

Rethinking Consent: Examining the Adequacy of the Concept of Consent in Digital Platform Agreements under Indonesian Civil Code

Meninjau Ulang “Sepakat”: Menelaah Kelayakan Konsep Sepakat dalam Perjanjian Platform Digital berdasarkan Kitab Undang-Undang Hukum Perdata Indonesia

Adis Nur Hayati

Research Center for Law, The National Research and Innovation Agency, Indonesia

✉ adisnurhayati@gmail.com

ABSTRACT: Consent is often considered a concrete representation of an individual's will to freely choose independently. It is associated with the concept of individual autonomy, which is underpinned by the right to make one's own choices and freedom from coercion. However, in practice, consent within standard agreements on digital platforms often fails to reflect a truly voluntary and informed consumer agreement. Consumers' provision of consent on digital platforms frequently occurs without adequate understanding, genuine choice, or real bargaining power due to manipulation and undue influence exerted through dark patterns employed by platform operators. Therefore, this paper aims to analyze the adequacy of the concept of consent in the Indonesian Civil Code when applied to digital platform transactions. It employs a doctrinal legal research method to analyze the relevant provisions and their practical implications in the digital context. This paper argues that the current concept of consent in the Indonesian Civil Code is no longer adequate for application in digital platform environments. In particular, the act of providing consent through mechanisms such as an “I agree” checkbox and other similar formats may not genuinely reflect the consumer's informed and voluntary consent.

ABSTRAK: Kesepakatan kerap dianggap sebagai representasi konkret dari kehendak individu untuk secara bebas memilih secara independen. Hal ini berhubungan erat dengan konsep otonomi individu, yang bertumpu pada hak untuk mengambil keputusan sendiri serta kebebasan dari segala bentuk paksaan. Namun, dalam praktiknya, kesepakatan dalam perjanjian baku di platform digital seringkali gagal mencerminkan persetujuan konsumen yang benar-benar sukarela dan berdasarkan informasi yang memadai. Pemberian kesepakatan oleh konsumen di platform digital seringkali terjadi tanpa pemahaman yang memadai, pilihan yang sungguh-sungguh bebas, maupun daya tawar yang seimbang akibat manipulasi dan pengaruh yang tidak semestinya dari dark patterns yang digunakan oleh platform. Sehubungan dengan hal tersebut, tulisan ini bermaksud untuk menganalisis kelayakan konsep sepakat dalam Kitab Undang-Undang Hukum Perdata (KUHPerdata) ketika diterapkan dalam transaksi pada digital platform. Tulisan ini menggunakan metode penelitian hukum doktrinal untuk menganalisis ketentuan-ketentuan yang relevan terkait kesepakatan dan implikasi praktisnya dalam konteks digital. Tulisan ini berargumen bahwa konsep sepakat yang ada dalam KUHPerdata tidak memadai untuk diterapkan dalam konteks platform digital. Secara khusus, tindakan pemberian kesepakatan melalui mekanisme, misalnya kotak centang ‘I agree’ maupun format sejenis lainnya, kerap kali tidak merepresentasikan persetujuan konsumen yang sungguh-sungguh didasarkan pada informasi yang memadai dan diberikan secara sukarela.

Keywords:

consent; digital platforms; contract law

Kata Kunci:

sepakat; digital platforms; hukum perjanjian

Submitted/Diserahkan:

30-01-2025

Accepted/Diterima:

03-09-2025

How to cite/Cara Mengutip:

Hayati, Adis Nur. “Rethinking Consent: Examining the Adequacy of the Concept of Consent in Digital Platform Agreements under Indonesian Civil Code”. *Jurnal HAM*. Vol. 16 No. 2, Agustus 2025, 151-164, <http://dx.doi.org/10.30641/ham.2024.16.151-164>

Copyrights/Hak Cipta (c) 2025

Adis Nur Hayati

1. Introduction

Consent is often considered, particularly in classical legal theory, as a concrete representation of an individual's will to freely choose for oneself.¹ Through the mechanism of giving consent, a person is considered to have the capacity to make choices or decisions consistent with their will. Therefore, consent is viewed as a mechanism that encourages the realization or express manifestation of individual autonomy.² According to Christman J., autonomy itself can be understood as "*the independence and authenticity of the desires (values, emotions, etc.) that move one to act in the first place*". It is usually associated with personal abilities, traits, or the ability to act freely and without constraints.³ From its definition, it can be seen that this concept is actually one embodiment of implementing the human right to make one's own choices and freedom from coercion.

As a manifestation of individual autonomy, consent upholds the dignity of individuals.⁴ Human dignity itself is actually the ultimate value which is the basis and thing that human rights seek to protect.⁵ As stated by Roberto Andorno "*Human dignity is the foundation of human rights; rights derived from human dignity. Human dignity is not a kind of super-right, or a collective term to refer to rights, but rather the ultimate source of all rights.*"⁶ In the context of providing consent in an agreement, the protection of human dignity is closely related to the right to make one's own choices and freedom from coercion. Therefore, it can be concluded that respect for consent also means respect for autonomy and human rights, while violation to consent also indirectly means violation to both.

However, despite its important role, in practice the use of consent in standard agreements on digital platforms frequently fails to reflect a genuinely voluntary and informed agreement from consumers. When consumers encounter an agreement on a digital platform and click the "I agree" checkbox, they are typically deemed to have consented to all the terms outlined therein.⁷ However, consumers often fail to fully comprehend the terms to which they have ostensibly agreed.⁸ The granting of consent by consumers on digital platforms is frequently based on limited understanding, constrained choice, and diminished bargaining power, often manipulated through dark patterns employed by business actors.⁹ This means that the consent given by consumers does not really represent their complete true will and autonomy. As stated by Chunlin Leonhard, "*There is an increasing disconnect between consent in contract law and consent in reality.*"¹⁰

On the other hand, from the perspective of Indonesian Civil Code, giving consent through the "I agree" checkbox or other similar forms is considered legitimate and valid as long as the consent does not contain elements of error, coercion, or fraud.¹¹ While the Indonesian Civil Code emphasizes the legal capacity of the consenting party, it pays little attention to whether such consent is based on a full comprehension. In this case, a person is

1 Ella Corren, "The Consent Burden in Consumer and Digital Markets," *Harvard Journal of Law & Technology* 36, no. 2 (2023): 555; Heidi M. Hurd, "The Moral Magic of Consent," *Legal Theory* 2, no. 2 (June 1996): 124–26, <https://doi.org/10.1017/S1352325200000434>.

2 Corren, "The Consent Burden in Consumer and Digital Markets," 554–55; Neil Richards and Woodrow Hartzog, "The Pathologies of Digital Consent" 96 (2019): 1462.

3 Lynelle Watts and David Hodgson, *Social Justice Theory and Practice for Social Work: Critical and Philosophical Perspectives* (Singapore: Springer Singapore, 2019), 160, <https://doi.org/10.1007/978-981-13-3621-8>.

4 Corren, "The Consent Burden in Consumer and Digital Markets," 554–55; Jill Marshall, *Personal Freedom through Human Rights Law ? Autonomy, Identity, and Integrity under the European Convention on Human Rights*, International Studies in Human Rights, vol. 98 (Leiden: M. Nijhoff, 2009).

5 Sinai Deutch, "Are Consumer Rights Human Rights?," n.d., 554. *Osgoode Hall Law Journal* 32.3 (1994) : 537-578. <http://digitalcommons.osgoode.yorku.ca/ohlj/vol32/iss3/4>

6 Roberto Andorno, "Human Dignity and Human Rights," in *Handbook of Global Bioethics*, ed. Henk A. M. J. ten Have and Bert Gordijn, 1st ed. (Springer Dordrecht Heidelberg New York London, 2013), chap. Human Dignity and Human Rights, <https://academic.oup.com/book/25568/chapter/192892967>, 49.

