Contract Law and Its Development (Form, Principles and Substance)

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Abstract. This study aims to explore the development of contracts as legal products that frame the relationship of the parties who transact their interests in the field of property law. To achieve this goal, doctrinal legal research is carried out with a statutory approach, using primary legal materials and secondary legal materials, which are collected through literature studies, and analyzed by carrying out legal interpretations. Expected results, can be known and understood the development of the form of the contract which was originally only written and unwritten, an e-contract appears and its implications and problems. It will be known and understood the development of the meaning of the principles in contract law, especially on the principle of freedom of contract. It will also be known and understood the substance/clauses in certain contracts that are required by laws and regulations. The results of this study are expected to be a contribution to the development of contract law, and discussion material in contract law learning.

Keywords: Principles · form · contract law · development · substance

1 Introduction

In everyday life, humans as social beings who are the bearers of rights and obligations will of course interact with other humans. These interactions include, among others, in the field of assets, where there is an exchange of interests that can be valued in money. To achieve the purpose of the exchange of interests, a contract is made, which formulates a series of promises between the parties.

Agus Yudha Hernoko stated that the contract started from differences or unequal interests between the parties. The formulation of a contractual relationship in general always begins with a negotiation process between the parties. Through negotiations the parties seek to create forms of agreement to bring together something they want (interests); through the bargaining process. In short, in general, a business contract actually starts from a difference of interest that is attempted to be reconciled through a contract. Through the contract these differences are accommodated and further framed with legal instruments so that it binds the parties (Agus Yudha Hernoko, 2010) [1]. The framework of legal actions intended to create legal relations in the field of business or assets will have a function as documentation of the agreement between the parties

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making the contract, and as an anticipation if in the implementation of the contract in the future a dispute or dispute arises between the parties.

Contracts must always be designed with the assumption that problems in the future implementation of the contract should occur (Ricardo Simanjuntak, 2011). For these two interests, the contract that has been agreed upon by the parties will be the basis of reference. Given the urgency of a contract, the contract should be made properly and well.

A contract can be said to have been made correctly if it has fulfilled the conditions for the existence (legitimacy) of a contract, as regulated in Article 1320 of the Civil Code, namely agreeing that those who bind themselves, are capable of making an engagement, a certain matter, and do not violate the lawful cause (ie: Law No. -Laws, public order, and decency). The contract made by the parties can be said to be good, if the contract is able to accommodate the business interests and interests of the parties who make it. In addition, it must also pay attention to current developments in contract law. Important developments that need to be observed include, among others, but are not limited to the forms, principles, and mandatory clauses that must exist in certain contracts.

Of these three issues, one of the issues that is developing quite crucially at this time is the development of the principle of freedom of contract, related to the validity of the contract in this case the cause of halal, namely not violating the law. This is related to the arrangement of certain contracts that must follow the procedures and contents that have been regulated and stipulated by law. Certain laws have regulated the clauses that must exist in a contract.

The arrangement of these clauses encourages discussion in the event of a violation of the clauses stipulated in a law, the contract will be invalid and null and void by law. The next problem that arises is when a law regulates a contract to stipulate the clauses that must be in a contract regarding the freedom of contract that is owned by the parties.

2 Research Method

This study is a doctrinal legal research that examines the issue of legal principles (Soerjono Soekanto and Sri Mamudji, 2007) [2] namely the principles in contract law, especially the principle of freedom of contract, related to the terms of the validity of a contract that must not violate the law.

This study uses secondary data, sourced from primary legal materials and secondary legal materials (Soerjono Soekanto and Sri Mamudji, 2007) [3]. Primary legal materials are in the form of laws and regulations that contain minimum clauses that must be in contracts regulated by laws and regulations, such as in contracts for the procurement of goods and services, and franchise contracts. The secondary legal materials are the results of studies on contracts in the field of government procurement of goods and services, mining contracts, and franchise contracts which have been published in scientific journals resulting from research and up-to-date text books. The data was obtained by conducting a literature review (content identification). The validity or validity of the data is carried out with source criticism. As for data analysis, it is carried out by means of legal interpretation, namely interpreting legal history, and grammatical interpretation, by using the technique of editing analysis style (Crabtree, 1995) [4].

