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Reformulating Contractual Freedom in Online Lending Agreements to Strengthen Consumer Legal Protection

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ABSTRACT
The development of online lending services raises concerns about freedom of contract, particularly when electronic consent is obtained amid unequal bargaining positions and limited understanding of contractual terms. Although Indonesian law regulates electronic agreements and consumer protection, formal consent does not necessarily guarantee substantive contractual freedom. This study examines the principle of freedom of contract in online lending agreements and proposes its reformulation to strengthen legal protection for fund recipients. Employing normative legal research with statutory and conceptual approaches, the study qualitatively analyzes the Indonesian Civil Code, consumer protection regulations, and regulations governing Information Technology-Based Joint Funding Services (LPBBTI), using adhesion contract theory as its analytical framework. The findings reveal a gap between the formal validity of electronic consent and the quality of fund recipients' consent, reflected in contractual imbalances, insufficient understanding of material information, and inadequate standards for verifying consent. The study proposes a substantive consent framework based on three parameters: transparency of material information, verifiable understanding, and contractual fairness. It concludes that this reformulation can strengthen legal protection for fund recipients without undermining the validity of electronic contracts. Accordingly, the Financial Services Authority (OJK) should clarify technical standards for obtaining consent, while further empirical research is needed to evaluate their effectiveness.

INTRODUCTION

The principle of freedom of contract fundamentally legitimizes the parties' autonomy to establish legal relationships on the basis of voluntarily concluded agreements. However, the development of electronic contracts in the digital financial services industry places this principle within a more complex set of issues, especially when the freedom to express consent is not accompanied by the ability to determine the content of an agreement. Through the theory of contracts of adhesion, Kessler criticized a conception of freedom of contract that benefits only the economically stronger party, because standardized contracts allow contractual terms to be determined unilaterally. This issue acquires a new dimension in digital transactions that rely on clickwrap agreements, in which consumer consent is represented by an electronic act without individual negotiation. Barnes demonstrates that contract formation through online platforms enables businesses to impose terms serving their own interests under more limited social scrutiny than in conventional contracts. Meanwhile, Lemley criticizes the notice-and-consent paradigm because consent obtained through formal notification does not necessarily provide consumers with an effective choice. These developments demonstrate that the fundamental problem of freedom of contract within the digital ecosystem concerns not merely the validity of

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an expression of intent but also the law's capacity to ensure that consent rests on substantive understanding and freedom (Barnes, 2024; Kessler, 1943; Lemley, 2025).

This issue is relevant to online lending in Indonesia, which has developed as an instrument of technology-based financing. The Financial Services Authority (Otoritas Jasa Keuangan, OJK) recorded that outstanding financing in the online lending industry reached IDR 106.94 trillion in August 2026, an increase of 22.07% compared with the corresponding period of the preceding year. This development illustrates the growing volume of financing activities conducted through electronic contractual relationships, while also expanding the need for legal certainty and protection for the parties involved. Within the framework of Information Technology-Based Joint Funding Services (Layanan Pendanaan Bersama Berbasis Teknologi Informasi, LPBBTI), the legal relationship involves not only fund providers and fund recipients as parties to financing agreements but also operators that provide, manage, and operate the electronic systems through which these contractual relationships are established. This characteristic distinguishes online lending from conventional loan agreements, as consent is formed through digital infrastructure whose management and design are controlled by the operator. Saputro and colleagues show that the development of online lending in Indonesia continues to face consumer protection issues arising from fragmented regulations, weak supervisory coordination, and limited digital literacy. These conditions underline the importance of re-examining the position of freedom of contract in electronic financing relationships, particularly to ensure that expanded access to financing does not diminish legal protection for fund recipients (OJK, 2024, 2026; Saputro et al., 2026).

