



INDONESIAN CONTRACT LAW

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The Pluralism of Indonesian Contract Law

- Contracts in Indonesia are governed by either (i) *Adat* (customary) Law or (ii) the Indonesian Civil Code.
- Generally *Adat* Law governs contracts between members of the indigenous population in a village settings. It does not designed for the completely different setting of European or international transactions.



Choice of Law

When members of different settings contract with one another, a choice of law problem arises which can be solved by resorting to one of the following principles:

- **Intention of the parties**

May be determined by (i) explicit statement of the parties in the contract, (ii) legal terms or concepts found only in one of the two legal systems used in the contract, or (iii) the form and the substance of the contract.

- **Setting**

The place where the contract concluded.

- **Entrance into the law sphere of the other party**

The law where the transaction concluded applies.

- **Public offer**

The law of the one who makes the public offer applies to the transaction.

- **Overpowering economic and social position**

The law of the one who dictate the terms of the contract.



Contract under *Adat* Law

- *Adat* Law is not written, not statutory, and not uniform throughout Indonesia. *Adat* evolved out of the needs of a closed village community.
- Under *Adat* Law, the requirement of a contract is the “real agreement” i.e. one which is actually performed.
- No definite age limit for one to have the ability to enter into a contract as married women also have.
- Contracts involving non-concrete objects are exceptional but possible.
- Like the Civil Code, *Adat* Law requires free will of the contracting parties and legal *causa* of the contract.



History of the Civil Code

- Enacted in 1948 by the principle of concordance with the Civil Code applied in the Netherlands at that time.
- The transitional provision of the Indonesian Constitution (UUD 1945) provides that any law applicable at the colonial era are still applicable until they are replaced.
- Thus the above Code, except toward the following issues, is still applicable in Indonesia up to now.



Structure of the Civil Code


Consists of four Books, which are:


- Book I, concerning family, matrimony, and inheritance. The section on matrimony is no longer applicable as it has been replaced by Law No. 1 Year 1974. The section on family and inheritance applies only to non-Muslim citizen.
- Book II, concerning assets, lien, and mortgage. The section on mortgage is no longer applicable as of the enactment of Law No.42 Year 1996.
- Book III, concerning contracts which applies facultatively, means that contracting parties may waive it.
- Book IV, concerning evidence, which is still applicable especially as procedural law.



Contract under the Civil Code

- The “consensual principle” or “the meeting of the minds” forms the basis of contract law under the Civil Code (CC).
- Pursuant to Article 1320 CC, a contract is valid only if it fulfills the following requirements:
 - Concluded based on the free will of the parties;
 - Concluded by legally competent parties;
 - Agreed upon a definite object; and
 - Agreed upon a legal purpose.
- A contract that fulfills the above requirements is legally binding to the parties; it cannot be terminated without the consent of the parties (Article 1338 CC).

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- A contract is voidable if it is concluded by means of fraud, duress, or mistake.
 - Incompetent persons to enter into a contract are:
 - Any person under 21 years of age;
 - Any person under official custody.
 - The object of the contract need not be determined so long it is countable, nor must it be exist at the time the contract concluded.
 - The Civil Code distinguishes property between the movable (Arts. 509-13 CC) and the immovable (Arts. 506-8 CC).
 - Every contract must be performed in good faith (Art. 1338 CC).

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- The parties are not only bound to the explicit terms of the contract, but also to that which commonly imposed by custom, justice, and law (Art. 1339 CC).
 - The Code provides specific rule regarding assignment of risk, but not general rule, which among others are:
 - In rental contracts, the lessor;
 - In sales contract, the buyer;
 - In loan agreement, the borrower.
 - Failure to execute the contract constitutes breach of contract a.k.a. default; it entails the obligation to pay damages.



