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Standard Agreements: Review of the Principles Pacta Sunt Servanda, Good Faith and Fairness

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Abstract

The use of standardized contracts today shows one side of the dominance of the modern economy by business entities or companies and even banks. Agreement is one of the main sources in civil law relationships, where the parties involved have the freedom to determine the contents and form of the agreement in accordance with Article 1338 of the Civil Code. In practice, this freedom often does not take place in a balanced manner, especially in standardized agreements. This research focuses on the principle of justice in standard agreements, where the agreement should be able to fulfill a sense of justice for the parties. Justice is very important in standard agreements, to avoid exploitative practices

and ensure equal legal protection between the parties. Based on this narrative, it is important to examine how the principle of justice is applied, protected, and enforced in standard agreements that develop in the community. The approach used in this study is normative juridical, focusing on secondary data. The results of the study show that the application of the fairness aspect of contracting in agreements or standardized contracts is still far from expectations. Agreements made in standardized forms tend to benefit one party who has a stronger bargaining position, who usually acts as the "designer" of the standardized contract.

KEYWORDS Freedom of Contract, Standard Contract, Justice

Introduction

The use of standardized agreements today shows one side of the dominance of the modern economy by business entities or companies. Companies create forms of contracts as part of stabilizing their external market relationships.[1] Economic activities in the era of globalization and technological progress are increasingly complex and dynamic. Agreements are vital legal instruments in establishing legal relationships between business actors, consumers, and financial institutions. One form of agreement that is widely used in modern business practices is a standard agreement. On the one hand, standard agreements offer efficiency and convenience in transactions, on the other hand, legal issues often arise regarding the validity and fairness of these agreements, especially when there is an imbalance of weak positions.

The agreements that most strikingly show the dominance of one party are agreements which in Dutch are called standard voorwarden or in English law are called standard contracts,[2] in Indonesia there are those who refer to them as standard agreements. Agreements that are in the form of standards, in their contents are determined by parties who have a stronger bargaining position than other parties,[3] while parties whose bargaining position is lower, are very unlikely to make changes to the provisions contained in the draft agreement. This means that the party receiving the offer is not in a position to choose from a wide range

[1] R M Panggabean, "Validity of Agreements with Standard Clauses," in *JURNAL HUKUM*, vol. 17, October 2010.
[2] Mariam Darus Badrulzaman, *Various Business Laws* (Bandung, 1994).
[3] Ibid.

of options but only chooses to accept or reject the offer, take it or leave it.[4]

The use of standard agreements was originally based on economic considerations, namely to reduce the costs incurred by making contracts and also for practicality. Standard agreements are currently used not only in conventional banking, Islamic banking, Islamic capital markets, Islamic insurance, but standard agreements are widely used in various trade transactions covering the sale of goods, services and software, including licenses. The number of standard agreements used in various business contract transactions today and easily seen the dominant position of one party, then there is a possibility that the standard agreement, has reduced the realization of the principle of freedom of contract in the perspective of balanced protection for the parties and contrary to the sense of justice.[5]

It is suspected that this standardized agreement will not be able to provide an adequate sense of justice for parties in a weak position. Justice in this case is justice based on the Principle of Proportionality, where the parties have obligations and rights proportional to their contributions,[6] but in reality the form and content of the agreement has been determined by the strong party before the agreement is signed by the parties. The strong party will inevitably try to accommodate all its interests in the agreement, even though it has the potential to cause economic losses or injustice to other parties.[7]

An agreement occurs when the parties in it agree to bind themselves to each other, so in this case the implementation of the agreement cannot be separated from the principle of consensualism which is a condition for forming an agreement. The principle of consensualism is an absolute requirement in every contract that serves to ensure legal certainty.[8] An agreement is deemed to occur after the parties say an agreement. Further understanding of the

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[4] Selcuk Ozyurt, *A Reputation-Based Theory of Spatially-Separated Duopoly Competition and Bargaining*, September 2009, https://www.researchgate.net/publication/239590422_A_Reputation-Based_Theory_of_Spatially-Separated_Duopoly_Competition_and_Bargaining.

[5] Putu Laksmi Noviyana and Dewa Gede Pradnya Yustiawan, "Contractual Fairness in Internasional Trade an Analysis of Business Law Standards," *International Journal of Law, Crime and Justice* 02 (March 2025), https://doi.org/10.62951/ijlcj.v2i1.509.

[6] A. Hernoko Hernoko and Ratnawati Ika Yunia, "The Principle of Proportionality in Franchise Agreements," *Journal of Business Law* 01 (April 2015).

[7] Ery Agus Priyono, "Aspects of Justice in Business Contracts in Indonesia (Studies on Franchise Agreements)," *Journal of Law Reform Master of Law Studies Program* 14 (2018).

[8] Subekti R., *Aspects of National Bond Law* (Alumni, 1986).

agreement of the parties, that in essence in the legal relationship of the agreement, the agreement that occurs is formed due to the bargaining process. Through this bargaining process, the parties will know clearly and in detail the rights and obligations that must be carried out in carrying out the agreement.

The use of standard contracts in today's business world raises legal issues that require resolution. Traditionally, an agreement is based on the principle of freedom of contract between two parties who have equal positions. The agreement obtained in the agreement is the result of negotiations between the parties. Such a process is not found in a standard agreement. There is almost no freedom in determining the contents of the agreement in the negotiation process. The contents or terms of the agreement have been determined unilaterally by the employer.[9] The party drafting the standard agreement, generally the business actor, is in a stronger position than the consumer or other parties. As a result, the clauses in the agreement often only benefit the drafting party, while other parties do not have sufficient opportunity to negotiate or even understand the contents of the agreement thoroughly.

Standard agreements have caused quite a lot of legal debate among the public, especially regarding the validity of the obligations born from them. Formally, a standard agreement can be said to have fulfilled the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code, the substance and method of its formation often raise questions related to justice, equality, and freedom of contract. Based on the provisions of Article 1338 of the Civil Code, an agreement that has been made by the parties legally applies as law for them. Several principles of agreement in general are a reference in designing and implementing the contents of the agreement. One of the most basic principles is the principle of pacta sunt servanda. This principle has legal force, because basically an agreement made freely between the parties should be obeyed, not denied, and become law for the parties.[10]

The principle of pacta sunt servanda is also known as the principle of legal certainty. This principle relates to the consequences of an agreement. The principle of pacta sunt servanda outlines that judges or third parties must respect the substance of the contract made by the parties, just like a law. They

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[9] Ridwan Khairandy, *The Validity of Standard Agreements After the Enactment of the Consumer Protection Law* (Paper, 2007).

