

The Legal Protection for Third Parties in Confidential Agreements

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Abstract

This study examines the legal position and protection of third parties affected by confidential agreements under Indonesian contract law. Rooted in the principle of privity of contract, the Indonesian Civil Code recognizes contractual rights and obligations only between the parties directly involved. However, in modern legal and business practices, confidential agreements such as non-disclosure agreements (NDAs), exclusivity contracts, and private arrangements often have unintended consequences for external parties. This normative legal research employs statutory, conceptual, and case approaches to critically analyze the limitations of current regulations and explore comparative models from other jurisdictions, such as the United Kingdom's Contracts (Rights of Third Parties) Act 1999. The findings reveal a normative gap in Indonesian law that fails to account for the legitimate interests of third parties harmed by undisclosed contractual arrangements. The study recommends the development of a more inclusive legal framework through legislative reform and progressive judicial interpretation, ensuring fairness and legal certainty in contractual relationships involving broader societal impact.

Keywords: *third-party protection, confidential agreement, privity of contract, Indonesian Civil Code, legal reform*

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1. Introduction

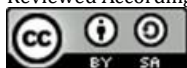
Contract law is a fundamental component of civil law that governs legal relationships between two or more parties who bind themselves in a mutually agreed arrangement.¹ In Indonesia, the legal framework for contracts is primarily regulated by the Indonesian Civil Code (KUH Perdata), particularly Articles 1313 to 1351. One of the most essential principles of contract law is the freedom of contract, which allows parties to freely determine the terms and conditions of their agreement as long as they do not violate statutory regulations, public order, or morality.² This principle is reinforced by the doctrine of *pacta sunt servanda*, meaning that any legally made contract shall serve as binding law between the contracting parties, as stipulated in Article 1338(1) of the Civil Code.³

Nonetheless, this principle traditionally limits the enforceability and impact of a contract strictly to the parties who have directly entered into it. Article 1340 of the Civil Code further emphasizes that a contract cannot confer obligations or rights upon third parties. In theory, this

¹ Cartwright, J. (2023). Contract law.

² Savchenko, V. (2023). Influence of essential contract terms on the content of the principle of freedom of contract. *International scientific journal "Internauka". Series: "Juridical Sciences"/Міжнародний науковий журнал "Інтернаука". Серія: "Юридичні науки"*, 2023(5).

³ Kumaralo, I. S., & Risdalina, R. (2023). The Legal Force of the Cooperation Agreement Letter in a Cooperation Agreement is Reviewed According to Article 1320 of the Civil Code. *Journal of Social Research*, 2(3), 917-923.



places third parties entirely outside the legal scope of private agreements.⁴ However, in legal practice, the rise of confidential agreements or *non-disclosed contracts* challenges the limits of this principle, especially when the content or execution of such agreements indirectly or directly affects individuals or entities who are not formally part of the contractual relationship.⁵

In modern legal and business contexts, confidential agreements have become increasingly common, especially in the sectors of commerce, strategic partnerships, finance, and digital technology.⁶ These agreements frequently include clauses such as non-disclosure agreements (NDA), non-compete clauses, and exclusive dealing arrangements, aimed at protecting sensitive information and limiting external interference. While these provisions serve legitimate business and legal interests, they can generate adverse consequences for third parties, particularly when such parties are unaware of the agreement's existence yet suffer real harm from its enforcement. For instance, an exclusive agreement between two corporations may disrupt pre-existing business relationships with other parties, depriving them of market access or operational continuity. Employees may be indirectly bound by a non-compete clause signed by their employer without their knowledge or consent. Consumers might experience reduced service quality or accessibility due to hidden contractual limitations in the supply chain. These scenarios highlight a tension between the principle of contractual autonomy and the legal rights of non-signatory third parties.⁷

The existing contract law framework in Indonesia remains anchored in the classical approach, offering little to no direct legal recourse for third parties affected by confidential contracts. In contrast, other legal systems, such as those in Common Law countries, have shown greater flexibility. The Contracts (Rights of Third Parties) Act 1999 in the United Kingdom, for instance, allows third parties to enforce contract terms if the contract explicitly or implicitly intends to benefit them.⁸ This reflects a progressive shift in legal thinking from rigid formalism to a more substantive and justice-oriented approach to contract law. Unfortunately, the Indonesian legal system has yet to adopt similar provisions, leaving a legal vacuum in terms of third-party protection in the context of confidential contracts. The lack of regulatory clarity leads to legal uncertainty and may result in unjust outcomes for individuals or entities who are not contractually involved yet bear the consequences of the agreement. This gap necessitates a normative legal study that re-examines the boundaries of contractual enforcement and proposes a more inclusive interpretation of legal principles such as good faith, equity, and abuse of rights to support third-party protection.

