

Legal Assessment of Default in Treaty Law from the Perspective of Contractual Freedom on the Protection of the Parties' Rights

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Article	Abstract
How to cite: Dahrissiregar, 'Legal Assessment of Default in Treaty Law from the Perspective of Contractual Freedom on the Protection of the Parties' Rights' (2026) Vol. 7 No. 2 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University. DOI: 10.35719/rch.v7i2.410 Article History: Submitted: 05/03/2026 Reviewed: 12/03/2026 Revised: 06/04/2026 Accepted: 17/04/2026 ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)	The concept of contract freedom is one of the cornerstones of treaty law, which has its roots in economic liberalism. Analyzing the connection between default and the freedom of contract concept in Indonesian treaty law is the goal of this study. As long as the agreement does not violate the law, public order, or decency, the parties are free to form agreements that serve their interests under the freedom of contract concept. But in reality, defaults often lead to disagreements and issues with the parties' rights being protected. This research examines how default is seen in the context of contract freedom and the degree to which the law offers the parties assurance and fairness using a normative juridical technique with a conceptual and legislative approach. The study's results demonstrate that while the principle of freedom of contract affords considerable latitude to contracting parties in establishing the terms of their agreements, predicated on the principle of pacta sunt servanda, these freedoms are nevertheless circumscribed by considerations of public policy, morality, and legal stipulations designed to preclude exploitation and inequity. The study's findings indicate that the principle of freedom of contract is not unqualified, but rather is circumscribed by legal standards governing the legal ramifications of breach of contract. Therefore, the safeguarding of the parties' rights must be appropriately balanced to prevent the misuse of the principle of freedom of contract, while still ensuring the fulfillment of the agreement's intended purpose. Keywords: Parties, Legal Protection, Justice, Agreements. Abstrak Konsep kebebasan kontrak merupakan salah satu landasan hukum perjanjian, yang berakar pada liberalisme ekonomi. Menganalisis hubungan antara wanprestasi dan konsep kebebasan berkontrak dalam hukum perjanjian Indonesia adalah tujuan dari penelitian ini. Selama perjanjian tersebut tidak melanggar hukum, ketertiban umum, atau kesopanan, para pihak bebas membuat perjanjian yang melayani kepentingan mereka berdasarkan konsep kebebasan berkontrak. Namun pada kenyataannya, gagal bayar sering menyebabkan ketidaksepakatan dan masalah dengan hak-hak para pihak yang dilindungi. Penelitian ini mengkaji bagaimana default dilihat dalam konteks kebebasan kontrak dan sejauh mana hukum menawarkan jaminan dan keadilan kepada para pihak dengan menggunakan teknik yuridis normatif dengan pendekatan konseptual dan legislatif. Gagal bayar hukum kontrak Indonesia mencerminkan keseimbangan yang terlihat antara perlindungan hak kreditur dan debitur, sebagaimana dibuktikan oleh ketentuan luas KUHPerdara. Hasil studi menunjukkan bahwa sementara prinsip kebebasan kontrak memberikan keleluasaan yang cukup besar kepada para pihak yang berkontrak dalam menetapkan ketentuan perjanjian mereka, berdasarkan prinsip pacta sunt servanda, kebebasan ini tetap dibatasi oleh pertimbangan kebijakan publik, moralitas, dan ketentuan hukum yang dirancang untuk mencegah eksploitasi dan ketidakadilan. Temuan studi menunjukkan bahwa prinsip kebebasan kontrak tidak memenuhi syarat, melainkan dibatasi oleh standar hukum yang mengatur konsekuensi hukum dari pelanggaran kontrak. Oleh karena itu, perlindungan hak-hak para pihak harus seimbang dengan tepat untuk mencegah

penyalahgunaan prinsip kebebasan berkontrak, dengan tetap memastikan pemenuhan tujuan perjanjian yang dimaksudkan.

