Journal of International Trade, Logistics and Law, Vol. 9, Num. 2, 2023, 132-143

A BRIEF COMPARATIVE STUDY BETWEEN INDONESIAN CONTRACT LAW UNDER INDONESIAN CIVIL CODE AND SINGAPORE CONTRACT LAW

Fajar SUGIANTO
Universitas Pelita Harapan, Indonesia

Velliana TANAYA
Universitas Pelita Harapan, Indonesia

Tomy MICHAEL
Universitas 17 Agustus 1945 Surabaya, Indonesia

Received: July 26, 2023 Accepted: Oct 13, 2023 Published: Dec 01, 2023

Abstract:
Agreements or familiarly known as contracts is the basis for various aspects of business activities. Contracts in the Indonesian Civil Code (ICC) are called agreements, which is one of the sources of engagement whose provisions are the subject of Book III concerning Contracts of ICC. The experts on contract law, diametrically have divided their views on the term 'agreement' with 'contracts'. According to Peter Mahmud Marzuki as quoted by Agus Yudha Hernoko, he provided a critical view of the differences between these terms, namely:
In the Anglo-American mindset, an agreement in Dutch is known as overeenkomst and in English it is known as an agreement which has a broader meaning than a contract, due to the fact that it includes matters relating to business or non-business. Therefore, Agreements related to business are called contracts, while those that are not related to business are only called agreements. Based on the results of the comparative study, it is known that the contract law arrangements in the ICC are not as complete and not as up-to-date as Singapore's contract law. This is because since the ICC was first promulgated in Indonesia, it has never been modernized. In order to minimize legal problems, both due to empty and vague norms, the results of the comparison of contract law can help construct additional arrangements both for a holistic-comprehensive study of contract law and for making business contracts that are required to be updated.

Keywords:
Comparative; legal problems; social contract

1. Introduction

Agreements or familiarly known as contracts is the basis for various aspects of business activities. Contracts in the Indonesian Civil Code (ICC) are called agreements, which is one of the sources of engagement whose provisions are the subject of Book III concerning Contracts of ICC. The experts on contract law, diametrically have divided their views on the term 'agreement' with 'contracts'.
According to Peter Mahmud Marzuki as quoted by Agus Yudha Hernoko, he provided a critical view of the differences between these terms, namely:
In the Anglo-American mindset, an agreement in Dutch is known as overeenkomst and in English it is known as an agreement which has a broader meaning than a contract, due to the fact that it includes matters relating to business or non-business. Therefore, Agreements related to business are called contracts, while those that are not related to business are only called agreements.[1]
This view is in accordance with economic principles in conducting business activities, which is the balancing of the unlimited needs of legal subjects with the very limited resources owned by the legal subjects. The interactions that occur between legal subjects when conducting business activities needs to be transformed through contracts in order for the legal relationship between the parties to give birth to rights and obligations as the means of fulfilling the business needs of the legal subjects.

Considering that the role of contracts is immensely important in every business activity, in which it continues to change and accelerate rapidly, thus, it is essential to have a legal analysis regarding the revision of the main provisions of Contract Law in accordance with the ICC using a comparative study with Singapore which adopts the common law legal system. The comparative is done by placing contracts based on theory, which then compares the arrangements and principles of contract law.[2]
The results of the comparison of contract law between Indonesia and Singapore can be used to fill in the gaps in norms and system of norms contained in the ICC. Thus, an up-to-date contract law framework will be constructed to meet the legal needs of business actors in contracting and generate a legal guidance or basis which can be used as a guide for business actors as long as it is not against the applicable prevailing legal rules.[3]

2. Comparative Study of Contract Law Between Indonesia and Singapore

Business contracts are always reciprocal in nature, hence, business contracts are also known as obligatory agreements. According to Herlien Budiono, "an obligatory agreement is an agreement that arises because of an agreement between two or more parties with the aim of forming a legal bond for the benefit of one at the expense of the other or by reciprocity".[4]
Theoretically, a contract consists of 3 (three) parts, namely the essential part (essensilia), the natural part (naturilia), and the accidental part (accidentalia). According to R. Soeroso, the essential element is an element that must exist in the agreement, thus, without this element there is no agreement.
The natural (naturilia) part, according to Herlien Budiono, is the part of the agreement which by its nature is deemed to exist without the need for a special agreement by the parties. This part of the agreement is generally regulatory in nature and is contained in the statutory provisions for each named agreement. This section is further divided into 2 (two) types of contracts, namely nominee contracts and innominate contracts.
According to the perspective of Economic Analysis of Law, an efficient contract is a contract that has the maturity of an agreement to establish independence and is useful to eliminate opportunistic nature thus, the parties are able to create relationships by providing cooperative exchanges. Therefore, a good contract from an economic perspective is a contract that is able to provide remedies to the contractors and provide added value to anyone who takes advantage of the exchange of existing resources.