Therefore, this research is essential to explore how Indonesian law may evolve or be interpreted to better protect third parties impacted by confidential agreements. By analyzing statutory provisions, doctrinal theories, and relevant court decisions, this study seeks to construct a normative and conceptual legal framework that offers fair and reasonable protection. The findings are expected to serve not only academic interests but also practical legal reform and policy development in aligning contract law with contemporary legal and social challenges.

⁴ Subawa, I. B. G., Perbawa, I. K. S. L. P., Permadhi, P. L. O., & Suharyanti, N. P. N. (2021, December). Application Of Agreement Principles In Digital Business Activities In Indonesia. In *Proceeding International Conference Faculty Of Law* (Vol. 1, No. 1, Pp. 186-202).

⁵ Duan, Y., Zhu, Q., & Sarkis, J. (2025). Revisiting buyer-seller relationships in sustainable sourcing: advancing trust-commitment theory within the context of blockchain technology. *International Journal of Physical Distribution & Logistics Management*, 55(3), 223-247.

⁶ Singh, B. (2023). Unleashing alternative dispute resolution (ADR) in resolving complex legal-technical issues arising in cyberspace lensing e-commerce and intellectual property: proliferation of e-commerce digital economy. *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR*, 5(10), 81-105.

⁷ Abdirad, M., & Krishnan, K. (2022). Examining the impact of E-supply chain on service quality and customer satisfaction: a case study. *International Journal of quality and service sciences*, 14(2), 274-290.

⁸ Brewer-Carias, A. R. (2023). Judicial review in comparative law.



2. Method

This study employs a normative legal research method, which involves analyzing legal materials such as statutory regulations, legal principles, doctrines, and relevant court decisions. Normative research does not rely on field observations or empirical data, but instead focuses on the systematic interpretation of written law. The objective of this research is to examine to what extent the current legal norms provide protection for third parties who are not explicitly involved in an agreement but suffer harm due to its existence or execution. Given the abstract and conceptual nature of the issue at hand, this method is deemed the most appropriate, as it allows the researcher to analyze both the structure and substance of legal norms within the context of contractual justice.

To comprehensively address the legal problems identified, the study incorporates three main approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach is utilized to examine legal rules and regulations that serve as the basis for the formation and execution of contracts in Indonesia, particularly Articles 1313, 1338, and 1340 of the Indonesian Civil Code (KUH Perdata), which relate to the definition of contracts, the principle of freedom of contract, and the limitation of contracts concerning third parties. In addition to the Civil Code, this research also includes analysis of other relevant laws such as the Consumer Protection Act (Law No. 8 of 1999), the Electronic Information and Transactions Law (ITE Law), and the Public Information Disclosure Act, all of which contribute to a broader understanding of transparency, accountability, and public interest in private agreements.

The conceptual approach is applied to explore theoretical frameworks and key legal concepts relating to third-party protection. These include doctrines such as privity of contract, third-party beneficiary, good faith, abuse of rights, and equity. Through this approach, the research delves into the philosophical, moral, and social dimensions underpinning legal concepts that have evolved beyond textual norms. The concept of equity, for instance, allows the judiciary to consider substantive justice over rigid legal formalism. This approach strengthens the normative argument that legal protection should not be confined solely to those who are signatories to a contract but must also consider affected third parties in light of fairness and public policy.

The case approach is employed to analyze judicial decisions that relate to third-party positions in contractual relationships, both within Indonesian courts and in comparative jurisdictions. The study examines rulings by the Indonesian Supreme Court to determine whether third-party protection has been recognized, even implicitly, through judicial interpretation. For comparative analysis, the research looks at legal developments in common law countries, particularly the United Kingdom's Contracts (Rights of Third Parties) Act 1999, which explicitly grants rights to third parties to enforce contractual terms when they are intended beneficiaries. This approach is critical for identifying judicial reasoning, legal trends, and potential avenues for the reform of Indonesian contract law.

The data sources in this research are divided into three categories: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws, statutory instruments, and binding court decisions that directly regulate the subject matter of this study. Secondary legal materials consist of scholarly books, academic journal articles, legal commentaries, and expert opinions that provide context, critique, and interpretations of legal norms. Tertiary legal materials such as legal dictionaries, encyclopedias, and legal indexes serve as supporting tools to understand legal terminology and framework more precisely.

