

The Principle of Balance to Realize Justice of the Parties in Standard Agreements for Business Format

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ABSTRACT

Business people in various contracts commonly use standard business format agreements; progress in the economy with the development of digital businesses today demands efficiency in costs, energy, and time. Standard business contract agreements do not reflect the principle of balance of the parties in the agreement, which emphasizes the realization of a balance (similarity) between the rights and obligations of the parties. The position imbalance in the standard business contract agreement is caused because the parties have different bargaining positions. The position imbalance in the standard business contract agreement is caused because the parties have different bargaining positions. This research aims to understand the implementation of the principle of balance in a standard business format agreement that provides justice for the parties. The research method is a normative research type, which refers to the legal norms contained in the legislation. Primary and secondary legal materials and qualitative analysis are presented in an analytical descriptive manner. The study results indicate that an imbalance occurs, which places the parties in different economic powers. Instead, they should be faced with a parallel position and harmony, with the fulfillment of the rights and obligations of the parties; in other words, if the business actor has fulfilled the obligations and rights, then the consumer will not be harmed. So the principle of balance is the basis for the creation of a good and fair agreement.

Keywords: *Fairness, Principle of Balance, Standard Business Format Agreement.*

1. INTRODUCTION

The association of life between humans cannot be separated from specific dynamic patterns that grow and develop, are agreed upon, and are set as guidelines for people's lives. The more complex a society, the more complex things must be regulated and agreed upon to maintain the balance of life among community members, including building the community concerned so that there are agreements and contracts in society. (rachmad baro, legal theory, 2005, p.65).

Agreement/contract law is a significant field of law in the era of globalization, especially in supporting activities in the trade sector and business transactions.1 (rachmad baro, legal theory, 2005, p.65). Agreement/contract law is a significant field of law in the era of globalization, especially in supporting activities in the trade sector and business transactions. moreover, in today's dynamics of modern life, developing a standard business format agreement that unifies the relationship between the parties within the scope of socio-economic interests is not a simple matter. In the existence of agreement law, the parties' interests must be appropriately accommodated based on the principle of balance in the agreement/business contract that protects

the parties. in the civil code, the agreement is regulated in book iii (article 1233-1864) concerning engagement. article 1313 of the civil code states: "agreement is an act by which one or more people bind themselves to one or more other people." an agreement has competent parties, agreed subject matter, legal considerations, mutual agreements, and mutual rights and obligations. based on the above understanding, the agreement consists of the parties; There is an agreement between the parties; there are achievements to be carried out; in oral or written form; there are certain conditions as the contents of the agreement; there is a goal to be achieved. (Niru Anita Sinaga And Siberius Zaluchu, 2017, P.39) . In General, an agreement between the parties gives birth to a legal engagement/relationship, giving rise to rights and obligations. if it is not carried out as agreed, there will be sanctions. an agreement in the form of an agreement is essentially binding, even by article 1338 paragraph (1) of the civil code. this agreement has binding power as law for the parties who make it. 2 (huala adolf, 2007, p.15). Making of an agreement should pay attention to essential things, including the conditions for the validity of the agreement, the principles of the agreement, the rights and obligations of the parties, the structure and anatomy of the making of the contract, the settlement of disputes and the termination of the contract. in an agreement made in

general, it should be able to accommodate the interests of the parties. The principle of balance here also plays a role as a forum for interests. The principle of balance aims to balance the position of the parties in fulfilling their rights and obligations. Starting from the above background, several problems want to be studied in this research, namely how to implement the principle of balance that creates justice for the parties in a standard business format agreement. Through this research, terrorist ideas will be formulated to perfect a standard agreement for a balanced business format for the parties to achieve justice. The results of this study can be used as theoretical material for research in the field of business contracts that have an impact on fair business competition.

2. METHOD

This type of research is normative legal research that finds the truth of coherence, namely whether there are legal rules according to legal norms and are there norms in the form of orders or prohibitions by legal principles and whether someone's actions are by legal norms (not only by legal rules) or the law. Sources of legal materials, namely primary and secondary legal materials, namely legislation, theories, and concepts related to the problems to be studied. all legal materials related to this research are systematically processed, compiled, and analyzed qualitatively to produce descriptive conclusions³. math and equations.

3. RESULT AND DISCUSSION

The law of engagement contained in book III of the Civil Code is a law that is specific in entering into agreements and legal actions that are economic in nature or legal actions that can be assessed from the assets of a person or legal entity. National development is the essential thing to realize a just and prosperous society that is evenly material and spiritual in this democratic era, by supporting the growth of the business world so that it can produce a variety of goods and services that are useful for improving people's welfare, while at the same time obtaining certainty on goods and services that are available—obtained from trade without causing consumer losses.

