



Analysis of the legal provisions of engagement in electronic contracts in the digital ERA

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Abstract

This study aims to analyze the legal provisions of engagement in electronic contracts in the digital era, especially in the context of laws and regulations in Indonesia. Along with the advancement of information technology, electronic contracts have become an important part of modern business transactions, but there are still various challenges related to legal certainty, implementation, and protection of the rights of the parties. This research will examine relevant regulations, such as the Civil Code (KUHPerdata) and the Electronic Information and Transaction Law (UU ITE), as well as the role of electronic signatures in strengthening the validity of contracts. Through a normative juridical approach and literature study, this study will identify potential weaknesses in the arrangement of electronic contracts and offer recommendations to improve legal certainty as well as fairness for the parties involved. The results of this research are expected to contribute to the development of a legal framework that is more adaptive to technological changes, as well as support security and effectiveness in digital transactions in Indonesia.

Keywords: Electronic contracts, engagements, digital age, Indonesian law, UU ITE

Introduction

The digital era has brought significant changes in various aspects of life, including in the field of law and business transactions. One of the important phenomena that has arisen due to the development of information technology is the use of electronic contracts as a form of agreement between parties who transact online. Electronic contracts are now a very crucial instrument in supporting the smooth flow of digital trade and services, especially in the context of e-commerce, digital banking, and various technology platform-based services^[1]. However, even though electronic contracts are becoming more widely used, the aspects of legal certainty and protection of the rights of the parties are still an issue that requires in-depth study.

In Indonesia, legal provisions that govern engagements in electronic contracts can be found in various laws and regulations, including the Civil Code (KUHPerdata) and the Electronic Information and Transaction Law (UU ITE). Both of these regulations provide a legal basis for the enforcement of electronic contracts, but their implementation in the digital context often faces challenges. One of them is how to ensure that electronic contracts have the same strong validity as conventional contracts, especially in terms of electronic signatures and approval mechanisms^[2].

Advances in information technology have also created conditions where geographical boundaries in transactions become blurred, and this raises questions about the jurisdiction of the applicable law. In addition, rapidly changing technology demands the adaptation of more dynamic legal regulations to accommodate various new forms of electronic contracts. Thus, a study of the legal provisions of engagement in electronic contracts needs to be carried out to ensure that the Indonesian legal system can keep up with technological developments and provide adequate legal protection for the parties involved. Another challenge that arises is related to legal certainty in the enforcement of the rights and obligations of the parties in electronic contracts^[3].

In some cases, disputes related to electronic contracts are difficult to resolve due to a lack of legally valid evidence or lack of clarity regarding the applicable provisions. Therefore, electronic contract enforcement often requires support from other technologies, such as stronger digital security systems and supporting legal infrastructure. This study also aims to review the role of electronic signatures as one of the important elements in strengthening the validity of electronic contracts^[4].

Electronic signatures are regulated in the ITE Law as a tool to ensure that the identity of the parties can be verified and that the agreement reached is valid according to the law. However, further studies are needed on the extent to which electronic signatures are recognized and accepted in everyday legal practice, as well as what challenges they face. Thus, through a normative juridical analysis of existing legal provisions, this research is expected to make a significant contribution in strengthening the legal framework related to electronic contracts in Indonesia.

Based on the above explanation, the research questions are:

1. What are the legal provisions of engagement regulated in electronic contracts according to laws and regulations in Indonesia, especially in the Civil Code (KUHPerdata) and the Electronic Information and Transaction Law (UU ITE)?,
2. What is the role of electronic signatures in ensuring the validity of electronic contracts in Indonesia?,
3. What are the challenges faced in the implementation of electronic contracts in Indonesia? Indonesia is related to legal certainty and the protection of the rights of the parties?.

Methods

This research uses a normative juridical approach, which is a legal research method that focuses on the study of applicable legal norms. This approach aims to analyze the legal provisions that govern engagements in electronic contracts in Indonesia, especially those listed in the Civil

Code (KUHPperdata) and the Electronic Information and Transaction Law (UU ITE) ^[5].

The data used in this study are sourced from primary legal materials, such as laws and regulations, as well as secondary legal materials that include literature, journals, and previous research related to this topic. Data collection is carried out through library research, where researchers will collect, read, and analyze various relevant legal sources. This study not only focuses on the regulations governing electronic contracts, but also examines important documents related to the implementation and problems that arise in the implementation of electronic contracts. In addition, the study also includes an analysis of various relevant legal cases, both at the national and international levels, to see how legal provisions are applied in practice.

