

## THE IMPLEMENTATION OF PACTA SUNT SERVANDA PRINCIPLE AS A BASIS FOR MAKING MEMORANDUM OF UNDERSTANDING

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### Abstract

Memorandum of Understanding is an initial agreement that regulates and provides an opportunity for the parties to conduct a feasibility study before arriving at a more comprehensive agreement. Making a Memorandum of Understanding requires the implementation of the principle of pacta sunt servanda to show that the parties have a binding agreement with each other. This research aims to find out how the implementation of pacta sunt servanda principle as the basis for making Memorandum of Understanding and how the legal position of Memorandum of Understanding. Using normative juridical legal research method with qualitative analysis. The results of this study conclude that the implementation of the principle of pacta sunt servanda as the basis for making Memorandum of Understanding is very important to ensure that the parties fulfill their promises and commitments and the agreement is respected and fulfilled by the parties. The legal position of the Memorandum of Understanding from the perspective of contract law is as an informal agreement that is not legally binding, but has strategic and diplomatic importance.

**Keywords:** Implementation, Pacta Sunt Servanda Principle, Memorandum of Understanding

## INTRODUCTION

In Indonesian law, agreements are regulated in the Civil Code. Agreements are usually made in writing in the business world, whether it is an agreement legalized before a Notary or an agreement under the hands of the parties. The agreement in the Civil Code is regulated in Book III, namely regarding Obligation Articles 1233 to 1864. The Common Law legal system in Indonesia greatly influences the development of the business world in making agreements, therefore business actors usually make an agreement. Memorandum of Understanding (MoU) is usually used as a prelude to making a contract between the parties. In the Common Law legal system, the Memorandum of Understanding (MoU) is said not to be a contract because it has not given rights and obligations to the parties.

Memorandum of Understanding (MoU) is not recognized or regulated in the Civil Code. The Memorandum of Understanding (MoU) is an initial agreement in a contract made under the Common Law legal system. The contract made is a bond that has legal consequences of the same nature as the agreement. The contract is an agreement between the parties that has legal consequences that bind the parties as a law. It can be said in general that the Memorandum of Understanding (MoU) is a pre-contract agreement, not a contract (Slamet, 2021).

Agreement is generally one of the roots of the birth of an obligation other than law. According to Article 1313 of the Civil Code, agreement is an act by which one or more people bind themselves to one or more other people. The agreement is also considered as a legal manifestation; therefore, the agreement has legal certainty.

Agreements must be made and executed with due regard to human moral principles and common sense. To live their lives, humans as God's creation need other humans. Living in harmony requires sensitivity, tolerance, mutual respect, and a willingness to help each other. The interests of all parties must be considered equally when drafting and enforcing the substantive provisions of the agreement, with no party's interests being given higher or lower priority. Each party also has equal rights and obligations that must be respected (Sinaga, 2015).

The agreement itself is an important thing, especially in business matters. In conducting cooperation, the parties conducting business affairs are listed in the agreement. The agreement is generally made in writing, whether the agreement is made notarially made before a Notary or the parties' agreement is made under the hand (Ansyah, 2022).

Memorandum of Understanding (MoU), which is commonly referred to as a pre-contract, is a legal action carried out by one party (legal subject) to inform the other party of its objectives regarding something offered or owned. Thus, it can be said that the Memorandum of Understanding (MoU) is an initial agreement that regulates and provides an opportunity for the parties to conduct a feasibility study before arriving at a more comprehensive agreement and has legal force. The wishes of each party are outlined in the terms of the Memorandum of Understanding (MoU), along with the time period that must be agreed upon before the contract is made (Adolf, 2008).

So fundamentally, the Memorandum of Understanding (MoU) stems from the existence of two parties who have different interests. With this difference, a negotiation is carried out between the two parties before reaching a mutual agreement. Memorandum of Understanding (MoU) is one of the pre-contract processes carried out after an understanding and agreement between the two parties.

