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Reconstructing the Obligation of Restitutio in Integrum in Void Agreements under Indonesian Law

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This research aims to analyze the urgency and legal regulation of the obligation to restore the original condition as a consequence of a contract that is null and void by law in Indonesia.

The method This normative legal research uses a statutory approach, a conceptual approach and a case approach with primary legal materials (Civil Code, court decisions), secondary (textbooks, journals) and is analyzed descriptively qualitatively.

The novelty of this research lies in the reconstruction of the legal consequences of a voidable contract through the reinforcement of the obligation of restitutio in integrum as an integral part of a judge's ruling.

The research findings indicates that Article 1265 of the Civil Code only regulates the restoration of the original state for contracts with the condition of being void, not contracts that are void by operation of law. This lack of regulation results in inconsistent court decisions in determining the restitution mechanism and has the potential to create legal uncertainty for the parties and harm the interests of third parties.

The conclusion of this study is the urgency of the obligation to restore the original state is a logical consequence of the principle of restitutio in integrum which requires the formation of new norms in the Civil Code in order to realize legal certainty through court decisions. This study offers a normative and jurisprudential basis for the reformulation of Article 1265 of the Civil Code to include void agreements.

Keywords : Null and Void; Return the Original State; Contract; Legal Certainty.

Abstrak

Penelitian ini bertujuan untuk menganalisis urgensi dan pengaturan kewajiban pengembalian keadaan semula (restitutio in integrum) akibat dari perjanjian yang batal demi hukum di Indonesia.

Metode penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, pendekatan konseptual dan pendekatan kasus dengan bahan hukum primer (KUHPdata, putusan pengadilan), sekunder (buku teks, jurnal) dan dianalisis secara deskriptif kualitatif.

Kebaruan penelitian ini terletak pada rekonstruksi konsekuensi hukum perjanjian batal demi hukum melalui penguatan kewajiban restitutio in integrum sebagai bagian integral dari putusan hakim.

Hasil penelitian menunjukkan bahwa pasal 1265 KUHPdata hanya mengatur pengembalian keadaan semula bagi perjanjian dengan syarat batal, bukan perjanjian yang batal demi hukum. Kekosongan norma ini mengakibatkan ketidakseragaman putusan pengadilan dalam menentukan mekanisme restitusi dan berpotensi menimbulkan

ketidakpastian hukum bagi para pihak serta merugikan kepentingan pihak ketiga.

Kesimpulan dari penelitian ini ialah urgensi kewajiban pengembalian keadaan semula ialah konsekuensi logis asas restitutio in integrum yang memerlukan pembentukan norma baru dalam KUHPerdara guna mewujudkan kepastian hukum melalui putusan pengadilan. Penelitian ini menawarkan landasan normatif dan yurisprudensial bagi reformulasi pasal 1265 KUHPerdara agar mencakup perjanjian batal demi hukum.

Kata Kunci : Batal Demi Hukum; Restitutio in Integrum; Pengembalian Keadaan Semula; Perjanjian; Kepastian Hukum.

1. INTRODUCTION

The obligation of Restitutio in integrum as a result of void contract remains an issue that lacks clear regulation within the Indonesian civil law system. Article 1265 of the Indonesian Civil Code regulates the restoration of the status quo only in relation to agreements subject to a resolutive condition, rather than agreements that are null and void. This normative gap has resulted in inconsistencies in judicial decisions concerning the determination of the appropriate restitution mechanisms, as evidenced by various court proceedings in Indonesia.

As an illustration, in a civil case involving a claim for damages arising from a breach of contract, a judge may find that the contract was entered into by a party lacking legal capacity or that it is affected by a defect of consent, such as duress, mistake, or fraud. Nevertheless, in the absence of an application by a party seeking the annulment of the agreement, the judge does not have the authority to unilaterally annul the contract.¹ In such circumstances, the scope of the judge's examination is limited to the subject matter of the dispute, namely, whether a breach of contract has been committed by either party to the agreement. However, if, in the course of the same proceedings, the judge finds that the terms of the agreement are contrary to mandatory provisions of law (*dwingend recht*), the judge is required to declare the agreement void by law. In such circumstances, the agreement may be declared void without awaiting a request from the parties, as a contract that violates mandatory legal provisions cannot acquire binding force or legal protection from the outset²

As stated by Jing Zhu;

"The right of recovery is drawn from the principle known as restitutio in integrum; it translates to 'back to the original state'. This doctrine makes it clear why the law requires that where an unlawful act has been done, the wrongdoer be made to bring the ictim back to the same position as if the act had not been committed."

In light of the foregoing explanation of the doctrine of restitutio in integrum, where an invalid agreement has caused loss or damage, the parties may be entitled to seek restoration to the position they were in prior to entering into the agreement.³ As quoted in Article 1265 Civil

¹ Muhammad Hadiyan Achfas, "The Brief and The Judicial Review of The Use of The Lack Subjective and Objective Terms In The Cancellation of Agreement", *Jurnal Hukum Mmimbar Justitia* 10, no. 2, (December 27, 2024): 365, <https://doi.org/10.35194/jhmj.v10i2.4934>

² Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)* (Yogyakarta: FH UII Press, 2014).

³ Jing Zhu, "The Right of Recovery in Civil Law: Mechanisms, Challenges, and Reform Proposals", *Cultura: International Journal of Philosophy of Culture and Axiology* 21, no. 4, (2024): 443.

Code :

“Suatu syarat batal adalah syarat yang bila dipenuhi akan menghapuskan perikatan dan membawa segala sesuatu kembali pada keadaan semula, seolah-olah tidak pernah ada suatu perikatan”

Under this provision, the annulment of a contract not only extinguishes the legal obligations arising from the agreement but also gives rise to consequences concerning the restoration of the circumstances and rights affected by its performance. In practice, however, the application of this principle is not always straightforward, as the losses arising from the annulment of a contract may be complex. Such losses may include material losses directly related to the subject matter of the agreement, such as the restitution of money, goods, or economic benefits received, as well as immaterial or indirect losses, such as lost business opportunities, reputational damage, or additional costs incurred during the performance of the agreement. Therefore, in applying the principle of *restitutio in integrum*, the judge must carefully consider the causal relationship between the annulment of the contract and the losses suffered, so that the restoration ordered genuinely reflects the principles of justice and proportionality for the aggrieved parties

For example, Decision Number 112/Pdt.G/2016/PN.Gin affirmed that a land lease agreement for a lifetime term, which also involved a nominee arrangement constituting a circumvention of the law, was contrary to Article 1548 of the Indonesian Civil Code and applicable agrarian law provisions. Accordingly, the agreement was declared null and void. Nevertheless, the court focused primarily on determining the invalidity of the agreement and did not order the parties to restore the original position as a legal consequence of the agreement being null and void, such as by ordering the return of rent payments, the vacation of the leased property, or the restoration of the parties' respective rights and obligations. This condition demonstrates the lack of clarity regarding the mechanism and legal basis for restoring the original position as a consequence of an agreement being declared void by law in Indonesian judicial practice.

