

Contractual Freedom and its Limits in Modern Civil Law Governance

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Abstract: *The principle of freedom of contract is one of the main pillars of Indonesian civil law that guarantees the private autonomy of the parties in forming and determining the content of the agreement. However, in modern civil law practice, this principle is no longer understood as absolute, but rather experiences limitations to achieve justice and balance in contractual relationships. This study aims to analyze the position of the principle of freedom of contract in the Indonesian civil law system, while also examining the form and implications of its limitations through the principles of good faith, propriety, balance of the parties, as well as state intervention and the role of judges. The research method used is normative legal research with a statutory, conceptual, and doctrinal approach, which is based on an analysis of the provisions of the Civil Code, especially Articles 1320, 1337, 1338, and 1339, and supported by the opinions of scholars and the development of modern civil law doctrine. The results of the study indicate that the principle of freedom of contract remains relevant as a foundation for legal certainty and economic dynamics, but its application is limited to protect the weaker party and prevent abuse of bargaining position. These restrictions actually strengthen substantive justice without eliminating legal certainty, by shifting the paradigm of freedom of contract from formal freedom to freedom that is just and responsible.*

Keywords: *Freedom of Contract, Good Faith, Civil Law.*

INTRODUCTION

Freedom of contract is a fundamental principle in civil law rooted in classical liberalism and the theory of voluntary autonomy. This principle places the will of the parties as the primary source of the birth of a legal relationship, as reflected in Article 1338 paragraph (1) of the Civil Code. This provision affirms that every legally made agreement applies as law for the binding parties.¹ Classical doctrine views the parties as being in an equal position and having the rational ability to determine the contents of their contract.² Therefore, formal legal certainty is placed as the primary objective of contract law. This construction arises from the assumption that

contractual relations take place in balanced social and economic conditions.

Developments in modern society demonstrate that the assumption of equality between parties in a contract does not always align with empirical reality. The dynamics of the global economy, digitalization, and the proliferation of mass contracts have significantly changed the face of contractual relations. Standard contracts have become the primary instrument in financial services, e-commerce, and public service transactions. In these circumstances, agreements are no longer reached through equal negotiation, but rather through unilateral acceptance by the weaker party.³ This situation creates a paradox between

¹ Rahim, A. (2022). *Dasar-Dasar Hukum Perjanjian: Perspektif Teori dan Praktik*. Humanities Genius.

² Asnawi, M. N., SHI, M., & Faisal Santiago, S. H. (2024). *Pembaruan hukum kontrak*

di Indonesia: prakontrak, kontrak, pascakontrak. Prenada Media.

³ Yulia, Y. (2024). *Perlindungan Hukum Dalam Transaksi Kontrak E-Commerce*. *AL WASATH Jurnal Ilmu Hukum*, 5(1), 27-40. <https://doi.org/10.47776/alwasath.v5i1.842>

the normative recognition of freedom of contract and the substantive loss of that freedom. Thus, freedom of contract in the modern context often serves as a formal legitimation of unequal legal relations.

The unequal bargaining power of the parties is a fundamental issue in modern contract law that cannot be ignored. Business actors generally possess economic, informational, and technical advantages over consumers or individuals. This inequality places the weaker party in a position of acceptance without the ability to influence the substance of the contract. The principle of freedom of contract in such situations has the potential to conflict with the principles of justice and balance. Satjipto Rahardjo emphasized that law must be understood as a social institution inseparable from the power structures that surround it.⁴ Therefore, contracts born of structural inequality deserve to be reexamined for their legitimacy and fairness.

The misuse of standard clauses and exoneration clauses has become a phenomenon that highlights the problematic limits of freedom of contract. Such clauses are often drafted unilaterally by parties in dominant positions. These clauses generally limit or even eliminate business actors' liability for losses suffered by other parties. Normatively, the Consumer Protection Law prohibits the unilateral inclusion of clauses that harm consumers.⁵ However, in practice, exoneration clauses are still frequently found in service agreements and digital transactions. This

situation demonstrates the weak effectiveness of norms in curbing abuses of freedom of contract.

