International Journal of Social Science and Human Research

ISSN (print): 2644-0679, ISSN (online): 2644-0695

Volume 08 Issue 07 July 2025

DOI: 10.47191/ijsshr/v8-i7-83, Impact factor- 8.007

Page No: 5597-5601

The Principle of Legal Certainty in Electronic Contracts: Challenges of Evidence and Law Enforcement in Indonesia

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ABSTRACT: The advancement of information technology has given rise to electronic contracts as a modern form of agreement conducted without face-to-face interaction, crossing territorial and temporal boundaries. In the context of Indonesian Law, electronic contracts have been legally recognized through Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions (EIT Law). However, their implementation still faces several challenges, particularly in ensuring the principle of legal certainty. This study employs a normative legal method by analyzing legislation, legal doctrines, and academic literature to examine the application of the principle of legal certainty and identify obstacles in the evidence and enforcement of electronic contracts. The findings show that weak digital legal infrastructure, limited digital literacy among Law enforcement officers, and the lack of regulatory harmonization hinder the enforcement of legal certainty in electronic contracts. Therefore, it is necessary to strengthen legal certainty through regulatory harmonization, the development of adap tive digital evidence mechanisms, and the improvement of institutional capacity and legal resources.

KEYWORDS: Electronic Contract, Legal Certainty, Digital Evidence, EIT Law, Law Enforcement

I. INTRODUCTION

The development of information and communication technology has fundamentally changed the pattern of legal transactions and interactions in modern society. One real manifestation of this transformation is the birth of **electronic contrac**t, namely an agreement between parties made through an electronic system, either in the form of an application, e-commerce platform, or other digital media. In practice, electronic contracts allow legal relations to occur without the physical presence of the parties, transcend geographical boundaries, and take place instantly via the internet network (Amajihono, 2022).

Normatively, electronic contracts in Indonesia have been recognized through Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law) which has been updated by Law Number 19 of 2016. Article 18 of the EIT Law emphasizes that electronic contracts made through electronic systems are valid and binding, as long as they fulfill the elements of agreement between the parties and do not conflict with the Law, morality, and public order. This provision is in line with the principle of freedom of contract as stated in Article 1338 of the Civil Code (Amajihono, 2022). However, even though legal regulations are available, the practice of implementing electronic contracts in the field still faces various challenges, especially in terms of legal certainty, evidence, and Law enforcement.

The principle of legal certainty, as one of the fundamental principles in civil Law, requires that every agreement provide a guarantee of clarity of the rights and obligations of the parties as well as the validity and sustainability of the contract legally. In electronic contracts, legal certainty is tested by the technical characteristics and digitalization of the form of the agreement. One form of e-contract that is often used in online transactions is the click-wrap agreement, where an agreement is deemed to have occurred when the user clicks the "agree" button without any direct negotiation on the contents of the contract (Pratama, 2017). In practice, this type of contract model is often considered a standard clause that can create an imbalance in the positions of the parties and obscure the existence of a true agreement.Furthermore, the challenge of proof in electronic contract disputes is a crucial issue. Unlike conventional contracts supported by physical documents, electronic contracts rely on digital evidence such as electronic documents, system audit trails, transaction logs, and electronic signatures. However, not all electronic signatures have the same evidentiary power, depending on whether the signature is certified by the Electronic Certification Organizer (PSrE) or not. According to Article 5 paragraphs (1) and (4) of the EIT Law, electronic information and electronic documents can be used as valid legal evidence, but will only have authentic value if they meet the requirements of integrity and authenticity—which are often difficult to prove without digital forensic support (Amajihono, 2022). The weakness of digital literacy among Law enforcement officers and the less than optimal technical support in judicial institutions add to the complexity of this On the other hand, Law enforcement on electronic contracts also faces various obstacles. In addition to the lack of detailed regulations in Laws and regulations regarding the mechanism for resolving electronic contract disputes, there are also issues related to jurisdiction over cross-border transactions, as well as protection for weaker parties, especially consumers. Although Article 18 of the EIT Law provides space for parties to determine the choice of Law and dispute resolution forum, in many cases, consumers do not have the freedom to choose, but only follow the system that has been unilaterally determined by business actors. This condition has the potential to weaken the principle of justice and the effectiveness of Law enforcement (Hidayah, 2021).

In response to these challenges, strengthening the principle of legal certainty in electronic contracts not only requires adjustments to substantive and procedural legal norms, but also needs to be accompanied by institutional reform, increased digital legal literacy, and the development of adaptive evidentiary mechanisms for electronic evidence. These aspects of reform are important to ensure that the Law does not lag behind the reality of ever-evolving technology. Legal certainty does not merely concern administrative order or the formal form of the contract, but also includes the protection of the legal rights of the parties in a fair and proportional manner.

