

Legality of Digital Contracts in Indonesian Positive Law Perspective

Hera Alvina Satriawan¹, Allan Mustafa Umami², Fatria Hikmatiar Al Qindy³,
Wahyuddin⁴

Universitas Mataram

Article Info

Article history:

Received: 16 July 2024

Publish: 1 September 2024

Keywords:

Contract;

Digital.

Abstract

In the rapidly developing digital era, digital contracts have become popular in Indonesia due to their convenience and efficiency in business transactions, such as online buying and selling. A digital contract is an agreement made using electronic or digital media, differing from the traditional paper and pen method. The rise of electronic transactions has led to the creation of digital or electronic contracts, resulting in electronic engagements. This shift from conventional to digital contracts represents technological advancement in contract practices, as seen with Electronic Contracts. Unlike conventional contracts, which have clear legal regulations, Digital or Electronic Contracts in Indonesia are relatively new. This research examines the legality and validity of Digital Contracts from the perspective of Indonesian Positive Law. The study aims to understand and assess the legality of digital contracts in Indonesia. The research employs normative legal research methods, using the Statutory Approach and the Conceptual Approach. The findings conclude that digital contracts are legal and valid under Indonesian positive law, provided they meet the validity requirements of an agreement as stipulated in Article 1320 of the Civil Code.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](#)



Corresponding Author:

Hera Alvina Satriawan

Universitas Mtaram

1. INTRODUCTION

In the rapidly developing digital era, digital contracts have become popular in Indonesia because they provide convenience and efficiency in carrying out business transactions, such as buying and selling goods online.

A digital contract or digital agreement or online contract or electronic contract is a contract whose approval or signing is carried out using electronic media. So, it is very different from the conventional concept of using paper and pen as we usually do.

According to Prof. Subekti "An agreement is an event where one person makes a promise to another person or where two people promise each other to carry out something". The term agreement can also be called an agreement because in an agreement, both parties must agree first. The terms agreement and contract are the same, where in business practice the term contract is used, apart from that the term agreement or agreement is also used. Article 1313 of the Civil Code provides the definition of contract or agreement which states that a contract or agreement is an act by which one or more people bind themselves to one or more other people.

Electronic Contracts or online contracts or online contracts are agreements between the parties to bind each other to achieve common goals carried out electronically. In general, an electronic contract is defined as a contract made in electronic form.

So Digital Contracts are basically the same as conventional contracts that we usually find, the difference is in their physical form. Regarding the contents of the contract and the writing format, it is almost the same as a conventional contract.

Article 1 Number (17) of the Law concerning Information and Electronic Transactions (UU ITE), namely Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 2008 concerning Electronic Information and Transactions states that an

Electronic Contract is an agreement between parties made through an Electronic System. This meaning is in line with Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions.

The existence of electronic transaction activities results in the creation of digital contracts or electronic contracts, giving rise to electronic engagements or legal relationships by combining computer-based networks with communication systems which are then facilitated by the internet network or global network. Electronic Contracts or digital contracts are an embodiment of Article 1338 of the Civil Code which enforces the "Principle of Freedom of Contract".

The contract law system in Indonesia is regulated in Articles 1320 and 1338 of the Civil Code which consists of written contracts and oral contracts. Classically, the preparation of contracts or agreements in Indonesia is a conventional contract (drafting is done by signature and face to face meeting) with all its own advantages and disadvantages in its preparation.

The trade (business) transaction system which was originally paper based has shifted to a non-paper based (digital) transaction system. The presence of information technology today has at least two implications. Implications it has an impact in the economic sector and also in the legal sector. In the economic sector, the presence of the internet tends to bring about an increasingly transparent, effective and efficient climate. Meanwhile, the presence of the internet in the legal sector raises various fundamental legal issues. One of these legal issues is related to Contract Law (Agreement). Until now, it is acknowledged that conventional contract law rules have not been able to reach them completely electronically.

The change in the use of contracts from conventional to digital in society is a technological advancement in the business sector which can be seen in the existence of electronic contracts, which are business contracts made electronically. Compared to contracts made conventionally (made by meeting directly or face to face) where the legal regulations are clear, electronic contracts in Indonesia are still something new and therefore need further study and research.

Based on the background description above, the problems in this research can be drawn, namely What is the legality of digital contracts from an Indonesian Positive Law Perspective, and the aim of this research is to find out legality of digital contracts in the Indonesian Positive Law Perspective.

2. RESEARCH METHOD

The research method used in this research is a normative legal research method, with a statutory approach and a conceptual approach. Normative legal research methods are methods that study the regulations in a well-organized legal system. In this method, the focus of active research is on the analysis of applicable norms. Therefore, the main study material in this method is legal products and other sources of positive law. Normative research treats law as a structure consisting of a system of norms, such as principles, norms, rules of legislation, agreements, and doctrine (sources of law).