3 Findings and Discussion

1. Development of Contract Form

Currently, there are many contractual transactions that use electronic means, so that e-contracts appear. Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, in Article 45 stipulates that electronic transactions carried out by the parties have legal consequences for the parties. When conducting electronic transactions, you must adhere to:

The Principles of Honesty, Prudence, Transparency, Accountability and Fairness. As a form of contract between the parties, more regulated electronic transactions can be conducted under electronic contracts or other forms of agreement. An Electronic Contract is considered valid if: a) there is an agreement between the parties; b) is carried out by a legal subject who is capable or authorized to represent, in accordance with the provisions of the legislation; there are certain things; d) the object of the transaction does not conflict with the laws and regulations, morality and public order (Article 46) [5].

The electronic contract must be made in the Indonesian language. Electronic contracts made with standard clauses must comply with the provisions regarding standard clauses, as regulated in laws and regulations. Government Regulation Number 71 of 2019 is not limited to regulating the minimum clauses that must exist in Electronic Contracts, but stipulates quite detailed provisions related to contracts, namely: that business actors who offer products through electronic systems must provide complete and correct information relating to contract terms, manufacturers and products offered; obliged to provide clear information about contract offers or advertisements; obliged to give a time limit to consumers and/or contract recipients to return the goods and/or services provided if the delivered goods and/or services provided are not in accordance with the contract or there are hidden defects; obliged to submit information regarding the goods that have been sent and/or the services provided; and business actors cannot burden consumers regarding the obligation to pay for goods sent and/or services provided without a contract basis (Article 48) [6].

The Electronic Transaction occurs when an agreement is reached by the parties. This agreement is reached or occurs when the transaction offer sent by the Sender has been received and approved by the Recipient. This agreement can be done by: a) acceptance act which states approval; b) the act of receiving and/or using the object by the Electronic System User (Article 49) [7]. In the implementation of this electronic transaction, the parties must ensure: the provision of correct data and information, and the availability of infrastructure and services as well as the settlement of complaints. In addition, the parties must make a balanced choice of law regarding the implementation of electronic transactions (Article 50) [8].

2. Development of the Meaning of Contract Law Principles

Article 1320 of the Civil Code regulates the conditions for the validity of a contract, namely (1) agreeing that those who bind themselves; (2) the ability to make an engagement; (3) a certain matter; (4) a lawful cause. The first two conditions, namely agreement and skill, are known as subjective conditions because they are related to the

subject who made the contract, while the next two conditions, namely a certain thing and a lawful cause, are known as objective conditions because they are related to the object of an agreement/contract. Violation of subjective conditions, will resulting in the cancellation of the contract being requested from the judge, meanwhile if the objective conditions are violated, the contract made by the parties is null and void by law. A contract will bind the parties well if it is placed on the principles of contract law. These legal principles include the principle of contractual liberty, the principle of good faith, the principle of agreement, the principle of pacta sunt servanda, and the principle of balance/proportionality. The principle of freedom of contract is an important principle because freedom is part of human rights.

The principle of freedom of contract is the freedom that is given by law to the broadest extent possible to the public to make agreements about anything, as long as it does not conflict with laws and regulations, propriety, and public order (HR Daeng Naja, 2006). The principle of contractual freedom can be derived from the provisions of Article 1338 of the Civil Code. It provides that all validly concluded agreements are lawful to the parties that entered into them and can be revoked only by mutual consent of the parties or for cause., determined by the parties. the law is enough. The agreement must be executed in good faith. From this provision, the parties can make agreements, both those that have been regulated in Book III of the Civil Code, or those that have not been regulated. Agreements in Book III of the Civil Code include: buying and selling, exchanging, renting, agreements to do work, partnerships, associations, grants, safekeeping of goods, borrowing and borrowing, fixed or perpetual interest, chancy agreements, giving power, assurance, and peace. On the basis of the principle of freedom of contract, then other types of agreements emerged to meet the needs of the community, such as lease agreements. In addition to determining the type of agreement, freedom of contract includes the freedom to determine with whom to make a contract, determine the terms of the contract, the contents of the contract, the choice of applicable law, the choice of dispute resolution, the choice of legal domicile.

