

The Legal Dynamics of Pacta Sunt Servanda in Community Agreements

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Abstract : *Pacta Sunt Servanda is one of the principles applied in agreements made by the community. However, the fact is that many people do not know about this principle when making transactions in agreements. This study aims to examine the implementation of the Pacta Sunt Servanda Principle in the Agreement of the Sawai Village Community, North Seram District, Central Maluku Regency. The research method used is sociological legal research, which is a combination research method between doctrinal legal research methods and empirical legal research methods. The implementation of the principle of pacta sunt servanda in Sawai Village, North Seram District, Central Maluku Regency, both in land rights agreements and other agreements in the community must always be socialized as a form of binding agreements that are often made by the community in order to minimize disputes because one party feels disadvantaged and wants to renege on the agreement.*

Keywords : *Pacta Sunt Servanda Principle, Community Agreements.*

Abstrak : Pacta Sunt Servanda merupakan salah satu asas yang diterapkan dalam perjanjian yang dibuat oleh masyarakat. Akan tetapi, pada kenyataannya banyak masyarakat yang belum mengetahui asas ini ketika melakukan transaksi dalam perjanjian. Penelitian ini bertujuan untuk mengkaji penerapan asas Pacta Sunt Servanda dalam Perjanjian Masyarakat Desa Sawai, Kecamatan Seram Utara, Kabupaten Maluku Tengah. Metode penelitian yang digunakan adalah penelitian hukum sosiologis, yaitu metode penelitian gabungan antara metode penelitian hukum doktrinal dengan metode penelitian hukum empiris. Penerapan asas pacta sunt servanda di Desa Sawai, Kecamatan Seram Utara, Kabupaten Maluku Tengah, baik dalam perjanjian hak atas tanah maupun perjanjian lainnya dalam masyarakat harus selalu disosialisasikan sebagai salah satu bentuk pengikatan perjanjian yang sering dibuat oleh masyarakat guna meminimalisir terjadinya perselisihan karena salah satu pihak merasa dirugikan dan ingin mengingkari perjanjian.

Kata kunci : Prinsip Pacta Sunt Servanda, Kesepakatan Komunitas.



I. INTRODUCTION

Humans as part of a group of people who are then known as Legal Subjects certainly cannot be separated from all legal actions in all social interactions carried out. As a Legal Subject, humans cannot be separated from all legal acts. one of the most common legal acts is to make an agreement or contract in order to meet the needs and survival or in order to obtain profits.¹ Contracts or agreements made both in writing and orally are concrete events that can be observed and experienced in everyday life in society.² one of the most frequently performed legal acts is entering into an agreement or contract in order to meet the needs and survival or in order to obtain profit. Contracts or agreements made both in writing and orally are concrete events that can be observed and experienced in everyday life in society.

Agreement according to Article 1313 of the Civil Code is an act in which one or more people bind themselves to one or more other people. Based on this understanding, the agreement is interpreted as a relationship or agreement of the parties who mutually agree on a matter that has been determined together. This contract or agreement is a legal event where someone promises to do or not do something.³ In every agreement with the intention that in every agreement that has been made and agreed upon by the parties must be carried out in good faith, as specified in Article 1338 paragraph (3) of the Civil Code which states that all agreements must be made in good faith. Based on this article, it can be concluded that good faith is the basis for implementing the agreement. The parties in making and implementing the agreement must pay attention to the principle of good faith, namely in carrying out the agreement must heed the norms of compliance and decency. Regarding the implementation of the principle of good faith which is closely related to propriety, it is also explained in Article 1339 of the Civil Code which states that an agreement is not only binding for matters expressly stated in an agreement, but also binding for everything that by the nature of the agreement is required by decency, custom and law.⁴

The regulation of Article 1338 paragraph (3) of the Civil Code is an embodiment of the legal principle in an engagement, namely the binding of an agreement like a law for

¹ Akyuwen, R.J., Panjaitan, W.N., & Nabila, S.H. (2023). The Principle of Good Faith in Transactional Agreements in the Community of West Seram Regency. *Batulis Civil Law Review*, 4(2), 119-128. DOI: <https://doi.org/10.47268/ballrev.v4i2.1842>

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³ Dr. Ahmadi Miru, S.H., M.S. *Contract Law and Contract Drafting*, PT RajaGravindo Persada, Jakarta, 2016, pp. 2.

