

Legality of Electronic Contracts in the Context of Good Faith Principle Application in E-Commerce Transactions within the Modern Economy: A Review Based on Wilstheorie

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Abstract

Seeing the many facilities provided by E-commerce, especially related to electronic contracts, legal problems arise from the side of civil law related to the validity of the agreement and the legal relationship of the parties. This research aims to determine the validity of electronic contracts from the perspective of the application of the principle of good faith in e-commerce transactions in the context of modern economics according to Wilstheorie. Electronic contracts are the result of advances in technology and information, where buying and selling transactions are carried out online through electronic media. The provisions regarding the legal requirements and legal force of electronic contracts in the laws governing electronic transactions are still uncertain. Electronic contracts are often made in a standardized contract format, where the clauses made do not pay attention to the application of the principle of good faith and applicable laws and regulations. Wilstheorie emphasizes the importance of moral and intellectual agreements with integrity and honesty and has an important role in shaping social structures that are not only fair but also sustainable. The research method used in this scientific work is normative juridical research method. The results of this study state that Wilstheorie about standard contracts is an agreement or contract based on a shared understanding of the values and principles that underlie common life in society with integrity and honesty. This concept emphasizes the importance of moral and intellectual agreements in shaping a fair and sustainable social order.

1. Introduction

Rapid technological advancements encourage people to continue to adapt and participate in technological developments. However, these advancements often far outpace the development of the legal order, especially in Indonesia. Since entering into the technological era, people have been simplified in fulfilling their needs through electronic transactions such as buying and selling, electronic contracts through messaging, leasing, and various other types of transactions¹. E-commerce provides many benefits to its users, such as increased effectiveness and time efficiency. These effectiveness and time efficiency gains occur due to the nature of *e-commerce* which allows activities to be conducted anywhere and anytime. Since transactions are conducted without face-to-face contact and using electronic devices in different locations, it is important to build trust between the parties involved in *e-commerce*.

¹ Ibnu A'thillah Farhan and Moh. Safil Kafi, "Peranan Pelaksanaan Asas Iktikad Baik Dalam Hukum Perjanjian," *Jurnal Ilmiah Research Student* 1, no. 2 (2023): 532–38.

Virtual transactions are the essence of *e-commerce*². This characteristic gives businesses a special advantage in connecting producers and consumers quickly over the internet, with efficient transmission of data and information. It becomes an invaluable tool for businesses in increasing the rate of growth of their business and, consequently, enlarging their profits.

The many benefits offered by *e-commerce* to entrepreneurs are a great attraction for businesses in Indonesia to utilize the *e-commerce* platform. The utilization of *e-commerce* as a supporting tool or service provider has made the *e-commerce* business in Indonesia grow rapidly. As with other changes in society, the development of e-commerce business in Indonesia also raises a number of legal issues that cover various sectors such as criminal, civil and tax law. A concrete example of problems in the civil law sector is related to agreements used in *e-commerce* transactions, known as electronic contracts. Regulations governing electronic contracts are crucial given the difference in principle with conventional contracts that are generally agreed upon in person and in writing. The main difference lies in the presence or absence of face-to-face or direct meetings between the parties involved, which has implications for the fulfillment of the identity and capability requirements of the parties in entering into an agreement³.

One form of progress in treaty law is the birth of electronic contracts which were first introduced through the UNCITRAL *Model Law on Electronic Commerce* in 1996. In 2008, the recognition of *e-contract* in Indonesian positive law is regulated in Law Number 11 of 2008 jo. Law Number 19 of 2016 jo. Law Number 1 of 2024 concerning the Electronic Information and Transactions (hereinafter referred to as Law No. 1/2024). However, neither the UNCITRAL model law the Law No. 1/2024 explicitly outlines the concrete form of an *e-contract*. Therefore, the diversity of *e-contract* may lead to confusion and different interpretations. *E-contract* is a form of contract made electronically through interaction between the offering party and an electronic system. Usually encountered in the legal context between producers and consumers, electronic contracts are recognized as valid and binding on the parties in accordance with Article 8 paragraph (1) *United Convention on the Use of Electronic Communications in International Contracts*. Therefore, the convenience and efficiency of electronic contracts are often utilized by business actors in trading activities⁴.

