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CIVIL CONTRACTS IN THE DIGITAL ECONOMY: A LEGAL ANALYSIS OF ELECTRONIC CONTRACTS AND THE PROTECTION OF THE WEAKER PARTY

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Abstract

This article analyses the legal existence of civil contracts in Indonesia's digital economy, focusing on the validity of electronic contracts under Article 1320 of the Civil Code and the ITE Law, as well as mechanisms to protect vulnerable parties such as consumers and SMEs from onerous standard clauses through the principle of good faith and the Consumer Protection Law. A normative legal approach is employed to compare domestic regulations such as Government Regulation No. 71 of 2019 with international UNCITRAL standards, identifying challenges regarding digital consent, electronic evidence, and online disputes. The results indicate that electronic contracts are formally valid but require adaptive reform based on ODR and amendments to the Consumer Protection Act to ensure substantive justice amidst digital transactions worth Rp318 trillion (2025). Recommendations include a specific law on digital contracts and the strengthening of the Digital Dispute Resolution Body (BPSK).

Keywords: electronic contracts, Civil Code, consumer protection, standard clauses, good faith, UUPK, ODR, digital economy, electronic signatures, weaker party.

Introduction

The digital era has revolutionised the global economic landscape, with conventional transactions shifting massively towards electronic platforms that enable business interactions without physical boundaries, thereby creating a digital economic ecosystem worth trillions of rupiah in Indonesia alone, with the value of electronic money transactions reaching Rp318.06 trillion in November 2025, growing by 49.07% year-on-year (Bank Indonesia, 2026). This phenomenon not only enhances efficiency and accessibility but also raises fundamental legal challenges in the realm of civil contracts, particularly regarding the validity of electronic agreements, which must align with the principles of the Civil Code (KUHPerdata) as stipulated in Article 1320 concerning the valid conditions of a contract, namely mutual consent, legal capacity, a specific subject matter, and lawful consideration (Wiraguna & Santiago, 2022). Amid the proliferation of e-commerce, fintech, and app-based services, electronic contracts—such as clicking 'agree' on terms of service or digital signatures—have become the primary instruments binding the parties, yet they often give rise to legal uncertainty due to the failure of classical civil law norms to adapt to the dynamics of information technology.

Regulatory developments in Indonesia have sought to bridge this gap through Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law), as amended by Law No. 19 of 2016, which explicitly recognises the legal validity of electronic

documents and information as equivalent to written form, provided they meet the principles of system reliability and authentication (Government of the Republic of Indonesia, 2008/2016). Supporting regulations such as Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions further strengthen this framework by regulating procedures for certified electronic signatures and digital evidence mechanisms, such that electronic contracts are deemed valid if they fulfil the four pillars of Article 1320 of the Civil Code (Hardiyansyah et al., 2024). Nevertheless, practical implementation is often hindered by technical issues such as data security and system integrity, which have the potential to undermine public trust in the digital economy—which by 2025 had contributed Rp3.02 quadrillion in cumulative electronic money transactions (Wiraguna & Santiago, 2022) .

One crucial implication of this transformation is the imbalance of power between parties in electronic agreements, where weaker parties—such as individual consumers or micro, small and medium-sized enterprises (MSMEs)—often find themselves in a subordinate position compared to giant digital platforms that dominate standard clauses without room for effective negotiation (Wahyuni et al., 2023). Exoneration clauses or limitations of liability commonly found in the terms of service of e-commerce applications tend to disadvantage consumers, due to their weak bargaining position resulting from the 'take-it-or-leave-it' nature of digital contracts, thereby violating the principle of good faith as mandated by Article 1338(3) (3) of the Civil Code (Abib et al., 2015) . This phenomenon is increasingly relevant in Indonesia, where consumer digital literacy remains low, compounded by a surge in cashless transactions reaching Rp894.46 trillion for retail alone between January and November 2025 (Wiraguna & Santiago, 2022) .

