

Application Of Legal Maxims In Contract Law: Pacta Sunt Servanda And Islamic Rules On Promises

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Abstract

In the practice of contract law, the fulfillment of promises and compliance with agreements are fundamental aspects to ensure justice and legal certainty. The principle of pacta sunt servanda which emphasizes the obligation to honor agreements has relevance to Islamic rules which also require the fulfillment of promises. This research adopts a normative legal method with a comparative juridical approach. Primary sources include laws, regulations, court decisions, and legal documents, while secondary sources comprise books, journals, and articles discussing pacta sunt servanda, Islamic promise rules, and contract law. Data is collected through literature and document analysis, then examined qualitatively using inductive and comparative methods to assess similarities and differences between the two legal principles. Findings reveal that both systems stress the importance of honoring contractual commitments. However, they differ in certain applications—particularly in addressing exceptions like force majeure and Islamic considerations of public benefit (maslahah). The study concludes that pacta sunt servanda and Islamic promise rules can complement one another in legal systems with pluralistic

frameworks. Their combined application enhances trust, fairness, and stability in contractual relations. This research recommends reinforcing legal frameworks that uphold contract compliance while considering substantive justice and specific contextual exceptions.

KEYWORDS: *Pacta Sunt Servanda; Islamic Principles of Promise; Contract Law; Legal Maxims; Force Majeure.*

Introduction

In the dynamics of community life, agreements are a solid foundation in establishing legal relationships between individuals and legal entities. Through the agreement, the parties bind themselves to carry out their obligations and obtain the agreed rights.¹ In order for this legal relationship to run well, legal certainty and compliance with applicable norms are needed. One of the fundamental principles in treaty law is *pacta sunt servanda*. This principle affirms that a valid agreement applies as law to the parties who make it.²

Pacta sunt servanda comes from Latin which means "promises must be kept".³ This principle is a reflection of the moral and ethical

¹ Desi Syamsiah, Riki Martin Bala Bao, and Nur Fatihah Yuliana, "Dasar Penerapan Asas *Pacta Sunt Servanda* Dalam Perjanjian," *JURNAL HUKUM DAS SOLLEN* 9, no. 2 (December 25, 2023): 841–48, <https://doi.org/10.32520/das-sollen.v9i2.2988>; Yoga Tri Cahyo and Marisa Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context," *Walisongo Law Review (Walrev)* 5, no. 1 (April 30, 2023): 31–54, <https://doi.org/10.21580/walrev.2023.5.1.14585>.

² Mosgan Situmorang, "The Power of *Pacta Sunt Servanda* Principle in Arbitration Agreement," *Jurnal Penelitian Hukum De Jure* 21, no. 4 (December 31, 2021): 447, <https://doi.org/10.30641/dejure.2021.v21.447-458>; Syamsiah, Bao, and Yuliana, "Dasar Penerapan Asas *Pacta Sunt Servanda* Dalam Perjanjian"; Cahyo and Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context"; Arum Puspita Kesuma and Muh Afif Mahfud, "The Implementation Of *Pacta Sunt Servanda* Principle As A Basis For Making Memorandum Of Understanding," *Awang Long Law Review* 5, no. 2 (May 31, 2023): 432–40, <https://doi.org/10.56301/awl.v5i2.724>; M. Adnan Lira, "Principle Law *Pacta Sunt Servanda* in Agreement Rent Place Business," *Journal of Law and Sustainable Development* 11, no. 12 (December 8, 2023): e2157, <https://doi.org/10.55908/sdgs.v11i12.2157>; Silvia Crafa et al., "Pacta Sunt Servanda: Legal Contracts in Stipula," *Science of Computer Programming* 225 (January 2023): 102911, <https://doi.org/10.1016/j.scico.2022.102911>.

³ Syamsiah, Bao, and Yuliana, "Dasar Penerapan Asas *Pacta Sunt Servanda* Dalam Perjanjian"; Cahyo and Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context"; Lira, "Principle Law *Pacta Sunt Servanda* in Agreement Rent Place Business"; Crafa et al., "Pacta Sunt Servanda: Legal

values that underlie human relationships. In the context of contract law, this principle is the basis for law enforcement and dispute resolution. When the parties have agreed to be bound by an agreement, they are obliged to fulfill all the provisions contained in it.⁴ In addition, this principle has become the cornerstone of contract law in various legal systems, including positive law and Islamic law.

In Islam, promises also have a very important position. The Quran and hadith contain many instructions that emphasize the importance of keeping promises. Promises are considered part of the mandate that must be maintained and implemented. Breaking promises is considered a sinful act and can damage trust among fellow human beings and will get retribution in this world and the hereafter.⁵

Although the principle of *pacta sunt servanda* and Islamic rules about promises are harmonious, in practice there are often various challenges in its application.⁶ As with the *first*, unpredictable changes in circumstances can be a reason for one party to renounce the agreement. *Second*, the information gap between the parties can cause one party to feel disadvantaged and renege on the agreement. *Third*, differences in interpretation of the content of the agreement can trigger disputes. *Fourth*, the existence of an element of coercion in making an agreement can be a reason to cancel the agreement. *Fifth*, legal uncertainty or uncertainty regarding a certain matter can be a loophole for parties to avoid their obligations.⁷

Contracts in Stipula”; Septarina Budiwati, Muhammed Junaidi, and Wisnu Tri Nugroho, “The Principle of Pacta Sunt Servanda in Fintech Transactions Is Reviewed Through The Perspective of Ushul Fiqh,” *Al-Iktisab: Journal of Islamic Economic Law* 4, no. 1 (May 12, 2020): 47, <https://doi.org/10.21111/al-iktisab.v4i1.4350>.

⁴ Syamsiah, Bao, and Yuliana, “Dasar Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian”; Cahyo and Kurnianingsih, “Pacta Sunt Servanda: Legal Dynamics in Indonesian Context.”

⁵ Rizka Ferdiana Sari, “Delik Wanprestasi Jual Beli Online Perspektif Hukum Pidana Islam,” *Al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2 (2018), <https://doi.org/10.15642/aj.2017.3.2.426-453>; Ridwan Khairandy, “Landasan Filosofis Kekuatan Mengikatnya Kontrak,” *Jurnal Hukum No. Edisi Khusus Vol. 18 Oktober 2011: 36 - 55* 18 (2011): 36–55, <https://journal.uui.ac.id/IUSTUM/article/view/7232/6392>.

⁶ Nury Khoiril Jamil, “Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia,” *Jurnal Kertha Semaya* 8, no. 7 (2020); Rumawi Khoiril Jamil, Nury & Rumawi, “Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia,” *Jurnal Kertha Semaya* 8, no. 7 (2020); Syamsiah, Bao, and Yuliana, “Dasar Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian.”

