e-ISSN: 2550-0813 | p-ISSN: 2541-657X | Vol 10 No 1 Tahun 2023 Hal. : 187-200

NUSANTARA: Jurnal Ilmu Pengetahuan Sosial

available online http://jurnal.um-tapsel.ac.id/index.php/nusantara/index

CORRELATIONS OF APPLICATION OF PACTA SUNT SERVANDA LEGAL PRINCIPLES AND PERMITTED CAUSAL RELATIONS

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Abstract

The purpose of this research is to find out and analyze the legal consequences of articles that are contradictory or inconsistent with the legal principles in the agreement in Law no. 7 of 2011 concerning Currency and to find out and analyze the relationship between the legal principles of Pacta Suntc Servanda and the non-prohibited cause at statute no. 7 of 2011 concerning Currency in its application. The research method used is normative legal research The research result are: first, that the emergence of legal consequences from the existence of an inconsistency in the application of the principle of contract law contained in Law no. 7 of 2011 concerning Currency, creates inconsistencies in the application of legal norms. Second, that Article 23 substantially stipulates a prohibition against the use of the Rupiah currency, but on the one hand it can be applied the other way around. That reviewing from Jurisprudence No. 1/Yur/Pdt/2018, which states: "With the consistent compliance with the plaintiff's claim to the defendant to pay a sum of money in foreign currency, the court's order that grants the petition must comply with Article 21 Paragraph (1) of Law no. 7 of 2011 by adding the formulation of words which in essence "payments must be made in rupiah in accordance with the middle rate of exchange of Bank Indonesia at the time of execution of the decision. Third, Every person in entering into an engagement through an agreement or contract which in the agreement uses a foreign currency calculation, must also include in the agreement or contract the value of the payment obligation in rupiah currency at the time the agreement or contract is executed, so that there is no problem with the payment in the future and also correlates the legal terms of an agreement in the principle of a lawful clause so that the agreement is not legally flawed and/or even null and void by law itself.

Kata Kunci: correlation, currency and legal principles.

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DOI : 10.31604/jips.v10i1.2023.187-200

BACKGROUND

Principles can be identified by generalizing judge's decisions and by abstracting from a number of legal rules related to the same social problem. In other words, legal principles can be found from judges' decisions or positive law in general. Every positive law should contain legal principles, either explicitly (in the form of articles) or implicitly. Likewise in Law No. 7 of 2011 concerning Currency has limitations regarding criminal as well as civil matters as is the case in most existing laws. In Article 21 paragraph (2) it is stated there regarding exceptions to the use of Rupiah if this is a certain transaction in the context of implementing the state revenue and expenditure budget; receiving or giving grants from or to abroad; international trade transactions; savings in a bank in the form of foreign currency; or international financing transactions. Of the five exceptions, all of them have a civil element, which relates to the legal principle of engagement, as is the case with the exception contained in Article 23 paragraph (2) which very clearly states that anyone may refuse to use Rupiah if this has previously been agreed in writing. The difference lies in the territorial element or area where and where the agreement is made or addressed. Because in one article it clearly explains about the activities of agreements between countries, while the other only explains the legal principles of the agreement.

An indication of the blurring of legal norms in law no. 7 of 2011 contained in these two articles, also experienced by the judiciary in Indonesia. This is reflected in jurisprudence in 2018 where the judiciary in civil cases based on decision number No. 2992 K/Pdt/2015 dated 19 April 2016 presented the legal attitude of the judiciary towards the case, namely in the case between PT National Sago Prima *versus* PT Ion Exchange and friends. At the cassation level, the Supreme Court stated that it rejected the cassation request from the cassation applicant (defendant), but the Supreme Court corrected its ruling by converting the amount of compensation from previously using dollars to rupiah. Whereas in the main case there was no mistake in the decision at the *judex facti* just that the decision must follow the applicable laws and regulations, in terms of financial transaction activities, follow the rules of the Currency Law. Even though in Article 23 paragraph (2) there is a permissibility of transactions with foreign currency if it has been agreed upon, the Supreme Court does not refer to this, but focuses more on Article 21 paragraph (1), which also applies to decisions of judicial institutions.

