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The Principle of Balance as a Tool for Preventing Breach of Contract in Business Agreements

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ABSTRACT

Breach of contract in business agreements can lead to complex legal consequences, ranging from financial losses and damage to business reputation and relationships to protracted and costly legal disputes. Preventive measures from the earliest stage of the contractual relationship are therefore crucial. This study aims to analyze the principle of balance as a tool for preventing breach of contract in business agreements. It employs a qualitative approach based on library research of primary legal sources, namely the Indonesian Civil Code (KUHPerdata), and secondary sources, including books, journals, and related scholarly articles. The forms of breach discussed are failure to perform, improper performance, and delayed performance. The analysis shows that the principle of balance can be implemented through five approaches: background checks on prospective partners, sound contract drafting, balance of performance between the parties, the application of good faith, and open communication. These approaches reinforce one another in creating fair, proportionate, and mutually beneficial contractual relationships, thereby reducing the risk of breach from the pre-contractual stage through to contract performance. The principle of balance thus serves not only as a normative principle in contract law but also as an effective practical mechanism for preventing breach of contract and fostering sustainable business cooperation.

Keywords: the principle of balance, breach of contract, business agreements.

INTRODUCTION

Individuals pursue their interests by entering into agreements, which the Indonesian Civil Code (KUH Perdata) regulates in Book III (Articles 1233–1864) on Obligations. The Code uses "contract" and "agreement" interchangeably, as the title of Chapter II of Book III ("Concerning Obligations Arising from Contracts or Agreements") shows. Article 1313 defines an agreement as an act by which one or more persons bind themselves to one or more other persons. Lawrence M. Friedman describes contract law as the body of law that regulates certain aspects of the market and governs particular types of agreements (Friedman, 2001).

According to Munir Fuady, business law is the body of legal rules governing commercial, industrial, or financial activities, particularly the production or exchange of goods or services, in which entrepreneurs place their capital at risk in pursuit of profit (Fuady, 2005). Based on this definition, contract law comprises legal rules, legal subjects, performance, mutual consent, and legal consequences, so an agreement is by nature binding. Article 1338 paragraph (1) of

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the Civil Code likewise provides that an agreement has binding force as law upon the parties (Sinaga, 2018).

According to Siti Malikhatun Badriyah, the purpose of an agreement is to achieve a balance of interests between the parties, so balance matters from the pre-contractual (offer) stage, through the contractual stage in which mutual consent arises, to the performance of the agreement (Badriyah, 2016). An imbalance may arise from the conduct of the parties or from the performance of the agreement. Legal principles form the broadest foundation of legal rules, help resolve new legal problems, and are needed to interpret rules that can never address every legal issue comprehensively (Prasnowo & Badriyah, 2019).

The principles of contract law are the pillars of contract law, the broadest foundation for legal rules, and the guidelines through which the law is implemented. To realize protection and justice, they must be harmonized and applied simultaneously, proportionately, and fairly. They include freedom of contract, consensualism, legal certainty, good faith, equality of rights, propriety, balance, and protection (Sinaga, 2018).

The principle of balance is a principle in Indonesian contract law that constitutes a continuation of the principle of equality, which requires a balance of rights and obligations between the parties to an agreement. In addition to possessing certain characteristics, the principle of balance must also be consistently directed toward concrete and substantive justice. Regarding the role of the principle of balance, Herlien Boediono argues that the concepts of consensualism, binding force, freedom of contract, and balance are imbued with normative expectations concerning the ideal fulfillment of social roles, in accordance with the social rules shaped by the traditions, norms, and history of the society concerned. Therefore, in determining whether an agreement is balanced, it should not be assessed solely on the basis of positive law; consideration must also be given to whether the agreement is fair to the society in which it operates. At least three aspects of an agreement need to be considered in order to achieve balance. First, the conduct of the parties, which relates to the subjects of the agreement. It cannot be denied that an agreement can only be formed when the parties mutually bind themselves to one another.

The legal acts undertaken by the parties can be observed through their respective declarations of intent to perform or refrain from performing a legal act. Second, the content of the agreement. Balance in the content of an agreement is inseparable from the parties' awareness and mutual consent to enter into such an agreement. An imbalance may arise when the content

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of the agreement is drafted solely by one party, when a foreign language is used, or when the agreement contains relatively rigid clauses combined with the weaker bargaining position of one of the parties, leaving that party with little or no opportunity to participate in determining or modifying the terms of the agreement. Third, the performance of the agreement, which is undertaken by the parties as a form of compliance with its terms. The expectation is that the parties will perform the agreement in good faith so as not to cause harm to either party (Prasnowo & Badriyah, 2019).

