Juridical Analysis of the Application of the Principle of Contractual Balance in the Law of Agreements

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Abstract
In the law of agreements, standard contracts have long been used in various contracts. The use of standard agreements is closely related to economic advancements that demand efficiency in cost, time, and energy expenditure. Standard agreements do not reflect the principle of balance between the parties in the agreement. The imbalance in positions in standard agreements is caused by the parties having unequal bargaining positions, resulting in "unreal bargaining." The purpose of this research is to understand the implementation of the principle of balance in agreements that use standard agreements. The method used in this research is normative, referring to legal norms found in regulations, using qualitative data and a descriptive-analytical approach. The research results indicate that imbalance occurs when the parties are in different economic strengths. The balance of an agreement is not solely determined by the positions of the parties but also by aspects of good faith. There are three aspects for the balance in an agreement to be achieved: the actions of the parties, the content of the agreement, and the implementation of the agreement. Ultimately, this will become binding for the parties involved.

1. Introduction

Humans, in fulfilling various needs, employ various methods, one of which is by making agreements. In the Civil Code (KUH Perdata), agreements are regulated in Book III (Articles 1233-1864) concerning Obligations. Article 1313 of the Civil Code states: "An agreement is an act by which one or more persons bind themselves to one or more other persons." An agreement consists of elements, namely competent parties, agreed-upon subject matter, legal consideration, mutual agreement, and mutual rights and obligations. Based on the above definition, an agreement consists of: Parties; There is an agreement between the

parties; There is a performance that will be carried out; In oral or written form; There are specific conditions as the content of the agreement; There is an intended goal.[1]

Generally, an agreement is the parties' consensus on something that creates a legal obligation/relationship, resulting in rights and obligations. If not executed as agreed, there will be sanctions. An agreement essentially binds, even in accordance with Article 1338 paragraph (1) of the Civil Code, this agreement has the binding force of law for the parties who make it. The creation of an agreement should consider important aspects, including the valid conditions of the agreement, the principles of the agreement, the rights and obligations of the parties, the structure and anatomy of contract formation, dispute resolution, and the termination of the contract.[2]

The purpose of the agreement is to achieve a balance of interests between the parties. Thus, balance becomes crucial, even the central point from the beginning, starting from the pre-contractual stage (offer stage), then at the time of the agreement that creates obligations between the parties (contractual stage), to the stage of implementing the binding agreement. The existence of legal principles must be considered in the contract process to create balance and preserve the rights held by the parties before the contract becomes a binding obligation.[3]

"The fundamental idea is generally of a nature that serves as the background for specific regulations found within and behind every legal system manifested in legislation and judicial decisions, constituting positive law and can be elucidated by seeking common characteristics in these concrete regulations."

In general, the forms of agreements used by parties in agreements can be oral or written. However, gradually, the forms of agreements used in Indonesian society have undergone changes and developments. These changes and developments are not separate from the influence of the progress of science and technology, the influence of the development of social, economic, and industrial conditions experienced by society today.[4]

With these developments, people have started to freely determine their positions and freely determine the content and form of agreements. In connection with the growing economic growth, agreements have emerged among parties that use more practical formats. These agreements are called standard agreements, which appear practical but are actually more advantageous to their

[1] Taufik Hidayat Lubis, 'Hukum Perjanjian Di Indonesia', *SOSEK: Jurnal Sosial Dan Ekonomi*, 2.3 (2022), 177–90.
[2] Yudhi Setiawan, Budi Sutrisno, and Ari Rahmad Hakim B.F., 'Pelaksanaan Pasal 1338 Ayat (1) (3) KUHPDT Tentang Kebebasan Berkontrak Dan Itikad Baik Dalam Pembiayaan Kendaraan Bermotor', *Jurnal Kompilasi Hukum*, 5.1 (2020), 148–78.
[3] Niru Anita Sinaga, 'Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian', *Jurnal Ilmiah Hukum Dirgantara*, 10.1 (2019).
[4] Niru Anita Sinaga, 'Peranan Asas Itikad Baik Dalam Mewujudkan Keadilan Para Pihak Dalam Perjanjian', *JURNAL ILMIAH M-PROGRESS*, 8.1 (2015) <https://doi.org/10.35968/m-pu.v8i1.186>.

creators. Business actors are required to increase the efficiency of transaction time in serving consumers, thus requiring more effective contract binding.