Memorandum of Understanding (MoU) as a pre-contract is basically unknown in Indonesian Contract Law. However, in this modern era in practice it is often done by adopting what is practiced internationally (Dien, 2016).

One of the backgrounds for making of a Memorandum of Understanding (MoU) is due to unclear business prospects and the absence of a way out of the negotiations carried out. Therefore, a Memorandum of Understanding (MoU) is made rather than there being no ties in the action. There are several principles that form the basis for the validity of the Memorandum of Understanding (MoU), one of which is the principle of *Pacta Sunt Servanda*. Where a legally made Memorandum of Understanding (MoU) can have full legal binding. This is related to the *pacta sunt servanda* principle (Agreement binds the parties).

The theory used to substantiate the topic of writing this article is to use the theory of legal certainty. In the administration of law, legal certainty is one of the most important things and cannot be separated from the law itself. In the absence of the value of certainty, the law will lose its purpose because it can no longer be used as a guide to general behavior. Because certainty itself is one of the goals of the law. According to Sudikno Mertokusumo, legal certainty itself is a guarantee that the law is carried out, that those entitled according to the law can obtain their rights and that the decision can be implemented. Although legal certainty is closely related to justice, law is not identical to justice. Law is general, binds everyone, is equalizing, while justice is subjective, individualistic, and does not equalize.

The problems raised in writing this article are regarding the legal position of the Memorandum of Understanding (MoU) and the implementation of *pacta sunt servanda* principle as the basis for making a Memorandum of Understanding (MoU). There have been several previous studies that can be used as studies that strengthen and optimize this article. The following previous research is used as a reference, namely: research conducted by a researchers named Aditya Putra Ardhana and I Made Sarjana with the title of their research "Penerapan Asas Itikad Baik sebagai dasar Pembuatan Nota Kesepahaman" In their research, the researchers discuss the application of the principle of good faith as the basis for making a memorandum of understanding (Ardhana & Sarjana, 2020).

The second research is a research article written by a researcher named Devi Setiyaningsih with the research title " Kedudukan dan Kekuatan Hukum Memorandum of Understanding (MoU) sebagai Tahap Pra Kontrak (Kajian dari Sisi Hukum Perikatan)" in this study discusses the MoU Arrangement according to Indonesian Law and the binding force of the MoU in terms of bond law (Setiyaningsih & Budhisulistiyawati, 2020).

Based on some of the results of previous research, it can be seen that there are differences with this research article, namely in this research article the author discusses the Implementation the principle of *pacta sunt servanda* as the basis for making a Memorandum of Understanding (MoU). This indicates that there is novelty or originality and indicates that there is a difference in previous research with this research. Thus, this research is important because it can be used as knowledge for readers.

## RESEARCH METHOD

The research method used in this research is to use normative juridical legal research, namely legal research conducted by examining and studying library materials or secondary data. Secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials or non-legal materials (Soekanto & Mamudji, 2015). The type of data collection used is using a literature study (bibliography study), namely written information regarding the legal position and implementation of the principle of *pacta sunt servanda* obtained from various sources and widely published and then studied.

Primary legal materials used in this research are Law Number 24 of 2000 and the Civil Code. In addition, secondary legal materials are also used in the form of books related to the Agreement and Memorandum of Understanding (MoU) and related research journals. The materials collected are then analyzed by looking at the relationship between these provisions so that a qualitative conclusion is obtained.

## RESULTS AND DISCUSSION

### Legal Position of Memorandum of Understanding (MoU) Viewed from the Perspective of Contract Law

Memorandum of Understanding (MoU) fundamentally has not been specifically regulated in positive law in Indonesia. Memorandum of Understanding (MoU) nationally is based on Article 1 letter a of Law Number 24 of 2000 concerning International Agreements that "International Agreements are agreements in certain forms and names, which are regulated in international law made in writing and give rise to rights and obligations in the field of public law."

