Volume 7 Issue 1, January 2026: pp. 35-50
Indonesian Private Law Review.
Faculty of Law, Universitas Lampung,
Bandar Lampung, Indonesia.
P-ISSN: 2723-259X E-ISSN: 2745-9284
https://jurnal.fh.unila.ac.id/index.php/iplr

THE PARADIGM SHIFT IN CONTRACT INTERPRETATION: A COMPARATIVE ANALYSIS OF INDONESIA, NEW ZEALAND, THE CISG, AND THE UPICC

Mursal Maulana[1], Jani Purnawanty[2], Rafan Darodjat[3], Meliesa Permatahati[4], Michael Wolff[5]

[1]Universitas Padjadjaran, Indonesia, E-mail: mursal.maulana@unpad.ac.id
[2]Universitas Airlangga, Indonesia, E-mail :jani@fh.unair.ac.id
[3]Universitas Airlangga, Indonesia, E-mail: rafan.darodjat-2025@fh.unair.ac.id
[4]Universitas Padjadjaran, Indonesia, E-mail: meliesa18001@mail.unpad.ac.id
[5]LLB (Cantenbury), FCIArb, AMINZ (Assoc), NZBA Member, ICCA Member, New Zealand, E-mail: michael@wolff.nz

Submitted: October 25, 2025; Reviewed: February 3, 2026.; Accepted: April 23, 2026
DOI: 10.25041/iplr.v7i1.4681

Abstract

Contract interpretation remains a contested issue in contract law, particularly under the Indonesian Civil Code, which reflects a civil law tradition that prioritizes textual interpretation. Modern commercial practice, however, demands a more contextual approach. This article examines how Indonesia can modernize its interpretive framework through a normative comparative analysis of the Indonesian Civil Code and the contract law of New Zealand, with reference to the United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts. The study finds that contemporary contract law has shifted toward an objective contextual approach that preserves the primacy of contractual language while incorporating commercial context, reasonableness, and good faith. Incorporating this approach into the Indonesian Civil Code would enhance interpretive consistency, strengthen judicial reasoning, and provide a principled foundation for contract law reform in Indonesia.

Keywords: *Contract Interpretation, Indonesia Civil Code, Modern Contract Principle, New Zealand's Contract Law Framework*

A. Introduction

Contract interpretation remains one of the most complex and contested areas of contract law[1] and a leading source of commercial litigation[2]. Scholarly debate intensified after the 2003 publication of Contract Theory and the Limits of Contract Law by Alan Schwartz and Robert E. Scott, which proposed a new framework for interpreting contracts.[3]

[1] Larry A. DiMatteo et al., *Commercial Contract Law: A Transatlantic Perspective* (Cambridge: Cambridge University Press, 2013), 241.
[2] Ronald J. Gilson, Charles F. Sabel, and Robert E. Scott, "Text and Context: Contract Interpretation as Contract Design," *Cornell Law Review* 100 (2014): 25.
[3] Alan Schwartz and Robert E. Scott, "Contract Theory and the Limits of Contract Law," *Yale Law Journal* 113 (2003): 541, quoted in Steven J. Burton, "A Lesson on Some Limits of Economic Analysis: Schwartz and Scott on Contract Interpretation," *Indiana Law Journal* 88, no. 1 (2013): art. 6, 340.

A valid contract binds parties to perform agreed obligations, yet disputes often arise over what was actually agreed. Meaning does not exist in isolation because language depends on context. Differences in background, knowledge, and experience create ambiguity. For this reason, contract law, like literature and theology, relies on interpretation to clarify uncertain terms and establish precise meaning.

Contract drafting presents significant linguistic risks. Careful attention to legal principles improves enforceability and protects party interests.[4] Words and symbols cannot fully capture intent, and parties may overlook issues that later become important[5].Interpretation of written contracts requires examining both the text and the context known to the parties at formation. Courts apply the perspective of a reasonable person to determine a meaning that is sensible and consistent with the parties' intent.[6]

There are two competing starting points in contract interpretation. The first prioritizes the parties' intention, reflecting the principle of party autonomy, under which legal obligations arise from and are justified by their free will.[7] The second prioritizes external facts, as commercial relationships depend on protecting reliance, which is based on what parties actually say rather than what they privately intend. The central question is whether courts or arbitral tribunals should exclude evidence of prior negotiations, known as extrinsic evidence, and rely solely on the contract's text, or consider both the text and surrounding circumstances.[8]

This tension dates back to ancient Roman law. When formal procedures or specific words were required to create legal obligations, interpretation focused on external expressions, because legal consequences followed from the words used, not from subjective intent.[9] This principle was captured in the *maxim cum in verbis nulla ambiguitas est, non debet admitti voluntatis* quaestio (when the words are clear, intent should not be questioned).[10]

Contract interpretation disputes may also shift from the parties to judges or arbitral tribunals, depending on the forum. Differences in interpretation that initially arise between the parties may reappear within the tribunal itself, leading to dissenting opinions on the proper meaning of contractual terms.

Contract interpretation law remains complex, marked in many jurisdictions by inconsistent decisions, doctrinal shifts, and persistent uncertainty. In Indonesia, the Civil Code (*KUH-Perdata*), Book Three, Chapter Two, Part Four, Articles 1342 to 1351, provides the primary legal framework.[11] These provisions historically emphasize a textual approach, followed by the application of good faith in performance. Article 1342 expressly states that when contractual wording is clear, interpretation departing from that wording is not permitted[12].