Under Indonesian civil law, agreement is one of the requirements for a valid contract under Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata), while Article 1338(1) confers binding force on every lawfully concluded agreement. Nevertheless, freedom of contract cannot be separated from the obligation of good faith under Article 1338(3) and the principle of propriety that also determines the parties' obligations under Article 1339 of the Civil Code. The relationship between these provisions becomes important when online loan agreements are formulated through standard terms that leave fund recipients no room for individual negotiation. Kim explains that digital contracts in the form of wrap contracts raise issues concerning notice, the formation of consent, and the enforceability of terms determined by service providers. Becher and Benoliel develop the concept of dark contracts to explain how a lack of transparency in drafting and presenting consumer agreements may diminish the weaker party's ability to understand and scrutinize the terms binding them. In this context, compliance with an electronic consent mechanism cannot automatically serve as the sole measure of substantive freedom of contract, although the use of standard-form contracts does not itself automatically render an agreement invalid (Becher & Benoliel, 2023; Kim, 2013).

The tension between formal consent and substantive volition becomes more apparent when agreement formation is influenced by information limitations and digital interface design. In their study of users' behavior in accessing standard agreements for online software services, Bakos and colleagues found that only a very small proportion of prospective consumers opened licensing terms before completing a transaction. Although their research does not specifically address online lending, it illustrates the limits of assuming that making contractual documents available necessarily ensures that consumers understand their content. Brenncke extends this issue through an analysis of online choice architectures, demonstrating that digital choice designs can exploit consumers' behavioral biases and reduce autonomy in decision-making. In the context of Indonesian consumer protection, Hayati identifies dark patterns on digital platforms that may undermine consumers' ability to choose freely. These limitations show that freedom of contract

cannot be assessed merely by the existence of electronic consent; it must also be evaluated in terms of information quality, freedom in forming one's will, and the fairness of the agreed terms. The issue becomes particularly relevant to online lending because the consequences of consent extend beyond the use of a service to create financial obligations that may persist until the financing term expires (Bakos et al., 2014; Brenncke, 2024; Hayati, 2024).

Indonesian positive law has in fact imposed limits on the exercise of freedom of contract in financial services agreements. Article 18 of Law Number 8 of 1999 concerning Consumer Protection prohibits certain standard clauses that harm consumers, while Article 45 of Financial Services Authority Regulation Number 22 of 2023 requires financial services businesses to provide explanations concerning costs, benefits, risks, rights, and obligations; allow sufficient time to understand an agreement; and obtain confirmation of understanding that can be used as evidence. This regulation is reinforced by Article 46, which restricts exoneration or exemption clauses in standard agreements. Meanwhile, Article 146 of Financial Services Authority Regulation Number 40 of 2024 specifically requires LPBBTI operators to ensure that users have read and understood the agreement before signing it. However, the elucidation of this article still gives an example of compliance through a notification facility asking whether users have read and understood the agreement. Although sectoral regulations already recognize the obligation to confirm and document understanding, a normative question remains regarding the criteria for distinguishing administrative confirmation from an understanding that genuinely reflects the fund recipient's free will (OJK, 2023, 2024).

This issue cannot be separated from the characteristics of LPBBTI, which position the operator as the manager of the infrastructure through which contractual relationships are established, while financing agreements are, in principle, entered into between fund providers and fund recipients. On the one hand, operators have an obligation to ensure the availability of information and users' understanding, including transparency regarding the economic benefits of financing as further specified in Financial Services Authority Circular Letter Number 19/SEOJK.06/2025. On the other hand, fund recipients encounter contractual terms concerning the amount payable, financing costs, duration, late payment, and the consequences of default, which have generally been established before consent is given. Suriati and Lubis identify a doctrinal tension between the formal recognition of clickwrap agreements and the civil law requirement that consent reflect free and adequately informed intent. Meanwhile, Tantaru and Soplantila identify how imbalanced standard terms in online lending may weaken a debtor's position when facing claims of default. Both studies show that protection for fund recipients should not be treated solely as an issue arising after a contractual breach, but should also address the formation of consent before a contractual relationship produces binding legal consequences (OJK, 2025; Suriati & Lubis, 2026; Tantaru & Soplantila, 2025).

