



THE PRINCIPLE OF PROPORTIONALITY ON DIGITAL BUSINESS AGREEMENTS: BETWEEN MITIGATION AND ORIENTATION

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Abstract

The Agreement as part of civil law is one of everyday life's most frequently performed actions. This study aims to anticipate the development of digital agreements by contextualizing the provisions of laws and regulations regarding agreements. This research is normative legal research that uses statutory and conceptual approaches. The results of the study confirm that efforts to mitigate digital agreements following contract law are by still referring to Article 1320 of the Civil Code by prioritizing four orientations to minimize risks in digital agreements. First, the preventive orientation by looking at the parties who are invited to enter into agreements. Second, the prudence and proportionality in reading the provisions in digital agreements. Third, the prudence and proportionality of digital agreements by including names as well as identities that can be contacted and can be accounted for by the parties. Fourth, prudence and proportionality in determining the object of the agreement. Furthermore, the orientation of digital agreements based on the principle of proportionality based on philosophical, sociological, and juridical aspects requires specific arrangements, particularly regarding the minimum requirements for implementing digital agreements. That is because the unique characteristics of digital agreements need special arrangements regarding the terms of the validity of digital agreements, which in general still refer to Article 1320 of the Civil Code.

Keywords: Proportionality, Principle, Business, Digital Agreement.

A. Introduction

The Agreement as part of civil law is one of everyday life's most frequently performed actions. In practice, agreements are made by every human being from various activities, from waking up to going back to sleep at night. In this context, the agreement is one of the legal aspects that are urgent always to be carried out because it relates to human efforts to establish bonds with other humans. That requires the state's role in regulating agreements through statutory regulations. The state's role in regulating agreements is based on the Civil Code (Kitab Undang-Undang Hukum Perdata or KUHP), particularly in Book III. One of the essential rules regarding agreements is the arrangement regarding the terms of the agreement's validity, namely those contained in Article 1320 of the Civil Code. The terms of the agreement's validity are one of the initial indications to determine whether an agreement is valid.

The development of actual agreement practices also requires the contextualization of agreement arrangements. In practice, if the agreement was only carried out in writing in the

past, in its development, there have also been agreements implemented digitally. Even though they have the same -written characters, digital agreements have certain characteristics so that laws and regulations related to agreements require adjustment efforts to accommodate the development of digital agreements. Digital agreements are increasingly being used, especially since digital business trends are surfacing. That is coupled with the COVID-19 pandemic, which further emphasizes the role of digital business as an essential pillar of the economy. The massive development of digital business is in line with the development of digital agreements in practice. Therefore, this study aims to anticipate the development of digital agreements by contextualizing the provisions of laws and regulations regarding agreements.

Research on digital agreements has been carried out by several researchers before, including (i) Nur Sa'adah and Sri Endah Indriawati (2020), which discusses the legal consequences of electronic agreements in terms of Article 1866 of the Civil Code with a focus on the validity from digital agreements can optimize digital forensics so that if a digital agreement is following digital forensics, the legal consequences of digital agreements are the same as agreements in general. Furthermore, the agreement entered into by (ii) Putu Pery Indrawan, Anak Agung Sagung Laksmi Dewi, and Luh Putu Sudini (2021) regarding Contract Trading Through the Internet (Electronic Commerce) in terms of Agreement Law which focuses on assessing the legal terms of digital agreements which must also be referred to Article 1320 BW which means, if the legal terms of the agreement are not met, then the digital agreement is not legally valid. Furthermore, research conducted by (iii) Misbakhul Munir Mubarak (2022) concerning E-Commerce from the Perspective of Sharia Economic Law focuses on the validity of digital commercial contracts from the perspective of Islamic economics. Of the three previous studies regarding digital agreements or contracts, there has yet to be any specific research discussing aspects of implementing the principle of proportionality in digital agreements, as the author orients. Therefore, this research is original. This research seeks to answer two problem formulations: (i) How are digital agreement mitigation efforts following contract law? Moreover, (ii) How is the orientation of the implementation of digital agreements following the principle of proportionality?

