

## Business Cooperation Agreements in the Perspective of Civil Law: Legal Risks and Protection

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**Abstrak:** *Business cooperation agreements are a form of contractual that is increasingly used in modern business practices, even though it is not explicitly regulated in the Civil Code and is classified as an innominate agreement. This study aims to analyze the validity and form of legal protection in business cooperation agreements based on normative juridical approaches. The main focus of the research is on the fulfillment of the legal requirements of the agreement (Article 1320 of the Civil Code), the principle of freedom of contract (Article 1338), and the potential violation of the principle of business competition as regulated in Law No. 5 of 1999. The results of the study show that although freedom of contract provides flexibility for the parties, the substance of the agreement must still meet the standards of fairness and compliance with positive laws. An imbalance in the relationship between the parties involved as well as unilateral clauses can create legal risks and contractual unfairness. Therefore, it is important to apply the principles of good faith, clarity of clauses, and adaptive dispute resolution mechanisms. This study recommends strengthening the contract structure based on the principles of fairness and dual compliance with civil law and business competition law as an effort to realize legal, fair, and competitive cooperation in the eyes of the law.*

**Keywords:** *Civil Law; Business Cooperation Agreement; Legal Protection*

### INTRODUCTION

Business cooperation agreements are an increasingly relevant instrument in contemporary business practices, along with the increasing complexity of legal relationships between business actors involving various forms of collaboration. In the Indonesian civil law system, this kind of agreement is classified as an innominate agreement, which is a type of agreement that does not have a standard form as explicitly regulated in the Civil Code (Civil Code). Nevertheless, its validity is still recognized as long as it fulfills the legal elements of the agreement as stipulated in Article 1320 of the Civil Code. The principle of freedom of contract in Article 1338 of the Civil Code is the main legitimacy for the parties to draft an agreement based on mutual interests. This flexibility shows that civil contract law is open to new forms of engagement, as long as it

does not conflict with public order and decency. However, this openness also has implications for the need for high caution, because the absence of special arrangements results in the substance of the contract becoming the main focus in providing legal protection for the parties.<sup>1</sup>

Although the principle of freedom of contract provides ample space for the parties to draft the content of the agreement, the facts show that not all business cooperation agreements are drafted with adequate juridical standards. Many business actors, especially the MSME sector, draft agreements informally or only based on trust, without including important clauses regarding rights and obligations, responsibilities of each party, profit sharing, and dispute resolution. Inaccuracy in drafting clauses can make the agreement vulnerable to cancellation or cannot be

<sup>1</sup> Cawa, A. D. A. (2020). *Perlindungan hukum bagi driver dalam kerjasama kemitraan pada perusahaan*

*Gojek dalam perspektif hukum Islam* (Doctoral dissertation, Universitas Hasanuddin).

effectively implemented, especially if it does not meet subjective elements such as an agreement free from coercion and objective elements such as a clear and halal object. In this case, the vacuum of standard legal norms increases the likelihood of the birth of a contract that is not in favor of justice, especially when the negotiating position of the parties is unbalanced or when there is a conflict of interest in the implementation of the agreement.<sup>2</sup>

The risk of imbalance in legal relations is one of the main issues in business cooperation agreements. It is not uncommon to find that parties with greater capital capacity or business experience use these positions to draft biased agreements.<sup>3</sup> Such clauses can contain excessive penalty provisions, limitation of liability that benefits only one party, and disproportionate revenue sharing. In the perspective of modern contract law, such imbalances can be categorized as a form of prejudicial standard clauses, and theoretically can be invalidated or at least interpreted strictly by judges through the *contra proferentem* principle. Contemporary civil law doctrine recognizes the importance of the principle of fairness in contracts as a remedy for the abuse of freedom of contract. Therefore, good faith in the formation and implementation of contracts must always be used as a foundation, as also emphasized in Article 1338 paragraph (3) of the Civil Code, that agreements must be executed in good faith.

