

Expansion of the Essence of Pacta Sunt Servanda in the Dignified Padan of the Toba Batak Indigenous Community

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Abstract

The Toba Batak traditional community lives and develops and has cultural values, some of which are transformed into laws to be obeyed communally. One of the laws in Toba Batak society is regarding Dignified Padan. In general, Dignified Padan in the Batak Toba traditional community is an agreement as in civil law, of course with several features in its arrangement. In an agreement there is the principle of Pacta Sunt Servanda which states that an agreement is binding as if a law is binding. The question is how in an agreement containing the Pacta Sunt Servanda there is still a violation (default) of it. On the one hand, Dignified Padan in Toba Batak society still exists today and is adhered to by the majority of Toba Batak society, so this research is to examine the contents of Dignified Padan as an expansion of the concept of Pacta Sunt Servanda in an agreement. This research is empirical legal research which produces the result that Dignified Padan is worthy of being used as a role model for an agreement and is regulated in positive law in Indonesia.

Keywords: *Padan, Dignified Padan, Agreement, Pacta Sunt Servanda.*

1. INTRODUCTION

Laws are made to be implemented. The law can no longer be called law if it is never implemented.[1] There are several terms related to the legal relationship between one legal subject and another legal subject, namely: engagement law and agreement (contract) law. The term engagement itself is a translation from Dutch, namely "verbintenis". These agreements exist in several areas of civil law, such as within the scope of property law, family law, inheritance, and individual law. Engagements that cover several areas of civil law are called engagements in the broadest sense. In fact, the definition of engagement itself in civil law is not found in Book III Burgerlijk Wetboek (BW), but the meaning is given from several doctrines and opinions of existing legal scholars. This is different from the agreement which comes from Dutch, namely "overeenkomst" which is regulated in Article 1313 BW.[2]

Basic Pacta Sunt Servanda are to be kept comes from Latin, which means "promise must be kept." The fundamental basis of Civil Law System, in its development, has been adopted into various legal systems in the world, especially regarding the implementation of agreements. Aziz T. Saliba states that the principle Pacta Sunt Servanda are to be kept is the sacralization of an agreement (sanctity of contracts). The focal point of contract law is freedom of contract or what is known as the principle of autonomy, which means that

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by observing appropriate legal limits, people can enter into any agreement according to their wishes in accordance with Article 1313 Burgerlijk Wetboek, and when they have decided to make an agreement, they are bound by the agreement.[3]

The strength of the agreement made legally by the parties is valid as law; that is the basic Pacta Sunt Servanda are to be kept. Besides that Pacta Sunt Servanda are to be kept also referred to as the principle of legal certainty in relation to the consequences of an agreement. Through this principle, the judge or third party must respect the substance of the contract made by the parties as a binding law; the parties' contract cannot be interfered with by anyone.[4] Regarding legal certainty itself, Apeldoorn said that legal certainty can also mean things that can be determined by law in concrete matters. Lord Lloyd believes that "law seems to require a certain minimum degree of regularity and certainty or without that it would be impossible to assert that what was operating in a given territory amounted to a legal system".[5] However, against the agreement as stipulated in Burgerlijk Wetboek, there are still many violations of the agreement itself (defaults) committed by one of the parties who made the agreement.

Explanation of "Padan Bermartabat (Match with Dignity)": In the Toba Batak traditional community environment, it is a promise, vow, rule, regulation, "Padan na robi", previous agreement, "Padan na imbaru", latest agreement, "Marpadan", promise, hold an alliance, "Parpadanan", alliance, agreement, "Mamadanhon", making something into a fellowship, "Dongan Sapadan", friend in alliance, partner in agreement.[6] In the life of the Toba Batak traditional community, it is often made a "match" (pledge) between one clan (Clan) with other clans. This pledge initially occurred between one family and another family or between one family group and another family group of different clans.

As for "Padan Bermartabat (Dignified Match)" itself is not a positive law but a living law (the living law) which is not written (unwritten law) which lives and develops in the Toba Batak traditional law community until now. Toba Batak Indigenous People who created "Dignified Match" will hold fast to the promise and pass it on to their respective descendants so that "Dignified Match" that has been made remains remembered, obeyed, and implemented faithfully. Although different clans, in each "Dignified Match" which has been made is generally set as a bond so that both parties who pledge consider each other as "Dongan Sabutuha" (classmate). The consequence is that each Padan is obligatory to consider the sons and daughters (children) of one's pledge friends the same as one's own sons and daughters (children). Sometimes family ties are due to the existence of a "Padan" is closer than family ties due to the clan.[7] "Dignified Match" In Toba Batak society the law applies "Aha didok, ikkon diulahon" (what is said must be done). "match" is said officially by testifying to God (or something that is considered holy and sacred) to strengthen the truth and sincerity accompanied by the determination to do something to strengthen the truth or dare to suffer something if the statement is not true. In other words "Dignified Match" In the Toba Batak traditional community is a form of human existence itself.

