

ABSTRAK

Perkembangan layanan digital berbasis *Software as a Service* memunculkan pola hubungan hukum baru antara penyedia layanan dan pengguna melalui kontrak elektronik. Kontrak elektronik pada layanan *Software as a Service* berbentuk klausula baku, tetapi tidak selalu disertai mekanisme persetujuan. Penggunaan mekanisme *browsewrap agreement* pada aplikasi Smartlink, menimbulkan permasalahan ketika klausula baku dalam Syarat dan Ketentuan diberlakukan tanpa pernyataan sepakat. Penelitian ini bertujuan untuk mengidentifikasi keabsahan perikatan serta penerapan asas kebebasan berkontrak terhadap klausula baku dalam Syarat dan Ketentuan aplikasi Smartlink yang diberlakukan tanpa adanya pernyataan setuju dari pengguna. Metode penelitian yang digunakan adalah yuridis normatif dengan spesifikasi penelitian bersifat deskriptif. Penelitian ini diperoleh dari sumber data sekunder berupa bahan-bahan hukum yang dikumpulkan melalui studi kepustakaan dan dianalisis melalui teknik kualitatif. Hasil penelitian menunjukkan bahwa ketiadaan *clickwrap agreement* pada Smartlink melemahkan pembuktian unsur sepakat menurut Pasal 1320 KUHPdata sehingga perjanjian dapat dibatalkan serta klausula baku pada Syarat dan Ketentuan Smartlink merupakan penerapan asas kebebasan berkontrak melalui mekanisme *take it or leave it* yang yang dibatasi undang-undang sehingga klausula yang melanggar dapat batal demi hukum.

Kata Kunci: Hukum Perikatan; Kontrak Elektronik; Klausula Baku.

ABSTRACT

The development of digital services based on Software as a Service has created new patterns of legal relationships between service providers and users through electronic contracts. Electronic contracts in Software as a Service services take the form of standard clauses, but they are not always accompanied by a consent mechanism. The use of a browsewrap agreement mechanism in the Smartlink application raises issues when the standard clauses in the Terms and Conditions are enforced without an expression of consent. This study aims to identify the validity of the legal obligation as well as the application of the principle of freedom of contract to the standard clauses in the Terms and Conditions of the Smartlink application, which are enforced without an explicit statement of agreement from users. The research method employed is normative juridical with a descriptive research specification. This study relies on secondary data sources in the form of legal materials collected through library research and analyzed using qualitative techniques. The findings indicate that the absence of a clickwrap agreement in Smartlink weakens proof of the consent element under Pasal 1320 KUHPerdata rendering the contract voidable. The study also finds that Smartlink's standard-form Terms and Conditions reflect the application of freedom of contract through a take-it-or-leave-it mechanism. However, this freedom is limited by mandatory laws, so clauses that contravene statutory provisions may be deemed null and void.

Keywords: *Law of Obligations; Electronic Contract; Standard Clauses.*