In economic activity, there is an effort to get profit or profit. However, it must be based on the rules and norms in the applicable laws and applicable laws. With a legal relationship, there is a relationship between the legal subject and the legal object (the relationship of material rights).

Developments in business and trade where companies enter into a form of contract as part of stabilizing market relations. The form of a contract that has been prepared and determined in advance unilaterally is a standard agreement. An agreement is an event where two people promise each other to do something by prioritizing mutual trust to keep promises. The agreement is not enough to use oral media but also needs to be made in written form. A written agreement can be used by the

parties to supervise the other party to obey and comply with the agreement's contents.

The disobedience of one party to the contents of the agreement will harm the other party's interests. The standard agreement, according to Prof. Johanes Gunawan, an expert on consumer protection, said that what Bliau called a standard agreement is an agreement in which there are certain conditions made by business actors, without involving consumers in drafting contracts, so that consumers have no other choice, and are under their control. In comparison, the standard clauses are the articles contained in the standard agreement. Either electronic/digital or non-digital form. The Indonesian nation does not yet have a law of agreement for the products of the Indonesian nation itself. The contract law used still refers to the provisions stipulated in the third book of BW concerning engagement. To have a national legal product in contract law, the legal principle is fundamental as the legal basis itself. There is legal certainty for the parties, especially the fulfillment of balanced rights and obligations. The following table presented the principles of contract law according to Islamic Law, BW, Customary Law, Symposium on Engagement Law.

Table 1. Comparison of the principles of contract law

Islamic law	BW	Customary law	Bond Law Symposium
divine	habit	works of kindness	trust
ability	conse nsuali sm	family	Legal Equation
justice	Freed om of contr act	harmony	balance
Equation	certain ty	trust	Legal certainty
Honesty/ truth	perso nality	Mutual help	morality
written	Good intent ion	Bonding sign	protection
Benefits/ problems		communal	propriety
Willingn ess/ cons ensualis m		Outline	habit
Freedom of contract		The importance of motive	
binding		casuistic	
balance		real	
Legal certainty			
worship			
Trust/tru st			

Good intention			
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The principle of balance in the engagement law symposium is a principle that is a continuation principle of the principle of legal equality, which requires a balance of rights and obligations between the parties in the agreement. In addition to having particular characteristics, the principle of the balance must also be consistently focused on concrete truths. So the principle of balance has an essential role in every stage of the contract as a process.

The principle of balance encourages and at the same time becomes a working principle of the principles of treaty law, both from Indonesian treaty law and from Dutch treaty law, which represents modern law. In Dutch treaty law, applying the principle of balance is seen in the obligation to refer to decency, good faith, propriety, and appropriateness in carrying out the rights and obligations in an agreement. (Anita Kamilah, 2012, p.104)

This fully aims to improve the protection of the dignity of consumers in increasing awareness, knowledge, care, ability, and independence to protect themselves from developing responsible business behavior.

Implementing these provisions is necessary for several business actors as a preventive measure to protect from consumer actions that can harm business actors. However, even though the standard contract states restrictions or transfers of responsibility for business actors, in its implementation, most business actors take advantage of public ignorance in the inclusion of standard business format clauses because business actors must remain fully responsible for providing compensation to consumers by the actual loss is based on proper consideration as long as the consumer's loss is caused by negligence or error on the part of the business actor in the standard business format agreement.

A standard business format agreement must also pay attention to the equality of the principle of legal equality, which places the parties inequality; there are no differences regarding differences in skin, nation, wealth, power, and position. The principle of balance is a continuation of legal equality because the principle of legal equality also places the parties in the balance between the rights and obligations of the parties to provide justice, which is implemented from the principle of balance in standard business format agreements.

In an agreement that no one's interests are more important in part but are faced with the same bargaining value, parallel or in harmony, what is meant by the fulfillment of the rights and obligations of the parties until they are faced with a harmonious position is that there is no gap between the fulfillment of rights and obligations, with In other words, if business actors have fulfilled the obligations and rights, consumers must also fulfill their rights and obligations to business actors so

that no one is harmed in the standard business format agreement. So the principle of balance in the standard business contract agreement is the basis for creating a good and fair agreement for all Indonesian people.

