

Study Of Raw Contracts in Electronic Contracts in The Digital Era Based on Indonesian Contract Law

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Abstract

Standard contracts in the digital era are made in the form of terms and conditions (terms of use) and electronic contracts (e-contracts) using digital signatures. As a contract user, you have no choice but to agree to the contract if you want to use the technology provider's facilities or refuse but cannot use the technology. There is no bargaining position or balance between technology providers and users. How is the Standard Contract Arrangement in Electronic Contracts in the Digital Age Based on Indonesian Contract Law? And how is the application of standard contracts in electronic contracts in the digital era based on Indonesian contract law? This research aims to study Raw Contracts in electronic contracts in the digital era based on Indonesian contract law. This study uses a normative juridical research method with secondary data consisting of primary, secondary, and tertiary legal materials. Standard Contract Arrangements in Electronic Agreements in the Digital Age Based on Indonesian Contract Law have not been regulated in detail. For this reason, it is necessary to make a regulation that explicitly regulates Electronic Standard Contracts and Contracts/agreements in general. This is based on the principle of *Lex specialis derogat legioni generali*.

Keywords: Contracts, electronics, raw contracts.



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Introduction

The development of the digital era is running fast and cannot be stopped by humans. Need man will ease in carrying out daily activities demand human to continue develop technology has become easier, for one thing is by digitalization. Digitalization can make things easier and become more efficient and more practical.

Progress in the field technology and improvement amount internet users every year cause Lots Of innovation that grows in the midst society. Progress in the field of technology used as a tool interaction carried out in a way distance far away, and that which is made a means of obtaining information in the learning process teaching, also influences economic activity. Innovation in the field of this technology is a lot give birth to mobile applications that become transactional media such as e-marketplaces, *ecommerce*, *online travel agents*, and other types of other applications.

The development of agreements in the digital era is very fast and continues to increase due to the agreement or contract is an internal social tool human civilization to support human life as creatures social. The existence of agreements or contracts for human life because can facilitate life's needs and human interests able to fulfill itself without help from others. To involve other people must be clear in meeting the needs that need to be expressed in the form of an agreement or contract that can protect the parties in balanced rights and obligations. There is an adage that says, “ *sweet potato society Ibi ius* ” which means where there is society, there is law. Has It is generally accepted that law exists throughout the world, as long as it exists human society. Because previously there was still an opinion that as if law only existed in civilized societies.¹

Existence principal freedom contract in agreement standards or standards can be said to have not been met because in reality it is very rare for the parties to hold one agreement have position bid balanced and has position bargain stronger will be more decisive fill agreement. It is no longer possible for consumers to renegotiate content agreement and some intentionally vacated to give chance negotiations with parties' new consumers are filled once reached agreement.² Generally, the possibility of negotiation is open only related matters type, price, quantity, color, place, contract term, and several specific things from the object agreed upon.³

The more If a technology is sophisticated, the law must be able to do so answer all necessary needs. So of course, in this case the rules made must be in nature *ius constituendum*, in the sense exist until many years even hundreds year as is the case *Burgelijk Wetboek* or the Civil Code and Criminal Code. Current legal products must be based on technology and cover need will digitalization. For example, contracts standards used by the parties provide technology to their users.

¹ Cindawati Cindawati, “PERKEMBANGAN PERJANJIAN DALAM PRAKTIK PERDAGANGAN (PERSPEKTIF HUKUM ISLAM DAN HUKUM POSITIF),” *JURISDICTIE* 7, no. 2 (February 1, 2017): 219, <https://doi.org/10.18860/j.v7i2.3717>.

² Gemala Dewi, *Aspek-Aspek Hukum Dalam Perbankan & Perasuransian Syariah Di Indonesia* (Jakarta: Kencana, 2004).

³ Sidharta, *Hukum Perlindungan Konsumen Indonesia* (Jakarta: Grasindo, 2000).

The standard contract used digitally is the same as a contract standard carried out conventionally contracts. This standard also creates reciprocal achievements that must be met between the two sides parties therein. For example, when somebody download A application before being able to run or use the application, they will appear a number of *access requests* that are based on *terms of use* that must be approved, and if No Approved then directly the features in the application that cannot be used. On some other applications when a person user or regular called a server using a website/application that person deemed to have known and agreed to the contents *terms of use* that exist when running application that. *Terms of Use* this is the basis agreement on users and providers application. This agreement is in other words referred to as *an electronic contract (e-contract)*. *E-contract* is another form or development of contract law that was born in the era of globalization on the basis of principle freedom contract.

Being agreements are usually drafted second split party no longer discussed rather, it is available in a format created by a higher-ranking party the is party provider application. It cannot be denied in modern legal practice of creation agreement often widely loaded clause standard in it. The Determination clause in the agreement use application the covers terms detailed related limitation not quite enough responsibilities and scope of power between both parties' party.

It's the same in implementation legal fiction when laws are issued so all over public considered know and are obliged to comply with the Law (presumption *iures de iure*). Legal fiction is the principle that assumes everyone knows the law (*presumptio iures de iure*). Everyone considered knows the law, don't you? exception farmers who did not graduate from school basic, or residents living in the interior. In Latin there is also an *adage ignorantia jurist non excusat*, ignorance of the law cannot be forgiven. Somebody can't avoid it from legal traps by arguing whether or not they have not Known the laws and regulations legislation certain.⁴

Article 18 paragraph (2) of the Law Protection Consumers also prohibits perpetrator business from including clause standard or form difficult visible or not clearly legible, or whose disclosure difficult understandable. In practice often conditions service A application No clearly stated in the existing online application.

The agreement is outlined in an agreement such as *electronic contracts (e-contracts)*, later will be the basis for the parties to carry out prosecution. If happen a dispute or a problem that is detrimental to one party involved in the practice business Accordingly, organizers can still be sued either based on Article 38 of Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) or based on UUPK.⁵

Insensitivity to rights owned by consumers and lack of attitude critical to searching, reading, and clearly reviewing the terms service use before using an application is also

⁴ MYS/CRD, "Fiksi Hukum Harus Didukung Sosialisasi Hukum," accessed March 13, 2024, <https://www.hukumonline.com/berita/a/fiksi-hukum-harus-didukung-sosialisasi-hukum--hol19115?page=2>.

⁵ Teguh Arifiyadi, "Apakah 'Term of Service' Bisa Membebaskan Penyedia Layanan Dari Hukum?," 2017, <https://www.hukumonline.com/klinik/a/whether-term-of-service-bisa-membebankan-pendia-jasa-dari-Hukum-lt4f26da047affd/>.

frequently used by provider applications in designing. This e-contract determines clauses that are not impossible to mitigate or eliminate burdens and obligations that the answering party should bear.

Role legal principles of agreements in making Agreement is very necessary, including principles main considered the cornerstone of contract law; legal principles are the broadest basis for the birth of a legal regulation; principle serves as a guide or orientation direction based on which the law can be implemented. For protection and justice materialized in an agreement, is necessary harmony from all over principles of contract law, namely principal freedom contract, principle consensualism, principle legal certainty (*pacta sunt servanda*), principle good faith (good faith), principles personality, basics belief, principal equality rights, moral principles, principles propriety, principle habit, principle legal certainty, principles balance, and principles protection. The whole of these principles is mutually related to one from another, cannot be separated, applied simultaneously, takes place proportionally and fairly, and serves as a frame tie fill agreement that. Thus, expected the ideal and desired application of law can be realized.⁶

With an agreement expected the parties involved therein can implement their respective rights and obligations in good faith, in accordance with the agreed agreements. Thus, what is the goal making agreement can be reached namely: Creation justice, order and legal certainty.⁷

Standard contracts in the digital era are made in terms and conditions (terms of use) and electronic contracts (e-contracts) using digital signatures. As a user contract, there is no choice; others agree to the contract If they want to use the facilities from provider technology or reject it but can't use technology. Here, the provider technology and its users have no position bid. For the contract standard used by the provider technology, there needs to be an update related to contract law, which is still based on the Civil Code. So that justice between user and provider technology can be realized well.

METHOD

This research uses the method study Juridical Normative with secondary data consisting from primary, secondary and tertiary legal materials. The data collection method in this research uses a library search method. The approach used in this research is a statutory and conceptual approach. Meanwhile, the data analysis used is qualitative analysis.

RESULT AND DISCUSSION

Standard Contract Arrangements in Electronic Agreements in the Digital Era Based on Indonesian Civil Law

⁶ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107–20, <https://doi.org/10.37893/JBH.V7I2.318>.

⁷ Potler Gultom, "IMPLIKASI ASAS KEBEBASAN BERKONTRAK DALAM PERJANJIAN PENGADAAN BARANG/JASA TNI ANGKATAN UDARA," *JURNAL ILMIAH HUKUM DIRGANTARA* 11, no. 2 (March 1, 2021), <https://doi.org/10.35968/JIHD.V11I2.768>.