Dignified Matching, in general, is the same as the concept Pacta Sunt Servanda are to be kept in civil agreements. Violation of an agreement made must contain several consequences that can be imposed on the violator. Specialized in Dignified, which is made with a concept more religious, then the consequences for violators will also be more religious (religius magis). If agreements generally within the scope of civil law only concern assets (in the narrow sense), it is different with Dignified Match. Dignified Match can be made by the parties not only from the background of wealth (material) but spread across all aspects of the life of the Toba Batak traditional community.

Dignified Match, as a result of the cultural values of the Toba Batak traditional community which according to Sibarani is divided into 3 (three) parts, namely: "Instrument values (instrument values), a value that is demonstrated through self-identity, namely clan, language, script, and customs. Interaction value (interactional value), is a

value in carrying out interaction relations, namely Dalihan Na Tolu, norms, customs, customs, for example in marriage, birth, and death. Terminal value (terminal values), is the vision value of the Toba Batak people, this value is hamoraon, hagabeon, hasangapon".[8]

Problem formulation for this research are 1) How does Dignified Match become a living law in Toba Batak society?; 2) How can Dignified Match expand the truth Pacta Sunt Servanda are to be kept in an agreement?.

2. METHODS

The purpose of the method is "the process, principles, and procedures by which we approach problems and seek answers. In social science, the term applies to how one conducts research".[9] Research (research) means search again. The search in question is a search for true (scientific) knowledge, because the results of this search will be used to answer certain problems.

This research is a type of empirical legal research, namely a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical remains and archives.[10] Empirical legal research or also known as Socio-Legal Research, which is an approach to researching law as an object of research that is not only seen as a mere prescriptive and applied discipline but also as empirical or legal reality. Therefore, empirical legal research is intended to invite researchers not only to think about normative legal issues only (law as written in the book).

3. RESULTS AND DISCUSSION

3.1 Match with Dignity as a Living Law (The Living Law) In Toba Batak Society

According to Good luck's opinion, culture is the entire system of ideas, actions, and results of human work within the context of social life, which is made human property by learning. So, obey Good luck Culture is closely related to 3 (three) interrelated things. First, abstract things such as systems of ideas, knowledge, art, values, and others; Second, things that are real (concrete), namely behavior that has been patterned, for example, habits and so on; Third, things related to physical objects as embodiments of human ideas and works such as temples, household equipment, art objects, and so on. Based on the description above, it can be understood that the development of legal anthropology in Indonesia is positively correlated with the development of customary law science, so that the two can be distinguished but cannot be separated.[11]

Legal goals that are close to realistic are legal benefits and legal certainty. Positivists place more emphasis on legal certainty, while functionalists prioritize the benefits of law, and it can be argued that "the highest right, the highest wrong, the highest law, the highest cross," which means that harsh laws can hurt unless justice can help them, so even though justice is not the only goal of law, justice is the most substantive thing.[12] In essence, society expects benefits in implementing or enforcing the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or usefulness for society. Don't let it happen that just because the law is implemented or enforced, it causes commotion and unrest in society. Legal benefits by Satjipto Rahardjo must be proportional to the sacrifice. Legal utility is a theory that accompanies justice and legal certainty. In implementing legal certainty and justice, the principle of expediency should be considered.[13]

The diversity of people's perceptions, attitudes, and behavior towards the substance of the law (complying with, ignoring, and/or violating it) really depends on the cultural values that live and underlie the legal culture of that society. M. Sastrapratedja suggests that people act based on the values they believe in, and these are always repeated and become the rules of their life. The stronger the value chosen, the stronger the influence of that value on one's life. A society's perceptions, attitudes, and behavior towards the law and the legal system are determined by cultural values that are believed to determine how they behave towards the law.[14]

The pledge made in Match with Dignity, which was carried out by the ancestors of the Toba Batak people in ancient times, remaining sustainable cannot be separated from the preservation of the clan within the Toba Batak people. In general, modern Toba Batak people have never even seen the shape or form of its existence match Dignified This is good in the form of writing, buildings, ornaments, and so on, but the Toba Batak indigenous people know it based on stories (holds) which has been carried out continuously from generation to generation until now. The concept of exchanging information through stories, sagas (holds) has proven to be more pervasive and its legitimacy is recognized by the modern Toba Batak people as truth.