⁴ Abdulkadir Muhammad. *Law of Association*, Bandung: Citra Aditya Bakti. 2000, p. 238.

each party who has agreed upon it or better known as the principle of *Pacta Sunt Servanda*. Legal principles according to Satjipto Rahardjo as quoted by Fence M. Wantu who argues that "legal principles are not legal rules, but no law can be understood without knowing the legal principles that exist in it"⁵, then likewise in an agreement in order to be understood and understood together, it is important to know that the principle of *pacta sunt servanda* which is also regulated in 1338 Civil Code is a binder in the steps of the parties to make an important contract to be implemented in the future.

The people of Sawai Village, North Seram Subdistrict, Maluku Regency generally often conduct transactions in the form of loan and borrowing agreements by relying on garden produce as a method of debt repayment, but there is an imbalance in the implementation of the contract where the contract that occurs most often is an oral contract in addition to a written contract, and this has the potential to cause potential conflict in the future, especially because the method of debt repayment used is natural products that cannot be predicted with certainty the amount of yield and condition.

The implementation of the principle of *pacta sunt servanda* in an agreement prioritizes every element in the contents of the agreement between the two parties to be balanced and proportional without harming or only benefiting one party. Because the agreement is the determinant of the occurrence or birth of an agreement, this means that if there is no agreement, there will be no contract between them. Even though there is an agreement between the parties that gives birth to an agreement, there is a possibility that the agreement that has been reached has a defect or what is commonly called a defect of will or a defect of agreement due to the occurrence of a mistake or error that occurs due to the intent of one of the parties regarding a matter that is wrong but left unchecked without any good faith to correct it.

⁵ Dr. Fence M. Wantu, S.H., M.H., Textbook of Introduction to Legal Science, Publisher: Reviva Cendikia, 2015, p. 25.

II. RESEARCH METHODS

The research method used is sociological legal research, which is a combination research method between doctrinal legal research methods and empirical legal research methods.⁶ Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem under study.⁷ Empirical research is intended to determine the implementation of the principle of Pacta Sunt Servanda in community agreements, namely by selecting a sample population, especially Sawai Village, North Seram Subdistrict, Central Maluku Regency with the consideration that at that location there are many legal actions of the community that make transactional agreements.

III. RESULTS AND DISCUSSION

3.1 Urgency of *Pacta Sunt Servanda* Principle in Agreement.

An agreement can be interpreted as a promise made and executed by the party who promises to the party who accepts the promise. Agreement when viewed from its definition in the legislation is contained in Article 1313 of the Civil Code which states that: "an agreement is an act by which one or more people bind themselves to one or more other people".⁸ Based on theory, in an agreement there are 5 (five) principles known according to civil law. These five principles include: the principle of freedom of contract, the principle of consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of personality, and the principle of good faith.⁹ The principle of *pacta sunt servanda* is one of the fundamental principles in the law of agreements derived from Latin, which literally means "agreements must be obeyed." This principle emphasizes that every valid agreement made by the parties must be implemented with full responsibility. In the context of Indonesian law, this principle is one of the main bases underlying all contractual relationships regulated in the Civil Code (KUHPer).

The urgency of this principle lies in its ability to provide legal certainty for the parties. When two parties agree to bind themselves in an agreement, they indirectly

⁶ Irianto, "Introducing Sociolegal Studies and its Methodological Implementation", Jakarta, 2018, Legal Research Methods Constellation and Reflection, p.32.

⁷ Ronny Hanitijo Soemitro, "Legal Research Methodology and Jurimetry" Jakarta: Ghalia Indonesia, 1990, p.13.

⁸ Niru Anita Sinaga, "The Role of the Principles of Agreement Law in Realizing the Purpose of the Agreement", Binamulia Hukum Journal, 2018, p. 111. 111.

⁹ M.Muhtarom, "Principles of Agreement Law: A Foundation in Contract Making", SUHUF Journal, 2014, p.50.