The modern rule of law no longer positions itself as a completely passive party in private legal relations. State intervention in contract law is a consequence of the shift in the legal paradigm from individualism to the protection of social interests.⁶ The theory of the publicization of private law explains that civil law is increasingly influenced by public legal values.⁷ Regulations in the areas of consumer protection, financial services, and banking reflect restrictions on private autonomy. These restrictions aim to protect the vulnerable and maintain a balance of interests. Thus, freedom of contract is no longer understood as absolute, unlimited freedom.

The role of judges in assessing contracts has also undergone significant development. Judges no longer merely assess whether the formal requirements of a valid agreement have been met. In judicial practice, judges have begun to assess the substance of contracts based on the principles of good faith and propriety.⁸ Article 1338 paragraph (3) of the Civil Code serves as the normative basis for judges to correct unfair contracts. Court decisions have shown a tendency to override clauses that conflict with a sense of justice. This phenomenon marks the development of the judge's role as guardian of contractual justice.

Theoretically, this situation demonstrates a tension between legal certainty and substantive justice. Legal certainty, which

⁴ Sarumpaet, M. I., Harahap, H. H., & Lubis, F. (2024). Peran Politik Hukum dalam Pembangunan Hukum Progresif di Indonesia. *Innovative: Journal Of Social Science Research*, 4(4), 3991-4003. <https://doi.org/10.31004/innovative.v4i4.12848>

⁵ Putri, M. A., Fitria, A., & Asri, D. P. B. (2025). Perlindungan Konsumen terhadap Klausula Baku dalam Perjanjian Pembiayaan Kredit Kendaraan Bermotor. *Almufi Jurnal Sosial dan Humaniora*, 2(2), 221-231. <https://doi.org/10.63821/ash.v2i2.477>

⁶ Prabantariko, M. (2024). Tinjauan Sosio-Legal Atas Kontrak: Kajian Tentang Keterikatan

Sosial (Social Embeddedness) Dan Keterikatan Institusional (Institutional Embeddedness) Pada Penegakan Kontrak. *Mimbar Hukum*, 36(2). <https://doi.org/10.22146/mh.v36i2.17201>

⁷ Muzaki, M. F., & Siregar, A. Z. (2024). Perkembangan Hukum Perdata Di Indonesia. *Jurnal Sosial Politik dan Hukum*, 1(01), 12-16. <https://jurnal.devitara.or.id/index.php/sospol/article/view/95>

⁸ Budi, G. S. (2025). Perkembangan Asas Kebebasan Berkontrak dalam Praktik Hukum Perdata di Indonesia. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 3(1), 139-148. <https://doi.org/10.62379/wnaj8r67>

emphasizes formal agreements, often ignores the social realities of the parties. Corrective justice theory holds that contract law must be able to correct imbalances arising from private relations.⁹ Contract law serves more than just a tool to legitimize economic transactions.¹⁰ Its corrective function is crucial to prevent contracts from being used as instruments of domination. Without such correction, freedom of contract has the potential to perpetuate systemic injustice.

The principles of balance and contractual justice are increasingly relevant in the development of modern civil law. A fair contract is not simply measured by the agreement of the parties. The proportionality of rights and obligations is a crucial indicator in assessing contract fairness. Modern civil law doctrine views contracts as legal relations with social and economic dimensions.¹¹ Therefore, freedom of contract must be accompanied by legal and moral responsibility. This approach aligns with the legal objective of achieving benefit and justice.

The increasing number of contractual disputes indicates structural problems in the application of freedom of contract. These disputes are often triggered by unbalanced clauses that are not understood by either party. Empirical data shows that standard contracts are a major source of civil conflict in the services and trade sectors. This situation indicates the limitations of market mechanisms in creating contractual justice. Without clear limitations, freedom of contract has the potential to deepen social inequality. Therefore, strengthening normative boundaries is an urgent need.

Based on this description, contractual freedom in modern civil law governance must be understood proportionally. This freedom cannot be separated from the principles of good faith, justice, and protection of the vulnerable. Restrictions on freedom of contract do not constitute a denial of private autonomy. Rather, these restrictions represent an attempt to restore contracts as instruments of substantive justice. Therefore, the conceptual reconstruction of freedom of contract is a crucial agenda in the development of modern civil law.

