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Binding Power of Contracts Formed Through Click-Wrap And Browse Wrap Mechanisms in the Perspective of Indonesian Contract Law

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Abstract: The development of digital technology has encouraged the use of electronic contracts as a means of establishing legal relationships in online transactions. This study aims to analyze the validity and binding force of contracts formed through click-wrap and browse-wrap mechanisms in the legal perspective of Indonesian agreements. The research method used is normative juridical with legislative, conceptual, and case approaches. The results of the study show that electronic contracts are recognized and have legal force as long as they meet the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code and Law Number 1 of 2024 concerning Information and Electronic Transactions. The click-wrap mechanism has a stronger binding force due to the explicit consent through the affirmative action of the user. In contrast, browse-wrap faces the constraint of proving the deal because consent is only assumed from the use of the service. Therefore, legal certainty for electronic contracts requires transparency, good faith, and adequate consumer protection.

Keywords: Contract Law, Treaty Law, Legal Force

INTRODUCTION

The development of information and communication technology has encouraged the transformation of various aspects of people's lives, including in the field of trade and civil legal relations. Transaction activities that were previously carried out conventionally are now shifting to digital platforms that allow the parties to carry out legal acts without having to meet in person (Sunan et al., 2025). These changes gave birth to various forms of electronic contracts that are used to regulate legal relations between business actors and digital service users. The existence of electronic contracts is an important instrument in providing legal certainty for the rights and obligations of the parties in technology-based transactions (Haspada et al., 2025).

The rise of this electronic agreement mechanism coincides with the Indonesian legislature's efforts to accommodate digital transactions, especially through the Electronic Information and Transaction Law Number 11 of 2008 and subsequent amendments (Tyaskinasih, 2023). Although the ITE Act provides general recognition of electronic contracts and electronic signatures, it provides only limited specific, specific guidance regarding the

complex requirements for lawful consent in the context of *click-wrap* and *browse wrap*. This regulatory gap creates significant uncertainty for businesses seeking to enforce their terms and for consumers whose rights may be affected by agreements that they may not have reviewed or fully understood. The principle of *pacta sunt servanda* "agreement must be obeyed" which is the basis of Indonesian contract law as reflected in Article 1338 of the Civil Code, assumes that the parties enter into a binding agreement with full knowledge and voluntary consent (IZZAH, 2022). However, the reality of online contracts often involves lengthy and complex provisions presented in a format that hinders thorough reading, coupled with "accept or reject" scenarios that can undermine the actual choice of informed consent (Wulandari et al., 2025).

The use of *click-wrap* and *browse wrap* mechanisms is increasingly commonly applied by business actors in various internet-based services, such as e-commerce, software *as a service*, social media, digital applications, and other service provider platforms. The *click-wrap* mechanism generally requires the user to actively express his or her consent by clicking the "agree" or "I agree" button to the predetermined terms and conditions. On the other hand, the *browse wrap* mechanism does not require affirmative action from the user, but assumes that the user has agreed to the terms and conditions only by accessing or using a website or digital service (Anita Mu'min et al., 2025).

The emergence of these two mechanisms raises legal problems related to the validity and binding power of contracts formed through electronic media (Pembangunan et al., n.d.). From the perspective of Indonesian treaty law, an agreement must in principle meet the legal requirements as stipulated in Article 1320 of the Civil Code, namely the agreement of the parties, expertise, certain objects, and halal causes. Among these four conditions, the element of agreement is the most crucial aspect to assess the existence of contractual relationships in electronic contracts, especially those that use *click-wrap* and *browse wrap* mechanisms. Problems arise when the form of consent given by the user is not always done explicitly as is usual in conventional contracts (A. Hasan, 2025).