Kata Kunci: *Para Pihak, Perlindungan Hukum, Keadilan, Perjanjian*

Introduction

The doctrine of freedom of contract constitutes a core principle within treaty law, fundamentally grounded in the philosophy of economic liberalism. This principle affords the contracting parties the latitude to independently define the structure, substance, and ramifications of their agreement, aligned with their individual objectives. In Indonesia, this principle is embodied in Article 1338 paragraph (1) of the Civil Code, which stipulates that all legally executed agreements possess the binding force equivalent to laws for the parties involved.¹ Nevertheless, in its progression, the principle of freedom of contract has undergone substantial developments in conjunction with the evolving social, economic, and political landscape of Indonesian society. Concurrent with societal evolution and the escalating complexity of Indonesian requirements, a paradigm shift has occurred in the comprehension and application of the freedom of contract principle. This transition is characterized by the introduction of numerous regulations that restrict the scope of contractual freedom to safeguard the public interest and prevent inequity between parties with unequal bargaining power.

Modern developments demonstrate that the exercise of freedom of contract is frequently compromised as a result of informational asymmetries and disproportionate bargaining power among the involved parties.² This phenomenon is particularly apparent in standardized agreements or contracts that are predominantly drafted unilaterally by parties possessing greater economic leverage. This circumstance elicits apprehension that freedom of contract, a specific expression of individual autonomy, may, in practice, facilitate the exploitation of vulnerable parties.

The evolution of Indonesian treaty law demonstrates a transformation in the conceptual understanding of the principles governing freedom of contract. At the outset, this principal afforded the involved parties complete autonomy in determining the contractual stipulations.³ Nonetheless, The government initiated interventions to uphold equilibrium and equity within agreements, aligning with societal advancement and the increasing intricacy of legal relationships. Within the framework of the global economy and the digital age, the difficulty of implementing the principle of freedom of contract is progressively intensifying.⁴ The advent of electronic transactions, international agreements, and novel contractual instruments necessitates a reevaluation of the established principle of freedom of contract. New kinds of contracts have been made possible by the growth of information and communication

¹ Vivilia Agnata Mudi and Magdhalena Tasik Todingrara, "Relevansi Asas Kebebasan Berkontrak Dalam Konteks Ekonomi Digital," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 2, no. September (2025), file:///C:/Users/User/Downloads/Vol.2+No+6+2025+Hal+282-289.pdf.

² Sri Redjeki Slamet et al., "Penerapan Asas Kebebasan Berkotrak Dalam Konteks Perjanjian Baku Suatu Tinjauan Keabsahan Hukumnya," *Forum Ilmiah* 21, no. 3 (2024): 169–76, file:///C:/Users/User/Downloads/8573-16836-1-PB.pdf.

³ Grimaldi Setia Budi, "Perkembangan Asas Kebebasan Berkontrak Dalam Praktik Hukum Perdata Di Indonesia," *Jurnal Kajian Hukum Dan Kebijakan Publik* 3, no. 1 (2025): 139–48, file:///C:/Users/User/Downloads/Perkembangan+Asas+Kebebasan+Berkontrak+dalam+Praktik+Hukum+Perdata+di+Indonesia-1.pdf.

⁴ Elisabeth Gloria and Putri Triari Dwijayanthi, "Rekonstruksi Kedudukan Prinsip Itikad Baik Dalam Transaksi Bisnis Era Media Sosial Digital," *Jurnal Media Akademik (JMA)* 3, no. 11 (2025).

technology. For example, digital transfers based on blockchain technology were not even thought of before.⁵ Obviously, this problem makes us wonder how well the principle of freedom of contract can be used in this new situation and what the government's role will be in controlling and overseeing it.

Talks about fair and acceptable limits on government involvement in matters of free contract are common. Integrating the idea of freedom of contract with Indonesian society's values and rules is another difficult task. Indonesia has a lot of different cultures and values, so it can be hard to find a balance between the idea of freedom of contract and the specific values of the country.⁶ The Indonesian nation's philosophy, Pancasila, stresses the need for a balance between individual rights and group interests. This is different from the Western legal tradition's idea of freedom of contract, which is based on the idea of individualism.⁷

Being able to freely make contracts and the government's role as a watchdog are both important, but they need to be balanced. That balance is needed to make sure that both sides are free to make deals while still staying within the legal lines that protect the public interest and stop unfairness. This follows the idea that contract freedom must come with responsibility and can't go against the laws and rules that are already in place.