2.1. Terms of Validity of the Contract

2.1.1. According to ICC

Article 1320 ICC stipulates four conditions to be fulfilled in order for the contract made by the parties to be valid, namely: 1. Agreement, 2. Capacity, 3. Specific Subject, 4. Admissible Cause. Out of the four aforementioned conditions, regarding the first condition concerning the existence of an agreement, the ICC did not formulate how to reach an agreement. Agreement was developed from its position as the principle of consensualism which emphasizes on the existence of the word 'agreement' as the establishment of a contract.
The principle of consensualism is closely related to the agreement in formulating contracts. In order to reach a certain level of consensus according to the ICC, it is first necessary to distinguish between contracts born out of an agreement and those born by law. The following are the articles that determine the principle of consensualism according to the ICC:
Article 1233 of ICC stipulates that a contract is established due to an agreement between the parties or because of the law. An agreement between parties that contains promises in it as an Agreement. Furthermore, Article 1313 defines an agreement as an act in which one or more persons bind themselves to one or more persons.
The provisions regarding the formulation of a contract that was born out of an agreement, is determined according to the ICC as stipulated in Article 1320 regarding the validity requirements of an agreement, namely; consent, capacity, specific subject, and admissible cause. Specifically regarding the agreement, the ICC did not clearly specify the formulation of the agreement thus, it can be concluded that its form could be measured by the existence of consent, mutual agreement, or mutual opinion. The ICC only stipulates that consent must not be given in a state of mistake, coercion, or fraud.
Regarding competence, Article 1330 ICC stipulates that those who are incompetent are persons who are not yet mature according to the prevailing laws and regulations, those that are under guardianship, and women who are stipulated by law that are prohibited from making such agreements.

Regarding a certain matter, only goods that can be traded can be used as the subject of the agreement (Article 1332 ICC) and the type of goods that can be determined by its nature (Article 1333 ICC). Goods that will be available in the future can also be the subject of an agreement (Article 1334 ICC).
In regards to the terms of permissible cause, it is stipulated in Article 1335 which in essence prohibits agreement without a cause or is concluded due to fraud or prohibited causes, Article 1336 determines that the agreement remains valid even though there is no specific stated cause, however, there is the existence of a permissible cause, and Article 1337 of ICC determines the prohibited cause as regulated by law, contrary to public decency, and public order. In the event that a contract is formed and born because of the law, Article 1352 stipulates that the engagements that are born by the law are the result from someone's actions, arise from actions according to law or acts that violate the law.
The formulation of the agreement in the ICC does not clearly specify how to reach an agreement for the parties who want to bind themselves in the contract. In practice in Indonesia, an agreement is reached from the existence of an offer which is then accepted and approved through acceptance. The formulation of this agreement through offer and acceptance is actually contained in the common law system, in which it has had numerous users thus, the offer-acceptance is classified as lex mercatoria in the commercial world. Hence, it is not surprising that it can now be found in the modern civil law system that has adopted a lot of agreement-acceptance formulations in pre-contracts, communications, calculation of time limits, and other important elements in the bargaining process. With the achievement of a solid agreement (through the offer-acceptance mechanism and the bargaining process) it can bring together a match between the will or wants of the contracting parties who will enter into the contract. Reaching the consensus in this manner can also be referred to as a 'meeting of the minds' and 'concurrence of wills' where the parties desire "the same in reverse".
The elaboration above is in line with the tradition of contract law, according to the civil law system, contracts are made based on the consensus theory or the agreement of the parties that bind themselves. Such contract should be better known as a consensual contract that is made based on an agreement which means to agree, and not to be interpreted as a contract as many people have interpreted it. According to Bryan A. Garner, a consensual contract is, historically, a contract that was born from a simple consensus of the parties, without any formality or symbolic actions for the determination of obligations. He also added that although this consensual contract is also known in the common law environment, its development comes from the Roman law which initially only used informal consensus in 4 (four) types of contracts, namely (1) agency agreement or mandatum, (2) partnership agreement or (societas), (3) sale and purchase or emptio venditio, and (4) lease or (locatio conductio). Consensual contracts, Hist. A contract arising from the mere consensus of the parties, without any formal or symbolic acts performed to fix the obligation Cf. real contracts.[5]
From the definition of the consensual contract mentioned above, it is very important to pay attention to two very important elements, namely the word Hist. and Cf. According to Bryan A. Garner, if hist. is included, then the meaning is historical which is no longer current in law. While the inclusion of Cf means it is used to refer to related but CONTRASTABLE terms. From this understanding, it can be understood that contracts based solely on consensus are not commonly used and the meaning is not the same as the actual meaning of the contract. This can be supported by the progress and development of the era, which shows that this consensus theory is difficult to deal with the plurality and interests of lifestyle in the society which is increasingly heading towards globalization. In the end, this theory shifted and developed with the adoption of offer and acceptance theory which is actually the tradition and characteristic of the common law system. Many developed countries that have adopted the civil law system have adopted and enforced the theory of offer and acceptance to get a consensus agreement.
The ICC adopts this consensus theory as one of the conditions for the validity of a contract, and has not included the theory of offer and acceptance to reach an agreement. Consensus that should be obtained to form a basis for an agreement is a basic question for every legal subject to enter into a contract. The processes of offer and acceptance that are commonly carried out in the commercial sector in Indonesia are only based on the habit and the adoption from the procedures of foreign businessmen. However, in essence, the ICC does not prohibit the adoption and mixing of other legal systems as long as they are not in conflict with the prevailing laws and regulations.