⁷ Situmorang, “The Power of Pacta Sunt Servanda Principle in Arbitration

In addition, in the era of globalization, the complexity of business transactions is increasing. The agreement involves not only domestic parties, but also foreign parties. This requires a deep understanding of the principles of *pacta sunt servanda* and Islamic principles of promises in the context of international law.⁸

Based on the problems raised above, several questions arise in this study, including, How is the principle of *pacta sunt servanda* applied in Indonesian contract law? How is the harmonization between the principle of *pacta sunt servanda* and Islamic principles of promise in the practice of agreements in Indonesia? What are the factors that affect the application of the principle of *pacta sunt servanda* in the agreement? How to overcome problems arising from legal uncertainty in the application of the principle of *pacta sunt servanda*?

This research will be limited to the analysis of the application of the principle of *pacta sunt servanda* in civil contract law in Indonesia, with a focus on agreements involving sharia elements. And the results of this research are expected to contribute to the development of contract law in Indonesia, especially in terms of enforcing the principle of *pacta sunt servanda*.

Result & Discussion

A. The Principle of Pacta Sunt Servanda in the

Agreement"; Septarina Budiwati, "Prinsip Pacta Sunt Servanda Dan Daya Mengikatnya Dalam Kontrak Bisnis Perspektif Transendens," *Publikasi Ilmiah*, no. Prosiding Seminar Nasional Hukum Transendental 2019 (2019); Muhammad Caesar, "Prinsip Dan Faktor-Faktor Yang Harus Diperhatikan Dalam Pembuatan Kontrak," *Lex Privatum* 2, no. 1 (2014); Margaretha Donda Daniella, William Tandy Putra, and Erich Kurniawan Widjaja, "Asas Itikad Baik Dalam Memorandum Of Understanding Sebagai Dasar Pembuatan Kontrak," *Notaire* 2, no. 2 (2019), <https://doi.org/10.20473/ntr.v2i2.13122>; Adittia Karyana and Sri Ratna Suminar, "Akibat Hukum Pelanggaran Asas Pacta Sunt Servanda Oleh Pembeli Dalam Perjanjian Jual Beli Ditinjau Dari Buku Ke III KUHPdata," *Bandung Conference Series: Law Studies* 2, no. 1 (2022); Khoiril Jamil, Nury & Rumawi, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia"; Lira, "Principle Law Pacta Sunt Servanda in Agreement Rent Place Business"; Crafa et al., "Pacta Sunt Servanda: Legal Contracts in Stipula."

⁸ Sri Lestari Rahayu, Siti Muslimah, and , Sasmini, "Perlindungan Ham Pekerja Migran: Kajian Normatif Kewajiban Indonesia Berdasar Prinsip-Prinsip Dan Norma-Norma Hukum Internasional," *Yustisia Jurnal Hukum* 2, no. 1 (April 2, 2013), <https://doi.org/10.20961/yustisia.v2i1.11082>; Resi Atna Sari Siregar, "Analisis Terhadap Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Islamic Circle* 2, no. 1 (August 16, 2021): 41–51, <https://doi.org/10.56874/islamiccircle.v2i1.472>.

Perspective of Positive Law

The principle of *pacta sunt servanda* is a legal principle that emphasizes that every agreement that has been legally made and agreed upon by the parties must be fulfilled in good faith.⁹ In Latin, the term means "an agreement must be observed" or "an agreement is a law for the parties."¹⁰ This principle is the main foundation in contract law in various jurisdictions.¹¹ Thus, any party bound by the agreement may not violate or renege on the agreement without a clear legal reason.

This principle plays an important role in creating legal certainty and maintaining trust between parties. Without the application of this principle, the parties will not feel safe in making transactions because there is a risk that the agreement can be broken at any time.¹² Therefore, *pacta sunt servanda* serves as the main guideline so that the agreement has binding force and provides protection for the parties in a positive legal context.¹³

The principle of *pacta sunt servanda* has developed since ancient times and is known in various legal traditions, including Roman law and religious law. In Ancient Roman law, covenants were considered sacred and obligatory to be obeyed because they were bound by strong moral norms and customary laws.¹⁴ In addition, in religious traditions, such as in Islamic law and Christian teachings, the fulfillment of promises is seen as a moral obligation that must be upheld.¹⁵

⁹ Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak."

¹⁰ Lira, "Principle Law Pacta Sunt Servanda in Agreement Rent Place Business"; Crafa et al., "Pacta Sunt Servanda: Legal Contracts in Stipula"; Situmorang, "The Power of Pacta Sunt Servanda Principle in Arbitration Agreement."

¹¹ Dewi Oktoviana Ustien and Umar Marhum, "Perspektif Hukum Terhadap Suatu Perjanjian," *Lakidende Law Review* 1, no. 2 (August 25, 2022): 85–92, <https://doi.org/10.47353/delarev.v1i2.11>.

¹² Caesar, "Prinsip Dan Faktor-Faktor Yang Harus Diperhatikan Dalam Pembuatan Kontrak"; Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak"; Ahmad Iffan and Universitas Gadjah Mada, "Keberadaan Asas Pacta Sunt Servanda Dan Good Faith Menurut Hukum Internasional Dan Hukum Islam," *JOURNAL EQUITABLE* 3, no. 1 (2018); Harry Purwanto, "Keberadaan Asas Pacta Sunt Servanda Dalam Perjanjian Internasional," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (February 23, 2012): 155, <https://doi.org/10.22146/jmh.16252>.

¹³ Oktoviana Ustien and Umar Marhum, "Perspektif Hukum Terhadap Suatu Perjanjian"; Zumrotul Wahidah, "Berakhirnya Perjanjian Perspektif Hukum Islam Dan Hukum Perdata," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 2 (October 5, 2020): 21–37, <https://doi.org/10.29313/tahkim.v3i2.6435>.

¹⁴ Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak."

¹⁵ Ridwan Khairandy.

In the Middle Ages, this principle became stronger with the development of *jus gentium* (law of nations), which is a rule that regulates the relationship between various groups of societies or states.¹⁶ In this period, peace agreements and trade agreements between countries became increasingly important so that the principle of *pacta sunt servanda* began to be applied more formally. When European countries began to interact through diplomacy and trade, this principle was adopted to maintain trust and prevent the violation of international contracts.¹⁷

In modern times, this principle has gained a stronger legal foundation with the formation of international law. The Charter of the United Nations (UN) and the 1969 Vienna Convention on the Law of International Treaties stipulate that any valid international treaty must be implemented in good faith.¹⁸ In this context, *pacta sunt servanda* ensures that countries cannot easily renege on agreed international obligations.¹⁹

In the national laws of various countries, the principle of *pacta sunt servanda* is implemented as a basic principle in contract law. In

¹⁶ Jacob Giltaij, "The Rediscovery of the Roman Jus Gentium and the Post 1945 International Order," *Leiden Journal of International Law* 35, no. 3 (September 23, 2022): 521–33, <https://doi.org/10.1017/S0922156522000036>; Gholam Ali Nouri Babanari, "New Developments in International Law," *India Quarterly* 46, no. 2–3 (April 1, 1990): 134–70, <https://doi.org/10.1177/097492849004600203>.

