



Reconstruction of the Principle of Justice of Contract Law against the Imbalance of the Parties in Commercial Contracts

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ABSTRACT

The rapid development of digital technology has transformed contractual systems in global trade. This study analyzes and reconstructs the principle of justice in Indonesian contract law, particularly concerning bargaining power imbalances in digital commercial contracts. Using a normative juridical approach, it examines positive legal norms, legal principles, and contract law doctrines within the digital context. The findings show that Indonesian contract law has not fully realized substantive justice, as the principle of balance has not been adequately integrated with protections for weaker parties in digital contracts. Consequently, reinterpretation and restructuring of contract norms are necessary, with emphasis on algorithmic transparency, legal accountability of digital platform operators, and stronger protection in electronic contracts.

INTRODUCTION

The development of digital technology has brought fundamental changes to the contractual system in global trade. The complexity of transactions continues to increase along with the rapid advancement of technology in the current era of globalization. The development of modern information technology is strongly supported by infrastructure built by the public and private sectors. This technology is now penetrating all aspects of life, thus encouraging the development of electronic commerce or *E-commerce* (Siregar, 2025b). Information technology includes all devices used to produce, store, modify, and apply information. Through the application of this technology, micro, small, and medium enterprises (MSMEs) can now access international markets more effectively. (Siregar, 2025a) This transformation not only touches on the technical aspect, but also changes the way people view legal and economic relations. If previously business transactions depended on face-to-face and direct negotiations, now these activities have shifted to the online realm through digital platforms that work automatically, quickly, and across national borders. This shift creates tremendous efficiency, but it also has consequences for the nature of the legal relationship between the parties to the contract. This is where a new form of contractual known as digital commercial contracts emerged, which is widely applied in e-commerce, marketplaces, as well as various algorithm-based service platforms. In this context, the principle of justice as the legal basis of classical contracts faces a severe test due to the existence of

The inequality of legal position that is now mediated by technology and controlled by the power of data (Kharisma & al., 2025). Normatively, the principle of freedom of contract in Article 1338 of the Civil Code (KUHPercivil) emphasizes that every agreement has the same legal force as the law for the parties who make it. However, in the practice of digital contracts, this principle often loses its substance due to the dominance of those who control technology, economics, and information. Platform providers typically set contracts in the form of a standard agreement, which limits the user's choice to only "agree" or "not to use the service". This situation gives rise to inequality of bargaining position, which makes justice a mere formality and erodes the meaning of substantive justice and contractual equilibrium that should be the main essence of treaty law (Aprilianti & Sudiro, 2024)

The phenomenon has historical roots in the contract law tradition that developed within the framework of 19th-century liberal individualism. The principle of *laissez-faire* and the principle of autonomy of the will uphold individual freedom, assuming that the law only plays a role in maintaining that freedom without state interference. However, in the context of today's digital economy, this paradigm is beginning to be questioned. The structure of the digital market controlled by giant tech corporations creates a sharp power gap between large business actors and individual users. In this condition, the individual's bargaining position weakens so that he no longer has an equal opportunity to determine the content of the agreement. This inequality creates an urgency to reconstruct the principle of justice so that contract law is able to adapt to the complex dynamics of the digital economy. The goal is that the law can still

provide proportionate protection for those who are structurally and technologically weak (F. Elian, 2023; J. Elian, 2023)

From an empirical perspective, various digital contract disputes reveal the rampant use of exculpation clauses and unilateral provisions that often harm consumers (Sadat et al., 2024). Such clauses are common in e-commerce practices, such as statements that the platform is not responsible for any form of the User's loss, or the unilateral right to change the Terms without notice. Such provisions are clearly contrary to the principle of good faith as stated in Article 1338 paragraph (3) of the Civil Code and the principles of consumer protection in (*Law Number 8 of 1999 concerning Consumer Protection, 1999*) about Consumer Protection. A number of court rulings in Indonesia show a new trend, where judges are starting to reinterpret digital contracts by focusing on substantive justice rather than formal justice based solely on the text of the contract. This approach marks the direction of the development of digital contract law that is more in favor of balance and protection of structurally weak parties in the digital ecosystem.