The application of standard agreements initially aimed to shorten time for greater effectiveness and efficiency. However, it turns out that this may not be fair to one party and tends to be advantageous to the creator. Standard agreements have emerged in every business transaction, ranging from large-scale to small-scale transactions. The emergence of standard agreements is actually an indirect result of the introduction of the principle of freedom of contract (Article 1338 of the Civil Code). This causes an imbalance in the positions of both parties in a negotiation, ultimately resulting in an agreement that is not very favorable to one party. Businesses often interpret this advantageous position by creating standard agreements and/or standard clauses in any document or agreement made by one party that is "more dominant" than the other.[5]

They are said to be "standard" because both the agreement and the clauses cannot be negotiated or bargained by the other party. Balance is recognized in an agreement as a principle, where the principle of balance requires both parties to fulfill and execute the agreement. The principle of balance in a contract or agreement must be considered so that one party is not disadvantaged simply because there is freedom of contract between the two parties in making an agreement. Essentially, an agreement begins with a difference in interests among the parties. The formulation of contractual relationships generally begins with a negotiation process among the parties.[6]

Balance is a principle intended to harmonize legal institutions and fundamental principles of contract law, known in civil law based on the individualistic thinking and background on one hand and the mindset of the Indonesian nation on the other hand. Balance is also defined as an effort to achieve a state of equilibrium, thus requiring a legitimate transfer of wealth. The purpose of balance in several rules that have been presented is the occurrence of equality in the positions of rights and obligations between the parties in an agreement with the same terms and conditions (ceteris paribus), and no party dominates or exerts pressure on the other party.[7]

2. Research Method

The method used in this research is normative juridical, which refers to legal norms found in legislation, court decisions, using qualitative data and employing a descriptive-analytical approach. All data related to this research are

[5] Agus Satory, 'Perjanjian Baku Dan Perlindungan Konsumen Dalam Transaksi Bisnis Sektor Jasa Keuangan: Penerapan Dan Implementasinya Di Indonesia', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 2.2 (2015), 269–90 <https://doi.org/10.22304/pjih.v2n2.a4>.
[6] Sri Lestari Poernomo, 'Standar Kontrak Dalam Perspektif Hukum Perlindungan Konsumen', *Jurnal Penelitian Hukum De Jure*, 19.1 (2019), 109–20 <https://doi.org/10.30641/dejure.2019.V19.109-120>.
[7] Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, 'Implementasi Asas Keseimbangan Bagi Para Pihak Dalam Perjanjian Baku', *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8.1 (2019), 61–75 <https://doi.org/10.24843/JMHU.2019.v08.i01.p05>.

processed and systematically organized, then qualitatively analyzed to draw conclusions in descriptive form.[8]

3. Results and Discussion

In an agreement, the parties express their intentions in a promise. In fact, an agreement is based on a specific purpose or intention. The purpose of an agreement is grounded in the agreed-upon intentions, manifested in the form of promises among the parties. However, imbalances can arise in an agreement, which may result from the behavior of the parties themselves or as a consequence of the agreement's implementation.[9]

Legal principles provide the broadest foundation for the emergence of legal regulations. This means that legal regulations can ultimately be traced back to these principles. Legal principles are not only useful for solving new problems and opening new fields but are also necessary for interpreting rules in line with the principles underlying those rules. The role of these legal principles is crucial for interpreting rules that cannot completely resolve issues.