The data obtained will be analyzed qualitatively using descriptive-analytical methods, namely explaining and interpreting existing legal provisions, as well as identifying weaknesses or legal loopholes that may exist in the regulation of electronic contracts in Indonesia. The results of this analysis are then used to formulate recommendations that can provide solutions to legal problems faced in the implementation of electronic contracts in the digital era.

Result and discussion

The legal provisions of the contract are regulated in electronic contracts according to the laws and regulations in Indonesia, especially in the civil code (KUHPperdata) and the electronic information and transaction law (UU ITE)

Electronic contracts can be classified as engagements that have legal consequences, where both parties, both business actors and consumers, have obligations that must be fulfilled. If one party fails to fulfill its obligations in accordance with the terms agreed in the contract, then the other party has the right to demand the fulfillment of its rights, including compensation for losses resulting from such negligence ^[6]. In this case, the business actor is obliged to provide goods or services in accordance with the agreement, while the consumer must fulfill the payment obligation or other obligations stipulated in the contract.

For example, if a business actor is negligent in fulfilling his obligations, for example not delivering products according to the promised specifications or causing losses to consumers, then consumers have the right to demand compensation. This claim can be filed under civil law or under the applicable consumer protection law in Indonesia. On the other hand, if consumers do not fulfill their obligations, such as failing to make payments in accordance with the provisions in the electronic contract, business actors also have the right to demand settlement for the losses incurred.

This mutual obligation reflects the principle of justice in legal alliances that apply in Indonesia. Electronic contracts, even though they are done digitally, remain legally binding and have the same powers as conventional contracts. Thus, this covenant is protected by law, and in the event of a dispute, dispute resolution can be carried out through legal channels, either through mediation, arbitration, or court. The existence of these rules provides a guarantee that each party in an electronic contract has protected rights and obligations that must be fulfilled, so as to create fairness and legal certainty in digital transactions in this modern era.

The legal provisions of engagement in electronic contracts in Indonesia are regulated through various laws and regulations that aim to adapt technological developments to applicable legal principles. In general, the legal basis of engagement can be found in the Civil Code (KUHPperdata), which regulates agreements and legal relations between the parties bound by a contract. In the context of electronic contracts, these provisions are adapted to cover the characteristics of digital transactions, such as remote communication and the use of electronic documents ^[7].

The Electronic Information and Transaction Law (UU ITE) also provides a more specific legal framework regarding the validity of electronic contracts, the validity of electronic signatures, and the protection of data and information involved in digital transactions ^[8]. In the ITE Law, an electronic contract is declared valid if it meets the general conditions of the contract regulated in the Civil Code, such as the agreement between the parties, the ability to act, the object of the agreement, and the halal cause. The ITE Law also emphasizes that electronic contracts have the same legal force as conventional contracts as long as the electronic documents used can be accessed and accounted for. This includes the use of electronic signatures that are recognized as a means of verifying the parties' identities and their consent to the content of the agreement ^[9].

The ITE Law pays special attention to the security and reliability aspects of the electronic systems used in the making of contracts, to ensure that the rights of the parties are legally protected. However, even though there are already legal provisions governing electronic contracts, their implementation still faces some challenges. One of the problems that often arises is the lack of understanding of the parties regarding the validity of electronic contracts, especially in the use of electronic signatures that are valid and recognized by law ^[10]. In addition, there is often confusion about the applicable legal jurisdiction, especially in cross-border transactions. Therefore, a deeper understanding and wider socialization of the legal provisions of engagement in electronic contracts are needed, so that legal certainty and protection of the rights of the parties can be guaranteed in this digital era.

Electronic contracts are included in the type of unnamed agreement because they are not specifically regulated in the Civil Code (KUHPperdata). Even so, electronic contracts are still considered valid and legally binding as long as they meet the general conditions of the agreement stipulated in Article 1320 of the Civil Code. This article stipulates four conditions for the validity of an agreement, namely the existence of an agreement between the parties, the ability to act, a certain thing that is agreed, and a halal cause ^[11].

