

## AUTO AGREEMENT AND CONSENT VALIDITY IN E-TRANSACTIONS UNDER INDONESIAN LAW

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**Abstract:** The digital transformation has introduced new forms of legal agreements, most notably through automatic consent mechanisms commonly seen in the form of “click to agree” on terms and conditions in digital services. Despite their prevalence, the extent to which these auto agreements comply with the principles of contract law remains underexplored. This study examines the validity of auto agreements within Indonesia’s digital contract framework, with particular focus on the requirements of contract formation under the Civil Code and the relevant provisions of the ITE Law, Government Regulation No. 71 of 2019, and the PDP Law. Using a normative juridical approach, the research finds that while auto agreements are typically standardized and non-negotiable, they can be legally enforceable if they meet the “mutual consent” requirement in Article 1320 of the Civil Code and adhere to statutory obligations on transparency and fairness. The PP PSTE and the amended ITE Law provide specific regulatory standards for standard clauses in digital contracts, while the PDP Law imposes strict conditions for explicit and informed consent in data processing clauses. The findings suggest that improving digital contract literacy, encouraging user engagement with key terms, and ensuring accessible dispute resolution mechanisms are essential to protect user rights. Within Indonesia’s legal system, auto agreements maintain their enforceability when aligned with the principles of equity, transparency, and informed consent.

**Keywords:** Digital Contract, Auto Agreement, Personal Data Protection

### 1. Introduction

Advances in information technology have fundamentally altered how legal agreements are established, particularly within digital environments. Traditional contracts, which previously required physical documentation and manual signatures, may now be executed through simple interactions such as clicking or swiping on electronic devices. The idea of consent has also changed, and now instantaneous and automatic approval has taken the place of the long, drawn-out negotiation process that is typical of traditional contracts. In traditional contract law, there are separate steps for making an offer, considering it, and accepting it. These steps are done through careful thought. In the digital world, however, this whole process can happen with just one click.

In the digital age, developers and service providers are most interested in being efficient. Applications and platforms are in a fierce race to make processes easier, so that users can

quickly access services without any technical or administrative problems. This development has resulted in the widespread adoption of "*click to agree*" mechanisms, commonly referred to as auto agreements, across nearly every category of digital products spanning social media platforms through to financial service providers. Indonesia's e-commerce sector has experienced remarkable expansion, fundamentally reshaping seller buyer dynamics by enabling rapid, streamlined business transactions through single-click interactions.<sup>1</sup> Such expedited processes reflect contemporary societal preferences for convenience and mobility within daily routines.

The prevalence of digital consent protocols, typically manifested through 'agree' buttons, has established these mechanisms as integral components of modern digital infrastructure. These procedures appear consistently across diverse technological platforms, including mobile applications, web-based services, and various online service providers. Each time a user wishes to advance to the subsequent stage such as during account creation, accessing specific features, or completing transactions they encounter **terms and conditions** documents that must be agreed to beforehand. These documents, which often have important legal clauses, are usually written in long formats full of technical terms.

But these kinds of clauses can sometimes use language that is hard to understand. People often agree to the terms of service agreements and privacy policies without fully understanding their rights because the language is intentionally complicated. According to research by Yerby and Vaughn, in the United States there are currently no regulations that govern how terms of service, acceptable use policies, or privacy policies should be drafted to ensure they are easily understood.<sup>2</sup> Although this study focuses on the United States, a similar situation could also occur in Indonesia if there is no oversight to ensure the transparency and clarity of digital documents. As a result, the consent process tends to become merely an administrative formality, as most users do not actually read or comprehend the contents of the documents they agree to, due to the presentation of information in rigid legal language, non-intuitive structures, and using words from other languages that most people do not know. On the other hand, users often scroll straight to the bottom of the page and click the '*agree*' button without reading the whole agreement because they need the service right away.

This situation brings up important legal issues in Indonesia's contract law and protection of personal data. In the practice of various digital services, consent given through auto-click mechanisms is technically treated as a form of legal agreement between the user

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<sup>1</sup> Rudi Yacub dan Wahyu Mustajab, "Analisis Pengaruh Pemasaran Digital (Digital Marketing) terhadap Brand Awareness pada E-Commerce," *Jurnal Manajerial* 19 no. 2 (2020): 198-199: <https://doi.org/10.17509/manajerial.v19i2.24275>.