[10] Nurharsya Khaer Hanafie et al., "Contemporary Agreement Law Discussing Electronic, Agreements in Electronic Media Transactions on The Aspect of, Their Legitimacy, SHS Web of Conferences 149, 03006 (2022) ," *SHS Web of Conferences 149*, ahead of print, 2022, https://doi.org/10.1051/shsconf/202214903006.

may not intervene in the substance of the contract made by the parties.[11] The principle of pacta sunt servanda remains an important pillar in contract law, but in the implementation of standard agreements there is an imbalance of power between the parties and the contents of the agreement which are contrary to the principles of justice and good faith.

In the law of agreements, there are several important principles that are the basis for the operation or the basis for the implementation of standard agreements, such as the principle of pacta sunt servanda. legal principles are a realm of thought or ideal ideals that underlie the formation of legal rules, are general or universal and abstract, not concrete. Paul Scholten said that legal principles are both in the legal system and behind or outside the legal system. As far as the value of the legal principle is realized in the legal rules of the positive legal system, then the legal principle is in the system, on the contrary, as far as the value of the legal principle is not realized in the legal rules of the positive legal system, then the legal principle is behind the legal system.[12]

Aziz T. Saliba stated that the principle of Pacta Sunt Servanda is the sanctity of contracts. The focal point of treaty law is freedom of contract or what is known as the principle of autonomy, which means that by paying attention to appropriate legal limits people can enter into any agreement according to their wishes, and if they have decided to make an agreement, they are bound by the agreement.[13] The dynamics of modern civil law, the principle of pacta sunt servanda, which can be interpreted as an agreement must be kept, is the main foundation in regulating civil relations between the parties. This principle emphasizes that every agreement that has been legally agreed by the parties has binding force like a law, however, in practice, not all agreements are made with equal bargaining positions. One form of agreement that often becomes a concern for the community, especially consumers, is a standard agreement, which is an agreement whose contents have been determined unilaterally by business actors and only provides little, if any, room for other parties to negotiate.[14]

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[11] Jabalnur, "Underhand Agreements Viewed from the Principle of Pacta Sunt Servanda," *Halu Oleo Legal Research* 06 (August 2024).

[12] Harry Purwanto, "The Existence of the Pacta Sunt Servanda Principle in International Agreements," *Jurnal Mimbar Hukum* 21 (September 2009).

[13] Aziz T. Saliba, "Universidade de Itauna and Faculdades de Direito Do Oeste de Minas, Brazil Wrote His Co-Authored Paper Entitled Comparative Law Europe," *Contracts Law and Legislation* 08 (August 2001), http://pihilawyers.com/blog/?p=16.

[14] Nirmit Jadwani and Ravi Yadav, "Judicial and Legislative Responses to Unequal Bargaining Power in Standard Form Contracts: A Comparative Study," International Journal of Law, Justice and Jurisprudence 5 (2025), https://doi.org/10.22271/2790-

This phenomenon raises critical questions regarding justice in the implementation of the principle of pacta sunt servanda, especially in the context of standard agreements and other weak parties. Inequality of position in standard agreements often creates injustice that is contrary to the spirit of sustainable justice, which is a principle that seeks a balance between legal certainty, justice, and benefits for all parties in the long term.

The unequal position between business actors and consumers or other weak parties often leads to agreements that do not reflect the free will of the parties, but merely a formal form of consent. The principle of pacta sunt servanda in such situations can actually become a means of legitimizing contractual injustice. The development of modern law requires the law not only to guarantee certainty, but also to guarantee justice, namely justice that is long-term, paying attention to the balance of interests and protection of weak parties.

Advances in technology and the digitalization of the economy have expanded the use of standard agreements in the form of terms and conditions online. The public generally agrees to these terms without fully understanding their contents and consequences. This reinforces the need for reinterpretation of the principle of pacta sunt servanda so that it does not become a formal shield for harmful practices, but remains relevant in upholding the values of justice. This article aims to examine the application of the principle of pacta sunt servanda in standard agreements from the perspective of sustainable justice. Through a normative juridical approach and analysis of developing legal practices, this study is expected to provide a comprehensive overview of the limitations and reinterpretation of the principle to be in line with the principles of justice that are more humanistic and adaptive to social developments.

Covenant law is one of the main pillars in the civil law system that regulates legal relationships between legal subjects based on agreements. Among the fundamental principles in the law of agreements, one of the most central is the principle of pacta sunt servanda, which literally means "agreements must be obeyed." This principle provides legitimacy that an agreement that has been legally agreed by the parties is binding like a law for them. This is reflected in the provisions of Article 1338 paragraph (1) of the Civil Code (KUH Perdata) which states that "all agreements made legally shall apply as laws to those who make them."[15]

0673.2025.v5.i1c.183.

[15] Subekti R. and Tjitro Sudibio R., Kitab Undang-Undang - Undang-Undang Hukum

The principle of pacta sunt servanda guarantees legal certainty and stability in contractual relations, because the parties can trust that the agreed agreement will be implemented in accordance with the contents and objectives that have been determined. Thus, this principle serves to maintain trust and legal responsibility between the parties. However, in practice, the implementation of the principle of pacta sunt servanda does not always run without obstacles. There are certain conditions that make the implementation of the agreement unfair or even impossible, such as the existence of force majeure, abuse of circumstances (misbruik van omstandigheden), or imbalance in the agreement.[16] Therefore, although the principle of pacta sunt servanda is the main foundation in contract law, its implementation must still consider the principles of justice, good faith, and propriety as regulated in legal norms and general principles of civil law. Against this background, it is important to examine more deeply how the principle of pacta sunt servanda is applied in Indonesian legal practice, including how this principle is balanced with other principles such as fairness, protection of weak parties, and the legal mechanisms available in the event of irregularities in the implementation of the agreement.

Although there are regulations such as the Consumer Protection Law, regulations related to standard agreements are still considered unable to answer the complexity of the problem as a whole. Therefore, this research is important to review the application of the principle of pacta sunt servanda in the context of standard agreements with a sustainable justice perspective, in order to support the development of a more equitable agreement law.

This research is a legal research with conceptual approach and statute approach. The data used is secondary data obtained from literature in the form of laws and regulations, books and other literature that has a relationship with the problems in this study. All secondary data collected is then grouped and analyzed qualitatively to obtain answers to the problems that have been determined. The results of data analysis are described and described descriptively analytically. This research uses a normative juridical approach, utilizing secondary data sources in the form of laws and regulations, and other relevant documents.[17] This research uses descriptive analytical research specifications to provide a comprehensive

Perdata (Balai Pustaka, 2017).

[16] Purwahid Patrik, *Basics of Bond Law, Bandung* (CV Mandar Maju, 1986).

[17] Arie Nurwanto and Ida Hanifah, "Juridical Review of the Pacta Sunt Servanda Principle in Motor Vehicle Credit Financing Agreements (Comparative Study of the Civil Code and Law Number 8 of 1999 Concerning Consumer Protection)," *IURIS STUDIA: Journal of Legal Studies* 3 (2023).

description of a fair standard agreement for parties in good faith in accordance with the provisions of the principle of pacta sunt servanda.

