

JUSTICE FOR THE PARTIES TO THE STANDARD AGREEMENT RELATING TO THE FREEDOM CONTRACT PRINCIPLE

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Abstract

This research investigates the considerations necessary for creating a fair standard contract and implementing the principle of freedom of contract. A standard contract, typically drafted by one party with predetermined terms, is crucial in commercial transactions. Despite the principle of freedom of contract, ensuring fairness for all parties involved remains a challenge. The method employed is normative juridical research, utilizing secondary data sources. The findings showed that the standard contracts may not violate the principle of freedom of contract outlined in Article 1320 and Article 1338 of the Civil Code, conflicts may arise, particularly due to restrictive clauses like exoneration clauses. Parties have the right to review the contract and accept or reject its terms. However, disparities persist in standard contract formation, highlighting the need for further examination of their fairness and compliance with legal principles.

Keywords: Role; Principle of Freedom of Contract; Standard Contract.

Abstrak

Penelitian ini menyelidiki pertimbangan-pertimbangan yang diperlukan untuk menciptakan kontrak standar yang adil dan menerapkan prinsip kebebasan kontrak. Kontrak standar, biasanya dibuat oleh satu pihak dengan persyaratan yang telah ditentukan, sangat penting dalam transaksi komersial. Terlepas dari prinsip kebebasan kontrak, memastikan keadilan bagi semua pihak yang terlibat tetap menjadi tantangan. Metode yang digunakan adalah penelitian yuridis normatif, dengan memanfaatkan sumber data sekunder. Hasil memperlihatkan bahwa kontrak standar tidak boleh melanggar prinsip kebebasan kontrak yang digariskan dalam Pasal 1320 dan Pasal 1338 KUHPerdata, konflik dapat timbul, terutama karena klausul yang membatasi seperti klausul pembebasan. Para pihak memiliki hak untuk meninjau kontrak dan menerima atau menolak persyaratannya. Namun, disparitas tetap ada dalam pembentukan kontrak standar, menyoroti perlunya pemeriksaan lebih lanjut atas keadilan dan kepatuhannya terhadap prinsip-prinsip hukum.

Kata Kunci: Peran; Prinsip Kebebasan Kontrak; Kontrak Standar.

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INTRODUCTION

Article 1313 of the Civil Code states that an agreement is an act by which one or more people bind themselves to one or more other people. In general, an agreement is an agreement between the parties regarding something that gives rise to a legal agreement/relationship, giving rise to rights and obligations, if it is not carried out as agreed it will give rise to sanctions. The existence of an agreement will create an agreement for the parties. An agreement is a legal relationship between two people or two parties based on which one party has the right to demand something from another party and the other party is obliged to fulfill that demand." With the existence of an agreement it is hoped that the parties involved in it can carry out their rights and obligations. each of them is in accordance with the agreed agreements. In this way the aim of making the agreement can be achieved, namely the creation of justice, order and legal certainty.¹

In everyday life, one of the agreements we find is a standard agreement. A standard agreement is a written agreement made by one of the parties and in it the things that will be agreed are written, generally the parties only fill in informative data with little or no changes to the existing clauses. The party who is offered the standard agreement does not have the opportunity to negotiate and is only in the position of accepting or rejecting it. The purpose of making a standard agreement is the same as the purpose of agreements in general. To achieve this goal, you must pay attention to the principles contained in contract law. One of the principles that must be considered is the principle of freedom of contract.

The principle of freedom of contract is a principle that provides an understanding that everyone can enter into an agreement with anyone and for any matter. Basically, the principle of freedom of contract prioritizes the freedom and equality of every human being. The law requires equal treatment for all people, and is regulated in legal provisions, this is what is called equality. right. This principle of freedom of contract is a reflection of the open system of contract law. The parties can regulate anything in the agreement to the extent that is not prohibited by law, public order and morality. The legal basis for this principle is Article 1338 paragraph (1) of the Civil Code. All agreements made legally apply as law to those who make them.

