



CONTRACT LAW IN PRACTICE IN INDONESIA: A THEORETICAL STUDY AND ITS IMPLEMENTATION IN CIVIL CONTRACTS

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ABSTRACT

This study aims to analyze the legal position of contracts in civil agreement practices in Indonesia, with a focus on the normative basis in the Civil Code, relevant basic principles, and obstacles that arise in its application. Indonesian contract law relies on the Civil Code, but social, economic, and technological changes necessitate reform to address societal dynamics. The research method used is normative juridical with a doctrinal and conceptual approach. Data was obtained through a literature study of legislation, legal literature, and analysis of research results in legal journals. This approach was used to systematically examine the applicable legal rules, legal principles, and doctrines, as well as their implementation in civil contract practice. The results of the study show that fundamental principles, such as freedom of contract, consensualism, pacta sunt servanda, good faith, and the principle of personality, remain relevant as guidelines in the formation and execution of contracts. However, obstacles still arise from both normative and practical aspects, such as the ambiguity of electronic contract regulations, the use of standard contracts that are detrimental to certain parties, and the public's weak understanding of rights and obligations in contracts.

A. INTRODUCTION

Civil law is a branch of law that governs relationships between individuals or legal entities in terms of their personal interests. It involves rules and principles that govern individual rights and obligations, legal responsibilities, property ownership, contracts, agreements, inheritance, and various disputes between the parties involved. The main objectives of civil law are to protect individual rights, facilitate dispute resolution, and uphold justice in interactions between individuals. In Indonesia, civil law is divided into

several parts which are regulated in the Civil Code (*Kitab Undang Undang Hukum Perdata*/KUHPerdata).¹

An agreement or contract is a series of agreements made by the parties to bind themselves to each other. In everyday life, the term agreement is often used, even if it is only made verbally. However, in the business world, agreements are very important because they concern the field of business being pursued. Considering this, contract law is a form of manifestation of legal certainty.²

Contract law in the Civil Code, as regulated in Article 1313, states that an agreement is an act whereby one or more persons bind themselves to one or more other persons.³ In addition, Article 1233 states that contractual relationships and agreements arise from consent or from the law, which means that every legal obligation or liability can arise through an agreed contract or based on applicable legal regulations.

Furthermore, Article 1320 stipulates that for an agreement to be considered valid, it must meet four important requirements: mutual agreement between the parties, legal capacity of the parties entering into the agreement, clearly defined subject matter, and legitimate cause.

In practice, contract law is not limited to the theoretical aspects set forth in legislation, but is also closely related to its implementation and application in various civil agreements, such as sales and purchase agreements, lease agreements, loan agreements, and business cooperation agreements. However, the application of contract law in Indonesia often faces challenges, both in relation to differences in the interpretation of articles in the Civil Code, the existence of standard clauses that tend to be detrimental to one party, and the weak understanding of the public regarding the fundamental principles in contracts such as the principle of freedom of contract, the principle of consensualism, and the principle of good faith.⁴

¹ Cathleen Lie, Vivian Clarosa, Yohanes Andrew Yonatan, and Mia Hadiati, "Pengenalan Hukum Kontrak dalam Hukum Perdata Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 923.

² Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis) Buku Kedua*, (Bandung: Citra Aditya Bakti, 2003), 34.

³ Cathleen Lie, Vivian Clarosa, Yohanes Andrew Yonatan, and Mia Hadiat, "Pengenalan Hukum Kontrak dalam Hukum Perdata Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 919. See too, Bambang Sutiyoso, "Penafsiran kontrak menurut Kitab Undang-Undang Hukum Perdata dan maknanya bagi para pihak yang bersangkutan," *Jurnal Hukum Ius Quia Iustum* 20, no. 2 (2013): 213.

⁴ Reni Ayu Anggriani, Yuni Dhea Utari, Nur Umida, and Annisa Agustira, "Implementation of the Principle of Freedom of Contract in Business Agreement Law and Its Implications for Justice," *INTERDISIPLIN: Journal of Qualitative and Quantitative Research* 1, no. 3 (2024): 90. See too, Nurashiah Harahap, "Penyuluhan Tentang Perjanjian Menurut Kitab Undang-Undang Hukum Perdata," *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat* 1, no. 1 (2020): 198.

