

Application The Principle of Pacta Sunt Servanda In Consumer Protection Indonesia

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Abstract: *An agreement is part of a contract that has legal consequences and is binding on the parties involved and also in the implementation of the existing agreement related to the law of property that is bound by the agreement that has been agreed upon. The agreement in question has met both formal and material requirements and if it is associated with consumer protection, the agreement of pacta sunt servanda in trading goods and/or services must bind and be bound by the agreement that has been made and not violate rights either intentionally or negligently. What has been agreed upon in the agreement usually concerns the costs that must be paid, the warranty period if the goods are damaged or defective and the availability of spare parts and replacements according to the price and quality of the goods and services that have been determined. This study uses normative juridical by reviewing literature and regulations from legislation by analyzing according to the problems to be studied. The result is that the agreement that has been agreed upon by the parties gets a guarantee or legal certainty because it is binding and must not be violated.*

Kata Kunci:

Asas, Pacta Sunt Servanda, Perlindungan, Konsumen.

Abstrack: Perjanjian merupakan bagian dari perikatan yang mempunyai konsekuensi hukum dan mengikat dari para pihak yang ada dan juga dalam pelaksanaan dari perjanjian yang ada berhubungan dengan hukum kekayaan yang terikat dari perjanjian yang sudah disepakati itu. Perjanjian yang dimaksud sudah memenuhi baik syarat formil dan materiil sudah terpenuhi dan jika dikaitkan dengan perlindungan konsumen maka perjanjian dari pacta sunt servanda dalam memperdagangkan barang dan atau jasa harus mengikatkan diri dan terikat dengan perjanjian yang sudah dibuat dan tidak melakukan pelanggaran hak baik karena kesengajaan maupun karena kelalaian. Yang sudah disepakati dalam perjanjian tersebut biasanya menyangkut biaya yang harus dibayarkan, masa garansi jika barang rusak atau cacat dan ada suku cadang dan pergantian sesuai dengan harga dan kualitas barang dan jasa yang sudah ditentukan. Penelitian ini menggunakan yuridis normatif dengan mengkaji literatur dan peraturan dari perundang-undangan dengan menganalisis sesuai dengan masalah yang akan diteliti. Hasilnya bahwa perjanjian yang sudah disepakati oleh para pihak mendapatkan jaminan atau kepastian hukum dikarenakan terikat dan tidak boleh dilanggar.



Introduction

The living needs of every person cannot be separated from the goods and services that will be purchased or consumed or even traded for use in daily life where it will be the main thing in every aspect of life, and because it is included in the primary or basic needs which are important in nature where the time to get it is not free but must spend money or costs and the hope is that it can be used or used or even enjoyed without any risk and does not cause loss or harm to someone.

But sometimes what is explained by the buyer to the consumer or agreed verbally often has a bad impact, because it is done verbally through information (Lira, 2023) and notification of the quality of goods and/or services that are not correct, makes the buyer unable to sue the seller because there is no strong and accurate evidence because there are no witnesses who saw or heard, making it difficult to sue the buyer who feels disadvantaged by the quality and the quantity of something desired and of course this is detrimental to consumers in relation to the protection that must be considered by providing their rights fairly and adequately.

Protection for consumers is everything that can be done to ensure that there is legal certainty to provide consumers with protection and the protection provided is part of their protected rights, where (Miru, 2008). The aim is to ensure that business actors or sellers or even producers do not take arbitrary action against buyers or consumers by providing something that is considered to guarantee the quality of the goods and services sold but in fact is not true, so that buyers feel deceived or receive incorrect or misleading information.

In fact, consumers have the right to receive protection in accordance with the provisions of Article 3 of Law Number 8 of 1991 concerning Consumer Protection and are free from actions that are dangerous as a result of purchasing or consuming goods and/or services, and there are 3 (three) basic rights in protecting existing consumers, where the three basic rights are (Renata, 2023):

- a. the right to prevent consumers from various losses, whether personal losses or property losses, where the loss suffered by consumers can be avoided as much as possible.
- b. the right to obtain goods and/or services at a reasonable price, where the reasonableness of the reasonable price will result in or be in accordance with the quality and standard of the goods and/or services available.
- c. the right to obtain or receive a proper resolution to a problem faced, where consumers who have problems or are in conflict with the law or with business actors receive a fair resolution and receive satisfaction from each of the disputing parties.

