Leges Privatae
P-ISSN: 0000-0000; E-ISSN: 3025-1990
Vol. 2 No. 5, February 2026
DOI: https://doi.org/10.62872/m42sy114
Available: https://ejournal-nawalaedu.com/index.php/JOY/index

LEGES PRIVATAE
Civil Law Science

Civil Legal Protection for Victims of Default in Digital Financial Services

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Entere	: December 01, 2025	Revised	: January 11, 2026
Accepted	: February 20, 2026	Published	: February 28, 2026

Abstract

The development of digital financial services has transformed the pattern of contractual relationships in society, but at the same time, it has given rise to complex issues of default and has implications for weak civil legal protection for consumers. This study aims to analyze the normative construction of default in electronic contracts, identify the vagueness of norms regarding the liability of platform providers, and formulate a more responsive accountability model for victim protection. The method used is normative legal research with an abstract statute approach, a conceptual approach, and a case approach, through a qualitative analysis of primary and secondary legal materials. The results show that the construction of default in the Civil Code is still oriented towards classical bilateral relations and is not fully adaptive to the character of multi-party agreements in the digital ecosystem. The vagueness of norms is evident in the ambiguity of the platform's legal status as a party or intermediary, as well as the unclear standards of negligence in algorithmic systems. Obstacles to proving fault in closed systems weaken the effectiveness of fault-based liability, so a normative shift towards a risk-based liability approach and loss distribution is required. Reconstructing platform accountability through the integration of civil norms and sectoral regulations is a prerequisite for realizing legal certainty and substantive justice for victims of default in digital financial services.

Keywords: *Civil Law, Default, Digital Financial Services.*

Citation:
Arianti F (2026) Civil Legal Protection for Victims of Default in Digital Financial Services *Leges Privatae* Vol 2 (5) February 2026 pages

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1. Introduction

Digital transformation in the financial sector is a logical consequence of the industrial revolution 4.0, which places information technology as the primary foundation of modern economic activity. The development of financial technology (fintech) has shifted the paradigm of financial intermediation from a face-to-face model to an application-based system and electronic platforms that are real-time, geographically limitless, and efficiency-oriented. Theoretically, this phenomenon can be analyzed through the theory of legal modernization, which states that law must be responsive to social change and technological developments.[1] The state no longer plays a passive role as a regulator, but rather as an architect of digital governance that ensures stability and the protection of public interests.[2] This transformation expands financial access for people previously excluded from

[1] Oktavia, A., & Angkasa, N. (2024). Hubungan Perubahan Sosial dan Perubahan Hukum Dalam Sistem Hukum Terbuka. *Siyasah*, *4*(2), 123-136. https://doi.org/10.32332/siyasah.v4i2

[2] Indriyani, D. (2025). Peran Regulasi Digital dalam Perlindungan Hak Masyarakat Modern. *Jurnal Kajian Hukum*, *1*(1), 24-29. https://publikasi.nexusjurnal.com/index.php/jkh/article/view/20

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the conventional banking system, thus encouraging financial inclusion as part of national development policy.

The expansion of services such as peer-to-peer lending, paylater, digital wallets, and platform-based financing demonstrates the accelerated penetration of technology into everyday financial practices. Data from financial services regulators shows a significant increase in the number of active accounts and transaction value each year, reflecting a shift in public preference toward digital payment and financing systems.[3] Economically, this situation increases transaction efficiency and expands the consumer base. However, legally, this expansion introduces new complexities in contractual relationships that are not entirely identical to conventional creditor-debtor relationships. Legal relationships in the digital ecosystem involve platforms as intermediaries, users as consumers, and investors or financiers as third parties with their own legal interests.[4]

This growth is normatively based on the principle of freedom of contract as stipulated in the Civil Code, specifically Article 1338, which affirms that all legally concluded agreements are valid as law for the parties. This principle legitimizes the emergence of electronic contracts in digital financial services. The validity of electronic contracts is reinforced by Law Number 19 of 2016 concerning Electronic Information and Transactions, which recognizes electronic documents as valid legal evidence. Therefore, normatively, there are no obstacles to the validity of digital agreements. Problems arise, however, in the implementation and accountability aspects of default.

Behind this rapid growth, empirical data shows a significant increase in consumer complaints about digital financial services. The annual report by the financial services sector regulator shows that fintech lending and digital financing disputes have been among the highest complaint categories in recent years.[5] The complaints include defaults, unilateral changes in interest rates or fees, unethical collection methods, and misuse of personal data.[6] This fact indicates that digital transformation has not been fully matched by adequate legal protection. The quantitative growth of the industry has not always been directly proportional to the quality of legal certainty for consumers.

The increasing number of disputes demonstrates the imbalance in bargaining power between digital businesses and consumers. From a consumer protection theory perspective, consumers are in a structurally weaker position due to limited information, technological access, and negotiating capacity.[7] Law Number 8 of 1999 concerning Consumer Protection expressly guarantees the right to accurate, clear, and honest information, as well as the right to fair treatment. However, in digital service practice, information is often presented in lengthy and complex clauses that are difficult to understand comprehensively. This information gap has the potential to create contracts that are formally valid but substantively problematic.