In addition, social developments and the dynamics of the business world demand renewal and adaptation in the practice of contract law.⁵ For example, in the current era of digitalization, new forms of contracts have emerged, such as e-contracts or electronic agreements, which raise questions regarding their validity and binding force in the eyes of the law.⁶ This shows that there is a gap between classical contract law theory and increasingly complex legal practice.

Therefore, a comprehensive study of contract law in practice in Indonesia is needed. First, from a theoretical aspect, namely understanding the basics and principles contained in contract law. Second, from an implementation perspective, examining the extent to which these principles are applied in civil agreements in society. Thus, this study is expected to contribute to strengthening understanding, assessing the effectiveness of contract law implementation, and offering solutions to various problems that arise in civil law practice in Indonesia.

Based on these considerations, it is essential to identify the legal foundations and guiding principles that shape contract law in Indonesia. Understanding how the Civil Code regulates civil agreements and how fundamental contract law principles operate in practice becomes a crucial starting point for analysis. Accordingly, this study is guided by the following research questions.

1. How do the provisions of the Civil Code regulate and serve as the legal basis for civil agreements in Indonesia?
2. What fundamental principles of contract law are most relevant to civil agreement practices in Indonesia?
3. What normative and practical constraints commonly arise in the application of contract law in Indonesia?

B. RESEARCH METHODS

This article uses a normative or doctrinal legal approach, namely legal research that examines the principles, norms, and positive legal regulations that apply in the Indonesian contract law system, both conventional and digital. According to Soerjono Soekanto⁷, normative legal research is research

⁵ Muhammad Fahri Mokodompit, "Konseptual Tentang Kebebasan Berkontrak Dan Perlindungan Bagi Para Pihak Dalam Suatu Perjanjian Kredit," *Lex Privatum* 7, no. 6 (2019): 459. See too, I. Dewa Ayu Sri Ratnaningsih, and Cokorde Istri Dian Laksmi Dewi, "Sahnya Suatu Perjanjian Berdasarkan Kitab Undang-Undang Hukum Perdata," *Jurnal Risalah Kenotariatan* 5, no. 1 (2024): 14.

⁶ Gusti Putu Krisna Murti AV, and Dewa Gede Pradnya Yustiawan, "Legal Consequences of Electronic Agreements Reviewed from Article 1866 of the Civil Code," *Policy Law Notary and Regulatory Issues (Polri)*, 2, no. 1 (2023): 104. See too, Muhamad Hasan Muaziz, and Achmad Busro, "Pengaturan Klausula baku dalam hukum perjanjian untuk mencapai keadilan berkontrak," *Law Reform* 11, no. 1 (2015): 78.

⁷ Soerjono Soekanto, *Pengantar penelitian hukum*, (Depok: UI Press, 2006), 13.

that examines law as an autonomous and systematic system of norms, with a conceptual and theoretical approach. Soekanto explains that: "Normative legal research does not examine empirical data, but rather examines law in a normative sense, namely as rules, principles, and the systematics of legislation." This research is referred to as a literature study, which involves examining journals, books, research reports, magazines, and other literature relevant to the discussion being examined in the research. For data analysis in this research, the researcher used qualitative methods and collected data from various sources, which was then developed based on type, both primary and secondary data. This study uses an interactive approach to describe primary and secondary data sources to help researchers understand the content of various existing sources. First, through a literature review relevant to the material being studied.

C. DISCUSSION

1. Contract Law Provisions in the Civil Code as the Legal Basis for Civil Agreements in Indonesia

Essentially, a good contract is one that provides maximum protection for itself or the parties it represents. In drafting a contract, the parties seek to establish a legal relationship that contains binding rights and obligations for all parties. This is also an effort by the parties to achieve legal certainty and justice in order to achieve the objectives of the contract itself. In a contract, legal certainty is something that can guarantee the rights and obligations arising from the agreement between the parties based on the principles of balance or justice. This can be realized by paying attention to the validity of the contract as a condition underlying the realization of an ideal contract, which provides legal certainty and justice for the parties.