¹⁷ Lileys Glorydei Gratia Gijoh, "Implementasi Hukum Dalam Kontrak Bisnis Internasional," *LEX ET SOCIETATIS* 9, no. 1 (January 12, 2021), <https://doi.org/10.35796/les.v9i1.32142>; Mrs. Cindawati, "Prinsip Good Faith (Itikad Baik) Dalam Hukum Kontrak Bisnis Internasional," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (November 11, 2014): 181, <https://doi.org/10.22146/jmh.16038>.

¹⁸ Mahsati Alizade, "Vienna Convention On The Law Of Treaties," *SCIENTIFIC RESEARCH* 4, no. 2 (February 2024): 34–38, <https://doi.org/10.36719/2789-6919/30/34-38>; Paul Gragl and Malgosia Fitzmaurice, "The Legal Character of Article 18 of the Vienna Convention on the Law of Treaties," *International and Comparative Law Quarterly* 68, no. 3 (July 11, 2019): 699–717, <https://doi.org/10.1017/S0020589319000253>; Purwanto, "Keberadaan Asas Pacta Sunt Servanda Dalam Perjanjian Internasional"; Ibnu Mardiyanto, "Perjanjian Internasional Ditinjau Dari Perspektif Hukum Nasional Dan Internasional," *SAPIENTIA ET VIRTUS* 8, no. 1 (April 11, 2023): 185–209, <https://doi.org/10.37477/sev.v8i1.415>.

¹⁹ Dio Lavarino & Wiyli Yustanti, "Kekuatan Mengikat Perjanjian Internasional Menurut Konvensi Wina Tahun 1969," *Revista CENIC. Ciencias Biológicas* 152, no. 3 (2016): 28; Eliezer Joel Tangkuman, Imelda A. Tangkere, and Natalia L. Lengkon, "Berakhirnya Perjanjian Internasional Ditinjau Dari Konvensi Wina 1969 Tentang Perjanjian Internasional," *Fakultas Hukum* 12, no. 1 (2023): 1673–74; Mardiyanto, "Perjanjian Internasional Ditinjau Dari Perspektif Hukum Nasional Dan Internasional."

Indonesia, this principle is reflected in Article 1338 paragraph (1) of the Civil Code (KUHPer) which states that all agreements made legally binding on the parties who make them like laws.²⁰ This provision confirms that an agreement has legal force that must be obeyed as well as written rules. In the perspective of positive law, this principle provides two main functions, *first*, as legal certainty for all parties to the agreement that the agreement will be implemented in accordance with the agreed provisions. In addition, this legal certainty provides protection to each party from possible losses due to unilateral changes by one of the parties.²¹ *Second*, as fairness in the agreement, to always emphasize responsibility and good faith in the implementation of the agreement. When the parties voluntarily agree to a contract, they are morally and legally bound to carry out their obligations according to the content of the agreement. This is in line with the principle that the agreement made must not be contrary to the norms of law, decency, and public order.²²

In addition, this principle is also closely related to the principle of *freedom of contract*, which is also regulated in Article 1338 of the Civil Code.²³ In freedom of contract, the parties are free to determine the content, form, and terms of the agreement, as long as it does not violate laws and social norms.²⁴ However, this freedom is not absolute because the agreement made must meet the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code, *first*, there is an agreement between the parties, *second*, the

²⁰ MS Alfarisi et al., "Penerapan Kontrak Perjanjian Kerja Di Indonesia Dalam Perspektif Kitab Undang-Undang Hukum Perdata (KUHper)," *Legalitas: Jurnal Hukum* 15, no. 1 (July 4, 2023): 91, <https://doi.org/10.33087/legalitas.v15i1.440>; MA, "Kitab Undang-Undang Hukum Perdata," *JDIH*, 2014.

²¹ Cahyo and Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context"; Ubaidullah Muayyad, "Asas-Asas Perjanjian Dalam Hukum Perjanjian Islam Ubaidullah Muayyad," *'Anil Islam* 8, no. 1 (2021): 12.

²² Muayyad, "Asas-Asas Perjanjian Dalam Hukum Perjanjian Islam Ubaidullah Muayyad"; Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak."

²³ dhaniswara K Harjono, "Standard Agreements In The Concept Of Freedom Of Contract," *Russian Law Journal* 11, no. 3 (April 7, 2023), <https://doi.org/10.52783/rlj.v11i3.1254>.

²⁴ Muhammad Romli, "Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 KUH Perdata," *Jurnal Tahkim* 17, no. 2 (2021); Deny Fernatha, "Perikatan Yang Dilahirkan Dari Sebuah Perjanjian Berdasarkan Pasal 1332 KUHPerdata Tentang Barang Dapat Menjadi Objek Perjanjian," *Journal of Law* 7, no. 2 (2021); Alfarisi et al., "Penerapan Kontrak Perjanjian Kerja Di Indonesia Dalam Perspektif Kitab Undang-Undang Hukum Perdata (KUHper)."

ability of the parties to make an agreement, *third*, there is a certain object that is agreed, and *fourth*, there is a halal cause.²⁵ If an agreement meets the above conditions, then it can be ensured that the agreement is valid and binding for the parties who make it.

Although the principle of *pacta sunt servanda* emphasizes that the agreement must be implemented properly, in practice there are several restrictions that result in an agreement being void or unable to be implemented in accordance with the agreement. First, there is a void clause, the agreement can be canceled if there are certain terms or conditions previously agreed upon by the parties as a reason for cancellation, such as default or inability of one of the parties to fulfill obligations.²⁶ *Second, force majeure*, extraordinary conditions beyond the control of the parties, such as natural disasters or economic crises, can make an agreement unenforceable.²⁷ In the condition of *force majeure*, the performance of obligations can be suspended or even released, depending on the situation and the conditions agreed in the agreement. *Third*, an agreement that is proven to be contrary to the provisions of the law or norms of decency and public order can be annulled by the court. It aims to protect the public interest and prevent the abuse of freedom of contract.²⁸

In addition, the application of this principle also emphasizes that not only the formal form of the agreement is respected, but also the substance and purpose of the agreement must be upheld. If one

²⁵ Romli, "Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 KUH Perdata"; Oktoviana Ustien and Umar Marhum, "Perspektif Hukum Terhadap Suatu Perjanjian."

