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# Comparison of Chinese and Indonesian Legal Cultures in Contract Making

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## Abstract

This article discusses the comparison of legal culture between the Chinese and Indonesian people in making contracts. A comparison of legal culture is carried out by comparing the legal culture of the Chinese and Indonesian people in complying with contract law based on the Chinese/Chinese Civil Code and Indonesian Civil Code as well as other related regulations in the field of contracting. Contract law in China is known as the Contract Law of the People's Republic of China, the people are called Chinese. However, on January 1, 2021, the Contract Law in China has been declared revoked and is no longer valid because a new law known as the Chinese Civil Code has been promulgated. Meanwhile, contract law in Indonesia is also known as the Civil Code, which was obtained from the colonial era government, and is still in force today. Meanwhile, in the Netherlands, only the Civil Code used previously has been updated. The problem raised is how to compare the legal culture of the Chinese and Indonesian people in making contracts. The method used is normative legal research with a comparative approach. The analytical knife used is the general theory of contract law in positive law. Through the analysis carried out, the comparison factors were obtained as the basis for the comparison of making contracts by the Chinese and Indonesian people. From the results of this comparison, the differences and similarities of contract law that apply in Indonesia and China are obtained.

**Keywords:** Legal Culture, Contract, Chinese, Indonesian

## 1. Introduction

Indonesia cannot ignore the influence of economic and business relations between countries that are mutually dependent and mutually influence the current contract law, the occurrence of patterns of social relations, and today's political economy can cause new problems in the contractual relationship between the parties (Kusmiati, 2017).

It is undeniable that the trade war between China and the United States has had a wide impact on the international community. One of the impacts is that Indonesia's trade performance with China experienced a deficit of US\$. 48 billion in January – May 2019 period. This figure increased from the January – May 2018 deficit of US\$. 8.11 billion. It was noted that the export value from January to May 2019 was only US\$. 9.55 billion, even though exports for the same period in 2017, reached US\$. 10.25 billion. This means that there is a decline in exports reaching US\$. 700 million in 5 (five) months. Meanwhile, the decline in imports from China to Indonesia was lower, only around US\$. 330 million US\$. 18.36 billion to US\$. 18.03 billion (Lubis, 2021). This paper does not discuss the relationship between China and Indonesia but only wants to describe why China is currently developing rapidly in its economy.

In the economy, of course, there is a relationship between one party and another. The point is that there is a symbiotic mutualism that brings mutual benefits. This mutually beneficial relationship is regulated in an agreement or contract. The law of agreement or contract in each country is certainly different. However, there are similarities, namely the principles of applicable law.

In Indonesia, there is no legal regulation that specifically regulates international trade contracts. The existing arrangements only refer to the agreement of the parties based on the legal rules in the Civil Code (KUH.Perdata), Herziene Indlansche Reglement (HIR) or Reglement Buitengewesten (R.Bg), Indonesian Trade Law, Law Consumer Protection, International Private Law and Unidroit Principles of International Commercial Contracts (UPIICC) only (Soenardi, 2004: 35).

While in China, using: General Principles of China's Civil Law, China's Product Quality Act, China's Consumer Protection Act, China's Contract Law Act, China's Foreign Trade Law, Unlawful Act China, United Nations Vienna Convention on Contracts for the International Sale of Goods 1980 (CISG), Unification of Private Law (UNIDROIT), International Commercial Terms (INCOTERMS), and Uniform and Practice for Documentary Credits (UCP) (Indahwati, 2020: 14).

The definition of a contract or agreement according to the agreement law in Indonesia can be interpreted as an act between one or more parties who bind themselves to one or more other parties. Article 1313 of the Civil Code, states: *“an agreement is an act by which one or more people bind themselves to an act by which one or more people bind themselves to one or more other people”* (Article 1313 of the Civil Code). Meanwhile, the definition of a contract according to the existing civil law institutions in China a contract is defined as an agreement regarding the establishment, change, or termination of a civil relationship between another person, legal entity, or organization as a subject with the same status. Article 2 Contract Law of the People's Republic of China, states: *“For the purpose of this law, a contract means an agreement on the establishment, alteration or termination of the civil right-obligation relationship between natural persons, legal persons or other organization as the subject with equal status”* (Article 2 Contract Law of the People's Republic of China).

