

LEGAL CERTAINTY AND CONTRACTUAL FREEDOM IN INDONESIAN CIVIL LAW: A NORMATIVE ANALYSIS OF THE PRINCIPLES OF THE CIVIL CODE AND CONTEMPORARY PRACTICE

Jaka Santosa¹

¹Universitas Bina Sarana Informatika

Email: jaka.jos@bsi.ac.id

ABSTRACT

This paper examines the principles of legal certainty and contractual freedom in Indonesian civil law through a normative juridical analysis of the Civil Code and its application in contemporary practice. Legal certainty ensures predictability and enforceability of agreements, while contractual freedom provides parties with autonomy to establish contractual terms. However, these principles are not absolute and often exist in tension, particularly when contractual autonomy is restricted by statutory provisions, public order, morality, or consumer protection laws. By analyzing statutory frameworks, jurisprudence, and doctrinal perspectives, this study finds that Indonesian civil law seeks to harmonize these principles rather than treat them as opposites. Contemporary challenges, such as standard form contracts, digital transactions, and consumer protection, highlight the need for a balanced approach. The findings demonstrate that Indonesian civil law must uphold both legal certainty and contractual freedom in a way that respects individual autonomy while safeguarding justice, fairness, and social interests.

Keywords: Legal Certainty, Contractual Freedom, Indonesian Civil Code, Consumer Protection

INTRODUCTION

Law serves as the foundation for regulating social order, ensuring justice, and providing certainty in legal relations, particularly in the context of private law within civil law systems, where two fundamental principles stand out: legal certainty (*rechtszekerheid*) and contractual freedom (*contractsvrijheid*). Legal certainty guarantees that individuals can predict the consequences of their actions within a legal framework, while contractual freedom ensures that individuals have the autonomy to create agreements based on mutual consent; however, these two principles, though complementary, often exist in a dynamic tension that requires careful balance. Legal certainty is characterized by the availability, reliability, and comprehensibility of legal information, allowing individuals to predict legal outcomes and plan accordingly (Frändberg, 2014), and it is essential for economic and commercial activities, as it reduces transaction costs and promotes efficient business operations (Tridimas, 2019), while also being multifaceted, encompassing legal clarity, stability, and peace, which are crucial for maintaining social order (Wrbka, 2016). On the other hand, contractual freedom allows parties to negotiate terms and create agreements that

reflect their mutual interests and consent (DiMatteo, 1995), but this freedom can be limited in standard agreements where stronger parties may dominate, leading to potential injustices and inequality in rights and obligations (Susanti, 2024), so the principle of freedom of contract is often balanced by regulations to prevent exploitation and protect weaker parties in contractual relationships (Susanti, 2024). Consequently, the tension between legal certainty and contractual freedom requires a careful balance to ensure fairness and justice in legal relations (DiMatteo, 1995), and legal systems often incorporate relational norms and flexible doctrines to address this tension, ensuring that both principles are respected and upheld (DiMatteo, 1995).

In Indonesia, the Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata), inherited from the Dutch colonial legal system, codifies the principles of contractual freedom and legal certainty, with Article 1338 affirming the binding force of contracts and highlighting the autonomy of parties in shaping their agreements, though this autonomy is not unlimited as contracts must not contradict statutory provisions, public order, or morality. In practice, the coexistence of contractual freedom and legal certainty has become increasingly complex with the evolving demands of modern commerce, consumer protection, and regulatory intervention, particularly in standard agreements where stronger parties often dominate, leading to inequality and potential injustices for weaker parties (Susanti, 2024). The Civil Code further requires under Article 1338(3) that contracts be executed with good faith, reasonableness, and equity; however, in practice, especially in real estate transactions, standard agreements often lack detail and clarity, thereby undermining the principle of good faith and resulting in inequitable outcomes (Sanjaya, 2019). While freedom of contract enhances efficiency and trust in business relations, it can also generate injustices if not properly regulated, necessitating legal mechanisms to maintain fairness and balance in agreements (Anggriani et al., 2024). Moreover, in the context of Islamic economic law, contracts must comply with social systems, ethics, and shariah principles, imposing further limitations on contractual freedom to ensure adherence to broader ethical standards (Gunawan & Sukardi, 2021). Ultimately, the principle of contractual freedom can foster prosperity if parties possess equal bargaining power; however, to prevent abuse and injustice,

its development must be supported by a robust legal framework that guarantees both order and justice (Rusli, 2015).

