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The Urgency of Setting Refund and Warranty Clauses in Electronic Agreements: Harmonization between Covenant Law and Consumer Protection

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Abstract. *The rapid growth of electronic transactions in the digital era has driven the transformation of conventional contract models into e-contracts based on digital and automated systems. However, this transformation poses serious challenges in terms of legal protection for consumers, particularly regarding refund and warranty clauses, which are often unilaterally drafted by businesses. The main issue addressed in this research is the lack of clarity in the substance of refund and product warranty clauses in electronic contracts, which contradicts the principles of contractual fairness and consumer protection.This study employs a normative juridical method, using statutory and comparative legal approaches with a focus on international practices, particularly in the European Union. The findings reveal a regulatory gap in Indonesia's positive law, including Law No. 8 of 1999 on Consumer Protection, Law No. 11 of 2008 on Electronic Information and Transactions, and the Indonesian Civil Code. The absence of minimum standards for refund and warranty clauses results in an imbalance of power between businesses and consumers and undermines legal certainty in digital transactions. Therefore, there is a need to harmonize the principle of freedom of contract with consumer protection through the establishment of regulations that govern standard clauses in a transparent, proportional, and fair manner. Such regulation is expected to resolve the dilemma between business efficiency and the fairness of legal protection, and to foster the development of a sustainable digital trade ecosystem.*

Keywords: *Electronic Contract; Refund; Warranty; Consumer Protection; Standard Clauses; Legal Harmonization.*

1. Introduction

The development of information technology has had a significant impact on the pattern of economic transactions in the global community, including in Indonesia (Ardianto et al., 2024; Khairi et al., 2025). One of the most striking forms of transformation is the growth of electronic commerce (e-commerce), which allows transactions to take place without the limits of time and space (Yulia, 2024). Through digital media, consumers can easily access various products and services only through electronic devices. However, this progress also brings its own legal challenges, especially regarding legal certainty and protection of the parties involved in the transaction, especially consumers as parties who are juridically considered to be in a weak position (Izazi et al., 2024; Yulianingsih & Putra, 2024). In this context, the regulation of consumer rights to refunds and warranties (guarantees against product defects or service incompatibility) is an important aspect that has not been fully accommodated in the Indonesian legal system.

One of the main issues that arises is the lack of clarity of refund and warranty clauses in electronic contracts (e-contracts) (Gbegbaje, 2023). In many practices, business actors draft these clauses unilaterally and often in the form of standard form contracts that do not provide negotiation space for consumers (Harahap & Chrisanta, 2023). These clauses are often drafted in language that is non-transparent, ambiguous, and makes it difficult for consumers to understand their rights and obligations. In conventional contract law, this contradicts the principles of consensualism and good faith (*goede trouw*), which are fundamental principles in contract formation as stipulated in Articles 1320 and 1338 of the Indonesian Civil Code (KUH Perdata).

In the context of Dutch law, which has significantly influenced Indonesia's civil law system, the principle of *redelijkheid en billijkheid* (reasonableness and fairness) serves as the basis for assessing contractual balance. When there is an imbalance or a clause that disadvantages one party particularly the consumer a judge may declare the clause invalid. However, in the practice of e-commerce in Indonesia, such protection has not been effectively implemented. Consumers often remain unaware of or unable to assert their rights due to the lack of legal clarity regarding standard refund and warranty clauses. This issue is further exacerbated by weak oversight from authorities over the rapidly growing digital business practices.

Consumer protection is actually regulated under Law Number 8 of 1999 concerning Consumer Protection (UUPK), which states that consumers have the right to comfort, security, and safety in the consumption of goods and/or services (Muhemin et al., 2025; Prayuti et al., 2025; Rifki, 2024; Siregar, 2024). This includes the right to correct, clear, and honest information about the condition and guarantee of goods/services (Retor, 2019). However, the Consumer Protection Law (UUPK) does not explicitly regulate how refund and warranty clauses should be formulated in the context of electronic contracts. Meanwhile, Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), along with its amendment through Law Number 19 of 2016, although addressing the validity of electronic contracts, also falls short in providing detailed guidance on contractual substance such as refunds and warranties.

