

Reconstruction Of The Concept Of Will Defect (Wilsgebreken) In The Era Of Digital Contracts: A Study On Manipulative Design Practices And Algorithmic Nudging On E-Commerce Platforms

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Abstract: The rapid development of e-commerce in Indonesia brings new legal issues related to the validity of electronic contracts. The practice of manipulative design (dark patterns) and algorithmic nudging on e-commerce platforms has the potential to influence consumers' free will in giving consent. This research analyzes the relevance of the concept of defect of will (wilsgebreken) in Articles 1321-1328 of the Civil Code to these practices, identifies existing regulatory weaknesses, and formulates a model for reconstructing the concept of defect of will for the digital contract era. The research method used is normative juridical with legislative, conceptual, and comparative approaches. The research results show: (1) the traditional concept of defects of will (dwaling, dwang, bedrog) is inadequate to accommodate forms of systematic and programd digital manipulation; (2) there is a legal vacuum in the ITE Law, Consumer Protection Law, and PMSE Government Regulation that has not explicitly regulated manipulative design; (3) a reconstruction of the concept of defects of will is needed by adding a new category of "digital manipulation" (digitale manipulatie) that includes the exploitation of cognitive weaknesses thru interface design and algorithms. The research recommends amending the Civil Code to accommodate digital defects of will, issuing specific regulations prohibiting dark patterns, and adopting best practices from the European Union's Digital Services Act.

Keywords: Defects of Will, Wilsgebreken, Digital Contracts, Manipulative Design, Dark Patterns, Algorithmic Nudging, E-Commerce, Consumer Protection.

1. Introduction

The digital revolution has fundamentally changed the way society conducts buying and selling transactions. E-commerce platforms such as Shopee, Tokopedia, Lazada, Bukalapak, and Blibli have now become the primary choice for Indonesian consumers when shopping. Data from the Central Statistics Agency (BPS) in 2024 recorded the value of e-commerce transactions in Indonesia reaching Rp 503 trillion with more than 178 million active users (Statistik, 2024). This figure places Indonesia as the largest e-commerce market in Southeast Asia and one of the most dynamic in the world.

However, behind the convenience and efficiency offered by digital transactions, serious legal issues have emerged that have not been extensively studied in Indonesian civil law literature. The issue is the use of manipulative design and algorithmic nudging by e-commerce platforms, which systematically influence consumers' free will in making purchasing decisions. In the international legal and technology literature, these practices are known as dark patterns. (Maison Sormin, 2026)

Manipulative design is a user interface design technique deliberately created to guide, confuse, or even deceive users into taking actions that they do not actually want or do not fully understand the consequences of (Brignull, 2025).

Concrete examples of manipulative design practices commonly found on e-commerce platforms in Indonesia include: 1) Confirmshaming, which is the use of language that makes consumers feel guilty if they do not accept an offer, such as a button saying "No, I don't want a discount" in small font and faded color; 2) Hidden

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costs, which are additional fees like shipping, insurance, or service charges that only appear at the final checkout stage when consumers are already psychologically invested in completing the purchase; 3) Trick questions, which are the use of confusing questions or checkboxes that lead consumers to unknowingly agree to things they do not want, such as subscribing to a newsletter or sharing personal data; 4) Roach motel or easy to subscribe, hard to cancel, which is a subscription process that is very easy to sign up for but has a cancellation process that is layered and difficult; 5) Forced continuity, which is the automatic renewal of a paid subscription without clear prior notification; 6) Misdirection, which is the use of visual design to direct consumers' attention to choices that benefit the platform but harm the consumers; Then use this data to display personalized product recommendations, targeted push notifications, and special offers designed to encourage impulsive purchases. These algorithms operate based on a deep understanding of consumer psychology and individual shopping habits. (Elisabeth Gloria, 2025).

From the perspective of Indonesian civil law, these practices raise fundamental questions regarding the validity of the electronic contracts formed. Article 1320 of the Indonesian Civil Code (KUHPerdara) establishes four conditions for the validity of an agreement, namely: 1) The agreement of those who bind themselves; 2) The capacity to enter into an obligation; 3) A specific subject matter; and 4) A lawful cause. The first and second requirements are subjective conditions that, if not met, result in the agreement being voidable (*vernietigbaar*), while the third and fourth requirements are objective conditions that, if not met, result in the agreement being null and void (*nietig*) (Sembiring & Nasution, 2024).