At the global level, academic discourse on the principle of justice in contract law has shifted towards a more normative, egalitarian orientation, with an emphasis on social balance. (R. Mitchener, 2025) in *European Journal of Law and Economics* reveals that the main problem in contemporary contract theory is to find a common ground between economic efficiency and distributive justice. In the Indonesian context, this dilemma has become even more complicated because there is no national regulation that explicitly regulates the digital contract model. The normative gap creates uncertainty in the application of the principle of justice to technology-based contractual practices, which can ultimately hinder the development of the digital legal system in a fair and proportionate manner. From a social point of view, the process of economic digitalization gives birth to a new form of dependence that is complex and multidimensional. Digital platform users now not only play the role of consumers, but also as data subjects which are the main source of economic value for digital companies. The inequalities that arise in digital contract relations are not only economic, but also epistemic and informational. Platform providers have authority over data, algorithms, and automated decision-making mechanisms, while users lose control over their personal data. Therefore, the principle of fairness needs to be reinterpreted by adding the dimensions of digital ethics, algorithmic transparency, and the right to manage personal data as an integral part of contractual rights in the digital era

A review of the national legal framework shows that applicable regulations, such as ITE Law Number 11 of 2008 and Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law) and its amendments, still focus on administrative aspects such as the validity of electronic documents and the use of digital signatures. However, these provisions have not touched on the realm of principles regarding contractual justice, the balance of positions of the parties, and mechanisms that ensure protection against structural inequality in digital contract relationships. This condition shows the weak normative foundation for the application of justice in digital contract law. Therefore, it is necessary to reconstruct the principles of justice that are more contextual,

adaptive to technological developments, and relevant to the ongoing socio-economic dynamics.

A number of previous studies in Indonesia have actually addressed the issue of contractual balance, but most of them still focus on conventional contracts. (I. F. J. Sadeli & al., 2023), for example, highlights the importance of the principle of balance in standard contracts, but has not touched on the integration of digitalization factors and technological innovation. Similarly, The urgency of this research lies in the need for the national legal system to adapt to the massive digital transformation. Without a reconstruction of the principle of justice, contract law risks losing its relevance and social legitimacy. This study is expected to make a theoretical contribution to the development of digital contract law in Indonesia, as well as normative recommendations for policymakers in formulating regulations that are fair and balanced between the interests of business actors and the protection of weak parties.

Thus, the purpose of this study is to analyze and reconstruct the principle of fairness in contract law against the imbalance of the position of the parties in digital commercial contracts in Indonesia. This research will examine the normative, juridical, and philosophical foundations of the principle of contractual justice, as well as offer a model of legal reconstruction that is appropriate to the social and technological context of the digital age.

THEORETICAL REVIEW

Classical Contract Theory

Classical contract law theory is based on the principle of freedom of contract and the principle of *pacta sunt servanda*, which views agreement as the embodiment of the autonomy of the will of the parties. In this frame of mind, the role of the state is limited to a minimum and does not interfere in the content of the agreement as long as the elements of the validity of the contract have been met. (Savigny, 1840) states that the contract is born from the meeting of minds between the parties which then binds them in full. In line with this view, Samuel Williston argued that justice in contracts is achieved when consent is formed through complete freedom without any pressure or coercion from any party. Nevertheless, classical contract theory is not without criticism. This approach is considered less responsive to real social and economic conditions, especially in contemporary commercial contract practices that often show inequality of bargaining positions between the parties.

The Inequality of Bargaining Power Theory

The idea of an imbalance of the positions of the parties developed as a critical response to the dominance of classical contract theory. (Gierke, 1957) The view that contracts cannot be understood solely as private relationships between individuals, but must be seen as a social relationship that contains dimensions of justice and social responsibility. Furthermore, (Atiyah, 1979) through his work *The Rise and Fall of Freedom of Contract*, he emphasizes that the concept of freedom of contract is often pseudo, especially in the practice of standard contracts. In this type of contract, one party generally has significant economic, technical, and information advantages, so the other party is in a weak and limited position in determining the content of the agreement. Therefore, the theory of the imbalance of the parties becomes an important conceptual foundation in assessing the urgency of the renewal and reconstruction of the principle of justice in modern contract law.