By following him consistently in terms of the plaintiff's demand for the defendant to pay a sum of money in a foreign currency, the court order that granted the petitum must conform to Article 21 Paragraph (1) of Law no. 7 of 2011 by adding a formulation of the words which in essence payments must be made in the rupiah according to the middle exchange rate of Bank Indonesia at the time of execution of the decision, this legal position has become the jurisprudence of the Supreme Court. At present the Currency Law which has contradictory articles still adheres to the existing jurisprudential provisions, there has been no progress to amend the Currency Law or the issuance of a new regulation or a circular letter from Bank Indonesia regarding inconsistent that. Even so, at least there are parties who still want to pay attention to this situation, namely the Supreme Court through its jurisprudence.

Currency is a symbol of the sovereignty of a country. Rupiah is the currency of the State of Indonesia, which is used as legal tender in national economic activities aimed at realizing social welfare for all Indonesian people.

Article 23B of the 1945 Constitution of the Republic of Indonesia in Article 23B mandates that the types and prices of currencies are determined separately by law. These stipulations and arrangements are necessary to provide legal protection and certainty for the types and prices of currencies.

Law enforcement related to currency crimes, requires arrangements that provide a deterrent effect for perpetrators because the effects of these crimes have an extraordinary impact on the economy and the dignity of the nation as a whole. Therefore, the Government together with the DPR drafted and ratified Law no. 7 of 2011 as a concrete manifestation of the mandate of the 1945 Constitution and to achieve the value of state sovereignty from an economic perspective. However, in this currency law, it turns out that there is ambiguity in the norms (multi-interpretations) of rules that cause problems in their application in the life of the wider community.

In monetary terms, the supervisory task of using this currency is under the supervision of the Central Bank, in this case Bank Indonesia (BI). As stipulated in Bank Indonesia Regulation Number 17/3/PBI/2015 concerning Obligation to Use Rupiah in the Territory of the Unitary State of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2015 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5683) and the implementing provisions as stipulated in the Letter Bank Indonesia Circular Number 17/11/DKSP dated 1 June 2015. Bank Indonesia has the authority to oversee the implementation of State financial regulations, namely supervision of the compliance of each party in carrying out the obligation to use Rupiah and the obligation to list prices for goods and/or services in Rupiah. And in the PBI there is also only a brief explanation of the application of the rules in Article 21 and Article 23 of the Currency Law.

An irony, in one provision it regulates a matter that must be carried out while in another provision which regulates a prohibition in the same law actually degrades the value of this obligation by providing an omission of the meaning of the provision in the obligation rule by not considering that this has become a negation or denial of other provisions. The existence of provisions for exceptions in legislation is a normal thing, but if this does not make a statutory regulation become something that confuses the public, then the problem raised in this study is how is Article 21 and Article 23 of the Law enforced? Law No. 7 of 2011 concerning currency which is correlated with the legal principle of engagement in Sunt servanda as well as the relationship of legal norms in civil law and how to settle obligations in an agreement both inside and outside the court

METHODS

The method used uses normative legal research methods with the research approach used Approach to Law Number 7 of 2011 concerning currency which deals with problems with the inconsistency of the application of the Pacta Sunt Servanda Legal Principles and the Legal Principles of Law in a Permissible Cause besides that the case approach is a problem that is a concern of the judiciary related to the implementation of transactions using Rupiah currency, namely Court Decision No. 2992/K/Pdt/2015 in the case between PT National Sago Prima Versus PT Ion Exchange. The nature of this research is the blurring of norms or anatomical norms in the Law Currency No. 7 of 2011 with existing legal principles or there are inconsistencies in the application of legal norms in it, causing legal ambiguity and then giving conclusions so that the problem is clearly

illustrated in other languages, it is also called prescriptive. The primary legal material used is Law No. 7 of 2011 concerning Currency, Bank Indonesia Regulation No. 17 of 2015, Bank Indonesia Circular Letter No. 17 of 2015 and Court Decision No. 2992 K/Pdt/2015 while the main secondary legal materials are books, Journals of Law Journals related to this Research.