7 Imelda Martinelli et al., "Penggunaan Click-Wrap Agreement Pada E-Commerce: Tinjauan Terhadap Keabsahannya Sebagai Bentuk Perjanjian Elektronik," *Jurnal Supremasi*, March 24, 2024, 74, <https://doi.org/10.35457/supremasi.v14i1.2797>.debates over the validity of Click-Wrap Agreements as electronic contracts often arise. This research adopts a normative approach using secondary data. Electronic contracts are recognized by Indonesian law, as stipulated in Article 18 paragraph (1)

8 Elettra Bietti, "Consent as a Free Pass: Platform Power and the Limits of the Informational Turn," *Pace Law Review* 40, no. 1 (January 17, 2020): 324–25, <https://doi.org/10.58948/2331-3528.2013>; Richards and Hartzog, "The Pathologies of Digital Consent," 1463.no. 1 (January 17, 2020)

9 Bietti, "Consent as a Free Pass," 325.

10 Chunlin Leonhard, "The Unbearable Lightness of Consent in Contract Law," *Case Western Reserve Law Review* 63, no. 1 (2012): 78.

11 R. Subekti, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Pramita, 2004), art. 1320.

deemed to lack legal capacity only if the party making the agreement is not an adult or is under guardianship.¹² This situation can lead to consumers giving consent without fully understanding it, making the outcomes of manipulative practices legally valid. This inevitably leads to injustice and detriment for consumers, as evidenced by the Zico vs. Grab Company case and the Amir vs. Lazada Company case, which will be discussed later in this article.

The practice of obtaining consent that is not meaningful may undermine consumer autonomy and dignity. This, in turn, poses a risk of infringing upon human rights, particularly the right to the protection of dignity, freedom of thought, and freedom of conscience, as interpreted from human rights instruments such as Article 28G and 28I of the 1945 Constitution and Articles 4 and 29 of Law No. 39 of 1999 on Human Rights. In this context, the government, as mandated by Article 28I (4) of the 1945 Constitution jo. Article 71 of Law No. 39 of 1999 on Human Rights, has a responsibility to protect and uphold those rights by ensuring that digital consent mechanisms uphold the values of transparency, fairness, and meaningful choice.

With regard to these matters, this article argues that Indonesian Civil Code current concept of consent is no longer adequate to be applied in digital platform environments. Consent provided on digital platforms through an “I agree” checkbox or similar mechanism may not fully reflect the informed and voluntary consumer consent. In relation to this, this article will analyze the issue in three parts. In the first part, this article explains the concept of consent and its current regulations in Indonesia. In the second part, this article discusses the issues of consent in digital platform agreements. In the third and final part, this article analyzes whether the Indonesian Civil Code concept of consent remains sufficient in the context of digital transactions. For the record, consent is fundamental to various interactions and legal relationships in our daily lives, such as in buying and selling transactions, marriage, medical consultations, and others. However, in this paper, the discussion of consent is limited to consumer transactions on digital platforms.

2. Method

This study adopts a doctrinal legal research method, focusing on the analysis of legal norms, particularly those related to the concept of consent (*sepakat*) in the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata). The research relies on library-based data collection, using primary legal materials such as statutes and court decisions, as well as secondary materials including journal articles, legal commentaries, and prior research discussing digital consent and contract law. The analysis in this paper applies grammatical and teleological interpretations of the Indonesian Civil Code, particularly focusing on consent in Article 1320. It seeks to examine the literal meaning of the provision of consent and evaluate whether its application in digital platform agreements still aligns with the broader objectives of contract law, namely, protecting individual autonomy and ensuring fairness in contractual relations.

This study incorporates two court cases, Zico vs. Grab Company case and the Amir vs. Lazada Company case, which were selected based on their relevance in illustrating how consumers may provide uninformed or involuntary consent in digital transactions. These cases serve to demonstrate the limitations of the current legal framework in addressing consent issues in digital environments. As a normative legal analysis, this study acknowledges its limitations in empirically proving certain claims, such as consumers' lack of power, understanding, or choice, since such insights require multidisciplinary perspectives. Nevertheless, the research makes a conceptual contribution by critically assessing the adequacy of existing legal norms and their alignment with the evolving dynamics of digital transactions.

3. Findings and Discussion

3.1 The Concept of Consent and Its Current Regulation in Indonesia

Defining consent can be difficult because of its broad function and meaning. Some experts argue that consent is a moral concept used to distinguish between legitimate and illegitimate behavior.¹³ In this case, consent can change the morality of a prohibited action into an action that is legal to do. For example, when someone takes someone else's property without permission, The act is considered theft and is unlawful. However, when the

12 R. Subekti, art. 1330.

13 Randy E. Barnett, “A Consent Theory of Contract,” *Columbia Law Review* 86, no. 2 (March 1986): 269, <https://doi.org/10.2307/1122705>; Bietti, “Consent as a Free Pass”; Hurd, “The Moral Magic of Consent”; Alan Wertheimer, “What Is Consent? And Is It Important?,” *Buffalo Criminal Law Review* 3, no. 2 (January 1, 2000): 557–83, <https://doi.org/10.1525/nclr.2000.3.2.557>.

owner consents, the act is no longer unlawful.¹⁴ In other cases, consent can also be a cooperative-collaborative tool to transfer or divide up rights and obligations among equal parties.¹⁵ For example, when someone agrees to buy certain goods from another person, that person transfers the right to the other person to collect payment from him and creates an obligation for him to pay that person. With regard to these views, Elettra Bietti believes that consent basically changes the rights and obligations that exist between persons so that things that are not permitted become permissible and change the expectations between the consenter and the consentee.¹⁶ In this case, according to her, there are two core roles of consent between individuals that can be identified. First, consent functions as "*a proprietary gate that one opens to allow another's access that would be impermissible absent the act of voluntarily opening the gate.*" Second, consent functions as "*a normative rope whereby one binds oneself to another.*"¹⁷ As for consent in digital platforms, the function of consent tends to focus as a gate that allows other parties (business actors) to carry out certain actions.

Consent is an important foundation in our daily interactions because it is considered a manifestation of individual autonomy.¹⁸ As a note, according to Daniel Susser et al., autonomy is rooted in the view that "*People can (mostly) rationally deliberate on the different options they are faced with, that they know (mostly and roughly) what they believe and desire, and that they can act on the reasons they think the best.*"¹⁹ Through the mechanism of consent, a person is understood to have the capacity to make choice and decisions consistent with their will. Therefore, consent is considered a mechanism that encourages the realization or an express manifestation of individual autonomy.²⁰

The notion of autonomy is closely linked to the concept of human dignity, which is a foundation value that human rights seek to protect.²¹ As Immanuel Kant stated that "*Autonomy is then the ground of the dignity of human nature and of every rational nature.*"²² Referring to Oxford Encyclopedia English Dictionary "Dignity" is defined as "*the state of being worthy of honor or respect*". According to Roberto Andorno, the concept of human dignity refers to the principle that all humans have equal rights and inherent worth and therefore should be given the highest respect and attention, regardless of age, gender, socioeconomic status, ethnicity, or other characteristics.²³ Human dignity serves as the basis for all human rights. therefore, inherent quality of individuals, rooted in their ability to make autonomous choices, and therefore cannot be taken away.²⁴ Furthermore, not only on the basis, but human dignity also becomes a core value that human rights seek to protect. Human dignity is often said to be "*the valuable status protected by human rights.*"²⁵

Respecting consent is a fundamental requirement of respecting individual autonomy and human rights; therefore, it can be interpreted that any violation of consent implies a failure to uphold both. Through human rights law, individuals are empowered to exercise their autonomy in various aspects of life.²⁶ Accordingly, both the relationship between autonomy and human rights is crucial in upholding the dignity and integrity of individuals, as it enables them to live in accordance with their own values and beliefs. As mentioned by Lynelle Watts and David Hodgson, "*the link between human rights and autonomy, both involve ideas about human nature and the relationship to society, and both are considered normative aspirations in struggles for freedom and justice.*"²⁷ As a note, in the context of providing consent in an agreement, the protection of human dignity is closely tied to the right to make one's own choices and freedom from coercion.

