

## JURIDICAL ANALYSIS OF VALIDITY ONLINE-BASED AGREEMENT (ELECTRONIC CONTRACT) IN INDONESIA

Nur Oloan<sup>1</sup>  
Resti Deawinda Parinduri<sup>2</sup>  
Abdul Aziz Abidan<sup>3</sup>

<sup>1,2,3</sup>University of Muhammadiyah South Tapanuli

[nur.oloan@um-tapsel.ac.id](mailto:nur.oloan@um-tapsel.ac.id)

[rezti@um-tapsel.ac.id](mailto:rezti@um-tapsel.ac.id)

[abdul.aziz@um-tapsel.ac.id](mailto:abdul.aziz@um-tapsel.ac.id)

**Abstract:** This research aims to analyze the juridical aspects related to the validity of online-based agreements (electronic contracts) in Indonesia, considering the rapid development of digital technology that has changed the paradigm of transactions and public legal relations. Electronic contracts are now one of the main instruments in commercial, administrative, and public service activities. To be valid, electronic contracts must meet legal requirements as stipulated in the Civil Code, the ITE Law, and its derivative regulations, namely Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. This research uses a normative juridical approach by examining laws and regulations, legal doctrines, and case studies of court decisions. The results show that although Indonesia's legal framework has accommodated electronic contracts, there are still challenges in the aspects of proof, consent of the parties, transaction security, and digital consumer protection. This research provides recommendations for strengthening identity verification mechanisms, increasing digital literacy of public law, and harmonizing regulations in order to realize legal certainty in the implementation of electronic contracts.

**Keywords:** *Electronic Contracts; Validity of the Agreement; Digital Law; THE WILL; Online Transactions.*

### Introduction

The internet is one of the most profitable electronic media devices, with a single click of an advertising button will fill the web page and is sure to catch some glimpses for fellow web surfers. It not only spreads through electronic media but can benefit web page creators all the time (Amajihono, 2022).

The development of information technology has significantly influenced all aspects of human life, including law and civil transactions. Beyond serving as a communication medium, the internet has become a space for conducting economic activities quickly, effectively, and efficiently. This development has changed the mindset and life of people in Indonesia, things that were previously done through traditional methods, can now be done by utilizing technological developments (Arista, 2013).

In this context, online-based agreements or electronic contracts are becoming an important instrument in conducting modern business transactions. Agreements are one of the important aspects of business carried out by individuals with individuals as well as individuals with groups (Sekarini, M. A. and Darmadha, 2014).

An electronic contract is a contract made through an electronic system, where parties do not interact physically but remain legally bound to fulfill certain obligations. With the growth of e-

commerce, digital services, and app-based platforms, electronic contracts have become an essential part of modern legal practice. However, questions remain about their validity under Indonesian law. While the Civil Code sets requirements for a valid agreement—consent, competence, a clear object, and a lawful cause challenges arise when these elements are fulfilled electronically, such as through “agree” clicks, digital signatures, or automated system acceptance.

Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and its amendments, including (*Law No. 1 of 2024*), have provided a legal basis for legal recognition of electronic documents, electronic signatures, and electronic contracts. However, implementation in the field shows that there are still differences in interpretation, technical constraints, and legal vulnerabilities that must be studied more deeply.

Thus, this research is important to provide a comprehensive understanding of how legal regulations in Indonesia regulate the validity of electronic contracts, as well as what challenges and solutions can be offered to strengthen legal certainty in the digital era.

### Literature Review

The basis of contract law in Indonesia mainly comes from Book III of the Civil Code (KUH Percivil) which regulates engagement. This basis includes the principle of freedom of contract (Article 1338 paragraph (1) of the Civil Code), which states that agreements made legally are binding on the parties as per the law.

The definition of contract in the Civil Code is an act in which one or more persons bind themselves to one or more other persons, which is based on an agreement to give rise to obligations. This meaning is contained in Article 1313 of the Civil Code and creates a legal relationship that obliges the parties to carry out something that has been agreed.

**Subekti** in his book *Principles of Civil Law*, argues that a contract or what is usually called an agreement is an event in which a person promises to another person or where two people promise each other to perform something (Subekti, 1983).

Meanwhile, the definition of civil law according to **Sri Soedewi Masjhoen Sofwan**, civil law is a law that regulates the interests between individual citizens and one individual citizen to another (Sofwan, 1975). So we can conclude that a contract is a product of an agreement between the parties bound in it

In addition, there is the principle of contract, the meaning of the principle of code is the basic principles that are the legal basis in agreements, the most important is the principle of freedom of contract, which gives the parties the freedom to make agreements and determine their contents freely, as long as they do not violate the law, morality, and public order.

Other important principles include consensualism (a valid agreement since the agreement was reached), *pacta sunt servanda* (a promise that is binding on the parties and must be fulfilled), and good faith (the performance of a contract based on trust and good intentions).

According to the ITE Law (Law No. 11 of 2008 jo. Law No. 19 of 2016), electronic contracts are regulated in Article 1 number 17 which defines it as “agreements of the parties made through an electronic system”. In addition, Article 18 paragraph (1) states that electronic transactions that are stated in electronic contracts are binding on the parties.