create legal obligations that must be obeyed. This principle creates confidence that each party will fulfill what has been agreed upon, thus minimizing the risk of uncertainty that can disrupt business and social relationships. Thus, the principle of *pacta sunt servanda* serves not only as a legal norm, but also as an ethical norm that guides the parties' behavior. One of the legal bases of the *pacta sunt servanda* principle can be found in Article 1338 of the Civil Code, which states that "all agreements made legally shall apply as laws to those who make them." This shows that agreements are not just agreements between individuals, but also contain legal elements that are binding and must be obeyed. In implementation, this implies that if one party breaches the agreement, the injured party has the right to demand fulfillment or compensation in accordance with the applicable provisions. In many cases, violations of agreements often occur and ignore the principle of *pacta sunt servanda* which is a binding element in the agreement. For example, debt and credit agreements that often occur in social life, when making agreements, the two parties who promise are based on the principle of trust so that they easily agree with each other. What is rarely known is that every point of agreement made because of trust will be binding like a law and if there is no accuracy and certainty in making the debt and credit agreement, then when a dispute occurs in the future, the parties will violate each other or even deny the agreement they have made. That is why the principles in the Agreement are interrelated with each other, starting from the importance of the principle of good faith, freedom of contract, the principle of personality to the principle of *pacta sunt servanda* which complements the strength of the agreement.

The principle of *pacta sunt servanda* in agreements also has relevance in dispute resolution. When there is a dispute between contracting parties, the judge or arbitrator will refer to this principle as one of the main considerations in making a decision. The implementation of this principle helps to uphold justice and ensure that the aggrieved party gets proper protection. The legal process that refers to the principle of *pacta sunt servanda* provides clarity regarding the rights and obligations of each party, making it easier to reach a fair resolution. The principle of *pacta sunt servanda* is a bridge that connects agreements between parties who promise each other not to be broken.

Therefore, when the implementation of the principle of *pacta sunt servanda* can be applied, this principle previously underlined the importance of good faith in the implementation of the agreement. Good faith becomes an important element that must be upheld by each party so that actions taken by one party that do not reflect good faith can be used as a reason to challenge or cancel the agreement. This shows that the principle

of *pacta sunt servanda* involves not only formal obligations, but also includes moral aspects in contractual relationships. While this principle provides many advantages in making agreements, there are certainly some challenges in its implementation for the parties in the future. For example, in situations where one of the parties experiences a significant change in conditions, such as bankruptcy or an emergency, the fulfillment of treaty obligations may become difficult or even impossible. In this case, there needs to be a mechanism to evaluate whether the breach of the agreement is a result of the unforeseen condition. This often leads to legal debates on the line between contractual obligations and *force majeure* circumstances. In addition, there are times when dissatisfaction with the content of an agreement may arise after the agreement has been signed. In this situation, one party may feel that the agreed terms are no longer fair or balanced. Therefore, it is important to consider aspects of fairness and balance in the agreement, especially if the agreement is made for the long term, so it is necessary to take a deep look at the points of the agreement so as not to harm either party in the future. For example, what often happens in rural communities is an agreement to use land in the form of a coconut lease agreement and so on, where the party leasing the land planted with head trees is usually promised a certain amount of profit with a contract of several years. What needs to be observed is that the profit in one year may be different for the next few years. The leasing party must be careful not to suffer losses in the future as a result of an agreement that has already been signed and is then binding to comply with. Parties should commit to carefully negotiating the terms of the agreement, ensuring that all parties have a clear understanding of their rights and obligations.

The protection of individual and group rights in the context of agreements is also an important concern. In some cases, an unequal bargaining position between the parties can lead to one party being forced to agree to adverse terms. To overcome this, the principle of fairness is integrated into the agreement process, so that each party can feel equal protection in the contractual relationship. In practice, the implementation of the principle of *pacta sunt servanda* also requires high legal awareness from the parties. The community, which often acts as the parties, must fully understand the principles in the agreement stipulated in the Civil Code because it concerns the content of the signed agreement, including the risks and consequences that may arise. Therefore, the Village Head as the leader of the community is in dire need of education regarding agreements to be conveyed to the community who often make agreements in their daily lives.

The principle of *pacta sunt servanda* also serves as a reminder that treaty law cannot be separated from the social norms prevailing in society. When parties contract, they not only bind themselves in a legal relationship, but also interact in a broader social context. Therefore, the implementation of a good agreement must reflect the values upheld by society, such as honesty, justice and responsibility. Furthermore, when referring to technological developments in today's modern era, it also affects the way agreements are made and executed. With the advent of digital contracts and smart contracts, the concept of *pacta sunt servanda* has become increasingly relevant. Digital contracts, which are often automated and do not require human intervention, present new challenges regarding enforcement. However, this principle remains the foundation governing the relationship between the parties, albeit in a more modern format. A dynamic legal system that adapts and evolves along with technological changes also requires people in the village to participate dynamically in knowing the existing developments, especially on matters that are frequent and part of everyday life such as conducting transactional agreements. The enforcement of the principle of *pacta sunt servanda* in the digital era requires special attention, especially in terms of data protection, the validity of electronic signatures, and the recognition of automatically created contracts. With the right approach, this principle can remain relevant and function well in an increasingly complex world. From a researcher's perspective, further research on the implementation of the principle of *pacta sunt servanda* in various contexts and situations is also needed.

