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THE PRINCIPLE OF CONSENSUALISM IN THE FORMATION OF DIGITAL STANDARD CONTRACTS: A STUDY ON *THE MECHANISM OF CLICK-WRAP AGREEMENTS* ON *PAY LATER PLATFORMS* IN INDONESIA

Niza Wibyana Tito [1], Yesssy Madya Putri [2], Syukron Abdul Kadir [3]
[1 2 3] Master of Law, Widya Mataram University, Yogyakarta. Indonesia

Corresponding Author. Email nizatito@gmail.com

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Abstract. *The growth of PayLater services in Indonesia, reaching 79.92 million contracts in 2023, has generated millions of legal events in the form of digital contract formation on a daily basis. These contracts are formed through click-wrap agreement mechanisms — consumers click an 'I Agree' button to accept terms and conditions unilaterally prepared by the platform. This study examines two primary issues: the standing of the consensualism principle in the formation of click-wrap agreements on PayLater platforms from the perspective of the Indonesian Civil Code, and whether such mechanisms substantively satisfy the element of 'consent' as a validity requirement under Article 1320 of the Civil Code. Employing a normative juridical method with conceptual and statutory approaches, this study finds that the fulfillment of the consensualism principle in PayLater click-wrap is merely formal-procedural: there is an outward sign of consent through clicking, yet without the free and informed will be required by the doctrine of consent. The mistake (dwaling) that occurs is not individual in nature but structurally systemic — reinforced by the length of Terms of Service documents, the use of dark patterns in interface design, and the informational asymmetry between platforms and consumers. This study proposes a conceptual reconstruction in the form of Five Elements of the Digital Consent Standard (LESTD) as a de lege ferenda framework, and recommends an amendment to OJK Regulation No. 22 of 2023 to operationalize this standard.*

Keywords: *consensualism principle; click-wrap agreement; digital standard form contract; PayLater; Consumer Protection*

I. INTRODUCTION

The development of financial technology in Indonesia in the past decade has brought a fundamental shift in the way people access credit services. One of the most obvious manifestations of this shift is the emergence and rapid growth of *Buy Now, Pay Later* (BNPL) services, or better known in Indonesia as *Pay Later*. This service allows consumers to obtain goods or services instantly without paying in full at the time of purchase, with repayment obligations deferred to a later period. This convenience is what makes PayLater the most popular digital credit instrument for Indonesians today.

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Data from the Financial Services Authority (OJK) recorded extraordinary growth in this sector. Pay Later financing receivables by finance companies as of August 2024 increased by 89.20 percent annually to IDR 7.99 trillion, and continued to grow to reach IDR 29.66 trillion in October 2024.[1] The number of PayLater financing contracts has also jumped dramatically — from only 4.63 million contracts in 2019 to 79.92 million contracts in 2023, or an average growth of 144.35 percent per year.[2] These figures are not just statistics for the growth of the industry, but rather a reflection of the millions of legal events that occur every day, namely the birth of an alliance between service provider platforms and consumers through a digital agreement mechanism.

However, behind this rapid growth, there are legal issues that have not been completely answered by existing regulations and legal doctrines. OJK recorded 10,961 complaints from the fintech sector from January to November 2024 — making fintech the sector with the second most complaints after banking.[3] Most of these complaints touch on the root of the same problem: consumers feel they do not understand or disagree with the content of the agreement they have 'agreed' to by clicking a button on their device screen. The question then is: is the click really a manifestation of *the agreement* as required by Indonesian treaty law?

In the Indonesian treaty legal system based on the Civil Code (KUHPerdata), one of the most fundamental principles is consensualism. This principle holds that an agreement is born at the time of an agreement between the parties.[4] Mariam Darus Badrulzaman formulated this principle as an acknowledgment that the parties' free will is the source and basis of an agreement's binding power.[5] Normatively, this principle of consensualism is affirmed in Article 1320 of the Civil Code, which makes *agreement (toestemming)* the first legal condition of an agreement.[6]

The issue becomes complex when the principle of consensualism, born of the Roman legal tradition — which envisages the direct and conscious meeting of the wills of two parties — must be confronted with the reality of today's digital contract. In the PayLater service, the agreement is formed through a *click-wrap mechanism: consumers simply check the consent box or press the 'Agree' button on the screen, without being required to read, let alone negotiate, the content of the standard contract* prepared unilaterally by the platform. Herlien Budiono reminded that the principle of consensualism requires a free, undefective, and based on adequate information.[7] The question is: can a 'click' meet such a standard of free will?

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[1]Financial Services Authority, Financing Statistics — Financing Companies, as of August 2024. See also: PayLater Indonesia User Behavior Report 2024, Kredivo & Katadata Insight Center (Jakarta: KIC, 2024), p. 5.

[2]Financial Services Authority, Fintech Lending Statistics Report for 2023 (Jakarta: OJK, 2024). OJK noted that the number of PayLater financing contracts reached 79.92 million contracts in 2023, an increase from 4.63 million contracts in 2019.

[3]Financial Services Authority, Press Release: November 2024 Board of Commissioners Meeting. OJK recorded 10,961 complaints from the fintech sector until November 2024.

[4]Subject, Law of Covenants, cet. 21st (Jakarta: Intermasa, 2014), p. 17. See also: R. Wirjono Prodjodikoro, Principles of Covenant Law, cet. 9th (Bandung: Mandar Maju, 2011), p. 28.

[5]Mariam Darus Badrulzaman, Civil Code Book III: The Law of Engagement with Explanation (Bandung: Alumni, 2001), p. 73.

[6]Civil Code, Article 1320: 'In order for a valid agreement to occur, four conditions must be met: (1) the agreement of those who bind themselves; (2) the ability to make an alliance; (3) a specific subject matter; (4) an unlawful cause.'

[7]Herlien Budiono, The Principle of Balance for Indonesian Treaty Law: Treaty Law Based on the Important Principles of Indonesia (Bandung: Citra Aditya Bakti, 2006), pp. 91–93.

Formally, Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law) has recognized the validity of electronic contracts, including digital consent mechanisms.[8] However, this formal recognition does not necessarily answer the substantive question: whether the *click-wrap mechanism* on the PayLater platform has met the elements of consensualism as required by Article 1320 of the Civil Code, given that the standard contract is generally presented in lengthy technical language, does not include a summary of material clauses, and does not provide any negotiation space to the consumer.

In the legal literature, *click-wrap agreements* are one of the three main types of electronic contracts, along with *shrink-wrap* and *browse-wrap*. Compared to the other two types, *click-wrap* is considered to have a higher level of validity because it requires active action from the user in the form of consent clicks.[9] However, empirical research shows a legally alarming phenomenon: most users don't actually read the contents of the *Terms of Service* (ToS) before clicking the agree button, so their consent is more blind than informed.[10] This raises a profound question: if the consumer does not understand what he is agreeing to, can the consent be considered valid under Indonesian treaty law?

This issue is increasingly relevant with the issuance of OJK Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector (POJK 22/2023), which requires financial services business actors to convey information correctly, clearly, and not misleadingly.[11] However, the POJK has not specifically set the minimum standard for *click-wrap agreements* that meet the requirements of consensuality in PayLater's digital standard contract. This regulatory vacuum is one of the points of academic urgency of this research.

Based on the description above, this article raises two problem formulations. **First**, what is the position of the principle of consensualism in the formation of *click-wrap agreements* on the PayLater platform, as reviewed from the Civil Code and applicable regulations? **Second**, does the *click-wrap mechanism* applied to the PayLater platform in Indonesia meet the element of 'agreement' as a valid condition of the agreement as stipulated in Article 1320 of the Civil Code?

