



Electronic Contracts (E-Contracts) and Validity in Indonesian Civil Law: Analysis of Article 1320 of The Civil Code and The ITE Law

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Abstract. *The development of information technology has given rise to a new form of business transaction: the electronic contract. This contract form replaces the traditional process that requires a physical meeting between the parties. However, questions arise regarding the validity of e-contracts from the perspective of Indonesian civil law, specifically based on Article 1320 of the Indonesian Civil Code (KUHPPerdata) and the provisions of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). This research aims to analyze the validity of electronic contracts as legally binding agreements and to assess the extent to which the ITE Law can serve as their legal basis. Using a normative juridical legal research method, the research results show that e-contracts are valid and binding as long as they meet the requirements for the validity of an agreement under Article 1320 of the Civil Code, namely consent, capacity, a specific object, and a lawful cause. The ITE Law expands the recognition of electronic evidence and digital signatures as valid evidence in civil law. Thus, electronic contracts have the same legal force as conventional contracts, as long as they meet the principles of free will and the integrity of a reliable electronic system.*

Keywords: *Article 1320 Of the Civil Code; Civil Law; Digital Transaction; Electronic Contract; ITE Law.*

1. INTRODUCTION

The rapid development of information technology has brought fundamental changes to various aspects of human life, including the fields of economics and law. In Indonesia, the process of economic digitalization is happening very quickly as internet penetration and the use of digital devices in business activities increase. This transformation not only changes the way society transacts but also gives rise to a new paradigm in the legal relationship between businesses and consumers. Buying and selling activities, business cooperation, and service provision can now be done online without any physical meetings between the parties. This phenomenon creates new challenges for legal systems that have been rooted in the concept of conventional agreements. One concrete form of this digital transformation is the emergence of electronic contracts (e-contracts). In practice, an e-contract refers to an agreement that is created, sent, approved, and stored thru an electronic system. This contract mechanism replaces the traditional process that previously required physical signatures on paper documents. With e-contracts, parties can create agreements with just a few clicks on a computer or smartphone. This certainly provides high efficiency, speed, and flexibility in modern business transactions. However, the convenience offered by electronic systems also raises new legal issues. One of the main issues that arises is the validity of the electronic contract itself. Many parties are questioning whether e-contracts can be considered to have the same legal force as conventional contracts signed manually. This issue becomes relevant considering that Indonesian civil law,

particularly the Civil Code (KUHPerdata), was drafted in the context of the 19th century, long before the advent of digital information and communication technology as we know it today. In the Indonesian legal system, the validity of an agreement is generally regulated in Article 1320 of the Civil Code, which stipulates four requirements for the validity of an agreement: agreement of the parties, legal capacity, a specific object, and a lawful cause. This formulation emphasizes that every agreement must be based on free will, legal capacity, clarity of object, and purposes that do not conflict with law and morality. The important question that arises is whether these four elements can be applied in the context of contracts made thru electronic media.

On the other hand, Indonesia has adopted Law Number 11 of 2008 concerning Electronic Information and Transactions (Law ITE) as a specific regulation providing a legal basis for digital transactions. This law was later updated thru Law Number 19 of 2016, which strengthened the recognition of electronic documents, digital signatures, and electronic transaction systems that are legal and legally accountable. In this context, the ITE Law serves to complement and expand the scope of civil law so that it can adapt to the dynamics of economic digitalization. The relationship between classical law (Civil Code) and modern law (Electronic Information and Transactions Law) presents an interesting dialectic in the context of contract validity. The Civil Code is general and abstract, while the Electronic Information and Transactions Law is specific and technical, regulating transaction mechanisms thru electronic means. The combination of the two illustrates how the Indonesian legal system is trying to integrate old values such as the principle of consensualism, the principle of freedom of contract, and the principle of good faith into the fast-paced and borderless digital legal framework.