Distributive Justice Theory and Corrective Justice

The understanding of justice in contract law is rooted in the theory of justice in general. (Aristotle, 350 B.C.E.) classify justice into two main forms. Distributive justice is oriented towards the distribution of rights and obligations in a balanced and proportionate manner in accordance with the position and contribution of each party. Meanwhile, corrective justice functions as a mechanism for redressing inequality that arises due to a certain act or legal relationship. In the realm of commercial contracts, corrective justice has special significance when the substance of the agreement gives birth to structural injustices (Dahris Siregar, Faisal Sadat Soadun Harahap, 2024). In such conditions, the state through contract legal instruments is positioned as the authority to make corrections in order to restore balance and protect the interests of the parties fairly.

Social Justice Theory in Contract Law

The social justice approach views contracts not just as an expression of free will, but as a legal instrument that must be in line with the values of humanity, propriety, and social justice (Rawls, 1971) Through the concept of Justice as Fairness, it emphasizes that a legal order is said to be fair if it is able to provide real protection to the least advantaged group. In the context of contract law, the Rawlsian perspective demands that there be restrictions on the freedom of contract if its application actually creates significant inequality and harms one of the parties. This thinking is in line with the idea (Pound, 1922) Regarding law as a means of social engineering, which places contract law as an instrument to organize and balance the interests of individuals and society in a fair manner.

Reconstruction of the Principle of Justice in Contract Law

Legal reconstruction is directed to carry out conceptual updates so that legal norms are able to respond to the dynamics and needs of society that continue to develop. (Rahardjo, 2009) Through the idea of progressive law, it emphasizes that the law should not be confined to the sound of the text of regulations, but must be directed to the achievement of substantive and real justice. In this perspective, the reconstruction of the principle of justice in contract law can be understood as an effort to rearrange the basic foundations of treaty law. This includes reinterpreting the principle of freedom of contract so that it is not absolute, strengthening the application of the principle of good faith at every stage of the contractual relationship, and increasing legal protection for parties in weaker bargaining positions. Through this approach, commercial contracts are no longer seen solely as instruments of economic exchange, but as legal relationships that are loaded with the value of justice, propriety, and balance of interests of the parties.

Good Faith Theory

The principle of good faith is one of the main pillars in the development of modern contract law. (Jhering, 1913) stated that the function of law is not only limited to protecting the will of the parties, but also includes safeguarding propriety, honesty, and a sense of justice in every legal relationship. In situations where there is an imbalance in bargaining positions, the principle of good faith acts as a corrective mechanism for exploitative contract provisions. This principle also provides a normative basis for judges to intervene in the substance of the agreement that causes injustice, in order to ensure the achievement of a balance and legal protection that is appropriate for all parties (Sadat et al., 2024).

METHODOLOGY

This research applies a normative juridical method, which is an approach that examines positive legal norms, legal principles, and relevant doctrines in the contract law system in Indonesia. The main focus of this approach is to analyze the principle of fairness in contract law, especially in the context of inequality of position between the parties in digital commercial contracts. The analysis was carried out by reviewing various laws and regulations, legal literature, and related court decisions. The research specification is descriptive-analytical, meaning that it not only describes the norms of contractual justice textually, but also assesses the extent to which these principles are effectively applied in the practice of digital contracts in the field. The data collection process is carried out through *library research* with steps of inventory, selection, and classification of legal sources and scientific literature, both from the national and international levels. This stage aims to gain a comprehensive understanding of the principles of justice and its relevance in digital contractual relationships. Thus, literature studies are not only a source of information, but also a methodological basis for building a robust and systematic legal analysis framework.

Data analysis was carried out qualitatively with a deductive approach. This process begins by interpreting legal norms based on the principles of fairness and balance that are at the core of general contractual law theory, then lowering them to a more specific context, namely application in digital contracts. From the results of this reasoning, the research produced normative conclusions that became the basis for efforts to reconstruct the principle of justice in the national legal system, so as to be able to answer legal challenges in the digital era that continues to develop dynamically.

