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Pacta Sunt Servanda, Electronic Agreements, and Police Evidentiary Practice

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Abstract

Electronic agreements are increasingly used in online sales, platform services, online credit, and digital commercial transactions. Their binding force is commonly justified through pacta sunt servanda under Article 1338 of the Indonesian Civil Code. However, electronic agreements create problems that cannot be resolved by repeating classical civil-law doctrine alone, because electronic consent, standard clauses, authentication, electronic signatures, system reliability, and electronic evidence affect whether a digital agreement is valid, fair, enforceable, and provable. This article analyses how the binding force of electronic agreements should be interpreted under the Indonesian Civil Code, Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 and Law Number 1 of 2024, Government Regulation Number 71 of 2019, and consumer-protection principles. It also explains the relevance of electronic agreements to police handling of digital transaction disputes and online fraud complaints. This study uses normative legal research with statutory, conceptual, and issue-based approaches. Primary legal materials include the Civil Code, the ITE Law and its amendments, Government Regulation Number 71 of 2019, and relevant rules on electronic evidence and standard clauses. The findings of this study demonstrate that electronic agreements bind the parties only when electronic consent is legally meaningful, the contractual clauses are not contrary to good faith or fairness, and the electronic system can support evidentiary reliability. In police practice, electronic agreements are relevant as initial evidentiary materials for distinguishing ordinary contractual default from online fraud. Thus, pacta sunt servanda in electronic agreements must be interpreted proportionally: it protects legal certainty, but it is limited by valid consent, good faith, consumer protection, system reliability, and evidentiary accountability.

Keywords: Pacta Sunt Servanda, Electronic Agreements, Digital Transaction Dispute, Police Evidentiary Practice

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INTRODUCTION

Electronic agreements have become a dominant legal instrument in online sales, platform services, digital payment arrangements, online lending, remote working, and other technology-based transactions. Their legal relevance does not lie only in the shift from paper to electronic media, but in the question of whether digital acts such as clicking an agreement button, registering an account, using a platform, or accepting pre-drafted terms can create a valid and binding legal relationship under Indonesian contract law. The validity of an agreement must still be read through Article 1320 of the Indonesian Civil Code, especially the requirements of consent, legal capacity, a specific object, and a lawful cause (Senda et al., 2024). The binding force of the agreement is then connected with Article 1338 of the Indonesian Civil Code as the doctrinal basis of pacta sunt servanda (Syamsiah et al., 2023).

The Civil Code was drafted for conventional legal relationships and does not expressly regulate electronic consent, electronic signatures, transaction logs, system records, or platform-based standard clauses. Nevertheless, the classical requirements of consent, legal capacity, a specific object, and a lawful cause remain applicable to electronic agreements. The challenge is interpretive: old contract-law concepts must be applied to digital acts that are produced, stored, and proven through electronic systems. The ITE Law provides the digital-specific layer for electronic information, electronic documents, electronic signatures, and electronic contracts (Hariningsih, 2018). Government Regulation Number 71 of 2019 further strengthens the discussion because electronic agreements depend on the reliability and accountability of electronic systems.

The problem becomes sharper because electronic agreements are often formed through standard-form mechanisms. A user may be required to accept terms and conditions without negotiation, to click an 'I agree' button, to continue browsing after a notice, or to register an account while being deemed to accept contractual terms. These mechanisms do not have the same legal quality. A click-wrap agreement may show stronger affirmative consent than a browse-wrap agreement, while a sign-in-wrap agreement depends on whether the user was clearly informed that registration constitutes acceptance. Therefore, electronic consent must be tested not only formally, but also through notice, accessibility, attribution, and fairness (Scivi et al., 2020).

The binding force of electronic agreements is also limited by good faith and balance. Based on the principles of contract law, especially the principle of balance, justice in an agreement is not solely measured by the equality of the performances exchanged, but rather places more emphasis on the equal position between the parties in the legal relationship (Haerani et al., 2023). This is important in electronic agreements because the stronger party, usually a platform or service provider, often controls the interface, the wording of clauses, the storage of data, and the evidence of consent. If pacta sunt servanda is applied mechanically, it may protect formal consent while ignoring substantive imbalance, unfair standard clauses, or evidentiary asymmetry (Basarah, 2023).

