

Implementation of the Principles of *Pacta Sunt Servanda* On Heavy Equipment Rental Agreement

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Abstract. *This study aims to determine the implementation of the principle of Pacta Sunt Servanda to the heavy equipment rental agreement at PT. Jaya Jasa Sarana, as well as to find out the obstacles and solutions in implementing the Pacta Sunt Servanda principle. This research is a sociological or empirical legal research using an empirical juridical approach. The specification of this research is descriptive-analytical with the types of primary data and secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Methods of data collection using primary data in the form of observation or observations and interviews (interviews) as well as secondary data through literature study. The data were analyzed qualitatively with an inductive thinking pattern. Based on the research, it was concluded that in implementing the Pacta Sunt Servanda principle in each heavy equipment rental agreement, it can be analyzed into two general descriptions, namely before the presence of Human Resources (HR) in the Legal field and after the presence of Legal Officers. The main factor that becomes an obstacle is the absence of good faith efforts from the client to comply with and fulfill every content of the substance of the agreement and the implementation of the contract. One of the clauses that must be made in a construction work contract is about the settlement of disputes or disputes. The solution implemented by PT. Jaya Jasa Sarana, namely as follows: More stringent in analyzing work contracts, especially regarding the clauses in the contract, both in terms of what will be planned, what has been implemented, and post implementation; complete and accurate administration of documents such as billing, receipts, invoices, tax invoices, and others; increase knowledge in the field of employment contracts and civil affairs.*

Keywords: Agreement; Equipment; Implementation; Lease.

1. Introduction

Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia by upholding moral values, ethics, character and noble personality of the nation, having faith and piety to God Almighty, and respecting diversity in the life of society, nation and state. and protect the dignity of every citizen.¹As a rule of law country, it is appropriate that all aspects of life in society, statehood, including in government must be based on applicable law, namely in accordance with the national legal system. One of the aims of forming a state government is to promote public welfare, this mandate has also been spelled out in Article 33 of the 1945 Constitution which is the mandate of the constitution which underlies the formation of all laws and regulations in the economic sector. This affects economic development through development activities, one of which is in the field of construction services to support national economic development. National development itself has the goal of realizing a just and prosperous society based on Pancasila and the 1945 Constitution.

In accordance with these development objectives, both physical and non-physical development activities have a very important role for the welfare of the community. The construction service sector is a community activity in realizing development which functions as a support or infrastructure for community socio-economic activities and supports the realization of national development goals.²Apart from playing a role in supporting various fields of development, construction services also play a role in supporting the growth and development of various industrial goods and services needed in the implementation of construction services and broadly supporting the national economy. In every working process, the construction industry is inseparable from heavy equipment equipment, in which the mechanism can also be carried out by a heavy equipment rental system so that it requires a rental agreement between the two agreeing parties.

The agreement in the agreement will have an impact on a legal relationship which is forged between two or more people who agree to give rise to legal consequences,³One of these legal acts or relations is a leasing agreement. The word agreement to enter into an agreement means that both parties must have free will, the parties do not get a pressure that can result in a "defect" for the realization of that will.⁴As contained in the sound of Article 1548 of the Civil Code. A lease is a consensual agreement. That is, it is valid and binding at the

¹ Yuliantoro. "Application of Elements of Negligence in the Investigation Process of Traffic Accident Crimes". Unissula Sovereign Law Journal, Vol 35, No 1, (2019), p. 36-51

²Explanation of the Law of the Republic of Indonesia number 2 of 2017 concerning Construction Services.

³Mertokusumo Soedikno, 2005, Knowing the Law of an Introduction, Liberty, Yogyakarta, p. 117.

⁴Saliman Abdul R, 2010, Business Law for Companies, Kencana, Jakarta, p. 89.

moment an agreement is reached regarding its basic elements, namely goods and prices. The subjects or parties involved in the lease agreement are the lessor and the lessee. The lessee is a person or legal entity that leases goods or objects to the lessee, while the lessee is a person or legal entity that rents goods or objects from the lessee.⁵An effective leasing mechanism is needed so that it can further avoid problems in the future. If these problems persist, a more effective legal basis for settlement is needed so that the principle of justice can be upheld. With the mechanism in the form of a rental agreement contract, basically the position of each party in the implementation of the rental agreement must be returned to the basic concepts of contract law as in the agreement where there are principles that form the basis of its implementation.

The implementation of construction services cannot be separated from the leasing of heavy equipment, which in fact, in a project, it is not uncommon for deviations from the agreed agreement to occur, even though the agreement made is legally binding and applies as law for both parties according to the principle of *Pacta Sunt Servanda* which is a fundamental principle in the agreement, this principle is contained in the editorial Article 1338 paragraph 1 of the Civil Code. Given the background that was born from church law, in the principle of *Pacta Sunt Servanda* every agreement made legally is very sacred for the parties who have agreed in it. Besides that, the principle of *Pacta Sunt Servanda* can also be interpreted that a judge or a third party must respect the substance of the contract made by both parties as befits the power of a law. Thus any third party cannot easily intervene in the substance or implementation of contracts that have been made legally by the parties.⁶The connection between this principle and religious elements in the Anglo Saxon legal system is often known as the "sanctity of contract". In the concept of the sacredness of the contract, the most important thing is to comply with the contents of the contract.⁷Likewise in Islam which is contained in the letter Al-Maidah verse 1 (QS 5: 1), which meaning: "O you who believe, fulfill the words..."