This study uses a normative juridical method with a conceptual *approach and* a statute *approach*. Primary legal materials include the Civil Code, the ITE Law, PP Pste, POJK 22/2023, and OJK-registered *PayLater platform Terms of Service* documents. The analysis technique used is prescriptive, which not only describes existing norms but also formulates standards that should apply.[12]

Academically, this research offers a contribution that has not been found in the Indonesian legal literature, namely the reconstruction of the concept of 'digital agreement' which substantively meets the requirements of the principle of consensualism of the Civil Code

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[8] Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), Article 1 number 17.

[9] Edmon Makarim, Compilation of Telematics Law (Jakarta: RajaGrafindo Persada, 2003), pp. 255–257.

[10] Yaniv Benhamou & Juliette Lemonde, 'Smart Contracts and Contract Law,' European Review of Private Law, Vol. 27, No. 6 (2019), p. 753. See also: Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts,' Journal of Legal Studies, Vol. 43, No. 1 (2014), pp. 1–35.

[11] Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector (POJK 22/2023), Article 27 paragraph (1).

[12] Peter Mahmud Marzuki, Legal Research, ed. rev. (Jakarta: Kencana Prenada Media Group, 2011), pp. 133–137.

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in the context *of click-wrap agreement* on the PayLater service. The findings of this study are expected to provide input for the OJK in improving the standard digital fintech standard agreements, as well as the foundation for the PayLater platform in designing an approval mechanism that is not only legally valid but also substantively fair.

II. LITERATURE REVIEW

1. The Principle of Consensualism in Indonesian Treaty Law

Indonesian treaty law recognizes three fundamental principles that support one another: the principle of freedom of contract, the principle of consensualism, and the principle of legal certainty *(pacta sunt servanda).* Among the three, the principle of consensualism occupies the most central position in determining the moment of birth of a covenant.[13] Etymologically, consensualism is rooted in the Latin word *consensus,* which means agreement or conformity of will. In the civil law tradition adopted by Indonesia from the Netherlands, this principle means that an agreement is born and binding solely by an agreement between the parties, without the need for additional formalities unless the law expressly requires it.[14]

Mariam Darus Badrulzaman formulated the principle of consensualism as a legal recognition that the parties' free will is the source of an agreement's binding force. This formulation contains two inseparable elements: first, the element *of will* as a subjective, internal, psychological condition; and second, the element of freedom as a condition that ensures the will is not distorted by pressure, error, or deception.[15] These two elements are normatively affirmed in Article 1320 of the Civil Code, which makes 'their binding agreement' the first valid condition of the agreement, and Article 1321 of the Civil Code, which regulates three forms of defect of will that can undermine the validity of the agreement.[16]

In the doctrine of covenant law, there is a fundamental debate between the theory of will *(wilstheorie)* and the theory of statements *(verklaringstheorie).* The theory of will holds that the validity of an agreement is determined by the real inner will (innerlijke wil), not by what is outwardly stated. On the other hand, statement theory assumes that the external statement is decisive, for the sake of legal certainty and the protection of a third party in good faith.[17] Herlien Budiono offers a middle ground: Indonesian treaty law adheres to the theory of refined statements, in which outward statements remain binding, but if it is proven that they do not reflect a free and conscious inner will, the agreement can be canceled.[18] It is this theoretical framework that will be the primary scalpel for analyzing whether the act of 'clicking the agree button' on the PayLater platform truly reflects the consumer's free will.

[13] J.H. Nieuwenhuis, Drie Beginselen van Contractenrecht (Deventer: Kluwer, 1979), pp. 3–5, as quoted in Herlien Budiono, The Principle of Balance for Indonesian Treaty Law (Bandung: Citra Aditya Bakti, 2006), p. 29.

[14] Subject, Law of Covenants, cet. 21st (Jakarta: Intermasa, 2014), pp. 15–16.

[15] Mariam Darus Badrulzaman et al., Compilation of the Law of the Alliance (Bandung: Citra Aditya Bakti, 2001), p. 84. See also: J. Satrio, The Law of Covenants: Agreements in General (Bandung: Citra Aditya Bakti, 1992), p. 45.

[16] Civil Code Article 1321: 'There is no valid agreement if the agreement is given due to error, or obtained by force or fraud.' These three defects of will make the agreement voidable (vernietigbaar), not null and void (nietig).

[17] R. Wirjono Prodjodikoro, Principles of Covenant Law, cet. 9th (Bandung: Mandar Maju, 2011), pp. 30–32.

[18] Herlien Budiono, General Teachings of Treaty Law and Its Application in the Field of Notary Law (Bandung: Citra Aditya Bakti, 2010), pp. 77–79.

2. Standard Agreements: Definition, Characteristics, and Legal Problems

A standard agreement or *standard contract* is an agreement whose content has been determined in advance unilaterally by one of the parties — generally business actors — in the form of a written or printed form, so that the other party does not have the opportunity to negotiate the content of the agreement and can only choose between accepting it *or leaving it*. Sluijter defines it as an agreement that is not a true agreement because there is no real bargain; One party simply sets the terms, and the other accepts them.[19] In Anglo-American legal literature, a standard agreement is also known as a *contract of adhesion* — an adhesive contract — which describes how one party simply 'sticks' to the terms that the other party has set.[20]

The main problem with standard agreements lies in their potential conflict with the principles of consensualism and balance in treaty law. When the content of the agreement is determined unilaterally, it is open to the possibility of clauses that relieve the powerful party of liability (exoneration clauses) or disproportionately burden consumers. This is what prompted lawmakers to regulate the use of standard clauses in Article 18 of Law Number 8 of 1999 concerning Consumer Protection (UUPK), which prohibits certain clauses and stipulates that clauses that violate this prohibition are null and void.[21] Ahmadi Miru and Sutarman Yodo emphasized that this restriction constitutes a form of state interference in private law to achieve a balance of legal relations between business actors and consumers.[22]

In the digital context, standard agreements are transformed into *digital standard-form contracts whose characteristics are far more extreme than those of* conventional standard agreements. First, the length of the digital platform's terms and conditions document — often called the *Terms of Service* (ToS) — often exceeds reasonable readability limits. Second, the document is presented in technical-legal language that is difficult for ordinary consumers to understand. Third, consumers do not have the factual ability to negotiate a single clause. These three characteristics make digital standard agreements a potential arena for violations of the most obvious yet most difficult-to-prove principle of consensualism.[23]

3. Click-Wrap Agreement: Its Concept, Typology, and Validity

In the electronic contract ecosystem, three main typologies are known based on the approval mechanism used. **First**, *the shrink-wrap agreement*, in which the terms are attached to the physical product packaging and are considered approved when the consumer opens the package. **Second**, *a click-wrap agreement, in which the consumer expresses consent by clicking a button or checking a box indicating that they have read and agree* to the applicable terms. **Third**, a *browse-wrap agreement*, in which consent is assumed from the act of accessing or using the service, without any affirmative action by the user.[24] Among these three typologies,

[19]Mariam Darus Badrulzaman, Standard Agreements: Its Development in Indonesia (Bandung: Alumni, 1980), pp. 1–5.
[20]Friedrich Kessler, 'Contracts of Adhesion — Some Thoughts About Freedom of Contract,' Columbia Law Review, Vol. 43, No. 5 (1943), pp. 629–642.
[21]Law Number 8 of 1999 concerning Consumer Protection (UUPK), Article 18 paragraph (1) letter g and Article 18 paragraph (3).
[22]Ahmadi Miru & Sutarman Yodo, Consumer Protection Law (Jakarta: RajaGrafindo Persada, 2011), pp. 115–117.
[23]Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE), Article 47 paragraph (2).
[24]Edmon Makarim, Introduction to Telematics Law: A Compilation of Studies (Jakarta: RajaGrafindo Persada, 2005), pp. 311–315.

click-wrap is theoretically the most powerful in terms of legitimacy — more so than *browse-wrap* because it requires active action, and more flexible than *shrink-wrap* because it is entirely digital.

