

Reconstruction Of Indonesian Contract Law Toward Substantial Justice

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Abstract

Indonesian contract law, rooted in the Civil Code (*Kitab Undang-Undang Hukum Perdata* / KUH Perdata) inherited from the Dutch colonial era, has long prioritized freedom of contract and formal legal certainty. However, this paradigm frequently overlooks structural inequalities between contracting parties, rendering contracts susceptible to becoming instruments of legalized injustice. This article aims to examine the reconstruction of Indonesian contract law toward substantial justice through four strategic steps: (1) reinterpretation of the principle of freedom of contract, bounded by propriety, balance, and good faith; (2) strengthening of the principle of balance as a corrective mechanism against the unequal positioning of parties; (3) substantive revitalization of good faith as an animating principle throughout all phases of the contractual relationship; and (4) expansion of the judicial role as an active guardian of



justice. This research employs a normative legal method with statutory, conceptual, and comparative approaches. Primary legal materials include the Civil Code, court decisions, and relevant legislation, while secondary legal materials encompass scholarly literature and national as well as international legal journals. The findings indicate that true contractual justice cannot be measured solely by the existence of formal consent, but must be assessed against whether the substance and process of contract formation are genuinely fair, balanced, and respectful of the dignity of all parties. A reconstruction of contract law that integrates substantial justice will transform it from a mere instrument of formal certainty into a genuine means of realizing a more just and dignified society.

KEYWORDS

Substantial Justice, Contract Law, Freedom Of Contract, Good Faith, Judicial Intervention

Introduction

Endah Safitri et al., in their journal article entitled "*Standard Contracts and Contractual Justice in the Perspective of Indonesian Civil Law*" published in 2025, note that civil law reform particularly in the domain of contract law is fundamentally concerned with shifting the focus from the "*will theory*" (based on the meeting of minds) toward the "*reliance theory*". Contractual justice is no longer measured solely by whether both parties have affixed their signatures, but by whether the contractual terms are substantively fair.¹

For justice to be realized, a contract must embody the coherent application of all foundational principles of contract law, including: the principle of freedom of contract, the principle of consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of good faith, the principle of personality, the principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the

¹ Endah Safitri, Teguh Suroso, and Susilo Wardani, "PERJANJIAN BAKU DAN KEADILAN KONTRAKTUAL DALAM PERSPEKTIF HUKUM PERDATA INDONESIA," *ANDREW Law Journal* 4, no. 2 (2025): 866–873.

principle of morality, the principle of propriety, and the principle of protection. These principles are intrinsically interrelated, inseparable, and must be applied simultaneously, proportionally, and equitably, serving as the normative framework that binds the substance of any agreement. As further elaborated by Niru Anita Sinaga in her journal article entitled "*The Harmony of Contract Law Principles in Realizing Justice for the Parties in an Agreement*": "Justice can only be understood when it is positioned as the condition that law seeks to bring about. The effort to realize justice in law is a dynamic process that takes considerable time one that is often dominated by the forces contending within the broader framework of political order to give it concrete expression."²

Moreover, Muhammad Haris Abdul Hakim et al., in their 2025 journal article entitled "*Transformation of Conventional Contract Law Principles through the Integration of Sharia Values*", observe that conventional contract law, derived from the European colonial tradition, views the contractual relationship as nothing more than the product of the free will of rational individuals. This perspective positions human beings as autonomous legal subjects, with the state's role limited to general regulation without intervening in the substance of private relations. In contrast, Sharia contract law proceeds from the understanding that human beings bear responsibilities not only to one another, but also to God Almighty. Accordingly, contracts (*akad*) are understood as sacred bonds that must fulfill the principles of justice, trustworthiness, and honesty, and must be free from any prohibited elements.³

These scholarly works collectively illuminate the systemic challenges confronting Indonesia's current contract law framework. Accordingly, reconstructing Indonesian contract law to achieve substantial justice rather

² Niru Anita Sinaga, "Keselarasan Asas-Asas Hukum Perjanjian Untuk Mewujudkan Keadilan Bagi Para Pihak Dalam Suatu Perjanjian," *Jurnal Mitra Manajemen* 7, no. 1 (2015).