According to Agus Yudha Hernoko in his book, the principle of balance is the principle that places the same position between the parties. In principle, the balance of the determining factors is not the outcome that is agreed upon but the equality of the parties who promise.

The development of the principle of balance in the standard business format agreement shows that the need for balance and equality of position of the parties is the primary condition for creating an agreement. There needs to be an understanding of this principle's application by the parties that carry out business relations in the agreement so that there is no invalidity in the agreement due to non-fulfillment of equality in making agreements. Standard business format agreements should emphasize the principle of balance; many business actors use one-sided standard clauses because the principle of balance aims to balance the parties' position in fulfilling rights and obligations. The agreement has three primary purposes: to enforce a promise and protect the reasonable expectations that arise from it; To prevent any attempt to enrich oneself that is done unfairly or improperly by a party; To prevent certain kinds of harm (Atiyah, 1995, P.45). In addition to the three objectives mentioned above, Herlien Budiono added a fourth objective of the agreement: achieving a balance between one's interests and the related interests of other parties.

The condition of balance as the fourth goal is achieved through social propriety, immaterial existence, which is achieved in the spirit of balance. In an agreement, the interests of individuals and society will be simultaneously guaranteed by objective law. From the point of view of substance or intent and purpose, the agreement turns out to be contrary to decency and or public order will be null and void by law, and essentially the same thing will apply concerning agreements that are contrary to the law. With this, it is clear that social propriety is intangible through such an agreement. In an unbalanced agreement, it can arise as a result of the behavior of the parties themselves or as a consequence of the substance (content) of the agreement or the implementation of the agreement.

Concerning the agreement's content or intent and purpose, the parties expand by increasing expectations to achieve the entrusted performance. From the rationale of the parties, it can be seen if future expectations can be objective or even contain the sacrifices of the opposing party, which results in such a way that future expectations lead to imbalance. Achieving a state of balance implies efforts to prevent harm to one of the parties to the agreement in the context of objective future expectations. Understanding the agreement's contents is necessary, and a balance in the contract is essential in an agreement (Taufik Kurrohman. (2016), p. 61).

The agreement has several aspects, namely the parties' actions, the contents of the agreement agreed by the parties, and the implementation of the agreement. The three interrelated aspects of the agreement above can be raised as testing factors regarding the working power of the balance principle.¹³ The same thing was also stated by Mariam Darus Badruzaman, who said that an agreement has several aspects, namely the parties' actions, the contents of the agreement, and the implementation of the agreement, which the parties have agreed. Three interrelated aspects of the agreement can be raised as criteria regarding the conditions for the existence of balance and become criteria for the existence of imbalance if the conditions for balance and the three aspects are not met. (Anita Kamilah, 2012, p. 106).

Salim H.S stated that the principle of balance is a principle that requires both parties to fulfill and implement the agreement. (Salim HS, 2010,13-14). That the principle of balance is a continuation of the principle of equality, where creditors have the power to demand repayment of achievements through the debtor's wealth, but creditors also bear the burden of carrying out the agreement in good faith, so that the position of creditors and debtors is balanced (Mariam Darus Badrul Zaman, 1994, p. 43).

The principle of balance as the balance of the bargaining position of the parties carrying out the standard business contract agreement can be interpreted as to the working power of the balance principle, among others, namely the distribution of rights and obligations in the legal business contract agreement relationship as if without regard to the ongoing process in determining the final result of the distribution; Balance reflects the result of a process; It is more directed to the balance of the positions of the parties, meaning that in terms of the standard business contract agreement, the position of the parties is balanced; and the existence of a balance between the parties with a position that can only be achieved on the same terms and conditions.

The use of standard contracts in today's business world creates legal problems that require attention and resolution. An agreement occurs based on the principle of freedom of contract between two parties who have a balanced position. The agreement obtained in the agreement is the result of an agreement between the parties. Such a process is not found in standard business contract agreements. There is almost no freedom in determining the contents of the agreement in the negotiation process. The contents or terms of the agreement have been determined unilaterally by the business actor.

In practice, standard business contract agreements do not reflect the principle of balance between the parties in the contract. The imbalance of position in the standard business contract agreement does not yet have the same bargaining position between the parties. The imbalance of position in standard business contract agreements is caused by the following: The makers of standard

contracts generally have higher control over resources (economics, technology, or science) than the recipients of the standard contracts. One of the forms is seen in the clauses contained in standard or standard forms whose contents tend to be one-sided or referred to as exclusion or exoneration clauses. This clause provides limitations and/or transfer of responsibility for a business risk to another party so that it can cause an unfair loss or profit to one of the parties.