2.2. According to Singapore Contract Law

Singapore contract law tends to follow the general tradition of contract law in the common law system, in which the birth of a contract according to the Singapore contract law begins with an agreement based on offer and acceptance. Article 8.2.2. defined an offer as a promise or expression of desire in other forms, from the offeror to be bound by certain conditions which are arranged after the unconditional acceptance of these terms by the party who is given the offer. Provided that there are other elements of agreement formation, namely rewards and the intention or intent to create a legal relationship and the acceptance of the offer results in a valid agreement.

Additionally, Article 8.2.3. determines whether a particular statement is considered as an offer which depends on the purpose for which the offer is made. An offer must be made with the intention or intent to be bound. On the other hand, if a person simply gives an offer or inquires for information, without the intention to be bound, at best he only intends to invite and entertain the other party. Based on the objectivity test, a person can be said to have made an offer if his statement makes an ordinary person believe that the person making the offer intends to be bound by the acceptance of the alleged offer, even though that person actually has no such intention.

In regards to the method of termination of an offer, Article 8.2.4 stipulates that an offer may be terminated by withdrawing it at any time before the offer is accepted, provided that the withdrawal of the offer is notified to the offered party, either by the offerer or through a reliable source.

Rejection of an offer, including making a counteroffer or by changing the original terms, terminates the offer. If there is no strict rule regarding time limit, an offer will expire after a reasonable period of time. What is considered a reasonable period of time depends on the particular facts of the case in question. Such as, with the death of the offeror if known to the offered party, makes the offered party unable to accept the offer. Even if there is absence of knowledge of the incident, the death of either party terminates the existence of any private offer.

Regarding the provisions of an acceptance, it is regulated in Article 8.2.5 and Article 8.2.6. Offer pursuant to Article 8.2.5 provides that an offer is accepted on the basis of unconditional submission and without limitation to its terms by the offered party. This submission can be expressed unequivocally by words or actions, but cannot be inferred from mere silence, except in very exceptional circumstances.

Article 8.2.6 further provides that, as a general rule, acceptance must be notified to the offeror. Although, there are some exceptions where acceptance is sent by post and this method of notification is justified either expressly or impliedly.

This exception, known as the postal acceptance rule, which stipulates that acceptance occurred at the time the letter of acceptance is sent by post, regardless of whether the letter is actually received by the offeror or not.[6]

The next article regulates how a certainty in a contract should be made, that is, before an agreement can be enforced as a contract, its provisions must be quite certain. At a minimum, the main terms of the agreement should be further elaborated. Beyond this, the Court may decide on matters of ambiguity or uncertainty by referring to the actions of the parties, the pattern of previous transactions between the parties, trading practices or standards of fairness. At times, the provisions in laws regarding the details of the contract can fill in this gap.

Elements of completeness of a contract are already regulated in order for the contract to be legally valid. Article 8.2.8 provides that an incomplete agreement also cannot be considered as an enforceable contract. Agreements made subject to the contract may be considered incomplete if the objectives of the parties, as determined from the facts, do not wish to be legally bound until the signing of a formal document or until a further agreement has been reached. This can be seen further in the Article below.

Completeness. 8.2.8 An incomplete agreement also cannot amount to an enforceable contract. Agreements made 'subject to contract' may be considered incomplete if the intention of the parties, as determined from the facts, was not to be legally bound until the execution of a formal document or until further agreement is reached.

The next article shows that Singapore's legal instruments have been prepared and adequate to welcome the development of era and technological advances. Article 8.2.9 regulates the Electronic Transaction Act, which further regulates that, except in matters relating to written requirements or signatures on wills, securities, indentors, statements of trust or power of attorney, contracts involving immovable property and documents of ownership, and electronic records can be used to express the offer or acceptance of an offer in the making of a contract. A statement of intent or intent between the parties to the agreement may also be made in the form of an electronic record. It is also explained in the Electronic Transaction Law, that when an electronic record is sent from a certain person, the time and place of sending and receiving electronic records will be determined.

Therefore, from the elaboration above, a consensus contract according to Singapore contract law is formulated by: Offer + Acceptance = Agreement. The most important element of consensualism (offer and acceptance) in the common law system is the presence of a meeting of the minds (meeting of the minds) and the concurrence of wills that have united the parties. The union of the parties means that there is harmony or compatibility in opinions, views, intentions, and goals that can be combined to organize future events.

2.2. Principles of Contract Law

According to ICC

Freedom of contract is basically the embodiment of free will, the radiance of human rights whose development is based on the spirit of liberalism that glorifies individual freedom. This development was in line with the formation of B.W. in the Netherlands, and the spirit of liberalism was also influenced by the slogan of the French Revolution "liberte, egalite et fraternite" which means freedom, equality and brotherhood.[7] In other words, this understanding of individualism allows everyone to be free to get what they want. In relation to contract law, such a fundamental freedom if it is not strictly and clearly regulated, a contract made from the result of freedom of contract cannot produce justice towards welfare.

Freedom of contract is a principle of contract law as stipulated in Article 1338(1) ICC: "All agreements made legally are binding as law for the parties who make them". The word "all" from the system of norms contained in the article shows that the ICC regulates freedom of contract so that its legal consequences are binding for and between the parties who make it.