Medical waste refers to contagious or harmful waste materials that come from the healthcare sector. This garbage originates from non-recyclable things with the potential to be infectious.⁸ In their research titled "Civil Liability of Dompu Hospital Against Environmental Pollution as a Result of Medical Waste Management," Moch. Riyadi Husna and Djumardin, cited by the Ministry of Environment and Forestry, reported that in September 2018, there were 95 hospitals equipped with licensed incinerators with a combined capacity of 45 tonnes per day. In December 2019, data from the Medical Waste e-monev by the Environmental Health Directorate of the Ministry of Health showed that approximately 42% of hospitals comply with regulations for medical waste management. Some hospitals have incinerators that are not in use because they lack the necessary permit.⁹

Indonesian contract law still uses regulations Dutch government contained in the book third Civil Code. Contract in Dutch is called *overeenkomst* translated into Indonesian is __ agreement. The Civil Code regulates agreement in Article 1313 of the Civil Code which reads: Agreement is an action with which one party or more binding self to one or more people. One, because Why agreement by many people b No can always be equated with a contract is because in understanding the agreement provided in Article 1313 of the Civil Code is not contains the words " the agreement is made in writing."

Contract law is Whole from governing legal rules legal relationship between two or more parties based on an agreement to create legal consequences. Just by wearing contract law terms give rise to connotations as follows:¹⁰

1. Contract law intended as a governing law about agreements written simply, so people often ask "where is the contract" interpreted that is what is being asked is written contract.
2. Contract law intended as a governing law about agreements in the business world simply.
3. Contract law is simply intended by the governing law about agreements international, multinational or agreements with companies' multinational.
4. Contract law simply intended as a governing law about performance agreements _ carried out by both parties' party. So, it will odd If used term contracts for Grant Contracts, inheritance contracts and so on.

The Civil Code does not clearly state the times when contract. Article 1320 of the Civil Code only states that it is sufficient to have a consensus of the parties. According to Salim HS, theories discuss the moments when they occurred contract including:¹¹

1. Statement Theory (Uitings theory)

⁸ Annisa Hartami, Lego Karjoko, and Fatma Ulfatun Najicha, "Optimalisasi Peran Pemerintah Dalam Kebijakan Penanganan Limbah Medis," *PLEDOI (Jurnal Hukum Dan Keadilan)* 2, no. 1 (2023): 16, <https://doi.org/10.56721/pledoid.v2i1.168>.

⁹ Moch Ryadi Husna and Djumardin Djumardin, "Tanggung Gugat Keperdataan Rsud Dompu Terhadap Pencemaran Lingkungan Sebagai Akibat Dari Pengelolaan Limbah Medis," *Private Law* 3, no. 1 (2023): 13, <https://doi.org/10.29303/prlw.v3i1.2131>.

¹⁰ Soejono Dirdjosisworo, *Misteri Dibalik Kontrak Bermasalah* (Bandung: Mandar Maju, 2002).

¹¹ Salim HS, *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Sinar Grafika, 2005).

According to this theory, a contract already exists / is born when an offer is written acceptance response letter. In other words, the contract exists at the time the other party states receipt / acceptance.

2. Delivery Theory (Verzending theory).

According to this theory, the time of sending the acceptance response is the time of birth contract. The postmark date can be used as a benchmark for the date of birth contract.

3. Theory of Knowledge (Vernemings theory).

According to this theory at birth contract is at the time of the acceptance response is known contents by the offering party.

4. Acceptance theory (Ontvang theory).

According to this theory at birth contract is when the answer is received, no care is lettering the opened or left No opened. The main thing is at the time of the letter it arrived at the address si recipient letter that is what was used as a benchmark when it was born contract.

The writer divides the regulations regarding Electronic Standard Contracts into 3 (three) parts namely based on the Civil Code (Civil Code), Laws and based on Contract Law. Legislation that regulates both directly and indirectly not directly about agreement standard. Legislative regulations will be described according to hierarchy regulation legislation as regulated in the Law. No. 12 of 2011 concerning the Formation of Legislative Regulations juncto UU. No. 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, with the following explanation:

1. Civil Code (Civil Code)

The Civil Code originated from Burgerlijk Wetboek which was promulgated in 1838 in the Netherlands and enforced in the Dutch East Indies in 1848 during Revolution Industry (1750 - 1850), has contained provision interpretation implied agreement _ applies to an agreement standard. The provision in question is Article 1349 of the Civil Code which regulates as follows: If any doubt, then an agreement must be interpreted to the detriment of the person who has asked agreed something things, and for the benefit of the person who has bound them himself for that.

Need explained that in context agreement standard, then what is meant:

- a. phrase of the person who has asked agreed something matter is party designer, maker, and offerer agreement standard; And
- b. The phrase of the person who has tied the knot himself for that is receiving party agreement standards that have been designed, manufactured, and offered unilaterally by the party designer, maker, and offerer agreement standard.
- c. This principle then adopted as Unidroit Principles 2010 which in Article 4.6 regulates the contra proferentem rule as follows: 'If contract terms supplied by one party are unclear, an interpretation against that party is preferred.'¹²

¹² Johannes Gunawan, "Revitalisasi Prinsip Contra Proferentem Dalam Perlindungan Konsumen Di Indonesia," in *Bunga Rampai Hukum Keperdataan: Diterbitkan Dalam Rangka Merayakan 70 Tahun Djaja S. Meliala, S.H.,M.H. Dosen FH UNPAR Bandung*, ed. Yanly Gandhawidjaja (Bandung: Nuansa Aulia, 2019).

2. Constitution

a. Law Number 8 of 1999 concerning Protection Consumer (UUPK)

UUPK is the only one regulation legislation shaped governing law about clause standard, namely in Chapter V concerning Inclusion Conditions Standard Clause.

In Article 18 Chapter V UUPK it is clearly stated that:

- 1) Perpetrator effort in offering goods and/ or services intended for trade forbidden create or include clause standard in every document and/or agreement if: there are governing rules existence clause standard, namely:¹³
 - a) state diversion not quite enough answer perpetrator business.
 - b) state that perpetrator business entitled reject submission return purchased items consumer.
 - c) state that perpetrator business entitled reject submission return of money paid for goods and/ or services purchased by consumers.
 - d) state granting authority from consumers to perpetrators business both directly and not immediately to do everything action unilaterally relating to goods purchased by consumers in installments.
 - e) regulates the matter of proving the disappearance of utility goods or services purchased by consumers.
 - f) give rights to the perpetrator attempt to reduce benefit services or reduce treasure riches the consumer is the object sell buy services.
 - g) state he submitted consumers to regulations in the form of new, additional, continued and/or amended regulations continuation made unilaterally by the perpetrator business in the consumer era utilise the services purchased.
 - h) state that consumer gives power to the perpetrator effort to charge right dependents, rights pledge, or right guarantee to goods purchased by consumers in installments.
- 2) Perpetrator business forbidden include clause standard whose location or shape difficult visible or cannot be read clearly, or whose disclosure difficult understandable.
- 3) Every clause standards set by the perpetrator efforts on documents or agreements that fulfill provision as referred to in paragraph (1) and paragraph (2) is stated null and void.
- 4) Perpetrator business must adopt clause standards that conflict with this Law.

Article 18 paragraph (1) and paragraph (2) UUPK regulates 4 (four) things that are prohibited in an agreement standard, namely:

¹³ Muhamad Hasan Muaziz and Achmad Busro, "PENGATURAN KLAUSULA BAKU DALAM HUKUM PERJANJIAN UNTUK MENCAPAI KEADILAN BERKONTRAK," *LAW REFORM* 11, no. 1 (March 31, 2015): 74, <https://doi.org/10.14710/lr.v11i1.15757>.

- 1) Contents of the agreement standard, ie prohibition inclusion contains 8 (eight) types of clause standard in documents and/or agreements standard (Article 18 paragraph (1) UUPK);
- 2) Location of clauses standard, ie prohibition placement clause standard in documents and/or agreements difficult standard visible, placement example clause standard on the ticket parking (which is agreement standard) in section behind ticket parking (Article 18 paragraph (2) UUPK);
- 3) Clause form standard, ie prohibition use size letter clause standard in documents and/or agreements difficult standard visible, usage examples letters that don't unreadable by normal eyes for the sake of saving use paper (Article 18 paragraph (2) UUPK);
- 4) Disclosure clause standard, ie prohibition disclosure of words and/or phrases clause standard in documents and/or agreements difficult standard _ understood by lay people, examples of inclusion provision that's an agreement credit (in the form of an agreement default) override the application of Article 1266 of the Civil Code, without explained legal consequences of waiver of Article 1266 of the Civil Code (Article 18 paragraph (2) UUPK).