The main idea of the freedom of contract relates to the emphasis on the goals and intentions or the will of the parties. In addition, the idea of freedom of contract is also related to the view that contracts are the result of free choice. With this main idea, then it is understood that no one is bound by a contract as long as it is not done on the basis of a free choice to do something (Ridwan Khairandy, 2011) [9]. In its development, this freedom began to be limited, among others by laws and regulations, namely the emergence of laws and regulations governing the procedures or mechanisms for making certain contracts, starting from the pre-contract stage (the intention to establish legal relations, communicate with each other, negotiate, exchange of texts, reaching a preliminary agreement), signing of contracts, execution of contracts, additions clauses, contract repairs, up to termination and post-contract (in government goods/services procurement contracts).

Another limitation, namely the existence of laws and regulations governing the contents or clauses in the contract, namely the provision that a contract must at least contain the clauses determined by the legislation (minimum clause), which can be seen as an example laws and regulations relating to contracts for the procurement of public goods/services, laws and regulations in the field of franchising, among others. From this

example, it can be seen that the restriction on freedom of contract is not only for contracts involving the Government and the public interest, but with certain objectives, such as protecting the interests of the parties proportionally, is also applied to business-to-business contracts.

Basically, the freedom of contract has been limited by the contents of Article 1338 of the Civil Code itself. Even though they are free, the parties when making a contract must be based on the provisions of Article 1320 of the Civil Code which regulates the conditions for the validity of a contract. which includes: agreeing on those who bind themselves, capable, a certain thing, and a lawful cause. The first two conditions, namely agreement and skill, are known as subjective conditions because they are related to the subject who made the contract, while the next two conditions, namely a certain thing and a lawful cause, are known as objective conditions because they are related to the object of an agreement/contract. Violation of subjective conditions will result in the cancellation of the contract being requested from the judge, meanwhile if the objective conditions are violated, the contract made by the parties is null and void by law.

The agreement that forms the basis for binding the consensual agreement must be intact. There must be no oversight, coercion, or fraud (Article 1321 of the Civil Code). If an error occurs, it does not necessarily result in the cancellation of the agreement other than if the error occurs regarding the nature of the goods that are the subject of the agreement. Mistakes are not the cause of the cancellation, if it concerns the person with whom someone intends to make an agreement (Article 1322 of the Civil Code). Agreements obtained under duress, physical or psychological, will invalidate the agreement (Article 1223–Article 1227 of the Civil Code).

Likewise, the agreement will be void in the event of fraud (deception) committed by one of the parties. This fraud is not suspected, but must be proven (Article 1328 of the Civil Code).

Agreements will also not be obtained, in the event of an abuse of circumstances.

Regarding the terms of competence in making contracts, the Civil Code stipulates that everyone is capable of making engagements, if by law it is not declared incompetent (Article 1329 of the Civil Code). As for those who are declared incompetent by law are: people who are not yet mature, those who are placed under guardianship, and women (Article 1330 of the Civil Code). Those who are put under custody, such as bad behavior, gamblers, drunkards, spenders, declared incompetent after going through a judge's decision. For women who are declared incompetent, this provision is no longer valid (Marriage Law: the position of women and men are equal before the law, each party can take legal actions, the husband is the head of the household, the woman is the head of the household. housewife).

The requirement for a certain thing as one of the conditions for a valid agreement can be said that the agreement must have a certain object, which is termed goods, namely goods that can be traded (Article 1332 of the Civil Code). The object of this agreement is emphasized in Article 1333 of the Civil Code, which stipulates that an agreement must have an object of agreement, namely an item of which at least the type can be determined. It does not become a hindrance that the number of goods is uncertain, as long as the amount can be determined or calculated at a later date. Items that will only be available in the future can become the subject of the agreement (Article 1334 paragraph (1) of the

Civil Code). The causes or causes that are allowed or lawful as one of the conditions for the validity of the agreement must be fulfilled by the parties. This is because an agreement made without cause or without cause, or made for a false or forbidden cause, has no power (Article 1335 of the Civil Code). A cause is prohibited, if it is prohibited by law, or if it is contrary to good decency, or public order (Article 1337 of the Civil Code).