<sup>2</sup> Jonathan Yerby dan Ian Vaughn, "Deliberately Confusing Language in Terms of Service and Privacy Policy Agreements." *Issues in Information Systems* 23 no. 2 (2022): 138: [https://doi.org/10.48009/2\\_iis.2022.112](https://doi.org/10.48009/2_iis.2022.112).

and the service provider. Such mechanisms are deemed to satisfy the element of mutual consent in civil law relationships. However, upon closer examination, doubts arise regarding the validity of such consent when viewed in light of Article 1320 of the Indonesian Civil Code (KUHPerduta), which requires an agreement to be entered into freely and consciously by both parties. Instant consent in a digital context often does not involve adequate consideration or understanding on the part of the user. In many cases, users agree to terms and conditions not because they have read and comprehended them, but merely to gain quick access to the service. This situation indicates that the elements of free will and awareness, which should inherently be present in an agreement, become blurred and legally weakened.

The ongoing evolution of digital services has positioned electronic consent mechanisms as fundamental elements within user-provider interactions. Indonesia's Electronic Information and Transactions Law (ITE Law) serves as the foundational legal framework establishing the validity of electronic contractual arrangements. Law No. 27 of 2022 on Personal Data Protection (PDP Law) has made it harder to get consent for processing personal data. These two rules show that the state is trying to make sure that positive law is in line with the needs of the digital society. Nevertheless, the validity of consent mechanisms requiring minimal active user engagement remains a subject of ongoing legal discourse.

While both the ITE Law and the PDP Law have established the legitimacy of electronic contracts and codified consent principles for personal data processing, questions surrounding their practical application continue to generate scholarly debate. This is especially clear in automatic consent mechanisms like clickwrap and browsewrap agreements, which don't require users to do much. Consent given solely by clicking the 'agree' button without a thorough comprehension of the agreement's terms calls into question the legitimacy of such contracts, particularly when involving parties who lack legal capacity.<sup>3</sup> Despite the principle of freedom of contract enshrined in the Indonesian Civil Code, the acknowledgment of electronic contracts under the ITE Law, and the consent provisions in the PDP Law, a legal void remains in the regulation of automatic forms of consent, especially regarding the delineation of boundaries and the legitimacy of standard contracts in digital transactions.

The impetus for this research stems from persistent gaps in academic and regulatory discourse concerning the juridical validity of automatic consent within digital contractual arrangements under Indonesian law. While previous studies have discussed electronic transactions and standard clauses in general, few have specifically examined the legal standing and validity of such consent in light of the general principles of contract formation, as well as the regulatory and educational approaches necessary to ensure fairness,

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<sup>3</sup> Hadi Wijaya & Wiwin Yulianingsih, "Pencantuman Klausula Eksonerasi dalam Syarat dan Ketentuan Aplikasi Trading Efek," *Legal Spirit* 8 no. 3 (2024): 526: <https://publishing-widyagama.ac.id/ejournal-v2/index.php/jhls/article/view/5524>

transparency, and public comprehension. Accordingly, this study addresses two central legal questions:

1. How the legal standing and validity of automatic consent in digital contracts can be assessed under Indonesian civil law principles and within the current legal framework?
2. How regulatory and educational strategies can be designed to promote equitable, transparent, and easily understood digital consent practices?

## **2. Method**

This research adopts a normative or doctrinal legal approach, utilizing analytical techniques that examine law as systematically codified norms derived from legislative instruments, established legal principles, and jurisprudential doctrines. Legal interpretation in this study applies systematic interpretation to analyze the coherence between statutory provisions, grammatical interpretation to clarify the meaning of key contractual terms, and teleological interpretation to assess the legislative purpose underlying digital contract regulations. The primary objective is to evaluate the juridical legitimacy of automatic consent mechanisms auto agreements within digital contractual frameworks under Indonesian jurisprudence.

The methodological framework incorporates both statutory and conceptual approaches. Through the statutory approach, this study scrutinizes pertinent provisions within the Indonesian Civil Code (KUHPerdata), with particular emphasis on Articles 1320 and 1338, alongside complementary regulatory instruments including ITE Law and its subsequent amendments, Government Regulation No. 71 of 2019 regarding the Implementation of Electronic Systems and Transactions (PP PSTE), Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, and PDP Law. Meanwhile, the conceptual approach is used to understand the meaning and scope of automatic consent within the context of contract law and electronic agreements. This study is entirely focused on written legal norms without the use of empirical data, aiming to examine the extent to which Indonesia's positive law can address the challenges to the validity of digital contracts formed automatically.

