

Legal Pluralism in Contracts: Reconstruction of the Principle of Freedom of Contract for the Harmonization of Customary and National Law

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Abstract

Introduction: This article examines the normative tension between the principle of freedom of contract in national civil law and the practice of customary agreements within indigenous communities. In the Indonesian legal system, contractual relations are generally constructed on an individualistic and formal legal framework, while customary agreements are rooted in communal values, unwritten norms, and local wisdom. Within the perspective of legal pluralism, the coexistence of these different legal orders often generates challenges in terms of recognition, validity, and legal enforcement.

Purposes of the Research: The purpose of this research is to identify the normative points of tension between the doctrine of freedom of contract and the practice of customary agreements and to formulate a conceptual model for integrating these norms within the national civil law system through the perspective of legal pluralism.

Methods of the Research: This research employs a normative juridical method using statute, conceptual, and comparative approaches. Legal materials consist of primary legal sources such as legislation and secondary materials including legal doctrines and scholarly writings related to civil law, customary law, and legal pluralism.

Results of the Research: The findings reveal that the normative tension between the principle of freedom of contract and customary agreements stems from differences in legal subjects, consent, evidentiary standards, bargaining positions, and legal authority. To address these tensions, this study proposes an integration model through the reconstruction of the freedom of contract doctrine to accommodate communal values, a progressive approach recognizing customary agreements as legally valid, adaptive evidentiary mechanisms that incorporate customary proof, and legal pluralism-based harmonization between national civil law and customary law. These models preserve legal certainty while strengthening recognition of indigenous communities' living law.

Keywords: Legal Pluralism; Freedom of Contract; Customary Agreements.

Submitted: 2026-03-10

Revised: 2026-07-13

Accepted: 2026-07-15

Published: 2026-07-27

How To Cite: Shenti Agustini, Mimi Sintia Mohd Bajury, Agustianto, Febri Jaya, and Winda Fitri. "Legal Pluralism in Contracts: Reconstruction of the Principle of Freedom of Contract for the Harmonization of Customary and National Law." SASI 32 no. 3 (2026): 274-285. <https://doi.org/10.47268/sasi.v32i3.3812>

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INTRODUCTION

Every legal rule formulated by the legislator is derived from legal principles as its background, so that the ideal purpose of the formation of the legal rule can be explained by referring to the legal principles that underlie it. One of the legal principles adopted in contract law is the "principle of freedom of contract," which means that everyone is free to enter into an agreement containing any kind of agreement conditions, as long as the agreement is made legally and in good faith, and does not violate public order and morality. This freedom is the embodiment of free will, the emanation of human rights and

fundamental rights.¹ The provisions used as the legal basis for the use of standard contracts in Indonesia are Article 1338 Paragraph (1) of the Civil Code which stipulates: "all agreements made legally apply as laws for those who make them" from the word all it can be interpreted that every legal subject can make an agreement with any content, there is freedom for legal subjects to determine the form of the agreement. In other words, through the principle of freedom of contract, legal subjects have the freedom to make agreements, including opening up opportunities for legal subjects to make new agreements that are not yet regulated in the Civil Code in order to be able to follow the needs of society due to developments in the times (innominat agreements).²

Freedom of contract means freedom to determine the contents of the agreement and with whom to agree. The principle of freedom of contract is universal which refers to the free will of every person to make a contract or not to make a contract, the restrictions are only for the public interest, and in the contract there must be a reasonable balance. In practice, the principle of freedom of contract is not applied in making a standard agreement but remembers that standard contracts have become a necessity for society and business actors. The principle of freedom of contract means that the parties have freedom in agreeing/contract.³

However, the problem arises when customary law communities enter into agreements with third parties, as customary contract law has a very different essence from that regulated in the Civil Code. The Government of the Republic of Indonesia, through Article 18 of the Amendment to the 1945 Constitution, respects the existence of customary law and customary law communities. This recognition includes customary practices within communities that have developed into customary law, which continues to be maintained to this day in the form of local wisdom (indigenous people). Local wisdom derived from customary law differentiates Indonesian law from that of European and American countries in general.

