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Validity of Contracts in the Digital Era in Indonesia

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Abstract

The era of digitalization has brought influence and changes to the contract law order in Indonesia. Contract law is no longer implemented conventionally by meeting the parties face to face in planning or making contracts, but with digital contracts, everything can be realized and legal. Regulations regarding digital contracts have been regulated in Law Number 1 of 2024 concerning Law Number 19 of 2016 and Amendments to 11 of 2008 concerning Information and Electronic Transactions. However, basically digital contracts still cannot leave the conventional Civil Code. The writing method in this article uses a normative juridical method, with a statutory regulatory approach, conceptual approach, philosophical approach, and case approach. This approach method will provide a comprehensive picture from various perspectives and is supported by the Constitutional Court decision Number 20/PUU-XIV/2016. Based on the results of the study, digital and conventional contract law continue to work side by side, and the two contract models can complement each other and can be realized in the implementation of agreements. The validity of the contract basically has similarities with the variations developed in the Information and Electronic Transactions Law, namely the confirmation in Article 47 paragraph (3) with the addition of aspects of price and costs, contract cancellation, hidden defects and legal options in resolving transaction disputes. electronic. However, there are differences in the meaning of hidden defects in the Information and Transaction Law, and it has also regulated several variants regarding electronic contracts and conventional contracts in Article 46 paragraph (1).

Keywords: *Validity of Contracts, Digital Era, Contract Law, Indonesia*

INTRODUCTION

The influence of globalization has also had an impact on legal developments, including contract law. Contract law is no longer only conventional and partial in Indonesia, but is also developing digitally.The contract law that applies in Indonesia is multi-faceted and dynamic, because it can follow and adapt to developments in contract law, although the basis for its application remains based on the legal system inherited from the Dutch legal system, customary law and Islamic law.

The conventional and partial contract law system that has been in effect from the past until now, will experience development and change with the emergence of virtual-based information technology. The 04 industrial revolution has become an important factor in the development of contract law, especially regarding digital contracts, so there is a need for more specific thinking and regulation regarding digital contract law.

Contract law does not only concern online and offline contracts, but also concerns the contractual legal arrangements of other countries. According to San Man Kim[2]: "f*formation of a contract is the starting point of contractual relations between the parties, but elements for formation of contract differ between the laws of each country. Thus, whether a contract is formed or not often becomes at dispute in international trades".*

Contract law contains broad aspects, because it not only concerns the affairs and interests of the parties, but when it concerns national interests and other countries, then the influence of the characteristics of these countries also influences the occurrence and validity of contracts. The contract will also bridge the interests of parties with different nationalities to bring together their respective interests on an equal footing, including in online contracts with technological advances. Interesting thing aboutThe use of technology in the digital era means that everything related to contracts gives a new nuance to legal relationships. *Intoday's society, a dense network of laws and regulations presides over all people's actions. Moreover, it is so extensive that any number of activities–including contracts–is capable of breaking the law* [3]. These regulations do not only concern existing laws and regulations but

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[2] Kim, Sang Man,*A comparative study of the CISG and the North Korean contract law as to the formation of a contract*,Journal of International Trade Law and Policy Vol. 19 No. 1, 2020, © Emerald Publishing Limited 1477-0024 DOI 10.1108/JITLP-07-2019-0046, p. 37.

[3]Rossella Esther Cerchia, A Comparative Viewpoint on Illegal Contracts: In Favor of Flexibility and Proportionality, Global Jurist 2021; 21(2), p. 447.

also dynamics in society and the desires of the parties, so they must be understood carefully in order to avoid acts that violate the law, both regarding personal matters and the interests of other parties.

Dynamic nature does not mean that it is able to face all challenges and industrial developments in the global era, because its characteristics are not only following and adapting to developments in contract law, but must also regulate it so that it will provide legal certainty and legal protection in the preparation of a contract.Rohaya Nizla[4], explained that "The problem that must be answered immediately is about Indonesia's readiness to enter the industrialization era and respond to the challenges of economic globalization in the form of a free market and the risks that may arise, namely sharp competition and the occurrence of economic crises. No less important aspect to build in accompanying economic development is the construction of contract law. For this reason, it is necessary to develop contract law that can cover all actions or practices that arise or that may arise from competition or crises that surround".