However, as a preliminary agreement or pre-contract, the Memorandum of Understanding (MoU) regulation is subject to the Civil Code regarding obligations where basically the Civil Code adheres to an open system which means that anyone can make or establish an agreement.

A Memorandum of Understanding (MoU) is a morally binding agreement in principle between two or more parties. In the perspective of contract law, a Memorandum of Understanding (MoU) cannot be categorized as a legally valid contract. Memorandum of Understanding (MoU) is usually used as a preliminary agreement or principle that becomes the basis for making a more formal and legally binding contract. Or it can be said that the Memorandum of Understanding (MoU) is only used to express the intention and initial agreement between the parties involved and does not yet cover more specific details and legal aspects, but the Memorandum of Understanding (MoU) itself has strategic and diplomatic importance. Therefore, Memorandum of Understanding (MoU) is often used as a basis for making more formal and legally binding agreements.

In substance, the Memorandum of Understanding (MoU) contains an agreement between the parties regarding a matter. In making an agreement, it is said to be valid as a law if it fulfills Article 1320 of the Civil Code regarding the conditions for the validity of an agreement which includes several things, namely an agreement for those who bind themselves, capacity in making an agreement, regarding a certain subject matter, and a *halal* cause.

In making an agreement, it is necessary to implement the legal requirements of an agreement, this is because if it is not implemented, the agreement can be canceled if the subjective conditions are not fulfilled, such as the consent of the bound parties and the requirements for the ability to make an agreement. In addition, if it does not fulfill the objective requirements, namely certain things and halal causes, the agreement can be canceled legally (Situmorang, 2021).

The principles applicable in contract law include several principles such as the principle of freedom of contract, the principle of consensualism, the principle of trust, the principle of good faith and the principle of *pacta sunt servanda*. In this case, the principle of freedom of contract is a principle where the parties who make or do not make agreements are given freedom. Furthermore, freedom is also given to the parties in entering into an agreement with anyone, determining the contents of the agreement, the implementation of the agreement, the terms and also given freedom to the parties in determining the form of the agreement, which can be written or oral. In making a Memorandum of Understanding (MoU), the principle of freedom of contract is one of the important principles where the principle of freedom of contract allows the parties to make a Memorandum of Understanding (MoU) in accordance with what is desired as long as the contents in the Memorandum of Understanding (MoU) do not violate the laws and regulations (Septiana, 2016).

Article 1338 of the Civil Code can also be used as a legal basis for making a Memorandum of Understanding (MoU) which states that all agreements made legally shall act as laws for those who make them. This indicates that agreements made on the basis of an agreement between the parties are binding for these parties. Furthermore, based on the principle of freedom of contract and the principle of consensualism, if any matter has been agreed by the parties and it has a lawful cause according to the law, then an agreement has been enacted and can also be said to be a contract. As a follow-up to the Memorandum of Understanding (MoU) to make a more detailed agreement regarding its contents, the parties cannot be forced.

Therefore, further research is needed regarding the substance in the Memorandum of Understanding (MoU) to determine how the position of the Memorandum of Understanding (MoU). If the achievement is not fulfilled, whether the material has an element of financial or moral loss and also about whether there are sanctions in the Memorandum of Understanding (MoU). If there is a loss, it can be said that the Memorandum of Understanding (MoU) already has the position of a contract (Darise, Lasut, & Roy Ronny Lembong, 2022).

There are various views regarding the position of the Memorandum of Understanding (MoU). Therefore, there are two kinds of views related to the binding force of the Memorandum of Understanding (MoU), such as:

1. Gentlement Agreement

Memorandum of Understanding (MoU) as a Gentlement Agreement means that the Memorandum of Understanding (MoU) does not have legal binding power because its binding is only limited to moral recognition. Which means that the binding force of the Memorandum of Understanding (MoU) is different from ordinary agreements. Although the Memorandum of Understanding (MoU) is made in a notarial deed which is the strongest form (but in practice it is rare for the Memorandum of Understanding to be made notarially).