Article 18 paragraph (3) UUPK regulates about penalty civil if there is an agreement standard include clause standards that are prohibited in Article 18 paragraph (1) and Article 18 paragraph (2) UUPK, namely clause standard the stated null and void.

Article 18 paragraph (4) UUPK regulates about obligation party designers, manufacturers and offerors clause standard as included in the document and/or agreement standard, to adjust clause standard in documents and/or agreements standards that have been used in the provisions of the UUPK.

Apart from sanctions civil as regulated in Article 18 paragraph (3) UUPK, UUPK also imposes penalty criminal penalties for violators of Article 18 UUPK, namely regulated in Article 62 paragraph (1) and paragraph (3) as follows:

- (1) Perpetrator infringing business _ provision as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letters a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with criminal imprisonment for a maximum of 5 (five) years or criminal a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).
- (2) To resulting violation _ wound heavy, painful severe, permanent disability or death enforced provision applicable criminal law.

Furthermore, Article 63 UUPK regulates that to penalty criminal as referred to in Article 62, can be imposed punishment additionally, in the form of:

- 1) plunder goods certain;
- 2) announcement of the judge's decision;
- 3) compensation payment loss;
- 4) order cessation of certain activities that cause emergence loss consumer;

- 5) obligation withdrawal goods from circulation; or
- 6) revocation of business license.

Need stated a number of matters about penalty criminal that, namely The provisions of Article 62 paragraph (1) UUPK are:

- 1) provision formal criminal, which means that penalty Criminal penalties can be imposed on violators of Article 18 UUPK if they have been fulfilled element criminal law in Article 18 UUPK, without obligation to prove that has arisen consequence from violation of Article 18 UUPK;
 - 2) provisions that do not adhere to principle ultimate remedium, i.e criminal law provisions along with sanctions can only be imposed after the type of other sanctions (sanctions civil and/or sanctions administrative) has been imposed moreover formerly but no stop violation of Article 18 UUPK;
 - 3) provisions that cause Violators of Article 18 UUPK can be immediately detained by investigators Because threat punishment The punishment contained in Article 62 paragraph (1) is a maximum of 5 (five) years.
3. Government Regulations

PP No. 80 of 2019 concerning Trading via Electronic Systems (PP PMSE) does not use the phrase agreement standard, however a number of articles in it is governing article _ about agreement digital standards, which are used in this Government Regulation phrase contract electronics.

Articles in PP PMSE relating to agreements digital standards or contracts electronics as follows:

- 1) Article 52
Electronic Contracts are valid and binding on the parties if:
 - a) in accordance with the terms and conditions in the Electronic Offering;
 - b) the information contained in the Electronic Contract is in accordance with the information contained in the Electronic Offer;
 - c) there is agreement of the parties, i.e terms and conditions an offer sent by the party making the offer, accepted and approved by the party receiving it offer;
 - d) carried out by competent or authorized legal subjects represent in accordance with the provision's regulation legislation;
 - e) there is matter certain; And
 - f) object transaction must not conflict with the rule of legislation, morality and order general.
- 2) Article 53
 - (1) The information in the Electronic Contract must be in accordance with the offer and contain at least:
 - a) identity of the parties;
 - b) specifications of agreed goods and/or services;
 - c) legality of Goods and/or Services.

- d) mark transaction Trade;
 - e) terms and terms;
 - f) procedure operational delivery of Goods and/or Services;
 - g) procedure return of Goods and/or services in case happen incompatibility between the goods and/or services received and those agreed upon;
 - h) procedure in p there is cancellation by the parties; And
 - i) choice of settlement law PMSE dispute.
- (2) Electronic Contracts are prohibited include clause detrimental standards _ Consumer as regulated by law regarding Protection Consumer.
- 3) Article 56
Business actors are obliged to provide an Electronic Contract that can be downloaded and/or saved by Consumers.
- 4) Article 57
- (1) Electronic Contracts are considered automats become null and void if happen error technical as a result of the Electronic System no safe, reliable and responsible answer.
 - (2) If a technical error happens as referred to in paragraph (1), the party's recipient no must return goods and/or services that have been sent and received.
 - (3) Loss consequence happen error technical as referred to in paragraph (1) is the full responsibility Business Actors.

Article 52 PP PMSE regulates validity agreement digital standards or contracts electronic contains 6 (six) conditions validity.

Thus, there are additional 2 (two) conditions the validity of which is not contained in the conditions validity non- standard agreement as regulated in Article 1320 of the Civil Code. Additional 2 (two) conditions these, namely:

- 1) in accordance with the terms and conditions in the Electronic Offering;
- 2) The information contained in the Electronic Contract is in accordance with the information contained in the Electronic Offer.

Both conditions above explicitly state that agreement standard or contract electronics must include information in accordance with the information included in the electronic offer. Whereas electronic bidding load terms and conditions (clause standard) in the agreement digital standards or contracts electronics. Thus, what is meant information stated in the agreement digital standards or contracts electronic among others are terms and conditions in the form of clauses standard.

In this case it is necessary stated that if Article 52 PP PMSE is intended as *lex specialis* from Article 1320 of the Civil Code as *lex generali*, then matter that cannot be done, because the *lex specialis* must be included in the regulations existing legislation _ equal to or higher rather than the *lex generali*. Thus _ addition of 2 (two) conditions validity for the agreement digital standards or contracts electronics, at least must be regulated in law, not regulations government.

Furthermore, Article 53 paragraph (2) PP PMSE confirms that agreement digital standards or contracts electronic forbidden include clause detrimental standards _ consumer as regulated by UUPK. In addition, the party offering agreement digital standards or contracts electronic must provide agreement standard or contract electronic devices that can be downloaded and/or stored by parties other.

Finally, in Article 57 paragraph (1) PP PMSE is regulated that agreement digital standards or contracts electronic considered automats become null and void if happen error technical as a result of the Electronic System no safe, reliable and responsible answer. It's necessary to come back again to state that *lex specialis* can only be contained in regulations legislation equivalent to the *lex generalis*. Article 57 paragraph (1) PP PMSE is *lex specialis* from the provisions of Article 1266 of the Civil Code as *lex generalis* which require that cancellation The agreement must be made in advance court. Article 1338 paragraph (2) of the Civil Code is the *lex generalis* states that agreement can only be withdrawn, returned or canceled upon agreement of the parties to the agreement.

4. Other Legislation

Need be delivered moreover formerly that field financial services since issuance of Law no. 21 of 2011 concerning the Financial Services Authority has been transferred its management from Bank Indonesia to the Financial Services Authority (OJK), except about Payment system management is still handled by Bank Indonesia (BI).

Both OJK and BI have published regulation about protection consumers, namely:

a. Financial Services Authority Regulations (POJK)

POJK No. 1/POJK.07/2013 Concerning Protection Consumer Financial Services Sector regulates about agreement standard as follows:

1) Article 22

- (1) In case Financial Services Business Actors use agreements standard, agreement standard they must prepared in accordance with regulations legislation.
- (2) Agreement standard as intended in paragraph (1) can be in digital or electronic form to be offered by Financial Services Business Actors via electronic media.
- (3) Agreement standard as as intended in paragraph (2) which are used by Financial Services Business Actors are prohibited from:
 - a) state diversion not quite enough responsibility or obligation Financial Services Business Actors to Consumers.
 - b) state that Financial Services Business Actors have the right reject refund of money paid by consumers for the products and /or services purchased;
 - c) state granting authority from Consumers to Financial Services Business Actors, both directly and indirect, to do everything action unilaterally regarding goods which are collateralized by the Consumer, except action unilateral the carried out according to regulations legislation;

- d) arrange about obligation proof by the Consumer, if Financial Services Business Actors stated that disappearance utility products and/or services purchased by Consumers, are not quite enough answer Financial Services Business Actors;
- e) give the right of Financial Services Business Actors to reduce utility products and/or services or reduce treasure riches The consumer is the object agreement products and services;
- f) state that Consumer subject to new, additional, continuation and/or changes regulations made unilaterally by Financial Services Business Actors during the Consumer Period utilise the products and/or services purchased; and/or
- g) state that Consumer give authority to Financial Services Business Actors for charges right dependents, rights pledge, or right guarantee for products and/ or services purchased by Consumers in installments.

This POJK contains 7 (seven) types of clause standards prohibited in the agreement standard, good agreement digital raw as well agreement non-digital standards in the financial sector.

