

RECONSTRUCTION OF STANDARD CLAUSES IN ELECTRONIC CONTRACTS IN INDONESIA: THE VALUE ORIENTATION OF DIGNIFIED JUSTICE

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Abstract

The rapid advancement of internet technology makes it easier to access any information needed, including product information. The existence of this facility makes it a very important potential to influence trade patterns, especially electronic transactions through e-commerce which are legally bound to electronic contracts. Electronic contracts have standard clauses, Standard clauses have the benefit of saving the parties' usage and transaction time. Electronic contracts containing standard clauses have the potential to violate the law and damage the dignity of users if they do not comply with the Law on Electronic Information and Transactions. The research method used is the normative juridical research method. Researchers use secondary data in the form of primary, secondary, and tertiary legal materials and use qualitative analysis. The results of the study, namely the value of Dignified Justice, aim to humanize people, in this case, to provide justice for consumers and business actors in electronic contracts.

Keywords: *dignified justice; electronic contract; standard clauses*

Abstrak

Kemajuan teknologi dan informasi melalui jejaring internet memberikan kemudahan dalam mengakses informasi dan kebutuhan manusia secara pesat dan cepat. Adanya kemudahan tersebut membuatnya menjadi suatu potensi yang sangat penting untuk dapat mempengaruhi pola perdagangan, terkhusus transaksi elektronik melalui e-commerce yang secara yuridis terikat kepada kontrak elektronik. Kontrak elektronik memiliki klausula baku, klausula baku memiliki manfaat untuk menghemat waktu penggunaan dan transaksi para pihak. Kontrak elektronik yang bermuatan klausula baku berpotensi melanggar hukum dan merusak martabat pengguna apabila tidak mematuhi Undang-Undang tentang Informasi dan Transaksi Elektronik. Metode penelitian yang digunakan yakni metode penelitian yuridis normatif. Peneliti menggunakan data sekunder berupa bahan hukum primer, bahan hukum sekunder, dan tersier, serta menggunakan analisis kualitatif. Hasil penelitian yakni nilai keadilan bermartabat bertujuan untuk memanusiakan manusia, dalam hal ini untuk memberikan keadilan bagi konsumen dan pelaku usaha dalam kontrak elektronik.

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Kata kunci: keadilan bermartabat; klausula baku; kontrak elektronik

I. Introduction

The regulation of standard clauses in Indonesia is governed by the Indonesian Law No. 8 of 1999 regarding Consumer Protection Law. The normative definition of standard clauses are rules or conditions unilaterally prearranged and stipulated in advance by business parties specified in documents and/or contracts that are binding and must be fulfilled by the consumer.⁵

Standard clauses appear in standard contracts between consumers and entrepreneurs. Consumer in Consumer Protection Law is the use of goods and/or services available in society, whether for the benefit of oneself, one's family, or other living beings, who is a commercial A person who is not meant to be. On the other hand, the normative definition of an economic operator in Consumer Protection Law is a person who is incorporated, resides, or conducts activities solely or independently within the jurisdiction of the Republic of Indonesia, regardless of whether it is in the form of a legal entity. A person or business entity that Jointly, through agreements to carry out business activities in different economic sectors.⁶

In the Consumer Protection Law, the provisions regarding this standard clause are regulated in chapter V regarding the provisions for the inclusion of standard clauses consisting of only one article, Article 18 Consumer Protection Law. Article 18 Consumer Protection Law In principle, it regulates two prohibitions that apply to business actors who make standard agreements or standard clauses. Article 18 paragraph (1) regulates the prohibition of the inclusion of a standard clause, while Article 18 paragraph (2) regulates the form and format as well as writing of prohibited clauses.⁷

Standard clauses appear in electronic contracts for various electronic services. The regulation on electronic contracts in Indonesia is regulated in Indonesia Law No. 11 of 2008 concerning Electronic Information and Transactions as amended by Law No. 19 Of 2016 (the ITE Law), and in the implementing regulations, namely Indonesia Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.

⁵ Law No. 8 of 1999 regarding Consumer Protection.

⁶ Ibid.

⁷ Ibid.

The normative definition of an electronic contract based on Government Regulation No. 71 of 2019 is an agreement between the parties made through the Electronic System. Meanwhile, the normative definition of electronic systems in Indonesia Government Regulation No. 71 of 2019 is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate Electronic Information.⁸

People worldwide, including in Indonesia, incorporate electronic media into their daily lives, which typically include social media, gaming, and even work. The crucial aspect of utilizing electronic media lies in understanding the technology and staying informed about current developments. In today's online buying or selling transactions, the paramount consideration is comprehending that every aspect of the buying and selling process initiates with chatting, negotiating, and eventually reaching a final agreement, referred to as electronic contracts.