The existence of customary law and the rights of indigenous peoples have been constitutionally recognized in the 1945 Constitution. Article 18 of the Amendment to the 1945 Constitution respects the existence of customary law and customary law communities. Customary practices within communities that have developed into customary law continue to be maintained to this day in the form of local wisdom (indigenous people). Local wisdom derived from customary law differentiates Indonesian law from the law in European and American countries in general.⁴

Customary Law in Indonesia has distinctive characteristics that are different from other laws, there are four general characteristics or properties of Customary Law which are a unity, namely: 1) magical religious, namely a mindset based on religiosity, namely the community's belief in the existence of something sacred; 2) communal, According to the view of Customary Law, every individual, member of society is an integral part of society as a whole. The relationship between one member of society and another is based on a sense

¹ Dedi Harianto, "Asas Kebebasan Berkontrak: Problematika Penerapannya Dalam Kontrak Baku Antara Konsumen Dengan Pelaku Usaha", *Jurnal Hukum Samudra Keadilan* 11, no. 2 (2016): 145-156. <https://ejurnalunsam.id/index.php/jhsk/article/view/33>

² Christiana Tri Budhayati, "Asas Kebebasan Berkontrak Dalam Hukum Perjanjian di Indonesia", *Jurnal Widya Sari* 10, no. 3 (2009): 232-247

³ Shenti Agustini, Febri Jaya, Agustianto, "The Principle of Contract in Commercial Agreements: Are Limitations Needed?", *Jurnal Juncto* 5, no. 2 (2023), 212.

⁴ Jemmy Sondakh, "Perjanjian Adat Dalam Mapalus Rumah Etnis Tounawang Minahasa Tenggara Relevansinya Saat ini", *Jurnal Lexet Societatis* 9, no. 2 (2021), 30.

of togetherness, kinship, mutual assistance, and mutual cooperation. Customary Law Communities believe that every individual's interests should be adjusted to the interests of society because no individual is separate from their community; 3) concrete, Concrete nature means clear, real, tangible, and visual, meaning it can be seen, visible, open, not hidden. This means that every legal relationship that occurs in society is not carried out secretly. For example, buying and selling, always shows a real act, namely the transfer of the object of the agreement; 4) simple, that customary law communities are simple, not complicated, not administrative, not written, easy to understand, and implemented based on mutual trust. This can be seen in transactions that are carried out verbally only, including in cases where agreements are rarely made in writing.⁵

Indonesia has long desired to have its own contract law, given that the Indonesian contract law currently in use, based on the principle of concordance, is Book III of the old Dutch Civil Code, in effect since 1838, which in the Netherlands itself has been updated several times to become the *Nieuwe BW (Burgerlijk Wetboek)*. Ideally, the formation of a law, including contract law, must be in accordance with the nation's character and legal perspective, as ideal factors, as well as humans, the surrounding environment, and tradition, as real factors. These ideal and real factors are built from and then manifested in customary law (in addition to Islamic law) that existed even before Dutch law was enacted in Indonesia. Therefore, customary law, at least its principles, should serve as a reference or foundation in the formation of national contract law. On the other hand, it must also be recognized that interactions within society evolve over time. Trade, for example, has entered a global era where individuals or business institutions domiciled in Indonesia have established business relationships with their foreign partners who have their own contract law systems.⁶

Normative tensions between the principle of freedom of contract and customary agreement practices arise when the individualistic construction of national civil law confronts the communal structure and values of collectivity in indigenous communities. In the legal doctrine of contracts, derived from the Civil Code, freedom of contract is understood as the full autonomy of the parties who freely and equally determine the content and form of the agreement. However, in customary practice, agreements are not solely born of individual will, but rather through collective deliberation, the legitimacy of customary authority, and are based on values of harmony and community sustainability. When customary agreements are tested in the state's judicial system, particularly in disputes involving external parties such as corporations, issues of validity, proof, and unequal bargaining power arise. The state tends to assess legitimacy based on formal, written parameters, while customary norms exist in social practices that are not always formally documented. This is where a paradigm clash occurs between centralistic state law and customary law as living law, which is constitutionally recognized in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, but has not yet been fully integrated into the national civil law system.