Need stated that at the time this text was prepared, POJK No. 1/POJK.07/2013 Concerning Protection Financial Services Sector Consumers are currently in the process of being revised in order to anticipate developments in the sector financial services, including the emergence of Financial Technology (Fintech), new financial industries such as pawnshop private.

b. Bank Indonesia Regulations (PBI)

PBI No. 16/1/PBI/2014 Concerning Protection Consumer Payment System Services regulate about agreement standard as follows:

1) Article 8

- (1) In making agreement with Consumers, Organizers forbidden create or include clause standard in every document and/or agreement which is:
 - a) state release / transfer not quite enough answer Organizers to Consumers;
 - b) Arrange for proof of loss utilization Payment System services used by Consumers;
 - c) give the Organizer 's right to reduce benefit Payment System services used or reduced treasure riches The consumer is the object sell purchase using Payment System services; and/or
 - d) state he submitted Consumers to regulations Organizers in the form of new rules, additional rules, advanced rules and/or changes continuation made unilaterally by the Organizer during the Consumer period utilise Payment System services from Organizer.

- (2) Organizer forbidden include clause standard whose location or shape difficult visible or cannot be read clearly or whose disclosure difficult understood by consumers.

This PBI regulates 4 (four) clauses prohibited standards, and prohibitions inclusion location and form of clauses difficult standard visible, as well prohibition inclusion clause the standard for which it is disclosed difficult understandable. Setting pattern about inclusion clause standard in POJK and PBI following the regulations regarding inclusion clause standard as included in Article 18 UUPK.

5. Indonesian Contract Law

Contract law is translation from in English, namely contract of law, while in Dutch it is called a term *overeenscom-strecht*. Lawrence M. Friedman interprets contract law as the only legal device to arrange aspect certain from the market and regulate type agreement certain. That is, contract law is a legal rule relating to the implementation of an agreement or agreement.¹⁴

This opinion examines contract law from the dimensions of implementing the agreement made by the parties, but Michael D. Bayles does not look at the stages precontractual and contractual. This stage is a decisive stage in preparation _ A contract. Contracts that have been drawn up by the parties will also be implemented by them themselves.

This means contract law is a legal mechanism in society to protect expectations that arise in the making agreement for various future changes performance, such as transport wealth (real or not real), performance services, and payment with money.

This opinion examines contract law from aspect legal mechanisms or procedures. The purpose of this mechanism is to protect desires / hopes that arise in the making consensus among the parties, as in a treaty transport, wealth, performance services, and payment with money. Another definition argues that contract law is " Continuity governing legal rules various agreement and bond between legal citizens.

The definition of contract law listed in the Indonesian Encyclopedia examines it from scope aspect the settings, ie agreement and bond legal citizen. Apparently, these definitions equate understanding between contract (agreement) with agreement, whereas between both of them is different. Contract (agreement) is one source engagement, meanwhile one 's consent condition is legal contract, as regulated in Article 1320 of the Civil Code.

Contract law regulated in Book III of the Civil Code, which consists of 18 chapters and 631 articles. Started from Article 1233 of the Civil Code to Article 1864 of the Civil Code. Each chapter is divided into several parts. It is in the NBW of the Netherlands, where the regulation of contract law in Book IV of *van Verbintenissen*, begins from Article 1269 NBW to Article 1901 NBW.

¹⁴ Salim HS, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2021).

The matters regulated in Book III of the Civil Code are as follows:¹⁵

- a. Engagements in general (Article 1233 to Article 1312 of the Civil Code). Matters regulated in Articles 1233 to Article 1312 of the Civil Code include: sources engagement; achievement; compensation for costs, losses and interest Because No fulfillment of an obligation; and types of engagement.
- b. A bond that is born from agreement (Article 1313 to Article 1351 of the Civil Code). Matters regulated in this chapter include provisions general, terms and conditions of its legal agreement, consequence agreement, and interpretation agreement.
- c. Delete it agreement (Article 1381 to Article 1456 of the Civil Code) Delete it engagement divided into 10 types, namely due payment; offer of cash payment followed by safekeeping or safekeeping; debt renewal; debt set-off or compensation; debt commingling; debt relief; destroyed goods owed; cancellation or annulment; enactment condition void; expired.
- d. Buying and selling (Article 1457 to Article 1540 of the Civil Code) Matters regulated in Article 1457 to Article 1540 of the Civil Code, include: provisions general; obligation the seller; obligation the buyers; right buy return; sell buy receivables, and other rights not body.
- e. Exchange (Article 1541 to Article 1546 of the Civil Code)
- f. Lease (Article 1548 to Article 1600 of the Civil Code) Matters regulated in the provisions This lease includes: provisions general; the same rules apply to rental home and rental land, special rules that apply to rent house and furniture House.
- g. Consent to carry out work (Article 1601 to Article 1617 of the Civil Code). Matters regulated in the provisions of Articles 1601 to Article 1617 of the Civil Code, include: provisions general; agreement labor in general; obligation employer; obligation laborers; Miscellaneous method the end published employment relationship Because agreement; and contracting work.
- h. Partnership (Article 1618 to Article 1652 of the Civil Code) Matters regulated in this provision include: provisions general; engagement between allies ; _ alliance of allies to party third ; and various things method the end fellowship.
- i. Legal entity (Article 1653 to Article 1665 of the Civil Code)
- j. Grant (Article 1666 to Article 1693 of the Civil Code). Matters regulated in the provisions about This grant includes provisions general; ability to give grant and enjoy profit from a grant; method grant something; withdrawal return and deletion grant.
- k. Custody goods (Article 1694 to Article 1739 of the Civil Code) Matters regulated in custody goods, that is custody goods in general and types of custody; custody goods true; equalization and the like.
- l. Lending to use (Article 1740 to Article 1753 of the Civil Code) What is regulated in this provision includes: provisions general; obligations of the person receiving it loans; and the obligations of people who lend.
- m. Lending and borrowing (Articles 1754 to Article 1769 of the Civil Code) Matters regulated in the provisions This lending and borrowing includes: understanding lending

¹⁵ HS.

and borrowing; obligations of the person who lends; obligation the borrower; and borrow at interest.

- n. Fixed or eternal interest (Article 1770 to Article 1773 of the Civil Code)
- o. Agreement chance (Article 1774 to Article 1791 of the Civil Code). Matters regulated in the agreement _ These benefits include understanding; agreement flower fork life and its consequences; gambling and betting.
- p. Granting of power of attorney (Articles 1792 to Article 1819 of the Civil Code) Matters regulated in the granting of power of attorney include: nature granting power, obligation recipient of power of attorney, obligation power of attorney, and so on method the end granting power.
- q. guarantor (Article 1820 to Article 1850 Civil Code) Matters regulated in the provisions This debt coverage includes: nature liability, consequences underwriting between the receivable and the bearer, consequences underwriting between the receivable and the guarantor, and between the guarantors themselves, and delete them debt coverage.
- r. Peace (Article 1851 to Article 1864 of the Civil Code) Agreement this peace is an agreement made by the parties to the dispute. In that agreement both parties party agreed to end a conflict that had arisen between them. Agreement new peace is said legitimate when made in written form.

Contract legal regulation system is an open system. It means that everyone is free to hold agreement, whether that has been arranged or those that have not been regulated in law. This can be concluded from provisions contained in Article 1338 paragraph (1) of the Civil Code, which reads: All agreements made legally valid as law for those who make it.¹⁶

The provisions of Article 1338 paragraph (1) of the Civil Code provide freedom for the parties to:¹⁷

- a. make it or not make agreement,
- b. stage agreement with anyone,
- c. determine fill agreement, implementation and requirements, and
- d. determine the shape agreement, whether it is written or verbal.

Until now, the author has not found any regulations regarding contract standard electronic or contractual standards in general are specifically in contract law. In the Criminal Code No discussed about contract standard. But only arrange about Engagements Born Out of Contracts or Agreements. Contract Arrangements are born from engagement found in CHAPTER II to CHAPTER IV regarding deleting it engagement.

So, in this case the author assesses that contract law does not accommodate it at all regarding the overall arrangement of the Contract or Standard Contract. Contract law only learn about governing legal rules about A contract or agreement that is born from engagement. Thus _ contract standard electronic Still need enough in-depth discussion so that in its application you get a justice.

¹⁶ HS.

¹⁷ HS.

Application of Standard Contracts in Electronic Contracts in the Digital Era Based on Indonesian Contract Law

In the Civil Code the moment of occurrence is not clearly stated in the contract. In Article 1320 of the Civil Code only It is said that it is sufficient to have a consensus of the parties. Furthermore, there are 4 theories that discuss the momentum of occurrence contract, namely the theory of statement, delivery, knowledge, and acceptance:

1. Statement Theory

According to statement theory, agreement (toesteming) occurs when the party receives the agreement the offer stated that He accept that offer.

2. Delivery theory (verzendtheori)

According to delivery theory agreement happen if receiving party _ offer to send a telegram. Criticism of this theory, how? it can be known. It's possible, even though it has already been sent, however No known to the offering party. This theory is also very theoretical, it is considered to happen agreement automatically.