In order to find the best balance between the freedom of contract as a sign of individual freedom and the need for government control to protect the public interest, the above problems need to be looked at in great detail. Looking at different governing models and the best ways things have been done in Indonesia and other places can help you come up with the best solution. The study's goals are to look at how the principle of freedom of contract has changed as treaty law in Indonesia has grown, to find out the limits and types of government involvement in this area, and to come up with ways to find the best balance between freedom of contract and government oversight in practicing treaty law today.

Research Method

The normative legal methods used in this study have both a philosophical and a historical focus. Legal studies that look at law as a set of norms include normative judicial research. These studies use principles, norms, and rules from laws and regulations, court decisions, agreements and theories.

This research uses the normative judicial method because it looks at the concept of freedom of contract as a legal rule and how it works in the Indonesian legal system. Different theories, such as the theory of willpower, the theory of contractual justice, and the theory of state involvement, use a mental method to look at the idea of freedom of contract. At the same time, a historical method is used to show how the principle of freedom of contract has changed as treaty law in Indonesia has grown from the colonial era to the present day. Legal texts, science magazines, earlier research findings, and other academic sources were used to gather secondary

⁵ Zidna Ilma and Ery Agus Priyono, "Perkembangan Hukum Perjanjian Di Era Digital : Tinjauan Atas Kontrak Elektronik," *JIHHP: Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025): 3327–33, <file:///C:/Users/User/Downloads/Perkembangan+Hukum+Perjanjian+di+Era+Digital.pdf>.

⁶ Mardona Siregar and Mustafid, "Analisis Implementasi Teori Hukum Inklusif Dalam Pembentukan Undang-Undang Yang Pancasila Di Indonesia," *Indonesian Journal of Humanities and Social Sciences* 5, no. 3 (2024): 1299–1314, <https://ejournal.uit-lirboyo.ac.id/index.php/IJHSS>.

⁷ Darmawati et al., *Pancasila: Kontekstualisasi, Rasionalisasi Dan Aktualisasi*, ed. Oki Anggara (Jawa Timur: Penerbit Future Science (CV. Future Science), 2024), <https://repo.itpln.ac.id/1177/1/E-Book pancasila.pdf>.

data for this study. Primary data came from treaty law rules and regulations, and government policy documents.

Literature reviews and document analyses that are related to the topic of the research are used to gather data. The researcher looked at how laws and rules in treaty law have changed over time, starting with the Civil Code and law and rules that are important to this writing in order to look at how the principle of freedom of contract has changed. It was qualitative data analysis that was done using both descriptive and explanatory methods. The study methods used are descriptive and analytical, which means that the laws that apply to legal theories and the best ways to put those laws into practice in relation to issues were described. We use the descriptive-analytical method to talk about and figure out how the rules and customs of treaty law in Indonesia have changed over time in relation to the freedom of contract concept. At the same time, analytical methods are used to figure out what different laws and court decisions mean and how they affect the freedom of contract concept.

Results and Discussion

Protection Principles in International Law

The Great Dictionary of the Indonesian Language says that a contract is an official written deal between two or more people to do or not do something. Some examples of contracts are trade agreements, rental agreements, and so on.⁸ A contract is usually a written deal that is legally binding. It spells out the rights and duties of each party, and if those rights and duties aren't met, the parties can be sued. As a way to make sure that the deal is followed, the contract protects everyone legally.

In the Civil Law System, the Common Law System, and other legal systems, freedom of contract is still a very important concept.⁹ The first reason is that the principle of freedom of contract is a global value that all countries must follow. Second, the idea of freedom of contract can be seen as a sign of the free will of the people who sign an agreement, which can also be seen as a sign of respect for human rights.

The idea of freedom of contract is a fundamental tenet in civil law that permits both parties to establish an agreement on terms and circumstances of their preference, provided they do not contravene legal statutes, ethical standards, or public order. These freedoms show free will and human rights when making deals.¹⁰ This freedom is often limited, though, because the parties don't always agree with each other, especially when deals are standard.