Freedom of contract consists of:

1. freedom to enter into an agreement or not to enter into a contract;
2. freedom to choose which party to enter into an agreement with;
3. freedom to determine the content of the agreement;
4. freedom to determine the form of the agreement; and
5. Freedom to determine how the agreement is made.[8]

According to Sutan Remi Sjahdeini, the principle of freedom of contract under Indonesian contract law covers the following scopes:

a. freedom to enter into or not to enter into an agreement;
b. freedom to choose the party with whom the parties wishes to enter into an agreement;
c. freedom to determine or decide the cause of the agreement to be made;
d. freedom to determine the object of the agreement;
e. freedom to determine the form of an agreement;
f. the freedom to accept or deviate from the optional provisions of the law.[9]

According to Singapore Contract Law

Freedom of contract under Singapore's contract law is stated explicitly as specified under the first paragraph of 8.8.4, that just as parties are free to agree to bind themselves to a contract, they are free to negotiate with each other to release themselves from the obligations of that contract.

In the event of a contract, the contract means that there has been an agreement between two or more parties, with the provisions explaining the basic obligations and basic rights of the parties which can be enforced by means of law. Whether the parties have reached an agreement, or the suitability of the will can be determined objectively from the facts. The concept of offer-acceptance represents many, if not all, starting points for an agreement to analyze whether it has been reached.

Article 8.2.1 . A contract is essentially an agreement between two or more parties, the terms of which affect their respective rights and obligations which are enforceable at law. Whether the parties have reached agreement, or a meeting of the minds, is objectively ascertained from the facts. The concepts of offer and acceptance provide in many, albeit not all, cases the starting point for analysing whether agreement has been reached.

Based on the article above, it can be understood that the existence of a contract requires an agreement between the two parties which is also an essential element, and this agreement becomes the basis for the birth of the rights and obligations of each party.

The principle of freedom of contract according to Bryan A. Garner in the common law system is the doctrine that people have the right to bind themselves legally; a judicial concept that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as governmental interference".
He also quotes the opinion of Henry Sumner Maine who states that this principle is a progressive movement of society from status to contract. Coupled with a quote from P.S Atiyah's opinion which emphasizes the principle of freedom of contract against two closely related concepts, namely:
"in the first place, it indicated that contracts were based on mutual agreement, while in the second place it emphasized that the creation of a contract was the result of a free choice unhampered by external control such as government or legislative interference".[10]
The principle of freedom of contract is often equated with other terms, such as the principle of liberty of contract and the principle of autonomy of parties.
From the explanation above, two general elements can be drawn in the freedom of contract according to the common law system, namely: communication that results in mutually agreed promises and free choice that is not intervened by any party, including the government or other agencies. legislative. With the fulfillment of these two elements, it can realize the will of the parties to make a contract.
Based on this comparison, it is known that the important characteristics of freedom of contract that manifest the purpose of contracting are voluntary in determining the form of the contract, contracting parties, type of contract, contract content, and forum. This volunteerism must have legal recognition from and for each party, thus making the construction of a legally-binding contract.
All forms of interaction that are not voluntary do not reflect the freedom of the parties and do not reflect the spontaneity of the parties who exchange promises of expectations. The higher the level of willingness of the parties, the higher the sense of dependence of the parties to make and maintain the contract they made. It is very important that this freedom is maintained for the common good of society which must also be limited in order to protect the interests of others so that it becomes possible to apply strict limits by taking into account the legal consequences, the nature of the contract, customs and conditions based on the law, equity and promptness.

2.3. Good Faith Principle

According to ICC.
Article 1338(3) stipulates that the agreement must be executed in good faith. The rest of the formulations regarding the realization of an action in good faith are juxtaposed with the prohibitions specified in:

a. Article 1322 ICC, concerning mistake (dwaling);
b. Article 1323 ICC, concerning the element of coercion (dwang);
c. Article 1328 ICC, concerning fraudulent acts (bedrog);
d. Article 1335 ICC, concerning prohibitions of agreements without a cause, or concluded pursuant to a fraudulent or prohibited cause;
e. Article 1337 ICC, concerning a cause is prohibited if it is prohibited by law, or if it violates morality or public order.

In its development, the principle of good faith cannot be separated from appropriateness and propriety (redelijkheid and billijkheid). In addition, the implementation of contracts in good faith is also harmonized with the interpretation of contracts according to (or measures of) fairness/property and appropriateness.[11] There are also unwritten norms, such as the norms of etiquette (goede zeden) that must be complied by anyone who participates in society. So J. Satrio emphasized that people in carrying out their interests must pay attention to their own interests and property belonging to others (maatschappelike betamelijkheid).[12] He further concluded that the ICC requires a balance of performance and mutual exchange of promises for the validity of an agreement, so that good faith in the implementation of an agreement helps to lead to the best legal consequences, and it is done by stopping its implementation.
The use of good faith is often found in various contexts which are usually accompanied by different meanings in each of these contexts. Good faith in contracts generally prioritizes the value of loyalty to the promise that has been agreed upon, and emphasizes a common goal by paying attention to the expectations of the other party for what has been promised. Assessment of violations of good faith cannot be generalized, because it depends on the values of

fairness and reasonableness contained in each type of contract, for example insurance contracts, labor, buying and selling, and others.[5]

According to Singapore Contract Law

Legal provisions regarding the principle of good faith are stated in the articles below:

Article 8.2.3 Whether any particular statement amounts to an offer depends on the intention with which it is made. An offer must be made with the intention to be bound. On the other hand, if a person is merely soliciting offers or requesting for information, without any intention to be bound, at best, he or she would be making an invitation to treat. Under the objective test, a person may be said to have made an offer if his or her statement (or conduct) induces a reasonable person to believe that the person making the offer intends to be bound by the acceptance of the alleged offer, even if that person in fact had no such intention.