Contract law concerns various aspects including industry and the international economy. The development of contract law is no longer only conventional but also digital.The 04 industrial revolution era is a digital era, and the use of technology and the internet has become an inseparable part of human life. The use of technology and the internet is widely carried out by members of society at all levels. As infrastructure, technology has made it easier for humans in various aspects in carrying out relationships between people and also in business provides benefits, including shortening the distance between relationships, no need to meet face to face, easier, more efficient and effective in work and time. This digital era has a very wide range of technologies, which include e-commerce, e-learning, intellectual property, cybercrime and electronic signatures. With the development of information technology in contract law, smart contracts have emerged.

The contract law regulations in the Civil Code are also basically flexible, because they do not specifically regulate the form and validity of contracts. The conditions for the validity of a contract also contain general aspects, and the specifics are left to the contracts which are specifically regulated in the regulation. This means that digitalization can still be valid and is still accommodated in the provisions of the Civil Code, even though changes and adjustments to contractual legal arrangements will still be needed in the future.

Digital contract law has experienced rapid development, even though written arrangements are far behind. Contracts carried out online are contracts that do not bring buyers and sellers together and offers and acceptances are made online which are called online contracts. Contracts, both conventional and online, have become part of people's lives in carrying out legal relations, especially in business transactions. The differences between online contracts and conventional contracts are an interesting study, because not only are the patterns different, but also the legal arrangements and protection of the parties are interesting to study.

"Legal regulation of electronic contracts is based on the principles of freedom of contract. In this case, individuals are free to choose a contractor, enter into contracts on their own terms, which can be changed in a more convenient way, which is a distinctive feature of electronic contracts and freedom of contract in terms of digitalization in general". [5]

The principle of freedom of contract is an important basis, because it does not only involve the freedom to make or not make a contract, it also concerns broad aspects in the field of electronic transactions, because it concerns Indonesian jurisdiction. Electronic transactions can only involve legal acts carried out by Indonesian legal subjects, but also those carried out by foreign legal subjects and outside the territory of Indonesia, so they involve cross-territorial and universal matters. This aspect is crucial because it concerns Indonesia's national interests, starting from national economic interests, protection of strategic state data, national honor and dignity, national security and defense, Indonesian citizens and legal entities.

[4]Rohaya Nizla, et al, 2023, Challenges of Indonesian Contract Law in The Digital Business Era, Pagaruyuang Law Journal, Vol 7 No. 1, 2023. Faculty of Law, Muhammadiyah University of Bukittinggi, p. 5.

[5]Davydova, Iryna, et al, 2021, Freedom of Contract in The Digital Age and Its Implementation in Modern Technologies: Theory and Practice, International Journal of Computer Science and Network Security, VOL.21 No.12, December 2021, p. 544.

This paper specializes in studying contract law based on the Civil Code and digital contracts and does not examine international electronic contracts. This means that the discussion will be based on the Civil Code for the study of contract law and the digital aspect will be based on Law Number 1 of 2024 concerning the Second Amendment to Law 19 of 2016 and Amendment to Number I1 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the Electronic Information and Transaction Law).

LITERATURE REVIEW

Characteristics of contract law in Indonesiainfluenced and still valid based on contract law, a legacy of the Dutch legal system which is regulated in the Civil Code and is widely applied in written contract law, although verbally it is also regulated therein, and there are even some legal experts who emphasize that the contract law system is written.[6]. Contract law based on applicable customary law is still partial, because it depends on each individual customary law, and is generally unwritten. Contract law based on Islamic law mainly applies to sharia contracts used in sharia banks with a sharia economic system. These contract law systems are still valid and influence each other and are a wealth of contract law in Indonesia, although in practice you can choose which law to use. Subsequently, it developed and became one of the legal options for the Indonesian people, namely digital contract law which is based on the Electronic Information and Transactions Law.

The differences between various contract laws can be seen from the validity of the contract. The validity of contracts based on the Civil Code is regulated in article 1320 of the Civil Code which contains: "1. Those who bind themselves agree, 2. Competent in making an agreement, 3. A certain thing and 4. A lawful cause." The regulations in the Civil Code still distinguish between the validity and the existence of a contract. The validity of a contract must fulfill these four terms, while a contract is based on an agreement only.