## **3. Analysis or Discussion**

### **A. A Legal Review Of The Validity Of Auto Agreements In Digital Contracts**

Digital technology has made it possible to make legal agreements in new ways, such as when making contracts. You can now agree to terms and conditions on a number of digital platforms with just one click of the "agree" button. There is no need for negotiation or conversation between the parties. Automatic consent, also called auto agreement, is a common way to do things in many electronic transactions, such as signing up for an account,



using an application, or getting access to certain digital services. The increasing prevalence of auto agreement mechanisms, while offering enhanced convenience and efficiency, simultaneously generates significant concerns regarding their compliance with foundational principles of Indonesian contract law. Particularly pertinent is whether such consent genuinely demonstrates the requisite elements of free will, conscious awareness, and unambiguous intent that constitute the essential components of legally binding agreements.

The legal requirements for a valid agreement under Indonesian law are stipulated in Article 1320 of the Civil Code, which sets out the necessity of consent, legal capacity, a specific object, and a lawful cause. Consent holds a crucial position as it reflects that the parties to the agreement genuinely understand and consciously agree to its contents. In the context of digital contracts employing automatic consent mechanisms, it is necessary to examine each of these elements to determine whether such agreements truly comply with the applicable legal provisions. The following discussion will systematically analyse each element of Article 1320 of the Civil Code, beginning with the element of consent, and assess its alignment with the practice of auto agreement, which has now become commonplace in electronic transactions.

The validity of an agreement under Article 1320 of the Indonesian Civil Code, particularly the element of “consent,” requires more than just a simple expression of agreement. It also demands the genuine free will of the parties involved. An agreement is considered valid only when the parties fully understand and agree to the essential terms without coercion, fraud, or mistake.<sup>4</sup> Valid consent necessitates the absence of vitiating factors such as mistake, duress, or fraudulent misrepresentation, and may manifest through express declarations (whether documented or verbal) or through implied conduct demonstrating clear intention. This understanding assumes particular relevance within e-commerce contexts, where contractual relationships frequently develop through electronic means and implicit behavioral indicators.<sup>5</sup> In this context, consent encompasses more than mere technical indicators or expressions of agreement; it must also signify the free will, awareness, and comprehension of each party concerning the terms and implications of the contract to which they have consented.

In the digital context, consent often originates unilaterally through auto click mechanisms or instant approval by clicking the “agree” button on documents prepared entirely by the service provider. At this point, doubts arise regarding the validity of the consent element in digital contracts, as users are not given a genuine opportunity to fully understand the contents of the agreement, let alone negotiate them.

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<sup>4</sup> Nanda Amalia. Hukum Perikatan. (Nanggroe Aceh Darussalam: Unimal Press, 2012), 22. <https://repository.unimal.ac.id/1148/1/%5BNanda%20Amalia%5D%20Hukum%20Perikatan.pdf>

<sup>5</sup> Syamsiah, Desi. “Kajian terkait keabsahan perjanjian e-commerce bila ditinjau dari Pasal 1320 KUHPerdata tentang syarat sah perjanjian”. *Jurnal Inovasi Penelitian* 2 no. 1 (2021): 329. <https://doi.org/10.47492/jip.v2i1.1443>.

Electronic contracts using clickwrap mechanisms often equated in practice with auto agreements are considered valid when users take explicit actions, such as clicking the “agree” button to accept the displayed terms and conditions. On some platforms, consent is also deemed to occur passively, for instance through the continued use of a service without an explicit click or confirmation,<sup>6</sup> although this approach raises legal debates concerning the user’s awareness and free will.

Under Article 50 of Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (**PP 80/2019**), the preparation of terms and conditions by business actors in the digital context is regulated in Article 13, which allows the establishment of such terms and conditions provided that the information delivered to consumers is truthful, clear, and honest, and supported by valid data or documents. Furthermore, Article 13(2) emphasizes that this information must meet the elements of truth and accuracy, as well as the accessibility of goods or services. PP 80/2019 further provides that the validity of electronic contracts does not solely depend on the user’s affirmative action, but also on the business actor’s obligation to convey both the technical mechanisms and the substance of the terms and conditions transparently. Provisions within Articles 39(3) and 44 establish that electronic consent achieves validity exclusively when acceptance occurs following the provision of clearly articulated information to the consenting party.

