International Journal of Social Science Research and Review

http://ijssrr.com
editor@ijssrr.com
Volume 6, Issue 4
April, 2023
Pages: 480-485

The Principle of Freedom of Contract in Standard Agreements Viewed from the Nature of Justice

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http://dx.doi.org/10.47814/ijssrr.v6i4.1089

Abstract

A company that cooperates with other parties usually makes a standard agreement, in which they set their own terms of cooperation for the common good. This paper discusses the principle of freedom of contract in standard agreements, using normative research methods. Even though standard agreements are regulated in Articles 1330 and 1338 of the Indonesian Civil Code (KUHPer) which explain freedom of contract as one of the principles, there are still questions regarding the extent to which the principle of freedom of contract applies in standard agreements that apply in Indonesia.

Keywords: *Agreement; Standard Agreement; Freedom of Contract; Legal Principles*

Introduction

1. Background

In contract law, there is a principle known as "the principle of freedom of contract". This principle allows anyone to enter into an agreement containing any conditions, as long as the agreement is made in a legal manner, in good faith, does not violate decency and public order.[1] This freedom is considered a human right and respect for free will.[2] By understanding this principle, one is allowed to make agreements with other parties. This principle also assumes that both parties to the agreement have the same bargaining position. In Indonesia, the principle of freedom of contract is recognized in contract law, so that the contract system applied in Indonesia is an open system.

[1] Gemala Dewi, Legal Aspects in Sharia Banking and Insurance, (Jakarta, Kencana, 2004), p. 187.
[2] Ibid., p. 193.

The existence of the principle of freedom of contract in a standard or standard agreement can be said to have not been fulfilled because in reality it is very rare for the parties to the agreement to have a balanced bargaining position and those who have a stronger bargaining position will determine more about the contents of the agreement. It is no longer possible for the parties to renegotiate the contents of the agreement and some of them are deliberately left blank to provide opportunities for negotiations with the new consumer parties to be filled in after an agreement is reached. [3]In general, the possibility of negotiation is only matters related to the type, price, quantity, color, place, term of the contract, and some specific things about the object being agreed.[4]

Whereas if seen from practice , agreement standard / agreement raw There is something distorted thing _ from the conditions agreement because of the agreement inside condition shah agreement the should must happen negotiation or bid bid sehingha can he found something deal . However , practice _ agreement default / standard This more mastered by one party that is creditor consider what the debtor feels _ Where debtor feel deal done _ Far from justice because in fact from A justice .

According to Abdul Kadir Muhammad, an agreement refers to an agreement where one or more people agree to do something related to matters related to wealth.[5] The contract or agreement itself is a series of agreements made by the parties to bind themselves to each other. Many foreign companies that come to Indonesia bring various types of agreements, including standard contracts used for agreements for the supply of goods and services.[6]

In essence, standard agreements aim to provide convenience or practicality for the parties in conducting transactions. Therefore, the rapid development of standard agreements is unstoppable in an era that demands practicality in conducting transactions. [7]The standard agreement was born because of the increasing economic interests of the community. In reality, a standard agreement is only a unilateral statement, namely a statement from a party who feels more interested in the legal action that will result from the existence of the agreement based on the will of the business actor. Standard agreements have advantages and disadvantages.

The advantages are that it is more efficient, simplifies business practices, saves time and costs and can be signed if the parties have agreed on the contents of the standard agreement. The weakness is the lack of opportunity for the consumer to negotiate or change the clauses in the contract concerned, in this case the consumer has a weak position.[8]

In addition, the standard agreement only pays attention to time efficiency in carrying out or making the agreement. Meanwhile, in this case the beneficiary is the entrepreneur who makes the standard agreement, the consumer is only in two choices, namely accepting the agreement or not accepting the agreement. The standard agreement does not have a balance of will for the parties who make the agreement in making it. Because the consumer does not participate in determining the contents of the agreement. Meanwhile, the principle of freedom of contract still looks gray in the standard agreement.

[3]Ibid., p. 186.
[4]Shidarta, Indonesian Consumer Protection Law, (Jakarta, Grasindo, 2000), p. 120
[5] I Made Aditia Warmadewa and I Made Udiana, 2016, “The Legal Consequences of Default in the Agreement Baku”, Kertha Semaya Vol.04.
[6]Mariam Darus Badrulzaman, 1989, Bank Credit Agreement, Bandung Alumni, p .30 .
[7]I Gusti Ayu Ratih Pradnyani, I Gusti Ayu Puspawati and Ida Bagus Putu Sutama, 2016, "Standard Agreements in Consumer Protection Law", Kertha Semaya Vol. 04, No. 05.
[8]Putu Prasintia Dewi and Anak Agung Sagung Wiratni Darmadi, 2015, "Principles of Naturalia in Standard Agreements", Kertha Semaya Vol. 03, No. 05.