The consequence of the absence of a standard standard cooperation contract is the increased potential for multi-interpretation of contractual clauses. Agreements that are not drafted with firm and clear legal language will make it difficult for the interpretation process,

both by the parties and by the judge in the event of a dispute.<sup>4</sup> Clauses that are ambiguous, too general, or do not contain substantive provisions such as risk sharing, implementation time, and mechanism for termination of cooperation, are particularly vulnerable to conflict in the future. The principle of *pacta sunt servanda*, which states that a legally made agreement is valid as a law for the parties, will not be effectively implemented if the substance of the contract does not reflect a legally accountable will. Therefore, it is important for the parties to use the principle of prudence, even involving legal consultants as much as possible in the process of drafting the agreement so that the contract drawn up can contain aspects of legal protection as a whole.<sup>5</sup>

Legal protection in business cooperation agreements cannot be separated from the application of two approaches: preventive and repressive. The preventive approach emphasizes the importance of drafting a clear, transparent, and fair contract before the agreement is implemented.<sup>6</sup> It also includes the inclusion of risk mitigation clauses, arrangements for unilateral termination of cooperation, and alternative dispute resolution outside of court. In this case, the existence of Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration, as regulated in Law Number 30 of 1999, is a form of legal protection that is increasingly relevant in the context of modern business. Meanwhile, a repressive approach in the form of dispute resolution through judicial institutions or arbitration provides legal guarantees if one of the parties commits a default or unlawful act. In both, the existence of clear and detailed clauses is an absolute

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<sup>2</sup> Widyawati, A. M. J., Legowo, M. I., Utomo, D. T. B., & Dewi, M. A. (2025). Analisis Hukum Terhadap Klausul Eksonerasi Dalam Perjanjian Kerja Sama. *Jurnal Kolaboratif Sains*, 8(6), 3880-3886.

<sup>3</sup> Ratnasari, V., Pasaribu, A., & Mulyanto, R. (2023). PERLINDUNGAN HUKUM TERHADAP PELAKU USAHA ATAS RISIKO YANG TERJADI DALAM PERJANJIAN BERDASARKAN HUKUM PERDATA. *AMAR*, 1(2), 1-18.

<sup>4</sup> Anggraeny, I. (2025). Perlindungan Investasi Infrastruktur Pada Perjanjian Kerjasama Pemerintah dan

Badan Usaha dalam Perspektif Hukum Jaminan. *Indonesian Civil Law Journal*, 1(2), 1-6.

<sup>5</sup> Arifin, Z., Sediati, D. S. R., Hendriyanto, R., & Arifin, M. (2023). Keabsahan Dan Perlindungan Hukum Perjanjian Kemitraan Jasa Konstruksi. *Jurnal USM Law Review*, 6(1), 65-78.

<sup>6</sup> Wibowo, A. S., Negara, D. S., Marsal, A. P., & Da Silva, E. B. (2021). Contractual Instruments' Effectiveness in Preventing Business Disputes and Ensuring Business Law Stability. *Journal of Social Science Studies*, 1(2), 209-214.

requirement for legal protection to be realized concretely.<sup>7</sup>

From a doctrinal point of view, business cooperation agreements that are not specifically regulated by law can still be considered valid as long as they meet the formal and material requirements of the agreement. However, such legitimacy does not necessarily guarantee optimal legal protection for the parties. When a dispute arises, the civil judge will judge not only on the editorial basis of the agreement, but also through an interpretive approach that takes into account the intentions of the parties (wilsovereenstemming), business practices, and the principles of fairness.<sup>8</sup> Thus, it is increasingly possible for judges to judge agreements based on the principles of substantive justice and good faith, rather than mere formalities. This practice is widely found in jurisprudence, which shows that judges often take an active position in interpreting cooperation agreements in order to balance the legal interests of both parties. Therefore, the existence of jurisprudence and general principles of civil law is an important complement to the legal protection in cooperation agreements.

Another aspect that is important to consider in the legal protection of cooperation agreements is the potential for legal risks from unlawful acts (onrechtmatige daad) that occur during the cooperation. For example, if one of the parties misuses shared information or resources for interests outside the agreement, it can be sued civilly under Article 1365 of the Civil Code. In addition, the implementation of cooperation that causes losses to third parties is also a form of legal responsibility that must be anticipated in risk allocation clauses.<sup>9</sup> Therefore, legal protection in cooperation agreements does not only concern internal relations between the parties, but must also include external relations with third parties, so

as not to cause adverse further legal implications.