The regulation of digital contracts is in the Information and Electronic Transactions Law, but this regulation is not yet comprehensive, so it still requires regulation in the Civil Code. Trading activities through electronic transactions have become an inseparable part, both on a national and international scale, and this is a real legal action. The explanation of the Information and Electronic Transactions Law emphasizes that 'juridically, activities in electronic systems (cyber space) cannot be approached with conventional legal measures and qualifications alone, because if this method is adopted there will be too many difficulties and things that will escape legal enforcement'. This explanation shows that there is still room for conventional arrangements, even though they can give rise to difficulties for the parties. The perpetrators in electronic transactions are still qualified as people who actually carry out legal acts.

Article 1 number (17) of the Electronic Information and Transactions Law confirms that: "an electronic contract is an agreement between the parties made through an electronic system". Furthermore, Article 1 point (5) emphasizes that the definition of 'electronic system is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit and/or disseminate electronic information'. Electronic information in electronic contracts is not limited to writing, voice, telegrams, but also electronic means that can be understood as electronic contracts. Conventional contracts and electronic contracts can be distinguished but cannot be separated, even though the parties do not actually meet face to face. This is also based on legal principles as regulated in Article 3, namely the principle of legal certainty, the principle of benefit, the principle of prudence, the principle of good faith and the freedom to choose technology or neutral technology which is an embodiment of the principle of freedom of contract. Apart from that, contract law, both conventional and electronic, is still based on choice of law.

METHOD

This article was written using a normative juridical method, with a statutory regulatory approach, conceptual approach, philosophical approach and case approach. The normative juridical method is a method that is based on secondary data concerning legal principles, statutory regulations, legal conceptions, legal theories and the applicable legal system. The goal of the statutory regulatory approach is to examine regulations in order to find

[6]Subekti, 1991, *Hukum Perjanjian*, Intermasa, Jakarta, hlm. 1. Juga dalam Budiono Kusumohamidjojo, 2007, *Panduan Negosiasi Kontrak*, Mandar Maju, Bandung, hlm. 7.

the legal ratio and ontological basis, by examining statutory regulations in accordance with the legal issues being studied regarding contract law, especially those concerning digitalization. A conceptual approach is taken to explore various views or doctrines that have developed in the realm of legal science as well as legal principles in the field of contract law. The philosophical approach is to obtain an overview of the essence and essence related to theories of contract law and digitalization, while the case approach is aimed at examining cases related to contract law and digitalization. The approach to this case is based on the judge's decision as a source of legal documents, using the Constitutional Court decision Number 20/PUU-XIV/2016.

Secondary data in the form of primary, secondary and tertiary legal materials was obtained through document study which was then analyzed qualitatively in the form of sentence descriptions so that explanations regarding contract law and digitalization could be obtained.

Conventional Contracts and Electronic Contracts

The term contract is in Chapter II Book III of the Civil Code which reads: "Engages that arise from an agreement or contract", but the term contract is often differentiated from agreement. According to Subekti[7], that the contract is a written agreement. Budiono Kusumohamidjojo[8]also agrees with Subekti, that the main characteristic of a contract is that it is a writing that contains and functions as evidence of the existence of (a set of) obligations. In theory, both opinions are doctrinal opinions, so that an unwritten contract is not a contract, but an agreement. In fact, in Chapter II Book III it is emphasized that a contract is the same as an agreement. However, it must be noted that the provisions in the Civil Code are more authentic than doctrinal opinions. Basically, contract law in Indonesia does not require a particular form, unless the law so determines, because contracts are not only regulated in the Civil Code, but are also specifically regulated by laws that specifically regulate certain areas of contracts, including contracts. on line. Contract law is still based on conventional contract law systems in force in Indonesia, but with technological developments, contracts can be made online.*La filosofía del derecho de contratos se inclusion en estas coordenadas de analysis. Respecto de la primera cuestión, los estudios tradicionales en el ámbito contractual suscriben la conexión entre el individualismo y el derecho de contratos, estimando que el prisma individualista constituye el fundamento normativo común de esa área del derecho privado.*[9]

The definition of contract is regulated in Article 1313 of the Civil Code which reads: "Agreement is an act by which one or more people bind themselves to one or more people." This definition has invited a lot of criticism from legal experts, because it contains many weaknesses, such as unilateral agreements, being too broad, what constitutes an act can also invite various interpretations, including being interpreted as an unlawful act, and there is no definite purpose.