In making contracts in Indonesia, it is known that there are conditions for the validity of the agreement. The conditions for the validity of the agreement are regulated in Article 1320 of the Civil Code, consisting of an agreement between the parties; capable of action; a certain thing; and halal cause. Meanwhile, the conditions for the validity of the agreement are based on the Chinese Civil Code, namely: an agreement between civil subjects; binding on the parties; made in writing and orally (Civil Code of the People's Republic of China, Book III: Contracts, Part One General Provisions).

The analysis was carried out using the theory of legal certainty proposed by Gustav Radbruch, in his book *“Rechtsphilosophie”*, who stated that: *“Nicht dargetan ist der unbedingte Vorrang der durch das positive Recht erfüllten Forderung der Rechtssicherheit vor den von ihm viellecht unerfüllungkeunden glass Forderung der Rechtssicherheit”*. Radbruch's view is generally interpreted that legal certainty does not always have to be given priority for its fulfillment in every positive legal system, as if legal certainty must exist first, then justice and benefit (Radbruch *in*. Susanto, 2014).

In the context of making contracts based on the perspective of the legal culture of the community, there are basic differences and similarities. Whether the differences and similarities in the context of contracting are examined from the perspective of legal culture. Starting from these legal issues, the object of the study is focused on how to compare the legal culture of the Chinese and Indonesian people in making contracts. The aim is to find out and analyze the comparative legal culture, where the differences and similarities lie.

## 2. Research methods

The research method used is normative legal research with descriptive analysis. A comparative approach is taken to understand contracting in China and Indonesia. A statutory approach is also carried out to examine the provisions governing the making of contracts from a civil law perspective. The statutory regulations used for comparison are the Chinese Civil Code which was only enacted on January 1, 2021, with the Indonesian Civil Code, a product of the colonial era.

## 3. Research Results and Discussion

### 3.1. China's Civil Code (China): Civil Code, Part III Contracts

China's legal system, developed according to its historical path, is "apart" from the development of the Anglo-Saxon (Anglo-American) legal system, as well as the civil law system (European Continental). Although at a certain point there appears to be an intersection between these legal systems, the Chinese legal system is built on a foundation of legal sources, principles, institutions, and institutions that are different from other legal systems in the world, so that it appears as a separate legal system (Wardiono, 2012).

There are more than 200 Chinese laws, and the main ones include the Constitution; Civil code; Criminal law; Company law; Securities Law; Trademark Law; Patent law; Copyright Law; Civil Procedure Law; Criminal Procedure Law; Administrative Procedure Law; Election Laws at the National People's Congress and Local People's Congress; Legislation Law. China's laws and regulations can be divided into four levels in terms of effectiveness in a decreasing hierarchy: 1) Constitution; 2) Law; 3) Administrative regulations, judicial interpretations, and military regulations; 4) Local laws and regulations, departmental regulations. In addition to the constitution and more than 200 laws, there are thousands of administrative regulations, judicial interpretations, military regulations, local by-laws, local by-laws, and departmental regulations (China Justice Observer (CJO), URL, 2022).

China announced its first civil code in May 2020, which includes 7 (seven) sections, namely: General Principles, True Rights, Contracts, Personality Rights, Marriage and Family, Succession, Liability for Torture, and Additional Provisions. The contract is the third part (China Justice Observer (CJO), URL, 2022). Previously, China had passed the Contract Act separately. After the entry into force of the Civil Code, the Contract Law will be abolished on January 1, 2021, when the Civil Code comes into force (China Justice Observer (CJO), URL, 2022).