Consequently, auto agreement mechanisms maintain their legal legitimacy only where service providers can demonstrate that contractual terms have been presented with complete transparency and remain comprehensible to end users. Within this framework, automatic consent retains the potential to fulfill the agreement element specified in Article 1320 of the Civil Code, contingent upon transparent information dissemination and the user’s deliberate execution of affirmative consent actions.

The enforceability of contractual arrangements depends fundamentally upon both the consent element and the legal standing of contracting parties, as delineated within Articles 1320 and 1330 of the Civil Code. Legal capacity, as a requirement for a valid agreement, refers to the ability of a legal subject whether an individual or a legal entity to engage in legal acts that can produce legal consequences, including entering into a legally binding agreement.<sup>7</sup> In the practice of digital application usage, it is not uncommon for services to be accepted by minors without any verification of capacity or age. This situation poses a potential violation of the legal capacity requirement, as agreements made by individuals who have not reached the age of majority are only valid if accompanied or approved by a parent or legal guardian. Digital contracts entered into independently by minors may be classified

<sup>6</sup> Alicia Walangitang. “Kajian hukum atas kontrak baku elektronik dikaitkan dengan sahnya perjanjian dalam KUHPerdata”. *Lex Privatum* 8 no.2 (2020): 49. <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/29781>

<sup>7</sup> Lukman Santoso Az. Aspek Hukum Perjanjian: Kajian Komprehensif Teori dan Perkembangannya, (Yogyakarta: Penebar Media Pustaka, 2019), 52. [https://sar.ac.id/stmik\\_ebook/prog\\_file\\_file/293832.pdf](https://sar.ac.id/stmik_ebook/prog_file_file/293832.pdf)

as voidable agreements and can be annulled if proven to cause harm or create an imbalance of rights and obligations.

Data from Statistics Indonesia (BPS) for 2021–2022 indicates a high level of internet usage among children aged 5 to 18, which increases the likelihood of their involvement in digital transactions or interactions.<sup>8</sup> Within contractual jurisprudence, this presents a distinctive legal challenge given that minors lack the requisite legal standing to enter into binding agreements independently. Such legal incapacity renders children particularly vulnerable to exploitation while simultaneously positioning them as potential perpetrators of misconduct. A notable illustration emerged in 2020 when authorities documented cases involving adolescents aged 15 and 16 who orchestrated online fraudulent schemes targeting numerous victims, including prominent public figures.<sup>9</sup> This incident highlights the substantial involvement of minors within digital environments and emphasizes the critical importance of upholding legal capacity principles in digital contractual arrangements to prevent agreements that may prove detrimental or legally invalid. The Indonesian Civil Code, through Articles 1320 and 1330, establishes that agreements entered into by individuals lacking legal capacity remain subject to annulment. Consequently, digital agreements independently executed by minors possess no binding legal force.

The third requirement for a valid agreement under Article 1320 of the Indonesian Civil Code is the presence of a specific object (*een bepaald onderwerp*), meaning the subject matter of the contract must be clear, identifiable, and not prohibited by law. A contract may be deemed invalid if it fails to clearly define the object being agreed upon, as this element is essential in determining the legal validity of an agreement<sup>10</sup>. The establishment of a determinate object remains essential for enabling parties to discharge their respective contractual obligations effectively. However, the object does not need to be described in full detail at the beginning of the agreement, as long as its type is clear.<sup>11</sup> Consequently, a digital contract that permits access to a specific service via a “click to agree” mechanism is deemed to fulfill the object requirement, as long as the service is identifiable and holds legal and economic significance.

The fourth prerequisite involves a lawful cause (*een geoorloofde oorzaak*), stipulating that the agreement's underlying purpose must not contravene legal provisions, moral

<sup>8</sup> Statistics Indonesia (BPS), Percentage of Population Aged 5 Years and Over Who Have Accessed the Internet in the Last 3 Months by Province and Age Group, accessed July 31, 2025, <https://www.bps.go.id/id/statistics-table/2/NDIwIzI=/persentase-penduduk-usia-5-tahun-ke-atas-yang-pernah-mengakses-internet-dalam-3-bulan-terakhir-menurut-provinsi-dan-kelompok-umur.html>.