The verse contains God's command to believers to fulfill the promises that have been made with God and with other human beings, so the essence of the verse contains the sacred understanding of an agreement or contract so that the promises that have been made are fulfilled without any a repudiation of the contract makers. Thus, there is a legal phenomenon that occurs, namely regarding the fulfillment of the *Pacta Sunt Servanda* principle in every rental agreement or work contract with clients.

⁵Agus Yudha Hernoko, 2010, Law of Agreement on the Principle of Proportionality in Commercial Contracts. Kencana, Surabaya, p. 2.

⁶Salim HS, 2010, Contract Law, Contract Drafting Theory and Techniques, Sinar Graphic, Jakarta, p. 10.

⁷Munir Fuady, 2013, Grand Theories in Law, Kencana, Jakarta, p. 214.

This study aims to determine the implementation of the principle of *Pacta Sunt Servanda* to the heavy equipment rental agreement at PT. Jaya Jasa Sarana, as well as to find out the obstacles and solutions in implementing the *Pacta Sunt Servanda* principle.

2. Research Methods

This type of thesis research is sociological or empirical legal research,⁸with the method of empirical juridical approach. The specification of this research is descriptive-analytical, with the presentation of descriptive procedures or research problem solving carried out by describing the objects investigated based on actual facts which are not limited to data collection but include analysis and interpretation of the meaning of the data.⁹The types of data used are primary and secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. While the data collection method uses primary data in the form of observation or observations and interviews (interviews) as well as secondary data through literature study. The data were analyzed qualitatively with an inductive thinking pattern.

3. Results and Discussion

3.1. Implementation of the *Pacta Sunt Servanda* Principle on Heavy Equipment Rental Agreements

A description of the rental agreement can be found in Article 1548 of the Civil Code which states that leasing is "an agreement by which one party binds himself to provide the other party with the enjoyment of an item for a certain time and with the payment of a price that the the party is obliged to pay."¹⁰In the lease agreement, that pThe implementation of the agreement carried out by both parties is a regulation that applies as a law for those who make it, so that implementing an agreement must be based on compliance with the contents of the agreement. So thus, basically the position of each party in the implementation of the agreement must be returned to the basic concepts of engagement law as in the agreement where there are principles that form the basis of its implementation.

Of the various principles contained in the agreement, the principle of *Pacta Sunt Servanda* or the principle of the binding force of the contract is considered a

⁸M. Atho Mudzhar, 2012, Challenges of Islamic Studies in Indonesia Today, Indo-Islamika Journal, Vol 2, No 1, p. 93.

⁹Victor Imanuel W Nalle, 2016, Socio-Legal Studies of Order and Peace in Sidoarjo Regency, Journal of Law & Development, Vol 47, No 3, p. 386.

¹⁰Civil Code Article 1548 Concerning Leases

fundamental principle because this principle underlies the birth of an agreement and is a principle related to the consequences of an agreement. *Pacta Sunt Servanda* comes from the Latin which means 'promises must be kept' (agreements must be kept), so that in positive law the formulation of the norm is that every agreement made legally applies as a law for those who make it. From the results of interviews with PT. Jaya Jasa Sarana (hereinafter referred to as JJS), that in implementing the principle of *Pacta Sunt Servanda* in every heavy equipment rental agreement and work contract made between JJS and clients, we can analyze it into two general descriptions, the first is before the Human Resources (HR) in the field of Legal and the second is after the Legal Officer.

1. Before there was a Human Resources (HR) Legal Officer

As a service company engaged in the field of construction services, of course the issue of rental agreements or work contracts is very crucial in a company or in a field of work like this.¹¹The lack of human resources in the legal field is of course a separate problem internally for the JJS company, so that several work contracts that have been made and agreed upon by JJS and clients are non-binding and not strong or it can be said that the clauses are arbitrary due to a lack of human resources. and also the contract was made unilaterally by the employer without any analysis.¹²The non-binding contract is contrary to the fundamental principle of the agreement, namely the principle of *Pacta Sunt Servanda* or the binding force of the agreement as can be seen from the editorial of Article 1338 paragraph 1 of the Civil Code which states that agreements made legally apply as laws. In relation to this article, Subekti stated that in the context of an agreement, the parties to the agreement are allowed to "make laws" for themselves.¹³

The article can also be interpreted that an agreement that has been made legally by the parties (not contrary to law) is binding on both parties and cannot be withdrawn, except with the consent of both parties or based on reasons that has been determined by law.¹⁴This means that the law also recognizes and places the position of the agreement made by the parties who make the agreement equal to the making of the law in terms of binding strength and legal certainty. The strength of the agreement made legally (Article 1320 of the Civil Code) has the same power as laws made by legislators and therefore must be obeyed by the parties, even if it is deemed necessary it can be enforced with the help of law enforcement agencies (judges, bailiffs).¹⁵These provisions basically provide

¹¹Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

¹²Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

¹³Subekti, 2004, Agreement Law, Intermedia, Jakarta, p. 14.