3. Theory of knowledge (*vernemingstheorie*)

The theory of knowledge opinion that happen agreement happen if The party offering the offer is aware of the acceptance (*acceptatie*), however the acceptance has not been received (no known directly). Criticism of this theory, how? He knows it will accept if he hasn't received it yet.

4. Acceptance theory (ontsvangstheorie)

According to acceptance theory that toesteming occurs when the offeror _ receive immediate answers from party opponent.

Before discussing further about determination of Electronic Standard Contracts, author will review moreover formerly about principle from the Standard Contract. Munir Fuadi explain there are 4 (four) principles that must be considered in contracts standard namely:¹⁸

1. The principal agreement will be between the parties. Agreement as the basis of its legal engagement remains the determining factor valid or not contract that. As explained in article 1320 of the Civil Code which states valid agreement there is an agreement from both parties. Although contract raw made by one party only, elements the agreement must be fulfilled in the contract standard that. The agreement can be marked by its signature contract that way¹⁹ or that way handover of goods transacted;
2. Principle assumption risk from the parties. There are assumptions risks in the agreement No prohibited. It means if one _ party willing bear risk the, when risk the happen then that states willing must bear it risk said;²⁰
3. Principle obligation read (duty to read). Principle obligation reading by consumers adopted by the system of common law countries such as America must also be considered consumers in Indonesia. The discipline of law also teaches that each party must read the contract they

¹⁸ Salim HS, *Perancangan Kontrak Dan Memorandum of Understanding* (Jakarta: Sinar Grafika, 2007).

¹⁹ Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis) Buku Kedua* (Bandung: PT.Citra Aditya Bakti, 2007).

²⁰ Fuady.

signed. Signature affixed to the contract the is a sign that they have read fully the contract they agreed to;²¹

4. Principle The contract follows custom. Contract as a governing role what the parties should do and should not do does not mean what they should not do stated in the contract whether it may or may not be done. There are principles Customs also bind the parties to the agreement.²²

Application of Electronic Standard Contracts in Indonesia author divide it into 3 (three) parts which will be writer describe it as follows:

1. Electronic Standard Contracts in Electronic Transactions

Standard contract electronic transactions electronics in general found in business activities electronic commerce (*e-commerce*). Yahya Ahmad Zein stated that development A technology in the era of globalization allows trading activities to be carried out through frequent electronic media called electronic *commerce* or *e-commerce*.²³

In Indonesia itself there are some examples of classification business trading electronic (*e-commerce*), namely:²⁴

- a. *Listings / classified ads*

Like OLX, berniaga.com functions as a platform where individuals can place the best goods and sell them for free. Income obtained from premium advertising. On type This sale is very suitable for sellers who only want to sell goods by quantity small.

- b. *Online Marketplace*

Such as tokopedia.com, bukalapak.com, which is the website in question Not only help promote goods just merchandise but facilitate online money transactions. Whole Online transactions are facilitated by the relevant website.

- c. *Shopping Mall*

For example, blibli.com, zalora.com, Business models almost the same as the marketplace, however sellers who can market goods there just well-known sellers or brands because of the verification process tight.

- d. *Online store*

Like lazada.com, bhinneka.com. In this business an online shop with its own website address with which the seller owns stock products and sells them online to buyers.

- e. *Online shop on social media*

On type Anyone who sells using social media can promote this sale goods their merchandise using social media sites such as Facebook, Twitter (X), and Instagram.

- f. *Types of crowd sourcing and crowd funding websites*

²¹ Fuady.

²² Fuady.

²³ Yahya Ahmad Zein, *Kontrak Elektronik Dan Penyelesaian Sengketa Bisnis E-Commerce: Dalam Transaksi Nasional Dan Internasional* (Bandung: Mandar Maju, 2009).

²⁴ Scivi Junifer Kapoh, "KAJIAN HUKUM PENERAPAN KONTRAK BAKU ELEKTRONIK PADA TRANSAKSI E-COMMERCE," *LEX ET SOCIETATIS* 8, no. 3 (September 1, 2020), <https://doi.org/10.35796/les.v8i3.30671>.

The website is used as a platform to gather people with the same *skills or to* raise funds online. For example, kitabisa.com, wujudkan.com.

Lots of it ease of accessing the internet makes consumer *e-commerce* increased, some the reason among others, are practical, easy payment system, time efficiency and quantity attractive promotional prices from perpetrator online business. However, behind all convenience and benefits offered, there are also concerns will not quite enough answer online companies to consumers *e-commerce* remember so many online companies.²⁵

But behind convenience neither does that free from problems that arise consequence contract standard electronic transactions electronics. One case the violation of the Electronic Standards Contract occurred in 2016, namely Achmad Supardi was the victim who suffered losses from Lazada, Achmad Supardi made confession that Lazada has canceled it unilaterally transactions that have been paid paid off consumers and return consumer funds This is in the form of a shopping voucher which can only be spent on Lazada.²⁶

Achmad bought 1 Honda motorbike vario and 3 units of Honda credit,orbikes on December 12 2015 at Lazada, 3 units of Honda Revo purchased at a price of IDR 500 thousand each for a total of IDR 1,500,000, while the Honda Revo purchased at a price of IDR 2,700,000 for cash on the road purchases, the price on the Lazada site is price motorbikes with *cash on the road*, not credit, and numbers This is not a down payment figure, and Achmad thought price cheap part from promotion Crazy National Online Shopping Day (Harbolnas) craziness, and he has made transfer payments via BCA ATM, transactions valid and confirmed by Lazada.

On December 14 2015, Achmad opened the Lazada site again with the same appearance but already existed part addition that the price of the motorbike is already set price credit , on the same date, ia on the phone Honda Angsana, who is a Lazada motorbike tenant , staff Angsana ask is The motorbike was bought on credit , Achmad explained motorbikes purchased cash on the road, party Angsana call up to two times.

Two days then, Achmad checked the transaction status at Lazada, and he surprised Because transaction confirmed and stayed wait delivery it turns out turned into rejected and closed by Lazada. Lazada unilaterally processed the refund by providing shopping vouchers according to the amount of money spent to purchase 4 motorbikes and replacing the funds with 2 vouchers amounting to IDR 4.2 million.

Ahmad admitted disappointment, because the voucher cannot be cashed, as a consumer He asked Lazada to apologize, and as a company big No appropriately treat consumers with no honorable.

²⁵ Kapoh.

²⁶ Ridho Syukro, "Batalkan Transaksi, Lazada Langgar UU Perlindungan Konsumen," 2016, <https://www.beritasatu.com/ekonomi/337594/batalkan-transaksi-lazada-langgar-uu-perlindungan-konsumen>.

The analysis²⁷ in this case is default that occurs because carry out agreement but not as promised. It could happen because of 2 things, first namely Achmad Supardi bought the motorbike and has carried it out his obligations that is pay the amount of money that had been agreed upon, however Lazada is implementing it obligation to provide different items than what was agreed namely vouchers. And the second is when it happens cancellation made by Lazada , should return the money that has been transferred as it was originally that is, it is still in the form of cash , but what is given by Lazada is a voucher worth the money that has been transferred by Achmad Supardi, of course this voucher itself is not liquid cash that Achmad Supardi transfers when making payments, and the voucher can only be used on Lazada.

At the time it happened default, first done is returning to the agreement agreed upon by both parties' party. If the deal is bought and sell goods, then the seller must deliver goods and buyers must Pay according to content contract. At the time it happened default from perpetrator effort, at least the money transferred returned to the buyer, or given away compensation for damages. If seen by agreement, ie Terms and Conditions of Lazada in section sale article 8 paragraph 1, which reads: "all refunds will be carried out through the original payment mechanism to the person who made the original payment." Which means that the refund made by Lazada should have been in the form of cash, as was given by Mr. Achmad, but what was given only in the form of a voucher for the amount value transferred by Achmad Supardi.

Protection Act Consumer arrange regarding Rights and Obligations Consumers and Business Actors, and prohibitions for perpetrators business, which is based on Law no. 8 of 1999 concerning Protection Consumer article 4 point 3 which reads: "the right to correct, clear and honest information about conditions and guarantees goods and/or services." Which means consumers own the right to clear and honest information such as advertising provided by Lazada, but which occurs after payment or transaction has occurred the canceled by Lazada, and the money has been transferred the replaced in the form of a voucher.

Basically, there are fines _ because of an injury promise is consequence No fulfillment obligation main from perpetrator business that is give goods that correspond to those purchased by consumers. If based on a specific theory of justice, namely justice distributive. Justice This distributive is justice that gives each person a portion commensurate with his or her achievements do. For example, in the case raised by the author, Achmad Supardi has made achievements that is give an amount of money agreed upon by both parties, but Lazada did not perform the achievements that it should have done, but give goods in other forms, namely vouchers.

