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BULLYING AND LEGAL ACCOUNTABILITY: VICTIMS' COMPENSATION IN INDONESIAN CRIMINAL, CIVIL, AND ADMINISTRATIVE LAW

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Abstract: The rapid growth of electronic commerce has made standard-form electronic contracts, together with the dispute resolution clauses embedded in them, a common yet legally contested feature of everyday transactions. This article examines the validity of dispute resolution clauses in electronic contracts, such as choice of forum, choice of law, arbitration, and online dispute resolution, from the perspective of Indonesian civil law. Previous studies have examined the validity of electronic contracts in general and the position of choice-of-law clauses in cross-border digital transactions, but comparatively little attention has been paid to the validity requirements and enforceability of dispute resolution clauses that are unilaterally drafted into standard-form electronic contracts. Using a normative juridical method with statutory, conceptual, and comparative approaches, this article finds that a dispute resolution clause in an electronic contract is valid so long as it fulfills the elements of a valid agreement under Article 1320 of the Indonesian Civil Code and does not violate the principle of good faith under Article 1338 or mandatory consumer protection norms. Clauses that unreasonably restrict consumer access to justice, that are concealed from a party's reasonable notice, or that rely on an internal online dispute resolution mechanism lacking independence may be declared void or non-binding. The article recommends clearer regulatory standards on the form, disclosure, and procedural fairness of such clauses in electronic standard contracts.

Keywords: Civil Law; Dispute Resolution Clause; Electronic Contract; Standard Clause; Validity

I. INTRODUCTION

The development of information technology has fundamentally changed the way society conducts transactions. Transactions that were once conducted face to face have largely moved into electronic space through online trading platforms, digital financial applications, and various other internet-based services. This shift has given rise to a new form of legal relationship known as the electronic contract, that is, an agreement formed through an electronic system without the physical presence of the parties.[1] The rapid growth of electronic transactions has been driven by easier internet access, the expansion of marketplace platforms, and a shift in consumption patterns toward an ever greater reliance on digital services in daily life.

One element that is most often overlooked by the parties to an electronic contract is the dispute resolution clause. This clause is usually embedded in the terms and conditions unilaterally drafted by the business actor or platform operator, and it typically covers choice of forum, choice of law, arbitration, or online dispute resolution. Consumers generally have no room to negotiate the content of such a clause, so that the consent given is better described as a unilateral, take-it-or-leave-it acceptance rather than an agreement born from a genuine process of bargaining.[2]

This standard-form character of electronic contracts becomes even more problematic when linked to the structurally weaker bargaining position of consumers vis-à-vis business actors or platform operators. That imbalance is not confined to price or product quality; it extends to a far more fundamental matter, namely the forum and method of dispute resolution that will apply once a dispute arises, a concern reinforced by studies on the validity of electronic contracts under Law Number 11 of 2008 read together with the Civil Code.[3]

Earlier research has extensively discussed the validity of electronic contracts in general by reference to the requirements for a valid agreement under Article 1320 of the Kitab Undang-Undang Hukum Perdata, namely consent, capacity, a certain object, and a lawful cause. Similar conclusions have been reached in studies

[1] Wilma Silalahi & Evellyn Octavia, 2026. *Keabsahan dan Perlindungan Hukum dalam Kontrak Elektronik*. Indonesian Journal of Law and Justice 3, no. 3, p. 1, https://doi.org/10.47134/ijlj.v3i3.5674.

[2] Fahdelika Mahendar & Christiana Tri Budhayati, 2019. *Konsep Take It or Leave It dalam Perjanjian Baku Sesuai dengan Asas Kebebasan Berkontrak*. Jurnal Ilmu Hukum: Alethea 2, no. 2, p. 97 – 114, https://doi.org/10.24246/alethea.vol2.no2.p97-114.

[3] Joko Widarto, 2021. *Keabsahan Kontrak Elektronik Berdasarkan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik Juncto Kitab Undang-Undang Hukum Perdata*. Lex Jurnalica 18, no. 2, p. 172 – 182, https://doi.org/10.47007/lj.v18i2.4548.

examining electronic contracts through the lens of the law of obligations,[4] and in studies assessing the effectiveness of Indonesia's positive law in governing the validity of electronic contracts more broadly.[5] Other studies have highlighted the position of foreign choice-of-law clauses in cross-border digital business contracts and their implications for the interests of domestic business actors.

Such studies show that Indonesian law, through the instrument of public policy, may set aside a foreign choice of law where that choice undermines mandatory national rules.[6] These studies make an important contribution, yet they generally remain confined to the validity of electronic contracts as a whole, or to choice-of-law clauses alone, and have not specifically examined the validity of the dispute resolution clause as a self-standing norm within the electronic contract, whether in terms of its form, the manner of its disclosure, or its legal consequences where one party occupies a weaker bargaining position.