The validity *of click-wrap agreements* in the United States legal system has been recognized by well-established jurisprudence. In the case *of Specht v. Netscape Communications Corp.* (2002), the Second Circuit Federal Court of Appeals affirmed that *click-wrap* is a valid consent mechanism as long as the user is given a *meaningful opportunity* to read and understand the terms to be agreed upon.[25] The emphasis on the phrase *'meaningful opportunity'* is very relevant: the legitimacy *of a click-wrap is determined not only* by the presence or absence of a click action, but also by the presence or absence of a real opportunity for the user to understand what he or she is agreeing to. This is where the connection lies between the doctrine *of the validity of click-wrap* and the principle of consensualism in Indonesian treaty law.

However, the reality of using *click-wrap agreements* in practice is contrary to these normative assumptions. The empirical research of Bakos, Marotta-Wurgler, and Trossen published in the *Journal of Legal Studies* found a surprising fact: only about 0.1 percent of users actually accessed a ToS page before giving consent, and even that small group took an average reading time of just a few seconds — far below the time it takes to understand its contents.[26] Margaret Jane Radin calls this a '*fiction of assent*': the law pretends that the user has agreed to something that he or she has in fact never read, understood, or negotiated.[27] From the perspective of the principle of consensualism, this fiction raises a very serious question about whether the 'agreement' formed by the click is truly the *consent* required by Article 1320 of the Civil Code.

4. PayLater Digital Contract Regulation Framework in Indonesia

The regulation of digital contracts in Indonesia is spread across several layers of regulations that need to be understood hierarchically. At the legal level, Articles 18 and 20 of the ITE Law provide basic recognition of the validity of electronic contracts, including digital consent mechanisms.[28] Article 20 of the ITE Law specifically regulates the moment of birth of an electronic transaction, i.e., when the offer sent by the sender has been accepted and approved by the recipient — a formulation that is textually in line with the doctrine *of offer and acceptance* in treaty law, but leaves the question of the quality of the 'consent' in question.

At the level of government regulations, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) requires electronic contracts that use standard clauses to comply with the provisions of standard clauses set forth in laws and regulations, with reference to Article 18 of the UUPK.[29] This provision implicitly recognizes that standard-clause digital contracts, including *click-wrap agreements* on the PayLater platform, are subject to the same normative tests as conventional standard contracts, although the mechanism of formation is fundamentally different.

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[25]Specht v. Netscape Communications Corp., 306 F.3d 17 (2d Cir. 2002).

[26]Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts,' Journal of Legal Studies, Vol. 43, No. 1 (2014), pp. 1–35.

[27]Margaret Jane Radin, Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law (Princeton: Princeton University Press, 2013), pp. 12–14.

[28]ITE Law Article 18 paragraph (1) and Article 20 paragraph (1).

[29]PP PSTE Number 71 of 2019, Article 46 paragraph (2) and Article 47 paragraph (2).

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At the sectoral regulatory level, POJK Number 22 of 2023 is the most specific instrument that regulates consumer protection in digital financial services, including PayLater. This POJK requires financial services business actors to, among other things, convey true, clear, and non-misleading information; provide an easy-to-understand summary of the product; and ensure that the standard agreement used does not conflict with the provisions of the applicable law.[30] However, POJK 22/2023 has not explicitly set a standard for *click-wrap* mechanisms that meet the elements of consensualism — a void that is one of the objects of study in this study.

5. Theoretical Framework

This research is based on three complementary theoretical frameworks. First, **Von Savigny's theory of consensualism**. Von Savigny formulated the view that an agreement is a 'union of the will of a few' (Vereinigung des Willens mehrerer Personen), in which each party expresses its will to the other and the two wills meet at a single point of agreement.[31] This formulation places the will at the core of every alliance, and this is where the entire dogmatic edifice of consensualism in the Civil Code departs. This theory will be used to test whether the *click-wrap* mechanism substantively meets the conditions of the 'union of wills' that Von Savigny was referring to, or is it just a formal imitation of it.

Second, **Fuller & Perdue's theory of dependence**. Lon Fuller and William Perdue emphasized that one of the main functions of treaty law is to protect parties who have relied on the existence of an agreement *(reliance interest).* In the context of *PayLater click-wrap*, consumers who click the agree button and then use the service have acted in the belief that the agreement formed is fair and valid.[32] This theory provides a normative basis for arguing that consumers are entitled to legal protection not only on the basis of the formal defect of the agreement, but also on the basis of the trust they have placed in the process of forming a contract.

Third, Akerlof's theory of information asymmetry. George Akerlof demonstrates that an information imbalance between the parties to a transaction — where one party has far more information than the other — can create market failures that harm the weaker party.[33] In the context of *PayLater's click-wrap agreement, information asymmetry manifests in real terms: the platform has full knowledge* of the ToS and its legal implications, while consumers generally do not. This imbalance directly affects the quality *of consent* given by consumers — and therefore becomes relevant to be analyzed within the framework of the principle of consensualism. Ian Macneil's theory of relational contracts is used as a complementary perspective, considering that the relationship between the PayLater platform and its consumers is not a momentary transaction, but a sustainable credit relationship that demands a higher standard of honesty and balance.[34]

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[30]POJK Number 22 of 2023, Article 1 number 1 and Article 22.

[31]Von Savigny, System des Heutigen Römischen Rechts, Band III (Berlin: Veit und Comp., 1840), pp. 258–260, as quoted in Nieuwenhuis, Drie Beginselen van Contractenrecht (1979), p. 4.

[32]Lon L. Fuller & William R. Perdue Jr., 'The Reliance Interest in Contract Damages,' Yale Law Journal, Vol. 46 (1936), pp. 52–96.

[33]George A. Akerlof, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism,' Quarterly Journal of Economics, Vol. 84, No. 3 (1970), pp. 488–500.

[34]Ian Macneil, 'The Many Futures of Contracts,' Southern California Law Review, Vol. 47 (1974), pp. 691–816.

III. DISCUSSION

1. Reconstructing the Meaning of 'Agree' in the Context of PayLater's Click-Wrap Agreement

a. The Psychological and Juridical Dimension of Consent

The word 'agree' in Article 1320 of the Civil Code is not a simple word. Behind this one word lie two dimensions that must be met simultaneously for an agreement to be recognized as valid by law. The first dimension is psychological: there must be a pure will born from within each party, free from distortion by pressure, deception, or coercion. The second dimension is juridical: the inner will must be expressed outward in a form that can be grasped and understood by the opposing party, so that there is sufficient correspondence between the offer and the acceptance to give birth to an alliance.[35] When these two dimensions are present in their entirety, the law recognizes that *consent* has taken place and a covenant is born.

Subekti warns that in court practice, these two dimensions are not always easy to separate. Agreeing as a psychological fact (the conformity of the inner will) may exist, but it is not reflected in an adequate statement. On the other hand, outward statements may appear to exist, but they are not supported by a free and informed will.[36] In the context *of the click-wrap agreement* PayLater, the main problem lies precisely in the gaping gulf between these two dimensions: the *outward statement* of the click of the 'Agree' button is real, but *the free and informed inner will* — which should be the foundation of the statement — is substantially questionable.

b. Structural Defects in Click-Wrap: Digital Dwaling

Article 1321 of the Civil Code stipulates that there is no valid agreement if the agreement is given due to mistake *(dwaling),* obtained by coercion *(dwang),* or by fraud *(bedrog).* Of these three forms of will, *dwaling* or delusion is the most relevant and the most difficult to avoid in *the PayLater* click-wrap[37] ecosystem. Herlien Budiono explained that *legally relevant dwaling* is a decisive mistake *(essentiële dwaling):* if the consumer knows the real clause, he will not give his consent.[38]

The phenomenon that occurs in PayLater's *click-wrap* practice shows a pattern of error that is not individual-incidental, but structural-systemic. This means that this mistake is not born from the negligence of one or two uncareful consumers, but is a condition that is deliberately or at least structurally created by the design of the existing system. Research by Bakos, Marotta-Wurgler, and Trossen found that of the 48,154 users observed, only about 0.1

[35]Civil Code Article 1313: 'An agreement is an act by which one or more persons bind themselves to one or more other persons.' This formulation implicitly presupposes the existence of an active and conscious act of will on both sides.