¹⁴Subekti, 2003, Fundamentals of Civil Law, Intermedia, Jakarta, p. 139.

¹⁵Agus Yudha Hernoko, 2010, Law of Agreement on the Principle of Proportionality in Commercial Contracts. Kencana, Surabaya, p. 111.

recognition of the freedom and independence of the parties in making agreements to be free to determine: (i) the contents, (ii) the validity and terms of the agreement, (iii) in a certain form or not, and (iv) are free to choose laws - Which law will be used for the agreement.¹⁶

The application of the *Pacta Sunt Servanda* theory is not only aimed at guaranteeing legal certainty and order, but also aims at guaranteeing social, economic and trade order. Of course, we can imagine how chaotic the social, economic and legal conditions in this world would be if everyone were free to obey or not comply with the contracts or agreements that have been made. Customary law in Indonesia also has an old adage which states that "if the cow is being held, it is the rope, but if the human is being held, it is the mouth (the words)".¹⁷

The lack of experts in the legal field makes every heavy equipment rental agreement and work contract made between JJS and the clients make it incompatible with the applicable agreement principles, especially the *Pacta Sunt Servanda* principle because the contract agreement they made is not binding, even though legally the agreement between the two parties should be binding on both of them and even a third party is not allowed to interfere with the agreement made. Because the principle of *Pacta Sunt Servanda* can also be interpreted that a judge or a third party must respect the substance of the contract made by both parties as befits the power of a law.¹⁸

As a consequence of the *Pacta Sunt Servanda* principle, the judge and third parties are "prohibited from interfering with the contents" of the agreement made by the parties to the agreement concerned.¹⁹ So that other consequences no third party may reduce the rights of other people to determine the contents of the agreement he made.

2. After that, there is a Human Resources (HR) Legal Officer

In connection with the emergence of various kinds of obstacles that exist in each agreement, in the end JJS hires human resources in the legal field so that the contracts obtained by JJS are the same as employers in the eyes of the contract and in the eyes of the law, meaning that their rights and obligations are in accordance with what was planned and included in the agreement clauses.²⁰ In

¹⁶Ibid.,

¹⁷Munir Fuady, 2013, *Grand Theories in Law*, Kencana, Jakarta, p. 218.

¹⁸Salim HS, 2010, *Contract Law, Contract Drafting Theory and Techniques*, Sinar Graphic, Jakarta, p. 10.

¹⁹Djohari Santoso, and Achmad Ali, 1989, *Indonesian Treaty Law*, Library Fac. Law of the Indonesian Islamic University, Yogyakarta, p. 49.

²⁰Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

every job there are pre, executor, and post. This means that in planning, determining what tools will be used, what type of work in the scope of work is like, how long will it take, then in carrying out the work it must be in accordance with the planned clauses and in accordance with what was signed in the contract agreement. Then after the implementation, there are obligations that must be carried out by the employer, including payment, which means that as a service provider, you have a contract with the service provider so that it must be in accordance with what is contracted, for example, in terms of the implementation time, it must be appropriate, the tools used stated in the contract must comply. Also, after the job is done,²¹

The fulfillment of the rights and obligations of each party in the agreement makes the purpose of making an agreement fulfilled which in the theory of legal purposes put forward by Gustav Radbruch that the purpose of law includes three basic values (grundwerten), namely justice (gerechtigheit), expediency (zwekmaeszigkeit), and legal certainty (rechtssichherkeit).

"Certainty" in the sense that the contents of the work contract received by JJS have standard and binding certainty and the clauses written in the contents of the agreement have certainty to be obeyed and implemented by both parties concerned. Legal certainty is a matter (statement) that is certain, conditions or provisions. The law essentially must be certain and fair. Certainly as a guideline for conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically.²²With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.²³

With regard to "fairness", the contract agreement between JJS and the client has an element of justice as fair for both parties and does not burden both of them where the rights and obligations of each party are fulfilled equally without anyone being wronged in the slightest. Law as the bearer of the value of justice according to Radbruch is a measure of the fairness and unfairness of the legal system. Not only that, the value of justice is also the basis of law as law. Thus, justice has both normative and constitutive characteristics for law. Justice is the basis for every dignified positive law.²⁴This also pays attention to the priority

²¹Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

²²Dominikus Rato, 2010, *Legal Philosophy Looking for: Understanding and Understanding Law*, Laksbang Pressindo, Yogyakarta, p. 59.

²³Moh Mahfud MD, *Law Enforcement and Good Governance*, Material at the National Seminar "Time for Conscience to Speak" organized by the DPP HANURA Party. Jakarta Constitutional Court, January 8, 2009.