Article 8.2.7 Before the agreement may be enforced as a contract, its terms must be sufficiently certain. At the least, the essential terms of the agreement should be specified. Beyond this, the courts may resolve apparent vagueness or uncertainty by reference to the acts of the parties, a previous course of dealing between the parties, trade practice or to a standard of reasonableness. On occasion, statutory provision of contractual details may fill the gaps.

Principle of Reciprocity

Article 8.3.2 The idea of reciprocity that underlies the requirement for consideration means that there has to be some causal relation between the consideration and the promise itself. Thus, consideration cannot consist of something that was already done before the promise was made. However, the courts do not always adopt a strict chronological approach to the analysis.

Adequacy

Article 8.3.3 Whether the consideration provided is sufficient is a question of law, and the court is not, as a general rule, concerned with whether the value of the consideration is commensurate with the value of the promise. The performance of, or the promise to perform, an existing public duty imposed on the promisee does not, without more, constitute sufficient consideration in law to support the promisor's promise. The performance of an existing obligation that is owed contractually to the promisor is capable of being sufficient consideration, if such performance confers a real and practical benefit on the promisor. If the promisee performs or promises to perform an existing contractual obligation that is owed to a third party, the promisee will have furnished sufficient consideration at law to support a promise given in exchange.

Prohibition of Denial

Promissory Estoppel Article 8.3.4 Where the doctrine of promissory estoppel applies, a promise may be binding notwithstanding that it is not supported by consideration. This doctrine applies where a party to a contract makes an unequivocal promise, whether by words or conduct, that he or she will not insist on his or her strict legal rights under the contract, and the other party acts, and thereby alters his or her position, in reliance on the promise. The party making the promise cannot seek to enforce those rights if it would be inequitable to do so, although such rights may be reasserted upon the promisor giving reasonable notice. The doctrine prevents the enforcement of existing rights, but does not create new causes of action.

Article 8.11.3 That said, the line between illegitimate pressure and mere commercial (and legitimate) pressure is extremely fine, and where it falls is often dependent on the particular facts of the case. In general, the reasonableness of the parties' respective conduct appears to be an important consideration. For instance, a party who threatens to breach a contract with another if the latter does not agree to its request for increased payments is not exerting illegitimate pressure if, owing to acute financial conditions, that is the only course available to him. However, where the dominant party makes the same demand for no reason other than an opportunistic desire to exploit the counter party's vulnerability for financial gain, such conduct is less likely to be viewed favourably.

Trade Restriction Agreement

Article 8.12.8 A contract which is wholly in restraint of trade is contrary to public policy and is illegal at common law. Such a contract is void. Leeway, however, is given in light of the fact that, in some contexts, some restraint of trade may well protect legitimate interests.

Article 8.12.9 For example, a 'reasonable' restraint of trade clause which seeks to protect: (a) the interests of the parties concerned; (b) and the interests of the public will not be void. Both these aspects of reasonableness must be established.

Article 8.12.10 This determination will vary from case to case, but significant factors will include the geographic scope as well as the length of time for which the restraint of trade is to apply. The wider and longer the restraint, the more difficult it will be to prove that the restraint is reasonable.

A good faith according to Singapore Contract Law must represent a balanced transaction, meaning that the exchange transaction of the parties must be reasonable which means rational, logical, reasonable, tolerable, sensibility, fairness. The principle of good faith is also called bonafide comes from Latin with the meaning "in good faith", but in usage it is defined as "made in good faith; without fraud or deceit, sincere; genuine." A similar and more detailed understanding of the definition of good faith, namely:

"a state of mind consisting in in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absensence of intent to defraud or to seek unconscionable advantage".

Based on this comparison, it is known that the important characteristics in the principle of good faith, especially in business contracts, are juxtaposed with the principle of fair dealing, which means transparency in the implementation of trade. Departing from good faith and a balanced transaction, the parties are obliged to complement each other in designing and making a contract as it is in which the enforcement of the contents of the contract is mutually agreed upon. It is very necessary to focus on two elements, namely "honestly" and "with honesty" towards the relationship of the parties, both during pre-contract, contract making, signing, and contract execution stages. This good faith can be reflected in the honesty of behavior by considering the values of justice, proportional balance, togetherness, and propriety.

2.4. The Principle of Pacta Sunt Servanda

According to the ICC.