RESEARCH RESULTS

Basic Analysis of the Inequality of the Position of the Parties (Inequality of Bargaining Power) in Digital Commercial Contracts

From a legal point of view, this issue is closely related to violations of the principle *Good Faith*, which obliges each party to execute the agreement with honesty and fairness. In the digital context, the practice of platform providers unilaterally including exculpatory clauses such as exemption from liability for consumer losses is substantially contrary to that principle. (Usman, 2021) in *Treaty Law* affirms that the principle *Good Faith* It is not only formal juridical, but also an ethical foundation that ensures the realization of contractual justice for all parties involved. Thus, the violation of this principle in digital contracts not only violates positive legal norms, but also undermines the moral order in the practice of fair electronic transactions. The relationship between the dimensions of law and normative construction can be understood through the lens of the theory of distributive justice introduced by Aristotle and refined by (Rawls, 1971) in *A Theory of Justice* (1971). In this perspective, justice is not only defined as formal equality before the law, but also includes a proportionate distribution of benefits in social and economic life. Therefore, the digital contract legal system needs to internalize the meaning of substantive justice in order to be able to protect parties who are in a weak position. This thinking is in line with the view (A. Sadeli et al., 2023) in *Journal of Law and Development* (Sinta 2), which emphasizes the urgency of the principle of contractual balance as an instrument to maintain proportionality and equality in contractual relationships that tend to be asymmetrical. Thus, the reconstruction of the principle of justice in digital contracts is not only a moral demand, but also a normative necessity for the sustainability of an inclusive legal system.

From the realm of legal theory, this problem can be analyzed using responsive legal theory put forward by (Nonet & Selznick, 1978) The theory assumes that the law must be able to adapt to social change in order to remain relevant and fair. In a digital ecosystem controlled by algorithms and data, the application of responsive legal theory demands a change in legal orientation from mere formal instruments to those that favor social justice and the protection of digital rights. This thinking is reinforced by (F. Elian, 2023), which states that fairness in digital contracts must include epistemic and informational aspects because users often lose control over personal data that is a major source of economic value for platform providers. Although the ITE Law and its amendments through Law Number 19 of 2016 have provided a legal basis for the validity of electronic documents and signatures, the regulation has not explicitly

regulated the aspect of contractual fairness. This emptiness of the norm gives rise to the so-called (D. Mitchener, 2025) in *European Journal of Law and Economics* (Scopus indexed) as *Normative Gap*, where a balance between efficiency and justice can only be achieved through regulations that are adaptive to technological developments and oriented towards equitable distribution of benefits.

Thus, the relationship between the legal dimension and the normative construction in digital contract law is reflected in the tension between the principle of freedom of contract rooted in liberalism and the principle of justice based on egalitarianism. These two principles should not be contradicted, but need to be reconstructed in order to strengthen each other. The integration between distributive justice theory, responsive legal theory, and the principle of contractual equilibrium provides a solid methodological foundation for building digital contract law that is more humane, inclusive, and adaptive to technological change. Empirically, the shift in orientation from formal justice to substantive justice marks the emergence of a new normative phase in digital contract law. In this phase, the law plays a role not only as a regulator of economic relations, but also as an instrument of protection for vulnerable parties as well as a guarantee of algorithmic transparency. Ultimately, an ideal digital contract legal system must be able to uphold the principles of comprehensive justice, covering the moral, social, and technological dimensions in a balanced manner.

Legal Principles as the Basis of the Principle of Justice in the Reconstruction of Digital Commercial Contracts

The principle of justice is the moral and philosophical foundation of the entire legal system, including in the realm of covenant law. Justice serves as a normative benchmark to ensure the birth of an agreement that is not only formally valid, but also reflects a substantial balance between the parties. In the practice of digital commercial contracts, the application of this principle faces serious challenges due to the inequality of bargaining positions generated by the dominance of the economy, technology, and information owned by digital business actors. This inequality has the potential to cause exploitation of consumers or users, so it is necessary to update the classical principles in treaty law. Normatively, (*Civil Code Article 1338, 1847*) Affirm the Basics *Pacta Sunt Servanda*, which means that every agreement made legally valid as law for the parties who made it. This principle reinforces the principle freedom of contract, that is, the right of each individual to determine the content and form of the agreement autonomously. However, in the reality of digital contracts, this principle often does not work ideally. Users of digital platforms generally do not have the space for negotiation because the agreement clauses have been drafted unilaterally by the service provider, thus giving rise to a pattern of contracts accepting the entire content or refusing without negotiation that limits the autonomy of the user.