The occurrence of limits on freedom of contract is affected by a number of things, such as: The doctrine of good faith is becoming more important. This means that there must be good faith not only when the deal is carried out, but also when it was first made; The expanding practice of misusing situations; Economic growth creates trade associations, legal bodies, companies, and other social groups, like workers and peasants.; Increasing numbers of people

⁸ Lukman Santoso Az Amin Tohari Anisya Anggun Kinanti et al., *Dinamika Hukum Contrat Indonesia*, ed. Lukman Santoso Az, Print I, (Yogyakarta: Trussmedia Grafika, 2017), https://repository.iainponorogo.ac.id/348/1/BukuDinamikaHukumKontrak_pluscover.pdf.

⁹ Firmansyah Herman, Heri Tahir, Ririn Nurfaathirany Heri, "Analisis Kritis Terhadap Daya Batas Asas Kebebasan Berkontrak Dalam Kitab Undang-Undang Hukum Perdata," *PAMALI: Pattimura Magister Law Review* 2, no. 1 (2022): 61–76, file:///C:/Users/User/Downloads/819-2469-1-PB.pdf.

¹⁰ Andita Putri Nabila and Gunawan Djayaputra, "Urgensi Pelaksanaan Kebebasan Berkontrak Dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak," *UNES Law Review* 6, no. 2 (2023): 4072–80, <https://doi.org/10.31933/unesrev.v6i2.1246>.

in society want social welfare; Wanting to protect the public interest or weak groups is what the government does.¹¹

Freedom of contract means that both sides have the right to choose what the agreement says, how it looks, and what kind of agreement it is. Article 1320 of the Civil Code says that this freedom is not total and must take into account the legal conditions of the agreement. These include the parties' agreement, legal competence, certain goals, and halal reasons.¹² The deal also can't break any laws or rules or be immoral or bad for society. Furthermore, Article 1338 (1) of the Civil Code says that all formal deals are binding on the people who make them. The first line of Article 1338 of the Civil Code says that everyone is free to choose who they will legally bind themselves to, what the agreement says, how it is made, and which law applies to it. This concept gives people freedom, but it can only do so much because of a few things: Laws must be followed: The deal must not go against the rule that applies. For instance, a promise to do something illegal is not acceptable; Public Order: The deal can't get in the way of social values or public order. Deals that hurt the public interest, for instance, are not accepted; As far as morality goes, the deal has to be in line with social norms of fairness. A agreement that goes against morals, for instance, is not valid; Surety in the law: The deal must be made honestly and not involve any tricks or threats.

Progressive law says that the idea of freedom of contract should give people freedom and knowledge. When following the principle of freedom of contract, it is important to think about the fairness and balance of trading positions for everyone. This is because progressive law stresses that the law should be on the side of real justice and the benefit of the community.¹³ The freedom of contract principle says that the parties can use the agreement to make a lot of decisions that are in their best interests, as long as they don't break any laws or behave badly. This concept makes sure that both sides are legally protected so that they can come to the best deal possible while still protecting public order and the interests of everyone.

It is in default when someone doesn't do what they agreed to do in a contract, either because they don't do it at all, do it late, or do it badly. Default is the opposite of the idea that vows must be met when it comes to freedom of contract. The person who was wronged has the legal right to ask for compensation under Article 1243 of the Civil Code.¹⁴

The concept of freedom of contract gives people a lot of freedom, but they also have to follow the law, social rules, and public order. Contracts for illegal actions or other agreements that are meant to break the law are not valid. Also, there can't be any aspects of force, fraud, or basic mistake in the agreement for it to be legal. This is because freedom of contract depends on everyone agreeing to the terms voluntarily.

¹¹ Sigit Sapto Nugroho Endro Martono, *Hukum Kontrak Dan Perkembangannya*, ed. M.Hum. Elviandri, S.HI., Cetakan I (Solo: Pustaka Iltizam, 2016), [https://unmermadiun.ac.id/repository_jurnal_penelitian/Sigit Sapto Nugroho/URL Buku Ajar/BUKU HUKUM KONTRAK DAN PERKEMBANGANNYA.pdf](https://unmermadiun.ac.id/repository_jurnal_penelitian/Sigit%20Sapto%20Nugroho/URL%20Buku%20Ajar/BUKU%20HUKUM%20KONTRAK%20DAN%20PERKEMBANGANNYA.pdf).