²⁶ Bernadetha Aurelia Oktavira, "Hukumnya Mencantumkan Klausul Eksonerasi Dalam Perjanjian," [hukumonline.com](https://www.hukumonline.com/klinik/a/hukumnya-mencantumkan-klausul-eksonerasi-dalam-perjanjian-lt4d0894211ad0e#/), 2021, https://www.hukumonline.com/klinik/a/hukumnya-mencantumkan-klausul-eksonerasi-dalam-perjanjian-lt4d0894211ad0e#.

²⁷ Aaron Anil Chadee et al., "Minimizing Liability of the COVID-19 Pandemic on Construction Contracts—A Structural Equation Model for Risk Mitigation of Force Majeure Impacts," *Buildings* 13, no. 1 (December 28, 2023): 70, <https://doi.org/10.3390/buildings13010070>; Jamil, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia"; Khoiril Jamil, Nury & Rumawi, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia"; Farhan Jiddan Saros and Nurkholis Anwar, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia," *JOURNAL SAINS STUDENT RESEARCH* 1, no. 1 (October 1, 2023): 769–75, <https://doi.org/10.61722/jssr.v1i1.396>.

²⁸ Syamsiah, Bao, and Yuliana, "Dasar Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian"; Wahidah, "Berakhirnya Perjanjian Perspektif Hukum Islam Dan Hukum Perdata."

of the parties defaults on its obligations without a valid reason (default), the aggrieved party can sue through legal channels to obtain the fulfillment of its rights or compensation.²⁹

In the context of international law, *pacta sunt servanda* is a key element that regulates relations between countries and international organizations. The 1969 Vienna Convention states that any international agreement that has been ratified by the participating countries has binding force and must be implemented in good faith.³⁰ This is important so that relations between countries take place in a stable and predictable manner, considering that countries rely heavily on written agreements to avoid conflicts and maintain peace.

However, there are exceptions to the application of this principle in international law. For example, if a treaty is made under pressure or coercion, or if it violates the principles of *Jus cogens* or *ius cogens* (basic international norms that cannot be ignored), then the treaty has no binding force.³¹ This shows that the application of *pacta sunt servanda* is not absolute, but rather subject to higher

²⁹ Caesar, "Prinsip Dan Faktor-Faktor Yang Harus Diperhatikan Dalam Pembuatan Kontrak"; Sri Istiawati, "Kedudukan Perjanjian Dalam Kitab Undang-Undang Hukum Perdata Dalam Sengketa Konsumen," *Juripol* 4, no. 1 (May 31, 2021): 208–16, <https://doi.org/10.33395/juripol.v4i1.11034>; Yunanto Yunanto, "Hakikat Asas Pacta Sunt Servanda Dalam Sengketa Yang Dilandasi Perjanjian," *Law, Development and Justice Review* 2, no. 1 (May 29, 2019): 33–49, <https://doi.org/10.14710/ldjr.v2i1.5000>.

³⁰ Siregar, "Analisis Terhadap Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa"; Rahayu, Muslimah, and , "Perlindungan Ham Pekerja Migran: Kajian Normatif Kewajiban Indonesia Berdasar Prinsip-Prinsip Dan Norma-Norma Hukum Internasional"; Purwanto, "Keberadaan Asas Pacta Sunt Servanda Dalam Perjanjian Internasional"; I Gede Angga Adi Utama, "Asas Pacta Sunt Servanda Dalam Perspektif Hukum Perjanjian Internasional," *Ganesha Civic Education Journal* 1, no. 1 (2019); Iffan and Gadjah Mada, "Keberadaan Asas Pacta Sunt Servanda Dan Good Faith Menurut Hukum Internasional Dan Hukum Islam"; Cindawati, "Prinsip Good Faith (Itikad Baik) Dalam Hukum Kontrak Bisnis Internasional."

³¹ Ulf Linderfalk, "The Legal Consequences of Jus Cogens and the Individuation of Norms," *Leiden Journal of International Law* 33, no. 4 (December 8, 2020): 893–909, <https://doi.org/10.1017/S0922156520000357>; Lucas Carlos Lima and Loris Marotti, "Duas Ideias Irreconciliáveis? Regionalismo e Jus Cogens No Direito Internacional," *Revista de Direito Internacional* 20, no. 1 (June 22, 2023), <https://doi.org/10.5102/rdi.v20i1.8781>; Katie A. Johnston, "Identifying The Jus Cogens Norm In The Jus Ad Bellum," *International and Comparative Law Quarterly* 70, no. 1 (January 8, 2021): 29–57, <https://doi.org/10.1017/S0020589320000500>; Patricia Viseur Sellers, "Jus Cogens: Redux," *AJIL Unbound* 116 (September 12, 2022): 281–86, <https://doi.org/10.1017/aju.2022.47>.

norms and values.

The principle of *pacta sunt servanda* is also reflected in various religious and customary legal systems. In Islamic law, the principle of fulfilling an agreement is described in the Qur'an, for example in surah Al-Ma'idah verse 1 which emphasizes the importance of keeping promises and agreements. Fulfilling promises is not only considered a legal obligation, but also part of the moral integrity expected of every Muslim.³²

In some indigenous peoples in Indonesia, agreements or agreements have their own legal force. Customary agreements are often considered more binding than formal contracts, as they are based on cultural norms and mutual trust. Violation of the agreement not only brings legal sanctions, but also results in the destruction of social relations and the loss of trust in the community.³³

In the business world, the principle of *pacta sunt servanda* is very relevant to maintain credibility and market stability. Business contracts and trade agreements are made to ensure that all parties comply with their obligations and receive their rights in accordance with the initial agreement.³⁴ This principle promotes transaction certainty and reduces the risk of future disputes. Thus, *pacta sunt servanda* is not just a normative principle, but also a practical guideline that maintains stability and order in social, economic, and political life.

³² Hidayah, "Asas Kontrak Perjanjian Dalam Perspektif Islam"; Muhammad Romli, "Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 KUH Perdata," *Jurnal Tahkim* 17, no. 2 (2021); Widya Sari Muhammad Arif, "Konsep Akad Perjanjian Dalam Perspektif Hukum Islam Dan Hukum Perdata," *Islamic Civil Law* 1, no. 2 (2022); Universitas Islam and Sunan Kalijaga, "Asas-Asas Perjanjian Dalam Hukum Perjanjian Islam," *Anil Islam: Jurnal Kebudayaan Dan Ilmu Keislaman* 8, no. 1 (2015).