Based on the description above, the formulation of the problem in this journal is: how is the principle of legal certainty guaranteed and enforced in electronic contracts amidst the challenges of proof and implementation of Law in Indonesia?

II. RESEARCH METHOD

This research is a normative legal research. Soerjono Soekanto and Sri Mamudji explained that in normative legal research, library materials are basic data which in research science are classified as secondary data sources (Soekanto and Mahmudji, 2013: 14). Normative legal research was chosen because the main focus of this research is to analyze how the principle of legal certainty is applied in electronic contracts, as well as to examine the challenges of proof and legal enforcement based on the Laws and regulations in force in Indonesia.

This research approach is often referred to as (library research), because it digs up data through document studies and legal literature. Library research The normative legal method relies on legal materials as the main data source, which consists of primary and secondary legal materials. Primary legal materials include Laws and regulations such as the Civil Code, Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning Information and Electronic Transactions, and Law No. 8 of 1999 concerning Consumer Protection. While secondary legal materials are obtained from legal literature, scientific journals, and scientific articles.

III. DISCUSSION

A. Principle of Legal Certainty in Electronic Contracts

In Indonesian civil Law, the principle legal certainty explicitly reflected in Article 1338 paragraph (1) of the Civil Code, which states that "all agreements made legally apply as Laws for those who make them." This provision gives rise to the principle in the name of our Lord, namely that a contract binds the parties as stipulated by Law. Consequently, the agreement cannot be withdrawn unilaterally, except by mutual agreement or legal reasons determined by Law (Amajihono, 2022). In simple terms, this principle emphasizes that a valid agreement must be complied with by the parties involved, and is a basic principle in enforcing contracts. In other words, this principle shows the importance of complying with the agreements that have been made by the parties (Priyono, 2024). In this context, legal certainty demands that contracts, including electronic contracts, contain clear and consistently enforced terms of the validity of the agreement.

The principle of legal certainty in contracts also means that the contents of the agreement must be obeyed and implemented properly by the parties who are bound. In the Indonesian legal system, this is also based on Article 1320 of the Civil Code which contains four elements of a valid agreement, namely: agreement, competence, certain objects, and Lawful causes. If one of these conditions is not met, the contract is considered invalid or has no legal force. This also applies to electronic contracts, where the digital-based form of the agreement is not a legal obstacle as long as it meets the valid elements of the agreement (Wardani et al., 2024).

Regulations on electronic contracts have been included in Article 18 paragraph (1) of Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning Electronic Information and Transactions (EIT Law), which states that electronic contracts are valid and binding if made with the agreement of the parties. The EIT Law even recognizes that the contract may contain provisions on choice of Law and dispute resolution, strengthening the legality of electronic contracts in the national legal system. However, several gaps in norms, especially regarding the form and technical standards of electronic contracts, often cause ambiguity in the application of the principle of legal certainty substantially (Putri & Budiana, 2018).

The main characteristic of an electronic contract is that agreement between the parties can be reached easily and appropriately through electronic media, such as computers, without requiring a face-to-face meeting. Interaction is carried out in two directions, utilizing special software that allows communication and exchange of transaction data. The transaction process takes place through an open public network, with a relatively faster contract formation time compared to conventional contracts (Manap, 2018).

Based on the previous explanation regarding electronic contracts carried out through electronic media, this also presents challenges in proving the existence of a genuine agreement. Often, electronic contracts use a click-wrap agreement model, where users simply click the "agree" button to be deemed to have agreed to all the terms. Although efficient, this model has the potential to ignore the principles of clarity of agreement and fairness because the position of the party that creates the system (business actors) tends to be more dominant than the party receiving the contract (consumer) (Amajihono, 2022).

The principle of legal certainty is also closely related to the principle of good faith (goede trouw), as stated in Article 1338 paragraph (3) of the Civil Code, which emphasizes that the implementation of an agreement must be based on honesty, propriety, and awareness to fulfill obligations as agreed. In electronic contracts, good faith is tested in the pre-contract phase (pre- contractual), during the contract (contractual), and post-contract. If business actors design an electronic contract system that is not transparent, does not provide clear access to the contents of the contract, or hides important clauses, then the principle of good faith as well as legal certainty will be violated (Wardani et al., 2024).