Other research has specifically examined the existence of online arbitration and online dispute resolution (ODR) as alternative means of resolving disputes arising from electronic transactions. Such research generally notes that the concept of ODR has not yet been regulated in detail under Indonesian legislation, even though a normative opening for it can be found in Article 1338 of the Civil Code on freedom of contract and Article 18 of the Electronic Information and Transactions Law on the parties' freedom to choose a dispute resolution forum.[7] Other studies emphasize the urgency of more firmly regulating online arbitration given the significant post-pandemic increase in the volume of electronic transactions.[8]

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[4] Wahyu Suwena Putri & Nyoman Budiana, 2018. *Keabsahan Kontrak Elektronik dalam Transaksi E-Commerce ditinjau dari Hukum Perikatan*. Jurnal Analisis Hukum 1, no. 2, p. 300 – 309, https://doi.org/10.38043/jah.v1i2.417.

[5] Siti Rahmawati, 2024. *Tingkat Keabsahan Kontrak Elektronik Berdasarkan Hukum Positif di Indonesia*. Innovative: Journal of Social Science Research 4, no. 4, p. 7561 – 7572, https://doi.org/10.31004/innovative.v4i4.14023.

[6] Bayu Prasetyo & Gunardi Lie, 2026. *Keabsahan dan Implikasi Klausul Pilihan Hukum Asing dalam Kontrak Bisnis Digital Internasional bagi Pelaku Usaha di Indonesia*. Justice Amnesty Law and Undoing Journal 2, no. 1, p. 224, https://doi.org/10.57235/jalu.v2i1.8530.

[7] Daniel Simamora, 2020. *Tinjauan Normatif terhadap Online Dispute Resolution sebagai Metode Penyelesaian Sengketa E-Commerce*. Jurnal Eksekusi 2, no. 2, p. 1, https://doi.org/10.24014/je.v2i2.10838.

[8] Irene Fransisca Liemanto et al, 2021. *The Urgency of Regulating Online Arbitration in Dispute Settlement of E-Commerce Transactions in Indonesia*. International Journal of Multicultural and Multireligious Understanding 8, no. 7, p. 1 – 10, http://dx.doi.org/10.18415/ijmmu.v8i7.2847.

Further research shows an overlap between Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (hereinafter the EIT Law), Law Number 8 of 1999 on Consumer Protection, and the Civil Code, which creates uncertainty in determining jurisdiction and the applicable dispute resolution mechanism whenever loss is suffered by one of the parties. This uncertainty becomes a gap that risks harming the structurally weaker party, particularly the consumer, because a unilaterally inserted dispute resolution clause may restrict access to the forum most favorable to that party.[9]

This concern is heightened by the development of international instruments such as the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Technical Notes on Online Dispute Resolution which, although a form of soft law without direct binding force, have widely served as a conceptual reference for states in designing the legal framework for electronic transactions, including the dispute resolution dimension.[10] Indonesia itself does not yet have a specific and comprehensive regulation governing the form, validity requirements, and reasonableness limits of dispute resolution clauses in electronic contracts, so that resolution of these questions still largely rests on the interpretation of conventional contract law doctrine.

This regulatory gap raises a fundamental question as to the extent to which a dispute resolution clause unilaterally inserted into an electronic contract can be regarded as valid under the principle of freedom of contract and the requirements for a valid agreement in the Civil Code, and what limits of reasonableness must be met so that the clause does not offend the principle of good faith. This article is written to address that gap by placing the dispute resolution clause itself, rather than the validity of the electronic contract in general, at the center of the inquiry. The urgency of this study is further underscored by the steadily rising volume of electronic transactions in Indonesia, accompanied by a corresponding rise in consumer

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[9] Krismat Hutagalung et al, 2021. *Perlindungan Hukum Konsumen Terhadap Perjanjian Baku yang Merugikan Konsumen*. Mizan: Jurnal Ilmu Hukum 10, no. 2, p. 207, https://doi.org/10.32503/mizan.v10i2.1850.

[10] Djoni Budhijanto et al, 2025. *UNCITRAL Technical Notes on Online Dispute Resolution as Soft Law Instrument for Online Dispute Resolution: An Indonesia Perspective*. BANI Arbitration and Law Journal 2, no. 1, p. 38.

complaints, a pattern also visible in comparative studies of contract law developments in the digital era.[11]

Building on the foregoing, this article aims to analyze the validity of dispute resolution clauses in electronic contracts from the perspective of Indonesian civil law, and to formulate the limits within which such clauses remain consistent with the principles of balance and good faith in contracting. The discussion is structured around three main questions: first, whether a unilaterally inserted dispute resolution clause satisfies the requirements for a valid agreement under Article 1320 of the Civil Code and the principle of freedom of contract under Article 1338; second, what legal standing the various forms of dispute resolution clause (choice of forum, choice of law, arbitration, and online dispute resolution) occupy within Indonesian civil law and procedural law; and third, what legal consequences follow where such a clause is found to conflict with the principle of good faith or with consumer protection norms.

