
Reconstruction of the Principle of Good Faith in Investment Cooperation Agreements Case Study of Default and Abuse of Condition Disputes

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Abstract

Technological developments have driven a major transformation in the practice of civil legal relations, particularly in the field of contracts. Agreements previously made conventionally through physical documents are now often realized in digital form through online platforms, applications, and other electronic systems. This change raises questions regarding the status, validity, and binding force of digital agreements within the framework of Indonesian civil law, which still relies on the Civil Code. This study seeks to normatively examine the position of digital agreements based on the valid conditions of agreements in Article 1320 of the Civil Code, the main principles of contract law, and the regulation of electronic contracts in the Electronic Information and Transactions Law and its implementing regulations. In addition, this study also examines how electronic evidence such as digital documents, system logs, and electronic signatures are recognized and assessed for their evidentiary strength in civil disputes.

The study's findings indicate that digital agreements are, in principle, valid and binding, just like conventional agreements, as long as all elements are met and they do not conflict with the law. Consent through electronic means, such as clicking "agree" or using an electronic signature, can be considered a valid expression of will. However, challenges arise in protecting vulnerable parties and providing evidence, given that digital agreements generally take the form of standard clauses drafted unilaterally by business actors. While electronic evidence has been legally recognized, its implementation requires strengthening technical capacity and consistent judicial assessment. By understanding these dynamics, this study emphasizes the importance of strengthening technical regulations, improving the digital literacy of judicial officials, and implementing the principle of good faith to ensure legal certainty and justice in digital transactions in Indonesia.

Keywords: digital agreements, electronic contracts, engagement law

INTRODUCTION

The development of information technology has fundamentally changed the way humans conduct legal relations in the civil sector. Transactions of buying and selling, leasing, providing services, and even financing, which were previously always formalized in written agreements on paper with wet signatures, are now increasingly conducted digitally through various application platforms and trading websites. On the one hand, this transformation provides convenience, efficiency, and reduces transaction costs. On the other hand, it raises fundamental questions regarding the status and binding force of digital agreements from the perspective of contract law, which still relies on the Civil Code as the primary codification of Indonesian civil law.

In the Indonesian legal system, agreements are understood as the primary source of the birth of an obligation as formulated in Article 1233 of the Civil Code which states that an obligation arises because of an agreement or because of a law. Article 1313 of the Civil Code defines an agreement as an act by which one or more people bind themselves to one or more other people. Subekti explains that an agreement is a legal relationship of wealth between two or more people that gives rights to one party and obligations to the other party, thus giving rise to an obligation that can be legally sued if there is a violation of the agreed performance (Subekti, 2005).

Furthermore, the classical theory of contract law developed by scholars such as Subekti and J. Satrio is based on the assumption that agreements are generally made verbally or in writing in a concrete, physical form. However, the basic principles they emphasize, such as the principle of consensualism, the principle of freedom of contract, the principle of *pacta sunt servanda*, and the principle of good faith, are actually abstract and open to application to any form of agreement, including digital agreements. Satrio asserts that an obligation born from an agreement is essentially a legal relationship that originates from a valid agreement of wills, without limiting the medium or container of the agreement (Satrio, 2001).

The valid conditions for an agreement in Article 1320 of the Civil Code are crucial in assessing the validity of digital agreements. This article requires the agreement of those who bind themselves, the capacity to enter into an agreement, a specific thing, and a lawful cause. Classical doctrine questions these matters in the context of conventional agreements, for example, how the agreement is formed, how capacity is determined, and how the object and cause of the agreement are assessed. In the context of digital agreements, similar questions arise with new nuances: how the agreement is represented by the click of approval in the user interface, how the parties' capacity is verified electronically, and how certain digital content can be positioned as the object of the agreement.

Regulatory developments provide additional support for the recognition of digital agreements as valid and binding. Law No. 11 of 2008 concerning Electronic Information and Transactions, as amended by Law No. 19 of 2016, defines an electronic contract as an agreement between parties made through an electronic system (Article 1 number 17 of the ITE Law). This law recognizes Electronic Information and Electronic Documents as valid legal evidence, as long as they comply with statutory provisions. This recognition opens up space for electronic contracts or digital agreements to be treated equally with conventional contracts as long as the valid conditions of an agreement under Article 1320 of the Civil Code are met. Several recent studies confirm that electronic agreements and digital contracts, in principle, do not eliminate the valid conditions of an agreement, but only change the medium and method by which the parties express their intentions (Septiari, 2025; Syahrin, 2020; Hermawan, 2024).

