

The Buy & Sell Strategy with Concept of "*Standart Contract*" & Problems

Sukarmi^{*)}, Djauhari^{)}, Denny Suwondo^{***)}**

^{*)} Lecturer Faculty of Law, Universitas Islam Sultan Agung Semarang, E-mail: sukarmi@unissula.ac.id

^{**)} Lecturer Faculty of Law, Universitas Islam Sultan Agung Semarang, E-mail: dennysuwondo@unissula.ac.id

^{***)} Lecturer Faculty of Law, Universitas Islam Sultan Agung Semarang, E-mail: djauhari@unissula.ac.id

Abstract. *The impact of globalization penetrates various aspects of life and layers, especially in the field of trade (buying and selling). This field is vulnerable to the use of standard agreements to facilitate transactions with standard or standard contract receipts, meaning that the clauses are drawn up and arranged in such a way without paying attention to the interests of consumers as users of goods and/services. There is an injustice in the process of making the agreement, because the consumer is not involved in determining the agreement, resulting in extreme emotions, different perceptions of the object of the dispute, and ultimately unpleasant attitudes between the parties. The urgency of research to get the right solution in getting around is made possible through Alternative Dispute Resolution (dispute resolution out of court), juridical normative method with descriptive analytical research specifications. Analyzing the problem by describing factually related to existing legal norms. Social Justice Theory which is in line with John Rawls' opinion, justice which focuses on the balance of rights and obligations of the parties, so that it has the opportunity to consistently benefit.*

Keywords: Agreement; Standard Contract; Social Justice.

1. INTRODUCTION

The people of Semarang as the millennial generation,¹ who depend on technology and a free lifestyle. The connotation of a generation surviving in the millennial era is always attached to gadgets that are carried everywhere. Must have item acts as a companion, its absence will still be endeavored to even use

¹ <https://www.hipwee.com/list/berjuang-di-era-milenial-inilah-perjuangan-sebagai-bagi-generasi-muda-kekinian/> accessed on 25/02/2020 at 21.50

tuition for prestige (for a moment) to be able to have it. Hedonic lifestyle² prioritizing material and even many teenagers are now "thirsty" for the attention of others, even to the point of unfair competition.

Now there has been a change in social values³, where eastern culture shifted to westernized which sometimes added insight, made smarter and more advanced but also had a bad impact. Idolized role models, which usually idolize themselves, are something important and fun⁴, which has the impact of being inaccurate in the choice of goods and prices, so that evidence or proof of purchase of said goods is not paid attention. The contemporary lifestyle has been inaccurate, even the installation of exonation clauses that are attached to the Standard Agreement or standard contract. "World Deception"⁵ with the slogan, a very attractive showroom plus a friendly and attractive sales assistant, as (Imam Ghazali) said that the world looks stagnant even though it is moving, the world looks promising even though it is full of tricks "which will not lead them to *Amanah* life. The business world has a lot of problems with deception, as if it were allowed to make a profit. Standard agreements are made unilaterally by including standard clauses in accordance with the wishes of the entrepreneur. Commonly called the "standardized contract, standard contract or contract of adhesion".⁶

The agreement on freedom of contract which should be in balance is a very important element. Economic aspects are increasingly developing, the parties are looking for a more practical format, one party prepares terms that are standardized in the format of the agreement printed on the form given to the "Standard Contract". The problem is how to get around the buying and selling strategy with a "Standard Contract" in order to bring justice to both parties.

However, the fact that so far is still detrimental to the consumer, as a weak party due to the unbalanced position of the economy. Strategies that are pursued so that both parties get a balance or equality, it must be done, strived for or at least minimized in order to get comfort by way or step (notified, read and consumers may reject or accept or accept with certain notes)

2. RESEARCH METHODS

The approach method in this research is normative juridical or also called doctrinal method, but it is also supported by empirical facts as concrete examples. The specification of this research uses descriptive analytical research specifications, meaning that the researcher analyzes the problem by providing a factual picture but also supported by empirical facts associated with related legal norms.

² Shopping <https://www.finansialku.com> accessed on 25/02/2020 at 22:15

³ nn via <http://2.bp.blogspot.com> accessed on 25/02/2020 at 21:20

⁴ idol via <https://pbs.twimg.com> accessed on 25/02/2020 at 22:20

⁵ Ibid. p. 27

⁶ Afrida Nasution, Definition of Standard Agreement> [https://avivsabili.blogspot.com/26 March 2014](https://avivsabili.blogspot.com/26-March-2014) Accessed on 26/02/2020 at 16.30

This legal research uses secondary data in the form of legal materials, especially primary legal materials. The data collection method is based on the data source obtained in this study, the data is collected by means of library research. As a way to draw conclusions from the collected research results, the method of normative-qualitative analysis will be used, which focuses on the philosophical aspect (justice) with a deductive inference model.