Initially, a contract was understood as the terms agreed upon by the parties as a result of a negotiation or bargaining between the parties that entered into the contract. However, at the moment, it seems that there are at least contracts in the form of norms and standards (standardized contracts) and electronic contracts (digital contracts) that are widely used in electronic commerce (e-commerce).⁹ Bryan A. Garner explained that E-commerce is the practice of buying and selling goods and services through online consumer services on the internet. This shortened form of electronic has become a popular prefix for other terms associated with electronic transactions. This defines the concept of e-commerce as a form of buying and selling computer goods and services online through the internet network.

The magnitude of business opportunities in the world of e-commerce is experiencing massive growth. Reporting from data from the Association of Indonesian Internet Service Providers, it noted that in early 2022, Indonesian Internet users would reach 210 million. Accompanied by a massive number of internet users, Bank Indonesia (BI) stated that the value of transactions in e-commerce in Indonesia in 2022 would reach around 435 trillion.¹⁰ However, the

⁸ Government Regulation No. 71 of 2019 regarding Electronic Systems and Transactions.

⁹ Dharmawan, E., and Soesilo, H. (2019) 'Keabsahan Kontrak Elektronik Dalam Transaksi Bisnis Ditinjau Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik', *Journal of Law*, 5(2): 1-13.

¹⁰ Mahadi, T. (2022) Total Nilai Transaksi E-Commerce Capai Rp 435 Triliun hingga Bulan Lalu. Available from: <https://industri.kontan.co.id/news/total-nilai-transaksi-e-commerce-capai-rp-435-triliun-hingga-bulan-lalu>

increase in public consumption in e-commerce raises obstacles in implementation, which have yet to be resolved, especially in the legal field. The implementation of electronic contracts in e-commerce is only guided by the principle of freedom of contract, which refers to Article 1338 of the Civil Code and Law No. 11 of 2008 as amended in the ITE Law.

However, implementing electronic contracts cannot only be guided by these two regulations. As is generally what can be found in standard transactions, electronic contracts also have standard clauses as benchmarks used as guidelines for entering into agreements between buyers and sellers. Setting the concept of standard clauses in electronic contracts was originally loaded to save time and increase effectiveness in making contracts because making agreements in different transactions will waste a lot of energy, time, and costs. However, in practice, electronic contracts containing standard clauses by business actors often harm the parties receiving these standard clauses, namely the consumer, due to the unilateral creation of standard clauses. As a result, if consumers reject these standard clauses, consumers cannot get the services or goods needed.

The application of standard clauses that take sides and often corner consumers makes consumers an unfavorable choice because they are only faced with one choice. In addition, consumers' lack of fluency in using electronic transactions makes many consumers not aware that standard clauses are binding in these transactions. As a result, consumers often cannot defend and protect their rights in overcoming obstacles in the transaction process because there are times when the fulfillment of their needs cannot be postponed.

Examining more deeply, the form of an agreement with standard clauses exists and has been used for a long time, but in this context, it is used for buying and selling in E-Commerce. Enforcement of standard contracts through E-Commerce can also cause issues related to consumer rights, among others:¹¹

1. There is no opportunity for consumers to examine the truth of goods and services offered, because consumers cannot immediately identify, view, or touch the item to be ordered but only know it through the display screen computer monitors.
2. Contracts made in E-Commerce transactions are often standardized and do not reflect the principle of equality (fair & equal).

¹¹ Romires, F. (2022) 'Penggunaan Klausula Baku Dalam Perjanjian E-Commerce Ditinjau Dari Perspektif Perlindungan Konsumen', *Jurnal Inovasi Penelitian*, 3(4): 5803.

3. There is an exoneration clause in the binding sale and purchase held so that Legal protection for producers is noticed and consumers lack legal protection.
4. The legal subject status of business actors is unclear.
5. There is a prepayment requirement generally done by:
 - a. Transfer via bank.
 - b. Fill in the credit card number.
 - c. Payment by check or remittance.
6. There is no guarantee of transaction security and privacy, as well as an explanation of the risks associated with the system used.
7. There is no guarantee for consumers if the goods and/or services sent are not according to what is displayed via the internet and not even sent.
8. E-commerce transactions are cross-border, thus raising questions regarding which country's jurisdiction should apply.

