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Principles of Legal Philosophy in Contracting with Goodwill and Justice

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Abstract
Human nature is as an individual and social being, meaning that humans cannot live alone in fulfilling their needs so that they are always together with others, be it individuals with individuals, individuals with groups, and groups with groups. In social life, obstacles may occur, including conflict. This conflict can happen to anyone, anywhere, anytime and is caused by problems concerning the needs of human life. For example, in the world of work, career, position, society, religion, politics. Human interaction with other humans sometimes arises agreements and / or contracts in fulfilling their life needs. The issue is whether there are principles of legal philosophy in contracting with good faith and justice? Related to this, the author will examine using normative legal research methods with *statute approach*, *conceptual approach*, *analytical approach* and the views of experts related to the problem. The results showed that there is a legal principle of philosophy in contracting with good faith and justice. In terms of contracting, it is mentioned in the provisions of Article 1320 of the Civil Code regarding the valid conditions of an agreement and the birth (emergence) of good faith and / or sincerity which views that the contract is a fundamental norm principle. This can open up opportunities for rulers and/or owners of capital to act in breach of a contract in order to extract profits and harm weak parties.

Keywords: Principles of Legal Philosophy, Contracting, Good Faith, Fairness

1. Introduction

The rapid growth of humans will certainly be accompanied by the development of needs for human survival that are diverse with intense, increasingly rapid, and competitive competition. The fulfillment of these needs can only be met through building mutually beneficial patterns of interaction that do not conflict with the values that live, grow and develop in the midst of society and are subject to and obey the laws that are in force [1]

The various patterns of interaction built by humans show that human nature as social beings who cannot live alone, humans must live in an organized society to achieve common goals. This is to emphasize how important a pattern of interaction and/or human relationships with other humans, humans with other creatures and humans with the environment as a prerequisite for improving the quality of life and human life so that it is valuable and meaningful.

It is necessary to synergize the interaction patterns that are adjusted to the times so that the needs can be met together in accordance with the needs that humans want from each other. Because if the interaction patterns that are built are not compatible and even cause conflict between each other in fulfilling their interests, it will cause various kinds of problems that trigger the emergence of various problems and conflicts including legal issues.

Good interaction patterns must be able to articulate various demands of interests through agreements that accommodate needs, both between individuals and in a broader scope, namely society. These good agreements will become habits and habits become customs which in the end are set as agreements that contain sanctions where anyone who violates and/or denies the agreement will be subject to sanctions, both moral (social) sanctions and sanctions as we often know today, namely legal sanctions.

As a result of conflict, the results of human labor in various aspects of life will not be achieved as expected. So, conflicts must be resolved and avoided as much as possible, so that in dealing with each other it is hoped that there is comfort, inner calm, cool and comfortable atmosphere. Thus, awareness of the existence of conflict, the ability to find its causes, process and manage it properly is necessary.[2]

In the provisions of Article 1234 of the Civil Code reads: "The obligation is intended to give something, to do something, or not to do something" (Suparni, Niniek, 2016) is the core and / or main principle of the standard contract that is born either by

[1] Hasaziduhu Möhö, Fariaman Laia, https://jurnal.uniraya.ac.id/index.php/PanahKeadilan
[2] Ismoyowati, Widya Wacana Vol. 9 Nomor 1 Januari 2014

agreement of the parties who make it or by order of the law. The reference to the above provisions has a correlation with the provisions of Article 1338 of the Civil Code which requires the validity of an agreement (contract). For this reason, it is relevant to question how the principles of legal philosophy in contracting with good faith and justice.

The philosophy of law focuses on the philosophical aspect of law which is oriented towards the problem of the function and philosophy of law itself, namely controlling the law, resolving disputes, maintaining and maintaining order, making changes, regulating order for the realization of a sense of justice based on abstract and concrete legal rules. Legal philosophy thinking has a positive impact because it analyzes not superficially but deeply from any legal issues that arise in society or the development of legal science itself theoretically, its horizons are broad and comprehensive.