In civil law, breach of contract is regulated in the Civil Code through Articles 1238 and 1243, which stipulate that a party who fails to fulfill a contract is obligated to compensate for the loss. The concept of breach of contract is essentially simple: failure to fulfill a contractual obligation.[8] However, in the

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[3] Bahtiar, M. Y. (2025). Kebijakan dan Regulasi Ekonomi Digital di Indonesia: Analisis Regulasi Otoritas Jasa Keuangan, Bank Indonesia, Kementerian Komunikasi dan Digital, Pajak Digital, serta Perlindungan Data dan Keamanan Siber. *Journal of Economics, Management, and Accounting*, *1*(1), 268-275. https://doi.org/10.65310/avm33948

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[5] Hikmah, A. R. (2025). Risiko Konsumen Fintech Dan Urgensi Literasi Keuangan. *Prosiding Simposium Nasional Manajemen dan Bisnis*, *4*, 36-48. https://doi.org/10.29407/x8p8gr61

[6] Angelica, V. B., & Suardita, K. (2025). SISTEM PENAGIHAN DEBITUR GAGAL BAYAR PINJAMAN ONLINE MELALUI EMERGENCY CONTACT, APAKAH SAH DIMATA HUKUM?. *Jurnal Media Akademik (JMA)*, *3*(3). https://doi.org/10.62281/v3i3.1637

[7] Prabowo, R. E. (2025). Perlindungan Hukum terhadap Konsumen dalam Transaksi Jual-Beli Handphone di E-commerce. *Journal of Law Review*, *4*(2), 105-119. https://doi.org/10.55098/jolr.v4i2.135

[8] Alfianto, D., Rido, A., & Wijaya, G. V. (2024). Pertanggungjawaban Perdata dan Tanggung Gugat dalam Perkara Wanprestasi dan Perbuatan Melawan Hukum. *Jurnal Pengabdian Masyarakat: Pemberdayaan, Inovasi dan Perubahan*, *4*(6). https://doi.org/10.59818/jpm.v4i6.986

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context of digital financial services, identifying forms of negligence becomes more complex because the system operates through algorithms and automated mechanisms. A crucial question arises when a system failure or technical disruption results in consumer loss: is it categorized as negligence, force majeure, or ordinary business risk? This ambiguity opens up room for interpretation that doesn't always favor the victim.

Sectoral regulations issued by the Financial Services Authority (OJK) aim to oversee digital financial service providers and maintain financial system stability. These regulations cover transparency obligations, risk management, and consumer protection. However, administrative regulations do not always detail the civil consequences of contractual breaches. Administrative law serves to oversee and sanction providers, while consumer recovery remains dependent on civil law mechanisms.[9] This dualism shows the existence of a normative gap in the integration of legal protection.[10] The issue of norm ambiguity is becoming increasingly apparent in determining the limits of digital platform liability. The Civil Code is structured around bilateral relationships, while digital financial services involve multi-party relationships. Platforms often claim to be merely technological intermediaries, not parties to the underlying agreement between the provider and recipient of funds. From a civil liability theory perspective, determining which legal entity bears the risk of loss is crucial to the effectiveness of legal protection.[11] The ambiguity regarding the legal position of platforms causes uncertainty in demanding compensation.

Digital financial services contracts generally take the form of standard agreements drafted unilaterally by business actors. Consumers are only given the option to accept or reject through a "click agree" mechanism, with no room for negotiation. In modern contract law theory, freedom of contract should not be interpreted as absolute but rather limited by the principles of balance and good faith.[12] Exoneration clauses that limit or even eliminate a business actor's liability have the potential to conflict with this principle. Therefore, analyzing the validity of standard clauses is crucial in the context of protecting victims of default.

Obstacles to proof are also a fundamental issue in civil disputes involving digital services. While electronic evidence is legally recognized, access to system data and transaction logs rests entirely with platform providers. Consumers often lack the technical capabilities to prove system errors or algorithmic negligence. From a procedural justice perspective, this unequal access to evidence can undermine the effectiveness of the right to redress.[13] This situation shows that formal recognition of electronic evidence does not automatically guarantee substantive justice.

From the perspective of responsive legal theory, the law should not only maintain formal certainty but also guarantee protection for vulnerable parties. Digital transformation demands the reconstruction of norms to suit the fast-paced and complex nature of electronic transactions. A progressive interpretative approach is needed to interpret default provisions to adapt to digital dynamics. Without this updated understanding, civil law risks lagging behind evolving social realities. This situation has the potential to widen the gap between normative texts and empirical practice. Thus, digital transformation and the expansion of financial services present not only

[9] Kariza, A., Thalib, M. C., & Kamba, S. N. M. (2025). Pertanggungjawaban Hukum Pihak Ekspedisi terhadap Kerugian Materil dan Imaterial Konsumen akibat Kelalaian dalam Pengiriman Barang. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *3*(6), 10081-10096. https://doi.org/10.61104/alz.v3i6.2720

[10] Sutrisno, A. (2025). Penerapan Hukum Internasional dalam Sistem Hukum Nasional Indonesia: Tantangan Teoritis dan Praktis. *Iblam Law Review*, *5*(2), 78-90. https://doi.org/10.52249/ilr.v5i2.611

[11] Ikromi, Y. (2024). Analisis Perlindungan Hukum Terhadap Pihak Yang Dirugikan Akibat Perbuatan Melawan Hukum Dalam Perjanjian. *Al-Dalil: Jurnal Ilmu Sosial, Politik, Dan Hukum*, *2*(2), 78-85. https://doi.org/10.58707/aldalil.v2i2.771

[12] Kharisma, B., Hayatuddin, K., & Tanzili, M. (2025). Kebebasan Berkontrak Dan Prinsip Keadilan Perjanjian Leasing Dalam Perspektif Hukum Perdata. *Lex Stricta: Jurnal Ilmu Hukum*, *4*(1), 221-236. https://doi.org/10.46839/lexstricta.v4i1.1499

