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## The Knock-Out Rule under the UPICC as a Mechanism for Resolving the Battle of Forms in Indonesia

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**Abstract:** The development of modern commerce, characterized by the widespread use of standard contractual documents and electronic transactions, has given rise to the phenomenon of battle of forms, namely situations in which parties proceed with a transaction despite the existence of mutually inconsistent standard clauses. This phenomenon challenges the classical construction of contract formation under the Indonesian Civil Code (KUHPPerdata), which is grounded in the theory of offer and acceptance requiring strict correspondence between the two. This study aims to analyze how the knock-out rule as stipulated in Article 2.1.22 of the UNIDROIT Principles of International Commercial Contracts (UPICC) contributes to legal certainty in resolving conflicts of standard terms and to examine its relevance within the Indonesian contract law system. Employing a normative juridical method with statutory and comparative approaches between the KUHPPerdata and the UPICC as a soft law instrument, this research finds that the knock-out rule provides a more adaptive framework by recognizing the existence of a contract insofar as the parties have agreed on its essential elements, while disregarding conflicting clauses and replacing them with applicable gap-filling provisions. This principle maintains a balance between freedom of contract, good faith, and legal certainty, and has the potential to address normative gaps in Indonesian contract law while promoting harmonization with international commercial practice.

**Keyword:** Knock-Out Rule; UPICC; Battle of Forms.

### INTRODUCTION

In modern commercial practice, business transactions are no longer always conducted through formally executed written contracts signed by the parties. The development of information and communication technology has facilitated rapid transactions through various media, both in digital and offline environments, such as email, instant messaging applications, websites, and telephone communications. This transformation has direct implications for the manner in which contracts are formed, particularly in relation to how offer and acceptance are understood in practice.

In contract law construction, offer and acceptance constitute fundamental elements that determine the formation of a legally binding agreement. This is reflected in Article 2.1.1 of the UNIDROIT Principles of International Commercial Contracts (UPICC), which provides that a contract may be concluded either by the acceptance of an offer or by the conduct of the parties that sufficiently indicates agreement. (UPICC 2016, Art. 2.1.1.) The UPICC represents a harmonization of various legal systems, including civil law, common law, socialist legal systems, sharia law, and canon law, aimed at facilitating international commercial activities. (Gea, 2021)

In classical contract law theory, both in civil law and common law traditions, a contract is considered concluded only when the acceptance mirrors the terms of the offer. An offer is deemed valid only when its terms and conditions are clearly formulated such that a simple acceptance by the other party directly gives rise to a contractual relationship. (Ardyo, 2019) Conversely, where the offeree does not agree with the offer and proposes modifications or additional terms, such response is not regarded as an acceptance but rather as a counter-offer. This classical construction assumes the existence of a clear, explicit, and conscious meeting of minds between the parties at the time of contract formation. (Devi, 2022)

Within the Indonesian legal framework, commercial activities are generally regulated under Law Number 7 of 2014 on Trade. This law emphasizes that trade constitutes a strategic activity that must be conducted in an orderly, fair manner and provide legal certainty for business actors. Article 1 paragraph (1) of the Trade Law defines trade as a system of activities related to transactions of goods and/or services within the country and across national borders, aimed at transferring rights over goods and/or services in exchange for compensation. (UU No.7 Tahun 2014) This provision indicates that Indonesian law has explicitly recognized the dynamics of modern commerce, which occur rapidly and involve the exchange of various forms of commercial documents.

Furthermore, Articles 65 and 66 of the Trade Law have also recognized electronic commerce as a legitimate component of national trade activities. (UU No.7 Tahun 2014) This recognition demonstrates that national regulations have accommodated the reality of modern transactions, which are often conducted without formally executed written contracts and instead rely on electronic communications and the exchange of standard documents. Nevertheless, the Trade Law primarily focuses on trade governance, consumer protection, and general trade policy, and does not specifically regulate the mechanisms of contract formation between business actors, particularly with respect to resolving conflicts arising from the exchange of standard terms and conditions.