The unequal position between businesses and consumers in e-contracts is a serious concern in modern legal literature. In many cases, businesses, especially large digital platforms, have dominant power in determining the terms and conditions of the contract.

This results in consumers only being able to agree or reject the entire contract without having the bargaining power to negotiate the contents of the clauses (Karar et al., 2025). In contract law theory, such a condition is referred to as an adhesion contract, which is fundamentally contrary to the principle of balance in contractual relationships. When this imbalance is not addressed, it leads to a violation of the principle of *pacta sunt servanda* (agreements must be kept), as the contract is formed without mutual good faith and fairness.

An example of a case illustrating this issue is a dispute between a consumer and a major e-commerce platform in Indonesia, where the consumer purchased a damaged electronic item but faced difficulties in filing a warranty claim or requesting a refund due to complicated procedures and warranty clauses that were inadequately explained in the product description (Rohayati et al., 2025; Sinaga & Silubun, 2024; Zaprullah & Fuad, 2024). A similar case has also occurred on an international scale, such as in a lawsuit against Amazon in Europe, where consumers challenged the differing refund policies among European Union member states, leading to debates over the harmonization of consumer protection across jurisdictions (Busch et al., 2016; Fletcher et al., 2023; Townley et al., 2017).

The lack of clarity in refund and warranty clauses also threatens legal certainty in digital transactions. Consumers often face difficulties in resolving disputes because the contracts do not include clear mechanisms for resolution—such as procedures for returning goods, deadlines, and the limits of the business operator's liability. In this context, the Electronic Information and Transactions Law (ITE Law) does recognize the validity of electronic contracts; however, its implementation in practice often relies on the policies of individual platforms rather than on firm national legal standards. As a result, consumers become vulnerable to violations of their rights.

Therefore, efforts are needed to harmonize contract law and consumer protection law within the context of electronic agreements. The purpose of this harmonization is to ensure a balanced distribution of rights and obligations between the parties and to foster public trust in the digital ecosystem. In the long term, this harmonization will also contribute to the development of a legal system that is adaptive to technological advances while remaining grounded in the principles of justice and legal certainty. As such, refund and warranty clauses should not merely be seen as a moral responsibility of businesses but as a legal obligation that must be enforced by the state.

This research addresses two main questions:

1. Why should refund and warranty clauses be more explicitly regulated in electronic contracts?
2. How can harmonization be achieved between contract law and consumer protection law in relation to these clauses?

2. Research Methods

The research method used in this writing is the normative-juridical method with a statutory approach and comparative law (Suteki, 2018). This type of research falls under the category of doctrinal legal research, which relies on literature studies of both primary and secondary legal materials. The approach used is the statute approach, which involves examining relevant laws and regulations such as the Indonesian Civil Code (KUH Perdata), Law Number 8 of 1999 on Consumer Protection, and Law Number 11 of 2008 on Electronic Information and Transactions along with its amendments. In addition, a comparative approach is employed by analyzing the regulation of refund and warranty clauses in electronic contracts within the legal systems of the Netherlands and several European Union countries, in order to obtain a comprehensive understanding of international practices and consumer protection frameworks. The research is descriptive-analytical in nature, aiming to describe and analyze the urgency of regulating refund and warranty clauses in electronic contracts, as well as how harmonization between contract law and consumer protection law can be achieved. Data collection is conducted through literature review of various legal documents, court decisions, academic journals, and other official sources. The collected data is then analyzed qualitatively, focusing on normative interpretation of applicable legal provisions and their relevance to current legal practices.

