

The Validity of Electronic Agreements in the Perspective of Indonesian Civil Law

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ABSTRACT

The advancement of digital technology has led to significant transformations across various sectors, including the legal field. One such change is the rise of electronic contracts (e-contracts), which allow business transactions to be conducted electronically without the need for the physical presence of the parties involved. E-contracts have become a vital alternative in many transactions within the digital age. This article aims to explore the validity of electronic contracts from the standpoint of civil law in Indonesia. It covers the legal framework governing electronic contracts, the requirements for their validity, and the challenges and issues encountered in their implementation in Indonesia. Through an analysis of existing legal provisions and a comparison with international practices, this article seeks to provide a clearer understanding of the legal standing of electronic contracts in Indonesia's legal system.

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INTRODUCTION

The advancement of information and communication technology (ICT) has significantly impacted various aspects of human life, including the social, economic, and legal sectors. The rapid growth of the digital age has revolutionized the way people interact, communicate, and conduct transactions. In the past, legal agreements between parties typically required physical interaction, such as in-person meetings or the exchange of signed documents. However, with the emergence of the internet and digital platforms, transactions can now occur without physical meetings, leading to the creation of a new form of legal agreement: electronic contracts or e-contracts.

An electronic contract refers to an agreement made and executed through electronic means, such as communication, transactions, or the exchange of information carried out digitally. One of the most notable examples of this shift is the use of electronic signatures, which replace traditional methods requiring physical signatures. This innovation not only streamlines the transaction process but also enables remote agreements to be made more efficiently (Siregar, 2024).

In Indonesia, legal provisions governing agreements and transactions generally reference the Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata). According to the Civil Code, an agreement is considered valid if it fulfills certain requirements, such as mutual consent, the competence of the parties, and a clear subject matter. Traditionally, such agreements have been documented in writing and concluded with a physical signature as proof of consent. However, with the passage of time and technological advancements, new challenges have emerged, particularly with respect to electronic contracts that do not require physical

interaction (Toumahu & Anggarini, 2024).

The availability of digital technology, which facilitates fast and easy transactions, raises important questions about the validity of electronic contracts. In the business and trade sectors, the use of electronic contracts is becoming more common for both domestic and international transactions. Agreements can now be made online without the need for face-to-face meetings, fostering the growth of the digital economy. However, the legal recognition of electronically executed contracts has not been fully clarified, presenting challenges in the application of civil law in Indonesia.

Furthermore, the rapid development of digital technology introduces new concerns regarding the protection of personal data and the security of electronic transactions. Electronic contracts often involve the exchange of sensitive personal and financial information. Therefore, it is essential to examine how Indonesian law can safeguard personal data and ensure the integrity of electronic transactions, preventing data misuse and protecting against fraudulent activities.

Indonesia's existing regulations on electronic contracts, particularly Law Number 11 of 2008 on Electronic Information and Transactions (ITE), as amended by Law Number 19 of 2016, provide a legal foundation for the recognition of electronic transactions. The ITE Law covers various aspects of electronic transactions, including the validity of electronic signatures, which are permitted in contracts and transactions. Despite the presence of such regulations, many still question the legal strength of electronic contracts, particularly in terms of proving their validity in the event of disputes.

The recognition and acceptance of electronic contracts within Indonesia's legal system require further attention, particularly given the rapid technological advancements. Without a clear legal framework and sufficient protection, risks may arise, including the misuse of technology, ambiguity regarding the legal status of electronic contracts, and potential harm to the parties involved. Additionally, the global nature of electronic transactions creates challenges when dealing with international parties and different legal systems (Susilowati et al., 2023). Therefore, it is crucial to consider how international regulations governing electronic contracts can serve as a reference and how Indonesia can align its legal system with these global developments.

Other countries, such as the United States and European Union member states, have already established robust regulations regarding the validity of electronic contracts and signatures. For example, the United States' Electronic Signatures in Global and National Commerce (ESIGN) Act ensures that electronic signatures hold the same legal weight as traditional signatures, provided they meet certain criteria. Similarly, the European Union's EIDAS Regulation (Electronic Identification and Trust Services) provides guidelines for the use of electronic signatures and their recognition in international transactions among member states. Comparing these international frameworks is essential for Indonesia to develop its own regulations on electronic contracts and ensure they meet global standards (Andriati & Batubara, 2024).

