social considerations of society enter the law. Thus, legal principles become a source to live the legal system with society's ethical, moral, and social values. Legal principles are the broadest foundation for the Birth of legal regulation, meaning that legal regulations can ultimately be returned to these principles.

Legal principles are a philosophical foundation whose existence is a condition sine qua non for a legal norm in favorable legal rules, which aims to provide feasible or appropriate direction according to the law (rechtmatig) regarding using or applying favorable legal rules. The principles of contract law also function as philosophical guidelines or philosophical orientation directions for the formation of legal norms in contracts made by the parties and guidelines in resolving complex

contractual legal cases by using an interpretation approach to the legal norms contained in the rules of contract law in force in Indonesia and legal norms that are applicable in Indonesia contained in the contract made by the parties themselves. The use of legal principles in contracts is the basis for binding an agreement or contract that has been made.

There are principles of contract law, including the principle of consensuality, the principle of Freedom of contract, the principle of *pacta sunt servanda*, the principle of balance, the principle of good faith, and so on. According to Ridwan Khairandy, the law of agreements recognizes three principles of agreement that are interrelated. The three principles are as follows:

1. The principle of consensual
2. The principle of Freedom of contract
3. The principle of the binding force of the contract

According to Ridwan Khairandy, the three principles are interrelated with each other, the principle of consensual (the principle of consensual, *het consensual same*), the principle of the binding force of the contract (the principle of the binding force of contract, *deverbindende kracht van de overeenkomst*), and the principle of Freedom of contract (principle of Freedom of contract, *de contractsvrijheid*). Freedom of contract and consensual are located in the pre-contract period, and the principle of binding force is in the contract execution period.

According to Tan Kamello, the principles referred to in treaty law are the essential principles of treaty law, namely the principle of consensual relating to the Birth of the agreement, the principle of Freedom of contract relating to the content of the agreement, and the principle of binding force relating to the consequences of the agreement. The consensuality principle comes from the Latin word "consensus," which means agreement. In making a contract, consensus is required; the parties agree or agree on the agreed performance. The agreement must be based on the consensus or agreement of the parties agreeing. With the principle of Consensualism, the agreement is said to have been born if there is an agreement or conformity of will between the parties who agree. Consensus or agreement is a meeting of the wills of both parties. The principle of consensuality means that the contract is born or exists since there is an agreement between the parties regarding the subject matter. If the parties have agreed, every contract is binding on the parties who make the contract.

The consensus of the parties, then the agreement, gives rise to the binding force of the agreement, just like the law for the parties to the agreement. This consensual principle is the source of binding agreements, which bind moral and legal obligations that the parties must carry out. In Indonesian treaty law, a consensus or agreement is considered invalid if there is a defect of will as specified in Article 1321 of the Civil Code, namely the existence of coercion (*dwang*), fraud (*bedrog*), and delusion or delusion (*dwelling*). In addition, based on jurisprudence, will defects can also be in the form of abuse of circumstances due to economic or psychological advantages.

The application of the principle of consensuality to all types of agreements, as consensual is a binding contractual source for the parties to the agree, there have been many kinds of agree have been ents or contracts developed, including an agreement that is carried out online or often known as an electronic contract. An electronic contract is an agreement the parties make using an electronic system. The characteristics of electronic contracts are as follows:

1. Electronic contracts can occur remotely, even beyond national borders via the Internet;
2. The parties to an electronic contract generally meet face to face (faceless nature), maybe never.

A contract is valid if it meets the legal requirements of an agreement in Article 1320 of the Civil Code; besides that, according to Article 46 paragraph (2) of Government Regulation Number 71 of

2019 concerning the Implementation of Electronic Systems and Transactions, an electronic contract is valid if:

- a) There is an agreement between the parties;
- b) Performed by a legal subject who is capable or authorized to represent by the provisions of laws and regulations;
- c) There is a particular matter;
- d) The object of the transaction must not conflict with the laws and regulations of decency and public order.

