International Journal of Education, Vocational and Social Science
https://e-journal.citakonsulindo.or.id/index.php/IJEVSS
E-ISSN : 2963 4954
IJEVSS

# The Juridical Construction of Passive Subjective Novation Through Paylater Schemes in Marketplace Business Transactions

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**Abstract**

*Increasingly progressive digital technology is driving significant changes in business transaction practices, particularly through marketplace platforms. This has led to new innovations widely used by consumers, such as paylater services, which allow payments to be routed through third parties, such as fintech companies. This scheme raises questions regarding the legal standing of the parties in an agreement. This paper discusses the legal standing of the parties by focusing on the concept of passive subjective novation, namely the replacement of the debtor's position in an agreement, as regulated in the Civil Code (KUHPerdata). The research method used is normative law with a qualitative descriptive analysis approach referring to statutory regulations, conceptual frameworks, and actual practices in Indonesia. The results show that in paylater transactions, passive subjective novation occurs, where the consumer, who was originally indebted to the seller, is replaced by the paylater service party as the new debtor, while the consumer shifts into a new obligation to the paylater service. This practice is in accordance with the principle of freedom of contract and is legally valid according to the Civil Code, POJK and the ITE Law.*

**Keywords: Business; Marketplace; Passive Subjective Innovation; Paylater**

## INTRODUCTION

A contract constitutes one of the sources of obligations in civil law, alongside statutory provisions as regulated in Article 1233 of the Indonesian Civil Code (KUHPerdata). Contractual



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practice is grounded in the principle of freedom of contract, whereby parties are free to determine the form, content, and object of their agreement insofar as these do not contravene statutory regulations, public order, or morality, as stipulated in Article 1337 of the Civil Code. In practice, contracts are not limited to formal arrangements executed through notarial deeds or written agreements but also include simple consensual arrangements arising in transactions such as sales, lending and borrowing, and digital services. The existence of a contract is essential because it provides legal certainty, ensures the fulfillment of rights and obligations, and functions as an instrument for dispute resolution should disagreements arise in the future.

Contractual practices in business activities vary widely depending on the interests of the parties, including matters relating to the termination of obligations. In contract law, the extinction of obligations may occur under several circumstances, as regulated in Article 1381 of the Civil Code. One mechanism through which an obligation may be extinguished is debt renewal. Debt renewal or novation constitutes a legal act that ends an existing obligation and creates a new one in its place. Under Article 1413 of the Civil Code, novation occurs under three conditions: when a debtor establishes a new obligation to replace the original one; when a new debtor is appointed to substitute the original debtor; and when a new creditor is designated to replace the original creditor. Thus, novation is a legal mechanism that does not merely modify the content of a contract but creates an entirely new legal relationship with distinct legal implications.

In practice, debt renewal is frequently used to provide convenience and flexibility in business and financial transactions. Concrete examples may be seen in corporate debt restructuring, banking credit agreements, and digital transactions. Novation offers an alternative for contracting parties to adjust their obligations according to evolving circumstances without entirely terminating their contractual relationship. However, this mechanism requires explicit consent from the parties; absent such clear agreement, the original debt relationship remains valid and novation is deemed not to have occurred.

Technological disruption has significantly transformed contractual practices, particularly with the emergence of electronic contracts facilitated by the internet and digital platforms. Law No. 19 of 2016 on Electronic Information and Transactions provides a legal foundation for electronic contracts, including the use of digital signatures, thereby extending contract formation beyond conventional written documents. This demonstrates that contractual practices are dynamic and capable of adapting to societal needs and technological developments.

The digital era has brought substantial change to the transactional patterns of modern society. Marketplaces such as Tokopedia, Shopee, Bukalapak, and Lazada have become widely


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used platforms for the exchange of goods and services. This phenomenon aligns with the evolution of financial technology (fintech), one of whose prominent services is the paylater scheme, which allows consumers to purchase goods without immediate payment but instead through installment or deferred payment mechanisms.

Increasing dependence on digital services has shaped a pragmatic societal paradigm in which convenience and efficiency are prioritized. Within this context, paylater services have emerged as a highly preferred payment alternative. According to the Financial Services Authority (OJK), the use of digital financing services in Indonesia has increased significantly over the past three years, driven by a more consumerist lifestyle and the growing need for flexible payment methods.

