

The Application of the Principle of Balance Between the Parties in Standard Form Contracts under Civil Law

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ABSTRACT

Standard form contracts are widely used in business activities due to their efficiency and practicality. However, their unilateral nature often places one party, particularly consumers, in a weaker bargaining position. This condition raises concerns regarding the application of the principle of balance between the parties as a fundamental principle in civil law. This study aims to analyze the application of the principle of balance in standard form contracts under civil law and to examine the extent to which existing legal regulations provide protection for the weaker party. This research employs a normative juridical method by analyzing statutory regulations, legal doctrines, and relevant legal principles, particularly those contained in the Civil Code and consumer protection laws. The results of the study indicate that although the principle of balance is recognized in civil law, its implementation in standard form contracts has not been fully realized, as many contractual clauses tend to favor business actors. Therefore, stronger legal safeguards and stricter supervision are required to ensure fairness and balance between the parties in standard form contracts.

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1. INTRODUCTION

Contracts occupy a central position in civil law as legal instruments that generate rights and obligations between parties. In business activities, contracts serve to allocate risks, regulate performance, and provide legal certainty for commercial transactions. As business transactions become increasingly frequent and standardized, standard form contracts (perjanjian baku) are widely used because they offer efficiency, speed, and uniformity in drafting and implementation (Sjahdeini, 1993). However, the very characteristics that make standard form contracts practical pre-drafted clauses and limited negotiation also create a structural risk of imbalance between contracting parties.

Standard form contracts are generally drafted unilaterally by business actors and presented to the other party on a “take it or leave it” basis, leaving limited space for bargaining. This condition may lead to unequal bargaining power, particularly when the weaker party lacks sufficient legal knowledge, economic leverage, or realistic alternatives to refuse the agreement (Hernoko, 2010). In the Indonesian

context, empirical patterns observed in contractual practice show that standard clauses often prioritize the interests of the drafter and may reduce the space for fairness in contractual relations (Setiawan et al., 2021).

Within civil law doctrine, the principle of balance between the parties functions as a normative foundation to ensure that contractual rights and obligations are proportionate and fair. This principle is closely linked to other foundational principles of contract law, such as freedom of contract and good faith (Subekti, 2005). Although freedom of contract recognizes parties' autonomy to determine contractual terms, such freedom is not unlimited; it should operate within legal boundaries and must not undermine fairness, propriety, and the protection of weaker parties.

A recurring problem in standard form contracts is the inclusion of exoneration clauses, namely clauses that limit or even exclude the liability of business actors. Such clauses tend to shift risks disproportionately to the weaker party and may contradict the expected balance of obligations in contractual relations. Recent Indonesian legal scholarship emphasizes that exoneration clauses frequently reflect unequal positions between creditors/business actors and debtors/consumers, and therefore require stricter control to protect public interests and contractual fairness (Hidayat, 2018). Similarly, a study in Pandecta highlights that standard agreements containing exoneration clauses may cause consumer detriment and that consumer protection instruments have not always effectively reshaped business behavior without stronger enforcement mechanisms (Agustianto, 2022).

Indonesian law provides a specific legal framework to address unfair standard clauses, particularly through Law Number 8 of 1999 concerning Consumer Protection (UUPK). Under this framework, business actors are prohibited from inserting certain standard clauses that unfairly transfer responsibility or otherwise harm consumers. In contemporary business models—especially in technology-driven trade—standard clauses also appear in electronic contracts used by e-commerce platforms, which further reinforces the urgency of ensuring balance and fairness between parties (Prasetyo et al., 2024). This development indicates that standard form contracts are no longer limited to traditional paper-based agreements but have expanded into mass digital contracting practices.

Despite the existence of statutory prohibitions and doctrinal guidance, standard form contracts in practice still frequently contain clauses that disproportionately favor business actors. Research in Indonesian legal journals continues to underline that imbalance persists because standard clauses are often treated as unavoidable prerequisites to access essential goods or services, leaving consumers with minimal effective consent beyond formal acceptance (Setiawan et al., 2021). Therefore, a normative legal analysis is necessary to evaluate how the principle of balance is applied in standard form contracts under civil law and to assess whether the current legal framework provides adequate safeguards for the weaker party.