Regulations regarding electronic contracts have been regulated in Law Number 11 of 2008 and is the first law in Indonesia as the basis for regulations in the field of information technology and electronic transactions, although along the way it has experienced several changes and also problems in practice in Society, namely by having a material review at the Constitutional Court with Decisions Number 50/PUU-VI/2008, Number 2/PUU-VII/2009, Number 5/PUU-VIII/2010 and Number 20/PUU-XIV/2016, and especially The lawsuit to the Constitutional Court concerns aspects of criminal law.

Digital Contract Regulations are in the Information and Electronic Transactions Law). Article 1 number (17) of the Electronic Information and Transactions Law confirms that: "an electronic contract is an agreement between the parties made through an electronic system". The electronic system in question is a computer system in a broad sense which includes hardware and software, telecommunications networks and/or electronic communication systems.

Electronic contracts are basically contracts that parties make, but do not meet face to face. Electronic contracts are special in nature from conventional contracts in general, so the principle of lex specialis derogate generali

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[7]Subekti, 1991, *Hukum Perjanjian*, Intermasa, Jakarta, p. 1.

[8]Kusumohamidjojo, Budiono, 2007,

[9]Fredes, Esteban Pereira, 2022, *Altruism and Solidarity in Contract Law, Revista Chilena de Derecho*, Vol. 49 No. 3, PP 1-30.

will apply. This principle can be applied if there are special regulations governing electronic contracts. The new Civil Code can be applied if there is no regulation or part of an arrangement that specifically regulates electronic contracts. Basically in the electronic contract arrangements that exist in Indonesia

Article 1 point (17) of the Electronic Transactions Law states: "Electronic contracts are agreements between the parties that are made electronically." This article is very general and does not yet address the objectives and legal consequences. This article also does not explain further about agreements which, from an electronic perspective, can be differentiated from conventional contracts. This means that electronic contracts still follow the provisions of contracts in general, both from the aspect of legal subject and legal object. The legal subjects in electronic contracts are individuals and legal entities, with unlimited territorial reach, because they can be within the Indonesian legal territory or outside the Indonesian legal territory, with legal consequences in the Indonesian legal territory and/or outside the Indonesian legal territory and harming the interests Indonesia (check Article 2 of the Electronic Transactions Law).

Electronic contracts involve various materials, starting from agreements, legality, implementation, evidence to risks. Electronic contract risk also concerns the level of risk from the lowest risk to the highest risk inherent in electronic transactions. In principle, there are similarities between electronic contracts and electronic transactions. Article 1 point (2) states: "Electronic transactions are legal actions carried out using computers, computer networks and/or other electronic media." Electronic transactions are agreements between sellers and buyers in the world of commerce, and electronic contracts with electronic transactions fall within the scope of private law, because there is a legal relationship between the parties. The enforcement of a contract will look at whether the contract was valid or not, whether online or offline, as well as in its written and oral form.

The purpose of electronic transactions in the Preamble to the Information and Electronic Transactions Law is to "provide certainty law, justice, and protecting public interests from all kinds of disturbances as a result misuse of Electronic Information, Documents Electronics, Information Technology, and/or Electronic Transactions that disturb public order." Changeseveral provisions in the LawInformation and Electronic Transactionsin its implementation, it still gives rise to multiple interpretations and controversy in society, so changes need to be made to create a sense of justice in society and legal certainty.

Electronic contracts also cover the areas of law enforcement, evidence and legal protection.The development of contracts has been carried out and utilized by the community, although there are no regulations that explicitly regulate it.This development also has an impact on contract law which is basically conventional in nature.

On the other hand, "the advantages generated through smart contract automaticity and enforceability present a concrete basis for undermining reliance on traditional contracts".[10] The advantages obtained in electronic transactions also involve the simplicity of contract preparation, automatic procedures, saving time in communication to realize contracts, as well as guaranteeing transparency, fairness and security in carrying out transactions.

Transparent guarantee means openness in carrying out electronic transactions, not only regarding the rights and obligations of the parties but also the object of the contract and the implementation of the contract, so that it does not harm the parties or other parties and Indonesia's national interests. Guarantee of justice means that there is a balance between the rights and obligations of the parties and this guarantee is supported by a simple security guarantee which means freedom from danger, fraud and uncertainty in the arrangements. This guarantee ultimately talks about the protection of parties in electronic transactions, including identity, data and digital assets.