From the provisions above, it is known that an electronic contract is valid if there is an agreement between the parties. The agreement is a conformity of will and must be expressed explicitly or implicitly. A will must be expressed and cannot be if it is only desired by one party but not conveyed to the other party, so there will be no conformity or meeting of wills.

Article 4 of UNCITRAL describes e-contracts, namely: "as between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement." Based on these provisions, a contract is an agreement or agreement (consensus). Agreements in electronic transactions are generally the same but take different forms. UNCITRAL regulates it as "variation by agreement" Freedom to determine this agreement is part of the scope of the offer and acceptance process in electronic contracts carried out using electronic networks known as electronic data interchange (EDI).

An E-Commerce transacticonsensualism principle means both parties agree with both parties. This offer and acceptance begin the agreement between the parties concerned. This online offer and acceptance process is similar to the offer and acceptance process in general. The difference is only in the media used; in e-commerce transactions, the media used is the Internet.

Electronic agreements are known as click-wrap agreements. To determine the agreement in an e-contract when the party receiving the offer "clicks" on the agreement section. An E-contract is an agreement between computer users (users) in interacting with producers or electronic service providers. What needs to be considered in the click-wrap agreement is its placement which must be visible to the recipient of the agreement (user). In addition, the offering party must be able to ensure that the receiving party reads the terms of the agreement offered.

Based on the theory of the occurrence of an agreement, the Acceptance theory can be used, that the agreement occurs when the Seller who has an online store receives a direct answer from the consumer or buyer. The form of agreement in buying and selling via the Internet can be done in several patterns. The methods or patterns used are single click, double click, to three clicks. Each has different characteristics. In principle, one party's agreement to the other party's statement has been represented through these three patterns.

One example of an electronic contract is a sale and purchase contract through the Shopee marketplace. Buying and selling through Shopee also begins with an offer (offer) and acceptance (acceptance) as a process of agreement. In this case, the offer is that the Seller displays the selling item in the Shopee marketplace storefront, and the buyer chooses the desired item after that clicks the buy button and then processes for payment until the delivery of goods to the buyer. The agreement or consensus in the online buying and selling agreement is reached implicitly or tacitly.

A sale and purchase agreement in Shopee is a "click-wrap agreement," which occurs when the buyer and Seller agree to make a sale and purchase with the buyer clicking the purchase button. The agreement in buying and selling in Shopee occurs by using electronic networks and the Internet, without which the buying and selling agreement would not be reached. The agreement in buying and selling in Shopee is reached if the buyer accepts the offer given by the Seller, marked by the

buyer clicking the "Buy now" or "Checkout" button; when he has clicked it, legal consequences are born in the form of rights and obligations of the parties. After the buyer clicks the buy now or checkout button, the Shopee application electronic system will process further, such as the payment bill that the buyer must pay. The buyer pays the price of the goods, and the Seller is then obliged to deliver (ship) the goods purchased by the buyer to the destination address specified by the buyer. Such an agreement is a statement of will by tacit or implicit means, namely that the buyer clicks on the purchase and pays the price of the goods, and then the Seller delivers the goods.

In Shopee buying and selling, the agreement is reached by the buyer clicking buy now. Before the buyer clicks the buy now button, which means expressing his will to buy, the buyer should read the description of the item information and the terms of purchase provided by the Seller in the description or information column. All information about the goods must be given clearly and in a place that is easy to read because this is the obligation of the Seller and the right of the buyer, namely the right to information. After reading and understanding the information, the buyer clicks the buy now button as approval. The purchase button is also clearly visible; in Shopee, the button is at the bottom of the right.

From the analysis above, the principle of consensual has been applied in electronic contracts at Shopee. The sale and purchase contract at Shopee is carried out through an electronic system; the offer and acceptance process is carried out through the electronic system of the Shopee application. The agreement, which is the conformity of the will of the parties, is reached by the Seller providing an offer through the Seller's storefront in the Shopee application and the buyer selecting goods from the storefront and then clicking the buy now button as a form of accepting the offer from the Seller. Clicking the purchase button is a form of agreement, a feature of electronic contracts. When you have agreed, it creates rights and obligations for the parties that must be fulfilled.