In this case, electronic contracts still refer to the basic principles of the law of engagement, even though they are not explicitly regulated in the Civil Code. In addition, in Article 9 of Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE), business actors who offer products or services through electronic systems are required to provide complete and correct information. This information includes the terms of the contract, the identity of the manufacturer, and the products offered to consumers. However, this provision still leaves a legal gap because it is not explained in detail about the terms of the contract in question, giving rise to the potential for different interpretations ^[12].

The absence of further explanation of the terms of these contracts creates legal uncertainty, especially in the application and validity of electronic contracts in the realm of practice. However, to ensure legal certainty for the parties involved, electronic contracts must still comply with the basic principles of the law of engagement and other relevant provisions. The absence of clear regulations regarding contract terms in the ITE Law indicates the need to clarify and strengthen regulations related to electronic contracts. This is important so that business actors and consumers can have legal certainty in carrying out digital transactions, as well as to avoid potential disputes that can arise due to unclear rules in agreements carried out through electronic media.

The role of electronic signatures in ensuring the validity of electronic contracts in Indonesia

The parties involved in making electronic contracts generally consist of business actors and consumers. Business actors act as the party that offers the product or service, while the consumer is the party who accepts the offer and has the right to choose whether to agree to the terms and conditions submitted. In this context, the government has an important role as a supervisor in the enforcement of consumer protection laws^[13]. The government's job is to ensure that consumer rights are properly protected and that business actors do not engage in harmful practices, such as providing unclear information or using clauses that are detrimental to consumers. Because it is considered to be able to shorten time and costs, business actors usually use standard clauses in making electronic contracts^[14].

Standard clauses are provisions that have been prepared in advance by business actors and are generally non-negotiable by consumers. Business actors use this clause for efficiency, especially in online transactions that involve many consumers at once. However, the use of standard clauses often puts consumers at a disadvantage, as consumers do not have the opportunity to negotiate the terms set out in the contract.

The role of electronic signatures is very important in ensuring the validity of electronic contracts in Indonesia, especially in the increasingly digital era. Electronic signatures, according to Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE), have the same legal force as conventional signatures as long as they meet the conditions that have been set. These electronic signatures are used as a means of authenticating the identities of the parties involved in the contract, as well as to provide assurance that the contract is legally made.

With an electronic signature, the parties involved can ensure that the agreement made is not forged and the other party cannot deny their involvement in the contract. In addition to serving as an identity verification tool, electronic signatures also play an important role in securing the integrity of the content of the contract^[15]. A valid electronic signature guarantees that the content of the electronic contract is not altered after it has been signed by the parties. With the encryption technology used in electronic signatures, any form of change that occurs to the contract after it is signed can be easily detected^[16]. This provides additional legal protection for the parties, as any unauthorized changes can be considered a breach of contract, and this helps to maintain the authenticity and integrity of the electronic documents.

In Indonesia, the use of electronic signatures has been regulated more specifically in Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. This regulation provides technical guidelines on how electronic signatures should be applied and the conditions for them to be considered legally valid. However, even though regulations regarding electronic signatures already exist, their implementation in the field still faces several challenges, such as limited public awareness and understanding regarding the validity of electronic signatures^[17]. Therefore, the role of the government and related institutions is urgently needed to socialize and strengthen the existing legal framework so that electronic signatures can be implemented more widely and effectively in digital transactions in Indonesia^[18].

In practice, consumers only have two options regarding this standard clause, namely agreeing to all the stipulated terms or refusing to continue the transaction (take it or leave it). This condition can create injustice for consumers, especially if the clauses prepared by business actors contain provisions that burden or harm consumers^[19]. Therefore, it is important for the government to continue to monitor and establish regulations that protect consumers from the misuse of standard clauses in electronic contracts, while providing fair legal protection for both parties involved.

Electronic signatures in Indonesia have legal force if they meet the six conditions listed in Article 11 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). These conditions include: first, an electronic signature is uniquely associated with its owner; second, the signature can identify who is signing; third, electronic signatures are created using data that only the signatory has; fourth, any changes made to electronic signatures can be known; Fifth, there is a way to know that a signature has been placed on a document; And sixth, the signature must be accountable in the event of a legal dispute.

By meeting these requirements, electronic signatures are recognized as a legally valid authentication tool in Indonesia. In addition to the conditions that must be met, the evidentiary power of electronic signatures is recognized as equivalent to manual signatures. This means that electronic signatures can be used in various types of agreements or contracts with the same legal value as conventional signatures^[20].