¹² Karina Nazzlia Ramadhani and Afifah Putriana Sari, "Kontradiksi Batasan Asas Kebebasan Berkontrak Dalam Perjanjian Terhadap Kepastian Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 7877–84, file:///C:/Users/User/Downloads/Kontradiksi+Batasan+Asas+Kebebasan+Berkontrak+Dalam+Perjanjian+Terhadap+Kepastian+Hukum.pdf.

¹³ Volume Number June et al., "Transformasi Paradigma Kebijakan Publik : Integrasi Prinsip Hukum Progresif Dalam Pembangunan Hukum Responsif Di Indonesia," *Khatulistiwa: Jurnal Pendidikan Dan Sosial Humaniora* 5, no. June (2025), file:///C:/Users/User/Downloads/Khatulistiwa+---+Volume.+5,+Number.+2,+June+2025+Hal+875-888.pdf.

¹⁴ Yoliandri Nur Sharky and Gunawan Djajaputra, "Akibat Hukum Terjadinya Wanprestasi Dalam Perjanjian Kerja Tanpa Adanya Jaminan," *Unes Law Review* 6, no. 4 (2024): 9825–31, file:///C:/Users/User/Downloads/1933-Article%20Text-8589-1-10-20240604-1.pdf.

The Civil Code of Indonesia sets out the rules that support the concept of freedom of contract. All deals made in line with the law are legal for the people who make them, according to Article 1338(1) of the Civil Code. This part says that a deal made officially is binding on both sides like a rule. This is in line with the freedom of contract concept. Laws and rules must be followed for a deal based on freedom of contract to be legal. Some parts of the Civil Code, 1321–1328, say that promises made without force or fraud are legally binding.¹⁵

In Indonesian treaty law, the idea of freedom of contract can be seen in a number of articles of the Civil Code, such as those below: Paragraph (1) of Article 1320 jo. Part 1 of Article 1338 of the Civil Code and Part 4 of Article 1320 are both relevant. The Civil Code has Article 1337 and Article 1329 as well. Articles 1330 and 1331 of the Civil Code; Article 1332 of the Civil Code, which says that deals can only be made over things that can be sold; Also, Book III of the Civil Code doesn't say that a deal has to be made in a certain way; most of its rules are just extra laws that go along with other laws. Article 1339 of the Civil Code says, "An agreement is binding not only for what it says directly, but also for everything that is required by law, custom, or the nature of the agreement."¹⁶

It is possible for people to make agreements based on their own free will under Article 1338 of the Civil Code. This is in line with the principles of consensualism and *pacta sunt servanda*. However, public order, decency, and the law still put limits on this freedom. If a freely agreed upon agreement is not kept without a good reason, this is called a default. Articles 1243–1252 of the Civil Code spell out the rules for this. The main idea behind these rules is that both parties must perform their part, unless there is a "force majeure" situation or other important circumstances that let the debtor off the hook.

The principle of freedom of contract is firmly rooted in Indonesian law, but it is still limited by a number of rules that are meant to protect the public interest, public order, and parties who are weak in a negotiation.¹⁷

Article 1338 paragraph (3) of the Civil Code talks about the principle of good faith. It stresses how important it is to be honest and follow the rules when carrying out an agreement. If the debtor defaults, their carelessness must be understood reasonably by looking at their intentions and the circumstances. The idea of balance, which comes from Supreme Court cases, says that each party's rights and responsibilities should be equal. This is done by figuring out what fair and acceptable pay is without putting too much stress on one party. Based on Article 1266 of the Civil Code, the concept of legal clarity lets people know ahead of time what will happen if they don't follow the rules., that the consequences for breaking the contract must be made clear so that both sides know what the risks are if they don't follow through with their promises.¹⁸

As stated in Article 1365 of the Civil Code, the concept of justice says that the person who has been wronged should be protected first and foremost by being given fair pay based on

¹⁵ "Kitab Undang-Undang Hukum Perdata (KUHPerdata) Pasal 1338" (Indonesia, 1847).

¹⁶ Mariam Darus Badruzaman, *K.U.H. Perdata Buku III: Hukum Perikatan Dengan Penjelasan*, Cet. 2 (Bandung: Alumni, 2006).