[13] Adam, A. P., Ibrahim, A. M., Aruan, T. M. P., Tolingguhu, N., Al'Asfah, R., Palahuwata, T. M. N. A., ... & Maini, H. P. (2026). PENERAPAN ASAS DUE PROCESS OF LAW DALAM HUKUM ACARA PIDANA DI INDONESIA. *Jurnal Hukum Bisnis (J-KUMBIS)*, *4*(1), 16-27. https://doi.org/10.37606/j-kumbis.v4i1.408

economic opportunities but also significant legal challenges. The increase in consumer disputes and complaints demonstrates that industry growth has not been fully matched by effective civil legal protection. The ambiguity of norms regarding platform liability, standards of proof, and the validity of standard clauses demonstrates the urgent need for regulatory clarification and harmonization. The imbalance in the parties' positions further emphasizes the urgency of strengthening the principles of justice and good faith in electronic contracts. A comprehensive analysis of these issues provides an important foundation for formulating a more adaptive, just, and certainty-oriented civil legal protection model in the digital financial services ecosystem.

2. Method

This research employs a normative legal research method (doctrinal legal research) focused on analyzing positive legal norms governing civil legal protection for victims of default in digital financial services. The approaches employed include a statute approach, a conceptual approach, and a case approach to examine the construction of civil liability in electronic contracts. According to Soerjono Soekanto, normative legal research examines law as a norm or rule applicable in society and aims to discover coherent legal principles, doctrines, and systems.[14] Peter Mahmud Marzuki emphasized that normative legal research functions to produce new arguments, theories or concepts as prescriptions for resolving the legal issues faced.[15] Therefore, this study does not merely describe the provisions of laws and regulations, but rather conducts a critical analysis of the ambiguity of norms in the regulation of default in digital financial services.

The legal materials used consist of primary legal materials in the form of relevant laws and regulations, secondary legal materials in the form of literature, scientific journals, and scholarly opinions, and tertiary legal materials as supporting materials. The legal material collection technique was carried out through systematic and structured library research. Analysis was conducted qualitatively using grammatical, systematic, and teleological interpretation methods to assess the conformity of norms with the development of digital financial services practices. According to Johnny Ibrahim, normative legal research aims to find truth based on the logic of legal science built from the existing normative system, so the analysis must be conducted argumentatively and prescriptively.[16] Thus, this research method is directed at formulating a more adaptive civil legal protection construction and providing legal certainty for victims of default in the digital financial ecosystem.

3. Results and Discussion

Normative Construction of Default in Electronic Contracts in Digital Financial Services: Analysis of Statutory Regulations and Civil Law Principles

The concept of default in the Civil Code rests on the classic construction of an obligation as reflected in Articles 1238 and 1243, which stipulate that a debtor is declared negligent after being given a warning (summons) and is therefore obliged to compensate for losses if they fail to fulfill their obligations. This formulation is based on the assumption of a bilateral, personal, and direct contractual relationship between the creditor and the debtor. In digital financial services, the legal relationship is no longer simple, as it involves the platform as the system provider, the user as the

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[16] Indraswara, D. (2025). Rekonstruksi Metodologis Hukum: Diversifikasi dan Integrasi Penelitian Hukum Normatif (Doktrinal), Empiris (Non-Doktrinal), dan Studi Sosio-Legal: Legal Methodological Reconstruction: Diversification and Integration of Normative (Doctrinal), Empirical (Non-Doctrinal), and Socio-Legal Research. *IPMHI Law Journal*, *5*(2), 205-246. https://doi.org/10.15294/ipmhi.v5i2.41599

consumer, and in some models, investors or other third parties.[17] The elements of default, such as failure to fulfill obligations, delays, or improper performance, remain relevant, but the assessment parameters become more complex when the obligations are executed through an automated algorithmic system. System failures, application errors, or server disruptions raise normative questions about whether these conditions can be classified as debtor negligence or technological risk. The classic construction of default, which focuses on personal error, becomes problematic when legal subjects operate through digital instruments that are not fully transparent to users.

Article 1243 of the Civil Code regulates the obligation to compensate for non-fulfillment of obligations, which includes costs, losses, and interest. In digital transactions, losses are not always directly material, but can include reputational damage, data loss, or disruption to service access.[18] Normative interpretations of the scope of harm must be expanded teleologically to align with technological developments. Default in digital financial services can also take the form of performance that does not meet system security standards, such as failure to maintain the confidentiality of personal data.[19] Thus, the relevance of the element of breach of contract is not lost, but requires reinterpretation based on the function and purpose of legal protection. Without a progressive interpretation, civil law risks becoming trapped in a formalism that cannot address the complexities of the digital ecosystem.

The validity of electronic contracts must be analyzed through Articles 1320 and 1338 of the Civil Code, which require agreement, capacity, a specific object, and a lawful cause as prerequisites for a valid agreement. Electronic contracts, in principle, fulfill these elements as long as there is agreement between the parties expressed through an electronic system.[20] The recognition of electronic documents as valid evidence is affirmed in Law Number 19 of 2016 concerning Electronic Information and Transactions, which provides legal legitimacy to digital transactions. However, problems arise in the aspect of proving agreements, particularly in the "click agreement" mechanism, which often lacks substantial understanding by consumers. Agreements formally established through a click agreement do not necessarily reflect complete free will if the information is presented in a complex and disproportionate manner. Therefore, normative analysis must examine not only the existence of agreement, but also its quality within the framework of the principle of good faith.