The development of modern business practices and contract theory requires a shift in contract interpretation to reflect the complexity of contemporary contractual relationships. The current interpretive framework often fails to address challenges arising from electronic

---

[4] Sheri L. Bocher, "Contract Interpretation in Arbitration," *Employment Relations Today* 14, no. 2 (1987): 113–18.
[5] Madeleine van Rossum, "Interpretation of Commercial Contracts," *European Journal of Commercial Contract Law* 46, no. 2 (2011): 46.
[6] Neil Andrews, "Interpretation and Rectification of Written Contracts," in *Contract Law* (Cambridge: Cambridge University Press, 2015), 379–83.
[7] Hein Kötz, *European Contract Law*, 2nd ed. (Oxford: Oxford University Press, 2017), 91–92.
[8] Benson, Peter, ed. *The Theory of Contract Law: New Essays*. of *Cambridge Studies in Philosophy and Law*. Cambridge: Cambridge University Press, 2001.
[9] Vogenauer, Stefan, 'Interpretation of Contracts: Concluding Comparative Observations', in Andrew Burrows, and Edwin Peel (eds), Construction and interpretation, in Andrew Burrows, and Edwin Peel (eds), *Contract terms* (Oxford, 2007; online edn, Oxford Academic, 31 Oct. 2023), https://doi.org/10.1093/oso/9780199229376.003.0007, accessed 13 Mar. 2026.
[10] *Ibid.*
[11] Joshua M. Silverstein, "Contract Interpretation and the Parol Evidence Rule: Toward Conceptual Clarification," *Chapman Law Review* 24 (2020): 91.
[12] Gerrit Betlem, "The Doctrine of Consistent Interpretation-Managing Legal Uncertainty," *Oxford Journal of Legal Studies*, Volume 22, Issue 3, AUTUMN: 397–418, https://doi.org/10.1093/ojls/22.3.397

contracts, transnational transactions, and the need for legal certainty and protection of weaker parties. Other jurisdictions, such as New Zealand, have adopted more pragmatic and contextual approaches that better accommodate these developments.

This article examines the shift in contract interpretation from a textual to a contextual approach. It situates this analysis within relevant legal theories and instruments governing contract interpretation and evaluates how existing frameworks and doctrines address these issues. Most Indonesian scholarship remains descriptive, focusing on how interpretation is regulated under the Civil Code without critical comparison with other jurisdictions. This limitation prevents a clear understanding of how the law should evolve to reflect contemporary practice. This article addresses this gap by adopting a comparative approach, drawing on international legal instruments and comparative legal developments to propose a normative model for reform.

Against this background, this article evaluates contract interpretation rules in other jurisdictions and international instruments to provide a more comprehensive analysis. Its contribution lies in demonstrating the shift from a textual to a contextual approach and in offering a stronger conceptual foundation for reforming Indonesian contract law.

The significance of this article lies in its identification of the tension between textual and contextual approaches to contract interpretation and its effort to address gaps in existing scholarship. Unlike prior studies that remain largely descriptive, this article contributes original insights by proposing best practices for contract interpretation and offering comparative analysis, particularly with New Zealand. Its novelty lies in presenting a coherent pathway for reform, shifting contract interpretation from a strictly textual approach toward a contextual framework.

This article adopts a normative and comparative legal research method. It compares Indonesia's Civil Code with New Zealand's contract law framework, using international instruments such as the CISG and the UNIDROIT Principles of International Commercial Contracts (UPICC) as benchmarks. The analysis is supported by statutory interpretation, case law examination, and comparative evaluation to provide a comprehensive assessment. This article addresses two research questions. First, what interpretive approaches are adopted under the Indonesian Civil Code and New Zealand's contract law? Second, how can a modern interpretive model be integrated into the reform of the Indonesian Civil Code to enhance the effectiveness and relevance of contract law in Indonesia?

This article is structured into four chapters. Chapter 1 outlines the background, research questions, and objectives. Chapter 2 presents the main analysis, examining the concept of contract interpretation and the approaches under the Indonesian Civil Code, New Zealand law, the CISG, and the UPICC, followed by a comparative evaluation. Chapter 3 sets out the findings and conclusions. The final chapter provides recommendations for modernizing contract interpretation within the Indonesian Civil Code. This article contributes to contract law reform in Indonesia by offering a structured comparative analysis and proposing principle-based directions for legislative reform informed by international practice.

B. Discussion

1. Characteristics and Approaches to Contract Interpretation Currently Adopted in the Indonesian Civil Code And New Zealand's Contract Law

a. General Overview of Contract Interpretation

Before examining the theory and practice of contract interpretation, it is necessary to clarify the terminology. The term "contract interpretation" is often used broadly, yet it encompasses distinct approaches. Understanding the context and characteristics of each approach is essential. Terminology varies across jurisdictions, each with its own nuance. The term "interpretation" derives from the Latin *interpretatio*, which is the root of similar terms in European languages,

including i*nterprétation* (French), *interpretazione* (Italian), *interpretación* (Spanish), and Interpretation (German and English). In German and Dutch legal traditions, related but distinct terms are used: *Auslegung* in German and *uitleg* in Dutch. In Indonesia, the term *penafsiran* is used in legal practice and legislation, particularly in the Civil Code.

In the English legal tradition, the terms interpretation and construction are commonly used. Although often treated as interchangeable, they carry different meanings. Interpretation refers to identifying the semantic meaning of contractual language in its context, that is, determining how a reasonable person would understand the words used. Construction refers to applying that meaning to the relevant facts, linking the interpreted language to the specific circumstances of the dispute. This distinction is significant, as it shapes how judges and arbitrators determine and apply contractual obligations in dispute resolution.[13]

b. Characteristics and Current Approaches to Contract Interpretation in the Indonesian Civil Code

The Indonesian Civil Code, inherited from the Dutch colonial period, has governed private law for decades. According to Sahardjo, the Civil Code has become a Rechtboek used mainly as a guideline rather than a fully operative legal instrument. Its limitations are increasingly evident, as contractual relationships have expanded into complex and transnational forms. This development underscores the need for legal reform to address gaps in Indonesia's contract law framework.[14]

The Indonesian legal system continues to emphasize a strict textual approach to contract interpretation, as reflected in the Civil Code (KUH Perdata). Provisions on contract interpretation are set out in Book Three, Chapter Two, Part Four, Articles 1342 to 1351. These provisions reveal several shortcomings when compared with modern contract law principles:

1) Absence of an explicit factual matrix approach

The Civil Code addresses the meaning of words and the parties' intentions in Articles 1342 to 1345, but it does not recognize a structured framework allowing courts to consider the full factual background, including commercial context, trade practices, and transactional purpose. Unlike modern interpretive approaches, such as those influenced by the Hoffmann and ICS doctrine and codified in jurisdictions such as France[15],Indonesian law does not formally integrate contextual analysis as an interpretive tool.

