



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

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ABSTRACT

The development of information and communication technology has given rise to various new forms of legal relationships in society, one of which is electronic contracts. In classical civil law, agreements are always associated with written forms and physical signatures. However, the digital era demands a reinterpretation of civil law principles to maintain their relevance. This study aims to analyze the validity of electronic agreements from the perspective of Indonesian civil law, by examining the relationship between the Civil Code (KUHPdata) and Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The research method used is normative juridical with a statutory and conceptual approach. The results indicate that electronic agreements have the same legal validity as written agreements as long as they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code and the provisions for valid electronic documents as stipulated in Article 5 of the UU ITE. However, challenges remain in terms of evidence and legal protection for parties in electronic transactions.

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INTRODUCTION

The development of information technology has brought fundamental changes in the social, economic, and legal systems. Digitalization is not only changing the way humans interact, but it also poses new challenges to the conventional legal system based on written documents. One of the most significant changes is the emergence of the concept of electronic contracts that allow two or more parties to bind themselves through electronic media.

Electronic transactions are legal acts carried out using computers, computer networks, and/or other electronic media.¹ Electronic transactions that are included in an electronic contract are binding on the parties. Indonesian civil law is still based on the Civil Code which originated from the Dutch Burgerlijk Wetboek (BW) in 1848. In this classical system, an agreement is considered valid if it meets the conditions stipulated in Article 1320 of the Civil Code, namely agreement, competence, certain objects, and halal causes. However, electronic agreements present a new challenge to the meaning of the element of "agreement" which is now carried out digitally without physical meetings.

To answer these challenges, Indonesia passed Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). This law provides a legal basis for electronic transactions and documents to be recognized as legally valid. Article 5 paragraph (1) of the ITE Law states that information and/or electronic documents and their printed results are valid legal evidence. Thus, the normative applicability of the law to electronic agreements has been recognized in the national legal system.

This phenomenon is known as an electronic contract. In practice, the forms are very diverse, ranging from agreements made through online sites (click-wrap agreements and browse-wrap agreements), to agreements signed using electronic signatures (TTE). The existence of electronic agreements brings tremendous efficiency because it allows contractual processes to take place across time, places, and

jurisdictions. However, on the other hand, this convenience raises fundamental questions about the legal validity of electronic agreements from the perspective of Indonesian civil law.

Indonesian civil law, which is still largely based on the Dutch Burgerlijk Wetboek (BW) 1848 and adopted in the Civil Code (KUHPerduta), is essentially built on classical principles such as freedom of contract, consensualism, and good faith. These principles require a real agreement between the parties and a clear and measurable form of law. However, technological developments have given birth to a form of contract that does not fully meet the characteristics of conventional agreements: no physical documents, no wet signatures, and agreements are carried out virtually.

To answer the needs of modern law, Indonesia has passed Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), which was later updated through Law Number 19 of 2016. This ITE Law explicitly recognizes electronic information and/or electronic documents as well as their printed results as valid legal evidence (Article 5 paragraph (1)). This provision provides a legal basis for the enactment of an electronic agreement as a legal act, as long as it meets the principles of reliability, accessibility, and integrity of data.

Nevertheless, a fundamental question arises: to what extent can electronic agreements be considered valid under classical civil law? Can digital consent be equated with an agreement regulated in Article 1320 of the Civil Code? How is legal protection provided to the parties in the event of a dispute in an electronic agreement? These problems are important to be studied so that there is no gap between positive legal norms and the practice of digital contracts that continue to develop.

Thus, this study is relevant to trace the synchronization between the Civil Code and the ITE Law, as well as to assess whether the principles of civil law can still be applied in electronic legal relations in the digital era. This study is also expected to be able to provide a theoretical and normative basis for strengthening legal certainty and protecting the rights of parties in electronic transactions.

However, the harmonization between the Civil Code and the ITE Law still leaves theoretical and practical problems, especially regarding proof and legal protection in the event of a civil dispute. Therefore, this study seeks to examine the validity of electronic agreements from a comprehensive civil law perspective.

RESEARCH METHODS

According to Peter Mahmud Marzuki, legal research is "a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems faced. Normative legal research is carried out to produce new arguments, theories or concepts as a prescription in solving the problems at hand"

This research uses a normative juridical method, which is legal research conducted by examining literature materials or secondary data. The approaches used include the statute approach and the conceptual approach. Legal materials consist of primary legal materials (Civil Code, ITE Law), secondary legal materials (literature and legal journals), and tertiary legal materials (legal dictionaries and encyclopedias). The analysis was carried out qualitatively by drawing deductive conclusions.

RESULT AND DISCUSSION

The Position of Electronic Agreements in the Civil Law System

Covenants have a very important meaning in people's lives, both in modern and primitive societies. This is because the agreement regulates the relationship between two or more parties, which will impose rights and obligations.

According to Prof. Subekti, an agreement is an event where one person promises to another or where two people promise each other to do something. From this event, a relationship arises between the two people called an alliance. The treaty publishes an alliance between the two people who made it. In its form, the agreement is in the form of a series of words that contain promises or abilities that are spoken or written.

In the event that an electronic agreement does not in essence form a new legal system independent of civil law; it remains under the umbrella of Book III of the Civil Code on engagement. This means that all treaty principles, especially freedom of contract, consensualism, legal certainty, and good faith, remain valid. The novelty brought by electronic transactions is the medium and mechanism of proof, not its normative essence. Thus, the measure of the validity of electronic agreements is still taken from Article 1320 of the Civil Code (the condition for the validity of the agreement) which is then "married" with the system of Law 11/2008 jo. Law 19/2016 on Electronic Information and Transactions (ITE Law) as a special law that recognizes electronic information/documents as well as electronic signatures as valid and binding.