³ Muhammad Haris Abdul Hakim, Nur Aziz Muslim, and Aminatur Rosidah, "Transformasi Asas Hukum Perjanjian Konvensional Melalui Integrasi Nilai-Nilai Syariah," *Jejak Digital: Jurnal Ilmiah Multidisiplin* 1, no. 4 (2025): 1465–1476.

than merely formal justice has become an urgent imperative. For too long, contract law practice has been governed by a classical paradigm that emphasizes freedom of contract and legal certainty, frequently at the expense of addressing structural inequalities between contracting parties and the broader social consequences of contractual arrangements.

Yet in the reality of modern society, contractual relationships seldom arise between parties of equal standing. Many contracts emerge from asymmetrical economic relationships, standard-form agreements, or situational pressures that place one party in a position of vulnerability. If the law merely adheres to the literal text of an agreement, contracts may become instruments of legitimized injustice.

Methods

This research employs a normative legal research approach (*normative legal research*), examining law as a normative system by analyzing the principles, rules, and legal doctrines in force.⁴

The approaches applied encompass three methodological frameworks: the statute approach, which examines the Civil Code (*KUH Perdata*) and relevant legislation governing contracts; the conceptual approach, which analyzes the concepts of substantial justice, the principle of balance, and good faith; and the comparative approach, which compares Indonesian contract law with the legal systems of the Netherlands, Germany, and England.⁵

The legal materials utilized consist of primary legal materials, namely the Civil Code, Supreme Court decisions, and statutory regulations including Law Number 8 of 1999 on Consumer Protection and Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business

⁴ Peter Mahmud Marzuki, "Penelitian Hukum," *Jakarta: Kencana Prenada Media* 55 (2005).

⁵ Johnny Ibrahim, "Teori Dan Metodologi Penelitian Hukum Normatif," *Malang: Bayumedia Publishing* 57, no. 11 (2006).

Competition.

Secondary legal materials comprise nationally and internationally peer-reviewed legal journals accessible online, contract law textbooks, and relevant scholarly articles. All legal materials were gathered through library research and analyzed qualitatively using a prescriptive method to formulate an ideal reconstruction of contract law aimed at realizing substantial justice.

Result and Discussion

The Concept Of Justice

Linguistically, justice is understood as the antithesis of oppression and tyranny reflecting a state of equilibrium between excess and deficiency, such that neither surplus nor shortfall exists. Justice is thus conceived as the respect for the rights of others as an antidote to subjugation and aggression. It is commonly defined as 'giving to every holder of a right what is rightfully theirs,' while some perspectives broaden its meaning to encompass 'placing everything in its proper position, or performing every act with due precision.'⁶

In Arabic etymology, justice (al-'adl) carries the meanings of upholding fairness, acting equitably, and applying impartiality. Linguistically, it denotes steadfastness in religious obligation, or consistency in pursuing the path of truth by abstaining from prohibited conduct.⁷

Justice means situating all things in their rightful place. It is a concept of far-reaching significance, encompassing every dimension of human life. As a principle, justice is universal in scope, permeating all forms of

⁶ Sima Esmailpour, Yousef Molaei, and Mehdi Sheidaei, "Analysis of the Relationship Between Justice and Contract Law," *Legal Studies in Digital Age* 3, no. 4 (2024): 36–48.

⁷ Esmailpour, Molaei, and Sheidaei.

evaluation and the exercise of authority, whether in matters of great or minor consequence.

Justice is among the most paradoxical of concepts expansive in definition yet comparatively narrow in practice. In ethics, justice is regarded as a virtue grounded in a higher moral principle. A number of scholars hold that general concepts such as moral good and evil, divine justice, the virtue of honesty, and the vice of deceit are in harmony with human nature. This suggests that because human reason can independently apprehend such concepts and innate human disposition affirms their truth, ethical principles are similarly understood through this very faculty.