²⁴Yovita A Mangesti & Bernard L Tanya, 2014, *Legal Morality*, Genta Publishing, Yogyakarta, p. 74.

principle put forward by Gustav Radbruch that in order to apply the law appropriately and fairly to fulfill the objectives of the law, what is prioritized is justice, then benefits, followed by legal certainty.²⁵ Gustav Radbruch said that law is the bearer of the value of justice, justice has both normative and constitutive characteristics for law. It is normative because it is to justice that positive law originates. It is constitutive because justice must be an absolute element of law, without justice, a rule does not deserve to become law.²⁶

According to John Rawls, situations of inequality must be given rules in such a way as to benefit the weakest sections of society. This happens if two conditions are met. First, a situation of inequality guarantees a maximum minimum for the weakest class of people. This means that the social situation must be such that the highest possible profit is generated for the lower classes of people. Second, inequality is tied to positions that are open to everyone. It means that everyone is given the same opportunities in life. Based on these guidelines all differences between people based on race, skin, religion and other differences that are primordial in nature, must be rejected. John Rawls further emphasized that a justice enforcement program with a populist dimension must pay attention to two principles of justice, namely, first, giving equal rights and opportunities to the broadest basic freedoms of equal freedom for everyone. Second, being able to rearrange the socio-economic disparities that occur so that they can provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups.²⁷

In terms of "benefit", the agreement made between JJS and the clients has benefits for both parties both in terms of financial and co-worker relations so that neither party feels that neither party feels harmed by the agreement on a work contract or heavy equipment rental agreement. When viewed from the theory of the purpose of law, namely regarding the benefits of law, the purpose of the existence of law (an agreement) is for the greatest welfare for the majority of the people or for all the people, and legal evaluation is carried out based on the consequences resulting from the process of applying the law. Based on this orientation, the contents of the law are provisions regarding the regulation of the creation of state welfare.²⁸ Followers of utilitarianism beside Jeremy Bentham is John Stuart Mill. In line with Bentham's thought, Mill has the opinion that an action should aim to achieve as much happiness as possible. According to Mill, justice originates in the human instinct to reject and repay the damage suffered,

²⁵Satjipto Rahardjo, 2012, *Law Studies*, Citra Aditya Bakti, Bandung, p. 20.

²⁶Bernard L Tanya et al, 2013, *Legal Theory: Human Orderly Strategies across Space and Generations*, Genta Publishing, Yogyakarta, p. 117.

²⁷John Rawls, 1973, *A Theory of Justice*, Oxford University press, London, 1973, translated by Uzair Fauzan and Heru Prasetyo, 2006, *Theory of Justice*, Student Library, Yogyakarta.

²⁸Lili Rasjidi and IB Wyasa Putra, 1993, *Law as a System*, Rosdakarya Youth, Bandung, p. 79-80.

either by oneself or by anyone who gains sympathy from us, so that the essence of justice includes all essential moral requirements for the welfare of mankind.²⁹

Mill agrees with Bentham that an action should be aimed at achieving happiness, otherwise an action is wrong if it produces something that is the opposite of happiness. Furthermore, Mill stated that the standard of justice should be based on its use, but that the origin of the awareness of justice is not found in use, but in two things, namely stimulation to defend oneself and feelings of sympathy. According to Mill, justice originates in the human instinct to reject and repay the damage suffered, both by oneself and by anyone who gets sympathy from us. The feeling of justice will rebel against damage, suffering, not only on the basis of individual interests,³⁰

Bentham found that the most objective basis is to see whether a particular policy or action brings benefits or useful results or, conversely, harms the people concerned.³¹ So, if you look at this description, it is appropriate that the contractual agreements made by JJS with clients certainly have benefits and are profitable for both parties, as stated by the source, namely after having Legal HR, of course we provide input and also oversee how JJS contracts are obtained and can also have a positive impact on the company's growth.³²

It is only fitting that the implementation of the heavy equipment rental agreement and work contract at JJS have elements of fairness, benefit, and certainty for both parties who carry out the agreement. Soerjono Soekanto and Munir Fuady stated that the purpose of law in society is the embodiment of the values of justice, equity, legal certainty, protection of rights, order and people's happiness.³³ So the purpose of law is to protect human interests in society. Furthermore, Soebekti argues that the law serves the goals of the state, namely bringing prosperity and happiness to the people in serving the goals of the state by administering justice and order.³⁴ According to the positive law contained in the 4th paragraph of the Preamble of the 1945 Constitution, states that the purpose of our law is to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order that is based on freedom, lasting peace and social justice.

²⁹HR Otje Salman S, 2010, Philosophy of Law (Development & Dynamics of Problems), Refika Aditama, Bandung, p. 44.

³⁰Satjipto Rahardjo, 2006, Law Studies, Citra Aditya Bakti, Bandung, p. 277.

³¹Sonny Keraf, 1998, Guided Business Ethics and its Relevance, Kanisius, Yogyakarta, p. 93-94.

³²Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

³³Margono, 2020, Principles of Beneficial Justice and Legal Certainty in Judge Decisions, 2nd print, Sinar Graphic, Jakarta, p. 26.

³⁴Sudikno Mertokusumo, 1996, Getting to Know the Law Satau Introduction, Liberty, Yogyakarta, p. 81.