With the existence of these basic rights, then if consumers are truly the ones who are going to be protected, then the rights of consumers must be fulfilled by the state and also specifically for business actors and because the fulfillment of these rights will also provide protection for consumers from losses due to various things. aspects, to provide binding force between the existing parties in accordance with Article 1338 of the Civil

Code (Lusita, et. al. 2022). The provisions in this Article strongly suggest to the parties that the agreement must be based on good faith. In Black's Law Dictionary, good faith means honesty, openness, sincerity, and without any deceitful or fraudulent acts which are carried out sincerely, and without any engineering or pretense or mere lies.

So in its implementation, good faith also provides protection for both business actors and buyers so that there must be consistency and responsibility in implementing the contents of the agreement that has been agreed upon, whether there are any criminal acts committed and purely as is. The agreement that has been made or agreed upon must be implemented since the agreement was made, then it must be done (Subekti, 2001) with full consistency and no violations or negligence and if there are violations, sanctions will be imposed in accordance with the provisions of the existing violation.

This is intended to provide the extent of the binding force of the agreement in this *pacta sunt servanda* so that it can be used as a reference for those who carry out the agreement not to commit a default in accordance with what has been agreed upon where the parties are aware of it (Cindawati, 2014) full responsibility to carry out what has been jointly determined, because this is also the aim of consumer protection to be aware of the applicable ethics and legal norms, where every action taken that is not in accordance with what was agreed will result in existing consequences. Based on the introduction above, the formulation of the problem that will be studied is how is the application of the principle of *pacta sunt servanda* in consumer protection in Indonesia.

Research Methods

This research uses a type of normative juridical research using literature or book studies, and laws and regulations as well as theories and doctrines from experts, and can analyze the problem being researched and based on literature study

Discussion

The Principle of *Pacta Sunt Servanda*

Pacta Sunt servanda can be derived from Latin which means agreements must be kept, this principle is the basis (*ratio legis*) of the provisions of Article 1338 paragraph (1) of the Civil Code which stipulates that every agreement made legally applies as a law for those who make it. Where with the principle of *pacta sunt servanda* it is hoped that existing solutions can be resolved properly or a way out of the problems faced related to the agreement faced, and pay close attention to several provisions in the agreement. An agreement is a law for those who make it, which regulates the rights and obligations of a person (Hapsari & Kukuh, 2020) so that it can also be said to bind the parties involved in the existing agreement, and must be implemented with honesty and openness regarding the contents of the existing agreement, and not only that, in implementing the agreement, it is also very important to have good faith and full awareness in implementing it.

Clearly indicating that there is a denial of an existing obligation in an agreement, which constitutes an action that violates a promise or a breach of contract, where a breach of contract is defined as someone who is unable or cannot carry out or make a payment (Eleanora, 2020) due to negligence. This can also be interpreted as not being able to carry

out obligations also due to negligence. In fact, in implementing an existing agreement, it must be really considered that there is a correlation with the goods and services to be owned. Agreements and agreements that will be carried out or have been implemented cannot be withdrawn because they are binding, where this binding also means that the parties between the seller and the buyer must remain bound by the existing contents and cannot be undone because that is a violation and there is no good intention in implementing it according to what exists.

Because in the principle of *pacta sunt servanda* it cannot be separated from the good faith of a promise which can be illustrated by the provisions (Suhardana, et.al. 2024). where the parties making the agreement must be able to implement the provisions of the agreement in accordance with the content, spirit, intent and purpose of the agreement itself, where in making the agreement it can be easily understood by using good and correct Indonesian and is clear about the purpose of what will be agreed upon and agreed here can be implemented and adhered to with full awareness of good intentions.

