



Business Agreements on the Part of the Company are Not Balanced to Natural Persons

Supriono Tarigan

Doctoral Program in Law, University of North Sumatra
Jl. Abdul Hakim No.4, Padang Bulan, Medan, North Sumatra 20155
suprionotarigan@students.usu.ac.id

Hasim Purba

Faculty of Law, University of North Sumatra, Medan, Indonesia
hasim_purba14@yahoo.com

Maria Kaban

Doctoral Program in Law, University of North Sumatra
Jl. Abdul Hakim No.4, Padang Bulan, Medan, North Sumatra 20155
mariakabans@yahoo.com

Mulhadi Mulhadi

Doctoral Program in Law, University of North Sumatra
Jl. Abdul Hakim No.4, Padang Bulan, Medan, North Sumatra 20155
mulhadi@yahoo.com

Abstract. as social beings always relate and interact between other humans by covering several aspects, including social, cultural and legal aspects, including civil. law where every procedure for the implementation of life in it is based on law, whether written or unwritten, agreement in the Agreement Standard agreements, among scholars argue, Sluijter a Dutch legal scholar states that standard agreements are not agreements, because the position of the entrepreneur, for example dealing with consumers is like the framer of private law, imbalance occurs when the parties are in different economic powers. This article aims to discuss the issue that needs to be studied in this paper is what are the factors causing imbalances in business agreements between companies and individuals? The data used for this study was Library Research. In the context of a Business Agreement the Company is not balanced to individuals, but the Agreement must be carried out by the will of the parties who are not only the beneficiaries, or the agreement must have legal certainty of the parties and in general the agreement is implemented, will remain a standard agreement or that has been determined in advance, and the rules of civil law limit it.

Keywords: *Agreement, Company, People.*

I. INTRODUCTION

As social creatures, we always relate and interact with other humans by covering several aspects, including social, cultural and legal aspects, including civil. The discussion is more directed at aspects of civil law, especially the law of agreements regarding companies. Talking about the Company in particular certainly cannot be separated from business problems, where at this time the business carried out by humans is always growing and is expected to always continue to grow following the times. So it needs to be questioned how a business relationship or business between people is poured into an agreement that can accommodate all their interests including the existence of boundaries as a fence that protects the interests of the parties if something undesirable happens, including disputes about the absence of good faith, or all of which lead to disputes. Especially in this case it is a treaty that has a complex nature and characteristics of the agreement. Previously, it is necessary to understand in advance the meaning of Law, namely regulations that are orderly, well structured and binding on society and aim to create an orderly, peaceful and just society supported by legal certainty so that the interests of individuals and society can be protected as the normative purpose of a state is to realize a conducive state situation. Indonesia is a country of law where every procedure for implementing life in it is based on law, both written and unwritten or abstract which in its implementation is carried out jointly by the government and the people. While the definition of agreement is the implementation of the points of business relations or business between people which are stated in writing in the agreement sheet and already have the agreement of the parties. Agreements have a close relationship with engagements as Book III of the Civil Code Article 1233 which mentions the occurrence of engagements which suggests that engagements arise from agreements or laws. [1]

Covenants must be made and executed on the basis of common sense based on respect for the moral values of humanity. Man as God's creature in living his life cannot live alone, but always needs others. Previously, it is necessary to understand in advance the meaning of Law, namely regulations that are orderly, well structured and binding on society and aim to create an orderly, peaceful and just society with the support of legal certainty so that the interests of individuals and society can be protected as normative purposes. By setting forth the procedures and terms of a business transaction in the contract, the parties intend: [1] [2]

1. To provide written evidence of the transactions they make.
2. To prevent fraud.
3. To establish the rights and obligations of the parties, and
4. To regulate in more detail complex business transactions, in order to prevent obstacles in the execution of the contracts they make. [3]

A sole proprietorship is a company carried out by one entrepreneur, in this individual company who becomes a one-person entrepreneur. Thus, the company's capital is only owned by one person as well. If in the company there are many individuals or employees, they are only helpers of entrepreneurs in the company based on an employment agreement. [4] At first, the relationship of individual persons between employers and workers only concerns civil interests, which in this case means related to civil aspects. However, if between the parties there is a difference of opinion or dispute or problem, then from here government intervention and authority are needed, so that at this stage labor law is related to public law, both in constitutional law and criminal law. The difference seen between workers in private companies and civil servants is in terms of the beginning or cause of the legal relationship between the employer and the recipient of the job. [5]