This article seeks to offer a detailed analysis of the validity of electronic contracts within Indonesia's civil law framework. It will examine the legal foundations of electronic transactions, the conditions for the validity of electronic contracts, and the challenges associated with their implementation in Indonesia. Additionally, the article will explore the ITE Law and its amendments, the relationship between the Civil Code provisions and electronic contracts, and issues related to the validity of electronic signatures, data protection, and international regulations.

By exploring these issues, the article aims to provide a clearer understanding of the legal status of electronic contracts in Indonesia and how existing regulations can evolve to accommodate the rapid pace of technological change. Moreover, it will offer recommendations for developing regulations that are more adaptable to technological advancements and meet the public's demand for secure and efficient transactions. Ultimately, this will help ensure that electronic contracts are legally recognized within Indonesia's legal system, offering sufficient legal protection to all parties involved.

RESEARCH METHODOLOGY

This research adopts a descriptive-analytical approach, aiming to describe and analyze the validity of electronic contracts within the framework of civil law in Indonesia. The descriptive method is employed to outline various facts and regulations related to electronic contracts, including those governing their validity, electronic signatures, and the challenges associated with their implementation in Indonesia. The analytical approach is used to assess the relevance and effectiveness of current regulations governing electronic transactions in Indonesia, as well as to identify potential obstacles and propose solutions to enhance the legal recognition of electronic contracts.

The data for this study is primarily sourced from secondary materials, such as legal documents, including Law Number 11 of 2008 on Electronic Information and Transactions (ITE), its amendments in Law Number 19 of 2016, and the Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata). Additionally, the research draws on supporting literature, such as books, academic journals, scholarly articles, and previous studies on the validity of electronic contracts and the use of electronic signatures in Indonesia. Primary

sources, including legal documents and court rulings, will also be analyzed to gain a more comprehensive understanding of how electronic contract law is applied in practice in Indonesia.

The data collection method employed is library research, which involves gathering relevant information and legal materials through books, academic journals, regulations, and other documents related to the research topic. This research also includes a review of international regulations related to electronic contracts, such as the rules governing electronic signatures in developed countries, to offer a broader perspective on the application of electronic contract law in Indonesia. By comparing international frameworks, the research aims to identify potential gaps or discrepancies in Indonesia's legal approach.

After collecting the data, a qualitative analysis will be conducted to interpret the legal provisions and evaluate their practical effectiveness. This analysis will also include a comparison of Indonesia's regulations with those in other countries to identify any misalignments or gaps in the law. Thus, this research not only aims to describe the legal status of electronic contracts in Indonesia but also to evaluate whether the current regulations sufficiently address the challenges posed by technological advancements.

Additionally, the study employs a comparative analysis to examine how electronic contract regulations in Indonesia compare to those in other countries, such as the E-SIGN Act in the United States and the EIDAS Regulation in the European Union. This comparison will help formulate recommendations for the development of electronic contract law in Indonesia, taking into account international best practices. The analysis is expected to offer insights into the steps Indonesia should take to align its regulations with technological developments and global needs.

The research will also include a case study focusing on legal disputes related to electronic contracts in Indonesia, involving both individuals and organizations. This case study will identify issues faced in the application of electronic contract law and examine how the Indonesian judicial system handles disputes related to electronic contracts, especially concerning the validity and proof of electronic signatures. The case study will also assess the extent to which existing regulations provide legal protection to parties involved in electronic transactions.

Through this descriptive-analytical approach, the research aims to offer a clearer and more comprehensive understanding of the validity of electronic contracts within Indonesia's civil law system. It will also provide recommendations for developing regulations that are better suited to technological advancements. The findings of this study are expected to contribute to the evolution of Indonesian law, particularly regarding electronic transactions that play an increasingly prominent role in daily life. Furthermore, the research will highlight the challenges and opportunities in implementing electronic contracts, serving as a valuable reference for policymakers in creating more responsive and comprehensive regulations for a rapidly changing landscape.

RESULT AND DISCUSSION

Legal Basis of Electronic Contracts in Indonesia

Electronic contracts in Indonesia were first formally recognized in Law No. 11 of 2008 on Information and Electronic Transactions (ITE), which was updated by Law No. 19 of 2016. The ITE Law serves as the primary legal framework for electronic transactions in Indonesia. One of its key provisions is the recognition of electronic signatures as legally valid and equivalent to traditional signatures, provided they meet the legal requirements. Article 11 of the ITE Law specifies that an electronic signature is valid in an electronic contract if it guarantees the authenticity and integrity of transaction data, thus ensuring the legal validity of the electronic transaction (Wardani & Afriansyah, 2020).

