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The Validity of Digital Agreements between Marketplace Platforms and Sellers in the Perspective of the Principle of Consensus

Radhita Aurelia[1], Siti Malikhatun Badriyah[2]

[1,2] Master of Law, Faculty of Law, Universitas Diponegoro

ABSTRACT: The rapid advancement of information technology has significantly transformed the nature and mechanism of contracts, particularly through digital agreements on marketplace platforms. Digital agreements between marketplace operators and sellers no longer require face-to-face interactions but are instead established through electronic consent, such as clicks or digital signatures. This phenomenon raises questions about the validity of such agreements from the perspective of the consensualism principle, which serves as the foundation of contract law in Indonesia. This study aims to analyze the legal validity of digital contracts based on the requirements stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata) and to examine how the principle of consensualism is applied in electronic transactions. The research employs a normative juridical approach, focusing on the analysis of relevant legislation such as Law No. 11 of 2008 concerning Electronic Information and Transactions and its amendments. The findings reveal that digital contracts possess full legal force as long as they fulfill the elements of consent, capacity, a specific object, and a lawful cause. The principle of consensualism remains applicable since electronic agreements are considered valid as long as they are legally compliant and digitally verifiable. Therefore, digital contracts between marketplace platforms and sellers are deemed valid and legally binding, reflecting both fairness and legal certainty in the digital era.

KEYWORDS: Digital Contract, Marketplace, Principle of Consensualism.

I. INTRODUCTION

The development of information and communication technology in the digital era has brought about a fundamental transformation in commercial transactions, particularly in online spaces. Transactions that previously required physical meetings, handwritten signatures, and manual document exchanges have now evolved into fast, practical, and platform-based electronic interactions. Within this context, the phenomenon of digital agreements has emerged, referring to contracts created and executed through digital media between marketplace platforms and sellers, presenting new challenges for traditional contract law institutions (Latifa & Suryono, 2025).

On a normative level, the principle of consensualism remains one of the main foundations of contract law in Indonesia. This principle states that a contractual obligation is deemed valid once an agreement between the contracting parties has been reached, without the need for specific formalities as an absolute requirement (Dapung & Lubis, 2020). The Civil Code (KUHPerdata) in Article 1320 stipulates four essential elements for a valid agreement: (1) mutual consent of the parties, (2) legal capacity of the parties, (3) a specific object, and (4) a lawful cause (Subekti, 2002 in Dapung & Lubis, 2020). Therefore, under traditional Indonesian contract law, the concept of consensus or mutual assent (consensus ad idem) is the core of contract formation.

However, the rise of digital transactions, particularly those conducted through electronic platforms, shows that the practice of making agreements is no longer confined to face-to-face negotiations, physical signatures, or conventional written documents. For instance, consent given by clicking an “Agree” button, using an electronic signature, or accepting terms and conditions through a standard form contract (click-wrap) has become commonplace (Subarkah & Gravionika, 2024). This situation raises questions about the extent to which the consensualism principle still operates effectively within the framework of traditional civil law. Research indicates that digitalization has altered aspects of time, place, medium, and mechanisms of expressing consent, thereby creating challenges for legal certainty and contractual fairness (Latifa & Suryono, 2025).

In the specific context of marketplace transactions, contractual relationships between platforms as electronic system providers and sellers who may be individuals or micro, small, and medium enterprises (MSMEs) are often established through a single click of acceptance or unilateral consent to the platform’s terms and conditions. Nonetheless, such consent often occurs without active negotiation, as sellers merely accept the predetermined terms set by the platform. This raises questions about whether a truly balanced negotiation has taken place and whether such consent fulfills the requirement of free will as mandated by the principle of consensualism (Umar, 2020).

Furthermore, digital agreements frequently take the form of standard form contracts, where essential terms are determined unilaterally by the platform provider without ensuring that the seller fully comprehends the legal implications of such consent. This practice risks eroding the function of the consensualism principle, which requires the parties' conscious declaration of intent to be bound, and may create an imbalance in bargaining power that could affect contractual fairness (Suhadi, 2017).