Secara normatif, pengakuan terhadap transaksi elektronik dan dokumen elektronik telah diberikan melalui Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana telah diubah dengan Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. Pengaturan tersebut menegaskan bahwa kontrak elektronik memiliki kekuatan hukum yang sah sepanjang memenuhi ketentuan peraturan perundang-undangan. Namun demikian, regulasi yang ada belum mengatur secara spesifik mengenai karakteristik dan mekanisme pembentukan kontrak berbasis *click-wrap* maupun *browse wrap*, sehingga menimbulkan ruang interpretasi terkait pembuktian kesepakatan dan kekuatan mengikatnya dalam praktik (Muthiah, 2021).

Normatively, recognition of electronic transactions and electronic documents has been granted through Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. The regulation emphasizes that electronic contracts have legal force as long as they comply with the provisions of laws and regulations. However, existing regulations do not specifically regulate the characteristics and mechanisms for forming *click-wrap* and *browse wrap-based* contracts, thus creating room for interpretation related to proving agreements and binding power in practice (Muthiah, 2021).

On the other hand, the characteristics of electronic contracts, which are generally in the form of *standard form contracts*, also raise questions about the balance of the position of the parties. Users are often faced with the option of accepting all the terms and conditions that have been unilaterally set by the service provider without the opportunity to negotiate. This condition has the potential to cause an imbalance of rights and obligations, especially if there are clauses that are detrimental to consumers or limit the responsibilities of business actors

excessively. Therefore, the analysis of the binding power of contracts formed through *click-wrap* and *browse wrap* mechanisms is not only related to the aspect of agreement formation, but also concerns legal protection for the parties involved (Jual et al., 2024).

The difference in characteristics between *click-wrap* and *browse wrap* indicates that there is a different level of legal certainty in proving user consent (Sunaryanto et al., 2006). In the *click-wrap* mechanism, the user's active action to express consent can be used as an indication of a clear will to be bound by the content of the contract. In contrast, in the *browse wrap* mechanism, consent is often assumed based on the use of the service alone, thus giving rise to a debate about whether the user really knows and agrees to the applicable terms. These differences have implications for the assessment of the fulfillment of consensus elements as the basis for the birth of contractual relationships (Siahaan et al., 2023).

Based on this description, research on the binding power of contracts formed through *click-wrap* and *browse wrap* mechanisms in the legal perspective of Indonesian agreements is important to be carried out. This study aims to analyze the conformity of the two mechanisms with the legal principles of the Indonesian treaty, especially related to the fulfillment of the elements of the agreement as a valid condition of the agreement, and to assess the extent to which the contract formed through the mechanism has binding force for the parties. The results of the research are expected to contribute to the development of contract law in the digital era as well as a reference in realizing legal certainty for the implementation of electronic transactions in Indonesia.

METHODS

This research uses a normative legal research method (normative juridical research), which is a research that focuses on the study of legal norms that regulate the binding power of electronic contracts formed through the *click-wrap* and *browse wrap mechanism* in the perspective of Indonesian treaty law. Normative legal research is carried out by examining relevant laws and regulations, doctrines, legal principles, and court decisions in order to obtain legal arguments regarding the validity and binding power of electronic contracts.

The approach used in this study includes a statute approach, namely by examining the provisions in the Civil Code, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as other laws and regulations related to electronic contracts (Syahmi & Nasution, 2024). In addition, a *conceptual approach is also used* to analyze the concept of agreement, the principle of freedom of contract, the principle of consensualism, and the legal theories of agreement relevant to the *click-wrap* and *browse wrap* mechanism. To enrich the analysis, this study also uses a *case approach* through the study of court decisions and the practice of electronic contracts that are related to the formation of digital contracts.

RESULTS AND DISCUSSION

Based on the legal perspective of Indonesian agreements, *click-wrap* agreements generally meet the elements of agreement as required in Article 1320 of the Civil Code because there is an affirmative action that shows the user's consent. Therefore, contracts formed through the *click-wrap* mechanism have stronger binding strength and provide higher legal certainty. In contrast, *browse-wrap* agreements face challenges in the proof-of-agreement aspect because user consent is only assumed based on the use of the service. As a result, the binding power of *browse-wrap* relies heavily on the ability of the business actor to prove that the user has obtained adequate notice of the terms and conditions of the contract. Thus, from the legal point of view of the Indonesian treaty, the *click-wrap* mechanism reflects the fulfillment of the principle of consensualism and provides more optimal legal protection than the *browse-wrap mechanism*.