II. RESEARCH METHODS

This article uses a normative legal research method that focuses on the study of positive legal norms, doctrine, and relevant legal principles. It applies a statutory approach, a conceptual approach, and a comparative approach to relevant international instruments and to selected foreign jurisdictions. The primary legal materials used include the Civil Code, the EIT Law, Law Number 8 of 1999 on Consumer Protection, Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Government Regulation Number 71 of 2019 on the Administration of Electronic Systems and Transactions, Government Regulation Number 80 of 2019 on Trading through Electronic Systems, and Supreme Court Regulation Number 1 of 2016 on Mediation Procedure in Courts. Secondary legal materials are drawn from books, journal articles, and prior research relevant to the validity of electronic contracts and dispute resolution clauses, including the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Technical Notes on Online Dispute Resolution. The analysis is conducted qualitatively by examining the interrelation between norms and comparing them against contract law doctrine in order to answer the questions posed above.

[11] Athaya Reza Abhipraya et al, 2025. *Perkembangan Hukum Perjanjian di Era Digital: Dari Konvensional ke Elektronik*. PESHUM: Jurnal Pendidikan, Sosial dan Humaniora 5, no. 1, p. 1, https://doi.org/10.56799/peshum.v5i1.12660.

III. ANALYSIS AND DISCUSSION

a. Legal Standing of Electronic Contracts as the Basis for Dispute Resolution Clauses

1. Electronic Contracts under the Requirements of a Valid Agreement in the Civil Code

An electronic contract is essentially an obligation formed through an electronic system, and therefore remains, conceptually, subject to the general rules of contract law set out in Book III of the Civil Code. Article 1320 of the Civil Code establishes four requirements for a valid agreement:[12] the consent of the parties, the capacity to enter into an obligation, a certain object, and a lawful cause. So long as these four elements are satisfied, an electronic contract carries binding force equivalent to that of a conventional contract, a position reinforced by the EIT Law's recognition of electronic information and electronic documents as valid legal evidence.

This binding force is what underpins the enforceability of every clause contained in an electronic contract, including the dispute resolution clause, since such a clause is in essence an inseparable part of the entire agreement to which the parties have consented.[13] The validity of an electronic contract as a whole does not, however, automatically guarantee the validity of every clause it contains, because contract law distinguishes between the validity of the agreement as a whole and the validity of a particular clause embedded within it. A clause may still be held unenforceable, or void, even where the contract as a whole is considered valid, if that clause conflicts with statute, public policy, or morality, as required by the element of a lawful cause. This distinction matters in practice because a court asked to enforce, or to set aside, a dispute resolution clause is not thereby required to rule on the validity of the transaction as a whole; the two questions can and should be kept analytically separate.

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[12] Kitab Undang-Undang Hukum Perdata (Indonesian Civil Code), Article 1320.

[13] Ni Luh Gede Mella Septiari & Ni Made Puspautari Ujianti, 2025. *Kekuatan Hukum Perjanjian Elektronik dalam Perspektif KUH Perdata dan UU ITE*. Indonesian Journal of Law and Justice 2, no. 4, p. 1, https://doi.org/10.47134/ijlj.v2i4.4320.

2. The Severability of Dispute Resolution Clauses from the Underlying Contract

For this reason, the dispute resolution clause in an electronic contract must be assessed on its own terms, rather than automatically following the validity of the underlying contract. This separate assessment is important precisely because electronic contracts are typically standard-form contracts, in which the platform provider drafts the entirety of the terms unilaterally and the consumer is offered only the choice of accepting or rejecting the whole set of terms and conditions, without any room for negotiation.

This separation of assessment aligns with the doctrine of severability, that is, the principle allowing a particular clause to be held invalid without invalidating the agreement as a whole, so long as the remaining part of the agreement can stand on its own and still fulfills the parties' essential purpose in entering into the contract. This principle is relevant to electronic contracts, since the dispute resolution clause typically stands as a distinct provision, separate from the core terms concerning the object and price of the transaction.

b. Forms and Practices of Dispute Resolution Clauses in Electronic Contracts

1. Choice of Forum and Choice of Law in Cross-Border Electronic Contracts

In practice, dispute resolution clauses in electronic contracts commonly appear in several forms: choice-of-forum clauses, choice-of-law clauses, arbitration clauses, and internal online dispute resolution (ODR) mechanisms operated by the platform itself. Each of these forms carries different legal consequences for the position of the parties once a dispute arises.

