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The Fulfillment of the Freedom of Contract in Indonesia's Electronic Contract Regulation: An International Law Perspective

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Abstract

This study aims to analyze the alignment of Indonesia's regulations on electronic contracts with the UNCITRAL Model Law on Electronic Commerce in order to promote reforms to contract law that are more adaptable to digital developments. The digital transformation has made electronic contracts the primary means of conducting cross-border civil transactions. However, Indonesia's regulations under the ITE Law are considered to be limited to business transactions and do not yet accommodate other civil relationships.

The method used is normative legal research employing legislative, conceptual, and comparative approaches. This study analyzes the UNCITRAL Model Law on Electronic Commerce as an international legal instrument serving as a guideline for harmonization. In addition, this study also examines the ITE Law and its implementing regulations as sectoral regulations, as well as the Indonesian Civil Code as the general legal framework that should ideally serve as the overarching regulatory framework for electronic contracts.

The novelty of this study lies in its analysis of the relationship between the principle of freedom of contract in the Indonesian Civil Code and UNCITRAL's international standards, a topic rarely discussed in the national literature.

The results of the study indicate that the UNCITRAL Model Law provides a flexible and universal framework consistent with the principle of freedom of contract; however, its application in Indonesia remains limited by the ITE Law's focus solely on electronic transactions.

The conclusion of this study is that harmonization of Indonesian contract law with international principles is necessary so that the regulation of electronic contracts can apply across sectors, not limited to business, and meet the dynamics of legal globalization.

Keywords: Electronic Contracts; Freedom of Contract; International Law

Abstrak

Penelitian ini bertujuan *untuk menganalisis kesesuaian pengaturan kontrak elektronik di Indonesia dengan UNCITRAL Model Law on Electronic Commerce guna mendorong pembaharuan hukum perikatan yang lebih adaptif terhadap perkembangan digital. Transformasi digital telah menjadikan kontrak elektronik sebagai sarana utama transaksi keperdataan lintas batas. Namun pengaturan Indonesia dalam UU ITE dinilai masih terbatas pada transaksi bisnis dan belum mengakomodasi hubungan keperdataan lain.*

Metode penelitian *yang digunakan adalah penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan perbandingan. Penelitian ini menganalisis UNCITRAL Model Law of Electronic Commerce sebagai instrumen hukum internasional yang*

berfungsi sebagai pedoman harmonisasi. Di samping itu, penelitian ini juga mengkaji UU ITE beserta peraturan pelaksananya sebagai regulasi sektoral serta KUH Perdata sebagai kerangka hukum umum yang idealnya menjadi payung pengaturan kontrak elektronik.
***Kebaruan penelitian** ini terletak pada analisis keterkaitan asas kebebasan berkontrak dalam KUH Perdata Indonesia dengan standar internasional UNCITRAL, yang jarang diulas dalam literatur nasional.*
***Hasil penelitian** menunjukkan bahwa UNCITRAL Model Law menyediakan kerangka fleksibel dan universal yang selaras dengan asas kebebasan berkontrak, namun penerapan di Indonesia masih terbatas oleh fokus UU ITE pada transaksi elektronik semata.*
***Kesimpulan** dari penelitian ini ialah diperlukan harmonisasi hukum perikatan Indonesia dengan prinsip internasional agar pengaturan kontrak elektronik dapat berlaku lintas sektor, tidak terbatas pada bisnis, dan memenuhi dinamika globalisasi hukum.*
***Kata kunci:** Kontrak Elektronik; Kebebasan Berkontrak; Hukum Internasional*

1. INTRODUCTION

This article examines the comparison between electronic contract regulations in Indonesia and the United Nations Commission International Trade Law (UNCITRAL) Model Law on Electronic Commerce. This comparison is intended to encourage Indonesia to accommodate regulations regarding electronic contracts as part of the renewal of Indonesia contract law. Digital transformation has made its easier for people to engage in legal transactions. This is supported by agreements using electronic media, commonly referred to as electronic contracts. Parties entering into contractual relationships through electronic media are greatly facilitated, as differences in time and distance are no longer essential issues.[1] Electronic media enables borderless communication between parties within the country and foreign parties.[2]