On the other hand, Indonesia is known for its pluralism. Pluralism is a concept that expresses an attitude toward diverse situations, including social, cultural, political, and religious contexts, where adherents of one religion coexist, cooperate, and interact with

⁵ Achmad Asfi Burhanudin, "Eksistensi Hukum Adat di Era Modernisasi", *SALIMIYA: Jurnal Studi Keagamaan Islam* 2, no. 4 (2021), 103-104

⁶ Paripurna P Sugarda, "Posisi Hukum Adat Dalam Hukum Kontrak Nasional Indonesia", *Jurnal Yustisia* 4, no. 3 (2015), 505.

adherents of other religions.⁷ In the context of Indonesia, with its social diversity and legal pluralism, social relations between individuals will become varied.⁸ From a legal pluralism perspective, the tension between the principle of freedom of contract and customary agreements reflects the conflict between two systems of norms that coexist but are not entirely equal: formalistic state law and customary law as living law. Legal pluralism views law as not monopolized by the state, but also arises from social practices and community values. However, in the national civil system, which still relies on the Civil Code, the validity of contracts is measured through individual, written, and rational-formal parameters, so that customary communal norms are often marginalized when entering the judicial realm. This condition indicates the dominance of state legal centralism over customary law, even though its existence is constitutionally recognized in the 1945 Constitution of the Republic of Indonesia. Therefore, integrating the two remains a theoretical and practical challenge in the development of national law.

Previous studies have extensively discussed the principle of freedom of contract, the recognition of customary law, and legal pluralism as separate legal issues. However, limited attention has been given to examining the normative tension between the doctrine of freedom of contract and customary agreements within a single analytical framework. Existing studies also tend to describe the coexistence of state law and customary law without proposing a concrete integration model capable of reconciling these competing legal paradigms within Indonesia's national civil law system. This unresolved gap provides the basis for the present study.

Based on this background, there are 2 (two) problem formulations discussed in this research, namely, first, where does the normative tension lie between the doctrine of freedom of contract and the practice of customary agreements from a legal pluralism perspective? Second, what is the integration or reconstruction model that can bridge this tension in the national civil law system?

METHODS OF THE RESEARCH

This research is a normative juridical legal research, which focuses on the analysis of legal norms and doctrines⁹ which regulates the principle of freedom of contract and the recognition of customary agreements in the national legal system. The approaches used include a statute approach to examine the provisions of the Civil Code and the 1945 Constitution of the Republic of Indonesia, a conceptual approach to examine the doctrine of freedom of contract and the theory of legal pluralism, and this research employs a normative juridical method using statutory, conceptual, and comparative approaches. The comparative approach compares the contractual principles of the Indonesian Civil Code with the principles governing customary agreements under Indonesian customary law in order to identify normative differences and develop an integration model within the national civil law system. The type of data used is secondary data, consisting of primary legal materials (statutory regulations and court decisions), secondary legal materials (books, scientific journals, and research results related to legal pluralism and customary law), and relevant tertiary legal materials. The analysis was conducted qualitatively using descriptive-

⁷ Tafsiruddin, "Pluralisme dan Toleransi dalam Kehidupan", *Dakwatul Islam* 5, no 1 (2020): 42-50.

⁸ Devrayno, "Mengenal Budaya Hukum Dari Perspektif Pluralisme Hukum", *Jurnal Ilmu Hukum Tambun Bungai* 2, no. 2 (2017), 188.

⁹ David Tan, "Metode Penelitian Hukum: Mengupas dan Menegulas Metodologi Dalam Menyelenggarakan Penelitian Hukum", *Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021)

analytical methods to identify and explain normative tensions between the two legal systems.

RESULTS AND DISCUSSION

A. The Location of the Normative Tension Between the Freedom of Contract Doctrine and Customary Agreement Practices in the Legal Pluralism Perspective

Article 1313 of the Civil Code states that an agreement is an act by which one or more people bind themselves to one or more other people. Meanwhile, according to several experts, the definition of an agreement is as follows: a). According to Subekti, an agreement is an event in which one person makes a promise to another or in which two people mutually promise to carry out something; b). According to KRTM Tirtodiningrat, an agreement is a legal act based on an agreement between two or more people that creates legal consequences that can be enforced by law; c). According to R. Setiawan, the definition of an agreement in Article 1313 of the Civil Code is incomplete and too broad. Therefore, the definition needs to be revised: 1) An act must be interpreted as a legal act, namely an act intended to create legal consequences; 2) Adding the words "or mutually binding themselves" to Article 1313 of the Civil Code; 3) Thus, the formulation becomes, "An agreement is a legal act in which one or more people bind themselves or mutually bind themselves to one or more people;" d). According to Djumadi, "An agreement is an event in which someone makes a promise to another person or in which two or more people promise to carry out something."¹⁰