In practice, e-contracts are widely used on various digital platforms such as marketplaces (Tokopedia, Shopee, Bukalapak), digital financial services (e-banking, fintech), and application-based platforms. Every time a user clicks the "Agree" button on terms and conditions, a legal process has actually occurred, namely the formation of an electronic contract. This means that the expression of will in digital form has met the element of agreement as referred to in Article 1320 of the Civil Code, as long as it is done consciously without coercion and with sufficient knowledge. Nevertheless, the implementation of electronic contracts is not without legal risks, such as digital identity theft, personal data breaches, and online fraud. This risk highlights the importance of the principles of caution and the reliability of electronic systems in ensuring the authenticity and integrity of data. In this context, Article 15 of the ITE Law emphasizes that electronic system operators are responsible

for the reliability of the systems used to ensure the security and validity of transactions. This principle also serves as a bridge between legal validity and technological security in the digital business world.

Additionally, it is important to understand that electronic contracts not only serve as business instruments but also as a manifestation of the principle of freedom of contract recognized in Indonesian civil law. This principle grants the parties the freedom to determine the content, form, and method of implementing the agreement, as long as it does not conflict with the provisions of the law. Therefore, although the medium of contract creation has shifted from physical to digital, the essence of the legal relationship between the parties remains the same, namely the existence of a meeting of minds that gives rise to a legal bond. However, in its implementation, e-contracts still face challenges in terms of proof in court. Although Article 5 of the ITE Law has recognized electronic documents as valid legal evidence, not all judges have the same understanding in assessing the validity of digital evidence. This difference in understanding often leads to legal uncertainty, especially in cases of online contract disputes. Therefore, increasing the capacity of law enforcement officials and digital forensics standardization are crucial to ensure the principle of legal certainty remains guaranteed in the digital age.

Thus, the emergence of electronic contracts in modern business practices demands an update in the perspective on civil law in Indonesia. Article 1320 of the Civil Code, which is the basis for the validity of an agreement, remains relevant, but needs to be interpreted dynamically according to the context of information technology. The ITE Law serves as a complement, providing formal recognition of digital media as a legitimate means of establishing legal relationships. Therefore, the synergy between classical civil law and modern electronic law becomes an important foundation in realizing legal certainty and justice in digital business transactions in Indonesia.

2. RESEARCH METHODOLOGY

This research uses a normative-juridical legal research method, which focuses on studying the positive legal norms that apply within the Indonesian legal system. This approach was chosen because the research problem is conceptual and normative, specifically concerning the validity of electronic contracts (e-contracts) from a civil law perspective. Normative legal research places law as written rules that must be examined through interpretation of relevant legislation, legal principles, and doctrines. In this context, the research focus is directed toward analyzing Article 1320 of the Civil Code regarding the validity requirements of agreements, as

well as Law Number 11 of 2008 concerning Electronic Information and Transactions (Electronic Information and Transactions Law) and its amendments in Law Number 19 of 2016, which serve as the legal basis for the formation and recognition of electronic contracts in Indonesia.

The research approach used includes three types: the statute approach, the conceptual approach, and the case approach. The legislative approach was carried out by analyzing regulations directly related to electronic contracts, such as the Civil Code, the ITE Law, and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. The conceptual approach was conducted by examining contract law theories and principles such as the principle of freedom of contract, the principle of consensualism, and the principle of good faith in the context of digital transactions. Meanwhile, the case approach was used to identify the application of law in practice, thru the analysis of court decisions related to electronic contract disputes in Indonesia.

The sources of legal materials in this study consist of three categories: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include legislation that serves as the basis for the research, such as the Civil Code and the Electronic Information and Transactions Law. Secondary legal materials encompass books, scientific journals, and the opinions of legal experts discussing the validity of electronic contracts and the proof of digital documents. Tertiary legal materials are used to strengthen conceptual understanding thru legal dictionaries, encyclopedias, and official sources from government and academic institutions. Data collection techniques were carried out thru library research, which involves tracing relevant legal literature and documents, both in print and digital form.