METHODOLOGY

This research uses a normative juridical research method, a method that positions law as a norm or rule that applies within the legal system. This method aims to examine law in the sense of law in books, not law in empirical practice alone. Soerjono Soekanto states that normative legal research is conducted by examining library materials or secondary data that include laws and regulations, court decisions, and the doctrines of legal scholars.¹² This approach was chosen because the issues studied relate to the principle of freedom of contract and its limitations in the civil law system. The analysis focuses on legal norms governing contracts and general principles of civil law. Thus, this research seeks to find the ideal legal construction in modern contractual governance.

The approaches used in this research include a statutory approach, a conceptual approach, and a case approach. The statutory approach is carried out by examining the provisions of the Civil Code and other related regulations. The conceptual approach is used to analyze expert views on freedom of contract, contractual justice, and protection of the weak.

⁹ Bidasari, A., Pujiningsih, D., & Bagenda, C. (2025). Perlindungan Hukum Terhadap Pihak Lemah Dalam Perjanjian Leasing Perspektif Asas Keadilan Kontraktual. *Jurnal Kolaboratif Sains*, 8(11), 7165-7172. <https://doi.org/10.56338/jks.v8i11.9291>

¹⁰ Sinaga, N. A. (2025). Fungsi Filosofis, Yuridis Dan Ekonomis Kontrak Dalam Dunia Bisnis. *Jurnal Ilmiah Hukum Dirgantara*, 15(2). <https://doi.org/10.35968/jihd.v15i2.1604>

¹¹ Makruf, S., & Astarudin, T. (2025). Perikatan dalam Hukum Perdata Indonesia: Analisis terhadap Perikatan yang Timbul Karena Persetujuan dan Undang-Undang. *JIMU: Jurnal Ilmiah Multidisipliner*, 4(01), 1757-1773. <https://doi.org/10.70294/jimu.v4i01.1634>

¹² Rifa'i, I. J. (2023). Ruang Lingkup Metode Penelitian Hukum. *Metodologi Penelitian Hukum*, 6.

Peter Mahmud Marzuki emphasized that normative juridical research aims to discover legal principles, doctrines, and principles to address the legal issues faced.¹³ The legal materials used consist of primary, secondary, and tertiary legal materials analyzed qualitatively. The results of this analysis are expected to provide systematic and comprehensive legal arguments regarding restrictions on freedom of contract in modern civil law.

RESULTS AND DISCUSSION

The Position of the Principle of Freedom of Contract in the Indonesian Civil Law System

The principle of freedom of contract is one of the fundamental principles in civil law which was born from the doctrine of classical contract law and is rooted in liberalism. This principle views individuals as legal subjects who are independent and rational in determining their will. From a doctrinal perspective, freedom of contract gives parties the authority to voluntarily enter into an agreement.¹⁴ This freedom includes the freedom to determine whether an agreement will be made, with whom the agreement will be made, and what the content and form of the agreement will be. Therefore, the contract is seen as a manifestation of the autonomy of the will of the parties. This understanding places individual freedom as the main basis for the birth of contractual legal relationships.

In Indonesian civil law doctrine, the principle of freedom of contract is defined as the freedom of the parties to create and determine the contents of an agreement as long as it does not conflict with the law.¹⁵ This principle demonstrates that Indonesian contract law adheres to an open system, allowing the public to create new forms of contracts beyond those explicitly regulated in Book III of the

Civil Code. Sutan Remy Sjahdeini explains that the scope of freedom of contract includes the freedom to make or not make an agreement, the freedom to choose parties, and the freedom to determine the clauses, form, and purpose of the agreement.¹⁶ This freedom also includes the authority to deviate from complementary statutory provisions. Thus, civil law provides broad creative space for parties in forming contractual relationships.

The normative basis for the principle of freedom of contract is expressly reflected in Article 1338 paragraph (1) of the Civil Code which states that all agreements made legally are valid as law for those who make them. This provision confirms that the law gives full recognition to the will of the parties as a source of legal binding. This article is also the basis for the application of the principle of freedom of contract in the Indonesian civil law system. However, recognition of this freedom does not stand alone, but must be read together with the provisions of Article 1320 of the Civil Code. Article 1320 determines the conditions for the validity of an agreement which functions as an instrument controlling freedom of contract. Thus, contractual freedom only obtains legal legitimacy if it fulfills the subjective and objective requirements determined by law.