Electronic Contracts as a new legal concept in Indonesia provide a basis for the community in carrying out agreements through electronic media. The broad definition of Electronic Contracts does not cover the technical details that must be complied with by the parties involved in drafting a contract through an electronic medium. In general, an electronic contract refers to a written contract drafted using a computer and signed directly through an electronic system or using an electronic signature that is captured and affixed to the contract. Despite the existing provisions, there is no full guarantee to protect consumers who conduct

² Josephine Josephine, Sinta Dewi Rosadi, and Sudaryat Sudaryat, "Perlindungan Konsumen Daring Dan Tanggung Jawab Perusahaan Marketplace Atas Data Privasi Konsumen," *Jurnal Suara Keadilan* 21, no. 1 (2020): 97-112, <https://doi.org/10.24176/sk.v21i1.5686>.

³ Kadek Agus Mahendra Wijaya, A. A Sagung Laksmi Dewi, and Luh Putu Suryani, "Perijinan Dan Tindak Pidana Terhadap Juru Parkir Liar Di Kota Denpasar," *Jurnal Analogi Hukum* 4, no. 3 (2022): 260-65, <https://doi.org/10.22225/ah.4.3.2022.260-265>.

⁴ Susiana, "Kontrak Baku Franchise Ditinjau Dari Ketentuan Unidroit Dan KUH Perdata," *Kanun: Jurnal Ilmu Hukum* 17, no. 1 (2015): 61-82.

electronic transactions, especially those involving electronic contracts. Consumers in the context of electronic contracts are often in a weaker position than businesses, due to the intrinsic nature of electronic contracts and weaknesses in consumer protection regulations at both the international and national levels. The principle of good faith becomes very important for all parties, both business actors and consumers, in carrying out electronic contracts. In this research, the author compares with 3 (three) previous studies. First, research by Fatimatuzzahra with the title "The Effectiveness of the Legality of Electronic Contracts in Electronic Transactions Reviewed Based on Bond Law", this study states that the provisions regarding the legal requirements and legal force of electronic contracts in laws and regulations governing electronic transactions are still experiencing uncertainty⁵. In addition, electronic contracts are often made in the form of standard contracts. Second, research by Ni Luh Putu Sudarini with the title "The Legality of Electronic Contracts as Evidence in Review of Civil Law", this study says that the legal certainty of electronic contracts in Indonesia is based on Article 5 of Law No. 11 2008 concerning information and electronic transactions which is refined by the Constitutional Court Decision Number 20 / PUUXIV / 2016, still based on the legality of electronic contracts used as evidence from a civil law perspective sourced from the Constitutional Court decision 20/PUU-XIV/2016 and provisions related to contracts in general under contained in the Civil Code⁶. Third, research by Ida Bagus Prasadha Sidhi Nugraha with the title "Legality of Electronic Trade Contracts Reviewed in the Civil Code", this study says that the legality of electronic trade contracts is contained in the provisions of Article 1320 of the Civil Code, namely the agreement of the parties; the ability of the parties to do legal acts; a certain subject matter; and a cause that is not prohibited and the legal consequences if the trade contract made electronically or e-contract is invalid is that it can be canceled and null and void if it does not comply with the provisions of Article 1320 of the Indonesia Civil Code⁷.

2. Methods

This research employs normative, historical, and conceptual approaches. The normative approach aims to compare legal theories with the implementation of law in society⁸. It illustrates how, despite the law often being ideal in theory, there are frequently deviations in practice that hinder the achievement of the law's objectives. This legal research adopts an approach by analyzing regulations issued by the government and evaluating prevailing norms as the legal basis in the investigated scientific writing⁹. Legal research methods are used to extract legal products, legal norms, and relevant legal doctrines, with a focus on the analysis of electronic contracts. In this regard, the research examines the legal aspects or legality of a situation, regulation, or action, such as provisions, requirements, or legal considerations that

⁵ Fatimatuzzahra et al., "Efektivitas Legalitas Kontrak Elektronik Dalam Transaksi Elektronik Berdasarkan Hukum Perikatan," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2176-84.