3. RESULTS AND DISCUSSION

The implementation of Unissula's educational mission is to develop science and technology (science and technology) by reconstructing science based on Islamic values that is consistently sustainable, towards a balanced prosperous society blessed by Allah SWT.

Using the Pancasila theory of justice is in line with John Rawl's theory of justice, which is expected to have equal rights and welfare between the parties.

- Which is not against public order;
- Not against decency;
- Not against the law.

The parties are free to determine the rules of the game they want in the agreement, and implement them according to the agreement that has been reached as long as they do not violate the provisions of the halal clause.

The provisions of the law are already orderly, but in practice it is difficult to do so. Prohibitions and requirements regarding the use of standard contracts/standard contracts or Standard Contracts it is often violated by the producers who are in the strong position of the economy. The standard clause states the following:

Standard clauses are any rules or conditions and conditions that have been prepared and determined unilaterally by a business actor as outlined in a binding document and/or agreement and must be fulfilled by consumers with standard/standard clauses, as evidence with the exoneration clause, the position of consumers is ultimately unbalanced. A concrete example in research as a support is by a shop in the Market of Bulu Semarang, with a standard clause to trick consumers for the benefit of the producer.

If observed and analyzed, the urgency of this agreement is to change mindset, raise awareness of the conscientious nature of the community, provide an example by reminding and asking consumers to read it or explain the contents of the agreement against the standard clause on proof of purchase notes by providing understanding to the public (buyers /consumers).

In line with Unissula's educational mission, on the basis of Islamic values, science and technology (science and technology) must be developed by reconstructing science based on Islamic values consistently and sustainably, towards a balanced, prosperous society.

This research uses the Pancasila theory of justice which is in line with John Rawl's theory of justice. It is hoped that the rights and welfare of the parties will be balanced.

Pay close attention an agreement based on Article 1313 of the Civil Code is incomplete and too broad, because it only formulates a one-sided agreement. The agreement provides the widest possible freedom for the public to enter into an agreement that contains anything as long as it does not violate public order and morals. In fact, contract law in Indonesia adheres to the principle of freedom in terms of making agreements (*beginsel der contracts vrijheid*), which in current practice, agreements are often carried out in the form of standard contracts, which limit the principle of freedom of contract.

Agreements with standard clauses or standard agreements are variously termed: standardized contract, standard contract or contract of adhesion. In the beginning, the freedom agreement system contracted broadly, but had a balanced position. Basically, this agreement was born from the needs of the community which aims to provide convenience or practicality for the parties in conducting transactions. Its continuity shows that this Standard Contract contains an exonation clause which has legal consequences for consumers, the responsibility that should be borne by business actors is actually the responsibility of the consumers themselves.⁷

The Consumer Protection Law requires business actors to immediately adjust the standard of contracts used with the intention of placing consumers on an equal footing with business actors based on the principle of freedom of contract and to prevent actions that harm consumers due to factors of disobedience, unbalanced position, and can be exploited by business actors. to make a profit. However, due to the growing economic aspects, the parties are looking for a more practical format, so that one party prepares standard terms in the printed agreement format, in the form of a form to be subsequently given to the other party for approval. However, if consumers are observant, then the loss will not occur, (as an imbalance of justice does not occur). As an example:

The development of modern trade has resulted in differences in bargaining positions between consumers and business actors, so that consumers are limited to receiving the contents of the contracts made by producers. Standard clauses are contained in article 1, in contrast to Article 18 of the Consumer Law prohibits making and/or including standard *clausula* on every document and/or agreement if:

- a. States the transfer of responsibility of business actors;
- b. States that business actors have the right to refuse to return goods purchased by consumers;

⁷ Definition of Standard Agreement > <https://avivsabili.blogspot.com/> accessed on 26/02/2020 at 16.30

- c. States that business actors have the right to refuse the return of money paid for goods and/or services purchased by consumers;
 - d. States that the power of attorney from consumers to business actors, either directly or indirectly, is to take any unilateral action related to goods purchased by consumers;
 - e. Regulate the matter of proof of the loss of use of goods or use of services purchased by consumers;
 - f. Give business actors the right to reduce the benefits of services or reduce the assets of consumers which are the object of sale and purchase of services;
 - g. Declare the consumer's submission to regulations in the form of new, additional, advanced and/or further amendments made unilaterally by the business actor during the period when the consumer utilizes the service purchased;
 - h. States that the consumer authorizes the business actor to impose a mortgage, lien, or security right on goods purchased by consumers in installments.
- (2) Entrepreneurs are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or which expresses them difficult to understand.
 - (3) Every standard clause that has been stipulated by the business manager in a document or agreement that fulfills the provisions as referred to in paragraph (1) and paragraph (2) shall be declared null and void.
 - (4) Entrepreneurs are obliged to adjust standard clauses that are contrary to this law.