Contract law is an important part of civil law as regulated in Book III of the Civil Code (*Kitab Undang Undang Hukum Perdata/KUHPerdata*). Book III of the Civil Code, entitled "On Obligations," contains general provisions regarding obligations, whether arising from agreements or from laws. Contracts or agreements are the most important source of obligations in everyday practice, because almost all legal relationships in the civil sphere originate from an agreement between the parties.⁹

The requirements for a valid agreement as stipulated in Article 1320 of the Civil Code provide the basis for the validity of a contract, namely the

⁸ Cheren Shintia Pantow, "Hubungan Hukum Para Pihak Dalam Perjanjian Kerjasama Dagang Antar Perusahaan Menurut Hukum Perdata," *Lex Privatum* 8, no. 2 (2020): 54.

⁹ Muhammad Roesli, Sarbini Sarbini, and Bastianto Nugroho, "Kedudukan perjanjian baku dalam kaitannya dengan asas kebebasan berkontrak," *DiH: Jurnal Ilmu Hukum* (2019): 6. See too, Muhamad Hasan Muaziz, and Achmad Busro, "Pengaturan Klausula baku dalam hukum perjanjian untuk mencapai keadilan berkontrak," *Law Reform* 11, no. 1 (2015): 7.

agreement of the parties, legal competence, a specific object, and a lawful cause. The first two requirements are subjective, while the latter two are objective. If the subjective requirements are not met, the agreement can be canceled, while if the objective requirements are not met, the agreement is null and void.¹⁰

According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons bind themselves to one or more other persons. This definition is general in nature, but is considered too broad because it also covers other legal acts outside of contracts. In doctrine, legal experts have attempted to provide a more precise definition. Subekti¹¹, for example, defines an agreement as an event in which a person promises another person or two persons promise each other to carry out something that creates a legal relationship between them. This definition emphasizes the existence of a reciprocal relationship and the rights and obligations arising from the agreement.

Furthermore, Article 1320 of the Civil Code regulates the validity requirements of an agreement, namely: (1) the agreement of the parties, (2) the capacity to make an agreement, (3) a specific matter, and (4) a lawful cause. The first two requirements are referred to as subjective requirements, while the latter two are referred to as objective requirements. If the subjective requirements are not met, the agreement can be canceled; whereas if the objective requirements are not met, the agreement is null and void (Article 1320 of the Civil Code). Thus, this provision becomes the fundamental basis for distinguishing between valid and invalid agreements according to the law.

In practice, the principles of contract law contained in the Civil Code serve as important guidelines in every contractual relationship. The principle of freedom of contract as contained in Article 1338 paragraph (1) of the Civil Code states that "all agreements made legally are valid as law for those who make them." This formulation emphasizes that the parties are given the widest possible freedom to determine the content, form, and object of the agreement, as long as it does not conflict with the law, public order, and morality.¹²

In addition to the principle of freedom of contract, there is the principle of consensualism, which states that an agreement is, in principle, binding once an agreement has been reached, without having to be manifested in a specific

¹⁰ Monica Grace Makakombo, Maarthen Youseph Tampanguma, and Frits Marannu Dap9u, "Tinjauan Yuridis Perjanjian Di Bawah Tangan Melalui Media Sosial," *Jurnal Fakultas Hukum Unsurat* 4, no. 2 (2024): 7828.

¹¹ Subekti, *Hukum Perjanjian*, (Jakarta: Intermasa, 2010), 24.