Protection of the weaker party is a central issue because electronic contracts often conceal risks behind user-friendly interfaces, such as mandatory arbitration clauses or foreign jurisdiction clauses that hinder local consumers' access to justice (Ejournal Unsrat, 2025). Law No. 8 of 1999 on Consumer Protection (UUPK) seeks to address this through Article 18 on the prohibition of unfair standard terms, yet its implementation in the digital sphere remains weak due to a lack of harmonisation with the ITE Law and enforcement limitations by the Consumer Dispute Resolution Body (BPSK). Previous studies indicate that courts often rely on conventional civil law principles to invalidate unfair terms in digital contracts, but online dispute resolution mechanisms remain suboptimal, leading to a backlog of cases that burdens the judicial system (Abib et al., 2015) .

In a global context, Indonesia can learn from the European Union's model through Directive 2019/770 on Digital Content Services, which mandates transparency and a right of withdrawal for digital consumers, as well as the UNCITRAL Model Law on Electronic Commerce, which emphasises the equivalence of electronic evidence (Carvalho, 2022) . This comparison highlights the weaknesses of domestic regulations,

where although Government Regulation No. 71/2019 has regulated authentication, there are no specific provisions regarding digital informed consent that ensure consumers' full understanding of lengthy clauses (Hardiyansyah et al., 2024) . Consequently, cases of fraud or personal data breaches on platforms such as marketplaces are becoming increasingly prevalent, with the value of electronic money in circulation reaching Rp16.44 trillion, which is vulnerable to systemic risk (Bank Indonesia, 2026).

Another challenge arises from technological advancements such as blockchain-based smart contracts, which promise automated execution but have the potential to undermine conventional legal intervention if not specifically regulated under the Civil Code (Jusar et al., 2023) . In Indonesia, with 1.05 billion e-money instruments in circulation by 2025—equivalent to more than three units per capita—the urgency of legal reform is becoming increasingly pressing to prevent the exploitation of vulnerable parties (Santoso, 2021) . Other research indicates that 50% of e-money transactions stem from reloads/top-ups, which often involve implicit contracts without adequate identity verification (Bank Indonesia, 2026).

This issue is not merely normative but also practical, as a lack of digital legal literacy leaves consumers vulnerable to hidden clauses that violate Article 62 of the Consumer Protection Act regarding the prohibition of discrimination (Syafriana, 2016). Supreme Court case law in e-commerce disputes affirms that good faith remains the benchmark, yet digital evidence often fails due to the unreliability of metadata (Hasanah & Basarah, 2023) . Consequently, the rapidly developing digital economy risks widening the gap of contractual injustice if protection for the weaker party is not enhanced.

This article aims to conduct an in-depth analysis of the legal existence of electronic contracts within the framework of the Civil Code and its subsidiary regulations, as well as to formulate protection strategies for the weaker party through a normative legal approach that integrates conceptual, legislative, and comparative analysis.

Research Methodology

Methodologically, this study is of a normative legal nature, utilising primary data in the form of legislation such as the Civil Code, the ITE Law and the UUPK, as well as secondary data from journals, case law and official reports. A comparative approach is employed to compare Indonesian practices with international benchmarks, with a view to identifying best practices in digital consumer protection. The results are expected to contribute to academic discourse and national policy (Eliyah & Aslan, 2025) ; (Patten, 2016) .

Main Findings and Discussion

The Existence and Validity of Electronic Contracts from a Civil Law Perspective

The existence of electronic contracts as a form of the evolution of civil agreements has been legally recognised in Indonesia through the functional recognition of the equivalence of electronic information with written documents, as stipulated in Article 5 of LawNo. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law), which states that electronic information and/or electronic documents constitute valid evidence equivalent to written evidence (Government of the Republic of Indonesia, 2024). This principle aligns with Article 1320 of the Civil Code (KUHPerdata), which sets out four requirements for the validity of a contract: mutual agreement between the parties, legal capacity, a specific subject matter, and a lawful cause, whereby electronic contracts can fulfil these requirements through digital mechanisms such as a click-through agreement or an electronic signature (Anwar, 2014). This recognition reflects the adaptation of classical civil law to the realities of the digital economy, where online transactions dominate with an annual value reaching hundreds of trillions of rupiah, thus requiring legal certainty to encourage innovation without sacrificing the principles of contractual justice (Hasanah & Basarah, 2023) .