In general, electronic contracts are synonymous with business transactions. However, there are other contractual relationships that also require electronic contracts, such as lending and cooperation agreements. Electronic contracts offer a practical solution when the parties are in different locations but still wish to establish a legal relationship. The nature of the relationship between the parties in civil matters is as same as conventional transactions – it is formed through an agreement or contract. The main difference lies in the medium used to carry out the legal relationship. In conventional settings, parties typically meet face-to face to enter into an agreement. Whereas, through the advancement of transaction digitalization, parties are linked via the internet, thus obviating the necessity for in-person meetings. This distinction does not lead to a shift in the rights and obligations of the parties to the agreement.[3]

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[1] Togar Polmanto Winfernando and Ulil Amri Insan Kamil, "Dinamika Hukum Perjanjian Elektronik: Tantangan Dan Prospek Dalam Era Digital," *Journal Sains Student Reasearch* 1, no. 2 (2023): 862, https://doi.org/10.61722/jssr.v1i2.312.
[2] Andrew Betheln, "Harmonization of Laws on Electronic Contracts Based On Model Laws for the ASEAN Economic Community," *Global Legal Review* 1, no. 1 (2021): 2, http://repository.uki.ac.id/7268/1/HarmonizationOfLaws.pdf.
[3] Laksamana Varelino Zeustan Hartono and Paramita Prananingtyas, "Aspek Hukum Perjanjian Dalam Transaksi Jual Beli Secara Online," *Notarius* 16, no. 3 (2023): 1366, https://doi.org/10.14710/nts.v16i3.41327.

Despite of the positive effects of electronic contracts, there are crucial issues that cannot be avoided in relation to business transactions, which is consumer protection. As explained by Organization for Economic Co-operation and Development (OECD)[4]: "*Consumer protection has become more complex in the digital era, including for vulnerable consumers (e.g. children).*"[5] The OECD has identified 5 areas that impact electronic transactions, one in particular is directly related to this article:

> "Trade policy represents another important e-commerce policy area. As more trade occurs I digitally-enabled services and bundles of goods and services, the blurring of boundaries between goods and services can result in legal and regulatory uncertainties for firms participating in cross-border e-commerce under existing multilateral and bilateral trade agreements that rely on rules based on the traditional distinction between goods and services..."[6]

In the midst of the ease of digital transactions, there are challenges for a country's legal system.

The legal framework plays an important part of the sustainability of the digital market. In line with the statement from Lillyana Daza Jaller,et.al: "As communication technologies connect people and businesses around the world with increasing ease and convenience, businesses engaged in digital trade also expand their network of clients and suppliers across borders. A conducive regulatory framework for digital trade should hence guarantee that contracts concluded remotely through electronic channels are valid and legally enforceable just as those concluded in person."[7] In Indonesia, regulation concerning on electronic contracts is accommodated in Law Number 11 of 2008 on Electronic Information and Transactions, as last amanded by Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law), and further elaborated through the Regulation of the Government Number 71 of 2019 on The Organization of Electronic Systems and Transactions (PP PSTE), which primarily regulates procedural and compliance aspects of electronic transactions.

In essence, electronic contracts under the ITE Law are defined as agreements contained in electronic documents or other electronic media. In other words, electronic contracts are agreements presented in the form of electronic documents, meaning that agreements are not only made in written form on paper, but also can be integrated into digital formats and accessed through electronic devices. The existence of electronic contracts under the ITE Law is tied to electronic transactions. Nevertheless, the advancement of digitalization has made other contractual relationships also require electronic contracts, such as cooperation agreements, settlements, debt-credit relationships, inheritance, and others. The current regulations governing electronic contracts in Indonesia tend to be inflexible, as they limit the scope for agreements beyond business transactions to be conducted.

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[4] The OECD is an international organization that works to develop policies in the fields of economics and development.

[5] OECD, *Unpacking E-Commerce: Business Models, Trends and Policies* (Paris: OECD Publishing, 2019), 25.

[6] OECD, 25.

[7] Lillyana Daza Jaller, Simon Gaillard, and Martin Molinuevo, *The Regulation of Digital Trade: Key Policies and International Trends* (Washington DC: World Bank Group, 2020), 5.