<sup>9</sup> Susilowati Suparto dan Muhammad Rifqi Rafi Drajat. “Penguatan Perlindungan Hukum Konsumen Anak Sebagai Pengguna Teknologi Informasi di Era Digital.” *Acta Diurnala: Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Universitas Padjadjaran*, 7 no 2 (2024), 258. <https://doi.org/10.23920/acta.v7i2.1707>

<sup>10</sup> Joko Sriwidodo dan Kristiawanto. *Memahami Hukum Perikatan*. (Yogyakarta: Kepel, 2021), 118. <https://repo.jayabaya.ac.id/13/2/Memahami%20Hukum%20Perikatan.pdf>

<sup>11</sup> Agus Yudha Hernoko. “Hukum perjanjian: Asas proporsionalitas dalam kontrak komersial”. *Jurnal Hukum Peradilan*, 5 no 3 (2016): 457. <https://doi.org/10.25216/jhp.5.3.2016>

standards, or public order principles. Agreements formed with deceptive intent, malicious purposes, or unlawful objectives become legally void regardless of whether other contractual requirements have been satisfied. Within digital contexts, such violations may manifest when application terms and conditions facilitate covert or disguised personal data collection practices, thereby transgressing transparency obligations established under personal data protection legislation. Subekti articulates that agreements founded upon false or prohibited causes are considered legally non-existent from their inception<sup>12</sup>. Therefore, the validity of a digital contract also heavily depends on the legality of its purpose and the use of the information stipulated therein. When the formal requirements for a valid contract under Article 1320 of the Civil Code seem to be met in an auto agreement mechanism, the next important question is whether the agreement's substance and structure follow the principle of freedom of contract as stated in Article 1338 of the Civil Code.

The principle of freedom of contract, as stipulated in Article 1338(1) of the Indonesian Civil Code, grants parties the liberty to create agreements and determine their content, form, and implementation, provided they do not contravene statutory provisions, public order, or morality. The principle of freedom of contract indeed underlies the existence of standard form contracts in business to consumer relationships; however, its application must be limited when there is an imbalance of bargaining power to prevent the contract terms from solely favoring businesses at the expense of consumers.<sup>13</sup> In current digital transaction practices, standard form contracts appear to be increasingly dominant. Typically, the terms of the contract are pre-drafted unilaterally by the service provider, while the user is only given the option to accept all provisions without the opportunity to negotiate any of its contents. Such a pattern tends to reflect a take it or leave it approach, which in substance narrows the scope of contractual freedom and places the user in a legally passive position.<sup>14</sup>

Although Article 1338 of the Indonesian Civil Code provides the legal basis for the principle of Freedom of contract means that if one party has more power than the other in a contract, it could be unfair. Thus, the freedom to make contracts must be limited in some ways to protect the weaker party.<sup>15</sup> Hernoko agrees with this and says that freedom of contract is often only a nominal concept in modern practice, especially in the digital industry where standard form contracts are so common. Contracts are offered on a mass scale without any room for negotiation, thereby creating unequal bargaining positions and

<sup>12</sup> Subekti. *Hukum Perjanjian*. (Jakarta: Intermasa, 1979), 19.

<https://www.scribd.com/doc/180875492/Hukum-Perjanjian>

<sup>13</sup> Dedi Harianto. "Asas Kebebasan Berkontrak: Problematika Penerapannya dalam Kontrak Baku antara Konsumen dengan Pelaku Usaha." *Jurnal Hukum Samudra Keadilan* 11 no. 2 (2016): 145. <https://ejurnalunsam.id/index.php/jhsk/article/download/33/14/>

<sup>14</sup> Fransiska Novita Eleanora dan Aliya Sandra Dewi. "Pelaksanaan perjanjian baku dan akibat hukumnya bagi konsumen". *Jurnal Mercatoria* 15 no. 1 (2022): 20. <https://doi.org/10.31289/mercatoria.v15i1.6812>

<sup>15</sup> Melisa Febriani. "Studi hukum kritis: Pembatasan asas kebebasan berkontrak dalam perjanjian yang posisi para pihaknya tidak seimbang", *Jurnal Hukum Prioris* 8 no. 2 (2020): 255. <https://doi.org/10.25105/prio.v8i2.14983>



fostering a take it or leave it model<sup>16</sup>. The onesided contractual pattern described by Hernoko not only reflects bargaining power disparities but is also evident in the increasingly common forms of digital contracts. This aligns with the findings of Nilam Andalia Kurniasari in her thesis, which categorises types of electronic contracts, including based on the manner in which users provide consent, such as clickwrap and shrinkwrap agreements.