The article also has direct relevance to police science and law-enforcement practice. Reports involving online sales, digital services, electronic payments, online loans, account misuse, fictitious goods, fake confirmations, or deceptive platform conduct often begin with a private electronic agreement. Police officers who receive such reports must clarify whether the facts show ordinary civil default or online fraud. This clarification cannot be made only by asking whether an agreement exists; it requires examination of the offer, identity, consent, payment records, delivery obligations, electronic communications, system logs, and possible deception from the beginning (Firdaus & Shaleha, 2024).

Previous research has provided important foundations. Hasibuan and Ginting examined pacta sunt servanda in online sales using the Cash on Delivery system and focused on buyer default and seller protection (Hasibuan, 2024). Sulistyarini and Priyono discussed the actualization of pacta sunt servanda in e-contracts to support business activities in cyberspace (Sulistyarini & Priyono, 2024). Fatahillah et al. analysed the validity of electronic contracts as electronic transaction agreements under Indonesian laws and regulations (Fatahillah et al., 2025). These studies confirm the validity and binding force of electronic contracts, but they do not sufficiently integrate electronic consent, standard clauses, evidentiary reliability, and police-relevant digital dispute handling.

The novelty of this article is the construction of a proportional framework for electronic pacta sunt servanda. The article argues that an electronic agreement must pass three connected tests before its binding force can be relied upon: a consent test, a fairness test, and an evidentiary reliability test. This framework contributes to civil-law doctrine by harmonizing Article 1320 and Article 1338 of the Civil Code with the ITE framework. It also contributes to police science by explaining how electronic agreements may be used as initial evidentiary materials in digital transaction disputes and online fraud complaints. Based on this background, the article addresses three legal questions. First, how should pacta sunt servanda be interpreted in electronic agreements under the Indonesian Civil Code and the ITE Law? Second, how should electronic consent and standard clauses be assessed to prevent an overly mechanical application of binding force? Third, how are electronic agreements relevant to police evidentiary practice in handling digital transaction disputes and online fraud complaints?

This research employs normative legal research because it analyses legal norms, statutory provisions, legal principles, and doctrines concerning electronic agreements, pacta sunt servanda, and electronic evidence. It does not conduct empirical measurement of platform users, electronic system providers, or police officers. Instead, it interprets the legal meaning of electronic consent, contractual binding force, good faith, standard clauses, system reliability, and evidentiary use in digital transaction disputes (Amiruddin & Zainal Asikin, 2018).

The research applies statutory, conceptual, and issue-based approaches. The statutory approach is used to interpret Article 1320 and Article 1338 of the Indonesian Civil Code, Article 1 point 17 and Article 18 paragraph (1) of the ITE Law on electronic contracts, Article 5 of the ITE Law on electronic information and electronic documents as evidence, Article 11 of the ITE Law on electronic signatures, Government Regulation Number 71 of 2019 on the implementation of electronic systems and transactions, and Law Number 8 of 1999 concerning Consumer Protection on standard clauses. The conceptual approach is used to clarify pacta sunt servanda, electronic consent, good faith, fairness, standard-form contracts, authentication, attribution, integrity, and evidentiary reliability. The issue-based approach is used to connect those norms and concepts with practical legal problems in digital transaction disputes and online fraud complaints.

The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Indonesian Civil Code, Law Number 11 of 2008 concerning Electronic Information and Transactions, Law Number 19 of 2016, Law Number 1 of 2024, Government Regulation Number 71 of 2019, and Law Number 8 of 1999 concerning Consumer Protection. Secondary legal materials include books and journal articles on contract law, electronic contracts, consumer protection, electronic signatures, and electronic evidence. Tertiary legal materials are used only to support terminology when necessary.