The Validity of Contracts Formed Through the Click-Wrap and *Browse Wrap Mechanism* According to Indonesian Treaty Law

The development of information technology has fundamentally changed the landscape of commercial interaction, giving rise to various forms of electronic contracts that serve as the legal basis for digital transactions in the global market. Electronic contracts, which are defined as agreements that are formed through an electronic system and have binding legal force equivalent to conventional written contracts, are an important adaptation of traditional contract legal principles to the reality of the digital economy (Farhan Jiddan Saros & Nurkholis Anwar, 2023). In the context of digital business practices, two main mechanisms have emerged for establishing user consent and contractual relationships: *click wrap* agreements and *browse wraps*. This electronic consent mechanism reflects a different approach to obtaining user consent, with a *click wrap* agreement requiring explicit and affirmative action from the user, usually through clicking a button or "I Agree" checkbox after being presented with terms and conditions, while a *browse wrap* agreement operate on the assumption that the user has agreed to the terms only by accessing or using the website, without any clear indication of consent. The fundamental difference between these mechanisms lies in the nature of consent formation: click-wrap agreements indicate active user involvement and explicit acceptance, while browse-wrap agreements rely on implicit consent based on the assumption that users are aware of and accept the applicable terms only through the use of the service (Aisyah et al., 2025).

This evolution in contract formation mechanisms directly answers the need for efficient and scalable methods for building legal relationships in a high-volume digital environment. A click wrap agreement, by requiring the user's intentional actions, provides stronger evidence of mutual consent (*consensus ad idem*), which is a fundamental requirement for the validity of a contract under Article 1320 paragraph (1) of the Indonesian Civil Code (Girsang et al., 2025). Research examining electronic contracts as evidence in civil disputes emphasizes that while electronic agreements can meet formal validity requirements if drafted correctly, the way they are presented and user interactions significantly affect their enforceability. Similarly, a study of online arisan platforms shows how electronic agreements function in practice within Indonesia's digital financial ecosystem, revealing a gap between technical implementation and legal certainty. The rise of this mechanism coincides with Indonesia's legislative framework for digital transactions, notably through the Electronic Information and Transactions Law Number 11 of 2008, which provides general recognition of electronic contracts but offers limited specific guidance regarding the consent requirements for various electronic consent mechanisms (Wahyuni et al., 2023).

The binding power of *click wrap* and *browse wrap agreements* is based on the principle of *pacta sunt servanda* "agreements must be obeyed" which is the basis of Indonesian contract law as reflected in Article 1338 of the Civil Code (Fairuza et al., 2024). This principle stipulates that legally formed agreements are binding on the parties as a law, creating obligations equivalent to the requirements of the law. However, the application of this principle to *browse wrap* agreements presents significant challenges, as the absence of user affirmative action raises questions about whether genuine mutual consent has been reached. International jurisprudence, particularly from the United States, has developed sophisticated tests to evaluate the clarity of terms and user awareness in *click wrap* and *browse wrap* scenarios, but Indonesian courts have not set a comprehensive precedent addressing this particular digital consent mechanism. The effectiveness of basic contract principles becomes highly tested when considering whether the *browse wrap* mechanism can actually establish the mutual consent required by Indonesian law, especially given that users may never actually see the terms they are deemed to have accepted (Adam Muko, 2024).