Indeed, consumer rights to enjoy consumer protection have been stated or set forth in the form of a law, namely Consumer Protection Law. These rights have been recognized and have legal certainty regulated in positive law. Legal effort carried out by consumers who feel profitable may utilize the regulations in Consumer Protection Law. Still, in relation to e-commerce activities, new regulations have been made, namely the ITE Law. The dominant position of business actors in applying standard clauses significantly impacts consumers, suggesting a potential for default in electronic contracts. This is inconsistent with the principle of Dignified Justice, which prioritizes balance to humanize individuals. This approach through the concept of dignified justice is essential for achieving legal certainty in electronic transactions, ensuring equal rights and obligations for all parties.

Several articles have explored the same theme. Ditiya Salsabila and Budi Ispriyarso¹² investigated the validity of electronic contracts based on positive law in Indonesia, linking its implementation to several the ITE regulations. This research concludes that there are still issues in implementing electronic contracts to achieve legal objectives for both parties, and the validity of electronic contracts still has shortcomings in various aspects. Fatimatuazzahra et al,¹³ conducted

¹² Salsabila, D. and Ispriyarso, B. (2023) 'Efektivitas Keabsahan Kontrak Elektronik Berdasarkan Hukum Positif di Indonesia', *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, 5(2): 1343.

¹³ Fatimatuazzahra, Limanto, M. F., Jonatan, F., and Martinelli, I. (2023) 'Efektivitas Legalitas Kontrak Elektronik dalam Transaksi Elektronik Ditinjau Berdasarkan Hukum Perikatan', *Jurnal Kewarganegaraan*, 7(2): 2176.

research with the aim of reviewing the effectiveness of the legality of electronic contracts in electronic transactions based on contract law. Hazilina and Soedagoeng, explores relatively similar theme in Analysis of Freedom of Contract in Smart Contract E-Commerce.¹⁴ This article analyzes how smart contracts implement freedom of contract in e-commerce, finding that standard agreements violate these principles. Further research is needed to enable negotiable contracts. Based on the results of this research, it was found that the requirements for validity and the legal strength of electronic contracts in legislation regulating electronic transactions still experience uncertainty. Moreover, the provisions of clauses, which are usually standardized, are often made based on the will of the business actors alone. Based on the description above, this article will focus on describing, what are the standard clauses that maintain fairness and protect consumer dignity in electronic contracts?

II. Method

The type of method used in this article is the prescriptive jurisprudence research method, as current legal norms and literary sources are used as the primary research sources when discussing issues.¹⁵ The normative legal method is a legal research method that is known to answer legal problems encountered through regulations, principles, and legal doctrines.¹⁶ Wherein this research method fully uses secondary data (literature), in which the preparation of tentative theoretical frameworks (schemes) can be abandoned, but the preparation of conceptual frameworks is necessary. In this case, this article uses related materials such as regulations, books, journals, articles, an expert's opinion, and the internet as its source for this research. In compiling the conceptual framework, formulations contained in the statutory regulations form the basis of the research that can be used. In normative legal research, there is no need for a hypothesis, only a working hypothesis. This research is used to generate arguments or new concepts for solving the problem at hand.

¹⁴ Hazilina and Soedagoeng, H. G. (2021) 'Analisis Kebebasan Berkontrak Dalam Smart Contract E-Commerce', *Tanjungpura Law Journal*, 5(1): 53-66.

¹⁵ Amiruddin and Asikin, Z. (2004) *Pengantar Metode Penelitian Hukum*. Jakarta: RajaGrafindo Persada, p. 30.

¹⁶ Marzuki, P. (2017) *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media, p. 34.

III. Discussion

A. Comparison of Conventional Contracts with Smart Contracts

Electronic contracts are identical to smart contracts because their use of electronic system. Nick Szabo gives the term smart contracts as digital contracts whose implementation is carried out automatically, without direct human intervention.¹⁷ A smart contract is also defined as a digital contract that allows conditions to depend on a decentralized consensus that is immutable and self-applying through automatic execution via the blockchain.¹⁸

Smart contracts possess two key characteristics. Firstly, they exist in electronic form. While traditional contracts are typically written or verbal, the rise of e-commerce has introduced electronic contracts (e-contracts), often supplemented by documents like receipts or invoices. However, smart contracts differ from e-contracts by being computer-generated codes. These protocols automate actions based on predetermined conditions. Secondly, smart contracts are self-executing. Once approved and initiated, the code runs autonomously without requiring further authorization. This irreversibility prevents parties from halting the process.¹⁹

Smart Contract has differences from conventional contracts that will be explain as follow:²⁰

Table 1

Comparison of Conventional Contracts with Smart Contracts

Elements of Difference	Conventional Contract	Smart Contract
Form of Contract	Written or oral	Only programming code can be applied to distributed ledger technology (DLT) such as blockchains
Negotiation	Contracts are negotiable	Smart contracts are non-negotiable once the contract is converted into programming code and accepted by the blockchain.