In relation to the permissible or lawful causes, it is currently identified that there are laws and regulations that prohibit the parties from making certain agreements, prohibit the parties from carrying out certain actions in their business activities, regulate the provisions related to the agreement, and even have determine at least the clauses (minimum clauses) that must exist in a particular contract.

3. Development of Contract Substance (identification, inventory of the minimum clauses required to exist in certain contract by laws and regulations)

In this study, two examples of contracts whose minimum substance/clause must be in place are taken by: Comparison of laws and regulations, namely contracts for procurement of goods and services (public sector) and franchise contracts (private sector).

a. Government Goods and Services Procurement Contract

In the procurement of government goods and services, the authority to make contracts between the Commitment Holder Officials (PKK) and the Providers rests with the Head of Policy for Government Goods/ Services Providers (LKPP) of the Republic of Indonesia. The contract for the procurement of government goods/services is a standard contract that has been prepared and must be adhered to by the parties. The standard contract contains the General Contract Terms (SSU) and Special Contract Conditions (SSKK), includes: 1) Definition of the terms used; 2) Origin of Materials/Materials; 3) Work Completion Time; 4) Extension of Time; 5) Work Handover; 6) Contract Changes; 7) Job Change; 8) Changes in the Work Implementation Schedule; 9) Termination of Contract; 10) Termination of Contract; 11) Payment of Fines; 12) Compensation Events; 13) Contract Price; 14) Payment; 15) Dispute Resolution; 16) Good Faith; 17) Special Conditions of Contract (SSKK).

The contents of these clauses, both SSUK and SSKK, have been explained in detail in the contract preparation guide submitted by the Head of LKPP, which should not be deviated by either the PKK or the Provider. The detailed arrangement of the Government's Goods/Services Procurement Contract is understandable, considering that here there are state interests that must be safeguarded. This category of contract is a government contract, which is basically a one-sided will of the government. The terms of the contract have been prepared by the government through skilled and experienced designers. The contractor or supplier only has two choices, agree or not. It is completely impossible to make a counter offer (Y. Sogar Simamora, 2013:64). Thus, the application of the principle of freedom of contract that is owned by the parties, especially the provider can be said to have been degraded, even has lost its meaning.

It is important to study here is the possibility that the government contract to purchase goods/services may be canceled or nullified by law if there is a violation of the general terms and/or the specific terms of the contract. This is interesting because in general and special conditions there are elements or components of the parties making the contract, which concerns the issue of the validity of the contract signatories (legitimate representatives of the parties), reaching an agreement, the object of the contract, and the possibility of formulating the contents of the clauses that violate the law. -Law, public order, and decency.

b. Franchise Contract

Pursuant to the government's regulation No. 42 of 2007 on franchising, which implemented by the Regulation of the Minister of Trade Number 71 of 2019 concerning the Implementation of Franchising. In the Minister of Trade Regulation (Appendix II) it can be seen that the operation of a franchise must be based on a franchise agreement that has an equal legal standing and Indonesian law applies to them. The franchise agreement must be submitted to the prospective franchisee at least two times weeks before signing the agreement.

