

The Legal Consequences of Applying the Principle of Balance to Grant Agreements Waarmed by Notaries

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Abstract. *The development of contract law gave birth to a new principle, namely the principle of balance which states that an agreement is binding as long as it is based on a balance of interests between the parties. Agreement law in Indonesia recognizes grant agreements, namely unilateral agreements that only show the achievements of one party. The emergence of the principle of balance then raises issues which are the main focus of writing this law, related to the application and legal consequences in the grant agreement Number: 536/Waarmed/IV/201, April 6, 202 Notary PPAT Arif Indra Setyadi SH. MKn. Although there are no provisions governing the application of the principle of balance in Indonesian contract law, the application of the principle of balance is indirectly contained in Article 1320 of the Civil Code. The emphasis is on "agreement", "execution in good faith" and the binding agreement with "decency, custom and law" shows that in an agreement there should be a balance between the parties so as to create a sense of justice. An unbalanced agreement does not have binding power because it is contrary to good faith, a sense of justice and propriety. As a result, an unbalanced agreement can be requested for cancellation of the agreement.*

Keywords: Agreement; Balance; Grant; Waarmeding.

1. Introduction

Legal principles, both as fundamental testing norms or as main ideas underlying a legal system that actually functions as positive law, are described by Scholten as:

"The main ideas that underlie and underlie every provision of laws and regulations as well as court decisions in a legal system. The variety of special regulations and decisions here can be seen as the embodiment of it.

In Bruggink's opinion, the description above emphasizes the role of legal principles as meta-normen (norms outside, but underlying and animating) of concrete legal norms that appear as rules of conduct. The legal principle

functions as a foundation that provides direction, goals and fundamental assessments, contains values and ethical demands that support the firmness of a legal norm. Even though legal principles are not legal norms, there are no legal norms that can be understood without knowing the legal principles contained therein because these legal principles function to interpret legal rules and also provide guidelines for a behavior even if not in a direct way as happens with the norms of behavior.

Besides that, legal principles are used as material for existing legal teachings in such a way that solutions can emerge for new problems that develop. Based on this explanation it can be concluded that the principle is an opinion of experts, in the form of a basis or direction in the formation of practical law must be oriented to legal principles. This means that the legal principle is the basis for forming positive law.

In the reality that exists in society, it can be seen that every human being lives in togetherness so that they cannot be separated from interactions with one another. Living together in an environment in society certainly requires a rule to regulate every human behavior, especially in terms of making agreements needed to support the fulfillment of needs that cannot be fulfilled alone. Each of these agreements is then stated in an agreement where both parties freely agree to bind themselves to an agreement so that the agreement will have legal force that binds the parties. Every agreement made must be based on legal rules. However, to be able to interpret legal rules properly depends on the legal principles that underlie contract law. These legal principles are able to determine the limits or scope of the validity of the rule of law so that it can be seen that the justification or legitimacy of the binding force of an agreement must be sought in the legal principles.

In contract law, these are known as the principal principles of contract law which consist of the principle of freedom of contract, the principle of consensualism, and the principle of binding force (*pacta sunt servanda*). The above principles can be found in the Civil Code (which in writing this law is abbreviated as the Civil Code) which is the basic rule in contract law in Indonesia. Every agreement made by the parties basically always refers to the basic principles of contract law, but along with the development of the times, positive law developments are also felt, especially in contract law to support the needs of the community.

This can be seen from the emergence of various principles other than the three main principles of contract law which can be used as the basis for current Indonesian contract law. These principles include the principle of good faith, the principle of trust, the principle of morality, the principle of decency, the principle of equality of law, the principle of habit, the principle of protection, the principle of legal certainty.

Developments in contract law have also given birth to another principle, namely the principle of balance as the basis for Indonesian contract law. The principle of balance is a state of stillness or harmony because of the various working forces, none dominates the others, or because no one element dominates the other. This principle requires both parties to fulfill and implement the agreement. Balance is also said to be a goal in the agreement, namely the agreement reached in the spirit or soul of balance. This principle of balance has characteristics, namely objective expectations and equality of the parties. The balance in question, namely that on the one hand, is limited by will (which arises by considerations or favorable circumstances), and on the other hand, by the belief (in the ability to) manifest the desired results or consequences within the limits of these two sides a balance can be achieved which can be interpreted positively. When viewed in terms of the agreement, it can be concluded that the promise between the parties will only be considered binding as long as it is based on the principle of a balanced relationship between individual interests and public interests or there is a balance between the two parties as each party expects it. The principle of balance can also be interpreted as a proper or fair principle which is then accepted as the basis for juridical engagement in Indonesian contract law.