As stated on the aforementioned decision, the principle of *restitutio in integrum* should have constituted a primary consideration for the court in declaring the lease agreement null and void. Although the court declared the agreement null and void on the ground that it was contrary to law, the judgment did not expressly address the legal consequences of such invalidity, particularly with respect to the restoration of the parties to their respective pre-contractual positions. Under the doctrine of civil law, the annulment of an agreement should, in principle, restore the parties to the position they would have occupied had the agreement never been concluded. The losses arising from the invalid agreement extend beyond the deprivation of the landowner's use and enjoyment of the property to include the economic burdens incurred during the period in which the agreement remained in effect. In the present case, the Plaintiff bore the costs of Land and Building Tax (*Pajak Bumi dan Bangunan/PBB*), maintenance, and utility charges, which, pursuant to the terms of the agreement, should have been borne by the tenant. Accordingly, liability for losses arising from the use of the property

should properly be attributed to the party that directly derived the benefit from such use, namely the tenant or the party occupying the land, as that party was the one who obtained and enjoyed the benefits of the property throughout the period during which the agreement remained in effect.

A further case is reflected in the Decision of Gianyar District Court Number 259/Pdt.G/202/PN.Gin, which likewise concerns the use of a nominee agreement by foreign nationals to acquire land in Bali. In this case, an Australian couple entrusted the purchase of land and the construction of a villa to an Indonesian national, whose name was registered on the certificate of ownership (*Sertifikat Hak Milik*). However, as the relationship between the parties deteriorated, a dispute arose concerning the ownership of the land and the building constructed thereon. The court subsequently found that the agreement entered into by the parties constituted a form of circumvention of the law that was contrary to the legal restrictions governing land ownership by foreign nationals. Consequently, all agreements entered into by the parties were declared null and void. The decision is consistent with the principle of *restitutio in integrum*, whereby the land and its certificate of ownership are restored to the lawful owner in accordance with the provisions of Indonesian agrarian law.

Previous research entitled "Restitution Claims for Null and Void Contracts," authored by Tatjana Josipovic in 2022, demonstrates that Croatian law likewise recognizes the principle of restoration to the original position, commonly referred to as restitution. The study examines the legal consequences of contracts that are null and void, particularly with regard to the limitation period for bringing restitution claims. The principal issue identified in the study arises from the rule that the right to restitution may become time-barred five years after the performance of the relevant obligation, even where the parties only become aware of the invalidity of the contract after the expiration of such period. This situation may result in injustice for parties who have suffered losses as a consequence of the invalid contract. In response to this issue, Croatian courts subsequently adopted a reinterpretation of the provision governing the commencement of the limitation period, thereby providing more effective legal protection for consumers.⁴ In contrast to the aforementioned study, the present research focuses on the Indonesian civil law system, with particular emphasis on the necessity of restoring the parties to their original positions as a legal consequence of an agreement that is null and void. This research not only examines the legal consequences arising from the invalidity of an agreement but also emphasizes the necessity of judicial intervention through a court decision to ensure legal certainty and fairness for the parties, particularly in assessing the losses incurred during the period in which the agreement remained in effect.

Another study addressing the principle of restoration to the original position was conducted by Catherine Rosalina Sianturi et al. in 2024, entitled "*Efek Hukum Perubahan Serta Pembatalan Kontrak; Tinjauan Dari Perspektif Hukum Perikatan*." The study examines the legal effects of contractual amendment and termination from the perspective of contract law under

⁴ Tatjana Josipović, "Restitution Claims For Null And Void Contracts Tatjana Josipović," *European Integration Studies* 18, no. 1 (2022): 102–22, <https://doi.org/10.46941/2022.e1.102-122>.

the Indonesian Civil Code. The previous research analyzes how modifications to the terms of an agreement, as well as unilateral or mutually agreed termination, affect the legal position of the parties, including the resulting legal consequences, whether in the form of restoration to the original position or compensation.⁵ Meanwhile, the present research focuses more specifically on agreements that are null and void and on the obligation to restore the parties to their original positions through a court ruling. Unlike previous research, which examines the annulment of contracts in general, whether arising from breach of contract or other legal grounds, the present research specifically addresses the legal implications and urgency of declaring an agreement is null and void, including the liability and losses arising from its performance. The distinction between the two studies lies primarily in their respective direction and focus. Previous research emphasizes the mechanisms for modifying and terminating contracts within the context of contractual relationships that remain legally valid, whereas the present research emphasizes the necessity of judicial intervention and the affirmation of restitutionary obligations as a means of ensuring legal certainty in relation to agreements that are null and void.

Based on the findings of previous studies, the research gap identified in the present study lies in two principal aspects. First, there has been limited research specifically examining the mechanism through which judges impose an obligation to restore the parties to their original positions, as well as the determination of liability for costs and losses arising from the implementation of *restitutio in integrum* in relation to agreements that are null and void under Indonesian law. Second, judicial practice demonstrates that judges do not always expressly order the parties to restore the circumstances to their original state, including by allocating responsibility for costs or losses incurred before the agreement is declared null and void. This issue is particularly significant given that numerous agreements may fail to satisfy the requirement of a lawful cause under Article 1320 of the Indonesian Civil Code without the parties being fully aware of such invalidity. Accordingly, there is a need to reform and clarify the legal framework governing the legal consequences of agreements that are null and void, particularly with respect to the obligation of restitution and the allocation of liability for losses arising from the performance of such agreements

The position of losses arising from agreements that are null and void constitutes one of the principal grounds for recognizing the need for an obligation to restore the parties to their original positions. In the absence of such an obligation, the annulment of an agreement may merely terminate its legal effects without adequately addressing the losses already suffered by the parties. Although the declaration that an agreement is null and void eliminates its legal effects, uncertainty may remain regarding the obligation to restore the parties to their original positions and the allocation of responsibility for losses incurred during the performance of the agreement. This situation demonstrates a gap in legal practice and interpretation, particularly

⁵ Catherine Rosalina Sianturi et al., "Efek Hukum Perubahan Serta Pembatalan Kontrak; Tinjauan Dari Perspektif Hukum Perikatan," *Media Hukum Indonesia (MHI)* 2, no. 4 (November 20, 2024): 326, <https://doi.org/10.5281/ZENODO.14192185>.

in civil cases involving violation that causing an agreement is null and void as in the cases above. Accordingly, this research is important to ensure that the parties are equal before the law and to restore the positions to the circumstances existing prior to the agreement.