The principle of pacta sunt servanda is also often called the principle of binding contractual power or binding power, which was popularized by legal experts based on legal theories and doctrines, then disseminated through writings and or books on contract law. Pacta sunt servanda comes from Latin which means agreement must be maintained. Rules whose main agreements and provisions, especially those contained in contracts, must be maintained.

It is appropriate that what has been promised by the parties, must also be complied by the parties who have made these promises. Thus, the parties who promise must carry out the contract that has been agreed upon with them, as is the obligation to comply with the law.

J. Satrio emphasizes that the most important form of bond is its content. Because they determine the content themselves, people are actually bound by their own promises, promises given to other parties in the agreement.

The principle of pacta sunt servanda in B.W. lies in Article 1338 paragraph (1) B.W. establishes that it "... applies as a law for those who make it".[13] The word law cannot be interpreted narrowly just by looking at its grammatical meaning, but rather the prescriptive nature of a law, meaning that it is binding and enforced as a regulation.

According to Bryan A. Garner, a prescript is "a rule, law, command, or ordinance. The act of establishing authoritative rules." Another prescriptive nature in B.W. lies in Article 1339 B.W which stipulates "an agreement is not only binding for things that are expressly stated in it, but also for everything which, according to the nature of the agreement, is required by propriety, custom or law".[14] This article stipulates that what binds the parties in the contract is the content of the contract, propriety, custom, and the law. Regarding the content of the contract that comes from promises of words spoken by themselves to the other party, it is binding. In other words, there is the ability to fulfill what has been promised which then becomes a legal obligation in the system of exchanging promises. This has become the nature of "to be faithful to the spoken word, therefore it is nothing but the demands of natural common sense".[15]

According to Singapore Contract Law

The third part regulates reciprocal promises or consideration which is another characteristic of contract law according to the common law system. A promise that is reciprocated with a promise, will create reciprocal promises so that the contract made by the parties can be enforced by law. Article 8.3.1 defines, A promise contained in an agreement is not enforceable unless it is supported by consideration or it is made in a written document made under seal. Consideration is something of value (as defined by the law), requested for by the party making the promise (the 'promisor') and provided by the party who receives it (the 'promisee'), in exchange for the promise that the promisee

is seeking to enforce. Thus, it could consist of either some benefit received by the promisor, or some detriment to the promisee. This benefit/detriment may consist of a counter promise or a completed act. Furthermore, it also regulates the idea of reward in a contract between the parties. Article 8.3.2 stipulates that the idea of reciprocity that underlies the requirement for consideration means that there has to be some causal relation between the consideration and the promise itself. Thus, consideration cannot consist of something that was already done before the promise was made. However, the courts do not always adopt a strict chronological approach to the analysis.

To fulfill the idea of compensation required as a cause in the contract, Article 8.3.3 provides "adequacy", i.e. whether the compensation provided is sufficient in a legal matter, and in general, Courts do not only focus on whether the value of the compensation corresponds and relevant to the value of the promise. The performance of, or promise to perform, an existing public duty imposed on the promise recipient is nothing more than a sufficient reward under the law to support the promise made by the promise maker. The performance of an existing obligation, which is still owed according to the agreement to the promise maker, can be considered as sufficient compensation if the performance provides real and practical benefits to the promiser. If the recipient of the promise performs or promises to carry out an existing contractual obligation owed to a third party, then the recipient of the promise has provided sufficient compensation according to law to support the promise given in exchange.

In the next article, it is set quite briefly and clearly on how to interpret the doctrine of Promissory Estoppel, namely in the event that the doctrine of prohibition against denying a promise applies, then a promise becomes binding regardless of whether the promise is accompanied by a reward. This doctrine applies when a party makes an assertive promise, either by word or action, that he will not exercise his legal rights in the contract, and the other party acts, and subsequently changes his position, relying on that promise as the basis. The promiser party cannot exercise their right under its law if the action is deemed unfair, although the legal right can be reinstated after the promiser party gives reasonable notice. This doctrine prevents the enforcement of existing rights, but does not create a new basis for a lawsuit

Section 4 deals with the intention or intent to create a legal relationship. The intention or intent is divided into 3 (three) parts, namely the contractual intention or intent, commercial arrangement, and social arrangement. Article 8.4.1 stipulates, if there is no intention or intent under the contract, an agreement, even if it has been accompanied by a fee, cannot be enforced. Whether the contractors intend to establish a legally binding relationship between them is a matter to be determined based on an objective assessment of the relevant facts. Furthermore, Article 8.4.2, in the case of agreements in a commercial context, the Court generally first assumes that the parties intend to be legally bound. However, this assumption becomes invalid if the parties expressly state the opposite intention. This is often done through the use of award provisions or honor clauses, promissory notes, memorandums of understanding or other similar documents, although the final conclusion depends, not on the label attached to the document, but on an objective assessment of the language used and on all available facts. Then, Article 8.4.3 also stipulates that the parties in the household and social arrangements are first assumed not to have the aim of causing legal consequences