In the event that the franchise agreement Is written in a overseas language, The settlement have to be translated into Indonesian. The franchise agreement contains at least terms relating to: 1) Name and address of the parties, namely the name and clear address of the company and the clear name and address of the owner/person in charge of the company entering into the agreement, namely the franchisor and franchisee; 2) Wealth Type Intellectual (K), namely the type of franchisor's intellectual property such as company brand and logo, store design, management system, marketing, or franchised condiments; 3) Commercial activities, in particular agreed commercial activities, such as retail/retail, educational, restaurant, pharmacy or workshop; 4) Rights and obligations of the franchisor and franchisee, in particular the rights of both the franchisor and the franchisee, such as the franchisor's right to receive royalties or franchise fees from the franchisee, and more the franchisor must provide ongoing instruction to the franchisee. Franchisee has the right to use the intellectual property or business features owned by the franchisor, then the franchisee must comply with the code of ethics/security of the intellectual property or business features given by the franchisor. 5) Assistance, facilities, operational advice, training, and marketing provided by the franchisor to the franchisee, such as facility support in the form of computer supply and maintenance and information technology programs to manage business operations manager; 6) Area of operation, which is the limit of the area given by the franchisor to the franchisee for the development of the franchising, such as Sumatra, Java, Bali, or throughout Indonesia; 7) Contract period, namely the start and end time of the agreement, such as a cooperation agreement is set for ten years from the time the agreement letter is signed by the parties; 8) The indemnification procedures, i.e. procedures/conditions, including when and how the amount of compensation, such as franchise fees or royalties, if agreed upon in the agreement; 9) Ownership, change of ownership, and right of heirs, namely the name and clear address of the business owner if an individual, as well as the names and addresses of the shareholders, commissioners, and directors if they are a business entity; 10) Settlement of disputes, in particular the determination of the place/place of

dispute resolution, for example through the district court of the place/headquarters of the company or by arbitration with due observance of Indonesian law; 11) The procedure for extending, terminating, and terminating the agreement such as the termination of the agreement cannot be carried out unilaterally, the agreement ends automatically if the period specified in the agreement has ended. The agreement can be extended again if desired by both parties with mutually determined conditions; 12) A guarantee that the franchisee will continue to perform its obligations to the franchisee in accordance with the terms of the contract until the end of the contract period.

In carrying out the franchise agreement that has been made, both the franchisor and the franchisee are required to comply According to the provisions of laws and regulations related to their business activities, including laws and regulations in the fields of consumer protection, health, education, environment, spatial planning, and labor. intellectual property in accordance with applicable laws and regulations.

The determination of the minimum clauses aims to balance the bargaining position between international franchisors and national franchisees, so that the recipients local franchisees do not become victims of irresponsible international franchisees, although this balancing effort will be difficult to achieve, at least it will make the parties, namely international franchisees and national franchisees, have proportional rights and obligations. This effort has even begun to be regulated before the parties sign the franchise agreement, namely the franchisor's obligation to submit a franchise offer prospectus, which must be submitted within a sufficient grace period for the prospective franchisee to make a decision (two weeks).

Efforts to achieve proportional rights and obligations are feasible, considering that the Government is obliged to improve business development with franchises throughout Indonesia, especially the development of Micro, Small and Medium Enterprises (SMEs) and make them an instrument of poverty alleviation, by encouraging national franchise business actors. have national and international competitiveness (Moch Najib Imanullah, 2012; 2018). It's just that the arrangement would be more appropriate if it was in the form of a law. This is because the material concerns the life of the state, especially if the person submitting the prospectus and the franchise agreement is an international franchise. Here not only business interactions occur, but there are state interests that must be guarded (Moch Najib Imanullah, 2011; 2018). Thus, if there are violations of the minimum clauses that must exist in international franchise contracts, both in the category of violations of subjective terms and objective conditions, then the contract is declared null and void.

4 Conclusion

The development of the meaning of the principle of freedom of contract, and the minimum clauses in contracts that concern the interests of the Government and the wider community are intended to further ensure legal protection of the interests of the Government and public interest. Regarding contracts of a business-to-business nature, the existence of a minimum clause intended to provide legal protection to parties who have weak, which is the government's obligation to protect and balance the bargaining position the weak party (the principle of protection of the weak party in the contract), or

at most the rights and obligations of the parties are not proportional. In the event of a violation of these minimum clauses, then the contract will be subject to cancellation or null and void, depending on the clause that is violated is a condition of the contract that subjective or objective. Thus, the existence of this minimum clause is increasingly limiting the parties' The law stipulates that civil disputes can be settled quickly, cheaply and inexpensively in accordance with the legal principles applicable to the Indonesian civil justice system, for the better achievement of goals. The development of the form of the contract, in this case the E-Contract is a necessity because technological developments that must be accepted and addressed properly, because it will provide efficiency in carrying out legal actions, by means of the community to increase understanding of digital technical aspects.

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