The focus of this research is on the first requirement, namely consent (*toestemming*). A valid agreement under civil law must be given freely, meaning it should not be influenced by factors that impair the will (*wilsgebreken*) of the party giving consent. Article 1321 of the Civil Code states that "no consent shall have any force if given due to error or obtained thru coercion or fraud." Thus, the Civil Code recognizes three forms of defects in will, namely mistake (*dwaling*) (Indonesia), coercion (*dwang*), and fraud (*bedrog*) (Panjaitan, 2024).

The fundamental problem that arises is that the concept of defects of will in the Civil Code was formulated in the 19th century within the context of agrarian societies and face-to-face transactions. The concepts of *dwaling*, *dwang*, and *bedrog* were formulated based on the paradigm of direct interaction between humans, not interaction between humans and digital systems deliberately and systematically designed to influence user psychology. The question that then arises is whether manipulative design and algorithmic nudging can be classified as a form of defect of will that can annul an electronic contract? (Azzahra Audina Tangahu, 2026).

The lack of research in this area creates legal uncertainty for consumers who feel harmed by manipulative design practices but do not have a clear legal basis to demand contract cancellation. (Amara Diva Abigail, 2025).

At the international level, awareness of the dangers of dark patterns has driven various regulatory initiatives. The European Union, thru the Digital Services Act (DSA) 2022, explicitly prohibits the use of dark patterns on online platforms (Eropa). The Federal Trade Commission (FTC) of the United States has also issued guidelines and taken enforcement actions against companies that use dark patterns. This development indicates that the issue of manipulative design is not merely a business ethics concern, but has become a legal issue that requires adequate regulatory response (CHIKITA, 2024). Based on this background, this research aims to deeply examine the relevance and adequacy of the traditional concept of defect of will in addressing the challenges of manipulative design practices and algorithmic nudging on e-commerce platforms, as well as to formulate a reconstruction model of the defect of will concept suitable for the digital contract era in Indonesia. (Rakha Bimantara, 2026).

When compared with the European Union's Digital Services Act (DSA), several regulatory gaps can be identified in Indonesia's existing legal framework. First,

Indonesian regulations do not yet provide an explicit and comprehensive prohibition of dark patterns on online platforms. Although consumer protection, electronic transactions, and personal data regulations contain provisions that may indirectly address certain manipulative practices, these provisions are fragmented and do not specifically regulate the design of digital interfaces as a means of influencing users' decisions. In contrast, Article 25 of the DSA expressly prohibits online platforms from designing, organising, or operating their interfaces in a manner that deceives or manipulates users or otherwise materially distorts or impairs their ability to make free and informed decisions. This difference demonstrates a substantive regulatory gap in Indonesia concerning the protection of consumer autonomy in digital environments.

Second, Indonesia lacks a specific regulatory framework that establishes clear standards for assessing when digital interface design constitutes unlawful manipulation. Existing Indonesian legal provisions generally focus on deceptive conduct, unfair treatment, or the consequences of transactions rather than on the architecture of the digital interface itself. Consequently, practices such as confirmshaming, hidden costs, forced continuity, misdirection, and false urgency may be difficult to assess consistently under the existing legal framework. The DSA adopts a more preventive approach by directly addressing the way online interfaces are designed and operated, thereby recognising that manipulation can occur not only through explicit statements or fraudulent conduct but also through the structure and presentation of digital choices.

Third, there is a regulatory gap concerning the relationship between manipulative digital design and the validity of consumer consent. Indonesian civil law, particularly Articles 1320 and 1321 of the Civil Code, evaluates consent primarily through traditional concepts of mistake, coercion, and fraud. However, these concepts do not expressly address algorithmic nudging, personalised recommendations, behavioural profiling, or interface designs that influence consumers without necessarily involving conventional forms of coercion or fraud. The DSA's recognition of manipulative online interfaces therefore provides a broader regulatory perspective for protecting users' ability to make free and informed decisions. This creates an important normative question for Indonesian civil law: whether digital manipulation that materially impairs consumer autonomy should be recognised as a contemporary form of defect of will capable of affecting the validity of an electronic contract.