¹² Melisa Febriani, "Studi Hukum Kritis: Pembatasan Asas Kebebasan Berkontrak dalam Perjanjian yang Posisi para Pihaknya Tidak Seimbang," *Jurnal Hukum Prioris* 8 (2020): 353.

written or formal form, unless otherwise specified by law V.¹³ This principle shows the importance of the role of the parties' intentions in the formation of an agreement. In addition, the principle of good faith as contained in Article 1338 paragraph (3) of the Civil Code also emphasizes that the implementation of an agreement must be carried out with honesty and propriety, not only oriented towards the interests of one party.¹⁴

However, in the practice of civil agreements in Indonesia, issues often arise that reveal tensions between contract law theory and practice. For example, in standard contracts or standard agreements, one party that generally has a dominant position, such as a bank or finance company, tends to stipulate unilateral clauses that are detrimental to consumers. This raises the issue of fairness in contracts, which is normatively contrary to the principle of freedom of contract because that freedom becomes illusory if one party does not have the opportunity to negotiate the content of the agreement.¹⁵

In addition, technological developments also challenge the regulation of classical contract law. The emergence of electronic contracts (e-contracts) raises questions regarding the validity of electronic signatures, electronic evidence, and consumer protection in online transactions. Law Number 11 of 2008 concerning Electronic Information and Transactions (*Undang Undang Informasi dan Transaksi Elektronik/UU ITE*) and its amendments were then introduced to fill this legal void.¹⁶ However, the Civil Code remains the primary source of law, so that contract law in Indonesia is currently within the framework of a mixed legal system between classical provisions in the Civil Code and modern regulations such as the ITE Law.¹⁷

Thus, it can be concluded that the Civil Code is the legal basis for contracts in Indonesia, providing theoretical guidelines through the regulation

¹³ Herman, Heri Tahir, Ririn Nurfaathirany Heri, and Firmansyah Firmansyah, "Analisis Kritis Terhadap Daya Batas Asas Kebebasan Berkontrak Dalam Kitab Undang-Undang Hukum Perdata," *PAMALI: Pattimura Magister Law Review* 2, no. 1 (2022): 68. See too, Dwi Atmoko, "Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku," *Binamulia Hukum* 11, no. 1 (2022): 88.

¹⁴ Apriyodi Ali, Achmad Fitriani, and Putra Hutomo, "Kepastian hukum penerapan asas kebebasan berkontrak dalam sebuah perjanjian baku ditinjau berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *SENTRI: Jurnal Riset Ilmiah* 1, no. 2 (2022): 278.

¹⁵ Romario V. Saisab, "Kajian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Perjanjian Baku," *Lex Privatum* 9, no. 6 (2021): 212. See too, Cheren Shintia Pantow, "Hubungan Hukum Para Pihak Dalam Perjanjian Kerjasama Dagang Antar Perusahaan Menurut Hukum Perdata," *Lex Privatum* 8, no. 2 (2020): 58.

¹⁶ Ni Luh Gede Mella Septiari, and Ni Made Puspautari Ujianti, "Kekuatan Hukum Perjanjian Elektronik dalam Perspektif KUH Perdata dan UU ITE," *Indonesian Journal of Law and Justice* 2, no. 4 (2025): 10.

¹⁷ Kosmas Dohu Amajihono, "Kekuatan Hukum Kontrak Elektronik," *Jurnal Panah Keadilan* 1, no. 2 (2022): 131. See too, Niru Anita Sinaga, "Implementasi Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Mewujudkan Keadilan Para Pihak," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 1 (2018): 37.

of obligations and agreements. Nevertheless, its application in practice still faces a number of challenges, both in relation to the dominance of certain parties in standard agreements and the demands for adaptation to technological developments. Therefore, future contract law regulations need to pay attention to the principles of justice, equality of the parties, and balanced legal protection so that contracts are not only legally valid but also reflect propriety in society.

2. Fundamental Principles in Contract Law Relevant to Civil Agreement Practices

A number of legal principles or foundations form the basis of contract law. The main principles or foundations are considered the cornerstones of contract law, providing an overview of the background thinking that forms the basis of contract law.¹⁸ Due to the fundamental nature of these matters, the main principles are also referred to as basic principles.¹⁹ Legal principles are the broadest foundation for the creation of legal regulations. This means that legal regulations can ultimately be traced back to these principles.²⁰ Principles serve as guidelines or orientation based on which the law can be enforced.