Thus, it can be concluded that business cooperation agreements in the framework of civil law contain two interrelated sides: as a form of freedom of contract that opens up opportunities for collaboration between business actors, as well as as a terrain that is prone to legal risks if not carefully drafted. Therefore, it is necessary to construct a law that is not only legalistic, but also pays attention to the substance of justice, balance, and protection of the legal rights of the parties. In the long term, the urgency of establishing special legal norms or standard guidelines on business cooperation agreements needs to be considered to create legal certainty and strengthen the position of the parties in accessing justice. Meanwhile, in current practice, a deep understanding of the principles of civil law and the application of contractual principles are the main foundation for minimizing risks and optimizing legal protection in business cooperation

## METODOLOGI

This research uses a normative juridical research method, which is a legal approach based on written legal norms as the main instrument for analyzing legal problems. This approach aims to examine the business cooperation agreement from a civil law perspective in relation to the risks and forms of legal protection inherent in the parties involved. This research is focused on the interpretation of relevant laws and regulations, legal principles, doctrines, and jurisprudence as primary and secondary legal materials.

Normative research aims to examine and understand how the law should apply (das sollen), not how the law is practiced in empirical reality (das sein), so that the entire analysis process relies on primary and

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<sup>7</sup> Kaup, S. (2024). Managing the Legal Risk of a Business Client. *European Research Studies Journal*, 27(3), 869-877.

<sup>8</sup> Libson, A., & Parchomovsky, G. (2022). Are All Risks Created Equal? Rethinking the Distinction Between Legal and Business Risk in Corporate Law. *BUL Rev.*, 102, 1601.

<sup>9</sup> Ambarini, S. T., & Hakim, A. R. (2025). Penyelesaian Sengketa pada Perjanjian Tidak Tertulis dalam Hubungan Kerjasama Dagang Ditinjau dari Perspektif Hukum Perdata. *Jurnal Hukum Lex Generalis*, 6(4).

secondary legal materials that are textual and conceptual.<sup>10</sup>

As explained by Peter Mahmud Marzuki, normative legal research is a method that focuses on the study of legal materials as the main object of study, by interpreting and constructing applicable laws to answer certain legal issues.<sup>11</sup> According to Marzuki, this approach is prescriptive because it aims not only to describe the law, but also to provide normative arguments for the validity of a legal action or act in the legal system adopted.<sup>12</sup> Meanwhile, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and comparative law.<sup>13</sup>

In this approach, the primary legal material that is the main focus consists of the Civil Code (KUHPer), especially the provisions regarding the legal terms of the agreement (Article 1320), the principle of freedom of contract (Article 1338), and unlawful acts (Article 1365), which are the normative basis in assessing the validity and legal consequences of business cooperation agreements. In addition, this study also refers to Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition as the basis for additional analysis, especially in the context of business cooperation relationships that have the potential to create unfair market dominance or cause unfair business competition.

The relevance of Law No. 5 of 1999 in this study lies in the importance of ensuring that business cooperation agreements do not contain clauses or contractual schemes that are contrary to the principles of fair competition. For example, business cooperation that results in dominant market share control or price fixing can be qualified as prohibited agreements according to Articles 4 to 11 of Law No. 5 of

1999. Therefore, this study will also analyze the potential clash between the principle of freedom of contract in civil law and the provisions of business competition law, especially in the event that there are agreements that substantially limit market access for other business actors.

Secondary legal materials in this study are obtained from legal literature that discusses business cooperation agreements, contract theory, and principles of contractual justice, including the views of civil law and competition law experts. In addition, legal journals, academic opinions, and official documents from the Business Competition Supervisory Commission (ICC) will also be used as references to strengthen normative analysis. This research will use deductive reasoning techniques, namely drawing conclusions from general law rules into the concrete cases studied, as well as using grammatical, systematic, and teleological interpretation methods in interpreting the provisions of the law.