The utilization of combining legal science with legal philosophy is legal politics, because legal politics is more practical, functional by describing constructive teleological thinking carried out in relation to law formation and legal discovery which is an abstract rule that applies generally, while legal discovery is the determination of concrete rules that apply specifically. In understanding the relationship between legal science and Positive Law, regarding normative law, an examination of the elements of law is needed. The elements of law include ideal and rational elements. Ideal elements include moral desires and human ratios that produce legal principles, real elements include culture, natural environment that produce legal systems. Ideal elements produce legal rules through legal philosophy. Real elements produce legal systems which in this case are influenced by legal principles that depart from certain areas of legal system by identifying legal rules that have been formulated in certain legislation (Soekanto, 1986: 16).[3]

Based on the description of the problem above, the author will examine the following problems: 1) what is the relationship between the principles of legal philosophy and contracting with good faith and justice; 2) how is the nature of contracting with good faith and justice in the perspective of the Philosophy of Law; 3) how is the future arrangement of the relationship between the principles of Legal Philosophy in contracting with good faith and justice?

2. Research Method

2.1 Type of Research

The type of research used in this paper is normative legal research, which seeks to examine legal principles or norms, legal systematics, the level of legal synchronization, comparative law and legal history as stated by (Joenadi Efendi and Johnny Ibrahim, 2016) as follows:

1. Research on legal principles, namely research on legal elements both ideal elements that produce legal rules through legal philosophy and real elements that produce certain legal systems (written);
2. Research on legal systematics, namely identifying the main notions in law such as legal subjects, rights and obligations, legal events in laws and regulations;
3. Research on the level of vertical and horizontal synchronization, namely examining the harmony of positive law (legislation) so that it does not conflict based on the hierarchy of legislation;
4. Legal history, which examines the development of positive law (legislation regulations) within a certain period of time.

Therefore, the type of normative legal research is also often identified with the type of library research, against the law which is conceptualized as the norms of rules that apply in society and become a reference for everyone's behavior. In this research, the author uses the statute *approach, conceptual approach, analytical approach and the* views of experts related to the problem.

2.2 Data Collection Technique

Data collection techniques and tools are carried out by means of literature studies, namely by inventorying and reviewing laws and regulations, legal documents and journals, as well as the results of previous research related to the legal force of a contract.

2.3 Data Analysis

The analysis of legal materials in this research is descriptive in nature which is carried out by describing the explanation of legal materials, to then draw deductive conclusions from a general problem in order to get an overview of the legal force of the contract in the study of legal philosophy so that in the end the purpose and benefits of law can be achieved through the creation of a balance between legal rights and obligations.

3. Discussion

3.1 Relevance of Philosophy of Law Principles to Contract with Intention and Justice

Etymologically, the word philosophy comes from the Greek, where "*philein*" means love, and "*sophos*" means wisdom. Thus, philosophy is an earnest love for the truth, towards the level of true wisdom. This is in line with Alston's thoughts who asserts that philosophy is: "critical analysis of the basic concepts by which people think about the world and human life". Furthermore, Notonagoro defines it as a science that looks at its object from the point of view of essence and/or the basic essence of why, why, how, when, where and when something happens. Therefore, it is also often said that philosophizing is thinking, but not every thinking means philosophizing, because the characteristics of philosophical thinking are:

1. Radical or Radix (Greek) means "root". Radical thinking is thinking down to the roots, to the essence or substance of what is being thought about. It means reaching the ultimate knowledge, the knowledge that underlies all sensory knowledge;
2. Universal (general) relates to the *common experience of mankind*;
3. Conceptual generalizations and abstractions from experience about individual things and processes;
4. Coherent and consistent. Coherent means in accordance with the rules of thinking (logical). Consistent means that it does not contain contradictions;
5. Systematic is derived from the word system, which means a coherence of a number of elements that are interconnected according to an organized system to achieve a certain purpose. In expressing an answer to a problem, opinions or arguments are used which are

[3] Handayani, Johannes, Kiki, Jurnal Muara Ilmu Sosial, Humaniora, dan Seni, Vol. 2, No. 2, Oktober 2018: 720-725

interconnected descriptions in an orderly manner and contain a certain purpose and intention;
Comprehensive covers the whole (seeks to explain phenomena that exist in the universe as a whole as a system;
6. Free from social, historical, cultural or religious prejudices;
7. Responsible for having clear and defined standards and/or measuring instruments that are not assumptive and/or fabricated.