The theory of legal objectives as presented by Radbruch, describes that in realizing the legal objectives Radbruch states that it is necessary to use the principle of priority of the three basic values which are the objectives of law. This is because in reality, legal justice often collides with the benefit and certainty of law and vice versa. Among the three basic values of the law's purpose, in the event of a collision, someone must be sacrificed. For this reason, the priority principle used by Gustav Radbruch must be implemented.³⁵

According to Radbruch, utility demands legal certainty. The law must be certain, says Radbruch. The demand for justice and certainty is a permanent part of the ideals of law and is outside the contradictions for political opinion, and the usefulness of giving an element of relativity. However, not only is utility relative, but the relationship between the three elements of the legal ideal is also relative.³⁶For Radbruch these three aspects are relative, they can change. At one time it can highlight justice and push the utility and legal certainty to the edge. At other times, certainty or usefulness can be emphasized. This relative and variable relationship is unsatisfactory. Meuwissen chose freedom as the foundation and ideals of law. Freedom in question is not arbitrariness, because freedom is not related to what we want. But it's about wanting what we want. With freedom we can relate certainty, justice, equality and so on instead of following Radbruch.³⁷

3.2. Obstacles and Solutions in the Implementation of the *Pacta Sunt Servanda* Principle Against Heavy Equipment Rental Agreements

The absence of good faith efforts from clients is one of the main obstacles faced by JJS in carrying out agreements in the form of heavy equipment rental agreements and work contract agreements, sabotage attempts are one of the reasons that result in unilateral contract termination by clients. Sabotage is carried out by competitors so that JJS often terminates contracts, which in reality is not due to JJS's negligence but competitors who make efforts as an example because JJS provides heavy equipment services, the equipment will not work if there is no land preparation and security guarantees in a project,³⁸

In addition to unilateral termination of the contract, in terms of payments, JJS has received payments several times that are not in accordance with its nature, in one contract it is stated that the service provider pays no later than 14 days or 30 days or 180 days according to the agreement but in reality it can be more and JJS has not been able to try many are still worried about not getting a job back in

³⁵Muhammad Erwin, 2012, *Philosophy of Law*, Raja Grafindo, Jakarta, p.123.

³⁶Gustav Radbruch in W. Friedmann, *Legal Theory & Philosophy: Philosophical Idealism & Justice Problems*, Cet. Second, Translator: Muhammad Arifin, 1994, RajaGrafindo Persada, Jakarta, p. 43.

³⁷Sidharta Arief, 2007, *Meuwissen About Legal Development*, Legal Studies, Legal Theory and Legal Philosophy, Refika Aditama, Bandung, p. 20.

³⁸Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

the same place. In addition to default in a job, there is also retention or maintenance guarantee whose nominal value is around 5 to 10 percent. From the point of view of a work contract, retention is a right that must be paid but is often not paid.³⁹

Given the unilateral termination of contracts, defaults, and retention payments that are not paid by clients from JJS, the main factors that become obstacles or obstacles to the application of the *Pacta Sunt Servanda* principle in heavy equipment rental agreements or work contracts made by JJS with clients is a matter of the lack of good faith efforts from the client to comply and fulfill every content of the substance of the agreement or the execution of contracts that have been made legally by both parties.

Provisions regarding good faith are contained in the provisions of Article 1338 paragraph 3 of the Civil Code, which states that agreements must be implemented in good faith. Good faith in the implementation of the agreement means more "properness", different from the understanding of the law of objects which means more "honesty". The good faith contained in Article 1338 paragraph 3 of the Civil Code wants that in carrying out the agreement it creates a sense of justice for the parties concerned and does not cause harm to either party. Thus it can be seen that actually the benchmark of a contract agreement made in good faith is not determined by what is in someone's mind, but a contract agreement in good faith is a contract that fulfills propriety or fairness and justice so as not to cause harm to either party. So that good faith in the implementation of the contract means that the parties carry out their respective rights and obligations.

Good faith must be the spirit of the agreement both during the pre-contract, the contract takes place and after the contract so that it will produce a fair agreement and not cause disputes in the future.⁴⁰ Good faith is the basis for implementing contractual agreements by the parties which in carrying out the contract must heed the norms of decency and decency as explained in Article 1339 of the Civil Code which states that a contract is not binding for matters expressly stated in a contract, but also binding for everything that by the nature of the contract is required by decency, custom and law.

Subekti explained that good faith according to Article 1338 paragraph 3 of the Civil Code is one of the most important pillars of contract law which demands decency and justice, in the sense that it is required to have legal certainty in the form of implementing contracts that do not conflict with strict norms and values

³⁹Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

⁴⁰Endang Suprapti and Arihta Esther Tarigan, Good Faith in the Agreement 'A Perspective of Law and Justice', Salam Journal, Volume 8, Number 1, p. 157.

of justice. ⁴¹Good faith in implementing a contract means compliance, namely an assessment of the behavior of one party in terms of implementing what has been agreed and aims to prevent inappropriate and arbitrary behavior from one of the parties.