In practice, these standard agreements cause problems and controversy. On the one hand, the standard agreement does not violate the principle of freedom of contract as contained in Article 1320 in conjunction with Article 1338 of the Civil Code.² This means that the party who will enter into an agreement is still given the right to approve or reject the agreement submitted to him. On the other hand, there are also those who consider standard agreements to violate the principle of freedom of contract. What often becomes a problem in standard agreements is the inclusion of exoneration clauses, namely clauses that contain conditions that limit or even eliminate responsibilities that should be borne by the provider. In a standard agreement, the opportunity for the opposing party to negotiate or change the clauses in the agreement is very minimal. So, this agreement has the potential for biased clauses to occur.³

¹ Badrulzaman, Mariam Darus. 1994. Various Business Laws. Bandung. Alumni. Badrulzaman, Mariam Darus. 1996. Civil Code Book III Law on Engagements

² Meliala Adrianus. 2009. Fraudulent Business Practices. Jakarta. Ray of hope

³ We are Anita. 2013. Build to Handover (Build Operate and Transfer/BOT) Building without having to own land (Perspective of Agrarian Law, Contract Law and Public Law). Bandung. CV. Keni Media.

The existence of this standard agreement does not actually need to be debated, considering that standard agreements have become a necessity in practice and become daily habits. What needs to be paid attention to is when the standard agreement contains elements that are unfair to one of the parties. This needs to be taken into account because in its daily application in making standard agreements there is very little application of the principle of freedom of contract. In fact, the principle of freedom of contract implies that people have the freedom to make agreements in accordance with their individual interests. This situation reflects that individual freedom and equality has been reduced or even no longer used in contract law, this can lead to conflict.⁴ If a conflict occurs, legal means are needed to resolve it. To overcome this problem, a solution is needed to create the goal of making an agreement, namely justice for the parties. With the background described above, the author would like to discuss what things must be considered when making a standard agreement and how the principle of freedom of contract can be implemented in a standard agreement so that justice can be achieved for the parties to the agreement.

METHOD

The research method used is normative juridical. In this research, the method used is normative juridical, then the data sources are mostly taken from secondary data. Secondary data is data obtained from library materials, obtained from sources in the form of primary and secondary legal materials.

RESULT AND DISCUSSION

1. Legal Basis for Cosmetics Distribution in Indonesia

The distribution permit is defined based on the Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number Hk.00.05.1.23.3516 concerning the Distribution Permit for Medicinal Products, Traditional Medicines, Cosmetics, Food Supplements, and Foods Sourced, Containing, From Certain Ingredients And / Or Containing Alcohol. This is a form of registration approval granted by the Food and Drug Administration of the Republic of Indonesia for drugs, traditional medicines, cosmetics, dietary supplements, and food products. This approval is required so that the product can legally circulate within Indonesia. Therefore, cosmetics without a distribution permit can be defined as cosmetic products that have not received registration approval from BPOM and are therefore not allowed to be legally circulated in Indonesia.

Agreements are made because of a reciprocal relationship between the two parties. Standard agreements are often found in agreements between business actors/companies and/or workers/consumers. An agreement is made because there is an agreement between two parties to fulfill all the agreements contained in it. An agreement arises because there is a reciprocal relationship which according to both parties is expected to be mutually beneficial, however in standard agreements there are often agreements that result in one-sided hardships. This happens because the position of the parties is not equal because the company is the party that has greater economic power than workers or consumers who have less economic power. So, in order to be equal and not biased, standard clauses must be considered. The principle of freedom of contract is a form of realization of the wishes of the parties and also upholds equality in every human right. The existence of an exoneration clause which is restrictive in nature reduces consumers' room for movement because it becomes inflexible and dynamic

⁴ R. Subekti. 2005. Contract Law. Jakarta: Intermasa.

in determining the contents of the agreement. In this case, consumers do not have strong enough authority so they are considered to lack control over the contents of the agreement.⁵

The birth of the principle of freedom of contract cannot be separated from trade patterns. The development of the principle of freedom of contract has actually occurred since the 16th century, where the king's power in various cases was used as the right to dominantly regulate the lives of his people. Monopoly practices were also applied to individuals, churches and townships. The recipients of these rights collected taxes from traders and issued regulations to guarantee and protect the monopoly. Apart from providing special privileges, the government at that time also strictly regulated workers and controlled the prices of consumer goods and also restricted trade between cities.