The issue of harmonizing legal certainty and contractual freedom has gained prominence in contemporary Indonesian legal practice, as on one hand, legal certainty is essential to support a stable economic environment where contracts function as enforceable guarantees for business and personal relations, yet on the other hand, excessive rigidity in the name of certainty can undermine fairness and adaptability, while excessive freedom may lead to imbalances of power and exploitation, thus creating challenges for legislators, judges, and legal scholars in interpreting and applying civil law principles in line with societal changes. Legal certainty, as a foundational principle in both civil and common law traditions, underpins the legality of legislative and administrative actions, and in Indonesia the judiciary plays a crucial role in supporting it through legal interpretation and findings that fill gaps left by ambiguous laws (Aditya, 2023), with this role becoming particularly important in international business disputes where judges must balance the principle of freedom of contract with other considerations to ensure fair and executable decisions (Ali & Prakoso, 2023). Meanwhile, freedom of contract remains a fundamental principle allowing parties to create agreements that act as laws between them, though in standard agreements this freedom is frequently limited by the dominance of stronger parties, resulting in inequality and potential exploitation of weaker parties (Susanti, 2024), especially in consumer protection where conflicts emerge between the freedom of contract and the need to protect consumers from harmful standard clauses, requiring legal strategies that integrate technology and harmonize international law (Tarar & Walambuka, n.d.). Furthermore, business agreements such as license and franchise agreements often encounter legal uncertainty due to conflicting decisions from different legal bodies, emphasizing the urgent need for clear regulations and judicial consistency to uphold legal certainty in business transactions (Tarar & Walambuka, n.d.).

Given this context, this research employs a normative legal analysis to explore the interaction between legal certainty and contractual freedom in Indonesian civil law. By examining statutory provisions, jurisprudence, and legal doctrine, the study seeks to clarify the boundaries and interdependence of these principles. Furthermore, the research addresses contemporary practices where contractual autonomy must be reconciled with

public interest, consumer rights, and equitable principles. The ultimate objective is to demonstrate that Indonesian civil law must strike a balance that both respects individual autonomy and safeguards the integrity of legal order, ensuring that the law remains just, predictable, and relevant in modern society.

LITERATURE REVIEW

1. Legal Certainty in Civil Law

Legal certainty is a cornerstone of civil law systems, ensuring that laws are clear, predictable, and consistently applied, and in the Indonesian context, legal certainty (*kepastian hukum*) is crucial for the enforceability of agreements under the Civil Code, fostering trust and stability in legal relations by guaranteeing the enforceability of agreements, protection of legitimate expectations, and the ability of parties to anticipate legal consequences, although its rigidity can sometimes limit contractual flexibility and potentially override substantive justice. Legal certainty is essential for the implementation of laws in Indonesia because it prevents manipulation of the law for personal gain; however, in practice, the application of legal norms—such as those governing land and building transactions—often lacks certainty, as evidenced in Medan City (Siahaan et al., n.d.), while in civil disputes, legal certainty is further challenged by difficulties in executing court decisions influenced by both juridical and non-juridical factors (Yasa & Iriyanto, 2023). In the realm of contracts, legal certainty is vital in economic law as it reduces transaction costs and promotes efficient business operations by enabling parties to plan their actions based on clear legal provisions (Tridimas, 2019), but in standard agreements, the principle of contractual freedom is often undermined by the dominance of stronger parties, resulting in inequality and necessitating clearer regulations to protect weaker parties (Susanti, 2024). Furthermore, legal certainty in agreements—such as those between the DKI Jakarta Government and developers—is reinforced by the principle of *pacta sunt servanda*, yet challenges remain due to the frequent non-implementation of agreements, underscoring the need for both flexibility and stronger enforcement mechanisms (Kurniawan et al., 2024).