The absence of detailed regulations in the EIT Law regarding the form and mechanism for evaluating electronic contracts poses a risk of inconsistent application of the Law in the field. For example, contracts made through social media such as WhatsApp or Instagram are difficult to verify as legally valid contracts due to limitations in proving agreement (Putri & Bud iana, 2018). This creates a gray area in legal certainty, especially when one party feels disadvantaged due to the contents of the contract not being read, hastily agreed to, or unbalanced.

Thus, the application of the principle of legal certainty in electronic contracts requires conformity between the principles of classical civil Law and the development of modern contract forms and technologies. Fulfillment of formal and material requirements must be maintained, including clarity of the identities of the parties, objects, terms of the agreement, and dispute resolution mechanisms. Without harmonization between legal norms and the reality of digital practice, the principle of legal certainty in electronic contracts will continue to face serious challenges in its implementation.

B. Challenges of Evidence in Electronic Contract Disputes

In the Indonesian legal system, evidence is a crucial part in the process of resolving civil disputes, including in cases arising from electronic contracts. Evidence aims to convince the judge regarding the truth of the legal arguments put forward by the parties, so that the judge has a basis for making a fair decision. General provisions for civil evidence refer to Article 1866 of the Civil Code and Article 164 HIR which states that valid evidence consists of: written evidence, witnesses, allegations, confessions and oaths (Wahyuni et al., 2022).

In the context of electronic contracts, the first challenge arises from the form and nature of the electronic document itself . Many parties still assume that a valid agreement must be written in physical form. In fact, Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning Electronic Information and Transactions (EIT Law) has recognized electronic information and documents as valid legal evidence, as long as they can be accessed, displayed, their integrity is guaranteed, and they can be accounted for (Wahyuni et al., 2022).

However, in judicial practice, the use of electronic evidence still faces obstacles, especially in proving the validity and authenticity of electronic information. Many cases show that judges or Law enforcement officers still have difficulty accepting digital evidence without the support of technical verification. The validity of electronic documents is often doubted if they are not affixed with a certified electronic signature, even though Article 11 of the EIT Law has emphasized that electronic signatures have legal force and valid legal consequences, as long as they meet the principles of verification and authentication that can be proven digitally forensically (Wahyuni et al., 2022).

Another challenge arises from the variety of forms of electronic contracts, such as the click-wrap agreement commonly used on various e-commerce sites. In this type of contract, an agreement is deemed to have occurred when the user clicks the "agree" button. Although theoretically valid, this form raises problems if a dispute occurs and the plaintiff needs to prove that they understand and agree to the entire contents of the contract. This problem becomes more complex if the system does not regulate technical procedures that can guarantee that the user actually reads the clauses of the agreement before agreeing to it (Amajihono, 2022).

Furthermore, evidence in electronic contract disputes also faces challenges in ensuring the identity of the parties and the existence of a valid legal relationship. This is because many contracts are made through social media, email, or online systems that do not explicitly contain the legal identity data of the parties. Therefore, the support of electronic system logs and metadata is needed as part of the evidence. However, not all parties have the ability or access to obtain and present such technical data legally in court (Wahyuni et al., 2022).

In addition, the existence of electronic signatures is also often misunderstood. Many people think that electronic signatures are just scans of ordinary signatures. In fact, according to Article 1 number 12 of the EIT Law, an electronic signature is electronic information that is attached, associated, or related to other electronic information that is used as a means of verification and authentication. This type of signature can be in the form of a digital code, barcode, or fingerprint, which requires an authentication system and data encryption to ensure its validity (Wahyuni et al., 2022).

Electronic signatures are an important innovation in digital transactions that aim to provide authentication, integrity, and non-repudiation guarantees for electronic documents. In the context of Indonesian Law, the position of electronic signatures is officially recognized through Article 11 of Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law), which states that electronic signatures have legal force and valid legal consequences, as long as they meet certain requirements, such as the clear identity of the signatory and the relevance and integrity of the electronic information signed.

Strengthening digital evidence is highly dependent on legal and technical infrastructure, such as the existence of an Electronic Certification Organizer (PSrE) that is authorized to issue electronic certificates as proof of the validity of electronic signatures. In addition, it also requires understanding and capacity from judges, Lawyers, and Law enforcement officers to assess digital evidence according to the principles of authenticity and integrity, as required in Article 6 and Article 15 of the EIT Law.

As an instrument of proof, electronic information and documents can be valid evidence if they meet the requirements of accessibility, integrity, and verifiability. In practice, electronic certificates, activity logs, and digital transaction traces are the main evidence to show the involvement of the parties and the validity of the disputed contract. Unfortunately, not all transaction systems provide these digital traces with standards that are acceptable to the Indonesian legal system (Wahyuni et al., 2022).