Rights and obligations must and should be respected by the parties from each party as well as from third parties who may be given rights or burdened with obligations if deemed to exist, where because of the aforementioned binding, they respect each other and have mutual confidence to always comply with the contents and spirit of the existing agreement, and where this is also not violated or fraudulent, they will carry out the contents of what exists and comply with what exists and must be done in accordance with existing regulations and there is no indication of lying or taking advantage of (Khalish, et.al. 2023). (one of the parties which ultimately results in dishonesty in the existing agreement, and later on will be subject to the term default and must be carried out seriously to comply with, respect and carry out.

In carrying out actions that can hinder efforts to achieve the intent and purpose of the agreement itself, it is not permitted, either before the agreement comes into force or after the agreement comes into force in the future. This means that it has been thought about from the start when the agreement will be implemented or not and what the obstacles are must always be discussed between the parties to find a fair solution and there is benefit between the parties involved in providing or implementing the agreement that has been mutually agreed upon.

Conditions for the Validity of an Agreement

In the provisions of Indonesian law or in the Indonesian Civil Code (KUHPPerdata) in Article 1313, what is meant by an agreement is an act in which one or more people bind themselves to one or more people, and in an agreement between two parties, it also results in rights and obligations for each party or individual. And because an agreement is something that has permanent legal force, the agreement must be based on written provisions of the law, namely in Article 1320 of the Civil Code ([https://siplawfirm.id/syarat-sah perjanjian](https://siplawfirm.id/syarat-sah-perjanjian), 2024), regarding the conditions for the validity of an agreement, without any error or fraud or coercion, namely: the agreement

of those who bind themselves, the capacity of those who make the contract, a certain thing and a cause which is lawful or not prohibited.

The legal consequences of an agreement not being fulfilled will depend on the subjective conditions of a voidable contract (*vernietigbaar*) meaning whether it can be cancelled or not is left to the interested parties. Meanwhile, if the objective conditions are not met, the contract will be null and void by law, meaning that the contract from the start will be deemed to have never existed. So that the agreement made must also be truly implemented because if the agreement is made it can be considered as an act due to a breach of promise or default, and can also give the injured party the right to sue.

Every agreement must have an agreement between the parties, without any coercion, mistake or fraud. If these elements are present, then the agreement is considered invalid. Apart from that, every agreement is made by legally competent people or adults and does not conflict with the values of decency or public order and also in making agreements it must not conflict with decency and propriety.

Consumer Protection

In the legislation governing consumer protection in Indonesia, the term "consumer" is explained as a formal legal definition found in Article 1 number 2 of Law Number 8 of 1999 on Consumer Protection (abbreviated as UUPK) (Zulham 2013). UUPK states that "Consumers are every person who uses goods and/or services available in society, whether for the benefit of themselves, their family, other people or other living creatures and not for trading."

Consumers can be defined in 3 (three) meanings: (Liza, 2024).

1. Consumers in general are any person who obtains goods or services to achieve a certain goal.
2. Intermediate consumers are any person who obtains goods and/or services for use with the aim of making other goods/services or for trading (*commercial purposes*)
3. The final consumer is every person who in this case naturally obtains and also uses goods and/or services for the purpose of fulfilling their personal, family and/or household needs and not for re-sale (*non-commercial*)

The purpose of consumer protection also concerns the rights of consumers who do not feel disadvantaged and the existence of legal instruments that are also created to provide protection for consumers, the protection provided is not only related to the existence of guarantees and certainty in providing legal protection if there is bad intention from business actors or buyers in selling goods and/or services that are not as promised or desired (Gayo, et.al 2021). So that one party feels disadvantaged due to the existing actions. And to respond to the existing circumstances or events, there needs to be a legal device provided by the state to protect the rights of consumers. So that the rules provided are to protect consumers related to the fulfillment of compensation that will be obtained.