Previous studies have developed critiques of the validity of consent in digital contracts, yet their focus differs from the reformulation of freedom of contract in LPBBTI. Hayati examines the adequacy of the concept of agreement under the Indonesian Civil Code when applied to digital platform agreements and reveals the limitations of electronic consent as a representation of genuinely free will. Kusumahpraja and Lutfi subsequently discuss the paradox of consent in electronic contracts affected by dark patterns and propose testing the legitimacy of digital volition through indicators of information openness, autonomy of will, and authentic consent. Unlike these two studies, Suriati and Lubis focus on the validity and enforceability of clickwrap agreements in financial technology services, while Saputro and colleagues investigate weaknesses in regulatory coordination and consumer protection enforcement in online lending. Tantaru and Soplantila, meanwhile, place greater emphasis on standard terms and debtors'

positions in cases of default. Although these studies establish a conceptual foundation concerning contractual imbalance, digital consent, and consumer protection, the relationship between freedom of contract, the obligation to confirm understanding under LPBBTI regulations, and criteria for substantive consent among fund recipients has not been the focus of an integrated normative examination in those studies (Hayati, 2025; Kusumahpraja & Lutfi, 2026; Saputro et al., 2026; Suriati & Lubis, 2026; Tantaru & Soplantila, 2025).

Against this background, the research gap lies in the absence of a sufficiently developed normative framework linking the validity of agreement under the Indonesian Civil Code to consumer protection obligations in electronic financing agreements, particularly in assessing whether confirmation of understanding satisfies the requirements of substantive freedom of contract. Obligations to disclose information and obtain consent already have a regulatory basis, but the relationship between proof of consent, understanding of contractual consequences, and fairness in the distribution of rights and obligations still requires conceptual examination. Accordingly, this study aims to analyze the position of freedom of contract in online loan agreements under Indonesian positive law and formulate its reformulation through a substantive consent approach as an instrument for strengthening legal protection for fund recipients. Employing normative legal research through statutory and conceptual approaches, the study adopts the theory of contracts of adhesion to examine inequality in contract formation, while developing a substantive consent framework based on information transparency, verifiable understanding, and contractual fairness. The reformulation is not intended to negate the enforceability of electronic contracts or require individual negotiation of every standard term, but rather to clarify the standards for realizing freedom of contract so that fund recipients' consent is not merely formally binding but also reflects just legal protection (Kessler, 1943; Kim, 2013).

RESEARCH METHOD

This study employs a normative legal research method with a doctrinal-prescriptive design to analyze the position of the principle of freedom of contract in online loan agreements and formulate a legal framework capable of ensuring substantive consent for fund recipients. This design was selected because the research problem concerns not only the applicability of positive legal provisions but also the coherence between the principle of agreement in civil law and consumer protection obligations in electronic contracts. Doctrinal research allows for a systematic examination of legal norms, principles, and concepts to identify inconsistencies or limitations in regulation that require prescriptive reformulation. This approach is relevant because the problem of freedom of contract in online lending concerns not merely the practice of electronic consent but also the normative criteria by which to determine whether an agreement reflects free will and substantive legal protection (Hutchinson & Duncan, 2012; Theil, 2025; van Hoecke, 2011).

This study employs a statutory approach and a conceptual approach. The statutory approach examines Articles 1320, 1338, and 1339 of the Indonesian Civil Code; Law Number 8 of 1999 concerning Consumer Protection; Financial Services Authority Regulations Numbers 22 of 2023 and 40 of 2024; and Financial Services Authority Circular Letter Number 19/SEOJK.06/2025 to identify the relationship between the validity of consent, restrictions on standard terms, and the duties of LPBBTI operators to ensure users' understanding. Meanwhile, the conceptual approach employs Friedrich Kessler's theory of contracts of adhesion as its principal framework for analyzing disparities in bargaining power during contract formation. This framework is supplemented by Nancy S. Kim's concept of wrap contracts and Becher and

Benoliel's concept of dark contracts to understand transparency, the formation of intent, and the fairness of contractual terms in a digital environment. The use of adhesion contract theory remains relevant because contemporary studies of standard-form contracts show that the formal recognition of consent does not necessarily ensure the autonomy of the party accepting contractual terms (Becher & Benoliel, 2023; Cumyn, 2025; Kessler, 1943; Kim, 2013).

