Journal of Law and Regulation Governance

The Shifts in the Concept of Agreement in Contracts

Inri Januar
Universitas Kristen Indonesia, Indonesia
Email: inrijanuar@yahoo.com

ABSTRACT

Agreement is fundamental in contract law, as it forms the basis for establishing legal commitments between parties. However, developments in contract law have shown that merely agreeing on terms at the time of contract formation is insufficient to address actions or situations that arise later. This research examines three Constitutional Court decisions that have redefined the interpretation of agreement in contract law: Constitutional Court Decision Number 83/PUU-XXII/2024 (January 3, 2025), Constitutional Court Decision Number 21/PUU-XVIII/2020 (June 15, 2020), and Constitutional Court Decision Number 18/PUU-XVII/2019 (November 25, 2019). The objective of this research is to analyze how these rulings influence the understanding of agreement in contract law. Using a normative juridical research method, the research focuses on court decisions, statutory regulations, and contracts as binding legal instruments. The research employs statutory, conceptual, and case analysis approaches. The findings highlight two key aspects of agreement in contract law: first, the explicit agreement forming the legal foundation of a contract, and second, the importance of agreement when one party seeks to challenge or annul a contract. This research contributes to the ongoing discourse in contract law by demonstrating that agreement is not only essential for contract formation but also vital for dispute resolution and contract termination. The evolving interpretation of agreement in Constitutional Court rulings reflects the dynamic nature of contract law and its ability to adapt to contemporary legal challenges.

Keywords: agreement, conntracts, promissory injury.

INTRODUCTION

The object of the law is the interests of each legal subject, which can occur between individual legal subjects or community groups. According to Aji et al., "Law functions to integrate and coordinate interests that can collide with each other, by law it is integrated in such a way that the collisions can be minimized". The interests referred to by Aji et al. can be managed by state authorities through legislation or by the legal subjects themselves in private matters, or even both. In private matters, this is commonly known as an agreement.

Wijatmoko et al. distinguishes the function of an agreement into two categories: the juridical function and the economic function. The juridical function ensures legal certainty for the parties involved, while the economic function pertains to the transformation of resource value from low to high (Wijatmoko et al., 2023). The economic function of an agreement is based on voluntary will, aiming to achieve a profitable and fair outcome for all parties involved.

From a juridical perspective, an agreement must fulfill two conditions: correctness and fairness. Correctness refers to conformity with the legal requirements, whether written or unwritten. The fairness condition aims to minimize interpretational disputes and ensure compliance among the parties involved. The economic approach to law emphasizes cost-benefit considerations, which some argue may not always align with the principles of justice. Economists, with their focus on efficiency, often do not prioritize justice as a fundamental element (Cameron et al., 2023).

An agreement is formed through mutual consent, as stated in Article 1320 of the Civil Code, which outlines the essential conditions for a valid contract. This provision aligns with the principle of consensualism, in contrast to real agreements stipulated in Article 1694 of the Civil Code, which require a specific act to establish an agreement. Furthermore, agreements made by the parties are binding as law, as stipulated in Article 1338 of the Civil Code. The application of this principle underscores the importance of maintaining a balance of interests, risk distribution, and bargaining positions (Priyono, 2018).

However, recent Constitutional Court decisions have introduced significant shifts in the interpretation of agreements. Constitutional Court Decision Number 83/PUU-XXII/2024 (dated January 3, 2025), Constitutional Court Decision Number 21/PUU-XVIII/2020 (dated June 15, 2020), and Constitutional Court Decision Number 18/PUU-XVII/2019 (dated November 25, 2019) appear to redefine the nature of agreements. These rulings distinguish between agreements made at the inception of a contract and those that arise after certain acts or conditions emerge.

This research builds upon previous research on contract law by analyzing how Constitutional Court decisions have redefined contractual obligations. Unlike earlier studies that emphasized either the juridical or economic functions of agreements, this research explores the intersection of both elements in light of recent legal developments (Mercuro & Medema, 2020). Furthermore, it critically examines whether these shifts enhance legal certainty or create new ambiguities that could lead to contractual disputes.

Based on the above background, the purpose of this research is to analyze the effect of the Constitutional Court's decision on the understanding and application of contract law, especially related to the interpretation of contractual obligations that have undergone a shift. Thus, the benefit of this research is to contribute to the development of an understanding of the relationship between the functions of contract law, both from a juridical and economic perspective, in the context of the latest developments in Constitutional Court decisions. This research is also expected to provide recommendations for legal practice and policy making related to the application of contract law that can better integrate the principles of fairness and efficiency in regulating the relationship between parties to an agreement.