RESULTS AND DISCUSSION

Article 21 and Article 23 of the Currency Law from the standpoint of understanding civil law norms, permissible causes and from the point of view of the legal principles of the Pacta Sunt Servanda Agreement

Article 1320 of the Civil Code concerning the validity of an agreement does not explain the meaning of permissible causes. However, Article 1337 of the Civil Code states prohibited causes. A cause is prohibited if it conflicts with: law, decency, and public order. An agreement if it does not meet the subjective (individual) requirements, namely based on the agreement of both parties and the acting skills of the parties, then the agreement can be canceled. Whereas an agreement that does not meet objective requirements (a matter), namely an agreement made based on something that violates applicable regulations or norms, then the agreement must be canceled or canceled by itself by law.[2]

A cause that is allowed means that the object of the agreement must be something that is permissible both by law and by applicable norms. The purpose of the causation allowed in Article 1320 of the Civil Code is not due to a reason/cause that encourages people to make agreements, but the contents of the agreement itself which is the goal to be achieved by the parties and that is what is controlled by law.[3]

The cancellation of an agreement due to the non-fulfillment of the subjective conditions of the agreement has the meaning that if one of the parties requests the cancellation of the agreement that has been agreed to in court, but if the parties have no objections, then the agreement is still considered valid. Whereas the cancellation of an agreement due to non-fulfillment of the objective conditions of the agreement has the meaning that from the beginning it was considered that an agreement or agreement had never been born or made.[4]

The Currency Law has criminal as well as civil limitations as is the case in most existing laws. In Article 21 paragraph (2) it is stated there regarding exceptions to the use of Rupiah if this is a certain transaction in the context of implementing the state revenue and expenditure budget; receiving or giving grants from or to abroad; international trade transactions; savings in a bank in the form of foreign currency; or international financing transactions. Of the five exceptions, all of them have a civil element, which relates to the legal principle of engagement, as is the case with the exception contained in Article 23 paragraph (2) which very clearly states that anyone may refuse to use Rupiah if this has previously been agreed in writing. The difference lies in the territorial element or area where and where the agreement is made or addressed. Because in one article it clearly explains about the activities of agreements between countries, while the

[2] Djaja S, Meliala, 2008, Perkembangan Hukum Perdata Tentang Orang Dan Hukum Keluarga, Bandung, CV Nuansa Aulia, hlm. 95

[3] Komariah. 2002. *Hukum Perdata*. Malang : Universitas Muhammadiyah Malang. hlm. 175 s/d hlm.177.

[4] *Ibid.*

other only explains the legal principles of the agreement.

Regarding the similarities and differences contained in the intended articles and paragraphs of the Currency Law, both of which have elements of the legal principles of engagement, but are inconsistent in their application because both are an exception to a matter that is required, the following is a simple explanation :

1. Article 21 paragraph (1) confirms that the use of Rupiah must be carried out in every transaction that has the purpose of payment; settlement of other obligations that must be met with money; and/or other financial transactions, and all of these are, of course, transactions carried out within the country and do not have the purpose of transaction activities for inter-state interests. Because in paragraph (2) it is emphasized that this is an exception.
2. Article 23 paragraph (1) emphasizes that it is prohibited for anyone who has no doubts about the authenticity (physical form) of an amount of Rupiah to refuse to accept the money, this of course regulates payment transactions in cash and are made within the country and have no purpose. transaction activities for interstate interests. Because the nature of this article is more of a prohibition and of course it is obligatory to support things that are obligatory as one of them is the obligation contained in article 21. However, in article 23 there is a distortion or reduction (depreciation/reduction) of the meaning the interrelatedness of a prohibition with obligations, namely in paragraph (2) which very clearly directs that everyone may refuse to use the Rupiah currency if the payment transaction activity is based on an agreement in the form of a written agreement governing payments using foreign currency (currency).

In the following, the author tries to describe things as a result of the conflict contained in paragraph (2) of article 23 of the Currency law when viewed from the 2 main legal principles of engagement, as follows:

a) Permissible Causal Principle

Because the foundation of this principle is something that is permissible in terms of rules and norms, so that if there are parties who want to agree and make a written agreement/agreement in which on the premise both parties want payment using foreign currency on the grounds that the value is higher, then the implementation of the agreement is threatened with being unable to be carried out due to ambiguity which part of the rules are to be used in the Currency law because the related purpose of the agreement is the implementation of the activities of a payment transaction.

b) Principle of Legal Certainty (*Pacta Sunt Servanda*)

Due to the unclear (absurd) laws and regulations related to payment transactions, so that the activity of making agreements is threatened. Meaning, the principle of legal certainty for an agreement does not exist. Whereas the problem is that if there is an agreement made between interested

parties in terms of fulfilling rights with the method of payment in foreign currency, then the agreement cannot be implemented because the norms contained in the provisions of Article 21 of the Currency law require that the use of the Rupiah currency in terms of all transactions.