Contract law in Indonesia is basically based on several fundamental principles contained in the Civil Code, particularly Book III on Contracts. These principles serve as the fundamental basis for the formation, implementation, and settlement of contract disputes. The existence of these principles is very important to ensure that contracts are not only legally valid, but also fair, balanced, and reflect propriety in legal relationships between legal subjects. In the practice of civil agreements in Indonesia, there are five most relevant fundamental principles, namely: the principle of freedom of contract, the principle of consensualism, the principle of *pacta sunt servanda*, the principle of good faith, and the principle of personality.²¹

The principle of freedom of contract is a fundamental principle in contract law. Article 1338 paragraph (1) of the Civil Code states that "all agreements made legally are binding as law for those who make them." This principle gives the parties the authority to freely determine the content, form,

¹⁸ Nurasiah Harahap, "Penyuluhan Tentang Perjanjian Menurut Kitab Undang-Undang Hukum Perdata," *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat* 1, no. 1 (2020): 199.

¹⁹ Herlien Budiono, "Het Evenwichtbeginsel Voor Het Indonesisch Contractenrecht," *Diss Leiden* (2001): 47. See too, Reinhard Polton, "Pemenuhan Hak Dan Kewajiban Sesuai Kesepakatan para pihak dalam kontrak Ditinjau dari kitab undang undang Hukum perdata," *Lex Crimen* 6, no. 3 (2017): 62.

²⁰ Johannes Ibrahim, and Lindawaty Sewu, *Hukum Bisnis Dalam Persepsi Manusia Modern, ctk, Kedua*, (Bandung: Refika Aditama, 2007), 32.

²¹ Fahdelika Mahendar, and Christiana Tri Budhayati, "Konsep Take It or Leave It Dalam Perjanjian Baku Sesuai Dengan Asas Kebebasan Berkontrak," *Jurnal Ilmu Hukum: ALETHEA* 2, no. 2 (2019): 99.

and terms of the agreement as long as it does not conflict with the law, public order, and morality. In practice, the principle of freedom of contract provides a high degree of flexibility for the parties in formulating clauses according to their needs. The principle of freedom of contract gives the parties the freedom to draft the content of the contract in accordance with their needs and the characteristics of the legal relationship they are establishing.²² This is particularly relevant in complex and diverse business contracts, such as franchise agreements, joint venture agreements, and international sale of goods. Each type of contract requires flexibility in determining clauses, including those related to the division of rights and obligations, risk management, dispute resolution, and performance fulfillment.²³ Understanding this foundation is essential before examining other principles that shape contractual obligations.

The principle of consensualism states that an agreement is binding once the parties have reached an agreement, without having to be set out in writing or in a specific formal manner, except for agreements that are required by law to be made in writing.²⁴ This principle is reflected in Article 1320 of the Civil Code, which requires agreement as one of the conditions for a valid agreement. This principle shows that the will of the parties is the main factor in the creation of an agreement. In practice, the principle of consensualism facilitates the creation of contractual relationships because it does not always have to go through certain formalities. However, the weakness of this principle becomes apparent when disputes arise, especially if the agreement is not made in writing. Therefore, in modern practice, the principle of consensualism is often combined with the need for written documentation to avoid difficulties in proving the agreement.²⁵ This relationship between freedom of contract and consensualism illustrates how contractual autonomy is balanced with evidentiary needs.

The *pacta sunt servanda* principle is a principle which states that a legally made agreement is binding and must be complied with by the parties

²² Ekacatra Hery Jatmiko, "Penerapan Asas Kebebasan Berkontrak dalam Kontrak Bisnis di Indonesia," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora* 2, no. 3 (2025): 95.

²³ Herman, Heri Tahir, Ririn Nurfaathirany Heri, and Firmansyah Firmansyah, "Analisis Kritis Terhadap Daya Batas Asas Kebebasan Berkontrak Dalam Kitab Undang-Undang Hukum Perdata," *PAMALI: Pattimura Magister Law Review* 2, no. 1 (2022): 69. See too, Bebeto Ardyo, "Formulasi Pengaturan Tahapan Pra Kontrak dalam Proses Pembentukan Kontrak di Indonesia," *Jurnal Yustika: Media Hukum Dan Keadilan* 22, no. 02 (2019): 87.