This phenomenon illustrates what the (Gilmore, 1965) referred to as “*Death of contract*”, That is, the condition when the agreement loses its meaning as a result of free agreement and turns into a tool of legitimacy of economic power. In the legal context In modern times, this situation signifies a shift in the function of the contract from an instrument of justice to a means of economic domination. Therefore, the principle of freedom of contract needs to be conceptually revised and reinterpreted to be in line with the values of justice that live in contemporary society. The reconstruction requires integration between The Basis of Balance and The Basis of Protection for the Weak As affirmed by (I. F. J. Sadeli & al., 2023) in *Journal of Law and Development (Sinta 2)*, modern contracts are supposed to reflect Distributive Justice, not just formal justice. Therefore, contracts in the digital era are not enough to only meet legal requirements, but must also contain a dimension of substantive justice so that no party is harmed as a result of inequality of economic power and information. This synergy between the principle of freedom and the principle of justice shows that freedom of contract is not absolute, but is limited by moral and legal responsibilities.

According to (Usman, 2021), the principle of freedom of contract must always be within the limits of three main principles, namely Public Order, Morality, and Good Faith. These three principles serve as normative control instruments to prevent the abuse of freedom of contract that can threaten balance and justice between parties. Therefore, the application of the principle of justice in digital contracts not only requires compliance with formal legality, but also requires the renewal of ethical and social values so that contracts can be a means that realize substantive justice and protect all parties. In that context, Reconstruction of the Principle of Justice in Digital Contracts is inseparable from existing national legal frameworks, as the Indonesian legal system provides a normative foundation that can be used to remedy inequities in contractual practices. The national legal system has provided a wide range of corrective legal instruments which serves to balance the contractual relationship between digital business actors and users. These instruments not only regulate the formal legality aspects of the agreement, but also include an element of substantive justice that protects parties in a weak position. This is important considering that in modern civil law relations, economic and technological dominance often creates unequal relationships. Therefore, the enforcement of contractual justice in the digital age demands a progressive interpretation of the law, in which freedom to contract is seen not only as a manifestation of individual autonomy, but also as a social responsibility to ensure equality, consumer protection, and balance in digital transactions.

First, Article 1320 of the Civil Code (KUHPercivil) stipulates four main elements that are the conditions for the validity of an agreement, namely the existence of an agreement between the parties, the ability to make an agreement, certain objects, and halal causes. These four elements form the main foundation that guarantees the legal validity and moral legitimacy of any contract made. However, in the context of digital contracts, the elements of the agreement are seriously distorted because users of digital platforms often do not have adequate opportunities to read, understand, let alone negotiate the content of agreements that have been unilaterally drafted by service providers. This situation creates a violation of the principle of free agreement which is a fundamental prerequisite for the birth of a sincere will in the legal doctrine of treaties. As a result, even if digital contracts qualify as formally valid, their justice substance is often not met, so they lose the ethical and moral value that should be inherent in any legal obligation.

Second, Law Number 8 of 1999 concerning consumer protection, expressly prohibits business actors from including standard clauses that remove responsibility for consumers. This provision serves as a legal mechanism to prevent the practice of abuse of economic power that often occurs in digital standard contracts which are the pattern of a contract of accept the entire content or reject without negotiation. These provisions have become very relevant in practice Terms of Service various digital platforms that often load Exclusion Clause that is, a unilateral liability exemption clause that harms the user. (*Supreme Court Decision Number 822 K/Pdt/2019, 2019*) is an important precedent in affirming this principle. In its decision, the Court stated that the clause that removes the responsibility of business actors for consumer losses is contrary to the principles of justice, propriety, and the principles of legal protection as stipulated in the law. This ruling shows a shift in legal orientation from just formal justice to justice Corrective and Distributive, where the state takes an active role in balancing contractual relations in the digital ecosystem.