2. Problems

There are several problems that can be taken from the background in this research article, namely as follows.

1. What is the role of the Principle of Freedom of Contract in a Standard Agreement in View of the Nature of Justice?

2. What Are the Legal Consequences If a Standard Contract Agreement Contradicts the Nature of Justice?

Research Methods

The research method used in this writing is normative legal research, namely research that emphasizes the deductive method as the main holder, this normative analysis mainly uses library materials and statutory regulations as a source of research material.[9]

Results and Discussion

Based on the provisions above, it can be interpreted that everyone can make an agreement with any content, there is freedom for every legal subject to make an agreement with whoever he wants, with the desired content and form. [10]International law experts often mention that *good faith* is the main basis for the enactment of the *pacta sunt servanda principle*, in which a contract must be carried out without prejudice, so the parties must carry it out in good faith (bona fide). [11]According to Treitel, as quoted by Sutan Remy Sjahdeini, *freedom of contract* is used to refer to two general principles, namely:

1. The general principle states that the law does not prevent the terms that can be agreed upon by the parties, but does not mean that the terms of the agreement that are cruel or unfair to one of the parties remain in effect. This principle aims to emphasize that in the freedom of contract, the parties are free to determine the contents of the agreement to be made.
2. The principle also states that in general a person cannot be forced to enter into an agreement according to law. Therefore, freedom of contract includes the freedom of the parties to choose with whom they want or do not want to enter into an agreement.

Further elaboration of the principle of freedom of contract according to Indonesian contract law includes the following scope:[12]

1. The liberty to create or decline contracts.
2. The liberty to select the party with whom to engage in a contract.
3. The liberty to establish or choose the reason for the made contract.
4. The liberty to determine the subject matter of the contract.
5. The liberty to decide the conditions of an agreement, including the ability to agree or disagree with the provisions of the law which are discretionary (supplementary, optional).

[9]Aminuddin and Zainal, 2008, Introduction to Legal Research Methods, PT. Raja Grafindo Persada, Jakarta, p.166.
[10]Christiana Tri Buddhaayati, *The Principle of Freedom of Contract in Contract Law in Indonesia*, Widya Sari Journal, Vol. 10 No. 3 January 2009, p. 236.
[11]Munir Fuady, *Grand Theories (Grand Theory) in Law*, (Jakarta, Prenadamedia Group, Print 3, 2014), p. 241.
[12]Sutan Remy Syahdeini, Freedom of Contract and Balanced Position of Debtors and Creditors, paper presented at the Indonesian Notary Association Seminar in Surabaya on April 27, 1993, p. 10

In practice, the principle of freedom of contract is used as the basis for using standard contracts to regulate transactions between consumers and business actors. A standard contract is a written contract made by one of the parties and often has been printed with certain clauses that are difficult to change. The other parties to the contract can only fill in certain data without having many opportunities to negotiate clauses made by one of the parties, so the contract tends to be one-sided.

According to Article 1 number 10 of Law no. 8 of 1999 concerning Consumer Protection, standard clauses are any rules or terms and conditions predetermined by business actors in documents or agreements that are binding and must be fulfilled by consumers. A standard agreement is an agreement that has been determined by a business actor with certain conditions.

In a standard agreement, consumers are not free to determine the contents of the agreement and can only accept or reject the agreement. The principle of freedom of contract is still a question in this regard. The principle of freedom of contract can be taken from Article 1338 paragraph (1) of the Indonesian Civil Code (KUHPer) which states that an agreement made legally applies as a law for the party making it. The party making the agreement must comply with the agreement and make it with the consent and knowledge of all parties.[13]

So, thus it can be understood that the freedom that is owned by each individual gives to every actor or party who enters into an agreement has a right or freedom to contract, in this case is to determine the contents of the contract. The principle of freedom of contract can also be found in article 1330 of the Civil Code. If you look at this provision, it can be concluded that everyone is free to choose the party he wants to make an agreement, as long as that party is not an incompetent party.

