

THE BINDING FORCE OF ELECTRONIC AGREEMENTS IN ONLINE LENDING SERVICES: A REVIEW OF CIVIL LAW AND THE LAW ON INFORMATION AND ELECTRONIC TRANSACTIONS

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Abstract

The development of online lending services (*peer-to-peer lending fintech*) in Indonesia has shifted the paradigm of establishing contractual relationships from a conventional format to an electronic one. This study aims to analyse the binding force of electronic agreements in online lending services from the perspective of the Civil Code (KUHPerdata) and Law No. 19 of 2016 amending Law No. 11 of 2008 on Electronic Information and Transactions (the EIT Law). The research method employed is a normative legal study using a literature review approach. The results of the study indicate that electronic agreements in online lending possess legally binding force and are equivalent to conventional agreements provided they fulfil the four valid conditions of a contract as stipulated in Article 1320 of the Civil Code, namely: agreement between the parties, legal capacity, a specific subject matter, and a lawful cause. This binding force is reinforced by Article 18(1) of the ITE Law, which stipulates that electronic transactions set out in electronic contracts are binding on the parties, as well as the recognition of electronic documents and electronic signatures as valid evidence under Articles 5 and 6 of the ITE Law. The harmonisation between the Civil Code, the ITE Law, and the OJK's sector-specific regulations creates legal certainty for the parties involved in online lending transactions, although the effectiveness of legal protection remains dependent on responsible implementation by fintech operators, including transparency regarding the content of contracts, the reliability of electronic systems, and debt collection mechanisms that comply with statutory provisions.

Keywords: electronic contracts, online loans, binding force, Civil Code, ITE Law, fintech lending

Introduction

Advances in information and communication technology have driven significant transformation in the financial services sector, particularly in the form of online lending services or *peer-to-peer (P2P) fintech lending*. In Indonesia, this industry has experienced exponential growth in recent years, with total outstanding financing reaching Rp75.02 trillion as of October 2024, representing a year-on-year increase of 29.23 per cent (Financial Services Authority [OJK], 2024). By June 2025, the cumulative total of loans

disbursed had even reached Rp1,212.87 trillion, with the number of borrower accounts standing at 158.37 million (Yulianti et al., 2024)). This phenomenon demonstrates that online lending has become an integral part of the national digital financial ecosystem, particularly for those who were previously underserved by conventional financial institutions.

In line with this rapid growth, the mechanism for establishing legal relationships between lenders and borrowers has shifted from conventional forms to electronic formats. Online loan agreements are generally drawn up via digital platforms, where the parties express their consent by clicking the 'agree' button or providing an electronic signature (H. A. Wahyuni et al., 2023)). These agreements are set out in the form of electronic documents stored within the systems of fintech lending service providers. This transformation raises fundamental questions regarding the binding force of electronic agreements compared to conventional written agreements, which have long been the standard under Indonesian civil law.

From the perspective of the Civil Code (KUHPPerdata), a contract is deemed valid if it fulfils the four conditions set out in Article 1320, namely: (1) agreement between the parties, (2) legal capacity of the parties, (3) a specific subject matter, and (4) a lawful cause (Zheng et al., 2020) . If these conditions are met, the agreement in question is binding on the parties in the same way as a law, as affirmed in Article 1338 of the Civil Code, which adheres to the principle of *pacta sunt servanda*. This principle forms the primary basis that every valid agreement must be performed in good faith and cannot be unilaterally revoked without the consent of the other party. However, the characteristics of electronic contracts in online lending present their own complexities, particularly regarding proof of agreement and the validity of electronic signatures. In practice, many borrowers claim they do not understand the contents of the contract or feel pressured by the 'click-wrap agreement' mechanism commonly used by fintech platforms. On the other hand, the rate of borrower default in online lending remains a serious issue; OJK data as of January 2024 recorded a loan repayment success rate of 97.07 per cent, meaning that 2.93 per cent of borrowers are still in default, causing losses to creditors(Irfani et al., 2025) . This situation underscores the urgency of conducting a comprehensive review of the legally binding nature of electronic agreements.