In practice, performance does not always proceed smoothly and may give rise to conflicts. The injured party must therefore be legally protected, while the party that commits a breach of contract (wanprestasi) must bear the legal consequences and be held liable for the resulting losses (Sinaga, 2017).

In business agreements, imbalances in rights and obligations frequently cause losses, dissatisfaction, and even breach of contract (wanprestasi). The principle of balance should therefore guide the drafting and performance of agreements so that they are not only valid but also substantively just. This article addresses how the principle of balance can be implemented as an instrument for preventing breach of contract (wanprestasi) in business agreements.

METHODS

This article uses a qualitative approach with the library research method, a form of scientific research based on inductive reasoning and oriented toward in-depth observation of a social phenomenon (Harahap, 2020). Primary legal sources include the Civil Code (KUHPerdata); secondary sources include textbooks, reputable journals, and scholarly articles on civil and contract law relevant to breach of contract in business agreements. The data were analyzed descriptively and qualitatively by identifying, classifying, interpreting, and synthesizing the sources, including a comparison of experts' views with previous studies.

RESULTS

Breach of contract (wanprestasi) in a business agreement is the failure of a party to fulfill the obligations agreed upon. Under Indonesian positive law, the injured party may claim specific performance, damages, or cancellation of the agreement. Because these consequences are complex, preventing breach during both the drafting and the performance of business agreements is essential. This article therefore focuses on the principle of balance as a preventive instrument.

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Breach of contract (wanprestasi) in a business agreement may occur in several forms, as follows: (1) failure to perform, namely where a party fails to perform what has been promised in the agreement; (2) improper performance, namely where a party performs its obligations but not in accordance with the terms agreed upon; and/or (3) delayed performance, namely where a party performs its obligations but fails to do so within the time stipulated in the agreement. In general, a person may be considered negligent or to have committed a breach of contract based on several circumstances, namely: (a) the performance is not fulfilled at all, which occurs when a debtor completely fails to perform its obligations, thereby causing losses to the creditor. A debtor who is unable to perform its obligations at all must demonstrate that such failure was caused by a particular circumstance, such as force majeure (*overmacht*), the creditor's own breach of contract, or a waiver of rights; (b) the performance is only partial or defective, which occurs when a debtor performs its obligations only partially or imperfectly. The debtor must demonstrate that such partial or defective performance was also caused by a particular circumstance, such as force majeure (*overmacht*) or the creditor's own breach of contract; (c) the performance is delayed, which occurs when a debtor ultimately performs its obligations but does so after the stipulated deadline. A debtor who delays performance must likewise demonstrate that the delay was caused by a particular circumstance, such as force majeure (*overmacht*) or the creditor's own breach of contract; and/or (d) the debtor performs an act prohibited under the agreement, in which case the debtor must be able to provide the reasons or circumstances that led to the performance of an act prohibited by the agreement (Maria Alberta Liza Quintarti, 2024).

These breaches commonly occur when the principle of balance is neglected. Parties generally expect a balance of position, rights, and obligations, but this is not always achieved. Creditors with stronger economic or bargaining power may impose clauses on debtors, creating inequality that threatens business activity in Indonesia (Bukit et al., 2018).

DISCUSSION

Developments in the field of contract law have led to the emergence of a new principle, namely the principle of balance, which constitutes one of the foundations of contract law in Indonesia. The principle of balance refers to a stable or balanced condition that exists when various interests operate without any one of them dominating the others, or when no single element exercises control over the others. Achieving balance is one of the objectives of an agreement because it can promote justice and equality between the parties. From a contractual perspective,

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it can be concluded that promises made between the parties can only be considered binding when they are based on the principle of balance between individual needs and interests. The principle of balance is interpreted as a fair and reasonable principle that is accepted as the basis for legal binding force in an agreement. According to Muhammad Irayadi, balance in an agreement refers to an equal position between the rights and obligations of the parties under the agreement, with equal terms and conditions and without either party exercising dominance over the other. Efforts to prevent breach of contract (wanprestasi) in business agreements by employing the principle of balance as an instrument can be pursued through various approaches, as described below:

1) Background checking

Before entering into an agreement with someone, it is necessary to first examine their background, as this constitutes a crucial step that should be undertaken. The purpose of conducting a background check is to ensure and serve as a benchmark for determining whether the person in question is capable of fulfilling their obligations and taking responsibility for them. In business, cooperation between parties is common. Therefore, background checks are necessary when selecting a business partner, particularly in relation to: (a) alignment of vision and mission. In establishing a business partnership, the parties should first ensure that they share the same vision and mission so that the business integration can proceed smoothly. Furthermore, alignment in vision and mission can make business operations more effective. Difficulties may arise if, after reaching an agreement, both parties are found to have different visions and missions, as the time required to adapt to such differences is not insignificant and may hinder business operations; and (b) the financial condition of the business partner. When entering into a business partnership, the ultimate objective is, of course, to generate profits from the business. In a franchise business, the franchisor should first ensure that the financial condition of the franchisee is stable. Background checking is the process of examining the track record of a prospective business partner before entering into an agreement, including aspects such as legal standing, reputation, financial capacity, and previous contractual performance. The principle of balance requires equality of information and bargaining power between the parties. By conducting a background check, the parties entering into an agreement can ensure that their contractual counterpart has the capacity and good faith to perform their obligations. This helps prevent an imbalance in the contractual relationship, thereby reducing the risk of default arising from mismatched expectations or inadequate capacity.

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2) A Good Contract

Every cooperation agreement requires a business contract, which ensures that the agreement can be properly implemented and anticipates circumstances that may harm either party. Although business contracts are essential, many people still consider them of little importance and rely solely on mutual trust between the parties.

A valid contract must comply with the provisions of Article 1320 of the Indonesian Civil Code (KUHPerdata), as every contractual arrangement must first satisfy the prescribed legal requirements. Once the requirements for the validity of the contract have been fulfilled, the parties may enter into an agreement in which the provisions or clauses contained therein must be clearly drafted so as to avoid multiple interpretations. The terms of the agreement must be clear and understood by each party, particularly with regard to the termination of the agreement or the circumstances under which the agreement will expire. Furthermore, another important matter that must be considered is the dispute resolution clause.

In the business world, the desired outcome is, of course, mutually beneficial cooperation. However, the expected objectives are often not achieved as intended, as various circumstances may arise and potentially cause losses to one of the parties. Such situations are common issues in the business world. Therefore, every agreement should include a dispute resolution clause. For example, in the event of a dispute, the parties may determine whether the matter should be immediately brought before the courts or whether mediation should first be pursued between the parties.

A well-drafted contract is clear and comprehensive and accommodates the interests of both parties, including rights, obligations, sanctions, and dispute resolution. It reflects the principle of balance because it is not one-sided and places neither party in a dominant position. By stipulating what each party must do, when, and how, it prevents breach; when both parties see its contents as fair and balanced, they are more likely to comply.

3) Balance of performances

To prevent a breach of contract (wanprestasi), there must be a balance between the rights and obligations of the parties. In the context of the principle of balance, the concept is not merely

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intended to describe a particular statement or condition, but also has a broader impact on the legal aspects and capacity of the agreement in question. An imbalance may arise as a consequence of the actions of either party or as a result of the implementation of the agreement. An agreement may be challenged if it is subsequently found that one party is in a substantially weaker position, as an imbalance and disproportionate dominance may affect the substance and intended purpose of the agreement. The consequence of inequality in the implementation of an agreement is the emergence of an imbalance between the parties. If the more dominant party exerts influence over the relationship between the parties' respective performances, then, as long as there is a balance of performance under the agreement, attention should be given to the fairness and harmony underlying the manner in which the agreement was formed, rather than merely to the final outcome of its implementation. A balance of performance means that there is proportionality between the obligations assumed and the rights received by each party under the agreement, whether in terms of workload, economic value, or the risks borne by each party. This constitutes a concrete manifestation of the principle of balance itself. If one party perceives its obligations as excessively burdensome in comparison with the benefits received, its motivation to perform its obligations may decrease, potentially resulting in a breach of contract (wanprestasi).

By maintaining a balance of performance, a stronger sense of fairness and shared responsibility can be fostered in the implementation of the agreement. In order for an agreement to be properly implemented, due regard must be given to the principle of balance. As a means of assessing the principle of balance in contractual agreements and determining whether it has been properly implemented, there are three ways to evaluate its application, namely: (1) the actions of the parties; (2) the contents of the agreement; and (3) the implementation of what has been agreed upon.

4) Good faith

The principle of good faith is set forth in Article 1338 paragraph (3) of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUH Perdata). According to Subekti, good faith can be categorized into two forms: (1) subjective good faith, which refers to honesty, whereby such honesty must already exist before the agreement is entered into; and (2) objective good faith, which refers to reasonableness and propriety, which must be present from the initial contractual stage, as it relates to the rights and obligations that must be performed by the parties in good faith. Honesty should be upheld when entering into an agreement because it can foster trust between the parties intending to enter into a contractual relationship. Such honesty may

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take the form of providing the other party with comprehensive and detailed information in order to avoid potential problems arising from insufficient information provided by the franchisor. Furthermore, an agreement executed before an authorized official may constitute a manifestation of the parties' good faith, while the propriety of the parties' conduct can be assessed through the performance of their respective obligations. Good faith refers to an honest, transparent, and responsible attitude throughout the negotiation, performance, and dispute resolution processes under an agreement. Good faith serves as the moral foundation of the principle of balance. Balance in an agreement concerns not only the technical aspects of the contract but also the intentions and conduct of the parties. When both parties act in good faith, they are more likely to respect each other's obligations and refrain from seeking loopholes to evade their responsibilities. This helps prevent unilateral actions that could potentially result in a breach of contract (wanprestasi).