¹⁷ Szabo, N. (1996) 'Smart Contracts: Building Blocks for Digital Free Market', *Extropy Journal of Transhuman Thought*, 6(1): 199.

¹⁸ Cong, L. W., and He, Z. (2019) 'Blockchain Disruption and Smart Contracts', *The Review of Financial Studies*, 32(5).

¹⁹ Savelyev, A. (2017) 'Contract Law 2.0: 'Smart' Contracts As the Beginning of the End of Classic Contract Law', *Information & Communications Technology Law*, 26(2): 116-134.

²⁰ Serfiyani, C. Y., and Serfiyani, C. R. (2019) 'Kajian Hukum Teknologi Blockchain dan Kontrak Pintar Di Industri Jasa Keuangan', *Buletin Hukum Kebanksentralan*, 16(1): 39-60.

Language	Naturally with the language of a country	Programming code.
Contract Legalization	Contract approval comes from the deal between the parties, and in certain conditions, needs Notary approval.	Derived from the agreement of the parties.
Contract Changes	The contents of the contract can be changed	Programming code is not can be changed if it has been recorded in the blockchain.

An electronic contract is an agreement or legal relationship that is carried out electronically by combining a network of computer-based information systems with a communication system based on telecommunications networks and services which is further facilitated by the existence of a global computer, internet network.²¹ The requirements for a valid electronic contract are regulated in Article 46, paragraph (2) of the Government Regulation of the Republic of Indonesia No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Electronic contracts cannot conflict with laws and regulations, decency, and public order.

According to Sanusi, five elements are essential for forming an electronic contract.²² First, an offer must be made, which can be expressed through a website or online platform showcasing products or services. Clearly displaying this offer is crucial for informing consumers about the potential contract. Second, acceptance of the offer is required to establish the contract. This can be communicated via email, confirmation, or other electronic means. Third, written requirements and signatures are sometimes mandated. While many contracts can be formed electronically, certain jurisdictions necessitate physical documents with handwritten signatures. This means that consumers must have printed out contract documents and signed contract documents, as well as sending copies of approval documents. Fourth, both parties must possess the legal capacity to enter into a contract. Fifth, consideration is essential. A contract requires an exchange of value, making it a fundamental element of electronic contracts as well.²³

²¹ Makarim, E. (2003) *Kompilasi Hukum Telematika*. Jakarta: RajaGrafindo Persada, p. 25.

²² Sanusi, M. (2005) *Hukum Teknologi dan Informasi*. Jakarta: Tim Kemas Buku, p. 77.

²³ Ibid.

B. Electronic Contracts with Dignified Justice and Value to Protect the Interests of the Parties

As stipulated in Article 1313 of the Civil Code (KUHPer), an agreement is a legal act whereby one or more parties bind themselves to one or more others. A standard form contract is a specific type of agreement prepared unilaterally by one party. Typically printed in a standardized format, these contracts offer limited or no opportunity for negotiation by the other party, who is generally restricted to filling in specific information without altering the predetermined terms and conditions.

Regarding Electronic Contract, Article 1 point 17 of Law No. 11 of 2008 concerning Information and Electronic Transactions, as amended by Law No 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (the ITE Law), also provides a definition for an electronic contract, which is described as "an agreement made by parties through an electronic system." Article 1 point 5 of the ITE Law previously explained that "An electronic system is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate Electronic Information."

Subsequently, Article 5 paragraph (3) of the ITE Law regulates: "Electronic Information and/or Electronic Documents are declared valid when using an Electronic System in accordance with the provisions stipulated in this Law." Moreover, Article 18 paragraph (1) of the ITE Law stipulates: "Electronic Transactions that are documented in Electronic Contracts are binding on the parties."

According to Article 1320 of the Indonesian Civil Code, the conditions for a valid contract are:

1. An agreement between the two parties.
2. The capacity of both parties to perform legal acts.
3. The existence of a definite object or thing as the subject matter of the agreement.
4. A lawful cause or reason for the agreement.

Meanwhile, according to Article 46 paragraph (2) of Indonesia's Government Regulation No. 71 of 2019, an electronic contract is considered valid if:

1. there is an agreement between the parties;

2. it is conducted by a legally capable person or authorized representative, in accordance with applicable laws and regulations;
3. there is a definite subject matter; and
4. the object of the transaction does not violate any laws, regulations, morality, or public order.

