

# BATAS-BATAS KEBEBASAN BERKONTRAK

Oleh:

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## ABSTRAK

*Freedom of contract serves to be a central principle in contract law. The principle, however, is without limitation. To avoid manipulation of the principle, the principles of aequitas praestationis and justum pretium are added to it. The supplementary principles may be found in statute, mores, and public order (policy). The reason why statute expressly or implicitly states certain contracts illegal is to create legal certainty as well as to preserve legal transactions; while mores and public order (policy) are left to court interpretation. To interpret whether a contract is contrary to mores or public order (policy), the court should consider philosophical basis of certain society at certain time in order to avoid court's wide discretion.*

**Kata Kunci:** freedom of contract - avoid manipulation of the principle - statute, mores, and public order (policy)

## PENDAHULUAN

Menurut L.E.H. Rutten, setiap masyarakat sampai pada suatu tingkat perkembangan tertentu mengakui adanya azas kebebasan berkontrak<sup>1</sup>. Kebebasan berkontrak, menurut L.J.

van Apeldoorn merupakan salah satu landasan Hukum Perdata Belanda<sup>2</sup>. Dalam mencari landasan filosofis bagi azas kebebasan berkontrak, van Apeldoorn merujuk kepada pemikiran dialektis Hegel. Menurut Hegel, kebebasan berkontrak merupakan konsekuensi dari pengakuan akan

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<sup>1</sup>L.E.H. Rutten, Mr. C Asser's Handleiding tot de Beoefening van het Nederlands Burgerlijk Recht, Verbintenissenrecht: Algemene Leer der Overeenkomsten, Tjeenk Willink, Zwolle, 1982, p. 32

<sup>2</sup>P. van Dijk et al., *Van Apeldoorn's Inleiding tot de studie van het Nederlandse Recht*, W.E.J. Tjeenk-Willink, Zwolle, 1985, p. 508.