"Part III Contract", has a total of 29 chapters, which are divided into 3 (three) subsections: General Provisions, General Contracts, and Quasi Contracts. "General Terms", provides conclusions, effectiveness, performance, changes, termination, and liability for breach of contract. "General Contracts", provides 18 general contracts, such as sales contracts, lease contracts, technology contracts, and partnership contracts. "Quasi-contract", provides for two conditions: negotiorum gestio and unfair enrichment (China Justice Observer (CJO), URL, 2022).

There are several important points contained in Part III of the Chinese Civil Code Contract, as follows:

#### 1. "Contracts and Applicable Laws

*A contract is an agreement between a civil subject to establish, modify, and terminate a civil law relationship. Where the contract does not fall into one of the types provided for by the "Typical Contract" of the "Part III Contract", the "General Terms" may apply to the contract and the relevant provisions of the "Typical Contract" or similar contract-related provisions of other laws. can be referenced.*

*The parties may agree to the applicable contract law according to the law chosen. However, Chinese law will apply to contracts to be fulfilled on Chinese territory for Sino-Foreign equity joint ventures, Sino-foreign contract joint ventures, and Sino-Foreign cooperation in exploring and exploiting natural resources.*

## *2. Conclusion and Contract Effectiveness*

*The parties may, when entering into a contract, use written, oral or other forms. "Written form", means any form that provides the information contained in a contract that can be reproduced in a tangible form, such as a written agreement, letter, telegram, telex, or facsimile. Any electronic data that can show, in tangible form, the specified content via electronic data exchange or email and which can be accessed for reference and use at any time will be considered as written form.*

*If the parties sign a contract in the form of a contract instrument, the contract is made when both parties put their signature, fingerprint, or seal. A legally formed contract will be effective at the time of its formation unless otherwise provided by law or agreed upon by the parties.*

## *3. Termination of Contract*

*The parties may agree on the cause of termination of the contract by either party. If the cause occurs, the party who has the right to terminate the contract may terminate the contract. In addition, in any of the following circumstances, the contract may be unilaterally dissolved, even though the parties have not agreed to it, namely:*

- (1) It is impossible to achieve the objectives of the contract due to force majeure;*
  - (2) Each party expressly declares, or demonstrates through its conduct, that it will not pay its principal debt before the end of the performance period;*
  - (3) Any party that delays payment of its debts and fails to do the same within a reasonable time after being asked to do so;*
  - (4) Each party delays the performance of its debts, or commits other violations, making it impossible to achieve the objectives of the contract;*
  - (5) Other circumstances determined by law.*
- ## *4. Legal and Agreed Obligations For Contract Breach*

### *(1) Legal Liability for Breach of Contract*

*If any party fails to perform its contractual obligations or its performance is not in line with the agreement, that party will bear the responsibility for breach of contract such as continuing performance, taking corrective action, or compensating for losses.*

### *(2) Agreed Damage Or Damage*

*In addition to legal obligations for breach of contract, the parties may also agree that when one party breaches the contract, that party must pay a certain amount of damages to the other party according to the seriousness of the breach, and may also agree. on the method of calculating the amount of loss caused by the breach of contract.*

*If the agreed amount of compensation is lower than the loss caused by the breach of contract, the court or arbitration institution may increase the amount of liquidated compensation at the request of the parties; if the agreed amount of compensation is excessively higher than the actual loss, the court or arbitration institution may reduce it at the request of the parties” (China Justice Observer (CJO), URL, 2022).*

## *3.2. Chinese Legal Culture in Contract Making*

The business relationships carried out by the Chinese people of Benteng Kampung Sewan are generally non-contractual. A non-contractual business relationship is a business relationship that is carried out without using an agreement in the sense of a modern business contract that uses the clauses in the contract explicitly and in detail. The business carried out by these small traders is based on agreement and mutual trust between the traders. These traders have been carrying out trading methods without contracts for generations (Wasitaatmadja, 2020: 164).