Serving not only an important role in reflecting individual and upholding dignity, integrity, and freedom, the notion of consent also serves as a tool in digital platform transactions or agreements. Through the power to give consent, consumers have the ability to switch, choose, or replace business actors or products with other

14 Corren, "The Consent Burden in Consumer and Digital Markets"; Hurd, "The Moral Magic of Consent."

15 Corren, "The Consent Burden in Consumer and Digital Markets," 562.

16 Bietti, "Consent as a Free Pass."

17 Bietti, 316–17.

18 Corren, "The Consent Burden in Consumer and Digital Markets," 554–55; Marshall, *Personal Freedom through Human Rights Law?*

19 Daniel Susser, Beate Roessler, and Helen Nissenbaum, "Online Manipulation: Hidden Influences In A Digital World," *Georgetown Law Technology Review* 1 (2019): 35, <http://dx.doi.org/10.2139/ssrn.3306006>.

20 Corren, "The Consent Burden in Consumer and Digital Markets," 554–55; Richards and Hartzog, "The Pathologies of Digital Consent," 1462.

21 Deutch, "Are Consumer Rights Human Rights?," 554.

22 Roberto Andorno, "Human Dignity and Human Rights."

23 Roberto Andorno.

24 Gerald Gaus, Christi Favor, and Julian Lamont, "Behavioral Law and Economics: The Assault on Consent, Will, and Dignity," *Stanford University Press*, August 20, 2008, 14, <https://ssrn.com/abstract=1274444>.

25 Marshall, *Personal Freedom through Human Rights Law?*, 23.

26 Marshall, 7.

27 Watts and Hodgson, *Social Justice Theory and Practice for Social Work*, 159.

business actors or products that suit their needs.²⁸ Consent is one of the instruments that empowers consumers to control their lives through the ability to freely choose for themselves what and with whom they will transact.

Regarding the importance of the function and role of consent, the question arises as to what form of consent can truly represent individual autonomy and have transformative moral force. What if a person signs an agreement without understanding its content, can that truly be called consent? And what if their decision to agree was shaped by unconscious influences, can such consent still be seen as genuine? According to Chunlin Leonhard, there are at least three conditions for consent to truly reflect an individual's autonomy ("informed consent").²⁹ First, the consent must be free from elements of coercion and undue influence. Consent must be given voluntarily without violence or undue influence such as lure of gifts, countdown timers, pre-selected choices, and other persuasive tactics, among others. Second, consent must be given on the basis of adequate information. If the giver of consent does not have access to the information, then they cannot evaluate other options for the decision they make. Third, giving consent must be accompanied by understanding from the person giving the consent. Understanding itself is an important requirement in providing informed and meaningful consent. This element can be influenced by various factors such as intelligence, rationality, maturity, or even language.³⁰

Similarly, but more comprehensively, Elettra Bietti outlines a set of conditions for what she terms "moral consent" (consent with moral transformative power) that includes: 1) The consenting individual must possess the rational capacity to give meaningful consent, which excludes minor or those with mental or physical impairments. 2) Consent must be free from coercion or undue manipulation. 3) Consent must be voluntary, with at least one viable and morally acceptable alternative available. 4) The scope of consent must be reasonably limited. 5) Consent must be fully informed, requiring adequate disclosure of the context and potential consequences. 6) Consent must be ongoing, allowing individuals to confirm or withdraw their consent at any time. 7) Consent must be given under a just condition, which include full and transparent disclosure of available options.³¹

Chunlin Leonhard and Elettra Bietti offer a normative account of what meaningful consent should entail, grounded in conditions such as informed understanding, voluntariness, and limitation. This paper refers to their framework to highlight the contrast between ideal standards and the legal construction of consent in Indonesia. While these conditions provide a useful analytical benchmark, many scholars have questioned whether such ideal standards of consent, particularly informed and autonomous agreement, can be fully realized in practice, especially in digital environments marked by power asymmetries and manipulation.³² The following section examines how Indonesian Civil Code currently defines and regulates consent in contractual relationships.

In Indonesian law, the concept of consent (*sepakat*) is a fundamental requirement for the validity of agreements and is primarily governed by the Indonesian Civil Code, particularly in Articles 1320 to 1337. This section focuses on examining the legal construction and doctrinal adequacy of consent within this framework, especially in the context of digital platform agreements. While other laws, such as the Personal Data Protection Law (PDP Law), the Electronic Information and Transactions Law (ITE Law), and other sectoral regulations address digital agreements, they tend to emphasize procedural and technical elements rather than the substantive meaning and characteristics of consent. The Civil Code serves as the primary reference for determining the validity of consent or an agreement, while other laws function as *lex specialist* or supplementary regulations that may vary across sectors. As such, the Civil Code remains the core legal reference for assessing whether consent in contractual relationships is legally valid, including in digital contexts.

As mentioned earlier, in Indonesia, the main regulation on consent, especially those related to civil relations, is regulated in the Civil Code, also known as *Burgerlijk Weboek*. Viewed from a historical perspective, the preparation of the Indonesian Civil Code itself was greatly influenced by French Civil Code (Code Napoleon) and parts of Old Dutch law. In this case, the application of the principle of concordance made Dutch Civil Code an example for the Civil Code in Indonesia. The codification of Indonesian Civil Code itself then came into effect on January 1, 1848.³³ From the perspective of its historical formation, it is evident that the legal requirements for a valid agreement, such as consent, under the Indonesian Civil Code were developed during the colonial era, long before the emergence of digital transactions as they exist today. Consequently, the conception and characteristics of consent deemed valid under the Civil Code may no longer be adequate to accommodate the forms of agreements and contractual relationships that arise through today's digital platforms.