⁶ Ni Luh Putu Sudarini and dewa gede pradnyana yustiawan, "Keabsahan Kontrak Secara Elektronik Sebagai Alat Pembuktian Di Tinjau Secara Hukum Perdata," *Jurnal Hukum Dan Sosial Politik* 1, no. 4 (2023): 266-75.

⁷ Ida Bagus Prasadha Sidhi Nugraha Nugraha and I Gede Ysa, "Legalitas Kontrak Perdagangan Secara Ditinjau Dalam Kitab Undang-Undang Hukum Perdata," *Kertha Semaya* 8, no. 5 (2020): 689-98.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010).

⁹ Ani Purwati, *Metode Penelitian Hukum: Teori Dan Prakte* (Surabaya: CV. Jakad Media Publishing, 2020).

must be adhered to or taken into account in a particular context or activity related to electronic contracts in the application of the principle of good faith in e-commerce transactions within the modern economy, reviewed based on *wilstheorie*¹⁰

3. Results and Discussion

In this modern era, technological advancements have provided solutions to the challenges faced by humanity¹¹. Issues such as distance, which were once difficult to overcome, can now be addressed thanks to the rapid progress in information and communication technology. Since technology has transformed the world, society has found ease in meeting their needs through online transactions such as buying and selling, making contracts via electronic messages, renting, and various other activities¹². Legislators have defined the concept of a contract in Article 1313 of the Indonesian Civil Code by explaining that a contract is an agreement that binds one or more persons to one or more others¹³. Additionally, in the context of Indonesian jurisprudence, Subekti defines a contract as an event where one person promises to another or where two people mutually agree to perform something¹⁴. Through these two definitions, efforts are made to simplify the relationships between parties based on promises that have the legal force as a primary characteristic of legal norms. The parties involved in the agreement have reached an understanding regarding the promises that must be fulfilled and executed, which in law is referred to as performance¹⁵. This performance can involve the delivery of goods, the execution of an action, or refraining from doing something. Furthermore, by agreeing to these promises, the agreement or contract becomes a legal form that binds those who make it. Thus, the parties are obligated to act and behave in accordance with the content of the agreement¹⁶.

Agreements in electronic contracts can be classified as "innominate agreements" because the term electronic contract is not specifically mentioned in the Indonesian Civil Code or the Commercial Code¹⁷. This development has emerged as a result of the evolution in the business world. One of the scenarios where an agreement is reached without the parties meeting in person is explained by the Will Theory (*Wilstheorie*), which teaches that an agreement occurs when the will of the receiving party is expressed. This is realized when the seller offers or promotes products or services through the internet. In the context of online contracts, the principle of Will Theory (*Wilstheorie*) asserts that a contract is validly formed based on the

¹⁰ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2016).

¹¹ Fatimatuzzahra et al., "Efektivitas Legalitas Kontrak Elektronik Dalam Transaksi Elektronik Berdasarkan Hukum Perikatan."

¹² Shidarta, "Teori Timbulnya Perjanjian Dalam Transaksi Konsumen Elektronik," *Jurnal Rechtsvinding* 12, no. 2 (2023): 185–210.

¹³ R. Subekti, *Hukum Acara Perdata*, 1981.

¹⁴ Agus Yudha Hernoko, *Hukum Perjanjian, Asas Proporsionalitas Dalam Kontrak Komersil* (Jakarta: Kencana Prenada Media Group, 2010).

¹⁵ Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari, "Kekuatan Mengikat Klausula Arbitrase Dalam Kontrak Bisnis Dari Perspektif Hukum Perjanjian," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 2 (2022): 427–37, <https://doi.org/10.24843/JMHU.2022.v11.i02.p14.Klausula>.