Indonesia's legal framework has responded to these technological developments through the enactment of the Electronic Information and Transactions Law (UU ITE), which recognizes electronic documents and signatures as valid evidence in digital transactions. Article 18 paragraph (1) of the UU ITE explicitly states that "Electronic information and/or electronic documents created, sent, received, or stored through electronic means have legal force, as long as they can be proven legally" (Kertha Semaya, 2024). This provision indicates that the legal system has begun to accommodate the validity of digital agreements.

Nevertheless, even with this legal framework in place, studies reveal that the implementation of consensualism in digital transactions remains conceptually and practically uncertain. Questions persist about how electronic consent expressed merely through clicking or passive acceptance of terms without negotiation can be recognized as true agreement in the sense of consensualism (Latifa & Suryono, 2025). Other challenges include proof of consent, identification of parties, their legal capacity (especially for individual or micro-entrepreneurs), and transparency regarding the object and lawful cause of the agreement when such interactions occur online.

Within digital marketplace ecosystems, platforms often occupy a dominant position by unilaterally determining internal rules and contractual terms that apply to sellers. Platforms may modify terms unilaterally, impose penalties, or require the use of additional services that entail supplementary contractual obligations not fully understood by sellers. This situation provokes debate regarding whether freedom of choice and awareness of consent are adequately preserved under the consensualism principle, and consequently, whether such digital agreements can be deemed valid (Latifa & Suryono, 2025).

From the perspective of legal certainty and contractual fairness, examining the validity of digital agreements between marketplace platforms and sellers within the framework of the consensualism principle is essential. This analysis is particularly significant given the rapid growth of the digital economy and the increasing prevalence of cross-border, cross-device, and multi-party transactions facilitated by digital platforms. If the validity of digital agreements is questioned due to inadequate consent or lack of genuine free will the resulting legal risks for both sellers and consumers become substantial, undermining legal certainty for both parties.

Empirical studies and surveys have found that clickwrap and browsewrap agreements in Indonesian e-commerce still face regulatory challenges when viewed through the lens of consensualism, as consent is not always explicit and parties often do not read the full terms before agreeing (Subarkah & Gravionika, 2024). This underscores the need for a deeper examination of how the principle of consensualism can be meaningfully applied within highly automated and standardized digital environments. Therefore, this study is grounded in the necessity to understand and analyze the validity of digital contracts between marketplace platforms and sellers through the lens of the consensualism principle. It seeks to address existing conceptual and normative gaps while contributing to the formulation of more responsive regulations that align with digital development and ensure contractual justice in the platform economy era.

II. FORMULATION OF THE PROBLEM

1. How is the validity of digital agreements between marketplace platforms and sellers assessed under the existing provisions of Indonesian contract law?
2. How is the principle of consensualism applied in the process of forming and executing digital agreements between marketplace platforms and sellers?

III. RESEARCH METHOD

This study employs a juridical-normative research method using statutory and doctrinal approaches as the primary analytical framework. Operationally, it examines primary legal sources such as the Indonesian Civil Code (particularly Article 1320, which regulates the essential elements of a valid agreement), the most recent amendment to the Electronic Information and Transactions Law (Law No. 1 of 2024), and related implementing regulations governing electronic signatures and certification authorities as normative foundations for assessing the validity of digital agreements (Indonesia, 2024). In addition, the study utilizes secondary legal sources including scholarly articles, books, and academic publications from the past three years that discuss electronic contracts, clickwrap/browsewrap mechanisms, and marketplace practices as interpretive materials for analyzing norms and evaluating the implementation of the consensualism principle in practice (Wiraguna, 2024; Chusnida, 2023). The data analysis method applied is qualitative in nature, consisting of three stages: first, textual analysis of statutory provisions, legal doctrines, and relevant judicial decisions; second, a systematic-dogmatic approach to test the consistency of positive legal norms with the principle of consensualism; and third, a comparative analysis of empirical literature and sample marketplace terms-and-conditions clauses as document studies to identify practices potentially deviating from the principle of free consent (Zainuddin & Karina, 2023; Pakpahan, 2024). To strengthen the validity of the findings, this study also adopts a source triangulation technique by comparing results from statutory provisions, legal doctrines, contemporary academic discussions, and practical reports from the e-commerce sector (HukumOnline, 2024). The findings are presented in the form of systematic legal argumentation and regulatory recommendations aimed at ensuring harmony between legal certainty, the protection of weaker parties, and the evolving dynamics of the digital economy.