Remedies

- Generally an aggrieved party is free to sue for specific performance, especially with regard to the sale of land.
- The party in breach is obliged to compensate:
 - Expenditures, includes any actual cost incurred by the aggrieved party in relation to the contract;
 - Losses, includes any injury to the property of the aggrieved party by reason of the breach; and
 - Interest, means lost profit; the maximum interest allowed for damages is 6% per annum.
- The damages must be foreseeable at the time the contract concluded (Art. 1247 CC).
- Damages are exempted by *force majeure*, either “absolute” or “relative” (Arts. 1244-5 CC).



Discharge of a Contract (1)

The following are ways in which a contract can be discharged:

■ Performance

- The Code names it “payment” as in Art. 1382 CC.
- Shall be made in good faith and at the residence of the creditor

■ Certified tender plus deposit

- Occurs when the creditor refuses to accept payment; it shall be deposited at the court at the responsibility of the creditor (Art. 1404 CC).

■ Novation

- Occurs upon consent of both parties and have to be done expressly.
- Terminates the contract and forms a new contract.



Discharge of a Contract (2)

■ Set-off

- If one is simultaneously a creditor and a debtor of another person, then the contract(s) can be terminated by “compensation” (set-off: Art. 1425 CC).
- Termination by set-off occurs automatically (Art. 1426 CC).
- Set-off is not possible if a party sues for the return of the goods.

■ Merger

- Occurs when the positions of debtor and creditor unite into one, for example by marriage or inheritance (Consolidation of debts: Art. 1436 CC).

■ Release

- A new contract in which the creditor frees the debtor from any obligation (Discharge of a debt: Art. 1438 CC).
- Creditor’s offer to free the debtor must be accepted.
- The discharge of debt may occur implicitly but must be provable.



Discharge of a Contract (3)

■ **The destruction of the subject matter**

- A contract concerning delivery of goods is terminated if the goods were destroyed, lost, or prohibited to trade such goods which were beyond the ability of the obligor to prevent and preceded the delivery of the goods (Art. 1444 CC).
- The obligor bears the burden to proof any of those occurrence.

■ **Rescission**

- All contracts entered into by any incompetent party are void and must be declared void (Art. 1446 CC).
- The nullification of contract returns the parties to their original positions (Art. 1451-2 CC).

■ **Running of the statute of limitations**

- Thirty years after a contract concluded, all legal claims and obligations related to it are discharged (Art. 1967 CC).

■ **Occurrence of a canceling condition**



General Types of Contract (1)

The simplest type of contract involves only two parties and a single *causa* that can be executed immediately.

The following are other general types of contract recognized by the Civil Code:

■ Conditional contract

- The validity of which depends upon the occurrence of a specific future event (Art. 1253 CC). An example is a fire insurance agreement.

■ Temporal contract

- It is possible to stipulate as a condition that a contract will be implemented or terminated when a certain date has been reached (Art. 1268 CC). A common example is the labor contract.



General Types of Contract (2)

- Alternative contract

- Provides a selection of ways for a party to fulfill its obligation (Art. 1272 CC). An example is payment which to be made either by money or goods.

- Contracts entailing joint and several liability

- Occurs when several debtors are obliged to one creditor.
- Each of the debtors can be sued to pay the whole debt, the payment of which would free the other debtors from the creditor (but would indebt them to the debtor who paid).
- Exists either by an express provision (Art. 1282(1) CC) or by law, such as loan agreements (Art. 1749 CC), agent contracts (Art. 1811 CC), or partnership contracts (Art. 18 Commercial Code).



General Types of Contract (3)

■ Divisible and indivisible contracts

- Depends on the nature of the obligation (Arts. 1296-8 CC).
- All contracts are generally presumed indivisible unless otherwise stated. One which can only be performed as a whole – like delivery of a horse – is necessarily indivisible.
- The fact a contract can be performed in parts – like delivery of 20 kg of rice in two installments – does not necessarily mean it is divisible.

■ Contract with a punishment clause

- A common practice to insure the debtor fulfills his obligation properly (Art. 1304 CC).
- The punishment is usually in the form of cash and can be classified as damages that have been determined beforehand by the parties.