Fourth, Indonesia also faces an institutional and enforcement gap. The existing framework does not yet establish a dedicated and comprehensive supervisory mechanism specifically designed to monitor manipulative digital interface practices across online platforms. Recent Indonesian legal scholarship identifies the absence of explicit substantive prohibitions, specialised institutional oversight, and technical guidelines for digital interface governance as significant shortcomings in the current framework. Accordingly, the regulatory gap between Indonesia and the EU is not limited to the absence of a specific prohibition, but also concerns the absence of clear standards, preventive obligations, institutional oversight, and enforcement mechanisms for protecting consumers against manipulative digital environments.

2. Materials and Methods

This research is a normative legal study of a descriptive-analytical nature aimed at examining and analyzing the concept of defect of will (*wilsgebreken*) in Indonesian civil law concerning manipulative design and algorithmic nudging practices on e-commerce platforms. Normative legal research is conducted by examining legal norms found in legislation, doctrines, court decisions, and various legal literature as the main materials for the research (Marzuki, 2021). This research emphasizes the analysis of the validity of electronic contracts and legal protection for digital consumers based on positive legal provisions and the development of contemporary legal doctrine.

The research approaches used include the statute approach and the conceptual approach. The statute approach is employed to analyze various legal provisions governing electronic contracts and consumer protection, including the Civil Code, Law

No. 8 of 1999 on Consumer Protection, Law No. 11 of 2008 on Electronic Information and Transactions as last amended by Law No. 1 of 2024, Government Regulation No. 80 of 2019 on Trade Thru Electronic Systems, and Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions. Meanwhile, the conceptual approach is used to examine the concepts of defects of will (*wilsgebreken*), abuse of circumstances (*misbruik van omstandigheden*), dark patterns, manipulative design, and algorithmic nudging based on civil law and cyber law theories that have developed in academic literature (Marzuki, 2021).

The research data sources consist of primary legal materials and secondary legal materials. Primary legal materials include national legislation and comparative legal instruments, such as the European Union's Digital Services Act, the General Data Protection Regulation (GDPR), the United States Federal Trade Commission Act (FTC Act), and the Dutch *Nieuw Burgerlijk Wetboek*. As for secondary legal materials, they consist of legal books, national and international journal articles, previous research findings, and policy documents relevant to the research object. The use of primary and secondary legal materials aims to obtain a comprehensive legal analysis of the researched issue.

The data collection technique was carried out thru library research by inventorying legislation, reviewing scientific literature obtained from various academic databases, documenting terms and conditions as well as interface designs on e-commerce platforms, and then systematically categorizing all legal materials using reference management software. Next, the data is qualitatively analyzed thru legal interpretation and legal reasoning methods to obtain answers to the research problem regarding the relevance of the concept of defect of will in facing manipulative design practices and algorithmic nudging in electronic transactions (Marzuki, 2021).

The basis for deriving the legal reconstruction model is obtained from the normative analysis of the gap between the existing Indonesian legal framework and the development of digital practices involving manipulative design and algorithmic nudging. The reconstruction is formulated by identifying the limitations of the existing concept of defect of will (*wilsgebreken*), particularly the concepts of mistake (*dwaling*), coercion (*dwang*), and fraud (*bedrog*), when applied to digital environments in which consumer consent may be influenced through interface design, personalised recommendations, behavioural profiling, and algorithmic decision-making. The normative analysis is then used to determine whether the existing legal framework is sufficient to protect the principle of free and informed consent in electronic contracts. Where the existing provisions are found to be inadequate, the identified normative gaps constitute the legal basis for formulating a reconstruction of the concept of defect of will. The reconstruction model is further derived through comparative analysis of Indonesian civil law and relevant international instruments, particularly Article 25 of the EU Digital Services Act, GDPR, and other comparative frameworks. The comparison identifies principles that can be adapted to Indonesia rather than directly adopted. The model is developed by identifying regulatory gaps, formulating principles to protect consumer autonomy, and integrating digital manipulation into the concept of defect of will while maintaining freedom of contract, good faith, consumer protection, and legal certainty.