Additionally, the ITE Law covers various aspects of electronic transactions, such as the admissibility of electronic evidence in court and the legal procedures for resolving disputes related to electronic transactions. These regulations provide a solid legal basis for Indonesian courts to handle cases involving electronic contracts, which are increasingly prevalent in sectors like business, e-commerce, and finance.

Electronic contracts are also governed by Indonesian civil law, particularly the Civil Code (KUHPerdata), which traditionally regulates contract validity. According to the Civil Code, a contract is valid if it meets four conditions: mutual agreement between the parties, the capacity of the parties to make the contract, a clear object, and a lawful cause. These principles still apply to electronic contracts, ensuring that agreements made without face-to-face interaction are legally recognized.

The combination of the ITE Law and provisions in the Civil Code provides a strong legal foundation for electronic contracts. However, additional regulations are required to address challenges in their implementation, particularly concerning technical issues and the protection of personal data.

Requirements for the Validity of Electronic Contracts under Indonesian Civil Law

Although electronic contracts are executed digitally, they must still meet the validity requirements outlined in Article 1320 of the Civil Code to be considered valid under Indonesian law (Sugianto et al., 2023). The following outlines the application of these requirements to electronic contracts:

Existence of Agreement (Consensus): In electronic contracts, agreement between parties usually takes place through clear and undeniable electronic communication. For instance, in online transactions, an email or app notification confirming the agreement can serve as proof. Despite the digital nature of the transaction, the contract remains valid if the agreement is clear and free from coercion or fraud. Evidence of agreement can include digital records, such as emails or electronic signatures.

Capacity of the Parties (Capacity): According to Article 1329 of the Civil Code, the parties involved must have the capacity to enter into the contract. For electronic contracts, this means the parties must understand the contract terms. For example, in e-commerce transactions, both the consumer and service provider must be aware of the product details, price, and their respective obligations. A digital confirmation, like clicking "agree" or "accept" on a website or app, indicates that the party has voluntarily given consent.

Clear Object (Objectum Licitum): Just like conventional contracts, the object of an electronic contract must be clear and lawful. The object could be physical goods or digital services, with a clear value and nature. For example, an e-commerce contract may involve the sale of goods like electronics or clothing. The object of the contract must not be unlawful or against public order.

Lawful Cause (Cause): The purpose or cause of the contract must be lawful and not contrary to the law, morality, or public order. In electronic transactions, this means the transaction must not involve illegal activities, such as fraud or money laundering. An electronic contract made for unlawful purposes is void, just as conventional contracts are void if they have an illegal purpose.

In summary, the validity requirements for electronic contracts under Indonesian civil law are similar to those for traditional contracts. An electronic contract is valid as long as it meets these four criteria and complies with the applicable legal regulations.

Challenges in Implementing Electronic Contracts in Indonesia

Despite the clear regulations established by the ITE Law, several challenges persist in the implementation of electronic contracts in Indonesia (Wilbert et al., 2024). Some of the main challenges include:

Concerns over the Security and Validity of Electronic Signatures: A major issue is the validity of electronic signatures. Although the ITE Law recognizes them, there is still uncertainty among the public and businesses about their validity. A lack of understanding of the technical requirements, along with concerns about data manipulation or misuse, makes some parties hesitant to use electronic signatures. Strengthening security systems and developing more secure technologies is crucial to building trust in electronic signatures.

Protection of Personal Data: Personal data protection is a critical issue in electronic transactions. Parties involved in transactions must handle personal data according to applicable regulations. The Personal Data Protection Law (UU PDP), enacted in 2022, is a significant step toward safeguarding personal data in electronic transactions. However, challenges remain in enforcing the law effectively, monitoring those managing personal data, and educating the public about their rights regarding data protection.

Lack of Public Awareness and Understanding: Many businesses and individuals lack knowledge about the legal provisions governing electronic transactions. Insufficient outreach and education on proper procedures for conducting electronic transactions are barriers to broader adoption. As electronic transactions become more widespread, more efforts are needed to educate the public about their rights and responsibilities in electronic contracts.

Comparison with Other Countries in Electronic Contract Regulations

Several countries have implemented more advanced electronic contract regulations. In the United States, the E-SIGN Act (Electronic Signatures in Global and National Commerce Act) recognizes electronic signatures as legally valid and ensures that they hold the same legal weight as traditional signatures, provided they meet specific criteria.

Similarly, the European Union regulates electronic signatures under the EIDAS Regulation (Electronic Identification and Trust Services). This regulation offers a clear legal framework for electronic signatures used in transactions between EU member states and establishes trust services to ensure the security of cross-border electronic transactions. The EU also recognizes highly secure electronic signatures, such as those certified by authorized bodies.