Non-contractual business relationships are important to study because this kind of trading system can perpetuate trade between traders. Respect for what is agreed upon in the form of taking goods that must be paid for is firmly held, but full of flexibility, in the sense that the payment for the goods may be delayed, as long as the debtor continues to pay. The sanction for the delay is only that he is no longer allowed to take the goods until the previous debt is paid off. Respect for other people's property rights, in the form of goods taken, is still recognized. This causes trade between traders to be lasting (Wasitaatmadja, 2020: 164).

The small traders consider that the records of the number of goods and their prices made by the traders are evidence of the trade relationship, like a modern contract that binds the parties. Non-compliance to pay the price of the goods taken may occur, but the settlement is always carried out by deliberation. If the obligation to pay is not fulfilled, then the trade relationship ends and the debtor will no longer be trusted. However, if the debtor pays later, the buying and selling relationship will resume. Buyer and seller relationships are generally based on mutual trust, because there is a family relationship or have known each other for a long time in trading or other relationships; and because they need each other (Wasitaatmadja, 2020: 164-165).

Based on this description, the legal culture of the Chinese community in making contracts to trade is more of a non-contractual relationship. It is based on the foundation of mutual trust in trading and is carried out from generation to generation. If there is a dispute, every Chinese person must make every effort to avoid dispute, because the dispute can damage the honor and disrupt public order. Thus, every member of the community must always strive for reconciliation and seek conciliatory solutions. If the reconciliation process does not produce anything, then the dispute is legally resolved, as the ultimate tool (Wardiono, 2012: 73).

### 3.3. Indonesian Civil Law Institution

The agreement signed by the parties is the source of the engagement and is binding on both parties or who signed it from the date the agreement was signed. The agreements discussed in this study are those intended in Book III of the Civil Code. In the Civil Code, the formulation of the engagement is written in Article 1233 of the Civil Code which states that: *“every engagement is born either by agreement or by law”*. Based on the article, it can be said that the engagement occurs due to an agreement between the two parties or by several parties. *“The engagement can also occur not of its own volition but because it was born by law”* (Hutabarat, 2010: 24).

The word “agreement” (*verbintenis*) has a broader meaning than “agreement”. According to R. Subekti: *“Book III BW entitled Regarding Engagement, engagement (verbintenis) has a broader meaning than the word "agreement" because in book III it is also regulated regarding legal relationships that do not originate from an agreement or agreement, namely concerning engagements arising from unlawful acts (onrechtmatige daad) and concerning engagements arising from the management of other people's interests that are not based on consent (zaakwaarneming). But most of Book III is devoted to engagements arising from agreements or agreements. As for what is meant by an engagement in Book III BW, it is a legal relationship (regarding property assets) between two people who give rights. One person demands something from another, while the other person is obliged to comply with the demands. Book II regulates legal relations between people and people (individual rights), although the object may also be an object. Because the nature of the law contained in Book III is always in the form of a demand, the contents of Book III are also called debt law. The party entitled to sue is called the debtor or creditor, while the party obliged to fulfill the claim is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. although perhaps the object is also an object. Because the nature of the law contained in Book III is always in the form of a demand, the contents of Book III are also called debt law. The party entitled to sue is called the debtor or creditor, while the party obliged to fulfill the claim is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which*

according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. While the party who is obliged to fulfill the demands is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. While the party who is obliged to fulfill the demands is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action” (Subekti, 1992: 122-123).

Book III of the Civil Code does not define engagement. However, several legal experts define engagement. According to Mariam Darus Badruzaman, “an engagement is a relationship that occurs between two or more people located in the field of property law, where one party has the right to achievement and the other party is obliged to fulfill that achievement” (Badruzaman, 1993: 1). Meanwhile, J. Satrio stated:

“Regarding the term *verbinten*, there is still no unified opinion on the translation into Indonesian. Some use the term “debt”, there are those who use the term “commitment”, there are those who use the two terms together, and some even propose the term “agreement” to replace *verbinten*, even though it is given a broad meaning, including those that arise from law. Adat and other aspects are narrower than the *verbinten* that have been known so far because they do not include those born from the law only (*uit de wet allen*) and those born from *onrechtmatigedaad*” (Satrio, 1993: 1).