From the above understanding, important things can be formulated related to the principles of legal philosophy in contracting with good faith and justice in the perspective of agreement law (Subekti, R. and Tjitrosudibio, R, 2004), namely:

1. **Based on the Rule of Law:** is declared as a rule of law, if the process of making it is at least based on a philosophical foundation, sociological foundation and juridical foundation and is formed and / or determined by the authorities and / or institutions specifically authorized for that. The rule of law is a standard and / or basic benchmark that must give color in various forms of interaction and legal agreements.
2. **Regulates the Legal Relationship between Two or More Parties:** That the designation of the rule itself aims to regulate and organize relationships that cause legal consequences, namely the rights and obligations of each party.
3. **Must Have Legal Consequences:** that if there has been an agreement for the parties, it has become law for them, see the provisions of Article 1338 paragraph (1) of the Civil Code, that: "all agreements made legally shall apply as laws for those who make them".

Furthermore, Salim emphasized the elements contained in contract law (Salim, HS, 2003), as follows:

1. The existence of legal rules: Legal rules can be divided into 2 (two) types, namely written and unwritten innominate contract legal rules. The existence of legal subjects: The legal subject is the supporter of rights and obligations. Legal subjects in innominaat contracts are debtors and creditors, executing entities with business entities or permanent businesses, service users and service providers, and others.
2. The existence of a legal object: The legal object is closely related to the subject matter. The subject matter of performance in an *innominaat* contract depends on the type of contract made by the parties. In a contract of work, for example, the main achievement is to carry out exploration and exploitation in the mining sector, especially gold and copper.
3. The existence of an agreement: An agreement is commonly referred to as a consensus. This agreement is the conformity of the parties' statements of will regarding the substance and object of the contract.
4. Legal consequences: legal consequences relate to the rights and obligations of the parties.

In line with this direction of thought, there are several principles and/or principles contained in contract law, which according to Ahmadi Miru (Miru, Ahmadi, 2007) are as follows:

1. **The Principle of Consensualism:** Which means that an agreement is to give birth to an agreement. This means that the validity of an agreement if there is an agreement of both parties. Compare with the provisions of Article 1320 of the Civil Code (Suparni, Niniek, 2016): "In order for a valid agreement to occur, it is necessary to fulfill four conditions: (1). Agreement of those who bind themselves; (2). Capacity to make an agreement; (3) a certain subject matter and (4) a cause that is not prohibited.
   It is intended that the agreement reached by the parties gives birth to rights and obligations for them or commonly called that the contract is already obligatory, which gives birth to an obligation for the parties to fulfill the contract;
2. **The Principle of Freedom of Contract:** Analyzed from the provisions of Article 1338 paragraph (1) of the Civil Code: "all agreements made legally shall apply as laws for those who make them" (Subekti, R, and Tjitrosudibio, R, 2004), where the parties are free to:
   1. Make or not make an agreement;
   2. Enter into an agreement with anyone;
   3. Determine the content of the agreement, its implementation and terms; and
   4. Determine the form of the agreement, whether written or unwritten.
3. **The principle of Pacta Sunt Servanda:** Often referred to as the principle of legal certainty, where everyone who makes a contract is bound to fulfill the contract, even judges and/or third parties must respect and may not intervene in the substance of the contract made by the parties because it is the law for them.
4. **The Principle of Good Faith:** In the provisions of Article 1338 paragraph (3) of the Civil Code: "an agreement must be carried out in good faith" (Subekti, R. and Tjitrosudibio, R, 2004). Good faith is the most important requirement in making an agreement while keeping in mind the reasonable interests of the other party based on trust or firm belief or good will of the parties (Mataniari D, Edi Wahjuni, and Rhama, 2021). That in addition to the principles mentioned above, Salim added 1 (one) principle, namely:
5. **The principle of Personality (Personality):** According to Salim, HS, it is based on the provisions:
   a. Article 1315 of the Civil Code: "In general, no one can bind himself on his own behalf or request the establishment of a promise than for himself" (Subekti, R. and Tjitrosudibio, R, 2004).
   b. Article 1340 paragraph (1) of the Civil Code:"An agreement is valid only between the parties that make it" (Subekti, R, and Tjitrosudibio, R, 2004).