3. Results and Discussion

3.1. Refund and Warranty Clause Issues in Electronic Agreements

The main problem in the current practice of electronic transactions in Indonesia lies in the vagueness and imbalance of refund and warranty clauses in e-contracts. Many digital platforms such as Shopee, Tokopedia, and Lazada apply the terms and conditions of refunds and product warranties through Terms and Conditions that are formulated unilaterally by business actors, without the participation or explicit consent of consumers (Fausi & Karim, 2025; Hayati & Ginting, 2021; Priowirjanto et al., 2022). For instance, Shopee requires that refund requests be submitted within a specific time frame after the product is received, and only for certain product categories. This policy is not always openly displayed on the transaction page but is instead hidden in a separate link that consumers often do not read. This clearly contradicts the principle of transparency in consumer protection law and undermines the principle of contractual fairness, which in classical contract law is based on the principles of freedom of contract (*contractvrijheid*) and good faith (*goede trouw*) (Martin, 2023). In this context, freedom of contract should not be interpreted as absolute, especially in standard form contracts where the consumer is the weaker party and requires protection, as emphasized by the theory of limitations on freedom of contract that has developed in modern civil law (Wilson, 1965).

This imbalance is further exacerbated by the absence of specific technical regulations in Indonesia's positive law regarding the substantive content of refund and warranty clauses in electronic contracts. Although, in general, consumer rights are regulated under Law Number 8 of 1999 on Consumer Protection (UUPK), and the validity of electronic contracts is recognized by Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law), along with its amendment through Law Number 19 of 2016, neither of these regulations provides detailed minimum standards for the content of refund or warranty clauses in digital transactions. Even the Indonesian Civil Code (KUH

Perdata), which serves as the legal foundation for contracts, remains overly general and unresponsive to the dynamics of digitalization. This stands in stark contrast to the European Union's Consumer Rights Directive 2011/83/EU, which explicitly mandates an unconditional right of return within 14 days from the date the consumer receives the goods (Kriswandaru, 2023). Thus, regulations in Indonesia remain normatively and substantively lagging behind the consumer protection standards of other jurisdictions.

Table 1. Comparison of Refund and Warranty Clause Regulations in Relevant Legal Instruments

Regulation	Refund Clause	Warranty Clause	Regulatory Weaknesses
Law No. 8 of 1999 (UUPK)	Generally regulated under Articles 4 and 7	No technical provisions	Does not specify detailed refund procedures or time limits
Law No. 11/2008 & Law No. 19/2016	Only affirms the validity of electronic contracts	Not explicitly regulated	Does not mandate the inclusion of refund/warranty clauses in digital contracts
Indonesian Civil Code (KUH Perdata)	Freedom of contract (Article 1320)	Implied through the principle of good faith	Not relevant to digital transactions and standard form contracts
EU Directive 2011/83/EU	Unconditional return within 14 days	Mandatory product warranty information	Provides a minimum level of protection mandatory across all EU member states

The absence of a legal mechanism that compels businesses to draft fair refund and warranty clauses has led to practices that tend to be exploitative toward consumers. In many cases, business operators or platform providers establish internal policies that are difficult to understand or even burdensome for consumers. One example can be found on Tokopedia, where several consumers were unable to request a refund for damaged products due to the lack of unboxing video evidence (Winarsih & Oktaviarni, 2021). Such clauses place an undue burden on consumers and unfairly shift the burden of proof, which, in theory, contradicts the principle of proportionality in business operators' liability as developed in consumer protection theory by Stephen Weatherill in the context of European Union law (Howells & Weatherill, 2017). Under Indonesian law, the right to information and compensation is also guaranteed in Articles 4 and 7 of the Consumer Protection Law (UUPK). However, in practice, its implementation has not yet been standardized in electronic transactions.

In addition, the direct implication of the ambiguity of these clauses is the weakening of legal certainty for both consumers and business operators. When consumers lack a clear legal basis to claim their right to a refund or warranty, dispute resolution becomes difficult, whether through litigation or non-litigation channels. On the other hand, law enforcement authorities also lack objective parameters to assess the validity or fairness of clauses embedded within the automated systems of e-commerce platforms. This

situation threatens the sustainability of the digital trade system, as it may erode public trust in the safety and fairness of online transactions.