3. RESEARCH RESULTS AND DISCUSSION

3.1. Validity of Electronic Agreements

The legal basis for the agreement/contract is regulated in Civil Code. One of them is regulated in the provisions of Article 1338 of the Civil Code which regulates the "principle of freedom of contract" which states that all agreements made legally apply to the law for those who make them.

This article states that both parties to the contract are free to make agreements/contracts, whatever the content and whatever form. In other words, all agreements/contracts that are legally made apply to the law for those who make them.

However, the principle of freedom of contract does not mean unlimited (absolute) freedom. Each party making an agreement must fulfill the legal requirements of the agreement and continue to pay attention to the provisions of laws and regulations, morality and public order.

Regarding the validity of electronic (digital) agreements, in principle the validity of an agreement is not determined by the physical form of the agreement. In printed/written or electronic/digital form, oral or written form, this is in accordance with the principle of freedom of contract and will still be considered valid by law if it fulfills the four conditions in Article 1320 Civil Code.

As for the four conditions for the validity of the agreement these are:

1. agreement of the parties

Agreement means that there is a free agreement of will between the parties regarding the main things desired in the agreement. In this case, the parties must have a free/voluntary will in binding themselves, where the agreement can be stated expressly or tacitly. Freedom here is meant to be free from error, coercion and fraud.

2. skills of the parties

In accordance with Article 1329 of the Civil Code, in general all people are competent in making agreements, unless determined to be incompetent according to law. action. Everyone. A whereas wasteful. A. Civil law in force in Indonesia uses various standards for a person's age of maturity.

3. A specific object or a certain thing

Certain things mean what is agreed in the form of rights and obligations for a party, at least the type of object referred to in the agreement is determined and is an object that can be traded.

4. For a halal reason. (legal cause)

Because what is halal means that the contents of an agreement describe a goal that both parties want to achieve. The contents of the agreement do not conflict with the law, morality or public order.

More specifically regulates the legal conditions for an electronic agreement or electronic contract or digital contract, including:

1. there is an agreement between the parties;
2. carried out by competent legal subjects or those authorized to represent them in accordance with the provisions of statutory regulations;
3. there are certain things; And
4. the object of the transaction must not conflict with statutory regulations, decency and public order.

Electronic agreements or contracts must also contain at least:

1. identity data of the parties;
2. objects and specifications;
3. electronic transaction requirements;
4. prices and costs;
5. procedures in the event of cancellation by the parties;
6. provisions that give the injured party the right to return the goods and/or request a product replacement if there are hidden defects; And
7. legal options for electronic transaction settlement.

Based on the provisions of the Civil Code and the ITE Law as explained above, electronic contracts or digital contracts as long as they meet the legal requirements for an agreement, the agreement is valid and has the same force as a conventional agreement or one signed and attended by the parties in person.

Likewise with its evidentiary power, digital contracts have the same evidentiary power as contracts signed directly by the parties.

3.2. Legality of Digital Contracts in Indonesian Positive Law Perspective

From a legal perspective, legality talkshis. The word "legality" has the basic word "legal", which is something that is in accordance with statutory regulations or law.

A contract is an agreement between two or more parties that is binding and has legal force. In a contract, each party has obligations and rights must fulfilled. Contracts are usually made in written form and include details such as terms and conditions, time period, and sanctions if a party violates the agreement.

Positive Law in Indonesia, also known as Indonesian national law, is the law that applies at a certain time within the territory of the country of Indonesia. In this case, these are the laws or other regulations that apply in Indonesia regarding digital contracts.

As explained in Article 1313 of the Civil Code, an agreement is "an act by which one or more people bind themselves to one or more other people". In addition, Article 1233 of the Civil Code states that every agreement can occur either through agreement or by law. In this context, an engagement is a relationship between two or more individuals where one party has the right and obligation to fulfil the performance of another party.

An agreement, in its form, is a series of words containing concrete promises or commitments that are spoken or written. The legal relationship that arises from the engagement in an event is then stated in the contract. Therefore, the agreement is not just words containing promises, but is also a promise made in writing intentionally, so that it becomes evidence for the parties involved.

Based on Article 1320 of the Civil Code, a contract is considered valid if it meets several conditions, including the consent of the parties involved, the ability to take legal action, the existence of certain things, and the existence of a valid reason. A contract or agreement creates an engagement between the parties involved, so that the contract or agreement becomes the main and most important source of an engagement.

According to R. Subekti, an agreement is a legal relationship between two individuals or two parties, where one party has the right to demand something from another party, and the other party has the obligation to fulfil these demands. Looking at the definition of an agreement put forward by Subekti, it can be concluded that a contract is a legal relationship between one legal subject and another legal subject in the field of property, where one legal subject has the right to claim performance and the other legal subject is also obliged to carry out performance in accordance with what has been agreed.