So that it is contrary to the legal principle of *Pacta Sunt Servanda* contained in the provisions of Article 1338 paragraph (1) of the Civil Code which states that "all agreements made legally apply as laws for those who make them". Whereas if it is also reviewed regarding the relation to the legal principle of a permissible cause whose application rests on Articles 1320 and 1337 of the Civil Code, then the agreement can be canceled or canceled by itself for the sake of law. If these two main legal principles cannot be implemented, then the other legal principles of engagement will certainly not work as well.

That due to the inconsistency contained in the articles of Law No. 7 of 2011 concerning Currency, creates erroneous and confusing legal interpretations in practice. So the concept of justice, certainty and legal benefits of the Currency Law and its application is still something that is only something that is aspired to (*das sollen*) rather than something that can actually be felt or implemented (*das sein*) by the wider community, law actors and legal practitioners. Whether it's for those who are in the legal institutions of the State or those outside it.

Completion of Obligations from an Agreement Based on Other Positive Laws, either inside or outside the Court of Justice

. Law exists for every human being anywhere on earth. However primitive, and however modern a society must have laws. Therefore, the existence (existence) of law is universal, law cannot be separated from society, in fact it has a reciprocal relationship.[5] The law regulates human life from being in the womb to death. Even the final will of someone who has died is still governed by law. And the law regulates all aspects of people's lives (economic, political, social, cultural, defense, security and so on) and there is not a single aspect of human life in society that escapes the touch of law.

Legal consequences are the consequences caused by legal events. Because a legal event is caused by a legal action, while a legal action can also give rise to a legal relationship, a legal effect can also be interpreted as an effect caused by the existence of a legal action and/or legal relationship. More clearly, according to Syarifin, legal consequences are all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by the relevant law that have been determined or considered as legal consequences.[6]

Based on this description, in order to be able to determine whether or not a legal consequence has arisen, what needs to be considered are the following matters:

1. There is an act committed by a legal subject against a legal object or there is a certain consequence of an action, which consequence has been regulated by law
2. The existence of an act that is immediately carried out intersects with the

[5] Zaeni Asyhadie dan Arief Rahman, 2014, *Pengantar Ilmu Hukum*, Jakarta : PT Raja Grafindo Perkasa, hal. 21.

[6] Ishaq., 2008, *Dasar-Dasar Ilmu Hukum*. Cet. I. Jakarta : Sinar Grafika. hlm. 80

implementation of rights and obligations that have been regulated in law (law).

Discussing a legal consequence, the author raises a case for research, namely in a civil case which has become a jurisprudence with Register Number 1/Yur/Pdt/2018 which has something to do with the problem of inconsistency in the application of Article 21 and Article 23 of Law No. 7 of 2011 concerning Currency, with excerpts of the contents of the discussion as follows: until 2015 the Supreme Court did not question the lower court's decision (*judex facti*) which imposed a penalty for paying a sum of money in civil cases using foreign currency. However, in 2016 this attitude changed, the Supreme Court began to interpret that the provisions in Article 21 Paragraph (1) of Law No. 7 of 2011 concerning Currency is also binding for courts.

This legal position is contained in decision no. 2992 K/Pdt/2015 dated 19 April 2016 namely in a case between PT National Sago Prima *versus* PT Ion Exchange and friends. In this case the Defendant was declared by the district court to have committed a default and was sentenced to pay compensation to the plaintiff in the amount of money in foreign currency (US Dollars). The use of foreign currency is in accordance with the petition of the plaintiff. This decision was strengthened by the DKI Jakarta High Court. At the cassation level, the Supreme Court **stated that it rejected** the cassation request from the cassation applicant (defendant), but the Supreme Court corrected its ruling by converting the amount of compensation from previously using dollars to rupiah. These improvements were made with reference to article 21 Paragraph (1) of the Currency Law.