Justice has also generated considerable debate in philosophy. From a philosophical standpoint, justice is understood through rational inquiry and bears resemblance to the concept of natural law, thereby possessing a naturalistic character. Plato, among the earliest and most influential of philosophers, held that justice is an ideal attainable only by those trained in philosophy individuals of particular qualification and cannot be accessed through experience and sensory perception alone.

Plato defined justice according to the talent and right of each individual, asserting that 'justice means each person obtaining what is rightfully theirs and performing the profession suited to their capacity and competence.' He regarded the discharge of one's proper function, without encroaching upon the affairs of others, as the essence of justice. Aristotle, in turn, interpreted justice as moderation and balance, and subsequent thinkers have offered various definitions of justice in accordance with their respective perspectives.

Justice is not merely about rules that are obeyed, but about a sense of rightness felt in the conscience. It is not simply a lawful decision it is something that lives within the human spirit, offering tranquility and the assurance that truth has prevailed. Here lies the significance of *substantial justice*: a form of justice that excavates the deepest meaning of law,

transcending formality and normative text. As articulated in the editorial statement of the Supreme Court's Marinews publication: 'Substantial justice begins with the fundamental question: does the application of law in a particular case truly reflect justice in concrete reality? Does the judgment rendered bring genuine benefit, touch the sense of humanity, and provide redress for those affected?'.⁸

At its foundation, positive law is designed to guarantee certainty, order, and equality before the law. However, justice cannot be achieved through uniform treatment alone; it also demands sensitivity to the differing circumstances and backgrounds of each individual. Justice is, therefore, situational in nature and oriented toward humanity.

The rigid application of law without regard for social context risks negating substantive justice. An individual may be found formally in violation of the law while, in substance, they are defending their fundamental rights. In such circumstances, legal procedures may run their course, yet the public's sense of justice remains unsettled.

Contemporary legal thought situates substantial justice as the moral dimension of law. This approach does not negate positive law, but insists that law must not be understood as nothing more than normative text. Legal interpretation must be oriented toward human values and universal moral principles, enabling law to function in a more adaptive and socially responsive manner.

Substantial justice accordingly demands an active role from judges and law enforcement officials not merely to interpret statutory provisions, but to understand the dynamics of lived experience. This approach calls for wisdom, empathy, and social sensitivity. True justice is not born solely from normative construction but from the inner awareness of the human being;

⁸ M. Khusnul Khuluq, "Keadilan Substansial Dan Tantangannya Dalam Sistem Hukum Positif," Marinews, 2025, <https://marinews.mahkamahagung.go.id/artikel/keadilan-substansial-dan-tantangannya-dalam-sistem-hukum-oqQ>.

thus, substantial justice is closer to wisdom than to formal juridical calculation.

This stands in distinction from *contractual justice*, which is a form of relational justice rooted in the most foundational normative premise of private law within a liberal legal order: the principle of mutual respect for self-determination and substantive equality.

Contractual justice is, in essence, concerned with ensuring that parties occupy a position of equilibrium throughout the entire contractual process.

It follows that in moving toward the ideal of justice, attention must be directed not only to normative reform, but to a fundamental paradigm shift: from formal freedom toward substantive justice. The following strategic points may serve as a framework for reflection in advancing this pursuit.

Strategic Steps Toward Substantial Justice

1. Reinterpretation of the Principle of Freedom of Contract

The principle of freedom of contract constitutes a fundamental tenet of Indonesian civil law, as enshrined in Article 1338 of the Civil Code (*Kitab Undang-Undang Hukum Perdata / KUH Perdata*). Based on the formulation of Article 1338 KUH Perdata, the principle of freedom of contract encompasses four distinct freedoms:⁹

- a. The freedom to conclude or to refrain from concluding an agreement;
- b. The freedom to choose the counterparty with whom one wishes to enter into an agreement;
- c. The freedom to determine the form of the agreement; and

⁹ Nia Susanti, “Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata,” *Indragiri Law Review* 2, no. 2 (2024): 33–39.