The legal materials consist of primary legal materials in the form of legislation regulating contractual relationships and consumer protection in LPBBTI, and secondary legal materials comprising books, scholarly journal articles, and research findings concerning freedom of contract, adhesion contracts, electronic consent, and digital consumer protection. Legal materials were identified through official regulatory sources and scholarly publication databases, taking into account substantive relevance, source authority, and recent developments in scholarship, without disregarding classical works providing the theoretical foundations of the study. The materials were collected through library research and document analysis, while qualitative analysis was undertaken through grammatical and systematic interpretation of legal provisions, followed by a conceptual assessment of the relationship between formal consent and substantive freedom of contract. As an analytical instrument, the study develops three parameters adapted from the literature on adhesion contracts and digital contracts: transparency of contractual information, verifiable understanding on the part of fund recipients, and fairness in the distribution of the parties' rights and obligations. These parameters are used to assess the adequacy of the existing normative framework and to formulate directions for legal reformulation that are not exclusively oriented toward the formal validity of contracts (Becher & Benoliel, 2023; Kim, 2013; Theil, 2025).

The analysis first identifies the provisions governing the formation and enforceability of electronic agreements, then examines their consistency with freedom of contract, good faith, and consumer protection. The results of this examination form the basis for proposing a substantive consent framework that can be integrated into stronger standards for forming online loan agreements. Because this study relies entirely on lawfully accessible legal materials and literature, it involves no respondents or collection of personal data, and therefore ethical consent from research participants is not required. The validity of the arguments is maintained through the use of authoritative legal sources, consistency of interpretation, and a distinction between applicable legal provisions and recommendations for reform. The methodological limitation is the absence of empirical testing of fund recipients' understanding or the application of contractual terms by individual operators. Accordingly, this study does not seek to measure the actual effectiveness of regulatory implementation but instead aims to develop a normative framework that can serve as a foundation for subsequent empirical research on the implementation of substantive consent in LPBBTI (Hutchinson & Duncan, 2012; Theil, 2025).

RESULT AND DISCUSSION

The Paradox of Freedom of Contract in Online Loan Agreements: Between Electronic Consent and Contractual Imbalance

The application of freedom of contract in online loan agreements reveals a tension between formal consent and the actual autonomy of contracting parties. In conventional agreements, freedom of contract encompasses the right to establish a legal relationship and determine its contractual terms. In online lending, however, most contractual provisions are predetermined by operators or financing providers, leaving fund recipients with limited opportunities to negotiate. Their freedom is therefore largely confined to accepting or rejecting the agreement rather than determining its substance. Nevertheless, the use of standard-form

agreements does not automatically invalidate contractual consent. The central issue is whether electronic acceptance can legitimately justify all contractual provisions, particularly those that may disadvantage fund recipients (Barnes, 2025; Gergen, 2025).

Under Indonesian civil law, Article 1320 of the Indonesian Civil Code establishes agreement as one of the requirements for contractual validity, while Article 1338(1) recognizes the binding force of lawfully concluded agreements. These provisions must be interpreted alongside Article 1338(3), which requires good faith, and Article 1339, which subjects contractual obligations to propriety, custom, and legislation. Accordingly, freedom of contract is not unlimited. Although consent establishes a contractual relationship, it does not necessarily legitimize clauses that conflict with mandatory legal protections. The distinction between contractual formation and the fairness of contractual terms is particularly important in standard-form agreements, where consumers frequently accept provisions without reading or fully understanding them (Ayres & Schwartz, 2014; Marotta-Wurgler, 2012).