The status of standard agreements in digital financial services demonstrates the dominance of business actors in formulating terms and conditions. Law Number 8 of 1999 concerning Consumer Protection prohibits the inclusion of standard clauses that shift business actors' responsibilities or eliminate consumers' rights to compensation. Normative testing of exoneration clauses is crucial because many platforms include limitations on liability for system failures or specific risks. Theoretically, the principles of balance and good faith require that contracts be not only formally valid but also substantively fair.[21] Unilateral dominance in clause drafting has the potential to reduce the principle of freedom of contract to merely a formal legitimation of structural inequality. Critics of this practice emphasize that civil law protection should not stop at textual validity but must address the substance of contractual justice.

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[17] Gayo, R. P., & Ilham, M. (2024). Analisis Hukum Kewajiban Penyedia Layanan Terhadap Perlindungan Konsumen Dalam Bisnis Platform Digital. *Indonesia of Journal Business Law*, *3*(2), 61-68. https://doi.org/10.47709/ijbl.v3i2.5010

[18] Rahayu, R. A., & Yulianingsih, W. (2025). PERLINDUNGAN HUKUM BAGI NASABAH ATAS KEHILANGAN SALDO DALAM LAYANAN BANK DIGITAL DI INDONESIA. *JURNAL ILMIAH ADVOKASI*, *13*(4), 1293-1309.

[19] Danyswara, R. A., & Putra, M. A. P. (2026). Analisis perlindungan konsumen terhadap wanprestasi dalam transaksi elektronik melalui sistem perantara pembayaran pada marketplace digital. *Jurnal Media Akademik (JMA)*, *4*(1). https://doi.org/10.62281/y2cg5r74

[20] Hermawan, R. O., Adolf, H., & Santoso, E. (2024). Kajian Hukum Penerapan Pasal 1320 KUHPerdata dalam Kontrak Elektronik. *Iustitia Omnibus: Jurnal Ilmu Hukum*, *5*(2), 141-164. https://jurnal-pasca.unla.ac.id/iustitiaomnibus/article/view/100

[21] Hakim, M. H. A., Muslim, N. A., & Rosidah, A. (2025). Transformasi Asas Hukum Perjanjian Konvensional Melalui Integrasi Nilai-Nilai Syariah. *Jejak Digital: Jurnal Ilmiah Multidisiplin*, *1*(4), 1465-1476.

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Available: https://ejournal-nawalaedu.com/index.php/JOY/index

Integration between civil and sectoral regulations in digital finance is a crucial aspect of the statutory approach. The Financial Services Authority (OJK) has the authority to regulate and supervise digital financial service providers, including establishing consumer protection and risk management standards. Administrative sanctions imposed by the regulator do not automatically waive or replace civil liability for consumer losses. The relationship between administrative and civil regimes should be understood as complementary, not substitutive. Ambiguity arises when sectoral norms do not explicitly define the limits of platform liability in contractual relationships. The lack of explicit integration has the potential to create overlapping or even a lack of norms in the practice of enforcing victims' rights.

Overall, the analysis of laws and regulations shows that the normative framework regarding default and electronic contracts is indeed in place, but it is not yet fully adapted to the multi-party and system-based nature of digital financial services. The Civil Code provides a general foundation for default and compensation, the Electronic Transactions and Transactions Law recognizes the validity of electronic contracts, and the Consumer Protection Law limits clauses that are detrimental to consumers.[22] The problem lies in the lack of harmonization and clarity regarding the distribution of responsibilities in complex digital business models. Legal structures, which are still oriented toward classic bilateral relationships, need to be reconstructed to accommodate tripartite or multi-party relationships. Without interpretive updates and regulatory harmonization, civil legal protection for victims of default in digital financial services will remain in the shadow of normative uncertainty.

The principle of freedom of contract, rooted in Article 1338 of the Civil Code, has historically been built on the assumption of equality of parties and individual rationality in determining their own interests. In the digital era, this assumption deserves criticism, as the relationship between financial platform providers and consumers is not on equal footing. Freedom of contract is often reduced to the unilateral freedom of business actors to formulate terms and conditions, while consumers are only given the option to accept or reject them in their entirety.[23] The absolute application of this principle in electronic contracts has the potential to legitimize structural inequalities hidden behind the formality of digital agreements. Therefore, freedom of contract cannot be maintained as a stand-alone principle without normative correction. Conceptual reconstruction is needed so that this principle can be read alongside the principles of balance and protection of the weaker party.

The relevance of the principles of balance and good faith is crucial in asymmetrical digital relations. The principle of balance demands a proportional distribution of rights and obligations, preventing unilateral domination in the formulation of contractual clauses.[24] In digital financial services, parity means not only formal equality but also substantive equality that takes into account inequalities in information and technological access. The principle of good faith, both subjectively and objectively, serves as a corrective instrument against potential abuses of freedom of contract. Formally valid electronic contracts can be deemed substantively flawed if they arise from opaque or misleading practices.[25] The reinterpretation of freedom of contract must be directed at the protection of fair interests, not merely at the recognition of the formal autonomy of the parties.