According to Ridwan Khairandy, the standard of good faith in implementing contract agreements is an objective standard that refers to an objective norm. The behavior of the parties to the agreement must be tested on the basis of unwritten objective norms that develop in society. Provisions of good faith refer to unwritten norms that have become legal norms as a separate source of law. These norms are said to be objective because behavior is not based on the assumptions of the parties themselves, but the behavior must be in accordance with the general assumptions about good faith.⁴²

Good faith is very important in making a contract, in the sense that what is meant by good faith here is to act as a good person, good faith is directly related to legal protection for the parties if one day a dispute occurs in court.⁴³So that good faith is required in carrying out an agreement or when the agreement is carried out by both parties, namely regarding compliance and fairness because it is stated that compliance in the contract means that it does not fulfill the interests of one of the parties. While justice here is the certainty to get what has been contracted. Thus good faith to fulfill promises on an agreement that has been agreed upon is important, because a promise must be accounted for. As Allah says in Surah Al-Isra' verse 34 which Meaning: "... and fulfill the promise, in fact the promise must be held accountable."

Morality and decency are the main basis for the concept of good faith in Islam where good morals must be a motivation for the parties who make and carry out contracts and the contents of the agreement must not only be in accordance with laws and regulations but must also be in accordance with decency as well. Islam emphasizes that every human behavior and action will never be separated from the provisions of Allah SWT. As the word of God in the letter Al-Hadid verse 4 which Meaning: "... and He is with you wherever you are and Allah is Seeing of what you do."

Good faith in Islam cannot be separated from monotheism or divine elements, including in mu'amalah activities it will never be separated from monotheistic values as good faith in business contracts. Thus, humans have a responsibility for

⁴¹Muhammad Syaifudin, 2012, *Contract Law*, Mandar Maju, Bandung, p. 94.

⁴²Ridwan Khairandy, 2003, *Good Faith in Freedom of Contract*, Faculty of Law, University of Indonesia, Jakarta, p. 195.

⁴³Juajir Sumardi, 1995, *Legal Aspects of Franchise and Transnational Companies*, Citra Aditya Bakti, Bandung, p. 41.

it. Responsibility to society, responsibility to second parties, responsibility to oneself, and responsibility to Allah SWT. As a result of applying this concept, humans will not do as they please because all their actions will receive a reward from Allah SWT.⁴⁴ Good faith in carrying out business contracts in Islam is also contained in the letter Al-Maidah verse 1 (QS 5:1), which Meaning: "O you who believe, fulfill the words..."

The verse contains Allah's commands to believers to fulfill the promises that have been made with Allah and with other human beings, so that the essence of the contents of the verse is good faith so that the promises that have been made are fulfilled without any denial from the makers. The contract and the verse contain the sacred meaning of an agreement or contract (the sacredness of the contract).

In a construction work contract, there is always the possibility of a dispute arising. One of the clauses that must be made is regarding the settlement of disputes or disputes. This contract clause regulates the settlement of disputes that occur during the implementation of the contract. Settlement of disputes that occur in construction work contracts is regulated in Law Number 2 of 2017 concerning Construction Services, based on Article 88 which states that "disputes that occur in construction work contracts are resolved with the basic principle of deliberation to reach consensus". Usually, a construction work contract contains a dispute resolution clause in the event of a dispute.

Placing a dispute resolution clause into the agreement is one of the solutions implemented by JJS in minimizing disputes in the future. It needs to be poured into the clauses of the agreement to identify and minimize the impact so that JJS can get a sense of security in working and in carrying out work contracts provided by service providers.⁴⁵ In the dispute clause, you can take legal action through arbitration or court, but this has never been implemented because the deliberation to reach a consensus can be a win-win solution and letters of reprimand or internal subpoenas can be carried out quite effectively.⁴⁶ The provisions of the dispute settlement clause contained in the construction work contract are in accordance with Article 88 paragraph (2) of the Construction Services Act which states "in the event that the parties' deliberations cannot reach a consensus, the parties take the stages of dispute resolution efforts stated in the contract. construction work."

⁴⁴Muhammad Syakir Aula, 2004, *Syari'ah Insurance: Life and General Concepts and Operational Systems*, Gema Insani Press, Jakarta, p. 723-727.

⁴⁵Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

⁴⁶Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

If the dispute resolution efforts are not listed in the construction work contract, the parties to the dispute make a written agreement regarding the dispute resolution procedure to be chosen. The Construction Services Law has regulated the stages of efforts to resolve disputes as stated in Article 88 paragraph (4):

- a. Mediation;
- b. Conciliation; And
- c. Arbitrage.

Various kinds of solutions to the problems faced by JJS will be described as follows, first, it is more stringent in analyzing work contracts, we must carefully examine the clause by clause. So what is planned, implemented, and post-implemented will really have a positive impact and growth for the company. The second is to fully and thoroughly administer documents such as billing, receipts, invoices, tax invoices, and so on so that the balance between what is paid and what is received is appropriate and there are no shortages. Furthermore, further increase knowledge or understanding in the field of employment and civil contracts, so that unwanted things or indications that we do not expect in the implementation of this contract can be minimized.⁴⁷

From the description of the sources above, it can be concluded that the solutions implemented by JJS are as follows:

1. More stringent in analyzing work contracts, especially regarding the clauses in the contract, both in terms of what will be planned, what has been implemented, and what has been implemented;
2. Complete and thorough administration of documents such as billing, receipts, invoices, tax invoices, and others;
3. Increase knowledge in the field of employment and civil contracts.