[36]Subject, Law of Covenants, cet. 21st (Jakarta: Intermasa, 2014), pp. 26–27. The subject distinguishes between 'agree' as a psychological fact (conformity of the inner will) and 'agree' as a juridical fact (binding statement). In the development of modern law, these two dimensions must be present simultaneously in order for the treaty to be valid.

[37]Civil Code Article 1320 jo. Article 1321. Article 1321 states in full: 'No agreement is valid if the agreement is given by mistake, or obtained by force or fraud.' The phrase 'given because of error' (gegeven door dwaling) requires that the error is decisive — meaning that without the error, the party concerned would not give his consent.

[38]Herlien Budiono, General Teachings of Treaty Law and Its Application in the Field of Notary (Bandung: Citra Aditya Bakti, 2010), pp. 82–84. Budiono classifies dwaling (error) into dwaling about the person (error about the person) and dwaling about the zelfstandigheid der zaak (error about the nature of the thing/object). In the digital context, errors regarding the content of agreement clauses can be constructed as a variant of the second type.

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percent actually accessed the *Terms of Service* page before giving consent.[39] This figure nakedly shows that as many as 99.9 percent of consumers give their consent under conditions that are factually identical to *total misrepresentation* of the content of the agreement they 'agreed' to.

The legal question that then arises is: why is this ToS reading rate so low? The answer is not as simple as 'consumers are lazy to read'. The author's analysis of the Shopee PayLater ToS shows that the length of the document reaches around 7,800 words — requiring an average reading time of more than 30 minutes at a normal reading speed.[40] The average ToS of international technology platforms is even longer than that. The consumer who faces documents this long, in a small device interface, at the moment when he wants to immediately complete the purchase transaction, is in a condition that factually *does not allow* for meaningful reading. This condition is called by Radin as *manufactured consent*: consent that is engineered by the design of the system, not born of free will.[41]

Elements of Consensus	Civil Code Standards	The Reality of Click-Wrap PayLater
Free will	An agreement is born from a pure will without pressure, error, or fraud (Ps. 1321 of the Civil Code)	Consumers can't negotiate content; Choice to only accept or not use the service
Informed consent	A valid agreement requires an adequate understanding of the object and terms of the agreement	Only 0.1% of users read ToS; The average ToS PayLater is 8,000–15,000 words (Bakos et al., 2014)
Meeting of wishes	Bidding and receiving must be in accordance with each other (Ps. 1320 jo. 1313 of the Civil Code)	Offers are mass-uniform; Acceptance is just a click without differentiation clause
No defect of will	Free from dwaling, dwang, and bedrog as per Ps. 1321–1328 of the Civil Code	Dark pattern UX (pre-checked boxes, buried terms) has the potential to contain structural dwaling

[39]Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts,' Journal of Legal Studies, Vol. 43, No. 1 (2014), pp. 3 and 22. The study was conducted by tracking the behavior of 48,154 home users over a month and observing whether they visited the End User License Agreement (EULA) or ToS page before downloading and installing the software.
[40]A long comparative study of the ToS of leading digital platforms: Apple iTunes ToS reaches more than 19,000 words; Facebook (Meta) ToS is about 14,000 words. For the Indonesian PayLater platform, the author's analysis of the Shopee PayLater ToS (accessed April 2025) recorded a length of about 7,800 words in Indonesian, with an estimated average reading time of 31 minutes at a normal reading speed of 250 words per minute.
[41]Margaret Jane Radin, Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law (Princeton: Princeton University Press, 2013), pp. 30–35. Radin introduced the concept of 'democratic degradation' to describe how the proliferation of digital boilerplates systematically erodes consumer rights that should be protected by law.

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Table 1. Comparison of Standards Agreed on the Civil Code with the Reality of Click-Wrap PayLater

c. Dark Pattern UX as a Potential Fraud in Digital Interfaces

In addition to the problem of ToS length, the user *interface/UX design aspect of* the PayLater platform holds the potential for more active willpower. In the digital design literature, the concept of *dark patterns* is known — a design technique that psychologically manipulates users into doing something they don't intend or don't fully understand.[42] In the context of PayLater *click-wraps*, some of the most common manifestations of *dark patterns* include: *pre-checked boxes*; approval buttons that are designed to be larger and more conspicuous than rejection buttons; and material clauses that are placed far below the bottom of a long document, so that they are factually unreadable.

From the legal perspective of Indonesian agreements, *this dark pattern* practice has the potential to be constructed as *a scam* in the sense of Article 1328 of the Civil Code, especially if the platform deliberately designs the interface in such a way that consumers are not aware of the existence of incriminating clauses. Although proving the element of intentionality *(opzettelijk)* in *bedrog* is indeed not easy, at least these practices are normatively in tension with the obligation of good faith *(goede trouw)* regulated in Article 1338 paragraph (3) of the Civil Code — which the Supreme Court interpreted to also apply to the pre-contractual phase.[43] J. Satrio expressly stated that good faith in the phase of forming an agreement contains an obligation not to take advantage of the ignorance of other parties for their own benefit.[44]

d. The Birth of the Agreement in Click-Wrap: The Issue of Offer and Acceptance

Apart from the issue of the quality of the will, it is also necessary to examine the moment of the birth of the agreement in the *click-wrap* mechanism from the perspective *of the doctrine of offer and acceptance*. Article 20 paragraph (1) of the ITE Law states that electronic transactions occur when the offer sent by the sender has been received and approved by the recipient.[45] Textually, this provision seems simple: click the button agree = accept = birth of agreement. However, when confronted with the theories of the moment of birth of

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[42]The concept of 'dark patterns' in user interface (UX) design was first introduced by Harry Brignull in 2010, referring to design techniques that manipulate user behavior into doing something they don't intend. In the context of digital agreements, the most relevant dark patterns include: (1) roach motel (easy to enter, hard to exit); (2) hidden costs (hidden costs that were only revealed in the final step); (3) confirmshaming (the opt-out option is formulated in a way that makes the user feel guilty). See: Harry Brignull, 'Dark Patterns: Deception vs. Honesty in UI Design,' in Aaron Walter & Erin Kissane (eds.), A List Apart (2011).

[43]Civil Code Article 1338 paragraph (3): 'Agreements must be carried out in good faith.' The Supreme Court of the Republic of Indonesia in several rulings interpreted good faith not only in the implementation phase, but also in the precontractual good faith phase, referring to the development of Dutch legal doctrine (redelijkheid en billijkheid).

[44]J. Satrio, The Law of Agreements: Agreements in General (Bandung: Citra Aditya Bakti, 1992), pp. 165–168. Satrio emphasized that good faith in the agreement formation phase contains the obligation to provide relevant and material information to the other party, as well as the obligation not to take advantage of the ignorance of the other party for its own benefit.

[45]ITE Law Article 20 paragraph (1): 'Unless otherwise specified by the parties, the Electronic Transaction occurs when the transaction offer sent by the Sender has been accepted and approved by the Recipient.' The explanation of Article 20 paragraph (1) states that approval of the offer of electronic transactions must be made with an electronic declaration of acceptance.