¹⁷ Nabilah Luthfiyah Chusnida, "Analisis Prinsip Kebebasan Berkontrak Dalam Pengembangan Penerapan Kontrak Baku," *Rewang Rencang : Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 1–23, file:///C:/Users/User/Downloads/1924-File Utama Naskah-7721-1-10-20251018.pdf.

¹⁸ Muzdalifah Karsa Prima and Helena Primadianti Sulistyningrum, "Asas Itikad Baik Dalam Memorandum Of Understanding : Tinjauan Terhadap Hukum Perjanjian Di Indonesia," *Sriwijaya Journal of Private Law* 2, no. 1 (2025), file:///C:/Users/User/Downloads/RV-4814+Publish.pdf.

their losses. These four principles work together to make a complete system of legal protection. Good faith makes sure that breaches of contract are interpreted in a fair way, and balance makes sure that punishments don't take advantage of people, certainty in the law makes the process clear, and fairness makes sure that debtors' rights are properly restored. These rules are used to deal with failures, which shows that Indonesian treaty law isn't just about strictly following through on contracts, but also takes into account aspects of fairness, compassion, and the balance of interests between borrowers and creditors when deciding how to settle treaty conflicts.

Contract Freedom in Different Legal Systems

A legal idea called "contract paradigm" that comes from medieval theory has some features that are still useful and in line with how modern contracts have grown. The following traits are "traditional-conventional": Freedom of contract is one of the most important ideas in civil law. It means that people who make deals can choose what they say, how they say it, and how long they last, as long as it doesn't break the law, be rude, or upset other people. The Civil Code of Indonesia makes this concept a strong part of the law. Regarding the Civil Code, Article 1338(1) says that deals made legally are binding on both parties, just like the law. This is based on the concept of freedom of contract.¹⁹

Common law is based on the idea of freedom of contract, which means that both parties have the right to choose for themselves what the deal says and how it works. This concept comes from the idea that each person should be able to enter into a formal relationship without the government getting in the way too much.²⁰ Legal restraints, rules, and public policy can limit this freedom, though. At common law, freedom of contract does not allow people to make deals that break the law or are not in the public interest.

In the common law system, there are also clear boundaries on the right to meet someone as a contract. The people who signed the deal must follow certain rules and laws. It's not legal and binding if the contract breaks the law or doesn't follow public policy.²¹ This rule is meant to stop deals that could hurt the community as a whole or go against what most people agree on. It is assumed that the parties will be careful when writing the deal.

The Islamic law system bases freedom of contract on *al-ikrah*, which means "freedom of will," and the will of both parties to the deal. The Qur'an and Hadith talk about this idea. They say that any deal must be made freely, without any lies, pressure, or other things that hurt either side. In Islamic law, there are limits to the freedom of contract. These limits come from sharia rules that are meant to protect the public interest (*maslahah*) and stop abuse.

Agreements, which are sometimes called contracts, are deals that two or more people make with each other that spell out their rights and responsibilities to each other. Contracts are actions that tie more than one person to another person, according to Article 1313 of the Civil Code. Indonesia's Civil Code sets the rules for treaty law. Book III, which covers involvement,

¹⁹ Andrea Tamaranova Retaly and Christine S T Kansil, "Batas Batas Penerapan Asas Kebebasan Berkontrak Dalam Perjanjian Baku Melalui Media Elektronik Antarpelaku Usaha Di Era Digital," *Al-Sulthaniyah* 14, no. 2 (2025): 797–809, file:///C:/Users/User/Downloads/4506-Article Text-20369-1-10-20251207.pdf.

²⁰ Ekacatra Hery Jatmiko, "Penerapan Asas Kebebasan Berkontrak Dalam Kontrak Bisnis Di Indonesia," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 3 (2025), file:///C:/Users/User/Downloads/Hukum+Inovatif+-+Volume+2,+Nomor+3,+Juli+2025+hal+91-99-1.pdf.