Choice-of-forum and choice-of-law clauses often designate a jurisdiction far removed from the consumer's domicile, or even a foreign legal system, thereby potentially making it more difficult for domestic consumers to pursue legal remedies. This concern is most acute in cross-border electronic transactions, where the platform operator is domiciled abroad while its services are widely used by consumers in Indonesia. The importance of a clear choice-of-law and choice-of-forum clause in avoiding jurisdictional conflict in cross-border transactions has likewise been emphasized in the context of international business contracts more broadly,[14] including in comparative studies of how

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[14] Nina Vernia Margaretha et al, 2023. *Penerapan Klausula Pilihan Hukum (Choice of Law) dan Pilihan Forum (Choice of Forum) dalam Penyelesaian Sengketa Kontrak Internasional*. Diponegoro Law Journal 12, no. 3, p. 1, https://doi.org/10.14710/dlj.2023.38990.

domestic courts and arbitral tribunals in Indonesia recognize choice-of-law clauses in international contracts.[15]

In such circumstances, Indonesian law, through the instrument of public policy, is empowered to set aside a foreign choice of law where that choice undermines mandatory national rules and impedes domestic consumers' access to justice. Judges hold a central role as guardians of legal sovereignty in developing the law so as to achieve substantive justice in cross-border digital business disputes. That authority serves as an important counterweight given the unequal bargaining position between the individual consumer and the platform operator, which is typically a multinational corporation with far greater legal resources. The same rationale underlies the broader function of choice-of-law clauses in providing certainty, efficiency, and protection of the parties' interests in the settlement of international contract disputes, albeit one still bounded by public policy and mandatory rules in the forum state.[16]

Nonetheless, the invocation of public policy cannot be exercised arbitrarily; it must be grounded in a careful assessment of the real impact of the foreign choice of law on the public interest or on the interests of the weaker party. Courts must ensure that setting aside a foreign choice of law is genuinely necessary to protect fundamental interests, rather than a mere preference of forum, so that legal certainty in cross-border transactions is preserved. This calibration is delicate: an overly permissive stance risks leaving consumers without meaningful recourse, while an overly aggressive use of public policy risks undermining the predictability that choice-of-law clauses are meant to provide in the first place.

At the regional level, cooperation among ASEAN member states through the ASEAN Agreement on Electronic Commerce has likewise encouraged the harmonization of electronic transaction regulation, including cross-border dispute resolution. Such harmonization is increasingly relevant for Indonesia given the growing number of electronic transactions involving business actors from other ASEAN member states, making it necessary to develop a shared regional understanding of the minimum standards of validity and reasonableness

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[15] Laras Susanti, 2019. *The Comparison between Recognition to Choice of Law in International Contracts by Courts and Arbitration in Indonesia*. Kertha Patrika 41, no. 3, p. 170.

[16] Saefullah, 2022. *Choice of Law dalam Penyelesaian Sengketa Perjanjian Internasional*. Binamulia Hukum 11, no. 2, p. 117, https://doi.org/10.37893/jbh.v11i2.296.

that a dispute resolution clause must meet, so that consumers across the region enjoy a comparable level of protection.

2. **Arbitration and Online Dispute Resolution Mechanisms**

An arbitration clause provides certainty as to a dispute resolution mechanism outside the courts, as regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. That law requires an arbitration agreement to be made in writing and expressly agreed by the parties, so that an arbitration clause in an electronic contract can in principle satisfy this requirement so long as the electronic consent given meets the EIT Law's requirements for the validity of electronic documents.

Further developments have given rise to the concept of online arbitration, or e-arbitration, that is, an arbitration process conducted through electronic means, including hearings by video conference and the electronic submission of documents. The implementation of online arbitration in Indonesia has not yet been explicitly regulated in legislation, and in practice has so far been conducted only under the internal rules of particular arbitration institutions.[17] This regulatory gap raises questions of legal certainty for the enforcement of online arbitral awards, particularly regarding the formal requirements of signature and examination customarily required in conventional arbitration proceedings.

Beyond online arbitration, the practice of electronic contracting also frequently incorporates an internal online dispute resolution (ODR) mechanism operated by the platform itself, such as a complaint feature, internal mediation, or automated resolution based on platform policy. UNCITRAL defines ODR as a mechanism that can help parties resolve disputes simply, quickly, flexibly, and securely, without requiring physical presence at a meeting or hearing, encompassing among others ombudsman services, negotiation, conciliation, mediation, and arbitration, and it has likewise been examined as a model of legal protection for business actors.[18]

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[17] Juan Matheus, 2021. *E-Arbitration: Digitization of Business Dispute Resolution pada Sektor E-Commerce dalam Menyongsong Era Industri 4.0 di Tengah Pandemi Covid-19*. Lex Renaissance 6, no. 4, p. 1, https://doi.org/10.20885/JLR.vol6.iss4.art4.