The legal materials were analyzed using a qualitative descriptive approach, by describing and interpreting the content of legal norms contained in the Civil Code and the Electronic Information and Transactions Law (EIT Law), and connecting them to electronic contract practices in modern business transactions. This analysis is also conducted deductively, drawing conclusions from general legal principles toward their application to specific issues related to e-contracts. Thru this method, the research not only describes the current legal situation but also provides normative recommendations for the need for legal reform and increased legal certainty in the implementation of electronic contracts in Indonesia.

3. RESULT AND DISCUSSION

Application of Article 1320 of the Civil Code to Electronic Contracts

In the Indonesian legal system, Article 1320 of the Civil Code (KUHPerdata) is a fundamental norm that regulates the validity of an agreement. This article has become a cornerstone in assessing whether an agreement can be considered valid and legally binding. Article 1320 sets forth four main elements: the consent of those who bind themselves, the capacity to enter into an agreement, a specific object, and a lawful cause. These four elements are cumulative and cannot be separated from each other. If one of the elements is not met, the agreement can be canceled or void by law.

In the context of digital transformation, legal relationships are no longer limited to conventional forms. The development of information technology has given rise to new transaction models thru electronic media, known as electronic contracts. This contract is made, sent, approved, and stored thru an electronic system without requiring direct face-to-face interaction between the parties. This type of contract is legally recognized in Article 1, paragraph 17 of Law Number 11 of 2008 concerning Electronic Information and Transactions (Law on Electronic Information and Transactions), which states that "an electronic contract is an agreement made thru an electronic system." Although electronic contracts use digital media, their essence still adheres to the basic principles of contract law regulated in the Civil Code. This means that the validity of an e-contract is still assessed based on the four essential elements of a valid agreement as mentioned in Article 1320. Indonesian civil law does not require a specific form for the validity of a contract, except in cases explicitly regulated by law. Therefore, electronic contracts have the same legal status as conventional written contracts, as long as their substance meets the applicable legal provisions.

The first and most fundamental requirement is the agreement of the parties. In classical civil law, agreement is defined as a meeting of minds (*consensus ad idem*) between two or more parties to produce certain legal effects. In the digital context, the agreement is manifested thru actions that can be identified as a form of acceptance of an offer. Examples include pressing the "agree" button, filling out data in a digital form, or confirming an offer via email. Such actions are considered a legitimate expression of legal will when performed consciously without coercion, fraud, or mistake as referred to in Article 1321 of the Civil Code. In e-commerce practice, transactions often occur automatically without direct negotiation between the seller and the buyer. This raises the question: do automatically made agreements still uphold the principle of free will? The answer is yes, as long as the system provides sufficient opportunity for users to read and understand the content of the agreement. As long as there is

no element of coercion or manipulation, clicking "agree" is still considered a genuine expression of free will. This doctrine is known as "implied consent thru digital conduct," which is now widely recognized in modern contract law theory.

The second requirement is the ability to enter into an agreement. In Article 1329 of the Civil Code, a person is declared capable of entering into an agreement if they have reached adulthood and are not in a state prohibited by law. In the digital context, proficiency is not only determined by age and mental condition, but also by the validity of the digital identity used. This means that someone is considered competent if their electronic identity is verified and legally accountable. This is affirmed in Article 11 paragraph (1) of the ITE Law, which stipulates that electronic signatures have legal force and valid legal consequences if they meet the requirements of system reliability and identity authenticity. Challenges arise when digital transactions are conducted by legally incompetent parties or using false identities. For example, a minor making online transactions using an adult's account, or someone using another person's personal data without permission. In this case, the contract made can be canceled or declared invalid because it does not meet the element of legal capacity. Therefore, electronic system providers such as marketplaces, digital banking, and fintech are required to implement a strong authentication system so that user identities can be verified accurately.