Article 1320 of the Civil Code emphasizes that the agreement of the parties is an essential element in establishing an agreement, reflecting the principle of consensualism. The principle of consensualism states that an agreement arises from the meeting of the wills of the parties. This principle serves as the foundation for the validity of an agreement arising from freedom of contract. Without a free and unimpaired agreement, freedom of contract loses its legal legitimacy. Therefore, consensualism serves as a normative prerequisite for the validity of freedom of

¹³ Kristiawanto, H., & SHI, M. (2024). *Pengantar Mudah Memahami Metode Penelitian Hukum*. Nas Media Pustaka.

¹⁴ Chusnida, N. L. (2025). Analisis Prinsip Kebebasan Berkontrak dalam Pengembangan Penerapan Kontrak Baku. *Jurnal Hukum Lex Generalis*, 6(4).

<https://doi.org/10.56370/jhlg.v6i4.1924>

¹⁵ Atmoko, D. (2022). Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku. *Binamulia Hukum*, 11(1), 81-92. <https://doi.org/10.37893/jbh.v11i1.308>

¹⁶ Harjono, D. K. (2022). Standard Agreement In The Basic Concept Of Contractual Freedom. *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat*, 8(1), 104-115.

contract. This relationship demonstrates that freedom of contract and consensualism complement each other in forming a valid agreement.

The principle of freedom of contract is also closely related to the principle of *pacta sunt servanda*, which confirms that agreements made legally bind the parties like law.¹⁷ This principle functions to guarantee legal certainty in contractual relationships. Freedom of contract gives the parties the authority to determine the contents of the agreement, while *pacta sunt servanda* ensures that the agreement must be obeyed. Thus, what is agreed freely and legally cannot be denied unilaterally. The relationship between freedom of contract, consensualism, and *pacta sunt servanda* forms a systemic unity in contract law. These three create a normative cycle from the birth to the binding of an agreement.

In the Indonesian civil law system, the principle of freedom of contract is a general principle of contract law. This principle serves as the primary foundation for the formation and implementation of contractual relationships.¹⁸ Its existence provides legal certainty and autonomy for the parties. However, this position is not absolute, but rather exists within the framework of a legal system that upholds the public interest. Therefore, freedom of contract is always limited by statutory provisions, public order, and morality, as stipulated in Article 1337 of the Civil Code. These limitations demonstrate that Indonesian civil law does not adhere to absolute contractual freedom.

In the development of modern civil law, the meaning of the principle of freedom of contract has undergone a significant shift. The emergence of standard agreements and unequal

contractual relations has given rise to criticism of liberal contractual freedom. Modern doctrine emphasizes that freedom of contract must be accompanied by the principle of balance and protection of the weaker party.¹⁹ The concept of abuse of circumstances indicates that freedom of contract can be abused under certain conditions. Therefore, freedom of contract is no longer understood as unlimited freedom. It must be placed within a framework of justice and social propriety.

Based on this description, the principle of freedom of contract in the Indonesian civil law system holds a strategic position as the foundation of contract law. This principle legitimizes private autonomy and legal certainty in contractual relationships. However, this freedom is normatively limited by the legal requirements of the agreement, the principle of consensualism, and the principle of *pacta sunt servanda*.²⁰ Developments in legal doctrine and practice indicate that freedom of contract must be understood proportionally. Thus, the principle of freedom of contract functions not only as an instrument of individual freedom but also as part of just civil law governance.

The principle of freedom of contract has a fundamental function in guaranteeing the private autonomy of the parties in contract law. Based on Article 1338 paragraph (1) of the Civil Code, this principle gives individuals the authority to determine for themselves whether to bind themselves to a contract and to formulate the rights and obligations arising from it. From the perspective of the theory of will, contracts are seen as an expression of rational and independent individual freedom. This private autonomy makes the parties their own "lawmakers." Therefore, civil law respects free will as a source of legitimacy for contracts.

¹⁷ Bachsin, A., Adiyaksa, A. F., Ekoputro, H. F. H., Saputra, R. P., & Kusnadi, N. (2025). Peran Asas *Pacta Sunt Servanda* dalam Menjamin Kepastian Hukum Kontrak di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(3), 2531-2539.