As commonly understood in everyday language, the term "balanced" (evenwicht) refers to the idea of a "state where the distribution of burdens on both sides is in balance." In the context of this study, "balance" is understood as a "state of tranquility or harmony because no one dominates, or because no one element controls the others." Balance is also defined as something based on efforts to achieve an equal state as a result of which a legitimate transfer of wealth must occur.[10]

The principle of balance is a principle in Indonesian Contract Law that is a continuation of the equality principle, which calls for a balance of rights and obligations among the parties in an agreement. The principle of balance, besides having certain characteristics, must also consistently be directed towards concrete truth.

The principle of balance not only encourages but also serves as a working principle in contract law, both in Indonesian contract law and Dutch contract law representing modern law. In Dutch contract law, the application of the principle of balance is evident in the obligation to adhere to morality, good faith, propriety, and appropriateness in fulfilling rights and obligations in an agreement.[11]

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[8] Ani Purwati, *Metode Penelitian Hukum: Teori Dan Praktek* (Surabaya: CV. Jakad Media Publishing, 2020); I Made Pasek, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Pranadamedia Grup, 2016).

[9] Alya Yudityastri and Suraji, 'Klausula Baku Dalam Perjanjian Endorsement Dikaitkan Dengan Asas Kebebasan Berkontrak', *Jurnal Privat Law*, 8.2 (2020), 165–72 <https://doi.org/10.20961/privat.v8i2.48402>.

[10] Sulhi Muhamad Daud, 'Hukum Objek Dan Kausa Dalam Perjanjian (Sebuah Perbandingan Antara Hukum Perdata Dan Hukum Islam)', *Islam & Contemporary Issues*, 1.1 (2021), 59–64 <https://doi.org/10.57251/ici.v1i1.79>.

[11] Nasaruddin Nasaruddin and Yulias Erwin, 'Implementasi Asas Keseimbangan Dalam Perjanjian Baku Untuk Mewujudkan Keadilan Bagi Para Pihak', *Jurnal Law and Goverment*, 1.1 (2023).

An agreement is an event where two individuals promise to do something while prioritizing the principle of mutual trust to fulfill promises. An agreement is not sufficient solely through oral communication; it also needs to be documented in writing. A written agreement can be used by the parties to monitor each other to ensure compliance with and adherence to the agreement terms. Non-compliance by one party with the terms of the agreement will harm the interests of the other party.[12]

Agreements in the economic world are essential instruments for realizing economic changes in the distribution of goods and services. Agreements aim to create a better situation for both parties involved. Agreements have three fundamental purposes, namely:

a. Enforce a promise and protect reasonable expectations arising from it;
b. Prevent unjust or improper self-enrichment by one party;
c. To prevent certain kinds of harm.[13]

In addition to the three mentioned purposes above, Herlien Budiono adds a fourth purpose of an agreement: achieving a balance between one's own interests and the relevant interests of the other party. The requirement for balance as the fourth purpose is achieved through social propriety, an immaterial existence achieved within the spirit of balance. In an agreement, individual and societal interests are simultaneously guaranteed by objective law.

Agreements from a substantive or purposeful standpoint that are contrary to morality and/or public order will be legally null and void, and essentially the same applies to agreements that contradict the law. It is clear that social propriety is not embodied in such agreements. Imbalance in agreements can arise due to the behavior of the parties themselves or as a consequence of the substance (content) of the agreement or the implementation of the agreement.[14]

Related to the content or purpose of the agreement, the parties expand by increasing expectations to achieve entrusted performances. From the foundational thoughts of the parties, it can be understood whether future expectations can be objective or, on the contrary, involve sacrifices from the opposing party, resulting in such a way that future expectations end in imbalance. Achieving a balanced state implies, in the context of future expectations, an objective effort to prevent one party's loss in the agreement. Understanding the content of the agreement is a necessity, and achieving a balance in contracting is crucial in an agreement.