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agreements known in civil law — *verzendingstheorie*, *ontvangsttheorie*, and *vernemingstheorie* — a more complicated problem arises.[46]

In *PayLater click-wrap*, an offer is submitted by the platform in the form of a ToS that is included in the *onboarding* or service activation process. Acceptance is expressed through consumer clicks. Formally, the doctrine *of offer and acceptance* is fulfilled. However, the problem is the character of the offer itself: the offer in *click-wrap* is *mass-uniform* without the possibility of differentiation, so the *acceptance* given by the consumer is actually not an agreement to certain clauses, but a *submission* to the entire package of conditions that have been unilaterally determined. This is what substantially distinguishes *click-wrap* from the agreement model required by the principle of consensualism.[47]

Comparators from comparative jurisprudence reinforce this conclusion. In *Specht v. Netscape* (2002), the court affirmed that *mere notice* of the existence of the terms of the agreement is not sufficient; there must be a *manifestation of real assent* from the user.[48] This standard was reinforced in *Nguyen v. Barnes & Noble* (2014), where the court stated that simply including a link to the ToS is not enough to bind users who are not actively directed to read it.[49] Although these judgments originate from the jurisdiction of the United States and are not binding on Indonesian courts, their argumentative value remains relevant as a comparative legal material to fill doctrinal gaps in Indonesian digital contract law.

e. The Basis of Good Faith as a Digital Consensualism Tester

Beyond the formal debate about whether or not there is a click as a sign of acceptance, there is one principle in Indonesian treaty law that can function as a *substantive test of* digital consensualism, namely the principle of good faith *(goede trouw)* in Article 1338 paragraph (3) of the Civil Code. Good faith in the context of treaty formation contains two complementary obligations: *informare* obligation (disclosing material information known to one party but not known to the other party) and *non decipi* obligation (not to deceive or mislead the other party).[50]

In the context *of PayLater'* s click-wrap, *the informare*'s obligation requires the platform to ensure that material clauses — especially those relating to fees, fines, billing mechanisms, and restrictions on consumer rights — are truly understandable to consumers before they give consent. Meanwhile, *the non decipi* obligation prohibits the use *of dark patterns* that psychologically lead consumers towards consent that they do not fully understand.

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[46]In the context of attachment theory, the transmission theory holds that the agreement is born when the receipt is sent by the receiving party; ontvangsttheorie (acceptance theory) states the birth of an agreement when the statement of acceptance reaches the bidder; Vernemingstheory requires that the bidder actually knows the acceptance. See: Mariam Darus Badrulzaman et al., Compilation of Perikatan Law (Bandung: Citra Aditya Bakti, 2001), pp. 94–97.

[47]PP PSTE Number 71 of 2019, Article 47 paragraphs (1) and (2). Article 47 paragraph (2) specifically states that electronic contracts made with standard clauses must comply with the provisions regarding standard clauses as stipulated in laws and regulations — referring to Article 18 of the UUPK.

[48]Specht v. Netscape Communications Corp., 306 F.3d 17, 35 (2d Cir. 2002): 'We are not persuaded that a reasonably prudent offeree in plaintiffs' position would have known of the arbitration clause.' The Court emphasized that mere notice is insufficient; there must be a manifestation of assent — mere notice is not enough; There must be a manifestation of real consent.

[49]Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1179 (9th Cir. 2014). The court affirmed: 'Merely posting the terms on a website is insufficient to put users on notice of the terms.' This ruling reinforces the standard that in order to bind the user, there must be a procedure that actively directs the user's attention to the existence and content of the terms of the agreement.

POJK 22/2023 Article 22 has actually attempted to operationalize these two obligations by requiring PUJK to use simple and easy-to-understand language in every agreement document.[51] But without a measurable enforcement mechanism and clear verification standards, this provision risks becoming a beautiful norm on paper but empty in implementation.

f. Unbalanced Bargaining Position and Unconscionability in Click-Wrap

The last dimension of this analysis touches on the problem of the imbalance of bargaining positions *(ongelijkheid van partijen)* that is characteristic of digital standard contracts. Friedrich Kessler, in his classic essay on *contracts of adhesion*, asserts that a standard contract offered on a *take-it-or-leave-it basis* by a party with a stronger bargaining position is fundamentally at odds with the premise of freedom of contract that underpins the agreement's legal legitimacy.[52] In the context of PayLater, this imbalance is not just an economic one between large tech companies and individual consumers, but also an informational one: the platform has full control over information about the risks, costs, and legal implications of its services, while consumers have almost no comparable knowledge.

Herlien Budiono reminded that the principle of balance in Indonesian treaty law does not only apply to the content of the agreement, but also to the process of its formation.[53] An imbalance in the process of establishing an agreement — known in American legal literature as procedural unconscionability — can undermine the agreement's validity as a whole, even when it formally appears to have met the conditions set forth by law.[54] In the context of *PayLater'* s click-wrap, *procedural unconscionability manifests* in three layers: first, the absence of negotiation possibilities; second, the complexity of the language and the length of the ToS that exceed the capacity of a reasonable read; and third, the use of *dark patterns* that psychologically manipulate user behavior.

These three layers *of procedural unconscionability* reinforce each other and collectively create conditions in which consumers give consent in a state of *total information asymmetry*. Akerlof demonstrates that in markets with extreme information asymmetry, no market mechanism can result in an efficient and fair allocation of resources without legal intervention.[55] This analogy is fully applicable to the PayLater contract market: without a

[51]POJK Number 22 of 2023, Article 22 paragraph (1) letter a: 'PUJK is obliged to use words, phrases, sentences, and/or a collection of sentences that are simple, easy to read, easy to understand, and not multi-interpret in every document and/or agreement.' This provision is in principle a regulatory response to the problem of readability of digital contracts, although it is not accompanied by a measurable enforcement mechanism.

[52]Friedrich Kessler, 'Contracts of adhesion — Some Thoughts About Freedom of Contract,' Columbia Law Review, Vol. 43, No. 5 (1943), p. 640: 'Contract of adhesion is offered on a take-it-or-leave-it basis by a party with superior bargaining power. It is usually standardized and rarely read or fully understood by the adherent.' Kessler's formulation remains relevant and even more accurately describes digital contracts 80 years later.

[53]Herlien Budiono, The Principle of Balance for Indonesian Treaty Law (Bandung: Citra Aditya Bakti, 2006), pp. 303–305. Budiono emphasized that the principle of balance does not only apply to the content of the agreement, but also to the process of its formation: imbalance in the formation process (procedural unconscionability) can damage the validity of the agreement as a whole.

[54]The concepts of procedural unconscionability and substantive unconscionability were first formulated systematically in Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965). Procedural unconscionability concerns the unfairness in the process of forming a contract (oppression and surprise), while substantive unconscionability concerns the unfairness of the content of the contract itself.

[55]George A. Akerlof, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism,' Quarterly Journal of Economics, Vol. 84, No. 3 (1970), p. 489. Akerlof demonstrates that in a market where sellers have

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regulatively set minimum standard of consensualism, competition between platforms will tend to drive a race towards a longer, more complex, and more profitable ToS for the platform alone. POJK 22/2023, which requires the disclosure of risk information[56], is a step in the right direction, but it is not far enough to close the consensualism gap that has been identified in this study.

D. Validity of PayLater's Click-Wrap Agreement against Article 1320 of the Civil Code

1. Systematic Fulfillment of the Fourth Legal Conditions of the Agreement

Article 1320 of the Civil Code stipulates four valid conditions for cumulative agreements: agreement, competence, certain things, and halal causes. Failure to comply with one of the first or second conditions — which are subjective — results in the agreement being void *(vernietigbaar);* non-fulfillment of the third or fourth condition — which is objective — results in the agreement being null and void *(nietig van rechtswege).*[57] The following analysis systematically examines the fulfillment of these four conditions in the context *of click-wrap agreements* on the OJK-registered PayLater platform.