The validity of a contract is determined by its substance, not its form. In other words, whether a contract is valid depends on its underlying terms and conditions, rather than how it is executed. A contract is generally considered void or voidable if it breaches any of these essential elements. It's important to note that the terms "void" and "voidable" refer to different levels of contract invalidity.²⁴

Electronic Contract is a new form of contract that exists as a result of the current technological advancement. The parties to an electronic contract are bound by mutual trust. There is a relationship of trust between the parties formed prior to this electronic contract. This is because electronic contracts typically involve remote interactions, preventing parties from engaging in face-to-face meetings. Therefore an electronic contract with standard clauses must uphold human justice values. Dignified Justice is a legal theory initiated by Teguh Prasetyo, a permanent professor of law at Pelita Harapan University. The value of Dignified Justice comes from Pancasila and aims to humanize people. The content of standard clauses with dignity is a standard clause that balances the interests of consumers and businesses.

The Dignified Justice theory is recognized as the justice that humanizes individuals, commonly referred to as "*nge wong ke wong*." The Dignified Justice theory acknowledged that these principles aim to humanize people by leveraging the opportunities that God has bestowed upon us and by aiding others through considerate actions.²⁵ The Dignified Justice theory departs from the assumptions of the system. It is known that Dignified Justice has a goal of working towards justice that humanizes people (Javanese: *nge wong ke wong*). Dignified Justice, therefore, embodies the fundamental principles of Pancasila in the realms of society, politics, economics, and culture. Moreover, within the framework of Dignified Justice, Pancasila serves as the nation's soul and collective spirit.²⁶ In this case, Dignified Justice is primarily based on the first and second Precepts of

²⁴ Sinaga, D. and Wiryawan, I. (2020) 'Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis', *Jurnal Kertha Semaya*, 8(9): 1385-1395.

²⁵ Prasetyo, T. (2015) *Keadilan Bermartabat Perspektif Teori Hukum*. Bandung: Nusa Media, p. 30-31.

²⁶ Prasetyo, T. (2018) *Pengantar Ilmu Hukum*. Depok: RajaGrafindo Persada, p. 17.

Pancasila which read, "Belief in the one and only God" and "A just and civilized humanity" and from Pancasila in its implementation.

An e-commerce contract is one of the most frequently encountered form of electronic contracts. An e-commerce contract agreement is a take-it-or-leave-it agreement. Therefore if a consumer agrees with the conditions placed in the contract, they are agreeing with the contract. On the other hand, if the buyer does not agree to the conditions placed in the contract, the transaction process will be void or will not take place. In e-commerce, the use of standard clauses is absolute. This is because, in e-commerce, contract parties do not interact directly, but through electronic media, such as the Internet. When a consumer wants to purchase a product on her website, the dealer presents a contract (terms) containing terms and conditions in the form of a general contract on the sale being made. This contract can be classified as a standard clause as the content of the contract is unilaterally determined by the dealer. In which, the consumer has no possibility (optional) to change the contract on the website or application where the contract is displayed. Which resulted in the consumer being unable to object to the content of the contract. Therefore the consumer only has two options, which are to either accept the order or cancel it.²⁷

As mentioned, electronic contracts such as e-commerce contracts contain standard clauses. The standard clause is in the electronic contract as a result, streamlining the process of buying and selling. Standard clauses are commonly used in business transactions to streamline processes, reduce costs, and save time. Negotiating and drafting a unique sales contract for every transaction between a dealer and consumer would be highly inefficient and time-consuming. The implementation of standard clauses in electronic contracts provides great benefits for dealers due to their efficiency during the implementation of electronic contracts with a large number of consumers. Therefore, resulting in the use of clauses commonly used in sales contracts in standard electronic contracts.²⁸

The existence of standard clauses as a medium to facilitate buying and selling transactions carried out between producers and consumers turns out to be misused by producers who provide conditions that are very detrimental to consumers, among others, in agreements bank loans, insurance agreements,

²⁷ Syahrin, M. A. (2020) 'Konsep Keabsahan Kontrak Elektronik Berdasarkan Hukum Nasional Dan Uncitral Model Law On Electronic Commerce', *Jurnal Ilmiah Hukum Kenotariatan*, 9(2): 105-122.