[18] Wahyu Beny Mukti Setiyawan et al, 2020. *Online Dispute Resolution sebagai Model Perlindungan Hukum Pelaku Bisnis*. Rechtidee 15, no. 1, p. 114, https://doi.org/10.21107/ri.v15i1.7703.

The concept of ODR is indeed not yet regulated in detail under Indonesian legislation, but this does not preclude its application, given that Indonesia recognizes the principle of freedom of contract under Article 1338 of the Civil Code and the freedom to choose a dispute resolution forum under Article 18 of the EIT Law. Online mediation likewise finds a foothold in Supreme Court Regulation Number 1 of 2016 on Mediation Procedure in Courts, particularly regarding the conduct of mediation through information technology. Even so, an ODR mechanism operated internally by the platform carries an inherent weakness: its independence and objectivity are difficult to measure, since the party administering the mechanism is simultaneously a party that may itself become involved in the dispute. The absence of external oversight over such internal ODR mechanisms creates a risk of conflict of interest, particularly where the outcomes tend to favor the platform operator that designed and operates the mechanism.

3. Platform Practices and Marketplace Responsibility in Indonesia

At the level of practice, major Indonesian e-commerce platforms generally provide an internal dispute resolution mechanism as a first step before a dispute is brought to another forum. Such mechanisms typically take the form of a complaint feature or resolution center, allowing buyers and sellers to raise objections over non-conforming transactions, such as goods that never arrive, defective goods, or a mismatch between the product description and the goods received.

Case studies on several platforms indicate that such resolution-center mechanisms tend to be reasonably effective for simple, low-value disputes, since the process is relatively swift and does not impose additional cost on the consumer.[19] A case study of consumer protection in a Shopee dispute involving the use of standard clauses in electronic contracts similarly shows that the internal resolution mechanism tends to work well for straightforward complaints, but affords limited recourse where the underlying loss is more substantial.[20]

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[19] Hellen S. De Lima et al, 2025. *Analisis Hukum Kontrak dalam Sistem Hukum Indonesia: Perlindungan, Wanprestasi, dan Tantangan Era Digital*. Jurnal Hukum Sasana 11, no. 1, p. 1, https://doi.org/10.31599/sasana.v11i1.3966.

[20] Ade Jona Prasetyo et al, 2024. *Perlindungan Hukum Konsumen Tentang Adanya Klausula Baku dalam Kontrak Elektronik Antara Konsumen dan Pihak E-Commerce (Studi Kasus pada E-Commerce Shopee)*. Gorontalo Law Review 7, no. 2, p. 466, https://doi.org/10.32662/golrev.v7i2.3745.

The basic weakness of such internal resolution-center mechanisms lies in their limited authority, since the outcomes they produce are generally confined to a refund or a product replacement, without extending to broader compensation for non-material or other losses the consumer may have suffered. Where a consumer is dissatisfied with the outcome of internal resolution, the consumer in principle retains the right to bring the dispute before the Consumer Dispute Settlement Board or the competent court, so long as the dispute resolution clause in the platform's terms and conditions does not validly foreclose that right.

A civil court decision concerning a marketplace dispute in Medan (Decision No. 183/Pdt.G/2018/PN Mdn) illustrates this point: the court affirmed that a marketplace, as an electronic system operator, may be held legally liable where a consumer's loss arises from the operator's negligence or system failure, and that an exoneration clause purporting to limit or shift that liability onto the consumer does not automatically bar the consumer's claim.[21] This is consistent with the broader finding that a platform operating as an electronic system provider bears a duty to protect consumers in transactions conducted through its platform, and may be held accountable where it fails to do so.[22]

Such practice confirms that an internal dispute resolution mechanism on an electronic commerce platform should properly be understood as a complement to, rather than a substitute for, a more formal dispute resolution forum. A dispute resolution clause that expressly designates the internal mechanism as the exclusive and final forum, without leaving room for the consumer to pursue other legal remedies, risks conflicting with the consumer's right to a proper dispute resolution process as guaranteed by Law Number 8 of 1999 on Consumer Protection, particularly Article 19 concerning business actors' liability for consumer losses.