Third, ITE Law Number 11 of 2008 jo. Law Number 19 of 2016 and its amendments have provided a legal basis for the recognition of electronic transactions and digital signatures as a form of legal agreement in the online realm. However, the main focus of this regulation is still limited to the aspects of formal validity and security of electronic transactions, without comprehensively regulating the substance of fairness in digital contractual relationships. This substantial regulatory vacuum creates what is called a normative gap, which is a gap between existing legal provisions and the need for real protection of fairness in modern digital contract practices.

As described by (D. Mitchener, 2025) in *European Journal of Law and Economics* (Scopus indexed), the main challenge in digital contract law does not lie in the issue of the validity of legal formalities, but in the achievement of substantive equality between parties who have significant differences in economic power and access to information. This view emphasizes the need for the national legal system to develop contractual justice principles that are more adaptive to digital reality. Thus, the contract does not only function as a formal legal instrument, but also as a container that guarantees equitable distribution of rights, balance of interests, and protection against structural vulnerability parties in the increasingly complex and integrated digital economy ecosystem.

Implications and Challenges of Reconstructing the Principle of Justice in Digital Commercial Contract Law

Inequality of position between the parties in digital commercial contracts has a significant juridical impact on the validity, legitimacy, and law enforcement mechanisms of agreements. In the civil law system, the balance of the position of the parties is a fundamental element that determines the birth of a valid and fair agreement. However, in the practice of the digital economy, this imbalance often arises due to the dominance of business actors who master technology, data, and contractual provisions. As a result, the basic principles of treaty law such as freedom of contract, good faith, and the balance of bargaining positions are eroded quite deeply. This condition has implications for the loss of moral and juridical legitimacy of digital contracts as a tangible form of free agreement between contracting parties.

From a legal point of view, the consequences of this imbalance are very clear: digital contracts that contain Unilateral Standard Clause can be considered null and void or canceled by the court if it is proven to contain elements of injustice or violate the provisions of the applicable law. This principle is in line with the doctrine of modern contract law which emphasizes the importance of supervision of Injustice, That is a provision that disproportionately burdens one party without a rational basis. The Supreme Court Decision number 822K/Pdt/2019 is an important reference in this context. In the ruling, the Court stated that the standard clause that negates the liability of business actors for consumer losses is invalid, because it is considered contrary to Law Number 8 of 1999 concerning consumer protection. This decision shows the progressive steps of the Indonesian judiciary in upholding the principle of substantive justice, and ensuring that digital contracts are not used as a means to legitimize economic dominance by stronger parties. More deeply, the imbalance of contractual positions in digital relationships not only raises the issue of formal validity, but also shakes up the normative order of treaty law oriented towards social justice. This inequality erodes the essence of the contract as a result of an equal free agreement, and instead turns it into an instrument that reflects structural inequality. In view (Usman, 2021), a contract drawn up under conditions of economic dominance no longer reflects the free will of both parties, but rather becomes an extension of the dominant party's economic power." This statement confirms that agreements that appear legally valid can lose their substantial

legitimacy in the event of inequality in economic power and access to information between the parties involved.

As such, formal legality is not always synonymous with substantive justice, especially in the context of digital contracts. When consumers have no room for negotiation or other choice but to accept the terms unilaterally determined by the service provider, then the justice that is the spirit of the law of the agreement is reduced. This phenomenon requires a reconstruction of the understanding of the principle of freedom of contract in the digital realm in order to be more on the side of balance and legal protection for the weak. In that way, the national civil law system can keep digital contracts as instruments of social justice, not a tool of legitimacy for the dominance of the modern economy.

From the point of view of substantive justice, the state has a moral and juridical responsibility to improve the unequal contractual relationship between the parties. The form of state intervention can be realized through the drafting of regulations that are more responsive to the development of digital technology, the establishment of electronic contract standards that ensure equality of legal positions, and the strengthening of the supervisory system for the practice of drafting standard clauses that are exploitative. These steps are in line with the principle of the welfare state in law, where the state not only plays a role in maintaining legal order (guardian of order), but also acts actively in creating social and economic justice in the midst of changes in the structure of legal relations due to digitalization. Therefore, legal problems in contractual inequality in commercial digital contracts are not only limited to determining whether or not an agreement is legal, but also related to the transformation of the contract law paradigm to be in line with the values of substantive justice, consumer protection, and equality in electronic transactions as the basis for the creation of a fair digital economic legal system.