- d. The freedom to determine the content, validity, and conditions of the agreement.

The liberal approach positions individual autonomy and corrective justice as the two primary foundations of contract law, shaping its structure and core rules. This view is reflected, among other places, in Charles Fried's seminal work, *Contract as Promise* (1981). In essence, a contract is understood as an exercise of personal freedom, and the law functions to support and protect that freedom in its effective realization. Freedom of contract thus occupies a central position within this perspective. Thereafter, once a contract has been formed, the legal consequences of delay, defective performance, or non-performance are governed by principles of corrective justice.¹⁰

According to the sovereignty theory grounded in welfare considerations, human beings act in accordance with their own individual interests. They choose actions that they consider most beneficial to their personal well-being. From this vantage point, moral value is assessed by the extent to which an action promotes the welfare of all. This understanding renders law a system of incentives designed to encourage self-interested rational actors to behave in ways that promote collective welfare. Compliance with law is not a matter of moral obligation but of self-interest. Because individuals are presumed to be rational, they will always calculate costs and benefits before abiding by a rule. Consequently, law is viewed not as a guide to conduct but merely as a mechanism for adjusting the costs and benefits of any given choice of action.¹¹

Several perspectives on freedom of contract merit attention. First, Werner Flume, the German private law scholar, held that the concept of justice does not apply to the content of a contract, but only to the process of its formation. Whatever outcome emerges from a fair contractual formation

¹⁰ Florian Rödl, "Contractual Freedom, Contractual Justice, and Contract Law (Theory)," *Law and Contemporary Problems* 76, no. 2 (2013): 57–70.

¹¹ Rebecca Stone, "Legal Design for the Good Man," *Va. L. Rev.* 102 (2016): 1767.

procedure cannot be evaluated on the basis of the substantive justice of its clauses. If the process is deemed fair characterized by voluntariness and equal bargaining power the content of the contract is beyond further scrutiny for justice. In this view, freedom of contract is understood as the freedom to choose one's counterparty, subject matter, and contractual terms. Simply put, this perspective holds that provided the procedure is fair, the outcome is to be accepted as it stands.¹²

Second, Karl Larenz held that freedom of contract is a highly effective means of achieving just outcomes in contractual exchange, and that it inherently encompasses the idea of equal bargaining power. Unlike the procedural understanding, the instrumental understanding does not reject the conceptual possibility that the content of a contract may be assessed for its justice. Nevertheless, law is not present to correct substantive injustice in a contract where the favorable procedural conditions namely, freedom of contract embracing equal bargaining power have already been met.¹³

Freedom of contract itself serves several functions:

- a. To provide legal certainty for the parties to an agreement;
- b. To enhance efficiency in economic activity; and
- c. To encourage creativity among the parties in fashioning agreements suited to their needs.

According to Maria Badruzaman, freedom of contract as codified in Book III of the KUH Perdata was, in origin, a principle rooted in the individualism of the eighteenth century so deeply embedded that it was not even constrained by the sense of justice alive in society.

The principle of freedom of contract has since undergone significant evolution. From the position that every individual was entitled to contract with whomsoever they wished, on whatever terms, and in whatever manner

¹² Rödl, "Contractual Freedom, Contractual Justice, and Contract Law (Theory)."

¹³ Stone, "Legal Design for the Good Man."

they chose, the principle has shifted toward a freedom bounded by propriety and attentive to the values regarded as beneficial by society. The existence of other contract law principles such as the principle of good faith and the principle of balance has substantially curtailed the individualistic dimension of freedom of contract.