¹⁶ Susiana, "Kontrak Baku Franchise Ditinjau Dari Ketentuan Unidroit Dan KUH Perdata."

¹⁷ Dian Cahayani, "Kesepakatan Dalam Perjanjian Sebagai Langkah Preventif Terhadap Pencegahan Wanprestasi," *Jurnal Ilmu Sosial* 2, no. 10 (2023): 1–3, <https://www.bajangjournal.com/index.php/JISOS/article/view/7315>.

clear and deliberate will of both parties to bind themselves in an agreement. In online transactions, a contract is formed through actions such as clicking the "Agree" or "Buy" button, which indicates acceptance of the terms that have been set. Will Theory emphasizes the importance of the clear expression of the parties' will as the foundation for the validity of a contract, even if it is conducted electronically or online¹⁸.

Every agreement, including electronic contracts, must be executed in good faith, as stipulated in Article 1338, paragraph 3 of the Indonesian Civil Code. This principle emphasizes that the parties entering into an agreement must act with good faith and propriety, implying that the creation of the agreement must be based on honesty to achieve mutual objectives¹⁹. Moreover, the execution of the agreement must adhere to the norms prevailing in social interactions. Article 1338, paragraph 3 of the Indonesian Civil Code governs that every agreement must be executed in good faith, meaning it should be carried out appropriately and fairly. P.L. Werry uses the term "*redelijkheid en billijkheid*," which means reasonableness and fairness, interpreted as rational, logically acceptable, and in accordance with objective norms, rather than the subjective views of the parties. Thus, this concept demands that the execution of the agreement be conducted in a reasonable, fair, and objectively compliant manner.

Electronic contracts emphasize the importance of the principle of good faith in establishing cooperative relationships among all parties involved in the contract. Article 17 of Law No. 1/2024, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Electronic Information and Transactions states that electronic transactions can be conducted within both public and private domains. In this context, the parties involved in electronic transactions are required to act in good faith in every interaction and exchange of information or electronic documents during the transaction process. The result of these electronic transactions is manifested in the form of an electronic contract that binds all parties involved. Essentially, online buying and selling is similar to conventional transactions in terms of the freedom to contract, allowing individuals to engage in transactions with various parties concerning different goods or services, anytime and anywhere. However, this also presents challenges for the government to oversee each agreement, whether written or unwritten, to ensure its validity in accordance with the law.

Willstheorie is a fundamental pillar in contract law, focusing on the will or intent of the contracting parties. According to this theory, a contract is considered valid if there is mutual consent derived from the free will of both parties. This consent is typically expressed through clear oral or written declarations. However, with the advancement of technology and the emergence of electronic contracts, the application of Will Theory faces several significant challenges. Firstly, in electronic contracts, consent is often given through simple actions such as clicking an "Agree" or "Accept" button on a webpage or application. Legally, this action can be considered a manifestation of will, but the main challenge lies in whether this consent truly reflects the free will of the involved parties. Secondly, in electronic contracts, users often have no choice but to accept the terms set by the service provider, without the opportunity to

¹⁸ Selma Dwi Amalia et al., "Penerapan Asas Itikad Baik Dalam Kontrak Online Pada Layanan," no. December (2023).

¹⁹ Ronald Fadly Sopamena, "Kekuatan Hukum MoU Dari Segi Hukum Perjanjian," *Batulis Civil Law Review* 2, no. 1 (2021): 1, <https://doi.org/10.47268/ballrev.v2i1.451>.

negotiate. This raises questions about whether the consent given genuinely represents free will or is merely an administrative action required to continue using the service.