3. Results and Discussion

3.1. *The Relevance of the Traditional Concept of Will Defect to Manipulative Design Practices Anatomy of the Concept of Defect of Will in the Civil Code Parties*

Indonesia's Mistake (*dwaling*) is regulated in Article 1322 of the Civil Code and concerns an essential error affecting the agreement. However, its traditional formulation does not readily accommodate manipulation through digital interface design. (Ahmad Jalaludin Arroddi, 2024). Coercion (*dwang*) under Articles 1323–1327 requires unlawful

pressure that creates fear and removes meaningful freedom of choice, making its application to subtle digital influence problematic. (Ketut Widia, 2022).

Fraud (*bedrog*) under Article 1328 requires intentional deception, which creates difficulties when manipulation occurs through automated interfaces or algorithmic techniques rather than conventional human deception. (I Ketut Widia, 2022).

3.2. Analysis of Manipulative Design Practices within the Framework of Traditional Will Defect

The practice of hidden costs involves displaying additional fees only at the final checkout stage. Although this may cause consumers to misunderstand the total price, an error concerning price generally does not constitute a ground for annulment under Article 1322 of the Civil Code, unless the difference substantially alters the nature of the agreed performance (Nurhaliza, 2025).

Pre-checked boxes for additional insurance or subscriptions may cause consumers to unknowingly accept services they do not desire. Although this practice may contain an element of deception, it remains questionable whether passive interface design satisfies the active deceit required under Article 1328 concerning fraud. (Irmawaty Ambo, 2025)

False urgency through fake countdown timers or inaccurate claims of limited stock can psychologically pressure consumers to purchase immediately. However, such pressure differs from the fear of real loss required under Article 1323, making its classification as coercion (*dwang*) under the traditional concept difficult. (Amirullah, 2025)

The roach motel practice makes subscription easy but cancellation difficult. Because it primarily concerns contract termination rather than the formation of consent, this practice is difficult to qualify as a defect of will under the traditional concept (Gede Bagus Prema Cahya Sani Putra, 2026).

3.3. The Limitations of the Traditional Concept of Will Defect

Based on the analysis above, several fundamental limitations of the traditional concept of defect of will can be identified in facing manipulative design practices: First, the assumption of rationality. The traditional concept of defect of will assumes that humans are rational beings capable of making optimal decisions if provided with sufficient information and no external pressure. However, behavioral economics has proven that humans have bounded rationality and various cognitive biases that can be exploited. Manipulative design actually works by exploiting these cognitive weaknesses, not by providing false information or physical threats (Wulandari & Rismansyah, 2025).

Second, the paradigm of human interaction. The concepts of *dwaling*, *dwang*, and *bedrog* are formulated based on direct interactions between humans where the party that deceives or coerces can be identified. In manipulative design, the "actor" is a digital system designed impersonally. There is no specific individual who is committing the deception as referred to in Article 1328. The interface design is the result of the work of a team of designers, product managers, and programmers who may not have individual malicious intent (Ayusari Chandraningtyas, 2024).

The defect of will must be proven by the party filing for annulment. Proving that a user interface design is a "deceptive practice of such a nature" is technically very difficult. Special expertise in the fields of UX design and behavioral psychology is required to analyze whether a design qualifies as a *dark pattern*. Individual consumers are almost impossible to prove this in court (Hapsari & Lie, 2025).

The traditional concept of a defect of will is binary: there is a defect of will or there is not. However, *manipulative design* operates on a spectrum from legitimate persuasion (which is indeed the essence of marketing) to manipulation that is clearly unethical (Prasetya et al., 2025). Where is the line between legitimate persuasion and manipulation that can void a contract? The Civil Code does not provide guidance for determining this boundary (Dhea Piscesa, 2026).