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[21] Theresia Gabriella Pohan et al, 2023. *Analisis Penggunaan Perjanjian Baku Elektronik Berklausula Eksonerasi pada Marketplace ditinjau Berdasarkan Hukum Positif Indonesia*. COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat 3, no. 7, p. 2913, https://doi.org/10.59141/comserva.v3i07.1075.

[22] Abdul Halim, 2023. *Tanggung Jawab Penyedia Platform E-Commerce dalam Melindungi Transaksi Jual Beli Melalui Platform E-Commerce*. Jurnal Notarius 2, no. 1, p. 1.

4. Disclosure Duties and the Formal Requirements of Electronic Standard Contracts

Beyond the question of forum and mechanism, the validity of a dispute resolution clause is also closely tied to whether the underlying electronic standard contract satisfies the formal requirements for electronic contract formation. Article 46(2) of Government Regulation Number 71 of 2019 sets out the conditions an electronic contract must fulfill to be considered validly formed, including agreement between the parties, capacity or authority to act, a certain object, a lawful cause, and the availability of the goods or services offered. These requirements exist alongside, and inform, the drafting of standard electronic agreements more generally, including agreements containing exoneration clauses on e-commerce marketplaces.[23]

A further, preventive approach available under civil law is to strengthen the duty to disclose at the stage of contract formation, rather than relying solely on a post hoc assessment of validity once a dispute has already arisen. This duty requires a business actor to present a dispute resolution clause clearly, in a place readily found, and in language an ordinary user can understand, so that a consumer's consent genuinely reflects an adequate understanding of the legal consequences attached to that clause. Strengthening this duty is consistent with the principle of good faith at the pre-contractual stage, which requires the parties to act honestly and transparently from the outset of negotiation, not merely once the agreement is being performed. Concrete measures that could strengthen this duty include presenting the dispute resolution clause separately from other general terms, using a format that highlights key points such as forum, cost, and time frame for resolution, and providing a plain-language summary alongside the full terms and conditions document, all of which could be developed into industry best practice encouraged by regulators and e-commerce business associations.

c. Validity, Consumer Protection, and Legal Consequences of Dispute Resolution Clauses

1. Validity under the Principle of Freedom of Contract and the Requirements of a Valid Agreement

The principle of freedom of contract under Article 1338(1) of the Civil Code[24] grants the parties the authority to determine the content of their own agreement,

[23] Theresia Gabriella Pohan et al, 2023. *Op Cit.*, p. 2915.
[24] Kitab Undang-Undang Hukum Perdata (Indonesian Civil Code), Article 1338.

including the manner of dispute resolution they wish to adopt. That freedom, however, is not unlimited. Article 1338(3) of the Civil Code affirms that every agreement must be performed in good faith, so that drafting a dispute resolution clause that manifestly disadvantages one party without providing any measure of equality may be regarded as contrary to that principle.

In the context of standard-form electronic contracts, the element of consent, as the first requirement for a valid agreement under Article 1320 of the Civil Code, requires closer scrutiny. Consent given by a consumer through the act of clicking an 'I agree' button, that is, a click-wrap agreement, can formally be regarded as a form of consent, since the EIT Law recognizes an electronic statement as a valid expression of will. Even so, consent that is formally valid does not always reflect free and fully informed consent, particularly where the dispute resolution clause is not displayed clearly, is buried within lengthy terms, or is expressed in language difficult for an ordinary user to understand. This concern over the adequacy of consent in click-wrap agreements has also been raised in studies examining such agreements specifically from the standpoint of consumer protection law.[25]

The elements of capacity and a certain object generally raise no significant difficulty in the context of a dispute resolution clause, since the designation of a forum or dispute resolution mechanism is an object capable of clear determination and does not conflict with the parties' legal capacity to act. The more complex difficulty lies instead in the element of a lawful cause, that is, the extent to which the purpose of inserting the clause is consistent with reasonableness and is not merely intended to restrict the other party's access to justice.

Accordingly, the validity of a dispute resolution clause in an electronic contract should be measured not only by the fulfillment of the formal requirement of consent, but also by the fulfillment of transparency and equality of bargaining position. Where such a clause is drafted reasonably, displayed clearly, and does not strip away either party's fundamental right to obtain justice, the clause may be declared valid and binding on the parties as though it were law unto themselves. This standard, in effect, asks courts and regulators to look past the formal moment of the click and to the substance of what was actually disclosed and understood.

[25] Hulman Panjaitan et al, 2025. *Strengthening Consumer Protection in Digital Transactions: A Legal Perspective on Click-Wrap Agreements Under the Consumer Protection Law*. Jurnal Hukum Unissula 41, no. 3, p. 206, https://dx.doi.org/10.26532/jh.v41i3.47262.