Before taking a job, JJS will analyze the client who will contract whether he has healthy finances. He also has to see if he has ever been in court and so on, so that the potential for default and also obstacles in implementing the work clauses in the contract can be resolved. happen and do well. So before carrying out a work contract, during the tender or bidding process, we will first cross-

⁴⁷Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

check whether the company is indeed a bona fide company that is growing or a company that is going bankrupt.⁴⁸

The dispute resolution clause is contained in the agreement so that both parties agree in the agreement to get certainty, justice and benefits from what is in the contents of the agreement that has been made so that the rights and obligations of each party are fulfilled without any party feeling abused by the other party . The rights and obligations of each party in the lease agreement arise after an agreement has been reached and some of the main elements in the lease agreement have been fulfilled. In the lease agreement, the subject of the lease agreement is the existence of the lessee and the lessor. Both parties have their respective rights and obligations and are regulated in the Civil Code, namely:

a. Rights and Obligations of the Lessee

As for what is the right of the party who rents out is to receive a predetermined rental price. While the obligations of the party who rents out in the lease agreement are:

1) Handing over the leased item to the lessee is regulated in Article 1550 paragraph (1) of the Civil Code, so the item handed over is not to be owned as in the sale and purchase agreement, but only to be used, to enjoy its use. Thus, the surrender is only in the nature of handing over power over the object being leased.⁴⁹

2) Maintaining the leased goods in such a way that they can be used for the purposes intended are regulated in Article 1550 paragraph (2) of the Civil Code

3) Giving rights to tenants to enjoy the leased goods is regulated in Article 1550 paragraph (3) of the Civil Code

4) Making corrections at the same time is regulated in Article 1551 of the Civil Code

5) Bearing defects from the goods leased is regulated in Article 1552 of the Civil Code.

b. Rights and Obligations of the Lessee

⁴⁸Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.

⁴⁹Subekti, Various Agreements, Op. Cit., p. 42.

As for what is the right of the lessee is to receive the leased goods in good condition, while what is the obligation of the lessee in the lease agreement, namely:

- 1) Use the rented goods as if they were their own;
- 2) Paying the rental price at a predetermined time (Article 1560 of the Civil Code).⁵⁰

The creation of justice, benefit and certainty in carrying out the substance of the agreement is the basis for the formation of dispute clauses. Law as the bearer of the value of justice according to Radbruch is a measure of the fairness and unfairness of the legal system. Not only that, the value of justice is also the basis of law as law. Thus, justice has both normative and constitutive characteristics for law. Justice is the basis for every dignified positive law.⁵¹ This also pays attention to the priority principle put forward by Gustav Radbruch that in order to apply the law appropriately and fairly to fulfill the objectives of the law, what is prioritized is justice, then benefits, followed by legal certainty.⁵²

Regarding expediency, John Stuart Mill has the opinion that an action should aim to achieve as much happiness as possible. According to Mill, justice originates in the human instinct to reject and repay the damage suffered, either by oneself or by anyone who gains sympathy from us, so that the essence of justice includes all essential moral requirements for the welfare of mankind.⁵³ While legal certainty is a matter (statement) that is certain, conditions or provisions. The law essentially must be certain and fair. Certainly as a guideline for conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically.⁵⁴

Legal certainty will guarantee a person to carry out behavior in accordance with applicable legal provisions, and vice versa without legal certainty, a person does not have standard provisions in carrying out behavior. Thus, it is not wrong if Gustav Radbruch argues for certainty as one of the goals of law.⁵⁵

⁵⁰Salim HS, Development of Innominate Contract Law in Indonesia, Op. Cit., p. 58-59.

⁵¹Yovita A Mangesti & Bernard L Tanya, Legal Morality, Op. Cit., p. 74.

⁵²Satjipto Rahardjo, Law Studies, Op. Cit., p. 20.

⁵³HR Otje Salman S, Legal Philosophy (Problem Development & Dynamics), Op. Cit., p. 44.

⁵⁴Dominikus Rato, Searching for Legal Philosophy: Understanding and Understanding Law, Op. Cit., p. 59.

⁵⁵Nur Agus Susanto, Axiological Dimensions of the "ST" Case Decision Study of Review Decision No. 97 PK/Pid.Sus/2012, Judicial Journal Vol. 7 No. December 3, 2014

4. Conclusion

Based on the research, it was concluded that in implementing the *Pacta Sunt Servanda* principle in each heavy equipment rental agreement, it can be analyzed into two general descriptions, namely before the presence of Human Resources (HR) in the Legal field and after the presence of Legal Officers. The main factor that becomes an obstacle is the absence of good faith efforts from the client to comply with and fulfill every content of the substance of the agreement and the implementation of the contract. One of the clauses that must be made in a construction work contract is about the settlement of disputes or disputes. The solution implemented by PT. Jaya Jasa Sarana, namely as follows: More stringent in analyzing work contracts, especially regarding the clauses in the contract, both in terms of what will be planned, what has been implemented, and post implementation; complete and accurate administration of documents such as billing, receipts, invoices, tax invoices, and others; increase knowledge in the field of employment contracts and civil affairs.