2) Uncertainty regarding pre-contractual negotiations as evidence

The Civil Code neither expressly permits nor prohibits the use of pre-contractual negotiations as interpretive evidence. Article 1343[16] provides only that when contractual terms allow multiple interpretations, the interpretation that best reflects the parties' intention prevails.[17] This lack of clarity has led to inconsistent judicial practice, with courts alternately admitting or excluding evidence of prior negotiations. This inconsistency contrasts with legal systems that provide clearer guidance on the evidentiary role of such negotiations.

---

[13] Randy E. Barnett, "Interpretation and Construction," *Georgetown Law Faculty Publications and Other Works*, no. 820 (2011): 66. https://scholarship.law.georgetown.edu/facpub/820.

[14] Abdullah Ahmad Johari *et al.*, "Analisis Kasus Garuda Indonesia vs. Rolls-Royce sebagai Kajian Hukum Perdata Internasional," *Majelis: Jurnal Hukum Indonesia* 2, no. 4 (November 2025): 124.

[15] Melissa Jane Hammer, *"Coming to a Consensus: Vector Gas and the Admissibility of Previous Negotiations in Contract Interpretation"* (LL.B. (Hons) diss., University of Otago, 2010).

[16] If the wording of an agreement is open to several interpretations, one shall ascertain the intent of the parties involved rather than be bound by the literal sense of the words.

[17] Mitchell, C. "Contract Interpretation: Pragmatism, Principle and the Prior Negotiations Rule." *Journal of Contract Law* 19 (2003): 58–82.

P-ISSN: 2723-259X
E-ISSN: 2745-9284

Debate also persists regarding the legal status of Memorandums of Understanding (MoUs) and Letters of Intent. In principle, these instruments may satisfy the validity requirements under Article 1320 of the Civil Code and may be legally binding. In practice, however, they often function as preliminary agreements without binding force. Huala Adolf characterizes MoUs and Letters of Intent as self-contracts rather than fully binding contracts,[18] reflecting their preparatory and flexible nature in commercial practice.[19]

3) Absence of a clear objective standard (reasonable person)

The Civil Code emphasizes the parties' common intention but does not provide a clear fallback rule when that intention cannot be determined. Modern contract law, such as it is in Article 1188 French Civil Code., often applies an objective standard, asking how a reasonable person in the same circumstances would interpret the contract[20].The absence of such a standard complicates interpretation and contributes to inconsistent decisions when subjective intent cannot be established.

4) Inadequate regulation of standard contracts and the *contra proferentem* principle.

The contra proferentem principle, articulated by Edward Coke in the *maxim verba cartarum fortius accipiuntur contra proferentem*, holds that ambiguous contractual language should be interpreted against the party who drafted it. This principle protects parties with weaker bargaining power and promotes fairness in contractual interpretation.[21] Modern legal systems, including post-reform France, expressly regulate contracts of adhesion and require ambiguity to be resolved against the drafting party. By contrast, the Indonesian Civil Code does not systematically regulate standard-form or adhesion contracts, nor does it address their relationship with unequal bargaining power or burdensome clauses.

5) Lack of explicit integration of good faith in interpretation

The Civil Code recognizes good faith in two distinct senses. First, under Article 1338(3), good faith refers to an objective standard governing contractual performance, requiring parties to act fairly, reasonably, and properly. This reflects the principle of *redelijkheid en billijkheid*, assessed according to objective legal norms. Second, good faith may refer to a subjective condition, namely the absence of knowledge of a defect, as reflected in Article 1386 concerning payment made in good faith. In this article, good faith is understood primarily in its objective sense as a governing standard of conduct.[22] Although good faith is recognized in general doctrine[23], the Civil Code does not clearly define its role as a method of interpretation. As a result, interpretation often relies on literal wording and formal consent, while the interpretive function of good faith remains underdeveloped and inconsistently applied. By comparison, some legal systems, including New Zealand in

[18] Klass, Gregory. "Intent to Contract." *Virginia Law Review* 95, no. 6 (2009): 1437–1502.
[19] Huala Adolf, *Dasar-Dasar Hukum Kontrak Internasional*, rev. ed. (Bandung: Refika Aditama, 2010), 117.
[20] Kramer, Adam. "Common Sense Principles of Contract Interpretation." *Oxford Journal of Legal Studies* 23, no. 2 (2003): 173–196. DOI: https://doi.org/10.1093/ojls/23.2.173
[21] Joanna McCunn, "The Contra Proferentem Rule: Contract Law's Great Survivor," *Oxford Journal of Legal Studies* 39, no. 3 (Autumn 2019): 490.
[22] Y. Sogar Simamora, "Fungsi Itikad Baik dalam Kontrak (Suatu Orientasi dengan Metode Pendekatan Sistem)," *Perspektif* 6, no. 3 (July 2001): 199.
[23] Article 1338 Indonesian Civil Code: All legally executed agreements shall bind the individuals who have concluded them by law. They cannot be revoked otherwise than by mutual agreement, or pursuant to reasons which are legally declared to be sufficient. They shall be executed in good faith.

specific statutory contexts such as insurance law, integrate good faith more explicitly into interpretation and enforcement.[24]

6) Absence of a structured hierarchy of interpretive methods

Many jurisdictions treat contract interpretation as a structured process based on a hierarchy of interpretive sources. The primary reference is the parties' express agreement. If ambiguity remains, interpretation considers the contract as a whole and the circumstances of its formation. Courts may then examine prior dealings between the parties and relevant trade usages. Where these sources do not resolve the issue, statutory default rules and general principles, including good faith and the protection of reasonable expectations, provide guidance.[25]

Articles 1342 to 1349 of the Indonesian Civil Code do not establish such a hierarchy. They do not clarify when courts should consider external evidence, apply trade usage, or use the contra proferentem principle, nor do they specify the relative weight of these sources. This lack of structure contributes to inconsistent judicial decisions and reduces predictability in contract interpretation.