The results of this normative juridical research are expected to make a theoretical and practical contribution to the formation of the legal structure of business cooperation agreements that are not only legally legal, but also do not cause legal implications for the principle of healthy business competition as mandated in Indonesian positive law. Thus, legal protection for the parties in cooperation is not only understood as an effort to maintain a contractual balance, but also as part of efforts to create a fair and competitive business climate in accordance with the provisions of applicable laws.

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<sup>10</sup> Novea Elysa Wardhani, Sepriano, and Reni Sinta Yani, *Metodologi Penelitian Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia., 2025).

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

<sup>12</sup> Mahlil Adriaman et al., *Pengantar Metode Penelitian Ilmu Hukum* (Padang: Yayasan Tri Edukasi Ilmiah, 2024).

<sup>13</sup> Rangga Suganda, "Metode Pendekatan Yuridis Dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2859, <https://doi.org/10.29040/jiei.v8i3.6485>.

## PEMBAHASAN

### 1. Juridical Analysis of the Validity of Business Cooperation Agreements Based on the Civil Code

A business cooperation agreement is a commonly used form of engagement in business practice, especially in situations where the parties agree to carry out joint economic activities without forming a new legal entity. From the perspective of Indonesian civil law, the validity of such an agreement is based on the principles stipulated in the Civil Code (KUHPer), especially Article 1320 which regulates the legal conditions of the agreement and Article 1338 which affirms the principle of freedom of contract.<sup>14</sup>

Article 1320 of the Civil Code stipulates four absolute conditions, namely the agreement of those who bind themselves, the ability to make an alliance, a certain thing, and a halal cause. In practice, the conditions of agreement are very crucial because business cooperation agreements are born from the voluntary consensus of the parties. If there is a defect in will such as fraud or coercion, the agreement can be null and void. The same is true of the requirement of legal proficiency, because the party who is not competent according to the law cannot legally bind himself in the engagement.<sup>15</sup> The object of the agreement must also be clear and determinable, and the purpose of the cooperation must be in accordance with the law and not contrary to morality or public order.<sup>16</sup>

The principle of freedom of contract in Article 1338 of the Civil Code provides ample space for the parties to draft the content and form of the agreement according to their business interests, as long as it does not violate the provisions of the applicable law. Therefore, even though the form of a business cooperation

agreement is not explicitly regulated in laws and regulations, it is still considered valid and binding as long as it meets the main elements determined by the Civil Code. The principle of *pacta sunt servanda* reinforces that an agreement that has been legally made is valid as a law for the parties who make it.

The principle of good faith is also an integral part of contract law, both in the negotiation, implementation, and dispute resolution stages. In business cooperation agreements, the existence of good faith is reflected in the formulation of fair clauses, disclosure of information, and equality in the implementation of rights and obligations. If this principle is ignored, it will open up space for default, moral hazard, and inequality in contractual relationships.

Substantially, a business cooperation agreement needs to contain concrete and non-multi-interpreted clauses, such as provisions regarding the distribution of business results, risk allocation, rights and obligations of each party, as well as dispute resolution and termination mechanisms. Ambiguity in clauses can lead to differences in interpretation leading to disputes. In practice, grammatical and systematic interpretation methods are used to understand the intentions of the parties in the event of a difference in understanding of the content of the contract.

The risk of default is an integral aspect of a contractual relationship. The Civil Code provides legal protection through a mechanism for claiming compensation (Article 1243), achievement fulfillment (Article 1234), or cancellation of agreements. Therefore, it is important for the parties to include penalty, force majeure, and limitation of liability clauses to regulate the legal consequences in the event of a breach of contract.<sup>17</sup>

<sup>14</sup> Dahayu, C. S., & Budhisulistiyawati, A. (2020). Tinjauan Yuridis Tentang Pelaksanaan Perjanjian Kerjasama Kemitraan (Studi Kasus di Brownies Cinta Cabang Sragen). *Jurnal Privat Law*, 8(1), 70-77.