In Article 1338 paragraph (1) of the Civil Code, there is no clear explanation regarding the meaning and limitations of the principle of freedom of contract. The article only explains that the agreement made will become law for the parties who make it. In addition, Article 1330 of the Civil Code also only states that freedom of contract is owned in choosing the party you want to make an agreement with.

Even so, standard agreements can be fulfilled under the principle of freedom of contract as stipulated in Article 1330 of the Civil Code, as long as each party making the agreement chooses the party to be made a partner in making the agreement. Because there are no clear boundaries in the principle of freedom of contract, if an agreement has been approved by the parties who make it, then the agreement is considered as law for them.

In this case, the agreement is defined as an agreement between the parties who make an agreement. The principle of consensuality means that an agreement is deemed to have been reached since the parties reached an agreement, which must meet the requirements listed in Article 1320 of the Civil Code. The agreement must be made with the voluntary consent of the parties and must be valid, in accordance with the provisions of Article 1321 of the Civil Code which states that no agreement is valid if the agreement is given due to mistake, coercion or fraud.

With this principle it can be concluded that agreeing to an agreement must be voluntarily from each party without any coercion or deception from the other party. Agreements that have been approved are only void or no longer valid if proven to have violated Article 1320 of the Civil Code, meaning that all losses and gains that will be obtained by parties who agree to the standard agreement must be accepted and followed by the parties that have agreed to them.

[13] Abdulkadir Muhammad, 2006, Engagement Law, PT. Citra Aditya Bakti, Bandung, p .87

On the other hand, the imbalance of position between the parties in an agreement results in the weaker party not having full freedom to determine the terms it wants in the agreement. In such a situation, the party with a more powerful position tends to take advantage of this opportunity to stipulate certain provisions in the standard agreement, which tends to only look out for their own interests. Therefore, if there is an unequal position between the parties, then this must be rejected because it will affect the substance as well as the intent and purpose of making the contract. The interpretation of the term balance regarding the substance content of the rule is:

1. More emphasis on equal distribution of the position of the parties, which means that the contractual relationship must provide equal benefits for both parties.
2. Equality in rights and obligations in contractual relations, regardless of the process used to determine the distribution.
3. Balance is seen as the result of a process, and not just a state given by nature.
4. Government intervention is considered as a coercive and binding tool to create equal distribution of position between the parties.
5. The basic principle of equal distribution of the positions of the parties can only be achieved if all the terms and conditions involved are the same (ceteris paribus).[14]

A standard agreement can be accepted as an agreement based on the fiction of will and trust (*fictie van wil en vertrouwen*) which arouses the confidence of the parties to bind themselves to the agreement. If the consumer accepts the agreement document, it means that the consumer voluntarily agrees to the contents of the agreement. The application of certain clauses carried out by parties who have a stronger position which results in losses for the weaker party, is usually known as "abuse of circumstances".[15]

Abuse of circumstances occurs when a person knows or should understand that the other party is in a special situation such as a state of emergency, addiction, inability to think long term, abnormal mental state or lack of experience, and uses that situation to compel them to take legal action, even though the is should have prevented it.[16] For example, when a customer who is a debtor in a banking institution, due to an urgent need for funds, does not have free will to accept or reject the credit agreement form submitted by the bank. In situations like this, they are forced to agree to terms determined unilaterally by the bank, even though these conditions have the potential to harm debtor customers.

Conclusion

1. Principle of Freedom Contracting in the Standard Agreement (Standard) Review from essence justice is deep balance _ contract exists position bid bid from the parties so that realization justice felt by the parties involved _ agreement
2. In the Civil Code the data does not explain clearly the meaning and limitations of the principle of freedom of contract, so that in a standard agreement it can be said that it has fulfilled the principle of freedom of contract if it refers to Articles 1330 and 1338 of the Civil Code concerning freedom of contract.
3. Legal Consequences if Contract the Standard Agreement (Standard) is contradictory with essence Justice the edition null and void, because contradict one _ objective law that is look for justice.

[14]Yudha, HA Law of Agreement, *Principle of Proportionality in Commercial Contracts,* (Jakarta, Kencana Prenada Media Group, 2010), p. 84.
[15]Ahmadi Miru , *Contract Drafting Contract Law* , (Jakarta, RajaGrafindo Persada, 2008), p. 41.
[16] Purwahid Patrik, Fundamentals of Engagement Law, (Bandung, Mandar Maju, 1994), p. 61

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