

**ELECTRONIC AGREEMENTS FROM THE LENS OF THE LEGAL
PERSPECTIVE “LAW AS A TOOL OF SOCIAL ENGINEERING”
PROPOSED BY ROSCOE POUND**

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ABSTRACT

The purpose of this research is to provide a juridical analysis of electronic agreements from the legal perspective of “Law as A Tool Of Social Engineering” coined by Roscoe Pound. This article emphasizes on a normative juridical research with a statutory approach, empirical approach, and case study approach to comprehend electronic agreements and the law that regulates it as norms implemented in society. The type of data analyzed in this article are primarily secondary data from books, previous studies, journals related to electronic agreements, and Indonesian laws concerning electronic agreements. Previous survey found that more than 660 thousand electronic agreements were signed in early 2018, which is 159 percent higher than the previous period, indicating that the use of electronic agreements continue to increase and expand to various sectors in Indonesia. Therefore, the Indonesian law system must have an explanatory approach regarding this phenomena of technological advancement, specifically about electronic agreements. Several regulations researched and analyzed in this research disclose the importance of law related to electronic agreements, one of which is providing legal protection for the interests of the parties in electronic agreements. Supported by the legal perspective of “Law as A Tool Of Social Engineering” coined by Roscoe Pound, the existence of laws or regulations, in this case specifically regarding electronic agreements, functions as a law that can maintain the stability and balance of conflicting interests in society. Furthermore, the legal perspective of “Law as A Tool Of Social Engineering” sees the laws related to electronic agreements direct human attitudes to react to changes in society, in this case related to the technological advances that offers electronic agreements, so that people

understand that agreements signed electronically have the same validity and binding force as conventional agreements signed physically.

Keywords: *electronic agreement; law as a tool of social engineering; Roscoe Pound.*

INTRODUCTION

In their daily life and activities, humans constantly bind themselves to agreements. The Big Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*) defines an agreement as “a written or verbal agreement made by two or more parties, each of whom agrees to comply with what is stated in the agreement.”¹ Technological advances have influenced the patterns, methods, and behavior of legal subjects in entering into agreements. The convenience offered by the internet in accessing information and interacting online makes it easier for people to enter into agreements or legal relationships electronically without being restricted by time or distance. Based on data held by PrivyID, an electronic signature provider company, more than 660 thousand documents were signed electronically from January to June 2018, the number increased by 159 percent from the same period in the previous year². This

phenomenon should be a concern since many legal subjects bind themselves to an electronic agreement without knowing and understanding the legal consequences arising from the agreement. Besides, electronic agreements are closely related to human interests.

In the definition stated in Article 1313 of the Civil Code, an agreement or arrangement is an act in which one or more people bind themselves to one or more other people. Generally, in the legal area, an agreement is understood as a legal act based on a consensus that results in particular legal consequences. Prof. Subekti explains in more detail the definition of an agreement, an event in which one person makes a promise to another person or two people promise each other to carry out something.³ Based on this explanation, it can be seen how an agreement contains elements of obligation, where one person binds himself to another person and vice versa. The presence of an obligation in the

¹ Departemen Pendidikan Nasional. (2005). *Kamus Besar Ikhtisar Indonesia Edisi Ketiga*. Jakarta: Balai Pustaka, hlm. 48.

² Redaksi Selular. (2018). *Penggunaan Tanda Tangan Digital di Indonesia Tumbuh Pesat*. [https://selular.id/2018/08/penggunaan-tanda-](https://selular.id/2018/08/penggunaan-tanda-tangan-digital-di-indonesia-tumbuh-pesat/)

[tangan-digital-di-indonesia-tumbuh-pesat/](https://selular.id/2018/08/penggunaan-tanda-tangan-digital-di-indonesia-tumbuh-pesat/) [diakses pada 24 Oktober 2023]

³ Subekti. (1990). *Hukum Perjanjian*. Jakarta: PT. Intermasa, hlm. 1.

elements of an agreement causes logical consequences between the parties, where the first party's responsibility then becomes the right of the second party, and the second party's responsibility becomes the right of the first party.