To address these challenges, the Indonesian government has enacted Law No. 19 of 2016 amending Law No. 11 of 2008 on Electronic Information and Transactions (the ITE Law). Article 18 of the ITE Law explicitly states that "Electronic Transactions set out in an Electronic Contract are binding on the parties", thereby providing legal recognition of the validity of electronic agreements (H. A. Wahyuni et al., 2023)). Furthermore, the ITE Law also recognises electronic information, electronic documents and electronic signatures as valid evidence in court, provided they meet the requirements for the reliability and integrity of the electronic system used. This provision serves as a

normative foundation that strengthens the position of electronic agreements within the Indonesian legal system.

In addition to the ITE Act, sector-specific regulations issued by the Financial Services Authority also govern consumer protection standards in fintech lending services. OJK Regulation No. 10/POJK.05/2022 on Information Technology-Based Money Lending and Borrowing Services requires providers to include the minimum contents of an agreement, which cover the identities of the parties, the agreement number and date, rights and obligations, and dispute resolution mechanisms(Septiari & Ujianti, 2025) . This regulation aims to ensure transparency and legal certainty for the parties, whilst preventing contractual practices that are detrimental to consumers due to information asymmetry or unfair standard clauses(Respati, 2024) . Consequently, there is harmonisation between the general provisions of the Civil Code and the ITE Law and the specific regulations in the financial services sector.

Although the legal framework is in place, implementation on the ground continues to reveal various issues, such as debtors' lack of understanding of the contents of agreements, the misuse of personal data, and debt collection practices that do not comply with statutory provisions. Several court rulings also reveal varying interpretations regarding the evidential value of electronic documents, particularly when the integrity of the system or the validity of electronic signatures is called into question. Therefore, an in-depth analysis is required of the binding force of electronic agreements in online lending from the perspective of civil law and the ITE Law, as well as how these two legal regimes can be harmonised to provide legal certainty and protection for the parties involved.

Against this background, this article aims to analyse the binding force of electronic agreements in online lending services using a normative legal approach based on the Civil Code and the Electronic Information and Transactions Act.

Research Methodology

This study employs a normative legal research method using a literature review approach, focusing on the analysis of primary, secondary and tertiary legal sources. Primary legal sources include the Civil Code (KUHPPerdata), Law No. 19 of 2016 amending LawNo. 11 of 2008 concerning Electronic Information and Transactions (the ITE Act), and Financial Services Authority Regulation No. 10/POJK.05/2022 concerning Information Technology-Based Money Lending Services (Eliyah & Aslan, 2025) . Secondary legal sources include textbooks, national and international journals, and other documents relevant to the binding force of electronic contracts and fintech lending. Data collection was carried out through a documentary study by examining, classifying and systematising these written sources, whilst the data analysis technique utilised a descriptive-analytical method to describe the applicable legal provisions and analyse their application in the context of online loan agreements, thereby producing

prescriptive conclusions regarding the binding force of electronic contracts from the perspective of civil law and the ITE Act (Myeong et al., 2022).

Results and Discussion

The Binding Force of Electronic Contracts from the Perspective of Civil Law (Civil Code)

In the Indonesian civil law system, a contract is a fundamental instrument governing the legal relationship between parties in economic transactions, including in the context of online lending services. Article 1313 of the Civil Code (KUHPerdata) defines a contract as “an act by which one or more persons bind themselves to one or more other persons” (Tyler, 2006). This definition is general in nature and neutral with regard to the medium used; consequently, it covers both conventional agreements drawn up in writing and electronic agreements formed via digital platforms. Thus, online loan agreements set out in electronic format are still classified as agreements within the meaning of the Civil Code, provided there is a legally binding act between the lender and the borrower (Syafriana, 2016).