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[22] Sugianingsih, N. K., & Yoga, I. G. P. (2025). SINKRONISASI PENGATURAN KONTRAK ELEKTRONIK PADA PASAL 18 UU ITE DAN KUH PERDATA DALAM PERLINDUNGAN KONSUMEN E-COMMERCE. *Jurnal Media Akademik (JMA)*, *3*(12). https://doi.org/10.62281/9fhakm12

[23] Patria, D. K. K., & Rokhim, A. (2025). Klausula Eksonerasi Dalam E-Commerce: Antara Kebebasan Berkontrak Dan Penyalahgunaan Keadaan. *Jurnal USM Law Review*, *8*(3), 1743-1757. https://doi.org/10.26623/julr.v8i3.12776

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[25] Raya, R. R., Azizil, F. N., Al Birra, R., & Rajib, R. K. (2025). URGENSI PERANCANGAN KONTRAK ELEKTRONIK DALAM MENJAMIN KEPASTIAN HUKUM TRANSAKSI E-COMMERCE DI INDONESIA. *Jurnal Intelek Insan Cendikia*, *2*(12), 18173-18183. https://jicnusantara.com/index.php/jiic/article/view/5608

Leges Privatae
P-ISSN: 0000-0000; E-ISSN: 3025-1990
Vol. 2 No. 5, February 2026
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Available: https://ejournal-nawalaedu.com/index.php/JOY/index

In electronic transactions, the principle of good faith has broader dimensions than in conventional contracts. Subjective good faith concerns the internal intentions and honesty of the parties, while objective good faith relates to standards of propriety and fairness in society.[26] Managing a digital system that is secure, transparent, and free from hidden risks is a manifestation of objective good faith on the part of platform providers. Reasonable conduct standards in the digital context include the obligation to maintain data security, ensure system reliability, and provide clear information regarding service risks. When a system disruption occurs that harms consumers, the assessment of breach of contract cannot be separated from testing against these reasonableness standards. The principle of good faith thus serves as an evaluative parameter for assessing whether a system failure constitutes accountable negligence.

The application of the principle of good faith as the basis for assessing system-based default requires a more progressive approach in civil law. Algorithmic failures or system errors should not be immediately viewed as force majeure without first examining whether the provider has met appropriate standards of prudence. Platforms, as professional business actors, have an obligation to anticipate technological risks through adequate security and oversight systems. Within this framework, the principle of good faith transforms into the principle of duty of care in managing digital services.[27] Failure to fulfill this duty of care can be classified as a form of breach of contract or even an unlawful act if it results in harm. Therefore, this principle is no longer abstract, but rather operational in determining responsibility.

The theory of weak party protection provides a conceptual basis for correcting the formal neutrality of civil law. Consumers in digital platform relationships are vulnerable due to limited information, technical capacity, and bargaining power. Laws that emphasize only formal equality have the potential to ignore the reality of this structural inequality. Protection of weak parties requires expanding contractual responsibilities so that risk distribution is not entirely borne by consumers. In the context of digital financial services, platforms, as entities that control the system and derive economic benefits, have a greater capacity to manage and absorb risk. Therefore, this theory encourages a rereading of civil law norms to be more sensitive to substantive justice.

Criticism of the formal neutrality of civil law in asymmetrical relations is becoming increasingly relevant in the digital ecosystem. Neutrality that fails to consider factual inequalities can actually result in systemic injustice. Civil law should not be positioned merely as a guardian of contractual certainty, but also as an instrument of social protection in a digital society. Reinterpreting the principle of freedom of contract, strengthening the principle of good faith, and applying the theory of protection of the weak party are conceptual steps to bridge the gap between normative texts and empirical reality. This conceptual approach emphasizes that justice in electronic contracts is not achieved solely through formal agreements but must be tested through standards of propriety, balance, and fair risk distribution. Thus, conceptual analysis serves as a theoretical foundation for reconstructing civil legal protection for victims of default in digital financial services. Top of Form

Default patterns in digital financial services practice exhibit distinct characteristics from conventional defaults due to their close association with dynamic electronic systems and platform policies. Defaults are not always solely caused by debtor negligence, but can arise from payment system failures, server disruptions, or automated processing errors beyond the user's control. In this context, identifying the negligent party becomes crucial because digital systems blur the line between human error and technological failure. Normatively, any failure to fulfill obligations must still be tested based on the elements of default, namely failure to fulfill, delay, or failure to comply. However, when the cause is a failure of the platform-managed system, responsibility cannot be immediately shifted to the consumer. Conceptual case analysis demonstrates that the construction of default must

[26] Hapsari, L. A., & Setiyawan, A. (2023). Penerapan asas itikad baik dalam penyelesaian sengketa perdata. *Zaaken: Journal of Civil and Business Law*, *4*(3), 436-454. https://doi.org/10.22437/zaaken.v4i3.31365

[27] Kusnodin, A. (2026). Transformasi Doktrin Itikad Baik dalam Perjanjian di Era Digital: Analisis Putusan Pengadilan 2020–2024. *Yustitiabelen*, *12*(1). https://doi.org/10.36563/g465kn77

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Available: https://ejournal-nawalaedu.com/index.php/JOY/index

consider effective control over the system as a primary indicator of fault determination.

Changes in interest rates, administration fees, or billing mechanisms without the consumer's explicit consent constitute a form of default that is both normative and structural.Electronic contracts often contain clauses that authorize the platform to change the terms and conditions unilaterally by electronic notice.[28] Formally, the clause appears valid because it was agreed to through a "click agree" mechanism, but substantively it may violate the principles of balance and good faith. Unilateral changes that impact the consumer's financial burden without room for negotiation can be classified as performance that does not comply with the original agreement. This practice demonstrates that breach of contract does not always take the form of total non-compliance, but can also involve deviations from the contractual content that are detrimental to one of the parties. Within the framework of civil law protection, such unilateral changes must be rigorously tested to prevent formal legitimization of substantive injustice.[29]

Misuse of personal data as part of digital financial services can also be viewed as a form of non-material breach of contract. The obligation to maintain data confidentiality and security is an inherent part of a platform's obligations in digital contractual relationships. When consumer data is used without consent or leaked due to system failure, the resulting losses are not always direct financial losses, but can impact an individual's reputation, privacy, and security. From a civil law perspective, non-material losses can still form the basis for a claim for compensation as long as a breach of contractual obligations can be proven. An abstract case analysis shows that the spectrum of breaches in digital services extends to include violations of protective obligations. Thus, the protection dimension of electronic contracts extends beyond payment or financing to encompass data integrity and security.