<sup>15</sup> Zildjian, A. A. R. (2024). *Analisis Yuridis Terhadap Keabsahan Penggunaan Klausula Overmacht Dalam Perjanjian Waralaba* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

<sup>16</sup> Suadi, I. P. M., Yuliantini, N. P. R., & Ardhya, S. N. (2021). Tinjauan yuridis subyek hukum dalam

transaksi jual beli online/e-commerce ditinjau dari kitab undang-undang hukum perdata. *Jurnal Komunitas Yustisia*, 4(2), 668-681.

<sup>17</sup> Salsiah, L. (2022). TINJAUAN YURIDIS TERHADAP KEABSAHAN PERJANJIAN MENGGUNAKAN BAHASA ASING DI INDONESIA BERDASARKAN UNDANG-UNDANG NO. 24 TAHUN 2009. *Journal of Syntax Literate*, 7(10).

The dispute resolution aspect is important in ensuring the effectiveness of legal protection. The inclusion of clauses regarding a settlement forum, either through court (litigation) or alternative channels such as arbitration or mediation, is necessary so that the parties do not face legal uncertainty when disputes arise<sup>18</sup> This arrangement also reflects anticipatory efforts against the risk of disputes.

The construction of legal relationships in business cooperation is generally reciprocal, meaning that the achievements of one party depend on the implementation of obligations by the other party. This is in accordance with the principle of mutual engagement as known in the Civil Code. If one of the parties is negligent, the other party has the right to withhold the implementation of its achievements as a form of legal protection. This structure creates balance and fairness in business relationships.

In the development of modern civil law, business cooperation agreements are increasingly complex because they involve new aspects such as the protection of intellectual property rights, the participation of foreign investors, and the possibility of being subject to foreign law or settlements in international forums. Therefore, prudence in drafting agreements with reference to best practices and principles of international contract law is very relevant to ensure that the agreement is valid, fair, and can be effectively implemented.

## **2. Legal Risks and Relationship Imbalances in Business Cooperation Agreements**

Legal risks and imbalances in relationships in business cooperation agreements are fundamental issues that need to be analyzed in depth, especially when there is a disparity of power between the parties. In the Indonesian civil law system, the freedom of contract guaranteed by Article 1338 of the Civil Code provides ample space for the parties to

determine the content of their contracts. However, in practice, this principle is often abused by parties with a stronger bargaining position through the drafting of unilateral clauses, exculpation of responsibility, or unfair profit-sharing arrangements. This creates inequality in legal relations that are substantively contrary to the principles of contractual justice and the principle of good faith. Modern contract doctrine rejects the classical view that equalizes the legal standing of the parties to a contract. The theory of "contract of adhesion" developed by Friedrich Kessler, as well as the concept of "unconscionable contract" in the common law tradition, suggests that imbalances in bargaining power can give birth to agreements that are legally worth setting aside. In a business cooperation agreement, this condition is very likely to occur when large business actors impose contractual provisions on small business partners without meaningful negotiation space.<sup>19</sup> A biased clause can be considered as a form of abuse of a dominant position, as stipulated in Article 25 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. In practice, the Business Competition Supervisory Commission (ICC) has stated in the Carrefour-Distributorship case that the practice of imposing contract clauses on small suppliers who do not have bargaining power can be categorized as a form of dominance that violates the principle of fair competition. Therefore, the inequality of relations in business cooperation agreements is not only a private issue, but also touches on the aspect of public law.<sup>20</sup>

Furthermore, this imbalance in the relationship is further complex when the agreement does not include a mechanism for risk sharing and fair dispute resolution. In contemporary contract law, risk allocation clauses, hardship clauses, and alternative

<sup>18</sup> Yose, R. F., & Djajaputra, G. (2025). Analysis of Default in Cooperation Agreements: A Perspective on Rights and Obligations of The Parties In Dispute Resolution. *JURNAL USM LAW REVIEW*, 8(2), 777-786.

<sup>19</sup> Wardoyo, H., & Budimah, B. (2025). Efektivitas Klausul Kontrak pada Hubungan Bisnis antara

UMKM dan Mitra Usaha di Indonesia. *JURNAL PENELITIAN SERAMBI HUKUM*, 18(02), 142-155.