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[10] *Papantoniou A, Alexandre, Smart Contracts in the New Era of Contract Law, Digital law Journal, Vol 1 No. 4, p.8-24.*

Validity of Contract

Judging from the form of the contract, it can be done in writing or unwritten, which later in its development can be done online. The Civil Code confirms that there are 4 conditions for the validity of an agreement as regulated in Article 1320 of the Civil Code, namely:

1. Those who bind themselves agree;
2. Skills in making an agreement/contract;
3. A certain thing;
4. A legitimate cause.

The Civil Code differentiates between the occurrence and validity of a contract, namely that the occurrence of a contract is based on an agreement, while the validity of a contract must fulfil the four elements of Article 1320 of the Civil Code. Whether a contract is valid or not is not seen from the contract it is made, whether online or offline, or from its form, written or oral. The contract will still be declared valid if the contract meets the conditions specified and confirmed in Article 1320 of the Civil Code.

Article 1320 of the Civil Code is a general criterion regarding the validity of a contract. The conditions regulated also concern the rights and obligations of the parties and/or third parties, and include the subject and object of the contract. The first two conditions are subjective conditions, where if not met, the agreement can be canceled. The other two conditions are objective conditions, if not fulfilled, the agreement is null and void.

Agreeing is the first condition which is based on the conformity of the wishes of the parties. Conformity between the wishes of one party and those that are understood and can be fulfilled by the other party. The agreement concerns the matters agreed upon, especially regarding goods and prices and other matters stated in the contract. Without an agreement, the contract will not occur, so it can be said that the contract occurred because there was an agreement. Agreeing can be influenced by factors that cause one's will to be mistaken as regulated in Article 1321 of the Civil Code. These factors are error, coercion and fraud and are then added to by the court decision with the existence of Abuse of Circumstances (Undue Influence). Contracts that do not fulfill the terms of agreement regarding the main points of the contract or there are factors of error, coercion, fraud and abuse of circumstances, the legal consequences of which can be cancelled. The contract continues to run even if there are factors that influence the will to be mistaken as long as the party whose will is mistaken does not question it.

The second requirement concerns the ability to make contracts. The provisions in the Civil Code do not regulate competence, but what is emphasized is incompetence. People are considered incompetent if they are not yet 21 years old, so to find a measure of competence using argumentum a contrario, which is the opposite measure, a minimum age of 21 years is considered competent. Considering that skill is a subjective factor, even someone who is not yet 21 years old can enter into an agreement.

The provisions regarding a person's maturity in laws and regulations in Indonesia are still multi-ruled, because between one regulation and another, the measure of maturity varies, so which regulation to follow is based on what law is used.

The third condition is a certain thing, as the object of the agreement. Article 1332 of the Civil Code states that "only goods that can be traded can be the object of an agreement". This means that the goods or legal acts that are the object of the agreement have economic value.

The fourth condition is a lawful cause. The meaning of a halal cause is that the object agreed upon must not conflict with the law, morality and public order.

The next development is the term online contract, electronic contract which in this paper is used interchangeably.The validity of an electronic contract is not determined by the physical form of the contract being made, because it can be made in print, writing, orally or electronically and is still based on the articles in the Information and Electronic Transactions Law and the articles in the Civil Code.

Specific arrangements have been regulated in Article 46 paragraphs (1) and (2) Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, requiring:

(1) "Electronic transactions can be carried out based on electronic contracts or other contractual forms as a form of agreement made by the parties.

(2) An electronic contract is considered valid if:

a. there is an agreement between the parties;

b. carried out by competent legal subjects or those authorized to represent them in accordance with the provisions of statutory regulations;

c. there are certain things; And

d. the object of the transaction must not conflict with statutory regulations, decency and public order."

In principle, there is no fundamental difference between the validity of a contract according to Article 1320 of the Civil Code and the validity of an electronic contract under Article 46 paragraph (2). However, considering that there is no further explanation regarding agreements and skills, you can refer to the Civil Code. An explanation of the agreement and also of the factors that cause the will to be mistaken as regulated in Article 1321 of the Civil Code is not found in the Public Information and Electronic Transactions Law. There is also no further explanation regarding the measure of skill, so the measure of skill can take its meaning from Article 1330 of the Jo Civil Code. Article 330 of the Civil Code using the argumentum a contrario method. Explanation of Article 46 Paragraph (1) Electronic Transactions can include several forms or variants, including:

a. the agreement is not carried out electronically but the implementation of the contractual relationship is completed electronically;

b. agreements are made electronically and the implementation of contractual relations is completed electronically; And

c. agreements are made electronically and the implementation of contractual relations is completed not electronically.