From a legal perspective, debt renewal in digital transactions generates a more complex contractual construction because it involves three parties: the consumer, the seller, and the digital financial service provider integrated into the marketplace's paylater system. This arrangement requires clear legal protection concerning the status and rights of each party, particularly given the shift in creditor position inherent in the paylater scheme—known as passive subjective novation. Without a clear mechanism for debt renewal, consumers may be disadvantaged by standard clauses. Therefore, debt renewal in digital transactions must not be understood merely as a technical aspect of business operations but must also be analyzed within the framework of contract law and fintech regulation to ensure fair treatment for all parties involved.

Electronic contracts constitute a crucial component of this framework. Paylater schemes generally employ click-wrap agreements, wherein consumers indicate consent to terms and conditions by clicking an acceptance button. Under the Electronic Information and Transactions Law, electronic agreements accompanied by digital signatures possess binding legal force. Nevertheless, academic debate persists regarding whether such consent genuinely satisfies the principle of freedom of contract under Article 1320 of the Civil Code, considering that consumers often do not read the detailed terms and conditions provided.

Based on the foregoing, it is essential to examine the juridical construction of passive subjective novation through paylater schemes in marketplace transactions. Such analysis not only strengthens the theoretical foundation of legal relationships within digital transactions but also provides practical insights for developing regulatory frameworks that are more responsive to technological advancements. Accordingly, this study is expected to bridge the gap between classical contract law and modern digital contractual practices in the context of passive subjective novation.


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## RESEARCH METHODS

This study employs a normative legal research method that focuses on descriptive-prescriptive analysis and the examination of legal principles relevant to the practice of passive subjective novation. Two complementary approaches are adopted: the statutory approach and the conceptual approach. The statutory approach is used to analyze the formulation and substance of Article 1413 of the Indonesian Civil Code (KUHPerdata) by assessing its compatibility with the practice of passive subjective novation within pay-later schemes. Meanwhile, the conceptual approach involves the examination of legal concepts related to novation, particularly the renewal of debt obligations.

A literature review was conducted to gather research data, including the collection of relevant legal sources such as legislation, books, legal documents, and scholarly articles. Through this approach, the study aims to provide a substantive description of the passive subjective novation scheme in the use of pay-later facilities within marketplace transactions.

## RESULT AND DISCUSSION

### 1. The Construction of Passive Subjective Novation in Civil Law

Debt renewal, or novation, is a legal event in which an existing obligation is extinguished and subsequently replaced with a new one. According to Subekti, debt renewal constitutes a mode of extinguishing an obligation by creating a new legal relationship to replace the previous one. This concept is highly relevant in practical legal interactions, as debt relationships do not always remain within a single binding agreement; rather, they may undergo modifications according to the needs of the parties. A debt may be renewed by substituting the object of performance, changing the party assuming the debt, or altering the nature of the promised performance, as long as such modifications are mutually agreed upon.

The Indonesian Civil Code (KUHPerdata) clearly regulates debt renewal under Articles 1413 to 1424. Novation may manifest in three forms: (1) objective novation, which involves replacing an old debt with a new one; (2) active subjective novation, referring to the substitution of the original creditor with a new creditor; and (3) passive subjective novation, referring to the replacement of the original debtor with a new debtor. These provisions ensure legal certainty regarding how obligations can be renewed, including when contractual relationships evolve, thereby safeguarding clarity in legal relations and preventing disputes.

In practice, debt renewal does not occur automatically; it must be expressly declared or clearly inferred from the intention of the contracting parties. This requirement is essential


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because novation carries significant legal consequences: it extinguishes the original obligation and all its legal effects, including existing securities, unless otherwise agreed. Thus, the Civil Code provides a legal framework that requires prudence on the part of contracting parties to prevent future disputes arising from novation.