The validity of a contract, including electronic contracts in fintech lending, is determined by the fulfilment of four mandatory conditions set out in Article 1320 of the Civil Code. The first requirement is the agreement of the parties (*toestemming van degenen die zich verbinden*), which requires a meeting of minds between the debtor and the creditor without any coercion, mistake or fraud. In the context of electronic agreements, this agreement is generally realised through a ‘click-wrap agreement’ mechanism, whereby the user clicks the ‘agree’ button after reading or at least having the opportunity to access the contents of the agreement (Falahiyati, 2020). Although there has been criticism regarding the imbalance in bargaining power between platform operators and consumers, provided that no defect in consent is proven, such a click of agreement is still considered a valid manifestation of consent under civil law (Wiraguna & Santiago, 2022).

The second requirement under Article 1320 of the Civil Code is the capacity of the parties to enter into a contract (*bekwaamheid om eene verbintenis aan te gaan*). Legal capacity in this context refers to the capacity of a legal person to perform legal acts, which is generally fulfilled if the party concerned has reached the age of majority (21 years or is married) and is not under guardianship due to mental incapacity or profligacy (Wiraguna & Santiago, 2022). In the practice of online lending, fintech lending operators are obliged to verify the identity and legal capacity of prospective borrowers through a ‘know your customer’ (KYC) process, which includes the uploading of an identity card, facial verification and other supporting data. If it transpires that the borrower lacks legal capacity, the agreement may be null and void as a matter of law, and the person lacking legal capacity or their representative may apply to the court for the agreement to be set aside.

The third requirement is the existence of a specific subject matter (*een bepaald onderwerp*), which means that the subject of the agreement must be clear, specific, or at least definable in terms of type and quantity. In an online loan agreement, this specific subject matter takes the form of a sum of money lent, together with the agreed terms regarding interest, the repayment period and the payment mechanism (S. Wahyuni et al., 2025). The clarity of this subject matter is crucial to avoid disputes at a later date, particularly regarding the principal amount of the loan, the total amount payable, and the consequences in the event of late payment. Reputable fintech lending platforms generally present these details transparently in electronic documents that borrowers can access and download before agreeing to the contract.

The fourth and final condition is the existence of a lawful cause (*eene geoorloofde oorzaak*), which requires that the content and purpose of the agreement must not conflict with the law, public morality or public order. In the context of online lending, a lawful cause is reflected in the lending and borrowing of money carried out for legitimate productive or consumptive purposes, with interest rates not exceeding the maximum limit set by the Financial Services Authority (OJK), and without involving practices such as fraud, extortion or money laundering (Yudha et al., 2025). If an online loan agreement is used to finance illegal activities, such as online gambling or drug trafficking, then the agreement is null and void as it contravenes the requirement for a lawful cause, and therefore does not give rise to any rights or obligations for the parties involved.

Where the four conditions for validity set out in Article 1320 of the Civil Code have been met, the electronic contract produces legal effects that are binding on the parties in accordance with the principle of *'pacta sunt servanda'* enshrined in Article 1338(1) of the Civil Code. This principle affirms that “all validly concluded contracts are binding as law upon the parties who have entered into them”, which means that the parties are obliged to fulfil their obligations as agreed and may not unilaterally withdraw without the consent of the other party or a reason justified by law (Falahiyati, 2020). In the practice of online lending, this principle serves as the legal basis for creditors to demand repayment of the loan if the debtor defaults, whilst also serving as the basis for debtors to demand that creditors fulfil their obligations, such as disbursing funds on time and not charging fees beyond those agreed upon.

Furthermore, Article 1338(3) of the Civil Code adds that a contract must be performed in good faith (*te goeder trouw*), which is a fundamental principle of Indonesian contract law. Good faith in the context of online lending encompasses the obligation for fintech operators to provide honest, complete and non-misleading information regarding interest rates, penalties, debt collection mechanisms and the consequences of default (et al., 2020). On the part of the borrower, good faith is demonstrated through the honest provision of accurate personal details, the use of funds in accordance with the stated purpose, and a genuine effort to repay the loan

according to the schedule. If either party acts contrary to good faith—such as a creditor who employs intimidating collection methods or a debtor who deliberately conceals assets to avoid payment—the aggrieved party may bring a claim before the court on the grounds of a breach of the principle of good faith.