In the process of proving in court, electronic signatures can be used as valid evidence as long as they meet the provisions stipulated in the ITE Law. Therefore, it is important for the parties involved in electronic contracts to understand these terms in order for electronically signed documents to remain valid and legally binding. Furthermore, along with the development of technology, the requirements for electronic signatures can continue to evolve. Technological advances have allowed for new innovations in digital security and authentication systems, which can strengthen the validity and validity of electronic signatures^[21].

More advanced encryption technologies, for example, can provide additional protection against possible forgery or manipulation of signatures. Therefore, regulations related to electronic signatures must also continue to be adjusted to technological developments so that they can remain relevant and provide maximum legal protection for users. Electronic

signatures bind the parties involved in an agreement. When an agreement or contract is signed electronically, the parties are legally bound by the content of the agreement, just as it is with a manual signature.

An electronic signature not only identifies the signatory, but also shows the agreement and approval of the party to the content of the contract. This ensures that every transaction or agreement carried out digitally has legal certainty and can be accounted for. However, electronic signatures are only valid as long as they do not violate the provisions of the law of the covenant or the time limit set in the agreement ^[22].

Like manual contracts, electronic signatures are also subject to certain legal restrictions, such as the validity period of the contract, the requirements that must be met, and the rules related to the engagement. If one party violates this provision, then the validity of the electronic signature and the resulting contract can be legally questioned. Therefore, it is important for all parties to understand the applicable legal limitations so that the use of electronic signatures can provide maximum certainty and legal protection ^[23].

In the Indonesian legal system, Article 60 paragraph (2) of Government Regulation Number 71 of 2019 recognizes two types of electronic signatures, namely certified and non-certified electronic signatures. Both types of signatures are recognized as valid for the signing of electronic documents. Certified electronic signatures are generated through a more rigorous verification and authentication process, while uncertified signatures can be created without involving a third party responsible for the authentication process. However, both are still recognized as valid authentication tools, as long as they meet the basic requirements stipulated in the relevant laws and regulations ^[24].

Uncertified electronic signatures, while legally valid, carry a greater risk of potential misuse. This risk arises because uncertified signatures do not go through a third-party verification process, making them more vulnerable to falsification and data manipulation. This can cause serious problems in digital transactions, especially those involving parties with large economic interests. Without adequate security guarantees, the validity of electronically signed documents can be questioned in the event of a dispute in the future. To reduce the risk of misuse, the use of certified electronic signatures is a safer and recommended option in electronic transactions in Indonesia ^[25].

Certified signatures involve a third party acting as a Certification Authority (CA) responsible for authenticating and verifying the identities of the parties involved. This CA is tasked with ensuring that the electronic signatures used comply with the security standards set out in the Electronic Information and Transaction Law (UU ITE). With verification from a third party, certified signatures provide higher protection for the validity and security of electronic documents, so that they can provide better legal certainty in digital transactions.

Electronic signatures, in accordance with the provisions of the Electronic Information and Transaction Law (UU ITE), have the same legal force as manual signatures. This means that electronic signatures have the same function in binding the parties involved in an agreement or contract. In this context, electronic signing shows approval and acceptance of the contents of the signed document, be it in a business transaction, personal agreement, or other legal document. The validity of electronic signatures in the Indonesian legal system provides legal certainty equivalent to conventional

methods. In addition, the process of authenticating electronic signatures can be done through a method known as a hash function.

This method serves to ensure the authenticity and integrity of the data in electronic documents. Hash functions work by generating a unique value or "hash value" from the signed data. This unique value serves as the digital identity of the document. As long as the hash value does not change, the document is considered authentic and has not been modified. If there is a change in the hash value, then this indicates that the data in the document has been changed, and its authenticity can be questioned. The use of hash functions as a mechanism for verifying the authenticity of data provides additional assurance for parties who use electronic signatures. This is important in preventing document forgery or unauthorized changes ^[26].

Credit agreements made under the hands or through notary deeds both have legal force in the eyes of Indonesian law. Both can be used as a basis to bind the parties in a credit transaction. However, in the event of a dispute regarding the validity of the agreement, the party denying the validity of the signature in the agreement must prove its claim. This suggests that although the agreement under hand is legally valid, the evidence provided may be less robust compared to an agreement made through a notary deed.