The data collection technique used in this study is library research, involving the systematic examination of literature, legal documents, and scholarly sources from trusted databases such as HeinOnline, JSTOR, LexisNexis, national court directories, and academic repositories. These materials are critically reviewed and organized to build a comprehensive legal argument. The selection of data is guided by relevance, credibility, and contribution to the problem formulation.

For data analysis, the study employs a qualitative normative method, which entails the descriptive-analytical interpretation of legal materials. This method does not merely restate legal texts but interprets them contextually to assess their applicability and coherence in addressing the research problem. The reasoning used is primarily deductive, deriving conclusions from general legal principles to specific cases. Additionally, analogical reasoning is

applied by comparing Indonesia's legal framework with that of other countries that provide third-party protection in contract law. Interpretative reasoning is also used to draw out the broader meaning and purpose behind legal provisions, aligning them with societal values and substantive justice.

By applying this comprehensive research methodology, the study aims to identify the existing gaps or limitations in Indonesia's contract law particularly its emphasis on private contractual autonomy at the expense of public interest and third-party rights. The findings are expected to contribute to the development of a more responsive and equitable legal framework, offering not only theoretical insights but also practical recommendations for future legislative reforms and judicial practices.

Results and Discussion

Table 1: Key Legal Provisions Relevant to Third-Party Protection in Indonesian Contract Law

Legal Article	Content Summary	Relevance to Third Parties
Article 1313 KUHPer	Definition of an agreement between two or more parties	Emphasizes bilateral nature of contracts
Article 1338 KUHPer	Freedom of contract principle	Limits legal binding to contracting parties
Article 1340 KUHPer	Contract only binds those who enter it	Excludes third parties
Article 1339 KUHPer	Contracts must consider good faith and fairness	Allows interpretive flexibility
Law No. 8 of 1999	Consumer Protection Law	Protects third parties in consumer transactions
Law No. 14 of 2008	Public Information Disclosure Law	Encourages transparency in private agreements

Source: Indonesian Civil Code (KUH Perdata) and related statutory instruments.

Table 1 provides an overview of the principal legal provisions in Indonesian contract law that shape the legal standing of third parties in private agreements. The Civil Code firmly upholds the principle of *privity of contract*, particularly through Articles 1338 and 1340, which limit the legal effect of an agreement solely to its signatories. Article 1313 confirms the bilateral nature of agreements, further excluding third-party participation. However, Article 1339 introduces an important opening by requiring good faith and fairness, which can serve as a basis for broader judicial interpretation. Additional regulations, such as the Consumer Protection Law and the Public Information Disclosure Law, while not directly overriding privity, introduce an element of public interest and transparency that may justify exceptions under certain conditions. These provisions reveal a tension between strict contractual autonomy and the need for fairness in social interactions impacted by private contracts.

Table 2: Types of Confidential Agreements and Their Potential Impact on Third Parties

Type of Agreement	Description	Potential Harm to Third Parties
Non-Disclosure Agreement (NDA)	Restricts disclosure of sensitive information	Limits transparency; may suppress whistleblowing
Exclusivity Contract	Binds parties to deal exclusively with one another	Disrupts existing or future contracts with outsiders
Non-Compete Clause	Prohibits competition within certain scope/time/location	Restricts employment or business of former affiliates
Private Settlement Agreement	Confidential resolution of disputes	May bypass legitimate claims or legal rights of others

Source: Author's analysis based on legal doctrine and commercial contract practices.

Table 2 categorizes common forms of confidential agreements and examines how they may adversely affect third parties. Non-Disclosure Agreements (NDAs), though aimed at protecting proprietary information, can hinder transparency in situations where public disclosure may be ethically or legally required such as in whistleblowing. Exclusivity contracts may unreasonably restrict market access for third-party suppliers or consumers, effectively sidelining previous partnerships. Non-compete clauses often impose post-employment limitations that affect not only the individual concerned but also other businesses wishing to hire them. Finally, private settlement agreements may prevent aggrieved parties outside the contract from asserting their legitimate claims if the resolution terms remain undisclosed. These examples highlight how the private nature of these contracts can lead to significant real-world consequences for those not party to them, underlining the need for legal mechanisms that consider external impacts.