Based on these descriptions, the case of an agreement that has been made has given rise to an engagement for the parties who made it, and the rights and obligations automatically must be carried out by both parties.

According to Mariam Darus Badruzaman, in contract law, there are several principles, including:

1. *The Principle of Freedom to Make Agreements (Partij Autonomy)*. This principle is also known as the principle of freedom of contract. In Article 1320 paragraph (1) of the Civil Code, it is stated that “the parties agree to bind themselves”. It can be seen that each party has a voluntary willingness to bind themselves to a mutually desired condition.
2. *Principles of Consensualism*. This principle is contained in Article 1320 of the Civil Code and Article 1338 of the Civil Code. It is stated in these articles that everyone has the same opportunity to express their wishes in an agreement.
3. *The Principle of Trust (vertrouwensbeginsel)*. This principle states that by agreeing, each party will keep its promise, thus will grow or emerge trust between one party and another, so that each party will provide its achievements under what has been mutually agreed upon.
4. *The Principle of Binding Strength*. This principle states that an agreement contains the meaning of the principle of binding power, because each party who promises is bound to do what has been agreed, but is not solely limited to what has been agreed, but also to several other elements as long as this is desired by the agreement. customs and propriety and morals.
5. *The Principle of Legal Equality*. This principle states that each party has a position and equality without being distinguished from one another because of differences in skin color, nation, wealth, power, position, and others. Each respects this difference as God's creation.
6. *Balance Principle*. The implementation of the agreement is the will of both parties who promise. This principle is also a continuation of the principle of legal equality. A creditor has the power to demand performance and if necessary can demand expansion of performance through the debtor's wealth, but the creditor must also bear the burden of carrying out the agreement in good faith. The stronger position of creditors is balanced with the obligation to pay attention to good faith so that the position of creditors and debtors is balanced.
7. *Principle of Legal Certainty*. The agreement has binding power for both parties because the agreement becomes law for the parties who make it and therefore the agreement has legal certainty.
8. *Moral Principles*. This principle is seen in a reasonable engagement, where a voluntary act of a person does not give him the right to sue against the performance of the debtor. This is also seen in *zaakwaarneming*, where a person who commits an act voluntarily (morally) in question has a (legal) obligation to continue and complete his actions, also this principle is contained in Article 1339 of the Civil Code. The factors that motivate the person concerned to take legal action are based on decency (morality), as a call from his conscience.

9. *Proper Principle*. In Article 1339 of the Civil Code, this principle relates to the provisions made in the agreement. This is a measure of the relationship and sense of justice with one another.
10. *Habit Principles*. This principle is regulated in Article 1339 in conjunction with Article 1347 of the Civil Code which is seen as part of the agreement. An agreement is not only binding on what is expressly regulated, but also for things that are commonly followed in circumstances and habits” (Badruzaman, 1992: 108-115).

It is necessary to know the legal terms of the agreement in general as stated in Article 1320 of the Civil Code, including 1) “*The agreement of the parties to bind themselves (detoestemming)*; 2) *The ability to make an engagement (de bekwaamheid)*; 3) *A certain thing (een bepaald onderwerp)*; and 4) *A lawful cause (een geoorloofde oorzaak)*” (Susanti, 2008: 6).