5. References

Journal

Endang Suprpti and Arihta Esther Tarigan. "Good Faith in the Agreement 'A Perspective of Law and Justice'". Salam Journal Vol 8, No 1 (2021)

M. Ato Mudzhar. "Challenges of Islamic Studies in Indonesia Today". Indo-Islamic Journal Vol 2, No 1 (2012)

Nur Agus Susanto. "Axiological Dimensions of the Decision on the Case of "ST" Study of the Judicial Review Decision Number 97 PK/Pid.Sus/2012". Judicial Journal Vol 7, No 3 (2014)

Victor Emmanuel W Nalle. "Socio-Legal Study of Order and Peace in Sidoarjo Regency". Journal of Law & Development Vol 47, No 3 (2016)

Yuliantoro. "Application of Elements of Negligence in the Investigation Process of Traffic Accident Crimes". Unissula Sovereign Law Journal Vol 35, No 1 (2019)

Book

Agus Yudha Hernoko, 2010, Law of Agreement on the Principle of Proportionality in Commercial Contracts. Kencana, Surabaya

Bernard L Tanya et al, 2013, *Legal Theory: Human Orderly Strategies across Space and Generations*, Genta Publishing, Yogyakarta

Djohari Santoso, and Achmad Ali, 1989, *Indonesian Treaty Law*, Library Fac. Law of the Indonesian Islamic University, Yogyakarta

Dominikus Rato, 2010, *Philosophy of Law Looking for: Understanding and Understanding Law*, Laksbang Pressindo, Yogyakarta

Gustav Radbruch in W. Friedmann, *Legal Theory & Philosophy: Philosophical Idealism & Justice Problems*, Cet. Second, translator: Muhammad Arifin, 1994, RajaGrafindo Persada, Jakarta

HR Otje Salman S, 2010, *Legal Philosophy (Problem Development & Dynamics)*, Refika Aditama, Bandung

John Rawls, 1973, *A Theory of Justice*, Oxford University press, London, 1973, translated by Uzair Fauzan and Heru Prasetyo, 2006, *Theory of Justice*, Student Library, Yogyakarta.

Juajir Sumardi, 1995, *Legal Aspects of Franchise and Transnational Companies*, Citra Aditya Bakti, Bandung

Lili Rasjidi and IB Wyasa Putra, 1993, *Law as a System*, Rosdakarya Youth, Bandung

Margono, 2020, *The Principles of Justice, Benefit and Legal Certainty in Judge Decisions*, 2nd printing, Sinar Graphic, Jakarta

Mertokusumo Soedikno, 2005. *Knowing the Law of an Introduction*, Liberty, Yogyakarta

Muhammad Erwin, 2012, *Legal Philosophy*, Raja Grafindo, Jakarta

Muhammad Syaifudin, 2012, *Contract Law*, Mandar Maju, Bandung

Muhammad Syakir Aula, 2004, *Syari'ah Insurance: Life and General Concepts and Operational Systems*, Gema Insani Press, Jakarta

Munir Fuady, 2013, *Grand Theories in Law*, Kencana, Jakarta

Ridwan Khairandy, 2003, *Good Faith in Freedom of Contract*, Faculty of Law, University of Indonesia, Jakarta

Salim HS, 2010, Contract Law, Theory and Techniques of Drafting Contracts, Sinar Graphic, Jakarta

Saliman Abdul R, 2010. Business Law for Companies, Kencana, Jakarta

Satjipto Rahardjo, 2012, Law Studies, Citra Aditya Bakti, Bandung

Sidharta Arief, 2007, Meuwissen About Legal Development, Law Science, Legal Theory and Legal Philosophy, Refika Aditama, Bandung

Sonny Keraf, 1998, Guided Business Ethics and Its Relevance, Kanisius, Yogyakarta

Subekti, 2003, Fundamentals of Civil Law, Intermedia, Jakarta

Subekti, 2004, Agreement Law, Intermedia, Jakarta

Sudikno Mertokusumo, 1996, Getting to Know the Law of Suta Introduction, Liberty, Yogyakarta

Yovita A Mangesti & Bernard L Tanya, 2014, Legal Morality, Genta Publishing, Yogyakarta

Regulation

The 1945 Constitution of the Republic of Indonesia

Law of the Republic of Indonesia number 2 of 2017 concerning Construction Services.

Code of Civil law

Etc

Moh Mahfud MD, Law Enforcement and Good Governance, Material at the National Seminar "Time for Conscience to Speak" organized by the DPP HANURA Party. Jakarta Constitutional Court, January 8, 2009.

Interview with Legal Officer PT. Jaya Jasa Sarana, 12 July 2023.