As the intensity of digital trade transactions increases, various forms of digital agreements have emerged, such as clickwrap agreements, browsewrap agreements, and various forms of platform terms and conditions. In practice, agreement is deemed to be simply agreed to by clicking the "agree" button or continuing to use the service. Salim HS, through his work on electronic contract law, emphasizes that Indonesian contract law, based on the principles of freedom of contract and consensualism, does not preclude the emergence of new forms of agreements as long as they do not conflict with law, public order, and morality (Salim HS, 2021). At this point, digital agreements should be read as a development of *innominaat* contracts previously studied in Indonesian contract law literature, such as partnership contracts, standard contracts, and financing contracts, whose regulatory patterns are largely determined by modern economic practices and needs.

However, normative recognition of digital agreements does not automatically eliminate practical problems. At the implementation level, various problems arise such as unclear language of clauses, domination of business actors in formulating standard terms and

conditions, as well as consumers' vulnerability to imbalanced bargaining positions. Ridwan Khairandy emphasized the importance of the principle of good faith in implementing agreements and criticized the application of the principle of freedom of contract as being too formalistic if it was not balanced with protection for weak parties (Khairandy, 2003). In the context of digital agreements, this problem is even more apparent because users often do not carefully read all the clauses that are displayed quickly and concisely on the screen, while the system assumes the user has agreed to all the terms once the approval button is pressed.

Another emerging issue concerns the issue of proof. Indonesian civil procedural law still refers to the provisions on evidence in the Civil Code and the HIR, which were historically designed to address conventional evidence such as original letters, witnesses, and confessions. On the one hand, Article 1865 of the Civil Code emphasizes that anyone claiming to have a right or citing an event as the basis for their right is obliged to prove that event or right. On the other hand, Article 1866 of the Civil Code regulates the types of evidence, including writings, witnesses, allegations, confessions, and oaths. The question that then arises is how to place electronic documents, system logs, electronic signatures, and digital transaction records as evidence within this framework. The ITE Law, through its provisions regarding electronic information and electronic documents as legal evidence, attempts to bridge this gap by affirming the equality of electronic evidence with conventional written evidence, as long as it can be accessed, displayed, its integrity guaranteed, and can be accounted for (Article 5 of the ITE Law).

Derivative regulations such as Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions emphasize the obligation of business actors to provide clear information and require the use of Indonesian in electronic agreements addressed to Indonesian citizens. This demonstrates the legislators' orientation to maintaining a balance between the efficiency of digital transactions and legal protection for users. However, in practice, disputes related to the cancellation of digital agreements, the enforceability of standard clauses, and the imposition of liability for data leaks and hacking still often give rise to varying interpretations in court, raising questions about the extent to which legal certainty and binding force of digital agreements are truly guaranteed.

Recent research on electronic contracts highlights the tension between a formal approach to valid agreements and a more substantive approach to protecting vulnerable parties. Several authors emphasize that if Article 1320 of the Civil Code is strictly applied, almost any digital agreement can be declared valid as long as there is an act of consent from the user, even if that consent is achieved through a very minimal mechanism such as the click of a button without sufficient understanding. This is where the principle of good faith and the prohibition on abuse of circumstances play a crucial role in ensuring that freedom of contract does not become a tool to legitimize practices that are detrimental to consumers.

Based on the description above, this study attempts to normatively analyze how the binding force of digital agreements in modern commercial transactions is reviewed from the perspective of the valid conditions of agreements according to the Civil Code and the provisions of electronic contracts in the ITE Law and its implementing regulations. Furthermore, this study also examines how electronic contracts or digital agreements are placed within the civil evidentiary regime, including the recognition and evidentiary force of electronic documents and electronic signatures in civil disputes. Thus, it is hoped that a clearer picture of the position of digital agreements in the Indonesian contract law system can be obtained, while also providing recommendations for strengthening legal protection and legal certainty in this area.

METHOD

This research uses a normative juridical method with a statutory and conceptual approach. Primary legal materials include the Civil Code, particularly provisions on contracts and agreements, and Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions and its implementing regulations. Secondary legal materials include the doctrines of scholars such as Subekti, J. Satrio, Salim HS, and Ridwan Khairandy, as well as recent journal articles discussing the validity and validity of electronic contracts in Indonesian civil law. The analysis is conducted qualitatively by interpreting the provisions of statutory regulations and doctrines, then connecting them with the phenomenon of digital agreement practices in modern commercial transactions.