Electronic contracts can be categorised into three types: first, based on the medium of communication, such as email and web-based platforms; second, based on the object of the agreement, namely goods, services, or digital services; and third, based on the mode of acceptance. In the last category, two dominant models are recognised: clickwrap contracts and shrinkwrap contracts. In a clickwrap contract, the user is deemed to have agreed to the entire content of the contract by clicking an "*I Agree*" button or its equivalent, whereas in a shrinkwrap contract, agreement is considered to have occurred when the user opens or breaks the seal of the software package. Both forms essentially illustrate that freedom of contract in the digital sphere has been simplified into mere technical actions, without substantive interaction with the terms of the contract.<sup>17</sup>

In digital contracts, especially the clickwrap model, the moment of acceptance is the most important part of making the agreement. In this kind of contract, the offer happens when the terms of the contract are shown on the user's screen, and acceptance happens when the user clicks the "*I Agree*" or "*I Accept*" button. Nieuwenhuis explains that this approach is based on the theory of acceptance in contract law, which includes the declaration theory, dispatch theory, reception theory, and cognition theory.

The relationship between auto agreement and clickwrap contracts is closely linked to the current patterns of digital access services. A clickwrap contract is one of the most commonly used models of electronic contracts, in which users are required to consent to the terms and conditions by clicking an "*I Agree*" button. In practice, even when the document is not read in full by the user, the act of clicking is still automatically regarded as valid consent. This has given rise to the term auto agreement, referring to situations where agreement is deemed to occur without the user's fully conscious and active engagement.

Following the examination of the Indonesian Civil Code, it becomes essential to analyze how Indonesian legislation specifically addresses standard clauses within electronic contractual frameworks. Article 47(2) of PP PSTE mandates that electronic agreements incorporating standard clauses must conform to the regulatory provisions governing such clauses as established within prevailing legal instruments. Furthermore, Article 47(3) requires that an electronic contract must at least include essential elements, such as the identity of the parties, the object and its specifications, the price and costs, transaction requirements, and provisions regarding cancellation and product returns.

<sup>16</sup> Agus Yudha Hernoko. "Hukum perjanjian: Asas proporsionalitas dalam kontrak komersial", 461.

<sup>17</sup> Nilam Andalia Kurniasari, "Kontrak Elektronik dalam Hukum Kontrak Indonesia" (Tesis Magister, Universitas Airlangga, 2005), 19-22. <https://repository.unair.ac.id/35913/>.

These provisions demonstrate that although digital contracts often adopt standardised models offered on a mass scale, there remains a legal obligation to ensure transparency and the protection of consumer rights. This obligation is reinforced by Article 48, which requires business actors to provide complete, clear, and accurate information regarding contractual terms, the producer, and the products offered. Business actors are also required to clarify contractual offers or advertisements and to provide consumers with a time limit to return goods or cancel services if they do not conform to the agreement or if hidden defects are found. The regulation even expressly prohibits business actors from imposing charges on consumers without a valid contractual basis.

Furthermore, Article 49 of the PP PSTE stipulates that an electronic transaction is deemed valid and binding once the parties have reached an agreement. This reaffirms the centrality of the element of “*consent*” as a requirement for the validity of contracts under Indonesian law. Accordingly, digital contracts containing standard clauses must still comply with the principles of contractual validity, information transparency, and the protection of the weaker party’s interests.

The regulation on standard clauses in the international context has also been incorporated into Law No. 1 of 2024, which serves as the second amendment to Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law). Interestingly, this provision was absent in the earlier versions of the ITE Law both the original 2008 enactment and its 2016 amendment since it had previously been governed under the PP PSTE. In the newly introduced Article 18A of the ITE Law, standard clauses are explicitly regulated in the context of cross-border electronic contracts that employ standardised terms prepared by the Electronic System Provider.

The provision affirms that Indonesian law shall apply if the service user is based in Indonesia, the contract is executed within Indonesian territory, or the electronic system provider has a place of business in Indonesia. This demonstrates that, despite the digital nature of the transaction and the involvement of foreign parties, national legal protection for Indonesian users remains firmly guaranteed.