Based on this, it is essential to understand the provisions of the Civil Code (KUHPer) and other legislation related to electronic agreements and how these regulations can construct justice and order for the interests of the legal subjects binding themselves on agreements made through electronic media. Roscoe Pound, a leading legal expert from the United States, provides a framework of thinking, namely "Law as a tool of social engineering," where the law is seen as an element constructed from the arrangement of human interests⁴. This theoretical framework can help explain the function of regulations or rules regarding electronic agreements in manifesting the stability and balance of the interests of the parties involved. The government, through statutory regulations, always tries to fill legal gaps by developing regulations that provide legal provisions that control and

restrain human interests, one of which concerns agreements in electronic media.

The public must be conscious that activities carried out in cyberspace have legal consequences, especially electronic agreements agreed upon and signed upon. However, to achieve such consciousness, society must comprehend how electronic agreements have validity and binding conditions like conventional agreements. Considering that conventional agreements have an evident structure with a physical form able to be proven while agreements made electronically do not have a physical form. Intending to comprehend the laws and regulations that regulate electronic agreements, this article uses a perspective from Roscoe Pound's theories to analyze the role and function of electronic agreement law, which are closely related to human interests and the position of law in society. In fact, technology has had a massive impact on people's daily lives in terms of culture, politics, economics, and especially the legal framework⁵. The immense impact of technology on human life is related to significant changes that can cause great anxiety and confusion because of the absence of regulations

⁴ Roscoe Pound. (1974). *An Introduction to the Philosophy of Law*. London: Yale University Press, hlm. 25.

⁵ Sinta Dewi Rosadi dan Dinah Sumayyah. (2015). *Cyber law: aspek data privasi menurut hukum internasional, regional, dan nasional*. Bandung: Refika Aditama, hlm. 1.

regarding these new changes. In this case, technological advances that make electronic agreements possible have impacted and influenced the Indonesian legal framework, where the public demands clarity on the validity, legal force, and legal function of laws regulating electronic agreements. The concept coined by Roscoe Pound, “Law as a tool of Social Engineering,” will illustrate comprehensively how the law regarding electronic agreements constructed from human interests protected by law, which then has a crucial function in directing, limiting, and controlling human behavior towards changes, in the form of agreements which are now in an electronic format⁶.

Based on the background explanation of electronic agreements explained previously, the primary problem in this research article is how an electronic agreement has validity in the eyes of the law according to the Criminal Code and other laws in force in Indonesia; as well as analyzing more comprehensively about electronic agreements through the perspective of legal theory proposed by Roscoe Pound, namely “Law as a tool of

social engineering” to understand the characteristics of electronic agreement law existed and administered in Indonesia starting from the aspect of protecting interests, regulating and finding equilibrium on conflicting interests, as well as the aspect of social construction.

RESEARCH METHODOLOGY

This article is a legal research that emphasizes normative research methods. Legal research can be defined as a sequence of procedures to discover legal provisions that apply to questions from existing facts and phenomena⁷. This article investigates the legal provisions that apply to agreements made electronically. Legal research in this article focuses on the law as a rule written in legislation, a benchmark for human behavior that is considered appropriate, in this case, related to forming an agreement⁸. The data sources used in this article are secondary data obtained from the Civil Code, laws, library materials, and other facts related to electronic agreements and their validity in the eyes of the law in force in Indonesia, as well as

⁶ L.J. McManaman. (1958). “Social Engineering: The Legal Philosophy of Roscoe Pound”. *St. John's Law Review*, 33(1), 1-47.

⁷ William H. Putman. (2004). *Legal Research, Analysis and Writing*. Australia: Thomson Delmar Learning, hlm. 26.

⁸ Amiruddin dan Zainal Asikin. (2006). *Pengantar Metode Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, hlm. 118.

the theory proposed by Roscoe Pound, namely, “Law as a tool of social engineering.”