This condition creates a dilemma between business efficiency and the fairness of legal protection. Business operators are concerned that overly strict refund and warranty policies may be abused by consumers, while consumers worry that weak legal regulation will continue to perpetuate practices that disadvantage them. In classical contract law, this dilemma relates to the concept of *equilibrium contractus* (contractual balance), which demands a balance between economic interests and legal protection. Therefore, the state must act as a mediator by setting minimum protection standards, including time limits for refund claims, proportional requirements, and simple, affordable dispute resolution mechanisms.

In relation to modern contract theory, the approach used must reflect the concept of *reasonable expectations of the parties*, namely the reasonable expectations of consumers regarding the products and services they purchase. This concept was developed by Grant Gilmore, who emphasized that a contract is not merely a formal agreement, but must also reflect the expectations and interests of both parties (Gilmore, 1964). In the context of e-commerce, consumers' expectations regarding clear refund and warranty terms have become an inherent part of the transaction and must be fulfilled fairly and transparently by business operators.If this issue is not promptly addressed through binding technical regulations, the imbalance in electronic contract practices will persist and negatively impact the development of the national digital economy. Legal clarity in refund and warranty clauses not only protects consumers but also provides legitimacy and legal certainty for good-faith business operators. Therefore, harmonization between contract law, consumer protection, and digital transaction practices must be pursued through regulatory revisions and the establishment of standardized clause guidelines by the government, particularly the Ministry of Trade and the National Consumer Protection Agency (BPKN).

3.2. Harmonization of Agreement Law and Consumer Protection

The development of digital technology and electronic trading systems (e-commerce) has encouraged the birth of various forms of electronic contracts that require adjustments to the principles of classical civil law (Putri & Satriawan, 2024; Rukmana et al., 2021; Santoso, 2019; Sari, 2022; Setiani & Taufiq, 2018). On the one hand, agreement law in Indonesia adheres to the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, which provides flexibility for parties to make agreements according to their will (Jatmiko, 2025; Wardhana et al., 2025). On the other hand, in the context of the legal relationship between business operators and consumers, this principle is often exploited by businesses to draft standard form contracts that leave no room for consumer participation. This practice contradicts the principle of consumer protection, which requires a balanced legal position to ensure that consumers are not disadvantaged due to information asymmetry and unequal bargaining power. Therefore, there is an urgent need to harmonize contract law and consumer protection law in order to create a legal system that is adaptive, fair, and responsive to contemporary needs.

Legal harmonization in this context does not merely mean merging two legal regimes, but rather uniting two fundamental values: *autonomie de la volonté* (freedom of will) in contract law and *consumentenbescherming* (consumer protection) in consumer law. This

theory aligns with the views of René David, a prominent comparative law scholar, who asserted that modern law must reconcile private norms with public interests in order to avoid structural imbalances. In the Indonesian context, contractual imbalance in electronic transactions has become a major concern, as consumers are often faced with one-sided clauses that are detrimental such as limitations on refund rights or the absence of clear warranty guarantees.

A concrete example of the abuse of dominant position by business actors can be found in e-commerce practices in Indonesia, such as on platforms like Shopee and Lazada, where most terms and conditions of purchase are unilaterally determined by the business operators or merchants. Clauses such as "purchased products cannot be returned unless there is a manufacturing defect" are often not further explained particularly regarding who determines the defect and what the return mechanism entails. In this case, there is a violation of the principle of *equality before the law*, as consumers are neither given the opportunity to negotiate nor to fully understand the contractual details. This highlights the growing need for the principle of *fairness* in the formation and execution of electronic contracts.

The core principles that must serve as the foundation for legal harmonization are transparency, proportionality, and contractual fairness. Transparency refers to the obligation of business actors to provide information that is clear, honest, and easily understood by consumers. This aligns with Article 4(c) of Law No. 8 of 1999 on Consumer Protection (UUPK), which states that consumers have the right to correct, clear, and honest information regarding the condition and warranty of goods and/or services (Mohd Yusuf Daeng, Siti Yulia Makkinnawa, 2022; Yessy Kusumadewi, 2022). Proportionality means that rights and obligations in a contract must be distributed fairly in accordance with each party's contribution and the risks involved. Contractual fairness refers to the requirement that a contract must not be one-sided or favor only one party. This concept is supported by the theory of commutative justice introduced by Aristotle and further developed by John Rawls in his theory of justice as fairness.