2. The Principle of Contractual Freedom

The principle of contractual freedom in Indonesia, as enshrined in Article 1338 of the Civil Code, allows individuals and businesses to freely determine the content, form, and terms of their contracts, serving as a fundamental basis for promoting flexibility and innovation in private agreements and reflecting the liberal legal thought of the 19th century; however, this freedom is not absolute and is constrained by statutory provisions, morality, and public order, requiring a balance with fairness, good faith, and equity to prevent injustices, particularly in situations of unequal bargaining power. The principle of freedom of contract enables parties to tailor agreements to their specific needs, thereby fostering innovation and efficiency in business transactions (Anggriani et al., 2024) and supporting the emergence of new contractual forms that can adapt to evolving social and economic conditions (Rusli, 2015). Yet, without proper regulation, this principle may result in injustices, especially when stronger parties dominate contractual negotiations, as often occurs in standard contracts that restrict the autonomy of weaker parties and lead to exploitation (MUKHIDIN, 2010; Susanti, 2024). To mitigate such risks, contractual freedom is subject to mandatory laws, the principle of good faith, and equitable considerations to ensure fairness and prevent abuse (Anggriani et al., 2024; Febriani, 2020), while robust legal frameworks and oversight are essential to maintain balance and safeguard weaker parties in contractual relationships (Febriani, 2020; MUKHIDIN, 2010).

3. The Interplay Between Legal Certainty and Contractual Freedom

The interaction between legal certainty and contractual freedom is a complex issue that requires balancing the enforceability of contracts with the flexibility and autonomy of the parties involved, and in Indonesian jurisprudence this balance is increasingly recognized through the invocation of doctrines such as good faith and proportionality to address potential abuses of contractual freedom, reflecting a broader trend towards a socially-oriented perspective in contract law that aligns with the state's role in protecting weaker parties and ensuring equitable outcomes. Legal certainty ensures that contracts are enforceable and predictable, which is crucial for commercial transactions, though excessive emphasis on certainty can undermine fairness, particularly in situations of unequal bargaining power (Phang, 1998), while contractual freedom allows parties to tailor agreements to their

needs, fostering flexibility and autonomy but, if left unrestricted, risks enabling exploitation of weaker parties and therefore requires regulatory interventions (DiMatteo, 1995). Indonesian courts have increasingly acknowledged the importance of balancing these principles by invoking doctrines such as good faith and proportionality to mitigate abuses and ensure fairness in contractual relations (Eugenia, 2024), marking a doctrinal shift from a purely liberal interpretation of contract law towards a more socially-oriented approach that emphasizes the protection of weaker parties and equitable outcomes (Eugenia, 2024). To further address legal uncertainty, mechanisms such as the presumption of concluding contracts within the boundaries of contractual freedom and the principle of estoppel have been proposed, aiming to eliminate or compensate for uncertainties that arise when agreements are withdrawn beyond the scope of contractual autonomy (Kapanetov & Савельев, 2022).

4. Contemporary Challenges in Indonesian Contract Law

The modern legal landscape in Indonesia presents significant challenges to the principles of legal certainty and contractual freedom, particularly due to the rise of consumer protection laws, electronic transactions, and strategic government regulations, which have necessitated a reinterpretation of traditional contract law principles to address contemporary social and economic realities. The Consumer Protection Act (Law No. 8 of 1999) often conflicts with the principle of freedom of contract, especially in standard contracts that may harm consumers, creating tension between Article 18 of the Consumer Protection Law and Article 1320 of the Civil Code, thereby requiring a balance between consumer protection and contractual freedom (Tarar & Walambuka, n.d.), while in e-commerce, consumer protection is regulated by specific provisions within the Consumer Protection Law that mandate cooperation between government bodies and consumer protection agencies to resolve disputes through both litigation and non-litigation methods (Prayuti et al., 2024). The rapid growth of e-commerce has also introduced complexities in ensuring the validity and enforceability of electronic contracts, as although such contracts enhance efficiency, they present challenges in fulfilling traditional requirements such as mutual consent and legal capacity (Putri & Budiana, 2018), and the existing legal framework does not yet fully

guarantee legal certainty for consumers in online transactions, underscoring the need for clearer regulations and stronger consumer protection measures (Rahma et al., 2022). Furthermore, standard form contracts frequently limit the bargaining power of weaker parties, creating risks of injustice and exploitation, thus emphasizing the importance of regulatory safeguards to maintain balance and fairness in contractual relationships (Susanti, 2024).