This research is normative legal research that examines literature, books, journals, previous research, doctrines, etc. by prioritizing legal prescriptions as the final result of legal research. The legal novelty in this study is the application of the principle of proportionality in digital agreements with a focus on mitigation and orientation to optimize digital agreements. The main legal material in this research is the Civil Code. Secondary legal material is the result of research and studies regarding digital agreements and the principle of proportionality. Non-legal material includes dictionaries, both legal dictionaries and language dictionaries. The approach in this study uses a conceptual and statutory approach.

B. Discussion

1. The Digital Agreement Implementation Mitigation: an Overview

Digital agreements are generally understood as a type of agreement.¹ Thus, various provisions relating to agreements in general also apply to digital agreements. As a particular part of the agreement, digital agreements must also comply with the principles and various provisions in the laws and regulations regarding agreements.² Generally, an agreement is understood as an agreement by the parties to be bound by what has been agreed upon. That means the points of agreement that have been agreed upon by the parties apply to the parties. Regarding the principles of contract law, there are various principles of contract law. This is

¹ Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53–70, <https://doi.org/https://doi.org/10.35968/jh.v11i1.651>.

² Jason Pratama Ong, "The Enforceability Of Digital Contract: A Comparative Analysis On Indonesia And New Zealand Law," *The Lawpreneurship Journal* 1, no. 1 (2021): 33.

emphasized by Peter Mahmud Marzuki, that the principle of law is a moral emission that has been contained in the legal process so that the emission of morality can legitimize legal practice and follow morality.³ Although there are many principles in contract law there are four main principles. The four main principles are directly related to the essence of the agreement. The four principles include the principle of personality, the principle of freedom of contract, the principle of binding agreements, and the principle of consensual.⁴

The principle of personality in the agreement focuses on the fact that the agreement is only binding on the parties who agree. This means that the agreement is only binding on the parties to the agreement. Third parties are not allowed to be subject to rights and obligations in the agreement. However, third parties can be involved in the agreement if there are relevant legal implications and the need to involve third parties. At the same time, this emphasizes that the essence of the principle of personality is that the agreement is only binding on the parties agreeing to the agreement and is not allowed to involve other parties with no direct relevance to the agreement.⁵ Furthermore, the principle of true personality is regulated in Article 1340, paragraph (1) of the Civil Code. However, there are exceptions to the principle of personality as stated in Article 1316 of the Civil Code and Article 1317 of the Civil Code relating to guarantees and *derden beding*. That is because guarantees and *derden beding* have relevance regarding arrangements for third parties

The following principle of agreement is the principle of consensual. Consensual lexically means *consensus*, which in Latin means to 'agree'.⁶ This principle emphasizes that an essential aspect of the agreement is the agreement. 'Agree' is the agreement of the parties to an existing agreement. That means the agreement is considered binding as long as there is an agreement between the parties.⁷ That is stated in Article 1320 of the Civil Code, especially in the first point, which emphasizes that one of the legal terms of an agreement is agreement. There can be no agreement, and vice versa; the agreement will not be valid without an agreement from the parties. The principle in contract law that is no less important is the principle of freedom of contract, commonly called the privity of contract.⁸ This principle emphasizes that the parties who agree have the freedom to determine what clauses and substance are in agreement. In this case, the freedom and independence of the parties in determining the substance of the agreement is an absolute right in the agreement. That means if one party is forced or does not have freedom in the agreement, it can impact the agreement's validity. Even so, the principle of freedom of contract is limited by Article 1337 of the Civil Code, which substantially confirms that even though the parties have the freedom to formulate an agreement, the parties must not conflict with law, decency, or public order in formulating an agreement.⁹

The following principle is related to the principle of binding agreements, which are legally binding. That principle is stated in Article 1338, paragraph (1) of the Civil Code, which emphasizes that the agreement that has been agreed is valid as per the law for the parties. Referring to this understanding this principle wants to avoid equating agreements with laws. It emphasizes the position of the agreement, like a law for the parties. That means, for the parties,

³ Peter Mahmud Marzuki, *Teori Hukum*, 1st ed. (Jakarta: Kencana, 2020).

⁴ Deviana Yuanitasari, "Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad PENGEMBANGAN HUKUM PERJANJIAN DALAM PELAKSANAAN ASAS ITIKAD BAIK PADA TAHAP PRA KONTRAKTUAL* 3, no. 2 (2020): 4.