2. Agreement is Agreement

Memorandum of Understanding (MoU) as an Agreement is Agreement has the meaning that if an agreement has been made, whatever its form, whether oral or written, short or long, complete or only regulates the main matters, it is still an agreement. Therefore, the Memorandum of Understanding (MoU) is said to have binding force like an agreement. Therefore, the provisions of the articles regarding the law of agreements can be implemented. And based on this view, to find the right juridical basis for the parties in making a Memorandum of Understanding (MoU) is contained in Article 1338 paragraph (1) of the Civil Code that whatever is made according to the agreement between the two parties, is the law that applies to it so that it binds both parties (Wawointana, 2016).

In this context, a Memorandum of Understanding (MoU) can be considered a legally binding agreement with various consequences. However, when the Memorandum of Understanding (MoU) itself is only a matter that has not been finalized and still requires other agreements to support it, and when there are no clear sanctions for the non-consenting party, then the Memorandum of Understanding (MoU) only has standing in terms of an agreement on a major project. And the strength of the law or the legal force of the Memorandum of Understanding (MoU) itself is in no way affected by this (Darma, Sarjana, & dkk, 2016).

The binding force of the Memorandum of Understanding (MoU) can be seen from the presence or absence of rights and obligations arising as a result of the Memorandum of Understanding (MoU) itself. Thus, if in the Memorandum of Understanding (MoU) made by the parties there are contents

that contain things such as including rights and obligations in its articles in substance, then implicitly the Memorandum of Understanding (MoU) can be said to be an agreement.

Memorandum of Understanding (MoU) is an agreement made by two parties who have the same interests. In accordance with Article 1338 of the Civil Code which states that agreements made legally shall apply as a law to those who make them. Based on this, the parties bind each other because of the Memorandum of Understanding (MoU) made between the parties. In addition, the parties must comply with the provisions stated in the clauses that have been mutually agreed upon in the Memorandum of Understanding (MoU). Thus, if it has fulfilled Article 1320 of the Civil Code regarding the validity of an agreement, it can be said that the position of the Memorandum of Understanding (MoU) itself has binding and compelling force and can be equal to the Law. However, it is only limited to the main matters contained in the contents of the Memorandum of Understanding (MoU).

However, theoretically the position of the Memorandum of Understanding (MoU) is considered not to be an agreement or contract. Because the Memorandum of Understanding (MoU) itself does not contain the element of "intention to create legal relations" between the parties, the Memorandum of Understanding (MoU) is considered as a pre-agreement or pre-contractual activity. As explained earlier, the Memorandum of Understanding (MoU) made by the parties is only about basic matters. For example, only about the agreement that is the object of the agreement and about the time of making. Theoretically, the rights and obligations of the parties are usually not listed. Therefore, the implementation of the Memorandum of Understanding (MoU) is only based on trust between the parties (Luthfi, 2017).

The legal standing of a Memorandum of Understanding (MoU) depends on the particular circumstances and jurisdiction in which it is executed. In some cases, a Memorandum of Understanding (MoU) may be considered a binding agreement if it meets contractual requirements such as:

- a. There is a clearly and firm agreement regarding the objectives, rights, and obligations of each party.
- b. There is valid consent from all parties involved.
- c. There is an exchange of value or rewards expected from the cooperation.

If the Memorandum of Understanding (MoU) fulfills these requirements, then the Memorandum of Understanding (MoU) can be considered as a binding contract and will be treated as a contract from a legal perspective.

However, in other cases a Memorandum of Understanding (MoU) can also be considered a preliminary agreement that is not legally binding, but sets the stage for future negotiations or a formal agreement.

