

# Legal Principles of Agreements: A Foundation in Contract Establishment

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**Abstract.** This study aims to explain the parties' understanding of the principles of the agreement (contract principles) in conducting or making a contract. In an agreement, the parties must meet the legal requirements of the agreement based on Article 1320 of the Criminal Code, namely subjective requirements: there is an agreement to bind themselves and the skills of the parties to make an engagement, while the objective conditions are a sure thing and a lawful cause. Therefore, in carrying out legal actions to make a contract/agreement, one must also understand the principles that apply to the basis of a contract/agreement, including the principle of freedom of contract, the principle of consensual, the principle of legal certainty/pacta sunt servanda, the principle of good faith and the principle of personality. Of the five principles based on the theory of legal science, eight national engagement law principles are added, resulting from a joint formulation based on a national agreement.

**Keywords:** principles; contracts; laws

## 1 Introduction

The law in Indonesia is heavily influenced by foreign legal systems, especially the European legal system, known as the Roman-German legal system. This legal system is through Dutch legal channels. Has embedded legal pillars that bind the community, the authorities, and the community.

In Burgerlijk Wetboek (BW), which Subekti and R. Tjitrosudibio later translated into the Civil Code (KUHPer), contract law is regulated in Book III concerning Engagement, where it regulates and contains property law concerning rights and obligations that apply to people or specific parties. The existence of an agreement, or what is currently commonly known as a contract, cannot be separated from fulfilling the conditions regarding the validity of an agreement/contract as stated in the Civil Code, as follows: 1. There is an agreement from those who bind themselves; 2. The existence of the ability to make an engagement; 3. Regarding a particular matter; and 4. For a lawful reason. With the fulfillment of the four conditions for the validity of the agreement, then an agreement becomes valid and legally binding for the parties who make it.[1]

Many legal actions are related to agreements or contracts between two or more parties in daily legal activities. Generally, they make agreements with an open system, meaning that everyone is free to enter into agreements, both regulated and those that have not been regulated

in law.[2] All agreements made legally apply as law to those who make them. Usually, a contract consists of six parts: the title of the agreement, the opening, the parties to the agreement, the recital, the contents of the agreement, and the closing. Of the six sections, there are several general clauses such as default, choice of law and choice of forum, domicile, and force majeure, the number of which depends on the parties' agreement.

The existence of a contract cannot be separated from the principles that bind it.[3] The principles in contracting absolutely must be fulfilled if the parties agree to bind themselves in carrying out legal actions. However, several contracts are often made without being based on the principles that apply in a contract. Things like this happened because of the lack of understanding of the parties to their conditions and positions. Therefore, the question arises, what principles apply in entering into a contract/agreement?

In this paper, we will try to explain how the parties understand the principles of the agreement (contract principles) in conducting or making a contract. The general purpose of this paper is to convey an image or description to the reader regarding matters that must be considered in making contracts related to legal actions. Meanwhile, the specific objective is to describe the characteristics of an open contract based on the principles and theories of Legal Science.[4]

Contract law is a part of civil law (private). This law focuses on self-imposed obligations.[5] Called as part of civil law due to a violation of the obligations specified in the contract, it is purely the business of the contracting parties. In their most classic form, contracts are expressions of human freedom to choose and enter into agreements. The contract manifests freedom (freedom of contract) and free will to choose (freedom of choice).[6]

Since the 19th century, these principles have undergone essential developments and shifts. Such a shift is caused by: first, the growth of standard forms of contract; second, the reduced meaning of freedom of choice and the will of the parties as a result of the widespread intervention of the government in people's lives; third, the entry of the consumer as a party to the contract. These three factors are related to each other. However, the contract and freedom of choice principles are still seen as the basic principles of contract formation.

## **2 Research Methods**

This paper is part of normative legal research, using a literature approach and an assessment of the law on principles in contractual agreements, which are part of Indonesian civil law. The author conducts a study on contractual agreements that legal practitioners need to know to carry out contracts that are not harmed by each other.[7] The data used in this study are primary data and secondary data.[8] However, they study more through secondary legal data and data on applicable laws in Indonesia related to contracts.

## **3 Results and Discussion**

### **3.1 Principles of Contract Law**

Based on the theory, there are 5 (five) principles in contract law that are known according to civil law. The five principles include the principle of freedom of contract (freedom of contract), the principle of consensual (consensual), the principle of legal certainty (*pacta sunt servanda*), and the principle of good faith (good faith), and the principle of personality (personality). The following is an explanation of these principles:

A. The principle of freedom of contract (freedom of contract)

The principle of freedom of contract can be analyzed from Article 1338 paragraph (1) of the Criminal Code, which reads: "All agreements made legally apply as law for those who make them."