An electronic contract is generally understood as an agreement that is made, sent, received, or stored through an electronic system. The international legal literature discusses many fundamental aspects of electronic contracts, ranging from authentication, data integrity, to proof. The *UNCITRAL Model Law on Electronic Commerce* is one of the global references in the regulation of electronic contracts, which is then adapted in various national regulations.

In the Indonesian context, some legal experts argue that electronic contracts are a natural development of conventional contract theory. Retnowulan Sutanto emphasized that the essence of the agreement has not changed even though the media used is different. Meanwhile, cyber law experts such as Edmon Makarim highlighted the importance of information security, personal data protection, and authentication mechanisms as vital elements in electronic contracts.

Several previous studies have shown that there are still challenges in the implementation of digital certificate-based electronic signatures, especially in terms of party identity verification. Dependence on digital platforms also poses the risk of monopoly, data misuse, and an imbalance in the bargaining positions of consumers and business actors.

In addition, academic studies show that the implementation of electronic contracts is greatly influenced by the level of digital literacy of the community. Low understanding of the terms and conditions of using digital applications or services often results in *unconscious agreements*, which have the potential to cause disputes.

### Method

This research uses a normative juridical approach that focuses on the study of laws and regulations, legal literature, and relevant court decisions. This approach was chosen because the issues studied are directly related to written legal norms and how those norms are interpreted in practice.

Primary legal materials include the Civil Code, the ITE Law, Law No. 1 of 2024, and government regulations related to electronic signatures. Secondary legal materials include books, scientific journals, articles, and legal doctrines that discuss electronic contracts and digital law. Meanwhile, tertiary legal materials are obtained through legal encyclopedias and other reference sources.

### Results and Discussion

Electronic contracts fall under the type of anonymized agreement, as these electronic contracts are not regulated in the Civil Code (Saparyanto, 2022).

Electronic contracts can be classified as agreements that have a threat of punishment, because if the business actor does not fulfill his obligations, the consumer is entitled to compensation for losses caused by the business actor's negligence in carrying out his obligations, and vice versa if the consumer does not fulfill his obligations as stipulated in the electronic contract (Budiana, 2018).

The validity of electronic contracts in Indonesia has been legally recognized to provide certainty for users in conducting business transactions digitally safely and legally.

Electronic contracts are in principle considered valid as long as they meet the legal requirements of the agreement according to the Civil Code. Article 1320 of the Civil Code regulates four conditions for the validity of an agreement, namely

1. Agreement of the parties,
2. The competence of the parties,
3. A specific subject matter (the object of the agreement), and
4. A cause that is not forbidden (a cause that is lawful).

If the subjective conditions (agreement and competence) are not met, the agreement can be voidable, while if the objective conditions (object and cause) are not met, the agreement is *null and void* (Artanti & Men Wih Widiatno, 2020).

- Agreement means the agreement between the parties without any coercion, error, or fraud. This is emphasized in Article 1321 of the Civil Code: “No consent has force if it is given due to mistake or obtained by coercion or fraud”.

- Competence of the Parties. Legal proficiency refers to a person's ability to perform legal acts. Article 1329 of the Civil Code states: "Everyone is authorized to make an engagement, unless he is declared incapable of doing so". Article 1330 of the Civil Code describes who is considered incompetent: Those who are incapable of making consent are: An immature child; People who are placed under pardon;
- A certain thing. The object of the agreement must be clear and determinable. Article 1332 of the Civil Code states: "Only goods that can be traded can be the subject of an agreement". Article 1333 of the Civil Code adds: "An agreement must have the principal in the form of an item that is at least determined in type."
- A halal cause. The cause or causa in the agreement must not be contrary to law, morality, or public order. Article 1335 of the Civil Code states: "An agreement without cause, or made on the basis of a false or prohibited cause, has no force". Article 1337 of the Civil Code adds: "A cause is prohibited, if prohibited by law or if it is contrary to decency or public order".

More specifically, Article 46 paragraph (2) of Government Regulation Number 71 of 2019 regulates the legal requirements of an electronic agreement or electronic contract, including:

1. there is an agreement of the parties;
2. carried out by a competent legal subject or authorized to represent in accordance with the provisions of laws and regulations;
3. there are certain things; and
4. The object of the transaction must not be contrary to laws and regulations, decency and public order.

In addition to these four conditions, electronic agreements addressed to Indonesian residents must be made in Indonesian. If the electronic contract uses a standard clause, it must be in accordance with the provisions of laws and regulations regarding standard clauses. An agreement or electronic contract must also contain at least the following:

1. identity data of the parties;
2. objects and specifications;
3. electronic transaction requirements;
4. prices and fees;
5. procedure in the event of cancellation by the parties;
6. provisions that give the aggrieved party the right to be able to return the goods and/or request a replacement of the product if there are hidden defects; and
7. Legal Options for Electronic Transaction Settlement

Parties that can be involved in electronic contracts include:

- a. Article 41 paragraph (2) of (*Government Regulation Number 71 of 2019*) is the public environment of government agencies, namely;
  - Institutions appointed by the Agency;
  - Inter-Agency;
  - Inter-Institutional appointed;
  - Inter-Agency with appointed Institutions;
  - Between Agencies or Institutions and business actors in accordance with the provisions of laws and regulations;
- b. Article 41 paragraph (3) of (*Government Regulation Number 71 of 2019*) is in the private environment, namely;
  - Between business actors;
  - Between business actors and consumers;
  - Between individuals.