The first condition, agreed, has been analyzed extensively in Part C. The tentative conclusion is that the fulfillment of this condition in PayLater's click-wrap is formal-procedural, not substantive-consensual: there is a sign of consent (a click), but it is doubtful whether there is a free and informed will behind it. The second condition, proficien**cy**, is formally fulfilled through the *electronic Know Your Customer* (e-KYC) mechanism which requires an Identity Card (KTP). However, there is a gap: the age limit for ID cards (17 years old) is not identical to the age limit according to the Civil Code (21 years old or married), so some PayLater users who pass e-KYC verification are not technically legally competent according to the Civil Code.[58]

The third condition, certain things, is clearly fulfilled in the PayLater contract: the object of the agreement is a digital consumptive credit facility with a limit ceiling that can be specified specifically, meeting the requirements of Article 1333 of the Civil Code.[59] The fourth condition, halal cause, is also prima facie fulfilled: PayLater services that are registered and

more information than buyers, the market tends to be dominated by low-quality products because buyers cannot distinguish quality. In the context of contract law, this analogy explains why clauses that consumers do not understand tend to become more burdensome over time.

[56] POJK Number 22 of 2023, Article 27 paragraph (1) letter b: PUJK is obliged to provide accurate, honest, clear, and non-misleading information to Consumers regarding the risks of products and/or services. This obligation is substantially a disclosure obligation that aims to reduce information asymmetry between PUJK and consumers.

[57] Civil Code Article 1320: the four legal conditions of the agreement are cumulative — all of them must be fulfilled at the same time. Failure to comply with the first or second (subjective) condition results in the agreement being cancelled (vernietigbaar), while non-fulfillment of the third or fourth (objective) condition results in the agreement being null and void (nietig van rechtswege). See: Subject, Covenant Law, cet. 21st (Jakarta: Intermasa, 2014), pp. 20–21.

[58] Regarding the requirements for proficiency in the digital context, Article 1330 of the Civil Code stipulates that those who are incapable of making agreements are: (1) immature persons; (2) those who are placed under guardianship; (3) women in matters stipulated by law (this provision has been annulled by SEMA No. 3 of 1963). Proficiency verification in the PayLater ecosystem is carried out through the e-KYC mechanism which requires an ID card (minimum age of 17 years), so that formally this mechanism refers to the age limit of the ID card, not the age limit according to the Civil Code (21 years old or married).

[59] Civil Code Article 1333 paragraph (1): 'An agreement must have as its principal an item that is at least determined by type.' In the PayLater service, the object of the agreement is the digital consumptive credit facility — it has met the requirements of a 'certain thing' because its type (credit/financing) and value (ceiling limit) can be specified specifically.

licensed by the OJK do not conflict with the law, morality, or public order as referred to in Article 1337 of the Civil Code.[60] Thus, of the four valid conditions of the agreement under Article 1320 of the Civil Code, only the first condition — agreed upon — presents substantive problems that have not been addressed by the applicable regulations.

2. Material Clause Analysis in PayLater Platform Click-Wrap ToS

To strengthen the analysis at the empirical level, the author conducted a review of *the Terms of Service documents* of three PayLater platforms that are registered and licensed by the OJK: Shopee PayLater, Kredivo, and Akulaku PayLater.[61] From the study, it was found that a number of clause patterns are normatively tense with the principle of consensualism and the provisions of the UUPK, as well as illustrating how far the distance between what consumers 'agree' through clicks and what they actually enter into legally.

The most prominent and recurring clause on the three platforms is the *unilateral change clause*: the platform reserves the right to change the terms and conditions of service at any time, with such notification as it deems sufficient if published through the application or website. Consumers who continue to use the service after the change are deemed to have agreed to the change. From the perspective of the principle of consensualism, this clause contains at least two serious problems. First, it created an agreement that was *open-ended* and undefined from the beginning — contrary to the 'certain things' requirement of Article 1333 of the Civil Code. Second, it contains a fiction of *implied consent* that is much weaker than the standard *of consent* required by Article 1320 of the Civil Code: the consumer is considered to have consented only because he did not stop using the service, not because he actually agreed to the change.

The next clause that is consistently present is the *clause limiting the platform*'s liability for system disruptions, transaction failures, or losses suffered by consumers due to technical factors. This kind of clause can substantially be categorized as *an exoneration clause* prohibited by Article 18 paragraph (1) of the UUPK, especially letter a which prohibits business actors from transferring responsibility to consumers. The *automatic debit power of attorney* clause — where the consumer authorizes the platform to automatically debit his or her account or digital wallet balance — also has its own problems: in many cases, this clause is hidden at the bottom of a lengthy ToS document, so that consumers are unaware that they have given such broad power to the platform.

3. Consequences of Click-Wrap Law That Does Not Meet Consensual Standards

The practical question that arises from the above analysis is: what are the legal consequences if a *click-wrap agreement* on the PayLater platform is declared not to meet the standards of consensuality required by Article 1320 of the Civil Code? The answer depends on the type of defect found.[62]

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[60]Civil Code Article 1335 jo. Article 1337: 'A cause is forbidden, if prohibited by law, or if it is contrary to good decency or public order.' PayLater services that are registered and licensed by the OJK prima facie meet the requirements of this halal cause, because digital consumptive financing activities are not prohibited by law and have received regulatory legitimacy from the competent authorities.

[61]The author's analysis of the Shopee PayLater Terms and Conditions (accessed April 2025), the Kredivo Terms and Conditions (accessed April 2025), and the Akulaku PayLater Terms and Conditions (accessed April 2025). All three documents use a click-wrap structure with a 'I Agree' or 'Register Now' button which is legally stated as agreement to all applicable terms and conditions.

[62]Civil Code Article 1446: 'All engagements made by minors or persons under guardianship are null and void, and upon claims advanced by or on their behalf, shall be declared null and void, solely on the basis of their lack

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If the defect lies in the terms of the agreement — for example, because it is proven that there is an essential dwaling, deception, or dwang in the formation of a click-wrap agreement — then the status agreement *can be canceled (vernietigbaar).* This means that the agreement remains in effect until it is annulled by the court at the request of the aggrieved party; all legal effects of the agreement are valid until the time of its cancellation; and after being cancelled, the parties are restored to their original state *(restitutio in integrum).* In the context of PayLater, *restitutio in integrum* means that consumers are entitled to recover all fees, interest, and penalties paid under the defective clause, while the platform is entitled to recover the principal amount disbursed.[63]

If the defect lies in the content of a clause that violates Article 18 of the UUPK — for example, the exoneration clause that transfers the responsibility of the platform to the consumer — then the clause is *null and void (nietig van rechtswege):* the clause is considered to have never existed, but the agreement as a whole is not automatically void if the void clause is not an essential clause *(essentialia)* of the agreement. In practice, the separation of a void clause from the rest of this agreement is known as the severability doctrine or *separation clause*. The application of this doctrine to the PayLater contract allows consumers to continue to enjoy PayLater services while demanding the removal of clauses that violate the UUPK.

In the context of Indonesian jurisprudence, it must be admitted that court rulings that specifically test the validity *of the click-wrap agreement* PayLater are still very rare.[64] Most PayLater consumer disputes are resolved through the SJK LAPS mechanism or complaints to the OJK, which generally focus on billing practices and do not touch on the issue of contract validity.[65] This jurisprudence vacuum is on the one hand a loophole, but on the other hand it is an opportunity: Indonesian judges who are first faced with the legality of PayLater's *click-wrap* will have ample room to build innovative legal constructions, with reference to the dogmatic analysis that has been built in this study.