This study accordingly focuses on the application of the principle of balance between the parties in standard form contracts under civil law. The study is expected to contribute to contract law discourse by clarifying the doctrinal meaning of balance, identifying recurring legal issues in standard clauses, and formulating recommendations to strengthen fair contracting practices and consumer protection in Indonesia. This research is guided by several legal questions that focus on the application of the principle of balance between the parties in standard form contracts under civil law. First, this study seeks to examine how the principle of balance between the parties is regulated within the framework of civil law, particularly in relation to standard form contracts as governed by the Indonesian Civil Code and consumer protection legislation. Second, the research aims to analyze the extent to which the principle of balance has been applied in standard form contracts based on existing legal norms and doctrines. Finally, this study explores the legal implications that arise from the application or violation of the principle of balance in standard form contracts, especially with regard to the rights and obligations of the parties involved.

2. METHODS

This study employs a normative juridical research method, which focuses on examining legal norms contained in legislation, legal doctrines, and principles relevant to the issue under study. Normative legal research is appropriate for this study because it aims to analyze the application of the principle of balance between the parties in standard form contracts under civil law, rather than to collect empirical data from the field.

The research approach used in this study includes a statutory approach and a conceptual approach. The statutory approach is conducted by examining relevant laws and regulations, particularly the Indonesian Civil Code (Burgerlijk Wetboek), Law Number 8 of 1999 concerning Consumer Protection, and other related regulations governing contracts and standard clauses. Meanwhile, the conceptual approach is applied by analyzing legal doctrines, principles, and scholarly opinions related to contract law, standard form contracts, and the principle of balance between the parties.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and official legal documents related to contract law and consumer protection. Secondary legal materials comprise legal textbooks, journal articles, and scholarly writings that discuss standard form contracts, contractual balance, and consumer protection. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references that assist in clarifying legal terminology and concepts.

The technique of collecting legal materials is carried out through library research, by systematically reviewing and analyzing relevant legislation, academic literature, and legal journals. The collected legal materials are then analyzed using qualitative juridical analysis, whereby the materials are interpreted and systematically arranged to answer the research problems. The analysis is conducted deductively, starting from general legal principles and norms to draw conclusions regarding the application of the principle of balance in standard form contracts under civil law.

Through this research method, the study aims to provide a comprehensive and coherent understanding of the extent to which the principle of balance is applied in standard form contracts and to evaluate the adequacy of existing legal frameworks in ensuring fairness and protection for the weaker party in contractual relationships.

3. FINDINGS AND DISCUSSION

The results obtained from the research have to be supported by sufficient data. The research results and the discovery must be the answers, or the research hypothesis stated previously in the introduction part.

3.1 Regulation of the Principle of Balance in Standard Form Contracts under Civil Law

The principle of balance between the parties is not explicitly formulated in a single provision of the Indonesian Civil Code (Burgerlijk Wetboek). However, its existence can be inferred from several fundamental norms governing contractual relations, particularly Article 1320 concerning the validity of contracts and Article 1338 paragraph (3), which emphasizes that agreements must be performed in good faith. These provisions indicate that contractual freedom is not absolute and must be exercised in accordance with fairness and propriety (Subekti, 2005).

From a doctrinal perspective, the principle of balance requires proportionality between the rights and obligations of the parties. Hernoko (2010) explains that balance in contracts reflects substantive justice, where contractual clauses should not disproportionately benefit one party at the expense of the other. In standard form contracts, however, this balance is structurally challenged due to the unilateral drafting of contract terms by business actors. As a result, the weaker party usually consumers has limited bargaining power and often cannot influence the content of the agreement.

To address this imbalance, Law Number 8 of 1999 concerning Consumer Protection explicitly regulates standard clauses. Article 18 of the law prohibits business actors from including clauses that

exclude or limit liability, transfer responsibility, or impose unfair obligations on consumers. This provision reflects a legislative effort to operationalize the principle of balance by restricting contractual clauses that undermine fairness (Widjaja & Yani, 2000). Therefore, normatively, Indonesian civil law recognizes and seeks to enforce the principle of balance in standard form contracts through both general contract principles and specific consumer protection regulations.

The author argues that the principle of balance constitutes a fundamental normative foundation in civil law, even though it is not explicitly formulated as an independent principle within the Indonesian Civil Code. Its existence can be identified implicitly through several core provisions governing contractual relations, particularly those related to the validity and performance of contracts. Article 1320 of the Civil Code emphasizes consensual agreement and lawful cause as essential elements of a valid contract, while Article 1338 paragraph (3) requires agreements to be executed in good faith. These provisions collectively reflect the legislator's intention to prevent contractual arrangements that create disproportionate advantages for one party over the other (Subekti, 2005).

From the author's perspective, the principle of balance functions as a corrective mechanism to the principle of freedom of contract. Although freedom of contract grants parties autonomy to determine the contents of their agreements, such autonomy should not legitimize contractual domination or the exploitation of weaker parties. In the context of standard form contracts, the unilateral drafting of contractual terms by business actors often transforms contractual freedom into a formalistic concept that disregards substantive fairness. This condition supports the view that contractual freedom must be interpreted in conjunction with balance and good faith to ensure equitable legal relationships (Hernoko, 2010).