Consumer protection concerns are particularly pronounced in the context of direct purchases (*browse wraps*), where "accept or decline" scenarios combined with lengthy and complex provisions presented in a format that hinders thorough reading can undermine actual choices and informed consent. The digitization of civil transactions in the era of Society 5.0 requires a careful evaluation of how the existing legal framework adapts to emerging technologies and user behavior. Questions arise as to whether current legal standards adequately protect the parties from unfair provisions, whether adequate notice requirements exist to make such provisions reasonably accessible, and how courts should evaluate evidence of user consent in cases where agreements are formed through automated processes. Smart contracts represent a further evolution in this trajectory, offering self-executable agreements with unprecedented automation but introducing new complexities related to approval verification, capacity assessment, and solution availability (Cahyo & Kurnianingsih, 2023).

The regulatory landscape for electronic contracts in Indonesia is still fragmented, with various ministries developing sector-specific guidelines rather than comprehensive laws addressing cross-sectoral issues such as the allocation of responsibilities among developers, spreaders, and users. This partial approach fails to answer the fundamental questions about the legal validity of various electronic consent mechanisms and their compatibility with established civil law principles. Recent scientific analysis highlights the tension between technological efficiency and legal protection in Indonesia's digital contract environment, emphasizing that while electronic agreements can theoretically meet the requirements of Article 1320, practical implementation often fails to ensure truly informed consent. The absence of specific judicial guidance on the mechanism of *click wrap* and *browse wrap* creates legal uncertainty that has the potential to undermine the legal certainty that contract law seeks to provide (Al Hafiz & Sukirno, 2024).

Comparative insights from jurisdictions such as Singapore point to a more advanced framework for evaluating electronic consent mechanisms, with clearer standards of what is considered reasonable notice and meaningful opportunities to review the provisions. However, even in this advanced regulatory environment, courts continue to grapple with trying to balance business efficiency with consumer protection in the context of digital contracts. The way forward requires systematic legal reform that balances the promotion of innovation with adequate safeguarding mechanisms, potentially including establishing specific validation criteria that complement the requirements of Article 1320, creating regulatory test containers to test innovative applications, and increasing judicial capacity to handle digital contract disputes through specialized training. Ultimately, the binding power of *click wrap* and *browse wrap* agreements cannot be judged in isolation from broader considerations of consumer protection, fair contract practices, and the practical realities of digital literacy among Indonesian internet users. This comprehensive analysis underscores the need for a systematic examination of how Indonesian treaty law, rooted in 19th-century civil law principles, can effectively address the unique characteristics and challenges posed by modern electronic consent mechanisms, ensuring that the binding power of digital contracts reflects the actual agreement, not just technical compliance or user consent to predefined terms before.

According to Article 1320 of the Civil Code, an agreement is considered valid if it meets four conditions, namely:

1. Agreement of the parties;
2. The competence of the parties;
3. The presence of a specific object;
4. Because it is halal.

In the context of *click-wrap agreements*, the element of agreement is relatively easier to prove because the user consciously takes an affirmative action that shows his or her willingness to be bound by the terms and conditions offered. The act of clicking the consent

button can be seen as a form of acceptance of the offer provided by the electronic service provider.

In contrast to *click-wrap*, the *browse-wrap* mechanism raises problems in the deal aspect. The absence of explicit action from the user has the potential to raise doubts about whether the user really knows and understands the applicable terms and conditions. Therefore, the validity of the *browse-wrap agreement* is highly dependent on the level of visibility (*reasonable notice*) and accessibility of the terms and conditions provided by the business actor.

In the legal perspective of the Indonesian treaty, the principle of consensualism requires a meeting of will (*consensus ad idem*) between the parties. Thus, the clearer the form of consent given by the user, the stronger the legal basis that supports the validity of the electronic contract.

Electronic contracts gained legal legitimacy through Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. The regulation recognizes that contracts made through electronic systems have legal force as long as they meet the legal requirements of the agreement as specified in civil law.

In addition, the regulation regarding the implementation of electronic systems shows that Indonesian law has accepted the use of electronic media as a means of establishing contractual relationships. However, the applicable regulations do not specifically regulate *click-wrap* and *browse-wrap*, so the assessment of their validity must still be returned to the general principles of treaty law.