And this case did not go to court, because of the clause *Disclaimer* listed by Lazada regarding Restrictions Responsibilities that sound like limitations not quite enough answer between perpetrator business with consumers. Clause the state that Lazada does not responsible answer everything _ risks and losses that arise during the process transactions, whether in the form of

²⁷ Nicolas Nicolas and Atalim Atalim, "Tanggung Jawab Badan Usaha Perdagangan Melalui Sistem Elektronik Dalam Hal Terjadinya Wanprestasi (Studi Kasus: Lazada Vs Achmad Supardi)," *Jurnal Hukum Adigama* 4, no. 2 (2021): 1940–57, <https://doi.org/10.24912/ADIGAMA.V4I2.17139>.

violations information provided by the seller, purchase goods purchased by buyers, as well as nominal difference at the time of payment.²⁸

And after the author browse *Disclaimer* on Lazada services has been experienced change to *Disclaimer* Use the AI services contained in numbers 22 to number 24 state that:²⁹

- a. By using the AI Services, you represent, warrant, and ensure your compliance with the Terms. You acknowledge and agree that you are responsible responsible for complying with all applicable laws, regulations and guidelines when using the AI Services. Lazada firmly releases not quite enough responsibilities and/or obligations whatever arises in connection with your compliance or non-compliance with these Terms and laws, regulations, and guidelines whatever happens. You admit that any consequences or damage resulting from your actions or negligence are fully borne by your answer, and you agree to release Lazada from claim, loss, or liability whatever arises hence.
 - b. Apart from above, Lazada, its affiliates, and all officers, employees, directors, agents, contractors and assigns diversion from each party mentioned above is not will responsible responsible to you for any losses whatever or whatever the cause (without limited to the form of action) arising directly or indirectly in connection with:
 - 1) any access, use and/or inability to use the AI Services.
 - 2) dependence on data or information provided through the AI Services. You may not act based on data or information the without moreover formerly verify content independently;
 - 3) system, server or connection failure, error, omission, interruption, delay transmission, computer viruses or code malicious, destructive or other harmful agents, programs or macros; and/or
 - 4) any use of or access to any other website or web page linked to or by the AI Services, even if we or any of our officers or agents or employees may have been given knew, or perhaps had anticipated, the same possibility.
 - c. LAZADA, its affiliates and all their respective officers, employees, directors, agents, contractors and assigns shall not be liable for any indirect, incidental, special, consequential or exemplary damages, including compensation for loss of profits, goodwill, *use*, or data or other loss, even if we have been advised of the possibility of such damage.
2. Electronic Standard Contracts on Agreement *Financial Technology* (Fintech)

Financial Technology P2P -based lending involves 3 parties, namely Organizer Service, Giver Loans and Beneficiaries Loans There is a legal relationship as a result An agreement between Organizer Service, Giver Loans and Beneficiaries Loan Of course will produce risk. The risk in

²⁸ Heni Pratiwi, "JURIDICAL ANALYSIS OF DISCLAIMER CLAIMS BY ENTREPRENEURS ON ONLINE TRADING (E-COMMERCE)," *Indonesia Private Law Review* 1, no. 1 (September 9, 2020): 43-54, <https://doi.org/10.25041/iplr.v1i1.2047>.

²⁹ LAZADA, "Disclaimer Penggunaan Layanan AI," accessed March 13, 2024, https://pages.lazada.co.id/wow/gcp/route/lazada/id/upr_1000345_lazada/channel/id/upr-router/id_upr?spm=a2o4j.tm80089997.1896063600.17.12c7e7e1xVG9i3&hybrid=1&data_prefetch=true&prefetch_replace=1&at_iframe=1&wh_pid=/lazada/channel/id/legal/LayananAI&trafficSource=TT.

P2PL is generally in the form of loans problems or delays in payments. Therefore, mitigation is needed _ risk to prevent happen risk loan problematic.³⁰

Mitigation settings P2P Lending -based Fintech risks are listed in CHAPTER V POJK No.77/POJK.01/2016, detailed in Articles 21 to 24. Article 21. Article 23 POJK No.77/POJK.01/2016 explains the possibility for Providers to collaborate and exchange data with the organizer service supporter-based technology information for improvement P2PL quality.³¹

Apart from being contained in the POJK, the substance obligation mitigation risks are also listed in PBI No.19/12/PBI/2017. In PBI what is meant is technology financial is use technology in the financial system that produces new products, services, technologies and/or business models and may impact stability monetary, financial system stability, and/or efficiency, smoothness, security and reliability of the payment system.³²

Currently, there are no specific rules about obligation mitigation risk specifically risk loan non-performing (NPL), NPL ratio threshold, as well as Legal implications for P2P Lending providers with high NPL result separate legal issues. The legal issue in question related to legal certainty and protection for the parties. In context loan problems that lead to loans traffic jam, the party who suffers the most is giver loans (investors). Therefore, legal protection of investors' funds is an issue crucial separately in the implementation of P2P Lending.³³

In Indonesia, there is P2P Lending -based Fintech which is quite well known among the public a number of Name they are Amarnya, Investree, Toko Modal, Rakyat Rakyat, Dana Cipta, and so on.³⁴

In financial implementation technology-based *peer to peer lending* often give birth new legal issues viz if si recipient the loan commits a default (risk fail pay) then the funds loaned party giver loan No will back. Risk fail pay the very harm One party that is party giver loan (creditor). The same thing also happens to party's recipient loan (Debtor), if there is late payment or negligence in carrying out debt payment obligations party organizers in making efforts billing often in a way threats, terror, and misuse of personal data debtor, the Of course it is very detrimental and disturbing for the weak.³⁵

The legal protection analyzed in the agreement online loans lie on the party's recipient loan therefore analysis to contract standards that have been created by the organizer usually

³⁰ Riris Nisantika, Si Ngurah Ardhya, and Muhamad Jodi Setianto, "TINJAUAN YURIDIS TENTANG PENCANTUMAN KLAUSULA EKSONERASI DALAM PERJANJIAN PINJAM MEMINJAM PADA FINANCIAL TECHNOLOGY BERBASIS PEER TO PEER LENDING," *Jurnal Komunitas Yustisia* 5, no. 3 (September 1, 2022): 162-77, <https://doi.org/10.23887/jatayu.v5i3.51896>.

³¹ Riris Nisantika, Si Ngurah Ardhya, and Muhamad Jodi Setianto.

³² Riris Nisantika, Si Ngurah Ardhya, and Muhamad Jodi Setianto.

³³ Riris Nisantika, Si Ngurah Ardhya, and Muhamad Jodi Setianto.

³⁴ Riris Nisantika, Si Ngurah Ardhya, and Muhamad Jodi Setianto.

³⁵ Wulandani, "PERJANJIAN PINJAM MEMINJAM FINTECH DIHUBUNGKAN KATA SEPAKAT PARA PIHAK SESUAI KETENTUAN PASAL 1320 KUHPERDATA DAN UNDANG UNDANG ITE," *Yustitia* 6, no. 2 (November 30, 2020): 201-16, <https://doi.org/10.31943/yustitia.v6i2.115>.

contain things that burden one party that is consumer. Point heavy Legal protection should be given to consumers regarding their rights and obligations regulated in UUPK. Consumers are also givers loans and organizers as marketplace lending.³⁶

One problems that arise from Electronic Standard Contracts to Agreement *Financial Technology* (Fintech) is complaint from P2P customers are disappointed with Fintech Amartha which is increasingly less transparent.³⁷

Already one for more than a year I have been a funder at Amartha. One *peer-to-peer* (P2P) lending that has a business license from Financial Services Authority (OJK). The results I received were very satisfying. Besides me I like the billing system, which is done every week, because it makes faster money circulation.

However, lately I am disappointed with the service and Amartha's working system is not working transparently. I have two problems natural, that is claim insurance and delays billing or installment payments partner. During a pandemic there are a number of partner businesses (fund borrowers) who experience difficulty paid, and had time submit tenor extension. When circumstances recovered, partially big borrower succeed pay instalment weekly smoothly.

However, there are a number of partners or borrowers who still fail to pay. In July I submit claim insurance on partners that. When I submitted a claim via email, Amartha *Customer Service* answered that insurance will be processed automatically If partners or borrowers No pay 4 (four) weeks in a row. After 90 days have passed since that email, I ask Return application status claim due to claim funds No come in. However, asked several times, agent / *customer service* No Once give certainty of disbursement date. According to I claim status insurance at Amartha no transparent. At the end of November, I realized oddity another, namely billing status partner I something is not updated.

previous months, payment status was always updated every week, both partners the pay and fail pay. But at the end of November, I... see there is one partner whose last payment status was in October, and the status during November is still empty. When I complained to *customer service*, it said that partner It pays regularly, however There are problems with agents in the field, so the payment status is not updated. After I check funding others, it turns out not just one experienced partner _ such a delay in updating. There are more than 4 (four) partners who experience the same thing in different locations. There are in Sulawesi, Central Java, Palembang, etc. I am I'm suspicious, is this Amartha's trick to slow down funders' cash flow? The longer I am the more disappointed with the system at Amarta which isn't transparent. Thank you.