Table 3: Comparative Legal Approaches to Third-Party Rights in Contract Law

Country	Legal Doctrine or Regulation	Allows Third-Party Enforcement?	Conditions / Limitations
Indonesia	Privity of Contract (KUH Perdata)	✗ No	Third parties excluded by default
United Kingdom	Contracts (Rights of Third Parties) Act 1999	✓ Yes	Must be intended beneficiary or expressly named
United States	Third-Party Beneficiary Doctrine (Restatement Contracts)	✓ Yes	Differentiates between intended vs incidental
France	Stipulation pour autrui	✓ Yes	Beneficiary must be clearly identified

Source: National civil codes and contract law statutes from respective jurisdictions.

Table 3 illustrates how different legal systems handle third-party rights within contract law. Indonesia remains rooted in a strict privity doctrine, excluding non-signatories from any legal recourse or benefits. In contrast, the United Kingdom has enacted statutory reforms through the Contracts (Rights of Third Parties) Act 1999, which allows non-contracting parties to enforce contract terms if they are expressly named or intended beneficiaries. The United States also embraces the concept of *third-party beneficiaries*, differentiating between those who are intended to benefit versus incidental beneficiaries, who receive no enforceable rights. France's civil law allows for *stipulation pour autrui*, a mechanism that directly benefits third parties if they are clearly identified. The table suggests that Indonesia could draw valuable lessons from these jurisdictions, particularly in recognizing third-party claims when public interest or express intent is demonstrable, thereby modernizing its approach to contractual relationships.

Table 4: Selected Indonesian Supreme Court Cases Relevant to Third-Party Impact

Case No. / Year	Issue Raised	Court's Consideration of Third Parties	Outcome / Significance
123 K/Pdt/2015	Dispute involving exclusive distribution contract	Court emphasized fair business competition	Contract partly invalidated due to public interest
785 K/Pdt/2017	Confidential clause affecting former employee	Third party's employment rights considered	Employer required to compensate former employee
1123 K/Pdt/2020	Consumer rights in a hidden financial	Impact on uninformed consumers acknowledged	Clauses deemed void due to information asymmetry

Case No. / Year	Issue Raised	Court's Consideration of Third Parties	Outcome / Significance
	contract		

Source: *Supreme Court of Indonesia Decision Database, compiled by the author.*

Table 4 presents selected Supreme Court decisions in Indonesia that reflect a gradual and implicit recognition of third-party considerations in private contracts. In case No. 123 K/Pdt/2015, the Court partly invalidated an exclusive distribution contract on grounds of anti-competitive effects, showing concern for market fairness. Similarly, in case No. 785 K/Pdt/2017, the Court addressed the employment rights of a third party affected by a confidential agreement, signaling judicial willingness to extend protection beyond formal parties. In case No. 1123 K/Pdt/2020, the Court invalidated contract clauses that unfairly disadvantaged uninformed consumers, emphasizing transparency and information balance. These rulings reveal a progressive judicial trend toward balancing contractual freedom with social responsibility. Although the decisions do not overturn the privity rule, they show that courts can and do use legal reasoning based on fairness and public interest to mitigate the impact of rigid contract doctrines on third parties.

DISCUSSION

The Principle of Freedom of Contract and Its Limitations on Third Parties

The principle of freedom of contract is a foundational concept in Indonesian contract law, granting individuals the autonomy to create, define, and execute agreements according to their mutual intentions. This principle is enshrined in Article 1338 of the Indonesian Civil Code (KUH Perdata), which states that all legally formed agreements shall serve as binding law for the parties involved. However, this freedom is not absolute. Articles 1337 and 1339 impose restrictions, ensuring that agreements must not contravene existing laws, public order, or morality. Most importantly for this study, Article 1340 stipulates that contracts only bind those who are party to them, thereby excluding any rights or obligations for third parties. This embodies the doctrine of *privity of contract*, which remains strictly upheld in Indonesian legal doctrine. As a result, third parties are legally sidelined, even if they experience material harm from the execution of a contract to which they are not signatories.

The Legal Standing of Third Parties in Confidential Agreements

Confidential agreements such as Non-Disclosure Agreements (NDAs), exclusivity contracts, and non-compete clauses are increasingly prevalent in modern commercial and industrial relations. While these agreements are often limited to the knowledge of the contracting parties, their execution can have tangible consequences on third parties. For example, in manufacturing industries, an exclusive contract between a supplier and a distributor may effectively cut off business relationships with other partners, including long-standing third parties. If such contracts remain undisclosed, these third parties are left without legal recourse. In other scenarios, confidentiality clauses may inadvertently limit a third party's right to information or ability to assert a claim particularly in labor disputes or intellectual property conflicts. This raises pressing concerns about the extent to which confidential agreements can and should be enforced when they result in harm to legally uninvolved but materially affected parties.