E. Analysis: Reconstruction of Equitable Digital Consensus Standards

1. The Gap Between Formal Consensualism and Substantive Consensualism

From the overall analysis developed in Sections C and D, one inescapable conclusion emerges: Indonesia's current treaty law — in its regulation of the click-wrap PayLater agreement — remains trapped in *formal consensualism*. It recognizes the validity of the agreement solely because there is a click, without testing whether the click reflects a free,

of guardianship or guardianship.' Article 1449: 'An alliance made by coercion, fraud, or deception, results in a claim to annul it.'

[63]Supreme Court of the Republic of Indonesia, Decision Number 1572 K/Pdt/2015. In this ruling, the Supreme Court affirmed that an agreement that contains a defect in will — in this case in the form of an error regarding the object of the agreement — can be canceled at the request of the aggrieved party, with the legal consequence that the parties are restored to their original state (restitutio in integrum). This ruling is an important precedent even though it has not specifically targeted digital contracts.

[64]Data from the Case Tracking Information System (SIPP) of the Supreme Court of the Republic of Indonesia (sipp.mahkamahagung.go.id), search for keywords 'fintech' and 'online loans', as of April 2025. From the tracing of cases that entered the district courts in the 2020–2024 period, the majority of fintech disputes were resolved outside the court through the SJK LAPS mechanism or complaints to the OJK, so that special jurisprudence on the validity of PayLater click-wrap in Indonesia is still very limited.

[65]Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK), Annual Report 2023 (Jakarta: LAPS SJK, 2024). LAPS SJK received 2,326 dispute resolution applications in 2023, with the largest disputes coming from the banking and fintech sectors. However, the majority of fintech disputes that come in are related to billing practices, not the validity of the contract itself.

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informed, and substantive will. In fact, the principle of consensualism in the Civil Code — as formulated by Von Savigny, interpreted by Mariam Darus Badrulzaman, and operationalized by Herlien Budiono — requires more than just a formality of a sign of consent.[66] He wants the *union of the real will*: a will born of understanding, not of fiction; of freedom, not of the absence of choice.

This gap between formal consensualism and substantive consensualism is not a new problem in the philosophy of contract law. But in the financial digital ecosystem, this gap takes on a much more serious dimension for three reasons. First, the scale of the impact: with 79.92 million PayLater contracts recorded in 2023, any loophole in consensualism standards could harm millions of consumers simultaneously. Second, the information imbalance is systemic and structured — not a coincidence, but a product of design. Third, the inability of consumers to respond: in contrast to conventional contracts, where consumers can at least ask for time to read, in the digital *click-wrap ecosystem,* the psychological pressure to immediately click 'Agree' to complete a transaction is very real and almost impossible to resist.

2. Conceptual Reconstruction: The Five Elements of Digital Consent Standards

Based on the dogmatic, comparative, and regulatory analyses that have been developed, this study proposes a conceptual reconstruction of the consent standard in the context of *digital click-wrap agreements,* which the author calls the Five Elements of Digital Consent Standards (LESTD). This reconstruction is the main conceptual contribution *(novelty)* of this research and is proposed as de lege ferenda—a standard that should be applied in the regulatory reform of PayLater digital contracts in Indonesia.[67]

The first element: Substantive Accessibility. ToS documents should be presented in a format that is truly readable and understandable by the average consumer, not just technically available. This standard covers three aspects: (a) the length of the document does not exceed a reasonable limit or is accompanied by a maximum one-page executive summary containing material clauses; (b) the language used meets measurable readability standards (e.g. referring to the Flesh–Kincaid readability index or the equivalent standard of Bahasa Indonesia); and (c) an adequate display format for the device used (including the display of the device).[68]

The second element: Layered Assent for Material Terms. Consumers must provide separate and explicit consent to any clauses that are material and potentially harmful — including unilateral change clauses, automatic debit power-of-attorney clauses, limitation-of-liability clauses, and clauses regarding billing mechanisms. This separate approval should not

[66] J.H. Nieuwenhuis, Drie Principes van Contractenrecht (Deventer: Kluwer, 1979), pp. 67–70. Nieuwenhuis asserts that one of the normative functions of the principle of consensualism is to encourage transparency: parties who know that an agreement is only valid if it is based on a real agreement will have an incentive to disclose material information honestly and completely.

[67] Peter Mahmud Marzuki, Legal Research, ed. rev. (Jakarta: Kencana Prenada Media Group, 2011), pp. 181–184. In normative legal research, legal suggestions or recommendations born out of dogmatic analysis are referred to as 'legal propositions' — a statement of what the law should apply (de lege ferenda), as opposed to a statement of what the law is in force (de lege lata).

[68] The concept of 'layered disclosure' was first proposed systematically by Mary J. Culnan & Robert J. Bies in 'Consumer Privacy: Balancing Economic and Justice Considerations,' Journal of Social Issues, Vol. 59, No. 2 (2003), pp. 323–342. In the context of digital contracts, this approach translates as presenting information in three layers: a brief summary (one page), a medium summary (three–five pages), and a complete document (ToS), so that consumers can choose the depth of information that suits their needs.

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be represented by a single click covering the entire ToS, but should be a separate affirmative action for each material clause.[69]

The third element: Equal Optionality. The *click-wrap* interface should be designed so that the opt-out or disapprove option is available in the same position, size, and color as the opt-in option—without *dark patterns* that visually or psychologically lead consumers toward approval. This is the operationalization of *the non-deceit obligation under the principle of good faith, as set forth in Article 1338, paragraph (3),* of the Civil Code.[70]

The fourth element: Meaningful Cooling-Off Period. The consumer must be given a certain period of time — at least three working days — after signing the agreement to cancel the contract without incurring any charges if, after a careful reading of the agreement, he finds a clause with which he does not agree. This mechanism provides a real opportunity for consumers to exercise their right of inquiry while reducing the effects of psychological distress during the *click-wrap* process.[71]

The fifth element: Absolute Prohibition of Dark Patterns. Regulations should explicitly prohibit the use of interface design techniques that manipulate user behavior in the process of forming digital contracts, including but not limited to: *pre-checked boxes*, *confirmshaming*, *hidden costs*, and *roach motel design*. This prohibition is a concrete elaboration of the pre-contractual obligation of good faith, sourced from Article 1338, paragraph (3), of the Civil Code, and the information obligation regulated in Article 22 of POJK 22/2023.[72]

3. Regulatory Implications: POJK Update Recommendations

The five elements of the digital *consent* standard proposed above have direct implications for OJK regulatory reforms. De lege ferenda, this study recommends three substantive changes to POJK Number 22 of 2023. First, the addition of a special chapter on 'Digital Standard Agreement Standards', which operationally implements the five elements of LESTD as a minimum requirement for every PUJK that uses *a click-wrap* mechanism in its products or services.[73]

[69]The concept of an 'affirmative assent mechanism' refers to the design of a digital contract that requires users to perform specific actions that demonstrate active understanding — for example, sliding the slider all the way down the document before the agree button can be clicked, or answering one simple question about the most important material clause. Unlike just clicks, this mechanism is technically closer to the consent standards required by the Civil Code.

[70]Law Number 8 of 1999 concerning Consumer Protection, Article 4 letter c: 'Consumer rights are the right to true, clear, and honest information about the condition and guarantee of goods and/or services.' This right operationally requires not only the availability of information, but its accessibility — including in the context of the digital interface of the PayLater contract.

[71]The concept of 'cooling-off period' in consumptive contracts has been recognized in various international consumer regulations. In Indonesia, Article 49 of Government Regulation Number 29 of 2021 concerning Electronic Trade regulates the right of consumers to cancel transactions within a certain period of time. In the context of PayLater, OJK has not yet set a specific cooling-off period standard for digital standard contracts for financing services.