The issue of proof is a major challenge in electronic contract disputes due to unequal access to information and technology. In classical civil law, the burden of proof rests with the party alleging breach of contract. In digital law, consumers often lack access to system logs, algorithm recordings, or internal platform data, which are key to proving the case. This imbalance has the potential to hinder the effectiveness of the right to redress because the weaker party lacks adequate evidence. Therefore, conceptual consideration is needed regarding the reversal of the burden of proof in certain circumstances, particularly when the platform has full control over the system and data. This approach aligns with the principle of substantive justice and the theory of weak party protection, which requires a proportional distribution of evidentiary risk to avoid unjustifiably burdening victims in the digital financial services ecosystem.

Civil Liability of Digital Financial Platform Organizers: A Conceptual Study of Normative Ambiguity and Its Implications for Victim Protection

The ambiguity of the legal status of digital financial platforms is a central point of normative ambiguity in the construction of civil liability. In practice, platforms often position themselves as intermediaries, merely providing technological means to bring parties together, thus refusing to be qualified as subjects directly bound by the underlying agreement between the funder and the recipient. However, in fact, platforms control the system architecture, determine operational standards, draft contractual clauses, and derive economic benefits from each transaction. When platforms play an active role in regulating, verifying, and even moderating the legal relationships between the parties, it is difficult to maintain their claim of neutrality as merely a passive facilitator. The absence of norms explicitly defining the legal standing of platforms in multi-party contracts leaves room for wide interpretation and potential for abuse. This ambiguity creates uncertainty in determining whether platforms can be held directly liable for defaults arising within the ecosystem

[28] Widyawati, A. M. J., Legowo, M. I., & Purnomo, H. (2025). Keabsahan Perjanjian Digital Berbasis Klik (Clickwrap Agreement) Dalam Perspektif Hukum Perdata Indonesia. *Jurnal Kolaboratif Sains*, *8*(9), 5849-5858. https://doi.org/10.56338/jks.v8i9.8668

[29] Suci, A. M., Arisma, T. F., & Putri, S. K. (2024). Penerapan prinsip keadilan dalam hukum perdata di Indonesia. *Journal of Global Legal Review*, *2*(2), 89-98. https://doi.org/10.59963/jglegar.v2i2.366

Leges Privatae
P-ISSN: 0000-0000; E-ISSN: 3025-1990
Vol. 2 No. 5, February 2026
DOI: https://doi.org/10.62872/m42sy114
Available: https://ejournal-nawalaedu.com/index.php/JOY/index

they manage.

The concept of intermediary liability in Indonesian civil law lacks comprehensive regulations, as has been established in cyber law regimes in several other jurisdictions. Digital platforms tend to exploit normative loopholes by assuming that responsibility rests solely with the user conducting the transaction.[30] This argument conceptually relies on the separation between system providers and contracting parties, but substantively ignores the fact that the system is entirely under the control of the platform. The unclear boundaries of responsibility for default risk demonstrates the absence of clear normative standards regarding risk distribution. While platforms have the authority to screen, assess, and display user risk profiles, failure to properly perform these functions cannot be absolved of responsibility. This unclear norm regarding role boundaries has direct implications for the effectiveness of legal protection for victims.

The implication of this ambiguity is a weakening of legal certainty for aggrieved consumers. Victims of default often face a situation where it's unclear who should file a claim for compensation. Debtors may lack the financial capacity to fulfill their obligations, while platforms seek refuge behind claims of being technological intermediaries.[31] This uncertainty contradicts the principle of legal certainty, which demands clarity regarding the subject and object of accountability. Within the framework of a state governed by the rule of law, vague norms have the potential to lead to disparate decisions and inconsistent law enforcement. Therefore, identifying unclear norms at the platform legal status level is a fundamental first step in formulating a clearer and fairer accountability model.

The ambiguity of norms is also evident in determining the standard of negligence in automated and algorithmic systems. The concept of negligence (culpa) in classical civil law focuses on human behavior that is careless or deviates from standards of decency.[32] In digital systems, many actions are executed by algorithms and automated mechanisms that operate without direct human intervention. When interest calculations, payment recording failures, or system disruptions occur that harm consumers, questions arise about whether these errors can be categorized as negligence. Existing norms do not explicitly regulate how to assess culpa in the context of complex and closed technologies. This ambiguity leaves room for providers to shift responsibility, citing unintentional technical disruptions.

A further question is whether system failures can be categorized as force majeure. Normatively, force majeure requires an event beyond the control of the parties, which is unpredictable and unavoidable. Internal system disruptions, server maintenance failures, or cybersecurity weaknesses are difficult to qualify as force majeure if they are within the provider's control. If every technological failure is easily labeled as force majeure, the principle of prudence in system management will lose its meaning. Therefore, a restrictive reading of the concept of force majeure in the digital context is necessary. Without clear boundaries, this ambiguity has the potential to harm victims and undermine the principle of accountability.