³³ Wilda Rahmi and Muhammad Adli Abdullah, "Wanprestasi Dalam Perjanjian Gala Tanah Menurut Hukum Adat Di Mukim Kuta Baro," *Jurnal Geuthèë: Penelitian Multidisiplin* 5, no. 3 (December 3, 2022): 258, <https://doi.org/10.52626/jg.v5i3.194>; Citranu Citranu Citranu, "Perjanjian Tumbang Anoi 1894 Sebagai Sumber Hukum Pidana Adat Dayak Ngaju," *Tampung Penyang* 17, no. 01 (December 12, 2019): 1–17, <https://doi.org/10.33363/tampung-penyang.v17i01.395>; Sulaiman Sulaiman, "Budaya Hukum Masyarakat Aceh Dalam Perjanjian Jual-Beli," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 17, no. 01 (January 17, 2018), <https://doi.org/10.30631/al-risalah.v17i01.26>.

³⁴ Budiwati, "Prinsip Pacta Sunt Servanda Dan Daya Mengikatnya Dalam Kontrak Bisnis Perspektif Transendens"; Gijoh, "Implementasi Hukum Dalam Kontrak Bisnis Internasional."

B. Islamic Principles of Treaties in the Perspective of Islamic Law

Binding in Islamic law is part of Islamic law in the field of mu'amalah which regulates human behavior in conducting economic relations. Islamic Binding Law is a set of legal rules derived from the Qur'an, As-Sunnah (Al-Hadith), and Ar-Ra'yu (Ijtihad) that regulate the relationship between two or more people regarding an object that is allowed to be used as an object of transaction. A prominent feature in Islamic binding is the existence of "*religious-transcendental*",³⁵ where in Islamic binding does not only prioritize the civil aspect, but there is an element of obedience in practicing religion. Thus, substantively, Islamic binding law is broader than the material contained in western civil binding.³⁶

Alliances in the perspective of Islamic law, are often identified by experts with contracts, because they both involve the involvement of both parties so that they give rise to rights and obligations or achievements that must be fulfilled.³⁷ Engagement in Islam or akad in terminology is derived from the Arabic language, namely *al-rabth* which means "rope or bond", *al-aqdatu* which means "connection" and *al-'ahdu* which means "promise".³⁸ Based on this etymological understanding, the contract is a rope that binds a person to another.

There are two terms in Arabic, namely: *first*, the word *'aqada* means to conclude, (see Q.S. Al Maidah (5): 1, in the Al Munawir dictionary, the Indonesian Arabic aqad is binding, it can also be called *'uquud*, meaning an agreement (recorded) contract. Secondly, *'ahdu* (see Q.S. Ali Imran (3): 76, i.e. promise. In terms of language, aqad is a bond, a bind.

Islam as a religion that regulates all aspects of human life, including muamalah relationships, also has strict rules regarding

³⁵ Hidayah, "Asas Kontrak Perjanjian Dalam Perspektif Islam"; Romli, "Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 KUH Perdata"; Muhammad Arif, "Konsep Akad Perjanjian Dalam Perspektif Hukum Islam Dan Hukum Perdata."

³⁶ Budiwati, "Prinsip Pacta Sunt Servanda Dan Daya Mengikatnya Dalam Kontrak Bisnis Perspektif Transendens."

³⁷ Dominikus Rato, *Memahami Hukum Perikatan, Analisis Standar Pelayanan Minimal Pada Instalasi Rawat Jalan Di RSUD Kota Semarang*, vol. 3, 2010; Sinta Indi Astuti, Septo Pawelas Arso, and Putri Asmita Wigati, "Memahami Hukum Perikatan Dan Perjanjian," in *Analisis Standar Pelayanan Minimal Pada Instalasi Rawat Jalan Di RSUD Kota Semarang*, vol. 3, 2015, 103–11.

³⁸ Dominikus Rato, *Memahami Hukum Perikatan*; Astuti, Arso, and Wigati, "Memahami Hukum Perikatan Dan Perjanjian."

promises. In Islam, a promise is a form of binding contract. Allah SWT says in the Qur'an surah Al-Ma'idah, 5:1 which reads.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ ۖ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ ۚ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ ۝١

It means: *"O you who believe, fulfill your promises! It is permissible for you to have livestock, except for those that will be mentioned to you (the haram) by not ruling hunting when you are doing ihram (Hajj or Umrah). Indeed, Allah has established the law according to His will"* (Surah Al-Ma'idah, 5:1).

In the tafsir of wajiz³⁹ stated in relation to the above verse, this surah begins with a command to every believer to fulfill the promises that have been pledged, both promises to Allah and promises to fellow humans. O you who believe! Fulfill the promises, that is, the promises between man and Allah, man and man, and man and himself, as long as they do not prohibit the lawful and do not justify the unclean. Among the promises of Allah are His laws that are set to you, namely that livestock, namely camels, cows, and goats, are permissible for you after they have been lawfully slaughtered, except for those who will be mentioned to you in their peril, which is mentioned in the third verse of this Surah and also by not allowing hunting when you are doing ihram or Umrah. Indeed, Allah has established the laws of halal and haram according to His will, according to His knowledge and wisdom.⁴⁰

This verse shows that a promise or agreement is a mandate that must be kept by every Muslim. The Qur'an considers promises as part of the contract, so violations against it are considered a form of forbidden betrayal. And in the Qur'an surah Ali 'Imran, 3:76 and Surah An-Nahl Verse 91 which reads.

بَلَىٰ مَنْ أَوْفَىٰ بِعَهْدِهِ وَاتَّقَىٰ ۖ فَإِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ ۝٧٦

It means: *"That's not so! Whoever keeps his promises and is pious, indeed, Allah loves those who are pious"* (Surah Ali 'Imran, 3: 76).

In the tafsir of tahlili it is explained that Jews are often inconsistent in keeping promises. They only kept their promise if the

³⁹ Subi Nur Isnaini, "Tafsir Ayat-Ayat Teologis Dalam Al-Muharrar Al-Wajiz," *Jurnal Online Studi Al-Qur'an* 17, no. 02 (2021).

⁴⁰ bisa dilihat dalam website <https://quran.nu.or.id/al-maidah/1> bagian tafsir wajiz

opponent of the promise was a fellow Jew. In fact, religion teaches us to always keep our promises to anyone, regardless of ethnicity or religion. God highly values honest and trustworthy people. They will get great rewards in this world and the hereafter.⁴¹

It can be concluded that this verse reminds us of the importance of justice in all forms of transactions. Every promise and covenant must be kept as best as possible. Do not let us become people who like to procrastinate or even deny obligations. God hates those who cheat and are unjust.

وَأَوْقُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ ﴿٩١﴾

It means: *"Keep your promise to Allah if you promise. Do not break your oath after confirming it, when you have made Allah your witness. Indeed, Allah knows what you are doing"* (Surah An-Nahl Verse 91).