The absence of specific regulation concerning the resolution of conflicting standard terms indicates the existence of a legal gap within the national contract law system. Consequently, the regulation of contract formation continues to rely on the general provisions of the Indonesian Civil Code (KUHPerdata), which are grounded in the classical theory of offer and acceptance. This condition creates particular challenges when modern commercial practices demonstrate that transactions continue to be performed despite the use of differing or even conflicting standard terms by the parties.

In practice, acceptance is not always expressed explicitly, but is often inferred from the conduct of the parties, such as the performance of transactions, delivery of goods, or payment. In electronic transactions, for instance, acceptance is frequently interpreted as arising from actions such as clicking an “agree” button, continuing the use of a service, or providing ambiguous verbal responses in telephone communications. This situation raises interpretative issues regarding when an acceptance may be considered valid.

This problem has long been recognized in the context of electronic transactions, leading contract law to adopt a cautious approach toward assuming acceptance of additional terms

communicated electronically, particularly where such terms are not expressly made conditions of the offer and acceptance. (Nimmer, 1992) The divergence in the interpretation of acceptance becomes increasingly complex when each party employs different standard terms in the transaction process. In many transactions, parties exchange contractual documents such as purchase orders, invoices, and delivery notes that contain differing or conflicting provisions, with each party attempting to impose its own standard terms (Rühl, 2014) without ever reaching explicit agreement on which terms shall govern, yet the transaction is nevertheless performed. This phenomenon is known as the battle of forms, namely a situation in which a contract is performed in fact, but there exists a conflict between the standard terms proposed by each party. (Pervin, 2025)

Purchase orders, invoices, and delivery notes are recognized by courts as strong evidence, as, in principle, an agreement is deemed to exist when the parties have reached a mutual and conscious understanding regarding a particular matter or interest. (Yusra and Sari, 2012) This is in line with Article 1338 of the Indonesian Civil Code concerning the principle of freedom of contract (*pacta sunt servanda*). In addition, under the UPICC, there are at least four fundamental principles of international contract law, one of which is the principle of freedom of contract. As stipulated in Article 1.1 of the UPICC, this principle affirms the parties' freedom to conclude a contract, including the freedom to determine its content. (Adolf, 2007)

In the context of international law, the phenomenon of battle of forms creates legal uncertainty regarding the contractual terms binding upon the parties. In various jurisdictions, this issue has led to different approaches, such as the first-shot rule, the last-shot rule, and the knock-out rule. (Stensgard, 2015) These differing approaches reflect the lack of uniformity in addressing the gap between classical contract formation theory and the realities of international commercial practice.

As part of efforts toward international legal harmonization, the International Institute for the Unification of Private Law (UNIDROIT), an international organization aimed at formulating and promoting universal principles of private law, (Nugraha et al. 2024) developed the UPICC. The UPICC serves as a soft law instrument that accommodates modern commercial practices. Under Article 2.1.22 of the UPICC, where parties use conflicting standard terms but have agreed on the essential elements of the contract, the contract is nevertheless considered concluded. In such circumstances, conflicting clauses are set aside (knocked out), while consistent clauses remain applicable, and any gaps are filled by default rules, including the general principles embodied in the UPICC. (Commentary UPICC) This approach represents a modernization of traditional contract formation theory, as it simultaneously upholds the principle of freedom of contract while ensuring legal certainty and good faith between the parties.

In the Indonesian context, transactions conducted without formal written contracts, whether electronic or offline, are highly common in commercial activities. However, national regulations, which remain grounded in the Indonesian Civil Code, do not explicitly regulate the resolution of battle of forms. As a result, the classical theory of offer and acceptance is no longer fully capable of addressing the complexity of modern transactions involving the exchange of standard documents and implicit acceptance. Therefore, the UPICC becomes relevant as a normative reference and as part of the development of *lex mercatoria*, providing guidance in addressing battle of forms issues in Indonesia.