Consumer protection is carried out based on relevant principles in national development, and if examined from an Islamic economic perspective, there are several basic principles of Islamic economics that serve as benchmarks, namely (1) *Al-Iman* or divine economy where *aqidah* is the first basis as the brain, central in the thinking of a Muslim and with it a Muslim and Muslim thinker will find a scope in which he believes. (2) the basis of assets as representatives of God and humans have the right to represent or use assets in accordance with their position as representatives, because the owner is the main motivator for development and production. (3) the basis of fairness and

balance(*equilibrium*) where justice is the main content of *Maqashid Sharia*, while the balance in question is the balance of material and spiritual needs.⁸

In the realm of idealist, Muslim power comes from and is under the guidance of prophetic Divine ethics and Political ethics. The teachings of the Koran and Hadith place a lot of emphasis on the understanding that power is a mandate that must be accounted for, both to the people and to Allah. Islam provides a profane and transcendental basis for power. In Islam, the people are not positioned as mere objects, while the leader does not have the absolute climax to carry out arbitrary actions. But Islam is oriented towards a political system that places the people as the party that must be served and the government as the party that must serve the people or citizens.⁹

A standard agreement is a contract that is written, one-sided and made by the party that puts standard clauses in it. The standard agreement contains standardized standard terms in which the form and content have been made and prepared in advance. The position of a standard agreement with the principle of freedom of contract means that the principle of freedom of contract provides space for freedom for the parties to make any agreement. It's just that in determining the content and form, consumers are usually not given the opportunity in this case.¹⁰ The making of an agreement is expected to pay attention to important matters, such as the terms of the validity of the agreement, the principles of the agreement, the rights and obligations of the parties, the structure and anatomy of the contract making, the settlement of disputes and the termination of the contract. According to Siti Malikhatun Badriyah,¹¹ the purpose of the agreement is to achieve a balance of interests between the parties. So that balance is very important and becomes the main point from the start, namely from the stage before the contract is made (the bid stage), an agreement appears, which causes an agreement between the parties (the contractual stage), to the stage of implementing the agreement that binds the parties. According to Sudikno Mertokusumo, the existence of legal principles needs to be considered, in the contract process in order to

⁸ Erina Pane. (2019). *Perlindungan Konsumen dalam Perspektif Undang-Undang Perlindungan Konsumen dan Hukum Islam*. [http: www.neliti.com](http://www.neliti.com), accessed on 18/03/2020 at 14:32

⁹ Agus Triyanto. (2012). *Hukum Ekonomi Islam (Dari Politik Hukum Ekonomi Islam sampai Pranata Ekonomi Syariah)*. Yogyakarta: UII-PRESS. p. 7

¹⁰ M. Roesli, Sarbini, Bastianto Nugroho, in *Jurnal Ilmu Hukum*, Vol. 15 No. 1 February 2019 – July 2019.p. 7.

¹¹ Siti Malikhatun Badriyah. (2016). *Sistem Penemuan Hukum dalam Masyarakat Prosmatik*. Jakarta: Sinar Grafika.p. 139

create balance and maintain the rights of the parties, according to Sudikno Mertokusumo:¹²

"Basic ideas that are general in nature, or are the background for concrete regulations contained in and behind every legal system that is embodied in statutory regulations and judge decisions which are positive law and can be put forward by looking for general characteristics in the concrete regulations." In general, the form of agreement used by the parties to the agreement can be oral or written. However, in its gradual development, the forms of agreement used in Indonesian society have undergone changes and developments. Change and development cannot be separated from the influence of the development of science and technology, the influence of the development of socio-economic and industrial conditions experienced by society today.¹³ With this development, people began to be free to determine their position, and were free to determine the content and form of the agreement. In connection with the growing economic growth, an agreement has emerged between the parties using a more practical format. This agreement is called a standard agreement, it appears that the agreement is practical but is actually more profitable for the maker. Business actors are required to further improve transaction time efficiency in serving consumers, thus requiring more effective contract binding. Initially, the implementation of standard agreements was intended to shorten the time so that it could be more effective and efficient. However, it turns out that this cannot be fair to one of the parties and tends to provide an advantage to the maker. The standard form of agreement, has appeared in every business transaction, from large-scale to small-scale business transactions. The emergence of a standard agreement is actually an indirect result of the introduction of the principle of freedom of contract (Article 1338 of the Civil Code).