This variant shows that conventional contracts and electronic contracts can be implemented by combining the two, starting from agreement to contract implementation. Apart from other variants that can be developed by the parties, for example, in the event of a default, it can be resolved electronically or non-electronically, as well as the clauses stated in the standard contract.

Article 47 paragraph (1) confirms that "Electronic Contracts and other contractual forms as intended in Article 46 paragraph (1) which are addressed to Indonesian residents must be made in Indonesian. Furthermore, Article 47 paragraph (2) emphasizes that "electronic contracts made with standard clauses must comply with the provisions regarding standard clauses as regulated in statutory regulations". This article emphasizes the identity of the nation in the contract clause, which must be written in Indonesian.

Article 47 paragraph (3) confirms that: Electronic agreements or contracts must also at least contain:

a. identity data of the parties;

b. objects and specifications;

c. electronic transaction requirements;

d. prices and costs;

e. procedures in the event of cancellation by the parties;

f. provisions that give the injured party the right to return the goods and/or request a product replacement if there are hidden defects; And

g. legal options for electronic transaction settlement.

These provisions are more detailed than the Civil Code, and the scope of the regulations is quite adequate. Its nature contains more specific aspects, because this transaction only involves giving something, namely handing over the goods that are the object of the transaction, so that the regulations in Government Regulation Number 71 of 2019 are the main reference for preparing electronic transactions. The conditions for the validity of electronic contracts are basically the same as contracts in general regulated in Indonesia, although what is regulated in Article 47 paragraph (3) regulates them in more detail, because it not only concerns the subject and object of the contract, but also emphasizes the existence of prices and costs, procedures for canceling contracts, returning them to their original condition and even regarding products with hidden defects as well as legal options in completing electronic transactions.

Interesting material is that which concerns hidden defects, which in the explanation of the article are not explained further. Hidden defects in goods are a specific arrangement and are differentiated from defects in goods or product defects in general, because they do not only concern defective goods but also concern the seller's position, whether they know or not of the defects in the goods. Regulations regarding hidden defects are only limited to species goods, and not to genus goods.[11]Genus goods are not inspected one by one, while species goods are checked more frequently and there is a guarantee that there are no hidden defects in the goods from the seller. Article 1504 of the Civil Code states "The seller is obliged to bear responsibility for hidden defects in the goods sold, which render the goods unfit for the intended use, or which so reduce such use that, had the buyer known of the defects, he would not have purchased them at all other than at a lower price." . This article contains two meanings, namely the goods cannot be used as intended and reduced use, with the result that the buyer will not buy it or will continue to buy it at a lower price.

Theoretically, there are two rights of the buyer, namely the buyer has two inherent rights, namely returning the goods by requesting a refund from the seller, which is called actio redhibitoria and the buyer will continue to buy at a lower price or actio quanti minoris. This provision is different from the consequences of default in general, so that hidden defects are a special regulation.

This problem becomes interesting, because buying and selling online means it is impossible to specifically inspect the goods by the buyer as mandated by Article 1504 of the Civil Code and the rights owned by the buyer. Hidden defects in goods according to the Civil Code are that the goods have been inspected directly by the seller, so that the buyer knows about the goods beforehand, and hidden defects are not known beforehand, either by the seller or the buyer, so that the seller is acting in good faith.

The aspect of good faith on the part of the seller is very influential in sales and purchase contracts with hidden defects in goods, because defects in goods can also occur through fraud as regulated in Article 1321 of the Civil Code regarding factors that cause intentions to be mistaken. In hidden defects, the seller has good intentions, because he does not know that the goods have defects. This is different from the factors that cause the will to be mistaken, namely in the section on fraud (Article 1328 of the Civil Code). Fraud is carried out intentionally to influence the buyer to the wrong destination or to have a wrong image. This fraud is not just a lie, but with all the efforts of reason, deception with words or silence which causes a mistake in the buyer's will.

Hidden defects in goods as regulated in the Civil Code are difficult to apply in digital transactions, because buyers cannot see and directly inspect the goods they buy. In online transactions, often the goods look good, with extraordinary descriptions, so they are attractive to buy, but the reality is that the goods do not match what is offered. The provisions in Article 47 paragraph (3) in point (f) which concern hidden defects in Government Regulation Number 71/2019, are very difficult to implement when referring to the provisions of Article 1504 of the Civil Code, because it must be proven that the seller was not aware of the defects in the goods being traded.