Following are the legal considerations in the decision:

- Whereas the reasons for cassation cannot be justified, the Judex Facti of the Jakarta High Court which upheld the South Jakarta District Court did not misapply the law, because the Plaintiff/Respondent for Cassation was able to prove that the Defendant/Applicant for Cassation had defaulted based on the "*Agreement for supply of machine and equipment"*, dated August 26, 2010;
- Whereas however, the amount of compensation to be paid by the Defendant/Applicant for Cassation to the Plaintiff/Respondent for Cassation must be in the form of rupiah currency, not in the form of United States (US) dollars because based on Article 21 of Law Number 7 of 2011 concerning Currency, Rupiah must used for the settlement of obligations that must be fulfilled with money made in the territory of the Unitary State of the Republic of Indonesia. The Panel of Judges is by law bound by the provisions of that article by requiring the parties to comply with Article 21 of Law Number 7 of 2011. Therefore, the Judex Facti decision must be corrected as far as compensation is concerned, namely it must be in Rupiah based on the exchange rate determined by Bank Indonesia on the date -the date the Plaintiff/Respondent of Cassation made payments to vendors (P-13A, P-13B and P-13 C) and other payments

made by the Plaintiff dated 20 October 2011 (P-14).

This legal position was followed in the Judicial Review decision No. 168 PK/Pdt 2016 dated 15 June 2016 namely between Aan Rustiawan and friends *versus* Hafrizal Chaniago and friends. In this case previously at the cassation level the Supreme Court granted the plaintiff's claim and ordered Defendant I to receive payment for the purchase of shares from the plaintiffs in dollars. In this Judicial Review (PK), even though the Supreme Court rejected the PK application, the Supreme Court revised the special cassation ruling on the use of currency in its decision by referring to Article 21 Paragraph (1) of the Currency Law. Following is the consideration of the Supreme Court in the PK stage:

- However, the petitum Judex Juris Number 7 insofar as it relates to the payment in United States dollars by the Plaintiffs to Defendant I, namely US$ 550,000.00 (five hundred and fifty thousand US dollars) must be changed in currency rupiah;
- Based on Article 21 paragraph (1) of Law Number 7 of 2011 concerning Currency: "Rupiah must be used in settling obligations that must be fulfilled with money";
- Based on the Bank Indonesia Transaction Exchange Rate on December 14, 2007, namely the date of sale and purchase of 1 (one) US dollar share equal to IDR 9,382.00 (nine thousand three hundred eighty two rupiah), then $ US 550,000.00 (five hundred fifty thousand dollars) United States of America) equal to IDR 5,160,100,000.00 (five billion one hundred sixty million one hundred thousand rupiah);
- Thus the Judex Juris decision must be corrected insofar as it concerns payments in the form of United States dollars into rupiah currency

The issue of using foreign currency in this decision was then discussed by the Civil Chamber in a Chamber Plenary Meeting on 22-24 November 2017. From the discussion the Civil Chamber agreed to strengthen the legal stance of the Supreme Court in the 2 previous decisions by adding a stipulation that conversion was not carried out by the court, but In the amar, an order was added to the party being punished to convert to the rupiah currency according to the Bank Indonesia middle rate on the day and date the payment was made (see SEMA No. 1 of 2017). Shortly after the Plenary Meeting of the Chamber, the Supreme Court again revised the appeal decision at the Reconsideration stage, namely in decision No. 663 PK/Pdt/2017 dated 27 November 2017. Following is the Supreme Court's consideration in the decision:

- Whereas however, the 3rd order of the East Jakarta District Court which sentenced Defendants I and II Reconvention/Plaintiff I and the Convention to pay the principal debt and interest in the amount of AUD3 .187,200 must be supplemented with the following wording: “paid in rupiah according to the Bank Indonesia middle rate prevailing at the time the payment was made;
- Whereas for payment of debt in the form of money, it is mandatory to use the rupiah currency in accordance with the instructions of Article 21

paragraph (1) of Law Number 7 of 2011 concerning Currency.

This legal stance was reaffirmed in several other Supreme Court decisions, including decision No. 728 PK/Pdt/2017 December 22 2017, 3273 K/Pdt/2017 January 11 2018, 3340 K/Pdt/2017 January 24 2018, along with 135 PK/Pdt/2018 March 28.

