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The Legal Certainty of Digital Consent In The Formation of Electronic Contracts is Reviewed From The Principle of Consensualism

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Abstract: The development of information technology has driven a transformation in the formation of contracts from conventional forms to electronic contracts based on digital consent (*digital consent*). This condition raises legal problems regarding the conformity of digital consent with the principle of consensualism as the basis for the birth of an agreement and its legal certainty in the Indonesian legal system. This study aims to analyze the relevance of the principle of consensualism in the formation of electronic contracts based on digital consent and examine the legal certainty provided to the parties in electronic transactions. This study uses a normative juridical method with a statutory approach, a conceptual approach, and a comparative approach. Legal materials are obtained through literature studies that are analyzed qualitatively and prescriptively. The results of the study show that digital consent in principle has fulfilled the elements of agreement as required in the principle of consensualism because it is a manifestation of the will of the parties expressed through electronic media. However, the current legal arrangements do not provide clear parameters regarding the standard of validity of digital consents, the quality of the agreement, and the mechanism of proof. Therefore, it is necessary to strengthen regulations through the implementation of *affirmative consent* standards, more specific regulations on forms of digital consent, and increased legal protection for parties to realize legal certainty in the formation of electronic contracts in Indonesia.

Keyword: The Principle of Consensualism; Contract Law; Business Law

INTRODUCTION

The development of information and communication technology has brought significant changes to various aspects of people's lives, including in the fields of trade and business (Pembangunan et al., n.d.). The rapid digital transformation has encouraged the emergence of various forms of electronic transactions carried out through e-commerce platforms. In practice, electronic transactions no longer rely on physical meetings between the parties, but are carried out through digital media that allows electronic agreements to occur. These changes also affect the way contracts are formed, which was previously based on direct interaction, to be based on digital consent (Suwadi et al., 2023).

In Indonesian contract law, one of the fundamental principles that is the basis for the birth of an agreement is the principle of consensualism (Anindita;, 2024). This principle affirms that an agreement has basically been born since the agreement of the parties without the need for certain formalities, unless otherwise specified by law. This provision is reflected in Article 1320 of the Civil Code (Civil Code) which places the agreement of the parties as a valid condition for the agreement. However, the development of digital technology raises questions about how the concept of agreement that has been understood in conventional legal relationships is applied in electronic contracts formed through digital consent mechanisms (Muthiah, 2021).

Digital consent in e-commerce transactions is generally realized through various mechanisms, such as click-wrap agreements, browse-wrap agreements, and electronic signatures (Farhan Jiddan Saros & Nurkholis Anwar, 2023). In practice, users often give their consent by simply clicking the "agree" button without thoroughly reading the content of the contract offered. This has led to a debate as to whether the act reflects the existence of free will and real agreement as required by the principle of consensualism. In addition, there is also the question of the extent to which digital consent can guarantee legal protection and legal certainty for the parties bound by the electronic contract (Sari et al., 2024).

In Indonesia, the recognition of electronic contracts and electronic transactions has been regulated through Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 1 of 2024 concerning the Second Amendment to the Electronic Information and Transaction Law, as well as Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. However, the regulation does not specifically explain the parameters of the agreement in the context of digital consent that are able to represent the basic principles of contract law, in particular the principle of consensualism. As a result, there is still room for interpretation that has the potential to cause legal uncertainty in the implementation of electronic contracts (Baso et al., 2024).

Some previous research has generally focused on the validity of electronic contracts, the evidentiary power of electronic documents, and legal protection in electronic transactions (Simamora et al., 2025). However, studies that specifically analyze the relevance of the principle of consensualism as the basis for the formation of electronic contracts based on digital consent are still relatively limited. Therefore, this study has an urgency to review how the principle of consensualism is interpreted and applied in the formation of electronic contracts in the digital era, as well as assess whether the digital consent mechanism used in e-commerce transactions has fulfilled the essence of the agreement as stipulated in Indonesian contract law (Fairuza et al., 2024).

Based on this description, this study aims to analyze the relevance of the principle of consensualism in the formation of digital consent-based electronic contracts in e-commerce transactions and identify its legal implications for the validity and legal certainty of electronic contracts in Indonesia. This research is expected to make a theoretical contribution to the development of contract law in the digital era as well as a consideration in improving regulations regarding electronic contracts in Indonesia.