Agreement law in Indonesia is inseparable from the rules contained in the Civil Code. In the Civil Code itself it is explained that agreements consist of various kinds, one of which is a unilateral agreement. A unilateral agreement is an agreement that creates obligations on only one party, while on the other party there are only rights. In addition to regulating unilateral agreements, the Civil Code also regulates free agreements, namely agreements that one party will provide an advantage to another party without receiving compensation. An example of the two agreements above is the grant agreement.

As explained above, a grant agreement is an example of a one-sided agreement or a free agreement. The gift agreement itself in Article 1666 of the Civil Code is explained as an agreement whereby the grantor, during his lifetime, freely and irrevocably surrenders something for the needs of the grantee who receives the gift. This grant is classified in what is called a "free of charge" agreement where the word "free of charge" is intended only for the achievement of one party, while the other party does not have to provide counter-achievement in return.

In connection with the statement stating that the principle of balance is the basis of juridical engagement in contract law in Indonesia, which means that every agreement made must be based on the principle of balance. If it is not based on the principle of balance or the agreement does not achieve balance then the parties to an agreement are declared not bound and even an agreement can be canceled, even though an agreement has been formed between the parties who

have bound themselves to the agreement. Based on the explanation above, it can be seen that a problem arises regarding balance in the case of a grant agreement which is a unilateral agreement, namely whether in a grant agreement must still be based on the principle of balance, then it can be said that the agreement has legally binding power.

2. Research Methods

The research method used by the author in conducting this legal research is normative juridical. Normative juridical law research is research that is focused on examining the application of principles or norms in positive law or it can also be said as legal research aimed at written regulations or other legal materials. The author's reason for choosing the normative juridical method is to find out how the principle of balance is applied to grant agreements, for this reason, in research and writing of the author's work, data obtained from both positive law in Indonesia and books governing the principle of balance and grant agreements are needed.

3. Results and Discussion

3.1. Application of the Principle of Balance in Grant Agreements Waarmeking by Notaries

As the author has described in the previous chapter, an agreement is an event where a person promises another person or where two or more people promise each other to do something. In an agreement there is a written or oral agreement, in the case of a written agreement there is an agreement written on paper which is carried out without being in the presence of an authorized official (underhand agreement), or in the presence of an authorized official which is poured into the form of a deed (authentic deed).

The definition of a gift itself is the surrender of an object belonging to someone to someone else which is done sincerely and sincerely, for example a gift from a parent to his biological or adopted child, and vice versa, a gift from a grandfather to his grandson, a gift from an uncle to a nephew, and Another example is that in essence a grant can be handed over from anyone and to anyone, whether in the form of movable or immovable objects according to and in accordance with the legal provisions that apply to it.

The agreement or Grant Letter dated July 25 2017 made and signed by and between Soepardjo Narsim as the grantor and Nuning Junianingrum as the grantee is included as a private agreement which then the grant letter is Waarmeking by Notary with Number: 536/Warmer/IV/ 2021 on April 6 2021. In the grant letter it was stated that the object was a plot of land measuring 330

M2 (three hundred and thirty square meters) based on Certificate of Property No. 58/Kelurahan Mersi on behalf of Soepardjo Narsim (Grant).

That because during his marriage Soepardjo Narsim was not blessed with children, so he adopted a child named Puji Riyanti who was the biological child of Soepardjo Narsim's older brother named Narkim Sunardji. From his marriage, Puji Riyanti then had a child named Nuning Junianingrum (in the grant letter as the recipient of the grant). Furthermore, the object of the grant in the Grant Letter is a plot of land based on the Certificate of Property Rights Number 58/Mersi Village in the name of Soepardjo Narsim as the grantor. From the Certificate of Property Rights Number: 58/Kelurahan Mersi it is known that the parcel of land which was the object of the grant has been owned by Soepardjo Narsim since 2007 which was obtained by inheritance.