Legal materials were selected according to three criteria. First, the source must directly regulate or discuss contractual validity, electronic transactions, electronic evidence, electronic signatures, system reliability, standard clauses, or digital transaction disputes. Second, primary legal materials are prioritized over secondary commentary. Third, older doctrinal sources are retained only when they remain necessary to explain the structure of Indonesian contract law and are balanced with more recent journal articles and current legislation. The analysis uses systematic and teleological interpretation. Systematic interpretation connects the Civil Code with the ITE Law, Government Regulation Number 71 of 2019, and consumer-protection law. Teleological interpretation examines the purpose of those rules, namely legal certainty, protection of parties, technological reliability, and evidentiary accountability in electronic transactions. The analysis is then organized into three tests: the consent test, the fairness test, and the evidentiary reliability test. These tests are used to determine whether an electronic agreement can properly be treated as valid, binding, fair, and usable in police evidentiary practice.

DISCUSSION

The Pacta Sunt Servanda Principle under the Civil Code and Electronic Contract Validity

Pacta sunt servanda is a principle of contractual binding force. It does not create an agreement by itself; rather, it attaches legal force to an agreement that has already satisfied the requirements of validity. This means that Article 1338, paragraph (1) of the Civil Code must be read after Article 1320. Consent, legal capacity, a specific object, and a lawful cause are sequential prerequisites. Only after these requirements are fulfilled can an agreement bind the parties as law (Senda et al., 2024). Article 1313 of the Civil Code is often used as the starting definition of an agreement, but the provision should not be treated as the sole doctrinal basis. Its formulation is broad because it describes an agreement as a legal act by which one or more persons bind themselves to one or more other persons. The more decisive provisions for electronic agreements are Article 1320 and Article 1338, because they determine validity, binding force, and good-faith performance. Therefore, the legal analysis must distinguish contract formation from contract enforcement (Syamsiah et al., 2023).

In electronic agreements, the validity requirements of Article 1320 remain applicable, but each requirement requires digital interpretation. Consent may appear through click-wrap, sign-in-wrap, electronic signatures, or other recorded acts of acceptance. Legal capacity may be difficult to verify when the user acts through an account, phone number, email address, or platform profile. A specific object must be clear in the digital offer, including goods, services, price, delivery obligations, payment terms, or data-related services. A lawful cause requires that the agreement does not violate law, public order, morality, consumer rights, or prohibited electronic transaction rules (Salsabila & Ispriyarso, 2023). The ITE Law does not replace the Civil Code's contract doctrine. It supplies the electronic layer through which civil-law consent, record, signature, and proof may operate. Article 1 point 17 of the ITE Law defines an electronic contract as an agreement of the parties made through an electronic system. Article 18 paragraph (1) provides that electronic transactions expressed in electronic contracts bind the parties. These provisions recognize the legal effect of electronic contracts, but they do not remove the need to test consent, capacity, object, lawful cause, and good faith under the Civil Code (*UU No. 1 Tahun 2024*, n.d.).

The current statutory framework must also be updated. Law Number 1 of 2024 is the second amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. It forms part of the current legal framework that should be cited together with Law Number 19 of 2016 and the original ITE Law. A manuscript that stops at the 2016 amendment risks legal inaccuracy because the current form of the ITE Law has been amended again in 2024. Government Regulation Number 71 of 2019 is relevant because it regulates the implementation of electronic systems and transactions. For electronic agreements, this regulation matters not only administratively but also evidentially. A contract formed through an unreliable system creates practical problems for proving who agreed, when consent occurred, whether the record was altered, and whether the system preserved transaction data. Therefore, system reliability is part of the legal environment in which pacta sunt servanda operates in digital transactions (Filmadina et al., 2025).

The Civil Code and the ITE framework should therefore be harmonized rather than separated. The Civil Code supplies the basic doctrine of validity, binding force, and good faith. The ITE Law supplies recognition of electronic information, electronic documents, electronic signatures, electronic contracts, and electronic evidence. Government Regulation Number 71 of 2019 supplies the technical and institutional framework for electronic systems. (*PP No. 71 Tahun 2019*, n.d.) Together, these rules show that electronic agreements may bind the parties, but the binding force is conditional and must be supported by valid consent, lawful content, good faith, and reliable electronic records (Fatahillah et al., 2025). International electronic commerce principles support this interpretation. The UNCITRAL Model Law on Electronic Commerce is built on non-discrimination, technological neutrality, and functional equivalence, meaning that electronic form should not be denied legal effect merely because it is electronic, but it must still satisfy equivalent functions such as writing, signature, original, and record (*UNCITRAL Model Law on Electronic Commerce (1996)*, n.d.). This comparative reference is not used to replace Indonesian law, but to support the functional interpretation of electronic agreements under the Civil Code and ITE framework.