c. New Zealand

New Zealand contract law adopts a hybrid approach that determines the parties' intention objectively while giving appropriate weight to the contractual text. This approach follows the framework developed by Lord Hoffmann in Investors Compensation Scheme Ltd v West Bromwich Building Society. The leading authority in New Zealand is Firm PI 1 Ltd v Zurich Australian Insurance Ltd,[26] where the Supreme Court held *"[T]he proper approach is an objective one, the aim being to ascertain "the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract". This objective meaning is taken to be that which the parties intended. While there is no conceptual limit on what can be regarded as "background", it has to be background that a reasonable person would regard as relevant. Accordingly, the context provided by the contract as a whole and any relevant background informs meaning."* Although there is no strict limit on relevant background, it must be information that a reasonable person would consider relevant. The contract must therefore be interpreted in light of its text, context, and commercial background.[27]

New Zealand courts rely on three core considerations. First, objectivity requires that contractual meaning be determined from the perspective of a reasonable person with the relevant background knowledge available to the parties[28]. Second, context requires that interpretation consider the contract as a whole and the relevant commercial circumstances, provided the contextual evidence is relevant to understanding the language used. Third, the primacy of the text recognizes that the contractual wording remains central. The ordinary meaning of the text is a strong indicator of intention, although it is not decisive.

Under this objective approach, unexpressed subjective intentions are irrelevant. Interpretation focuses on how a reasonable person in the parties' position would understand the contract, considering the commercial context known at the time of formation. Objectivity

[24] Hesselink, Martijn W. "The Concept of Good Faith." In *Towards a European Civil Code*, 4th ed. Kluwer Law International, 2011.

[25] Eyal Zamir, "The Inverted Hierarchy of Contract Interpretation and Supplementation," SSRN Electronic Journal: https://ssrn.com/abstract=1097642

[26] Helen Winkelmann, *et. al.*, "Contractual Interpretation," Accessed 12 December 2025 : https://www.courtsofnz.govt.nz/publications/speeches-and-papers/contractual-interpretation?

[27] Citing the principles in *Bathurst Resource ltd v L&M Coal Holdings Ltd and Firm PI Ltd.*

[28] *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85 at *[68]*. https://www.courtsofnz.govt.nz/assets/cases/2021/2021-NZSC-85.pdf

ensures consistency and predictability, while contextual analysis ensures that contractual language reflects its practical commercial meaning. This approach was reaffirmed in Bathurst Resources Ltd v L&M Coal Holdings Ltd, where the Supreme Court emphasized that although the contractual text remains central, interpretation must reflect the commercial purpose of the agreement and the meaning conveyed by the parties' chosen words.

This interpretive methodology represents a modern framework that balances textual certainty with contextual understanding. It offers a coherent model for reforming the Indonesian Civil Code, which has traditionally emphasized literal interpretation while giving limited weight to context and commercial background.

2. Integration of a Modern Model of Contract Interpretation in the Reformulation of the Indonesian Civil Code to Enhance the Effectiveness and Relevance of Contract Law in Indonesia

a. Harmonizing a Modern Contract Interpretation Provisions into Indonesian Civil Code.

Harmonizing contract interpretation provisions in the Indonesian Civil Code with contemporary best practices is essential for several reasons. First, the Civil Code is a legacy of Dutch colonial rule and reflects legal concepts developed under Netherlands law through the principle of concordance. As a result, many of its provisions no longer reflect the realities of modern contractual relationships, particularly in transnational commerce.

Second, contract law is founded on the principle of party autonomy, which allows parties to define their legal relationships freely. This principle is reflected in Book Three of the Civil Code, which adopts an open system of contract law. Reform of interpretive provisions must therefore reflect the parties' intentions and commercial purpose rather than rely solely on literal wording. Contract interpretation should function as a dynamic legal process, capable of adapting to evolving commercial practices, similar to the interpretation of international legal instruments.

Contract law has developed rapidly, accompanied by increasing efforts toward harmonization and convergence. Harmonization reduces transaction costs by minimizing differences between legal systems, allowing parties to operate more efficiently across jurisdictions[29]. International instruments developed by organizations such as UNCITRAL and the UNIDROIT, particularly the UNIDROIT Principles of International Commercial Contracts (UPICC), provide useful benchmarks. Although these instruments are classified as soft law, they are widely recognized and reflect contemporary standards in contract interpretation and drafting.

At the same time, convergence between civil law and common law traditions[30] has expanded the interpretive role of judges. Judicial interpretation is no longer limited to applying statutory provisions but may also clarify, develop, and adapt legal principles. This development demonstrates that courts in civil law systems, including Indonesia, play an important role in shaping contract law through interpretation.[31]

The growing complexity and intensity of contractual activity in the modern economy have exposed structural weaknesses in the Indonesian Civil Code. These limitations reduce legal certainty and hinder Indonesia's competitiveness in international trade. The gap becomes more apparent when compared with international instruments such as the UNIDROIT Principles of International Commercial Contracts and the United Nations Convention on Contracts for the

[29] Eliezer Sanchez-Lasaballett, "Conceptualizing Harmonization: The Case for Contract Law," *Uniform Law Review* 24, no. 1 (2019): 74.
[30] Smits, Jan M. "Convergence of Private Law in Europe." In *European Private Law: A Handbook*, vol. 1. Intersentia, 2008.
[31] Choky R. Ramadhan, "Konvergensi *Civil Law* dan *Common Law* di Indonesia dalam Penemuan dan Pembentukan Hukum," *Mimbar Hukum* 30, no. 2 (June 2018): 226.