Within the conceptual framework, the expansion of the concept of culpa is inevitable in the face of technological developments. The duty of care for platform operators must include the obligation to ensure system security, conduct regular audits, and anticipate reasonably foreseeable risks. Negligence is no longer limited to individual acts or omissions, but also encompasses system design failures, lack of algorithmic oversight, and neglect of risk management. This expansion is not a form of criminalization of business risk, but rather an affirmation that those controlling technology must bear responsibility for risks within their scope of control. Thus, identifying the ambiguity of norms regarding the standard of negligence provides a normative basis for reconstructing the civil liability

[30] Wahid, A. I., Mahka, M. F. R., & Jaya, K. (2025). Tanggung Jawab Perdata Terhadap Platform Digital Terhadap Kerugian Konsumen. *Jurnal Kolaboratif Sains*, *8*(12). https://doi.org/10.56338/jks.v8i12.7580

[31] Yusuf, M. (2025). *Financial Technology 5.0*. Deepublish.

[32] Simanungkalit, M. B., Farina, T., & Nugraha, S. (2025). Tanggung Jawab Perdata dalam Kecelakaan Lalu Lintas: Studi Normatif Perbandingan KUH Perdata dan Undang-Undang Lalu Lintas dan Angkatan Jalan. *Innovative: Journal Of Social Science Research*, *5*(3), 4275-4290. https://doi.org/10.31004/innovative.v5i3.19555

Leges Privatae
P-ISSN: 0000-0000; E-ISSN: 3025-1990
Vol. 2 No. 5, February 2026
DOI: https://doi.org/10.62872/m42sy114
Available: https://ejournal-nawalaedu.com/index.php/JOY/index

of digital platforms in a more assertive manner and oriented towards victim protection.

The classical theory of liability based on fault rests on the premise that a person can only be held accountable if proven to have committed a mistake, whether intentional or negligent (culpa). In the context of digital financial services, the concept of culpa remains relevant because Indonesian civil law is fundamentally oriented towards the principle of fault as the foundation of accountability. However, the issue becomes complex when the actions that cause losses are no longer entirely carried out by humans, but by automated systems and algorithms operating autonomously. In this situation, the identification of fault becomes unclear: does the fault lie in the system design, in negligent supervision, or in a failure of risk management? If the concept of culpa is not broadened conceptually, a normative vacuum will arise that allows business actors to hide behind technological complexity. Therefore, fault-based theory needs to be reinterpreted to encompass forms of structural negligence in the digital ecosystem.

The biggest obstacle to implementing fault-based liability on digital platforms is the issue of proof. Algorithms used in credit scoring, interest rate determination, and transaction processing are often black boxes and protected by trade secret claims. Injured victims have little access to log data, system parameters, or algorithmic decision-making mechanisms. In civil law, the burden of proof generally rests with the party making the allegation, requiring consumers to prove the platform's fault.[33] This information imbalance creates a structural asymmetry that factually undermines the effectiveness of fault theory. Normatively, this situation suggests that the pure application of fault-based liability in the digital context risks procedural injustice. Without a corrective mechanism, this theory can actually protect business actors who have full control over information.

In contrast to the fault-based approach, strict liability theory is based on the idea that in high-risk activities, accountability need not depend on proving fault. In digital risks involving the management of public funds, the processing of personal data, and the use of complex technology, the argument for implementing risk-based liability becomes even stronger. Platforms derive economic benefits from operating their systems, so it is ethically and normatively appropriate for them to also bear the risk of losses arising from those systems. The application of strict liability can be seen as an instrument to balance the unequal positions between businesses and consumers. By emphasizing the causal relationship between risky activities and losses, the focus of protection shifts from proving fault to redressing the victims. In high-risk industries like digital finance, this approach aligns with the principles of prudence and consumer protection.

The normative justification for the application of strict liability can also be supported by the principle of victim protection, a top priority in modern civil law. When digital systems are designed and controlled entirely by the platform, the risk of system failure is an inherent part of its business model. Shifting the entire burden of proof to the victim in situations fraught with technical complexity contradicts the principle of substantive justice. The paradigm shift from fault-based liability to risk-based liability does not eliminate the element of fault, but rather acknowledges that under certain circumstances, proving fault is not a proportionate requirement. Conceptually, strict liability serves as a mechanism for business actors to internalize risk. Thus, the industry is encouraged to systematically improve security standards and risk management.

Risk and loss distribution theory provides further foundation for reconstructing the digital platform liability model.[34] This theory emphasizes that losses should be borne by the party most capable of controlling and efficiently distributing the risk. In the digital financial ecosystem, platforms possess technological capacity, financial resources, and structural control over the system that users do not. Therefore, rationally and economically, platforms are the most appropriate party to bear the risk of losses arising from their system operations. Assigning responsibility to platforms

[33] Wahid, A. I., Mahka, M. F. R., & Jaya, K. (2025). Tanggung Jawab Perdata Terhadap Platform Digital Terhadap Kerugian Konsumen. *Jurnal Kolaboratif Sains*, *8*(12). https://doi.org/10.56338/jks.v8i12.7580

[34] Putri, N. K. P. K., & Yoga, I. G. P. (2025). ANALISIS YURIDIS TANGGUNG JAWAB PLATFORM DIGITAL TERKAIT KERUGIAN YANG DIDERITA OLEH PENGGUNA DALAM LAYANAN KONTRAK CERDAS. *Jurnal Media Akademik (JMA)*, *3*(12). https://doi.org/10.62281/3dgy6z67

Leges Privatae
P-ISSN: 0000-0000; E-ISSN: 3025-1990
Vol. 2 No. 5, February 2026
DOI: https://doi.org/10.62872/m42sy114
Available: https://ejournal-nawalaedu.com/index.php/JOY/index

also allows for the distribution of losses through insurance mechanisms, reserve funds, or business model adjustments. This approach is not solely oriented towards punishment, but rather towards efficiency and prevention of future losses.