Jurisprudence

2018.consistent in terms of the plaintiff's demand for the defendant to pay a sum of money in a foreign currency, the court order that granted the petitum must conform to Article 21 Paragraph (1) of Law no. 7 of 2011 by adding a formulation of the words which in essence payments must be made in the rupiah according to the middle exchange rate of Bank Indonesia at the time of execution of the decision, this legal position has become the jurisprudence of the Supreme Court.

Following is the decision of the Supreme Court with similar considerations:

- **Year 2015 |** 2992 K/Pdt/2015
- **Tahun 2016 |** 168 PK/Pdt/2016
- **Tahun 2017 |** 663 PK/Pdt/2017 & 728 PK/Pdt/2017
- **Tahun 2018 |** 3273 K/Pdt/2017; 3340 K/Pdt/2017 & 135 PK/Pdt/2018

In the past, it has become customary for claims of this kind in the past when the court granted the demands of the parties, the nominal amount of money decided also follows the currency used by the parties in the claim. Pursuant to Article 21 paragraph (1) of the Currency law; "Rupiah must be used in settlement of obligations that must be met with money".

In a rule of law, it is possible for the blurring of norms to result in inconsistencies in the regulatory foundation of a rule of law. Likewise in Indonesia which adheres to the Continental European or Civil Law legal system. Where the statutory regulations are used as the main source of regulations. Therefore, it is possible in laws and regulations to have blurred norms which result in inconsistencies in the application of legal norms.[7]

As a result of the blurring of norms which results in inconsistency which has problems in the form of problems regarding the existence of a trait that conflicts with legal norms, causing it to become blurred and unclear. The obscurity of norms that results in inconsistency in the application of legal norms is the existence of discrepancies or contradictions between the applicable legal rules, so that the legal rules become vague.[8]

The blurring of norms that result in inconsistency in the application of legal norms in statutory regulations can also result in public confusion in understanding these regulations. This confusion in society has resulted in non-optimal laws and regulations in resolving a problem that occurs. So because of that it affects the legal balance that lives in the midst of society because it can lead to different interpretations from law enforcers, especially judges of statutory regulations.

Certainty and clarity in laws and regulations and the jurisprudence of

[7] Dhaniswara K. Harjono, 2008. *Pengaruh Sistem Hukum Common Law Terhadap Hukum Investasi dan Pembiayaan di Indonesia*, Jakarta: Lex Jurnalica Vol. 6 No.3, hlm. 184-185.

[8] *Ibid.*

judges are needed, in order to maintain the balance of legal regulations in society. If a regulation with other regulations is unclear or unclear, then this can affect the existing legal system in Indonesia. Legislation is a legal substance that provides regulations regarding individual rights and obligations. Therefore, it is expected that the ambiguity of norms which results in inconsistency in the application of legal norms in the rule of law does not occur. Legal certainty in a regulation can be seen from the hierarchy in the order of existing laws and regulations.

That it is clear according to the principle that regulations that have a lower order may not conflict with regulations of a higher position. This is in accordance with article 7 paragraph (1) of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation that the types and hierarchy of Legislation consist of:

1. the 1945 Constitution of the Republic of Indonesia
2. Decree of the People's Consultative Assembly
3. Laws or Government Regulations in Lieu of Legislation
4. Government regulations
5. Presidential decree
6. Provincial Regulation, and
7. Regency/City Regional Regulations

Based on the order of laws and regulations, the regulations at the lowest position may not conflict, as is the case with the brief review above. So that if there is a discrepancy between the laws can be done by means of synchronization. From Article 1320 paragraph (4) jo 1337 it can be concluded as long as it is not regarding a clause that is prohibited by law or contrary to good decency or public order, then everyone is free to question it. The Indonesian Civil Code and other laws do not contain provisions that require or prohibit a person from entering into an agreement or requiring or prohibiting not being bound by an agreement. The application of the principle of consensualism according to Indonesian treaty law establishes this freedom.