28 Corren, "The Consent Burden in Consumer and Digital Markets," 554.

29 Leonhard, "The Unbearable Lightness of Consent in Contract Law," 67–68.

30 Leonhard, 67–68.

31 Bietti, "Consent as a Free Pass," 320–21.

32 Richards and Hartzog, "The Pathologies of Digital Consent."

33 Aisah Arman et al., *Selang Pandang Sistem Hukum Di Indonesia* (Jakarta: Kencana Prenada Media, 2016), 138–42.

In Indonesian Civil Code, consent is one of the requirements for a valid agreement. Referring to Article 1320 of the Indonesian Civil Code, it is regulated that the requirements for a valid agreement include 1) consent, 2) legal capacity, 3) a certain thing, and 4) a lawful cause. In this case, consent and legal capacity are subjective requirements because they concern the contracting parties, while a certain thing and a lawful cause are objective requirements of the agreement because they relate to the agreement itself.³⁴ According to R. Subekti, consent is a condition where the subject of the agreement agrees to the main matters of the agreement. In this case, what one party wants is also what the other party wants, so they desire something reciprocally.³⁵ According to J. Satrio, agreement is a conformity of will between the parties where the will meet and must be expressed. In this context, it is emphasized that the existence of will alone does not establish an agreement, the will must be expressed or made manifest and must be understood by the other party.³⁶ According to Lily Mulyati et al., the term “consent” can also be interpreted as “permission,” whereby “the two parties entering into an agreement must agree or consent to the essential terms of the agreement.”³⁷

However, upon closer examination, the Civil Code does not explicitly define consent. Article 1321 of the Civil Code only states that “consent is not valid if it is made due to error, coercion, or fraud.” In this regard, Nursyamsi Ichsan argues that the meaning of consent in the Civil Code must be interpreted through the *argumentum a contrarium* method, interpreting a provision based on its opposite. Accordingly, she suggests that the meaning of “consent” in the Civil Code is the opposite of “not consent,” implying that valid consent must be free from error, coercion, or fraud.³⁸ Furthermore, to better understand how the Civil Code implicitly shapes the contours of valid consent, the following section will elaborate on each of these elements in greater detail:³⁹

- a. First, the element of error (regulated in Article 1322 of the Civil Code). According to R. Subekti, a mistake occurs if one of the parties makes a mistake in relation to the main matters of the agreement, namely with respect to the goods that are the object of the agreement or the person who is the subject of the agreement. In this case, the mistake or error must be such that if the consenting party were not mistaken, the other party would not have given their consent. For example, someone mistakenly buys a painting they believe to be by artist A, but it turns out the work is just an imitation. In this case, the seller of the painting knows the work is an imitation but allows the buyer to be mistaken. Thus, there is an element of error involved in the transaction. However, it is important to note that this error must be known to the counterparty of the transaction. In this case, if the opposing party (seller) does not know that they are dealing with a person who makes a mistake, then the consent is still considered valid.⁴⁰
- b. Second, the element of coercion (regulated in Articles 1323 to 1327 of the Civil Code) occurs when there is certain coercion or threat that makes someone give their consent due to a feeling of being threatened or fear. In this case, it is important to note that the element of coercion referred to in the Civil Code is spiritual or mental coercion rather than bodily or physical coercion. The threatened force must also be an act prohibited by law, for example, being threatened with death.⁴¹
- c. Third, the element of fraud (regulated in Article 1328 of the Civil Code), arises when one party deliberately provides false or incorrect information accompanied by deception to persuade the opposing party to give consent. There must be act or series of lies to persuade the other party to give consent. For example, someone selling counterfeit cell phones carries out a series of actions by actively manufacturing fake cell phones, producing fake warranty cards, and offering their product original, to deceive other parties.⁴² As a note, apart from causing defects in the agreement, fraudulent conduct can also be categorized as a criminal act that can be prosecuted under criminal law.⁴³

Furthermore, besides the absence of elements of error, coercion, or fraud, in Indonesia, giving consent must also be carried out by someone who is legally competent. In this case, a person is considered incompetent only

34 Aisah Arman et al., 163.

35 Subekti, *Hukum Perjanjian*, 21st ed. (Jakarta: Intermasa, 2010), 17.

36 J. Satrio, *Hukum Jaminan (Hak-Hak Jaminan Kebendaan)* (Bandung: PT. Citra Aditya Bakti, 1993), 129.

37 Aisah Arman et al., *Selayang Pandang Sistem Hukum Di Indonesia*, 163.

38 Nursyamsi Ichsan and Muh. Ramli, *Hukum Perjanjian Dan Bisnis* (Sumatera Barat: CV Azka Pustaka, 2022), 56.

39 Elly Erawati and Herlien Budiono, *Penjelasan Hukum Tentang Kebatalan Perjanjian* (Jakarta: National Legal Reform Program, 2010), 56; Subekti, *Hukum Perjanjian*, 23–24.

40 Subekti, *Hukum Perjanjian*, 23–24.

41 Subekti, 23–24.

42 Subekti, 23–24.

43 Samuel M.P. Hutabarat, *Penawaran Dan Penerimaan Dalam Hukum Perjanjian* (Jakarta: Grasindo, 2010), 35–40.

if the party making the agreement is not an adult or is under guardianship.⁴⁴ However, if these conditions are not met, then the consent given in the agreement will not automatically become null and void but can be submitted for cancellation.⁴⁵ Referring to the provisions of Indonesian Civil Law, consent and legal capacity are considered subjective elements of an agreement. Therefore, if consent is improperly given or if one of the parties is deemed legally incompetent, the agreement may be subject to annulment by the court. It is important to understand that the cancellation of an agreement differs from an agreement void by law. In the case of cancellation, the agreement remains valid and binding on both parties until a court rules otherwise. However, if the agreement is void by law, it is considered as though the agreement never existed. Therefore, in cases where consent is improperly given, the party who feels their consent was not freely given may file for annulment in court.⁴⁶

While the primary focus of this paper is on the concept of consent under the Indonesian Civil Code, it is important to briefly acknowledge the role of the PDP Law (Law No. 27 of 2022), especially as this paper also analyses digital platform transactions. The PDP Law introduces the requirement of “explicit consent” as a legal basis for personal data processing. Article 22 of the PDP Law stipulates that consent for the processing of personal data must be given in written or recorded form. If the consent is given for multiple purposes, it must: (1) be clearly distinguishable from other matters, (2) be provided in a format that is understandable and easily accessible, and (3) use plain and clear language. If these conditions are not met, the consent is deemed null and void by operation of law.⁴⁷ Furthermore, Article 9 of the PDP Law provides that “*Data subjects have the right to withdraw consent for the processing of their personal data previously given to the data controller.*”⁴⁸ These standards arguably expand the traditional understanding of valid consent beyond the Civil Code’s focus on the absence of error, coercion, or fraud, by also demanding that consent be explicit, limited in scope, and easy to understand. However, such enhanced consent requirements are limited to transactions involving personal data processing. The PDP Law does not address whether digital consent, often obtained through opaque interfaces or pre-ticked boxes, can truly reflect informed and voluntary agreement. Nor does it apply to other types of digital platform agreements, such as sales or service contracts. Thus, while the PDP Law modernizes data governance, it does not resolve the deeper conceptual challenges of consent in the broader digital contractual landscape, which remains primarily governed by the Civil Code.

3.2 The Issues of Consent in Digital Platforms

The main issue with implementing consent on digital platforms lies in the practice of obtaining consent that may not fully reflect informed and voluntary consumer agreement, particularly when it is given through standardized agreements and in the absence of real alternatives. A study by Gunawan et al, found that six out of ten Indonesian e-commerce websites do not allow guest checkouts and require users to agree to the terms and conditions by ticking a box during customer registration.⁴⁹ Citing Subekti, the study also emphasizes that most users do not read legal documents, especially lengthy ones, raising concerns about the meaningfulness of such consent mechanisms.⁵⁰ This highlights how consent is often reduced to a formal act, such as ticking a box, without ensuring genuine comprehension or freedom of choice. This situation renders the concept of consent as an expression of consumer autonomy on digital platforms merely illusory. Additionally, not only does it fail to represent true individual autonomy, but providing consent on digital platforms also carries the potential to harm consumers.