Normatively, the integration of risk theory into a civil liability framework reflects an effort to strike a balance between legal certainty and social justice. If the law remains rigidly bound to the paradigm of individual culpability, it risks failing to address the structural and systemic complexity of digital legal relations. Conversely, by recognizing risk distribution as the basis for accountability, the law can serve as a corrective instrument to address power imbalances in the digital economy. The rationalization of imposing liability on platforms is not a form of excessive intervention, but rather a logical consequence of their control and the profits they obtain. From this perspective, civil liability serves not only to resolve disputes but also as a regulatory mechanism that encourages more responsible technology governance. Thus, a theoretical examination of various liability models opens up argumentative space for reformulating the liability paradigm for digital financial platforms in a more progressive manner and oriented toward victim protection.

The implications of unclear norms for protecting victims of default are most evident in the aspects of legal certainty and access to recovery. When a platform's legal status and accountability standards are not clearly defined, victims are left uncertain about the subject of a lawsuit and the legal basis upon which they can be sued. In litigation, consumers often face obstacles such as court costs, the complexity of technical evidence, and resource disparities compared to businesses with stronger legal and technological support.[35] On the other hand, non-litigation mechanisms such as internal dispute resolution or alternative dispute resolution are often formalistic and lack transparency, thus not always providing effective redress. Standard clauses that limit liability or require dispute resolution through specific forums also have the potential to restrict victims' freedom of movement. This situation suggests that without a clear accountability model, legal protection for victims of default in digital financial services tends to be illusory.

The effectiveness of alternative dispute resolution mechanisms in the fintech context requires critical examination, particularly regarding the independence, accessibility, and bindingness of their decisions. While these mechanisms are normatively intended to provide fast and efficient solutions, in practice, consumers' bargaining power often remains weak. Many victims lack an adequate understanding of their rights or the procedures required, hindering access to substantive justice from the outset. Furthermore, when disputes concern technical aspects such as algorithms or system security, non-litigation forums often lack the technical capacity to thoroughly examine claims. As a result, dispute resolution can potentially only scratch the surface of the problem without addressing its structural roots. Within the framework of victim protection, effectiveness should not be measured solely by the speed of resolution, but by the extent to which the mechanism actually restores violated rights.

The tension between substantive justice and formal certainty is a central issue in fintech disputes. Formally, the text of electronic agreements and sectoral regulations may appear to detail the rights and obligations of the parties. However, in the complex digital reality, power relations and technological control create imbalances that are not always reflected in normative texts. If judges are rigidly bound by the wording of contracts or a literal interpretation of regulations, the resulting decisions have the potential to ignore the context of structural inequalities.[36] Therefore, a progressive interpretation is needed that goes beyond simply reading norms textually but also considers the objectives of consumer protection and the principles of justice. This approach is not a

[35] Urbanisasi, U., & Adiningsih, R. C. S. (2025). Analisis Efektivitas Gugatan Konsumen terhadap Pelaku Usaha dalam Penyelesaian Sengketa Layanan Daring di Indonesia: Analysis of the Effectiveness of Consumer Lawsuits against Business Actors in Resolving Online Service Disputes in Indonesia. *Citizen: Jurnal Ilmiah Multidisiplin Indonesia*, *5*(6), 1660-1664. https://doi.org/10.53866/jimi.v5i6.1078

[36] Indah, R. M., Marwanto, S., Sarwono, A. R., Maulana, R. R., & Triadi, I. (2025). Penerapan Teori Penemuan Hukum dalam Putusan Hakim Pada Praktik Peradilan di Indonesia. *Journal of Law Perspectives Review*, *1*(2), 125-136. https://doi.org/10.64670/jlpr.v1i2.42

form of excessive judicial activism, but rather a normative response to the transformation of legal relations due to digitalization.

Reconstructing the digital platform accountability model is an urgent need to bridge the gap between norms and reality. The legal standing of platforms in multi-party contracts must be explicitly defined to eliminate ambiguity regarding their roles and responsibilities. Integration of general civil norms and sectoral regulations in the digital finance sector needs to be systematic to prevent regulatory fragmentation that creates gaps in accountability. Conceptually, a more responsive accountability model could combine fault-based principles with a risk-based approach under certain circumstances. This normative recommendation aims to clarify the boundaries of responsibility while strengthening victims' positions in seeking redress. Thus, protection for victims of default does not stop at regulatory rhetoric but is realized through a clear, consistent, and substantive justice-oriented accountability framework.

Conclusions

Civil legal protection for victims of default in digital financial services still faces fundamental problems in the form of unclear norms, unclear construction of platform responsibility, and an imbalance in the contractual relationship between providers and users, resulting in victims' weak position in obtaining legal certainty and recovering losses. The ambiguity of the platform's legal status as a party to the agreement or merely an intermediary has created uncertainty in determining the basis of liability, while the formalistic application of the principle of freedom of contract in electronic contracts tends to ignore the principles of balance and good faith in asymmetric digital relations. On the other hand, obstacles to proving fault in closed algorithmic systems indicate the limited effectiveness of fault-based liability theory, so that a normative shift towards a strict liability approach and a theory of loss distribution that positions the platform as the party best able to control and internalize systemic risk is required. Victim protection can no longer rely on the neutral and individualistic paradigm of classical civil law, but must be directed towards substantive justice through a reinterpretation of fundamental principles, including an expansion of the concept of culpa in the context of technology and the possibility of reversing the burden of proof under certain circumstances. Thus, the reconstruction of the digital platform accountability model has become an urgent conceptual need, through the affirmation of the legal standing of platforms in multi-party contracts and the integration of civil norms with sectoral regulations, so that the law does not merely maintain formal certainty, but truly functions as an effective protection instrument for victims of default in the digital financial ecosystem.

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