RESULTS AND DISCUSSION

1. The Position and Validity of Digital Agreements in the Perspective of Engagement Law

Systematically, the position of digital agreements must first be placed within the framework of Indonesian contract law. Article 1233 of the Civil Code states that every contract arises from an agreement or by law. Therefore, as long as a legal relationship arising through digital media can be qualified as a contract, it gives rise to a contract that gives rise to rights and obligations for the parties. Article 1313 of the Civil Code, although often criticized for its overly broad formulation, still provides a framework that states that a contract is an act by which one or more persons bind themselves to one or more other persons. This binding character is key in assessing whether a digital agreement has the same binding force as a conventional agreement.

Subekti states that an agreement is a legal relationship regarding property between two or more people, where one party has the right to a performance and the other party is obliged to fulfill that performance (Subekti, 2005). By referring to this definition, the medium or means of communication of the parties' will is not an essential element. What is essential is the existence of a legal relationship that can be legally accounted for. Therefore, a statement of will through electronic means can in principle be equated with a statement of will verbally or in writing, as long as it can be proven that the statement truly comes from the parties and reflects their agreement.

Satrio, in his work on contractual obligations, emphasizes that a contract is a legal relationship in the realm of property between two or more individuals, in which one party is obligated to perform an act and the other party has the right to demand the performance of that obligation (Satrio, 2001). This formulation, once again, does not limit the form or medium of the contract. In modern practice, this legal relationship can arise from an agreement expressed through a digital form, an agreement by checking an agreement box, or the act of downloading and using an application after the terms are displayed on the screen. Thus, conceptually, a digital contract can be qualified as an agreement that creates a contract as long as its legal requirements are met.

Article 1320 of the Civil Code requires four main elements: agreement between the parties, capacity to enter into a contract, a specific object, and a lawful cause. In the context of digital agreements, the element of agreement is manifested through electronic actions, such as clicking an agreement button after reading the terms and conditions. Several studies have concluded that this clicking action can be interpreted as a valid statement of agreement, as long as the terms and conditions are clearly displayed, accessible, and not hidden by the system (Kuspraningrum, 2011; Syahrin, 2020; Hermawan, 2024).

The element of capacity also remains unchanged due to the use of digital media. The Civil Code already regulates legal capacity, including restrictions for minors and those under guardianship. The challenge in digital agreements lies not in the concept of capacity itself, but in the mechanism for

verifying that the user performing the consenting act is truly mature and legally competent. On many platforms, this verification is carried out through the user's self-declaration confirming that they are over a certain age. Legally, if a user provides false information regarding their age, the question arises as to whether the agreement is void, voidable, or remains binding with certain consequences. Here, the doctrine of defective will in Article 1321 of the Civil Code and the prohibition on abuse of circumstances can serve as a basis for analysis.

The specific object elements in digital agreements generally do not raise significant issues, as the transaction object is usually described in detail in online catalogs, product descriptions, or service specifications. Problems arise when the information presented is incomplete, misleading, or inconsistent with reality. This can be linked to the principle of good faith and the prohibition of unlawful causes as stipulated in Article 1337 of the Civil Code. Digital agreements containing causes contrary to law, morality, or public order must still be declared void, even if they are made electronically. Similarly, if a business actor intentionally presents misleading information, this can be grounds for cancellation of the agreement and give rise to liability for damages.

The element of lawful cause needs to be read in conjunction with the development of types of agreements in practice. Salim HS explains that Indonesian contract law recognizes *innominaat* contracts that arise from practice, such as partnership contracts, financing contracts, or therapeutic contracts, which, although not explicitly regulated in the Civil Code, are still recognized as long as they do not conflict with statutory regulations (Salim HS, 2005; 2014). Digital agreements can be placed in a similar category, namely as a new form of agreement that is valid as long as its purpose is lawful and its substance does not conflict with the law. This is in line with the principle of freedom of contract in Article 1338 paragraph (1) of the Civil Code, which gives the parties the freedom to make any agreement, as long as it is not prohibited by law.

The ITE Law explicitly recognizes electronic contracts as a valid form of agreement. By defining an electronic contract as an agreement between parties made through an electronic system, the ITE Law essentially states that the electronic medium does not alter the nature of the agreement. Several studies have concluded that the valid requirements for an electronic contract still refer to Article 1320 of the Civil Code, so that electronic contracts that meet these requirements have the same status as ordinary written contracts (Syahrin, 2020; Kuspraningrum, 2011; Septiari, 2025). This recognition reinforces the view that digital agreements are not a separate legal category, but rather a variation of the form of agreement within the legal framework of contract law.