Compensation is demanded by consumers when a consumer feels very disadvantaged if the goods they purchased, for example, cannot be used properly or have

not been delivered within the specified time, then the goods are also damaged and there is no warranty period or the consumer cannot obtain spare parts. What is even more sad is that the money that has been used to purchase goods and/or services cannot be returned or only returned in full but there is no benefit obtained by the consumer in this case.

The existence of such losses means that consumers can sue to get what is their right, so if the business actor or distributor has bad intentions or deliberately carries out an action that clearly harms the consumer's rights (Hartanto, et.al. 2023) by consuming expired food and causing poisoning and illness for consumers, then this is also a good intention from the seller to make efforts to compensate for losses, by providing medical and hospital costs and other treatment costs which are also carried out properly and with full responsibility.

Moreover, if the business actor does not want to make compensation, it will be continued to the court process, but if there is awareness from the business actor or seller to carry out compensation, then the method that can be taken is through family or deliberation through mediation so that they can restore each other without having to go through the law enforcement process but through mediation, but if no agreement is reached, then it will be carried out through the courts.

Implementation of the *Pacta Sunt Servanda* Principles in Indonesia

Agreements are not only carried out conventionally but can also be carried out unconventionally and are indeed carried out online using technological means or internet media due to the sophistication of technology, and usually buying and selling is carried out via e-commerce (Hasibuan & Lilawati, 2024). (and the parties can reach an agreement by selecting the agree button on the agreement via the internet or by directly sending confirmation via email, and where in the bargaining process discussing the conditions for binding an agreement made based on information technology law as stipulated in Law Number 11 of 2008 concerning information and electronic transactions as amended by Law Number 19 of 2016

The implementation of the principle of *pacta sunt servanda* is due to the existence of legal protection which is automatic and when the agreement is executed legally and convincing for the parties and observed through the existing form, where the form of the principle of *pacta sunt servanda* that exists where the parties involved in the agreement must be in accordance with the content, spirit and also the existing objectives so that the content and spirit must be focused on the existing agreement to determine (Barkatullah, 2018), how to respond to the contents of the agreement must be in accordance with the basics of the agreement in accordance with the regulations that have been set. Respect the rights and obligations of the parties who signed the existing agreement and do not take actions that can hinder the contents of the agreement that has been made and avoid actions or deeds that violate morality and propriety and decency

Legal protection as applied in agreements regarding the rights and obligations between buyers and sellers, both online and unconventionally, of course in the provisions on compensation, both in the provisions of civil law and obligations, that in Book III of

the Civil Code (Syamsiah, et.al. 2023). which discusses legal protection between sellers and buyers who are considered to have violated the provisions in existing regulations if they violate the provisions in the principle of *pacta sunt servanda* if they are considered to have violated the provisions and contents of the agreement. Legal protection is more directed towards protecting a person's rights, including sellers and buyers, where if there is a violation of the rights that are violated and the consequences are due to the rights that are considered to have been violated (Adolf, 2006) as must be agreed but not implemented, and not only applies to the buyer but also to the seller.

Law enforcement if it is proven that there has been a violation of rights and the perpetrators of the violation will be subject to strict and clear criminal sanctions so that the restoration of existing rights runs well in relation to Law enforcement does not only discuss criminal sanctions given to the guilty party but also other compensation such as rehabilitation, as well as compensation and restitution given to buyers by looking at the level of loss that exists and the magnitude of the loss seen and for the sake of upholding the rights of the interested parties so that their rights can be restored.

Conclusion

1. The application of the principle of *pacta sunt servanda* in consumer protection is based on good faith and responsibility in carrying out and respecting the rights and obligations that have been stated in the agreement. And there is no violation of propriety, morality and politeness so that there needs to be good intentions in carrying it out. If there is a violation, either due to intent or negligence in violating the agreement.
2. Legal protection as regulated in the Civil Code, the Consumer Protection Law and the Electronic Information and Transactions Law provides protection for consumers who feel disadvantaged by business actors or buyers in relation to agreements that are carried out conventionally and unconventionally which are felt to have been violated by business actors or sellers and vice versa.

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