The legal principle contains ethical demands, so the legal principle is a bridge between legal regulations and social ideals and ethical views of society. So, with the realization of the principles contained in contract law, it means the realization of social ideals and ethical views of the parties involved in an agreement. In contract law, one of the important principles that needs to be known is the principle of freedom of contract. The principle of freedom of contract means that people may or are free to make any form of agreement, content, type with whom they make the agreement and are free to make agreements whether they are regulated by law or not regulated by law. Because this contract law follows the principle of freedom to make an agreement, so people are said to adhere to an open system as opposed to the closed system adopted by Book II of the Civil Code. That with the freedom to make an agreement means that people can create individual rights that are not regulated in Book III of the Civil Code but are regulated by the agreement itself, because an agreement that is legally made applies as a law for those who make it (Article 1338 paragraph (1) of the Civil Code).

Even though this principle applies, freedom of contract is limited by 3 things, namely not prohibited by law, not contrary to morality and not contrary to public order (Article 1337 of the Civil Code), so by Prof. R. Subekti said that the principle of freedom of contract is a principle which states that basically everyone is allowed to make contracts (agreements) of any kind and nature as long as they do not conflict with the law, morality and public order. As is known, one of the most important sources in the formation of BW was the French Civil Code by Napoleon Bonaparte. The principle of freedom of contract contained in the Civil Code is an embodiment of the principles of freedom and equality which were highly valued at that time. And the French Revolution with the mottos of Liberty, Elagilite and Fraternite

¹⁰ Taufik Hidayat Lubis, "Hukum Perjanjian di Indonesia", *SOSEK: Jurnal Sosial dan Ekonomi* 2, no. 3 (2022), 182

was manifested concretely in the codification they created, especially in the law of contracts which regulated freedom of contract. The concept of Liberalism, which highly values individual freedom on the one hand and reduces as much as possible the intervention of the State in civil relations between its citizens, clearly colors the formation of legal rules regarding agreements in the Civil Code.¹¹

The principle of freedom of contract, also known as freedom of contract, party autonomy, and liberty of contract, developed alongside capitalism and individualism. Any economic activity should not be restricted. Everyone has the right to enjoy the benefits of their labor. Freedom of contract is closely linked to the concept of human rights. The freedom to enter into agreements is a concrete manifestation of respect for human rights. Therefore, the regulation of agreements in the Civil Code is said to be open, as it allows for the parties to agree to anything they desire.¹² The principle of freedom of contract, as reflected in Article 1338 paragraph (1) of the Civil Code, affirms that every legally made agreement applies as law for the parties who make it. This formulation illustrates the legal legitimacy of individual freedom in forming private legal relationships. This principle was born from classical doctrine that developed in the 19th century, where the school of legal liberalism emphasized individual autonomy and freedom of will as the main pillars of civil relations. Contracts are seen as the embodiment of the free will of equal parties, and therefore every agreement is considered valid, fair, and must be complied with.

The law only acts as a safeguard to ensure that contracts do not conflict with the law, public order, or morality, as stipulated in Article 1337 of the Civil Code (*Wetboek*, 1847c). Beyond these limitations, the parties are given full freedom to determine the content, form, and mechanism of their contracts' implementation. This understanding then positions contracts as the primary instrument in civil law traffic, while also reflecting the paradigm of a liberal rule of law state that emphasizes individual freedom over state intervention.¹³

However, in this standard agreement, the consumer does not have the freedom to determine the contents of the agreement they made, the consumer can only accept or reject the agreement. The limitations of the consumer in the standard agreement are very apparent where all losses and benefits in the agreement they made must be accepted if the consumer agrees to the agreement. A standard agreement is a concept of an agreement whose contents do not need to be discussed and are usually included in an unlimited and specific agreement and moreover the structure is included in a certain form. One example of the preparation of a standard agreement in the form of a form is when we open a bank account or open a savings account, in the form there are fields and several agreements that have been prepared in such a way that must be filled in and there are several wordings in the formular agreement submitted by the company or bank, which inevitably the customer agrees to the contents of the wording in the form, where if they do not fill in or agree to the contents in the form then the bank will not approve the opening of the customer's financial account.¹⁴

The concept of an agreement in the Civil Code is very different from the concept of an agreement in customary law. According to Hilman Hadikusuma, what is meant by contract

¹¹ H. Nanang Hermansyah, "Analisis Yuridis Eksistensi Asas Kebebasan Berkontrak Dalam Perjanjian Dewasa ini (Standar Kontrak) Di Masyarakat", *Jurnal Wasaka Hukum* 8, no. 1 (2020), 160.