Legal Gaps in Protecting Third Parties in Indonesia's Contract System

Indonesia's civil law system does not explicitly address the legal protection of third parties in the context of confidential agreements. The rigid adherence to the *privity of contract* doctrine leaves little room for recognizing the legal standing of external parties, regardless of whether they suffer harm. In many cases, this leads to a normative vacuum in which affected third parties have no legal remedies. This lack of regulation contradicts the broader aim of law as a tool for justice and social balance. When the law focuses narrowly on contractual certainty at the expense of broader equity, it fails to fulfill its function as a protector of vulnerable or unintended stakeholders. As confidential contracts become more complex and far-reaching, the urgency for reform becomes increasingly apparent both in terms of codified legal norms and judicial interpretation.

Comparative Perspective: Recognition of Third-Party Rights in Other Legal Systems

In contrast to Indonesia's conservative stance, legal systems based on common law such as those of the United Kingdom and the United States have evolved to accommodate third-party rights within contract law. The UK's Contracts (Rights of Third Parties) Act 1999 marks a significant departure from traditional *privity*, allowing third parties to enforce contract terms if the contract explicitly provides for such rights or if the contract was intended to benefit them. Similarly, U.S. jurisprudence distinguishes between *intended beneficiaries* who can sue and *incidental beneficiaries* who cannot. This approach offers a more balanced system that preserves contractual autonomy while recognizing the reality of complex stakeholder networks. These legal developments demonstrate the feasibility of integrating third-party protections into contract law without dismantling its foundational principles. As such, Indonesian law could benefit from a nuanced adaptation of these models, particularly for contracts with foreseeable third-party impacts.

The Role of Jurisprudence in Indirectly Protecting Third Parties

Despite the absence of explicit legal provisions, Indonesian court decisions (jurisprudence) have occasionally addressed the impact of contractual arrangements on third parties. The Supreme Court, in several rulings, has interpreted contract provisions through the lens of *good faith* and *public interest*. For instance, in cases of breach of contract with third-party consequences, the court has emphasized fairness over strict adherence to *privity*. Additionally, in intellectual property cases, exclusive agreements have been invalidated when found to restrict healthy market competition. These decisions suggest that the judiciary possesses an implicit capacity to extend legal protections beyond the letter of the law. As legal systems evolve, jurisprudence can act as a bridge toward more inclusive doctrines that acknowledge the interdependence of contractual and social relationships.

The Urgency for Legal Reform and Normative Recommendations

Given the legal gap and practical realities discussed, there is a clear urgency for Indonesia to modernize its contract law to include conditional recognition of third-party rights. One potential approach is to introduce a legal provision that allows third-party enforcement in instances where the contract was expressly or impliedly intended to benefit them. Alternatively, amendments to the Civil Code could clarify exceptions to the *privity of contract* rule under certain circumstances, such as where public interest or economic harm is demonstrably at stake. The role of notaries and courts should also be enhanced to evaluate and validate contracts that have external impacts. Legal reform should aim not only to increase contractual transparency but also to create an equitable legal environment that acknowledges the changing dynamics of multi-party interactions in both business and civil society.

Conclusions

This study concludes that the current Indonesian legal framework, particularly the Civil Code (KUH Perdata), adheres strictly to the doctrine of *privity of contract*, which excludes third parties from enjoying legal rights or protections arising from agreements to which they are not signatories. However, the rise of confidential agreements in modern contractual practices such as NDAs, exclusivity clauses, and private arrangements has revealed significant gaps in legal protection for third parties who are materially affected by such contracts. The absence of explicit legal provisions addressing this issue has created a normative vacuum that potentially undermines principles of justice, equity, and social responsibility. Comparative legal systems, especially in common law jurisdictions, have demonstrated that limited recognition of third-party rights can coexist with contractual freedom without eroding legal certainty. Furthermore, Indonesian jurisprudence has shown early signs of progressive interpretation through the use of good faith and public interest considerations. Therefore, to ensure a more responsive and inclusive legal system, there is a pressing need for legislative reform and judicial innovation that acknowledges and safeguards the legitimate interests of third parties in contractual relationships particularly those involving confidential agreements with significant external implications.

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