Based on the principle of freedom of contract in drafting agreements, the parties are free to determine the medium to be used in the agreement (hard copy or electronic agreement). The principle of freedom of contract is an important element in contract law because it guarantees individual freedom and encourages diversity in agreements. The principle of freedom of contract is implicitly accommodated in Article 1338 of the Indonesian Civil Code. This principle opens up opportunities for legal entities to enter into agreements that are not regulated in the Indonesian Civil Code (innominate agreements) as a result of the ongoing development of globalization.[8]

As the basis for the formation of a contract, the principle of freedom of contract expresses 3 ideas, which are the freedom to determine the type and form of contract, the freedom to determine the parties, and the freedom to determine the content of the contract.[9] the framework of the civil law system in Indonesia also requires limitations based on the principle of good faith, the Civil Code, principles of morality or public order, and so on. The essence of the principle of freedom of contract is not only evident in every agreement made by legal entities but must also be reflected in the relevant legislation governing obligations, particularly electronic contracts. In order to fulfill the principle of freedom of contract, the regulation of electronic contracts in Indonesia should not be limited to the scope of business transactions, but there should be specific regulations indicating the media that can be used in contracts, such as written (hard copy) and/or electronic (digital) forms.

The momentum for reforming Indonesian contract law provides an opportune moment to re-examine the status of electronic contracts in Indonesian legislation. The Indonesian Civil Code (KUH Perdata) has been in existence for 176 years, which means it is outdated, and it is reasonable for some provisions to be adjusted to current conditions. In this regard, the absence of rigid regulations related to electronic contracts has led the author to conduct a study by referring to international legal sources, specifically the UNCITRAL Model Law on Electronic Commerce and the United Nations Convention on the Use of Electronic Communications in International Contracts. Furthermore, it is intriguing for the author to discuss the issue of whether, from a future-oriented perspective, the regulation of electronic contracts in Indonesia, as referenced in the UNCITRAL Model Law on Electronic Commerce, aligns with the freedom of contract?

In order to address legal issues, the author uses the UNCITRAL Model Law on Electronic Commerce as a benchmark because these regulations are universally applicable and Indonesia needs to adapt to international regulations to facilitate cross-border civil relations. Additionally, there is an international agreement closely related to electronic contracts, which

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[8] Shenti Agustini, Febri Jaya, and Agustianto, "The Principle of Freedom of Contract in Commercial Agreements: Are Limitations Needed?," *JUNCTO: Jurnal Ilmiah Hukum* 5, no. 2 (2023): 210, https://doi.org/10.31289/juncto.v5i2.3353.

[9] Peter Cserne, "Freedom of Contract [and Economic Analysis]," 2014, 1, https://download.ssrn.com/14/12/15/ssrn_id2538448_code524065.pdf?response-content-disposition=inline&X-Amz-Security-Token=IQoJb3JpZ2luX2VjEC0aCXVzLWVhc3QtMSJGMEQCIAJ%2FMLGcMCKjttZ3hHAdp5ZS6MN9fRR4%2BunZkzL2YxYuAiBSKrIlm1IO5%2FjbFnxP5K%2FepF72EkWjDdGBrgN3b.

is the United Nations Convention on the Use of Electronic Communications in International Contracts. This international convention was established to regulate the use of electronic communications for the formation or performance of international contracts, which are agreements entered into between parties located in different countries.[10] Dalam konteks ini, The UNCITRAL Model Law on Electronic Commerce is an international principle or custom that is not binding on any country, whereas the United Nations Convention on the Use of Electronic Communications in International Contracts is an international convention that is binding on every country that is a party to it. The convention is an example of the development and follow-up to the UNCITRAL Model Law on Electronic Commerce.

The author argues that the regulation of electronic contracts in Indonesia under the current ITE Law is inflexible because the essence of the ITE Law is the protection of electronic transactions, including the protection of the execution of electronic contracts. Even though the ITE Law implicitly allows parties to choose the form of agreement they wish to make (physical or digital agreement) legally, this choice is limited to civil business transactions. Ultimately, this paper proposes that the regulation of electronic contracts should be made more flexible, not only limited to electronic transactions but broader than that, encompassing all civil relationships, thereby achieving the fulfillment of the principle of freedom of contract.

2. METHOD

The research method used in this paper is normative legal research, which is conducted by examining the law as a rule that applies to society and serves as a guideline for every individual.[11] In order to resolve legal issues, this article uses two approaches: first, the statute approach, which involves reviewing and analyzing various laws and regulations related to the issues discussed;[12] second, a conceptual approach based on views and doctrines that are relevant to the topic discussed in this article;[13] and third, the comparative approach, which involves comparing national legal systems with international legal systems.[14] This research is supported by legal materials consisting of primary legal materials, consist of laws; and secondary legal materials consisting of law books, law journals, expert opinions, and research results relevant to this paper.[15]

3. DISCUSSION

3.1 Electronic Contract: Indonesia and International Perspective

In general, provisions regarding contracts are contained in Book III of the Civil Code.