In Information Technology-Based Joint Funding Services (LPBBTI), contractual relationships involve fund providers, fund recipients, and operators with different legal responsibilities. Article 143 of Financial Services Authority Regulation Number 40 of 2024 distinguishes agreements between operators and fund providers from financing agreements between fund providers and fund recipients. Although operators do not automatically become creditors, they control the electronic infrastructure through which contractual information is presented and consent is obtained. Consequently, their responsibilities cannot be assessed solely through their formal contractual position but must also consider their influence over the contract-formation process (Peng et al., 2023).

Contractual imbalance primarily arises from the use of standard-form agreements that allow operators to determine contractual provisions unilaterally. Standardization is not inherently unlawful because it promotes efficiency, reduces transaction costs, and facilitates legal certainty. However, problems emerge when the efficiency of predetermined terms results in disproportionate limitations on fund recipients' rights. Therefore, the legality of standard-form agreements must be assessed not only through their formal validity but also through the balance of rights and obligations they establish (Admiral et al., 2025; Barnes, 2025).

Electronic consent also raises questions regarding the effectiveness of information disclosure. Although financing documents may contain information concerning amounts, costs, duration, repayment obligations, and default consequences, their availability does not necessarily establish that users understand their implications. Research on electronic contracting demonstrates that requiring users to click an acceptance button does not substantially guarantee that they have reviewed the contractual terms (Marotta-Wurgler, 2011). Similarly, the tendency of consumers not to read lengthy standard-form agreements reflects the limitations of relying exclusively on disclosure as a mechanism of legal protection (Ayres & Schwartz, 2014; Marotta-Wurgler, 2012).

These concerns become more significant when contractual information is presented through digital interfaces that influence users' decisions. The arrangement of information, visual emphasis, navigation, and acceptance mechanisms may affect users' ability to review or reject contractual provisions. Research on dark patterns demonstrates that certain interface designs can influence consumer decisions by concealing information, emphasizing particular choices, or making rejection more difficult (Luguri & Strahilevitz, 2021; Mathur et al., 2019). Nevertheless, not every interface design constitutes unlawful manipulation. Its legal assessment must consider whether the design interferes with transparency, good faith, or the user's ability to make an informed contractual decision (Sax, 2026).

Indonesian legislation already provides a normative basis for addressing contractual imbalance. Article 18 of Law Number 8 of 1999 concerning Consumer Protection prohibits certain standard clauses, while Articles 44–46 of Financial Services Authority Regulation Number 22 of 2023 require financial services businesses to uphold balance, fairness, and transparency in contractual relationships. However, the existence of these provisions does not automatically guarantee fair contractual practices. The continued presence of potentially unfair clauses in digital agreements demonstrates the importance of examining contractual substance alongside formal regulatory compliance (Pałka et al., 2025).

The issue is also reflected in studies of digital financing agreements in Indonesia. Research concerning Shopee Pinjam and Kredivo identifies potential contractual imbalances, particularly regarding limitations of liability and unilateral modifications of contractual provisions. These findings demonstrate that formal compliance with contractual validity requirements does not necessarily ensure substantive fairness. However, such findings must be applied cautiously because the legal structures of other digital financing products are not necessarily identical to LPBBTI (Kh K et al., 2026; Santosa & Suryono, 2026).

A further concern relates to the adequacy of information concerning financing costs and obligations. Article 145 of Financial Services Authority Regulation Number 40 of 2024 requires financing agreements to include material information, such as financing amounts, economic benefits, installments, duration, fees, penalties, personal data use, and dispute resolution. Nevertheless, documentary completeness does not necessarily establish whether fund recipients understand their total payment obligations. Research on digital lending and credit decisions demonstrates the importance of presenting financing costs and risks in a manner that supports informed financial decisions (Dömötör et al., 2023; Peng et al., 2023; Pulk & Riitsalu, 2024).