An understanding of the principles in agreements and how to deal with the challenges and opportunities faced in the practice of agreements will make a significant contribution to the development of legal science that is equitable for people throughout Indonesia, especially for people in villages. In the researcher's opinion, this can help strengthen the implementation of the principle of *pacta sunt servanda* in the context of positive law, as well as provide guidance for legal practitioners in navigating issues that arise in the field. The principle of *pacta sunt servanda* as a fundamental principle in agreement law not only creates obligations for parties, but also encourages the creation of more transparent and accountable relationships. In an increasingly connected world, the implementation of this principle becomes even more crucial in maintaining the integrity of transactions and protecting the rights of individuals in society.

3.2 Implementation of the *Pacta Sunt Servanda* Principle in Community Agreements in Sawai Village, North Seram District, Central Maluku Regency.

Sawai Village is the oldest village in Maluku which is also a Coastal State and is located in a bay with fairly calm waters. Sawai Village is located on the north coast of Seram Island where the residential area is surrounded by hills and forests.¹⁰ Negeri Sawai is also included in the Manusela National Park area so it is not surprising that its natural conditions are very well preserved. This country has a large petuanan which is a combination of six hamlets namely Rumaolat, Besi, Masihulan, Horale, Openg, and Olong. These hamlets are located within Sawai Bay and stretch from east to west on the coast with the following boundaries:

1. North to the Seram Sea
2. South with petuanan huaulu
3. East with petuanan wahai (kali putri)
4. West with petuanan saleman

The people of Sawai Village generally rely on marine products for their daily livelihoods. However, in addition to being fishermen, it is not uncommon for the community to rely on agriculture such as garden and forest products as an important source of income for their welfare. In carrying out these economic activities, the community often makes agreements between farmers, fishermen, and other parties involved in their activities. The agreements made by the community are usually made in oral form. However, these agreements are closely related to the principle of *pacta sunt servanda*, which emphasizes that valid agreements must be obeyed. The existence of agreements in natural resource management, such as revenue sharing or land use, creates the legal certainty needed to support community welfare.

The principle of *pacta sunt servanda* stipulated in Article 1338 of the Civil Code (KUHPperdata) provides legal consequences that a valid agreement must be fulfilled in accordance with the agreement of the parties. The principle of *pacta sunt servanda* is not only a moral issue in the agreement, but a legal issue that will occur if the achievement cannot be achieved by one of the parties, especially the debtor. In fact, if brought to the court, the judge cannot intervene in the contents

¹⁰ Wikipedia, https://id.wikipedia.org/wiki/Sawai,_Seram_Utara,_Maluku_Tengah, accessed on September 20, 2024, at 12.48 WIT.

of the agreement made by the parties.¹¹ In Sawai Village, the Pacta Sunt Servanda Principle is still unknown and less relevant in its implementation. The people of Sawa Village often conduct transactions in the form of agreements, most of which are made orally. The agreements that are often made usually include leasing agreements for agricultural land to be utilized by the tenant. The principle of pacta sunt servanda ensures that every agreement on land rights must be complied with according to the agreed provisions so that the applicability of this principle must also be known by the community, especially the people of Sawa Village as parties who often make agreements. Lack of knowledge of this principle can result in the fulfillment of the terms of the agreement so that it can potentially cause disputes between communities which can then have an impact on the harmony of relations between community members and disrupt social peace in the village.

As the principle of agreement in general, which is regulated in the Law of Agreement in the Civil Code, the principle of *pacta sunt servanda* is also relevant to be applied in community agreements in Sawai Village. Although the agreement may not always have formal documentation, it is still legally binding based on the principle of agreement stipulated in Article 1338 of the Civil Code. This is in line with the Civil Code, which does not formulate that agreements must be made in writing, but must be made based on agreement and fulfill the requirements as contained in Article 1320 of the Civil Code.¹² Agreements made and agreed by both parties will be binding and apply as law as stated in Article 1338 of the Civil Code.¹³ The community agreement made by the people of Sawai Village based on an interview with Baparaja (the name for the Village Head in Maluku) Sawai, Mr. Rahman Mukadar, stated that most of them are agreements between individuals such as agreements on Land Results. For example, agreements regarding leasing between communities of land products such as coconut trees, Sago Trees, and cengkeah trees with an annual period. In the implementation of the agreement, it is known that the community actually only relies on trust without knowing that in making an agreement it is mandatory to affix important points related to the implementation of the agreement until when a dispute occurs between them. These things are then binding

¹¹ Budiwati, Septarina, "The Pacta Sunt Servanda Principle and Its Binding Power in Business Contracts from a Transcendental Perspective". *Proceedings of the National Seminar on Transcendental Law* (2019), pp. 42-43.