Harmonization of Conventional Contract Arrangements with Digital Contracts

[11]Sigit Irianto, et al, 2017, *Hukum Kontrak*, Fakultas Hukum Untag Semarang, p. 28.

Harmonization is a process as an effort to create harmony. Harmonization can also be interpreted as a step to harmonize, adjust and find common ground to find similarities between one legal material and another. Everything good can be translated into terms of harmony. Everything should always be in harmony, harmony and balance. What is just and what is prosperous is what is harmonious. All behavior and actions depart from a harmonious situation to a new harmonious situation.

Legal harmonization is a manifestation of harmonious, harmonious and balanced steps between the laws and regulations governing conventional contracts and digital contracts. Legal harmonization was developed in legal science to show that in the world of law, government policy and the relationship between the two there is diversity which can result in disharmony.[12]According to Mahendra, disharmony can occur[13]In principle, this is because the formation of legislation is carried out by different institutions, authorized officials change, the sectoral approach is stronger than the systems approach, weak coordination in legislation, limited access to community participation in the formation of legislation and the method is not yet stable. and definite methods, standards and standards that are binding on all Institutions. In other words, harmonization in law includes adjustments to statutory regulations, government decisions, judges' decisions, legal systems and legal principles with the aim of increasing legal unity, legal certainty, justice (justice, gerechtigheid) and comparability (billijkeid), usefulness and clarity of law, without obscuring and sacrificing legal pluralism if necessary.[14]Another important factor is that there must be good coordination between institutions, community access is not limited by good methods and standards. The aspect of harmonization, adjustment and common ground shows that there are two or more things that have points of similarity and difference to create a harmonious relationship. Without legal harmonization in the field of legislation that is being drafted, legal uncertainty, disorder and a feeling of unprotected society will arise. In this perspective, the problem of legal certainty will be perceived as a need that can only be realized through harmonization of laws and regulations.[15]

Harmonization of contract law arrangements is an inseparable part of legal harmonization and cannot be separated from the aspects of legal certainty, expediency, justice and proportionality in contract law. The aspect of legal pluralism characterizes the law that applies in Indonesia, because various legal regulations based on written law and unwritten law with all their variants are an inseparable part of Indonesian positive law. Harmonization, which is defined as aligning, harmonizing and balancing, shows that in contract law it is possible for there to be inconsistencies, inconsistencies and imbalances as a form of disharmony. This can happen because the characteristics, form, conditions and application may vary.

The contract law that applies in Indonesia, apart from those regulated in the Civil Code and various other laws and regulations, one of which is the Information and Electronic Transactions Law, also applies customary contract law, which is believed to be based on various patterns of community law in Indonesia. Pluralism in contract law does not make contract law disharmonious, but rather is a form of harmonious development of contract law in Indonesia. Each contract law in Indonesia remains embodied and recognized as positive Indonesian law, and is the legal choice for its users.

An agreement in Customary Law is an act in which the parties promise (agree/agree) to carry out a certain act based on full trust and accompanied by certain signs of commitment.[16]Contract law according to the Civil Code is based on the word of agreement as a form of contract and fulfillment of Article 1320 of the Civil Code as a form of validity of the contract. An electronic contract occurs by making an agreement between the parties which is made through an electronic system (Article 1 point 17 of the Electronic Information and Transactions

[12] L.M. Gandhi, 1995, *Harmonisasi Hukum Menuju Hukum Yang Responsif*, Pidato Pengukuhan Guru Besar Tetap, Fakultas Hukum Universitas Indonesia, Jakarta, dalam Hoh. Hasan Wargakusumah, dkk, 1996/1997, p. 28-29..

[13] Sugiyono, Pentingnya Harmonisasi Pembentukan Peraturan Perundang-undangan, https://karya.brin.go.id/id/eprint/11969, accessed 15 May, 2024.

[14]Opcit, p. 68

[15]Soegiyono, Pentingnya Harmonisasi Pembentukan Peraturan Perundang-undangan, https://karya.brin.go.id/id/eprint/11969/1/Soegiyono_Pentingnya_Harmoniasi_2015.pdf. p. 3, diakses tanggal 12 Juni 2024.

[16] http://repository.ubharajaya.ac.id/12946/1/Buku%20Ajar%20Hukum%20Adat.pdf, diakses tanggal 12 Juni 2024.