On digital platforms, consumers are generally considered to give consent to the platforms they visit by clicking “I agree,” “I accept,” “Ok,” “I have read and understood the terms,” or even by not clicking any buttons (for example, a notification stating that by accessing this site, you are deemed to agree to our terms and conditions).⁵¹ In this context, by clicking a button or performing similar actions, consumers are deemed to have agreed to the terms and conditions or policies set by business actors, and these actions are generally recognized as forming a legally binding agreement.⁵² As previously explained, under Article 1320 of the Indonesian Civil Code,

44 R. Subekti, *Kitab Undang-Undang Hukum Perdata*, art. 1330.

45 Subekti, *Hukum Perjanjian*, 25.

46 Subekti, 20.

47 Republic of Indonesia, “Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi,” Pub. L. No. 27 Tahun 2022, LN 196, TLN 6820 (2022), art. 23.

48 Republic of Indonesia, art. 9.

49 Aloysius Bernanda Gunawan, “Socialization of Terms of Use and Privacy Policy on Indonesian E-Commerce Websites,” *Journal of Social Science* 1, no. 3 (July 26, 2020): 45, <https://doi.org/10.46799/jss.v1i3.35>.

50 Gunawan, “Socialization of Terms of Use and Privacy Policy on Indonesian E-Commerce Websites.”

51 Corren, “The Consent Burden in Consumer and Digital Markets,” 563–64.

52 Richards and Hartzog, “The Pathologies of Digital Consent,” 1479.

an agreement is considered valid if it meets four essential elements: consent, legal capacity, a certain thing, and a lawful cause. Therefore, when consumers click a button or take similar actions, as long as this consent is given for a specific purpose and with a lawful cause, the agreement is considered legally valid and binding. That said, when a consumer clicks the “I agree” button on the terms and conditions, one of the clauses might state that the business actor has the right to access the consumer’s residential location information. By this act of clicking, the consumer is bound to an agreement with the digital platform operator. In this case, through this consent, consumers have given business actors the right to access their personal data, and consumers are also bound to the obligation of allowing business actors to exercise their rights.

Problems arise when most consumers click or take steps to provide consent without first reading or understanding the terms and conditions. In fact, it is highly likely that digital platforms operators will set terms and conditions for transactions that only aim to benefit them and, on the contrary, burden or harm consumers. For example, business actors might set terms and conditions that require consumers to provide personal information enabling profiling and targeted advertising. The problem is exacerbated by the practice of dark patterns, which are often used by business actors to manipulate consumer decision-making through the interface design of the digital platforms they create. These conditions raise the question of whether the consent given by consumers represents their true will and justifies the moral transformation of such business practices into legitimate conduct.⁵³

In more detail, this paper identifies at least three factors that suggest that digital consent, such as ticking the “I agree” checkbox and other similar actions, may not fully reflect informed and voluntary consumer agreement:

- a. First, consent is often given conditions of a lack of understanding. As mentioned earlier, numerous studies have shown that consumers frequently agree to terms and conditions without reading or fully comprehending them. Even when consumers do read such documents, they often fail to grasp the implications of their consent due to overly lengthy texts, complex or technical language, limited access to information, or constraints related to individual literacy and rationality.⁵⁴ In the Indonesian context, the 2024 National Consumer Empowerment Index Survey conducted by the Ministry of Trade reported a score of 60.11, indicating that Indonesian consumers are at the ‘capable’ level of empowerment.⁵⁵ Although this marks an improvement, the digital literacy level remains in the “moderate” category with a score of 3.5 out of 5. As noted by consumer protection expert Ermanto Fahamsyah, “*despite improvements in restoring consumer rights, consumer literacy in Indonesia remains low. Many consumers do not understand their rights and obligations, particularly in digital transactions.*”⁵⁶ These low literacy findings suggest that there remains a significant risk that consent is granted without comprehensive understanding in the Indonesian digital environment.
- b. Second, consent is given under conditions of limited choice and power. The existence of agreements or terms and conditions on digital platforms are generally made in the form of standardized agreement, where the clauses are fixed and have been prepared unilaterally by digital platform business actors. According to Sudikno Mertokusumo, in standard agreements one of the parties (business actors) has a superior economic and psychological position compared to the other party. As a result, the counterparty is inevitably bound (take it or leave it).⁵⁷ In line with this statement, Ahmadi Miru and Sutarman Yodo also explained that driven by their needs, the weak party of the standard agreements (consumer) is forced to accept the agreement. This condition means that consumers do not have power and have much less or even no chance to bargain with the terms and conditions provided by business actors.⁵⁸
- c. Third, consent is given under manipulation or influence from the practice of dark patterns used by business actors. Dark patterns are pervasive on digital platforms.⁵⁹ According to Harry Brignull, dark patterns are

53 Bietti, “Consent as a Free Pass,” 321; David Jamieson, Rob Wilson, and Mike Martin, “Just Ticking the Box: A Social Informatics Model of the Consequences of Consent,” 2019, 295.

54 Leonhard, “The Unbearable Lightness of Consent in Contract Law,” 67–68; Richards and Hartzog, “The Pathologies of Digital Consent,” 1479–81.

55 Ditjen Perlindungan Konsumen dan Tertib Niaga, “Diseminasi Hasil Survei Indeks Keberdayaan Konsumen Tahun 2024,” Government website, December 18, 2024, <https://ditjenpkn.kemendag.go.id/berita/diseminasi-hasil-survei-indeks-keberdayaan-konsumen-tahun-2024>.

56 Ermanto Fahamsyah, “Seperempat Abad UU Perlindungan Konsumen: Tantangan Dan Harapan,” News, January 10, 2025, <https://www.hukumonline.com/berita/a/seperempat-abad-uu-perlindungan-konsumen--tantangan-dan-harapan-lt678009202512d/?page=4>.

57 Achmad Burso, “*Pengaruh Perkembangan Perjanjian Baku Terhadap Penerapan Asas Kebebasan Berkontrak Dalam Rangka Menghadapi Era Masyarakat Ekonomi ASEAN*” (Semarang: Undip Press, 2016), p. 14–15.

58 Richards and Hartzog, “The Pathologies of Digital Consent,” 1488.

59 Arunesh Mathur et al., “Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites,” vol. 3 (Proceedings of the ACM on Human-Computer Interaction, USA: CSCW, 2019), 2.

defined as “tricks used in websites and apps that make you do things that you didn’t mean to, like buying or signing up for something.”⁶⁰ Dark patterns “nudge” consumers by relying on cognitive mechanisms and exploiting certain specific human biases or heuristics.⁶¹ In the context of this issue, through the practice of dark patterns, business actors create user interface designs that nudge consumer choices in the way they desire, such as giving consent to the terms and conditions they provide. According to Chunlin Leonhard, “*The party with more bargaining power, resources, and better access to information is in a better position to manipulate (consent).*”⁶² In the Indonesian context, Hafidza Safara et al. found that many consumers are unable to recognize the presence of dark patterns on digital platforms, particularly e-commerce websites. Consumers often assume that such interface elements are standard features or believe that they are not influenced by them. Factors such as vague or unclear information, trust in the platform’s design, and confusion between persuasive marketing strategies and manipulative tactics contribute to what the authors refer to as “dark pattern blindness”.⁶³

The condition of providing digital consent in the form of filling in the “I agree” checkbox and other similar forms, which is considered may not fully reflect the consumer’s informed and voluntary consent, means that consent can no longer be considered to reflect or encourage individual consumer autonomy. Studies explain that a person is autonomous when they can make decisions independently and lead their life according to their personal values.⁶⁴ According to Joanna Demaree-Cotton and Roseanna Sommers, there are two main components needed for autonomy: “*1) freedom from external interference or constraints and 2) the possession of certain types of decision-making capacities.*”⁶⁵ In this case, the presence of manipulation to influence consumers into giving consent indicates external interference with decision-making. Such interference may take the form of design choices or dark patterns employed by business actors to elicit consumer consent. On the other hand, limited understanding, restricted choices, and lack of power also reflect a diminished decision-making capacity on the part of consumers. These factors undermine consent as a mechanism for realizing or expressing individual autonomy, making it appear more symbolic than substantive.