¹⁸ Jatmiko, E. H. (2025). Penerapan Asas Kebebasan Berkontrak dalam Kontrak Bisnis di Indonesia. *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora*, 2(3), 91-99. <https://doi.org/10.62383/humif.v2i3.1828>

¹⁹ Putri, D. A. S., & Taupiqqurrahman, T. (2023). Akibat Hukum Undue Influence Terhadap

Pembatalan Perjanjian Ditinjau Dari Asas Keseimbangan. *Jurnal USM Law Review*, 6(2), 766-782. <https://doi.org/10.26623/julr.v6i2.7306>

²⁰ Jilan, S., Zulfikar, M. F. K., Putri, C., & Gustiani, S. N. (2024). Prinsip Otonomi Moral dalam Filsafat Hukum Immanuel Kant: Analisis terhadap Konsep Kebebasan dan Kewajiban. *Praxis: Jurnal Filsafat Terapan*, 2(01). <https://journal.forikami.com/index.php/praxis/article/view/924>

This function confirms that contract law is fundamentally built on a belief in individual freedom.

In addition to guaranteeing private autonomy, the principle of freedom of contract plays a crucial role in creating legal certainty. The principle of *pacta sunt servanda* asserts that legally concluded agreements bind the parties like law.²¹ This legal certainty allows parties to predict the legal consequences of their agreements. With a freely agreed contract, the rights and obligations of each party are clear and legally protected. This certainty is a primary prerequisite for the stability of civil legal relations and economic activity. Without freedom of contract, contract law would lose its flexibility in accommodating societal needs.

However, freedom of contract is not absolute and is conceptually limited by legal interests and public order. Article 1337 of the Civil Code expressly states that a cause of agreement is prohibited if it conflicts with law, morality, or public order. This provision demonstrates that civil law places the public interest above individual desires. The concept of public order serves as a controlling instrument to prevent contracts from being used for purposes that undermine social order. Therefore, freedom of contract is only protected to the extent that it aligns with fundamental societal values.

In the context of legal interests, restrictions on freedom of contract also aim to protect the weaker party in a contractual relationship. The objective requirement in Article 1320 of the Civil Code requires a lawful cause as the basis for the agreement. Contracts that violate mandatory legal provisions are declared null and void.²² Furthermore, sectoral laws such as the Consumer Protection Law explicitly restrict contractual freedom by prohibiting unbalanced standard clauses. These restrictions demonstrate that freedom of

contract must be subject to the principles of justice and legal protection. Thus, legal interests serve as a correction to individual freedom.

The development of modern civil law demonstrates a shift in the meaning of freedom of contract from individualism to a more social approach. In classical doctrine, freedom of contract was understood as the absolute right of individuals to determine their own interests. However, modern reality demonstrates the existence of unequal bargaining positions in contractual relationships, particularly in standard agreements. This situation gave rise to the concept of contract socialization, in which the state and courts play an active role in correcting unfair contracts. This shift indicates that freedom of contract is no longer understood merely formally. It must be interpreted substantively, taking into account social justice.

The emphasis on the principles of good faith and reasonableness is a key characteristic of freedom of contract in modern civil law. Article 1338 paragraph (3) of the Civil Code emphasizes that agreements must be executed in good faith. This principle serves as a corrective measure against potential abuse of freedom of contract. The freedom to determine the content of a contract must not be used to exploit other parties. Therefore, reasonableness and reasonableness serve as the standards for assessing the validity of a contract's substance. Thus, freedom of contract is combined with moral and legal responsibility.

In judicial practice, the shift in the meaning of freedom of contract is also reflected in the increasing intervention of judges in unequal contracts. Judges no longer merely assess the fulfillment of formal legal requirements of an agreement. Jurisprudence demonstrates that courts have the courage to annul or adjust contractual clauses that conflict with justice and public order.²³ This

²¹ Suhayati, K., Angelin, E. N., Setyawan, F., & Adonara, F. F. (2025). Keseimbangan Asas *Pacta Sunt Servanda* Dan Norma Perlindungan Hukum Harta Bersama Pada Perjanjian Perkawinan Di Indonesia: Penelitian. *Jurnal Pengabdian Masyarakat dan Riset Pendidikan*, 4(2), 10421-10429. <https://doi.org/10.31004/jerkin.v4i2.2949>