Result & Discussion

A. The Relationship Between the Principle of Pacta Sunt Servanda and The Law of Agreements

A principle is a general proposition that can be applied to any number of actions to serve as an appropriate guideline for those actions, without requiring a specific method of application. Something that is the foundation of a thought or opinion is called a principle. Basic laws can also be considered principles. Legal science does not believe that general legal principles are derived from more general rules; rather, they are fundamental standards developed from positive law. Legal principles should be viewed as general foundations or guidelines for applicable law, not as concrete norms because they are the result of positive law that is ingrained in society.[18]

The principle of pacta sunt servanda is the foundation in upholding the validity of an agreement. If this rule is not adhered to, the agreement may become void and parties may lose confidence in the institution of the agreement. One of the main principles of contract law is pacta sunt servanda, which guarantees the consistency, stability and integrity of the parties' contractual relationship.[19] Another term for Pacta Sunt Servanda is the principle of legal certainty. Courts or other third parties acting on behalf of the parties are required by law to honor the agreements that the parties have entered into, according to the legal doctrine known as pacta sunt servanda.

The Latin phrase "pacta sunt servanda" means that promises must be kept. This principle is obedience in nature, meaning that it must be obeyed in order to carry out the promises agreed upon by the parties. Pacta sunt servanda derives from the Roman praetorian doctrine known as pacta conventa servabo, which roughly translates to "I honor or respect the covenant." The idea of observance is supported by the ancient Roman legal maxim pacta sunt servanda and the holy commandment motzeh Sfassechat ismar, which means "You must keep your word." According to traditional contract

[18] Tata Wijayanta, “The Principles of Legal Certainty, Justice and Benefit in Relation to Commercial Court Bankruptcy Decisions,” *Journal of Legal Dynamics* 14 (May 2014).
[19] Desi Syamsiah, “Basis for the Application of the Pacta Sunt Servanda Principle in the Agreement,” *Das Sollen Journal* 9 (December 2023).

law doctrine, agreements must be properly observed and pacta sunt servanda respected, in the event that one party defaults, he or she is considered to have committed a grave sin.[20]

The principle of pacta sunt servanda is the main foundation in the law of agreements, which states that every agreement made legally applies as law to the parties who make it. This principle comes from Roman law and literally means "agreements must be kept". This principle in Indonesian treaty law is reflected in Article 1338 paragraph (1) of the Civil Code which reads "All agreements made legally shall apply as laws for those who make them. This means that when the parties voluntarily and legally agree on an agreement, they are legally bound to carry out the contents of the agreement. This certainly creates legal certainty in contractual relationships, trust between parties, stability in the business world and business transactions.

This principle is closely related to the principle of freedom of contract, which gives everyone the right to make or not make an agreement, determine the content and form of the agreement. After the agreement is made, the principle of pacta sunt servanda binds the parties legally and morally to comply with the agreement. The principle of pacta sunt servanda is at the heart of treaty law. It binds the parties to comply with the contents of the legally agreed agreement, however, its application must not be separated from the principles of justice, good faith, and protection of weak parties. The relationship between this principle and the law of agreements is mutually reinforcing, while at the same time needs to be adjusted to the development of society and the values of justice that live in it.

Aziz T. Saliba says that the binding force of an agreement has religious roots. This can be found in Islamic law, namely in the Qur'an Surah Al Maidah: "O you who believe, fulfill all promises...".[21] Likewise, it can also be seen in Surah Al-Isra, Chapter 34: ".... and fulfill promises, indeed promises will be held accountable..."[22] . From these few sentences when associated with agreements in general, then anyone who has made a promise (agreement) has an obligation to carry out what was promised or promised, in this case implementing the contents of the agreement. The principle of pacta sunt servanda is one of the basic norms (grundnorm; basic norm) in law, and is closely related to the principle of good faith to honor or obey the agreement.

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[20] Ridwan Khairani, "The Philosophical Basis of the Binding Force of Contracts," *Jurnal Hukum UII* 18 (2011).
[21] *Qur'an Surah Al Maa-Idah (n.d.).*
[22] *Qur'an Surah Al-Isra* (n.d.).

The principle of pacta sunt servanda is a fundamental principle in treaty law that originated from the Roman legal tradition and was adopted in various legal systems, including the legal system in Indonesia. This principle states that every agreement made legally applies as law to the parties who make it. In the Indonesian legal system, this principle is explicitly reflected in Article 1338 paragraph (1) of the Civil Code, which reads: "All agreements made legally shall apply as laws for those who make them." This principle is the main foundation that provides legal certainty and guarantees the stability of civil legal relations, because the parties know that the agreements they make will be respected and enforceable by law. The application of this principle does not always run ideally, in practice, when the agreement agreed by the parties is in the form of a standard agreement where it is very likely that one of the parties is in an unbalanced position economically, and socially, it is in this context that criticism of the application of pacta sunt servanda arises because many are concerned that it will ignore the value of justice in the contents of the agreement, more pursuing aspects of legal certainty.[23]

The principle of pacta sunt servanda provides automatic legal protection when an agreement is made and ratified by the parties. So that a sense of security can be achieved for the agreement made by the parties. The level of completeness of the agreement in the clause determines the strength of legal protection for the parties. The protection of rights and obligations obtained from the principle of pacta sunt servanda is an absolute right for the parties to the agreement. The parties are obliged to get their rights when what is promised has arrived at the agreed terms. The obligations of the parties in carrying out the performance are mandatory before there are provisions that make the agreement between the parties change according to the agreement of the parties. If there is a dispute in the implementation of the agreement, the judge with his decision can force the party who violates (default) to carry out his rights and obligations in accordance with the agreement, even the judge can ask the other party to pay compensation.

In essence, the principle of pacta sunt servanda requires the parties to fulfill their obligations in accordance with Article 1338 of the Civil Code. The agreement will be executed if it has fulfilled the conditions in Article 1320 of the Civil Code and the parties agree with each other as in the meaning of Article 1313 of the Civil Code. When the agreement is ratified by the parties, the principle of pacta

[23] A. Hernoko Hernoko, *EQUALITY VERSUS JUSTICE, IN CONTRACTS* (Unair Library, 2010).

sunt servanda will apply. Fulfillment of performance is sometimes constrained if there are matters of force majeure that result in the inability of one of the parties to fulfill the performance.[24] The agreement or contract between the parties should be to fulfill mutual rights and obligations. The principle of Pacta Sunt Servanda is the main basis for the fulfillment of the parties' achievements. Achievements must be carried out and cannot be changed in a unilateral manner, which of course will make one party incur losses. This is as stipulated in Article 1338 of the Civil Code which reads that a valid agreement binds the parties as law.[25]

Treaty law basically does not only regulate the formation and validity of contracts, but also must pay attention to whether the contents and implementation of the agreement are in line with the principles of justice, and protection of weaker parties. Thus, Indonesian treaty law has actually opened up space for a more equitable interpretation of the principle of pacta sunt servanda, especially if it is connected to the broad objectives of law: certainty, benefit, and justice. When agreements are not made based on true free will, or when there is unilateral imposition of clauses (as in standardized agreements), then this principle can be corrected through other principles such as good faith, justice, and protection of the disadvantaged party.