That notwithstanding, the above provision, by Salim (Salim, HS, 2003), suggests the basis for the exception as introduced in the provision:

a. Article 1317 of the Civil Code: "An agreement may also be made for the benefit of a third party, if an agreement made for oneself, or a gift of another person, contains such a condition", and
b. Article 1318 of the Civil Code does not only regulate agreements for themselves, but also for the benefit of their heirs and for people who obtain rights from them.

Conditions for the Legality of an Agreement

The validity of a contract must refer to and/or be based on the provisions of Article 1320 of the Civil Code (Suparni, Niniek,

2016) which reads: "In order for a valid agreement to occur, four conditions need to be met:

1. The agreement of those who bind themselves;
2. Capacity to enter into an agreement;
3. A specific subject matter and
4. A cause that is not prohibited.

From the formulation of the above provisions, there are several things that need attention, namely:

1. The principle of agreement for the contracting parties

The agreement between the contracting parties means that the parties have the same bargaining power position. The intended bargaining power position is at least between 2 (two) or more parties bound by a mutual need and mutual benefit to achieve certain goals. It is true that it is not uncommon for this principle to be neglected, especially contracts that are born between capital owners (employers) and those who need capital (job seekers). Job seekers are often in a difficult or weak position in making offers of certain interests except for the demands of urgent and basic needs. Finally, the most important element of a contractual requirement is not fulfilled. Even if there is and/or appears a contract, the contract is actually a contract of compulsion and/or in other words, a contract of submission to the party with capital (the employer).

2. Ability to create, understand and/or comprehend the meaning of an engagement (contract content)

The issue of the ability to make, understand and/or understand the meaning of the contract material/content is a crucial issue. Because the ability to do so is directly related to a person's ability to make an agreement between others is a matter of maturity. Those who are not yet adults (Subekti, R, and Tjitrosudibio, R, 2004) are considered as those who are not capable of making an obligation (contract). Compare with the provisions of Article 1330 of the Civil Code which reads: "Incapable of making an agreement are: (1) immature persons, (2) those placed under guardianship and (3) female persons, in matters stipulated by law, and in general all persons to whom the law has prohibited making certain agreements" (Subekti, R,. and Tjitrosudibio, R, 2004).

That in addition to this, adequate knowledge and expertise are required. Compare with the terms of a standardized contract, such as the conditions for applying for credit and/or the conditions for becoming an insurance customer. There is hardly enough space for each customer to read and/or understand the material or content of a contract (which terms are made with very complicated language to understand and with very small letters).

Finally, because of the demands of necessity, the customer is willing and/or finally willing to make contact. If this is the case, then from a legal perspective, all agreements that are born by agreement are the law for those who make them.

3. There is a specific object

What is meant by an object is something based on the fact that an obligation in the form of a contract can be made, whether the implementation of the obligation is binding for the present or for binding in the future. But the point is an object that is not floating and/or something that is uncertain.

4. Something that is not prohibited

That although there is a principle that everyone has the freedom to contract, it does not mean that they are free to contract for all matters. There are certain things that are prohibited and / or not allowed to do the engagement, especially things that are contrary to law and decency, as stipulated in Article 1337 of the Civil Code: "A cause is forbidden, if it is prohibited by law, or if it is contrary to good morals or public order" (Subekti, R,. and Tjitrosudibio, R, 2004).