In banking practice, although in general there is no significant difference between a deed under hand and a notary deed in the execution of credit transactions, a notary deed provides a higher level of protection. A notary deed is prepared by an authorized official, namely a notary, who has a legal responsibility in ensuring the validity of documents and signatures of the parties involved. Therefore, if the debtor or one of the parties denies the validity of the credit agreement, the notary deed has stronger evidentiary force before the law ^[27].

Challenges faced in the implementation of electronic contracts in Indonesia are related to legal certainty and protection of the rights of the parties

The main challenge in the implementation of electronic contracts in Indonesia is related to legal certainty that is not fully adequate. Although the Electronic Information and Transaction Law (UU ITE) has regulated the use of electronic documents and electronic signatures, in practice, the application of this rule still gives rise to various different interpretations among the public and business actors. This causes legal uncertainty regarding the validity and validity of electronic contracts, especially when disputes arise between the parties involved ^[28].

This uncertainty can weaken public confidence in the use of electronic contracts in business transactions. In addition to the issue of legal certainty, the protection of the rights of the parties in electronic contracts is also a significant challenge. In online transactions, especially those involving consumers and business actors, there is often a disparity in power between the two parties. Consumers tend to be in a weaker position, especially because they often do not have the ability to negotiate the terms of the contract that have been set by the business ^[29].

Standard clauses commonly used in electronic contracts often do not provide room for consumers to reject or change the content of the agreement, so consumer rights can be ignored. Consumer protection in electronic contracts is very important to consider, considering that consumers are often

the most vulnerable to losses. In digital transactions, consumers do not always have adequate access to the information needed to make informed decisions. For example, business actors can hide certain terms in contracts that are detrimental to consumers, or use legal language that is difficult for the general public to understand. This poses a risk of violating consumer rights, such as the right to clear and transparent information about the products or services offered.

On the other hand, business actors also face challenges in protecting their rights. One of the challenges faced by business actors is the problem of proof in disputes involving electronic contracts. Although electronic signatures have been legally recognized, in practice, proving the validity of electronic documents still requires a complicated process. In addition, business actors also need to ensure that the digital security system they use is strong enough to protect consumers' personal data, as well as prevent misuse or data leakage that can lead to lawsuits^[30].

Another challenge is the lack of public understanding of the legality of electronic contracts. Many parties still doubt the validity of electronic contracts, especially in terms of proof and law enforcement. In addition, some business actors may also not fully understand their obligations in ensuring the security and validity of the electronic contracts they use. Therefore, education about the importance of legal certainty and protection of the rights of the parties in electronic contracts needs to be increased so that all parties involved can better understand their rights and obligations.

To address these challenges, greater efforts are needed from the government to strengthen regulations related to electronic contracts and improve supervision and law enforcement. In addition, business actors need to strengthen their digital security systems and ensure transparency in the preparation of electronic contracts. Thus, both consumers and business actors can feel better legal certainty, and their rights are protected in every electronic transaction they make.

Conclusion

The legal provisions of the agreement regulated in electronic contracts in Indonesia are based on the Civil Code (KUHPerdata) and the Electronic Information and Transaction Law (UU ITE). Although electronic contracts are not explicitly regulated in the Civil Code, the principles of engagement in civil law still apply. The ITE Law complements this regulation by recognizing electronic documents as legal evidence, as well as providing a legal basis for the use of electronic contracts in digital transactions. Thus, electronic contracts are legally valid as long as they meet the conditions for the validity of the agreement as stipulated in the Civil Code and the ITE Law. Electronic signatures play an important role in ensuring the validity of electronic contracts in Indonesia. Based on the ITE Law, electronic signatures have the same legal force as manual signatures, as long as they meet the requirements set forth in the regulation. Certified eSignatures offer a higher level of security compared to non-certified ones, as they involve a third party that serves as a certification authority. Thus, electronic signatures provide greater legal certainty in digital transactions. Although regulations regarding electronic contracts have been recognized, the implementation of electronic contracts in Indonesia still faces significant challenges, especially related to legal

certainty and protection of the rights of the parties. These challenges include uncertainty in proving the validity of electronic contracts, weak protection of consumer rights, and information gaps between business actors and consumers. Therefore, improvements are needed in regulations, education, and supervision so that electronic contracts can run more effectively and fairly for all parties involved.

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