Furthermore, not only does consent fail to reflect and encourage individual autonomy but providing consent on digital platforms has the potential to cause harm to consumers. According to Elettra Bietti, consent can harm consumers in three ways: “*1) burdening them with decisions they cannot meaningfully make, 2) subordinating their core inalienable rights of respect and dignity to the economic interests of platforms, and 3) creating widespread ideological resistance against alternatives.*”⁶⁶ In line with this opinion, Ella Corren, in her work, also explains that “*consent shifts a considerable burden, to collect and process information, to make informed decisions, and to be liable for adverse results from business actors to consumers*”⁶⁷. According to Corren, in giving consent, consumers are actually burdened by the *ex-ante* and the *ex-post* burdens. *Ex-ante* burdens refer to challenges faced by individuals before giving consent, such as complex interfaces, information overload, or lack of real alternatives. *Ex-post* burdens, in contrast, refer to harms or obligations after consent has been given, such as difficulty withdrawing consent or unanticipated legal consequences.⁶⁸ The brief explanation is as follows:

- a. *Ex-ante* burdens refer to the informational and decision-making burdens imposed on consumers before giving consent. This burden arises from the significant information asymmetry between consumers and business actors, coupled with limited consumer rationality and limited attention spans.⁶⁹ For example, when buying a used car, the car seller will certainly reveal some information such as the price and type of car. However, consumers may need more information for consent to be informed and rational, such as price comparison information with other sellers or regarding the condition of the engine. In this case, the process of obtaining this information can be cheap and simple or expensive and complicated depending

60 Harry Brignull, “What Are Deceptive Patterns?,” Deceptive Patterns, accessed November 15, 2023, <https://darkpatterns.org/>.

61 “Dark Commercial Patterns - OECD Digital Economy Papers,” *OECD Publishing* 336 (October 2022): 9.

62 Leonhard, “The Unbearable Lightness of Consent in Contract Law,” 62.

63 Hafidza Safara Zahratunnisa et al., “How People Recognize Dark Pattern in E-Commerce?,” *Jurnal Sistem Informasi* 21, no. 1 (March 26, 2025): 95, <https://doi.org/10.21609/jsi.v21i1.1479>.

64 Joanna Demaree-Cotton and Roseanna Sommers, “Autonomy and the Folk Concept of Valid Consent,” Law and Economics Working Papers, August 13, 2021, 4.

65 Demaree-Cotton and Sommers, 4.

66 Bietti, “Consent as a Free Pass,” 309.

67 Corren, “The Consent Burden in Consumer and Digital Markets,” 551.

68 Corren, “The Consent Burden in Consumer and Digital Markets,” 551.

69 Corren, 559.

on the type of transaction. Not only is it a burden to obtain information, but to make a decision to give consent, consumers must also understand and consider the potential benefits against the potential costs of the transaction. This activity requires a certain amount of time and mental resources.⁷⁰

b. *"Ex-post burdens are legal burdens and rights-derogating burdens associated with the status of having consent."*⁷¹ This burden includes obligations related to consent as a legal construct. As previously explained, consent is a moral concept that can change actions that were initially impermissible into permissible, which then gives rise to the consequence of the emergence of ex nihilo obligations.⁷² Corren explains that: *"When a person consents to the actions of another, they are held accountable for their consent and consequently their legal status changes. They now have an obligation they did not have before — to uphold that which they consented to — and this obligation constrains their rights and potential legal remedies."*⁷³ For example, in the case of Campbell vs Facebook, Facebook was sued by its users for scanning and collecting data from their private messages, but they argued back that the users had no right to sue because they had "agreed" to the terms and conditions of the Facebook platform.⁷⁴

While Corren's framework on the burdens of consent originates from western scholarship, similar structural issues can be observed in Indonesia's digital landscape. For instance, in terms of *ex-ante* burden, Indonesian consumers frequently face consent requests on fintech platforms such as online lending or paylater services. These platforms often highlight attractive features, such as the loan amount or repayment period, while providing limited information regarding hidden costs, data usage, or algorithmic profiling that accompanies the consent. This creates a significant information asymmetry between consumers and businesses, where users may not be sufficiently informed to evaluate the potential benefits in relation to the associated risks. On the other hand, in terms of *ex-post* burden, similar practices are also observed in Indonesia through the automatic renewal of prepaid mobile data or call packages. After the validity period ends, the package is often renewed automatically using the remaining credit balance, sometimes without clear or timely notification.⁷⁵ When users complain, service providers typically justify the deduction by referring to prior consent or general terms and conditions. However, many consumers are unaware of such mechanisms, and reversing the charges is often difficult or impossible. This reflects how the burden of consent continues even after the transaction and demonstrates how consumers appear to lose their rights because they had "agreed" to the terms and conditions.

3.3 The Inadequacy of Consent Concept in Digital Platform Agreements in Indonesia

Indonesia's current concept of consent in contract law is no longer adequate to address the complexities of digital platform environments. As previously discussed, mechanisms such as "I agree" checkboxes or similar standardized forms of consent may fail to reflect the consumer's fully informed and voluntary agreement. This undermines the assumption that such consent guarantees individual autonomy. Although Indonesian law treats this form of consent as binding, as long as it is free from error, coercion, or fraud,⁷⁶ it does not adequately account for whether the user truly understood the terms. The Civil Code focuses mainly on the legal capacity of parties, limiting the definition of incompetence to minors or those under guardianship.⁷⁷ This narrow perspective does not sufficiently address modern power imbalances and informational asymmetries common in digital transactions. These conceptual limitations become particularly evident when examined through actual court decisions involving digital platforms.

One concrete example illustrating the inadequacy of the concept of consent in Indonesia with respect to digital platforms is Decision Number 527/Pdt.G/2019/PN.Jkt.Pst. between Zico and PT. Indonesian Transportation Solutions (Grab Company). In this case, Zico filed a lawsuit against Grab for alleged actions that caused him a loss of one million rupiah. However, Zico did not know that the terms and conditions of the Grab platform, to which he had agreed, stipulated that any disputes would be resolved through the Indonesian National Arbitration Board (BANI). The dispute resolution process at BANI requires significant costs. For example, the cost of registering a case with BANI in 2023 was five million rupiah, and administrative, inspection, and arbitrator fees

70 Corren, 559–79.

71 Corren, 559.

72 Corren, 559.

73 Corren, 580.

74 Corren, 559.

75 Firmansyah, "Media Konsumen - Kesalahan Sistem Perpanjangan Paket Data Internet XL Yang Sangat Merugikan," November 17, 2022, https://mediakonsumen.com/2022/11/17/surat-pembaca/kesalahan-sistem-perpanjangan-paket-data-internet-xl-yang-sangat-merugikan?utm_source=chatgpt.com#google_vignette.

76 R. Subekti, *Kitab Undang-Undang Hukum Perdata*, art. 1320.

77 R. Subekti, art. 1330.

start from twenty million rupiah (Indonesian National Arbitration Board, 2024). This situation was burdensome for Zico because the cost of accessing justice was significantly higher than the value of his loss. The arbitration cost was twenty times greater than the amount he sought to recover, which illustrates a structural injustice. Furthermore, Zico could not access other dispute resolution mechanisms, such as district courts or the Consumer Dispute Resolution Board (BPSK), because Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that “District Courts have no authority to adjudicate disputes between parties who are bound by an arbitration agreement.” Zico filed a lawsuit at the Central Jakarta District Court, but the court rejected the lawsuit.