On this basis, this study formulates two main research questions: (1) How The Knock-Out Rule Under The Upicc Establishes Legal Certainty In Resolving Conflicts Of Standard Terms And Conditions?, and (2) How The Knock-Out Rule As Regulated Under The Upicc Is Applied Within The Indonesian Contract Law System? By examining these issues, this research seeks to analyze the regulation of battle of forms under the UPICC, particularly through the application of the knock-out rule as stipulated in Article 2.1.22, as a mechanism

for resolving discrepancies in terms and conditions arising from the exchange of contractual documents. This study is intended to examine the normative foundations and the underlying rationale for the application of the knock-out rule as a form of modernization of contract formation theory, which emphasizes substantive agreement over formalistic requirements. Furthermore, this research also aims to identify the relevance and potential application of UPICC principles within Indonesian contract law practice, particularly in cross-border transactions that are frequently conducted without formally executed written contracts. It is therefore expected that this study will contribute to strengthening legal certainty and promoting the harmonization of international contract law in Indonesia.

The urgency of this research lies in the need to provide both conceptual and practical foundations in addressing the increasingly prevalent phenomenon of battle of forms in cross-border business contracts. Given that Indonesian contract law has not explicitly regulated mechanisms for resolving battle of forms, the application of the knock-out rule as provided under the UPICC becomes important to examine as an alternative approach to achieving legal certainty, protecting the parties, and promoting the harmonization of Indonesian contract law with international standards. Accordingly, the novelty of this research lies in its specific analysis of the application of the knock-out rule as a mechanism for resolving battle of forms as regulated under Article 2.1.22 of the UPICC, which has not been extensively examined within the context of Indonesian contract law.

## **METHOD**

This study employs a normative juridical research method, supported by comparative, conceptual, and statutory approaches. Normative juridical research is also commonly referred to as doctrinal legal research, as it primarily focuses on the examination of legal norms through literature and secondary data. (Soekanto and Mamudji, 2016) According to Soerjono Soekanto, normative legal research is a type of research that concentrates on the analysis of legal materials, particularly secondary data, including legal principles and applicable legal norms. (Soekanto, 2021) The comparative approach is understood as a method of examining legal issues by comparing different legal systems or regulations. (Marzuki, 2010) In this study, it is used to compare the regulation of battle of forms under the UPICC with the Indonesian contract law framework, with the aim of identifying differences, normative gaps, and potential areas for harmonization. The statutory approach is conducted by examining all relevant laws and regulations related to the issue under study. (Marzuki, 2010) In this research, this approach is applied to analyze the provisions of the Indonesian Civil Code (KUHPPerdata) as the primary positive law governing contract formation in Indonesia. Furthermore, the conceptual approach is utilized to examine the principles contained in the UPICC as a soft law instrument and as part of the broader framework of *lex mercatoria*.

The legal materials used in this study consist primarily of secondary legal materials, including official documents, books, research reports, statutory regulations, and relevant court decisions. These are complemented by legal literature, academic journals, and scholarly opinions that support the analysis undertaken in this research. (Soekanto, 2021) The technique for collecting legal materials is conducted through document-based research (library research), by reviewing various legal sources, both in print and digital form, in order to obtain accurate and relevant data. (Sunggono, 2001) In the context of this study, the normative juridical method is applied to examine the implementation of the battle of forms principle as regulated under the UPICC and its relevance to contract law practice in Indonesia.

## RESULTS AND DISCUSSION

### The Knock-Out Rule under the UPICC in Establishing Legal Certainty in Resolving Conflicts of Standard Terms and Conditions

The phenomenon of battle of forms is a common occurrence in modern international commercial practice. (Eiselen and Bergenthal, 2006) It refers to a situation in which parties exchange standard form documents containing their respective terms and conditions, yet fail to reach an agreement on which terms shall govern the contract. (Stensgard, 2015) This phenomenon generally does not arise with respect to essential elements of the contract, such as the object, price, and quantity, which are typically agreed upon by the parties in practice. Instead, it occurs in relation to standard clauses, such as choice of law, dispute resolution, limitation of liability, and other supplementary provisions. (Schwenzer et al. n.d.)