Electronic Consent and Standard Clauses as Limits to Binding Force

The strongest doctrinal problem in electronic agreements is not whether electronic contracts can exist, but when electronic consent is legally meaningful. Electronic consent must not be reduced to a mere technical action. A click, a login, a continuation of browsing, or a digital signature becomes legally relevant only when it can be connected to a clear offer, accessible terms, an identifiable user, and a system record that can show the time and manner of acceptance (Scivi & Maramis, 2020).

A click-wrap agreement generally requires the user to actively click 'I agree' or tick a box after being presented with terms and conditions. This form is usually stronger because it contains an affirmative act. A browse-wrap agreement attempts to bind the user by use of a website where the terms are placed through a hyperlink or notice. This form is weaker because the user may not have actual or reasonable notice of the terms. A sign-in-wrap agreement connects registration, login, or account creation with acceptance of terms. Its validity depends on whether the notice is clear and whether the user is informed that registration has contractual consequences. Implied consent may be relevant, but it is insufficient when the contractual terms are hidden, inaccessible, or materially burdensome (Artanti & Widiatno, 2024).

The consent test in electronic agreements should contain at least five elements. First, the contractual terms must be accessible before acceptance. Second, the system must make the acceptance mechanism clear. Third, the user must perform an affirmative act or receive sufficiently clear notice that continued use creates legal consequences. Fourth, the identity or account attribution of the accepting party must be reasonably verifiable. Fifth, the agreement must not contain an unlawful object or unlawful cause. Without these elements, the formal appearance of consent may not satisfy the substance of Article 1320 of the Civil Code (Senda et al., 2024). Good faith is the doctrinal limit to mechanical binding force. Article 1338, paragraph (3) of the Civil Code requires agreements to be performed in good faith. This means that a valid agreement is not enforced only according to literal wording, but also according to fairness, propriety, and the legitimate expectations of the parties. The application of pacta sunt servanda often has the potential to conflict with justice and good faith when one party uses a superior bargaining position, informational control, or technological control to impose unfair obligations (Azami dan Kustanto, 2025).

The principle of balance also supports this limitation. Based on the principles of contract law, especially the principle of balance, justice in an agreement is not solely measured by the equality of the performances exchanged, but rather places more emphasis on the equal position between the parties in the legal relationship. This test is necessary because electronic standard contracts often create imbalance. Users usually cannot negotiate terms, cannot change clauses, and cannot access services without accepting the provider's terms. Clauses concerning unilateral amendment, limitation of liability, forced dispute-resolution mechanisms, automatic renewal, data-use consent, cancellation restrictions, or one-sided sanctions may place the weaker party in a disadvantaged position. In this context, pacta sunt servanda should not be used to protect all terms mechanically (Basarah, 2023).

Good faith is the doctrinal limit to mechanical binding force. Article 1338 paragraph (3) of the Civil Code requires agreements to be performed in good faith. This means that a valid agreement is not enforced only according to literal wording, but also according to fairness, propriety, and the legitimate expectations of the parties. The application of pacta sunt servanda often has the potential to conflict with justice and good faith when one party uses a superior bargaining position, informational control, or technological control to impose unfair obligations (Azami & Kustanto, 2025). The principle of balance also supports this limitation. Based on the principles of contract law, especially the principle of balance, justice in an agreement is not solely measured by the equality of the performances exchanged, but rather places more emphasis on the equal position between the parties in the legal relationship (Haerani et al., 2023). In electronic agreements, equal position is difficult to achieve because the platform usually controls the interface, the terms, the transaction data, and the proof of acceptance. Therefore, fairness analysis must become a central thread in applying pacta sunt servanda to electronic standard contracts (Haerani et al., 2023).