This causes the position of the two parties in a negotiation to be unbalanced, which in turn creates an agreement that is not very profitable for either party. The advantage of such position by business actors is often translated by making standard agreements and/or standard clauses in every document or agreement made by one party who is "more dominant" than the other party. It is said to be "standard" because, both the agreement and the clause, cannot and cannot be negotiated or not negotiable by the other party. Balance is known in an agreement as a principle, where the principle of balance is the principle that requires both parties to fulfill and carry out the agreement.

The principle of balance in a contract or agreement must be considered so that one party is not harmed just because of the freedom of contract between the two parties in making an agreement. Basically, an agreement originates from a

¹² Sudikno Mertokusumo. (1996). *Mengenal Hukum Suatu Pengantar*. Fourth Edition, Print. 1, Yogyakarta: Liberty. p. 33

¹³ Danty Listiawati. (2015). *Klausula Eksonerasi dalam Perjanjian Standar dan Perlindungan Hukum Bagi Konsumen* in *Jurnal Privat Law*. (7). p. 127

difference in interests between the parties. Generally, the formulation of the contractual relationship begins with a negotiation process between the parties.

Balance is a principle that is intended to harmonize legal institutions and basic principles of contract law, which is known in civil law which is based on the thoughts and background of individualism on the one hand and the way of thinking of the Indonesian people on the other.¹⁴ Balance is also defined as an effort to achieve a balanced state, therefore it must result in a legal transfer of wealth.¹⁵ Al-Baidawi provides an understanding, that first, the word "*adl*" has meaning "is in the middle and equates the opinion that Rasyid Rida equates. According to him, the justice ordered in this verse, which is known to Arabic scholars, does not mean establishing laws based on what has been the right of every human being with his human nature and this nature is the basis of justice in divine teachings.¹⁶ This opinion is in line with Sayyid Qutub who stated that the basis of equality is the "humanity" characteristic of every human being. The implication is that humans have "the same rights because of the same status as human beings." Thus, justice is balance; Second, "*adl*" means balanced. This is found in Surah Al Maidah/5: 95 and Al-Infitar/82: 7 in the last verse which means that Allah has created you and then completes your events and makes your (body structure) balanced. M. Quraish Shihab explained, balance is found in a group in which there are various kinds of things that lead to a certain goal as long as certain conditions and levels are met in each part; third, "*adl*" which means "attention to individual rights and give that right to each owner". This definition then defines by "putting something in its place" or "giving the other party its rights through the nearest way." Fourth, "*adl*" in the meaning attributed to Allah, means maintaining the reasonableness of the continuation of existence, does not prevent the continuation of existence and the acquisition of grace there were many possibilities for it. So Allah's justice is basically His mercy and goodness. This justice of Allah contains the concessions that the mercy of Allah *Suhanahu wa Ta'ala* is not restrained to be obtained as far as that being can achieve it. The word "*adl*" is also used in various meanings such as (1) truth as in Al Baqoroh/2: 282, (2) relying on actions other than Allah or deviating from the truth.¹⁷

The purpose of the balance of some of the rules that has been stated is the occurrence of equality of position between the rights and obligations of the parties in an agreement with the same terms and conditions (*ceteris paribus*), and no party dominates or exerts pressure on the other party.

¹⁴ Jurnal Magister Hukum Udayana, Vol. 8 No. 1 Mei 2019, 61-75 ISSN: 1978-1520 64

¹⁵ Development of Agreements in Trade Practices (Islamic Law and Positive Law Persrspektirtif) CCindawati-Jurisdiction, 2016-unpal.ac.id-dalam Journal of Law and Sharia Vol. 7 No.2 Th 2016

¹⁶ Lajnah Pentashihan Al-Qur'an Manuscripts. Research and Development Agency and Education and Training Ministry of Religion of the Republic of Indonesia, 2009, Thematic Qur'anic Interpretation, Revised Edition volume 9. p. 5.

¹⁷ Ibid. p. 6-7

4. CLOSING

Strategies that are pursued so that both parties get a balance or equality, must be done, strived for or at least minimized in order to gain comfort by means or steps such as being told, read out, confirmed briefly, so that other parties or consumers if they already understand the contents of the blank the party can refuse or accept even if forced to accept with some notes. However, the best thing is if these clauses have fulfilled the sense of justice and balance in accordance with the balance as reflected in Sayyid Qutub which states that the basis of equality is the "humanity" characteristic of every human being. The implication is that humans have "the same rights because of the same status as human beings." Thus, justice is balance; surah Al Maidah/5: 95 and Al-Infitar/82: 7, Surah Al Baqoroh/2: 282, (2).

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