Within the framework of classical contract law, particularly under the theory of offer and acceptance, the exchange of documents containing conflicting terms is regarded as a sequence of counter-offers. Any modification or addition of terms is considered a rejection of the original offer, thereby preventing the formation of a valid agreement. (Anson et al., 2002) As a consequence, from a theoretical standpoint, no contract is deemed to have been concluded. However, in practice, parties continue to perform the transaction by delivering goods, making payments, and engaging in other commercial activities. This situation gives rise to the central juridical problem in battle of forms: the contract is performed in fact, yet the legal terms governing the parties remain uncertain. (Eiselen and Bergenthal, 2006) This legal uncertainty creates the potential for disputes, particularly in cases of breach of contract, as each party may attempt to enforce the standard terms that are most favorable to its own position.

The core issue, therefore, lies in the inconsistency between classical contract formation theory and the realities of modern commercial practice. While contracts are executed in practice, there remains uncertainty as to which terms and conditions are legally binding. In international commerce, this condition is not exceptional but rather constitutes a common practice. Such uncertainty has the potential to lead to disputes in the event of a breach of contract, as each party will seek to enforce standard terms and conditions that favor its own position.

In the context of international contract law, the UPICC responds to these issues by adopting a more flexible approach to contract formation. Article 1.1 of the UPICC affirms the principle of freedom of contract, which grants parties the authority to freely conclude agreements and determine their content (Desriyalni et al., 2024). This principle reflects the recognition that the will of the parties constitutes the primary foundation for the establishment of contractual relationships.

Furthermore, the UPICC does not require a specific form for the validity of a contract. Under Article 1.2, a contract need not be concluded in a formal written document and may be proven by any means, including through the conduct of the parties. (Lando, 2005) As such, repeated exchanges of contractual documents, accompanied by the performance of obligations such as delivery and payment, may serve as strong evidence of the parties' intention to be legally bound. Accordingly, the execution of transactions, such as delivery and payment, may be interpreted as an indication of agreement, even in the absence of a formally executed written contract.

In the context of battle of forms, this approach is particularly relevant, as it affirms that the absence of formal agreement on all terms does not necessarily negate the existence of a contract. This position is further reinforced by the principle of good faith and fair dealing under Article 1.7 of the UPICC, which requires parties to act honestly and fairly in the formation and performance of contracts. The principle of good faith supports the existence of a *meeting of minds* that is not solely determined by written expressions but may also be inferred from the conduct of the parties, (Sugianto, 2019) such as delivery, payment, or acknowledgment of

performance, indicating an intention to be bound. Thus, in situations of battle of forms, where parties exchange conflicting standard terms but nevertheless proceed with the transaction, such conduct may be interpreted as evidence of agreement on the essential elements of the contract.

Accordingly, in situations of *battle of forms*, where the parties continue to perform the transaction despite the existence of conflicting standard terms and conditions, such conduct may be interpreted as evidence of agreement on the essential elements of the contract. The UPICC further affirms in Article 2.1.1 on the manner of formation that a contract may be concluded through statements or other conduct indicating assent to the terms. Under this provision, a contract may be considered concluded even where the exact moment of its formation cannot be determined, provided that the conduct of the parties is sufficient to demonstrate agreement (UPICC 2016, Art. 2.1.1.) Such agreement is established based on the parties' common intention, and where such common intention cannot be ascertained, the contract shall be interpreted according to the meaning that a reasonable person in the same position as the parties would give to it (Schwenzer et al. n.d.)

However, the recognition of the factual existence of a contract does not fully resolve the issue of *battle of forms*. The central problem remains the question of which terms and conditions shall prevail when the parties' standard clauses are in conflict. It is precisely to address this issue that the UPICC adopts the knock-out rule as provided under Article 2.1.22. This provision states that where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and any standard terms that are common in substance, unless one party clearly indicates that it does not intend to be bound. This provision reflects the knock-out rule, which operates by excluding conflicting standard terms while retaining those that are substantively consistent between the parties.