METHODS

This research is a normative legal research *(normative juridical)* that focuses on the study of legal norms that govern the formation of electronic contracts and digital consent in the Indonesian legal system. The research was conducted using a statutory approach, a conceptual approach, and a comparative approach.(Syahmi & Nasution, 2024)

The legislative approach is used to analyze various legal provisions related to the formation of electronic contracts, especially the Civil Code, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. The conceptual approach is used to examine relevant legal doctrines, theories, and principles, in particular the principle of consensualism as the basis for the formation of agreements and the concept of digital consent in electronic contracts. The comparative approach is used to compare the regulation and practice of digital consent in the formation of electronic contracts in Indonesia with international legal instruments, such as the Model Law on Electronic Commerce prepared by UNCITRAL, in order to gain a more comprehensive understanding of the standards for the recognition of electronic agreements in digital transactions.(Girsang et al., 2025)

The legal materials used consist of primary legal materials in the form of relevant laws and regulations and international legal instruments, secondary legal materials in the form of books, scientific articles, legal journals, and previous research results, and tertiary legal materials in the form of legal dictionaries and legal encyclopedias.(Abidin, 2023) The collection of legal materials is carried out through library *research,* while the analysis of legal materials is carried out qualitatively with a prescriptive method to produce legal arguments regarding the legal certainty of digital consent in the formation of electronic contracts reviewed from the principle of consensualism.

DISCUSSION

The Essence of Digital Consent in the Formation of Electronic Contracts

The development of information technology has driven a transformation in the mechanism for the formation of civil legal relations, especially in the field of contracts (Anita Mu'min et al., 2025). If initially the contract was formed through a direct meeting of the parties and outlined in a physical document, the development of digital technology allows the formation of contracts through electronic means without the need for the physical presence of the parties. Such a form of contract is known as an electronic contract, which is an agreement that is made through an electronic system and binds the parties like conventional contracts in general (Wulandari & Priyono, 2025).

In the Indonesian legal system, recognition of electronic contracts can be found in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (Aisyah et al., 2025). The presence of these regulations shows that technological developments have been accommodated by national law through the recognition of the use of electronic means as a medium for the formation of legal relations and the implementation of business transactions (Girsang et al., 2025).

One of the main elements that is the main characteristic of electronic contracts is the existence of digital consent. Digital consent is a form of statement of intent made through electronic media to express acceptance of the terms and conditions offered in a transaction (Hasan & Putra, 2025). In contrast to conventional contracts which are generally characterized by the affixing of a signature directly, digital consent is realized through certain electronic actions that indicate acceptance from the party concerned (Haspada et al., 2025).

In the practice of electronic transactions, digital consent is generally manifested in several forms. First, click-wrap agreements, which are mechanisms that require users to actively give consent by clicking on a button or checkbox that says "I Agree" or a similar phrase before they can continue using the service or completing a transaction (Simamora et al., 2025). Second, browse-wrap agreement, which is a form of consent that is considered to be given when a user accesses or uses a website without any specific affirmative action. Third, consent through the use of electronic signatures that allows the identification and authentication of the party who gives consent in an electronic transaction (Farhan Jiddan Saros & Nurkholis Anwar, 2023).

Among these various forms, click-wrap agreements are the most widely used mechanism in e-commerce transactions because they provide clearer evidence of the existence of acceptance from users (Anindita;, 2024). However, the use of digital consent still raises various legal issues, especially related to the quality of the agreements formed. In many cases, users tend to give consent without reading or thoroughly understanding the content of the terms and conditions offered. This condition raises questions about whether the consent given truly reflects the free will and legal awareness of the parties (Jual et al., 2024).

From a contract law perspective, the existence of digital consent is basically a modern form of the agreement formation mechanism that has been known in treaty law (Muthiah, 2021). Digital consent functions as a medium to bring together the will of the parties in the digital space so that it can give birth to binding legal relationships. Therefore, even though it is carried out through electronic means, digital consent must still meet the basic principles of contract law, especially related to the existence of an agreement, the competence of the parties, certain objects, and halal causes as stipulated in Article 1320 of the Civil Code (Suwadi et al., 2023).

Thus, the essence of digital consent is not only understood as a technical action in the form of a click or the use of an electronic signature, but as a manifestation of the will of the parties that is the basis for the birth of a contractual relationship. Therefore, the validity and binding force of digital consents must be assessed not only on the basis of its technological aspects, but also on the fundamental principles of contract law applicable in the Indonesian legal system.