In this verse, Allah swt commands Muslims to keep their promise to Allah if they have made the promise. According to Ibn Jarir, these verses were revealed with bai'at (pledge of allegiance) to the Prophet Muhammad (saw) which was done by people who had just converted to Islam. They are commanded to keep the faithful promises they have made by oath, and to prevent them from revoking them. The small number of Muslims should not encourage them to cancel the bai'at after seeing the large number of polytheists. According to this verse, all covenants made of one's own will must be fulfilled either between fellow Muslims or with people outside Islam. Allah swt forbids Muslims to violate the oath that is said using the name of Allah, because in such an oath, Allah has been placed as a witness. Allah will reward those who fulfill what he says with an oath or reward him with punishment for those who betray the oath. Indeed, Allah knows all the deeds of man. He is the one who knows all the covenants they have strengthened by oath, and knows how they fulfill their promises and oaths.⁴²

In addition, in Qs. Al-baqarah (2):282 it is also explained regarding the agreement that must be recorded so that there will be no disputes in the future.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ

⁴¹ Bisa dilihat dalam website <https://quran.nu.or.id/ali-imran/76> bagian tafsir tahlili

⁴² Bisa dilihat dalam website <https://quran.nu.or.id/an-nahl/91> bagian tafsir tahlili

بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا ۚ فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلِئَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ ۚ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَلِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا ۚ وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ۚ ذَٰلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا ۚ إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا ۚ وَأَشْهَدُوا إِذَا تَبَايَعْتُمْ وَلَا بَضَارَ كَاتِبٌ وَلَا شَهِيدٌ ۚ وَلَنْ تَفْعَلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ ۚ وَاتَّقُوا اللَّهَ ۚ وَيُعَلِّمُكُمُ اللَّهُ ۚ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ۝٢٨٢

It means: "O you who believe, if you owe a debt for a specified time, write it down. Let a scribe among you write it down correctly. Let the recorder not refuse to write it down as Allah has taught him. Let him record and the debtor dictates. Let him fear Allah his Lord, and do not diminish it in the slightest. If the debtor is a person who lacks intelligence, is weak (his condition), or is unable to dictate by himself, his guardian should dictate it correctly. Ask for the testimony of two male witnesses among you. If there are no two men, one man and two women among the people you like from the witnesses so that if one of them forgets, the other reminds him. Let the witnesses not refuse when called. Do not get tired of writing it down until the deadline, whether it is small or large. That is more just in the sight of God, more able to strengthen the testimony, and closer to your doubts, unless it is a cash business that you are running among you. So, there is no sin for you if you do not record it. Take witnesses if you are buying and selling and do not let the recorder complicate (or complicate it), and neither do witnesses. If you do that, it is indeed an unrighteousness for you. Fear Allah, Allah gives you a lesson and Allah is All-Knowing." (Surah Al-Baqarah (2): 282).

It can be concluded that, Allah SWT firmly emphasizes the importance of loyalty to the promises made. When we promise, especially by including God's name, we are making sacred covenants. This promise must be kept, regardless of the number or strength of the opposing party. The history of the bai'at of the Prophet's companions is a clear example of how promises must be kept. Breach of promise is a very serious act and will have bad consequences. On the contrary, those who are consistent with their promises will get a good reward from Allah SWT. From the three verses above, it emphasizes the importance of keeping promises as a form of faith and obedience to Allah SWT, and breaking it is an act

of sin.⁴³

In the hadith, the provisions regarding muamalat are more detailed than the Qur'an. However, this breakdown does not really regulate things in great detail, remaining in the line of general rules. These hadiths can be seen below, among others.

a. HR. Abu Dawud dan Hakim

Allah SWT has said (in His qudsi hadith), "I am the third of two people who are united as long as one of them does not betray his friend. If one of them betrays, then I will leave the union of the two."

b. HR. Bukhari dan Muslim

"Whoever buys and sells salam (salaf), then do it in a certain measure (measure), a certain scale and a certain time."

c. HR. Ahmad dan Baihaqi

A person who is able to pay a debt is obliged to neglect his debt. So, if one of you transfers his debt to someone else, the transfer should be accepted, as long as the other person is able to pay.

"From Rifa'ah bin Rafi' that the Prophet Muhammad PBUH was asked: What is the best livelihood? The answer is: a person's work with his own hands and every purchase and sale that is successful".

The third source of Islamic law is *ijtihad*, which is an effort to use reason (*ar-ra'yu*). In Islam, reason has an important role as a means to understand and perfect the teachings in Islam.⁴⁴ However, the use of reason must be guided by the guidance of Allah SWT which is stated in the Qur'an and Hadith.

The Prophet Muhammad PBUH justified the use of reason in *ijtihad*, as explained in the hadith of Mu'az bin Jabal and QS. An-Nisa (4):59. According to Mohammad Daud Ali, *ijtihad* is defined as follows.⁴⁵ *Ijtihad* is a sincere effort or effort using all available

⁴³ Nur Hidayah, "Asas Kontrak Perjanjian Dalam Perspektif Islam," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 1, no. 2 (October 1, 2019): 166, <https://doi.org/10.19105/alhuquq.v1i2.3183>; I Mahmudi, "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Akad Murobahah Perspektif Hukum Islam DanKUHperdata (Studi Kasus BMT Istiqomah Tulungagung)," *Al-Muttaqin: Jurnal Studi, Sosial, Dan Ekonomi* 2, no. 1 (2021).

⁴⁴ Arrisman, *Hukum Perikatan Perdata Dan Hukum Perikatan Islam Di Indonesia*, 2020; Kristiawanto Joko Sriwidodo, *Memahami Hukum Perikatan*, Kepel Press, 2021.

⁴⁵ Mohammad Daud Ali, "Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia," *Paper Knowledge . Toward a Media History of Documents*, 2005; Arrisman, *Hukum Perikatan Perdata Dan Hukum Perikatan Islam Di Indonesia*.

abilities, carried out by qualified people (legal experts) to formulate legal lines that are not clear or have no provisions in the Qur'an and the Sunnah of the Prophet.

In the framework of Islamic law, *ijtihad* has a strategic role as a dynamic instrument that allows the law to remain responsive to the times, including in the context of agreements ('*uqūd*). Therefore, the approach to *ijtihad* should not solely focus on terminological discussions or theoretical debates regarding its authority and limits, but rather be directed at its relevance in accommodating social, political and economic changes that affect the substance and implementation of agreements. This is in line with the principle of *taḥawwulāt* (change) recognized in Islamic *fiqh*, which requires adjusting the law according to the new context faced by the people.⁴⁶

The flexibility of Islamic law in responding to the dynamics of treaties is reflected through various forms of *ijtihad*, such as *ijtihad qiyāsī*, *istiḥsān*, and *maṣlaḥah mursalah*, which allow the creation of new legal formulations that remain within the corridors of *maqāṣid al-sharī'ah*. For example, in the face of changing international political parameters or power configurations in peace treaties, *fuqahā* have performed *ijtihad* that considers the people's welfare and long-term stability. This approach shows that Islamic law is not rigid, but rather adaptable without losing its normative legitimacy.