3.3 Model for Reconstructing the Concept of Defect of Will for the Era of Digital Contracts

a. Lessons from the Development of Dutch Law

The Netherlands, as the country of origin of the Indonesian Civil Code, has modernized its civil law thru the Nieuw Burgerlijk Wetboek (NBW), which has been in effect since 1992. One important development is the addition of the fourth category of defect of will, namely *misbruik van omstandigheden* (abuse of circumstances), which is regulated in Article 3:44 of the NBW (Beland). Abuse of circumstances occurs when someone takes advantage of the special conditions of another party to gain an unfair advantage. Although Indonesia has not explicitly adopted *misbruik van omstandigheden* in the Civil Code, the Supreme Court's jurisprudence has recognized this concept in several rulings (Khrisna Adjie Laksana, 2023). Supreme Court Decision Number 2230 K/Pdt/2013 acknowledges that an agreement can be annulled if there is an abuse of circumstances that results in a striking imbalance of performance (Dewa Ayu Sri Ratnaningsih, 2023)

b. Lessons from the European Union's Digital Services Act

In Digital Services Act (DSA) 2022 of the European Union is the most comprehensive regulation in the world that explicitly regulates dark patterns. Article 25 DSA prohibits online service providers from designing, organizing, or operating their online interfaces in a way that deceives or manipulates service recipients or in any other way that materially distorts or impairs the ability of service recipients to make free and informed decisions (Gunaedi, 2025).

The DSA identifies several categories of prohibited practices: (a) giving greater visual prominence to certain choices when soliciting decisions from service recipients; (b) repeatedly asking service recipients to make choices when those choices have already been made; (c) making the procedure to terminate the service significantly more difficult than signing up for the service (Eropa, Uni, 2022). This DSA regulatory model can serve as a reference for the development of similar regulations in Indonesia

c. Proposal for the Reconstruction of the Concept of Will Defect

A Based on the analysis of the limitations of the traditional concept of will defects, existing regulatory gaps, and lessons learned from the development of international law, this research proposes a reconstruction model of the concept of will defects as follows: First, the addition of a fifth category of will defects in the Civil Code, namely "Digital Manipulation" (*digitale manipulasi*). Digital manipulation is defined as the use of interface design, algorithms, or other digital techniques that systematically exploit users' cognitive weaknesses to influence decision-making in electronic transactions in a way that harms users' interests. The elements of digital manipulation include: (a) the use of design techniques or algorithms; (b) the exploitation of cognitive weaknesses; (c) the influence on decision-making; (d) the harm to users' interests (Rakha Bimantara, 2026).

Second, the formulation of a list of practices that are considered digital manipulation *per se* (*per se* prohibition), including: (a) hidden costs that are only displayed after the checkout stage begins; (b) pre-checked boxes for paid services or data sharing; (c) false urgency thru countdown timers or claims of availability that do not match reality; (d) confirmshaming thru language that makes users feel guilty; (e) roach motel where the process of unsubscribing is significantly more difficult than the process of subscribing; (f) forced continuity without clear notification and the opportunity to cancel.

Third, proportional legal consequences. For practices that fall under *per se* prohibition, the contract can be canceled by the consumer within a certain period (for example, 14 days) without the need to prove any loss. For other practices that do not fall under *per se* prohibition, the consumer must prove that the practice materially affected their decision and harmed their interests. In addition to cancelation, consumers are also entitled to a refund and compensation (Ayham Altaira, 2026).

Fourth, the reversal of the burden of proof for certain cases. If consumers can demonstrate that the platform uses one of the practices in the *per se* prohibition list, then the burden of proof shifts to the platform to show that the practice does not affect consumer decisions or harm consumer interests (Az-Zahra', Nurlaily, & Agustianto, 2025).

Fifth, the obligation to audit interface design. E-commerce platforms of a certain scale (for example, more than 1 million monthly active users) are required to conduct an independent audit of their interface design from a consumer protection perspective and publish the audit results. Failure to conduct an audit or the discovery of dark patterns in the audit can serve as *prima facie* evidence of digital manipulation (Hayati, 2025).

d. Implications of the Reversal of the Burden of Proof for Legal Certainty

The proposed reversal of the burden of proof has significant implications for legal certainty for both consumers and business actors. Within the Indonesian consumer protection framework, the principle of shifting the evidentiary burden is relevant because consumers and business actors do not always occupy an equal position in terms of access to information and evidence. In the context of digital transactions, this imbalance becomes more significant because information concerning interface design, digital systems, and the mechanisms used to influence consumer decisions is primarily controlled by the platform. Indonesian legal scholarship has identified the inadequacy of the existing consumer protection framework in dealing specifically with dark patterns,

particularly because existing regulations only indirectly address certain forms of manipulative design (Hayati, 2025).