2. METHOD

This study is a normative legal research project utilizing secondary data as the primary source to analyze written legal norms related to the legal issue. The research adopts three approaches; first, the statutory approach is employed because the legal provisions governing a null and void circumstances and *restitutio in integrum* are expressly regulated under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata or KUHPerdata*). This approach involves a systematic examination of Article 1320, Article 1335 jo Article 1337, Article 1449, and Article 1453 of Indonesian Civil Code. Second, the conceptual approach is employed to examine the doctrine of *restitutio in integrum* as a legal principle aimed at restoring the parties to the position they occupied prior the agreement. Third, the case approach is employed to examine the application of *restitutio in integrum* in judicial practice. The data are collected through library research and analyzed using descriptive-qualitative methods based on deductive juridical reasoning. The findings are subsequently presented in a systematic manner.

3. DISCUSSION

3.1 The Urgency of Restoring the Status Quo as an Implication of an Agreement Null and void

The determination of an agreement as a valid and binding agreement is determined by the fulfillment of the requirements for the validity of an agreement as stipulated in Article 1320 of the Indonesian Civil Code: consent, capacity, a specific object, and a lawful cause. An agreement that fails to satisfy these requirements gives rise to specific legal consequences. The requirements concerning the parties' consent and legal capacity are classified as subjective requirements, as they relate directly to the parties entering into the agreement. Where these subjective requirements are not fulfilled, the agreement is legally voidable. The requirement regarding a specific subject matter and a lawful cause constitutes an objective requirement because it relates to the contractual performance which is the object of the agreement and failure to satisfy this requirement results in the agreement being null and void.⁶

A voidable agreement is understood to remain valid and legally binding unless and until it is annulled by a court. Accordingly, the agreement continues to produce legal effects and remains binding upon the parties. As long as none of the parties challenges the validity or enforceability of the agreement, each party remains obligated to perform its respective contractual obligations. Conversely, where a party objects to the validity or enforceability of the agreement, that party may seek the annulment of the agreement before the court.⁷ An agreement ceases to be valid and binding upon the parties once the court grants the application for its annulment. By contrast, an agreement that is declared null and void is one

⁶ Jeanette A.M & Achmad Busro, "Akibat Hukum Pembatalan Perjanjian yang Dibuat Atas Dasar Penyalahgunaan Keadaan", *Notarius* 16, no.2, (2023): 638. <https://doi.org/10.30652/29sdfq11>

⁷ M. Z. (M) Abdullah, "Kajian Yuridis Terhadap Syarat Sah Dan Unsur-Unsur Dalam Suatu Perjanjian," *Lex Specialist*, no. 11 (2010): 20–25, <https://www.neliti.com/id/publications/501389/>.

that is regarded as having never existed from the outset. This understanding is consistent with H. Kelsen's proposition that "an act that is null lacks any legal character from the beginning."⁸ The failure of the agreement to fulfill its intended purpose of giving rise to a binding legal obligation means that there is no legal basis upon which either party may bring a claim before the court.⁹

The nullity of such a contract operates automatically by virtue of law and does not require an application or request from any interested party. From a conceptual standpoint, a contract that is null and void is fundamentally distinct from a voidable contract. In the case of a void contract, the nullity operates *erga omnes*, such that it is effective against all parties, including third parties. Consequently, the contract is regarded as having produced no legal existence from the outset.¹⁰ Conversely, a voidable contract remains valid and legally binding unless and until its annulment is sought and granted by a court, with the resulting legal consequences confined to the parties directly concerned. This distinction underscores the more definitive and absolute nature of null and void, whereas a voidable contract preserves space for protection for certain parties, especially parties who have good faith.¹¹

A null and void agreement is automatically rendered invalid and is regarded as having never existed or come into legal existence from the outset. Consequently, a judge, by virtue of judicial office, is required to recognize and declare that such an agreement never existed or came into being. There is no explicit provision requiring a court judgment to establish that an agreement is null and void. An agreement that is null and void gives rise to absolute nullity, which operates against all parties. This differs from relative nullity, which produces legal effects only with respect to certain parties.¹² An agreement that is null and void may have broader legal implications, as its invalidity may affect parties beyond those directly bound by the agreement. Consequently, such agreements may give rise to potential legal risks that should be anticipated and carefully considered by the parties when drafting and entering into the agreement.¹³

An agreement is automatically null and void when it fails to satisfy the objective requirements for a valid agreement. This means that a declaration of nullity does not require an application for annulment by either party or the consent of the parties. An agreement that is null and void gives rise to the legal consequence that the parties must be restored to the position they occupied prior to the creation of the legal relationship, or the agreement is treated as if it were void from the moment it was originally concluded.¹⁴

⁸ Hans Kelsen dan Carl Schmitt, (United Kingdom: Cambridge University Press, 2015).

⁹ Stephanie Nathania Maramis, Merry Elisabeth Kalalo, and Rudolf Sam Mamengko, "Kajian Hukum Tentang Keabsahan Jual Beli Online Pada Aplikasi Facebook," *LEX PRIVATUM* 11, no. 4 (May 8, 2023), <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/47946>.

¹⁰ Ioannis A Tassopoulos, "The Void Ab Initio Theory in Comparative Perspective: J Marshall, H Kelsen, and Beyond", *ICL Journal* 17, no. 3 (August 18, 2023):217, <https://doi.org/10.1515/icl-2023-0034>.

¹¹ Elly Erawati and Herlien Budiono, *Penjelasan Hukum Tentang Kebatalan Perjanjian* (Jakarta: Kencana, 2015).

¹² Nanin Koeswidi Astuti, "Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum," *To-Ra* 2, no. 1 (May 1, 2016): 279–86, <https://doi.org/10.33541/tora.v2i1.1130>.

¹³ Simanjuntak P.N.H, *Pokok-Pokok Hukum Perdata Indonesia* (Jakarta: Djambatan, 2016).

¹⁴ Erawati and Budiono, *Penjelasan Hukum Tentang Kebatalan Perjanjian*.

Under the principle of *restitutio in integrum*, an invalid agreement that has caused losses may give rise to an obligation to restore the parties to their original positions. The fundamental consequence of an agreement that is null and void is that it produces no legal effects from the outset (*ex tunc*). Accordingly, any performance or benefit received by either party pursuant to an agreement that is null and void must be restored to the other party in order to prevent the retention of an unlawful benefit and thereby avoid unjust enrichment.¹⁵ This principle is further explained by Goff and Jones, that unjust enrichment refers to a situation in which the law permits a person to recover a benefit that has been improperly obtained by another at the former's expense, namely, "a benefit unjustly gained by another at his expense."¹⁶ The doctrine of unjust enrichment is not expressly regulated under the Indonesian Civil Code, yet briefly reflected, in Article 1359 paragraph (1) of the Indonesian Civil Code concerning payments made without a legal obligation. Every payment presupposes the existence of a debt; therefore, any payment made without a corresponding legal obligation may be reclaimed. This provision reflects the principle that the acquisition of wealth must be supported by a legal basis or underlying obligation, and that no person should obtain a benefit or enrichment unjustly at the expense of another. In the context of an agreement that is null and void, there is, by definition, no valid legal basis upon which either party may rely to retain any benefit or enrichment obtained under the agreement. Accordingly, where a party has received a benefit or acquired property without a valid legal basis, such benefit or property must be restored. Failure to restore the parties to the position they occupied prior to the conclusion of the agreement may consequently result in unjust enrichment without a legal basis.