²⁴ Muhammad Rakasyah Pratama, Shafira Aulia Putri, Rizma Aulia Ramdani, Putri Nurindah Sari, Naufal Aqil Hisyam, and Farahdinny Siswajanthry, "Konstruksi hukum terhadap prinsip konsensualisme dalam perjanjian di Indonesia," *Jurnal Studi Multidisipliner* 9, no. 6 (2025): 703. See too, Ernu Widodo, "Relevansi sistem civil law dan common law dalam pengaturan hukum perjanjian baku di Indonesia," *De Jure: Jurnal Hukum dan Syar'iah* 2, no. 2 (2010): 98.

²⁵ Dhira Utara Umar, "Penerapan Asas Konsensualisme Dalam Perjanjian Jual Beli Menurut Perspektif Hukum Perdata," *Lex Privatum* 8, no. 1 (2020): 58.

as required by law. This principle emphasizes legal certainty in contracts, namely that contracts are not merely statements of intent, but have binding force that cannot be ignored. In civil agreement practice, this principle serves to maintain the stability of legal relationships. For example, in a bank loan agreement, the debtor and creditor are obliged to carry out their respective obligations in accordance with the contract. However, the application of this principle should not be rigid, because in certain circumstances (e.g., force majeure or compelling circumstances), the implementation of the contract may be adjusted.²⁶ Thus, while consensualism enables the creation of contracts, *pacta sunt servanda* ensures their continued enforceability.

The principle of good faith is very important in the execution of contracts. Article 1338 paragraph (3) of the Civil Code states that agreements must be executed in good faith.²⁷ This principle requires that the parties to an agreement prioritize honesty and propriety and not solely pursue personal gain.²⁸ In practice, the principle of good faith is often used by judges as a basis for interpreting agreements or even limiting the implementation of clauses that are considered detrimental to one of the parties. Thus, this principle has a corrective and protective function against the possible abuse of freedom of contract. For example, in a one-sided standard contract, judges can use the principle of good faith to balance the positions of the parties.²⁹ Here, good faith complements *pacta sunt servanda* by ensuring fairness in contractual performance.

The principle of personality states that agreements are only binding on the parties who make them, as stipulated in Article 1315 of the Civil Code. This means that agreements cannot give rise to rights and obligations for third parties, except in certain cases permitted by law. In practice, the principle of personality ensures that only the parties who are actually involved in the agreement are responsible for implementing the contents of the contract. However, exceptions are possible, for example in *derden beding* (agreements for the benefit of third parties) as stipulated in Article 1317 of the Civil Code.³⁰

²⁶ Haryono, "Penerapan asas *pacta sunt servanda* pada perjanjian kerja waktu tertentu di pt. energi bumi sakti Semarang," (PhD diss., Universitas Islam Sultan Agung, 2022).

²⁷ Apriyodi Ali, Achmad Fitrian, and Putra Hutomo, "Kepastian hukum penerapan asas kebebasan berkontrak dalam sebuah perjanjian baku ditinjau berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *SENTRI: Jurnal Riset Ilmiah* 1, no. 2 (2022): 280.

²⁸ Ery Agus Priyono, "Peranan asas itikad baik dalam kontrak baku (upaya menjaga keseimbangan bagi para pihak)," *Diponegoro Private Law Review* 1, no. 1 (2025): 302.

²⁹ Deviana Yuanitasari, and Hazar Kusmayanti, "Pengembangan hukum perjanjian dalam pelaksanaan asas itikad baik pada tahap pra kontraktual," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 298. See too, Muhammad Roesli, Sarbini Sarbini, and Bastianto Nugroho, "Kedudukan perjanjian baku dalam kaitannya dengan asas kebebasan berkontrak," *DIH: Jurnal Ilmu Hukum* (2019): 9.

³⁰ Ghea Kiranti Shalilah, "Tinjauan terhadap peranan asas hukum perjanjian dalam mewujudkan hakekat perjanjian," *Lex Privatum* 10, no. 2 (2022): 341.

This final principle reinforces the personal nature of contractual obligations while acknowledging limited and regulated exceptions.