The regulatory framework for novation within the Civil Code illustrates the flexibility of Indonesian civil law in adapting to societal legal needs. Objective novation allows for substantive modification of debt obligations, such as substituting a monetary payment with the delivery of goods. Active subjective novation makes it possible for a creditor to transfer rights to another party without terminating the legal relationship with the debtor. Passive subjective novation, on the other hand, governs the substitution of the debtor with the creditor's approval, allowing for the transfer of debt obligations while protecting creditor interests. These variations emphasize that novation remains grounded in mutual consent, ensuring that all changes reflect voluntary agreement. Through these diverse forms, the Civil Code not only upholds legal certainty but also guarantees contractual flexibility based on the parties' needs.

The practice of debt renewal has evolved alongside increasingly complex patterns of human interaction in transactions. While novation initially occurred within simple interpersonal arrangements, it has now expanded into broader business sectors such as banking, financing, and large-scale cooperation agreements. This development demonstrates that novation is a dynamic legal mechanism capable of adapting to societal transformations. As previously noted, passive subjective novation constitutes the substitution of an existing debtor with a new one, subject to the creditor's consent. In this scenario, the debtor's position is transferred to another party who assumes full responsibility to perform the obligation. From a contractual standpoint, creditor approval is indispensable because debt repayment obligations are personal and directly linked to the creditor's trust in the original debtor.

The regulation of passive subjective novation is reflected in Articles 1417 and 1418 of the Civil Code, which emphasize that an obligation may be renewed through the substitution of the debtor. Consequently, once passive subjective novation is validly executed, the original debtor is released from all obligations and liabilities, and full responsibility shifts to the new debtor. This mechanism differs from other forms of debt transfer that may still involve joint liability. In passive subjective novation, the original debtor's liability terminates entirely.

Doctrinally, legal scholars assert that creditor approval is an essential requirement for passive subjective novation. Subekti emphasizes that without such approval, the novation would not be legally valid because it may infringe upon the creditor's interests, which were


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originally founded on trust in the first debtor. Such approval is therefore not merely a formality but a substantive legal safeguard ensuring that creditor rights are not compromised in the debtor substitution process.

In contemporary legal practice, passive subjective novation is increasingly implemented in debt restructuring and modern transactions, including digital lending schemes such as pay-later mechanisms and contractual transfers in banking. The flexibility of this form of novation allows a new debtor to replace the former without the necessity of drafting an entirely new contract, although the formulation of a new agreement remains advisable to minimize disputes. Hence, passive subjective novation serves not only as a theoretical legal instrument but also as a practical tool for ensuring legal certainty and accommodating the dynamics of digital economic transactions.

This practice has become particularly relevant in the digital era where flexible financial transactions have become a societal need. Pay-later services enable consumers to purchase goods under a short-term credit arrangement, creating the possibility for debt obligations to be transferred under certain circumstances, such as account sales or contract reassignment. However, it is important to note that most digital finance providers restrict or prohibit account transfers or debt assignments without formal procedures. These restrictions serve to protect consumers, merchants, and fintech operators, as well as to prevent identity misuse. Therefore, although passive subjective novation is theoretically possible in digital transactions, its implementation depends heavily on internal regulations set by service providers and the explicit approval of the creditor.

## 2. Implementation of Passive Subjective Novation in Pay Later Schemes

The advancement of digital technology has brought significant transformation to the commercial sector, notably through the emergence of e-commerce and marketplace platforms as channels for buying and selling goods. These platforms allow sellers and buyers to interact without physical meetings, thereby enhancing efficiency and flexibility in commercial transactions. The ease of access, product variety, and various payment systems offering convenience have positioned marketplaces as the preferred choice for modern consumers seeking to fulfill daily needs.

Transactions in e-commerce typically involve several simple steps. First, consumers select their desired products and place them in a virtual shopping cart. Next, they proceed to payment by choosing among available methods such as bank transfers, credit cards, digital wallets, or


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installment schemes. Once the payment is confirmed, sellers ship the products to the buyer's address. The delivery process is usually accompanied by tracking features that allow buyers to monitor their shipment in real time.

One increasingly popular payment mechanism is the pay-later facility. Pay-later enables consumers to purchase goods immediately and pay for them later, either in full or in installments. Pay-later is often regarded as a more accessible alternative to credit cards due to its relatively simple application process, which can be completed entirely through a mobile application. While providing financial flexibility, pay-later services also impose an obligation on consumers to fulfill their payment commitments.