¹² Panjaitan, Wijaya. 2024. "Legal Consequences of Default on Oral Agreement of Lending and Borrowing by Lovers Who Are Not Bound by Marriage". *PATTIMURA Legal Journal* 3 (1), 18-24. <https://doi.org/10.47268/pela.v3i1.13063>

¹³ *Ibid.*

until the agreement ends. However, the problem arises when the tenants of the garden land begin to realize that the agreed profit price at the beginning is no longer relevant for the following months, when the tenants question this, the renting party will argue that in the agreement they only promise the initial profit amount until the agreement ends. This issue of profit and loss should have been predicted and outlined in their agreement to minimize disputes. In this case, Baparaja Sawai usually resolves the dispute through consensus at Saniri Negeri, although according to his explanation in resolving this dispute it cannot always be successfully resolved at the direction of the village head, so the village head again leaves this issue to the two parties to the dispute which is then contained in a statement. In the researcher's opinion, Baparaja's role in this case is as a mediator who mediates disputes and then still leaves the best solution to the two disputing parties.

Based on Article 1338 of the Civil Code, the principle of *Pacta Sunt servanda* means that a valid agreement is not only binding on the parties, but also that the binding agreement must also be implemented in good faith. This means that all parties involved in land rights agreements in Sawai Village must fulfill their obligations in accordance with the agreement made without any element to deceive one of the parties with certain intentions. Based on the results of the interview with the Head of Negeri Sawai Village, the implementation of this *pacta sun servanda* principle in the context of community agreements faces challenges, such as limited information about the basis of the agreement and the absence of formal documentation when making the agreement. People who enter into agreements often do not think about the impact of the agreement when a dispute occurs because it is not included in the initial agreement. The dynamics that often occur in the social or economic structure of the village can make some agreements made by the community irrelevant or difficult to fulfill and then this will lead to disputes between communities. When a dispute occurs, the community usually requires the role of Baparaja Sawai as the Village Head as a mediator among the community to resolve the problem by consensus. However, the obstacle that is also often faced is that the Village Head only knows that there is an agreement between the community after a dispute arises. The community rarely involves the village head when making the initial agreement, even though this is important to ensure that the agreement remains effective and when a dispute occurs in the future, the Village Head can

mediate the problem more quickly and purposefully because he already knows the history of the agreement.

The implementation of the *Pacta Sunt Servanda* Principle in Negeri Sawai can be carried out effectively if the community and the local government work together to cooperate in the transactions carried out. People who want to make an agreement should involve the village head to participate in knowing the contents of the agreement and be involved as a witness who witnesses the agreement between individuals in the community. Conversely, the village head is also obliged to provide information and knowledge for the community regarding the benefits of an agreement should be done in writing so that the impact of an agreement made can be binding and minimize one party denying the contents of the agreement. The Village Head as the leader of the community is obliged to educate the community that the principles in the agreement will be the binding element of the validity of an agreement, so that the points in the community agreement must be made correctly and carefully so as to minimize disputes in the future.

IV. CONCLUSION

The implementation of the principle of *pacta sunt servanda* in Sawai Village, North Seram Sub-district, Central Maluku Regency, both in land product agreements and other agreements in the community must always be socialized as a form of binding agreements that are often made by the community in order to minimize disputes because one party feels disadvantaged and wants to renege on the agreement. Therefore, the village community must scrutinize the contents of the agreement without making the principle of trust the only binding basis in the agreement. The implementation of the principle of *pacta sunt servanda* faces challenges such as limited access to legal information, agreements that are often made orally that have the potential to be easily denied due to lack of evidence, and mechanisms in dispute resolution. The role of the Village Head as the *Baparaja*, who is respected and trusted by the community, is very important in improving the implementation of this principle in Sawai Village so that improved access to information and counseling about the law, as well as the provision of effective dispute resolution mechanisms can be carried out.

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