International Sale of Goods. These instruments reflect global best practices by adopting flexible, contextual, and commercially oriented interpretive standards suited to cross-border transactions.[32]

Their widespread acceptance has reshaped the expectations of commercial actors and arbitral tribunals. This development highlights the need to reform the Indonesian Civil Code to ensure coherence, competitiveness, and legal certainty in the modern global contracting environment.

b. Comparative Analysis as Benchmarking

A meaningful effort to modernize and harmonize Indonesian contract law requires examining international instruments that have shaped contemporary approaches to contract interpretation. The diversity of available models requires clear selection criteria. The relevant benchmarks include:

1) Authoritativeness, reflected in formal legal status and legitimacy, such as treaties like the United Nations Convention on Contracts for the International Sale of Goods (CISG) or interpretive frameworks grounded in the Vienna Convention on the Law of Treaties (VCLT)[33];
2) Practical adoption, particularly in international arbitration or through party choice, as demonstrated by the UNIDROIT Principles and arbitral practice under the International Chamber of Commerce (ICC)[34];
3) Persuasiveness across legal traditions, as reflected in instruments such as the Restatement (Second) of Contracts and the Principles of European Contract Law, which facilitate dialogue between civil law and common law systems[35];
4) Legislative influence, evident in modern civil code reforms that incorporate contextual and good-faith principles, including reforms in France and Germany (BGB §§133–157)[36]; and
5) Practical applicability, demonstrated through arbitral decisions and comparative judicial reasoning[37].

Applying these criteria, several instruments emerge as key references. The CISG is particularly significant due to its treaty-based authority and its interpretive framework under Article 8, which balances subjective intention and objective reasonableness. Its widespread adoption and binding legal status give it strong normative influence in cross-border commercial disputes.

The UNIDROIT Principles complement this framework. Despite their soft law status, they reflect modern commercial standards on interpretation, good faith, and gap-filling. They are

[32] Emmert, Frank. "Ole Lando and Hugh Beale (Eds.), Principles of European Contract Law - Parts I and II - Combined and Revised, the Hague/London/Boston: Kluwer Law International (2000) Xlviii + 561 Pp." *European Journal of Law Reform* 2, no. 3 (January 1, 2000): 385–86. https://doi.org/10.1128/jvi.02319-10.

[33] GÜL, İbrahim and Hasan Kalyoncu Üniversitesi Hukuk Fakültesi. "Freedom of Contract, Party Autonomy and Its Limit Under Cisg." Hakemli Makale. *Hacettepe HFD*. Vol. 6, 2016. https://cisg-online.org/files/commentFiles/Guel_6_1_HacettepeHFD_2016_77.pdf.

[34] Massimo V. Benedettelli, "Applying the UNIDROIT Principles in International Arbitration: An Exercise in Conflicts," *Journal of International Arbitration* 33, no. Issue 6 (December 1, 2016): 653–86, https://doi.org/10.54648/joia2016042.

[35] The University of Melbourne Handbook. "Contract Interpretation (LAWS70335)," n.d. https://handbook.unimelb.edu.au/2019/subjects/laws70335.

[36] Zimmermann, Reinhard, Marcel Kau, Johannes Saurer, Johannes Köndgen, Georg Borges, Rolf Sethe, Wolfgang Wurmnest, and Harald Koch. "Introduction to German Law." Edited by Tug˘Rul Ansay and Don Wallace. Uploaded by Wolters Kluwer Legal & Regulatory U.S. and Air Business Subscriptions. Kluwer Law International B.V., 2019. https://www.jura.uni-hamburg.de/media/die-fakultaet/personen/wurmnest-wolfgang/wurmnest-contract-law-in-zekoll-wagner-introduction-to-german-law.pdf.

[37] *Ibid.*

frequently adopted by contracting parties and applied by arbitral tribunals as an expression of contemporary *lex mercatoria.*

International arbitral practice also provides important guidance. Institutions such as the ICC, the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC) illustrate how interpretation operates in practice. Although many arbitral awards remain confidential, published decisions and institutional summaries show consistent reliance on instruments such as the CISG, the UNIDROIT Principles, and comparative legal principles to resolve interpretive uncertainty and fill contractual gaps.

The VCLT, although governing treaty interpretation rather than private contracts, also offers a useful methodological model. Its text-in-context approach reflects a coherent interpretive framework that aligns with modern contract law's shift toward contextual and purposive interpretation.

Together, these instruments provide a coherent set of normative and methodological references for reforming Indonesian contract law. They reflect global best practices and demonstrate how modern interpretation balances party autonomy, commercial expectations, and legal certainty in an interconnected legal environment.

1) Convention on Contracts for the International Sale of Goods (CISG)

The United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted in 1980 and in force since 1988, represents a major achievement in the unification of international sales law. With 97 contracting states, including leading trading nations, it provides a harmonized framework for cross-border sales contracts. Its authority is strengthened by an extensive body of jurisprudence, which distinguishes it from soft law or model law instruments and confirms its practical significance in international trade. The CISG applies to contracts for the sale of goods between parties whose places of business are in different contracting states.[38]

Although the CISG provisions on interpretation are concise, they establish a coherent methodology. By comparison, the UNIDROIT Principles of International Commercial Contracts contain a more detailed chapter on interpretation. Both instruments emphasize the parties' common intention, but they differ in scope.[39] The CISG primarily governs the interpretation of statements and conduct of a party, whereas the UNIDROIT Principles address the interpretation of contracts more broadly.

The Restatement (Second) of Contracts also treats common intention as the primary rule, yet it limits the admissibility of subjective evidence. The UNIDROIT Principles impose no comparable restriction. As a result, interpretive outcomes under the Principles may differ from those reached under the Restatement.

Where common intention cannot be established, the UNIDROIT Principles adopt a reasonableness standard. Similar to the CISG and the Uniform Commercial Code, they require consideration of course of dealing, course of performance, trade usages, and preliminary negotiations. This approach cannot be excluded by a merger clause.[40]

Article 7 is central to the CISG's interpretive and gap-filling regime. Article 7(1) requires autonomous and internationally oriented interpretation, promoting uniformity and good faith in international trade. This method discourages reliance on domestic interpretive

[38] JP Quinn, "The Interpretation and Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG). https://cisg-online.org/files/commentFiles/Quinn.pdf.

[39] United Nations Commission on International Trade Law. "Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)," n.d. https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status.