2. Strengthening the Principle of Balance

According to Siti Malikhatun Badriyah, the purpose of a contract is to achieve a balance of interests between the parties. Balance thus becomes of paramount importance indeed, the central concern from the very outset, beginning at the pre-contractual stage (the stage of offer), proceeding through the moment of agreement that gives rise to an obligation between the parties (the contractual stage), and extending to the stage of contractual performance binding upon the parties.¹⁴

The principle of balance may be understood as a state of stillness or harmony in which none of the competing forces dominates the others, or in which no single element prevails over the rest. This principle requires both parties to fulfill and perform their contractual obligations. In a contract, the interests of the individual and of society are simultaneously guaranteed by objective law. The principle of balance is grounded in the pursuit of an equilibrium. The failure to achieve balance, within the context of this principle, is not merely a factual observation it has a direct bearing on the juridical validity of the contract in question. In the formation of a contract, imbalance may arise as a consequence of the conduct of the parties themselves, or as a result of the substance of the contractual terms or the manner of their performance.¹⁵

Invoking the principle of balance as the basis for the annulment of a contract that formally satisfies the conditions of validity under Article 1320

¹⁴ Muhammad Irayadi, "Asas Keseimbangan Dalam Hukum Perjanjian," *HERMENEUTIKA: Jurnal Ilmu Hukum* 5, no. 1 (2021).

¹⁵ Irayadi.

KUH Perdata raises a problem of theoretical justification. This is because the principle of balance remains situated at the level of legal principle and has not been expressly codified in Indonesia's statutory framework. This view aligns with Sudikno Mertokusumo's assertion that legal principles do not constitute concrete norms, but are fundamental ideas of a general and abstract character, forming the foundation or backdrop against which positive legal rules emerge.¹⁶

A similar view was expressed by H.J. Homes in his work *Betekenis van de Algemene Rechtsbeginselen voor de Praktijk*, who held that legal principles are not to be regarded as concrete legal norms, but as general principles or guides for the law in force.

There exists a clear need to regulate a mechanism for the annulment of contracts arising from an imbalance in the position of the parties. In practice, even where the parties have formally arrived at an agreement, a contract may be regarded as unjust if one party occupies a position of superiority and exploits that superiority to insert clauses detrimental to the weaker party.¹⁷

In a number of countries, the Netherlands which shares a civil law system and strong historical ties with Indonesia accommodates this principle through the concept of *misbruik van omstandigheden* (abuse of circumstances).

Book III, Article 3:44(1) juncto (4) of the Netherlands Civil Code (*Nederlands Burgerlijk Wetboek / NBW*) provides that 'A juridical act may be annulled if it has been entered into under the influence of threat, fraud, or abuse of circumstances.' In substance, this provision stipulates that a contract may be annulled where the elements of threat, fraud, or abuse of circumstances are present. Examining Article 3:44(1) juncto (4) NBW, an

¹⁶ Faizal Kurniawan et al., "The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia," *Lex Scientia Law Review* 6, no. 1 (2022): 121–156.

¹⁷ Kurniawan et al.

imbalance in the positional standing of parties to a contract may be understood as falling within the scope of *misbruik van omstandigheden*, which constitutes a violation of the conditions for the validity of a contract.

Abuse of circumstances occurs when a person who knows, or ought to know, that another person may be induced to perform a legal act by virtue of their particular circumstances such as a state of emergency, dependency, recklessness, addiction, abnormal mental condition, or lack of experience nonetheless promotes that person to perform such a legal act, despite knowing, or being expected to know, that they ought to refrain from doing so.

Similarly, under English law, which adheres to the common law system, contracts may be annulled on the ground of *undue influence* a doctrine that in essence reflects the application of the principle of balance in contract. In the English legal system, the principle of balance is realized through the concept of undue influence. Conceptually, undue influence emphasizes the existence of factors or 'circumstances' that affect a person in the exercise of their will at the time of agreeing to a contract. In other words, undue influence arises when the relationship between the parties is exploited in an unfair manner. Accordingly, where a contract disregards those circumstances and the principle of justice for the parties, such a contract is liable to be annulled.

In addition, the UNCITRAL Model Law particularly Article 18 emphasizes the principle of equality and balanced conditions in the conduct of proceedings, such that this provision also constitutes, in substance, a manifestation of the principle of balance.

Likewise, §138(2) of the German Civil Code (*Bürgerliches Gesetzbuch / BGB*) provides that 'A legal transaction shall be void if a person, by exploiting the predicament, inexperience, lack of sound judgment, or significant weakness of will of another, causes himself or a third party to be

promised or granted a financial advantage in exchange for an act that is clearly disproportionate to the performance.'