RESEARCH METHOD

The definition of rules includes legal principles, the value of concrete legal regulations, and legal systems. Therefore, legal research that examines rules or norms is categorized as normative

legal research (Rohman et al., 2024), with norms as the primary object of research. Norms can be found in written and unwritten laws, regulations, and court decisions. This research method relies on authoritative primary, secondary (Anggrek & Tanawijaya, 2020), and tertiary legal sources. The legal material search technique employed is documentation research (Rosyadi, 2019) ensuring a comprehensive examination of legal texts.

The analysis is conducted using a statutory approach, a conceptual approach, a case approach, and a comparative legal approach (Siems, 2022). The statutory approach involves analyzing legislation such as the Civil Code, the Fiduciary Guarantee Law, the Mortgage Law, and the Commercial Code, as well as contractual agreements that serve as binding legal instruments for the parties involved. The case approach is applied by examining key court decisions, particularly three Constitutional Court rulings that have either altered or reaffirmed the legal framework of contractual agreements, including the necessity of renegotiation in certain agreements post-formation.

Additionally, a comparative legal approach is employed to analyze similar legal provisions and judicial interpretations in different legal systems, providing a broader perspective on how analogous issues are addressed in other jurisdictions. The selection and interpretation of legal sources are guided by doctrinal analysis, ensuring consistency with established legal principles while considering evolving jurisprudence (Wacks, 2021). Through this multi-faceted legal analysis, the research aims to offer a comprehensive understanding of the legal norms governing contractual agreements and their judicial interpretation

RESULTS AND DISCUSSION

According to Henry Campbell Black, an agreement is an agreement between two or more parties that creates, modifies or eliminates legal relations (Hijriyani et al., 2019). According to Hans Kelsen, the agreement made by the parties in a transaction is a legal norm, even though the agreement outlined in the agreement is produced by an individual. The status of the agreement as a legal norm is categorized as an individual norm, considering that the general legal norm has delegated the authority to make agreements to individuals and the legal order has determined sanctions for parties who violate the contents of the agreement (Risdiana, 2016).

Article 1320 of the Civil Code is a basic requirement in determining whether an agreement is valid or not. The article contains:

1. Agreement of those who bind themselves

   Agreement must occur not because of oversight, coercion and fraud. The notion of agreement is described as an approved statement of will (overeenstemende wilsverklaring).
2. Capacity to enter into an agreement

   Proficiency regarding the authority to perform legal acts both inside and outside the court. Capacity in civil law is regulated in Article 1330 junto 330 junto 433 junto 109. Article 39 of the Notary Law states that the age to be able to perform legal acts is 18 years old or married. Although there is still a lack of uniformity in mentioning the age of adulthood, in general, the

age of adulthood refers to 18 years or before 18 years but married.

3. Certain things

   Certain things are the object of the agreement. As regulated in articles 1332 to 1334 Junto articles 1356, 1465 and 1601 w of the Civil Code. What the parties want to make an agreement is reflected in this requirement. In the Notary Position Law, this requirement can be seen in article 38 paragraph (3) letter c which contains the will and desire of the interested party.

4. A lawful cause

   The notion of cause (oorzaak, causa) according to jurisprudence is interpreted with the content or intent of the agreement. Through the causa or cause requirement, in practice it is an attempt to place the agreement under the supervision of the judge or under the law in a broad sense because according to Article 1337 of the Civil Code it cannot conflict with law, decency or public order.

Agreement as a subjective condition in making an agreement must be distinguished from agreement related to matters at the time of the agreement. The conformity of will that is an agreement can be observed in the parties' statements (explicit or implicit), because the will cannot be known or seen by others (Kurniawan et al., 2020). Agreement in terms of determining an act is not a subjective requirement because it can only occur after the agreement is born. The reach of subjective requirements regarding agreement is only limited to the statement of the will of the parties to the agreement. If there is an act that will be assessed whether it falls within the qualifications contained in the agreement, an agreement is needed about it.

Constitutional Court Decisions

Constitutional Court Decision Number 18/PUU-XVII/2019 dated November 25, 2019

The Court in its decision has interpreted Article 15 paragraph 3 of Law Number 42 of 1999 concerning fiduciary guarantees. The verdict states "the phrase cidera janji is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted that the existence of a cidera janji is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal remedies that determine the occurrence of a cidera janji or default".

The decision on whether an act is categorized as a breach of promise or not must be based on an agreement or legal remedy. The agreement desired here is different from what is desired in the agreement to make an agreement. The agreement is only seen as a sentence that provides a definition or limitation of a breach of promise, whether an act of breach of promise must be agreed upon after the act. An agreement can be referred to as a voluntary act of the parties. Legal remedy is a forced remedy due to the absence of agreement of the parties in qualifying an act.