Law). Article 18 paragraph (1) confirms that: "Electronic transactions outlined in electronic contracts are binding on the parties."

There is no further explanation regarding the validity of contracts in this Law, but it can be interpreted that these binding provisions have given rise to the rights and obligations of the parties, and for the validity of the contract you can follow the provisions regulated in Article 1320 of the Civil Code.

The issuance and enactment of the Information and Electronic Transactions Law is not an obstacle, let alone erasing existing contract law, but in fact it has increasingly colored the development of contract law in Indonesia. As a legal choice for its users, applicable contract law can be used as an option and can complement each other if a legal vacuum occurs. Based on the principle of lex specialis derogate legi generalis, contract law regulated in the Civil Code is applied as a general rule, and if contract law based on electronic transactions and customary contract law requires it, it can be regulated in the Civil Code.

CONCLUSION

The global era has had a major influence on the development of contract law in Indonesia. Contract provisions in Indonesia are not only based on the Civil Code, Islamic contract law or customary contract law, which is categorized as conventional contract law, but also electronic contract law. These two types of contracts color every contract that occurs, both in terms of contractual relationships and different legal consequences. The validity of contracts according to the Civil Code is based on Article 1320 of the Civil Code and the validity of electronic contracts is based on Article 46 paragraphs (1) and (2) of Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions. These two provisions have points of similarity that can be applied to both contracts.

This means there is harmonization in the legal arrangements for conventional contracts and electronic contracts. Legal harmonization does not only involve the meeting point of the two contract laws, but also their differences, and these differences do not conflict with each other but complement each other. The application of the Civil Code as general law can still be applied in electronic contracts.

REFERENCES

Budiono Kusumohamidjojo, 2007, *Panduan Negosiasi Kontrak*, Mandar Maju, Bandung.

Davydova, Iryna, et al, 2021, *Freedom of Contract in the Digital Age and Its Implementation in Modern Technologies: Theory and Practice*, International Journal of Computer Science and Network Security, Vol.21 No.12, December 2021.

Fredes, Esteban Pereira, 2022, *Altruism and Solidarity in Contract Law, Revista Chilena de Derecho*, Vol. 49 No. 3, Pp 1-30.

Goerniadhie, *Harmonisasi Hukum Dalam perspektif Perundang-undangan (Lex Spesialis Suatu Masalah)*, JP Books, Surabaya.

http://repository.ubharajaya.ac.id/12946/1/Buku%20Ajar%20Hukum%20Adat.pdf, diakses tanggal 12 Juni 2024.

Kim, Sang Man, *A comparative study of the CISG and the North Korean contract law as to formation of a contract*, Journal of International Trade Law and Policy Vol. 19 No. 1, 2020, © Emerald Publishing Limited 1477-0024 DOI 10.1108/JITLP-07-2019-0046.

Koerniatmanto Soetopawiro, 1993, *Mentaliltas Barat dan Mentalitas Timur*, Dalam Kusnu

Sugiyono, *Pentingnya Harmonisasi Pembentukan Peraturan Perundang-undangan*, https://karya.brin.go.id/id/eprint/11969, accessed 15 May, 2024.

L.M. Gandhi, 1995, *Harmonisasi Hukum Menuju Hukum Yang Responsif*, Pidato Pengukuhan Guru Besar Tetap, Fakultas Hukum Universitas Indonesia, Jakarta.

Papantoniou A, Alexandre, *Smart Contracts in the New Era of Contract Law,* Digital law Journal, Vol 1 No. 4.

Rohaya Nizla, et al, 2023*, Challenges of Indonesian Contract Law in the Digital Business Era,* Pagaruyuang Law Journal, Vol 7 No. 1, 2023. Faculty of Law Universitas Muhammadiyah Bukittinggi.

Rossella Esther Cerchia, A Comparative Viewpoint on Illegal Contracts: In Favor of Flexibility and Proportionality, Global Jurist 2021; 21(2).

Sigit Irianto, et al, 2017, *Hukum Kontrak*, Fakultas Hukum Untag Semarang.

Soegiyono, Pentingnya Harmonisasi Pembentukan Peraturan Perundang-undangan, https://karya.brin.go.id/id/eprint/11969/1/Soegiyono_Pentingnya_Harmoniasi_2015.pdf. p. 3, diakses tanggal 12 Juni 2024.

Subekti, 1991, *Hukum Perjanjian*, Intermasa, Jakarta.