Although Law Number 11 of 2008 concerning ITE as amended by Law Number 19 of 2016, provides legitimacy for the enactment of electronic agreements, the legal substance is still focused on formality and procedural aspects. This regulation emphasizes the recognition of electronic transactions as a manifestation of the free will of the parties without looking deeper into the information inequality and power dominance that occurs in digital contractual relationships. As a result, the digital contract legal system in Indonesia stops at the level of the validity of consent and has not touched the dimension of justice in consent, even though these two aspects are fundamental elements in the principle of justice in modern contract law.

As an illustration, the provisions in Article 18 of the ITE Law only regulate the validity of electronic signatures as an authentication tool in online transactions, but do not extend the protection against information inequality inherent in digital contracts. In this context, digital service providers often control data, algorithms, and automated decision-making systems that determine the legal position of users. In addition, there is no explicit regulation regarding the obligation of algorithmic transparency, which is the obligation for platform providers to disclose the logic and parameters of automated systems that affect the rights and obligations of users. This legal vacuum creates a space for injustice because users do not have adequate opportunities to understand or control the consequences of the digital consent they provide.

Some of the implications and challenges that arise in the process of reconstructing digital commercial contracts in Indonesia can be identified in several key aspects. First, it is necessary to reformulate the principles and norms in the Civil Code (KUHPercivil) and the ITE Law, so that the principle of freedom of contract can be adjusted to the principles of balance and social justice. Second, institutional strengthening of consumer protection institutions and digital authorities such as the National Consumer Protection Agency (BPKN) and the Ministry of Communication and Information Technology (Kominfo) is important to ensure preventive supervision of digital contract practices that have the potential to harm consumers. Third, the application of the principle of distributive justice as stated by (Rawls, 1971) in *A Theory of Justice* It needs to be a normative foothold in national legal policy. According to Rawls, social and economic inequality must be regulated in such a way as to provide the greatest benefit to the most disadvantaged groups. Thus, the reconstruction of contractual justice in the digital ecosystem is not just a technical problem, but is part of the fulfillment of citizens' constitutional rights in achieving a fair and inclusive legal order.

DISCUSSION

Based on the results of normative and conceptual analysis of inequality in digital commercial contracts, it can be concluded that the renewal of the principle of fairness in digital contract law requires new regulations that are comprehensive and adaptive to technological changes. The national legal system needs to transform from a classical paradigm that is solely oriented towards formal certainty to a progressive legal system that emphasizes substantive justice, transparency in the digital realm, and protection of the weak. In this context, a number of strategic and normative steps can be proposed. First, a comprehensive revision of ITE Law Number 11 of 2008 jo. Law Number 19 and the Civil Code (KUHPerdata) need to be carried out immediately in order to be able to respond to the complexity of legal relations in modern digital transactions. This change must include the addition of norms regarding the principle of digital justice, namely the principle of justice in digital contractual relations that ensures equality of position of the parties, information disclosure, and the prohibition of exploitative practices against parties who do not have technological control. In addition, regulations on algorithmic accountability must also be included, to ensure that digital business actors are responsible for the algorithmic systems

they use so as not to cause discrimination or contractual injustice. The new regulation must also regulate the principle of information transparency in digital contracts to ensure the right of users to obtain clear, honest, and easy-to-understand information before giving informed consent.

In addition to the revision of the law, a derivative legal tool is needed in the form of Government Regulations (PP) or National Digital Authority Regulations as technical guidelines in regulating the supervision of electronic contracts and algorithmic audits on digital platforms. This implementing rule needs to ensure the accountability of digital service providers through periodic audit obligations of algorithmic systems used in contractual processes, such as *matching systems*, *pricing algorithms* or *automated approval* mechanisms. Furthermore, the platform provider is required to present a summary clause, which is a summary of contract clauses that are structured in a simple, transparent, and easy-to-understand manner. This provision aims to ensure that the principle of informed consent is truly embodied in every digital transaction, as emphasized in modern contractual justice theory, so that users can provide consent with a complete understanding and adequate legal awareness.