As time passes, society begins to realize the need for law to take care of its interests and also legal protection from things that are often not realized, including legal actions from various trade transactions such as selling goods/services, creating bank accounts, making power of attorney, and also purchasing goods. with the leasing bank. This often happens in land or housing buying and selling transactions with real estate agents or registering health insurance with insurance companies that offer their services, which of course involves the law. Without realizing it, this is one of the legal actions that we often encounter because when we agree to sign the purchase of land or house or sign insurance, a valid legal action occurs between the economic actor and the consumer. From this, rights and obligations arise between the two parties entering into the agreement.

Before the agreement is made, of course the parties negotiate first about how to make transactions and payments before actually deciding on an agreement between the two parties. The word of agreement is one of the main terms of agreement in making an agreement. Agreements are also a determinant in making standard agreements and are things that need to be taken into account when making an agreement and making an agreement. Article 1320 of the Civil Code explains in detail the 4 (four) legal requirements for making an agreement, including:

- a. There is an agreement between the parties
- b. The ability of the parties to enter into an agreement
- c. The existence of certain objects
- d. A legitimate cause

The first and second conditions are subjective conditions and the third and fourth conditions are objective conditions because they relate to the agreement. The terms of agreement in an agreement are a form of the result of a desire that is assessed by the absence of coercion, error and the absence of fraud in accordance with Article 1321 of the Civil Code which states that there is no valid agreement if the agreement was given due to mistake or was obtained through coercion or fraud. In general, the Civil Code does not require a special form or formality, whether it is written in the form of a notarial deed under the hand or verbally, both have the same legal force. However, if the agreement is made in writing, it will make it easier to prove it if an unwanted dispute occurs. Among the many agreements, some require the agreement to be written in writing, which is often called a formal agreement.

Legal competence means that the person involved is able to bear all the risks in the agreement and is mature in carrying out legal actions. A person who is an adult or legally competent is at least 18 years old, is not crazy, and/or for other reasons the law states that the person is not competent to carry

⁵ Miru Ahmadi. 2007. Contract Law and Contract Drafting Revised Edition. Jakarta. King Grafindo.

out legal actions. The third condition is an objective condition, so the agreement must have a legal object, such as the quantity, size, where it is located, what type it is and also its value/price. Then the fourth condition, namely a lawful cause, means that this condition does not violate legal provisions as stated in Article 1337 of the Civil Code that a cause is prohibited if it is prohibited by law, is contrary to morality or public order.⁶

According to Article 1332 of the Civil Code, objects only consist of goods that can be traded. Only those that have economic value can be used as objects in the agreement. Article 1338 paragraph 3 of the Civil Code stipulates the application of the principle of good faith in making agreements, because if it is based on bad faith then the agreement cannot be a valid agreement. The principle of good faith means that the freedom of the parties in making an agreement cannot be arbitrary but is limited by good faith.