²² Syafriadi, F. (2024). Analisis Sistem Penyusunan Kontrak Menggunakan Asas Kebebasan Berkontrak Dalam Hukum Perdata. *AL-DALIL: Jurnal Ilmu Sosial, Politik, dan Hukum*, 2(3), 17-24. <https://doi.org/10.58707/aldalil.v2i3.879>

²³ Eugenia, E. G., & Markoni, M. (2025). Kekuatan Hukum Penerapan Penyimpangan Pasal

phenomenon demonstrates the evolving role of judges as guardians of contractual justice. Freedom of contract is no longer immune to substantive assessment. This strengthens the responsible character of freedom of contract.

In contemporary civil law relations, the principle of freedom of contract remains relevant as a key foundation for economic dynamics and private relations. This principle enables the emergence of various new forms of contract, including electronic contracts and complex modern business contracts. However, this relevance is accompanied by functional and proportional limitations. Freedom of contract is now placed within the framework of protecting the public interest and the vulnerable. Thus, the principle of freedom of contract has not lost its significance but has undergone a transformation. It functions as a just freedom in modern civil law governance.

Restrictions on the Principle of Freedom of Contract Based on the Principles of Good Faith, Propriety and Justice

The concept of limiting freedom of contract in modern civil law doctrine arose from a critique of the extreme individualism that dominated classical contract law. In the classical paradigm, freedom of contract was understood as a full manifestation of the autonomy of the individual's will, as if all parties were always on equal footing.²⁴ However, socio-economic realities show that contractual relationships often take place under conditions of structural inequality, both in terms of information, economic power, and bargaining power. Modern civil law doctrine then shifted the orientation of freedom of contract toward a balance of interests and social justice. This shift affirms that freedom of contract remains recognized as a fundamental principle, but not an absolute one. This freedom

is limited by law, public order, and morality, as affirmed in Articles 1337 and 1338 of the Civil Code, so that contracts do not become a tool to legitimize injustice.

In this context, the principle of good faith serves as a corrective instrument against the potential for abuse of freedom of contract. Good faith is no longer defined narrowly as subjective honesty, but rather as an objective standard of proper and reasonable behavior in contractual relationships. This principle works to correct imbalances arising from the dominance of one party, particularly in standard agreements that are "take it or leave it."²⁵ The freedom to determine the content of a contract cannot be justified if it is used to exploit the weaknesses of the other party. Thus, good faith serves as a bridge between legal certainty and substantive justice. This principle emphasizes that contract law not only regulates the will of the parties but also assesses the moral quality and propriety of the implementation of that will.

The normative basis of the principle of good faith is expressly regulated in Article 1338 paragraph (3) of the Civil Code, which states that agreements must be executed in good faith. This provision serves as a direct limitation on the principle of freedom of contract, which is regulated in paragraph (1) of the same article. Article 1338 paragraph (3) provides normative authority to judges not to be rigidly bound by the wording of the contract if its implementation is contrary to propriety and justice. In doctrine, this provision is understood as an entry point for correction of the formalistic principle of *pacta sunt servanda*. Furthermore, this provision is strengthened by Article 1339 of the Civil Code, which expands the binding force of agreements to include propriety, custom, and law. Thus, the principle of good faith places contract law within a normative framework that is not merely textual, but also contextual.

1266 Dan Pasal 1267 Kuhperdata Sebagai Syarat Batal Dalam Perspektif Asas Kebebasan Berkontrak Dan Kepastian Hukum. *Journal de Facto*, 11(2), 308-324.

<https://doi.org/10.36277/jurnaldefacto.v11i2.234>

²⁴ Muhtar, M. H., Awaluddin, A., Mardin, N., & Dewi, M. N. K. (2025). *Filsafat Hukum*:

Refleksi atas Moralitas dan Keadilan dalam Sistem Hukum Modern. CV Eureka Media Aksara.