²⁸ Rahman, H. (2003) *Contract Drafting: Seri Keterampilan Merancang Kontrak Bisnis*. Bandung: Citra Aditya Bakti, p. 350.

goods safekeeping agreements, and sale and purchase agreements through e-commerce. One of the standard clauses is "items that have been purchased cannot be returned, damaged/lost goods are not our responsibility". Seemingly, standard clauses are indeed very profitable for producers, but from a dignified fairness point of view, the use of standard clauses cannot be used arbitrarily by business actors. In Indonesia, the use of this standard clause is regulated in Article 18 of Consumer Protection Law. Paragraph (1) describes the use of standard clauses that are prohibited, which reads:

"Business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if:

1. Declare the transfer of responsibility of business actors;
2. States that business actors have the right to refuse the return of goods purchased by consumers;
3. States that business actors have the right to refuse to return the money paid for goods and/or services purchased by consumers;
4. Declare the authorization of the consumer to the business actor either directly or indirectly to take all unilateral actions relating to goods purchased by the consumer in installments;
5. Regulates the matter of proof of loss of use of goods or use of services purchased by consumers;
6. Give rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
7. Declares consumer compliance with regulations in the form of new rules, additions, continuations and/or further changes made unilaterally by business actors while consumers are utilizing the services they have purchased;
8. States that consumers authorize business actors to impose mortgage rights, lien rights, or guarantee rights on goods purchased by consumers in installments."

Then followed by paragraph (2) which states, "Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand." This explains that standard clauses included by business actors must be clear, in terms of location, form, readability, and intent of these standard clauses. If the standard clause applied by the business actor violates the provisions of

paragraphs (1) and (2) then according to the provisions of paragraph (3) then the linked documents or agreements are null and void. The use of this standard clause will not create a potential for default if the business actor carries out his obligations as stipulated in Article 7 of Consumer Protection Law. Sellers often possess greater bargaining power than buyers, enabling them to impose standard contract terms unilaterally. This imbalance can significantly harm buyers by restricting their ability to negotiate purchase terms. This situation is often characterized as an abuse of bargaining position. Therefore while including the standard clause, the business actor should have prepared the terms promised. When dealing with potential customers, business actors are also required to explain honestly about the actual conditions of the goods/services being offered. If in the end there is a discrepancy between what was promised, the business actor is obliged to provide compensation to consumers as a form of accountability and good faith of the business actor. The default that is often committed by business actors is that many business actors ignore consumer rights. Consumer rights are regulated in Article 4 Consumer Protection Law which states that:

1. The right to comfort, security, and safety in consuming goods and/or services;
2. The right to choose goods and/or services and obtain goods and/or the service is in accordance with the exchange rate and conditions as well as guarantees promised;
3. The right to correct, clear and honest information regarding conditions and guarantees goods and/or services;
4. The right to have their opinions and complaints heard about goods and/or services used;
5. The right to obtain advocacy, protection and settlement efforts proper consumer protection disputes;
6. The right to obtain consumer guidance and education;
7. The right to be treated or served correctly and honestly and not discriminatory;
8. The right to obtain compensation if the goods and/or the services received are not in accordance with the agreement or not as it should be;
9. The rights regulated in the provisions of laws and regulations.²⁹

²⁹ Setyawati, D. (2017) 'Perlindungan Bagi Hak Konsumen dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik', *Syiah Kuala Law Journal*, 1(3): 46-64.

The ITE Law governs electronic transactions and contracts. This law explicitly recognizes the legal validity of electronic contracts. Article 18 (1) of the ITE Law states that electronic transactions that culminate in contracts are binding on the parties involved. Article 20 of the same law outlines the formation of agreements in electronic transactions: Unless the parties agree otherwise, an electronic contract is formed when the offer is received and accepted electronically. Acceptance of an electronic offer must also be made electronically.

Electronic contracts typically utilize electronic signatures. According to Article 1 Paragraph 12 of the ITE Law, an electronic signature is a signature consisting of electronic information that is related to other electronic information that can be used as a means of verification and authentication. Electronic signatures are necessary because consumers and dealers often cannot meet in person during the buying and selling process. Electronic signatures are employed in electronic transactions because they eliminate the need for physical presence, handwritten signatures, and geographical constraints. Electronic signatures are also used as a form of consent of the consumers to electronic contracts and standard clauses in them. This aligns with one of the legal requirements for a valid agreement outlined in Article 1320 of the Indonesian Civil Code. Therefore, electronic contracts that have received an electronic signature can apply and be binding as a law for consumers and dealers who are in the electronic contract. In electronic contracts, businesses often dictate the terms and conditions unilaterally, leaving consumers with limited options, typically accepting or rejecting the contract as a whole. In other words, to get the goods/services offered by potential customers, they inevitably have to agree to all terms and conditions. With the approval of the contract by the consumer, the requirements of Article 1320 of the Indonesian Civil Code are fulfilled, and the principle of *pacta sunt servanda* applies. Especially for the business actors who have full responsibility for everything they postulate to consumers.