Wilstheorie emphasizes the importance of the intent or purpose of the contracting parties. In electronic contracts, this intent is often represented by automated actions such as filling out forms, clicking links, or using electronic signatures. These actions, though seemingly simple, can hold inherent complexities. For instance, someone may inadvertently click "Agree" without fully understanding the terms to which they are agreeing. This implies that the user's true intent may not be entirely reflected in such actions, particularly if the user does not fully comprehend the technology being utilized. The manifestation of will in traditional contracts is generally clear, either through written documents or verbal declarations. However, in electronic contracts, the manifestation of will can take various forms, such as digital signatures, checkboxes for consent, or even the use of biometric technology. Digital signatures, for example, have become a common tool for verifying the identity and intent of contracting parties. While this tool enhances security and efficiency, the challenge lies in ensuring that these signatures genuinely reflect the true will of the parties, especially when users may not fully understand the technology.

One of the biggest challenges in applying Will Theory in the digital realm is the presence of information asymmetry. In many cases, users do not fully understand the long and complex terms and conditions that often accompany electronic contracts. Users may sign or agree to a contract without actually reading or understanding its contents. This means that the consent given may not fully represent their will, ultimately raising doubts about the validity of such contracts within the framework of Will Theory. Technology acts as an intermediary in electronic contracts and can influence how the will is expressed and interpreted. Algorithms, Artificial Intelligence (AI), and other automated systems may affect how terms and conditions are presented to users, thereby influencing their decisions without their knowledge. In some cases, technology can be used to present information in a way that affects users' decisions, such as highlighting certain terms or obscuring others. This raises important questions about the extent to which the will expressed in electronic contracts is truly free from external influence.

In the context of electronic contracts, Wilstheorie requires a careful approach to ensure that digital manifestations of will genuinely reflect the lawful intent of the parties. Clicking "Agree" or "Buy" can be considered a valid expression of will, provided that the process is designed with user awareness and clarity of information in mind. To ensure that the will of both parties is truly present, the use of digital records, electronic signatures, and structured consent processes can provide legal certainty and prevent potential disputes. The technological aspects of electronic contracts require an understanding of how innovations such as blockchain, smart contracts, and cybersecurity impact the formation and enforcement of contracts, as well as the principle of good faith. These technologies introduce new dynamics into contract law that need to be explored in depth. Blockchain, smart contracts, and cybersecurity play a crucial role in shaping electronic contracts that are more secure and efficient. However, challenges in translating legal principles such as good faith and protecting against cyber threats require special attention to ensure that electronic contracts remain fair and reliable.

On the other hand, business actors tend to disregard the competence of consumers or the compliance of their goods and services with social and legal norms, as long as the transaction yields profits and does not harm any party. The Will Theory (Wilstheorie) in the context of online contracts refers to the principle that a contract is validly formed based on the clear and deliberate will of both parties to bind themselves in an agreement. The application of the principle of good faith in online contracts requires that both parties must mutually respect and comply with the obligations and rights agreed upon. This is crucial to ensure that online contracts are not only legally valid but also executed with full integrity and honesty, forming a moral and intellectual agreement that shapes a fair and sustainable social order²⁰.

4. Conclusions

An electronic contract is an agreement between parties using electronic systems. According to Wilstheorie, a standard contract is an agreement or contract based on a mutual understanding of the values and principles that underpin communal life with full integrity and honesty. This concept emphasizes the importance of moral and intellectual agreements in forming a fair and sustainable social order. All types of agreements included in electronic contracts must be executed in good faith, in accordance with Article 1338 paragraph 3 of the Indonesian Civil Code. Good faith is a principle that must be applied by the parties, both business actors and consumers, in fulfilling the contract's terms with mutual trust and a strong understanding. There are several stages in the application of good faith, starting from before the contract is formed, during the contract process, and after the contract has been executed. In the context of electronic contracts, the principle of good faith is crucial for maintaining a good and sustainable cooperative relationship for all parties involved in the contract.

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²⁰ Bernadeta Resti Nurhayati, "Penyalahgunaan Keadaan Sebagai Dasar Pembatalan Perjanjian," *Jurnal Komunikasi Hukum (JKH)* 5, no. 1 (2019): 66, <https://doi.org/10.23887/jkh.v5i1.16752>.

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