Felipe Jiménez, in his article '*Rethinking Contract Remedies*', argues that contract law theory needs to be developed beyond viewing remedies as mere extensions of contractual rights. He organizes scholarly opinion into two principal approaches: the instrumentalist approach and the moralist approach. The instrumentalist approach, influenced by law and economics scholarship, holds that the primary purpose of contract remedies is to promote economic efficiency. Through the theory of efficient breach, a breach of contract is regarded as permissible if it yields greater social benefit. The moralist approach, by contrast, views breach of contract as morally culpable, on the basis that every promise contains an element of commitment and personal responsibility that must be honored.¹⁸

Jiménez proposes a pluralist approach that seeks to reconcile these two opposing views. He explains that contract remedies serve two primary purposes: maintaining the continuity and trustworthiness of contractual practice, while simultaneously protecting the parties bound by it. This perspective rejects the rubber-stamp conception that equates the content of contractual rights with the form of their enforcement. According to Jiménez, contractual rights and their remedies are two distinct matters: contractual rights function as guides to the conduct of the parties, while remedies determine the legal and moral consequences that follow when those guides are violated.¹⁹

3. Revitalization of Good Faith as a Substantive Principle

Roger Brownsword, writing in 1999, observed that 'in many legal systems around the world, whether civilian systems or common law, the

¹⁸ Sujoko Bagus et al., "Interpretation of Jimenez's Theory in Contract Law Practice in Indonesia," *Jurnal Ilmiah Gema Perencana* 4, no. 3 (2026): 1971–1986.

¹⁹ Bagus et al.

doctrine of good faith is recognized as one of the general principles of contract law.³⁰ While he does not provide a precise definition of good faith, he adds that the principle carries both subjective and objective meanings. The subjective sense focuses on the *fact of honesty* of the person concerned, while the objective sense is measured against external standards of *fair dealing* that exist independently of the individual's personal state of mind.

According to J.M. van Dunné, the force of good faith encompasses the entire arc of a contract analogized as "*the rise and fall of the contract*." Good faith thus operates across three phases of the contractual journey: the pre-contractual phase, the contractual phase, and the post-contractual phase. At each of these phases, the parties must attend to the course of the contract so that its underlying purpose may be realized.²⁰

In practice, civil disputes arising in connection with agreements are numerous, indicating that public understanding of the meaning of good faith the manner of conduct regarded as proper according to propriety and morality, and how judges comprehend the concept of good faith remains limited. The question arises whether judges merely function as mouthpieces of the statute, mechanically receiving whatever disputes are presented to them without making any effort to engage in reasoning capable of delivering maximum justice in their decisions.²¹

Good faith has been the subject of diverse characterizations across scholarly literature. Nurhidayah binti Abdullah, in her dissertation entitled 'An Empirical Analysis of the Status of Good Faith in Contractual Performance: The Australian Experience,' identifies nine distinct labels applied to the concept of good faith:

- a. Honesty
- b. Reasonableness

²⁰ Auliah Ambarwati et al., "The Essence of the Principle of Good Faith in the Agreement For The Parties," *IOSR Journal of Humanities and Social Science* 27 (2022): 36–43.

²¹ Ambarwati et al.

- c. Fairness
- d. Standard of Appropriate Behavior
- e. Parties' Reasonable Expectations
- f. Cooperation
- g. Loyalty
- h. Having Regard to the Other's Interest
- i. Exclusion of Any Form of Bad Faith (or 'Excluder')

From a historical perspective, good faith in Roman contract law referred to three forms of conduct expected of the parties. First, the parties were required to hold firmly to their word or promise. Second, the parties were prohibited from taking advantage of any misleading conduct directed at the other party. Third, the parties were required to fulfill their obligations and to conduct themselves as honorable and honest persons, even where such obligations had not been expressly stipulated.