The principle of *restitutio in integrum* is not expressly provided for in the Indonesian Civil Code. Nevertheless, its underlying rationale and normative substance are reflected in various provisions, particularly those governing compensation under Article 1243, unlawful acts under Article 1365, as well as the annulment and nullity of agreements.¹⁷ The principle of *restitutio in integrum* is consistent with the provisions of Article 1265 of the Indonesian Civil Code:

"Suatu syarat batal adalah syarat yang bila dipenuhi akan menghapuskan perikatan dan membawa segala sesuatu kembali pada keadaan semula, seolah-olah tidak pernah ada suatu perikatan"

Through the aforementioned provisions, Indonesian courts may provide remedies that extend beyond purely financial compensation, with the broader objective of restoring the parties to the position they occupied prior to the occurrence of a breach of contract, an

¹⁵ Andrews NH, "Restitution and Void Contracts: The Unmeritoripus defendant Must Pay", *The Cambridge Law Journal* 49, (1990): 15-17. <https://doi.org/10.1017/S0008197300106774>.

¹⁶ Charles Mitchel et all, *Goff & Jones The Law of Unjust Enrichment*, (London: Sweet & Maxwell, 2016) sebagaimana dikutip dalam Siti Aliza Alias dan Ida Madieha Abd Ghani Azmi, "The Law of Restitution of Unjust Enrichment in Malaysia: A Search For Principle, Post "Dream Property", *IIUM Law Journal* 32, no. 1, (May 15, 2024): 156, <https://doi.org/10.31436/iiumlj.v32i1.970>.

¹⁷ N. Yunita Sugiastuti, "Ganti Rugi Akibat Wanprestasi (Perbandingan Kitab Undang-Undang Hukum Perdata Indonesia Dan Civil Code Of The Netherlands)," *Jurnal Hukum PRIORIS* 8, no. 2 (September 14, 2022): 201–35, <https://doi.org/10.25105/prio.v8i2.14981>.

unlawful act, or the annulment of an agreement.¹⁸ Pursuant to Article 1265 of the Indonesian Civil Code, an agreement that is null and void entails the restoration of the parties to their respective original positions. As a fundamental principle of civil law, an agreement declared null and void requires the parties to be restored to the position they occupied prior to the agreement, on the premise that the agreement is regarded as having never existed. This principle further establishes that, where an agreement is declared null and void, the resulting legal consequences should not permit one party to suffer an uncompensated loss arising from the invalid agreement.¹⁹

Restoration to the original position may encompass actual losses arising from the annulment of an agreement. In practice, losses may arise both in direct connection with the subject matter of the agreement and from matters outside the contractual object, such as expenses incurred as a consequence of the performance of the agreement. As an example, in Decision Number 259/Pdt.G/2020/PN.Gin, declared a nominee agreement, or an agreement involving the use of another person's name, null and void in relation to the sale and purchase of land located in Mas Village, Gianyar, Bali. The nominee agreement was entered into between an Indonesian citizen and a foreign national, whereby the foreign national used the Indonesian citizen's name to acquire the land, given that, under the Agrarian Law, ownership rights over land in Indonesia may only be held by Indonesian citizens. In its consideration, the court held that the nominee agreement was null and void because its subject matter failed to satisfy the objective requirement of a valid agreement, namely that the agreement must have a lawful cause or be legally permissible, as it contravened the provisions of the UUPA. The nullity of the nominee agreement had significant consequences for the parties, particularly for the foreign national, who incurred actual losses in the form of expenses paid for the acquisition of the land and the associated administrative costs. Accordingly, pursuant to the principle of *restitutio in integrum*, the parties should, in principle, be restored to the positions they occupied prior to entering into the agreement. However, the court did not consider ordering the parties to restore their respective positions to the original state. Consequently, in the ruling, the judge merely declared the nominee agreement null and void but did not order the parties to restore the situation to its original state. The absence of an order to restore the status quo leaves the aggrieved party in this case, the foreign national who suffered financial loss regarding the land purchase and associated administrative costs without a clear legal remedy.

Another case is reflected in Decision Number 112/Pdt.G/2016/PN.Gin, concerning the annulment of a lease agreement in which the duration of the contractual term could not be determined with certainty, as the relevant clause stipulated that the lease would remain effective for the lifetime of the tenant. Article 8 of the agreement provided that the initial term of the lease was fifteen years, followed by subsequent terms of twenty years until the death of the tenant. Such a provision failed to satisfy the objective requirement concerning the subject

¹⁸ N. Yunita Sugiastuti.

¹⁹ Nindyo Pramono, "Problematisasi Putusan Hakim Dalam Perkara Pembatalan Perjanjian," *Jurnal Mimbar Hukum* 22, no. 2 (February 23, 2010): 224–33, <https://doi.org/10.22146/jmh.16221>.

matter of the agreement, as the duration of the lease was uncertain and could not be determined with precision. This was inconsistent with the requirement that the subject matter of an agreement must at least be determinable. In its legal reasoning, the court held that the nominee arrangement underlying the lease agreement was contrary to law, as the foreign national used the name of an Indonesian citizen to lease the land for an uncertain period. The nullity of the agreement consequently gave rise to losses, which extended beyond expenses directly related to the leased property to include costs incurred in connection with the administration and maintenance of the property, such as Land and Building Tax (Pajak Bumi dan Bangunan or PBB), which should have been borne by the tenant but was instead paid by the lessor. Nevertheless, the court ultimately declared the agreement null and void without expressly ordering the parties to restore their respective positions to the state existing prior to the conclusion of the agreement. The absence of such an order gives rise to legal uncertainty concerning the allocation of liability for the losses incurred, particularly as to which party should bear responsibility for the expenses arising during the performance of the invalid agreement.

Another case concerns a share sale and purchase agreement that was declared null and void because it resulted in crossholding between corporations. This matter was addressed in Decision of the Surabaya District Court Number 1397/Pdt.P/2020/PN.Sby, which involved an application by the parties to annul the deed of share sale and purchase. Such crossholding was contrary to the provisions of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the "Company Law"). In its legal reasoning, the court found that the deed of share sale and purchase contravened Article 36 paragraph (1) of the Company Law and therefore failed to satisfy the requirement of a lawful cause under Article 1320 point 4 of the Indonesian Civil Code. Accordingly, the deed of share sale and purchase was declared null and void. The nullity of the deed consequently gave rise to an obligation for the parties to restore the shares and consideration exchanged to their respective pre-contractual positions. However, the court did not expressly order the parties to undertake such restitution, namely, to return the shares and the purchase price to the positions existing prior to the transaction. The absence of clear rules governing the mechanism for restoring the parties to their original positions in share sale and purchase transactions may therefore create legal uncertainty regarding the manner in which such restitution should be carried out.