Article 1320 of the Civil Code regulates the legal conditions of an agreement. In this explanation, four conditions can be found that must be met so that the agreement can be considered valid, namely agreement, capability, a certain thing, and a halal cause. This article establishes the conditions for the validity of an agreement, which are divided into subjective terms and objective terms. Subjective conditions consist of two things, namely the agreement of the parties and the ability of the parties to make an agreement. While objective requirements consist of a certain thing and a halal cause.

In civil law, the validity of an agreement is very important to ensure the validity and sustainability of the agreement. Article 1320 of the Civil Code determines the conditions for the validity of an agreement, including subjective and objective conditions. Subjective conditions include the agreement of the parties who are bound by the agreement, while objective conditions include the existence of elements that meet the legal requirements. In some cases, the non-fulfillment of subjective conditions may affect the validity of the agreement. Coercion and deception are two examples of subjective conditions that are not met. If this subjective condition is violated, the agreement can be canceled through court proceedings. Condition

Synchronization of Article 1320 of the Civil Code and Articles 5–11 of the ITE Law

The test of the validity of electronic agreements should ideally be placed on a two-dimensional "matrix": the material axis (the legal requirements of the Civil Code agreement) and the formal-technical axis (the legal requirements of electronic evidence/documents according to the ITE Law).

First, consensus. In electronic transactions, consensus is manifested in explicit digital actions, such as click-wraps ("I agree"), sign-up agreements with checkboxes, or electronic signatures (TTEs). As long as the system displays contractual information clearly, gives a reasonable opportunity to read, and provides an explicit consent mechanism, the consensus element is met. Browse-wrap (simply site access is considered consent) is more susceptible to problems because the elements of notification and expression of intent are often blurred; therefore, the click-wrap or TTE model is more recommended for the sake of certainty.

Second, proficiency. Validity still refers to the general measure of the Civil Code: mature and capable of committing legal acts. In electronic agreements, the issue of proficiency is related to the identity verification mechanism (KYC, two-factor authentication, identity provider). A system that relies on anonymous accounts without adequate verification risks opening up disputes about who actually contracts. Normatively, system operators are required to provide verification infrastructure that is proportionate to the value/risk of transactions.

Third, a specific object. The object must be clear (type of goods/services, specifications, price, delivery/execution conditions, term, warranty/warranty). In the digital space, object descriptions are usually outlined on product pages, terms of service, or service level agreements. The absence of clear specifications and service descriptions can cause uncertainty of the object and lead to defects in the validity of the objective aspect.

Fourth, the reason is halal. The content and purpose of the electronic agreement must not be contrary to law, public order, and decency (e.g. trading in prohibited goods, or facilitating unlawful acts). Electronic media does not legitimize prohibited objects or purposes. This cause or causa is intended by the law is the content of the agreement itself.

On top of this material foundation, the ITE Law adds a formal-technical axis. Article 5 paragraph (1)–(2) recognizes information and/or electronic documents as well as their printed results as valid legal evidence, provided that they meet the integrity, accessibility, and reliability (detailed in Article 6—accessible, redisplayable, intact maintained). Article 5 paragraph (4) provides an important exception: this acknowledgment does not apply to documents that are required by law in a certain written form or must be made as a notary deed/official deed. This means that for types of agreements that *lex specialis* must be in the form of authentic deeds (for example, certain legal acts in the field of land, notary, or corporation), electronic contracts cannot replace the required formal form.

Validity of Electronic Agreements According to the Civil Code and the ITE Law

Electronic agreements are essentially still subject to the principles of civil law, in particular the principle of freedom of contract and the principle of consensualism. The principle of freedom of contract guarantees the right of the parties to enter into agreements in any form, including electronically, as long as they meet the valid terms of the agreement.

According to Sudikno Mertokusumo, basically everyone is free to hold and determine the content of the agreement. If the principle of consensualism is related to the birth of a covenant, the principle of binding power is related to the consequences of the agreement, then the principle of freedom of contract is related to the content of the agreement.

In electronic agreements, the elements of the agreement can be proven by the act of 'agree' or accept in the digital system. The element of competence is still measured from general civil law, namely parties who are mature and sensible. A particular object element is embodied in a clear good or service. Meanwhile, the element of halal cause means that the agreement does not contradict the law.

The ITE Law expands the definition of written documents to electronic documents. Article 5 of the ITE Law emphasizes that electronic information and electronic documents are valid legal evidence, as long as they can be accessed, redisplayed, and guaranteed to be intact. This makes electronic agreements have an equivalent position to written agreements.

The main issue in electronic agreements is the evidentiary and data security aspects. Because transactions are conducted digitally, the authenticity of documents and the identity of parties is often a legal

debate. In addition, not all law enforcement officials understand the mechanism of electronic signatures and digital authentication systems.

Normatively, electronic agreements have been legally recognized by the ITE Law. However, philosophically, Indonesia's civil law system still needs to be updated to be more adaptive to digital developments. Synchronization between classical civil law and cyber law is a must to create legal certainty that balances technological flexibility and legal protection for society.

CONCLUSION

Electronic agreements have the same legal validity as conventional agreements as long as they meet the legal requirements of the agreement according to Article 1320 of the Civil Code. The ITE Law provides a basis for the recognition of electronic documents and signatures as legal evidence. The main challenge is not legality, but the proof and design of digital contracts that are fair, transparent, and measurable. Then the biggest challenge in the implementation of electronic agreements lies in the aspect of proving and data security.

The government needs to strengthen technical regulations regarding electronic signatures and digital system security. Law enforcement officials need to be given special training on cyber law and electronic proof. The public also needs to increase legal awareness in conducting electronic transactions so that they understand their rights and obligations.

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