Agreements have several aspects: the actions of the parties, the agreed-upon content of the agreement, and the implementation of the agreement. The three interrelated aspects of the agreement above can be brought forth as testing factors concerning the effectiveness of the balance principle. The same is also stated by Mariam Darus Badrulzaman, who mentions that an agreement has several

[12] Satory.
[13] I Putu Eka Juliawan and I Made Dedy Priyanto, 'Wanprestasi Dalam Perjanjian Pengaturan Barang Dan Jasa', *Jurnal Kertha Wicara*, 9.9 (2020), 1–11.
[14] Yudityastri and Suraji.

aspects: the actions of the parties, the content of the agreement, and the implementation of the agreement agreed upon by the parties. These three interrelated aspects of the agreement can be presented as criteria for the presence of balance, but they also serve as criteria for the presence of imbalance if the balance conditions and these three aspects are not fulfilled.[15]

Salim H.S mentions that the principle of balance is a principle that requires both parties to fulfill and execute the agreement. Meanwhile, Mariam Darus Badrulzaman states that the principle of balance is a continuation of the equality principle, where the creditor has the power to demand performance settlement through the debtor's assets, but the creditor also bears the responsibility to execute the agreement in good faith, thus maintaining a balanced position between the creditor and the debtor.

Understanding the meaning of the principle of balance, when examined from various scholars' opinions, generally implies the balance of bargaining positions between contracting parties. The interpretation of the effectiveness of the principle of balance includes:

a. The distribution of rights and obligations in contractual relationships seems to overlook the process that occurs in determining the final outcome of such distribution.
b. Balance appears to be the end result of a process.
c. Weaknesses in the economic or knowledge aspects on the part of the recipient of a standard contract result in the aspect of balance in positions not being fulfilled. The recipient of a standard contract generally signs the presented contract due to the need for the contract object.
d. The presence of power or authority held by one party being greater, as evident in contracts between the government in its capacity as a private legal entity in civil relations, such as procurement contracts for goods and services.[16]

In practice, an unbalanced position can be observed in clauses written in an agreement, where these clauses impose limitations on the parties, such as in bank credit contracts, contracts in the housing sector, parking services, electricity, and others. These types of contracts typically contain standard clauses. According to Sutan Remy Sjahdeini, a standard agreement refers to an agreement where almost all its clauses have been standardized by the user, and the other party basically has no opportunity to negotiate or request changes.

According to Hondius, a standard agreement usually contains standard terms in the form of written concepts included in several agreements that are yet

[15] Muhammad Ardi, 'Asas-Asas Perjanjian (Akad),Hukum Kontrak Syariah Dalam Penerapan Salam Dan Istisna', *Jurnal Hukum Diktum*, 14.2 (2016), 265–79 <https://doi.org/https://doi.org/10.37893/jbh.v7i2.318>.
[16] Muhammad Irayadi, 'Asas Keseimbangan Dalam Hukum Perjanjian', *HERMENEUTIKA : Jurnal Ilmu Hukum*, 5.1 (2021) <https://doi.org/10.33603/hermeneutika.v5i1.4910>.

to be made, and their quantity is uncertain, without negotiating their content beforehand. Thus, a standard agreement may include exemption clauses considered to be biased and unfair. Economically, the use of standard clauses in standard agreements has practical advantages, reducing lengthy negotiations and saving costs. However, legally, it creates an unbalanced position for the parties, as one party is usually forced to accept conditions already standardized by the other party.[17]

Unilaterally established standard agreements do not rule out the possibility of being abused by one party with a stronger bargaining position to press the weaker party. Meanwhile, the weaker party can only accept what is offered, often bearing the losses. But why does this still happen?

This is based on economic considerations, aiming to reduce costs, energy, and time arising in the creation of an agreement and is practical because it can be used and signed at any time. The unilateral creation of agreements without involving the customer is common in the banking environment. These agreements take the form of pre-prepared forms provided by the bank to the customer with the principle of a "take it or leave it" contract.