Special Contracts (1)

The following are types of contracts which are regulated separately in the Civil Code:

■ Contract of sale

- Whereby a party is agreed to transfer his property right in a certain goods to another, who is agreed to pay a sum of money for the goods transferred at a particular time and place (Art. 1457 CC).
- Concluded once the parties agree upon the goods and the price.
- The seller is responsible for all inadequacies and defects which must be notified within reasonable time.
- If seller fails to deliver the goods in time, buyer may claim for delivery and for damages. Buyer may also claim only for damages or for termination of the contract with or without damages (Art. 1480 CC).



Special Contracts (2)

■ Contract of hire-purchase

- Not provided in the Civil Code but has developed in practice.
- Enables the buyer to enjoy the goods immediately although the payment and the transfer of right are not yet completed.
- Payment is usually made in installments.
- If the buyer resell or mortgage the goods before he fully paid the price, he can be charged with embezzlement.

■ Contract of installment-purchase

- Similar to the above type except that transfer of right occurs once the goods are delivered.



Special Contracts (3)

■ Contract of lease

- One party delivers particular goods to another party to be used for a certain period who shall pay the rent periodically.
- The lessee is generally obliged to maintain the goods as if it belongs to him (Art. 1560 Commercial Code).
- Not involves ownership rights (*hak milik*) but rather lesser personal right such as right to build (*hak guna bangunan*).
- The lessee may not sublet without the lessor's approval.



Special Contracts (4)

■ **Contract of gift**

- One party freely and irrevocably deliver particular goods to another who accepts it (Art. 1666 CC).
- The giver cannot terminate the contract unilaterally and cannot burden the receiver with a certain obligation.
- Must be done *gratis* i.e. without money payment
- Must be drawn before a notary in case of immovable goods.



Special Contracts (5)

- Contract of free loan
 - Not binding until the goods are delivered of which one lends it with no charge.
 - The borrower must take care of the goods as if it were his own and must return it in the original condition at the end of the agreement.
 - If the goods are irreplaceable, its right remains with the lender (Art. 1741 CC).
 - The lender may request a court to order the return of the goods before the contract expired if he can show he urgently needs them (Art. 1751 CC).



Special Contracts (6)

■ Pledges and chattel mortgages

- Tangible or intangible goods can be pledged.
- Case law allows “fiduciary ownership” which mainly applies to personal property and also to land with the right to build and right to use.
- No formalities required.
- The pledged goods cannot be appropriated by the pledgee even if the pledgor were delinquent nor were contracted to that effect (Art. 1154 CC).
- If the debtor fails to fulfill its obligation, the creditor has the right to sell the goods at a public auction or, with permission of a court, to sell privately or just keep the pledge.
- Pledgee also has a lien on the pledge for any mature claim against the pledgor which were arise after the pledge made (Art. 1159 CC).



Special Contracts (7)

■ **Contracts of agency or representation**

- Authorizes the agent to do specified acts on behalf of the principal (Arts. 1792-1819 CC).
- No formalities required; may be made orally or may even be inferred from the fact. Special power of attorney is required only when it concerns disposition of immovable goods or appearance before a court.
- The agent is liable to his principal for damages caused by his own intentional wrongdoing or negligence.
- The acts of the agent within the scope of his authority are considered to be the acts of the principal. Thus the principal is bound to all obligations incurred by the agent while so acting and is responsible for the torts committed by the agent who was acting within his authority.



Special Contracts (8)

■ **Contracts of agency or representation (cont.d)**

- The principal must (i) compensate the agent according to reasonableness and custom unless the parties agreed otherwise, (ii) reimburse the agent for the expenses incurred, (iii) indemnify the agent for all losses reasonably assumed resulting from the agency.
- Bankruptcy of either parties terminates the agency.

■ **Contract of suretyship**

- One party guarantees another's debt to a third party.
- Generally concerns money only.
- Subordinate to the main contract.
- Responsibilities of the guarantor which are beyond that burdened by the guarantee are void (Art. 1822 CC).
- The guarantor is entitled to act as creditor against the guarantee once the guarantor performed a.k.a. subrogation.



Thank you