A standard agreement is an agreement made in writing, unilaterally and made by a party who has the authority to determine the contents of the standard agreement therein. A standard agreement contains conditions that must be fulfilled by the parties, the contents of which have been adjusted and prepared in advance by the determining party. The position of standard agreements is closely related to the principle of freedom of contract, which explains that the principle of freedom of contract actually provides the parties with the opportunity to determine what content will be agreed upon in making a standard agreement. It's just that there are always weaknesses in making agreements, usually in determining the contents, consumers are not given the opportunity to negotiate the contents of the agreement.⁷

Based on the provisions of Article 1320 of the Civil Code, it can be interpreted as an abuse of the application of the principle of freedom of contract in standard agreements, especially in business activities. Because the decision was made not because of prior discussion between the parties, but most of the parties who entered into a standard agreement had already prepared a draft and just had to sign it, so it seemed that they only wanted their own profit because they did not negotiate the contents of the agreement. Therefore, consumers must also be smart in paying close attention to an agreement given by an authorized party to see whether the agreement made is still rational to consider before signing and an agreement is reached.⁸

For debtors or especially consumers, they are obliged to pay attention to the clauses in the agreement, usually parties who have a strong position only allow them to read the terms they propose, if approved, the consumer will continue the agreement by signing the agreement as a result of the agreement, but if they reject the contents agreement then the agreement cannot continue. That is why standard agreements are now widely known as "take it or leave it contracts"

Sluitjer believes that a standard agreement is not an agreement, because the position of the entrepreneur in the agreement is like that of a private legislator (*legio particulere wet-gever*). The conditions determined by the entrepreneur/business actor in an agreement are regulations and not an agreement. This was also expressed by Mariam Darus Badruzaman that the positions of entrepreneurs and consumers are not equal in standard agreements, standard agreements are considered to tend to be one-sided or one-sided. The existence of different positions for the parties when a standard agreement

⁶ Shidarta. 2014. Indonesian Consumer Protection Law. Jakarta. Kencana.

⁷ Soekanto, Soerjono and Sri Mamudji. 2004. Normative Legal Research A Short Review. Jakarta. PT. King Grafindo.

⁸ Sidabalok Janus. 2010. Consumer Protection Law in Indonesia. Bandung. Aditya Bakti's image.

is entered into does not give consumers the opportunity to negotiate with business actors. In this case, consumers are certainly not given leeway or opportunity to determine the contents of the agreement because consumers do not have the authority. So the standard agreement is deemed not to meet the rules required by Article 1320 of the Civil Code jo. Article 1338 Civil Code.

Producers or business actors will try to seek the highest profits in accordance with the economic principles adopted, namely "the principle of seeking the highest profits through the smallest sacrifices."⁷ In order to achieve the highest profits, producers or business actors must compete with each other with their own business behavior which can be detrimental to consumers. Intense competition can change behavior towards unhealthy competition to protect each other's conflicting interests

Prasasto Sudyatmiko expressed the opinion that there are 4 (four) examples of elements that influence unhealthy business behavior, namely "conglomeration, cartels/trusts, insider trading, and unfair competition."⁹ Which in subsequent implementation can give rise to other forms of forms of deviant acts, such as raising prices, reducing quality, dumping, and counterfeiting products. Paying attention to the characteristics contained in a standard agreement/standard contract, of course it is very possible that certain conditions may be contained that have the potential to be more profitable for the party who has prepared it, for example by providing special conditions to avoid difficulties or claims/lawsuits from opposing parties, exemption themselves from the burden of responsibility due to the occurrence of certain things or events during the term of the agreement. These conditions which are made unilaterally are then called "standard conditions/standard clauses".

A standard agreement may be made unilaterally by an economically powerful party, but the one in control is still the consumer because the consumer still has the right to choose. Choose whether to approve or reject an agreement that may be felt to benefit only one party. So a standard agreement cannot guarantee the freedom of the parties in negotiating their agreement, this is what creates an imbalance between the parties because of the emergence of exoneration clauses which are restrictive in nature. Making an agreement with the principle of freedom of contract must not conflict with Article 1320 of the Civil Code for reasons that are not prohibited, meaning that the parties making the agreement are free to determine the content but still have limitations, namely Article 1320 of the Civil Code itself. Article 1337 of the Civil Code also explains that a prohibited cause does not conflict with morality and public order. The basic things to pay attention to when making an agreement are still based on the applicable legal provisions, in fact a standard agreement is the same as other agreements, such as whether the conditions for the validity of the agreement have been fulfilled, and what are the principles of the agreement that govern it, and you need to be careful in reading and Pay close attention to the contents of the agreement before signing it.