Where the principle of restoration to the original position is applied in relation to losses, several categories of loss may be identified. These include losses arising from the use of land, which may be addressed by returning the land to its lawful owner; losses associated with the use and enjoyment of the contractual object; and expenses incurred in connection with the transfer of shares. Losses arising from the use and enjoyment of the contractual object warrant particular consideration by the court when determining the party upon whom liability for such losses should be imposed. The cases discussed above demonstrate that, although the respective agreements were declared null and void, the courts did not expressly order the parties to restore their positions to the state existing prior to the conclusion of the agreements.

This omission creates legal uncertainty regarding which party is responsible for compensating the losses arising from the performance of the invalid agreements. The absence of clear legal provisions governing the mechanism of restoration to the original position may result in courts failing to order the parties to return the respective performances they have received, thereby leaving the legal positions of the parties unrestored to the circumstances existing prior to the conclusion of the agreements

In judicial practice, the two cases discussed above do not represent isolated instances in which agreements have been declared null and void through judicial decisions. Numerous similar cases may be found. Nevertheless, in most of these cases, courts merely declare that the agreement is null and void on the ground that it fails to satisfy the objective requirements of a valid agreement, without expressly ordering the parties to restore their respective positions to the state existing prior to the conclusion of the agreement. As previously explained, an agreement may be null and void where its objective requirements are not satisfied. However, at the time of this research, there is no specific provision under Indonesian civil law requiring a court judgment to establish the nullity of an agreement that is void by operation of law. Furthermore, there is no explicit legal provision requiring a judge to order the parties to restore their respective positions to their original state where an agreement is null and void. To date, the Indonesian Civil Code primarily provides a legal basis for restoration and compensation in the context of breach of contract under Articles 1243–1246 and unlawful acts under Article 1365.²⁰

The absence of specific legal provisions governing this matter may create legal uncertainty for the parties to an agreement as well as for other parties involved. This research argues that a declaration that an agreement is null and void should preferably be established through a court judgment in order to reinforce the legal effect of such declaration. In addition, the court should expressly order the parties to restore their respective positions to the state existing prior to the conclusion of the agreement. Such an order is necessary to provide legal certainty that the agreement produced no legal effects from the outset and to determine which party bears responsibility for compensating losses incurred as a consequence of the agreement being null and void. Judges should therefore be vested with the authority to order restitution, or restoration to the original position, as a legal consequence of an agreement being null and void. A mere declaration of nullity is insufficient to restore the legal positions of the parties. Such judicial authority is necessary to ensure legal certainty, promote corrective justice, prevent unjust enrichment or enrichment without a legal basis, and ensure the effective implementation of the principle of nullity by operation of law.

In resolving civil disputes, particularly disputes concerning the declaration of an agreement as null and void due to the failure to satisfy the objective requirements of a valid agreement, judges should consider and seek to restore the parties to the positions they

²⁰ Rai Mantili, "Ganti Kerugian Immateriil Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda," *Jurnal Ilmiah Hukum DEJURE: Kajian Ilmiah Hukum* 4, no. 2 (March 30, 2019): 298–321, <https://doi.org/10.35706/dejure.v4i2.6460>.

occupied prior to the conclusion of the agreement in order to achieve substantive justice. This approach is consistent with the view advanced by Sudikno Mertokusumo. Accordingly, in addition to declaring an agreement null and void, the judge should expressly order the parties to take the necessary measures to restore their respective legal positions and circumstances to their original state. A judicial decision should provide a comprehensive resolution and should not give rise to further disputes or legal uncertainty. Therefore, judges should not merely focus on the parties' petition seeking a declaration that the agreement is null and void, but should also consider issuing consequential orders requiring the parties to restore their positions as though the agreement had never been concluded. Such restoration should be implemented in a manner that ensures that neither party suffers an uncompensated loss as a consequence of the restitution process.²¹ The application of the principle of *restitutio in integrum* in judicial decisions resolving civil disputes should be undertaken by judges. Nevertheless, as noted by Yahya Harahap, the implementation of such decisions is not a straightforward matter, as it requires a clear and effective mechanism for the enforcement or execution of the judgment. This is particularly so because restoring the parties to their original positions requires concrete remedial measures and cannot be achieved merely through the payment of monetary compensation.²² In Decision of the Cikarang District Court Number 128/Pdt.G/2020/PN.Ckr, the court not only declared the sale and purchase agreement null and void but also ordered the restoration of the parties to their original positions by requiring the land, which constituted the subject matter of the transaction, to be vacated and returned. However, the effective implementation of such a judgment requires a clear enforcement mechanism to serve as a legal guideline, as well as the good faith of both parties.

The obligation of *restitutio in integrum* in relation to agreements that are null and void is intended to restore the parties to their original positions by eliminating the legal consequences arising from the agreement, thereby ensuring justice and legal certainty and preventing unjust enrichment. The attainment of justice as one of the fundamental objectives of law is closely intertwined with legal certainty. According to Fence, law cannot be separated from legal certainty, particularly in the context of written law. Legal norms that lack the support of legal certainty lose their normative force and their capacity to serve as a reliable standard for guiding the conduct of individuals within society. Legal certainty may therefore be understood as the consistent and unequivocal application of legal rules in social life.²³ Legal certainty can also be understood as a country's legal rules that provide guarantees regarding the rights and obligations of every citizen.²⁴ As defined by Sudikno M, legal certainty refers to

²¹ Eko Rial Nugroho, "Penerapan Putusan Hakim Batal Demi Hukum Dalam Perkara Pembatalan Perjanjian - Fakultas Hukum - Universitas Islam Indonesia," *Prosiding Simposium Nasional Hukum Pidana Fakultas Hukum Universitas Islam Indonesia*, September 2022, 80–87, <https://law.uui.ac.id/penerapan-putusan-hakim-batal-demi-hukum-dalam-perkara-pembatalan-perjanjian/>.

²² M. Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*, Kedua (Jakarta: Sinar Grafika, 2017).

²³ Fence M Wantu, "Upaya Menciptakan Proses Peradilan Yang Bersih Sesuai Keadilan, Kepastian Hukum, Dan Kemanfaatan," *Jurnal Pelangi Ilmu* 4, no. 1 (2011).