<sup>20</sup> Priyono, E. A., & Njatrijani, R. (2017). Kajian Hukum Perjanjian Kerjasama CV. Saudagar Kopi dan Pemilik Tempat USAha Perorangan (Studi Kasus: Mal Ambassador, Jakarta). *Diponegoro Law Journal*, 6(2), 1-17.

dispute resolution forums such as mediation and arbitration are important elements in preventing the escalation of legal conflicts. This instrument is also a manifestation of the preventive legal protection that should be attached to the business cooperation agreement. This is in line with the spirit of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which emphasizes the efficient and equal resolution of conflicts without going through court mechanisms that tend to be rigid and expensive. In business cooperation agreements involving entities with different legal and capital backgrounds, ADR is an effective means of maintaining a balance of interests of the parties and maintaining the continuity of business relationships. However, the existence of such clauses must be accompanied by a common understanding of the principle of good faith. This principle is not merely a moral norm, but serves as a normative basis in testing whether the substance of the contract has been drafted and executed in a reasonable and fair manner.<sup>21</sup> The Supreme Court in various decisions has emphasized that violations of this principle can be the basis for canceling contracts or revising the content of agreements in order to realize substantive justice.

Furthermore, the principle of equity of interests in contracts is an important basis in maintaining proportionality between the rights and obligations of each party. In Indonesian legal practice, judicial intervention against contract inequality has begun to be accommodated, as reflected in Supreme Court Decision No. 1067 K/Pdt/2005 which states that agreements that actually only benefit one party and do not open up bargaining space are a form of deviation from the principle of contractual justice. This view affirms that judges are not only tasked with assessing the formal validity of a contract, but also obligated to assess the substance of the agreement based on fairness, propriety, and balance of interests. Thus, legal risks in business cooperation agreements should be seen not only as potential

disputes due to breach of contract, but also as a reflection of the failure of the legal structure in ensuring a balance between strong and weak business actors. Strengthening preventive legal protection, through risk control mechanisms and adaptive dispute resolution forums, is a must to ensure the sustainability of healthy, ethical, and fair business relationships. Therefore, the supervision of the substance of contracts and the application of progressive legal principles are important tools in ensuring that freedom of contract does not become a means of disguised domination that harms certain parties in business cooperation.

### **3. Implications of Business Competition Law on the Validity and Limitations of Cooperation Agreements**

The business cooperation agreement is a manifestation of the principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code, which states that every legally made agreement is valid as a law for the parties who make it. However, in the modern legal paradigm, the freedom to contract cannot be separated from the principle of the social function of the contract, as put forward by Friedrich Carl von Savigny in the school of history, who emphasized that the contract must take into account the interests of society at large. In this context, business competition law is present as a corrective norm against the possibility of abuse of agreements that are legally made but have the potential to undermine market structures and impede competition. Therefore, the material validity of a cooperation agreement must be assessed not only on the basis of its formal elements, but also from the perspective of the anti-competitive effects it may cause.

Law No. 5 of 1999 adopts the principles of competition law oriented towards market efficiency and consumer welfare, two main concepts in the theory of institutional economics developed by Oliver E. Williamson. Within this framework, agreements that contain price fixing clauses, market area regulation, or

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<sup>21</sup> Setiawan, B. (2024). PERLINDUNGAN HUKUM PARA PIHAK DALAM PERJANJIAN JASA KONSTRUKSI. *Jurnal Cinta Nusantara*, 2(02).

distribution exclusivity should be examined in terms of their potential impact on resource allocation efficiency and consumer freedom of choice. For example, Article 5 of Law No. 5 of 1999, which prohibits pricing between business actors, reflects the application of classic cartel theory which, according to Jean Tirole (2014), in his work *The Theory of Industrial Organization*, can reduce consumer welfare and eliminate innovation incentives. Therefore, even if the parties to the business cooperation reach a legitimate business consensus, the existence of such clauses can still be qualified as a form of prohibited agreement under competition law.<sup>22</sup>

Furthermore, exclusivity in distribution agreements or long-term cooperation can be a form of structural barriers to entry barriers, which according to Michael Porter in his theory of Five Forces Analysis, is one of the main determinants of competitive forces in an industry. Article 10 of Law No. 5 of 1999, which prohibits agreements that result in other business actors not being able to enter the market in question, is in line with this approach. Vertical exclusivity clauses are also not immune to scrutiny, as they can create market foreclosure which ultimately results in restrictions on consumer choice and unreasonable control over prices by dominant actors. This is in accordance with the concept of abuse of dominant position in antitrust law which is widely adopted in various countries and accommodated in Article 25 of Law No. 5 of 1999.