More specifically, Article 45 of Financial Services Authority Regulation Number 22 of 2023 requires financial services businesses to explain costs, benefits, risks, rights, and obligations, provide adequate time for consumers to understand agreements, and confirm their understanding. Article 146 of Financial Services Authority Regulation Number 40 of 2024 further requires LPBBTI operators to ensure that users have read and understood their agreements. Although the elucidation of Article 146 provides an electronic notification asking users whether they have understood the agreement as an example, such confirmation should not be treated as conclusive evidence of substantive understanding. The distinction between administrative confirmation and an adequate information process remains essential (Arbel, 2024).

Electronic records, including acceptance timestamps, document versions, and user confirmations, may establish that consent was electronically expressed. However, these records do not automatically prove that operators have fulfilled their disclosure and understanding obligations. Conversely, the failure of users to remember or explain every contractual provision does not automatically invalidate an agreement. Accordingly, contractual validity, compliance with information obligations, and the enforceability of individual clauses must be examined as distinct but interrelated legal questions (Barnes, 2025; Gergen, 2025).

Based on these findings, the paradox of freedom of contract in online lending does not arise because electronic contracting eliminates contractual autonomy, but because formal consent may be treated as equivalent to substantive freedom of will. Indonesian positive law already recognizes restrictions through good faith, consumer protection, information disclosure, and confirmation of understanding. Nevertheless, their implementation requires greater clarity, particularly regarding the distinction between information availability and actual understanding, the imbalance in controlling contractual terms, and the relationship between electronic consent

and contractual fairness. These issues provide the normative basis for reformulating freedom of contract through a substantive consent approach (Admiral et al., 2025; Pałka et al., 2025).

Reformulating Freedom of Contract Based on Substantive Consent to Strengthen Legal Protection for Fund Recipients

Reformulating freedom of contract in online loan agreements requires strengthening the quality of the consent-formation process without undermining the validity and legal certainty of electronic contracts. This study proposes a substantive consent framework based on three interrelated parameters: transparency of material information, verifiable understanding, and contractual fairness. This framework does not introduce a new requirement for contractual validity beyond Article 1320 of the Indonesian Civil Code. Rather, it provides a standard for assessing whether operators have fulfilled their legal obligations to protect fund recipients during contractual formation (Barnes, 2025; Gergen, 2025).

The first parameter is transparency of material information. Articles 145 of Financial Services Authority Regulation Number 40 of 2024 and 45 of Financial Services Authority Regulation Number 22 of 2023 provide a legal basis for disclosing contractual information. However, transparency should extend beyond the formal inclusion of information in contractual documents. Fund recipients must be able to identify the financing amount, total repayment obligations, economic benefits, fees, installment schedules, default consequences, and dispute resolution mechanisms before giving consent. Accordingly, operators should present these material elements in an accessible summary while maintaining access to the complete agreement. Research indicates that the presentation of financing costs and duration influences consumer decisions, demonstrating that information must be understandable and relevant to contractual decision-making (Pulk & Riitsalu, 2024).

Transparency also requires appropriate digital information design. Material provisions should receive sufficient visual emphasis without overwhelming users with excessive information. Contractual language should be accessible, while the presentation of financing amounts should be accompanied by total payment obligations and relevant charges. Such arrangements are proposed technical standards rather than requirements expressly prescribed in their entirety by existing OJK regulations. Their purpose is to improve comprehensibility without compromising the completeness and consistency of contractual documents (Arbel, 2024; Romano et al., 2026).

The second parameter is verifiable understanding. Article 146 of Financial Services Authority Regulation Number 40 of 2024 establishes the obligation of LPBBTI operators to ensure that users have read and understood their agreements. However, confirmation through a notification or acceptance button should not be regarded as sufficient evidence of compliance in every circumstance. Operators should provide reasonable opportunities for users to review material provisions, access complete contractual documents, and obtain explanations before giving final consent. Verification should focus on the adequacy of the information process rather than requiring users to demonstrate perfect understanding of every contractual clause (Ortiz et al., 2024).