In its development, contracts created are not only limited to physical formats such as paper, but can also be done digitally, known as Digital Contracts. Digital Contracts involve the use of information and data from all parties related to the agreement. Digital Contracts or electronic contracts emerged as a result of technology to make it easier to carry out agreements.

Based on the provisions in Article 1 number (17) of the ITE Law, "electronic (digital) contracts" are defined as agreements made by parties via an electronic system.

One example of a digital or electronic contract that we often encounter and even practice is an online buying and selling agreement or better known as an online shop or online shopping.

Furthermore, an electronic system is defined as "a series of electronic devices and procedures that function to prepare, collect, process, analyse, store, display, announce, transmit and/or disseminate electronic information (Article 1 number (9) of the ITE Law)". Basically, an electronic contract is an agreement agreed by the parties who make it using a very different medium or means, namely using an electronic system.

Based on the definition of engagement previously mentioned, the following are the elements or components contained in an agreement or contract:

1. Legal Relationship: This is a relationship that can result in legal consequences. These legal consequences arise due to the actions of legal subjects, which create rights and obligations for the parties to the contract.
2. Legal Subject: Legal subject means supporting or holding rights and obligations, legal subject in an agreement or contract including legal subject that is regulated or subject to the provisions in the Civil Code. Civil Law in Indonesia categorizes legal subjects into two parts, namely humans (individuals or groups) and legal entities. Therefore, those who can make agreements or contracts in Indonesia are not only limited to humans individually or collectively, but also legal entities such as foundations, cooperatives and limited liability companies.
3. Achievement: According to Article 1234 of the Civil Code, achievement can be in the form of giving something, doing something, or not doing something. If the legal subject who makes the agreement or contract does not carry out the performance as specified in the contract, then the legal subject is said to be in default.
4. Relating to Wealth: Usually, an agreement reached between two or more is stated in an agreement or contract and then signed by the parties, the contents of the agreement relate to something that can be valued in money.

4. CONCLUSION

Code. Anand for lawful reasons. The laws and regulations governing electronic (digital) contracts in Indonesia are Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions, Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions.

5. BIBLIOGRAPHY

- Simanjuntak Ricardo, *Teknik Perancangan Kontrak Bisnis*, (Jakarta: PT. Gramedia, 2018).
- Poernomof, Sri Lestariy, *Standar Kontrak dalam Perspektif Hukum Perlindungan Konsumen*, (Jurnal Hukum Penelitian De Jure 19, no. 1, 2019).
- Panggabean, R. M. *Keabsahan Perjanjian dengan Klausul Baku*. (Jurnal Hukum Iuis Quia Iustum 17, no. 4, 2010).
- Sinaga, David Herianto dan Wiryawan, I Wayan. *Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis*. (Jurnal Kertha Semaya, 8 (9), 2020).
- Santoso, Agus dan Pratiwi, Dyah, *Tanggung Jawab Penyelenggara Sistem Elektronik Perbankan Dalam Kegiatan Transaksi Elektronik Pasca Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*, (Jurnal Legislasi Indonesia. 5 (4), 2008).
- Arkiswan dan Sari, Debby Puspita, *Syarat Sah Kesepakatan Dalam Perjanjian Transaksi Elektronik Pada Aplikasi Jual Beli Online Lazada*, (Jurnal Pro Hukum. 10 (1), 2021).
- Latianingsih, Nining, *Prinsip Tanggung Jawab Pelaku Usaha Dalam Transaksi Elektronik Menurut Undang-Undang Informasi Dan Transaksi Elektronik*, (Jurnal Ekonomi & Bisnis PNJ 11.2, 2012).
- Ridwan Khairandy, *Pembaharuan Hukum Kontrak sebagai Antisipasi Transaksi Elektronik Commerce*, (Yogyakarta: Jurnal Hukum UII, 2001).
- Tektona, Rahmadi Indran, *Perlindungan Konsumen Dalam Kontrak Transaksi e-Commerce Berdasarkan Hukum Perdagangan Internasional*, (Jurnal Supremasi 6, no. 2, 2016).
- Pebriarta, I. Kadek Ari, and AA Ketut Sukranatha. "Keabsahan Kontrak Elektronik Dalam Kaitan Dengan Kecakapan Melakukan Perbuatan Hukum Oleh Para Pihak." Kertha Semaya: Journal Ilmu Hukum 3, No. 3: 1-13

- Salim, H. S. Hukum Kontrak Teori Dan Teknik Penyusunan Kontrak, Cetakan keempat. (Jakarta, Penerbit Sinar Grafika, 2006).
- Sastrawidjaja, Man Suparman. Perjanjian Baku Dalam Aktivitas Dunia Maya, Cyberlaw: Suatu Pengantar, Cetakan I. (Jakarta, Elips II, 2002).