[10] Article 1 Paragraph 1 United Nations Convention on the Use of Electronic Communications in International Contracs.
[11] Muhaimin, *Metode Penelitian Hukum* (Nusa Tenggara Barat: Mataram University Press, 2020), 11.
[12] Muhaimin, 56.
[13] Muhaimin, 57.
[14] Muhaimin, 57.
[15] Muhaimin, 59–60.

However, the provisions specifically regarding to electronic contracts in Indonesia are accommodated in the ITE Law and further regulated in PP PSTE. In the ITE Law, the existence of electronic contracts is closely related to electronic transactions, as stated in Article 18 paragraph (1) ITE Law: "*Electronic transaction which are made into an electronic contract are binding on the parties*." Furthermore, Article 46 paragraph (2) of the PP PSTE stipulates the requirements for the validity of electronic contracts, which are broadly similar to the requirements for the validity of agreements as regulated in Article 1320 of the Civil Code, including consensus, legal capacity, specific subject matter, and legality.

Unlike the Civil Code, the content of electronic contracts is specifically regulated under Article 47 paragraph (3) of the PP PSTE, which stipulates that electronic contracts must at least include the parties' identities, the subject matter and specifications, transaction terms, price and costs, cancellation procedures by the parties, provisions granting the aggrieved party the right to return the goods and/or request product replacement if there are hidden defects, and the applicable law for resolving electronic transactions.[16]

The Author argues that the provisions about electronic contracts in ITE Law and PP PSTE should be more appropriately regulated in Indonesian contract law. This argument is based on a comparison between universal general principles reflected in the UNCITRAL Model Law on Electronic Commerce and national rules that remain sectoral as well as transaction-oriented. It is also aligns with the underlying purpose of the ITE Law, which is to prevent cyber crime.[17] These crimes include: defamation, hate speech, hacking, viruses, illegal access, criminal liability, and robbery through internet.[18] The existence of the Civil Code, which has not been able to accommodate the current developments in digitalization, has prompted the need for immediate reform, particularly in the area of contract law. Electronic contracts are one of the formulas that should be regulated in the Draft Law on Contract Law (RUU Hukum Perikatan) so that the use of electronic contracts is not limited to electronic transactions but can also be used in other civil law relationships. This regulation does not simply replace the provisions on electronic contracts in the ITE Law. The ITE Law will remain in place to prevent the misuse of electronic contracts.

As time passes, technological innovation continues to undergo significant developments. The advent of technology brings both benefits and challenges to various human activities, especially in commercial activities. Behind the convenience of electronic contracts lies an unavoidable complexity, as stated by Arshiya:

> "Electronic contracts are dynamic, multi-layered transactions by their very nature. Agreement to a contract may not occur at a single moment in time with a layered

[16] Ikhlasul Sholah Kusuma Wardani, Alya Safirah, and Alfika Salsa Qurrotulaini, "Kontrak Elektronik Dalam Mekanisme Hukum Di Indonesia," *UNES Law Review* 6, no. 3 (2024): 8070, https://doi.org/10.31933/unesrev.v6i3.1707.

[17] Daian Cahayani, "Studi Penerapan Undang-Undang ITE Dalam Perspektif Legal Drafting," *Jurnal Ilmu Sosial* 1, no. 11 (2022): 1160, https://bajangjournal.com/index.php/JISOS/article/view/8566.

[18] Sherly Nelsa Fitri, "Politik Hukum Pembentukan Cyber Law Undang-Undang Informasi Dan Transaksi Elektronik Di Indonesia," *Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 7, no. 1 (2022): 112, https://doi.org/10.22373/justisia.v7i1.12719.

contract. There is a chain of actions – e-offer, e-acceptance, deliberation, and so on – that can lead to the development of electronic contract. The emergence of e-contracts has not only added to the complexity of the process, but it has also produced some serious legal concerns."[19]

The emergence of electronic transactions, include the use of electronic contracts, has resulted in a high level of interaction in the commercial sphere, which was originally limited to the local sphere but has now transformed into a global one. Therefore, this is an aspect that has become a concern for the whole world, both in terms of regulation and technical aspects. Thus, it is important to look at how electronic contracts are regulated in the international sphere.