In the theoretical aspect, the rule of reason approach is the main method of analysis in assessing whether a cooperation agreement is infringing or not from the perspective of competition law. This approach refers to a balance between pro-competitive justifications and anti-competitive effects, as developed in competition law in the United States through the Sherman Act. ICC, as a supervisory authority, also applies this approach in assessing whether a business cooperation has an

anticompetitive purpose and effect. Therefore, the substance of the agreement must be studied holistically, not only in its formal form but also in the economic consequences it has on market structure and business dynamics.<sup>23</sup>

In the juridical context, the enactment of the provisions of Law No. 5 of 1999 limits the contractual autonomy of the parties. The Constitutional Court in its various rulings, including Decision No. 69/PUU-X/2012, has affirmed the importance of constitutional restrictions on economic rights in order to protect the public interest and ensure social justice. Therefore, cooperation clauses that have an impact on monopoly practices can not only be administratively canceled by ICC, but also have the potential to be contrary to the principles of economic justice as mandated in Article 33 of the 1945 Constitution. This underscores that agreements that are initially private can have public consequences if they have a broad impact on market structures.

Thus, the regulation in Law No. 5 of 1999 fundamentally demands the integration between the principle of freedom of contract and the principle of market justice. Competition law acts as a public control against potential deviations from the spirit of a healthy and open free market economy. Therefore, it is not enough for business actors to ensure that their cooperation is legal according to the Civil Code, but also to apply the principles of compliance with competition law as part of ethical and responsible business governance.

## KESIMPULAN

The overall juridical analysis of the business cooperation agreement shows that the validity of the contract is not enough only to refer to the fulfillment of formal requirements as stipulated in Article 1320 of the Civil Code, but must also consider aspects of substantive justice and compliance with other relevant legal norms. The principle of freedom of contract does provide broad autonomy for the parties to draft the content of the agreement, but this

<sup>22</sup> AB, R. M. P., Agni, N. Y., & Rismoyo, A. K. (2020). ANALISIS YURIDIS KONSEP PERJANJIAN DALAM HUKUM PERSAINGAN USAHA. *Jurnal Yuridis Vol*, 7(2), 279-306.

<sup>23</sup> Febrina, R. (2022). Persaingan Usaha pada Era Digital Menurut Persepektif Hukum Persaingan Usaha. *Jurnal Karya Ilmiah Multidisiplin (JURKIM)*, 2(1), 121-127.

autonomy is limited by the principles of good faith, contractual social functions, and compliance with competition laws. Imbalances in the relationship in agreements often occur when the dominant party inserts exculpatory clauses, unilateral, or repressive, which shift the contractual balance and pose legal risks. This kind of practice can give birth to agreements that are formally valid, but are substantively unfair and can even be canceled based on the theory of "unconscionable contracts". In this case, strengthening the principles of fairness and balance is very important to maintain equality in business relationships. Furthermore, the enactment of Law Number 5 of 1999 expands the dimension of evaluating the validity of business cooperation agreements, especially to clauses that contain potential monopolistic practices or barriers to market entry. The rule of reason approach applied by ICC is an important tool in testing whether certain agreements provide legitimate economic justification or actually hinder market efficiency and consumer welfare. Therefore, business cooperation contracts must be built on the basis of double legal compliance: civil law and competition law. The drafting of the clause must reflect transparency, equality, and fair legal protection for both parties. On a practical level, the existence of an adaptive dispute resolution mechanism and proportionate risk allocation clause are also integral elements. Thus, an ideal business cooperation agreement is not only legally valid, but also fair in substance and in line with the principles of healthy and ethical business competition

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