²⁴ Rifqi Qowiyul Iman, "Putusan Hakim, Antara Kepastian Hukum Dan Keadilan," Artikel Pengadilan Agama Tais,

the implementation of the law in accordance with the formulations found in prevailing and evolving legal norms. This provides an assurance to the public that the law will be genuinely enforced. Fundamentally, legal certainty exists where the law is obeyed and applied.²⁵

Peter Mahmud Marzuki defines legal certainty as the tangible manifestation of legal norms whether written or unwritten that establish general provisions serving as behavioral guidelines for everyone in society. These provisions act as boundaries and guides for individuals when engaging in legal actions involving other parties. The existence of these rules and their application reflect this legal certainty.²⁶ According to Van, there are two aspects to legal certainty. First, it is related to the determinability (*bepaalbaarheid*) of the law in real situations, where the parties obtain clarity on the legal norms that apply in a particular case before determining their legal action. Second, legal certainty means legal security, namely that the parties receive protection from the possibility of arbitrary actions by judges.²⁷ Therefore, a judge's ruling should ideally combine legal certainty, justice, and utility three elements of paramount importance.²⁸

As a fundamental principle of civil law, an agreement declared null and void requires the restoration of the parties to the positions they occupied prior to the conclusion of the agreement, on the premise that the agreement is regarded as having never existed. An agreement that is declared null and void should not result in uncompensated loss to either party. Furthermore, the consequences of an agreement being null and void are not necessarily confined to the parties to the agreement but may also extend to third parties. This is illustrated by the circumstances addressed in Decision Number 259/Pdt.G/2020/PN.Gin. In addition to the losses suffered by the foreign national as a consequence of restoring the parties to their original positions, the seller or landowner may likewise incur losses. If the parties are restored to their pre-contractual positions, the seller is required to return the purchase price received for the land. This may become problematic where the funds have already been used for other purposes and the seller subsequently faces difficulties in returning the amount received. Accordingly, it is essential to establish legal certainty regarding the party responsible for compensating the losses and the mechanism through which such compensation is to be provided. This case demonstrates the importance of incorporating the obligation to restore the parties to their original positions as a legal consequence of an agreement being declared null and void, thereby providing legal certainty not only to the parties to the agreement but also to third parties who may be affected by its nullity. Such regulation should not merely establish the obligation of restitution but should also provide a clear mechanism for restoring the parties to their original positions, including the applicable period for its implementation.

Based on the foregoing discussion, the urgency of imposing an obligation to restore the parties to their original positions as a consequence of an agreement being null and void lies

accessed March 7, 2026, <https://drive.google.com/file/d/1lunag9lyJ3KZUT5YdToLHRZaJlvot8IM/view>.

²⁵ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Keempat (Yogyakarta: Liberty, 1999).

²⁶ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2008).

²⁷ Margono, *Asas Keadilan, Kemanfaatan & Kepastian Hukum Dalam Putusan Hakim* (Jakarta: Sinar Grafika, 2015).

²⁸ Iman, "Putusan Hakim, Antara Kepastian Hukum Dan Keadilan."

in ensuring legal certainty for both the parties to the agreement and any third parties affected by its nullity, thereby preventing them from suffering uncompensated losses. A court judgment should not merely declare an agreement null and void but should also order the parties to restore their respective positions to the circumstances existing prior to the conclusion of the agreement, as though the agreement had never been entered into. The obligation to restore the parties to their original positions following the nullity of an agreement constitutes a logical consequence of the principle of *restitutio in integrum*, which requires the parties to be restored to the positions they occupied prior to the agreement, as if the agreement had never legally existed.

3.2 Obligation to Return to Original Condition as a Result of an Agreement That is Null and Void

Agreements that fail to meet the objective requirements set forth in Article 1320 of the Civil Code namely, a lawful cause and a specific object are declared null and void and are deemed never to have existed from the outset. Consequently, such agreements create neither a legal relationship nor binding rights and obligations for the parties involved.²⁹ Therefore, there is no legal basis to sue for the performance of an obligation in court.³⁰ One of the legal bases stating that a contract becomes null and void due to the failure to satisfy objective requirements is Article 1335 of the Civil Code;

"Suatu perjanjian tanpa sebab, atau dibuat berdasarkan suatu sebab yang palsu atau yang terlarang, tidaklah mempunyai kekuatan"

The provision does not expressly state that the agreement is null and void. Nevertheless, the phrase "does not have legal force" may be interpreted as indicating that the agreement produces no legal consequences for either of the parties. The subsequent issue concerns the point at which an agreement may be regarded as null and void where, from the outset, it is deemed never to have existed, yet the parties have nevertheless proceeded to perform the agreement. In practice, agreements that are null and void in Indonesia are frequently brought before the courts for a declaration of nullity, even though the applicable legal provisions do not expressly require judicial intervention for such nullity to arise.

This differs from a "voidable" agreement, which requires an application for annulment to be brought before a court in order for the agreement to be declared invalid. This distinction gives rise to different legal consequences for each type of agreement, particularly with respect to the obligation to restore the parties to their original positions (*restitutio in integrum*). Article 1265 of the Indonesian Civil Code reads as follows;

"Suatu syarat batal adalah syarat yang bila dipenuhi akan menghapuskan perikatan dan membawa segala sesuatu kembali pada keadaan semula, seolah-oleh tidak pernah ada suatu perikatan".

²⁹ Rudini Sibagariang et al, "Status of Nulity by Law the Agreement Due to Standard Clauses in The Consumer Protection Law", *Sinergi International Journal of Law* 3, no. 4, (November 30, 2025):209, <https://doi.org/10.61194/law.v3i4.803>

³⁰ Dewi Oktoviana Ustien and Umar Marhum, "Perspektif Hukum Terhadap Suatu Perjanjian," *Lakidende Law Review* 1, no. 2 (2022): 85–92, <https://doi.org/10.47353/delarev.v1i2.11>.

It is clear from this article that the extinguishment of an obligation due to a resolutory condition restores the parties to their original position or initial state as if the obligation had never existed. In practice, however, not all agreements that are null and void are automatically followed by a restoration to the original state, a concept known as *restitutio in integrum*. Within the context of contract law, *restitutio in integrum* is a legal consequence aimed at eliminating all legal effects arising from an agreement that is deemed, from the outset, never to have existed.³¹ Therefore, in principle, the parties are required to return all performance received so that their situation reverts to the state existing prior to the agreement's formation. However, judicial practice in Indonesia shows that rulings declaring an agreement null and void are not always accompanied by restitution mechanisms that restore the parties to their original position. Consequently, there is a need to develop judicial practices to ensure that the remedies provided are more comprehensive and reflect substantive justice.³²

The principle of restitution is universally recognized in various countries, including South Africa. This principle establishes that the objective of restitution is to place the parties in the position they would have occupied prior to the termination of the contract, without placing an innocent party at a disadvantage. The scope of restoration encompasses all proceeds and interest that should have been received. As stipulated in the French Civil Code, if restitution is not made in monetary form, it must be effected through the return of the goods themselves; where this is not feasible, the value of the goods must be assessed. Furthermore, restitution extends to the proceeds derived from, as well as the use or enjoyment of, the goods in question.³³

Similarly, Croatia regulates agreements that are null and void and claims for restitution under the Obligations Act of 1978 (hereinafter referred to as the OA). Article 322 of the OA sets out the general grounds for a contract to be null and void due to three factors: a) Conflict with the constitution. The constitution in question is the supreme law of Croatia, governing the state's fundamental structure and human rights; b) Mandatory law. This provision refers to specific norms or stipulations within legislation; c) Public morality. Standards of public morality are derived from societal customs.