From what the author has said above, it seems that the principle of freedom of contract will still be accommodated in standard agreements, especially the fulfillment of the conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code, the first point is the existence of an agreement between the parties. The consumer is offered a number of things in the standard agreement clauses by the producer, of course the consumer must read carefully what their rights and obligations are in the agreement. If after reading and then agreeing, an agreement is born because of the standard agreement. By agreeing, it means that you have understood and comprehended the contents of the agreement, thus the principle of freedom of contract has been fulfilled.

2. *Implementation of Standard Agreements to Create justice for the parties*

Pre-emptive action is a preventive measure taken at an early stage, involving the implementation of counselling activities aimed at influencing the driving factors and opportunities for crime. Thus, it is expected to create awareness and vigilance, build resilience, and form conditions of behaviour and norms of life that are free from various forms of crime. (Bondan Wicaksono, Abdul Agis & Nurul Qamar, *Countering Corruption in Village Fund Financial Management*, *Journal of Lex Generalis (JLS)* Volume 2, Number 2, February 2021 p.546)

In everyday life, the agreements that we often encounter are standard agreements. Especially in terms of trade, standard agreements are really needed nowadays. Standard agreements are often made by business actors, especially in terms of trade, so standard agreements become a daily necessity because agreements develop from the habits and demands of the community itself.⁹

According to the Civil Code, agreements are one of the sources that give rise to agreements regulated in Book III of the Civil Code, except that other sources of agreements are laws, jurisprudence, written law and science. An agreement is a legal relationship that occurs either because of an agreement or because of the law. A legal relationship is a relationship that causes legal consequences, namely rights and obligations. ¹² An agreement can be said to be binding and has permanent legal force if the agreement has legal consequences due to the existence of an agreement, because the parties are bound by the contents of the agreement. and also based on propriety, customs and laws in Articles 1338, 1339 and 1340 of the Civil Code. Article 1338 of the Civil Code states that agreements must be based on good faith. There are five known principles in contract law, namely:¹⁰

a. Principle of Consensualism

This principle is related to Article 1320 of the Civil Code which states that the condition for the validity of an agreement is the existence of an agreement. That to give birth to an agreement it is sufficient to reach an agreement regarding the main matters of the agreement. The word of agreement is binding in the agreement when it has been said or spoken, so it does not require certain formalities. Unless the law provides certain formality requirements for an agreement where the terms must be in writing.

b. Principle of Freedom of Contract

The principle that gives freedom to the parties who make an agreement with conditions as long as the agreement they make does not violate the provisions stipulated in Article 1320 of the Civil Code. Apart from that, the parties are free to determine in terms of the content of the agreement, with whom to make the agreement, and also determine what form the agreement will take orally or in writing. And this principle fully supports equality of parties in making agreements.

c. Principle of Legal Certainty

According to Article 1338 paragraph (1) of the Civil Code, "All agreements that are legally made are valid as law for those who make them." If there is a dispute in the implementation of the agreement, the judge with his decision can force the violating party to carry out its rights and obligations in

⁹ *Modern. Second printing.* Bandung. PT. Refika Aditama.