IV. DISCUSSION

A. The Validity of Digital Agreements Between Marketplace Platforms and Sellers Under Indonesian Contract Law

The validity of digital agreements between marketplace platforms and sellers has become a significant issue in the development of modern civil law in Indonesia. The advancement of information technology has transformed the way society conducts transactions, including commercial activities through marketplace platforms. In this context, digital agreements represent a form of electronic contract concluded through an electronic system without the physical presence of the parties. Nevertheless, the validity of such agreements must still fulfill the legal requirements of a valid contract as stipulated in Article 1320 of the Indonesian Civil Code (KUH Perdata), namely: consent, legal capacity, a specific object, and a lawful cause (Simanjuntak, 2023).

In marketplace practice, consent is typically manifested through the act of clicking “agree” or “accept” on the terms and conditions. This form of declaration of intent is known as a click-wrap agreement, which is legally recognized as a valid form of consent because it demonstrates the user’s voluntary agreement to the contract terms (Lubis, 2022). Although such consent is not expressed verbally or through a physical signature, digital consent still satisfies the principle of consensualism as long as the parties understand the contract’s content and provide their agreement without coercion.

Beyond consent, legal capacity is another essential element determining the validity of digital agreements. In the context of marketplace transactions, platforms generally require users to be at least 18 years old or legally recognized as adults. This aligns with the civil law principle of legal capacity, which requires that parties entering into an agreement possess the legal competence to bind themselves (Sari, 2023). If an agreement is concluded by an incompetent party, it may be annulled under applicable law.

Regarding the object of the agreement, marketplace transactions usually involve goods or services that can lawfully be traded. As long as the object is not prohibited by law, does not contravene public order, and is specific and determinable in type and value, the requirement of a specific object is considered fulfilled (Suhartono, 2022). This is further reinforced by Law No. 11 of 2008 on Electronic Information and Transactions (UU ITE), which grants legal recognition to electronic documents and digital transactions. Article 18 paragraph (1) of the UU ITE explicitly provides that electronic transactions conducted through electronic systems are valid as long as they meet the general requirements for a valid agreement under civil law. Hence, the legal basis for digital agreements is expressly recognized in Indonesian positive law.

Furthermore, the element of lawful cause concerns the purpose of the agreement. In digital agreements between marketplaces and sellers, the objective is generally to facilitate online commercial activities. As long as this purpose does not conflict with the law, morality, or public order, the lawful cause element is deemed satisfied (Rahardjo, 2022). In this case, the marketplace platform acts as an intermediary that provides a trading venue between sellers and buyers, while the seller functions as the party offering goods or services. The legal relationship formed is contractual and governed by general principles of civil law.

The validity of digital agreements must also be assessed from the perspective of consumer protection law. In many cases, the terms and conditions in marketplace agreements are unilateral and disproportionately favor the platform. This creates a potential imbalance in the legal standing between sellers and platforms. Accordingly, Law No. 8 of 1999 on Consumer Protection is relevant to ensure that digital agreements do not contain clauses detrimental to one party (Prasetyo, 2023).