The principle of pacta sunt servanda is one of the basic norms in law, and is closely related to the principle of good faith to respect or obey the agreement.[26] The actualization of the implementation of the principle of good faith of a promise, among others, can be illustrated as follows :[27]

a) The parties must carry out the agreement in accordance with the contents, soul, purpose and objectives of the agreement itself;

b) Respect the rights and obligations of each party as well as third parties who may be granted rights and / or burdened with obligations; Do not take actions that can hinder efforts to achieve the goals and objectives of the agreement itself, both before the agreement comes into force and after the agreement comes into force.

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[24] Siregar Verawaty Lenny, "Legal Study of the Principle of Pacta Sunt Servanda in Fiduciary Agreements After the Decision of the Constitutional Court Number 99 / PU-Xviii / 2020," *Journal of Notarius UMSU Postgraduate Kenotariatan Study Program* 2 (July 2023).

[25] Subekti R. and Tjitro Sudibio R., *Kitab Undang-Undang - Undang-Undang Hukum Perdata* .

[26] Wayan Partiana, *International Treaty Law Part 2*, vol. 9 (Mandor Maja Pancasila and Citizenship Education, 2022).

[27] Agus Triansyah, "Application of the Pacta Sunt Sevanda Principle in Bankruptcy Disputes," *Badamai Law Journal* 5 (September 2020).

The definition of subjective good faith is contained in Article 530 of the Civil Code which regulates the position of power (Bezit) which implies an honest attitude or behavior in carrying out every action and action in society. One of the important provisions in a business agreement or contract is the provision or clause on dispute resolution which regulates the issue of forum and what law will apply to disputes that arise. Business actors tend to avoid resolving disputes through the courts, and choose to resolve them through out-of-court institutions.

The principle of pacta sunt servanda in agreement law, and the principle of good faith have a close and complementary relationship. The principle of pacta sunt servanda emphasizes that every agreement that has been legally agreed upon binds the parties like a law, as stipulated in Article 1338 paragraph (1) of the Civil Code. This principle guarantees legal certainty and requires the parties to carry out the contents of the agreement in accordance with what has been agreed. However, the implementation of the principle of pacta sunt servanda should not be separated from the principle of good faith, which is explicitly mentioned in Article 1338 paragraph (3) of the Civil Code: "Agreements must be executed in good faith."

Good faith acts as a barrier and guide in the implementation of an agreement, so that the agreement is not only fulfilled formally, but also ethically and fairly. This means that the principle of pacta sunt servanda does not provide room for rigid implementation of the agreement if it conflicts with the principles of justice or unreasonably harms one of the parties. The relationship between the two becomes particularly important in situations where imbalances or special conditions arise such as force majeure, abuse of circumstances, or the existence of onerous standard clauses. In such cases, good faith becomes the basis for judges to interpret and assess whether the performance of the agreement remains legally and morally acceptable.

B. Regulation of Standard Agreement in Achieving Contractual Fairness

In the practice of civil law relations, especially in the contractual field, agreements are the main means of regulating the rights and obligations of the parties. The practice of agreements in the development of modern society, many agreements are no longer made through a balanced bargaining process, but are arranged unilaterally by parties who have a stronger economic or legal position. This kind of agreement is known as a standard contract, which is an agreement whose clauses have been prepared in

advance by one party and cannot be changed or negotiated by the other party.

The main problem that arises from standardized agreements is the inequality of justice, because the weaker party (usually the consumer) often has no choice but to agree to the entire contents of the agreement. Many clauses in standard agreements are exclusive, burdensome, and sometimes even detrimental to other parties. This raises the question of the extent to which standard agreements are in accordance with the principles of justice and the principle of balance in treaty law. In the context of positive law in Indonesia, Articles 1320 of the Civil Code and 1338 of the Civil Code emphasize the importance of agreement and freedom of contract. However, in practice, this principle does not fully work because of the dominance of certain parties in drafting the contents of the agreement. Therefore, further study is needed regarding the protection mechanism for the injured party, as well as how the legislation regulates the limits of the validity of standard clauses so that they still reflect the principle of justice.

A standard agreement is a provision in an agreement that has been determined unilaterally by one party, usually a party that has a dominant position such as a business actor, service provider, or large corporation. The other party (consumer or service user) has no room to negotiate, can only accept or reject the entire contents of the contract. Because of its unilateral nature, standard agreements are very prone to causing injustice in contractual relationships, especially when the contents of the agreement are too burdensome for one party, there are clauses that limit the responsibilities of the dominant party, the rights of weak parties are eliminated unequally.

The rule of law in Indonesia has regulated standard clauses that are usually used in business relationships or agreements, in this case it can be seen in the provisions of Article 18 of Law No. 8 of 1999 concerning Consumer Protection. Some of these articles clearly state that there are rules governing the existence of standard agreements. It states that: "Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand". Meanwhile, paragraph (3) further states that: "Every standard clause that has been stipulated by a business actor in a document or agreement that fulfills the provisions as referred to in paragraph (1) and paragraph (2) shall be declared null and void". In the application of the provisions in paragraph (3), the use of standard clauses that are located as regulated in paragraphs (1) and (2), is still widely found. Not only does it stop there, in paragraph (3)

that, "Business actors are obliged to adjust standard clauses that conflict with this law.

To ensure fairness in contracting, the law must regulate and limit the use of standard clauses. In Indonesia, this is regulated, among others, in the provisions of Article 18 of Law No. 8 of 1999 concerning Consumer Protection, which expressly prohibits the contents of standard agreements that deprive consumers of their rights, give absolute power to business actors, and give the burden of proof to consumers. To achieve contractual justice, of course, standard agreements must be guided by the principle of balance so that no party is unilaterally disadvantaged and must also pay attention to the good faith of the parties.