It is known that the electronic contract has drawbacks in its application, such as the security of the consumer's information and consumer protection, this is especially in terms of the rights and position of consumers in the electronic contract. In this case, the difference in position between consumers and dealers in electronic contracts is caused by the standard clauses that exist between consumers and dealers in electronic contracts. As stated before, it is known that consumers cannot do anything except accept or reject the standard clauses that are set by the dealer in the buying and selling process they want, especially the

buying and selling agreement through e-commerce. In this case, the consumer is often at a loss in electronic contracts because the consumers have absolutely no say in determining the contents of standard clauses in the electronic contracts. Therefore putting forward consumer protection is needed in carrying out the buying and selling process throughout an electronic contract. Whereas prioritizing consumer protection for standard clauses contained in electronic contracts can be carried out through the implementation of a buying and selling process that is in line with Dignified Justice and the legislation.

The Indonesian ITE Law has the benefit of providing legal protection for consumers, and providing legal certainty for business actors in the field of information and technology. The act of Information Technology and Electronic Transaction has also mandated that technological transactions are implemented with the purpose of: a) Improving the life of the nation in the matter of information; b) Developing the national economy in order to improve the welfare of society; c) Increasing effectiveness and public service efficiency.³⁰ The sanctity of law principle maintains a balance between the parties in the execution of electronic contracts. Consumers are indeed in a vulnerable position and are compelled to say yes to electronic submissions.

Indonesian contract law is primarily grounded in a civil law framework, drawing limited influence from customary law (*adat*) despite its cultural significance. Given the primarily civil law foundation of Indonesian contract law with limited customary law influence, harmonizing adjustments to national contract law within the context of international agreements is both necessary and desirable. The need in the sense of contract renewal/legal agreement basically aims to create legal certainty to protect national interests. This harmonization can be based on the principles in the UNIDROIT Statute of The International Institute For The Unification of Private Law. These principles govern good faith and fair dealing (Article 1.7 UNIDROIT Principles 2016). In fact, Indonesia itself has ratified The Unidroit Principles For International Commercial Contracts (UNIDROIT Principles) through Indonesian Presidential Regulation No. 59 of 2008 regarding Ratification of the Statute of International Institute for Unification of Private Law. Therefore, harmonization can be applied to the principle of freedom of contract in the Civil Code with adjustments to the principle of freedom of contract in the UNIDROIT Principles, especially in setting standard clauses

³⁰ Kameo, J., Prasetyo, T., and Karo Karo, R. (2021) 'Regulating Digital Data Privacy In Indonesia (A Dignified Justice Perspective)', *Journal of Legal, Ethical and Regulatory Issues*, 24(1): 1.

that can cause potential contract defects, due to an unequal position. In which, the consumers only have a limited choice of the contract agreement. Thus, this harmonization becomes a guide as well as a need to be able to present an Indonesian contract law ecosystem to preserve the principles of balance and justice. This is in line with the theory of the principle of Dignified Justice upholding the balance of the parties in conducting electronic contracts. Due to this, the consumers are put in a weak position and have no choice but to follow the electronic contract application.

IV. Conclusion

Electronic contracts in Indonesia are valid and enforceable if they comply with the Indonesian ITE Law, the Indonesian Consumer Protection Law, and Government Decree No. 71 of 2019. This is one of the principles of consensus stated in Article 1320 of the Indonesian Civil Code and is a subjective requirement. Agreeing here also includes the agreed procedures contained in the relevant electronic system and means that the agreement is formed when the consumer selects the "yes" option on the electronic contract. Standard clauses can be used as long as they do not violate the provisions stipulated in the consumer protection law. Before including the standard clause and offering it to consumers, business actors are required to prepare everything regarding the goods/services being offered. Before the consumers make their choices, consumers have the right to be explained thoroughly regarding the goods/services offered by business actors. Electronic contracts must be executed with dignity and justice. Both business actors and consumers must fulfill their respective rights and obligations as initially agreed upon. Especially for business actors to minimize the potential for default. Economic agents are asked to maintain a balance of interests between consumers and economic agents. If the consumer suffers a loss that is not due to the consumer's negligence, the business actor is obliged to continue to pay the same amount of compensation.

Bibliography

Books:

Amiruddin and Asikin, Z. (2004) *Pengantar Metode Penelitian Hukum*. Jakarta: RajaGrafindo Persada.