From an evidentiary standpoint, digital agreements possess the same legal force as conventional agreements. Pursuant to Article 5 paragraph (1) of the UU ITE, electronic information and/or electronic documents and their printouts constitute valid legal evidence. This strengthens the legal position of digital agreements, as transactional data, records of consent clicks, and user activity logs within the system can serve as proof of consent (Putri, 2022). The Supreme Court of Indonesia has also recognized electronic evidence as valid proof in court proceedings, as stipulated in Supreme Court Regulation No. 1 of 2019 on Case Administration and Court Hearings in Electronic Form.

Nevertheless, challenges remain in assessing the validity of digital agreements, particularly when disputes arise between sellers and platforms. One major challenge concerns proof that both parties truly understood the agreement’s content prior to providing consent. In practice, many users do not read the terms and conditions in full, making the resulting agreement somewhat formalistic. This raises debate over the extent to which the consensualism principle can be purely applied in digital transactions (Mahendra, 2023).

Additionally, digital agreements in marketplaces are typically standard form or adhesion contracts, where the terms are predetermined unilaterally by the platform. Although legally valid, such contracts often contain inherent imbalances in bargaining power between the parties. In this context, modern contract law emphasizes the importance of contractual fairness to ensure that the legal relationship remains balanced (Wijaya, 2023).

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In general, it can be concluded that digital agreements between marketplace platforms and sellers are valid and legally binding, provided that they meet the essential elements of a valid contract as set forth in Article 1320 of the Indonesian Civil Code and the provisions of the UU ITE. Their validity does not depend on physical form but rather on the fulfillment of consent, capacity, specific object, and lawful cause. Moreover, the protection of weaker parties—whether sellers or consumers—must be continuously strengthened through adaptive legal and regulatory frameworks responsive to technological developments (Suryanto, 2022).

Thus, the validity of digital agreements in Indonesia has a solid legal foundation and is recognized within the national legal system. The remaining challenge lies not in the normative aspects, but in the practical implementation of the consensualism principle to ensure both fairness and legal certainty in every contractual relationship within the digital domain.

B. The Application of the Principle of Consensualism in the Formation and Implementation of Digital Agreements Between Marketplace Platforms and Sellers

The application of the principle of consensualism in the formation of digital agreements between marketplace platforms and sellers plays a crucial role in ensuring the validity of legal relationships conducted in digital environments. The principle of consensualism essentially emphasizes that an agreement is considered valid once mutual consent has been achieved between the contracting parties (Dapung & Lubis, 2023). In digital transactions, such consent is generally manifested through an action such as clicking the "agree" or "I Agree" button on the platform's terms and conditions. This act of clicking represents the free will of the parties and is legally recognized as a valid form of consent. Research indicates that the checkout mechanism used in marketplace systems employing click-wrap agreements fulfills the consensualism element because it requires an affirmative action from the seller (Yanti & Samsithawrati, 2024).

Nevertheless, the application of the principle of consensualism in digital practice faces substantial challenges, particularly regarding the extent to which digital consent truly reflects the parties' free will. Many sellers are positioned merely as recipients of standard terms and conditions without any opportunity for negotiation. This raises debates about the purity of consensualism in digital contracts, given that agreements often occur through mechanical actions without a thorough understanding of the terms (Latifa & Suryono, 2025). In other words, while formal consent exists, materially, questions remain as to whether the seller truly comprehends the contract's content or has meaningful freedom to negotiate.

Furthermore, within the process of forming digital agreements, the elements of information and transparency are integral components of consensualism. Both parties must be provided with sufficient information about their respective rights and obligations before entering into an agreement. In practice, however, marketplace platforms typically provide long and complex standard-form contracts, making it difficult for sellers to read or understand all binding clauses. Studies show that in browse-wrap agreements—where consent is implied merely through the use of a website without explicit action—the validity of true consent is questionable due to the absence of an active declaration of agreement (Subarkah & Gravionika, 2024). This suggests that the application of consensualism in digital contracts requires not only formal consent but also understanding, awareness, and genuine freedom of choice.