Apart from that Match with Dignity Proven to still exist among the modern Toba Batak indigenous community today. Remain sustainable in this case also so that no violation will be possible Match with Dignity which has been made. This is due to the magical religious concept contained in Padan Dignity, where Toba Batak people will not violate Padan Dignity because they are afraid of disaster (bala) that will befall them if they violate Padan Dignity.

Based on this Eugene Ehrlich, as the originator of the concept "the living law" himself stated that the living law is the opposite of statutory law (positive law), through this concept it basically means that we do not find this law in statutory regulations, in judges' decisions, or in decisions of other state institutions. The living law can only be found in society itself. Connected with the function of law as social control, the law will not carry out its duties if the broader foundation of social order does not support it. The roots of legal order in society are rooted in social acceptance and not in coercion from the state. Furthermore, Eugene Ehrlich found that social norms or norms of behavior that really regulate life in society can be viewed at a high level of consciousness. The living law may be very different from the norms applied by the courts. The law of life is a framework for the routine structuring of social relations.[15]

3.2 Expansion of Reality Pacta Sunt Servanda are to be kept Through Match with Dignity

As for Pacta Sunt Servanda are to be kept as a principle (principle) in contract law. Black's Law Dictionary mentions that principles as "a fundamental truth or doctrine, as of law; a comprehensive rule of doctrine which furnishes a basic or origin for others".[16] Satjipto Rahardjo goes on to state that legal principles (principles) are the soul of these legal regulations because legal principles are the broadest basis for the birth or system of law from legal regulations.[17] Johannes Gunawan stated that there are several principles in contract law regulated in BW, one of which is Pacta Sunt Servanda are to be kept. If there is a consensus from the parties in a contract (agreement), the agreement gives rise to the binding force of the agreement as if it were a law. What a person states in a legal relationship then becomes law for them (cum nexum faciet mancipiumque, uti lingua mancuoassit, ita jus esto (when he made a connection with the servant, who, as if he had lost his tongue, so be the right)).[18]

Obedience to fulfill the content of the contract made by the parties related to the basis Pacta Sunt Servanda are to be kept. The origins of this principle can be traced to the Roman praetorian doctrine, namely "Facta Conventa Sevabo " which means that I respect the agreement. This teaching is supported by the sacred commandment namely "motzeh sfassecha tismar" (you must keep your word). This concept eventually became a basic

concept (sacred basis) of classical contract law theory. This concept can also be traced from the agreement between Jehovah and the Israelites (Jews), failure to comply with the covenant was a sin and a violation of the contract.[19] Islamic law also regulates the same thing where contracts have different meanings, even in law the law, contracts are sacred and performing contracts is one's sacred duty. Inside Surah Al Maidah verse 1 (Q.S 5:1) obliges the believers to obey the covenant they made "Aufu bil-Uqud" because every agreement (al-ahdu) will definitely be held accountable.[20]

Back to match in the Toba Batak traditional community. One of Dignified Match which is famous to date is match which was made between Nainggolan Parhusip and Siregar Silali. On one occasion, Nainggolan Parhusip made a surprising statement, that from that moment on Siregar Silali had to become his younger brother and then took an oath, that from that moment on, sons of Nainggolan Parhusip's descendants could not marry Siregar Silali's daughters, and vice versa, sons -Men of Siregar Silali descent may not marry Nainggolan Parhusip's daughters. Since the time of the oath (match) was adopted by the baby boy who was handed over by Parhusip to Siregar, officially named Silali. Still holding Siregar's baby daughter, Nainggolan Parhusip continued his statement that from that moment on Siregar's daughter became his son and he handed over his own son to Siregar's son. Dignified Match what has been made has become a hereditary oath for the descendants of Nainggolan Parhusip and the descendants of Siregar Silali. Until now, none of Nainggolan Parhusip's descendants and Siregar Silali's descendants have married each other; they really respect each other match (oath). From then on, they vowed that their descendants would be brothers, namely "si sada lulu anak si sada lulu boru", meaning that they must feel that their offspring are equally their children. In the past, only Nainggolan Parhusip and Siregar Silali took the oath, but now all the descendants of Nainggolan and Siregar have united and agreed that the oath does not only belong to Nainggolan Parhusip and Siregar Silali, but to the descendants of Nainggolan and other descendants of Siregar. It can be seen that the relationship between these two clans is very close.[21]