3.2 The nature of contracting with good faith and justice in the perspective of Philosophy of Law

In relation to law, E. Utrecht, gives the definition of Philosophy of Law as an answer to questions and/or wants to see law as a rule and Soetika defines it as an attempt to:

1. Seeking the essence of the law knowing what lies behind the law
2. Investigating legal rules as a consideration of value, explanation of value, postulates (basics) of law to the basics.

That based on the above views there are at least 2 (two) things that become the essence of the power and/or binding force, the force of a contract, namely:

1. The existence and/or development of a basic understanding of each person (each party) to comply with and obey the provisions of Article 1320 of the Civil Code concerning the legal requirements of an agreement and,
2. The birth (emergence) of full awareness and based on a basic desire and / or good faith to fulfill and / or carry out the mandate contained in a contact, so that in the end the contract can be a balancing instrument between the rights and obligations of each person.

The basic understanding to submit and obey the rule of law, always arises from the understanding that the law is a rule and has a value that is able to give birth to new orders in human life and life. The rules contained in the contract are not limited to the principles / principles and / or conditions as stipulated in Article 1320 of the Civil Code, but the principles / principles and / or conditions are able to break through the rigidity of interaction in meeting the demands of diverse and competitive needs.

It is even able to provide guarantees and certainty of the rights and obligations of everyone. That about full awareness and based on a basic desire and / or good faith, is something that is absolute to be observed. Because, no matter how strict the conditions for the validity of an agreement (in this case a contract), without being based on the good faith of each person, it is impossible for the contract to be realized properly and optimally. Good faith must arise from the deepest heart to be willing and willing to fulfill the demands contained in the contract.

In the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it expressly reads: "The State of Indonesia is a state of law", meaning that the law must be the main foundation in the process of building and organizing the constitutional system and government system in line with the principles of the rule of law. The meaning of being a state of law has implications for the type of law that should be built, who should make it, and how to apply it so that the law can function as the main foundation in the process of nation and state life. This is all intended as an effort to limit state power so as not to abuse power to oppress its people (*abuse of power, abus de droid*) (Fuady, Munir, 2009).

In classical legal theory teaches us that the law is a rule that regulates human behavior, formed by the authorities, is coercive and if anyone violates it subject to sanctions. The problem then, is that the law that is coercive, many understand it as a form of restraint and / or pressure and even as a form of torture that limits humans to express and innovate, so it is not uncommon for people to rebel and / or look for arguments and / or reasons to be free from the bondage of the coercive law, and even shamelessly and / or feel guilty,

1. The law is formulated with legal formulations that are tolerant of the interests of the law makers themselves and/or the authorities; and

2. As far as possible manipulate the values contained in the formulation of the law as a result of the bondage of the applicable law in Indonesia, namely between unwritten law (customary law) and written law (Western law) and/or between the concept of Continental European law and the concept of Anglo Saxon law, which Achamad Ali calls: "as two kinds of misfortune or historical accident" (Ali, Achmad, 2009).

Jeremy Bentham and John Austin who adhere to positivism theory assume that: "the essence of law is the imposition of obligation" (Fuady, Munir, 2007) and by Hans Kelsen said: "the law is a restriction on freedom (liberty), finally (there is an understanding that - Author) the law is evil (Fuady, Munir, 2007) and this has an impact on:"people's obedience to legal orders (described - Author) is like the obedience of a herd of sheep to their shepherd, including their obedience when they are taken to the slaughterhouse" (Fuady, Munir, 2007).