Customers cannot propose suggestions, input, or objections to the agreement format and its clauses. Generally, an agreement containing exemption clauses is considered unbalanced. The relationship between parties in an unbalanced agreement is undoubtedly unfair to the parties. Injustice occurring in an imbalanced relationship between parties is called undue influence, while injustice occurring in an imbalanced situation (not a relationship) is termed unconscionability. The essence of justice is the fulfillment of everything that is their right and obligation.[18]

Justice demands proportional, appropriate, balanced actions that align with the rights of every individual. The effectiveness of the balance principle optimally balances the interests of the parties, providing an ideal legal framework for the parties and ensuring justice in an agreement. Therefore, the balance of an agreement must be examined using three aspects, namely:

a. His own actions or individual actor;
b. Contract content;
c. Implementation of what has been agreed upon.

What is consistently emphasized in relation to balance in an agreement is the freedom to contract for the parties in establishing agreement clauses. Ridwan Khairandy states that freedom to contract is interpreted in two aspects: positive freedom to contract, where the parties have the freedom to create binding contracts that reflect the free will of the parties, and negative freedom to contract,

[17] Wurianalya Maria Novenanty, 'Perjanjian Baku Dalam Dunia Bisnis Dikaitkan Dengan Hak Asasi Manusia', *MELINTAS*, 33.1 (2017), 70–90.
[18] Made Sarjana, 'Pembatasan Klausula Eksonerasi', *Jurnal Notariil*, 1.1 (2016), 109–27 <https://doi.org/https://doi.org/10.22225/jn.1.1.175.109-127>.

where the parties are free from an obligation as long as the binding contract does not regulate it.[19]

Freedom to contract has a scope that includes the freedom to enter into agreements with anyone and on any subject, as long as it does not conflict with the law, decency, morality, and the scope of obligations subject to what has been agreed upon. This scope is connected to the principles of freedom to contract and the binding force of an agreement. This scope aligns with Article 1.1 of UNIDROIT, which states, "the parties are free to enter into a contract and to determine its content."

In a standard agreement where the content has been predetermined by one party, the legal principles within it may seem neglected. This can be observed in the absence of negotiations between the parties to determine the content of the agreement and the weakened bargaining position of one party, leading to an imbalance in the agreement. This imbalance can arise from the behavior of the parties or as a consequence of the content of the agreement, and it may also manifest in the implementation of the agreement itself.

Imbalances in an agreement can be exploited by the party in a dominant position to abuse the situation. Generally, imbalances occur when the parties have different economic power. The economically weaker party may feel compelled to accept the terms imposed by the economically stronger party. This economic imbalance can affect the mental state of the weaker party, leading to feelings of pressure. Under pressure, the weaker economic party is forced to make a "take it or leave it" decision.

The lack of freedom for one party in entering into an agreement goes against the principle of freedom to contract. Through this principle, individuals are given the freedom to make agreements as broadly as possible as long as they do not conflict with public order. Therefore, freedom to contract must be understood as a responsible freedom, meaning the freedom to make agreements as long as it does not harm the interests of the other party. This is crucial, considering that an agreement requires a balance of regulation and protection of the interests of each party. In other words, freedom to contract is limited by the obligation to respect the interests of the other party in a contractual relationship.

An unbalanced position or bargaining power in an agreement contradicts the legal goal of justice, as agreements are formed as a vessel to reconcile the interests of the parties in a fair exchange.

In connection with this, Agus Yudha Hernoko suggests that there is often a misconception about the existence of a contract that ultimately traps and misguides objective assessments, especially regarding the question of whether an agreement is balanced or unbalanced. Agus Yudha Hernoko further states that this misconception arises from focusing only on the differing statuses of the contracting parties. While not entirely incorrect, a fair and objective assessment

[19] Eric Rahmanul Hakim, 'Penegakan Hukum Lingkungan Indonesia Dalam Aspek Kepidanaan', *Media Keadilan: Jurnal Ilmu Hukum*, 11.1 (2020), 43 <https://doi.org/10.31764/jmk.v11i1.1615>.

would be more appropriate when evaluating the existence of an agreement, especially by examining its substance and the relevant contract categories.