In addition to the general conditions mentioned in Article 1320 of the Civil Code, Munir Fuady stated that in contract law or contract law there are general legal requirements outside of Article 1320 of the Civil Code and special legal requirements, as follows:

1. “*General legal requirements outside of Article 1320 of the Civil Code, consist of:*
  - a. *Good faith conditions.*
  - b. *Conditions according to custom.*
  - c. *The conditions are appropriate.*
  - d. *Terms following the public interest.*
2. *Specific legal requirements consist of:*
  - a. *Written conditions for certain contracts.*
  - b. *Notary deed requirements for certain contracts.*
  - c. *Deed requirements of certain officials (who are not notaries) for certain contracts.*
  - d. *requirements from the authorities”* (Fuady, 1999: 33-34).

The existence of an agreement in an agreement means that both parties must have free will. The parties must not be under pressure that will result in a defect in the realization of the will. The definition of agreed is described as the terms of the agreed will (*overeentemende wilsverklaring*) between the parties. The statement of the party who accepts the offer is called acceptance. Judging from the terms of the agreement, it can be distinguished parts of the agreement, among others, namely:

1. “*The core part (wanzenlijke naturalia oorde)*.
2. *The core sub-section called essential is the part that is a trait that must exist in the agreement, the nature that determines or causes the agreement to be created (constructieve oordeel).*
3. *The non-core part, called naturalia, is the part that is an innate nature (natuur) of the agreement so that it is secretly attached to the agreement, such as guaranteeing that there are no defects in the object being sold (vrijwaring).*
4. *The accidental part is the part which is inherent in the agreement which is expressly agreed upon by the parties”* (Badruzaman, et.al., 2001: 57).

Article 1339 of the Civil Code also states that: “*Agreements are not only binding for things that are expressly stated in them, but also for everything which, according to the nature of the agreement, is required by propriety, custom or law*”. Generally, the agreement is not bound to a certain form, it can be made orally or in writing. If it is made in writing, it can be in the form of a notarial deed or a private deed. A private deed can be in the form of a standard agreement (standard agreement) and it is used as evidence in the event of a dispute in the future.

According to Mariam Darus Badruzaman, the conditions for a valid agreement as regulated in Article 1320 of the Civil Code can be distinguished between subjective terms and objective conditions. In this case, you must be able to distinguish between subjective and objective conditions. Subjective conditions are the first two conditions, while objective conditions are the last two conditions (Badruzaman, 1992: 198). Subjective requirements relate to the makers, namely: agreement and skill. If these subjective conditions are not met, then the agreement can be canceled (voidable). Meanwhile, the objective requirements are related to the object of the agreement, namely: a certain



thing and a cause that is not prohibited. If the objective conditions are not met, it will result in the agreement being null and void (Saliman, *et.al.*, 2004: 12-13).

Subjective terms are regarding the subject of the agreement, while objective conditions are regarding the object of the agreement. A valid agreement is recognized and given legal consequences, while an agreement that does not meet these requirements is not recognized by law. However, if the parties acknowledge and comply with the agreement they have made, do not meet the conditions stipulated by law but the agreement remains valid between them, but if one day there is a party who does not acknowledge so that a dispute arises, the judge will cancel or declare the agreement void.

The four conditions mentioned above are essential conditions of an agreement, meaning that these conditions must exist in an agreement, without this condition, the agreement is considered to have never existed or the agreement is invalid. However, with the entry into force of the agreement to agree, it means that both parties must have free will (Article 1338 paragraph (1) of the Civil Code). By agreement, an agreement was born.

The law distinguishes two types of mistakes, namely mistakes about people (personal error) and mistakes about goods that are the subject of the agreement (error insubstantial). Article 1323 of the Civil Code to Article 1327 of the Civil Code explains that coercion occurs when a person is not free to express his will. This coercion is in the form of physical violence or threats (to reveal secrets) that create fear in someone so that the person concerned agrees. Furthermore, Article 1328 of the Civil Code states that: "*fraud occurs when one party with a ruse succeeds in such a way that the other party is willing to agree and the agreement will not occur without the ruse*".