### **The Implementation of *pacta sunt servanda* principle as the basis for making Memorandum of Understanding (MoU)**

The law of agreements contains several important principles that form the basis for the implementation of an agreement. One of them is the principle of *pacta sunt servanda*. Before explaining the definition of *pacta sunt servanda* principle, it is better to elaborate on the definition of principle and its importance in law. The principle has the meaning of a basis for thinking in obtaining truth through important decisions taken. For parties who make an agreement, the principle is something that is very absolute and very important to pay attention to. It is intended that the end of an agreement of the parties can be carried out and achieved as desired by the parties who make the agreement. The legal principle itself is the basis for the birth of a rule of law. Thus, it can be said that the function of the principle is as an orientation guideline so that the law can be carried out.

The principle of *pacta sunt servanda* is a legal principle in contracts that means the agreement must be implemented. It shows that the parties must fulfill their promises and commitments stated in the agreement made. Agreements made must be kept and respected. The principle of *pacta sunt servanda* is also known as the principle of legal certainty. The terms of the agreement made must be obeyed by both parties. This principle underlies the statement that an agreement can give rise to a legal obligation, and consequently the parties are required to respect the contents of the agreement. When drafting a Memorandum of Understanding (MoU), it is important to ensure that the terms of the agreement are clearly defined and the parties understand their respective obligations.

Article 1338 paragraph (1) of the Civil Code states that all agreements made legally shall apply as a law to those who make them. The word "valid as a law" means that the position of an agreement made legally has the same position as a law. This shows the strength of providing legal protection if one party is disadvantaged in the agreement. Through filing a lawsuit against the other party. Whether or not a contract is binding for the parties may be viewed from the validity of an agreement made. The

validity or invalidity of an agreement is ascertained by testing through legal instruments in the form of the legal requirements of an agreement (Yunanto, 2019).

Therefore, it can be said that the principle of *pacta sunt servanda* is one of the basic norms in law, and also has a very close connection with the principle of good faith which aims to obey an agreement and respect it. This can be seen through its practical implementation which is based on the principle of good faith between the parties. When an agreement has been made by both parties, it can be seen that the two parties seem inseparable from each other. Although an agreement is the result of the agreement of the parties and is a meeting of the wishes of the parties, it will not be carried out in accordance with the wishes of the parties if the parties do not act in good faith (Utama, 2019).

Memorandum of Understanding (MoU) is the basis for drafting a contract or can also be considered as an initial agreement before signing a contract made on the basis of Common Law legal system. The characteristics contained in the contract are made the same as an agreement, namely a bond between the parties that has legal consequences. In accordance with the principle of *pacta sunt servanda*, the contract made is an initial agreement between the parties that is binding as law. This shows that the agreement of the parties has legal consequences (op.cit).

The regulation of the Memorandum of Understanding (MoU) fundamentally has not been specifically regulated in the Civil Code or in statutory regulations. The substance of the Memorandum of Understanding (MoU) itself, if reviewed further contains an agreement between the parties regarding matters that can be said to be still common (Putra & Priyanto, 2020).

So, it can be said that the Memorandum of Understanding (MoU) is a preliminary agreement or initial agreement made by the parties, therefore the legal basis refers to the provisions of Article 1320 of the Civil Code, namely regarding the legal requirements of the agreement. Furthermore, the regulation in the making the Memorandum of Understanding (MoU) is also subject to Article 1338 of the Civil Code. An agreement is the embodiment of law; therefore, it contains a legal certainty.

Article 1338 of the Civil Code which regulates the principle of freedom of contract which is the basis for the validity of the Memorandum of Understanding (MoU) states that:

1. All agreements made in accordance with the law shall be valid as law for those who make the agreement.
2. The agreement is irrevocable other than by agreement of both parties, or for reasons provided by law.
3. Agreement must be executed in good faith.

Based on the provisions of the contents of Article 1338 of the Civil Code above, it means that the party making the agreement must comply with the agreement it has made. To ensure the implementation of the balance of rights and obligations between the parties who make a promise, therefore the agreement is very necessary.

Article 1338 of the Civil Code Paragraphs (1) and (2) contain the principle of binding force or *pacta sunt servanda* where an agreement made legally has binding force for the parties involved in the agreement and the parties will bind as binding as the law. The attachment referred to is an attachment to everything that is based on its nature, namely based on propriety, custom or law (Safira, 2017).