This principle is a principle that gives freedom to the parties to (1) make or not agree; (2) enter into an agreement with anyone; (3) determine the content of the agreement, its implementation, and its requirements, and (4) determine the form of the agreement, whether written or oral.

At the end of the 19th century, due to the pressure of ethical and socialist ideas, individualism began to fade, especially after the end of World War II. This understanding then does not reflect justice. Society wants the weak to get more protection. Therefore, free will is no longer given an absolute meaning but is given a relative meaning, always associated with the public interest. The arrangement of the substance of the contract is not only left to the parties but also needs to be monitored. As the bearer of the public interest, the government maintains a balance between individual interests and the interests of society. Through the government's breach of contract law, there has been a shift in contract law to the field of public law. Therefore, through this government intervention, the legalization of contracts/agreements occurs. Through government intervention, this happens.

B. The principle of consensual

The principle of consensual can be concluded in Article 1320 paragraph (1) of the Criminal Code. In the article, it is determined that one of the conditions for the agreement's validity is the existence of a word of agreement between the two parties. This principle states that agreements are generally not held formally but only with the agreement of both parties. An agreement between a will and a statement made by both parties. The principle of consensual emerged inspired by Roman law and German law. The term consensualism principle is not known in German law, but it is better known as absolute and formal agreements. An actual agreement is an agreement that is made and implemented in absolute terms (in customary law, it is called cash). At the same time, a formal agreement is an agreement that has been determined in its form, namely in writing (either in the form of an authentic deed or an underhand deed). The terms *contractus verbis literis* and *contractus innominat* are known in Roman law. This means that an agreement occurs if it fulfills the predetermined form. The principle of consensual known in the Criminal Code is related to the form of the agreement.

C. The principle of legal certainty (*pacta sunt servanda*)

The principle of legal certainty, also known as the principle of *pacta sunt servanda*, is related to the agreement's consequences. The principle of *pacta sunt servanda* is that judges or third parties must respect the substance of the contract made by the parties, as it befits a law. They must not interfere with the substance of the contract made by the parties. The principle of *pacta sunt servanda* can be concluded in Article 1338, paragraph (1) of the Criminal Code. This principle has initially recognized in church law. In church law, an agreement occurs when there is an agreement between the parties who do it and is confirmed by oath. This implies that every agreement entered into by both parties is a sacred act and is associated with religious elements. However, in subsequent developments, the principle of *pacta sunt servanda* was given the meaning of *pactum*, which means an agreement that does not need to be strengthened by oaths and other formalities. In comparison, the term *nudus pactum* is enough with just an agreement.

D. The Principle of Good Faith

The principle of good faith is stated in Article 1338, paragraph (3) of the Criminal Code, which reads: "Agreements must be carried out in good faith." This principle is the principle that the parties, namely the creditor and debtor, must carry out the substance of the contract based on firm trust or confidence and the goodwill of the parties. The principle of good faith is divided into two types, namely relative good faith and absolute good faith. In the first intention, a person pays attention to the natural attitude and behavior of the subject. In the second intention, the assessment lies in common sense and fairness, and an objective measure is made to assess the situation (impartial assessment) according to objective norms. Various The Hoge Raad (HR) decisions closely related to applying the principle of good faith can be considered in the following position cases. The most prominent cases are those of Sarong Arrest and Mark Arrest. Both arrests are related to the decline in the value of Germany's money (devaluation) after World War I.

The Sarong Arrest Case: In 1918, a Dutch firm ordered a German businessman some sarongs for 100,000 guilders. Due to temporary circumstances, the seller may not be able to submit orders for a specific time. After the coercion ends, the buyer demands performance fulfillment. But since the agreement was made, the situation has changed a lot, and the seller is willing to fulfill the order but at a higher price because if the price remains the same, then the seller will suffer a loss, which is based on good faith between the parties cannot be sued from him.

The defense submitted by the seller based on Article 1338 paragraph (3) of the Criminal Code is set aside by HR in the arrest. According to HR's decision, it is impossible for one party to an engagement based on a change in circumstances, regardless of its nature, to have the right, based on good faith, to break its promise, which is clearly stated that HR still gives hope about this by formulating: changing the essence of the agreement or setting it aside altogether. Can a lighter verdict be expected if it's not a core change or an override in its entirety?