C. Analysis of the Harmony of Pacta Sunt Servanda Principles and Islamic Principles of Treaties

The principle of *pacta sunt servanda* and Islamic rules regarding agreements have fundamental similarities in terms of commitment and certainty. Both emphasized the importance of keeping promises and ensuring that the agreements that have been made are not broken. Without compliance with the agreement, trust between the parties will be lost, so social and economic stability will be disrupted. Another similarity that can be seen is that these two principles require legality and agreement between the parties in making an agreement.

In addition, the principle of *pacta sunt servanda* and Islamic rules both contain legal consequences in the event of a violation. In

⁴⁶ Ruud Marino Levrandi and Lexy Fatharany Kurniawan, trans., "Kepastian Hukum Penerima Ganti Rugi Pengadaan Tanah: Studi Kasus Korupsi Tol Padang-Sicincin," *Al-battar: Jurnal Pamungkas Hukum* 2, no. 1 (2025): 92–98, <https://doi.org/10.63142/al-battar.v2i1.183>.

the context of secular law, the aggrieved party is entitled to compensation or terminate the contract. Meanwhile, in Islam, the denial of the contract not only has implications for punishment in this world, but also has consequences in the hereafter.⁴⁷

Although there are similarities, there are also differences in principle between the two. In secular law, *pacta sunt servanda* emphasizes formality and legality, so that contracts are considered valid as long as they meet positive legal provisions. In Islam, the legal conditions of an agreement not only include legal aspects, but must also be in harmony with ethical and moral values. An agreement that is legally valid, but contrary to the principles of justice or contains elements of fraud, is not justified in Islamic law.⁴⁸

In addition, in Islam there is a principle of *maslahah* (benefit) that can cancel an agreement if it is proven to harm one of the parties or violate sharia.⁴⁹ Meanwhile, in *pacta sunt servanda*, even if the contract does not benefit one of the parties, it is still binding as long as it meets the legal requirements.⁵⁰ This difference shows that Islam focuses more on the aspects of justice and common good, not just legal certainty.

From the explanation above, the researcher in dividing several comparative aspects related to the principle of *pacta sunt servanda* and Islamic rules about agreements contained in table 1 below.

TABLE 1. Comparison Between Pacta Sunt Servanda Principles and Islamic Principles of Covenants

No	Comparative Aspects	Asas Pacta Sunt Servanda	Islamic Rules Related to Agreements
1	Understanding	Legally entered into agreements apply as law to those who make them. This means that the agreement must be kept by both parties.	A principle in Islam that emphasizes the importance of fulfilling promises and agreements. Based on the Quran and hadith.
2	Legal Basis	Positive law, especially in civil law.	The Quran and hadith, as well as <i>ijma'</i> (agreement of scholars) and <i>qiyas</i> (analogy).

⁴⁷ Arrisman, *Hukum Perikatan Perdata Dan Hukum Perikatan Islam Di Indonesia*.

⁴⁸ Joko Sriwido, *Memahami Hukum Perikatan*; Caesar, "Prinsip Dan Faktor-Faktor Yang Harus Diperhatikan Dalam Pembuatan Kontrak"; Syamsiah, Bao, and Yuliana, "DASAR PENERAPAN ASAS PACTA SUNT SERVANDA DALAM PERJANJIAN."

⁴⁹ Arrisman, *Hukum Perikatan Perdata Dan Hukum Perikatan Islam Di Indonesia*.

⁵⁰ Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak."

3	Purpose	Ensuring legal certainty in the relationship of the agreement, so that each party can take into account the risks and benefits that will be obtained.	Maintaining trust between fellow humans, building harmonious relationships, and realizing fairness in transactions.
4	Scope	It is generally applicable in all types of agreements, both civil, commercial, and international agreements.	This applies specifically to transactions that are in accordance with Islamic law, such as buying and selling, renting, and so on.
5	Legal Consequences	If one of the parties violates the agreement, the aggrieved party can demand compensation or cancellation of the agreement through legal channels.	In addition to legal consequences, breach of promises can also have social and religious consequences, such as loss of trust and sin.
6	Relevance to Values	Emphasizing the value of legal certainty and order.	Emphasizing the values of honesty, trust, justice, and benefit.

This comparative analysis shows that the principle of *pacta sunt servanda* and Islamic rules about agreements have many similarities, especially in terms of commitment and fulfillment of promises. Both aim to maintain legal certainty and trust in the relationship between the parties. However, Islam pays more attention to moral and justice aspects, where the agreement must be in harmony with sharia values and must not harm one party. In the modern context, especially in international business and cross-cultural transactions, it is important for Muslims to understand these differences and similarities in order to be able to transact while maintaining sharia principles.

D. Application of Pacta Sunt Servanda Principles and Islamic Principles of Agreements in Legal Practice in Indonesia

In the context of Indonesian law, the application of this principle is enshrined in Article 1338 of the Civil Code (KUHPerdata), which affirms that every legally made agreement applies as a law for the parties involved.⁵¹ The article stipulates that as long as an

⁵¹ Alfari et al., "Penerapan Kontrak Perjanjian Kerja Di Indonesia Dalam

agreement has been made in good faith and meets the conditions for the validity of the agreement (Article 1320 paragraph (1) of the Civil Code), the agreement is legally binding on the parties as per the law. In addition, the conditions for the validity of the agreement include:

1. Agreement of the Parties, the main condition of an agreement is the mutual agreement of all parties involved. This has also been reaffirmed in Article 1321 of the Civil Code.
2. Competence of the Parties, in the context of civil law, Article 1330 of the Civil Code is the main reference to determine which legal subjects do not have the capacity to perform legal acts, especially in terms of making agreements.
3. A specific object, one of the conditions for the validity of an agreement is the existence of a definite object of the agreement. This object can be in the form of an obligation of one party to do something (achievement), such as providing goods, services, or even refraining from an action, as stipulated in Article 1234 of the Civil Code.
4. Halal Reasons, The Civil Code emphasizes more on prohibitions in making agreements. Article 1337 specifically states that a cause of an agreement is considered invalid if it is contrary to the law, moral norms, or the public interest. In other words, the law does not provide a positive definition of what is meant by 'halal cause', but only provides negative limitations.

In practice, the principle of *pacta sunt servanda* ensures that agreements that have been made cannot be ignored. In fact, if one party breaks its promise (default), the other party has the right to demand fulfillment of the agreement or compensation in accordance with the agreement made.