⁵ Arihta Esther Tarigan Endang Suprapti, "Itikad Baik Dalam Perjanjian Suatu Perspektif Hukum Dan Keadilan," *Salam* 8, no. 1 (2021): 149.

⁶ Viswandro, *Kamus Istilah Hukum: Sumber Rujukan Peristilahan Hukum*, ed. Alex, Cetakan ke (Yogyakarta: Penerbit Medpress Digital, 2014).

⁷ Ronald Fadly Sopamena, "Kekuatan Hukum MoU Dari Segi Hukum Perjanjian," *Batulis Civil Law Review* 2, no. 1 (2021): 3.

⁸ Rumawi Khoiril Jamil, Nury & Rumawi, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia," *Jurnal Kertha Semaya* 8, no. 7 (2020): 1044–54.

⁹ Lili Naili Hidayah Muskibah, "Penerapan Prinsip Kebebasan Berkontrak Dalam Kontrak Standar Pengadaan Barang Dan Jasa Pemerintah Di Indonesia," *Refleksi Hukum* 4, no. 2 (2020): 177.

the agreement must be implemented and enforced if there is a violation of the agreement's substance.¹⁰ Even though there are four fundamental principles related to agreements, Agus Yudha Hernoko added one more important principle in the making and implementing agreements. The principle is the principle of proportionality. The principle of proportionality in agreements is related to the understanding that the formulation and enforcement regarding the agreement's substance must be carried out proportionally, prioritizing the dimensions of fairness and propriety of the parties.¹¹ The principle of proportionality does not require an agreement to be only mathematical and logical but needs to involve decency and moral considerations.¹² Thus, five agreement principles must be fulfilled in the agreement.

In the context of digital agreements, the five principles in the agreement apply *mutatis mutandis* in digital agreements. Related to the practice of digital agreements, of the five fundamental principles in contract law, only the principle of proportionality is slightly more challenging to implement compared to agreements in general. That is understandable because the character of a digital agreement is the same but has several unique characteristics compared to agreements in general. In the author's opinion, there are three characteristics of digital agreements that are different from agreements in general. *First*, digital agreements that are carried out usually coincide with digital transactions that are electronic or are within the scope of digital media. That means the agreement has a virtual character and promotes efficiency and effectiveness. That requires caution and accuracy from the parties before agreeing to the agreement's substance. *Second*, digital agreements have a character; namely, the agreement is manifested in actions, namely "clicking" on the agreement that has been agreed upon. Thus, digital agreements have a credo: "I click, then I have agreed." Even though, in general, it has facilitated the agreement process, digital agreements are only safe if the agreement's text is read carefully. The agreement is valid and can be detrimental to one of the parties. *Third*, the character of a digital agreement whose signature is carried out online or through a digital signature.¹³ This means that to prove whether a digital agreement is valid or not, and one must see whether the signatures of the parties are fake or not. In digital signatures, whether the signature is fake or not can only be seen through the help of digital forensics.¹⁴

Based on the three characteristics of digital agreements above, it is necessary to have a reconstruction that prioritizes the principle of prudence in digital agreements. That confirms that if an agreement is generally sufficient by applying the five principles of the agreement as described above, in digital agreements, it is also necessary to prioritize the precautionary principle to minimize any potential that the parties do not desire to the agreement. In practice, the precautionary principle in digital agreements relates to proportionality. Digital agreements carried out without care are disproportionate for the parties. Thus, even though there are six principles in digital agreements, the principle of prudence and the principle of proportionality occupies an essential aspect of digital agreements.

The unique characteristics and uniqueness of these digital agreements demand that digital agreements be implemented carefully and proportionately. That requires mitigation efforts from the parties before entering into a digital agreement. In the Big Indonesian Dictionary (*Kamus Besar Bahasa Indonesia* or KBBI), mitigation is an action to reduce the impact of a disaster.¹⁵

¹⁰ Moch. Isnaeni, *Perjanjian Jual Beli* (Bandung: Refika Aditama, 2016).

¹¹ Fiska Silvia Raden Roro, Agus Yudha Hernoko, and Ghansham Anand, "The Characteristics of Proportionality Principle in Islamic Crowdfunding in Indonesia," *Jurnal Hukum & Pembangunan* 49, no. 2 (2019): 455, <https://doi.org/10.21143/jhp.vol49.no2.2013>.