Based on this, the five principles above play an important role in maintaining a balance between legal certainty and fairness in contract practice. The principle of freedom of contract allows for flexibility, but must be corrected by the principle of good faith to prevent injustice. The principle of consensualism facilitates the creation of agreements, but needs to be supported by written documentation for legal certainty. The principle of *pacta sunt servanda* guarantees the certainty of contract performance, while the principle of personality affirms the limits of.

3. Constraints or Problems That Often Arise in the Application of Contract Law in Indonesia, Both from a Normative and Practical Perspective

Contract law in Indonesia, which is based on the Civil Code, still plays an important role in regulating civil legal relations. However, its application in practice often faces various obstacles, both normative (theoretical and regulatory) and practical in implementation. These obstacles reveal a gap between the ideal principles in legal norms and the reality in society. In general, the obstacles to the application of contract law in Indonesia can be seen from the following five aspects.

The problem of overly general regulations begins with the Civil Code's definition of an agreement in Article 1313, which describes an agreement as an act by which one or more persons bind themselves to one or more other persons. This definition is considered too broad and does not distinguish between unilateral and reciprocal agreements.³¹ The weakness of this definition gives rise to multiple interpretations that have the potential to cause legal uncertainty. In addition, the Civil Code is a colonial legal product that is more than a century old. Many of its provisions are no longer in line with modern needs, for example, those related to electronic contracts, standard contracts, or international business contracts. The limitations of these regulations mean that law enforcement officials, judges, and legal practitioners often have to make broad interpretations to keep up with the times.³² These regulatory shortcomings create a foundation of uncertainty that affects various aspects of contractual practice in Indonesia.

³¹ Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2020): 69. See too, Allan Mustafa Umami, and Aryadi Almau Dudy, "Realiasi Hukum Perjanjian Dalam Dinamika Hukum di Indonesia," *Parhesia* 1, no. 2 (2023): 139.

³² Rosdalina Bukido, "Urgensi Perjanjian dalam Lalu Lintas Hubungan Hukum Perdata," *Jurnal Ilmiah Al-Syir'ah* 6, no. 1 (2016): 128. See too, Cathleen Lie, Vivian Clarosa, Yohanes Andrew Yonatan, and Mia Hadiati, "Pengenalan Hukum Kontrak dalam Hukum Perdata Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 923.

One of the main issues in contract practice in Indonesia is the imbalance of positions between the parties. This is particularly evident in standard form contracts, such as insurance contracts, banking credit agreements, or telecommunication service contracts. In standard form contracts, the economically stronger party usually dictates the terms, while the other party only has the option to accept or reject them. This condition makes the principle of freedom of contract appear illusory, since the weaker party has no real opportunity to negotiate the clauses. Many standard clauses tend to be one-sided, such as clauses on exemption from liability, excessive penalties, or provisions that make contract termination difficult. These issues frequently become the subject of consumer disputes.³³ As a result, contractual fairness is often compromised, creating further tension between legal theory and contractual realities.

Although Article 1338 paragraph (3) of the Indonesian Civil Code emphasizes that contracts must be carried out in good faith, in practice this principle is often violated. Many parties interpret contracts formalistically, focusing only on the fulfillment of obligations without considering fairness and equity.³⁴ For example, in land sale and purchase disputes, sellers often fail to disclose the legal status of the land. Similarly, in credit agreements, creditors may impose burdensome interest rates and penalties on debtors. Such behavior contradicts the principle of contractual justice, meaning that good faith should serve as a substantive guideline rather than a mere formality. This erosion of good faith further exacerbates existing imbalances and highlights the need for stronger ethical enforcement in contractual relations.

In practice, evidentiary issues pose major obstacles in contract disputes. Many contracts in society are concluded orally, in line with the principle of consensualism. However, when disputes arise, the aggrieved party often faces difficulties in proving the terms and agreements that were made.³⁵ In addition, courts often encounter challenges in interpreting contracts. Judges in Indonesia still tend to adhere strictly to the contract text (black letter law), thereby overlooking substantive justice. As a result, court decisions do not always reflect a true sense of fairness for the parties. Meanwhile, alternative dispute resolution mechanisms such as arbitration and mediation have developed, but limited public understanding and high costs often hinder their effectiveness. Consequently, the enforcement of contract law remains

³³ Haryono, "Penerapan asas pacta sunt servanda pada perjanjian kerja waktu tertentu di pt. energi bumi sakti Semarang," (PhD diss., Universitas Islam Sultan Agung, 2022).