In implementing the sale and purchase contract at Shopee, there are times when it goes well and others when it does not, such as goods that do not arrive, are mistaken or are not sent. One of the cases occurred was experienced by a consumer who, in early February 2020, made three transactions to buy cosmetic nail polish products along with decorations from abroad with a nominal value of IDR 700,000, - IDR 500,000, - and IDR 200,000. On February 28, 2020, the transaction with a nominal value of Rp 700,000, - the status suddenly changed to completed, and the buyer had received the goods, but the buyer had not received the goods.

Another case is a seller who deceives buyers, as experienced by a consumer who bought electricity tokens through Shopee. The buyer bought the electricity token because the price was lower than usual; when the buyer had paid then, the Seller sent a 16-digit token number that was supposed to be entered into the electricity meter, but when entered, it failed. When contacting the Seller through the chat feature, the Seller said that the buyer must click confirmation on the Shopee application to use the token, but that is not the case. If the buyer clicks the confirmation button, the money paid by the Seller will be sent to the Seller by Shopee, but because the token cannot be used, the buyer does not click the confirmation button. The incident was then reported to Shopee, and the buyer made a refund request, and then Shopee returned the funds.

The Seller experienced the third case, namely the mode of buyers claiming a refund or return of goods because the goods were not suitable or small. This incident was experienced by a seller with a shop account named Miraclestore. The buyer engineered an unboxing video, exchanged the contents of the package, and returned used and damaged goods by submitting a claim through Shopee. The returned items are different models, colors, and damaged. For this incident, Shopee did not follow up seriously and instead returned the funds to the buyer on the pretext that there was no response from the expedition.

In the above cases, the incident occurred after the Birth of contractual obligations (rights and obligations) based on the parties' agreement. These cases show that the parties bound by the electronic contract did not implement the contents of the contract as it should have been implemented in good faith.

Legal Implications of the Application of the Consensuality Principle in Electronic Contracts at Shopee. According to the Big Indonesian Dictionary (KBBI), the term implication is the involvement or state of being involved. About the focus of this research, the intended meaning of legal implications is the involvement or linkage of several legal aspects due to the Application of the Principle of Consensuality in Electronic Contracts at Shopee. Several legal implications are several legal implications related to the Application of the Principle of Consensuality in Electronic Contracts at Shopee will be described below.

Consensual Gives Birth to the Existence of Electronic Contracts. The principle of consensual lies in the pre-contractual period. With consensual, a contract is said to have been born if there has been an agreement or conformity of will between the parties making the contract. With the promise comes the willingness for the parties to perform for each other; there is a willingness to bind themselves to each other. The contractual obligation is a source for the parties to freely determine the contents of the contract with all its legal consequences. Based on this will, the parties freely bring together their respective wills. The will of the parties is the basis of the contract. The occurrence of legal acts is determined based on an agreeTheal).

The contract is formed and born due to the meeting of the wills (consensus) of the parties. Contracts can be made freely without being bound by form and do not have to be stated formally but simply through consensus. Systems Roman legal system, ract is formed if the relevant property is delivered. Roman law adhered to the strict rule that all contracts, with some specific exceptions, had to fulfill several requirements before they could be said to have been formed. Although there is a tendency to recognize the consensual principle, as a general rule, nudus consensus obligated at that time was considered not applicable.

The existence of the principle of consensual can be concluded in the provisions of Article 1338 paragraph (1) jo. Article 1320 point (1) of the Civil Code. In these provisions, it is determined that one of the conditions for the validity of an agreement is the agreement of both parties. The consensual principle states that contracts are generally not held formally, but it is sufficient that there is an agreement between the two parties. An agreement is a conformity between the will and the statements both parties make.