5. Theoretical Framework

This study adopts a normative juridical framework, relying on statutory interpretation, doctrinal analysis, and jurisprudence. The principles of legal certainty and contractual freedom are viewed through the lens of civil law theory, supplemented by Radbruch's three values of law justice, certainty, and utility as a guiding framework. The literature consistently underlines the importance of harmonizing autonomy with regulation, ensuring that Indonesian civil law maintains its relevance while upholding justice and predictability.

RESEARCH METHODS

1. Research Approach

This study employs a normative juridical approach, which focuses on analyzing legal principles, statutory provisions, jurisprudence, and scholarly doctrine related to legal certainty and contractual freedom in Indonesian civil law. The normative method is appropriate because the research is aimed at examining the legal norms contained in the Indonesian Civil Code and their application in contemporary practice, rather than conducting empirical observations.

2. Nature of the Research

The research is descriptive-analytical, as it seeks to describe the principles of legal certainty and contractual freedom, analyze their interaction, and evaluate how these principles are applied and limited in Indonesian law. The descriptive aspect presents a structured overview of the legal provisions, while the analytical aspect critically assesses the

balance between contractual autonomy and regulatory restrictions in ensuring justice and predictability.

3. Sources of Legal Materials

This study relies on three categories of legal materials, namely primary, secondary, and tertiary legal materials. Primary legal materials include the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), particularly provisions related to contracts such as Article 1338 and related articles, statutory regulations such as Law No. 8 of 1999 on Consumer Protection and Law No. 11 of 2008 on Electronic Information and Transactions (as amended), as well as jurisprudence from Indonesian courts that interpret and apply the principles of contractual freedom and legal certainty. Secondary legal materials consist of scholarly writings, textbooks, and articles by Indonesian and foreign legal scholars on civil law, contract law, and legal philosophy, along with commentaries and analyses on the Civil Code and its application in Indonesian legal practice, as well as comparative studies on contractual freedom and legal certainty in other civil law jurisdictions, particularly the Dutch civil law system which influenced the Indonesian Civil Code. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources that serve to clarify legal terms and concepts used in this study.

4. Data Collection Method

The study applies a literature study method, collecting data from statutory texts, case law, and academic literature. Sources were gathered from law libraries, official government publications, electronic databases, and previous research relevant to Indonesian civil law.

5. Data Analysis Technique

The collected legal materials were analyzed using qualitative normative analysis, which was carried out through statutory interpretation by examining the text and spirit of relevant provisions in the Civil Code and other laws, doctrinal analysis by synthesizing scholarly opinions to understand the theoretical basis of contractual freedom and legal certainty, case studies of jurisprudence by evaluating how courts interpret and apply these principles in

resolving contractual disputes, and comparative analysis by drawing lessons from other jurisdictions that share historical or structural similarities with Indonesian civil law.

RESULT AND DISCUSSION

1. Legal Certainty in Indonesian Civil Law

The principle of legal certainty is reflected in the Indonesian Civil Code, which provides predictability and stability in contractual relations. Article 1338 paragraph (1) of the Civil Code explicitly states that “all legally formed agreements shall apply as law for those who make them.” This provision ensures that agreements, once validly made, bind the parties and can be enforced by the courts, thereby protecting the legitimate expectations of contracting parties and fostering trust in the legal system. However, in practice, absolute certainty is difficult to achieve, as courts are frequently required to interpret the scope and meaning of contractual terms, particularly in cases involving standard form contracts or unequal bargaining power. This demonstrates that legal certainty, while fundamental, is not static but must instead be interpreted dynamically to respond to societal and economic developments. The principle of freedom of contract, for instance, is often compromised in standard agreements due to the dominance of stronger parties, creating inequality in rights and obligations and thus necessitating clearer regulations to protect weaker parties and prevent exploitation (Susanti, 2024). Similarly, exoneration clauses in standard agreements can limit or eliminate liability, undermining legal certainty by favoring stronger parties and disregarding consumer protections (Widyawati, 2018).