Conceptually, the knock-out rule functions by eliminating conflicting clauses and preserving only those that are aligned or identical. (Pervin, 2025) Any gaps resulting from the removal of conflicting terms are then filled by applicable default rules or supplementary provisions. (Pervin, 2025) This approach differs fundamentally from the first-shot rule and the last-shot rule, both of which tend to favor one party over the other. By contrast, the knock-out rule is considered more balanced, as it does not prioritize the dominance of either party but instead reconstructs the contract based on the actual agreement that can be identified between them.

From the perspective of legal certainty, the knock-out rule makes a significant contribution. By recognizing that a contract remains valid despite conflicting standard terms, it avoids situations in which no legal relationship is deemed to exist. At the same time, by eliminating conflicting clauses, the knock-out rule reduces the potential for disputes regarding which terms shall apply. Legal certainty is thereby enhanced, as parties can reasonably predict that only mutually agreed terms will be binding, while conflicting provisions cannot be unilaterally imposed.

Moreover, the knock-out rule reflects an approach that aligns with the realities of international commercial practice, which prioritizes efficiency and the continuity of business relationships over rigid formalities in contract formation. Accordingly, the knock-out rule under the UPICC serves not only as a technical solution to conflicts of standard terms, but also as a mechanism that balances flexibility in commercial practice with the need for legal certainty.

### **Implementation of the Knock-Out Rule under the UPICC in the Indonesian Contract Law System**

In contrast to the previous discussion, which focused on the conceptual framework of the knock-out rule under the UPICC, this section examines the possibility of its application within the Indonesian contract law system. This analysis is particularly important given that

Indonesian law does not explicitly regulate mechanisms for resolving *battle of forms*, thereby necessitating an interpretative approach grounded in existing legal principles (Hermoko, 2010).

The UPICC constitutes a set of international contract law principles formulated by the International Institute for the Unification of Private Law (UNIDROIT), aimed at providing a neutral, modern, and flexible legal framework for international commercial contracts (UPICC 2016, Art. 1.1.). The UPICC is not intended to function as a binding international convention, but rather as a soft law instrument whose applicability depends on the agreement of the parties or its use by judges and arbitral tribunals in dispute resolution. (UPICC 2016, Preamble) This non-binding character places the UPICC outside the formal sources of law within the Indonesian legal system, which traditionally recognizes statutory regulations, jurisprudence, and legal doctrine. Nevertheless, its status as soft law does not negate its normative influence in international contract practice.

As a soft law instrument, the UPICC may serve as a reference, subject to necessary adjustments in accordance with the needs and conditions of a particular legal system (Mandala, 2017). Within the development of modern contract law doctrine, the knock-out rule is regarded as an effective mechanism for resolving conflicts of standard terms and conditions (*battle of forms*), particularly in contemporary international contract practice (Pervin, 2025).

In practice, the UPICC is frequently used as a chosen law (*choice of law*), particularly in cross-border contracts involving parties from different legal systems. It is also often utilized as an interpretative tool or as a gap-filler where national law does not provide adequate regulation. These functions demonstrate the significant persuasive authority of the UPICC, as its principles reflect internationally recognized best practices and general principles of contract law.

Within the Indonesian legal system, the acceptance of the UPICC may be justified through the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code. This provision grants parties the autonomy to determine the content and form of their agreements, including the freedom to select the applicable law, provided that such choice does not contravene public order or morality. Accordingly, there is no normative prohibition against parties referring to the UPICC as the governing law of their contract, either wholly or partially.

Furthermore, Articles 1339 and 1347 of the Indonesian Civil Code provide room for the application of custom and propriety, which may be interpreted dynamically to include internationally recognized contract law principles. In this regard, the UPICC shares fundamental similarities with the principles embodied in Book III of the Indonesian Civil Code, both in terms of its objectives and regulatory foundations (Desriyalni et al. 2024). In Indonesian commercial practice, the exchange of standard documents such as purchase orders, invoices, and delivery notes containing differing terms is commonplace, particularly in business-to-business transactions (Schwenzer et al. 2012). This indicates that the phenomenon of *battle of forms* also exists in practice within the national context, despite the absence of specific legal regulation addressing it.