One reason the judges rejected Zico’s lawsuit was their view that Zico had agreed or given his consent to the terms and conditions proposed by Grab. The judges did not find any element of error, coercion, or fraud in the consent process. Zico was also considered legally competent, fulfilling the subjective terms of the agreement. Therefore, in the judges’ view, Zico had legally bound himself to the agreement, and according to Article 1338 paragraph (1) of the Civil Code, “all agreements made legally apply as law for those who make them.” The judges’ views on the validity of Zico’s consent are evident from their considerations:

“Considering that both parties have agreed to state that all disputes and differences of opinion that may arise in the implementation of this agreement will be resolved by both parties choosing the Indonesian National Arbitration Board (BANI) which will be held in DKI Jakarta, the Parties agree that BANI’s decision is final and binding on the Parties and must be fully enforced, thus the Central Jakarta District Court has no authority to try the a quo case.”⁷⁸

This judges’ reasoning in Zico v. Grab reveals a formalistic approach that treats the act of ticking the “I agree” box as sufficient to fulfill the legal requirement of consent under Article 1320 of the Indonesian Civil Code. While the judges acknowledged the existence of consent through Zico’s acceptance of Grab’s terms and conditions, they did not inquire into whether that consent was truly informed, freely given, or meaningful in the context of digital contracts. Instead, they relied solely on the absence of error, coercion, or fraud as outlined in Articles 1320 to 1337, without addressing the broader issue of information asymmetry between digital platforms and consumers. The court also failed to examine the accessibility or clarity of the dispute resolution clause, which Zico allegedly agreed to. This reflects the doctrinal limitations of the Civil Code, which treats consent as a formal act rather than a substantive one. Although the judgment aligns with existing legal doctrine, it ultimately illustrates how outdated legal standards fall short in protecting consumers in digital environments where true understanding and autonomy are often compromised.

A similar case occurred in Decision Number 588/Pdt.G/2020/PN.Jkt.Brt between Amir and PT. Ecart Webportal Indonesia, the company behind www.lazada.co.id (Lazada). Amir filed a lawsuit against Lazada for alleged actions causing him a loss of seventeen million rupiah. However, Amir was unaware that Lazada’s terms and conditions stipulated that disputes would be resolved through BANI in Jakarta. Similar to Zico’s case, the judges considered that Amir had legally bound himself to Lazada’s terms and conditions through his consent. Therefore, he had to comply with the agreed provisions. The judges’ view is evident from their statement “Considering that, any disputes that may arise according to the agreed terms and conditions will be resolved through BANI.”⁷⁹

Referring to Chunlin Leonhard’s view, the judges’ interpretation of the validity of consent in these decisions is normal. Judges or courts tend to *“focus on evidence such as signatures on an agreement, spoken words, or other actions related to the transaction.”*⁸⁰ They place great emphasis on signatures, as concrete evidence that fulfills the element of legal certainty.⁸¹ Courts assume that parties have read and understood the contracts they sign, even when that assumption does not reflect actual practice.⁸² This assumption becomes more problematic in digital contexts, where contracts are frequently long, complex, and presented in standardized formats. This means that consent can still be considered valid even if it does not truly represent the consumer’s will or assent.

However, reflecting on the Zico and Amir cases, even though the judges’ interpretation and consideration in assessing the validity of consumer consent may be justifiable. In this case, Indonesian judges certainly cannot turn a blind eye and need to consider broadening the interpretation of the concept of consent that currently exists in Indonesian Civil Code. Assessment of the validity of giving consent on digital platforms should not only be limited to the prohibition of elements of error, coercion or fraud, but also take into account other elements such

78 Central Jakarta District Court, Central Jakarta District Court Decision Number 527/Pdt.G/2019/PN.Jkt.Pst, (n.d.) Ibid, p. 67.

79 Ibid, p. 42.

80 Leonhard, “The Unbearable Lightness of Consent in Contract Law,” 71.

81 Leonhard, 69–72.

82 Leonhard, 71.

as the capacity for understanding of the party giving consent, access to information, potential manipulation practices carried out through dark patterns. In contrast, some Western jurisdictions, for example, have developed the doctrine of unconscionability, which allows courts to refuse to enforce contracts in situations where one party has taken unfair advantage of another's ignorance, vulnerability, or lack of bargaining power.⁸³ While Indonesia, as a civil law country, does not formally recognize this doctrine, the concept illustrates how some legal systems have adapted contract law to better protect weaker parties in unequal relationships. As a note, the reference here is not to suggest direct transplantation, but to highlight how Indonesian law may lack equivalent tools for addressing structural imbalances in digital platform contracts.

In this case, the emergence of the practice of giving consent that is not meaningful and instead results in injustice and harm to consumers demonstrates that the application of the Indonesian concept of consent on digital platforms fails to respect consumer dignity as autonomous individuals and infringes upon their human rights to make free choices and be free from coercion. As discussed earlier, consumers are in a weaker position economically, in terms of resources and in access to information compared to business actors.⁸⁴ To create fairness and balance in the marketplace, this disparity must be addressed by the government through appropriate legislation. The Indonesian government has a constitutional and statutory obligation to safeguard consumer rights and autonomy. Article 28I (4) of the 1945 Constitution and Article 71 of Law No. 39 of 1999 on Human Rights states that protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government. Additionally, Article 29 (1) of Law No. 8 of 1999 on Consumer Protection obliges the government to foster a consumer protection system that ensures the fulfillment of both consumer and business rights and obligations. Consumers, as individuals, deserve protection from exploitative practices by businesses. The government must ensure that consent, intended to empower consumers, does not become a mechanism for business actors to unfairly transfer responsibilities onto them. In the context of digital platform agreements, this duty includes revisiting outdated standards of consent to ensure that businesses do not exploit legal formalities to shift risks or responsibilities onto consumers who may not fully understand the terms. Consent should serve as a mechanism of empowerment, not exploitation. Legal reform is urgently needed to ensure that consumer rights in the digital economy are meaningfully protected under Indonesian law.

4. Conclusion

Indonesian Civil Code's current concept of consent is no longer adequate to be applied in digital platform environments. Consent mechanisms such as "I agree" checkboxes or standardized digital forms may fail to represent the fully informed and voluntary will of the consumer, undermining the ideal principle of individual autonomy. Given that autonomy is an essential expression of human rights, particularly the freedom to make informed choices without coercion, violations of meaningful consent also raise human rights concerns. While this paper does not offer detailed regulatory proposals, the analysis suggests that Indonesian legal doctrine could benefit from rethinking the formalistic approach to consent. Courts and lawmakers might consider supplementing the existing criteria, such as absence of error, coercion, or fraud, with substantive safeguards that ensure consumers' real understanding, fair access to information, and the growing use of manipulative interface designs. Such an approach may provide a stronger foundation for developing more effective consumer protection frameworks in the digital era.

ACKNOWLEDGMENT

I would like to thank my work institution National Research and Innovation Agency (BRIN), especially the Research Centre for Law. I am grateful to Jurnal HAM for the opportunity they have given me. Furthermore, I acknowledge the use of AI tools in assisting with grammar and language checking for this work. These tools were used to enhance clarity and ensure accuracy in the writing process.

REFERENCES

Aisah Arman, Gandhi, L.M, Azizah Muhamad, Fully Handayani Ridwan, Lily Mulyati, and Manullang, E. Fernando M. *Selayang Pandang Sistem Hukum Di Indonesia*. Jakarta: Kencana Prenada Media, 2016.