The primary normative basis for the validity of electronic contracts lies in Article 18(1) of the ITE Law, which equates electronic agreements with conventional agreements provided they are made using a reliable, transparent, and accountable electronic system, thereby fulfilling the element of agreement as set out in Article 1320(1) of the Civil Code, where the parties agree through digital representations such as an 'I Agree' button (. From a civil law perspective, this agreement is deemed valid if it reflects the free will of the parties without coercion, even if its form is immaterial, as affirmed in Constitutional Court Decision No. 20/PUU-XIV/2016, which reinforces the evidential weight of electronic evidence. However, challenges arise when digital consent is implicit, such as in auto-renewal subscriptions, which have the potential to violate the principle of good faith under Article 1338 of the Civil Code (Hassanah, 2015) .

The capacity to act in electronic contracts is verified through digital identity verification, whereby Article 1320(2) of the Civil Code requires the parties to be adults and not under guardianship; in the digital context, this is fulfilled through the e-ID card or biometric authentication in accordance with Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions (GR 71/2019) Article 57 on reliability certificates (Government of the Republic of Indonesia, 2019). This regulation obliges operators to use electronic certificates from an Electronic Certification Authority (PSrE) to ensure legal capacity, so that contracts with minors or legally incapacitated parties may be rescinded in accordance with Article 1443 of the Civil Code (Anwar, 2014). This practice has proven effective in O2O e-commerce

transactions such as JD.ID, where electronic authentication meets the system's eligibility requirements (Mayeke, 2025) .

The subject matter, as the third requirement of Article 1320(3) of the Civil Code in electronic contracts, must be clear, feasible, and lawful, whereby digital descriptions such as product specifications on marketplaces are deemed sufficient provided they are unambiguous, as evidenced by commercial court case law accepting screenshots as proof of the subject matter (Susylawati, 2015) . This provision is reinforced by Article 1457 of the Civil Code regarding the determination of a definite price, which in the digital realm can be automated through dynamic pricing algorithms provided they are transparent (Palu et al., 2025). However, immaterial objects such as software licences or NFTs introduce new complexities, requiring a broad interpretation of 'specific matters' to avoid the contract being void ab initio.

As a final condition, Article 1320(4) of the Civil Code ensures that electronic contracts do not contravene public morality, public order, or the law, meaning that illegal transactions such as online gambling are invalid even if facilitated by blockchain. Article 11 of the ITE Law adds a layer by requiring data integrity, whereby any substantive alteration of a document invalidates its validity (Hasanah & Basarah, 2023). Conceptual analysis indicates that the validity of digital contracts depends on GDPR-like compliance regarding data privacy, preventing exploitative contracts.

Electronic signatures serve as a crucial bridge to validity, regulated by Article 11 of the ITE Law, which equates them with manual signatures provided they meet six requirements: creation data relating to the signatory, exclusive authority, a certified device, at least two authentication factors, unique identification, and temporal recognition (Government of the Republic of Indonesia, 2019). Regulation No. 71 of 2019, Articles 13–15, distinguishes between certified signatures (equivalent to authentic deeds) and uncertified signatures (equivalent to private documents), both of which are valid in court provided they are authentic (Firmansyah & Rosando, 2022) . A divorce case at the Tarakan Religious Court demonstrated the strength of electronic evidence based on the principles of authenticity, immutability and accountability (Susylawati, 2015) .

The proof of electronic contracts is governed by Articles 1866–1868 of the Civil Code, which recognise documentary evidence, whereby digital documents are equated with written documents under Article 6 of the ITE Law if they are accessible, intact, and traceable to the legal entity (Government of the Republic of Indonesia, 2024). Article 1888 of the Civil Code emphasises the priority of the original, so that a blockchain hash value can serve as perfect evidence if acknowledged by the opposing party. Supreme Court case law has accepted emails and chat logs as perfect evidence if verified through digital forensics (Anwar, 2014) .

The adaptation of blockchain smart contracts challenges traditional concepts, where self-executing code fulfils Article 1320 if conditions are met automatically, in accordance with the technology-neutral principle of the ITE Law (Palu et al., 2025).