Within the international legal infrastructure, there is an effective method used by countries to create international regulations in the field of electronic transactions, particularly electronic contracts, which is to draft international conventions that apply to various countries around the world. These conventions are universal in nature, meaning that they can be applied to both civil law and common law countries. In this regard, in 1996, UNCITRAL formulated a Model Law on Electronic Commerce, with several articles added in 1998. The primary objective of this model is to harmonize the regulations of different countries, thereby establishing a unified and consistent set of principles.[20] In addition, the model law serves as a guideline that countries can use in formulating legislation in the field of electronic transactions. This objective is contained in the Resolution adopted by the General Assembly, as follows:

> "Convinced that the establishment of a model law facilitating the use of electronic commerce that is acceptable to States with different legal, social and economic systems, could contribute significantly to the development of harmonious international economic relations. Believing that the adoption of the Model Law on Electronic Commerce by the Commission will assist all States significantly in enhancing their legislation governing the use of alternatives to paper-based methods of communication and storage of information and in formulating such legislation where none currently exists…"

In contrast to international convention,[21] The nature of the model law is more flexible because the rules contained therein are not binding on states. States have the freedom to follow all or part of it, or even reject the model altogether.[22] The essence of the model law in international law is as a set of guidelines, instructions, and directions for all states in drafting regulations, particularly those directly related to electronic transactions.

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[19] Arshiya, "E-Contract: A New Normal," *Indian Journal of Integrated Research in Law* 2, no. 2 (2022): 9, https://ijirl.com/wp-content/uploads/2022/03/E-CONTRACT-A-NEW-NORMAL.pdf.

[20] Pujiyono Suwadi, Reda Manthovani, and Alizza Khumaira Assyifa, "Legal Comparison of Electronic Contract in Electronic Commerce Between Indonesia and the United States Based on the United Nations Commission on International Trade Law," *Journal of Law and Sustainable Development* 11, no. 3 (2023): 6, https://doi.org/10.55908/sdgs.v11i3.714.

[21] In international agreements, there is the principle of pacta sunt servanda, which means that the parties subject to the international agreement are obliged to bind themselves to it.

[22] Ni Putu Dewi Lestari and Ni Made Ari Yuliartini Griadhi, "Peran United Nations Commission on International Trade Law (UNCITRAL) Dalam Harmonisasi Hukum Transaksi Perdagangan Elektronik (E-Commerce) Internasional," *Kertha Negara* 2, no. 5 (2024): 4, https://ojs.unud.ac.id/index.php/kerthanegara/article/view/10255.

The UNCITRAL Model Law on Electronic Commerce does not explicitly define electronic contracts. in general, many people view electronic contracts as contracts whose documents have been digitized/scanned/created in soft file form.[23] However, the definition of an electronic contract is not as simple as that interpretation. The author refers to the UNCITRAL Model Law on Electronic Commerce to understand the concept of electronic contracts.[24] As implicitly stated in Article 4 paragraph (1), it emphasizes that: "*As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III (read: communication of data messages) may be varied by agreement.*" Reflecting on these provisions, electronic contracts are interpreted as not only limited to electronic transactions, but can also be used for other civil relations. As a result, in general, electronic contracts are defined more broadly internationally than in Indonesia.

Therefore, it can be concluded that the regulation of electronic contracts in the ITE Law is actually intended to protect security and provide legal certainty for parties in electronic transactions.[25] Meanwhile, the UNCITRAL Model Law on Electronic Commerce also recognizes the existence of electronic contracts in electronic transactions. However, the provisions in the UNCITRAL Model Law on Electronic Commerce were conceived with the aim of facilitating the needs of electronic transactions in all states so that there is a common perception.

3.2 Freedom of Contract in Indonesian Contract Law Development

The existence of electronic contracts is similar to contracts made in physical document form. Electronic contracts are an evolution of contracts that are generally made in writing on paper. One form of electronic contract that is unconsciously used by the public is electronic mail (via e-mail or instant messaging services such as WhatsApp and so on).[26] The use of electronic mail can also be used for civil relations other than business transactions. Thus, electronic contracts are more accurately defined as legal relationships conducted electronically by combining networks with electronic systems carried out by two or more parties using electronic media.[27] In other words, electronic contracts are not limited to documents but can also take the form of online chats through certain applications.[28]

The view above shows that technological developments open up opportunities for parties to choose between paper and digital contracts.[29] Technological developments that trigger

[23] Kosmas Dohu Amajihono, "Kekuatan Hukum Kontrak Elektronik," *Jurnal Panah Keadilan* 1, no. 2 (2022): 133, https://doi.org/10.57094/jpk.v1i2.458.