Without the agreement of one of the parties making the agreement, the agreement made is invalid. People cannot be forced to agree. An agreement given by force is a *contradiction in terms*. The existence of coercion indicates the absence of agreement. What the other party may do is to give him a choice, namely to agree to be bound by the said agreement or refuse to be bound by the intended agreement or refuse to be bound by the intended agreement, with the result that the desired transaction cannot take place. In Indonesia, the principle *of Pacta Sunt Servanda* and the principle of freedom of contract are contained in Article 1338 of the first sentence of the Civil Code which contains a normative provision that "all agreements made legally apply as laws to those who make them". According to Sutan Remy Sjahdeini this principle includes the following scope:[9]

1. Freedom to make or not to make agreements.
2. The freedom to choose the party with whom he wants to make an agreement.
3. The freedom to determine or choose the cause of the agreement to be made.
4. Freedom to determine the object of the agreement.
5. Freedom to determine the form of the agreement.

[9] Sutan Remy Sjahdeini, 1993. *Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*, Jakarta : Institut Bankir Indonesia, hlm47.

6. The freedom to accept or deviate from the provisions of the law is optional (*aanvulled*, *optional*).

The principle of *pacta Sunt servanda* and the principle of freedom of contract frees the parties to determine what they want to agree on and at the same time determines what is not desired to be included in the agreement where the results of the agreement cannot be withdrawn other than with the agreement of both parties and the agreement can also apply legal as law for those who have agreed, but the implementation of this principle is not carried out without limits. Udin Silalahi said that the principle of freedom of contract for each individual has two meanings at once, namely the freedom to make an agreement and the freedom to make the contents of the agreement. The principle of freedom of contract contained in Article 1338 the first sentence of the Criminal Code is interpreted and understood systematically with other articles in the Criminal Code, namely:[10]

1. Imperative provisions that determine the terms of the validity of the agreement (Article 1320 of the Criminal Code).
2. Limitative provisions prohibiting the making of agreements without cause or causation or making agreements based on prohibited causes or causes, resulting in the law of the agreement not having binding force (Article 1335 of the Civil Code).
3. Limitative provisions that determine that a cause is prohibited, if it is prohibited by law or if it is contrary to decency or public order (article 1337 of the Civil Code).
4. Imperative provisions that require an agreement with nature, propriety, custom and law (Article 1339 of the Civil Code).
5. Enumerative provisions governing matters that according to custom are forever agreed to be tacitly included in an agreement known as "*bestendig gebruikelijk beding*" (article 1347 of the Civil Code).

Agreements/contracts in their most classical form are seen as expressions of human freedom to choose and enter into agreements. The new paradigm of contract law arises from the following two propositions:[11]

1. Every contractual agreement entered into is valid (*georloofde*); and
2. Any contractual agreements entered into freely are fair and require statutory sanctions.

Two aspects arise in contracts: First, freedom (as much as possible) to enter into a contract. Second, the contract must be treated as sacred by the court, because the parties are free and there are no restrictions in entering into the contract. Thus the principle of freedom of contract and the sanctity of*contracts*became the basis for the entire contract law that was developing

[10] M. Udin Silalahi, 2003, "*Dasar Hukum Obligation To Contract*", Artikel, Jurnal Hukum Bisnis Vol. 22, No. 2, hlm 92.

[11] Adrian Sutedi, 2014, *Aspek Hukum Pengadaan Barang & Jasa dan Berbagai Permasalahannya, Sinar Grafika*, Jakarta. hlm 47-48.

at that time. In other words, their orientation is chastity and freedom of contract.[12]

At present the Currency Law which has contradictory articles still adheres to the existing jurisprudential provisions, there has been no progress to amend the Currency Law or the issuance of a new regulation or a circular letter from Bank Indonesia regarding the consistent articles. . Even so, at least there are parties who still want to pay attention to this situation, namely the Supreme Court through its jurisprudence. Whereas jurisprudence has a very important function to fill the legal vacuum it is also important to realize the same legal standard (legal certainty) and to complement statutory regulations which have never been regulated in full and detail. With the existence of the same legal standards, a sense of legal certainty can be created in society, and prevent confusion in a decision.