²¹ Vanza Rifky Octavian, "Teknik Dasar Pembuatan Kontrak Hukum : Melindungi Hak Dan Kewajiban," *Kampus Akademik Publisng* 2, no. 6 (2024): 567–73, file:///C:/Users/User/Downloads/Vanza+Rifky+Octavian+620.pdf.

is especially important. As a result of Dutch colonial rule, the Indonesian Civil Code is based on the concept of harmony, which is a part of Dutch civil law (*Burgerlijk Wetboek*). The Indonesian Civil Code went into effect on January 1, 1848, and it was used as the major base for making deals.²²

Following what Article 1313 of the Civil Code says about what an agreement is, we can say that the things that are included in an agreement are: That there are legal concepts that are written like laws and not like common law; In the legal world, borrowers and debts represent people who have rights and obligations; What you give, what you do, or what you don't do is a success; Article 1320 of the Civil Code says that an agreement is a uniformity of will between the parties; Including legal repercussions like rights and duties that can lead to prosecution if goals aren't met.

In the Civil Code, agreements can be broken down into different types based on what they are about and how they work. An agreement can be mutual, which means that both parties have to do what they agree to, like in a sale and purchase agreement, or unilateral, which means that only one party has to do what they agree to, like in a grant agreement. There are also unnamed agreements and named agreements, which are controlled by the Civil Code, these are things that aren't clearly controlled but are still accepted as long as they meet the agreement's conditions.

An deal makes the people who sign it legally bound to each other. There is a formal relationship between two people called an engagement. One person can ask the other person for something, and the other person has to kindly comply.²³ Different definitions say that an engagement is a connection between two or more people over money, where one person has the right to receive the success and the other person has to give it. Using this definition, a partnership is made up of four key parts: formal ties, assets, the parties, and results. A person has "rights" when they deal with others and "obligations" when they do not. When one of the parties avoids or breaks the connection, the law will make the other party follow it or fix it.

When people agree to something, there are a few important things that need to be thought about or met. The agreement system is open, which means that both sides can choose to make agreements or not, as well as who they make agreements with and what they say, how they are carried out, what standards they have, and what form they take. It is necessary for both parties to agree for Article 1320 of the Civil Code to say that the agreement is binding, the capacity to do legal actions, the presence of an agreed-upon goal, and halal causes; the first and second conditions are known as subjective conditions., subjective factors are the third and fourth variables. A lot of different legal concepts must also be taken into account in the agreement. These include *pacta sunt servanda*, good faith, trust, personality, legal equality, balance, legal certainty, morals, appropriateness, custom, and security.

A contract can be spoken or written, and it's important to think about important terms like performance, failure, demand, pay, pressing circumstances, and risk. The parties must also think about legal authority, taxes, legal basis, agricultural issues, legal choices, dispute resolution, ending agreements, and the form of standard agreements. They must also think

²² Vika Nur Senda et al., "Implikasi Hukum Ketidakterpenuhan Syarat Subjektif Dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata Terhadap Keabsahan Perjanjian," *Letterlijk: Jurnal Hukum Perdata* Vol. 1, No. 2 (2024): h. 2, <https://doi.org/https://doi.org/10.25134/jise.v1i2.xx>.

²³ Suharnoko, *Hukum Perjanjian : Teori Dan Analisa Kasus*, Cet. 8 (Jakarta: Kencana, 2014).

about the stages of drafting agreements, which are pre-drafting, drafting, and post-drafting.²⁴ This is meant to make the law clear and keep disagreements from happening in the future. If one party breaches the agreement or doesn't follow through on their end of the deal, written proof makes it easier for everyone to come to an understanding.

The Civil Code's rule on deals is based on a number of basic ideas, the principle of freedom of contract, the principle of consensualism, and the principle of bound force. Consensualism is a concept that says an understanding happens when both sides agree on something, without any other steps being taken. People who sign a contract have some freedom to choose what it says, but it is still limited by the law and other rules that apply. The concept of binding power, on the other hand, says that an agreement that is legal is law for the people who make it.