[40] Joseph M. Perillo, "Unidroit Principles of International Commercial Contracts: The Black Letter Text and a Review," *Fordham Law Review* 63 (1994): 294–95.

traditions and encourages a transnational perspective. Article 7(2) provides that gaps are to be filled first by general principles underlying the Convention and, failing that, by applicable private international law. This structure has influenced subsequent instruments such as the UNIDROIT Principles and the Principles of European Contract Law.

Article 8 further refines the CISG's interpretive framework through a dual-layer model. It gives priority to actual party intent when the other party knew or could not have been unaware of that intent. When subjective intent cannot be established, interpretation shifts to an objective standard based on the understanding of a reasonable person in the same circumstances. This combination of subjective priority and objective subsidiarity has significantly influenced arbitral practice and comparative scholarship, reinforcing the CISG's impact on international dispute resolution.

Although the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not prescribe detailed interpretive methods comparable to the Vienna Convention on the Law of Treaties (VCLT), its framework reflects core hermeneutic principles recognized across jurisdictions, including textual meaning, context, purpose, and historical background. The CISG functions as a transnational interpretive model that aligns with general interpretive practice while remaining independent from domestic contract law and public international law.

The CISG also balances the rights and obligations of sellers and buyers by incorporating widely accepted comparative law principles. Its provisions reflect both the common core and better rules approaches. The common core approach, developed by Rudolf Schlesinger and advanced by Ole Lando, identifies shared principles across legal systems. Comparative scholars such as Mauro Bussani and Ugo Mattei emphasize that this method maps common legal structures across jurisdictions. Because the CISG was negotiated by representatives of civil law and common law systems, its provisions reflect broadly accepted commercial standards.[41]

Article 7 is the cornerstone of the CISG's interpretive and gap-filling framework. Article 7(1) requires autonomous interpretation, promoting uniformity and good faith in international trade. This ensures that interpretation remains independent from domestic legal concepts and supports consistent global application. Article 7(2) establishes a structured gap-filling process, requiring reliance on the Convention's general principles before resorting to private international law. This methodology has influenced later instruments and uniform law projects.[42]

Although the CISG does not prescribe a rigid interpretive method, its framework incorporates widely accepted interpretive elements, including textual analysis, contextual evaluation, and purposive reasoning. It also encourages comparative reasoning, allowing courts and arbitral tribunals to consider international jurisprudence to ensure consistent interpretation.

Article 8 strengthens this framework by combining subjective and objective standards. Article 8(1) gives priority to the parties' actual intent when the other party knew or should have known that intent. When intent cannot be established, Article 8(2) applies an objective standard based on the understanding of a reasonable person in the same circumstances. This dual approach ensures that interpretation reflects both the parties' true intention and the objective commercial meaning of their words, providing clarity, fairness, and predictability in international contracting.

---

[41] Larry A. DiMatteo, "CISG as Basis of a Comprehensive International Sales Law," *Villanova Law Review* 58, no. 4 (2013): 691. https://digitalcommons.law.villanova.edu/vlr/vol58/iss4/13.

[42] Ingeborg Schwenzer, "Interpretation and Gap-Filling under the CISG," *CISG-online*. https://cisg-online.org/files/commentFiles/Schwenzer.pdf.

2) UNIDROIT Principles of International Commercial Contracts.

Compared with the CISG, the PICC contains more detailed rules on contract interpretation. It requires interpretation in light of the contract as a whole under Article 4.4, mandates that all provisions be given effect under Article 4.5, expressly adopts the contra proferentem rule under Article 4.6, and addresses linguistic discrepancies in a manner similar to the PECL under Article 4.7.

Unlike the CISG and the PECL, the PICC also regulates supplementary interpretation. If an essential term is missing, an appropriate term may be supplied based on the parties' intention, the nature and purpose of the contract, good faith and fair dealing, and reasonableness under Article 4.8. This provision offers a clearer basis for gap filling than reliance solely on general clauses such as good faith.[43]

Although non binding, the UPICC has significant practical influence. Courts and arbitral tribunals, particularly under institutions such as the International Chamber of Commerce, London Court of International Arbitration, and Singapore International Arbitration Centre, frequently rely on the principles either by party agreement or as persuasive authority. Their systematic structure, detailed commentary, and neutrality make them a useful reference for interpreting ambiguous clauses, supplementing incomplete agreements, and guiding the internationally oriented application of domestic law. This practice confirms the UPICC's importance in contemporary contract law.[44]

The PICC adopts natural, normative, and supplementary approaches to interpretation. Under natural interpretation, a contract must be interpreted according to the parties' common intention under Article 4.1(1). If that intention cannot be established, the contract is interpreted according to the meaning a reasonable person in the same circumstances would assign under Article 4.1(2). The PICC therefore combines subjective and objective standards, similar to the CISG.

Regarding statements and conduct, the PICC prioritizes a party's actual intention if the other party knew or could not have been unaware of it. Otherwise, an objective reasonable person standard applies under Article 4.2. In determining intention, relevant circumstances include preliminary negotiations, established practices, subsequent conduct, the nature and purpose of the contract, trade meanings, and usages under Article 4.3.

In contract interpretation, the UNIDROIT Principles provide a universal framework that enhances predictability and fairness in cross border transactions.[45] The UPICC promotes good faith and emphasizes the objective meaning of the parties' statements and conduct under Articles 4.1 to 4.3. Article 4.1 of the Principles developed by the International Institute for the Unification of Private Law establishes that international contracts must be interpreted according to the parties' common intention. This provision balances subjective interpretation based on actual intent with objective interpretation based on the understanding of a reasonable person, thereby strengthening legal certainty in international contracting.[46]

These features establish the UPICC as a leading framework for modern contract interpretation. Its emphasis on party autonomy, contextual analysis, commercial reasonableness, and good faith provides adjudicators with a comprehensive interpretive framework. Party autonomy ensures respect for the parties' allocation of rights and

[43] Bong-Chul Kim, Ho Kim, and Chong-Seok Shim, "Legal Bases for the Interpretation of Contract Terms under the UNIDROIT Principles of International Commercial Contracts" (February 28, 2020), 116.
[44] Bonell, M. J. (2007), "The UNIDROIT Principles and CISG: Sources of Inspiration for English Courts?", Pace International Law Review, 19(9), 9-27
[45] Hans Van Houtte, "The UNIDROIT Principles of International Commercial Contracts," *Arbitration International* 11, no. 4 (December 1995): 375.
[46] Article 4.1 (Intention of the parties) (1) A contract shall be interpreted according to the common intention of the parties.

obligations. Contextual analysis links contractual meaning to the commercial environment in which the agreement was concluded. Commercial reasonableness resolves ambiguity in line with rational market behavior. Good faith functions as a corrective principle that prevents opportunistic or abusive outcomes. Rather than competing with instruments such as the CISG, the UPICC refines and extends their interpretive function by offering structured criteria for resolving disputes. This framework contributes to the development of a coherent and modern transnational law of contract.