Entering section 5 which regulates various terms of contract implementation. Article 8.5.1 to Article 8.5.4 expressly stipulates provisions, Article 8.5.1, the rights and obligations of the contractors are determined first, by ascertaining the terms of the contract, and secondly, interpreting the terms. In ascertaining the terms of a contract, it is sometimes necessary, especially if the contract is not in writing, to decide whether a particular statement is a contractual provision or merely a statement. Whether a statement is contractual depends on the intention or intent of the parties, which is objectively ascertained, and this is a matter of fact. In ascertaining the intentions or intentions of the parties, the Court will take into account a number of factors including the stage of the transaction in which the statement was made, the importance of the value attached by the party receiving the statement to the statement and the knowledge or expertise of the parties on the subject matter of the statement. Then Article 8.5.2 provides, Once the terms of a contract have been determined, the court applies an objective test in construing or interpreting the meaning of these terms. What is significant in this determination therefore is not the sense attributed by either party to the words used, but how a reasonable person would understand those terms. In this regard, Singapore courts have consistently emphasised the importance of the factual matrix within which the contract was made, as this would assist in determining how a reasonable man would have understood the language of the document. In this regard. Article 8.5.3 provides, in the case of the parties making their contract in writing, then to determine whether a particular statement, whether oral or written, is part of the actual contract depends on the application of the rules of parole evidence or parol evidence.

In Singapore, this common law rule and its major exceptions have been enacted in Sections 93 and 94 of the Evidence Act (Cap 97, 1997 Rev. Ed.). Article 93 stipulates that if 'the terms of the agreement… have become… in the form of a document…, then there is no need for evidence to prove the terms of the agreement… except for the document itself'. Thus, evidence of agreement or verbal statements need not be submitted to challenge, change, add to, or reduce the terms of the contract in writing. However, secondary evidence may be accepted if it falls within one of the exceptions to this general rule which can be found in the provisions of Article 94.

There is some controversy over whether Article 94 is the sole provision of all exceptions to this general rule, or whether any other common law exceptions not expressly provided for in Article 94 will continue to apply. Article 8.5.4 adds, however, that it should be noted that the scope of Articles 93 and 94 has been narrowed by Parliament in certain circumstances

Furthermore, Article 8.5.9 and Article 8.5.10 regulates the classification of the provisions, namely 8.5.9: contract provisions can be classified into terms, guarantees or provisions that are not conditions or guarantees (intermediate or innominate). A classification of terms is important in determining whether a contract can be released or terminated due to a breach.

Article 8.5.10 stipulates that the contracting parties can expressly stipulate in the contract how certain provisions will be classified. However, this is not permanent unless the parties have a special technical meaning for the words used to determine the classification of a provision. If there is no explicit arrangement, the Court will look at the language of the agreement objectively to determine how, taking into account the circumstances surrounding it, the parties want a certain provision to be interpreted. There are also instances where the law stipulates whether certain types of provisions should be considered as conditions or guarantees, if there is no specific determination by the contractors

Furthermore, Article 8.5.11 regulates the exclusion clauses which specify, the exception clause which seeks to exclude or limit the liability of the contractors in general, but not exclusively, found in the standard contract format. Singapore law relating to these provisions is essentially based on English law. The English Unfair Contract Terms Act 1977, which invalidated exclusion provisions or limited the validity of those provisions by applying fairness provisions, has been re-enacted in Singapore as the Unfair Contract Terms Act or Unfair Contract Terms Act (as Cap 396, 1994 Rev Ed)

Section 6 regulates the provisions regarding the ability of the parties to enter into a contract, namely against minors, mental disorders (mentally incompetent) and drunkards, and companies. Article 8.6.1 determines, under Singapore's common law system, a minor is a person who is under 21 years of age. The validity of contracts entered into with minors is governed by common law, as amended by the Minors' Contract Act (Cap 389, 1994 Rev. Ed.). Furthermore Article 8.6.2, as a general rule, contracts cannot be enforced against minors. However, if a minor has been provided with goods and or services needed, such as goods or services that are suitable for maintaining the life of the minor, then the minor must pay for it. Contracts for providing services which are entirely for the benefit of minors are also valid. Minors are also bound by several types of contracts, such as contracts relating to land or shares in companies, partnership agreements and marriage settlements, unless the minor refuses the contract before becoming an adult at the age of 21 years or within a reasonable time after that

The provisions regarding minors are further explained in Section 8.6.3 which provides that, under Section 2 of the Minors' Contracts Act, a guarantee must be provided in respect of contracts with minors, which guarantees cannot be applied to minors but applied to the guarantor. Article 3 paragraph (1) of the Minors' Contracts Act gives the Court the power to determine the payment of restitution by a minor if the Court deems it right and fair to do so.