The third requirement is a specific thing, meaning the object of the agreement must be clear, determinable, and have legal value. In an electronic contract, the object can be goods, services, or digital rights that can be traded. For example, purchasing physical goods thru a marketplace, subscribing to digital services like cloud computing, or software license agreements. All these forms are legally valid as long as their object is clear, accountable, and does not violate the law. Clarity of the object is important because it concerns legal certainty for the parties involved. This is in line with Article 1333 of the Civil Code, which states that the object of an agreement must be determined or at least determinable in type. However, in digital practice, problems often arise regarding the clarity of objects, for example, in cases of discrepancies between the product descriptions displayed on the website and the goods received by consumers. This situation raises legal disputes regarding whether the contract has met the element of a certain object. According to the principles of civil law, if the object of the agreement does not conform to what was promised, the injured party is entitled to demand cancelation of the contract or compensation for breach of contract as regulated in Article 1243 of the Civil Code. Thus, certain object elements in an e-contract must be strictly understood to avoid causing losses to either party.

The fourth condition is a lawful cause, which stipulates that the content of the contract must not contradict the law, morality, or public order. In digital transactions, this includes prohibiting agreements aimed at illegal activities such as the sale of prohibited goods, online gambling, or the dissemination of pornographic content. Based on Article 1337 of the Civil Code, a contract with an unlawful cause is null and void by law. Thus, even if the contract is made thru a valid electronic system, if its substance is contrary to the law, the contract has no binding force. The application of the halal cause requirement in the digital world is also related to the protection of personal data and cybersecurity. Agreements that allow for the misuse of consumer personal data without consent can be considered a violation of applicable legal provisions. Therefore, in addition to the Civil Code and the ITE Law, the regulations regarding personal data protection as stipulated in Law Number 27 of 2022 concerning Personal Data Protection (PDP Law) also serve as an important reference in assessing the validity of modern electronic contracts.

Doctrinally, the four valid conditions of the agreement indicate that Article 1320 of the Civil Code remains relevant and adaptable to developments in information technology. Indonesian civil law is based on the principle of freedom of contract, which allows parties to determine the form and medium of their contract. This means that as long as the substance of the agreement is in accordance with the law and principles of justice, electronic media does not change the legal status of the agreement. This view aligns with the theory of technological neutrality in law, which states that the law should apply equally to every form of transaction media without favoring any particular type of technology.

However, it's important to remember that in practice, the application of Article 1320 to electronic contracts cannot be separated from the aspect of proof. Although electronic contracts are recognized as valid, their proof must still demonstrate the existence of a proper agreement and execution. Article 5 of the ITE Law provides the legal basis for electronic information as valid evidence, but its effectiveness depends on data integrity and the reliability of the electronic systems used. Therefore, every electronic contract should be accompanied by a verification mechanism and digital transaction recording as authentic proof for future reference. By considering these four conditions, it can be said that Indonesian civil law has a high degree of flexibility in adapting to the times. Although the Civil Code was born in the context of the 19th century, its basic principles can still be applied to regulate modern agreements based on digital technology. This shows that the Indonesian civil law system is living law, meaning law that can evolve according to societal needs without losing its fundamental values.

From the overall analysis above, it can be concluded that an electronic contract (e-contract) is legally valid if it meets the four conditions stipulated in Article 1320 of the Civil Code. Its validity does not depend on the physical form of the agreement, but rather on the fulfillment of the elements of free will, legal capacity, clarity of object, and lawful purpose. Thus, Indonesian civil law remains the main foundation for the legitimacy of digital legal relationships in the modern era. Adaptation to the development of information technology does not eliminate classical principles, but rather expands their application to remain relevant, just, and provide legal certainty in electronic business transactions.