Consumer-protection law strengthens the same conclusion. Law Number 8 of 1999 concerning Consumer Protection is relevant when electronic agreements involve business-to-consumer transactions and standard clauses. Its relevance is not to transform every digital contract into a consumer dispute, but to prevent unfair standard terms from being protected by the formal doctrine of binding force. Where a clause removes essential rights, shifts unreasonable risks, or is presented in a way that prevents meaningful consent, pacta sunt servanda must be limited by consumer-protection values (Basarah, 2023). The difference between voidable and null-and-void agreements must also be maintained. Defective consent, such as mistake, coercion, fraud, or lack of meaningful consent, generally affects the subjective requirements of Article 1320 and may make the agreement voidable. Unlawful object or unlawful cause affects the objective requirements and may cause the agreement null and void. In electronic contexts, this distinction is important because a hidden or misleading consent mechanism differs from an illegal digital object, a prohibited transaction, or a fraudulent scheme disguised as a contract (Senda et al., 2024).

Thus, the fairness test asks whether the electronic agreement is enforceable not only because it was clicked, but because the consent is meaningful and the contractual structure is not abusive. This test protects legal certainty while preventing pacta sunt servanda from becoming a shield for unfair standard clauses. Legal certainty is not achieved by enforcing every electronic clause; it is achieved by enforcing valid, fair, and provable agreements (Azami & Kustanto, 2025).

Electronic Agreements and Electronic Evidence in Police Handling of Digital Transaction Disputes

The third dimension of electronic agreements concerns evidence and police handling of digital transaction disputes. In many online disputes, an electronic agreement is not only a civil-law document but also an initial evidentiary material. It may show the offer, acceptance, price, delivery terms, payment obligation, account identity, platform terms, and sequence of communication. This evidentiary function explains why the article belongs within a policing journal: police officers increasingly receive reports in which contractual records, screenshots, chats, invoices, payment receipts, electronic signatures, and platform logs must be clarified before the case can be classified as civil default or online fraud (Firdaus & Shaleha, 2024).

Article 5 of the ITE Law recognizes electronic information and electronic documents as legal evidence and as an expansion of lawful evidence. This makes electronic agreements important in digital transaction disputes, but recognition alone is not enough. The value of electronic evidence depends on authenticity, integrity, attribution, completeness, preservation, and legality of acquisition. A screenshot may show words on a screen, but it does not automatically prove who sent the message, whether the conversation is complete, whether the image was altered, or whether the account belongs to the reported person (Rura & Nalle, 2025).

Electronic signatures also have several legal functions. They may identify the signatory, indicate approval, connect the signatory with electronic information, and help preserve the integrity of the electronic document. In Indonesian law, this supports the interpretation that an electronic signature should not be treated merely as an image or symbol, but as a method of authentication and integrity protection when it satisfies statutory requirements (Rura & Nalle, 2025). The UNCITRAL Model Law on Electronic Signatures may be used only as a supporting comparative reference because it also emphasizes technical reliability in electronic signatures (*UNCITRAL Model Law on Electronic Signatures (2001)*, n.d.).

The evidentiary reliability test should include four elements. First, attribution: the electronic record must be connected to a person, account, device, phone number, email address, digital certificate, or platform identity. Second, integrity: the record must be shown not to have been altered, selectively cropped, or manipulated. Third, preservation: the data must be capable of being stored and presented in readable form while maintaining its evidentiary value. Fourth, lawful acquisition: electronic evidence should be obtained and handled through lawful procedures so it can support subsequent legal process. Government Regulation Number 71 of 2019 is relevant because electronic-system reliability affects whether electronic records can support legal certainty in digital transactions. System-provider accountability is central to this test. In electronic agreements, the provider may hold the most important evidence: user registration data, IP logs, click records, timestamps, transaction history, payment confirmation, delivery information, and complaint records. If the provider's system is unreliable or refuses to preserve relevant records, the weaker party may face evidentiary difficulty. Therefore, system reliability under Government Regulation Number 71 of 2019 is not merely a technical requirement; it affects the ability of parties and law-enforcement officers to prove consent, authenticity, timing, and contractual performance (Filmadina et al., 2025).