83 Leonhard, 74.

84 Burso, "Pengaruh Perkembangan Perjanjian Baku Terhadap Penerapan Asas Kebebasan Berkontrak Dalam Rangka Menghadapi Era Masyarakat Ekonomi ASEAN," 14–15.

Barnett, Randy E. "A Consent Theory of Contract." *Columbia Law Review* 86, no. 2 (March 1986): 269. <https://doi.org/10.2307/1122705>.

Bietti, Elettra. "Consent as a Free Pass: Platform Power and the Limits of the Informational Turn." *Pace Law Review* 40, no. 1 (January 17, 2020): 310. <https://doi.org/10.58948/2331-3528.2013>.

Brignull, Harry. "What Are Deceptive Patterns?" *Deceptive Patterns*. Accessed November 15, 2023. <https://darkpatterns.org/>.

Burso, Achmad. *"Pengaruh Perkembangan Perjanjian Baku Terhadap Penerapan Asas Kebebasan Berkontrak Dalam Rangka Menghadapi Era Masyarakat Ekonomi ASEAN."* Semarang: Undip Press, 2016.

Central Jakarta District Court. Central Jakarta District Court Decision Number 527/Pdt.G/2019/PN.Jkt.Pst, (n.d.).

Corren, Ella. "The Consent Burden in Consumer and Digital Markets." *Harvard Journal of Law & Technology* 36, no. 2 (2023).

"Dark Commercial Patterns - OECD Digital Economy Papers." *OECD Publishing* 336 (October 2022): 2–93.

Demaree-Cotton, Joanna, and Roseanna Sommers. "Autonomy and the Folk Concept of Valid Consent." *Law and Economics Working Papers*, August 13, 2021.

Deutch, Sinai. "Are Consumer Rights Human Rights?," n.d.

Ditjen Perlindungan Konsumen dan Tertib Niaga. "Diseminasi Hasil Survei Indeks Keberdayaan Konsumen Tahun 2024." Government website, December 18, 2024. <https://ditjenpktn.kemendag.go.id/berita/diseminasi-hasil-survei-indeks-keberdayaan-konsumen-tahun-2024>.

Elly Erawati and Herlien Budiono. *Penjelasan Hukum Tentang Kebatalan Perjanjian*. Jakarta: National Legal Reform Program, 2010.

Ermanto Fahamsyah. "Seperempat Abad UU Perlindungan Konsumen: Tantangan Dan Harapan." News, January 10, 2025. <https://www.hukumonline.com/berita/a/seperempat-abad-uu-perlindungan-konsumen-tantangan-dan-harapan-lt678009202512d/?page=4>.

Firmansyah. "Media Konsumen - Kesalahan Sistem Perpanjangan Paket Data Internet XL Yang Sangat Merugikan," November 17, 2022. https://mediakonsumen.com/2022/11/17/surat-pembaca/kesalahan-sistem-perpanjangan-paket-data-internet-xl-yang-sangat-merugikan?utm_source=chatgpt.com#google_vignette.

Gerald Gaus, Christi Favor, and Julian Lamont. "Behavioral Law and Economics: The Assault on Consent, Will, and Dignity." *Stanford University Press*, August 20, 2008. <https://ssrn.com/abstract=1274444>.

Gunawan, Aloysius Bernanda. "Socialization of Terms of Use and Privacy Policy on Indonesian E-Commerce Websites." *Journal of Social Science* 1, no. 3 (July 26, 2020): 41–45. <https://doi.org/10.46799/jss.v1i3.35>.

Hurd, Heidi M. "The Moral Magic of Consent." *Legal Theory* 2, no. 2 (June 1996): 121–46. <https://doi.org/10.1017/S1352325200000434>.

J. Satrio. *Hukum Jaminan (Hak-Hak Jaminan Kebendaan)*. Bandung: PT. Citra Aditya Bakti, 1993.

Jamieson, David, Rob Wilson, and Mike Martin. "Just Ticking the Box: A Social Informatics Model of the Consequences of Consent," 2019.

Leonhard, Chunlin. "The Unbearable Lightness of Consent in Contract Law." *Case Western Reserve Law Review* 63, no. 1 (2012).

Marshall, Jill. *Personal Freedom through Human Rights Law ? Autonomy, Identity, and Integrity under the European Convention on Human Rights*. International Studies in Human Rights, vol. 98. Leiden: M. Nijhoff, 2009.

Martinelli, Imelda, Satria Hadi Wibowo, Gertrud Felita Maheswari Andreas, and Majolica Ocarina Fae. "Penggunaan Click-Wrap Agreement Pada E-Commerce: Tinjauan Terhadap Keabsahannya Sebagai Bentuk Perjanjian Elektronik." *Jurnal Supremasi*, March 24, 2024, 73–86. <https://doi.org/10.35457/supremasi.v14i1.2797>.

Mathur, Arunesh, Gunes Acar, Michael J. Friedman, Elena Lucherini, Jonathan Mayer, Marshini Chetty, and Arvind Narayanan. "Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites," 3:1–32. USA: CSCW, 2019.

Nursyamsi Ichsan and Muh. Ramli. *Hukum Perjanjian Dan Bisnis*. Sumatera Barat: CV Azka Pustaka, 2022.

R. Subekti. *Kitab Undang-Undang Hukum Perdata*. Jakarta: Pradnya Pramita, 2004.

Republic of Indonesia. Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi, Pub. L. No. 27 Tahun 2022, LN 196, TLN 6820 (2022).

Richards, Neil, and Woodrow Hartzog. "The Pathologies of Digital Consent" 96 (2019).

Roberto Andorno. "Human Dignity and Human Rights." In *Handbook of Global Bioethics*, edited by Henk A. M. J. ten Have and Bert Gordijn, 1st ed. Springer Dordrecht Heidelberg New York London, 2013. <https://academic.oup.com/book/25568/chapter/192892967>.

Samuel M.P. Hutabarat. *Penawaran Dan Penerimaan Dalam Hukum Perjanjian*. Jakarta: Grasindo, 2010.

Subekti. *Hukum Perjanjian*. 21st ed. Jakarta: Intermasa, 2010.

Susser, Daniel, Beate Roessler, and Helen Nissenbaum. "Online Manipulation: Hidden Influences In A Digital World." *Georgetown Law Technology Review* 1 (2019): 45. <http://dx.doi.org/10.2139/ssrn.3306006>.

Watts, Lynelle, and David Hodgson. *Social Justice Theory and Practice for Social Work: Critical and Philosophical Perspectives*. Singapore: Springer Singapore, 2019. <https://doi.org/10.1007/978-981-13-3621-8>.

Wertheimer, Alan. "What Is Consent? And Is It Important?" *Buffalo Criminal Law Review* 3, no. 2 (January 1, 2000): 557–83. <https://doi.org/10.1525/nclr.2000.3.2.557>.

West Jakarta District Court. West Jakarta District Court Decision Number 588/Pdt.G/2020/ PN. Jkt. Brt (n.d.).

Zahratunnisa, Hafidza Safara, Imairi Etiveni, Betty Purwandari, and Erisva Hakiki Purwaningsih. "How People Recognize Dark Pattern in E-Commerce?" *Jurnal Sistem Informasi* 21, no. 1 (March 26, 2025): 82–97. <https://doi.org/10.21609/jsi.v21i1.1479>.

Author Statements:

Statement of Originality – The author declares that there is no conflict of interest in writing this article. This manuscript is the author's original work, has not been published previously, and is not under consideration for publication elsewhere.