³⁶ Ade Putri Lestari and St. Laksanto Utomo, "KEPASTIAN PERLINDUNGAN HUKUM PADA KLAUSULA BAKU DALAM PERJANJIAN PINJAMAN ONLINE DI INDONESIA," *SUPREMASI Jurnal Hukum* 3, no. 1 (April 22, 2020): 77-93, <https://doi.org/10.36441/supremasi.v3i1.124>.

³⁷ Livia Indah L, "Surat Pembaca : Kecewa Dengan Fintech Amartha Yang Semakin Tidak Transparan," 2020, <https://inside.kompas.com/surat-pembaca/read/60538/Disappointed-with-Fintech-Amartha-yang-Semakin-Not-Transparan>.

This is the result Because it is contract standards as stated in the terms and conditions of Article XXII about Restrictions Liability and Compensation as follows:³⁸

1. In providing the Website and Services, we strive and are committed to remaining compliant with regulations applicable legislation, incl However No limited to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law No. 27 of 2022 concerning Personal Data Protection along with regulation its derivatives as well as Financial Services Authority Regulation no. 06/POJK.07/2022 concerning Protection Consumers and Society in the Financial Services Sector (which can be changed from time to time).
2. We are not responsible answer for everything losses arising from failure your fulfillment or failure to perform provisions in the Terms and Conditions of Use, Policies Privacy and Agreement Funding between you and the party the other three.
3. We don't responsible responsible for the legal relationship between Recipient of Funds and Funders in the Agreement Funding, incl However No limit if exists loss to you or your party the other three arising based on the Agreement Funding that.
4. We don't responsible answer if after application We accept the recipients of the funds however it turned out later day Fund recipient failed carry out its obligations under the Agreement Funding to Funders.
5. Without rule out other provisions in the Terms and Conditions of Use, and Agreement Funding, we don't responsible for any losses incurred in connection with:
 - a. Unavailability access to and from the Website, Services, content because reasons and causes whatever.
 - b. Changes, modifications, deletions, additions, termination from the Website, our Services, Content, Terms and Conditions of Use, Policies Privacy and Agreement Funding.
 - c. Failure performance of our systems, networks, servers, connections so cause No the availability of our Website and Services, whether this occurs intentionally, or not intentionally, or as a result of deed party the third is beyond our control.
 - d. Inadequacy, lack, imperfection, suitability, inaccuracy, error, incompleteness and error of the Website, Services and Content.
 - e. Disappearance profits, opportunities or data that arise from your use of the Website, Content, Services.
 - f. Impact harm you experience consequence access our Website and Services, including However No limited to loss advantage, annoyance business, opportunity business.
 - g. Any losses incurred are caused by circumstances Force.
 - h. Any violation of the waiver of General Terms and Conditions and Policies Privacy required by regulations applicable laws, orders competent authority or decision court.
6. You agree to replacement losses and protect us from loss against all claims, obligations (incl obligations based on law and obligations to the parties third), costs, expenses, fines, fees (incl but No limited to legal costs on an indemnity basis full), compensation, decisions and / or

³⁸ Amarta, "Terms and Conditions," accessed March 13, 2024, <https://amartha.com/en/terms-and-conditions/>.

losses suffered or incurred by Us, including benefits and opportunities (potential or actual) that can be taken from it or lost, caused or arising because:

- a. Your violation of Terms and Conditions of Use, Policies Privacy, Agreement Funding and regulations applicable legislation.
- b. Violation to representations and warranties as mentioned above.
- c. Actions from party thirdly using your account which causes losses for us and/or other parties.
- d. Negligence of you who caused it loss from party third.

3. Online Loan Electronic Raw Contract

Provider loan online credit is companies in the form of legal entities in the form of Limited Liability Companies and Cooperatives which have been declared as "financial services" institutions. Business activities from service the online loan covers provision, management and operation service loan money from giver loan to the recipient-based loans technology information. Because it's a provider loan credit is perpetrator business offering "fund loan services carried out" through online media using devices technology perpetrator business offering products through electronic systems must provide complete and correct information related to conditions contracts, manufacturers, and products offered. that information covers.

- a. containing information identity as well as the status of legal subjects and their competence, both as producers, suppliers and organizers nor intermediary.
- b. other explanatory information matter certain conditions are required its legal agreement" as well explain goods and/or services offered, such as name, address and description goods / services. (explanation article 9 UUTE).³⁹

Agreement Online loans must be stated in an electronic document. Contents of the agreement loans "online at least load about: agreement number; date of agreement; identity of the parties; provision about rights and obligations of the parties; amount loans; ethnic group flower loans; big commission; time period; details of related costs; provision about fine (jia There is fine); mechanism solution dispute;" mechanism solution in case Organizer unable to continue its operational activities.⁴⁰

Frequent thing missed by the candidate recipient loan of the loan process credit "online this is read part provisions which are fill agreement this credit. Agreement This credit is agreement in the form of an electronic document included type agreement with clauses standard (standard contract).⁴¹

One case in online loans occur when someone has tied them up agreement by submitting online loans to one of the business entities service legal loans. After fulfilling all the requirements needed to make a loan, initially A borrowed a nominal amount of IDR 1,000,000

³⁹ Nyoman Andhi Priyambawa, I Nyoman Putu Budiarta, and A.A. Sagung Laksmi Dewi, "Perjanjian Elektronik Pada Pinjaman Online," *Jurnal Interpretasi Hukum* 3, no. 3 (December 30, 2022): 455-60, <https://doi.org/10.55637/JUINHUM.3.3.5803.455-460>.

⁴⁰ Priyambawa, Budiarta, and Dewi.

⁴¹ Priyambawa, Budiarta, and Dewi.

with a tenor of 30 days, then the repayment would be IDR 1,100,000. However, when the recipient has received the loan funds the only amounting to IDR 900,000, in the explanation service service it is the borrower's money deducted for admin fees and so on. So, provisions flower from loan the amounting to 0.74% per day. If referring to AFPI provisions, tribe the interest on this loan is still at the level reasonable Because no exceed provision namely 0.8%. In the latest regulations AFPI issued a provision that 4% interest for loans less than 30 days but this case is different submission The loan has a term of 30 days. However, before entering repayment time suddenly there is a nominal increase that must be paid off by calculating ethnic group interest increases to 1.02%.⁴²

If referring to the established clauses at the beginning, stated that in using the service, customers subject to rules, amendments, continuations, and/or other changes imposed by the service unilateral service: ⁴³

1.2 We reserve the right to decide on the version whatever terms and conditions conflicting and periodic revoke, modify, update, or replace it. Apart from letting know You about these changes through our Platform, we also reserve the right do so via registered email address you. You are obliged and have obligation to review These terms and conditions are periodically subject to revision or replacement. Assumed that you have received change If You continue to use our Platform after being subject to these terms and conditions. For carelessness You Because No read updated terms and conditions, we do not responsible answer for everything resulting losses.⁴⁴

In content clause is created by the service service online loans as organizers businesses, debtors and investors are the intended party from contract this standard. The agreement between giver loan and recipient loan only by agreement civil law of both parties' party. If observed carefully, it is clear that there is liberation not quite enough responsibilities carried out by the service service, if a condition exists urge until cause rising ethnic group interest should this be confirmed moreover first. The results of research conducted by (Lucky Sasmita et al., 2021), show that only 22 of 49 applications vetted legal online loans, or 45% of whole sample disclose flower loan daily. A total of 27 applications from sample No include information about ethnic group flower loan daily. Based on technique flower simple, found that only One application online loan, out of 27 applications loans that are not explicit disclose flower loan by specifying flower loans beyond the limit or a maximum of 0.8% per day. Submission Legal online loans must comply governing regulations magnitude ethnic group flower daily information that can be understood by consumers.⁴⁵

⁴² Gilang Putera Moertanto and Rosalinda Elsin Latumahina, "PERLINDUNGAN HUKUM TERHADAP PERUBAHAN KLAUSULA BAKU SEWAKTU-WAKTU OLEH JASA LAYANAN PINJAM MEMINJAM UANG BERBASIS TEKNOLOGI INFORMASI," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 735-48, <https://doi.org/10.53363/BUREAU.V3I1.213>.

⁴³ Moertanto and Latumahina.

⁴⁴ Moertanto and Latumahina.

⁴⁵ Moertanto and Latumahina.