¹² Budi Ispriyarso Mohammad Iqbal Rahmawan P, Aminah, "Penerapan Asas Proporsionalitas Dalam Perjanjian Waralaba," *Notarius* 12, no. 2 (2019): 910.

¹³ Eryandi Putra Pane, "Penerapan Asas Proporsionalitas Dalam Perjanjian Kredit Berbasis Online," *Locus Journal of Academic Literature Review* 1, no. 1 (2022): 39.

¹⁴ Rhama Wisnu Wardhana Mataniari Diana Teresa Naiborhu, Edi Wahjuni, "Keabsahan Perjanjian Tidak Tertulis Dalam Arisan Online (Studi Putusan Nomor. 106/Pdt.G/2017/PN Plk)," *Ilmu Kenotariatan* 2, no. 2 (2022): 55.

¹⁵ Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia* (Jakarta: Departemen Pendidikan Nasional, 2008).

From a legal perspective, especially contract law, mitigation is understood as an effort to carry out an inventory and mitigate and minimize the legal risks that will be faced.¹⁶ In the context of digital agreements, mitigation is interpreted as a series of efforts to minimize potential risks in digital agreements by prioritizing the principle of prudence and the principle of proportionality. Mitigation of risks related to digital agreements is needed so that the parties can minimize the risks that will occur due to having carried out digital agreements.

In the opinion of the author, mitigation of digital agreements can be carried out by prioritizing the principle of prudence and the principle of proportionality with three orientations, namely: (i) caution by looking at the parties who are invited to enter into agreements, (ii) caution and proportionality in reading provisions in digital agreements, and (iii) prudence and proportionality in digital agreements by including names as well as identities that can be contacted and can be accounted for by the parties. As well as (iv) prudence and proportionality in determining the object of the agreement. Related to the first orientation in mitigating digital agreements, namely caution by looking at the parties invited to enter into agreements, this can be done by identifying whether digital agreements are made to parties who already know or do not know. If you already know them, you can be oriented to contact them directly by telephone or other media. If you do not know each other, you should be able to get acquainted first and at the same time contact through social media and other available media. Efforts are made to ensure that the parties in this digital agreement have endeavored so that the parties' good intentions become apparent in the digital agreement. That is to anticipate parties with bad intentions in digital agreements.

It was related to the second orientation, namely prudence and proportionality in reading the provisions of digital agreements.¹⁷ That is understandable because digital agreements are often presented in terms of terms quickly, and sometimes the parties tend to immediately "click" without reading the terms first. That confirms that to mitigate the provisions in digital agreements, it is necessary first to carry out a comprehensive reading of the provisions in digital agreements. Next is the third orientation, prudence, and proportionality in digital agreements, by including names and identities that can be contacted and accounted for by the parties. It is important to emphasize if there is accountability from the parties regarding digital agreements. That can be done by including the parties' identities and the residence and domicile numbers of the parties who can be contacted. Next is the orientation to exercise caution and proportionality in determining the object of the agreement. That is important because one of the conditions for a valid agreement, as referred to in Article 1320, is the object of the agreement permitted by law. That needs to be observed by the parties, especially concerning efforts to mitigate digital agreements.

From the description above, it can be concluded that digital agreement mitigation efforts are following contract law by still referring to Article 1320 of the Civil Code, which is related to the terms of the validity of the agreement, and by prioritizing four orientations to minimize risks in digital agreements which include: (i) conscientiousness orientation - be careful when looking at the parties you wish to agree with, (ii) be prudent and proportional in reading the provisions in digital agreements, and (iii) be prudent and proportional in digital agreements by including names as well as identities that can be contacted and can be accounted for by the parties. Party. As well as (iv) prudence and proportionality in determining the object of the agreement. That is still based on the principle of proportionality and prudence in its application

¹⁶ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*, 4th ed. (Jakarta: Kencana, 2014).