The dynamic nature of legal certainty is also evident in judicial interpretation, where the principle of *pacta sunt servanda*—which asserts that agreements are binding as law—plays a central role in judicial considerations, yet judges also weigh the happiness and utility of the parties involved, showing a shift toward a more substantive approach to fairness (Cahyo & Kurnianingsih, 2023). Nonetheless, legal certainty is often prioritized over legal justice, as illustrated in cases concerning the spread of misinformation, where judges tend to emphasize adherence to written law rather than substantive fairness (Al-Fatih & Aditya, 2019). Moreover, the principle of legal certainty can be challenged in specific contexts such as marriage agreements made after marriage, which may generate legal uncertainty for third

parties since they primarily safeguard the interests of the contracting parties while neglecting third-party rights (Putra et al., 2021). These complexities highlight that while legal certainty remains foundational, its application requires careful balancing with fairness, justice, and the protection of broader societal interests.

2. The Application of Contractual Freedom

Contractual freedom (asas kebebasan berkontrak) gives individuals the autonomy to determine the content and form of their agreements, with the Civil Code allowing parties to create contracts not specifically regulated in the Code (innominate contracts) as long as they do not contravene statutory law, morality, or public order. This flexibility is vital for fostering economic growth because it enables innovation in business practices and adaptation to emerging forms of transactions, including digital and cross-border agreements. The principle of contractual freedom in Indonesia thus supports the creation of diverse contractual arrangements that reflect the needs of the parties and promotes efficiency in the marketplace. However, this freedom is not absolute, as Indonesian law sets boundaries to ensure fairness and protect public interest. The Consumer Protection Law restricts clauses that unfairly burden consumers, while the Electronic Information and Transactions Law impose specific requirements for digital contracts, underscoring that contractual autonomy must be balanced with the protection of vulnerable parties and the safeguarding of societal interests (Febriani, 2022; Susanti, 2024; Anggriani et al., 2024).

The limitations on contractual freedom become particularly evident in situations where there is a significant imbalance of power between contracting parties, such as in standard agreements where the stronger party dictates terms that may result in unfair obligations for the weaker party (Febriani, 2020; Susanti, 2024). To address this, the Consumer Protection Law plays a key role in restricting clauses that exploit consumers, thereby maintaining balance in rights and obligations (Febriani, 2020; Roesli et al., 2019). Meanwhile, the Electronic Information and Transactions Law provides specific requirements for digital contracts, reflecting the importance of adapting legal frameworks to technological advancements while protecting parties in electronic transactions (Anggriani et al., 2024). Despite these restrictions, contractual freedom continues to play a crucial role in supporting

economic growth by fostering flexibility and innovation in business practices, which is essential for adapting to the realities of digitalization and globalization. Nevertheless, the presence of legal protections and oversight is critical to ensure that freedom of contract does not lead to exploitation or injustice, but instead contributes to sustainable and equitable economic development (Rusli, 2015; Susanti, 2024).

3. The Tension Between Legal Certainty and Contractual Freedom

The relationship between legal certainty and contractual freedom is marked by both tension and interdependence, as legal certainty ensures that contracts are enforceable and thus gives meaning to contractual freedom, while unrestricted freedom may undermine certainty when contracts contain unfair or ambiguous terms that courts later strike down. In Indonesia, legal certainty is crucial for the enforceability of contracts, as emphasized in Article 1338 of the Civil Code, which guarantees both predictability and justice for contracting parties (Susanti, 2024). At the same time, contractual freedom allows parties to determine the terms of their agreements, yet this freedom is not absolute and is limited to prevent exploitation and ensure fairness, particularly in situations where there is an imbalance of bargaining power (Febriani, 2022). This dynamic reflects the constant negotiation between stability and autonomy in contractual relations, requiring careful balance to ensure both principles are upheld.