In Indonesia, while the ITE Law acknowledges electronic contracts and signatures, more detailed regulations and improved implementation are necessary to strengthen the legal protection of electronic transactions. The experiences of developed countries like the United States and the EU can serve as useful models for developing more comprehensive regulations in Indonesia, ensuring the security, reliability, and validity of electronic transactions as they continue to play a larger role in the nation's economic and social life (Abidin, 2023).

CONCLUSION

In Indonesia, electronic contracts are governed by Law No. 11 of 2008 on Information and Electronic Transactions (ITE) and its amendment under Law No. 19 of 2016, providing a solid legal framework for the recognition of electronic transactions and signatures. From the perspective of Indonesian civil law, electronic contracts are considered valid as long as they fulfill the essential requirements stated in the Civil Code (KUHPerdata) mutual agreement, capacity of the parties, a clear object, and a lawful cause. Thus, even if transactions are conducted digitally, electronic contracts hold the same legal weight as traditional contracts, provided they meet these legal criteria.

However, there are still several challenges in the practical implementation of electronic contracts in Indonesia. Key issues include concerns regarding the security of electronic signatures, the protection of personal data, and the general lack of understanding among the public and businesses about the relevant legal provisions. While the ITE Law provides a clear legal foundation, further implementation efforts and extensive public outreach are needed to increase understanding and build trust in electronic contracts. This is essential to developing a secure and protected environment for electronic transactions for both individuals and businesses.

Looking ahead, Indonesia must enhance its regulations surrounding electronic transactions to stay competitive with countries like the United States and those in the European Union, which have well-established legal frameworks. The development of more detailed regulations on electronic signatures, data protection, and the prevention of technology misuse is vital. Moreover, close collaboration between the government, legal bodies, and the technology sector will be necessary to ensure that electronic contracts are legally recognized and provide adequate protection for all parties involved, whether in business or personal interactions.

REFERENCES

- Abidin, M. I. (2023). Legal Review of the Validity of the Use of Smart Contracts in Business Transactions in Indonesia and Its Regulation in Various Countries. *Unnes Law Journal*, 9(2), 289–310. <https://doi.org/10.15294/ulj.v9i2.74957>
- Andriati, S. L., & Batubara, D. A. (2024). Mahadi : Indonesia Journal of Law The Validity of QR-Code Digital Signature in Contract Towards The Evidence Agenda In Civil Court. 03(02), 95–102.
- Siregar, R. Z. (2024). Law Synergy Conference (LSC) Legal Dynamics of Electronic Contracts in the Digital Era A Civil Law Review Law Synergy Conference (LSC). I(I), 187–192.
- Sugianto, F., Tanaya, V., & Michael, T. (2023). A Brief Comparative Study between Indonesian Contract Law Under Indonesian Civil Code and Singapore Contract Law. *Journal of International Trade, Logistics and Law*, 9(2), 132–143.
- Susilowati, C. M. I., Suwartiningsih, S., & Siahaan, H. M. (2023). Child Marriages and Criminal Law Policy in Indonesia: Exploring Legal Reform Possibilities. *International Journal of Criminal Justice Sciences*, 18(2), 139–150. <https://doi.org/10.5281/zenodo.4756311>
- Toumahu, A. C., & Anggarini, R. (2024). Analysis of Electronic Agreements Made by Minors in Ecommerce Transactions in The Perspective of Indonesian Positive Law. 5(2), 88–94. <https://doi.org/10.18196/jphk.v5i2.19584>
- Wardani, N. K., & Afriansyah, A. (2020). Indonesian Legal Challenges Regarding Electronic Contracts in International Trade. 130(Iclave 2019), 23–30. <https://doi.org/10.2991/aebmr.k.200321.004>
- Wilbert, Siregar, M., & Sukarja, D. (2024). Legal Analysis of the Implications of the ASEAN Agreement on E-Commerce for Electronic Business Contracts in Indonesia. *Jurnal Suara Hukum*, 6(1), 48–67. [https://journal.unesa.ac.id/index.php/suarahukum/article/view/17377%0Ahttp://files/615/Wilbert et al. - 2024 - Legal Analysis of the Implications of the ASEAN Ag.pdf](https://journal.unesa.ac.id/index.php/suarahukum/article/view/17377%0Ahttp://files/615/Wilbert%20et%20al.%20-%202024%20-%20Legal%20Analysis%20of%20the%20Implications%20of%20the%20ASEAN%20Ag.pdf)