[24] Ayşe Nilay Şenol, Işık Özer, and Gülfer Meriç, "Uncitral Model Law on Electronic Transferable Records: Is It an Applicable Legal Framework for Bills of Lading Under Turkish Law?," *Annales de La Faculté de Droit d'Istanbul*, no. 75 (2025): 256, https://doi.org/10.26650/annales.2024.75.0010.

[25] Anak Agung Bagus Tri Arta Udayana and Made Aditya Pramana Putra, "The Role of Contract Law in Improving Legal Certainty for Business Actors," *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 1865, https://doi.org/10.38035/jlph.v5i3.1217.

[26] Glenn Biondi, "Analisis Yuridis Keabsahan Kesepakatan Melalui Surat Elektronik (e-Mail) Berdasarkan Hukum Indonesia," *Premis Law Journal* 19 (2016): 2, https://media.neliti.com/media/publications/164959-ID-none.pdf.

[27] David Herianto Sinaga and I Wayan Wiryawan, "Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis," *Jurnal Kertha Semaya* 8, no. 9 (2020): 1389.

[28] *Ibid.*

[29] Siti Rahmawati, "Tingkat Keabsahan Kontrak Elektronik Berdasarkan Hukum Positif Di Indonesia," *Innovative:*

shifts in legislation do not necessarily override the principles of contract law. The principles of contract law remain a guideline or reference amid the rapid development of the current era of globalization. Freedom of contract is one of the fundamental principles of contract law, including in the context of electronic contracts. This principle gives legal subjects the right to enter into agreements according to their wishes, without coercion from external parties.. Implicitly, freedom of contract is regulated in Article 1338 of the Civil Code, which states that: "*All agreements made legally are binding on those who make them. Such agreements cannot be revoked except by mutual consent of both parties, or for reasons deemed sufficient by law. Agreements must be carried out in good faith.*"

Freedom of contract is an important principle, given that the parties bound by an agreement have the right to determine the content of the agreement in accordance with what has been agreed upon and the form of the agreement to be made. Through this principle, civil relationships conducted through electronic contracts can increase flexibility and efficiency, as the parties can engage in civil relationships without having to meet in person. In addition to providing convenience, there are negative implications of applying this principle to electronic contracts, particularly in the context of business transactions, namely the creation of an imbalance between parties with different bargaining power, especially in the context of consumers versus companies. Consumers often lack complete information about the products or services they purchase. Meanwhile, companies have deeper access to market information and technology, making consumers vulnerable to being misled by companies. It cannot be denied that the technological era can be misused, particularly by companies. The implementation of electronic contracts that do not bring the parties together directly makes it possible for the party drafting the contract to create an agreement that benefits one party. Additionally, the lack of direct negotiation processes also leads to inequality, as companies generally hold a stronger position due to their control over information and electronic transactions.

Regardless of these implications, the freedom or discretion granted does not mean complete freedom, as emphasized by Iryna Davydova et al.: "The freedom of one person must not violate the freedom of another. In this sense, the freedom of contract exists within the legal field of current regulations, customs of business, morality. Accordingly, the actions of the parties to the contract must be based on the principles of reasonableness, good faith, and fairness."[30] This statement shows that the principle of freedom of contract implies freedom accompanied by a sense of responsibility and full awareness for each individual in the creation of a contract.[31] It means that, in order to avoid imbalance between the parties in the implementation of electronic contracts, restrictions become an important aspect in the application of the principle of freedom of contract.

Journal Of Social Science Research 4, no. 4 (2024): 7562, https://doi.org/10.31004/innovative.v4i4.14023.

[30] *Ibid.*

[31] Muhammad Natsir Asnawi and Edi Hudiata, "Delimitation of Freedom of Contract Principle and Judge's Corrective Function in Assessing the Parties' Positions on an Agreement," *Mimbar Hukum* 29, no. 1 (2017): 7, https://doi.org/10.22146/jmh.16889.

One example of a principle in contract law that limits the principle of freedom of contract is the principle of good faith. Parties to an electronic contract must act honestly, fairly, and responsibly. In practice, the principle of good faith is evident in the implementation of electronic contracts, where the parties involved in the electronic contract must provide and disclose clear information in each provision of the contract.[32] For example, in business transactions, companies are required to present complete and honest product details. While technology offers convenience, it also brings negative effects, particularly in the execution of electronic contracts, such as the threat to data security, which can lead to online fraud.[33] Therefore, through the principle of good faith, the parties involved in electronic contracts are obligated to ensure security, reliability, and privacy in the use of electronic media.