In terms of its medium, pay-later constitutes an electronic transaction, conducted through electronic systems accessed via marketplace or fintech applications. Pursuant to Article 1(2) of the Electronic Information and Transactions Law (UU ITE), an electronic transaction is a legal act conducted using computers, computer networks, and/or other electronic media. Accordingly, the use of pay-later is legally valid as a digital contractual relationship between service providers and consumers. The legal basis of pay-later contracts is derived from electronic agreements formed digitally. Under Article 18(1) of the UU ITE, electronic contracts are binding as long as they satisfy essential elements: consent, legal capacity, a specific object, and a lawful cause. Therefore, user consent to the terms and conditions of pay-later services holds the same legal force as written contracts.

The implementation of paylater in Indonesia generally refers to regulations governing Information Technology Based Lending Services (LPMUBTI), such as the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 and POJK No. 10/POJK.05/2022 on Information Technology-Based Joint Financing Services. Additionally, consumer protection aspects are guided by Law No. 8 of 1999 on Consumer Protection. Despite its digital nature, pay-later operations remain within a robust legal framework ensuring certainty for both providers and users. The legal basis becomes essential for governing legal acts conducted in virtual spaces. Nonetheless, it is equally important to understand how passive subjective novation functions within pay later mechanisms.

In the context of digital transactions such as pay-later, passive subjective novation may occur when debt repayment obligations are transferred from the original consumer to a third party. For instance, a pay later user who initially serves as the primary debtor may appoint or agree with another party to assume the repayment obligation. In practical pay-later arrangements, passive subjective novation may arise when users encounter financial


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difficulties and subsequently enter an agreement with another party to承担 the debt payment. The third party then assumes the role of the new debtor, replacing the original consumer. However, such substitution does not automatically take effect; it requires explicit approval from the creditor—namely, the pay-later provider—because without creditor consent, the initial obligation remains attached to the original user.

The transfer of debt in passive subjective novation within pay-later schemes carries significant legal implications. With the substitution of the debtor, all obligations including interest, late fees, and penalties are transferred to the new debtor. This ensures legal certainty for both the pay-later provider as the creditor and the original consumer, who is released from obligations once the substitution is validated. Thus, passive subjective novation functions as a protective mechanism balancing the rights and responsibilities of parties involved in digital transactions.

The legal basis for debt renewal, including passive subjective novation, can be found in Article 1413(2) of the Civil Code, which states that novation may occur through the appointment of a new debtor approved by the creditor. This provision becomes relevant in pay-later schemes because the legal relationship among consumers, pay later providers, and sellers must remain within the framework of positive law. As such, passive subjective novation provides a juridical solution to payment issues arising in digital transaction systems for debtors who utilize pay-later mechanisms or lack sufficient financial capacity to satisfy their obligations.

## CONCLUSION

Debt renewal, or novation, is a legal mechanism that enables the extinguishment of an existing obligation and the creation of a new one, as regulated under Articles 1413–1424 of the Indonesian Civil Code. It encompasses three primary forms: objective novation, active subjective novation, and passive subjective novation. In particular, passive subjective novation is only valid with the creditor's consent, as it concerns the creditor's trust in the debtor; consequently, the original debtor is released from liability, which fully transfers to the new debtor. This mechanism reflects both legal certainty and the flexibility of contractual obligations in adapting to societal needs, whether in simple or complex practices, including debt restructuring and digital transactions such as paylater services. Its application, however, remains dependent on existing regulations and the consent of the parties involved to ensure the protection of their rights and obligations and to minimize potential disputes.

Paylater services, as a form of digital transaction, are legally recognized as they are


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grounded in the Civil Code, the Electronic Information and Transactions Law, and the Financial Services Authority Regulations (POJK), thereby creating binding legal relations through electronic agreements. Within this scheme, passive subjective novation may occur when payment obligations are transferred from the original debtor (the consumer) to a new debtor based on the consent of the service provider (the creditor/paylater provider). This mechanism provides legal certainty while ensuring the protection of the parties' rights and obligations within digital transactions.

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Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana telah diubah dengan Undang-Undang Nomor 19 Tahun 2016.



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