The annulment of an agreement does not give rise to the legal effects that would normally result if the agreement were valid. The consequences of the agreement's nullity arise at the time the contract was created *ex tunc* effects of nullity.³⁴ The provision regarding an agreement that is null and void carries the same meaning as the corresponding provision in Indonesia.

In addition to provisions regarding the grounds for an agreement to be null and void,

³¹ Helen Scott & Danie Visser, *Unjust Enrichment in South Africa*, <https://www.i-law.com/ilaw/doc/view.htm?id=436720>.

³² Selvia Budi Yeni et al., "Pergeseran Paradigma Perlindungan Korban Dalam Perbuatan Melawan Hukum: Analisis Perbandingan Sistem Hukum Indonesia Dan Prancis," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 3 (July 19, 2025): 2567–76, <https://doi.org/10.61104/alz.v3i3.1652>.

³³ Elmarie Fourie and Jerca Kramberger Škerl, *Universality of the Rule of Law: Slovenian and South African Perspectives on JSTOR*, 1st ed. (African Sun Media, SUN PReSS, 2021), <https://www.jstor.org/stable/j.ctv2gjwmmh>.

³⁴ Josipović, "Restitution Claims For Null And Void Contracts Tatjana Josipović."

the OA also sets forth provisions concerning the time limit for the annulment of such an agreement, as stipulated in Article 328 of the OA.³⁵ That article stipulates that there is no time limit for seeking the annulment of an agreement that is void by operation of law. Unlike other provisions, the Indonesian Civil Code does not specify a timeframe within which a claim for the annulment of an agreement that is void by operation of law may be brought before the courts.

The two provisions illustrate a fundamental distinction in the legal understanding of agreements that are null and void. Upon closer examination, however, both provisions share a fundamental principle: the legal consequences of the nullity of an agreement are determined by law itself (*ex lege*), irrespective of which authority is competent to establish or declare the nullity of the contract. Under Indonesian law, an agreement that is null and void is understood to be automatically invalid by virtue of the law itself, without requiring a formal declaration by a competent authority. This principle has a direct implication for the restoration of the parties to their original positions following the nullity of the agreement.

Another jurisdiction that imposes an obligation to restore the parties to their original positions as a consequence of a contract being null and void is Serbia. This obligation is regulated under the 1978 Law of Obligations (hereinafter referred to as the “LO”), which governs the general principles of contract law and remains, for the most part, applicable under Serbian law. Article 104 (1) of the LO provides that restitution must, as far as possible, be made in the same form as the performance originally rendered. Where such restitution is not possible, appropriate compensation must be provided based on the prevailing market value at the time the court renders its judgment, unless otherwise provided by law.³⁶

Another legal consequence arising from the nullity of a contract concerns liability for losses. The LO provides that the party responsible for causing the contract to be annulled must be liable to the other party for losses suffered in connection with the annulment, provided that such party acted in good faith. However, the nullity of a contract may also give rise to specific legal consequences. The LO retains the rule derived from the former federal law on obligations, under which a contract is null and void where it contravenes mandatory legal provisions, public policy, or good morals, having regard to its content or the purpose pursued by the parties. In such circumstances, the court may reject, in whole or in part, a claim by a party acting in bad faith for the restitution of the performance rendered by the other party. This rule is known as unilateral restitution, under which a party acting in good faith is entitled to restitution, whereas a party acting in bad faith is denied such entitlement.³⁷

Indonesia does not yet recognize a clear and comprehensive obligation to restore the parties to their original positions as a means of ensuring legal certainty. The Indonesian Civil Code merely provides a general basis through Article 1265, which contemplates the possibility of restoring the parties to their original positions without establishing any further procedural mechanism. This situation is reflected in Decision Number 112/Pdt.G/2016/PN.Gin, which

³⁵ Josipović.

³⁶ Attila Dudás, “General Rules on Invalidity of Contracts in Serbia,” *Review of European and Comparative Law* 49, no. 2 (May 30, 2022): 51–70, <https://doi.org/10.31743/recl.13441>.

³⁷ Dudás.

declared a land lease agreement entered into in 2004 null and void. At the outset, the court examined the agreement against the requirements stipulated under Article 1320 of the KUHPerdata. The court found that the use of a nominee agreement constituted a form of circumvention of the law that was contrary to the positive law of Indonesia and, consequently, declared the agreement null and void. In addition, the agreement stipulated a lease term of "for life" in consideration for a payment of IDR 15,000,000 (fifteen million rupiah).

The decision demonstrates that the operative part of the judgment was limited to declaring the agreement null and void, without addressing the parties' obligation to return the respective performances received or to restore their legal positions to the circumstances existing prior to the contract. The panel of judges did not address the legal consequences arising after the agreement was declared null and void. The ruling noted the existence of outstanding electricity bills and land and building taxes accrued between 2011 and 2016. Once the judgment became final and binding, liability for these charges automatically fell upon the landowner, even though the tenant had actually enjoyed the benefits of usage during that period. The benefits enjoyed and the costs paid during the lease term should have received special consideration from the panel of judges to restore the parties to the position they held prior to the contract's existence. The consequence of an agreement being null and void by operation of law necessitates a mechanism for restoring the status quo, as stipulated in the court's ruling.

In contrast to what is regulated in Article OA, the main consequence of cancellation is restitution in integrum. Article 323 (1) OA states that:

" In the event of the nullity of a contract, each contracting party is obliged to return to the other everything it received on the basis of such contract; if this is not possible, or if the nature of what has been performed is incompatible with restitution, appropriate compensation in money shall be provided, according to the prices applicable at the time of the court decision, unless otherwise provided by law."

Furthermore, Article 323(2) of the OA provides that:

"A party who enters into a contract that is null and void shall be liable to the other contracting party for any losses suffered as a result of the nullity of the contract, provided that the other contracting party was unaware, or under the circumstances was not required to have been aware, of the grounds giving rise to the nullity of the contract."

The two provisions clearly demonstrate that a party to an agreement that is null and void is entitled to seek restitution. In addition, third parties who suffer losses are afforded legal protection through the imposition of an obligation upon the parties to the null and void agreement to provide compensation. Through these obligations, the Obligations Act of 1978 establishes clear legal protection for injured parties and provides legal certainty concerning the consequences of agreements that are null and void.