The author further contends that statutory intervention through consumer protection legislation represents a concrete manifestation of the principle of balance in positive law. Law Number 8 of 1999 concerning Consumer Protection, particularly Article 18, explicitly restricts the use of unfair standard clauses that transfer responsibility or limit the liability of business actors. This provision reflects the legislator's recognition that standard form contracts inherently risk creating imbalance and therefore require normative limitations to safeguard the interests of consumers as the weaker party (Widjaja & Yani, 2000).

Nevertheless, the author observes that regulatory recognition alone does not guarantee the effective realization of the principle of balance. The absence of explicit doctrinal formulation within the Civil Code often results in inconsistent interpretation and application in contractual practice. As a consequence, the principle of balance remains dependent on judicial interpretation and doctrinal development rather than functioning as a clearly enforceable legal standard. Therefore, the author emphasizes the need for a more systematic integration of the principle of balance into civil law doctrine to strengthen its normative force in governing standard form contracts (Setiawan et al., 2021).

3.2 Application of the Principle of Balance in Standard Form Contracts

Despite normative recognition, the application of the principle of balance in standard form contracts remains problematic. Findings from recent legal scholarship indicate that standard form contracts frequently contain exoneration clauses that shift risks and liabilities to consumers. Such clauses often limit the responsibility of business actors for losses arising from their own actions, thereby disrupting the proportionality of rights and obligations (Hidayat, 2018).

A study by Setiawan et al. (2021) demonstrates that standard agreements in various business sectors tend to prioritize efficiency and risk management for business actors rather than fairness for all parties. This practice suggests that the principle of balance is often subordinated to commercial interests. Consumers, lacking meaningful alternatives or negotiation opportunities, are compelled to accept these clauses as a prerequisite for accessing goods or services.

The problem is further intensified in electronic contracts used in e-commerce transactions. Standard form electronic contracts are typically presented in digital platforms with lengthy terms and conditions that consumers rarely read or fully understand. Research conducted by Prasetyo et al. (2024)

reveals that many electronic contracts still contain prohibited standard clauses, despite clear statutory restrictions under consumer protection law. This situation indicates a gap between normative regulation and practical implementation.

Thus, while the principle of balance is formally acknowledged in civil law, its practical application in standard form contracts remains limited. The dominance of business actors in drafting contractual terms continues to challenge the realization of balanced contractual relationships.

The author observes that the application of the principle of balance in standard form contracts remains largely normative rather than substantive. Although civil law doctrine and consumer protection regulations recognize the importance of proportional rights and obligations, standard form contracts in practice are predominantly drafted to secure the interests of business actors. This unilateral drafting process limits the weaker party's ability to negotiate contractual terms, thereby undermining the realization of balanced contractual relationships. As a result, the principle of balance often functions more as a theoretical ideal than as an operational standard in standard form contracts (Hidayat, 2018).

From the author's perspective, the imbalance is most evident in the widespread use of exoneration clauses that restrict or exclude the liability of business actors. Such clauses effectively shift contractual risks to consumers and contradict the expectation of proportionality embedded in civil law principles. Even though Article 18 of the Consumer Protection Law expressly prohibits clauses that unfairly disadvantage consumers, these provisions are frequently reproduced in standard form contracts with minimal modification. This practice demonstrates a persistent gap between normative regulation and contractual implementation (Agustianto, 2022).

The author further argues that the digitalization of business transactions has intensified challenges in applying the principle of balance. Standard form electronic contracts used by e-commerce platforms are typically presented through lengthy terms and conditions that consumers rarely read or fully comprehend. The absence of meaningful consent in such arrangements raises questions regarding the validity of contractual agreement from a substantive justice perspective. Recent legal studies indicate that many electronic contracts continue to contain prohibited standard clauses, revealing weak enforcement and supervision mechanisms in digital commerce (Prasetyo et al., 2024).

In the author's view, the limited application of the principle of balance in standard form contracts indicates the need for a more proactive role of legal institutions. The principle of balance should not be confined to abstract doctrinal discussions but must be operationalized through consistent law enforcement, judicial interpretation, and increased legal awareness among consumers. Without such efforts, standard form contracts will continue to reflect structural inequality rather than functioning as instruments of fairness and legal certainty within civil law relations (Setiawan et al., 2021).