2. Consumer Protection Norms and Comparative Regulatory Approaches

The principle of consumer protection provides an additional perspective that cannot be disregarded in assessing the validity of a dispute resolution clause in an electronic contract. Law Number 8 of 1999 on Consumer Protection expressly prohibits business actors from including standard clauses that make it difficult for consumers to prove their rights, that place consumers in an unequal position, or that subject consumers to unilaterally issued supplementary rules. This concern has likewise been raised in studies of standard clauses that disadvantage consumers more generally,[26] and in studies specifically examining consumer protection in relation to standard clauses in electronic commerce transactions.[27]

A dispute resolution clause that designates a hard-to-reach forum, imposes costs disproportionate to the value of the transaction, or requires a convoluted procedure may be categorized as a clause that makes it difficult for a consumer to uphold his or her rights, and therefore risks conflicting with consumer protection law. This concern is heightened by the fact that electronic transactions are typically of small to moderate value, so that the cost and complexity of a dispute resolution procedure can present a real barrier for a consumer seeking to vindicate a claim. In the financial services sector, an equivalent concern has also driven a dedicated regulatory study on consumer dispute resolution built around online dispute resolution,[28] as well as a study addressing the legal protection of standard clauses in peer-to-peer lending services.[29] A similar concern, viewed through the lens of consumer dispute settlement following the enactment of the Financial Services Authority Law, underscores that even where a standard clause has been agreed to, the consumer's access to a fair dispute resolution channel must remain protected.[30]

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[26] Krismat Hutagalung et al, 2021. *Op Cit.*, p. 207.

[27] Roberto Ranto, 2019. *Tinjauan Yuridis Perlindungan Hukum Terhadap Konsumen dalam Transaksi Jual Beli Melalui Media Elektronik*. Jurnal Ilmu Hukum: Alethea 2, no. 2, p. 145, https://doi.org/10.24246/alethea.vol2.no2.p145-164.

[28] Hudiyanto et al., 2017. *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution*. Jakarta: Departemen Perlindungan Konsumen OJK, p. 4.

[29] Atikah Al Khansa Sanusi & Yudho Taruno Muryanto, 2022. *Perlindungan Hukum Pemberi Pinjaman Terhadap Klausula Baku pada Layanan Peer to Peer Lending*. Jurnal Privat Law 10, no. 2, p. 247, https://doi.org/10.20961/privat.v10i2.65065.

[30] A. Dwi Rachmanto, 2018. *Penyelesaian Sengketa Konsumen Akibat Perjanjian Baku dan Klausula Baku Pasca Keberlakuan UU Nomor 21 tentang Otoritas Jasa Keuangan*. Jurnal Hukum dan Pembangunan 48, no. 4, p. 836, https://doi.org/10.21143/jhp.vol48.no4.1805.

The Government, through Government Regulation Number 80 of 2019 on Trading through Electronic Systems, further requires business actors to provide an easily accessible consumer complaint mechanism, as part of consumer protection in electronic transactions. This provision confirms that the availability of an accessible dispute resolution mechanism is no longer merely an internal platform policy but has become part of the legal obligation that business actors must satisfy in conducting trade through electronic systems.

Comparison with the regulatory approach of other jurisdictions offers a further useful perspective in assessing the adequacy of Indonesia's regulation of electronic dispute resolution clauses. The European Union, for instance, has developed an Online Dispute Resolution framework requiring online business actors to provide a link to an official ODR platform administered independently by a public authority, giving consumers an alternative dispute resolution avenue that does not depend entirely on the business actor's internal mechanism. This differs from the practice generally found in Indonesia, where online dispute resolution mechanisms are still largely operated internally by each platform without the involvement of an independent supervisory authority.

The United States, by contrast, tends to rely on the doctrine of unconscionability in contract law to assess the validity of dispute resolution clauses considered excessively one-sided, including mandatory arbitration clauses that restrict a consumer's right to bring a class action. That doctrine bears a conceptual resemblance to the principle of good faith and the prohibition on standard clauses that disadvantage consumers as recognized in Indonesian law, although its testing mechanism is carried out through a body of judicial jurisprudence considerably more developed than current practice in Indonesia. This comparison suggests that strengthening Indonesia's regulation of electronic dispute resolution clauses could pursue two complementary policy directions: strengthening institutional oversight through a more independent ODR mechanism along the lines of the European Union model, and strengthening substantive review of one-sided standard clauses through the development of judicial doctrine along the lines of the United States approach.

3. **Legal Consequences and the Need for Regulatory Standardization**

Where a dispute resolution clause in an electronic contract is found to conflict with the principle of good faith or with consumer protection norms, the legal consequence is not the invalidity of the electronic contract as a whole, but rather the unenforceability of that clause specifically. This approach is consistent with the doctrine that a clause conflicting with statute or public policy may be declared void without affecting the validity of the remainder of the agreement, so long as that remainder can stand on its own.