RESULTS AND DISCUSSION

The definition of an agreement; according to Article 1313 of the Civil Code is “*an act by which one or more people bind themselves to one or more people.*” In his book titled *An Introduction to the Philosophy of Law*, Roscoe Pound explains that the significant parts (substance, the phrase used by Pound) in the life of every human being consist of the benefits that other people have promised to give him and the demands to obtain previously promised benefits⁹. Through his illustration, Pound is more inclined towards private agreements between the subjects bound by the agreement and the object. In other words, Pound remarks that what exists in human life, for example earning wages or salaries, acquiring a share of profits, obtaining loan money, etc., are benefits that have previously been promised to humans. Based on this logic of thinking, agreements have an influential role in

⁹ Roscoe Pound. (1974). *An Introduction to the Philosophy of Law*. London: Yale University Press, hlm. 133.

affecting the course of human life and their interests.

According to Pound, the essence of an agreement or contract is stability and equilibrium, and law must have a role and function to balance the interests that compete in society, to bring the greatest profit¹⁰. Previously, Pound had also put forward the Theory of Interests, where these three interests are¹¹:

- 1) Individual interest
Claims or demands come from the perspective of individual human life consisting of personal interests, domestic or household relationship interests, and substantive interests.
- 2) Public interest
The desires demanded by individuals come from political life, where every individual in a society has a responsibility towards each other and utilizes goods that are open to the public interest.
- 3) Social interest
Demands in social life involve fulfilling all the needs of society as

¹⁰ Shidarta. (2016). Peran Negara dalam Menyikapi Investasi Menurut Teori Kepentingan Pound. Binus Rubric of Faculty Members. <https://business-law.binus.ac.id/2016/01/03/peran-negara-dalam-menyikapi-investasi-teori-kepentingan-pound/> [diakses pada 23 Oktober 2023]

¹¹ Roscoe Pound. (1943). “A Survey of Social Interest”. *Harvard Law Review*, 57(1), 1-39.

a whole, so that it can function and be maintained well.

Discussing about agreements, in countries that apply civil law, the individual interests of the subject of the agreement, as well as social interests in the security of transactions, are guaranteed by law to protect agreements in general¹².

The current phenomenon is that technological advances are becoming more progressive, impacting human life and opening up diverse new ways of communicating and making transactions. It is undeniable that the virtual world, or electronic world, has become an element that is inseparable from human life. These various ways of electronic communication and transactions are rapidly spreading into every aspect of human life, including allowing electronic agreements to occur. Technological developments that produce rapid changes in human life must be balanced by rules or legal regulations so that the abstract or virtual world can be extracted into something concrete and tangible.

In his theory, Roscoe Pound has coined a concept where coercive law has a significant role in becoming a tool of

¹² Roscoe Pound. (1974). *An Introduction to the Philosophy of Law*. London: Yale University Press, hlm. 134

social control¹³. The term or concept of “Law as a tool of social engineering” puts law as a means of societal reform, where it plays a role in dealing with changes in values and aspects existing in society¹⁴. As a representation of the changes or shifts in society, electronic agreements require laws or regulations that function as agents of social control to limit human behavior and restrain human interests. The law governing electronic agreements is also a tool that can help society while facing this technological advancement by providing the public with references and rules that can be adhered to in implementing electronic agreements. In this case, people can enjoy the convenience offered by technology by being able to sign agreements electronically with minimal anxiety since there are laws that regulate it.

To understand the law that covers electronic agreements, one must first study the fundamentals of an agreement, in this case, the conditions for the validity of an agreement. The provisions for the validity of an agreement consist of

¹³ Soetandyo Wignjosoebroto. (2013). *Pergeseran Paradigma dalam Kajian-Kajian Sosial dan Hukum*. Malang: Setara Press, hlm. 126.

¹⁴ Martha Safira. (2017). “Law is a Tool of Social Engineering dalam Penanganan Tindak Pidana Korupsi di Indonesia Ditinjau dari Hukum Islam dan Perundang-undangan di Indonesia”. *Kodifikasia*, 11(1), 118-133.

absolute things, and each element must be adhered to by each party when agreeing. In Indonesia, currently, the legal requirements for electronic and conventional agreements are based on Article 1320 of the Civil Code, where an agreement is considered valid if it fulfills four conditions of agreement, namely as follows:

1. *Agreement or consensus of the parties*
2. *Legal competence of the parties*
3. *The existence of a certain matter*
4. *A lawful cause*