The binding force of electronic agreements is also reflected in the fact that they may serve as valid evidence in court, provided that the integrity and reliability of the electronic system used can be accounted for. Although the Civil Code does not explicitly regulate electronic evidence, the doctrine and case law of Indonesian civil law recognise that electronic documents that meet the requirements for the validity of a contract may be used as written evidence as referred to in Article 1866 of the Civil Code (Waruwu & Siswoyo, 2024). This is reinforced by the provisions of the ITE Law, which explicitly recognise electronic documents as valid evidence, thereby ensuring harmonisation between substantive civil law and procedural law in providing legal certainty for the parties bound by online loan agreements.

It may therefore be concluded that electronic agreements in online lending services have the same binding force as conventional agreements, provided they fulfil the four conditions of validity set out in Article 1320 of the Civil Code and are executed in accordance with the principles of *pacta sunt servanda* and good faith, as stipulated in Article 1338 of the Civil Code. This binding force is not only normative but also operational, as it provides a legal basis for the parties to demand the fulfilment of obligations, resolve disputes through the courts, and obtain legal protection in the event of a breach of contract or a violation of the terms of the agreement. A comprehensive understanding of the binding force of electronic contracts from the perspective of the Civil Code forms an essential foundation prior to analysing further legal reinforcement through specific provisions in the ITE Act.

Recognition and Legal Enforcement of Electronic Contracts under the Law on Information and Electronic Transactions (ITE Law)

The growth of digital transactions has transformed the way parties establish legal relationships, including in information technology-based online lending services. Whilst in conventional transactions the parties generally sign physical documents in person, in online lending services the agreement process is carried out via an application or digital platform using electronic data, electronic documents, digital consent and electronic signatures. These circumstances necessitate a legal framework capable of providing certainty regarding the status, validity and binding force of electronic agreements. Law No. 11 of 2008 on Electronic Information and Transactions, as amended on several occasions, most recently by Law No. 1 of 2024, serves as the primary legal basis recognising the existence of electronic transactions and contracts within the Indonesian legal system (Republic of Indonesia, 2008, 2016, 2024).

The legal recognition of electronic agreements stems from the definition of an electronic contract set out in Article 1(17) of the ITE Law. This provision defines an electronic contract as an agreement between parties entered into via an electronic system. This definition indicates that the key element of an electronic contract does not lie in the use of paper or a handwritten signature, but rather in the existence of an agreement between the parties, expressed and recorded via an electronic system. In the context of online lending, an electronic contract may take the form of a funding agreement between the lender and the borrower, a user agreement between the user and the platform operator, or a document setting out the terms of the loan, interest rates, fees, repayment period, penalties and repayment mechanisms. Therefore, an online loan agreement does not lose its legal validity simply because it is drawn up and agreed upon via digital media(Falahiyati, 2020) .

Section 18(1) of the ITE Act provides the most explicit basis for the binding force of electronic contracts by stating that electronic transactions set out in an electronic contract are binding on the parties. This provision affirms that electronic contracts have legal consequences equivalent to those of conventional agreements, provided that their formation meets the elements of a valid agreement. Consequently, a borrower who has agreed to the terms of a loan via an application cannot simply deny the existence of a contractual relationship merely on the grounds that the agreement was not physically signed. Conversely, both the service provider and the lender are also obliged to fulfil all obligations set out in the contract, including the obligation to provide accurate information, to disburse funds as agreed, and to apply fees and collection mechanisms that do not deviate from the agreement or applicable laws and regulations(Septiari & Ujianti, 2025) .