In the implementation stage, digital agreements between marketplace platforms and sellers must be executed in accordance with the principle that consent binds the parties once it is achieved. The consensual principle implies that a legal relationship is established the moment mutual consent occurs (Dapung & Lubis, 2023). In digital environments, proof of consent may take the form of user activity records, system metadata, or transaction logs demonstrating that the seller clicked to accept the terms. Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law) and its amendments recognize electronic documents and electronic signatures as legally valid evidence (Latifa & Suryono, 2025). Therefore, during implementation, the principle of consensualism can be upheld through digital record mechanisms that contain evidence of consent and the execution of rights and obligations arising from the agreement.

However, in practical terms, challenges arise when platforms unilaterally modify the terms without renewed consent from sellers or impose burdensome penalty clauses that sellers were unaware of. Such conditions undermine the balance of the initial consent, as the agreement no longer reflects an equitable meeting of wills. Contract digitalization studies highlight that when one party merely provides nominal consent without understanding the full implications, the validity of such consent weakens under the principle of consensualism (Latifa & Suryono, 2025). Thus, the execution of digital agreements must uphold fairness, contractual equity, and the right of both parties to be informed of any changes to binding terms and conditions.

To ensure that the principle of consensualism is truly realized in digital marketplace agreements, regulatory measures and internal mechanisms must be developed to support informed consent. For example, platforms should provide clear options for sellers— such as displaying summarized terms and conditions, requiring users to scroll through the content before agreeing, offering the choice to decline, and recording consent through reliable authentication methods. Research suggests that click-wrap mechanisms, which require affirmative user actions, provide stronger evidence of explicit consent than browse-wrap models that rely merely on website use (Subarkah & Gravionika, 2024). Accordingly, platforms implementing click-wrap models with sufficient disclosure are more aligned with the principle of consensualism.

Additionally, the readiness of regulations and legal enforcement significantly influences the implementation of consensualism in digital agreements. Although the ITE Law recognizes electronic contracts and digital evidence, literature points out that the regulatory framework remains insufficiently specific regarding user understanding, bargaining positions, and fairness in standardform digital contracts (Latifa & Suryono, 2025). This regulatory gap risks creating formally valid but substantively unfair agreements that fail to embody genuine, informed consent as required by the principle of consensualism. Hence, developing complementary regulations or practical guidelines to strengthen informed and voluntary consent is necessary.

Finally, from the perspective of sellers, the application of consensualism in digital agreements must be accompanied by awareness that the consent they provide forms the binding foundation of a legal relationship. Sellers must understand that by clicking "agree," they are legally bound by the platform's rights and obligations. Studies indicate that many small business sellers or MSMEs are unaware that digital consent holds the same binding effect as a conventional written contract, and this lack of awareness increases their risk of losses or disputes (Latifa & Suryono, 2025). Therefore, education and accessible information are essential to ensure that digital consent genuinely reflects the principle of consensualism.

In conclusion, the application of the principle of consensualism in digital agreements between marketplace platforms and sellers illustrates the dynamic interplay between technological advancement and fundamental principles of contract law. Ensuring that consent is freely given, adequately informed, digitally evidenced, and protected against unilateral changes is vital so that digital contracts are not only formally valid but also substantively fair and reflective of true mutual agreement. The balance between digital efficiency and the protection of party rights must continually be pursued through responsive regulation and transparent business practices.

V. CONCLUSIONS

A digital agreement between a marketplace platform and a seller is fundamentally valid and binding as long as it fulfills the essential elements of a valid contract as stipulated in Article 1320 of the Indonesian Civil Code, namely mutual consent, legal capacity, a specific object, and a lawful cause. Within the framework of modern civil law, the principle of consensualism remains the primary foundation for the formation of digital agreements, even though the manifestation of consent occurs electronically through actions such as clicking or other forms of digital approval. Thus, although the agreement is not made through face-to-face interaction, the principle that "consent creates obligation" continues to apply within the digital sphere. The application of the principle of consensualism in digital contracts emphasizes that the core of contractual validity lies not in the form of the agreement, but in the free will and mutual consent of the parties. Consent expressed through mechanisms such as click-wrap or scroll-wrap agreements can be recognized as a valid manifestation of consensus, provided it is given knowingly and without coercion. However, challenges arise when such consent pertains to standard-form agreements unilaterally drafted by the marketplace platform, as this may obscure the notion of genuine free consent as intended by the principle of consensualism. In practice, the validity and binding force of digital agreements have been explicitly recognized under Law No. 11 of 2008 on Electronic Information and Transactions (the ITE Law).