Constitutional Court Decision Number 21/PUU-XVIII/2020 dated June 15, 2020.

In the consideration of the Constitutional Court on page 35 of decision number 21/PUU-XVIII/2020, it is stated that debtors can defend themselves both at the deliberation stage and in the resistance / lawsuit in court, the Court also uses Article 1865 of the Civil Code as a basis for justifying the debtor's self-defense. Although in its ruling the Court rejected this application, in its

consideration the court stated:

"That based on the description of these legal considerations, actually without having to change the construction and / or with a conditional interpretation of the norms of Article 14 paragraph (3) of the Mortgage Law, especially against the phrase "executorial power" and the phrase "the same as a court decision that has obtained permanent legal force" to be conditionally enforced with the meaning "against a Mortgage guarantee where there is no agreement on default, because the debtor experiences overmacht/force majeure, the debtor has actually been guaranteed by law the right to prove, both at the deliberation stage (non-litigation) and the legal effort of resistance / lawsuit in court before the execution of mortgage rights is carried out using the instrument of Article 1865 of the Civil Code, as described above. Thus, it is clear that if the debtor feels that there is an event or circumstance of a forcible nature (overmacht/force majeure) and this is believed to be the reason for not being able to fulfill the obligations in the agreement, even though it is not included in the agreement clause, the law guarantees to anyone to prove, both at the deliberation stage (non-litigation) and through legal remedies for resistance / lawsuits ".

The discussion related to this decision is the right to be exempted from the qualification of default. J Satrio; default is when the debtor does not fulfill his promise as it should (does not fulfill the performance, is late in fulfilling the performance, mistakenly performs the performance) and can be blamed on him. Furthermore, Satrio stated that the non-performance of obligations cannot conclude whether it is a default or not. Although not recognized in the verdict, the Court's consideration has the same view as decision number 18/PUU-XVII/2019 if the default cannot be determined unilaterally but must be with an agreement or legal effort to take it.

Constitutional Court Decision Number 83/PUU-XXII/2024 dated January 3, 2025

This decision interpreted article 251 of the Commercial Code. The decision states that Article 251 of the Commercial Code is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditional binding legal force to the extent that it is not interpreted as "including in relation to the cancellation of coverage must be based on the agreement of the insurer and the insured or based on a court decision".

If Constitutional Court Decision Number 21/PUU-XVIII/2020 dated June 15, 2020 and Constitutional Court Decision Number 18/PUU-XVII/2019 dated November 25, 2019 discuss default, then Decision Number 83/PUU-XXII/2024 discusses the cancellation of the agreement. The cancellation of the agreement stems from an act that is considered an act of default by the insurer against the insured in insurance. The Court seems consistent with its previous decisions so that there is no arbitrary action in the implementation of the agreement.

Article 1266 of the Civil Code

Article 1266 of the Civil Code is one of the articles that regulates the cancellation of an agreement if it fulfills the actions prohibited in the agreement. Article 1266 of the Civil Code states:

"A nullity condition is always considered to be included in a reciprocal agreement, when one of the parties does not fulfill its obligations. In such cases, the agreement is not null and void, but

a judicial annulment must be requested. This request must also be made even if the nullity condition regarding the non-fulfillment of the obligation is stated in the agreement. If the condition of nullity is not stated in the agreement the judge is free to according to the circumstances at the request of the defendant to grant a period of time to still fulfill the obligation, which period however must not exceed one month"

In practice, this article is often overruled or canceled by the parties to the agreement. Civil law recognizes two kinds of norms, namely compelling norms and complementary norms. This division is to emphasize that there are norms that can be canceled based on the agreement of the parties and there are norms that cannot be canceled even though the parties state it (Tektona, 2023). This article cannot be ruled out because it is a means of legal protection for the parties. freedom of contract cannot be interpreted freely because it will be limited by law either written or unwritten law. In this article, the cancellation of the agreement must be done through a court decision unless the parties agree to cancel the agreement. Agreements are born by agreement and therefore can end by agreement as well.

Article 1244 of the Civil Code

Strict liability is the opposite of fault liability, but whether a person can be punished without fault. In strict liability it is not true that a person is punished in the absence of fault but reverses the burden of proof to the accused party. For example, the provisions in Article 1244 of the Civil Code where the burden of proof is given to the person deemed guilty and provide compensation. Articles 1244 and 1245 of the Civil Code are justification reasons (J Satrio, 1999). Article 1244 of the Civil Code can be interpreted as an article that requires an agreement in determining default. This article provides an opportunity to prove the existence of force majeure. Force majeure can abolish or postpone obligations. Two ways that can be used are voluntarily by agreement or by court decision as a forced effort.