¹⁷ Sulistianingsih, Dewi, and Raden Muhammad Arvy Ilyasa. "The Impact Of Trips Agreement On The Development Of Intellectual Property Laws In Indonesia." *Indonesia Private Law Review* 3, no. 2 (2022): 85-98. <https://doi.org/10.25041/iplr.v3i2.2579>

2. The Digital Agreement Orientation Based on the Principle of Proportionality: What's Next?

The principle of proportionality is one of the fundamental principles in contract law.¹⁸ The principle of proportionality relates to the substantive implications of a provision of the agreement for the parties.¹⁹ The principle of proportionality does not only put forward an agreement by "only" relying on mathematical logic. In mathematical logic, an agreement is considered balanced if there is compatibility between the rights and obligations of the parties in the agreement clause. However, the principle of proportionality is not only subject to mathematical logic. However, it explores various provisions in the agreement's substance so that it can be proper and fair to the parties.²⁰ This is in line with Lyons' view that the essence of an agreement, especially a business agreement, should provide space and opportunities for bargaining between parties. Bargaining between parties is expected to formulate a substance of the agreement, which is an agreement of the parties which is understood in depth so that the parties are committed to implementing it. The principle of proportionality actually seeks to establish fair and proper agreement relations, especially in business relations where fairness and proportionality of the parties must be important aspects so that the agreement truly accommodates the interests of the parties.²¹

The principle of proportionality, philosophically, is a constructive idea that attempts to construct an understanding of conventional justice in law, which is usually commutative.²² In the context of agreements, conventional justice, which is commutative, is commonly interpreted as the existence of an equal exchange of rights and obligations of the parties, which then has implications for achievements and counter-achievement.²³ The view of justice by prioritizing commutative nature is certainly not wrong, but it can become a problem when there are business developments or other social developments that demand agreements that are not just equality of rights and obligations of the parties. The complexity of business reality demands a revision of commutative justice in business so that it is not a matter of "equality of the parties" but how to present "fairness and propriety to the parties."²⁴ This is the essence of the principle of proportionality. This understanding is based on the fact that if commutative justice is applied to increasingly massive business developments, what will happen is that no justice is realized because when it is based only on the equality of the parties, justice becomes difficult to achieve, especially if it is only based on equality of rights and obligations of the parties.

This can be understood because the agreement in the science of law is a two-sided legal act. This is because in the agreement, there is an offer from one party (offer, *aanbod*), and the other party accepts the offer (acceptance, *aanvaarding*).²⁵ Any form of agreement is always related to aspects of offer and acceptance. In this context, the principle of proportionality does not only refer to the offers and acceptances made by the parties but also explores and evaluates the offers and acceptances made by the parties, which have implications that are proportional or not. If we trace the lexical dimension, the principle of proportionality comes from the

¹⁸ Agus Yudha Hernoko, "Keseimbangan Versus Keadilan Dalam Kontrak (Upaya Menata Struktur Hubungan Bisnis Dalam Perspektif Kontrak Yang Berkeadilan)" (Surabaya: Universitas Airlangga, 2010).

¹⁹ Anita Kamilah, "Penerapan Asas Proporsionalitas Dalam Pemanfaatan Aset Negara Melalui Model Build Operate and Transfer/Bot," *Jurnal Hukum & Pembangunan* 50, no. 3 (2021): 603, <https://doi.org/10.21143/jhp.vol50.no3.2757>.

²⁰ Hernoko, "Keseimbangan Versus Keadilan Dalam Kontrak (Upaya Menata Struktur Hubungan Bisnis Dalam Perspektif Kontrak Yang Berkeadilan)."

²¹ M.Yasir Said and Yati Nurhayati, "A Review on Rawls Theory of Justice," *International Journal of Law, Environment, and Natural Resources* 1, no. 1 (2021): 29–36, <https://doi.org/10.51749/injurlens.v1i1.7>.

²² Catriona Mackenzie, Denise Meyerson, and Therese MacDermott, eds., *Procedural Justice and Relational Theory: Empirical, Philosophical, and Legal Perspectives* (Milton Park: Taylor & Francis, 2021).

²³ Nur Hadiyati Alfis Setyawan, "Implementasi Asas Proporsionalitas Dalam Perjanjian Terapeutik Dalam Rangka Mewujudkan Keadilan Bagi Pasien," *Yurispruden* 4, no. 1 (2021): 16.

²⁴ A'An Efendi and Fradhana Putra Disantara, "Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?," *Yuridika* 37, no. 2 (2022): 329–66, <https://doi.org/https://doi.org/10.20473/ydk.v37i2.33364>.