Furthermore, the OA, particularly Article 225 of the Obligations Act of 1978, regulates the limitation period for bringing a restitution claim, which is five years, unless a different limitation period is prescribed by law. In relation to an agreement that is null and void, the

limitation period commences when the contract begins to be performed, as indicated by the performance of the contractual obligations by either party. Consequently, a restitution claim arising from a contract that is null and void becomes time-barred five years after performance under the agreement has been rendered. Although the nullity of the contract itself is not subject to a limitation period, once the applicable period for bringing a restitution claim has expired, the injured party may no longer bring a restitution claim before the court.³⁸

The situation in Indonesia stands in contrast to the framework established under the Obligations Act. This is further demonstrated by the case discussed above, namely Decision of the Gianyar District Court Number 112/Pdt.G/2016/PN.Gin, in which the court declared a lease agreement with a lifetime term null and void on the ground that it failed to satisfy the objective requirements of a valid agreement. The judgment, however, was not accompanied by any order for restitution or restoration of the parties to their original positions, despite the fact that, upon closer examination, the lease had resulted in losses arising from expenses incurred during the period in which the property was leased. The court did not consider restoration to the original position as a legal consequence of the agreement being null and void. This approach was based on the absence of applicable legal provisions imposing an obligation to provide restitution or otherwise restore the parties to their original positions in relation to agreements that are null and void.

Decision Number 259/Pdt.G/2020/PN.Gin likewise serves as a basis for analysis, demonstrating that the court merely declared the agreement null and void without addressing the restoration of the parties to their original positions. This case concerns the use of a nominee agreement in a land sale and purchase transaction involving a foreign national, who subsequently sought the annulment of the nominee agreement underlying the land transaction. In its judgment, the court declared the nominee agreement null and void on the ground that it failed to satisfy the objective requirements of a valid agreement.³⁹ This ruling also fails to consider restitution or the restoration of the parties to their original positions. Moreover, the foreign national is severely disadvantaged due to the funds expended to purchase the land using the name of an Indonesian national the defendant.

If the court considers restitution or the restoration of the status quo regarding the agreement, this will have implications for any sale and purchase agreement involving a third party. It is in this context that regulations on restitution protecting third parties—such as those found in the Obligations Act of 1978 are required. The obligation to restore the status quo in the event of loss to a third party can serve as a legal safeguard for an agreement that is void by operation of law.

Broadly speaking, the relevance of the regulatory model found in the Obligations Act of 1978 is based on three primary reasons: a) Filling the gap regarding the formal legal framework for restitutio in integrum. The Act contains highly rigid codified rules concerning objective

³⁸ Josipović, "Restitution Claims For Null And Void Contracts Tatjana Josipović."

³⁹ Devina Alodia, "Legal Validity of Nominee Agreements in Land Ownership by Foreign Nationals and Notary Liability in Indonesia" *Melayunesia Law* 10, No.1, (June 3, 2026):62.

obligations, compensatory restitution, and the protection of third parties; b) Balancing the principles of fairness and legal certainty. The Act adopts the principle that the rescission of a contract must not serve as a means for one party to achieve unjust enrichment; c) Similarity in legal system characteristics. The Act's underlying legal logic aligns with the Indonesian civil law codification, which is rooted in the Continental European tradition.

Referring to the jurisdictions discussed above, these legal systems generally recognize the importance of restoring the parties to their original position in order to ensure legal certainty. Courts also take into consideration the existence of bad faith that may have contributed to the nullity of an agreement. Accordingly, the court may determine the appropriate proportion of damages based on the degree of bad faith attributable to one of the parties. Such legal norms provide courts with a basis for ensuring legal certainty and legal protection for parties who suffer losses as a consequence of an agreement being declared null and void. The legal effect of nullity therefore extends beyond a mere judicial declaration; rather, it concerns the substantive legal position of the parties, which, in principle, should be restored to the position they would have occupied had the agreement never been concluded. This principle should serve as a benchmark for Indonesia in establishing greater legal certainty concerning the judicial declaration that an agreement is null and void.

Based on the foregoing analysis, it can be observed that the legal consequences of an agreement being null and void under the Indonesian Civil Code do not yet provide sufficient certainty regarding the obligation to restore the parties to their original position (*restitutio in integrum*). The absence of an explicit statutory provision governing such restitution leaves its implementation largely dependent on judicial interpretation, thereby creating the potential for divergent approaches in judicial practice. By contrast, the Obligations Act of 1978 of Croatia provides a more comprehensive framework by expressly establishing the obligation to restore the parties to their original position, including provisions addressing the protection of third parties who may suffer losses as a consequence of the nullity. This comparative analysis demonstrates that clear and explicit normative regulation of *restitutio in integrum* constitutes an essential element in ensuring the consistency, predictability, and effectiveness of the legal consequences arising from an agreement being declared null and void.

The absence of explicit legal provisions may result in a lack of legal certainty and fairness, particularly for parties who suffer losses as a consequence of the performance of an agreement that is null and void. Therefore, reform of Indonesian civil law is necessary to expressly establish restitution as a direct legal consequence of an agreement being declared null and void, while simultaneously providing judicial guidelines for determining an appropriate and equitable form of restoration to the parties' original position. Requiring the nullity of an agreement to be established through judicial proceedings may also serve as one of the prerequisites for ensuring the effective implementation of the *restitutio in integrum* principle under future legislation. Accordingly, the principles of legal certainty, justice, and utility, as fundamental objectives of law, may be realized in a balanced manner within the practice of law enforcement in Indonesia.

4. CONCLUSION

Based on the findings of this study, the principal finding is the normative gap concerning restitution as a consequence of an agreement being null and void. The absence of an explicit provision establishing the obligation of *restitutio in integrum* has contributed to inconsistency in judicial practice, with courts in some cases limiting their decisions to a declaration of nullity without ordering restitution. This situation creates legal uncertainty and may result in losses for parties acting in good faith. This study proposes a framework for legal reform that expressly establishes *restitutio in integrum* as a legal consequence of an agreement being null and void. Such a framework should encompass the obligation to return any performance received, liability for costs and losses incurred during the performance of the agreement, and protection for third parties who suffer losses as a consequence of the nullity. Accordingly, the establishment of a new provision within the Indonesian Civil Code is necessary to expressly regulate: (a) the obligation of *restitutio in integrum* in cases where an agreement is null and void; (b) the mechanism for restoring the parties to their original position; (c) the limitation period for asserting a claim for restitution; and (d) the liability of the parties, including liability toward affected third parties. In addition, judicial guidelines should be established to ensure that every judgment declaring an agreement null and void is accompanied, where appropriate, by an order for restoration to the parties' original position in a proportionate and equitable manner. Such regulation would strengthen legal certainty and promote the realization of justice for all parties affected by the nullity of the agreement.

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