Justice of contract can be seen in an agreement when both parties reach an agreement to bind themselves together without any pressure from the other party, in this case the contract is carried out voluntarily. The bargaining position of the parties in an agreement cannot be separated from the position of consumers, so that it can be clearly seen how the position of consumers in the agreement is one element that cannot be abandoned.[28]

Of course, if there is justice in the contract, there must be a balance in the standard agreement. The balance that exists in the contract can be examined in the conditions of the parties before making the contract. There are at least three aspects in an agreement that need to be considered to achieve this balance First, the Actions of the Parties, in this case related to the subject of the agreement, it cannot be denied that an agreement can be realized when the parties bind each other to the agreement. When the conditions and conditions of the parties are in a balanced condition, it will be able to make a good agreement, and vice versa when the legal actions carried out come from the imperfection of one or both parties, then the agreement can be said to be in an unbalanced state.[29]

Second, the content of the contract. The balance in the content of the contract is inseparable from the awareness and agreement of the parties to make the contract. It cannot be denied that the content of the contract made is inseparable from the principle of freedom of contract, this is because the existing legal rules do not regulate the type, content, and clauses contained in the contract. Third, namely the implementation of the contract, is an activity carried out by the parties as an application of the clauses made in

[28] Muhamad Hasan Muaziz and Achmad Busro, "Regulation of Standard Clauses in Agreement Law to Achieve Contractual Justice," Journal of Law Reform 11 (2015).
[29] Ibid.

the agreement, the implementation of this contract is the responsibility of the parties, therefore the parties are expected to want to carry out the contract in good faith, so as to provide benefits for both parties who promise.[30]

The provisions of contract law in Indonesia do emphasize that the agreement reached by the parties as one of the fundamental bases for the formation of a valid agreement or contract must not be based on coercion or fraud (misrepresentation) or oversight from the other party, where if the agreement is later proven to be reached by the efforts referred to in Article 1321 of the Civil Code, it will give the injured party the right to request cancellation of the contract that has been formally agreed upon or signed by the parties.[31] The legal consequences of clauses that are considered to be detrimental to the interests or rights of contracting partners in a weak position, which are often consciously imposed by entrepreneurs who have a stronger position to be paired as binding points or standard clauses in a contract, are generally not expressly regulated in Indonesian contractual relations provisions.

Standard agreements are important for business efficiency, but fairness in contracting must be maintained. There is a need for supervision, and legal awareness from business actors so that standard agreements do not become a tool of oppression, but remain a legitimate means of creating fair, balanced and ethical legal relationships. Standard agreements are inevitable in the fast-paced and mass modern world. The application of standard agreements should not be at the expense of the rights, dignity, and justice of weaker parties, therefore, a balance between efficiency and justice is needed in the agreement, which is realized.

Article 1338 of the Civil Code indicates that freedom of contract is limited by the good faith of each party. Agreements whose contents reflect the existence of bad faith on one of the parties can bear the consequences of null and void. The agreement is considered not to have existed, because it violates the objective requirements stipulated in Article 1337 of the Civil Code. Article 1338 paragraph (1) emphasizes that every agreement must be made legally. Thus, the word "valid" here refers to Article 1320 of the Civil Code which regulates the conditions for the validity of a contract, namely agreement, capability, a certain matter, and must not conflict with a halal causa.[32] This shows that the principle of

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[30] Ibid.
[31] Panggabean, “Validity of Agreements with Standard Clauses.”
[32] Subekti R. and Tjitro Sudibio R., *Kitab Undang-Undang - Undang-Undang Hukum Perdata* .

freedom of contract is limited by the requirements for the validity of an agreement.[33]

This also applies to other restrictions, such as: Article 1321 of the Civil Code, agreements due to oversight, coercion or fraud; Article 1335 of the Civil Code, agreements without cause, false or prohibited causes; Article 1337 of the Civil Code, causes prohibited by law, contrary to public order. Each of these provisions becomes the basis so that an agreement can be withdrawn, can be canceled or null and void, which shows that the principle of freedom of contract is limited.[34]

Standard agreements in practice often present problems of injustice due to the inequality of bargaining position between the party making the agreement and the party who can only accept the contents of the agreement without the opportunity to negotiate. The presence of the principle of justice in these conditions is very important to correct the potential abuse of dominant positions and protect weaker parties. The principle of justice in the law of agreements demands that contractual relationships not only meet the requirements of the formality of the validity of the agreement as determined by Article 1320 of the Civil Code, but also pay attention to the balance of rights and obligations of the parties. Fairness requires that the contents of the agreement are not exploitative and do not cause unilateral harm to one party, especially consumers or parties who do not have the power to negotiate.

According to John Rawls, there are two priorities in implementing the three principles. These priorities must arise because the implementation of one principle may stand in conflict with another. The first priority stipulates that the principle of equal liberty lexically applies before the second principle, both the principle of difference and the principle of equality of opportunity. That means if and only if we first fulfill the demands of the first principle before proceeding to fulfill the second principle. The first priority in social justice is the greatest possible freedom. Only after freedom is fully exalted,[35] The second priority is the relationship between the two parts of the second principle of justice. According to Rawls, the principle of equality of opportunity lexically applies before the principle of difference.[36]

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[33] Wiwin Widiyaningsih, "Freedom of Contract against Standard Standard Agreements in Achieving Contractual Justice," Journal of Presumption of Law Faculty of Law, Majalengka University 2 (April 2020).
[34] Ibid.
[35] Damanhuri Fattah, "The Theory of Justice According to John Rawls," *TAPIs Journal* 9 (December 2013).
[36] Ibid.

The first priority stipulates that basic freedoms should not be restricted in the name of greater material gain for everyone or even for those who are least advantaged. In other words, certain restrictions on liberty should only be made in order to achieve the broadest system of liberty for everyone. This combination of legal principles of justice and social justice theory requires legal mechanisms, either through legislation (such as consumer protection) or through judicial interpretation, to correct clauses that are contrary to a sense of justice. Unfair clauses can be declared null and void or at least disregarded in order to achieve a substantive balance between the parties.

Thus, in dealing with the reality of standard agreements, the principle of justice in law must be linked to the theory of social justice which emphasizes the protection of weak parties, so that contract law not only prioritizes legal certainty (pacta sunt servanda), but also guarantees substantive justice in legal relations between the parties.

Based on the description above, the legal principle that can be said to have the most important position in the law of engagement, namely the principle of good faith. An agreement can be said to be invalid, not fulfilling the legal requirements of an agreement if it deviates from the good faith of one of the parties. An agreement if there is coercion, oversight, fraud is a deviation from the principle of good faith. An agreement contrary to law, order and decency is also contrary to good faith. There are other circumstances or prerequisites that cause the contract not to be implemented freely, for example because of a defect of will, contrary to law, order, and decency, which is also a concrete form of non-fulfillment of the principle of good faith in the implementation of an agreement.