The content of the electronic contract that will carry out electronic transactions at least contains:

1. Identity data of the parties.
2. Objects and specifications.
3. Electronic Transaction Requirements.
4. Prices and fees.
5. Procedure in the event of cancellation by the parties.
6. Provisions that give the aggrieved party the right to return the goods and/or request a replacement of the product if there are hidden defects.
7. Legal options for the settlement of Electronic Transactions;

Regarding the procedures for the use of electronic contracts, it has specifically been regulated in Article 18 of the ITE Law which basically states:

- Electronic transactions made through the electronic contract system are binding on the parties.
- The parties have the right to determine the applicable or applicable laws in electronic transactions set out in the electronic contract.
- If the parties do not determine the legal choice in electronic transactions, the applicable law is based on the principles of International Civil Law.
- The parties have the right and authority to determine the authority to establish alternative dispute resolution institutions such as court forums, arbitration, or other institutions authorized to handle. disputes that may arise as a result of electronic transactions.
- If the parties do not elect a forum or institution that has the authority to resolve the dispute that arises, the authority to handle disputes over the occurrence of electronic transactions is stipulated and guided by the principles of international civil law.

Further explanation regarding the use of electronic contracts as Article 18 of the ITE Law basically contains the following:

- Electronic contracts can be used in electronic transactions, considering that contract activities are legal acts.
- In the event of a dispute over the occurrence of an electronic contract, the parties have the authority to determine by law which law to resolve the dispute over the electronic transaction that occurs.
- If the parties do not determine the dispute resolution mechanism that may arise as a result of the electronic contract made by the parties, then international civil law applies;

In addition to meeting the requirements for the validity of the agreement, the validity of the electronic agreement is also strengthened through the use of electronic paraphernalia (Putra et al., 2025). Article 11 of the ITE Law provides legal recognition of electronic paraphernalia, as long as it meets certain technical and security requirements (Hikami, 2022). In this context, it is important to consider *the principles of lex posterior and lex specialis* that apply in the Indonesian legal system (Putri, 2018).

Thus, although Article 1320 of the Civil Code is the basis for the general principle of the legal terms of the agreement, in the practice of digital transactions, the implementation and validity of the agreement must first refer to the provisions of this PP as a relevant and more up-to-date norm.

The principles *of lex posterior derogat legi priori and lex specialis derogate legi generali* are guidelines for the overriding of the provisions of Article 1320 of the Civil Code by a newer and special regulation, namely (*Government Regulation Number 71 of 2019 Concerning the Implementation of Electronic Systems and Transactions*).

An agreement in an electronic contract is considered to occur when the parties demonstrate their consent through verifiable electronic actions, such as clicking the 'agree' button, sending an agreement email, or using a certified electronic signature.

The ITE Law provides explicit recognition of the validity of electronic contracts, including the position of electronic documents as valid evidence. It is important to ensure that online transactions have the same legal force as conventional contracts.

Articles 46 to 52 of the ITE Law regulate various technical aspects of electronic contracts, including the obligations of business actors, information delivery mechanisms, and consumer rights. This is also based on Article 11 of the ITE Law which legalizes electronic paragraphs as valid legal evidence as long as they meet the applicable provisions.

Digital contracts have unique characteristics, such as being able to be done without direct contact and often in the form of a standard "*take it or leave it*" contract, where consumer consent is the key to its validity even though there are clauses that limit the obligations of business actors (Putra et al., 2025).

However, there are several obstacles in practice. First, verifying the identity of the parties is still a big challenge. Not all digital platforms implement two-factor authentication systems or digital certificates based on public key infrastructure (PKI). Second, the validity of contracts is often debated when there is a difference of understanding of terms and conditions of service. Third, the information security aspect has a great impact on contract integrity, considering its vulnerability to hacking and data manipulation.

The court decision shows that there is a diversity of interpretations of the proof of electronic contracts. In some cases, the court accepts *the system log file* as authentic evidence, but in other cases the judge considers that the evidence is insufficient without the endorsement of the electronic system operator. This shows the need for a more consistent standard of proof.

## Conclusion

An electronic contract is a legally binding agreement made through a digital system, where the parties do not interact physically but commit to fulfilling specific obligations. With the rapid growth of e-commerce, digital services, and application-based platforms, electronic contracts have become an integral part of modern legal practice. Despite their convenience and efficiency, questions remain regarding their legal validity under Indonesian law, particularly in meeting the Civil Code requirements of consent, legal capacity, a clear object, and lawful cause, especially when these elements are executed electronically through "agree" clicks, digital signatures, or automated system acceptance.

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