

Erosinya doktrin consideration di common law studi perbandingan terhadap perjanjian civil law = The erosion of the doctrine of consideration in common law a comparative study to civil law contracts

Tania Faramutia Riyanto, author

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Abstrak

Skripsi ini membahas erosi doktrin consideration di common law. Walaupun consideration adalah salah satu syarat sah perjanjian di common law, consideration bukanlah suatu syarat sah perjanjian di civil law. Consideration dibandingkan dengan hukum Indonesia sebagai representasi dari sistem civil law. Konsep consideration itu sendiri di common law telah ditemukan sebagai problematik dan tidak tetap. Isu utama dari consideration sebagai syarat sah perjanjian adalah consideration mencegah pelaksanaan janji tanpanya. Sebagai cara menghindari permasalahan ini, hakim-hakim di common law mengupayakan berbagai pengecualian dan alternatif dari consideration. Seiring dengan peningkatan penggunaan pengecualian dan alternatif untuk consideration, erosi terjadi. Dalam pengertian ini hukum perjanjian di common law menjadi mirip dengan civil law, yang tidak pernah menyaratkan consideration. Penelitian ini menunjukkan bahwa ketika menghadapi pilihan hukum antara civil dan common law seseorang harus menyadari perbedaan persyaratan contract.

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This research discusses the eroding doctrine of consideration in the common law. Although consideration is one of the requirements of a valid contract in the common law, it is not required in civil law contracts. Therefore the concept of consideration in common law is compared to Indonesian law, which is a representative of the civil law system. In fact, the very concept of consideration in the common law has been found to be problematic and non-rigid. The main issue with consideration, as a requirement of contract, is that it halts the enforcement of promises lacking consideration. As a way around this problem, judges in common law often resort to various exemptions and alternatives to consideration. Along with the increased usage of exemptions and alternatives to consideration, the doctrine of consideration has eroded. In this sense contract law in common law has become somewhat similar to that of civil law, which never required consideration for contracts in the first place. This research suggest that when facing a choice of legal system between common and civil law, one must be aware of the differences in the contractual requirements.