²⁵ Isnaeni, *Perjanjian Jual Beli*.

proportion and proportion of the words, which come from English and Dutch, respectively, which mean balance, comparability, and something that is acceptable and should be accepted by the parties.²⁶ Thus, linguistically, the principle of proportionality has the meaning of comparability and propriety, which normally must be accepted by the parties.

According to Agus Yudha Hernoko, the principle of proportionality is actually related to the distribution of rights and obligations carried out by the parties in the agreement.²⁷ The division of rights and obligations carried out by the parties in the agreement is an exchange of interests that must be framed by law. With the principle of proportionality, the framework carried out by law will provide a sense of decency and fairness to the parties. This also includes the formulation of the agreement, the substance of the agreement, to the implementation of the agreement. The principle of proportionality applies comprehensively in the agreement, both in terms of the formulation of the agreement, the substance of the agreement, and its implementation. It is understandable that digital agreements, as part of digital business development, must also prioritize the principle of proportionality. Philosophically, the principle of proportionality in digital agreements ensures that digital agreements are implemented by guaranteeing massive and comprehensive bargaining between the parties. In reality, digital agreements are carried out with a comprehensive offer from one party, and the other party agrees or rejects it by carrying out "click" activities.²⁸ Thus, digital agreements must also involve the parties comprehensively, including providing clauses in the form of specific proposals to other parties so that other parties do not simply agree or disagree with an agreement but can provide specific clauses in the agreement. That is expected to facilitate proportional bargaining by the parties.

Sociologically, digital agreements, as a result of the development of digital technology, cannot be denied that they require special arrangements or provisions that guarantee the proportionality of the parties.²⁹ That is because digital agreements have become unavoidable in social life. In addition, legally speaking, there are also no specific arrangements regarding standards and matters that must be included in digital agreements. Even though digital agreements are subject to the provisions of the Civil Code, there should be special rules explaining the minimum things in a digital agreement. Based on the description above, the orientation of digital agreements based on the principle of proportionality based on philosophical, sociological, and juridical aspects requires specific arrangements, especially regarding the minimum requirements for implementing digital agreements. In general, digital agreements still refer to the provisions contained in the Civil Code, especially regarding the legal terms of the agreement, which refers to Article 1320 of the Civil Code. Even so, with the unique characteristics of digital agreements, special arrangements are needed regarding the terms of the validity of digital agreements, which in general still refer to Article 1320 of the Civil Code but have unique characteristics so that they can be used as guidelines for the community in entering into digital agreements.

C. Conclusion

Efforts to mitigate digital agreements following contract law are by still referring to Article 1320 of the Civil Code, which is related to the terms of the validity of the agreement, and by prioritizing four orientations to minimize risk in digital agreements. First, prudent orientation by looking at the parties who are invited to make agreements. Second, prudence and proportionality in reading the provisions in digital agreements. Third, prudence and

²⁶ Rachdinda Pradigda Al-Qarano, "Asas Proporsionalitas Kontrak Standar Pada Perjanjian Waralaba," *Sains Global Indonesia* 2, no. 1 (2021): 3.

²⁷ Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*.

²⁸ Ong, "The Enforceability Of Digital Contract: A Comparative Analysis On Indonesia And New Zealand Law."

²⁹ Anita Asnawi, "Kesiapan Indonesia Membangun Ekonomi Digital Di Era Revolusi Industri 4.0," *Jurnal Ilmiah Indonesia* 7, no. 1 (2022).

proportionality of digital agreements by including names as well as identities that can be contacted and can be accounted for by the parties. Fourth, prudence and proportionality in determining the object of the agreement. That is still based on the principle of proportionality and prudence in its application. The orientation of digital agreements based on the principle of proportionality based on philosophical, sociological, and juridical aspects requires specific arrangements, especially regarding the minimum requirements for implementing digital agreements. In general, digital agreements still refer to the provisions contained in the Civil Code, especially regarding the legal terms of the agreement, which refers to Article 1320 of the Civil Code. Even so, with the unique characteristics of digital agreements, special arrangements are needed regarding the terms of the validity of digital agreements, which in general still refer to Article 1320 of the Civil Code but have unique characteristics so that they can be used as guidelines for the community in entering into digital agreements.

D. Suggestion

The government is expected to provide special arrangements regarding matters that must, at a minimum, be in a digital agreement. That can be realized by forming special regulations under the law to be used as guidelines by people who enter into digital agreements

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