Julisman gives an example of an agreement that contains fraud if the debtor's act of submitting a check to be used as collateral for his debt to the creditor is an agreement that has no legal force. Such an engagement is given because of the element of fraud committed by the debtor to the creditor. This is under Article 1321 of the Civil Code, that: "*No agreement has the power if it is given by mistake, or obtained by coercion or fraud*". Thus, an engagement made with an element of error, coercion, or even fraud, results in the engagement no longer meeting the legal requirements of the agreement under Article 1320 of the Civil Code. The condition for the validity of the violated agreement is the fourth condition, namely "*a cause that is not forbidden*" (Julisman, 2017: 116-121).

Meanwhile, regarding the ability to carry out legal actions as regulated in Article 1329 of the Civil Code to Article 1331 of the Civil Code stipulates that every person is capable of entering into an engagement unless the law states that the person is incompetent. People who are not capable of making agreements are people who are not yet mature and everyone who is put under custody is in a state of bankruptcy. Concerning a certain matter, the law determines the objects that cannot be made the object of the agreement. These objects are used for the public interest. An agreement must have certain objects, at least it can be determined that these objects can be in the form of objects that currently exist and also objects that will exist in the future (Article 1332 to 1335 of the Civil Code).

### *3.4. Indonesian Legal Culture in Contract Making*

As a society with an oral tradition, the Indonesian people do not appreciate the written tradition as a form of realization of existence. In Indonesian society, writing is only considered a means of documentation. Associated with the context of the agreement, the written contract is only considered a mere condition, the contract only fulfills its meaning textually but not contextually. In Indonesian society which has an oral tradition, usually, a new contract is read carefully when there is "*an urgent situation*", namely there is a dispute between the parties who signed the contract. The existence of a contract becomes useless when it is realized that the interests of the parties in the contract are not fully protected. This problem often occurs in the business community in Indonesia and consequently harms the business activity itself. As a nation that does not value writing, contracts are often seen as mere formalities and procedures. Therefore the contract does not need to be taken seriously except as a mere ceremonial ceremony. This kind of attitude causes the signing of the contract to be not preceded by the initiative to read or draft the contract carefully (Sugiastuti, 2015).

Huala Adolf in his research reveals the fact that the majority of Indonesian entrepreneurs (especially small and medium-sized entrepreneurs) do not care about contracts carefully. Generally, when signing a contract, these entrepreneurs are less concerned with the sound of the clauses in the contract. For entrepreneurs what is important is business transactions. In the mind of the entrepreneur, it is enough how to carry out the transaction. This kind of mindset also carried over when it turned out later that a dispute regarding the contract was born. These entrepreneurs are less concerned with what is in the contract clauses (Adolf, 2010).

Moreover, for a standard form of contract, people who have a written tradition are needed because to be able to choose whether they “take” or “leave” the agreement (which was made solely by the other party), they must first read the clauses. Given the legal fiction, that acceptance and signing of the agreement is a form of agreement/statement of agreement, then he must not only read but also understand the meaning of what is written in the agreement. For this reason, he must also have the character of a law-minded society because he must understand whether the contents of the agreement protect rights or at the same time understand the legal consequences of violating other people's rights or rights to himself.

If the understanding of the reality of the contract cannot be separated from the legal culture of the Indonesian people, then this character is not commensurate with the construction of contract law (more so in the construction of standard contracts). This description is the most relevant reflection material on ineffective and efficient contract formulation in an oral tradition society. It is not easy to format oral traditions in written form. Therefore, it is very natural that sometimes there is a discrepancy between the understanding of the agreement reached and the meaning of the contract made. Often the contract is only present as a mere documentation of an agreement that has been reached orally without comprehensively representing all the perceptions and aspirations that are to be represented in the agreement. Therefore, the contract only fulfills its meaning textually but not contextually. Whereas the contract should exist to protect the legal interests of the parties. Economically, contracts drawn up with an understanding of the content and meaning (contextual) will provide “*an essential check on opportunism non-simultaneous exchanges*”, by guaranteeing that one party, in implementing the contract, does not face risks, thus reducing transaction costs (Trebilcock, 1997: 16).