Unbalanced Position of Parties in a Standard Agreement

Standard agreements are legal instruments that are widely used in the development of modern transactions, especially in the service sector, finance, banking, and electronic commerce. Standard agreements, which are generally prepared unilaterally by one of the parties, offer convenience in accelerating the transaction process. However, this convenience often ignores the principle of balance in the legal relationship between the parties. The imbalance in the position of the parties in a standard agreement arises because one of the parties, usually the consumer or the service recipient, has no room to negotiate the contents of the agreement. This condition causes the risk of inclusion of one-sided clauses, commonly called exoneration clauses, which can harm parties with weaker bargaining positions. In practice, it is often found that exoneration clauses

improperly exempt or limit the drafter of the agreement from legal responsibility. Such conditions are certainly not in line with the principle of fairness in contracting, which requires protection of the injured party.

This phenomenon of imbalance raises various legal issues, especially related to the principle of freedom of contract and the principle of contractual justice, for this reason, it is important to conduct an in-depth study of the form of imbalance in the standard agreement, the factors that cause it, as well as the legal protection available to weak parties, and the existence of the principle of Pacta Sun Servanda. Imbalance often occurs in the implementation of standard agreements that have long been used in various contracts, the use of standard agreements is closely related to progress in the economic field which demands efficiency in spending costs, time and energy. The standard agreement does not reflect the principle of balance of the parties to the agreement.

Traditionally, an agreement is based on the principle of freedom of contract between two parties who have equal positions. The agreement obtained in the agreement is the result of negotiations between the parties. Such a process is not found in a standardized agreement. There is almost no freedom in determining the contents of the agreement in the negotiation process. The contents or terms of the agreement have been determined unilaterally by the employer. The imbalance of position in a standard agreement is caused because the parties have an unequal bargaining position, resulting in unreal bargaining.[37]

According to Hondius, a standard agreement usually contains standard terms in the form of written terms contained in several agreements that will still be made and the number is uncertain, without negotiating the contents first, thus a standard agreement can contain an exoneration clause which is considered a one-sided and unfair clause. Economically, the use of standard clauses in standard agreements has practical advantages, reducing long-winded negotiations and saving costs, but legally it gives an unbalanced position to the parties, because one party is usually forced to accept the terms that have been standardized by the other party.[38] The contents of a standard agreement have been determined by one of the parties, so the principles of agreement law in it seem to be ignored. This can be seen from the absence of

[37] Siti Dyara Aisha, "Imbalance of the Position of the Parties in the Banking Credit Agreement (Study at Bank Mestika Dharma Medan)," Journal of the University of North Sumatra 14 (June 2021).
[38] Ibid.

negotiations between the parties to determine the contents of the agreement, as well as the weak bargaining position of one of the parties, so that the element of balance in an agreement is not fulfilled. The imbalance can arise as a result of the behavior of the parties or as a consequence of the content of the agreement, and perhaps also in the implementation of the agreement itself.

Imbalances in agreements can be exploited by parties who are in a dominant position to abuse the situation. Imbalances generally occur when the parties are in different economic strengths. The weak economic party seems to be forced to accept the will of the strong economic party. The imbalance of economic circumstances can affect the psychological condition of the economically weak party, so that it feels depressed. The economically weak party is forced to make a take it or leave it decision.

Agreement is a form of obligation that is born upon the agreement of two or more parties, as regulated in the Civil Code (KUHPerdata). The principle of freedom of contract is the main basis that emphasizes that the parties are free to determine the content, form, and terms of an agreement. In practice, the development of modern economic and business needs has given birth to a new form of agreement called a standard agreement. A standard agreement is an agreement whose contents have been determined unilaterally by one party without room for negotiation for the other party. This form is commonly found in daily transactions, such as transportation service contracts, telecommunication services, online product purchases, and insurance.

The practice of standardized agreements, although it speeds up and simplifies the transaction process, does not mean that it does not cause problems of imbalance in the position of the parties. One of the parties, which is generally the consumer, is in a weak position because it can only accept or reject the agreement without the opportunity to negotiate. This imbalance of position has the potential to give birth to clauses that burden the weaker party, sometimes even contradicting the principles of justice and legal protection.

In an agreement, the parties express their will in a promise. In fact, an agreement is based on a certain goal or purpose. The purpose in an agreement is based on the agreed will, namely in the form of promises between the parties. However, in an agreement an imbalance may arise, which is a result of the parties' own behavior or as a consequence of the implementation of the agreement. As referred to in everyday language, the word "balance" (evenwicht) refers to the notion of a "state of burden sharing on both sides being

in a state of balance". Balance in the context of this study is understood as "a state of silence or harmony in which no one dominates, or in which no one element overpowers another.[39] Balance is also defined as being based on the pursuit of a state of equality, as a result of which there must be a legitimate transfer of wealth.

The requirement of balance as the fourth objective is achieved through social propriety, the immaterial existence of which is achieved in the spirit of balance. In an agreement, the interests of individuals and society will simultaneously be guaranteed by objective law. The agreement from the point of substance or purpose and goal turns out to be contrary to decency and or public order will be null and void and in essence the same will apply with respect to agreements that are contrary to the law. It is clear that social propriety does not exist through such agreements. In an unbalanced agreement, it can arise as a result of the parties' own behavior or as a consequence of the substance (content) of the agreement or the implementation of the agreement.[40]

In relation to the content or intent and purpose of the agreement the parties expand by raising expectations to achieve the entrusted performance. From the premise of the parties, it can be known if future expectations can be objective or if they contain sacrifices of the opposing party which result in such a way that future expectations lead to imbalance. Achieving a state of balance implies, in the context of objective future expectations, efforts to prevent the loss of one of the parties to the agreement. Understanding the contents of the agreement is a necessity and the existence of balance in contracting is an important thing in an agreement.[41]

The use of standard contracts in today's business world raises legal issues that require resolution. Traditionally, an agreement is based on the principle of freedom of contract between two parties who have equal positions. The agreement obtained in the agreement is the result of negotiations between the parties.[42] Such a process is not found in a standard agreement. There is almost no freedom in

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[39] Herlien Boediono, *The Principle of Balance for Indonesian Agreement Law: The Law of Treaties Based on the Principles of Indonesian* (Wigati, 2006).
[40] Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, “Implementation of the Principle of Balance for Parties in Standard Agreements,” *Udayana Master Law Journal* 8 (May 2019).
[41] Taufik Kurrohman, Application of the Principle of Contractual Balance in Islamic Banking Financing Agreements Perspective of Islamic Economic Law Theory (Surya Kencana Satu Journal, 2016).
[42] Panggabean, “Validity of Agreements with Standard Clauses.”

determining the contents of the agreement in the negotiation process. The contents or terms of the agreement have been determined unilaterally by the employer.

A standard agreement is an agreement whose terms have been determined unilaterally by one party without negotiation. In practice, other parties, who are usually in a weaker position (such as consumers), are only given the option to accept or reject the entire contents of the agreement. This undermines the essence of the principle of freedom of contract which demands equality of will between the parties. The imbalance of position occurs because the party drafting the agreement has more power to determine the contents, while the other party does not have the opportunity to influence the contents of the agreement. As a result, the agreement tends to benefit the stronger party and harm the weaker party.