¹² Tami Rusli, "Asas Kebebasan Berkontrak Sebagai Dasar Perkembangan Perjanjian di Indonesia", *Pranata Hukum: Jurnal Ilmu Hukum* 10, no. 1 (2015), 27.

¹³ Vivilia Agnata Mudi, Magdhalena Tasik Todingrara, "Relevansi Asas Kebebasan Berkontrak dalam Konteks Ekonomi Digital", *Aliansi: Jurnal Hukum Pendidikan dan Sosial Humaniora* 2, no. 6 (2025), 282-283.

¹⁴ Dwi Atmoko, "Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku", *Binamulia Hukum* 11, no. 1 (2022), 86.

law in customary law is law that includes a description of the law of debt (schuldenrecht), which includes matters or mechanisms for land transactions (groundtransakties) and transactions related to land (transactie waarbij ground betekenis). Customary agreements are not only consensual but also concrete. Therefore, words alone cannot bind agreements; they must be concrete. Agreements in customary law are not focused solely on fulfilling individual needs but are based on the basis of spirituality, kinship, harmony, and mutual assistance. Therefore, in customary agreements, it is very common to be carried out unwritten due to the strong foundation of trust that accompanies the agreement. The creation of the agreement does not require the parties to use a deed. Although not required in written form, agreements in customary law must be made in front of a traditional leader who acts as a community leader. Traditional leaders are considered to be representatives of the community to witness and approve the existence of an agreement between the parties in the community.¹⁵

An example of a common practice among indigenous communities is the land gala agreement in Aceh. A verbal land gala agreement is based solely on the good faith and intentions of both parties. This is likely due to the reluctance of both parties to break the good bond by signing a deed that would imply a lack of trust. However, this agreement lacks legal force, potentially leading to unwanted problems or disputes arising from the gala agreement. The practice of gala agreements remains popular among Acehnese indigenous people. This is because the gala agreement procedure eliminates the cumbersome requirements found in pawnshops, banks, or other financial institutions, particularly in urgent financial situations. Furthermore, gala agreements remain popular in the Meunasah Mancang Village community, particularly because they are conducted with relatives based on mutual trust and mutual assistance. This is expected to strengthen family ties. Because they are conducted between relatives, it is hoped that disputes will be resolved amicably.¹⁶

The Acehnese *gala* agreement clearly illustrates the practical manifestation of these normative tensions. Although the agreement is considered legally and socially legitimate within the indigenous community because it is based on mutual trust, kinship, and customary recognition, it often lacks formal written evidence required by the national civil law system. Consequently, when disputes arise before state courts, the validity of the agreement may be questioned despite its acceptance within the customary community. This situation demonstrates the conflict between the formal evidentiary requirements of civil law and the social legitimacy of customary agreements, reflecting one of the central tensions identified in this study.

Based on this, there are several sharp doctrinal differences between agreements under the Civil Code and those under customary law, namely: First, the primary normative tension lies in the differing paradigms regarding the legal subject in forming agreements. The doctrine of freedom of contract in the Civil Code is based on the assumption that the legal subject is an autonomous individual with complete freedom to determine their will within a contract. In contrast, in customary contract practice, the legal subject does not always exist as an individual, but is often embedded within a community or indigenous group as a social entity. The agreements made may involve collective consent or

¹⁵ M. Yazid Fathoni, "The Legality of Transfer of Land Rights Ownership Based on Adat Law in Indonesia Positive Law", *Jurnal IUS Kajian Hukum dan Keadilan* 8, no.1 (2020), 193-194.

¹⁶ Wilda Rahmi, M. Adli, "Breach of Contract in Land Gala Agreements According to Customary Law in Mukim Kuta Baroh", *Jurnal Geuthee: Penelitian Multidisiplin* 5, no. 3 (2022), 262.

representation by customary leaders. This paradigm difference creates tension when state law assesses the validity of agreements based on individual will, while in customary communities, decisions often arise from communal structures that possess their own social legitimacy.

Second, the next tension relates to the interpretation of the element of consent within an agreement. In classical civil law doctrine, an agreement is understood as a meeting of the free wills of equal parties without coercion. However, in customary law practice, agreements are not always formed through individual negotiations, but rather through community deliberation mechanisms involving social values, customs, and the legitimacy of customary leaders. This process often reflects a broader social consensus than mere personal agreement. From a state legal perspective, this model of agreement can raise questions about whether the element of free will is truly fulfilled, thus giving rise to tensions between the concept of consent in formal civil law and the practice of consensus in customary law.