A study of the four decisions of the Supreme Court of the Republic of Indonesia, each of which is listed in cases Number 464 PK/Pdt/2021, Number 1078 PK/Pdt/2024, Number 1157 PK/Pdt/2024, and Number 3663 K/Pdt/2024, reveals a number of recurring patterns and systemic trends in the practice of civil dispute resolution in Indonesia. The four cases, although different in legal

Perspektif Kitab Undang-Undang Hukum Perdata (KUHper)"; Apriyodi Ali, Achmad Fitrian, and Putra Hutomo, "Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata," *SENTRI: Jurnal Riset Ilmiah* 1, no. 2 (October 17, 2022): 270–78, <https://doi.org/10.55681/sentri.v1i2.234>.

subjects and objects of dispute, have the same common thread, namely rooted in the event of default or breach of promise to a previously agreed legal agreement.

In these cases, default is interpreted in various forms: starting from the failure of the local government to fulfill the obligation to pay to the contractor (decision 464), the non-fulfillment of the right to compensation by the business partner jointly and severally (decision 1078), violation of the loan and loan agreement and guarantee responsibility (decision 1157), to the failure of the insurance company to disburse the customer's claim for a valid insurance policy (decision 3663).

In general, the course of dispute resolution in each case shows complex dynamics. The litigation process often goes through all levels of justice from district courts, appeals, cassations, to review reflecting differences in juridical interpretation between courts. This phenomenon confirms that multi-level adjudication is one of the main characteristics in the Indonesian civil justice system, where the clarity of the legal substance of a case is not always decided consistently at each level.

Interestingly, there are almost uniform defense patterns used by the defendants, such as the exception *ne bis in idem*, the postulation of *obscuur libel* (fugitive lawsuit), and objections to the prematurity of the lawsuit. Although at the first level some lawsuits were declared inadmissible for procedural reasons, at the higher level, especially at the cassation or review level, judges often reassess the substance of the case and tend to prioritize material justice rather than just formal validity.

Furthermore, from the perspective of legal protection, these rulings show that the Supreme Court has not hesitated to affirm the rights of private legal subjects, both individuals and business entities, to demand justice even against powerful entities such as local governments and large corporations. This shows the judiciary's partiality towards the principle of contractual justice, where violations of legal agreements are considered serious violations that result in the obligation of compensation, late fines, and the imposition of *dwangsom* (forced money).

Overall, the analysis of these four decisions confirms that strengthening the principle of default, protection of legal engagement, and clarity of contract performance are the main foundations that the Supreme Court continues to maintain. Although the litigation process takes time and often goes through interpretive dynamics between courts, in the end the legal system seeks to maintain legal certainty while upholding the value of substantive

justice for all parties seeking justice.

In addition to the provisions in the Civil Code, agreements in Indonesia can also refer to the principles of Islamic law, especially in the context of sharia contracts. The Islamic principles applied in the agreement emphasize honesty, justice, and the absence of elements of fraud (*gharar*) or *riba*. In fiqh muamalah, an agreement is an agreement between two or more parties to transact with each other based on sharia provisions. In Islam, there are several main principles in making an agreement between:⁵²

- 1) Ijab and Qabul: There must be an offer and acceptance from both parties.
- 2) Openness (Transparency): Both parties must be open in providing information related to the object of the agreement.
- 3) Fairness: No party should be disproportionately disadvantaged.
- 4) Avoidance of Usury and Gharar: The agreement must not contain elements of usury or uncertainty that can harm one of the parties.

For example, in practice related to the fundamental principles of Islam in this agreement, Islamic banking has been practiced, one example of the application of agreements based on Islamic law is the murabahah contract. It is a form of buying and selling where the bank buys an item at the request of the customer and then sells it to the customer with an agreed profit margin.⁵³

A customer of an Islamic bank applied for murabahah financing to buy a car. The bank agreed to buy the car for IDR 200 million from the dealer and sell it to customers for IDR 220 million, which was paid in installments for 24 months. However, in the middle of the payment period, the customer experienced financial difficulties and was unable to continue the installments.

Islamic banks then provide installment restructuring by extending the payment tenor without increasing the profit margin, in accordance with the principle of justice in Islamic law. This shows

⁵² Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak"; Arrisman, *Hukum Perikatan Perdata Dan Hukum Perikatan Islam Di Indonesia*.

⁵³ Roifatuss Syauqoti, "Aplikasi Akad Murabahah Pada Lembaga Keuangan Syariah," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 3, no. 1 (June 2, 2018), <https://doi.org/10.30651/jms.v3i1.1489>; Abdul Rachman et al., "Model Implementasi Akad Murabahah Pada Produk," *Madani Syariah*, 6, no. 1 (2023): 81–92; Fathia Nur Khususna, Andi Rio Pane, and Rifkah Mufida, "Tinjauan Fiqh Muamalah Terhadap Pelaksanaan Akad Murabahah Pada Perbankan Syariah," *Kunuz: Journal of Islamic Banking and Finance* 1, no. 2 (December 30, 2021): 61–73, <https://doi.org/10.30984/kunuz.v1i2.49>.

the application of sharia values, namely avoiding the practice of riba and ensuring that transactions take place fairly and transparently.

Conclusion

The results of this study show that both positive law and Islamic law make the principle of *pacta sunt servanda* a fundamental principle in agreement law. Both emphasize the importance of legal certainty and the obligation of the parties to fulfill agreements that have been made legally. However, there are fundamental differences in terms of terminology, philosophical foundations, requirements for the validity of agreements, and dispute resolution mechanisms. Positive law focuses on formal and juridical aspects, while Islamic law integrates ethical and moral values, and places a stronger emphasis on transcendental elements ('illah) and justice in the implementation of contracts.

The principle of *pacta sunt servanda* in both legal systems is the main foundation in law enforcement of agreements, dispute resolution, and trust building in the business world. For legal practitioners, a deep understanding of these principles is essential to provide appropriate legal advice and ensure legal certainty in business transactions. Meanwhile, for the parties to the agreement, awareness of the importance of fulfilling commitments is the main key to the success of a transaction. In facing the challenges of globalization and technological developments, adjustments are needed to the application of these principles to remain relevant. Therefore, further studies are needed on the harmonization of the principles of *pacta sunt servanda* with other legal principles, including integration with principles in sharia economic law.

As a space for concrete development in the future, it is necessary to consider the integration of the principle of *pacta sunt servanda* into the regulation of sharia contracts in Indonesia, especially through strengthening the role and position of the National Sharia Council – Indonesian Ulema Council (DSN-MUI) in establishing binding fatwas in the preparation of contracts, as well as the codification of sharia law norms in the Sharia Civil Law Draft or through the improvement of the Sharia Economic Law Compilation (KHES). In addition, strengthening sharia arbitration institutions and mediation based on the principle of *islah* (peace) can also be part of sharia-based dispute resolution reform that is more effective and efficient. With this approach, the national legal system not only guarantees legal certainty and justice, but is also

able to respond to contemporary socio-economic dynamics in a more comprehensive and civilized manner.

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