C. Conclusion

The Indonesian Civil Code requires reform to reflect modern developments in contract interpretation. Contract law can no longer rely on a purely textual approach. It must address the complexity of contemporary legal relationships and commercial practice. Modern transactions demand interpretive methods that consider commercial context, industry practice, and the parties' shared assumptions at the time of contracting.

Reform should draw on comparative models from jurisdictions such as New Zealand and international instruments including the United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts. Such an approach would move Indonesia beyond rigid textualism toward a coherent and adaptive interpretive framework capable of addressing the demands of modern and transnational commerce.

D. Suggestion

Indonesia's Civil Code should be modernized to respond to evolving legal and commercial realities. Reform should not be limited to formal amendment but should incorporate a contextual and internationally informed approach to contract interpretation. Adopting soft law instruments such as the UPICC offers a pragmatic solution, particularly if Indonesia seeks to avoid additional treaty obligations under instruments such as the CISG.

References

Andrews, Neil. "Interpretation and Rectification of Written Contracts." In *Contract Law*. Cambridge: Cambridge University Press, 2015.

Barnett, Randy E. "Interpretation and Construction." *Georgetown Law Faculty Publications and Other Works*, no. 820 (2011). https://scholarship.law.georgetown.edu/facpub/820/

Benedettelli, Massimo V. "Applying the UNIDROIT Principles in International Arbitration: An Exercise in Conflicts." *Journal of International Arbitration* 33, no. 6 (2016): 653–86. DOI https://doi.org/10.54648/joia2016042.

Benson, Peter, ed. *The Theory of Contract Law: New Essays*. Cambridge Studies in Philosophy and Law. Cambridge: Cambridge University Press, 2001.

Betlem, Gerrit. "The Doctrine of Consistent Interpretation: Managing Legal Uncertainty." *Oxford Journal of Legal Studies* 22, no. 3 (2002): 397–418. DOI https://doi.org/10.1093/ojls/22.3.397

Bocher, Sheri L. "Contract Interpretation in Arbitration." *Employment Relations Today* 14, no. 2 (1987): 113–18. DOI: https://doi.org/10.1002/ert.3910140211

Bonell, Michael J. "The UNIDROIT Principles and CISG: Sources of Inspiration for English Courts?" *Pace International Law Review* 19 (2007): 9–27. DOI: https://doi.org/10.58948/2331-3536.1057.

P-ISSN: 2723-259X
E-ISSN: 2745-9284

Bong-Chul Kim, Ho Kim, and Chong-Seok Shim, "Legal Bases for the Interpretation of Contract Terms under the UNIDROIT Principles of International Commercial Contracts" (February 28, 2020). DOI: https://doi.org/10.35611/jkt.2020.24.1.113.

Burton, Steven J. "A Lesson on Some Limits of Economic Analysis: Schwartz and Scott on Contract Interpretation." *Indiana Law Journal* 88, no. 1 (2013). Available at SSRN: https://ssrn.com/abstract=2196066

Chalmers, D., et al. "Beyond the Bubble: Will NFTs and Digital Proof of Ownership Empower Creative Industry Entrepreneurs?" *Journal of Business Venturing Insights* 17 (2022): e00309. DOI: https://doi.org/10.1016/j.jbvi.2022.e00309.

DiMatteo, Larry A. "CISG as Basis of a Comprehensive International Sales Law." *Villanova Law Review* 58, no. 4 (2013). https://digitalcommons.law.villanova.edu/vlr/vol58/iss4/13

DiMatteo, Larry A., et al. *Commercial Contract Law: A Transatlantic Perspective*. Cambridge: Cambridge University Press, 2013.

Emmert, Frank. "Ole Lando and Hugh Beale (Eds.), Principles of European Contract Law - Parts I and II - Combined and Revised, the Hague/London/Boston: Kluwer Law International (2000) Xlviii + 561 Pp." *European Journal of Law Reform* 2, no. 3 (January 1, 2000): 385–86. https://doi.org/10.1128/jvi.02319-10.

Gilson, Ronald J., Charles F. Sabel, and Robert E. Scott. "Text and Context: Contract Interpretation as Contract Design." *Cornell Law Review* 100 (2014). Available at: http://scholarship.law.cornell.edu/clr/vol100/iss1/1

Gül, İbrahim. "Freedom of Contract, Party Autonomy and Its Limit under CISG." *Hacettepe HFD* 6 (2016). Available at: https://izlik.org/JA49HZ89HT

Hammer, Melissa Jane. *"Coming to a Consensus: Vector Gas and the Admissibility of Previous Negotiations in Contract Interpretation."* LL.B. (Hons) diss., University of Otago, 2010.

Hesselink, Martijn W. "The Concept of Good Faith." In *Towards a European Civil Code*. 4th ed. Alphen aan den Rijn: Kluwer Law International, 2011.

Gerrit Betlem, "The Doctrine of Consistent Interpretation-Managing Legal Uncertainty," *Oxford Journal of Legal Studies*, Volume 22, Issue 3, AUTUMN: 397–418, https://doi.org/10.1093/ojls/22.3.397

Gilson, Ronald J., Charles F. Sabel, and Robert E. Scott. "Text and Context: Contract Interpretation as Contract Design." *Cornell Law Review* 100 (2014). https://doi.org/10.2139/ssrn.2394311.