Therefore, it can be concluded that the ever-evolving era of digitalization requires a shift from conventional paper-based contracts to electronic contracts. Digital media can be used throughout the entire contract creation process, from negotiation to contract signing. This choice is a manifestation of the principle of freedom of contract. Futhermore, the principle of freedom of contract plays a crucial role in the development and reform of Indonesian contract law. Every legal entity, based on the principle of freedom of contract, is granted the freedom to exercise their right to choose between physical contracts or electronic contracts. However, the freedom obtained must be exercised with a sense of responsibility and full awareness, as the use of electronic contracts is unrestricted and influenced by network or internet systems.

3.3 Interpreting Electronic Contracts in the Reform of the Contract Law

Based on the previous discussion, electronic contracts in Indonesia are regulated by the ITE Law, which was essentially established to protect electronic transactions from cybercrime. The author argues that the existence of electronic contracts in the ITE Law is somewhat inappropriate because agreements are an important aspect that is not limited to electronic transactions but can also be used for other types of civil contracts. To address this issue, the author refers to the UNCITRAL Model Law on Electronic Commerce as an international legal instrument, commonly known as a uniform law instrument.

The existence of the Civil Code, which is supposed to be the umbrella act for the regulation of electronic contracts, is actually no longer in line with the current phenomenon of digitalization. Stefan Grundmann and Phillipp Hackeradmit in their writing that there is a discrepancy between the phenomenon and the regulations:

> "When it comes to the level of regulation, the starting point would seem to be that many phenomena of digital platforms and contracting are more decidely crossborder than the regulation of these phenomena. A common perception (and criticism) is therefore that phenomenon and regulation do not match, namely that regulation is territorial and the phenomenon is global– with one core consequence

[32] Ardiana Hidayah, "Asas Iktikad Baik Dalam Kontrak Elektronik," *Solusi* 19, no. 2 (2021): 156, https://doi.org/10.36546/solusi.v19i2.361.

[33] Risma Satriana Nilamjati, Albertus Sentot Sudarwanto, and Yudho Taruno Muryanto, "E-Contract in the Aspect of Online Sale and Purchase Agreement Correlated with Article 1320 of the Civil Code," *Siber International Journal of Advanced Law* 2, no. 3 (2025): 110, https://doi.org/10.38035/sijal.v2i3.130.

being that many laws may apply cumulatively. From this perspective, it may even be doubtful whether the most important regulatory forces still take sufficient effect in the digital arena."[34]

In this case, as explained in the previous discussion, the ITE Law closes the opportunity for the use of electronic contracts outside of business transactions. Therefore, as a solution, the steps that Indonesia should take are to internalize the regulation of electronic contracts through the Draft Law on Contract Law, which is currently in process.

The renewal of contract law to accommodate electronic contracts is important to comply with the principle of freedom of contract as explained in the previous section. In order to fulfill the principle of freedom of contract in the regulation of electronic contracts, so an essential aspect that needs to be addressed is the harmonization of legal standards from various jurisdictions.[35] This includes efforts to develop international agreements and frameworks that facilitate the recognition and enforcement of electronic contracts.[36] Harmonization of regulations will also benefit countries with civil law and common law system.[37] The uniqueness of universally applicable contracts means that contract regulations in a country must also be flexible and open to parties from other countries.

As an international instrument, the UNCITRAL Model Law on Electronic Commerce is intended not only for the use of electronic contracts in domestic and international commercial transactions, but also for the use of electronic contracts through electronic media connecting the parties.[38] Referring to Article 6 paragraph (1) UNCITRAL Model Law on Electronic Commerce: "Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference." In this case, data messages are information that is generated, sent, received, or stored through electronic media, but not limited to electronic data exchange, electronic mail (e-mail), telegrams, or other electronic media that can connect the parties.[39] This means that as long as it can be read, accessed, and agreed upon by the parties, the contract can be executed.[40] This interpretation opens up opportunities for electronic contracts to be used in contractual agreements, in addition to business transactions.