In practical terms, operators may implement a confirmation process that highlights financing amounts, total repayment obligations, installment schedules, and default consequences before final acceptance. Users should also be able to review or reject the agreement without disproportionate obstacles. Such mechanisms must avoid repetitive confirmation procedures that merely increase administrative steps without improving understanding. In addition, digital interfaces should not conceal material information or make rejection substantially more difficult

than acceptance, as such practices may undermine genuine contractual autonomy (Sin et al., 2025; Sylwestrzak, 2026; Zac et al., 2026).

Verifiable understanding must also be supported by appropriate electronic documentation. Operators should retain records of agreement versions, material information presented, confirmation stages, and the time of consent. These records can support the examination of whether contractual procedures complied with applicable obligations, although they should not be treated as conclusive proof of users' subjective understanding. Their use must also remain consistent with personal data protection principles, ensuring that stronger accountability does not result in unnecessary collection or processing of personal information (Calo, 2014).

The third parameter is **contractual fairness**, which requires the distribution of rights and obligations to comply with good faith, propriety, and mandatory legal provisions. Fairness does not require identical obligations between fund providers and fund recipients because their legal positions differ. However, such differences cannot justify clauses that violate statutory prohibitions or disproportionately restrict consumers' rights. Therefore, contractual assessment should examine provisions concerning economic benefits, fees, penalties, limitations of liability, unilateral amendments, and dispute resolution. Clauses that violate mandatory restrictions must be assessed according to the legal consequences established by applicable legislation (Pałka et al., 2025).

Contractual fairness must also consider the division of responsibilities among fund providers, fund recipients, and operators. Fund providers retain their contractual rights under financing agreements, while operators remain responsible for obligations arising from the operation of LPBBTI systems and applicable regulatory requirements. Consequently, operators cannot avoid their duties concerning information disclosure and consent mechanisms merely because they are not parties to the financing agreement as creditors. Conversely, their responsibilities should not automatically extend to all financing risks borne by fund providers. Each party's obligations must be determined according to its legal position and the applicable regulatory framework (Rosalina, 2026).

The integration of these three parameters establishes substantive consent as a framework for connecting contractual formation with substantive legal protection. Transparency ensures that material information is available and comprehensible; verifiable understanding provides a basis for assessing operators' compliance with disclosure obligations; and contractual fairness limits the enforceability of provisions that conflict with mandatory legal protections. None of these parameters can replace the others. Even clearly disclosed terms cannot automatically become enforceable if their substance violates statutory prohibitions. Likewise, the existence of an electronic acceptance record does not eliminate the obligation to provide adequate information (Ayres & Schwartz, 2014; Barnes, 2025).

From a regulatory perspective, reformulation should primarily focus on strengthening the implementation of existing OJK obligations rather than amending the general principle of freedom of contract under the Indonesian Civil Code. Technical regulations may clarify standards for material information, confirmation of understanding, electronic documentation, and the presentation of contractual amendments. Such reform must remain within the regulatory authority of OJK and must not arbitrarily create new contractual validity requirements or alter legal consequences without an adequate statutory basis (Barnes, 2025).

This framework should also apply to amendments of financing agreements. Article 147 of Financial Services Authority Regulation Number 40 of 2024 requires amendments to financing agreements between fund providers and fund recipients to obtain the consent of both parties. To

strengthen substantive consent, operators should provide comparisons of material changes, particularly those affecting repayment amounts, financing duration, penalties, and dispute resolution. This would enable the parties to understand the consequences of amendments before expressing their agreement (Pałka et al., 2025).

The legal consequences of non-compliance must also be differentiated according to the nature of the violation. Defects of consent must be assessed under the relevant provisions of civil law, prohibited standard clauses according to consumer protection legislation, and violations of operators' regulatory obligations under applicable OJK provisions. Consequently, failure to fulfill an information obligation does not automatically invalidate the entire financing agreement. The appropriate legal response must consider the violated obligation, the nature of the contractual provision, and the consequences prescribed by law (Barnes, 2025; Gergen, 2025).