In its subsequent development, the doctrine of good faith in Roman law came, in the thirteenth century, under the influence of Aristotelian philosophy and the Scholastic thought of Thomas Aquinas. Aristotle depicted contracts as a form of justice, holding that such justice required each person to act in accordance with natural law or agreement, and that each party to a contract gives something commensurate with what they receive. In Aristotelian ethics, the virtue of fidelity to one's promises is also addressed, alongside the virtue of generosity: a free person gives wisely, to the right recipient, in the right amount, and at the right time. One who breaks a promise is, in essence, a liar.²²

²² Ambarwati et al.

Within the Indonesian legal context, the use of good faith may be identified across numerous statutory provisions. In the Civil Code alone, the term 'good faith' appears twenty-two times.²³

The interpretation of good faith is not fully elaborated by scholars nor exhaustively set out in legislative instruments. The new Dutch Civil Code, for instance, distinguishes between good faith understood as adherence to a *reasonable commercial standard of fair dealing*, and good faith understood as *honesty in fact*.

Allan Farnsworth held that the doctrine of good faith is fundamentally grounded in the teaching of *fairness*. Robert Summers, on the other hand, argued that it is unnecessary to interrogate the meaning of good faith; rather, good faith can be most satisfactorily described by reference to its negative counterpart that is, as a prohibition against bad faith conduct. In this view, good faith possesses no single general meaning but carries heterogeneous significance depending on the form of bad faith at issue. Put simply, good faith is the absence of bad faith.

Research examining the concretization of the principle of good faith in Indonesian legislation finds that the conception advanced by Robert Summers viewing good faith as the absence of bad faith is widely reflected in Indonesian statutory instruments, including Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 8 of 1999 on Consumer Protection, Law No. 11 of 2020 on Job Creation (as it stood prior to its amendment), and Law No. 3 of 2011 on Fund Transfers.

4. Expanding the Role of the Judge as Guardian of Justice

²³ Olsen Peranto, "Itikad Baik Dalam Ketentuan Pasal 27 Ayat (2) UU No. 2 Tahun 2020, Perlukah DiPermasalahan?," *Jurnal Rechts Vinding*, 2020, 1–5.

Contract law recognizes the principle of *pacta sunt servanda* meaning that an agreement has the force of law between the parties who entered into it alongside the principle of freedom of contract, which grants the parties the authority to determine the substance of their own agreement. Accordingly, every party bound by a contract is obliged to abide by and perform what has been agreed. Should one party fail to fulfill the terms of the agreement, that party is deemed to have committed a breach (*wanprestasi*). The existence of these principles also constrains the discretion of judges in adjudicating disputes, since judges are equally bound to respect the agreement of the parties, meaning that the contract as formed must serve as a basis for the court's deliberations and judgment.²⁴

To this day, there persists among practitioners, academics, and the general public the view that a judge in examining and deciding a civil case ought to adopt a passive stance that the judge is not permitted to take an active role in the examination and adjudication of civil proceedings.

In his journal article, Mohammad Kamil Ardiansyah notes that in several cases, judges have undertaken a form of 'intervention' in the substance of contracts ruling, for instance, that a contractual interest rate of 32% be reduced to 12%, as occurred in Decision No. 245/PDT.G/2007/PN.Jkt.Bar. Similarly, in Supreme Court Decision No. 1253K/Sip/1973 in the case of Zainal Abidin v. A.M. Mohamad Zainuddin et al., the Supreme Court concurred with the legal reasoning of the Lhokseumawe District Court and the Banda Aceh High Court, which considered that a monthly interest clause of 20% as agreed upon in the contract was contrary to the values of justice and humanity.²⁵

This position is further supported by Endah Safitri et al., whose article argues for progressive judicial intervention: judges must be willing to annul

²⁴ Mohammad Kamil Ardiansyah, Dahlil Marjon, and Yussy Adelina Mannas, "Kewenangan Hakim Untuk Melakukan Intervensi Dalam Penyelesaian Perkara Perjanjian Kredit Bank Yang Bertentangan Dengan Nilai-Nilai Keadilan Dan Asas Keseimbangan Berkontrak," *UNES Law Review* 6, no. 1 (2023): 2130–2143.