Around the same time that technology and the economy have become more global, treaty arrangements have changed a lot over the past few hundred years. Conventional agreements used to be simple, like paper contracts and handwritten signatures. But now they come in more complicated forms, like e-contracts, smart contracts based on blockchain technology, and agreements in electronic trade.²⁵ As technology improves, international law needs to change to include digital contracts. Law Number 11 of 2008 covering Information and Electronic Transactions, as changed by Law Number 19 of 2016, says that electronic contracts are valid deals. To make the most of the unique features of digital contracts,, it's important to have a deep knowledge of what they are and how the law works with them.²⁶

A deal that is made and carried out over electronic means, like the internet, email, or digital platforms, is called an electronic contract. Law Number 11 of 2008 covering Electronic Information and Transactions (ITE Law) sets the rules for electronic contracts. This law states that electronic papers can be used as proof in international law.²⁷ These examples show how international law has changed along with changes in technology. Generally, the growth of treaty rules in the modern era shows attempts to adjust to changes in society, the economy, and technology. Although, the biggest problem still lies in finding a balance between legal clarity and freedom, as well as making sure that everyone interested in an agreement is treated fairly. There have been big changes in many areas of life because of globalization. Treaty law is one of them. Treaty law rules need to be harmonized at the international level because more people are interacting with each other across borders.²⁸ The objective is to make it easier for countries to do business with each other and to reduce the number of law issues that can get in the way of global trade.

As a part of globalization, the growth of information technology changes how deals are made and carried out. More and more people are using electronic agreements and smart

²⁴ J. Satrio, *Wanprestasi Menurut KUH Perdata, Doktrin Dan Yurisprudensi*, 1st ed. (Bandung: PT. Citra Aditya Bakti, 2012).

²⁵ Yoga Pratama Athaya Reza Abhipraya, Adhitya Khaliq Akbar Putra Pradana and Anton Susanto Mahardika, Raihan Trinanda Putra, "Perkembangan Hukum Perjanjian Di Era Digital: Dari Konvensional Ke Elektronik," *ESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 5, no. 1 (2025): 365–75, file:///C:/Users/User/Downloads/365-375(1).pdf.

²⁶ Syaiful Anwar and Johan Edi Nepri, "Harmonisasi Hukum Digital: Tantangan Global Dan Strategi Adaptif Indonesia Dalam Era Kedaulatan Siber," *Hutanasyah: Jurnal Hukum Tata Negara* 4, no. 1 (2025): 69–88, file:///C:/Users/User/Downloads/5.+Artikel.1297.OK+Syaiful+Anwar+69-88.pdf.

²⁷ Republik Indonesia, "Undang-Undang Tentang Informasi Dan Transaksi Elektronik," *Bi.Go.Id*, no. September (2008): 1–2, <https://peraturan.bpk.go.id/Home/Details/37589/uu-no-11-tahun-2008>.

²⁸ Agus Wibowo, "Hukum Di Era Globalisasi Digital," *Penerbit Yayasan Prima Agus Teknik*, 2023, 1–185.

contracts. This means that current law systems need to be changed to suit these new types of agreements. While keeping up with changes in technology and the needs of the global community, it stresses how important it is for international law to be flexible. The unification of treaty law is a very important problem in the growing number of foreign business deals. When countries with treaties have different legal systems, it can cause complicated legal disputes. Accordingly, the treaty's law concepts need to be unified or harmonized around the world.

Treaty law has changed over time to become more linked and adaptable to changes in the global environment. It is important to protect national interests and respond to fast technology change during this process, though. In general, globalization has made treaty law more fluid and complicated, which means that lawyers and lawmakers have to keep changing it.

Conclusion

The study's conclusion is that Indonesia's defaults display a sensible balance between safeguarding the rights of creditors and borrowers through detailed rules in the Civil Code when looking at freedom of contract. The study shows that even though the principle of freedom of contract gives parties a lot of freedom to choose what is written in agreements (*pacta sunt servanda*), these freedoms are still limited by public order, common sense, and laws that protect people from being exploited and treated unfairly.

The resolution of failures through four types of breach of contract, along with law protections that are fair, the fact that the values of good faith, balance, legal certainty, and justice are used in Indonesia's treaty legal system shows that it cares about more than just punishing people who break the rules. It also cares about social issues and doing what is right. The study's real-world consequences stress how important it is for both sides to fully understand their rights and duties before signing a contract, as well as to write clear contract terms to avoid future disagreements. People can make suggestions, like the need to make legal protections in deals more widely known., the growth of consistent case law for dealing with default cases and the growing importance of mediation as an alternative to faster conflict settlement and keeping the parties' business relationships strong.

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