Third, normative tensions are also evident in the form and verification of agreements. National civil law systems tend to emphasize the importance of written evidence and administrative formalities as the basis for proving the validity of a contract in court proceedings. Conversely, in customary law practice, agreements are often made orally or accompanied by customary symbols, rituals, or collective community recognition as a form of social legitimacy. When disputes arise and are brought into the state's judicial system, these formal standards of proof often fail to fully accommodate non-documentary customary practices. This creates tension because the social validity of a customary agreement does not always align with the formal standards of proof used by the state's legal system.

Fourth, another normative tension arises when the principle of freedom of contract is applied to legal relationships that are factually unequal. In civil law theory, the principle of freedom of contract assumes that the parties have a relatively equal position in determining the content and terms of the agreement. However, in practice involving indigenous peoples, contractual relationships often occur between local communities and parties with greater economic or political power, such as companies or state institutions. In such situations, agreements formally considered free can occur under conditions of unequal bargaining power. The legal pluralism perspective views this situation as demonstrating the limitations of the doctrine of freedom of contract when applied to unequal social contexts.

Fifth, normative tension also relates to conflicts over recognized sources of legal authority. In modern legal systems, the state holds primary authority in determining the validity and enforceability of legal norms. However, from a legal pluralism perspective, law originates not only from the state but also from social practices within society, including customary law. Although the existence of indigenous communities is recognized in the 1945 Constitution of the Republic of Indonesia, in practice, state law often remains the primary standard for assessing the validity of legal relationships, including agreements. Consequently, customary norms socially considered legitimate by a community can be delegitimized when confronted with the state's formal legal system.

Sixth, the final tension relates to the difference in goal orientation between national civil law and customary law. Modern civil law systems generally emphasize the principles of legal certainty, certainty of rights, and the strict enforceability of contracts through state law

enforcement mechanisms. In contrast, in customary law, agreements are not solely aimed at creating rigid legal obligations but also at maintaining social balance and harmony within the community. Conflict resolution in customary contexts often prioritizes deliberation and the restoration of social relations over formal enforcement of rights. This difference in orientation demonstrates that state law and customary law differ not only at the normative level but also in the fundamental goals they seek to achieve in regulating social relations.

B. Integration or Reconstruction Models That Can Bridge These Tensions in the National Civil Law System

In the classical doctrine of French contract law, the principle is held that freedom of contract is related to the free will of the parties. The parties have autonomy of will, namely the will to determine their own law. Contractual obligations stem from the will of the parties, which forms the basis of the contract. This doctrine emphasizes the individual freedom to enter into anonymous contracts (*Ombenoemde, Innominat Contracten*); as long as it does not conflict with public order, the parties are free to enter into any contract they desire.¹⁷ However, the principle of freedom of contract should not only be understood in an individualistic way, but should also accommodate the communal dimension in indigenous communities. In this framework, freedom of contract is not only seen as individual free will, but also as the collective will of the community represented by customary mechanisms. With this approach, the concept of freedom of contract in the Civil Code can be expanded so that it remains relevant to the social reality of a pluralistic society.

Then, regarding the form of oral agreements typically made in indigenous communities, it's important to understand that Indonesian society is traditionally an indigenous society that generally follows an oral tradition. Oral tradition, oral culture, and oral customs are messages or testimonies passed down from one generation to the next.¹⁸ The model of indigenous communities always carries out everything orally, including the creation of agreements. Therefore, the integration model can also be implemented through explicit recognition of customary agreements as a form of contract that has legal force, as long as it does not conflict with the basic principles of national law. This recognition can be realized through progressive interpretation of the provisions of agreements in civil law and strengthening the principle of recognition of indigenous communities as guaranteed in the 1945 Constitution of the Republic of Indonesia. Thus, customary agreements are not positioned as mere social practices, but also as part of the legal system recognized by the state. If oral agreements entered into by indigenous communities are also recognized, then reconstruction is also necessary to address the evidentiary aspect in dispute resolution. The judicial system can accommodate forms of evidence that exist within indigenous communities, such as testimony from traditional leaders, customary practices, or community confessions. This approach allows judges to assess the validity of agreements not only based on written evidence but also on social facts that exist within the community. According to this theory, judges can find someone guilty based on their beliefs, which beliefs are based on evidentiary grounds accompanied by a conclusion based on specific rules of evidence.