A fair and objective view of an agreement should be interpreted broadly, focusing more on balancing the positions of the parties, where the parties are given the responsibility for balance, among other things:

a. The equality in the distribution of rights and obligations in contractual relationships seems to ignore the process that occurs in determining the final outcome of that distribution.
b. Balance appears to be merely the end result of a process.
c. State intervention is a coercive instrument to bind and ensure the balance of positions between the parties.
d. Balance of positions between the parties can only be achieved under the same terms and conditions (ceteris paribus).

The interpretation of an agreement in relation to the balance of the agreement shows that the balance of an agreement is not solely determined by the positions of the parties but also by the aspect of good faith.

Good faith is a principle that the parties must adhere to in order to create a pure (fair) agreement. The obligation of good faith has been mentioned in the Restatement (Second) of Contract, Chapter 9, Topic 2, Section 205, which states that "every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Similarly, it is stated in U.C.C. Section 1-203 that "every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement" (Gordon. D. Schaber, Claude. D. Rohwer).[20]

The principle of good faith in drafting an agreement is interpreted as honesty, wherein an individual places complete trust in the other party based on honesty and does not hide anything negative that may later cause difficulties. Good faith in drafting an agreement helps prevent unlawful actions and breaches of contract.

Secondly, the content of the agreement. The balance in the content of the agreement is inseparable from the awareness and agreement of the parties involved in making the agreement. If one party drafts the agreement, uses foreign language, includes relatively rigid clauses, and there is a lack of bargaining power for one party, they may not have the opportunity to participate in determining or modifying the content of the agreement.

Thirdly, the execution of the agreement, which is carried out by the parties as a form of compliance with the agreement's content. The hope is that the parties can execute the agreement in good faith, ensuring that no party is harmed.

Regarding the effectiveness of the balance principle, Agus Yudha Hernoko states that the balance principle works well in both the formation and execution processes of contracts. In cases of imbalance during the formation, drafting, or

[20] M. Muhtarom, 'Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak', *SUHUF*, 26.1 (2014), 48–56.

execution of an agreement, the balance principle offers a general accountability for the application of diverse norms and aims to assess whether there is a fair commitment to the agreement.

Due to the imbalance in positions between the parties, state intervention is necessary to help restore the balance. This intervention aims to represent the interests of the parties fairly. The need for state intervention is based on H.L. Hart's theory of "the minimum content of natural law" that human vulnerability is one of the reasons for the necessity of law.

In relation to the creation of standard agreements, state intervention is required through the establishment of legal rules and the handling of standard agreement cases through the courts (court decisions) to protect the weaker party, who has lower bargaining power due to limited access to information, education, and resources.

The absence of balance affects the legal strength of an agreement. Balance is achieved when parties agree to mutually bind themselves without pressure from any party. The parties should be in equal positions with the same rights and obligations. When equality is established, parties can conduct their business activities more effectively, leading to the well-being of the people. Therefore, with the intervention of the state or government, balance can be upheld in the agreement.

4. Conclusion

Based on the discussion above, conclusions can be drawn. Standard agreements typically contain standard conditions in the form of written concepts included in several agreements yet to be made, and their quantity is uncertain, without negotiating the content first. Standard agreements have dominated almost all contracts in business activities, based on the emphasis that standard agreements are more effective and efficient in their implementation. The existence of standard agreements cannot be contained or hindered because they grow and develop alongside the growth and development of the business world, driven by society's need for such standard agreements. In general, imbalances occur when the parties have different economic power. To create a balance of rights and obligations among the parties, an agreement needs to incorporate the principles of balance, justice, and fairness, serving as guidelines and rules in regulating and forming the agreement. Ultimately, it becomes a binding commitment for the parties, enforceable in its execution or fulfillment. The optimal functioning of the balance principle will balance the interests of the parties, provide an ideal legal framework, and deliver justice in an agreement. The balance of an agreement is not solely determined by the positions of the parties but is also influenced by the aspect of good faith. There are three aspects to achieving balance in an agreement: the actions of the parties, the content of the agreement, and the execution of the agreement.

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