### 3.5. Comparison of Chinese and Indonesian Legal Cultures in Contract Making

As for the comparison of the legal culture of the Chinese community and Indonesian society in terms of making contracts, there are similarities and differences. The similarity is that the Chinese and Indonesian people when trading prioritizes the principle of kinship, so placing trust in the transaction opponent is an absolute must for a trader.

The kinship principle of the Chinese community comes from Confucius's understanding based on the rules of life called “*Li*”. The rules of life are not generally accepted provisions, *Li* has different substances following the form of relationship and the class of people who must apply them. Nevertheless, there is one provision that is generally accepted in the concept of “*Li*”, namely the existence of a stipulation that humans basically do not have subjective rights, but only have obligations, both obligations to their superiors, and society (Wardiono, 2012: 73).

The principle of the kinship of the Indonesian people comes from the identity of the Indonesian nation (*volksgeist*) (Berkowitz, 2009: 115). which was explored by the Founding Fathers during the BPUPKI session to formulate the basis of the Indonesian state. The BPUPKI session is a session held to formulate the basis of the Indonesian state. The BPUPKI trial times were 29 May-1 June 1945 (first trial), 10-17 July 1945 (second trial), and 2 June-9 July (unofficial trial, which took place between the first and second official sessions). This family principle is a milestone in trade in Indonesia. Family relations in fostering business relationships are also instilled by the Chinese community who migrated from mainland China to Indonesia. There are similarities in the way of trading between the Chinese and Indonesian people, which are both applying the principle of trust with their transaction counterparts.

From a civil law perspective, the contracts made were based on verbal agreements only, by both the Chinese and Indonesian people. The positive legal arrangement has been regulated in the Civil Code of each State. In China it

is called the Chinese Civil Code, as well as in Indonesia it is called the Indonesian Civil Code. It's just that in China, the Civil Code was only promulgated on January 1, 2021, while in Indonesia, the Civil Code which applies as positive law in Indonesia is a relic of the Dutch colonial era. Even in the Netherlands, the Civil Code has been updated, called The Netherlands New Civil Code (Nieuw Burgerlijk Wetboek 1992) (Maharani, 2020; Nieuw Burgerlijk Wetboek 1992).

The similarities between the Chinese Civil Code and the Indonesian Civil Code as positive laws governing the making of contracts are that they are both based on agreement (*consensus*). The contract is valid from the moment it is signed if it is written or agreed if it is in oral form. Termination of the contract by mutually agreeing, or making contract termination clauses first. If the cause occurs, then the party who has the right to terminate the contract can terminate the contract unilaterally.

In trading, both the legal culture of the Chinese community and the Indonesian people have the habit of only using small notes. These records are indirectly a contract, the arrangement of which is further regulated based on trading habits. For example, payment on time, if the debt is legally customary, it is required to pay off the old debt, then a new debt is given.

#### 4. Conclusions

In terms of making contracts, the comparison of the legal culture of the Chinese and Indonesian people in making contracts, there are similarities and differences. Making an agreement or contract based on the perspective of the legal culture of the Chinese and Indonesian people is dependent on the value of the trust (thrust) between one party and another. The higher the trust of one party with the counterparty of the transaction, the less contract is not made at all. Conversely, if the trust of the parties has been eroded due to something, then a contract will be made to bind each other. Based on the positive law that applies to each community, there have been arrangements regarding contracts, which are both regulated based on the Civil Code. It's just that in China it has been updated on January 1, 2021, while in Indonesia, the Civil Code is still a legacy of the Dutch. While in the Netherlands itself has been updated since 1992 called Nieuw Burgerlijk Wetboek.

The suggestions that can be recommended in this paper are that the executive and legislative institutions should immediately promulgate the new Civil Code. The formation of a national contract law needs to be carried out in the future so that the making of contracts is by the purpose of making it, has benefits and effectiveness as a legal document.

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