¹⁷ Andita Putri Nabila, Gunawan Djayaputra, "Urgensi Pelaksanaan Kebebasan Berkontrak dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak", *UNES Law Review* 6, no. 2 (2023), 4075.

¹⁸ Natasya Yunita Sugiastuti, "Esensi Kontrak Sebagai Hukum Vs Budaya Masyarakat Indonesia Yang Non Law Minded dan Berbasis Oral Tradition", *Jurnal Hukum Prioris*, 5, no. 1 (2015), 38.

This system or theory of proof is also called independent proof because judges are free to state the reasons for their beliefs. This system gives judges too much freedom, making it difficult to monitor.¹⁹ This approach allows judges to focus not only on formal evidence as stipulated in the civil evidence system, but also on the testimony of traditional leaders, customary practices, and community recognition as rational social facts. Thus, the evidentiary mechanism within the state legal system can be more adaptive to the existence of customary law as living law, without neglecting the principles of prudence and rationality in assessing evidence.

The integration model proposed in this study is philosophically grounded in Van Apeldoorn's view that positive law is not always synonymous with justice. Although positive law provides legal certainty through formal rules, it may fail to achieve substantive justice when it ignores the social realities and legal values that exist within society. In the context of customary agreements, strict reliance on formal contractual requirements may produce legally valid outcomes while simultaneously denying legal protection to agreements that are socially legitimate within indigenous communities. Therefore, reconstructing the doctrine of freedom of contract and harmonizing national civil law with customary law are necessary not only to preserve legal certainty but also to realize substantive justice in a legally pluralistic society.

This philosophical perspective is particularly relevant in contractual relationships involving indigenous communities and economically stronger parties. Formal compliance with the Civil Code does not necessarily reflect substantive fairness when unequal bargaining positions prevent indigenous communities from exercising genuine contractual autonomy. Accordingly, the proposed integration model seeks to balance legal certainty with substantive justice by recognizing customary legal values alongside formal civil law principles.

The next solution that can be implemented to bridge the tension between the doctrine of agreements in the Civil Code and customary law agreements is the need for harmonization between national law and customary law. Harmonization between the two regulations is essential in finding a legal solution to resolve this tension.²⁰ A more comprehensive integration model can be achieved through harmonization of state law and customary law. This harmonization can be achieved by developing guidelines or a legal framework that allows for the recognition of customary contractual practices within the national legal system, without neglecting the principles of rights protection and legal certainty. In this way, national civil law serves not only as an instrument of legal certainty but also as a means of accommodating the social values entrenched within society.

CONCLUSION

This study demonstrates that the tension between the principle of freedom of contract and customary agreements is not merely a technical conflict concerning contractual validity, but reflects a deeper structural incompatibility between the individualistic orientation of national civil law and the communal values embedded in customary law. The findings indicate that relying exclusively on formal contractual requirements risks marginalizing the

¹⁹ Susanti Ante, "Pembuktian dan Putusan Pengadilan Dalam Acara Pidana", *Jurnal Lex Crimen* 2, no. 2 (2013), 101.

²⁰ Winsherry Tan, Febri Jaya, Agustianto, "Harmonisasi Lembaga Hukum Nasional dan Adat dalam Mengatasi Perkawinan Bawah Umur di Kabupaten Lingga", *Jurnal Magister Hukum Udayana* 13, no. 4 (2024), 749.

living law of indigenous communities despite its constitutional recognition. Accordingly, the proposed integration model—through the reconstruction of the freedom of contract doctrine, progressive recognition of customary agreements, adaptive evidentiary mechanisms, and harmonization grounded in legal pluralism—offers a framework for balancing legal certainty with substantive justice. This study therefore contributes to the development of Indonesian contract law by demonstrating that legal pluralism should function as a normative foundation for integrating state law and customary law within the national civil law system.

ACKNOWLEDGMENTS

The authors would like to express their sincere gratitude to the Institute for Research and Community Service of Universitas Internasional Batam for its generous support through the provision of research grant funding that made this study possible. The authors also extend their appreciation to the Faculty of Law, Universitas Internasional Batam, for its continuous academic support, encouragement, and conducive research environment throughout the completion of this research.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

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