Where a dispute resolution clause is declared unenforceable, civil procedure law generally restores the authority to resolve the dispute to the competent court under the ordinary rules of civil procedure, so that the consumer retains access to justice even though the unilateral clause in the electronic contract is held non-binding. Beyond the unenforceability of the clause itself, a business actor that persists in including a dispute resolution clause manifestly contrary to consumer protection norms may also face administrative consequences or a claim for damages from an aggrieved consumer. This consequence serves as an important instrument to encourage business actors to draft more balanced dispute resolution clauses, rather than exploiting their dominant position to restrict consumers' access to justice.

Clearer regulation of the form, readability, and reasonableness limits of dispute resolution clauses in electronic contracts is therefore important to provide legal certainty for both business actors and consumers, while also preventing business actors from abusing their dominant position in unilaterally drafting terms and conditions. Such regulatory strengthening should ideally cover minimum standards of information disclosure, reasonable limits on forum and dispute resolution costs, and an oversight mechanism for platforms' internal online dispute resolution processes, complemented by active supervision from the ministry responsible for communication and informatics and from the Financial Services Authority in the digital financial services sector.

4. The Role of Supervisory Authorities in Promoting Standardization

Strengthening the validity and reasonableness of dispute resolution clauses in electronic contracts cannot be left entirely to case-by-case adjudication before the courts; it also requires an active role for supervisory authorities in promoting standardized practice at the industry level. The ministry responsible for communication and informatics, as the authority overseeing electronic system operators, occupies a strategic position to issue technical guidelines on the form of disclosure that dispute resolution clauses must satisfy.

In the digital financial services sector, the Financial Services Authority has likewise set a relevant regulatory precedent through its own study on consumer dispute resolution built around online dispute resolution, as well as through research addressing legal protection concerning standard clauses in peer-to-peer lending services. Such cross-sectoral approaches are important to ensure consistency in consumer protection standards for electronic dispute resolution, regardless of the specific business sector involved.

Beyond issuing technical guidelines, supervisory authorities can also play a role in periodically auditing electronic system operators' compliance with reasonable standards for dispute resolution clauses, including through review of platforms' published terms and conditions. Such oversight could be complemented by a reporting mechanism for consumers who encounter a dispute resolution clause considered unreasonable, allowing supervisory authorities to follow up proactively rather than waiting for a dispute to reach the courts. The combination of judicial enforcement and preventive administrative oversight is expected to create a more comprehensive culture of compliance, so that the validity and reasonableness of dispute resolution clauses in electronic contracts no longer depend solely on an individual consumer's initiative to bring a claim, an initiative that in practice is often constrained by limited cost, time, and legal knowledge.

IV. CONCLUSION

A dispute resolution clause in an electronic contract is, in principle, valid so long as it satisfies the elements of consent, capacity, a certain object, and a lawful cause required by Article 1320 of the Civil Code, and does not conflict with the principle of good faith under Article 1338. Consent given through an electronic mechanism, including a click-wrap agreement, is formally recognized as valid under the EIT Law, but that formal validity must be supplemented by transparency and equality of bargaining position before the clause can be said genuinely to reflect the free will of both parties. The various forms such a clause may take, choice of forum, choice of law, arbitration, and online dispute resolution, each carry distinct legal consequences: choice-of-forum and choice-of-law clauses may be set aside by Indonesian courts through the instrument of public policy where they impede domestic consumers' access to justice; arbitration clauses, including online arbitration, can in principle be accommodated under Law Number 30 of 1999, although the regulation of their electronic procedure still requires strengthening; and internally administered online dispute resolution mechanisms require guarantees of independence and transparency to avoid conflicts of interest, particularly given Indonesia's continued reliance on platform-operated mechanisms in contrast to the independent, publicly administered ODR model adopted in the European Union.

Where a dispute resolution clause is found to conflict with the principle of good faith or with consumer protection norms, the legal consequence is the unenforceability of that specific clause rather than the invalidity of the electronic contract as a whole, restoring the parties' access to the competent court under the ordinary rules of civil procedure. Regulators, particularly the ministry responsible for communication and informatics and the Financial Services Authority, business actors operating electronic commerce platforms, and consumers each have a role to play going forward: regulators in establishing clearer technical standards for the disclosure and reasonableness of such clauses and in considering an independent ODR platform; business actors in drafting transparent clauses that do not foreclose recourse to external legal remedies; and consumers in reading the terms and conditions carefully and in not hesitating to pursue the Consumer Dispute Settlement Board or the competent court where an internal platform mechanism fails to deliver a fair outcome.

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