This evidentiary imbalance is particularly important when consumers seek to establish that a digital interface has manipulated their decision-making. Dark patterns operate through interface design and behavioural techniques that may influence consumer autonomy without necessarily involving conventional forms of deception. Research on dark patterns in Indonesia indicates that manipulative interface practices can compromise consumer autonomy, while the existing Consumer Protection Law, amended Electronic Information and Transactions Law, and Personal Data Protection Law do not expressly regulate dark patterns (Az-Zahra', 2025). Accordingly, the proposed reversal of the burden of proof seeks to address the structural imbalance by requiring the platform, under defined circumstances, to provide evidence concerning the effect of the allegedly manipulative practice on the consumer's decision.

For business actors, the reversal of the burden of proof does not necessarily eliminate legal certainty, provided that the mechanism is formulated through clear, objective, and predictable criteria. The reversal should only operate after the consumer has demonstrated preliminary facts indicating the existence of a prohibited manipulative practice. This limitation is important because Indonesian research has found that the current legal framework does not yet expressly regulate dark patterns and that enforcement against manipulative digital practices remains limited. Therefore, establishing clearly defined categories of prohibited conduct would allow business actors to understand which interface practices may give rise to legal consequences .

The reversal of the burden of proof should therefore be understood not merely as a procedural change, but as an essential component of the proposed reconstruction of the concept of defect of will for the digital contract era. The proposed reconstruction responds to the identified gap in Indonesian law by developing a more specific framework for dealing with manipulative interface practices and their effects on consumer autonomy. Such reconstruction is consistent with the broader finding that Indonesia currently lacks an explicit and comprehensive prohibition of dark patterns and requires a legal framework capable of addressing manipulative digital design more effectively (Supriyanto & Hadi, 2025)

4. Conclusions

Based on the analysis that has been conducted, the following conclusion can be drawn: First, the traditional concept of defects in will as outlined in Articles 1321-1328 of the Civil Code (*dwaling*, *dwang*, *bedrog*) has limited relevance to the practices of manipulative design and algorithmic nudging on e-commerce platforms. These limitations are caused by: (a) the assumption of rationality that does not align with behavioral economics findings on bounded rationality and cognitive biases; (b) the human interaction paradigm that is incompatible with human-machine interaction; (c) the burden of proof standard that is difficult for consumers to meet; and (d) the absence of a gradient between legitimate persuasion and manipulation that can void a contract. Thus, the traditional concept of defect of will is inadequate to provide effective legal protection for digital consumers.

Second, the existing regulations in Indonesia have significant weaknesses in protecting consumers from manipulative design practices. The Consumer Protection Law was drafted before the e-commerce era and does not regulate digital interface

design. The ITE Law and PMSE Regulation focus on the information provided, not on the way the information is presented. There is no legal definition of dark patterns, no mandatory design standards to adhere to, no proactive oversight mechanisms, and no specific provisions for contract cancellation due to manipulative design. This legal vacuum creates legal uncertainty and leaves consumers without adequate protection.

Third, a reconstruction of the concept of defect of will is needed for the era of digital contracts thru: (a) the addition of a fifth category of defect of will in the form of "digital manipulation" (digitale manipulatie) in the Civil Code; (b) the formulation of a list of practices that are per se considered as digital manipulation; (c) the regulation of proportional legal consequences including the right to cancel and compensation; (d) the reversal of the burden of proof for certain cases; and (e) the obligation to audit interface design for large-scale platforms. This reconstruction model is expected to provide more effective legal protection for digital consumers while maintaining a balance with the interests of innovation and digital economic growth.

The main contribution of this reconstruction to the reform of Indonesian contract law lies in its ability to adapt the traditional concept of defects of will to the characteristics of digital transactions. By recognising digital manipulation as a distinct form of defect of will, the reconstruction provides a normative basis for assessing whether consumer consent obtained through manipulative interface designs and algorithmic techniques can be regarded as genuinely free and informed. The model also introduces clearer legal consequences and evidentiary mechanisms, thereby strengthening consumer protection while providing greater legal certainty for business actors. Consequently, the reconstruction offers a normative foundation for reforming Indonesian contract law to respond to contemporary forms of digital manipulation while maintaining a balance between consumer protection, contractual freedom, legal certainty, technological innovation, and digital economic development.

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