In regards to making contracts with people who according to law are considered incompetent, but in some cases and conditions can be considered competent, it is regulated in Article 8.6.4 which stipulates that a contract entered into by someone who is not clear-headed is valid, unless it can be shown that the person is unable to understand what he or she is doing and the other party knows or should know about this inability. In this case, the contract may be waived at the option of the mentally disturbed person who is assisted by a representative from the Court if necessary. The same principle applies to drunkards. According to Article 3 paragraph (2) of the Sale of Goods Act, a person who is mentally incompetent or intoxicated must pay a fair price for the goods/services he needs

Meanwhile, in the case that one of the parties is a company, Article 8.6.5 and Article 8.6.6 provide that 8.6.5 With due observance of the written law and the limitations contained in its articles of association, a company has full authority to conduct business, take actions or make transactions. If there is a limitation on the authority of a company and the company acts outside its jurisdiction, then Article 25 of the Companies Act authorizes the ultra

vires transaction if the transaction is supposed to be valid and binding. Section 8.6.6 provides that a limited liability partnership is also a body corporate under Singapore law – see Limited Liability Partnerships Act 2005 (Act No 5 of 2005). It may, in its own name: sue and be sued in its own name; acquire, own, hold and develop property; hold a common seal; and may do and suffer such other acts and things as any body corporate may lawfully do and suffer
From the description above, it can be seen that a legal relationship created through a contract is prescriptive, meaning that it is binding and is enforced as a regulation. The arrangement here is more of a mandatory nature that must be obeyed rather than optional, so that the implementation of a contract that is in accordance with the law and binding on the parties can be legally enforced.

3. Conclusion

Based on the results of the comparative study, it is known that the contract law arrangements in the ICC are not as complete and not as up-to-date as Singapore's contract law. This is because since the ICC was first promulgated in Indonesia, it has never been modernized. In order to minimize legal problems, both due to empty and vague norms, the results of the comparison of contract law can help construct additional arrangements both for a holistic-comprehensive study of contract law and for making business contracts that are required to be updated.

References

"Consumer Protection In Indonesia on Selling Buy Transaction Through E-Commerce | Wahyuni | Journal of International Trade, Logistics and Law." http://www.jital.org/index.php/jital/article/view/75/pdf_43 (accessed Jul. 26, 2023).

"Contracts Constituting Barter System | Saka | Journal of International Trade, Logistics and Law." http://www.jital.org/index.php/jital/article/view/54/pdf_29 (accessed Jul. 26, 2023).

L. F. Narulita and T. Michael, "Understanding Pancasila in Social Life: Study of the Balai Kerajaan Saksi–Saksi Yehuwa and the Free Catholic Church of st. Bonifacius Surabaya," Journal of International Trade, Logistics and Law, vol. 8, no. 2, pp. 55–58, Dec. 2022, doi: 10.15294/harmony.v6i2.46433.

"Determinants of Centralized Public Procurement Effectiveness: Evidence from Selected Ethiopian Higher Public Education Institutions | Abrahim | Journal of International Trade, Logistics and Law." http://www.jital.org/index.php/jital/article/view/195/pdf_102 (accessed Jul. 26, 2023).

B. A. Garner, Black's Law Dictionary 11th Edition. United States of America: Thomson Reuters, 2019.

Yusmita, E. Prasetyawati, and Hufron, "Perlindungan Hukum terhadap Penerima Pinjaman Uang Berbasis Teknologi Informasi," Jurnal Akrab Juara, vol. 4, no. 5, 2019.

A. Y. Hernoko, "Asas Proporsionalitas Sebagai Landasan Pertukaran Hak dan Kewajiban Para Pihak Dalam Kontrak Komersial," Jurnal Hukum dan Peradilan, 2016.

F. Sugianto, "NET BENEFIT ANALYSIS TO THE REFERENT GROUP TERHADAP DAMPAK IMUNITAS HUKUM APARAT PENEGAK HUKUM DI INDONESIA," DiH: Jurnal Ilmu Hukum, 2016, doi: 10.30996/dih.v12i23.891.

F. Sugianto, F. Sugianto, E. Sukardi, and T. Michael, "COMPARISON OF LEGAL CONSUMER PROTECTION SYSTEMS IN E-COMMERCE TRANSACTIONS TO SUPPORT DIGITAL ECONOMIC GROWTH IN INDONESIA," Dalat University Journal of Science, vol. 12, no. 1, pp. 39–51, May 2021, doi: 10.37569/DalatUniversity.12.1.814(2022).

O. Mykhalniuk, "DEFINITION OF THE CONCEPT OF MARRIAGE CONTRACT: NEW APPROACHES," Bulletin of Taras Shevchenko National University of Kyiv. Legal Studies, no. 117, 2021, doi: 10.17721/1728-2195/2021/2.117-11.

M. T. Rustamjonovna, "The Principle Of Good Faith In Civil Law," Turkish Journal of Computer and Mathematics Education (TURCOMAT), vol. 12, no. 4, pp. 1062–1067, Apr. 2021, doi: 10.17762/turcomat.v12i4.615.

A. Purwadi, "PRINSIP MORAL PADA PENGATURAN PERIKATAN ALAM," Mimbar Keadilan, 2020, doi: 10.30996/mk.v13i2.3296.

Subekti, Hukum Perjanjian, 23rd ed. Jakarta: Intermasa, 2010.

F. Sugianto and B. Budiarsih, "MENGGUGAH FONDASI KEILMUAN ILMU HUKUM DALAM PENGAKUAN PERKAWINAN HOMOSEKSUAL DI MASSACHUSETTS MELALUI EFISIENSI EKONOMI," DiH: Jurnal Ilmu Hukum, 2018, doi: 10.30996/dih.v0i0.1787.

M. Bridge, "Good Faith, the Common Law, and the CISG," Uniform Law Review, vol. 22, no. 1, 2017, doi: 10.1093/ulr/unw059.