In the practice of legal harmonization in developed countries, minimum standards for refund and warranty clauses have been implemented and are required to be included in every consumer contract. For example, in the legal system of the European Union, the EU Consumer Rights Directive 2011/83/EU obligates businesses to provide the right to return goods within 14 days without any conditions. This regulation also requires that information about such rights be stated explicitly and made easily accessible to consumers. In the Indonesian context, similar provisions do not yet exist in the form of laws or technical regulations, thus creating a need for policies that can normatively and practically fill this legal gap.

The author's main recommendation for harmonizing the law is the establishment of stricter regulation of standard clauses in legislation, particularly for electronic transactions. Currently, Article 18(1) of the Consumer Protection Law prohibits the inclusion of standard clauses that unilaterally shift responsibility to businesses, but it does not clearly specify which clauses should be prohibited or required. Therefore, implementing regulations or derivative rules are needed to govern the substance of standard clauses in electronic contracts, including the right to a refund, product warranty, and dispute resolution procedures.

The author proposes the establishment of an electronic contract oversight body under the coordination of the National Consumer Protection Agency (BPKN) or the Ministry of Trade, functioning as a regulatory watchdog. This body would be responsible for reviewing and approving model standard clauses used by digital platforms, as well as providing guidelines for drafting fair and transparent electronic contracts. Such functions have already been adopted in countries like Germany and the Netherlands, where consumer protection agencies have the authority to reprimand or even sanction businesses that violate established clause standards.

Another proposed idea is the implementation of national standard form contracts for electronic transactions, containing mandatory clauses that cannot be deleted or modified by businesses. This model can be developed through collaboration between academics, government, and industry players using participatory mechanisms, thereby reflecting the needs and interests of all parties. These standard contracts would ensure that consumers' rights to refunds and warranties are legally protected and not dependent on unilateral policies set by businesses.

From a civil law perspective, this approach does not conflict with the principle of freedom of contract, because in modern legal practice, contractual freedom is not absolute. According to Friedrich Kessler, freedom of contract in modern society must be limited by legal intervention to ensure social justice. Restrictions on exploitative clauses are not limitations on freedom but rather a safeguard for the integrity of legal relationships. Thus, the application of standard contracts is not a form of restriction on business actors' freedom, but a mechanism to guarantee transparency and legal certainty for all parties.

With proper harmonization between contract law and consumer protection law, a fairer and more conducive legal environment can be created for the growth of the digital economy in Indonesia. Consumers will feel safer and more protected when making online transactions, while businesses will gain legal clarity that supports their reputation and business sustainability. Therefore, the government must urgently formulate concrete and collaborative policies that are not only responsive to current issues but also capable of addressing the legal challenges of the digital future.

4. Conclusion

The harmonization between contract law and consumer protection in electronic transactions is an urgent necessity to address the legal imbalance between business actors and consumers, particularly in refund and warranty clauses. The principle of freedom of contract, as stipulated in Article 1338 of the Indonesian Civil Code (KUH Perdata), must be balanced with consumer protection principles outlined in Articles 4 and 18 of Law No. 8 of 1999 on Consumer Protection, to prevent its misuse by businesses in unilateral standard form contracts. The principles of transparency, proportionality, and contractual fairness are essential foundations for drafting fair clauses that do not burden consumers. Referring to international practices such as the EU Consumer Rights Directive 2011/83/EU, Indonesia should adopt a regulatory model that mandates minimum standards for refund and warranty clauses, accompanied by oversight from consumer protection authorities such as the National Consumer Protection Agency (BPKN). Legal scholars like Friedrich Kessler emphasize that freedom of contract in the modern era is not absolute, but must be limited to prevent the exploitation of weaker parties in this

case, consumers. Thus, this harmonization is not only a normative solution but also a foundation for legal certainty and justice within the digital economic ecosystem.

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