However, the position of digital agreements cannot be separated from the issue of standard clauses. In practice, almost all digital agreements are drawn up unilaterally by business actors in the form of standard form contracts. Users are in the position of accepting or rejecting the whole thing. Ridwan Khairandy criticized this development as a form of domination by the strong party which has the potential to reduce the true meaning of freedom of contract, because the weak party is only asked to agree without a real opportunity to negotiate (Khairandy, 2003; 2015). At this point, the principle of freedom of contract must be read in line with the principle of protection for weak parties, including the principles in the Consumer Protection Law.

Research on the application of the principle of agreement to electronic contracts shows that the principles of consensualism, freedom of contract, *pacta sunt servanda*, and good faith remain valid in the realm of electronic contracts. However, the testing method has changed. Courts no longer simply look at whether the parties signed a document, but must also assess how the terms and conditions were presented, whether users were given a reasonable opportunity to read them, and whether there are clauses that clearly violate the principles of fairness and balance. Here, the doctrine of abuse of circumstances and the prohibition of exoneration clauses that harm consumers play a crucial role in assessing the validity of digital agreements.

From the above description, it can be concluded that the status of digital agreements from a contractual legal perspective is essentially equivalent to that of conventional agreements. Digital agreements are valid and binding as long as they meet the requirements of Article 1320 of the Civil Code and do not conflict with other provisions of the Civil Code or specific laws such as the Electronic Information and Transactions Law and the Consumer Protection Law. The main challenge lies not in formal validity, but in substantive protection for the vulnerable party and the mechanism for providing evidence in the event of a dispute.

2. Binding Power and Proof of Digital Agreements in Civil Disputes

Once the status and validity of digital agreements are understood within the legal framework of contracts, the next issue, which is no less important, is their binding force and evidentiary aspects in civil disputes. Article 1338 paragraph (1) of the Civil Code states that all legally made agreements apply as law for those who make them. This formulation gives rise to the principle of *pacta sunt servanda*, which requires the parties to comply with and implement the agreement. Valid digital agreements, as long as they meet the requirements of Article 1320 of the Civil Code, doctrinally have the same binding force, so that the parties are obliged to fulfill the agreed performance.

In the context of digital agreements, problems often arise when one party feels aggrieved and sues for cancellation of the agreement or compensation on the grounds that they did not fully understand the contents of the agreement, or that certain clauses were too burdensome and unfair. Here, the court must balance the application of the principle of *pacta sunt servanda* with the principles of good faith and justice. Ridwan Khairandy argues that the court should not be bound simply by the text of the agreement, but must assess the faith of the parties and the context in which the agreement was formed, especially when there is an imbalance in bargaining power (Khairandy, 2003). In digital agreements, where the text of standard clauses is generally long and technical, while the user only makes one click, an overly formal approach to agreement can give rise to substantive injustice.

Courts can invoke Article 1339 of the Civil Code, which states that agreements are binding not only on matters expressly stated, but also on anything that, by its nature, is required by propriety, custom, and law. This provision allows judges to fill in gaps and correct imbalances, for example by interpreting detrimental clauses restrictively or declaring clauses that conflict with propriety and consumer protection invalid. In the context of digital agreements, particularly those concerning consumers, this provision can be used as a basis for assessing whether business actors have fulfilled their obligations fairly and honestly.

The evidentiary aspect becomes crucial when digital agreement disputes are brought to court. The Civil Code and the HIR classically regulate evidence in the form of letters, witnesses, allegations, confessions, and oaths. However, the ITE Law adds recognition of Electronic Information and Electronic Documents as valid legal evidence, allowing electronic records, transaction logs, electronic signatures, and digital communication recordings to be used to prove the existence of an agreement and its contents. Several articles emphasize that electronic contracts, as long as their authenticity, integrity, and relevance to the parties can be proven, have the same evidentiary force as written contracts (Syahrin, 2020; Septiari, 2025; Jukahu, 2025).

Article 5 of the ITE Law stipulates that Electronic Information and Electronic Documents, along with their printouts, constitute valid legal evidence, as long as they meet the requirements of being accessible, displayable, guaranteed to be intact, and accountable. This means that electronic records of the terms and conditions of an agreement, traces of user approval when clicking the agree button, and transaction and payment histories can be submitted as evidence in civil disputes. Technical issues such as authentication, integrity, and prevention of data changes are important, requiring the support of information technology expertise as expert witnesses.

Electronic signatures are also recognized as a valid form of agreement in electronic contracts. The ITE Law distinguishes between certified and uncertified electronic signatures. Certified electronic signatures, which utilize public key infrastructure and certification bodies, are generally more readily accepted as authentic evidence due to their clear verification mechanisms. However, in practice, many digital agreements use simpler forms of agreement, such as checkboxes or confirmation via one-time passwords sent to the user's phone number or email address. Several studies have shown that these forms of agreement can still be considered valid as general electronic signatures, as long as the identity and consent of the parties involved can be proven (Permitasari, 2021; Cahyadi, 2019).