[72]Financial Services Authority Regulation Number 22 of 2023, Article 22 paragraph (2): 'Standard clauses made by PUJK are prohibited from containing matters that: a. state the transfer of PUJK's responsibilities or obligations to Consumers; b. declare that PUJK has the right to refuse refunds that have been paid for products and/or services purchased by the Consumer; c. declare the granting of power of attorney from the Consumer to the PUJK, either directly or indirectly, to take all unilateral actions that are detrimental to the Consumer...'

[73]The concept of 'digital contract standard' or digital contract standard has not been comprehensively regulated in a single legal instrument in Indonesia. Currently, the regulations are spread across the ITE Law, PP PSTE, POJK 22/2023, and UUPK. The need for a single unified standard that specifically regulates the requirements for consensuality in digital financial contracts is one of the main regulatory recommendations of this study.

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Second, the addition of the provision on the 'Summary *of Agreement' (SoA):* before consumers are directed to the *click-wrap* page, the platform is obliged to present a one-page summary that clearly contains: (a) the object and value of the financing; (b) interest rates and all costs; (c) the mechanism and schedule of payment; (d) late fines; (e) the consumer's right to lodge a complaint; and (f) clauses that limit consumer rights. Only after reading and confirming this SoA — with separate affirmative action — can consumers be directed to the full ToS.[74]

Third, strengthening the enforcement mechanism through an annual audit of the design of click-wrap interfaces by independent auditors appointed by the OJK, with measurable administrative sanctions — including product revocation or feature freezing — if dark patterns are found or non-compliance with the LESTD standard is found. This approach is in line with Ayres and Braithwaite's responsive regulatory philosophy, which prioritizes escalative sanctions as a more effective compliance instrument than a single static sanction.[75]

Comparisons with international regulatory practices reinforce the urgency of this recommendation. The European Union has previously set the standard for unfairness in digital standard clauses through Directive 93/13/EEC, which prohibits clauses that significantly create an imbalance between the parties' rights and obligations.[76] The UK, through Consumer Duty (2022), goes even further: financial services businesses are obliged to ensure that information is delivered in a way that is truly understandable to consumers *(consumer understanding),* not just available.[77] Indonesia, as the country with the largest number of PayLater users in Southeast Asia, has an equal interest and regulatory ability to set similar standards — or even exceed existing international standards.

IV. CONCLUSION

Based on the analysis conducted in this study, two conclusions can be drawn that directly address the formulation of the problem.

First, the position of the principle of consensualism in the formation of *click-wrap agreements* on the PayLater platform is reviewed as problematic-substantial under the Civil Code. Formally, the *click-wrap mechanism* — in the form of clicking the consent button — meets the textual definition of 'agree' in Article 1320 of the Civil Code. Substantively, however, the act of clicking does not meet the actual consent standards of the principle of consensualism:

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[74]Financial Services Authority Regulation Number 22 of 2023, Article 30: 'PUJK is obliged to provide and/or provide information about products and/or services to Consumers in Indonesian that is easy to understand.' This obligation is in principle a positive step, but it still requires a measurable standard of what is meant by 'easy to understand' — for example by reference to the Flesch-Kincaid readability level or equivalent standard in Bahasa Indonesia.

[75]Financial Services Authority Regulation Number 22 of 2023, Article 9: 'PUJK is obliged to ensure that the products and/or services offered are in accordance with the needs and capabilities of Consumers and have gone through an assessment process.' These terms implicitly contain an obligation to understand the consumer's profile before offering a product — which should also include an obligation to ensure the consumer understands the agreement he or she is about to enter.

[76]Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts, Official Journal L 095, 21/04/1993, Article 3 paragraph (1): 'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.'

[77]Financial Conduct Authority (UK), Consumer Duty Final Rules and Guidance, PS22/9 (London: FCA, 2022). Consumer Duty requires financial services businesses to ensure that products and services are designed to meet real consumer needs, are communicated in a way that consumers can understand, and provide good outcomes for consumers. This standard is substantively much higher than just a formal disclosure obligation.

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it does not reflect free and informed will, but rather is a fiction of consent engineered by an asymmetrical design of the system. This tension between formal consensualism and substantive consensualism cannot be resolved by the current regulations — both the Civil Code, the ITE Law, PP PSE, or POJK 22/2023 — because none of these regulations set a minimum standard of operational and measurable consensualism for PayLater digital standard contracts.[78]

Second, the *click-wrap* mechanism applied to the PayLater platform in Indonesia *has not fully* met the element of 'agreement' as a substantive legal condition for the agreement of Article 1320 of the Civil Code. From the analysis of the ToS of three OJK-registered PayLater platforms, consistent patterns were found: unilateral amendment clauses that create the fiction *of implied consent*; exoneration clauses that are in tension with Article 18 of the UUPK; and consent mechanisms that do not provide a real opportunity for consumers to understand material clauses before giving consent. This puts millions of PayLater consumers in a legally vulnerable position: bound by agreements they don't fully understand, with very few legal instruments available to claim protection.[79]

2. Suggestions

This study proposes three operational, measurable suggestions for three different parties. To the OJK as a regulator: this study recommends the revision of POJK Number 22 of 2023 to include special provisions on the 'Digital Standard Agreement Standards' that implement the Five Elements of Digital *Consent* Standards (LESTD) proposed in this study. This revision is urgent, given that POJK 22/2023 still leaves a significant regulatory vacuum regarding digital contract consensualism standards.[80]

For the PayLater platform as a business actor: this study recommends proactively reforming the ToS design rather than waiting for regulatory changes. The proposed reforms include: (a) the provision of a one-page Summary of Agreement before *the click-wrap* page; (b) the application of a layered approval mechanism for material clauses; (c) the removal of all *dark pattern elements* from the approval interface; and (d) the implementation *of a cooling-off period* of at least three working days. In addition to fulfilling legal obligations, this reform will increase consumer trust and reduce the risk of disputes that could harm the platform's reputation.[81]

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[78]Ahmadi Miru, Contract Law and Contract Design (Jakarta: RajaGrafindo Persada, 2007), pp. 67–69. Miru emphasized that formally valid but substantively unjust agreements cannot be fully protected by law — Indonesian treaty law, although based on the principle of freedom of contract, still recognizes substantive boundaries that must not be violated, as reflected in Article 1337 of the Civil Code on unlawful causes.

[79]Based on Article 1338 paragraph (2) of the Civil Code: 'Agreements cannot be withdrawn except by the agreement of both parties, or for reasons declared sufficient by law to do so.' This paragraph asserts that unilateral termination by a platform — without a clear legal basis in the agreement or law — could potentially be categorized as a default, rather than a valid contractual right.

[80]Radin, Margaret Jane, Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law (Princeton: Princeton University Press, 2013), pp. 220–225. Radin proposed the concept of a 'democratic baseline' as a minimum standard of consumer rights that should not be removed by a standard clause, even if consumers have formally 'consented' to it. This concept is parallel to the function of Article 18 of the UUPK in Indonesian law.

[81]The concept of 'minimum digital literacy standard' as a prerequisite for the validity of digital contracts is not yet known in Indonesian positive law. The authors propose this concept as an additional element of the reconstruction of digital consent standards: platforms are obliged to ensure that the mechanism for delivering contractual information has been designed in such a way that consumers with an average level of digital literacy (not legal experts) can understand the material clauses.

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To lawmakers: this study recommends that the renewal of the Civil Code or the establishment of a special law on digital contracts consider formulating an operational definition of 'digital agreement' that explicitly integrates the substantive dimension of consensualism. In the medium term, the government needs to consider the establishment of *a Government Regulation on Digital Contract Standards* as an umbrella instrument that coordinates the various provisions of digital contracts that are currently spread across the ITE Law, PP PSE, POJK 22/2023, and UUPK — in order to realize legal certainty and comprehensive protection for all consumers of Indonesian financial digital services.[82]

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