When forming an agreement, there must be consensus from the parties involved. Agreement between the parties means that there is a will or free and voluntary will of the parties who agree upon the main things expected. In an electronic agreement, the points of consent are usually verified by a column containing an arrangement sentence that must be clicked, which when clicked would display a tick symbol indicating that the subject has agreed to the points of agreement. Moreover, in an electronic agreement, the subject is asked to add an electronic signature using certain methods as an indication that the subject has agreed

to the contents of the agreement. Regarding free will, Article 1321 of the Civil Code states that an agreement is invalid if it occurs due to elements of error (unconsciousness), coercion, or fraud. The next point, namely the legal competence of the parties entering into the agreement, is a factor that is no less important to ensure the agreement executed can be considered to be a legal act. Article 1330 of the Civil Code explains that people who are incompetent in carrying out agreements or legal acts are (a) minors, (b) people under guardianship, and (c) women. Furthermore, the existence of a particular matter reminisces that an agreement must have a specific and clear object that is agreed upon. The agreement must also not violate any existing laws or regulations. Every agreement must have a lawful cause or legal cause that serves as the foundation of the agreement. Article 46 Section (2) Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions regulates more in-depth and specific regarding the validity or conditions for considering the validity of an electronic agreement, including:

- a) *There is a consensus between the parties;*
- b) *Carried out by a competent legal subject or authorized person to*

- delegate, in accordance with the provisions of statutory regulations;*
- c) *The existence of a particular matter; and*
 - d) *The object of the transaction must not contradict with statutory regulations, morality, and public order.*

Apart from these four requirements, Article 47 Section (1) Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions regulates that electronic agreements that Indonesian citizens wish to agree must be made in Indonesian language. In the same Article, Section (2) states that if an electronic agreement uses standard clauses, it must comply with the provisions of statutory regulations regarding standard clauses. In Section (3) of Article 47, electronic agreements or contracts must also contain: (a) identity data of the parties, (b) objects and specifications, (c) electronic transaction requirements, (d) prices and costs, (e) procedures in the event of a cancellation by the parties, (f) provisions that give the injured party the right to return the goods and/or request a product replacement if there are hidden defects, and (g) legal options for electronic transaction settlement.

Using Roscoe Pound's view of interests, the legal conditions above exhibit legal protection not only for individual interests in personal, substantive, and domestic matters but also for public interests, as well as social interests. Provisions for the validity of electronic agreements in Article 46 Section (2) Government Regulation No. 71 of 2019 concerning the Implementation

of Electronic Systems and Transactions protect personal interests in terms of ensuring expertise and consensus between the parties. On the other hand, the requirement for the existence of an object that does not conflict with the laws and norms that apply in society is a form of protection for public interests and social interests. Even though it is a relatively new thing for society, regulations of electronic agreements have been prepared beneath the needs and interests of human social life. This is proof of the principle "Law as a tool of social engineering," that the existence of a law or statutory regulations, in this case specifically regarding electronic agreements, functions as a law that can maintain the stability and equilibrium of conflicting interests in society.¹⁵

Moreover, to suffice the legal void related to the legal force of an electronic agreement, the government has prepared several rules and regulations that provide legal certainty regarding electronic agreements. Referring to Law No. 11 of 2008, concerning Electronic Information and Transactions, Articles 5 to 12 state that Electronic Information or Electronic Documents and/or their printouts are valid legal evidence, which is an extension of valid evidence following the procedural law in force in Indonesia. Likewise, electronic signatures have legal force and legal consequences if they fulfill the following requirements according to Article 11 of Law Number 11 of 2008

¹⁵ Soetandyo Wignjosoebroto. (2013). *Pergeseran Paradigma dalam Kajian-Kajian Sosial dan Hukum*. Malang: Setara Press, hlm. 126.

concerning Electronic Information and Transactions:

- 1) *Electronic signature creation data relates only to the signatory;*
- 2) *Data on creating the electronic signature during the signing process is solely under the control of the signatory;*
- 3) *Any changes to the electronic signature that occur after the time of signing can be known;*
- 4) *Any changes to the electronic information related to the electronic signature after the time of signing can be known;*
- 5) *There are certain methods used to identify the signatory; and*
- 6) *There are certain ways to show that the signatory has given consent to the relevant electronic information.*

Based on the provisions of the Civil Code, Government Regulations, and the ITE Law, agreements electronically made have the same legal force as agreements signed by the parties directly (conventional agreements). Indeed, only under the conditions or requirements these regulations stated previously. Based on the ITE Law, electronic agreements are recognized as valid legal evidence, owing to electronic information and/or electronic documents being a relatively new variation and an addition to valid evidence following applicable procedural law in Indonesia. This also means that apart from having validity and legal force, electronic agreements can be used as electronic evidence in court whether a dispute occurs between the parties.