An employment agreement is an agreement made between workers or laborers (employees) and employers or employers who meet the conditions of work, rights and obligations of the parties. [6] In order to realize an agreement that has been mutually agreed, the parties to the agreement can carry out the contents of the agreement as appropriate. The law is supposed to provide justice, because justice is the purpose of the law. So, it is only natural that the law governing the agreement for a certain time provides a sense of justice to the parties. [7] In this connection, the content or clauses of the agreement for a certain time between the Employer and individuals or employees cannot be based only on the principle of freedom of contract. [8] Unbalances typically arise when the parties have disparate economic strength. It is said that a strong economy forces a weak economy to yield to its will. Weak economic parties may experience depression as a result of psychological effects of unbalanced economic conditions. Weak economic parties in a condition of hardship are compelled to make decisions or not. One of the conditions that runs counter to the idea of freedom of contract is the non-freedom of one of the parties. Individuals are granted the ability to reach agreements as broad as possible under this principle, provided that they do not interfere with public order. [9]

But in agreements between companies and individuals or individuals, there are always provisions that are not agreed upon into mutual agreements, such as in banks, Standard Agreements or standard agreements, among scholars argue, Sluijter a Dutch legal scholar states that standard agreements are not agreements, because the position of the entrepreneur, for example facing consumers is like the framer of private law (*legio particuliere wetghever*). Whereas Platto states that the standard agreement is a forced agreement (*dwangcontract*). Likewise with insurance agreements [10] Found in the insurance policy include clauses that essentially state that the insured is subject to regulations in the form of new, additional, continued or further changes made unilaterally by the insurer without the insured's agreement during the insurance coverage period. [11]

In general, the agreement is executed and must be carried out by the parties' will, who are not just the beneficiaries. It also needs to have the parties' legal certainty. A contract, in general, is an agreement between two parties on a matter that creates a legal relationship or engagement, confers rights and obligations, and, should the terms of the agreement not be followed, may result in penalties. Agreements in writing are practically legally binding; in fact, as stated in Article 1338 paragraph (1) of the Civil Code, the parties to an agreement bind themselves by it. While drafting a contract, one must take into account a number of crucial factors, such as the duration of the agreement's validity, the [12] Given that in the agreement, it tends to side with entrepreneurs, not providing bargaining value, with the economic needs of individuals, or individual people. Based on this, what needs to be studied in this paper is what are the factors causing the imbalance in business agreements between companies and individuals.

II. LITERATURE REVIEW

A. Covenant

. Agreements have a close relationship with engagements as Book III of the Civil Code Article 1233 mentions the occurrence of engagements which indicate that the engagement arises from agreements or laws. Treaties

must be made and executed on the basis of common sense based on respect for human moral values. Man as God's creation in living his life cannot live alone, but always needs others. Previously, it is necessary to understand in advance the meaning of the Law, namely regulations that are orderly, well structured and binding on the community and aim to realize an orderly, peaceful and just society with the support of legal certainty so that the interests of individuals and society can be protected as normative purposes. By establishing the procedures and terms of business transactions in the contract, the parties mean: [1] [1] [2]

1. To provide written proof of the transactions they make.
2. To prevent fraud.
3. To establish the rights and obligations of the parties, and
4. To organize in more detail complex business transactions, in order to prevent obstacles in the execution of the contracts they make. [3]

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B. Disharmony

Imbalances usually arise when the parties have different economic forces. It is said that a strong economy forces a weak economy to surrender to its will. Weak economic parties can experience depression as a result of the psychological effects of unbalanced economic conditions. Weak economic parties in conditions of difficulty are forced to make decisions or not. One of the conditions that contradicts the idea of freedom of contract is the absence of freedom of either party. Individuals are given the ability to reach the widest possible agreement based on this principle, provided they do not disturb public order. [9]

III. METHODS

This study focuses the analysis of favorable legal provisions and broad legal principles; it is referred to as normative legal research. Studying the law using primary and secondary sources is known as normative legal research. Library research is a method of gathering data for this study that involves reading books, statutes, journals, and expert opinions on criminal law matters that are scientific in nature and linked to the subjects covered in this article. [13]