Based on the contents of paragraph (1) that is "All agreements made in accordance with the law shall apply as laws for those who make it" has the meaning that there is a bond between the parties arising from the agreement, and not only that the agreement is also irrevocable if there is no consent from the other party. Thus, the parties are obliged to obey what has been agreed upon together.

In addition, if the agreement has been made legally as regulated in Article 1320 of the Civil Code, then the agreement applies to the parties making the agreement. This is an implementation of the principle of *pacta sunt servanda*. The principle of *pacta sunt servanda* is also referred to as the basis for binding an agreement, meaning that the parties to the agreement are bound by the agreement they make. Based on this, it can be stated that a legally binding agreement occurs because the law applies to the parties who make the agreement. The principle of *pacta sunt servanda* is also referred to as the principle of legal certainty, because it relates to the consequences of an agreement. Judges or third parties are obliged to respect the substance of the agreement made by the parties as well as the law. This is stated in the principle of *pacta sunt servanda*. In this case they are prohibited from intervening in the substance of the contract made by the parties (Salim, Wahyuningsih, & Abdullah, 2017).

The principle of *pacta sunt servanda* in addition to being regulated in Article 1338 of the Civil Code is also regulated in Law Number 24 of 2000 concerning International Agreements, in Article 4 section (1):

"The Government of the Republic of Indonesia makes international agreements with one or more States, international organizations, or other international legal subjects based on an agreement, and the parties are obliged to implement the agreement in good faith."

Based on the contents of Article 4 section (1), it appears that the principle of *pacta sunt servanda* is accepted and recognized as a legal principle in making international agreements. The Indonesian government makes agreements in good faith and the agreements are binding. Contracts are made to be obeyed on the basis of the principle of *pacta sunt servanda* which describes a legal certainty and binds the parties, but in this case the Memorandum of Understanding (MoU) only binds the parties morally. Or it can be stated that the Memorandum of Understanding (MoU) is a gentlemen agreement.

However, there is another expert opinion that the Memorandum of Understanding (MoU) has legally binding force or what is known as Agreement is Agreement. Memorandum of Understanding (MoU) is theoretically not a legally binding document and also binds the parties, because to be legally binding it must be followed up with an agreement. In the Memorandum of Understanding (MoU) the agreement is only a moral agreement. But in reality, a Memorandum of Understanding (MoU) and an agreement are equivalent. The bond formed is both morally and legally acceptable.

Memorandum of Understanding (MoU) which is a precursor agreement before signing the contract refers or is subject to contract law, therefore the principles in contract law must be applied in the Memorandum of Understanding (MoU). The basic principles that are essential in the Memorandum of Understanding (MoU) itself include the principle of freedom of contract, the principle of consensualism, the principle of *pacta sunt servanda*, and the principle of good faith. Memorandum of Understanding (MoU) arises when the parties have made an agreement to conduct a business transaction that begins with a negotiation process, after the offer and acceptance in the negotiation process then a Memorandum of Understanding (MoU) is born as a memorandum of agreement and preliminary agreement. The agreement contained in the Memorandum of Understanding (MoU) is of course the wishes and intentions of the parties that have been mutually agreed upon in the negotiations.

In making a Memorandum of Understanding (MoU), the principle of *pacta sunt servanda* or known as the principle of binding force must be considered. According to Black's Law Dictionary, *pacta sunt servanda* is Latin for "agreement must be kept", which is defined as "the rule that agreements and stipulations, especially those contained in treaties, must be observed."