GÜL, İbrahim and Hasan Kalyoncu Üniversitesi Hukuk Fakültesi. "Freedom of Contract, Party Autonomy and Its Limit Under Cisg." Hakemli Makale. *Hacettepe HFD*. Vol. 6, 2016. https://cisg-online.org/files/commentFiles/Guel_6_1_HacettepeHFD_2016_77.pdf.

Hammer, Melissa Jane. "COMING TO a CONSENSUS: VECTOR GAS AND THE ADMISSIBILITY OF PREVIOUS NEGOTIATIONS IN CONTRACT INTERPRETATION," 2010.

Johari, Abdullah Ahmad, et al. "Analisis Kasus Garuda Indonesia vs. Rolls-Royce sebagai Kajian Hukum Perdata Internasional." *Majelis: Jurnal Hukum Indonesia* 2, no. 4 (2025). DOI:10.62383/majelis.v2i4.1205

Huala Adolf, *Dasar-Dasar Hukum Kontrak Internasional*. Rev. ed. Bandung: Refika Aditama, 2010.

Kim, Bong-Chul, Ho Kim, and Chong-Seok Shim. "Legal Bases for the Interpretation of Contract Terms under the UNIDROIT Principles of International Commercial Contracts." Journal of Korea Trade Vol. 24, No. 1, February 2020, 113-130 https://doi.org/10.35611/jkt.2020.24.1.113

Klass, Gregory. "Intent to Contract." *Virginia Law Review*. Vol. 95, 2009. Available at: https://scholarship.law.georgetown.edu/facpub/20/

Kötz, Hein. *European Contract Law*. 2nd ed. Oxford: Oxford University Press, 2017.

Kramer, Adam. "Common Sense Principles of Contract Interpretation." *Oxford Journal of Legal Studies* 23, no. 2 (2003). DOI: https://doi.org/10.1017/S0008197304006622

McCunn, Joanna. "The Contra Proferentem Rule: Contract Law's Great Survivor." *Oxford Journal of Legal Studies* 39, no. 3 (2019). DOI: https://doi.org/10.1093/ojls/gqz002.

MITCHELL, C. (2010). Contract interpretation : pragmatism, principle and the prior negotiations rule. JOURNAL OF CONTRACT LAW, 26(2), 134–159. https://search.informit.org/doi/10.3316/agispt.20102176

Perillo, Joseph M. "Unidroit Principles of International Commercial Contracts: The Black Letter Text and a Review." *Fordham Law Review* 63 (1994). https://ir.lawnet.fordham.edu/flr/vol63/iss2/1/.

Quinn, JP. "The Interpretation and Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG)." *CISG-online*. https://cisg-online.org/files/commentFiles/Quinn.pdf.

Ramadhan, Choky R. "Konvergensi *Civil Law* dan *Common Law* di Indonesia dalam Penemuan dan Pembentukan Hukum." *Mimbar Hukum* 30, no. 2, June 2018. DOI: https://doi.org/10.22146/jmh.31169

Sanchez-Lasaballett, Eliezer. "Conceptualizing Harmonization: The Case for Contract Law." *Uniform Law Review* 24, no. 1 (2019). DOI:10.1093/ulr/unz007.

Schwenzer, Ingeborg. "Interpretation and Gap-Filling under the CISG." https://cisg-online.org/files/commentFiles/Schwenzer_Interpretation_and_Gap-Filling_under_the_CISG_2013_209.pdf.

Silverstein, Joshua M. "Contract Interpretation and the Parol Evidence Rule: Toward Conceptual Clarification." *Chapman Law Review* 24 (2020). Available at: https://digitalcommons.chapman.edu/chapman-law-review/vol24/iss1/3

Simamora, Y. Sogar. "Fungsi Itikad Baik dalam Kontrak (Suatu Orientasi dengan Metode Pendekatan Sistem)." *Perspektif* 6, no. 3 (July 2001). DOI: https://doi.org/10.30742/perspektif.v6i3.542

Smits, Jan M. "Convergence of Private Law in Europe." In *European Private Law: A Handbook*. Antwerp: Intersentia, 2008.

The University of Melbourne Handbook. "Contract Interpretation (LAWS70335)," n.d. https://handbook.unimelb.edu.au/2019/subjects/laws70335.

United Nations Commission on International Trade Law. "Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)," n.d. https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status.

Van Houtte, Hans. "The UNIDROIT Principles of International Commercial Contracts." *Arbitration International* 11, no. 4 (December 1995). DOI: https://doi.org/10.1093/arbitration/11.4.373.

van Rossum, Madeleine. "Interpretation of Commercial Contracts." *European Journal of Commercial Contract Law* 46, no. 2 (2011). DOI: 10.7590/EJCCL_2011_02_02

Vogenauer, Stefan. "Interpretation of Contracts: Concluding Comparative Observations." In *Contract Terms*, edited by Andrew Burrows and Edwin Peel. Oxford: Oxford University Press, 2007.

Winkelmann, Helen, et al. "Contractual Interpretation." Accessed December 12, 2025. https://www.courtsofnz.govt.nz/publications/speeches-and-papers/contractual-interpretation.

Zamir, Eyal. "The Inverted Hierarchy of Contract Interpretation and Supplementation." *Columbia Law Review* 97, no. 6 (2008). DOI: 10.2307/1123389

Zimmermann, Reinhard, Marcel Kau, Johannes Saurer, Johannes Köndgen, Georg Borges, Rolf Sethe, Wolfgang Wurmnest, and Harald Koch. "Introduction to German Law." Edited by

P-ISSN: 2723-259X
E-ISSN: 2745-9284

Tug˘Rul Ansay and Don Wallace. Uploaded by Wolters Kluwer Legal & Regulatory U.S. and Air Business Subscriptions. Kluwer Law International B.V., 2019. https://www.jura.uni-hamburg.de/media/die-fakultaet/personen/wurmnest-wolfgang/wurmnest-contract-law-in-zekoll-wagner-introduction-to-german-law.pdf.