The existence can see this imbalance in the position of clauses in the standard contract, which are solely concerned with the interests of the business actor or the owner of the capital whose bargaining position is more substantial. Limited access to information that the recipient of the standard contract should obtain. Contract recipients in signing standard contracts only focus on essential things in the contract, such as choosing a dispute resolution forum, compensation in case of default, changing policies, and so on. Hampered because the contract recipient is faced with the choice of "take it or leave it," especially if the contract recipient is faced with the object of the contract that is to fulfill basic needs such as the need for clothing, food, and shelter, then this choice will create a dilemma. The existence of weakness in the economic field or weakness in the field of knowledge on the part of the recipient of the standard contract causes the aspect of the balance of position to be unfulfilled. The recipient of the standard contract generally signs the offered contract due to the need for the object of the contract. The existence of power or authority possessed by one party is more significant. This can be seen in contracts entered into between the government in its capacity as private legal subjects in civil relations, for example, contracts for the procurement of goods and services. The unbalanced position can be seen in the clauses written in an agreement. The clause provides limitations for the parties in bank credit contracts, contracts in the housing sector, parking services, electricity, and other contracts. Contracts of this type contain clauses of standard business contract agreements.

4. CONCLUSION

The principle of balance in the standard business contract agreement has not been maximized to provide justice for the parties, because in the process of implementing the contract, what rights and obligations regarding the conditions that constitute the contents of the standard business contract have not been fulfilled, and without prior negotiation or agreement. In making a standard business contract agreement, it is necessary to contain the principle of balance to provide justice; the principle of balance is a guideline in regulating and making a standard business contract agreement and is valid and binding as law for the parties making a business contract, which can be enforced. Or the fulfillment of rights and obligations. The existence of the principle of maximum balance will balance the parties' interests and provide legal certainty for the parties and provide justice

in an agreement. The balance of an agreement is determined not only by the parties' position but also by the principle of good faith that must be carried out. So that balance in standard business contract agreements can be achieved and fulfill a sense of justice and legal certainty, namely the parties' actions, the contents of the agreement, and the implementation of the agreement. So that standard business contract agreements can be more effective and efficient in their implementation.

REFERENCES

- [1] Atiyah, P.S. 1995, *An Introduction to the Law of Contract*, 5th. Ed., New York: Oxford University Press Inc.
- [2] Anita Kamilah, 2012, *Bangun Guna Serah (Build operate and Transfer/ BOT) Membangun Tanpa Harus Memiliki Tanah (Perspektif Hukum Agraria, Hukum Perjanjian dan Hukum Publik)*. Bandung: Keni Media.
- [3] Adolf, H. 2007. *Dasar-dasar Hukum Kontrak Internasional*, Bandung
- [4] Badriyah, S. M. 2016. *Sistem Penemuan Hukum dalam Masyarakat Prismatic*, Jakarta: Sinar Grafika.
- [5] Badruzaman, M. D. 1994. *Aneka Hukum Bisnis*, Bandung: Alumni.
- [6] Gordon. D. Schaber, Claude. D. Rohwer. 1990. *Contracts*. St. Paul: Minn West Publishing Co. p. 174
- [7] Hernoko, A. Y, 2010, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Jakarta: Kencana Prenada Media Grup.
- [8] Kamilah, A. 2012. *Bangun Guna Serah (Build operate and Transfer/ BOT) Membangun Tanpa Harus Memiliki Tanah (Perspektif Hukum Agraria, Hukum Perjanjian dan Hukum Publik)*, Bandung: Keni Media.
- [9] Salim, 2010. *Hukum Kontrak Teori Dan Teknik Penyusunan Kontrak*, Jakarta: Sinar Grafika.
- [10] Subekti. 2010. *Hukum Perjanjian*, Jakarta: Intermedia.
- [11] Sinaga, N. A., & Zaluchu, T. 2018. *Peranan Asas Keseimbangan Dalam Mewujudkan Tujuan Perjanjian*. *Jurnal Ilmiah Hukum Dirgantara*.
- [12] Taufik Kurrohman, 2016., *Penerapan Asas Keseimbangan Berkontrak pada Akad Pembiayaan Perbankan Syariah Perspektif Teori Hukum Ekonomi Islam*, *jurnal Surya Kencana Satu*.
- [13] Undang-undang No. 8 Tahun 1999 tentang *Perlindungan Konsumen* Kitab Undang-undang Hukum Perdata.