The binding force of electronic contracts under the ITE Law must still be interpreted in harmony with the provisions on contracts in the Civil Code, particularly Article 1320 concerning the conditions for the validity of a contract. This means that the recognition set out in Article 18(1) of the ITE Law does not automatically render all digital contracts valid without conditions; rather, it applies where there is a free agreement, the parties are legally competent, the subject matter of the contract is clear, and the cause is lawful. In online lending services, consent can be demonstrated through the user's actions of agreeing to the terms and conditions, entering a *one-time password*, affixing an electronic signature, or clicking the 'agree' button after gaining access to the contract document. Therefore, digital consent mechanisms such as *click-wrap agreements* may be regarded as a form of declaration of intent provided that users are given a reasonable opportunity to read, understand and agree to the contents of the contract(Septiari & Ujianti, 2025) .

In addition to affirming the validity of electronic contracts, the ITE Act also strengthens the admissibility of evidence in disputes through the recognition of electronic information and electronic documents. Article 5(1) of the ITE Act stipulates

that electronic information and/or electronic documents and/or their printed copies constitute valid legal evidence. Furthermore, Article 5(2) emphasises that such evidence constitutes an extension of the admissible evidence under the applicable procedural law in Indonesia. Consequently, in online lending disputes, digital contracts, records of user consent, electronic communications, transaction records, transfer evidence, app notifications and their printed copies may be submitted to prove the existence of a legal relationship, the performance of obligations, or the occurrence of a breach of contract. This recognition is particularly important as the majority of online lending processes take place without physical meetings and without paper documents (Arafah, 2024).

Nevertheless, electronic documents cannot automatically be treated as irrefutable evidence. Article 6 of the ITE Law stipulates that electronic information and/or electronic documents must be accessible, displayable, guaranteed to be intact, and verifiable in order to substantiate a particular circumstance. In civil proceedings, the party presenting an electronic contract must be able to demonstrate that the document originates from a trustworthy system, has not been altered without authorisation, and relates to the party who actually carried out the transaction. Therefore, online lending providers must maintain an adequate digital *audit trail*, such as the time of approval, IP address, device identity, user authentication, history of verification code delivery, and an archive of approved documents. System reliability and data integrity are crucial aspects to ensure that electronic contracts possess strong evidential value in the event of a dispute (Republic of Indonesia, 2008).

The strengthening of the legal framework for electronic contracts is also closely linked to the provisions on electronic signatures in the ITE Act. In principle, an electronic signature serves as a means of authenticating and verifying the signatory's identity, whilst also indicating consent to specific electronic information or electronic documents. Article 11 of the ITE Law recognises electronic signatures as signatures possessing legal force and valid legal consequences provided they meet the requirements stipulated by law, including that the data used to create the signature relates solely to the signatory, remains under the signatory's control, and that any changes made after signing can be detected. In online lending services, the use of a reliable electronic signature can strengthen the evidence that the debtor or creditor has indeed given their informed consent to the contents of the contract drawn up electronically (Republic of Indonesia, 2008; Republic of Indonesia, 2019).

In the context of the operation of electronic systems, the ITE Act also places a responsibility on electronic system operators to operate their systems reliably, securely and responsibly. This principle is crucial for online lending platforms because the entire contractual process—from registration, identity verification, loan offers, contract approval, disbursement of funds, to instalment payments—takes place via a digital system managed by the operator. System unreliability, failure to maintain data security, or the absence of contract records accessible to users has the potential to undermine

legal protection and trigger disputes. Therefore, it is not sufficient for operators merely to provide a ‘ ’ button for digital consent; they must also ensure transparency, traceability, security and accessibility of contract documents for the parties involved (Republic of Indonesia, 2008; Republic of Indonesia, 2019).

From a sectoral perspective, the strengthening of electronic contracts in online lending is also set out in Financial Services Authority Regulation No. 10/POJK.05/2022 on Information Technology-Based Crowdfunding Services. This regulation requires operators to set out the legal relationship between the parties in an electronic document and to provide clear information regarding the rights and obligations of each party. Electronic contracts in technology-based funding services must, at a minimum, specify the identities of the parties, the amount of funding, the interest rate or economic benefits, fees, the term, payment mechanisms, risks, actions to be taken in the event of default, and dispute resolution procedures. These provisions are important for reducing information asymmetry and preventing the use of standard clauses that are not understood or that could potentially be detrimental to service users (Financial Services Authority [OJK], 2022).