Thus, the challenge of proof in electronic contracts not only concerns technical aspects, but also touches on normative and institutional aspects. Harmonization is needed between the provisions of traditional proof in the Civil Code and modern electronic evidence as regulated in the EIT Law and PP No. 71 of 2019. Without such adjustment, legal certainty in electronic contracts will continue to face the risk of uncertainty in the judicial process.

C. Law Enforcement and Efforts to Strengthen Legal Certainty

Law enforcement of electronic contracts in Indonesia still faces various serious challenges, both from the normative, technical, and institutional aspects. Although the existence of Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law) has provided legal recognition for electronic contracts, its implementation in practice has not fully created legal certainty. This is due to the lack of harmony in implementing regulations, limited understanding of Law enforcement officers regarding digital evidence, and minimal real legal protection for consumers as vulnerable subjects in digital transactions (Fatimatuzzahra et al., 2023).

One of the problems that arises is the dominance of business actors in the preparation of electronic contracts which often take the form of standard clauses. These clauses are usually drafted unilaterally without involving an equal negotiation process with consumers. As a result, contracts that should be a means of contractual justice actually become a tool of domination that weakens the bargaining position of consumers. In fact, Law No. 8 of 1999 concerning Consumer Protection expressly prohibits the inclusion of standard clauses that revoke consumer rights or limit the obligations of business actors unilaterally (Article 18). Practices like this obscure the principle of good faith and have the potential to violate the principles of justice and legal certainty which are the main pillars of contract law (Fatimatuzzahra et al., 2023).

In addition, the aspects of proof and legal form of electronic contracts have not been regulated in detail in PP No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Electronic contracts do not have the same legal standing as authentic deeds or private deeds, so in many cases, it is difficult to determine the strength of the evidence if one party denies their involvement in the contract. This problem becomes more complex when transactions are carried out via social media such as Instagram, WhatsApp, or Facebook, which do not have a formal mechanism for recording the agreement process (Fatimatuzzahra et al., 2023).

In Gustav Radbruch's perspective, ideal Law must contain three main elements: legal certainty, justice, and utility. When regulations do not provide effective protection for the weak, the legal system has failed to fulfill its legal ideals (Fatimatuzzahra et al., 2023). Law enforcement that is too oriented towards formal forms and ignores the substance of consumer protection causes the principle of legal certainty in electronic contracts to lose its essential meaning.

Efforts to strengthen legal certainty in electronic contracts in Indonesia need to be directed at three main strategies. First, it is necessary to harmonize regulations between the EIT Law, the Civil Code, and the Consumer Protection Law so that there are no gaps or overlaps in legal substance. Second, it is necessary to increase digital literacy and understanding of information technology Law for Law enforcement officers, notaries, and legal practitioners so that they are able to assess the validity of contracts and electronic evidence proportionally. Third, it is necessary to develop digital-based dispute resolution mechanisms such as online arbitration and electronic mediation, in order to provide faster, cheaper, and more adaptive access to justice with the digital ecosystem (Fatimatuzzahra et al., 2023).

Equally important, the state needs to strengthen the position of Electronic Certification Organizers (PSrE) and encourage business actors to use certified electronic signatures in every online transaction. This step aims to strengthen the legitimacy of contracts and facilitate the verification process when disputes arise. Without a strong legal and technological infrastructure, electronic contracts will remain in the shadow of uncertainty, especially for ordinary people who are vulnerable to manipulation in the digital transaction space.

Thus, although Indonesia already has a basic legal framework related to electronic contracts, its implementation still requires comprehensive updates in order to be able to enforce the principle of legal certainty effectively and fairly, especially in dealing with the complexity of cross-sector and cross-jurisdictional digital transactions.

IV. CONCLUSION

Electronic contracts are a form of modern agreement that is valid according to positive Indonesian Law, as regulated in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions (EIT LAW). Although it has received legal recognition, the implementation of electronic contracts in the field still faces various problems, especially in guaranteeing principle of legal certainty. This principle requires clarity and protection of the rights and obligations of the parties in the contract, including the validity of the agreement, the authenticity of the document, and its legal enforceability.

In practice, electronic contracts face serious challenges in terms of evidence and Law enforcement. Digital evidence such as transaction logs and electronic signatures are still not fully reliable due to weak legal infrastructure and technical understanding of Law enforcement officers. In addition, contracts made unilaterally by business actors often put consumers in a weak position, thu s obscuring the principle of contractual justice. Therefore, it is necessary to strengthen regulations, increase digital legal literacy, and update the evidence system that is able to answer the dynamics of electronic contracts in the information technology era. With these steps, the principle of legal certainty in electronic contracts can be enforced fairly and effectively.

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