Under the Indonesian Civil Code, contract formation continues to be understood through the classical framework of offer and acceptance, including the mechanism of counter-offer. However, this framework does not specifically address the issue of conflicting standard terms as encountered in *battle of forms* (Adila et al., 2016).

The central issue in *battle of forms* is not the existence of the contract itself, but rather the determination of which terms are binding upon the parties. To address this issue, international contract law introduces the knock-out rule, which provides that where the parties have agreed on the essential elements of the contract but employ conflicting standard terms, the contract remains valid.

In its application, the knock-out rule operates by excluding conflicting terms while retaining those that are substantively consistent. Any resulting gaps are filled by applicable supplementary or default rules (Pervin, 2025). In this way, the knock-out rule offers a solution to the uncertainty surrounding contractual content without negating the existence of the contract itself.

Within the Indonesian legal system, the application of the knock-out rule may be approached through several avenues (UPICC 2016). First, it may be applied through the explicit agreement of the parties who choose the UPICC as the governing law of their contract (Koellner, 2024). Second, in arbitral proceedings, the UPICC is often invoked as a reflection of general principles of international trade (*lex mercatoria*), including as a means to interpret or supplement contractual provisions where national law is silent. Third, although not formally binding, the UPICC may function as an interpretative instrument and a gap-filler in situations where positive law does not provide specific regulation concerning *battle of forms*. (Gea, 2021)

However, the application of the knock-out rule within the Indonesian legal system cannot yet be considered direct or automatic. This is due to the absence of explicit normative provisions governing such mechanisms, as well as the lack of consistent jurisprudence demonstrating judicial acceptance of the principle. As a result, the implementation of the knock-out rule remains highly dependent on the parties' intentions and the interpretative approach adopted by judges or arbitral tribunals.

Moreover, this condition may itself give rise to legal uncertainty, particularly in determining the supplementary rules used to fill gaps created by the exclusion of conflicting clauses. In practice, such determinations may vary depending on the applicable law and the interpretative stance of the adjudicating authority.

Accordingly, the application of the knock-out rule within the Indonesian contract law system remains potential and conditional in nature. While it holds relevance as a normative reference and interpretative tool, it has not yet evolved into an operational mechanism firmly embedded within national legal practice. Therefore, further development is required, both through doctrinal advancement, consistency in judicial practice, and the possible integration of such principles into future reforms of Indonesian contract law.

## CONCLUSION

This study affirms that the phenomenon of conflicting standard terms and conditions constitutes a logical consequence of modern commercial practices, which rely on the exchange of standardized documents without detailed negotiation of all contractual clauses. In this context, the classical construction of offer and acceptance under the Indonesian Civil Code (KUHPerdata), which requires strict correspondence between offer and acceptance, is no longer fully capable of explaining the factual formation of contracts. When every modification is treated as a counter-offer, the traditional approach risks creating legal uncertainty and even disregarding the reality that parties have demonstrated agreement on essential elements through the performance of the transaction. Accordingly, there is a conceptual need to reconstruct the understanding of contract formation so that it becomes more responsive to the dynamics of contemporary commerce, particularly in cross-border transactions involving Indonesian business actors.

Within this framework, the knock-out rule as provided under Article 2.1.22 of the UPICC offers a more adaptive and balanced model of resolution. Under this approach, a contract is considered valid insofar as there is agreement on its essential elements, while conflicting standard clauses are set aside and replaced by applicable supplementary provisions. This mechanism not only upholds the principles of freedom of contract and good faith, but also strengthens legal certainty in international commercial practice. Therefore, despite the UPICC's status as a soft law instrument, the knock-out rule may be positioned as a persuasive

normative reference within the Indonesian legal system, whether through the parties' choice of law or as an interpretative tool for judges and arbitral tribunals. In this regard, the knock-out rule has the potential to contribute to the harmonization of Indonesian contract law with international standards, particularly in addressing the increasingly prevalent phenomenon of *battle of forms* in cross-border transactions.

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