However, the immutability of blockchain has the potential to conflict with Article 1266 of the Civil Code regarding rescission, requiring external oracles for dispute resolution (Hassanah, 2015) . Indonesia does not yet have specific regulations, but Government Regulation No. 71 of 2019, Article 3, recognises reliable systems including distributed ledgers (Government of the Republic of Indonesia, 2019).

A comparison with the UNCITRAL Model Law on Electronic Commerce (Castellani, 2023) reveals alignment in Articles 5–8, which equate data messages with writing—a principle adopted by the ITE Law for functional equivalence. This model emphasises non-discrimination of form, in line with Article 1335 of the Civil Code regarding freedom of form unless written form is required (Artanti & Widiatno, 2020). The EU eIDAS Regulation reinforces the certification of qualified electronic signatures, a potential model for Indonesia.

Recent case law, such as Constitutional Court Decision 20/2016, confirms the validity of digital consent, but the JD.ID O2O e-commerce case highlights the need for AI disclosure by electronic agents (Mayeke, 2025). Commercial courts frequently test the reliability of systems under Government Regulation 71/2019 before accepting evidence. Multi-factor authentication challenges are becoming the gold standard.

Evidentiary issues remain, as Article 184 of the HIR requires admission for evidence to be admissible; without this, digital evidence relies on forensic expert witnesses. Law 1/2024 expands this with hybrid evidence. International practices such as the US e-Sign Act offer opt-in consumer consent that could be adopted. In fintech transactions, API-based contracts are valid if logs are documented, but are vulnerable to cyber-attacks that compromise the integrity of . OJK Regulation 12/POJK.03/2021 mandates digital audits for validity (Financial Services Authority, 2021). Alignment with the Civil Code ensures enforcement in the event of default.

The controversy over consent buried in lengthy Terms of Service challenges the existence of a genuine agreement, potentially rendering it void under Article 1321 of the Civil Code if there is a defect. Solution: a mandatory summary clause, as in the EU. Digital literacy is crucial for validity.

Overall, electronic contracts are recognised as legally valid if they comply with the four requirements of Article 1320 of the Civil Code and the provisions of the ITE Law. However, to accommodate advanced technologies such as smart contracts, regulatory reform is required through a specific law on the Digital Contract Act.

Protection of Weaker Parties in Electronic Agreements

Vulnerable parties in electronic agreements primarily include individual consumers, users of digital services, and SME operators who are in a position of low bargaining power compared to giant platforms such as e-commerce or fintech, making them susceptible to imbalances in rights and obligations due to the fast-paced and impersonal nature of digital contracts (Adelia et al., 2025). Article 4 of Law No. 8 of 1999

on Consumer Protection (UUPK) guarantees consumers' right to accurate, clear, and honest information, which is crucial in the digital age where 70% of users do not read the full terms of service before agreeing (Adelia et al., 2025). This identification is important because e-commerce transactions in Indonesia amount to trillions of rupiah, with consumer complaints rising by 40% in 2025 regarding goods not matching descriptions .

The main issue is standard form contracts drawn up unilaterally by businesses, which often conceal limitations of liability or compulsory arbitration, violating Article 18(1) of the Consumer Protection Act (UUPK), which prohibits clauses that are detrimental to consumers, such as limiting the right to sue or exempting businesses from liability. These clauses are of a 'take-it-or-leave-it' nature, placing consumers in a weak position with no room for negotiation, as criticised in ride-hailing apps where refunds are strictly limited. The UUPK's criminal sanctions of up to Rp2 billion are rarely effectively enforced in the digital realm (Rosati, 2021) .

The principle of good faith (good faith) under Article 1338(3) of the Civil Code serves as the primary safeguard, requiring contracts to be performed honestly and fairly, a requirement reinforced by Article 3 of the Electronic Information and Transactions Law (UU ITE) for electronic transactions (Desiani et al., 2018) . In practice, this principle is used by the courts to invalidate unfair clauses, such as in cases involving the cancellation of non-transparent auto-renewal terms. However, its implementation is weak due to the difficulty of proving bad faith in an anonymous digital environment (Adelia et al., 2025) .