Basic pacta sunt servanda are to be kept as one of the basic norms (grundnorm (basic standard)) in civil law to respect or obey agreements.[22] Grotius, as adherents of natural law (natural law), tries to say that promises are binding, and this is an important principle in agreements. Furthermore, Grotius states that we must fulfill our promises (promisorum implendorum obligation (the obligation to fulfill promises)). Against the foundation, pacta sunt servanda are to be kept alone, Grotius said that among the underlying principles of natural law, honoring promises and treaties is the most fundamental principle. pacta sunt servanda are to be kept, which is part of natural law, is the basis for consensus. Even by Anzilotti (an adherent of dualism), an Italian national strengthens his view, Grotius [23].

According to David Allen's opinion, which states that there are 4 (four) stages of development of thinking regarding the binding force of an agreement (relation to pacta sunt servanda are to be kept) as follows:[24]

Level I is mentioned Contracts Re; this stage, according to L.B Curzon, is referred to as "Obligations re (real contracts-the word "real" is derived from res", is based on the opinion that the binding force of an agreement (contract) is emphasized on the delivery of goods (res) not on promises. Includes:

- a. Mutuum , loan lending goods for consumption (including borrowing money).
- b. Commodatum , lent, lending items to use;
- c. Depositum, Security deposit, hand over goods for safekeeping without compensation and return them at the request of the party who handed over the goods;
- d. Pinus, handing over goods as collateral for the performance of obligations.

Stage II is called Contracts of Words; is based on the opinion that the binding force of a contract depends on the words (with words) that are spoken. Includes:

- a. Stipulatio , stipulation namely the interaction of words from 2 (two) or more people in the form of questions and answers (questions: Do you promise? jawaban: Spondeo- I Promise);
- b. Dictio Dotis (Diction of Dotis), namely serious questions (Solemn Declaration) that gives rise to a kind of binding sign or dowry (Dowry);
- c. Ius Iurandum Liberti (Jurata Promissio Liberti) The Right to Swear to a Freeman, namely a kind of sworn testimony by a third party on his behalf;
- d. Votum, wish namely a promise under oath to God.

Stage III is called Contracts Litteris; is based on the opinion that the binding force of an agreement (contract) lies in its written form. includes:

- a. Expensilatio , Expensive Namely a form of notification recorded in the creditor's book, on the basis of which the debtor is bound to pay.
- b. Synographae or Chinographae, namely, specifically written obligations borrowed from Greek customs and not found in Roman customs.

Stage IV is mentioned Contracts Consensus; is based on the opinion that the binding force of an agreement (contract) is due to the existence of an agreement or Consensus of the parties, including:

- a. Emptio Venditio , Purchase Sale namely the sale and purchase agreement (contract);
- b. Locatio Conductio, Rental Conduct namely an agreement (contract) that allows the use or rental of goods or services;
- c. Societas, company namely a cooperation agreement (contract) Partnership);
- d. Mandatum, Command, namely a service mandate carried out for another person (for example: agency).

Therefore, the study to make "Dignified Match" as a role model agreement (contract) in the national legal system is a necessity because "Dignified Match", which in fact originates from the Toba Batak tribe's traditional community, is a customary law that has very high wisdom values. Besides that, the Toba Batak tribe is one of the tribes with a very large number of individuals spread throughout the world. By entering "Dignified Match" into the national legal system has 2 (two) advantages, namely: First, can accommodate the interests of the Toba Batak indigenous people as a community and Second, through noble traditional values, can be used as a model that is used nationally because it is proven that "Dignified Match" will greatly minimize the existence of disputes (dispute) in it because it was made with sincerity, not just an agreement as used in the western legal system.

4. CONCLUSION

The Batak Toba indigenous people, with all their nobility of character, introduced an agreement scheme known as the term Dignified Match, which is still valid and exists among the Toba Batak traditional community. To Dignified Match, the provisions may not be violated, unless the violator is ready to accept the harm (disaster) that he will receive as a violation of Dignified Match. It is closely related to the law of national agreements where there is a basis Pacta Sunt Servanda are to be kept as a fundamental principle in an agreement. However, in the current era, defaults (broken promises) tend to occur frequently and have been proven in various cases in court. It seems related to this

Dignified Match can be used as a basis in national contract law as an extension of the basis Pacta Sunt Servanda are to be kept which is already there.

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