The UNCITRAL Model Law on Electronic Commerce, as principles that accommodate the implementation of electronic contracts, is further used as a principle in forming the United

[34] Stefan Grundmann and Philipp Hacker, "Digital Technology as a Challenge to European Contract Law: From the Existing to the Future Architecture," *European Review of Contract Law* 13, no. 3 (2017): 271, https://doi.org/10.1515/ercl-2017-0012.

[35] Sanusi, "The Evolution of Contract Law in the Digital Age: Implications for E-Commerce and Online Transactions," *Journal of Social Science* 1, no. 4 (2024): 498, https://doi.org/10.59613/global.v2i6.216.

[36] *Ibid.*

[37] Jason Pratama Ong, "The Enforceability of Digital Contract: A Comparative Analysis on Indonesia and New Zealand Law," *The Lawpreneurship Journal* 1, no. 1 (2021): 40, https://doi.org/10.21632/tlj.1.1.30-42.

[38] Renaud Sorieul, Jennifer R. Clift, and Jose Angelo Estrella, "Establishing a Legal Framework for Electronic Commerce: The Work of the United Nations Commission on International Trade Law (UNCITRAL)," *The International Lawyer* 35, no. 1 (2001): 110, https://scholar.smu.edu/cgi/viewcontent.cgi?article=2037&context=til.

[39] Article 2 UNCITRAL *Model Law on Electronic Commerce.*

[40] Renaud Sorieul, Jennifer R. Clift, dan Jose Angelo Estrella, "Establishing a Legal Framework for Electronic Commerce," 112.

Nations Convention on the use of Electronic Communications in International Contracts. This is evident in the similarity of the definition of data messages. Furthermore, Article 8 paragraph (1) of the United Nations Convention on the use of Electronic Communications in International Contracts recognizes the use of electronic contracts: "A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication." The author believes that the United Nations Convention on the Use of Electronic Communications in International Contracts is flexible because, although it specifically regulates international contracts in digital form, it also allows for the possibility of written international contracts.[41]

However, unlike the UNCITRAL Model Law on Electronic Commerce, the United Nations Convention on the Use of Electronic Communications in International Contracts is more limited in scope because there are several types of contracts that are excluded from the formation of international electronic contracts, such as: contracts that are personal or family-related, foreign exchange transactions, interbank payment systems, money orders, and so on.[42] This difference is inevitable considering that conventions are binding on the parties that join them, while model laws are universal and not binding on any country. Regardless, the United Nations Convention on the Use of Electronic Communications in International Contracts, as an international convention, can serve as a reflection and concrete evidence that electronic contracts are used in the international arena, which is international contracts. Therefore, Indonesia needs to immediately adapt itself to open opportunities for every individual to easily establish international contracts by providing legal regulations as a safeguard for their implementation. Through regulatory reforms, legal protection will be provided to parties involved in electronic contracts.

Interpreting electronic contracts outside the scope of the ITE Law will create regulatory flexibility, given that electronic contracts are a form of agreement closely related to contractual arrangements in Indonesia. Based on the UNCITRAL Model Law on Electronic Commerce, electronic contracts are not interpreted solely in the context of business transactions but rather in a broader sense. Parties engaged in civil law relationships have the freedom to choose whether to use a paper or electronic contract form. This aligns with the principle of contractual freedom. Therefore, as a step toward law reform, the Draft Law on Contract Law must include provisions regulating the form of contracts, whether physical and/or electronic. Such regulations do not mean disregarding the ITE Law. The existence of the ITE Law serves as a complementary regulation for electronic contracts, protecting parties who choose electronic contracts from cybercrime.

4. CONCLUSION

Transformation in the digital age has significantly affacted legal relationships, shifting

[41] Article 9 paragraph 2 United Nations Convention on the use of Electronic Communications in International Contracts

[42] Article 2 United Nations Convention on the use of Electronic Communications in International Contracts

them from physical connection to electronic interactions. In Indonesia, the Civil Code remains the primary framework for agreements, while the ITE Law dan PP PSTE regulates electronic contracts to protect parties from cybercrime. At the international level, the UNCITRAL Model Law on Electronic Commerce provides a universal reference for electronic transactions and facilitating contractual freedom across various types of agreements. Considering the outdated Civil Code, the Draft Law on Contract Law should incorporate electronic contracts into the general legal framework, guided by UNCITRAL Model Law on Electronic Commerce. This approach would provide flexibility for international parties, uphold contractual freedom, harmonize Indonesia's regulation with global standards, and support international relations as well as economic growth.

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