Some of the factors that cause imbalance in standard agreements include economic dominance, of course, the drafting party is usually a large company that has very strong financial and technical strength to set unilateral terms. Lack of alternative options such as consumers often have no choice but to accept the specified terms. Limited legal knowledge weak parties usually lack understanding of the legal consequences of the agreements they sign. Furthermore, the standardization of a definite transaction process in bulk transactions, companies use standardized agreements for efficiency, without considering the specific needs of each consumer. In practice, unequal position can be seen in the clauses written in an agreement, which clauses provide restrictions for the parties such as in bank credit contracts, contracts in the housing sector, parking services, electricity, and others. These types of contracts contain standardized clauses.

According to Hondius, a standard agreement usually contains standard terms in the form of written draft terms contained in several agreements that will still be made and the number is uncertain, without negotiating the contents first,[43] thus a standard agreement can contain an exoneration clause which is considered a one-sided and unfair clause. Economically, the use of standard clauses in standard agreements has practical advantages, reducing long-winded negotiations and cost savings, but legally it gives an unbalanced position to the parties, because one party is usually forced to accept the terms that have been standardized by the other party.

A standard agreement that is determined unilaterally does not

[43] Purwahid Patrik, *Standard Agreement and Abuse of Circumstances as Summarized in Contract Law in Indonesia*, 1998.

rule out the possibility that it can be misused by one party who has a higher bargaining position to suppress the party with a weak position. Meanwhile, the weak party can only accept what is offered, so that it often suffers losses. But why does this still happen, it is based on economic considerations, namely to reduce costs, energy, and time incurred in making an agreement and practical because it can be used and signed at any time.

What is always put forward in relation to the balance in an agreement is the freedom of contract for the parties, in determining the agreement clause. Ridwan Khairandy argues that freedom of contract is interpreted in two aspects, namely the positive meaning of freedom of contract where the parties have the freedom to make binding contracts that reflect the free will of the parties. As well as freedom of contract in a negative sense, namely the parties are free from an obligation as long as the binding contract does not regulate.[44]

A standard agreement in which the contents have been determined by one of the parties, the principles of agreement law in it seem to be neglected. This can be seen from the absence of negotiations between the parties to determine the contents of the agreement, as well as the weak bargaining position of one of the parties, so that the element of balance in an agreement is not fulfilled. The imbalance can arise due to the behavior of the parties or as a consequence of the content of the agreement, and perhaps also in the implementation of the agreement itself. The imbalance in the agreement can be utilized by the party who is in a dominant position to abuse the situation.

In general, imbalances occur when the parties are in different economic strengths. The economically weaker party is forced to accept the will of the economically stronger party. The economic imbalance can affect the psychological condition of the weak economic party, so that it feels pressured. In a depressed state, the weak economic party is forced to make a take it or leave it decision.[45]

C. Implementation of Fairness Principle in Standard Agreement

Agreement is a concrete form of legal relationship based on agreement between the parties, in its development, along with the increasing complexity of social and economic relations, a practical

[44] Ridwan Khairandy, *Good Faith in Freedom of Contract* (University of Indonesia, 2003).
[45] Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, “Implementation of the Principle of Balance for Parties in Standard Agreements.”

and efficient form of agreement was born, namely a standard agreement. A standard agreement is prepared unilaterally by one party and offered to the other party without any room for negotiation of the contents of the agreement. This practice is commonly found in various sectors, such as banking, insurance, online buying and selling, and transportation services.

Standard agreements, although they provide convenience in transactions and efficiency in the implementation of legal relations, in many cases, these agreements actually create imbalances between the parties. The party drafting the agreement tends to include clauses that benefit itself, while the party receiving the agreement is in a weak position and has no alternative but to agree to the entire contents of the agreement. As a result, standard agreements often ignore the principle of justice which is the spirit of the law of agreements.

The principle of justice, both formal and substantive, requires that every agreement must pay attention to the balance of rights and obligations of the parties, and avoid any abuse of power. The implementation of the principle of fairness in standard agreements is very important to prevent exploitative practices that harm weaker parties. The implementation of the principle of fairness in standard agreements in Indonesia has received normative recognition, among others through Law Number 8 of 1999 concerning Consumer Protection, which authorizes the court to cancel standard clauses that are considered unfair. However, in practice, the implementation of the principle of fairness still faces various challenges, both in the aspect of norm formulation and in law enforcement in the field.[46]

The use of standard agreements in the business world today raises legal issues that require resolution. Traditionally, an agreement is based on the principle of freedom of contract between two parties who have equal positions. The agreement obtained in the agreement is the result of negotiations between the parties. Such a process is not found in a standard agreement. There is almost no freedom in determining the contents of the agreement in the negotiation process. The contents or terms of the agreement have been determined unilaterally by the employer.[47] On the one hand, the practice is very profitable for entrepreneurs, but on the other hand, it causes losses to consumers. The application of this standard agreement since its inception until now has caused controversy both regarding the existence and validity of standard

[46] Moh. Yusuf Daeng et al., *THE LAW OF CONSUMER PROTECTION* (Taman Karya , 2024).
[47] Panggabean, "Validity of Agreements with Standard Clauses."

contracts. The Civil Code (KUHPerdata) does not specifically regulate standards. Now with the enactment of the Consumer Protection Law (UUPK), the issue of its validity has begun to be answered.

The public wants agreements or contracts to uphold the universal principles that apply in contract law, namely the principle of freedom of contract, the principle of freedom to choose applicable law and the principle of freedom to determine jurisdiction.[48] The reality is different where there is a tendency for business actors to close a transaction by first preparing contract formats that have generally been printed (modeled draft of contract) to be signed by their contract partners. Consciously or unconsciously, this has eliminated or at least limited the freedom of contract of the contractual partner to be able to negotiate the contents of an acceptable agreement.[49]

In relation to justice, it is not just a concept that has no meaning, but something that is very urgent and is a principle of life embedded in humans that requires application in life. Because no matter how ideal a concept is, it is not meaningful if it is not applied in an order of community life. One concept or principle that is always echoed and very popular in society is justice. The principle of justice is not just a public discourse that adorns the sometimes endless debate of opinions. The principle of justice with its various elements is an ideal thing to implement.[50]

Fair in the Big Indonesian Dictionary, contains three meanings, namely not one-sided, or impartial, the second is in favor of the truth, and the third is appropriate or not arbitrary.[51] According to Harun Nasution, the word justice used in the Indonesian language comes from the Arabic verb 'Adlu, which means to straighten, such as straightening house utensils. It also means to resolve a problem, such as resolving a dispute between two people.[52]

Justice is one of the fundamental values in legal and social life. Justice in the legal context is not only understood as giving rights to the rightful, but also as an effort to maintain a balance between

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[48] Ery Agus Priyono, The Role of the Principle of Good Faith in Standard Contracts (an Effort to Maintain Balance for the Parties) in Bunga Rampai Portrait of Standard Agreements When the Spirit Is Left behind by the Body (Yoga Pratama, 2020).