Digital evidence such as system logs, metadata, and electronic signatures may serve as legitimate proof of mutual consent between the parties. Nevertheless, to ensure that the principle of consensualism is substantively implemented, protection must be afforded to weaker parties such as small-scale sellers or inexperienced users through regulations that guarantee informational transparency and contractual balance. Therefore, going forward, the reinforcement of the principle of consensualism in digital agreements should be directed toward developing a legal and technological framework that not only emphasizes formal validity but also ensures justice, equality, and freedom for all parties engaging in digital transactions within marketplace environments.

REFERENCES

1) Dapung, H., & Lubis, M. (2023). *Hukum Perikatan dalam Perspektif Digitalisasi Transaksi*. Jakarta: Rajawali Press.
2) Latifa, N., & Suryono, A. (2025). *Digital Contract and the Principle of Consensus in Online Transactions*. *Jurnal Hukum dan Transformasi Digital*, 5(1), 33–50.
3) Yanti, R., & Samsithawrati, E. (2024). *Penerapan Asas Konsensualisme dalam Perjanjian Elektronik di Marketplace Indonesia*. *Jurnal Hukum dan Kebijakan Publik*, 18(2), 201–218.
4) Subarkah, M., & Gravionika, L. (2024). *Validitas Click-Wrap Agreement dalam Transaksi Online*. *Jurnal Ilmu Hukum Aktual*, 9(1), 56–72.
5) Simanjuntak, R. (2023). *Hukum Perikatan dan Transaksi Elektronik*. Bandung: Citra Aditya Bakti.
6) Lubis, M. (2022). *Click-Wrap Agreement dalam Transaksi Elektronik: Kajian Hukum Perdata*. *Jurnal Hukum dan Teknologi*, 17(2), 133–150.
7) Sari, D. (2023). *Kecakapan Bertindak dalam Transaksi Elektronik di Indonesia*. *Jurnal Ilmu Hukum*, 14(1), 55–70.
8) Suhartono, A. (2022). *Legalitas Objek Perjanjian dalam Transaksi Digital Marketplace*. *Jurnal Hukum Bisnis*, 8(2), 210–225.

9) Rahardjo, S. (2022). *Causa Halal dalam Perspektif Hukum Perdata Modern*. Yogyakarta: UII Press.
10) Prasetyo, H. (2023). *Perlindungan Konsumen dalam Transaksi Digital: Analisis Klausula Baku Marketplace*. *Jurnal Legislasi Indonesia*, 20(3), 321–339.
11) Putri, A. (2022). *Pembuktian Elektronik dalam Sengketa Transaksi Online*. *Jurnal Hukum ITE*, 6(1), 88–102.
12) Mahendra, R. (2023). *Konsensualisme dalam Perjanjian Elektronik: Antara Teori dan Praktik*. *Jurnal Hukum Modernisasi*, 9(2), 245–262.
13) Wijaya, T. (2023). *Keadilan dalam Kontrak Digital: Analisis Terhadap Kontrak Adhesi di Marketplace*. *Jurnal Hukum dan Pembangunan Ekonomi*, 11(1), 44–61.
14) Suryanto, B. (2022). *Asas Kepastian dan Keadilan dalam Hukum Kontrak Digital di Indonesia*. *Jurnal Ilmu Hukum dan Sosial*, 15(2), 199–217.
15) Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana telah diubah dengan UndangUndang Nomor 19 Tahun 2016.