If explored more deeply, Article 11 of Law No. 11 of 2008 concerning

Information and Electronic Transactions reflects the regulation of interests that arise over time due to competing interests between individuals in society. It is evident in the points of this Article, that there are rules regarding changes to electronic information, along with certain ways to ensure that the signatory has approved the relevant electronic agreement. According to the “Law as a tool of social engineering” framework, this is due to the role of law in society, which must determine which interests it will recognize, establish boundaries to ensure these interests at the expense of other interests, regulate how the law can interfere in these interests, and the law must develop mechanisms that need to be taken so that these interests are safe under legal protection¹⁶. In this context, electronic agreement law recognizes both parties' interests - those of the people who bind themselves consensually to an electronic agreement and the interests of the parties who have been promised or who have received the promise. With this, the law also regulates limitations to ensure the interests of the results of the electronic agreement are carried out. Through Article 47 paragraph (3) Government Regulation no. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, the law has also determined how the law can interfere in electronic agreement transactions, where an electronic agreement must contain legal

¹⁶ Amr Ibn Munir. (2023). “Roscoe Pound’s Theories of Interests and Justice: A Critical Appraisal”. SSRN: <http://dx.doi.org/10.2139/ssrn.4433213>

options for electronic transaction settlement inside.

At last, the concept of “Law as a tool of social engineering” positions law as an engineer that directs or drives society in the direction in which it ought to be governed. This means leading humankind towards progression to construct a more civilized society. In correlation with electronic agreements, which are the topic of this article, society requires laws that can help them understand complex developments in the face of ever-changing social, economic, and technological developments. With the presence of regulations regarding electronic agreements, the function of “Law as a tool of social engineering” could create a society that is knowledgeable and conscious that electronic agreements are recognized as valid in the eyes of the law, as is the case with electronic signatures. People can feel secure when making electronic agreements, as the law protects their interests. On the other hand, the law directs the public to comply and carry out the points agreed upon in the electronic agreement properly because the law protects the interests of the recipient of the promise as well. Through the principle of “Law as a tool of social engineering,” society is also prepared by law to accept technological developments by the modified form of an agreement, which was previously in physical form (using paper) to electronic form, and ensuring that these changes do not lessen the validity of an agreement and does not diminish the binding force of the agreement.

CONCLUSION

In conclusion, electronic agreements are valid and have the same force as conventional or physically signed agreements, as long as the electronic agreement fulfills the legal requirements for an agreement following existing laws and regulations. The legal principles included above regarding electronic agreements demonstrate that there is a function of the social control function of law to regulate and create stability between competing interests in society. By the concept of “Law as a tool of social engineering,” electronic agreement law ensures the protection of individual interests, as well as public interests and social interests. Legal certainty regarding the security of these interests also forces, or controls, the public to obey the law and carry out the main points of electronic agreements according to verifiable agreements. Moreover, “Law as a tool of social engineering” also explains that the rules enclosed in electronic agreement law contain terms, conditions, and limitations for human actions and behavior that ultimately serve as agents of social control in society.

Furthermore, it can be concluded that the principle of “Law as a tool of social engineering,” Roscoe Pound's thought, explains the legal role of electronic agreements as a juridical order that controls and directs human behavior in a civilized direction in the face of technological developments that allow shifts in the form of an agreement to electronic format. The concept put forward by Pound also illustrates that the law regarding electronic agreements

constructs human attitudes to face changes in society, in this case, related to electronic agreements, so that people comprehend that electronically signed agreements have the same validity and binding force as conventionally signed agreements. Understanding the justifiability and binding force will control the public to be more compliant with the laws governing electronic agreements and the provisions agreed upon in the corresponding electronic agreements they sign themselves.

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