²⁵ Ardiansyah, Marjon, and Mannas.

imbalanced standard clauses by invoking the doctrine of structural inequality. Judges must not be confined to the formality of consent, but must assess the substantive fairness of the clauses in question.²⁶

In advancing the ideal of contractual justice, this article also recommends the use of auxiliary terms. Auxiliary terms are supplementary contractual provisions that govern matters not addressed in the principal agreement, yet are essential to ensuring that the contract continues to be performed fairly and equitably. Savigny held that courts or legislators must endeavor to reconstruct the hypothetical agreement that the parties would most likely have reached with respect to a given issue.

However, this view is not without its weakness, as it does not genuinely account for the normative basis of supplementary rule formation: it is impossible to know with certainty, after the fact, what the parties would actually have agreed upon particularly since their interests may be in conflict. Recourse to what rationally and good-faith-acting parties might hypothetically have agreed upon offers no greater clarity, since it remains unclear what terms such parties would commonly have arrived at. The purpose of auxiliary terms is to prevent the exploitation of the weaker party and to guard against imbalance in the performance of a contract.

A further measure is the strengthening of common usage as a source of law. Here, deliberative theory merits introduction. Common usage is the product of numerous transactions. In each transaction, the parties negotiate over what terms are fair. They may engage in deliberation and offer reasons as to why a given term is fair or unfair, or they may forgo deliberation but refuse to agree unless one party proposes terms the other regards as fair. When does deliberation yield a just outcome? Deliberative theory holds that this requires an ideal speech situation.

²⁶ Safitri, Suroso, and Wardani, "PERJANJIAN BAKU DAN KEADILAN KONTRAKTUAL DALAM PERSPEKTIF HUKUM PERDATA INDONESIA."

In his article, Burton Ong describes the application of judicial law in Singapore to several forms of conduct that may be categorized as reprehensible: first, the exertion of actual pressure by the stronger party upon the weaker (*duress*); second, improper influence exercised by the stronger party over the weaker (*undue influence*); and third, the unconscionable exploitation by the stronger party of the weakness of the weaker party (*unconscionability*).³⁶

Conclusion

Conclusion Indonesian contract law, which has long been dominated by a classical colonial paradigm prioritizing freedom of contract and formal legal certainty, now faces an urgent demand to transform itself toward a more substantive conception of justice. True justice in contractual relations cannot be measured solely by the presence of signatures from both parties; it must be assessed against whether the content and the process of contract formation were genuinely fair, balanced, and respectful of the dignity of all parties involved.

The reconstruction of Indonesian contract law as envisioned in this article requires four interconnected strategic steps. First, the reinterpretation of the principle of freedom of contract no longer understood in an absolute and individualistic sense, but as bounded by the values of propriety, balance, and good faith that are alive in society. Second, the strengthening of the principle of balance as an instrument of correction against the inequitable positioning of parties, as already recognized by various modern legal systems, including the Netherlands through the concept of *misbruik van omstandigheden*, England through *undue influence*, and Germany through §138 BGB. Third, the substantive revitalization of good faith, encompassing the entire arc of the contract from the pre-contractual through to the post-contractual phase, so that honesty, reasonableness, and respect for the interests of the other party become the

animating spirit of every agreement. Fourth, the expansion of the judicial role as an active guardian of justice one who is not content to serve merely as a mouthpiece of the statute, but who is prepared to engage in progressive judicial intervention when a contractual clause is substantively detrimental to the weaker party.

Ultimately, contractual justice is not simply a technical and normative matter; it is a fundamental moral and human imperative. A well-designed system of contract law is one that is capable of reading social reality, sensitive to structural inequalities, and aligned with the values of justice that live in the conscience of society. By integrating the principles of substantial justice into the Indonesian contract law system whether through legislative reform, doctrinal development, or judicial wisdom contract law will no longer serve as an instrument of legitimized injustice, but will truly function as a means of realizing a more just, equitable, and dignified society.

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