From an institutional perspective, the Supreme Court of the Republic of Indonesia needs to play an important role in strengthening the enforcement of digital contract law through the issuance of Supreme Court Regulations (PERMA) which serves as interpretive guidelines for judges. The PERMA is expected to be a legal standard in assessing digital standard clauses, interpreting the principles of algorithmic fairness, and applying the principle of good faith in resolving contractual disputes (Sadat et al., 2024). This approach is important so that court decisions are not sporadic and casuistic, but are based on normative principles that are consistent with the value of substantive justice as affirmed in Supreme Court Decision Number 822K/Pdt/2019. With these guidelines, judicial institutions can ensure that digital contracts do not become a tool for legitimizing economic and technological dominance, but rather become a legal mechanism that protects equality between parties in the digital ecosystem.

However, digital contract law reform will not be effective without an improvement in the quality of human resources in the legal field. Therefore, universities and legal professional institutions need to strengthen curricula that focus on digital law, algorithmic ethics, and contractual justice in the technological era. Legal education should be geared towards producing prospective judges, practitioners, and academics who deeply understand the dynamics of law in the midst of algorithmic advances, including their social, economic, and technological impacts. In addition, the digital legal literacy program for the public needs to be intensified to increase awareness of legal rights and obligations in electronic transactions. Thus, the law does not only play a role as a normative tool, but also as a means of empowering society in the digital era. Overall, these four recommendations show that digital contract law reform in Indonesia must be multidimensional, strengthen substantive norms, increase algorithmic accountability, strengthen judicial institutions, and foster public legal awareness so that the national legal system is able to respond to the challenges of justice in the ever-evolving digital economy ecosystem without losing its moral and social legitimacy.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the analysis, it can be concluded that Indonesia's positive legal system, especially those contained in the Civil Code (KUHPerdata) and the Information and Electronic Transactions Law (UU ITE), still focuses on the formal legality aspect only. This condition results in the principle of substantive justice not being fully achieved, especially in contractual relations in the digital space which are often uneven. Therefore, there is a need for a reinterpretation and restructuring of legal norms that affirm the importance of algorithmic transparency, legal responsibility of digital platform operators, and protection for parties with weaker bargaining positions in electronic contracts. As a form of solution, this research can be a form of recommendation from a legal perspective so that there is a revision to a number of contractual articles contained in the Civil Code and the ITE Law to be more responsive to the characteristics of modern digital transactions. In addition, strengthening the role of digital contract supervisory institutions is crucial to ensure the consistent implementation of the principle of justice. The integration of the principle of distributive justice into national legal policy is also seen as a strategic step in creating a legal system that is not only oriented towards certainty, but also on social benefits in an inclusive and equitable digital space. Thus, contract law in Indonesia is expected to be able to transform into an instrument that not only guarantees legal certainty for the parties, but also implements social justice values that are relevant to today's digital ecosystem. This achievement is certainly inseparable from the support of academics, legal practitioners, and supervisors who have made valuable contributions to the preparation and development of this scientific study

ADVANCED RESEARCH

This research still contains several limitations that need to be critically considered. First, the focus of the study that only relies on normative analysis of laws and regulations and legal doctrine causes the research to not fully reflect the empirical dynamics in the practice of applying norms. Consequently, the results of the study highlight the juridical building that is ideal compared to the reality of implementation in the field, which is in fact influenced by institutional factors, technological developments, and the behavior of stakeholders. Second, the limited availability of secondary data and the lack of cross-jurisdictional comparisons have resulted in the analysis not being able to present a complete picture of the effectiveness and relevance of legal arrangements in the face of rapid and complex developments.

In light of these limitations, further research is recommended to adopt a more comprehensive approach by combining normative and empirical methods, such as in-depth interviews, case studies, and data-driven policy analysis. In addition, the expansion of the object of study through legal comparison with other countries that have similar regulatory characteristics can enrich the analytical perspective in a more critical and evaluative manner. Advanced research is also expected to be able to accommodate technological developments and the latest regulatory changes, so that the results of the study are not only descriptive and prescriptive, but also responsive, adaptive, and relevant to the process of legal formation and reform in the future.

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