- Makarim, E. (2003) *Kompilasi Hukum Telematika*. Jakarta: RajaGrafindo Persada.
- Marzuki, P. (2017) *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media.
- Prasetyo, T. (2015) *Keadilan Bermartabat Perspektif Teori Hukum*. Bandung: Nusa Media.
- Prasetyo, T. (2018) *Pengantar Ilmu Hukum*. Depok: RajaGrafindo Persada.
- Rahman, H. (2003) *Contract Drafting: Seni Keterampilan Merancang Kontrak Bisnis*. Bandung: Citra Aditya Bakti.
- Sanusi, M. (2005) *Hukum Teknologi dan Informasi*. Jakarta: Tim Kemas Buku.

Article Journal:

- Cong, L. W., and He, Z. (2019) 'Blockchain Disruption and Smart Contracts', *The Review of Financial Studies*, 32(5). DOI: <https://doi.org/10.1093/rfs/hhz007>
- Dharmawan, E., and Soesilo, H. (2019) 'Keabsahan Kontrak Elektronik Dalam Transaksi Bisnis Ditinjau Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik', *Journal of Law*, 5(2).
- Fatimatuazzahra, Limanto, M. F., Jonatan, F., and Martinelli, I. (2023) 'Efektivitas Legalitas Kontrak Elektronik dalam Transaksi Elektronik Ditinjau Berdasarkan Hukum Perikatan', *Jurnal Kewarganegaraan*, 7(2): 2176.
- Hazilina and Soedagoeng, H. G. (2021) 'Analisis Kebebasan Berkontrak Dalam Smart Contract E-Commerce', *Tanjungpura Law Journal*, 5(1). DOI: <http://dx.doi.org/10.26418/tlj.v5i1.46223>
- Kameo, J., Prasetyo, T., and Karo Karo, R. (2021) 'Regulating Digital Data Privacy In Indonesia (A Dignified Justice Perspective)', *Journal of Legal, Ethical and Regulatory Issues*, 24(1).
- Romires, F. E. (2022) 'Penggunaan Klausula Baku Dalam Perjanjian E-Commerce Ditinjau Dari Perspektif Perlindungan Konsumen', *Jurnal Inovasi Penelitian*, 3(4): 5803-5804.
- Savelyev, A. (2017) 'Contract Law 2.0: 'Smart' Contracts As the Beginning of the End of Classic Contract Law', *Information & Communications Technology Law*, 26(2). DOI: <https://doi.org/10.1080/13600834.2017.1301036>
- Serfiyani, C. Y., and Serfiyani, C. R. (2019). 'Kajian Hukum Teknologi Blockchain dan Kontrak Pintar Di Industri Jasa Keuangan', *Buletin Hukum Kebankesentralan*, 16(1): 39-60.

- Setyawati, D. (2017) 'Perlindungan Bagi Hak Konsumen dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik', *Syiah Kuala Law Journal*, 1(3). DOI: <https://doi.org/10.24815/sklj.v1i3.9638>
- Sinaga, D. and Wiryawan, I. (2020) 'Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis', *Jurnal Kertha Semaya*, 8(9): 1385-1395.
- Syahrin, M. A. (2020) 'Konsep Keabsahan Kontrak Elektronik Berdasarkan Hukum Nasional Dan Uncitral Model Law On Electronic Commerce', *Jurnal Ilmiah Hukum Kenotariatan*, 9(2). DOI: <http://dx.doi.org/10.28946/rpt.v9i2.419>
- Szabo, N. (1996) 'Smart Contracts: Building Blocks for Digital Free Market', *Extropy Journal of Transhuman Thought*, 18(2).

Indonesian Law:

- Government Regulation No. 71 of 2019 regarding Electronic Systems and Transactions (State Gazette of the Republic of Indonesia No. 185 of 2008, Supplement to the State Gazette of the Republic of Indonesia No. 6400).
- Law No. 8 of 1999 regarding Consumer Protection.
- Law No. 11 of 2008 regarding Electronic Information and Transaction (State Gazette of the Republic of Indonesia No. 58 of 2008, Supplement to the State Gazette of the Republic of. Indonesia No. 4843).
- Law No. 19 of 2016 regarding Amendment to Law No. 11 of 2008 regarding Electronic Information and Transaction (State Gazette of the Republic of Indonesia No. 251 of 2016, Supplement to the State Gazette of the Republic of. Indonesia No. 5952).
- The Civil Code of Indonesia.

Treaties:

- Unidroit Principles For International Commercial Contracts (UNIDROIT Principles) through Indonesian Presidential Regulation No. 59 of 2008.

Internet:

- Mahadi, T. (2022) Total Nilai Transaksi E-Commerce Capai Rp 435 Triliun hingga Bulan Lalu. Available from:
<https://industri.kontan.co.id/news/total-nilai-transaksi-e-commerce-capai-rp-435-triliun-hingga-bulan-lalu>