In dispute resolution, substantive consent provides a more comprehensive basis for assessing electronic agreements. Examination should consider not only the existence of electronic acceptance but also the information presented, opportunities for review, confirmation procedures, and the fairness of the disputed provisions. Operators should be capable of producing records relating to processes under their control, while the evidentiary assessment must remain subject to applicable procedural and substantive law (Marotta-Wurgler, 2011; Sylwestrzak, 2026).

Nevertheless, the proposed framework has limitations. As normative legal research, this study does not empirically measure fund recipients' actual understanding or the effectiveness of particular confirmation mechanisms in Indonesian LPBBTI applications. Therefore, further empirical research is necessary to examine the effectiveness of information summaries, digital confirmation procedures, and interface design. Such evaluation is important to ensure that stronger protection remains proportionate and does not unnecessarily undermine the efficiency of digital financing services (Ortiz et al., 2024; Sin et al., 2025; Zac et al., 2026).

Overall, reformulating freedom of contract through substantive consent provides a normative approach to reconciling contractual certainty with the protection of fund recipients. By integrating transparency of material information, verifiable understanding, and contractual fairness, this framework ensures that electronic consent is not assessed merely as a formal act of acceptance but also in relation to the legal obligations governing contractual formation. It preserves the binding force of valid electronic agreements while clarifying the responsibilities of LPBBTI operators and limiting contractual provisions that conflict with legal protection. Thus, freedom of contract can continue to support digital financing efficiency without disregarding the bargaining disparities inherent in standard-form agreements (Admiral et al., 2025; Barnes, 2025; Romano et al., 2026).

CONCLUSION

This study aims to analyze the position of the principle of freedom of contract in online loan agreements and formulate its reformulation to strengthen legal protection for fund recipients. Based on a normative examination of the Indonesian Civil Code, the Consumer Protection Law, LPBBTI regulations, and digital contract law literature, the study demonstrates that the central problem of freedom of contract lies not in the invalidity of electronic agreements, but in the gap between formal recognition of consent and the quality of the underlying volition. This gap is reflected in unequal bargaining positions in the drafting of standard clauses, fund recipients' limited understanding of contractual consequences, and the lack of detailed operational criteria for distinguishing administrative confirmation from substantive understanding. Although positive law already regulates transparency duties, confirmation of

understanding, and restrictions on clauses harmful to consumers, the relationship among these elements has not yet been fully formulated as an integrated standard for consent formation. The principal contribution of this study lies in reformulating freedom of contract based on substantive consent through three parameters: transparency of material information, verifiable understanding, and contractual fairness. This framework does not establish substantive consent as a new requirement for contractual validity, but as a normative criterion for strengthening the implementation of duties to protect fund recipients without negating the legal certainty of electronic contracts.

This reformulation has implications for strengthening LPBBTI regulation and supervision, particularly through elaborating standards for presenting material information, mechanisms for confirming understanding, and documentation of the consent process in OJK's technical rules. Unlike approaches focusing solely on the validity of electronic consent or prohibitions on standard clauses, this framework places legal protection at the stage of consent formation while maintaining distinctions among the responsibilities of operators, fund providers, and fund recipients. For LPBBTI operators, the framework can guide the development of more transparent and accountable electronic consent mechanisms, while regulators may use it to clarify indicators of compliance with consumer protection obligations. However, the study is limited to normative analysis and has not tested the effectiveness of the substantive consent parameters on fund recipients' behavior or understanding in practice. Further research should therefore empirically examine electronic consent designs among licensed LPBBTI operators, particularly by comparing the effectiveness of material information summaries, confirmation mechanisms, and accessibility of clause reviews in improving users' understanding without creating disproportionate transactional obstacles.

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