Indonesian jurisprudence illustrates how courts perform this balancing role, particularly in cases involving *perjanjian baku* (standard form contracts), where judges frequently apply the principles of good faith (*itikad baik*) and equity to correct imbalances, thereby limiting contractual freedom in favor of fairness and justice (Febriani, 2020; Susanti, 2024). This judicial approach demonstrates a shift from a classical liberal interpretation of contract law—where autonomy was paramount—towards a more social justice-oriented perspective aligned with Pancasila and the constitutional mandate to protect weaker parties. The courts' role in interpreting and managing contracts is therefore critical in maintaining a balance between freedom and certainty, ensuring that contracts do not perpetuate social and economic inequalities (Trakman, 2001). Comparative perspectives reinforce that this tension is not unique to Indonesia: in China, contractual freedom is restricted to safeguard public

interest and promote social justice (Dai, 2018), while in common law systems, judges often manage contractual relations by interpreting terms and implying fairness, underscoring the universal nature of these challenges (Trakman, 2001).

4. Contemporary Challenges in Practice

Several contemporary issues illustrate the evolving balance between legal certainty and contractual freedom in Indonesian civil law, particularly in the areas of standard form contracts, digital transactions, consumer protection, and globalization. Standard form contracts, which are widespread in banking, insurance, and e-commerce, are designed for efficiency and promote certainty but often limit negotiation, leading to potential exploitation of consumers who must accept terms without bargaining power (Gillette, 2009; Prematura & Suryani, 2023). The rise of e-commerce has exacerbated these issues, as online standard forms frequently lack transparency and consumer awareness, requiring judicial intervention or regulatory oversight to safeguard fairness (Gardiner, 2022). Similarly, digital transactions have redefined traditional notions of contractual freedom, as the Electronic Information and Transactions Law ensures the legal recognition of electronic contracts while imposing conditions to protect consumers and maintain contract validity (Martinelli et al., 2024). However, online platforms often use standard agreements that include exoneration clauses shifting responsibility to consumers, highlighting the need for regulatory adjustments to ensure consumer rights are not compromised (Prematura & Suryani, 2023).

Consumer protection laws further restrict clauses that waive liability or impose disproportionate burdens, thereby prioritizing public interest over absolute contractual autonomy. These legal frameworks aim to prevent the exploitation of consumers and adapt to the dynamic nature of digital transactions, emphasizing transparency and fairness in contractual relations (Martinelli et al., 2024; Prematura et al., 2022). Beyond domestic concerns, globalization and cross-border agreements also pose challenges to the interplay between certainty and freedom, as international transactions require alignment with foreign legal systems and principles. This situation creates uncertainty when Indonesian contract law must coexist with international conventions such as the United Nations Convention on Contracts for the International Sale of Goods (CISG), even though Indonesia has not yet

ratified it (Becher & Zarsky, 2007). Consequently, harmonization with international standards must be balanced with the preservation of domestic legal principles to avoid inconsistencies and ensure predictability in cross-border agreements (Becher & Zarsky, 2007).

5. Doctrinal and Practical Implications

From a doctrinal perspective, the balance between legal certainty and contractual freedom represents an evolution from classical contract theory towards a more socially responsive approach. Legal scholars emphasize the principle of *itikad baik* as the bridge between autonomy and certainty, ensuring fairness without undermining the enforceability of agreements.

Practically, this balance affects business, consumer relations, and governance. Businesses rely on certainty for investment security, while consumers depend on regulatory protections against unfair contracts. Courts, therefore, play a pivotal role in mediating between these competing interests, ensuring that contractual relations reflect both predictability and justice.

CONCLUSION AND RECOMMENDATIONS

The study concludes that legal certainty and contractual freedom are two interdependent principles forming the foundation of Indonesian contract law, where legal certainty guarantees that agreements are binding and enforceable, while contractual freedom empowers parties to determine the terms of their contracts. However, both principles operate within clear boundaries: contractual freedom cannot contravene statutory provisions, public order, or morality, and legal certainty must be applied with flexibility to accommodate fairness and social justice. In practice, absolute application of either principle is neither practical nor desirable, as demonstrated by contemporary challenges such as standard form contracts, digital agreements, and consumer protection.

Indonesian law has therefore evolved toward a balanced approach, emphasizing good faith, proportionality, and equity as mediating principles in contractual relations. Courts, legislators, and legal scholars play a critical role in maintaining this balance, ensuring that civil law adapts to modern societal and economic developments while preserving its fundamental

values. Ultimately, harmonizing legal certainty and contractual freedom not only strengthens the credibility of Indonesian civil law but also supports sustainable economic relations and safeguards justice for all parties involved in contractual transactions.

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