The discussion in this paper cannot be separated from the legal protection of the parties in the agreement. According to M Hadjon, legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on general provisions from arbitrariness or as a collection of rules or rules that will be able to protect other things (Diva et al., 2024). The legal protection used can be preventive or repressive. Preventive can be seen from existing laws and regulations including agreements. Repressive legal protection is realized in the handling of cases brought to court.

CONCLUSION

The conclusion of this research offers a new perspective on the role of agreements in contract law, by emphasizing that agreements alone cannot determine legal consequences once they are formed. Instead, agreements serve as subjective requirements to authorize contracts from the point of view of the parties involved. This research emphasizes that issues such as breach of contract and termination of employment require a more sophisticated legal framework, as the absence of mutual agreement may require legal action for its enforcement.

To ensure greater legal certainty and protection for contracting parties, this research calls for clearer procedural mechanisms in the initiation of lawsuits and the determination of liability. This research suggests that the regulatory framework be updated to explicitly define the obligations of the parties in dispute resolution and introduce standard procedures for dealing with breaches and contract cancellations. This will help ensure that legal practices are in line with evolving contract principles and provide better guidance for future legal interpretation.

REFERENCES

Aji, B. S., Warka, M., & Kongres, E. (2021). Credit Dispute Resolution through Banking Mediation during Covid-19 Pandemic Situation. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Vol*, *4*(2), 1618–1627.

Anggrek, I. S., & Tanawijaya, H. (2020). Analysis of Land Certificate's Publication Based on Land History and No Dispute Letter of Statement by Village Head Officer (Supreme Court's Jurisprudence Number 2943 K/PDT/2016). *The 2nd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2020)*, 835–840.

Cameron, A., Green, D. A., Perrin, J. R. K. D., Petit, G., & Tedds, L. M. (2023). Efficiency, Justice and the Standard Approach to Policy Analysis. *Basic Income and a Just Society: Policy Choices for Canada's Social Safety Net*, 2.

Diva, C. A. F., Efrila, E., & Jaeni, A. (2024). Legal Protection Of Victims Of Mental Retardation Rape As A State Of Helplessness. *Jurnal Hukum Sehasen*, *10*(2), 665–670.

Hijriyani, S., Salim, H. S., & Muhaimin, M. (2019). Preliminary Agreement Deed of Sale and Purchase Agreement (PPJB) on Houses through House Ownership Loan (KPR) Still in the Form of Pictures. *International Journal of Multicultural and Multireligious Understanding*, *6*(4), 175–186.

Kurniawan, R. A., Imanullah, M. N., & Sudarwanto, A. S. (2020). Karakteristik Perjanjian Guaranteed Stock Berdasarkan Konsep Â€˜ Niat Untuk Menciptakan Hubungan Hukumâ€™(Komparasi dalam Sistem Hukum Common Law dan Civil Law). *Arena Hukum*, *13*(1), 45–58.

Mercuro, N., & Medema, S. G. (2020). *Economics and the law: From Posner to postmodernism and beyond*.

Priyono, E. A. (2018). Aspek Keadilan Dalam Kontrak Bisnis Di Indonesia (Kajian pada Perjanjian Waralaba). *LAW REFORM*, *14*(1), 15. https://doi.org/10.14710/lr.v14i1.20233

Risdiana, Y. (2016). *Penafsiran kontrak komersial antara teks dan konteks*. Inboeku Media Ilmu.

Rohman, M. M., Mu'minin, N., Masuwd, M., & Elihami, E. (2024). Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials). *MAQASIDI: Jurnal Syariah Dan Hukum*, 204–221.

Rosyadi, I. (2019). Reconstruction of Judges' Decisions on Criminal Law in the. *Journal of Islamic Economic Law*, *4*(1), 22–39.

Siems, M. (2022). *Comparative law*. Cambridge University Press.

Tektona, R. I. (2023). Protection For Business Actors Due To Unilateral Cancellation From Consumers In The Pre-Order Method Of Buying And Selling Online (A Research In Islamic Law). *Journal of Nusantara Economy*, *2*(2), 73–82.

Wacks, R. (2021). *Understanding jurisprudence: An introduction to legal theory*. Oxford University Press.
Wijatmoko, E., Armawi, A., & Fathani, T. F. (2023). Legal effectiveness in promoting development policies: A case research of North Aceh Indonesia. *Heliyon, 9*(11).