In the Islamic legal system, the position of agreement on a contract is highly upheld, which means that the principle of pacta sun servanda (the promise is binding) is highly respected by Sharia law. This is by the word of Allah SWT, which emphasizes that: "O you who believe, fulfill the contracts."

Applicability of the principle of Pacta Sun Servanda. The principle of pacta sunt servanda is also called the principle of legal certainty. This principle relates to the consequences of the agreement. The principle of pacta sunt servanda means that the agreement is fully binding and, therefore, must be kept. Contract law in Indonesia adheres to this principle as stipulated in Article 1338 of the Civil Code. Article 1338, paragraph (1) of the Civil Code states: "All agreements made legally shall apply as law to those who make this Article's provisions, the contract's binding force the contract is the same as the law for the parties who agree to it. Likewise, judges or third parties must respect the substance of the contract made by the parties as if it were a law. They may not intervene in the substance of the contract made by the parties.

The principle of pacta sunt servanda was initially known in church law. In church law, it is stated that an agreement occurs if there is an agreement between the two parties and is strengthened

by an oath. This implies that every agreement between both parties is a sacred act associated with religious elements. However, in its development, the principle of *pasta sunt servanda* is given the meaning of spectrum, which means that an agreement does not need to be strengthened by oath and formalities. As for the principle of *nudes practicum*, it is enough to have an agreement.

Consensualism must be accompanied by a material contract (*zakelijke overeenkomst*). A contract is already binding on the parties immediately after reaching the agreement. However, this binding power is only limited to the emergence of the rights and obligations of the parties. At that stage, the property rights to the contracted object (e.g., sale and purchase agreement) still need to be transferred. One more stage is needed to transfer property rights, namely a property contract (*zakelijke overeenkomst*).

The concrete form of this property contract is the act of delivery (*levering*) of the object in question from the hands of the Seller to the hands of the buyer. This delivery stage is critical to note because it has specific legal consequences. For example, in a sale and purchase agreement, the goods have not been handed over to the buyer; if the goods are lost or destroyed, then the buyer is only entitled to demand a refund of the price but is not entitled to claim compensation, because legally the property rights to the object have not yet passed to the buyer. This is because there has not been a material contract in the form of delivery of the object to the buyer.

CONCLUSION

The consensuality principle applies to all types of agreements because consensuality is a binding contractual source for the parties to an agreement or contract, including forms of agreements made online or often known as electronic contracts. The sale and purchase agreement at Shopee includes a form of agreement carried out online or often known as an electronic contract. Electronic contracts are known as click-wrap agreements. To determine the agreement in an e-contract when the party receiving the offer "clicks" on the agreement section. An *Eisbe* said is an agreement between computer users (users) in interacting with producers or electronic service providers. Click-wrap agreement placement must be visible to the agreement recipient (user). In addition, the offering party must be able to ensure that the receiving party reads the terms of the agreement offered. That the application of the principle of consensuality in electronic contracts at Shopee raises several legal implications, namely:

Consensual Gives Birth to the Existence of Electronic Contracts, namely, with consensual, a contract is said to have been born if there has been an agreement or conformity of will between the parties making the contract, including the agreement in the electronic contract at Shopee.

The applicability of the principle of *Pacta Sun Servanda* means that the electronic contract that has been agreed upon is fully binding and, therefore, must be kept. Contract law in Indonesia adheres to this principle as stipulated in Article 1338 of the Civil Code. Article 1338, paragraph (1) of the Civil Code states: "All agreements made legally shall apply as law to those who make them."

For the transfer of the right, consensual must be accompanied by a material contract (*zakelijke overeenkomst*). Although a contract is binding on the parties as soon as an agreement is reached, this binding force is only limited to the rights and obligations of the parties. At that stage, the property rights to the contracted object (e.g., sale and purchase agreement) still need to be transferred. One more stage is needed to transfer property rights, namely a property contract (*zakelijke overeenkomst*). The concrete form of this material contract is the act of delivery (*levering*) of the object concerned from the Seller's hands to the hands of the buyer.

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