In terms of evidentiary strength, digital agreements face several challenges. First, there is the issue of proving the identity of the consenting party. Weak identity authentication systems, such as relying solely on email addresses without additional verification, can give rise to disputes when the registered user denies ever giving consent. Second, there is the issue of the integrity of electronic documents, for example, whether the terms and conditions submitted to the court are truly the same as those displayed at the time the user gave consent. Here, the use of timestamps, hashes, and immutable log records are crucial to strengthening the evidentiary position of business actors. Third, there are issues of jurisdiction and choice of law in cross-border digital agreements, which are regulated by choice of law and forum clauses.

On the other hand, from the perspective of the user or consumer, digital agreements are often viewed as detrimental due to unclear language and the lack of opportunity for negotiation. In disputes, consumers may seek to cancel an agreement or reject certain clauses, citing ignorance or confusion. Here, judges can utilize the principle of good faith and the provisions regarding agreement interpretation in the Civil Code. Unclear clauses can be interpreted *contra proferentem* against the parties who drafted them, namely the business actor. Furthermore, if it is proven that a particular clause is significantly detrimental to consumers and contradicts the principle of propriety, judges can declare the clause non-binding, even if the consumer has formally clicked to agree.

Several studies in Indonesia show that courts are beginning to recognize the evidentiary value of electronic documents and electronic contracts, although practice is not yet uniform. In some cases, evidence in the form of screenshots, email records, and transaction logs are accepted as important evidence. However, there are also cases where judges still prioritize conventional written evidence and direct testimony, especially when electronic evidence is not supported by convincing authentication mechanisms. This suggests that strengthening the capacity of judges and law enforcement officials to understand information technology is a crucial prerequisite for effective law enforcement in the field of digital agreements.

Businesses' obligation to provide clear and easily understood information also has implications for providing evidence. Government Regulation Number 71 of 2019 requires businesses offering products through electronic systems to provide accurate, clear, and honest information regarding the conditions and guarantees of the goods or services offered, as well as to ensure consumer safety and comfort. In the event of a dispute, businesses must be able to demonstrate that adequate information has been provided, for example through a recording of the website or application display during the transaction. Without adequate evidence, businesses can be found negligent in fulfilling their information obligations and held liable for consumer losses.

Ultimately, the binding force of a digital agreement is inextricably linked to the parties' ability to prove the existence of the agreement, its content, and its implementation or breach of contract. From a doctrinal perspective, a valid digital agreement has the same binding force as a written agreement on paper, based on Article 1338 of the Civil Code. However, from a practical perspective, this force will only be truly felt if electronic evidentiary instruments, including electronic signatures and electronic documents, are consistently accepted and understood by the courts. Therefore, it can be said that the main challenge going forward is no longer the conceptual level regarding the recognition of digital agreements, but rather the strengthening of the technical and institutional framework to ensure the

reliability of evidence, the protection of vulnerable parties, and the uniformity of court decisions. Developing technical guidelines, improving the digital literacy of law enforcement officers, and refining the derivative regulations of the ITE Law and the Civil Code are important agendas to ensure that the binding force of digital agreements is truly accompanied by legal certainty and justice for all parties involved in modern commercial transactions.

CONCLUSION

Digital agreements essentially have equal legal standing to conventional agreements as long as they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. The will of the parties expressed through electronic mechanisms such as clicking approval, checking boxes, or using electronic signatures can still be considered valid as a statement of agreement, provided that it is supported by clear information, the competence of the parties, a definable object, and a purpose that does not conflict with the law. With the enactment of the ITE Law and its various implementing regulations, the state has given formal recognition to electronic contracts as a tool for creating binding agreements, so that the principles of freedom of contract and the principle of *pacta sunt servanda* remain applicable in the context of digital transactions.

However, the main challenge lies in the evidentiary aspect and the protection of vulnerable parties, especially consumers, who are often faced with lengthy and non-negotiable standard clauses. Electronic documents, transaction records, and electronic signatures have been recognized as evidence, but their implementation still requires strengthening technical capacity and consistency among judges in assessing electronic evidence. To ensure legal certainty and justice, it is necessary to continue developing technical guidelines, digital literacy for judicial officials, and upholding the principles of good faith and propriety at every stage of digital transactions. Thus, digital agreements can truly become modern instruments that protect, bind, and provide justice for the parties.

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