3.3 Legal Implications of Imbalance in Standard Form Contracts

The failure to apply the principle of balance in standard form contracts has significant legal implications. Normatively, clauses that violate statutory provisions particularly those prohibited under Article 18 of the Consumer Protection Law are deemed null and void. This legal consequence is intended to protect consumers and restore fairness in contractual relations (Agustianto, 2022).

However, the invalidation of unfair clauses does not automatically guarantee effective protection. In practice, consumers often lack awareness of their rights or the legal capacity to challenge unfair standard clauses. Consequently, the deterrent effect of legal sanctions against business actors remains limited. This condition weakens the practical enforcement of the principle of balance and reduces the preventive function of contract law.

From a civil law perspective, the continued use of unbalanced standard clauses undermines the legitimacy of contractual consent. Although consumers formally agree to the contract, such consent may not reflect genuine autonomy due to unequal bargaining positions. As emphasized by Sjahdeini (1993), contractual justice requires not only formal agreement but also substantive fairness between the parties.

Therefore, strengthening the application of the principle of balance requires not only normative regulation but also stricter supervision, improved legal awareness, and consistent law enforcement. These measures are essential to ensure that standard form contracts function as instruments of legal certainty without sacrificing fairness and justice in civil law relations.

The author contends that the existence of imbalance in standard form contracts generates significant legal consequences within the framework of civil law. Normatively, contractual clauses that violate statutory provisions particularly those prohibited under consumer protection legislation are deemed legally ineffective. Article 18 of Law Number 8 of 1999 concerning Consumer Protection stipulates that unfair standard clauses are null and void by operation of law. This provision reflects the legislator's intention to correct contractual imbalance by invalidating clauses that undermine proportionality and fairness between the parties (Widjaja & Yani, 2000).

From the author's perspective, the invalidation of unfair clauses also affects the legitimacy of contractual consent. Although standard form contracts are formally accepted through signature or digital consent, such acceptance does not necessarily represent genuine autonomy when the weaker party lacks meaningful alternatives or bargaining power. In this context, imbalance in contractual relations may result in consent that is legally valid in form but substantively flawed. This condition challenges the classical notion of agreement under Article 1320 of the Civil Code, which presupposes equality between contracting parties (Subekti, 2005).

The author further observes that the legal implications of imbalance extend beyond individual contractual relationships to the broader credibility of contract law. Persistent tolerance of unbalanced standard clauses risks normalizing contractual practices that prioritize efficiency over justice. Legal scholars argue that such practices weaken the preventive and protective functions of civil law, as business actors may continue to rely on unfair clauses with minimal fear of legal consequences due to limited enforcement and consumer awareness (Agustianto, 2022).

In the author's view, addressing the legal implications of imbalance in standard form contracts requires a comprehensive approach that combines normative regulation, judicial interpretation, and effective enforcement mechanisms. Courts should play a more active role in interpreting contracts in light of the principle of balance, while regulators must strengthen supervision of standard clauses used in business practices. Without such systemic efforts, the legal consequences of imbalance will remain largely theoretical, and standard form contracts will continue to reflect structural inequality rather than fairness within civil law relations (Setiawan et al., 2021).

4. CONCLUSION

This study concludes that the principle of balance between the parties constitutes an essential normative foundation in civil law, particularly in governing standard form contracts. Although the principle is not explicitly articulated as an independent norm within the Indonesian Civil Code, its existence can be inferred from fundamental contractual provisions concerning the validity of agreements and the obligation to perform contracts in good faith. Consumer protection legislation further reinforces this principle by imposing limitations on the use of unfair standard clauses that disproportionately disadvantage the weaker party.

The findings indicate that the application of the principle of balance in standard form contracts remains limited in practice. Standard clauses are predominantly drafted by business actors and often contain provisions that prioritize efficiency and risk allocation in favor of the drafter. As a result, consumers are frequently placed in a subordinate position with minimal bargaining power, which undermines the realization of proportional rights and obligations as envisioned by civil law principles.

Furthermore, the imbalance inherent in standard form contracts carries significant legal implications. Unfair clauses that violate statutory provisions are legally null and void; however, the effectiveness of this legal consequence is constrained by weak enforcement mechanisms and limited consumer awareness. This condition reduces the preventive and corrective functions of contract law and allows unbalanced contractual practices to persist.

Therefore, this study emphasizes the necessity of strengthening the practical implementation of the principle of balance through consistent law enforcement, judicial interpretation that prioritizes substantive fairness, and enhanced regulatory supervision of standard form contracts. By reinforcing the normative and institutional framework, standard form contracts can function not only as instruments of efficiency but also as mechanisms that uphold fairness, legal certainty, and justice within civil law relations.

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