¹⁰ Busro Achmad. 2013. *Capita Selecta Agreement Law*. Yogyakarta. Tree of Light. Djumadi. 2004. *Labor Law Employment Agreements*. Jakarta. PT. Raja Grafindo Persada Ibrahim, Johaness & Lindawaty Sewu. 2007. *Business Law in Human Perception*

accordance with the agreement, and the judge can even ask the other party to pay compensation. The court decision is a guarantee that the rights and obligations of the parties in the agreement have legal certainty, so that they definitely have legal protection.

d. Principle of Good Faith

This principle is stated in article 1338 paragraph (3) of the Civil Code, "Agreements must be implemented in good faith". In this principle, the parties, namely creditors and debtors, must carry out the substance of the contract based on firm trust or belief and the good will of the parties. Good faith means that the inner state of the parties in making and implementing an agreement must be honest, open and trusting each other. The inner state of the parties must not be polluted by the intention to commit deception or cover up the true situation.

e. Personality Principles

The principle of personality means that the contents of the agreement only bind the parties personally and do not bind other parties who do not agree. A person can only represent another person in making an agreement made by the parties only valid for those who made it. Legal principles or principles are the main foundation in making agreements, because these principles or principles provide an overview of the background and way of thinking that form the basis of contract law. Legal principles or principles are the broadest basis for the birth of legal regulations. This means that legal regulations can ultimately be returned to these principles. 13 Legal principles or principles function as guidelines or orientation directions based on which the law can be implemented. These legal principles or principles will not only be useful as guidelines when facing difficult cases, but also in terms of implementing rules.

The principle of freedom of contract is based on Article 1338 paragraph (1) The Civil Code is considered by some legal experts to be a very important principle in contract law. Freedom of contract in article 1338 paragraph (1) of the Civil Code states that: "All agreements made legally are valid as law for those who make them". 14 From this article it can be concluded that basically everyone is allowed to make an agreement that can made freely in any content and form, as long as it does not conflict with the law, public order and decency. A valid agreement is valid as law for those who make it." 15 The provisions of Article 1388 paragraph (1) of the Civil Code or Article 1374 paragraph (1) mean that every person in entering into an agreement can act as if they were a law maker, therefore the agreement is considered as a source of law for the parties in addition to the law. law, because every agreement arises from an agreement and/or law.

In its development, freedom of contract has experienced restrictions, this can be seen by, among other things, the birth of the law on work agreements or labor law in 1926. The Indonesian government has also put into practice the law relating to trade agreements, as regulated in Law No. . 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, such as price fixing. 16 Restrictions on the principle of freedom of contract are also carried out by implementing standard contracts, both standard agreements made between business people and standard agreements made by the government, such as agreement forms relating to the transfer of land rights, known as Official Deeds. Land Deed Maker (PPAT).¹¹

¹¹ AZ Nasution. 2001. Consumer Protection Law An Introduction. Jakarta. Media Edited. *Explanation*. Bandung. Alumni.

However, freedom in contracting remains limited by one-sided interests between the parties to the agreement. When it comes to standard agreements, of course the principle of freedom of contract cannot be fully implemented. Unilateral interests in this case can have an economic background if the context of the agreement is in business or trade matters. It could also be based on the desire for maximum legal protection so that if failure occurs, their rights are more guaranteed and their rights are protected. Therefore, the implementation of the principle of freedom of contract in standard agreements in practice is to adapt to the interests of each party and adjust to the agreement or substance.

CONCLUSION

Agreements made in the context of standard agreements must still prioritize the principle of freedom of contract. Although not all of them can be accommodated, at a minimum the provisions regulated in the Civil Code which regulates agreements, especially the provisions of Article 1320, must be absolutely fulfilled in the substance of the standard agreement. If, after reading and examining the clauses in the agreement, it turns out to be detrimental to one of the parties, the party who feels disadvantaged must firmly reject or not agree to the agreement. This is necessary because any agreement, including a standard agreement, must still meet the requirements for the validity of the agreement as regulated in the Civil Code. In this way, the standard agreement that has been signed does not have the potential to become a conflict between the parties and is not null and void by law

The enactment of Law Number 11 of 2020 concerning Job Creation and its implementing regulations, namely Implementing Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and Registration of Establishment, Changes and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses (hereinafter PP Number 8 of 2021) provides changes to company law in Indonesia with the concept of Individual Limited Liability Companies with Micro and Small Business criteria. This provides legal.

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