Up to now Services Borrow Borrowing Based Money Information Technology (LPMUBTI) with reference to Indonesian OJK regulations which are the framework for p2p lending operations. An organization independent who has not quite enough responsibility, authority, regulation, supervision, and skills investigation is the Financial Services Authority, often called (OJK). Financial Services Business Actors (PUJK) by complying and implementing provision protection consumers in POJK Number 77/POJK.01/2016. According to the provisions, every financial technology provider is obliged to register and get permission from OJK to run business his business. BI also plays a role in providing a market for providers service effort by giving protection consumers, in particular related guaranteed confidentiality of data and information consumers over the network security cyber. Related participation in fintech services and capital participation (Benuf et al., nd). A must for every actor effort to comply with the provision macroprudential which aims to encourage function quality and balanced intermediation. Legal certainty can be achieved through efficient standardization as well as in its implementation transparent about his rights, para parties in accordance with the law, in this way they can build legal certainty.⁴⁶

4. Standard Electronic Contracts in Mobile Applications.⁴⁷

Electronic contract which Edmon Makarim calls an online contract is engagements or legal relationships carried out electronically by combining network (*networking*) of information systems-based computer (*Computer based information system*) with a communication system based on networks and services telecommunications (*telecommunication based*), which is further facilitated by the existence of network global internet computer (*network of networks*).

Standard contract electronics in cellphone applications are type contract standard electronic *Clickwrap Agreement and Wrap Agreement*. This contract is entered into by agreement requirements by the buyer mentioned by the seller in trading via an electronic system by clicking on the column provided which usually says I Agree, I Accept, and so on.

In a *clickwrap agreement* basically there are two types of agreements contained in the website or application, namely agreements that are closed by clicking (*clickwrap agreement*) and agreements that are concluded by *browsing* (*browsewrap agreement*).

In *the browser wrapper agreement*, before doing so transaction, the buyer must read and agree the terms in the contract are usually displayed on the website or application in question.

So, agreements are frequent. We carry out transactions via *e-commerce* is one type contract which in this case constitutes *clickwrap agreement*.

In essence *clickwrap agreement* is A contract electronics, contracts Electronics is recognized its legal validity in Indonesia in Article 1 number 17 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions

⁴⁶ Moertanto and Latumahina.

⁴⁷ Muhammad Fauzi, "Dengan Satu Kali Klik, Apakah Perjanjian Yang Kamu Buat Sah? Berikut Penjelasan Clickwrap Agreement | HeyLaw," 2021, <https://heylaw.id/blog/dengan-satu-kali-klik-apakah-perjanjian-yang-kamu-buat-sah-berikut-penjelasan-clickwrap-agreement>.

jo. Law Number 11 of 2008 concerning Information and Electronic Transactions which explains that contract electronic is agreement between the parties made through an electronic system.

Apart from that, Article 1 number 17 of Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions and Article 1 number 4 of Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems is also a basis validity *clickwrap agreement* which states that contract electronic is an agreement made by the parties made through an electronic system.

Almost all violations related to contract standard electronic No have ever reached a court or arbitration body. This happened Because the party who made it contract standard electronic always be in position highest bid.

One example of a user who feels disadvantaged by using an application cellphone is Application *Get Contact*. *Get Contact* or *Truecaller* is a crowd sourcing data application that utilizes big data from its users. Know identity number owner by combining big data from user contacts. Crowd sourcing itself is A concept for sharing data with certain permissions.⁴⁸

So far usage application *Get Contact* and *Truecaller* serves to help identify spam telephone numbers as well fraud by labeling telephone numbers the Then the application can notify its users that phone number the is spam. Things like this use the concept of crowd sourcing.

Like other applications, *Get Contact* and *Truecaller* will ask the user for permission to access other features such as access contacts and gallery. Access contacts intended for searching contacts become more effective and parties' developer promise not to share contact list information to users other. If you are still unsure, share access contact, then that's not a problem. We as users can refuse offer this is to prevent things that don't desired happened.

Another thing at issue ie violation privacy. Other users can see Name contacts that other people have saved for our number, even though some people have created them Name contact unique that is not wanting to see by other people consider it a violation privacy.

Privacy of course is something subjective. However, if dissected meaning violation privacy, then violation privacy is disclosure information without notice proper code of ethics, ie violate privacy a person or group of nature detrimental, such as publishing electronic documents in the form of images, videos, writing and others without using rules and manners proper manners.

In general, the concept of privacy emphasizes its importance to determine the extent to which the public can interfere with someone's life personal. Apart from that, it can be

⁴⁸ Afifah Khoirun Nisa, "Apakah Aplikasi Get Contact Dan Truecaller Melanggar Privasi? Berikut Hal Yang Dapat Dilakukan Agar Data Tidak Diakses Sembarangan Halaman 1 - Kompasiana.Com," 2022, <https://www.kompasiana.com/ifahhkn2002/627d2e72d8da790f863ff322/apakah-aplikasi-get-contact-dan-truecaller-melanggar-privasi-berikut-hal-yang-dapat-dilakukan-agar-data-tidak-diakses-sembarangandilakukan>.

concluded in essence privacy is freedom from any form of interference to life personal somebody nor attention disorders public.

One definition of privacy according to Ken Gormley mentioned that somebody own control over information relating to himself that he personally chooses to disclose to the public general. Application *Get Contact* according to Roskomnadzor.⁴⁹ As recorded Pikabu, in between information that this application can distribute, there are telephone numbers, accounts on the network social media, photos, postal addresses, IP addresses, and notes telephone. User application Afraid will spam and aggressive trojans. Application rules state that Gets Contact can share information user anything” with the parties any third.” It can also send messages by post or SMS, as well as “carrying out marketing activities permitted by law”. In the description apps on Google Play, apps say “protect from calling marketing dangerous by blocking it.” The FAQ section says that application No distribute any data, except for information contact. He sent request to GetContact, but No accept response.

Reddit users compare GetContact with companies Sweden TrueCaller. This “filters out” calls that are not necessary and also representative book universal telephone, distinguishing the number from which calls and messages come originates, and also allows you to create copy reserve from book telephone. Get Contact is banned in Azerbaijan, Kazakhstan and Kyrgyzstan. Application the blocked in Kazakhstan and Azerbaijan at the start February Because violate personal data and the law protection. Previously, the media reported that the app was also blocked in Kyrgyzstan, however confirmation of this we could not find on February 9, after the ban in Kazakhstan and Azerbaijan, it still available. After this news, no There is news about key. After GetContact banned in Kazakhstan, team development Codebusters launch its partner GetContact. Head company, Murat Alikhanov, said that it quickly becomes popular and allows you to earn one thousand dollars from advertisements per day. According to him, the team was ready to be banned. On February 28, creator GetContact replaced Name service Pootin them.

On February 28, Roskomnadzor warned Russian users about danger application. The office explained that user application during installation possible access to all information from the page or the phone. Roskomnadzor urge users to “at least own A little control over themselves” before installing “suspicious apps.” Agency promised to check Get Contact. It has not united to block application, but if happen offense, it can be limiting access to it. Among your contact details, the phone can also record credit card data, PIN, password from office personnel, etc. All this is also available in the public database after installing this application. Remember that the developer of this app is not moral and can then sell the database they collect to anyone: collectors, fraudsters, and others.

CONCLUSION

From the explanation provided above, the author draws interesting conclusions in this case. Firstly, regarding the standard contract arrangements in electronic agreements in the digital era

⁴⁹ Klikdetik, “Aplikasi Get Contact,” accessed March 13, 2024, <https://www.klikdetik.com/10954/aplikasi-get-contact.html>.

based on Indonesian civil law, the author divides the regulations into three parts: those based on the Civil Code, laws, and contract law. Electronic standard contracts are regulated under various legislations in Indonesia, including the Civil Code, Consumer Protection Law, government regulations, and financial authority regulations, but there's still a lack of specific regulation under Indonesian contract law. Secondly, concerning the application of standard contracts in electronic contracts in the digital era based on Indonesian contract law, the author categorizes them into four parts, including those for electronic transactions, financial technology agreements, online loans, and mobile applications. Notably, most violations related to electronic standard contracts have not reached court or arbitration due to the dominant position held by the party drafting the contracts.

This research offers the following suggestions. Firstly, since standard contract arrangements in electronic agreements under Indonesian contract law lack detailed regulation, there's a need for specific regulations addressing electronic standard contracts and contracts/agreements in general. This suggestion is grounded in the principle of *Lex specialis derogat legem generali*. Secondly, regarding the application of standard contracts in electronic contracts in the digital era under Indonesian contract law, for mobile applications utilizing Clickwrap Agreement and Wrap Agreement systems, it's recommended that the government, through the Ministry of Communication and Information, establish a specialized body responsible for certifying electronic standard contracts created by application parties. This certification process mirrors the certified form of electronic signature arrangements and ensures greater legal clarity and security in electronic transactions.

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