This binding power principle emphasizes that every agreement made by the parties is binding on them as a law. The basis for the principle of *pacta sunt servanda* itself is Article 1338 section (1) of the Civil Code which states that "all agreements made legally shall apply as a law to those who make them". Based on this, it indicates that the Law itself recognizes and places the position of the parties contained in the contract parallel to the Law. Implementation the principle of *pacta sunt servanda* is a very basic and essential principle in contract law. The principle of *pacta sunt servanda* itself in the Memorandum of Understanding (MoU) is often overridden on the grounds that it is not a final agreement. However, if reviewed from the principle of consensualism above, it indicates that the Memorandum of Understanding (MoU) is the result of an initial agreement, and the agreement must be respected and implemented. Therefore, if it is related, its implementation is closely related to the presence or absence of an agreement between the parties (Daniella, Putra, & dkk, 2019).

Thus, it can be stated that for everyone who makes a contract, it will be bound to fulfill the contract because there is an agreement in the contract that must be fulfilled by the parties where the agreement will bind the parties as the Law.

Based on several things that have been explained above regarding the Memorandum of Understanding (MoU), the principle of *pacta sunt servanda* has a very important role in the implementation of a Memorandum of Understanding (MoU). This can be separated from the meaning of principle of *pacta sunt servanda* itself that the agreement binds the parties. A legally made Memorandum of Understanding (MoU) has legal force in accordance with the principle of *pacta sunt servanda*. The enforcement of the Memorandum of Understanding (MoU) is equated with a law which has binding and compelling legal force. However, only regarding the main matters contained in the Memorandum of Understanding (MoU). The Memorandum of Understanding (MoU) is made on the basis of the agreement of the parties who will bind themselves in the contents of the Memorandum of Understanding (MoU) and also the Memorandum of Understanding (MoU) itself is made by the parties by fulfilling the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code. Thus, it can be stated that between the Memorandum of Understanding (MoU) and the binding force agreement owned is similar.

The existence of the principle of *pacta sunt servanda* as the basis for making a Memorandum of Understanding (MoU) has a connection with the existence or absence of an agreement between the

parties. In the case of making a Memorandum of Understanding (MoU), the binding and compelling force is only on the main matters contained in the Memorandum of Understanding (MoU). The principle of *pacta sunt servanda* in the making Memorandum of Understanding (MoU) binds the parties morally but not legally. The important role of the principle of *pacta sunt servanda* in the making Memorandum of Understanding (MoU) can be observed that is in its implementation the principle of *pacta sunt servanda* itself directly indicates that the parties who make Memorandum of Understanding (MoU) have promised to respect and implement the things that have been agreed upon.

Implementation the principle of *pacta sunt servanda* is very important because the Memorandum of Understanding (MoU) is a preliminary agreement that indicates the agreement and intention between the parties involved in a cooperation. If this agreement is not fulfilled by one of the parties, it can have a negative impact on the trust and relationship between the parties, and can make it difficult to implement the desired cooperation. Thus, it can be stated that the implementation of the principle of *pacta sunt servanda* is an important basis in making a Memorandum of Understanding (MoU) to ensure that the agreement is respected and fulfilled by all parties involved. Through implementation the principle of *pacta sunt servanda* in the making of the Memorandum of Understanding (MoU), the parties involved can have confidence and trust that the agreement will be fulfilled and can be implemented properly. This can strengthen the connection between the parties and create a positive and productive working environment.

## CONCLUSION

Based on the problems described in the discussion, it can be concluded that the implementation of *pacta sunt servanda* principle as the basis for making a Memorandum of Understanding (MoU) is very important to ensure that the parties fulfill their promises and commitments, ensure that the agreement is respected and fulfilled by the parties involved and also ensure that the Memorandum of Understanding (MoU) has strategic and diplomatic value. By applying the principle of *pacta sunt servanda* in the making of the Memorandum of Understanding (MoU), the parties involved have confidence and trust that the agreement will be fulfilled and can be implemented properly which aims to strengthen the relations between the parties. The legal position of the Memorandum of Understanding (MoU) from the perspective of contract law is as an informal agreement that is not legally binding, but has strategic and diplomatic importance. The position of the Memorandum of Understanding (MoU) varies, depending on the specific situation and jurisdiction.

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