5) Transparent Communication

One action that can be taken to prevent a breach of contract in the implementation of a business agreement is to establish open communication. This should be carried out clearly and directly between the parties, without involving intermediaries. Open communication is conducted by the parties with the aim of creating effective cooperation and ensuring that the interests and expectations of all parties are understood, so that no party feels unduly burdened. Open communication is a process of exchanging information directly, honestly, and clearly among the parties involved in an agreement, without intermediaries who may cause information distortion. In the context of implementing a business agreement, open communication enables the parties to communicate their expectations, difficulties, and relevant changes in circumstances promptly and transparently. It also creates a healthy dialogue that allows the parties to reach a common understanding and resolve potential conflicts before they develop into a breach of contract. The principle of balance is reflected not only in the content of an agreement but also in the process of its implementation, including the manner in which the parties communicate with one another.

Open communication supports the principle of balance by ensuring that no party feels "excluded" or left out of decision-making processes that affect the performance of the contract. Effective and transparent communication ensures that each party maintains an equal position in terms of information and expectations, thereby preventing misunderstandings that could result in improper performance of obligations or delays that ultimately lead to a breach of contract. For example, if one party encounters operational difficulties that may cause a delay

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in the performance of its obligations, open communication allows such circumstances to be communicated at an early stage. The other party can then adjust its expectations or even agree to a limited renegotiation. This approach is far better than remaining silent and unilaterally breaching the agreement. In other words, open communication serves as a primary supporting mechanism for maintaining the balance of contractual relationships dynamically. It ensures that equality and fairness are preserved throughout the duration of the agreement, rather than only at the time the agreement is entered into.

CONCLUSION

Breach of contract in business agreements carries complex legal consequences, including financial losses, reputational damage, strained business relationships, and protracted, costly disputes. These consequences show that prevention at the earliest stage of the contractual relationship is more effective than relying only on remedies after a breach has occurred. This article has argued that the principle of balance, which emphasizes fairness, proportionality, and equality between the parties, is a key tool for that purpose. Breach takes three main forms: failure to perform, improper performance, and delayed performance. The principle of balance addresses the risk of each through five mutually reinforcing approaches. First, background checks ensure that prospective partners have adequate capacity, integrity, and commitment, so that the risk of non-performance is filtered out before the agreement is made. Second, a good contract that is clear, fair, and impartial reduces ambiguity and gaps that could lead to improper performance. Third, a balance of performance, with proportional rights and obligations, keeps either party from being unduly burdened and so lowers the incentive to default or delay. Fourth, good faith, applied from negotiation through implementation, builds trust and a shared commitment to honor the agreement. Fifth, open communication allows obstacles and changes in circumstances to be anticipated or resolved early, before they escalate into a dispute.

These five approaches are not separate steps but one connected framework. A sound contract is weakened if the partner was never properly vetted, and a balanced allocation of rights and obligations is hard to sustain without good faith and open communication. Applied together, they reduce the risk of breach from the pre-contractual stage through to performance.

The principle of balance is therefore not merely a theoretical concept in contract law but a practical mechanism for preventing breach, fostering healthy business cooperation, and

creating stable and sustainable legal relationships. Business actors are encouraged to apply it consistently at every stage of the contractual relationship. Further research could examine how effective these approaches are in specific business sectors, or how courts and dispute resolution bodies apply the principle in practice.

LIMITATION

This research has several limitations. First, it adopts a normative and conceptual approach, so the effectiveness of the five approaches has not been empirically tested and the findings cannot establish that they will necessarily reduce breach of contract in practice. Second, it addresses business agreements in general and does not examine how the principle of balance operates across specific contract types, which limits generalizability. Third, concepts such as fairness, proportionality, and reasonableness cannot always be measured objectively, and no standardized instrument for measuring contractual balance is offered. Fourth, external factors such as economic conditions, market changes, regulation, and force majeure are not comprehensively examined, so the five approaches should not be seen as the sole determinants of whether wanprestasi occurs. Finally, good faith and open communication depend on the parties' actual conduct, and the lack of empirical indicators limits what can be shown about their effectiveness.

These limitations define the scope within which the findings should be interpreted. Further empirical research is needed to test the effectiveness of these mechanisms in different types of business agreements and to develop measurable indicators of contractual balance.

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