Furthermore, Article 18A(2) sets out an essential principle, standard clauses in electronic contracts must be presented in plain, clear, and easily comprehensible language. The contract must also be drafted in accordance with the principles of good faith and transparency. This reflects the national legal awareness of the importance of fostering trust and fairness in digital transactions, while addressing the challenges posed by overly technical and often user-unfriendly contractual practices.

Standard clauses in electronic contracts, particularly those containing provisions on the processing of personal data, are inherently linked to the personal data protection framework set forth in PDP Law. In many instances, the terms and conditions of digital services include authorisation for the platform provider to access, use, or share a user’s personal data. Accordingly, any electronic agreement containing such clauses must comply with the

principles governing the lawful processing of personal data. Article 20(1) and (2)(a) of the PDP Law stipulates that the processing of personal data by a data controller must be based on a valid legal ground, one of which is the explicit consent of the data subject for a specified purpose. Such consent must be given knowingly and cannot be deemed valid solely by virtue of the user accessing or using the service. Furthermore, Article 22(1) and (2) provides that consent may be granted in written or recorded form, either electronically or non-electronically, both of which hold equal legal standing.

Article 22(4) underscores the importance of clarity and accessibility in the format of consent. Any request for consent must be presented in plain and clear language, distinctly separated for each specific purpose, and made easily accessible to the data subject. Should these requirements not be met, Article 22(5) expressly stipulates that such consent shall be null and void by operation of law. This provision is further reinforced by Article 23, which states that any contractual clause requesting the processing of personal data without the data subject's valid and explicit consent has no binding legal force.

Consequently, any clause in an electronic contract that provides for the automatic processing of personal data without the user's explicit, active, and clearly informed consent may be deemed null and void pursuant to Article 22(5) and Article 23 of the PDP Law. These provisions firmly establish that consent lacking the requisite elements of validity holds no binding effect, even if contained within digitally agreed terms and conditions.

## **B. Preventive Strategies to Safeguard User Rights in Digital Contracts**

Considering the potential for future disputes, a preventive approach is a wiser step to ensure clarity and fairness in digital contracts. In this context, the principle of protecting the weaker party in contract law serves as a crucial foundation, given that consumers often find themselves in an unequal position compared to business actors. Achmad Zulfa Andikatama and Bambang Eko Turisno emphasize that addressing the challenges of the digital market requires an adaptive legal approach, including stronger data protection, improved product quality, and enhanced consumer awareness and education.<sup>18</sup>

According to Philipus M. Hadjon, the principle of legal protection is always related to issues of power, whether governmental power or economic power. In the realm of economic power, legal protection is intended to safeguard economically weaker parties against stronger parties, such as the protection of workers against employers.<sup>19</sup> In contract law, this principle is realized through the balance of rights and obligations, transparency, and good faith, in order to prevent the abuse of dominant positions and practices detrimental to the

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<sup>18</sup> Achmad Zulfa Andikatama dan Bambang Eko Turisno, "Consumer Protection Law in the Digital Era," *International Journal of Social Science and Human Research* 7, no. 7 (2024): 4556, <https://doi.org/10.47191/ijsshr/v7-i07-03>.

<sup>19</sup> Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, (Jakarta: Sinar Grafika, .2009), 8.

weaker party. Awareness of bargaining power imbalances, limited legal literacy, and the use of non-negotiable standard clauses underlines the necessity for strict regulation, effective dispute resolution mechanisms, and supervision by competent authorities to ensure that contracts operate in a fair and proportionate manner.

Building upon this, the principle of protecting the weaker party in contract law places the balance of rights and obligations as a central pillar in creating justice and legal certainty. This principle arises from the awareness that disparities in bargaining positions, limited legal literacy, and the use of non-negotiable standard clauses often result in harm to structurally weaker parties. Through the principles of freedom of contract, good faith, and transparency, the law seeks to ensure that both parties receive equal protection, including through strict regulations, effective dispute resolution mechanisms, and supervision by competent authorities.<sup>20</sup>

The application of this principle in the realm of digital contracts requires concrete measures that can be directly experienced by users. One such measure is ensuring the availability of clear and easily accessible communication mechanisms as a manifestation of transparency and service provider accountability. Without adequate communication channels, the weaker party risks being unable to voice objections or resolve disputes effectively, thereby undermining the legal protection to which they are entitled.