That since the Grant Letter was made and signed by the parties, it turns out that the grant object in question has never been implemented. Even when the grantor dies, the recipient of the grant never receives the object of the grant in question. Even though in the Grant Letter, the Grantor has expressly stated that as of the date this letter was drawn up, the land is legally fully owned by the second party or the recipient of the grant. However, in reality, until now the recipient of the grant has never been able to enjoy or control the object of the grant, in fact, it is still controlled by the biological parents of the grantee. The donor cannot carry out his obligations to the grantee to hand over the object being donated.

The principle of balance that is not applied to the Grant Letter Number: 536/Waarmer/IV/2021 April 6 2021 at PPAT Notary Arif Indra Setyadi SH. MKn.

A grant agreement is an example of a one-sided agreement or a free agreement. The gift agreement itself in Article 1666 of the Civil Code is explained as an agreement whereby the grantor, during his lifetime, freely and irrevocably surrenders something for the needs of the grantee who receives the gift. This grant is classified in what is called a "free of charge" agreement where the word "free of charge" is intended only for the achievement of one party, while the other party does not have to provide counter-achievement in return. The development of contract law gave birth to a new principle, namely the principle of balance which states that an agreement is binding as long as it is based on a balance of interests between the parties. The principle of balance itself is a principle that underlies the agreement of the parties that raises proper or fair juridical attachments in the law of the agreement. The principle of balance in question is not only seen from the existence of equality of achievement between the parties who are bound by the agreement, but by the agreement of the parties who make the agreement. The existence of the principle of balance as the basis for the binding force of the agreement can be seen from the fourth

objective of the agreement, which is to achieve a balance between the interests of the parties. The principle of balance is also applied in grant agreements, as in the case of agreements in general, in grant agreements there is a balance which can be seen from the purpose of the agreement as desired by the parties at the time the agreement was concluded. Agreement law in Indonesia recognizes grant agreements, namely unilateral agreements that only show the achievements of one party. In general, to assess the binding strength of the agreement is based on the terms of the validity of the agreement. The emergence of the principle of balance then raises problems related to the basis of the binding force of an agreement, especially in grant agreements. Although there are no provisions governing the application of the principle of balance in Indonesian contract law, the application of the principle of balance is indirectly contained in Article 1320 of the Civil Code. The emphasis on "agreement", "implementation in good faith" and the binding of agreements with "decency, custom and law" shows that in an agreement there should be a balance between the parties so as to create a sense of justice. An unbalanced agreement does not have binding power because it is contrary to good faith, a sense of justice and propriety. The achievement of the goals in the grant agreement is not only when the goods are handed over, but also the fulfillment of the obligations written in the agreement itself and contained in the provisions of the law.

3.2. The legal consequences of applying the principle of balance to the grant agreement are waarmed by a notary

Legal consequences arising from not implementing the balance principle in the Grant Letter Number: 536/Waarmed/IV/2021 April 6 2021 at Notary PPAT Arif Indra Setyadi SH. MKn.

If the obligations in the grant agreement are not fulfilled after closing the agreement, it creates an unbalanced condition related to the implementation factor of the agreement, as a result, an unbalanced agreement can be requested for cancellation of the agreement. Therefore, the author is of the opinion that in the grant agreement there is a contradiction that is not only in the form of goods but also includes all the requirements in achieving the objectives of the agreement as stated by Herlien Budiono. The purpose of the agreement is not achieved can be caused by various factors, among others, namely the actions of the parties, the contents of the agreement, and the implementation of the agreement. These three factors form the basis for testing the binding strength of the agreement.

4. Conclusion

Legal consequences arising from not implementing the balance principle in the Grant Letter Number: 536/Waarmed/IV/2021 April 6 2021 at Notary PPAT Arif

Indra Setyadi SH. MKn. can lead to legal problems, such as lawsuits from one of the parties who feel disadvantaged because the guarantee of a sense of justice in the principle of balance is not implemented.

5. References

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