Implications of the Electronic Information and Transactions Law on the Validity of Electronic Contracts

The enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions (the Electronic Information and Transactions Law), which was later updated by Law Number 19 of 2016, is a significant milestone in the history of digital law development in Indonesia. The presence of this regulation marks the state's recognition of the validity of legal activities conducted thru electronic media, including electronic contracts. Before the ITE Law was issued, Indonesian civil law only recognized the concept of agreements in oral and written (physical) form. Social changes resulting from the digitalization of transactions necessitate more adaptable legal frameworks, and the ITE Law is presented as an answer to this need. The ITE Law provides a strong normative basis for the existence and validity of electronic contracts. Article 18 paragraph (1) states that: "Electronic contracts are binding on the parties as long as they meet the legal requirements for agreements as stipulated in the laws and regulations." This provision indicates that electronic contracts do not create a new type of agreement, but rather expand the form of agreement already known in classical civil law, namely a consensual agreement that is binding based on agreement. Thus, the ITE Law serves as a bridge between the traditional legal values regulated in Article 1320 of the Civil Code and modern technology-based transaction practices.

The presence of the ITE Law affirms that electronic media is recognized as a legitimate means of expressing legal will. This means that agreements made thru clicking "I agree," filling out digital forms, or electronic signatures have the same legal force as physical signatures. In this context, the ITE Law adheres to the principle of functional equivalence, which is the equivalence of function between physical and electronic documents in a legal context. This principle aligns with the provisions of the Model Law on Electronic Commerce (1996) issued by UNCITRAL, which serves as an international reference in the formation of Indonesia's ITE Law. Beside recognizing the existence of electronic contracts, the ITE Law also strengthens

the legal aspect of proof. Based on Article 5 paragraph (1), "Electronic information and/or electronic documents and their printouts are valid legal evidence." Therefore, in electronic contract disputes, digital evidence such as screenshots, transaction records, or emails can be accepted in court as long as their authenticity can be verified. This provision expands the system of proof in Indonesian civil procedure law, which previously only recognized conventional means of evidence such as documents, witnesses, or confessions.

Furthermore, Article 11 paragraph (1) of the ITE Law explicitly recognizes electronic signatures as a valid element in agreements. Electronic signatures are considered to have the same legal force and effect as manual signatures if certain requirements are met, including: the data related to the creation of the signature is linked only to the signatory, and any changes to the signature can be known. This recognition is a progressive step in adapting contract law to the developments in digital technology. With certified electronic signatures, the integrity and authenticity of digital agreements can be maintained. The direct implication of this provision is increased legal certainty for electronic transaction participants. Before the ITE Law existed, many parties were unsure whether contracts made via email, application systems, or e-commerce platforms had the same binding force as conventional contracts. Now, with the legal recognition of electronic documents and digital signatures, each party has a clear legal basis to assert or defend their rights in digital transactions. This is very important in building trust between businesses and consumers in cyberspace.

Beside the aspect of proof, the ITE Law also emphasizes the principle of responsibility for electronic system operators. Based on Article 15 of the ITE Law, every electronic system operator is obliged to operate a reliable and secure system and is responsible for the functioning of that system in accordance with the law. This provision indicates that legal responsibility rests not only with the contracting parties but also with the system operators who facilitate the contract. If a system failure or data breach occurs that causes losses to the parties involved, the system operator can be held legally accountable. The obligation of the electronic system operator creates an additional layer of legal protection for users of digital services. For example, if a payment failure or data manipulation occurs in an online transaction due to the negligence of the platform provider, the responsibility is not only placed on the user, but also on the system administrator. This shows that the ITE Law not only regulates the legitimacy of contracts but also builds a legal ecosystem that guarantees security and justice in digital transactions. Thus, the ITE Law serves as a *lex specialis* that complements the norms in the Civil Code.