IV. RESULT AND DISCUSSION

Indonesia does not yet have a law that regulates detailed basic rules as in the Netherlands in their new civil code, the *Nieuw Nederlands Burgerlijk Wetboek*. However, this does not mean that in Indonesian treaty law there is no legal principle or rule of law that can be used as a benchmark to determine whether the substance of a clause in a standard agreement is a clause that is unreasonably very burdensome for other parties. Articles 1337 and 1339 of the Civil Code, can be used as one of the benchmarks in question. A cause is illegal if it is against the law, morality, or public order, as stated in detail in Article 1337 of the Civil Code. It is possible to understand this article to suggest that an agreement's terms cannot conflict with the law, morality, or public order. The complete language of article 1339 of the Civil Code is as follows: Agreements are enforceable not only for everything specifically mentioned in them but also for anything that their nature requires to be followed by propriety, custom, or the law. The interpretation of this article is that a treaty will be bound by not only the laws, customs, and propriety clauses that contain or permit orders. In other words, prohibitions prescribed (or forbidden) by propriety, custom, and law are also the terms of a treaty. Regarding customs, it is only binding on the agreement if the written terms of the agreement do not specify otherwise. [14][15]

A waiver clause in an agreement typically indicates an imbalance in the agreement. Parties to an agreement will undoubtedly feel unfairly treated in an unequal relationship. Unfair influences in imbalanced relationships are referred to as undue influence, while improper behavior in an imbalanced condition (not a relationship) is referred to as impropriety. Achieving everything to which it is entitled and obliged is the essence of justice. Justice requires behavior that is appropriate, balanced, and in line with each person's individual rights. Fairness in an agreement, ideal law for the parties, and balancing of the parties' interests are all achieved through optimal labor derived from the principle of balance. As such, a balance test must be applied to an agreement. [14]

A typical agreement, the terms of which have been set by one of the parties, appears to disregard the legal guidelines it contains. The lack of negotiations between the parties to decide on the terms of the agreement and one party's poor negotiating stance, which prevents the agreement's aspect of balance from being met, demonstrate this. These disparities could be brought about by the way the parties behave, the effects of the agreement's terms, and maybe even the way the agreement is carried out. Parties in a dominating position may take advantage of agreement imbalances to manipulate events. [15]

Unbalances typically arise when the parties have disparate economic strength. It is said that a strong economy forces a weak economy to yield to its will. Weak economic parties may experience depression as a result of psychological effects of unbalanced economic conditions. Weak economic parties in a condition of hardship are compelled to make decisions or not. One of the conditions that runs counter to the idea of freedom of contract is the non-freedom of one of the parties. Individuals are granted the ability to reach agreements as broad as possible under this principle, provided that they do not interfere with public order. [9]

A person who fully trusts the other party based on honesty and does not conceal anything negative that could cause problems later on is said to be acting in good faith when making an agreement. The agreement's preparation in good faith will prevent illegal activity and defaults from occurring. Herlien Boediono contends that the ideas of consensualism, binding power, freedom of contract, and balance are laden with normative expectations about the ideal development of social roles, in accordance with the social rules applied by the traditions, norms, and history of the society in question. This brings us to our discussion of the role of the principle of balance. [16, p. 377]

The principle of equilibrium is based on achieving a state of equilibrium. The non-fulfillment of balance, in the context of the principle of equilibrium, is not only to assert facts and circumstances, but to influence the juridical force of the agreement. In the making or formation of an agreement, an imbalance may arise as a result of the behavior of the parties themselves or as a consequence of the substance (content of the contract) or the performance of the agreement. A more fundamental problem is that because the content of the standard agreement is made unilaterally, the agreement tends to include unbalanced rights and obligations. As it is *exoneration clause* or in the common law system called *exculpatory clause*. *Exoneration clause* is a clause that transfers responsibility from one party to another, for example the seller does not want to be responsible for the quality of the goods he sells, then a clause is included that the goods that have been purchased cannot be returned [12, pp. 4-5][17]

In general, the agreement is executed and must be carried out by the parties' will, who are not just the beneficiaries. It also needs to have the parties' legal certainty. In general, an agreement is an understanding between the parties over a matter that results in a legal relationship or engagement and confers rights and obligations, both of which are subject to penalties if violated. Agreements in writing are practically legally binding; in fact, as stated in Article 1338 paragraph (1) of the Civil Code, the parties to an agreement bind themselves by it. When drafting an agreement, it's vital to take some things into account, such as the agreement's validity terms and the guiding [12]

One of the parties will not be able to amend the standard agreement to include himself as a party in an agreement that is not contingent upon the other side reneging on the agreement. Subjective and objective conditions are the two categories into which the agreement's legal conditions fall. Subjective terms encompass the parties' legally binding agreement as well as their capacity to enter into one. While specific items and justifiable reasons make up objective needs. Should these prerequisites be satisfied, the accord is deemed legitimate. Any party may seek cancellation of the agreement if the subjective requirements are not satisfied; the party making the request must be the one who is either incompetent or has given consent without consent. As long as a judge does not annul the agreement at the request of the party with the right to do so, it remains enforceable. In the event that objective requirements are not satisfied, the agreement is void. The agreement is voidable, which means that any party who objects may ask the court to void it. [18]