One of the initial and crucial steps is to ensure that any digital application or platform provides a responsive telephone line and customer complaint center. If such facilities are unavailable or difficult to access, consumers should reconsider proceeding with the electronic transaction. This requirement aligns with Article 37 of the PP PSTE, which obliges service providers to establish easily accessible complaint channels. This serves as an early indicator of whether a digital service can be considered trustworthy.

In addition to ensuring the availability of complaint channels, cultivating the habit of reading terms and conditions is equally important, even though it may often feel tedious. If the document appears excessively long, users are advised to focus on sections detailing the rights and obligations of each party and the dispute resolution mechanism. These two components form the core of a digital contract and will have a direct impact in the event of a dispute. By understanding these key points, users can better assess whether a digital agreement is fair and worthy of acceptance.

Ultimately, when faced with digital services that appear complex or confusing, the most prudent course of action is to contact the customer service of the application or platform provider directly. In practice, particularly in the realm of digital banking, it is not uncommon for users to visit branch offices in person or contact customer service representatives to clarify the contents of the terms and conditions before proceeding with any transaction.

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<sup>20</sup> Faiqa Syifa Irawan, "Keseimbangan Hak dan Kewajiban Para Pihak dalam Hukum Kontrak". *Jurnal Pemuliaan Keadilan* 2 no. 2. (2025), 55-56. <https://doi.org/10.62383/pk.v2i2.586>, <https://ejournal.appihi.or.id/index.php/pk>



A similar approach applies in the context of online lending, where users are advised to actively utilise chat features or customer service channels to clarify crucial points such as interest rates, late payment penalties, or repayment schemes. When communication is conducted via chat, screenshots of the conversation should be retained as evidence in case of any future breach of agreement. In contrast, if communication takes place over the phone, users should seek prior consent before making any recording. Legally, the recording of a conversation by one of the parties can be admissible as evidence; however, in order to maintain ethical standards and avoid potential civil disputes such as claims of privacy violations requesting consent remains a prudent measure.

Provisions on interception are set out under Article 31 of ITE Law, which prohibits the interception of electronic information without proper authority, except when conducted by law enforcement officials for the purposes of law enforcement. Therefore, although recordings made by a party directly involved in the communication may still be legally recognised, maintaining transparency through prior consent is important from both a legal and ethical standpoint. These simple preventive measures can strengthen the legal position of users while simultaneously fostering a safer and more responsible culture of digital transactions.

### 3. Conclusion

- A. An auto agreement arrangement is not inherently invalid. As long as its mechanism fulfils the legal requirements for a valid contract under Article 1320 of the Indonesian Civil Code (KUHPer) namely the existence of free and informed consent, the legal capacity of the parties, a clearly defined object, and a lawful purpose it may be deemed valid. Furthermore, the principle of freedom of contract under Article 1338 provides space for standard form agreements, provided they do not contain provisions that contravene the law, public order, or morality. Electronic regulations (ITE Law), such as PP PSTE and PP 71/2019, further reinforce the legality of click-wrap contracts and standard clauses, as long as information is conveyed transparently and comprehensively, including provisions relating to personal data. The PDP Law also stipulates that any clause concerning the processing of personal data that lacks explicit consent from the data subject is void ipso jure. Accordingly, an auto agreement remains valid under Indonesian law if it fully complies with all applicable legal provisions on contracts and data protection.
- B. In addition, public education on user rights in digital contracts must be promoted at the very least by encouraging the habit of reviewing sections on rights and obligations, or contacting customer service directly if the terms and conditions appear unclear. Digital platforms must also provide responsive channels, such as

telephone numbers or complaint centres, in accordance with Article 37 of the PP PSTE. If a platform is unresponsive, users should consider refraining from proceeding with the transaction. By adopting such measures, a more prudent and secure digital ecosystem can be established one that prioritises clarity, transparency, and consumer protection before disputes arise. However, current Indonesian regulations still leave several gaps in safeguarding digital consent. The absence of binding guidelines on the format and presentation of standard clauses allows platforms significant discretion, which may disadvantage less informed users. Likewise, enforcement mechanisms for holding platforms accountable remain limited, with complaint resolution processes often slow or ineffective. Therefore, future legal reform should prioritise the adoption of mandatory standards for consent presentation, clearer regulatory definitions of explicit consent under the PDP Law, and the strengthening of supervisory and enforcement frameworks. These measures would not only improve user protection but also enhance trust in Indonesia's rapidly evolving digital economy.

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