The Binding Power of Click-Wrap and Browse-Wrap Contracts in the Legal Perspective of Indonesian Treaties

The binding power of *click-wrap* and *browse-wrap* contracts in Indonesian contract law is basically rooted in *pacta sunt servanda* (Iftinaity Shaumi Rahma et al., 2022). The principle that requires that legally formed agreements have legal force between the parties and must be implemented in good faith; however, the enactment of such agreements as electronic contracts is highly dependent on the user's provable consent, transparency of the provisions, and compliance with the requirements of legal validity under Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law), thus requiring strong legal protection for users against unclear or unfair standard clauses that may undermine actual consent (Stuart & Herry, 2022). In particular, *click-wrap* agreements where the user actively indicates consent by clicking an "I Agree" button after being presented with the terms generally receive stronger legal recognition in Indonesia, as these affirmative actions meet the consensus requirements (*the principle of consensuality*) This is in accordance with Article 1320 of the Civil Code and in line with the provisions of the Information Technology Law that an electronic contract is valid if it is formed through an electronic system designed to ascertain the intention of the parties (Suwadi et al., 2023). In contrast, *browse-wrap* agreements that aim to bind users solely by their actions of browsing websites, often with provisions that can only be accessed via hyperlinks face significant legal uncertainty in Indonesian jurisprudence due to the absence of clear and active user affirmation, thus raising serious doubts about whether the essential elements of mutual consent have been met. Agreeing to the same has been actually achieved, thus potentially making the agreement unenforceable against consumers who are unaware or do not meaningfully agree to the terms of the contract (L. K. Hasan & Putra, 2025).

The application of *pacta sunt servanda* in this digital context, the principle is not absolute; it is increasingly relative to the need for consumer protection, which requires that the principle be balanced with the need for fairness, transparency, and the prevention of abusive standard clauses that exploit the asymmetric bargaining power that prevalent (Simamora et al.,

2025). *E-commerce* Therefore, effective legal protection for users demands that electronic contracts, particularly those that use standard provisions, comply with strict disclosure norms, provide information that is easily accessible and understandable before it is received, and are subject to judicial oversight to invalidate provisions that are deceptive, unfair or detrimental to consumer rights, ensuring that the binding power of these digital instruments is based on informed consent and voluntary, not just technological convenience (Lufti Nasution, 2023). This ever-evolving legal landscape underscores the need for Indonesian contract law to continue to adapt its classical doctrine to the realities of the digital market, strengthening the validity of electronic agreements while protecting the substantive rights of weaker parties in consumer contracts so as to uphold the legal integrity of *the contract agreement* in the virtual era (Anindita;, 2024).

CONCLUSION

Based on the results of the research, electronic contracts formed through *the click-wrap* and *browse-wrap mechanisms* in principle obtain legal recognition in the Indonesian legal system as long as they meet the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code and the provisions in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. The validity of electronic contracts still rests on the fulfillment of elements of agreement, competence, certain objects, and halal causes as the basis for the birth of a valid contractual relationship. The *click-wrap* mechanism has a stronger binding force than *browse-wrap* because of the affirmative action of the user that clearly shows agreement to the terms and conditions of the contract. This action reflects the fulfillment of the principle of consensualism (*consensus ad idem*) and makes it easier to prove the agreement of the parties. On the other hand, the *browse-wrap* mechanism poses problems in the aspect of proving consent because the agreement is only assumed based on the use of the service in the absence of an explicit declaration of acceptance from the user.

The application of *the principles of pacta sunt servanda* in electronic contracts cannot be separated from the principles of consumer protection, transparency, and good faith. Therefore, the binding power of electronic contracts is determined not only by the fulfillment of the formal aspects of the contract formation, but also by the existence of adequate notice, accessibility of terms and conditions, and the assurance that consent is given consciously and voluntarily. Thus, from the legal perspective of Indonesian agreements, *the click-wrap* mechanism meets the standards of legal certainty and protection of the parties more than *browse-wrap*, so it is worthy of being used as the main model in the formation of electronic contracts in the digital era.

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