Digital Consent Analysis Reviewed from the Principle of Consensualism

The principle of consensualism is one of the fundamental principles in contract law which emphasizes that an agreement is born from the agreement of the parties (Tuturoong & Herry, 2022). This principle is reflected in Article 1320 of the Civil Code which places agreement as a valid condition of agreement. Thus, the most important element in the formation of a contract is not a certain form or formality, but a meeting of minds between the parties who bind themselves in a legal relationship (Lufti Nasution, 2023).

In the context of conventional contracts, agreements are generally realized through direct negotiations that allow the parties to understand each other's rights and obligations before expressing their agreement (Tyaskinasih, 2023). However, the development of information technology has changed the mechanism for forming such agreements to be based on electronic systems. In e-commerce transactions, agreements are often realized through digital approvals that are made by clicking the "agree" button, checking the approval box, or using an electronic signature. The change in the mechanism raises questions about whether digital consent can be considered to fulfill the essence of the agreement as required by the principle of consensualism (Sunan et al., 2025).

Normatively, digital consent can be seen as a form of valid declaration of will. The action of a user who consciously clicks the consent button on an electronic platform indicates acceptance of the terms and conditions offered by the electronic system operator. From the point of view of declaration theory, the basis of judgment is not a person's inner will, but a statement that appears objectively. Therefore, the act of giving consent through electronic media can be equated with signing a contract in a conventional form because both are manifestations of a will that has legal consequences (Al Hafiz & Sukirno, 2024).

However, the application of the principle of consensualism in electronic contracts is inseparable from various problems. One of the main problems is the tendency of users to give consent without reading or comprehensively understanding the content of the contract offered (Iftinaity Shaumi Rahma et al., 2022). In the practice of electronic transactions, terms and conditions are often arranged in the form of standard clauses that are long, complex, and difficult for users to understand. As a result, the consent given is more formal than substantive because the user only focuses on completing the transaction without conducting a review of the content of the contract.

This condition has raised a debate about the quality of the agreements formed in electronic contracts. From the perspective of will theory, a valid agreement must reflect the true will of the parties. If the user gives consent without understanding the substance of the contract, then it can be questioned whether there has really been a meeting of will that is the basis for the birth of the agreement. On the other hand, from the perspective of reliance theory, the electronic system operator has the right to believe that the actions of the user who gives consent are a form of valid and binding acceptance. These differences in viewpoints show that the application of the principle of consensualism in the digital environment has a higher complexity compared to conventional contracts (Siahaan et al., 2023).

In addition, the use of standard clauses in electronic contracts also has the potential to cause an imbalance in the bargaining position between business actors and consumers. In general, users do not have the opportunity to negotiate the content of the contract because all terms and conditions have been unilaterally determined by the electronic system operator (Kusuma & Jasmine, 2025). This situation causes the agreement formed to tend to be take it or leave it, that is, the user only has the option to accept all the terms offered or not use the service at all. While this does not automatically eliminate the validity of the contract, it does suggest that the implementation of the principle of consensualism in electronic contracts does not necessarily reflect the position of the equal parties.

Based on this analysis, it can be understood that digital consent in principle has fulfilled the elements of agreement as required in the principle of consensualism because there is a statement of intent that is expressed electronically. However, the fulfillment of the elements of the agreement still leaves questions about the quality and substance of the consent given by the user. Therefore, the existence of digital consent is not enough only to be judged by the action of clicking or electronic signatures, but must also pay attention to aspects of information transparency, ease of access to contract terms, and protection of parties with weaker bargaining positions (Triestanto et al., 2026).

Thus, the principle of consensualism remains relevant as the basis for the formation of electronic contracts in the digital era. However, its application requires a more adaptive interpretation of technological developments so that agreements formed through digital consent are not only formally valid, but also reflect the free, conscious, and responsible will of the parties bound by electronic contracts.

Legal Certainty of Digital Consent in the Formation of Electronic Contracts and Their Regulatory Concepts in the Future

Legal certainty is one of the main goals of the law that functions to provide guarantees regarding the clarity of norms, consistency in the application of the law, and protection of the rights and obligations of legal subjects (Agreements & Banks, 2024). In the context of electronic contracts, legal certainty is a very important aspect considering that the legal relationship between the parties is formed through electronic media without any direct physical interaction. Therefore, arrangements are needed that are able to ensure that the digital consent given by the parties really has legal and binding force.