³⁴ Apriyodi Ali, Achmad Fitrian, and Putra Hutomo, "Kepastian hukum penerapan asas kebebasan berkontrak dalam sebuah perjanjian baku ditinjau berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *SENTRI: Jurnal Riset Ilmiah* 1, no. 2 (2022): 277.

³⁵ Cathleen Lie, Vivian Clarosa, Yohanes Andrew Yonatan, and Mia Hadiati, "Pengenalan Hukum Kontrak dalam Hukum Perdata Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 924.

inconsistent and heavily dependent on the availability of adequate evidence and interpretive flexibility.

The rise of digital technology has given birth to new forms of contracts, namely electronic contracts (e-contracts). Issues arise regarding the validity of electronic signatures, digital evidence, and consumer protection in online transactions. Although the Electronic Information and Transactions Law (*Undang Undang Informasi dan Transaksi Elektronik/UU ITE*) regulate some of these aspects, its integration with the Civil Code remains far from optimal.³⁶ Moreover, economic globalization has created cross-border business contracts (international business contracts). The Civil Code, with its national character, is often inadequate to regulate international contracts that involve foreign choice of law or international forum selection clauses. These technological and global developments underscore the urgent need to modernize the legal framework to address contemporary contractual challenges.³⁷

Based on the discussion above, it can be concluded that the problems in the application of contract law in Indonesia stem from several factors, the outdated normative framework of the Civil Code, imbalance of positions between contracting parties, weak implementation of the principle of good faith, difficulties in evidence and law enforcement, and challenges arising from technological development and globalization.

These problems highlight the need for reform in Indonesian contract law, both through regulatory updates and more progressive jurisprudential approaches. In this way, contract law can provide not only legal certainty but also justice and balanced protection for all parties

D. Conclusion

Contract law in Indonesia, which is based on the Civil Code, continues to serve as the primary legal foundation for civil agreements. The provisions contained in Book III of the Civil Code provide essential normative guidance regarding obligations, the validity of agreements, and the legal consequences arising from contractual relationships. However, as demonstrated in this study, many of these provisions were formulated in a different social and economic context and are no longer fully responsive to contemporary developments, particularly those driven by technological advancement and globalization.

³⁶ Suwari Akhmaddhian, and Asri Agustiwi, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Secara Elektronik di Indonesia," *UNIFIKASI: Jurnal Ilmu Hukum* 3, no. 2 (2016): 43. See too, Muhammad Roesli, Sarbini Sarbini, and Bastianto Nugroho, "Kedudukan perjanjian baku dalam kaitannya dengan asas kebebasan berkontrak," *DiH: Jurnal Ilmu Hukum* (2019): 6.

³⁷ Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2020): 70.

The study finds that fundamental principles of contract law namely freedom of contract, consensualism, *pacta sunt servanda*, good faith, and the principle of personality remain highly relevant as guiding norms in the formation and execution of civil agreements. These principles play a crucial role in ensuring legal certainty, contractual stability, and fairness between the parties. Nevertheless, their practical implementation often encounters significant obstacles. Problems frequently arise in the context of standard form contracts, where bargaining positions are unequal, leading to clauses that disadvantage weaker parties. In addition, evidentiary challenges, especially in oral agreements and disputes involving electronic contracts, further complicate contract enforcement. The ambiguity surrounding the regulation of electronic contracts and digital evidence also highlights the limitations of the existing legal framework.

Therefore, reform of Indonesian contract law is necessary to better align legal norms with modern societal needs. Such reform should aim to clarify regulatory gaps, strengthen the protection of weaker parties, and harmonize the Civil Code with contemporary regulations, including those governing electronic transactions. Ultimately, comprehensive reform is essential to ensure legal certainty, justice, and balanced legal protection for all parties involved in civil agreements.

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