[49] Ricardo Simanjuntak, "Consequences and Legal Actions Against the Inclusion of Standard Clauses in Insurance Policies Contrary to Article 18 of Law No. 8 of 1999 Concerning Consumer Protection," *Journal of Business Law* 22 (2003).

[50] Muh. Haras Rashid, "The Principle of Justice and Its Application," *Journal of Thought, Legal Research, Pancasila and Citizenship Education* 9 (June 2022).

[51] Dictionary Compilation Team Language Center, *Big Indonesian Dictionary* (Balai Pustaka, 2002).

[52] Harun Nasution, Islam Rational Ideas and Thought (Mizan, 1995).

individual interests and the interests of society as a whole. The principle of justice in agreement law serves to ensure that contractual relationships not only fulfill legal formalities, but also reflect the balance of rights and obligations of the parties. Fairness in the agreement requires that no party gains excessive benefits at the expense of the other party, and that each agreement clause is made and implemented in good faith.[53]

The implementation of this principle of justice becomes very important in the context of standardized agreements, where bargaining positions are often unbalanced, therefore, the law must be present not only as a tool of certainty, but also as a tool of justice to protect parties who are vulnerable to exploitation in the agreement relationship.[54]

The agreement has a number of aspects, namely the actions of the parties, the contents of the agreement agreed by the parties, and the implementation of the agreement. The same thing was also stated by Mariam Darus Badrulzaman who said that an agreement has a number of aspects, namely the actions of the parties, the contents of the agreement, and the implementation of the agreement agreed upon by the parties. The three interrelated aspects of the agreement can be raised as criteria regarding the requirements for balance, but also become criteria for imbalance if the conditions for balance and the three aspects are not met. How important fairness is in an agreement. Given that fairness is a principle to realize commutative justice for the parties, the agreement must be formed with reference to the criteria of fairness.[55]

Justice is a fundamental principle that is the main goal of every legal system. The application of justice in the field of law in practice is not only related to the formal enforcement of legal norms, but also how the law can realize the balance of rights and obligations and provide protection to all parties, especially those who are in a weak position. In general, the application of justice in the field of law can be seen through several approaches. Formal justice emphasizes that the law must be applied consistently in accordance with the applicable provisions. All people, regardless of social status, economic status or background, must be treated equally before the law. In this context, justice is achieved when legal procedures are

[53] Ery agus Priyono, Principles of Agreement Law (RajaGrafindo Persada, 2024).
[54] Carlo Russo et al., "Unfair Trading Practices and Countervailing Power," *Journal Homepage*, n.d.
[55] Nasarudin and Yulias Erwin, "Implementation of the Principle of Balance in the Standard Agreement to Realize Justice for the Parties," Journal Law and Government 01 (February 2023).

carried out correctly and are not discriminatory.[56]

Material justice demands that the outcome of the application of the law truly reflects substantive justice. This means that, in certain situations, the rigid application of the law can be overridden if it conflicts with people's sense of justice. Judges, in their judicial function, are often given space to interpret the law based on material justice, especially in cases concerning basic human rights. The implementation of justice in the field of law in practice, often faces challenges, including the existence of inequality in access to justice between strong and weak groups in society. Overlapping or vagueness in legal regulations that allow for deviations in interpretation. Limitations in the ability of law enforcement to implement material justice amidst procedural and bureaucratic pressures. Justice in law depends not only on the existence of good regulations, but also on the integrity of law enforcement officers, public legal awareness, and the courage of the judicial system to place the principles of justice above the interests of legal formalities.

Talking about justice in business shows that justice is reciprocally related to the parties involved. Not only in the sense that the realization of justice will create social stability that will support business activities, but also in the sense that as long as the principles of justice are implemented, a better and more ethical business face will be born. Good, ethical, and fair business practices will help realize justice in society, on the contrary, rampant injustice will cause social turmoil that disturbs business people.[57]

The role of good faith in maintaining justice as a bridge between the principle of pacta sunt servanda and justice. In the context of standard agreements, good faith requires that the party drafting the agreement does not utilize its dominance to include clauses that are exploitative or create imbalances. Good faith at the time of entering into an agreement is nothing but an estimation in the heart of the person concerned that the conditions necessary for entering into an agreement legally have all been fulfilled. Good faith at the time of drafting an agreement is based on being honest, open, and not hiding something so that it can prevent a valid agreement (subjective good faith), in carrying out the agreement must heed the norms of decency and justice, by keeping away and actions that might cause harm to other parties..., as stipulated in Article 1339 of

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[56] M. Zulfa Aulia, "Progressive Law: History, Urgency, and Relevance," *Undang: Journal of Law* 1 (2018), https://doi.org/10.22437/ujh.1.1.159-185.

[57] Ery Agus Priyono, *The Role of the Principle of Good Faith in Standard Contracts (an Effort to Maintain Balance for the Parties) in Bunga Rampai Portrait of Standard Agreements When the Spirit Is Left behind by the Body* .

the Civil Code (objective good faith).[58] An agreement that is carried out in good faith or not, will be reflected in the actual actions of the person implementing the agreement, so that although good faith in the implementation of the agreement lies in the human heart which is subjective, but good faith can also be measured objectively.The principle of good faith is stated in Article 1338 paragraph (3) of the Civil Code which reads: "The agreement must be carried out in good faith".

Conclusion

The principle of pacta sunt servanda is the main pillar in the law of agreements that emphasizes the binding force of the parties' agreement. In practice, this principle provides legal legitimacy for the birth of contractual rights and obligations, and guarantees legal certainty in every civil relationship. The application of this principle is not absolute, but must always be balanced with the principle of justice, especially when applied to standard agreements. Standard agreements commonly used in modern business practices do offer administrative efficiency and convenience, however, their unilateral nature by the dominant party often leads to unequal legal relations and injustice, especially for weaker parties. The principle of justice not only ensures balance in contractual relations, but also plays an important role in supporting the development of a legal system that is sustainable, fair, and oriented towards the protection of human rights. The implementation of the Pacta Sun Servanda principle is not merely because the parties have agreed on the contents of the agreement, but must also pay attention to the principles of good faith, balance and fairness of contract.

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[58] Niru Anira Sinaga, “Implementation of the Principle of Freedom of Contract in Standard Agreements in Realizing the Justice of the Parties,” *Dirgantara Law Scientific Journal-Faculty of Law* 9 (September 2018).

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