That with the understanding that the law is evil, it ultimately nourishes human attitudes that tend to worship freedom, apart from the fact that humans basically want to be free and do not want to be ruled by others, even if necessary the principle of the strong oppressing the weak (homo homini lupus or bellum omnium contra omnes) can be done. This is what concerns us all. Mahfud MD once said: "in the natural law understanding, the law must be based on morals, good sense and a sense of justice (however - the author) has been dumped from the law-making process and replaced by the positivism school which says that the law is whatever is enacted by the law making agency is the law in society" (Mahfud MD, 2007) [3], this situation is an acknowledgment of the enactment of the procedural due process of law principle replacing the *substantial due process of law principle*. This means that with the achievement of procedural law making, it is assumed that the substance of the law has been achieved.

3. Future arrangements linking the principles of the Philosophy of Law in contracting with good faith and justice

In fact, talking about law is the same as talking about justice, where the law must be able to be a tool that can treat a person or other party in accordance with their rights. However, the word "justice" is still considered as something rare and/or expensive, especially for the lower class of society. Finally, there is a public understanding that the application of law in our country seems to be sharper to the bottom but blunt to the top. This is what disappoints many parties, eventually the community becomes pessimistic and even creates an antipathy towards the law, of course with various reasons according to the level of understanding and experience of the law itself.

The situation above, of course, we cannot let it go on continuously, there needs to be ideas, ideas and / or breakthroughs and / or solutions that must be built in order to present wise values that live, grow and develop in the midst of society, so that in the end the law can become a standard of identity and / or standard of civilization of society which is often referred to as the principle of *Law is Morality. The principle of Law is Morality*, is also worth looking at the opinion of Roscou Pound who said that: "*law as* a *tool of social engineering"* (Fuady, Munir, 2009)) as also highlighted by Munir Fuady that in the legal principles of even the most primitive society, it is described that: "(1) Community participation in the law must approach totality, and (2) Law is not a tool to oppress, but as a tool for harmony and progress" (Fuady, Munir. 2012) because "on the one hand, changes in society affect the development of law itself, and vice versa it is also true that changes in law can affect the development of society" (Fuady, Munir. 2012).

In addition, Abdul Manan also said that: "The law must be dynamic, must not be static and must be able to protect the community. The law must be able to be used as a guardian of order, tranquility and behavioral guidelines in community life. Law must be a reformer in the life of the nation and state" (Manan Abdul, 2009) while Achmad Ali, emphasized that: "the purpose of law is the realization of justice, justice is harmony, and harmony is peace" (Achmad Ali, 2009).

4. Conclusions

On that basis, I agree with the thoughts of Herman Bakir, who said: "Each subject of law will only obey the law, not because of coercion poured out by public or political authorities (power) to impose (from the State), but because of emotional and individual pressures such as feelings of shame" (Herman Bakir, 2009), namely shame to do wrong, ashamed to do wrong, ashamed to take/utilize money that does not belong to him (corruption), ashamed to be caught by the police for a crime, ashamed to report false news (hoax), ashamed to berate others, ashamed to find fault with others, ashamed to punish people who are not wrong, ashamed to trouble others, ashamed to do business and so on. So justisional compliance will be achieved, if "shame" is embedded in each legal subject.

1. That a contract must refer to the principle of consesualism, the principle of freedom of contract, the principle of pacta sunt servanda, the principle of good faith and the principle of personality;
2. The validity of an agreement / engagement (contract) must refer to the provisions of Article 1320 of the Civil Code (Niniek Suparni, 1991) which reads: "In order for a valid agreement to occur, four conditions need to be met:
    a. The agreement of those who bind themselves,
    b. Capacity to enter into an agreement,
    c. A specific subject matter; and
    d. A cause that is not prohibited.

5. Suggestions

1. Deemed necessary to have adequate rules that specifically regulate about agreements/bonds and/or contracts that are fixed and/or standardized, such as agreements/bonds and/or contracts in the field of insurance and/or the field of credit;
2. There needs to be a mechanism for registering each contract at the Registrar of the local District Court, so

that supervision can be carried out on agreements /agreements and / or contracts that conflict with the law, values of decency and / or public order.
3. Very subject of law prioritizes the aspect of shame as an instrument to build healthy social interactions.

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