Police handling of digital transaction disputes requires a civil-criminal filter. A dispute tends to remain civil when the parties are identifiable, the transaction object is real, the agreement exists, and non-performance arises from delay, inability, misunderstanding, defective performance, or ordinary breach. A dispute may indicate online fraud when there are signs of deception from the beginning, such as false identity, fictitious goods or services, fake payment confirmation, repeated victimization, manipulated platform information, immediate disappearance after payment, or a pattern showing that the contract was used as a tool to deceive (Firdaus & Shaleha, 2024). This filter is important because pacta sunt servanda should not be used to criminalize every breach of electronic agreement. Civil default and criminal fraud have different legal characters. Default concerns failure to perform obligations arising from a valid agreement, while fraud concerns deception, dishonest representation, or fraudulent intent. However, the existence of an electronic agreement may help police officers reconstruct the facts: what was promised, what was accepted, what was paid, what was delivered, and whether the suspect had fraudulent intent from the beginning (Tanjaya et al., 2025).

For that reason, the police-relevant contribution of this article is the use of electronic agreements as a legal and evidentiary bridge. Under civil law, they establish rights and obligations. Under electronic transaction law, they are created, stored, and proven through electronic systems. Under police practice, they may become initial materials for receiving, clarifying, and directing reports involving digital transaction disputes. This integrated approach answers the need to connect Civil Code analysis with digital evidence, online fraud complaints, and law-enforcement practice (Fatahillah et al., 2025).

Consequently, electronic pacta sunt servanda should be formulated as follows: electronic agreements bind the parties when validity, meaningful electronic consent, lawful clauses, good faith, consumer protection, and evidentiary reliability are satisfied. This formulation avoids two extremes. It avoids denying the legal effect of electronic agreements merely because they are electronic. It also avoids enforcing every electronic clause mechanically without regard to consent defects, unfair standard terms, system unreliability, or evidentiary weakness (Azami & Kustanto, 2025).

CONCLUSION

Pacta sunt servanda remains applicable to electronic agreements in Indonesia, but its application is conditional. Article 1338 of the Indonesian Civil Code gives binding force only to agreements that first satisfy Article 1320: consent, legal capacity, a specific object, and a lawful cause. The ITE Law and Government Regulation Number 71 of 2019 do not replace this civil-law doctrine; they provide the electronic layer for contract formation, electronic information, electronic documents, electronic signatures, electronic contracts, and system reliability.

Electronic consent cannot be treated mechanically. Click-wrap, browse-wrap, sign-in-wrap, implied consent, and standard-form electronic contracts have different legal and evidentiary strengths. The act of clicking 'agree' binds the user only when the terms are accessible, the acceptance mechanism is clear, the user's identity or account can be reasonably attributed, and the contractual clauses are not contrary to good faith, fairness, consumer protection, public order, or law. Therefore, pacta sunt servanda must be read together with Article 1338 paragraph (3) on good faith and with protection against unfair standard clauses.

Electronic agreements are relevant to police evidentiary practice because they often appear as initial materials in digital transaction disputes and online fraud complaints. They may help identify the parties, the offer, consent, payment, performance obligations, and the alleged breach. However, police handling must distinguish civil default from online fraud by examining whether deception existed from the beginning and whether the electronic evidence is attributable, intact, preserved, and lawfully obtained. In this sense, pacta sunt servanda contributes not only to civil-law certainty but also to evidentiary clarification in digital law-enforcement practice.

SUGGESTION

Regulatory and institutional strengthening should focus on four practical areas. First, electronic system providers should design consent mechanisms that clearly display contractual terms before acceptance and preserve records of acceptance. Second, platform providers and business actors should avoid unfair standard clauses, especially clauses that unilaterally change obligations, remove essential rights, or shift all risks to users. Third, parties should preserve complete electronic records, including transaction history, payment proof, communication records, account data, electronic signatures, and system logs. Fourth, police handling of digital transaction complaints should use a structured civil-criminal filter so that ordinary contractual default is not over-criminalized and genuine online fraud can be investigated effectively.

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