How important is jurisprudence in the legal order in Indonesia? According to Jimly Asshiddiqie there are seven sources of constitutional law, namely:

1. unwritten constitutional values;
2. The constitution, both the preamble and the articles;
3. Written laws and regulations;
4. Judicial jurisprudence;
5. constitutional convention or *constitutional conventions*;
6. The doctrine of law which has become *ius commissionis opinion doctorum*;
7. International law that has been ratified or has been enacted as customary international law.[13]

Jurisprudential law, refers to the creation and refinement of law in formulating court decisions. Because it is oriented towards concrete cases, where from a series of cases it is channeled into a rule of law which then becomes a norm that can be applied and followed in various similar cases. Substantially a decision that has the character of jurisprudence, so that it is followed by other judges, is a decision that contains a legal breakthrough value. According to M. Yahya Harahap, court decisions containing breakthrough values have the following characteristics: They[14]

1. may be deviations from previous court decisions
2. The decision contains the value of a new interpretation of the formulation of the applicable law
3. The decision contains new principles: from the previous principle, on the discovery of a new principle
4. It can also be in the form of a Decision on the Waiver of Legislation (*contra legem*).

According to Jimly Asshiddiqie, even though he has such an important position, the role of jurisprudence is still far from being noticed, both in teaching law and in practicing law. This is due to several factors such as:[15]

[12] Ridwan Khairandy, 2003, *Iktikad Baik Dalam Kebebasan Berkontrak*, Universitas Indonesia Fakultas Hukum Pascasarjana, Jakarta, hlm 83.

[13] Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara*, cetakan ke-5, Jakarta: PT. Raja Grafindo Persada, 2014. hlm 121

[14] M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*, Bandung: Citra Aditya Bhakti, 1997, hlm. 450.

[15] Jimly Asshiddiqie dkk, *Putusan Monumental Menjawab Problematika Kenegaraan* Malang: Setara Press, 2016, hlm. 34-37.

1. *First*, the legal teaching system in Indonesia rarely uses references to judges' decisions or jurisprudence as material for discussion, because:
   a) Legal teaching is more about mastering the understanding of law in general, abstract in nature in the form of mere theoretical generalizations
   b) The applicable legal system places legal principles and rules originating from statutory regulations as the main foundation of the applicable law, and pays little attention to new meanings or interpretations of statutory provisions through jurisprudence
   c) Jurisprudence publications are very limited so that they are not easy to obtain and study or discuss
   d) Legal research policies that do not provide sufficient flexibility for research on judges' decisions or jurisprudence.

2. *Second*, from the point of view of legal practice, a judge's decision or jurisprudence is as if*legally non-binding*, because the Indonesian legal system does not implement a*precedent*.

As is known in the *stare decisis* or *binding precedent* (judges are obliged to follow a higher or earlier decision), the conception of the *civil law* which sees that judges are not bound by the decisions of previous judges should not be seen from one side only, that in the *civil law* do not recognize *precedent* tradition *common law*. Whereas in countries adhering to the *civil law* , such as the Netherlands and France, they also recognize and use the principle *precedent*, so it is not true that under the pretext of the freedom of judges, judges in Indonesia are free not to pay attention to legal principles in similar decisions in cases *in concreto*.

Nevertheless, it must be admitted that a more in-depth study is needed to find out why the Indonesian legal system originates or is rooted in the Dutch legal tradition which actually recognizes the *precedent*, but then in the Indonesian legal system, the certainty and strength of this doctrine becomes unclear and strong, and does not get more attention from legal practitioners and academics

CONCLUSION

Based on the discussions that have been put forward, a conclusion can be drawn as follows: Application of Article 21 and Article 23 of Law No. 7 of 2011 concerning Currency and its correlation with the legal principles of engagement in *Sunt servanda* and its relationship with the permissible causal legal norms contained in civil engagement law still cannot be accommodated properly, not least even though there are implementing regulations of the Currency Law earlier through Bank Indonesia Regulation (PBI) Number 17/3/PBI/2015 and the explanatory rules in Bank Indonesia Circular Letter (SEBI) Number 17 of 2015. Engagement principles and legal norms of engagement in agreements are still in the gray zone or unclear (absurd), which can be carried out on certain occasions but can also be a violation in other circumstances. Second The application of articles 21 and 23 of the currency law in settlement of obligations in an agreement has been assisted by regulatory provisions issued by the Supreme Court through a jurisprudence,

especially the part of settlement of obligations that have been agreed upon. However, this also cannot stop deviant practices due to the blurring of norms (multi-interpretations) in the Currency Law.

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