However, the implementation of the ITE Law also faces challenges, particularly in the aspects of technical and digital forensic evidence. Although electronic documents have been recognized as legitimate evidence, their validity still depends on the ability of the disputing parties to prove the authenticity and integrity of the data. For example, data that has been digitally modified or falsified can weaken its probative value. Therefore, judicial institutions and law enforcement agencies need to have the technical capacity to understand digital evidence so that the principle of due process of law is maintained. Beside technical challenges, there are also cross-border jurisdictional issues. Electronic contracts often involve parties located in different countries and utilize systems operated outside of Indonesia's legal jurisdiction. This raises questions about which law applies (*lex loci contractus*) and which court has jurisdiction to hear the dispute (*forum prorogatum*). The ITE Law does not explicitly regulate cross-border dispute resolution mechanisms, so strengthening international cooperation and harmonizing cyber laws thru inter-state agreements or regional instruments like the ASEAN Framework on Digital Economy is necessary.

From a substantive perspective, the ITE Law also has implications for the principle of freedom of contract, which is regulated in Article 1338 of the Civil Code. With the enactment of the ITE Law, this principle is extended to the digital realm, where parties are free to determine the content and form of contracts as long as they do not conflict with the law. However, the ITE Law also balances this freedom with the principles of responsibility and legal protection for users. This means that freedom of contract in the digital world should not be interpreted absolutely, but must still be subject to the principles of justice and protection for weaker parties, such as consumers. Furthermore, the ITE Law also strengthens the preventive and repressive legal functions in electronic contracts. The preventive function is realized thru the system operator's obligation to ensure security and transparency, while the repressive function is realized thru criminal or administrative sanctions for violations of electronic systems. With this regulation in place, the ITE Law not only serves as an instrument of recognition but also as a tool for controlling business actors and electronic system providers who are negligent in fulfilling their legal obligations.

Theoretically, the existence of the ITE Law changes the paradigm of contract law from being physically based to technology-based law enforcement. In this new paradigm, law no longer only regulates relationships between individuals, but also the relationship between humans and technological systems. Therefore, the implementation of the ITE Law requires synergy between legal experts, information technology experts, and supervisory bodies to be effective. This multidisciplinary approach is key to the future success of digital law. Based on

the overall analysis above, it can be concluded that the ITE Law provides formal and substantial recognition of the validity of electronic contracts within the Indonesian legal system. The existence of the ITE Law complements the provisions of Article 1320 of the Civil Code, where the Civil Code sets out the general requirements for the validity of an agreement, while the ITE Law provides legitimacy for the digital means and media used. These two legal instruments complement each other in creating legal certainty, justice, and protection for parties transacting in the digital world. Thus, electronic contracts have the same legal force as conventional contracts, provided they are made thru a reliable electronic system, meet the principle of free will, and comply with applicable legal norms.

4. CONCLUSION

Based on the analysis of Article 1320 of the Civil Code and Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law) and its amendments, it can be concluded that electronic contracts (e-contracts) are valid and have the same legal force as conventional contracts as long as they meet the four valid contract requirements, namely the agreement of the parties, legal capacity, a certain object, and a lawful cause. Digital media does not change the substance of the agreement, as the basis for the validity of the agreement remains the free will and good faith of the parties. Thru the ITE Law, the state provides legal recognition to electronic documents, digital signatures, and online transactions as valid evidence in court, thus affirming that the Indonesian legal system has accommodated the development of information technology in the field of contracts.

The relationship between the Civil Code as classical law and the ITE Law as modern law demonstrates a harmonious integration between the basic principles of civil law and digital innovation. The Civil Code serves as the normative basis for assessing the validity of the agreement's substance, while the ITE Law provides legitimacy for the electronic means used. However, the implementation of electronic contracts still faces challenges, such as digital proof aspects, the security of electronic systems, and legal protection for online consumers. Therefore, strengthening derivative regulations and increasing the capacity of law enforcement are needed so that contract law in Indonesia is not only normatively valid, but also effective in providing certainty, justice, and legal protection in the era of economic digitalization.

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