Consumer protection is a key element in the recognition and legal reinforcement of electronic contracts. In practice, the debtor’s position as a service user is often weaker than that of the service provider, as contracts are drawn up unilaterally in the form of standard clauses and presented in applications using technical language. Therefore, even though electronic contracts are deemed binding under Article 18 of the ITE Law, their validity must not be separated from the principles of transparency, good faith, reasonableness, personal data protection, and the prohibition of clauses that contravene the law. Electronic consent obtained through incomplete information, misleading interface design, threats, the concealment of costs, or the misuse of personal data may be challenged on the grounds of a defect in consent and a breach of consumer protection. In other words, the ITE Law provides legal recognition for digital forms of contracts, but does not justify the substance of contracts that are unfair or unlawful (Republic of Indonesia, 2008; OJK, 2022).

Based on the above, the ITE Act has played a significant role in providing legal recognition and reinforcement for electronic agreements in online lending services. This recognition is reflected in the definition of an electronic contract, the provision that electronic contracts are binding on the parties, the recognition of electronic documents as valid evidence, and the regulations concerning electronic signatures and the reliability of electronic systems. However, this binding effect remains conditional upon the fulfilment of the requirements for a valid agreement under the Civil Code, the reliability of the electronic system, the preservation of document integrity, and the protection of the parties’ rights. Consequently, the combination of the ITE Law, the Civil Code, and OJK Regulation No. 10/POJK.05/2022 forms a legal framework that provides

certainty for online lending transactions whilst also offering protection for users against irresponsible digital practices.

Conclusion

Electronic agreements in online lending services are legally binding and equivalent to conventional agreements, provided they fulfil the four conditions for the validity of an agreement as set out in Article 1320 of the Civil Code (KUHPerdota), namely: agreement between the parties, legal capacity, a specific subject matter, and a lawful cause. From a civil law perspective, the principle of *'pacta sunt servanda'*, as affirmed in Article 1338(1) of the Civil Code, renders such a valid agreement binding on the parties in the same way as a statute; consequently, the debtor and creditor are obliged to fulfil their rights and obligations in good faith. Digital consent mechanisms such as *click-wrap agreements*, which are commonly used on fintech lending platforms, are still recognised as valid manifestations of agreement provided there are no defects of consent in the form of duress, mistake or fraud.

The legal recognition and enforcement of electronic contracts are reinforced by the provisions of the Electronic Information and Transactions Act (EITA), in particular Article 18(1), which expressly states that electronic transactions set out in electronic contracts are binding on the parties. The EIT Act also grants legitimacy to electronic documents, electronic information and electronic signatures as valid evidence in court under Articles 5 and 6, provided they are accessible, displayable, have guaranteed integrity and are verifiable. The harmonisation between the Civil Code, as substantive law, and the ITE Law, as specialised information technology legislation, creates legal certainty for the parties involved in online lending transactions, whilst also providing a basis for dispute resolution in the event of a breach of contract or a violation of the terms of the agreement.

Consequently, Indonesia's legal framework has provided adequate protection regarding the binding force of electronic contracts in online lending services through the synergy between the Civil Code, the ITE Law, and sector-specific regulations such as Financial Services Authority Regulation No. 10/POJK.05/2022. However, the effectiveness of this legal protection is heavily dependent on responsible implementation by fintech lending providers, including transparency regarding the content of contracts, the reliability of electronic systems, the security of personal data, and debt collection mechanisms that comply with statutory provisions. Enhancing digital legal literacy amongst consumers and stricter supervision by the relevant authorities are key to ensuring that the binding force of electronic agreements is not merely normative, but also provides substantive justice for all parties within Indonesia's digital financial ecosystem.

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