Additionally, where is the balance principle? In order to avoid going to court, there must be balance between the parties to the agreement, with no one taking the lead. The parties must also have a balanced negotiating position, taking into account each other's interests, rights, and obligations. Objective law will simultaneously safeguard the interests of society and the individual in a treaty. Reaching an equilibrium state is the foundation of the principle of balance. The failure to maintain balance within the framework of the principle of balance has an impact on the agreement's legal authority more than just asserting facts and circumstances. The balance in question is that which, on the one hand, is constrained by the will produced by advantageous circumstances or considerations, and, on the other hand, is achieved, within the bounds of these two sides, by the belief in the ability to manifest the desired outcome or effect. Agreement or form of agreement accomplishment of the agreement preparation usually entails the parties' agreement or disagreement on specific items that will be later included in the Agreement. When creating insurance policies with high intensity and roughly comparable material governed by the agreement, this is different. Frequently, insurance firms have created a common agreement. ([19] [20] *Standardized contract*). [21]

Furthermore, in addition to the various limitations found in the Civil Code, a number of principles, including trust (fiduciary relation), confidentiality (confidential relation), and prudence (prudential relation), limit the application of the freedom of contract principle in relationships with bank credit.

1. Discretionary Relation, A bank's operations are predicated on a relationship of trust between the bank and its clients, according to the principle of trust. Banks operate on public funds that are held in trust, hence each bank must preserve both the public's trust and the health of its own finances. Sjahdeini claims that the connection that exists between banks and depository clients is one of loan and borrowing, founded on the idea of confidence, between debtors (banks) and creditors (depositors of funds). Likewise, there exists a trust relationship between the bank and its clients, whereby the bank is obligated to provide fiduciary services to its clients. [22]
2. Principle of Confidentiality (Confidential Relation), bank-customer civil cases (Article 43), tax interests (Article 41), bank receivables settlement (Article 41 a), criminal justice (Articles 42 and 42 A), information sharing between banks (Article 44), and at the request, approval, or power of attorney of depository customers (Article 44 A). The connection between the bank and the depository customer is founded on the idea of secrecy, as evidenced by the provisions or duties the bank has provided to keep its customers' financial information private.
3. Prudential Relation, according to the precautionary principle, banks must follow it when performing their duties and engaging in business dealings in order to safeguard the public money that have been entrusted to them. [23]

Freedom of communication or the implementation of this principle is not absolute in cases where banks are subject to regulations regarding confidentiality under Law Number 10 of 1998 Concerning Amendments to Law Number 7 of 1992 Concerning Banking and Insurance. The principles outlined in the following clauses are subject to limitations under the Civil Code: If an agreement is made without the consent of the party making it, it is void, according to Civil Code Article 1320 paragraph (1). The "principle of consensuality" appears to govern treaty law, as indicated by this paragraph.

The understanding that a party's freedom to decide what is in a contract is constrained by the other party's agreement is found in Article 1320 paragraph (1) of the Civil Code. In other words, the principle of consensuality limits the freedom of contract. It can be inferred from Civil Code paragraph 1320(2) that competence places restrictions on an agreement's flexibility. There is no freedom at all for someone who is legally declared incapable of entering into agreements to enter into them.

The parties are not free to establish agreements with causes that are against the law, good decency, or public order, as stated in Article 1320 paragraph 4 in conjunction with Article 1337 of the Civil Code. Regarding the freedom of the parties to enter into an agreement with respect to its goal, Article 1332 of the Civil Code offers guidance. This clause states that only things with monetary value may be utilized as the subject of an agreement; no other products may be promised. [24]

V. CONCLUSION

The interests of individuals and societies can be protected as the normative purposes of a state, such consent is required by propriety, custom or legislation. This Article shall be interpreted to mean that not only the provisions of propriety, custom, and laws that allow or contain orders are binding or applicable to an agreement, but also provisions, generally involving the parties to agree and disagree on certain matters that will hereinafter be included in the Agreement, Non-fulfillment of balance, in the context of the principle of balance, not only to assert facts and circumstances, rather it is to influence the juridical power of the covenant. In the making or formation of an agreement, an imbalance may arise as a result of the behavior of the parties themselves or as a consequence of the substance (content of the contract) or the performance of the agreement. The more fundamental problem is that because the content of the standard agreement is made unilaterally, the agreement tends to include unbalanced rights and obligations, the imbalance factor occurs in the standard agreement, then the basic is to individuals with companies, economic problems, so there is no option to determine a balanced agreement position.

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