Normatively, the Indonesian legal system has recognized the existence of electronic contracts through Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. The regulation confirms that electronic information, electronic documents, and electronic contracts have a valid legal standing and can be used as evidence that has probative power. With this recognition, Indonesian law has basically accommodated the development of digital transactions that are increasingly growing in modern trade practices (Delgado-Pérez et al., 2024).

However, the current regulations still leave a number of problems related to the legal certainty of digital consent. Existing regulations do not provide clear parameters regarding the form and quality of digital consent that can be considered to have met the elements of the agreement as required in contract law. The applicable regulations regulate more about the validity of electronic means and electronic transaction systems, but do not specifically regulate standards regarding the provision of digital consent, the level of user understanding of the content of the contract, and the mechanism for proving the existence of free will in the formation of electronic contracts (Fairuza et al., 2024).

The vacancy in the arrangement has the potential to cause legal uncertainty, especially when there is a dispute between the parties. In practice, not all digital consent is given through affirmative action that clearly indicates acceptance of the terms and conditions of the contract. Some digital platforms still use mechanisms that do not explicitly ask for user consent, so that it has the potential to cause differences in interpretation regarding the existence of agreements that are the basis for the birth of contractual relationships (Abidin, 2023).

When compared to the development of international law, the regulation of electronic contracts has received more comprehensive attention. The UNCITRAL Model Law on Electronic Commerce recognizes that electronic communications can produce legal consequences equivalent to conventional documents as long as they meet the principles of reliability, authenticity, and integrity of information. In addition, some countries such as Singapore through the Electronic Transactions Act and the United States through the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) have regulated in more detail the validity of electronic consent and the use of electronic signatures in the formation of contracts. The arrangement provides stronger legal certainty as it emphasizes the importance of affirmative action that demonstrates conscious and provable consent (Fairuza et al., 2024).

Based on this comparison, it can be understood that the Indonesian legal system still needs to strengthen regulations that specifically regulate digital consent in electronic contracts. Such arrangements are necessary to ensure that the consent given is not only formally valid, but also reflects the true will of the parties. Thus, legal certainty is not only realized through the recognition of electronic media, but also through the protection of the quality of the agreement that is the basis for the birth of contracts (Tarhini, 2021).

In order to realize more optimal legal certainty, it is necessary to reconstruct the digital consent arrangements in Indonesian contract law. First, it is necessary to establish an affirmative ***consent standard*** that requires users to actively express their consent before being bound by an electronic contract. Second, electronic system operators need to be required to present the terms and conditions of the contract clearly, easily accessible, and easily understood by users. Third, it is necessary to establish regulations that specifically regulate the validity of ***click-wrap agreements***, ***browse-wrap agreements***, and other forms of digital consent to avoid differences in interpretation in practice. Fourth, it is necessary to strengthen the legal protection mechanism for consumers as parties who generally have a weaker bargaining position in electronic contracts (Chauhan, 2025).

Thus, the legal certainty of digital consent in the formation of electronic contracts is not enough to be realized through the recognition of the use of technology alone, but also requires arrangements that are able to ensure that there is a real, transparent, and provable agreement. Through the strengthening of these regulations, the principle of consensualism can be maintained as the foundation of Indonesian contract law while being able to adapt to technological developments and the needs of digital transactions in the modern era (Siahaan et al., 2023).

CONCLUSION

Digital consent is a modern form of the statement of the will of the parties in the formation of an electronic contract which in principle has fulfilled the elements of agreement as required in the principle of consensualism. Through mechanisms such as ***click-wrap agreements***, ***browse-wrap agreements***, and electronic signatures, digital consent can be the basis for the birth of a valid contractual relationship as long as it meets the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code. Thus, the principle of consensualism remains relevant as the basis for the formation of electronic contracts in the digital era because the essence of the agreement remains the main element in the birth of an agreement.

However, the legal certainty of digital consent in the Indonesian legal system still faces various challenges. The current regulations have recognized the existence of electronic contracts and electronic evidence, but have not provided clear parameters regarding the validity standards of digital consent, the quality of the agreements formed, and the mechanisms of proof. Therefore, it is necessary to strengthen regulations that specifically regulate digital consent through the implementation of ***affirmative consent*** standards, clearer regulations regarding the validity of various forms of electronic consent, and increased legal protection for parties, especially consumers. This step is necessary to realize more optimal legal certainty while ensuring that the agreements formed in electronic contracts are not only formally valid, but also reflect free, conscious, and responsible will.

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