HR decisions are always based on the time the parties make them. If the party was ordering sarong as ordered, then the seller must carry out the contents of the agreement because it is based on the agreement being carried out in good faith.

E. Principles of Personality (personality)

The principle of personality is the principle that determines that a person who will perform and make a contract is only for individual interests. This can be seen in Article 1315 and Article 1340 of the Criminal Code. Article 1315 of the Criminal Code states: "In general, a person cannot enter into an engagement or agreement other than for himself." The essence of this provision is clear to agree; the person must be for his benefit. Article 1340 of the Criminal Code reads: "The agreement is only valid between the parties who make it." This implies that the agreement made by the parties only applies to those who make it. However, there are exceptions to this provision as indicated in Article 1317 of the Criminal Code, which states: "An agreement can also be entered into for the benefit of a third party, if an agreement made for oneself, or a gift to another person, contains such a condition." This article constructs that a person can agree/contract for the benefit of a third party, subject to certain conditions.

Meanwhile, Article 1318 of the Criminal Code does not only regulate agreements for oneself but also for the interests of their heirs and those who obtain rights from them. Compared to the two articles, Article 1317 of the Criminal Code regulates agreements for third parties, while Article 1318 of the Criminal Code is for the benefit of himself, his heirs,

and those who obtain rights from those who make them. Thus, Article 1317 of the Criminal Code regulates the exceptions, while Article 1318 has a broad scope.

### **3.2 Principles of National Bond Law**

In addition to the five principles described above, eight principles of national engagement law have been successfully formulated. The eight principles are trust, legal equality, the principle of balance, the principle of legal certainty, the principle of morality, the principle of etiquette, the principle of habit, and the principle of protection. The explanation is as follows:

The principle of trust, namely that everyone who agrees, will fulfill every achievement made between them in the future. The principle of legal equality, namely that legal subjects who agree have the same position, rights, and obligations under the law. They should not be discriminated against, even though the subject of the law is of different skin color, religion, and race. The principle of balance, namely the principle that requires both parties to fulfill and carry out the agreement. Creditors have the power to demand performance and, if necessary, can demand repayment of achievements through the debtor's wealth. Still, the debtor also must carry out the agreement in good faith.

The principle of legal certainty, namely, implies that the agreement as a legal figure contains legal certainty. This certainty is revealed from the binding power of the agreement, namely as a law for those who make it. The principle of morality is a principle related to fair engagement, namely a voluntary act of a person who cannot claim the right for him to sue the performance of the debtor. This can be seen in *zaakwarneming*, where a person acts voluntarily (morally), and the person concerned has a legal obligation to continue and complete his actions. One factor that motivates the person concerned to take legal action is based on decency (morality) as the call of his conscience.

The principle of propriety, namely the principle contained in Article 1339 of the Criminal Code. This principle relates to the provisions regarding the contents of the agreement, which are required by etiquette based on the nature of the agreement. The principle of habit is seen as part of the agreement. An agreement is binding on what is expressly regulated and for things that are customary to follow. The principle of protection, namely the principle, implies that debtors and creditors must be protected by law. However, the debtor needs to be protected because this party is in a weak position.

These principles are the basis for the parties to determine and make a contract/agreement in their daily legal activities. Thus, it can be understood that all of the above principles are important and must be considered for contract/agreement makers. The ultimate goal of an agreement can be achieved and implemented as desired by the parties.

## **4 Conclusion**

To understand and form an agreement, the parties must meet the conditions for a valid agreement based on Article 1320 of the Criminal Code, namely subjective requirements: there is an agreement to bind themselves and the skills of the parties to make an engagement, while the objective requirements are a sure thing and a lawful cause. Therefore, in carrying out legal actions to make a contract/agreement, one must also understand the principles that apply to the basis of a contract/agreement, including the principle of freedom of contract, the principle of consensual, the principle of legal certainty/*pacta sunt servanda*, the principle of good faith and the principle of personality. Of the five principles based on the theory of legal science, eight principles of national engagement law are added, which are the result of a joint formulation based on national agreements, including the principle of trust, the principle of legal equality, the

principle of balance, the principle of legal certainty, the principle of morality, the principle of decency, the principle of habit and practice. Protection principle. Thus, the principles of the agreement generally apply in terms of forming or designing a contract in legal activities.

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