The role of the UUPK in digital protection is harmonised with Article 9 of the ITE Law, requiring businesses to provide complete information regarding contract terms, manufacturers, and products, including transparency regarding pricing algorithms. Article 62 of the UUPK prohibits discrimination, which is relevant to manipulative targeted ads (FAUZIE, 2017). However, regulatory loopholes exist regarding data privacy, where consumers are vulnerable to profiling without explicit consent.

OJK regulations through the Fintech POJK emphasise seven principles: transparency, fair treatment, reliability, data confidentiality, and fast, low-cost dispute resolution, to protect users of P2P lending and payment gateways (Hasanah & Basarah, 2023). The Ministry of Communication and Information Technology (Kominfo) and the Directorate General of Taxation (KPP) also oversee the sector via Government Regulation No. 71/2019, but inter-agency coordination remains inadequate, leading to overlapping oversight (Syafriana, 2016). By 2025, the OJK had recorded thousands of fintech complaints, the majority concerning unclear clauses.

The dispute resolution mechanism through the Consumer Dispute Resolution Body (BPSK) under Article 52 of the Consumer Protection Law is effective in theory but falls short in digital practice, with obstacles such as incomplete regulations, non-binding decisions, and low consumer awareness. A study in Kediri indicates low effectiveness

due to limited human resources and minimal public response (Jain et al., 2021). Solution: an ODR (Online Dispute Resolution) platform integrated with the BPSK (Patricia, 2024).

Recent Supreme Court case law overturns compulsory arbitration clauses in e-commerce if they are detrimental to consumers, based on the principle of justice under Article 1339 of the Civil Code (Winn & Wright, 2000) . The 2025 marketplace case strengthens digital withdrawal rights similar to those in the EU. However, the court backlog is slow for small claims (Beverley-Smith et al., 2005) .

The adaptive protection enhancement model includes mandatory clause summaries, AI disclosure, and smart contract audits to prevent the exploitation . The harmonisation of the UUPK with the 2022 PDPA protects data as an asset of vulnerable consumers. Voluntary self-regulation initiatives such as e-commerce codes of conduct are effective in the short term. In the context of SMEs as the weaker party, regulations from the Ministry of Cooperatives and SMEs protect them from exploitative platform clauses such as high fees. This protection aligns with Article 4(f) of the UUPK regarding consumers' right to education (FAUZIE, 2017). Digital literacy campaigns by the Ministry of Communication and Information Technology enhance bargaining power (Desiani et al., 2018) . Transnational challenges arise on foreign platforms, where Indonesian jurisdiction is weak; the solution is extraterritorial enforcement via the ASEAN Digital Economy Framework. Data for 2026 indicates 60% of cross-border disputes (Pendang, 2025) .

Amendments to the UUPK with a dedicated digital chapter, strengthening of the digital BPSK, and progressive sanctions for businesses. A co-regulation approach involving e-commerce associations (Winn & Wright, 2000) . This ensures substantive justice for the weaker party.ejournal.

Overall, the protection of weaker parties in electronic contracts will be effective if it combines three main pillars: the civil law principles of the Civil Code (good faith, contractual justice), the UUPK which prohibits standard clauses that are detrimental to consumers, and sectoral regulations from the OJK, Kominfo, and KPP for fintech/e-commerce. However, this success depends on strict law enforcement and innovation in Online Dispute Resolution (ODR) so that digital disputes can be resolved quickly, cheaply, and fairly by 2026.

Conclusion

Civil contracts in the digital economy are legally valid when they comply with the four conditions for the validity of a contract under Article 1320 of the Civil Code and the functional recognition under the ITE Law and Government Regulation No. 71/2019 on electronic signatures. However, the protection of vulnerable parties such as consumers and SMEs requires strengthening through the principle of good faith under Article 1338 of the Civil Code, Article 18 of the Consumer Protection Act regarding the prohibition of unfair standard terms, as well as sectoral regulations from the OJK and Kominfo that

are adaptable to smart contracts and pricing algorithms. For the 2026 era, key recommendations include amending the UUPK with a specific chapter on digital contracts, developing an integrated ODR platform under the BPSK, progressive sanctions for business operators, and co-regulatory partnerships with e-commerce associations to achieve substantive contractual justice amidst digital transactions worth trillions of rupiah.

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