²⁵ Mubarak, M. R., Habim, N., & Edrisy, I. F. (2023). Asas Keseimbangan dan Asas Kebebasan Berkontrak Pada Perjanjian Baku Yang Menganut Konsep Take It or Leave It. *Jurnal Hukum Legalita*, 5(2), 282-293. <https://doi.org/10.47637/legalita.v5i2.1089>

The principles of propriety and justice play a central role in assessing the substance of an agreement, particularly when freedom of contract results in unbalanced clauses. Propriety (*redelijkheid*) and justice (*billijkheid*) serve as evaluative standards for assessing whether the contents of a contract are still socially acceptable.²⁶ These principles ensure that contracts are not only formally valid but also materially fair. In practice, propriety and justice serve as instruments of control over clauses that disproportionately burden the weaker party. Judges use these principles as a basis for interpreting and correcting contracts that are textually valid but substantively violate a sense of justice. Therefore, the principles of propriety and justice affirm that the ultimate goal of contract law is not merely legal certainty, but rather the achievement of dignified contractual balance and justice.

The relationship between the principle of freedom of contract and the principle of balance between the parties shows the dialectic between private autonomy and contractual justice. The principle of freedom of contract as regulated in Article 1338 of the Civil Code provides wide scope for the parties to determine the content, form and subject of the agreement according to their wishes.²⁷ However, this freedom has the potential to give rise to injustice if carried out in unequal relationships. This is where the principle of balance acts as a structural corrector to ensure that freedom of contract does not turn into a tool of domination. The principle of balance requires proportionality between the rights and obligations of the parties, so that the contract is not only formally valid, but also substantively fair. Thus, freedom of contract cannot be separated from the obligation to maintain a balance in legal relations.

²⁶ Lutfi, A., Reumi, F., Br, W., Judijanto, L., Nurdin, E., Kastama, I. M., ... & Febriyanti, N. I. P. (2025). *Pengantar Ilmu Hukum: Teori dan Penerapannya di Indonesia*. PT. Sonpedia Publishing Indonesia.

²⁷ Ali, A., Fitriani, A., & Hutomo, P. (2022). Kepastian hukum penerapan asas kebebasan berkontrak dalam sebuah perjanjian baku ditinjau berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata. *SENTRI: Jurnal Riset Ilmiah*, 1(2), 270-278. <https://doi.org/10.55681/sentri.v1i2.234>

The principle of balance serves as a key pillar to prevent freedom of contract from leading to exploitation of the weaker party. In many modern contractual relationships, particularly standard contracts, the bargaining positions of the parties are unequal. Business actors possess economic power, information, and control over the terms of the agreement, while consumers, or weaker parties, are merely on the receiving end.²⁸ In this context, the principle of balance limits the scope of freedom of contract by demanding a fair distribution of rights and obligations. Freedom without balance loses its normative legitimacy. Therefore, the principle of balance is not the antithesis of freedom of contract, but rather a prerequisite for such freedom to be legally and morally meaningful.

Restrictions on freedom of contract are concretely realized through the prohibition of clauses that disadvantage the weaker party, particularly in standard agreements. The state recognizes that formal freedom to enter into a contract does not always reflect substantive freedom. Standard clauses are often drafted unilaterally by the dominant party and include transfers of responsibility, limitations on the right to sue, or refusals to recover damages.²⁹ In such circumstances, the weaker party's agreement is illusory, arising from economic necessity or compulsion. Therefore, the law limits freedom of contract by explicitly prohibiting unfair clauses. This restriction emphasizes that free will should not be used to legitimize structural inequality.

The prohibition on clauses that disadvantage the weaker party has a strong normative basis in Article 18 of the Consumer Protection Law. This provision expressly states that certain standard clauses are declared null and void, even if they have been agreed to and

²⁸ Apriani, D., & Syafrinaldi, S. (2022). Konflik Norma Antara Perlindungan Usaha Kecil Menurut Hukum Persaingan Usaha Indonesia Dengan Perlindungan Konsumen. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 14-33. <https://doi.org/10.14710/jphi.v4i1.14-33>

²⁹ Ray, M. A., & Budhiawan, A. (2025). Batal Demi Hukum Perjanjian Baku yang Memuat Klausula Eksonerasi. *PUSKAPSI Law Review*, 5(1), 233-246. <https://doi.org/10.19184/puskapsi.v5i1.53756>

signed. This demonstrates a paradigm shift from the supremacy of the will of the parties to the supremacy of the values of justice and legal protection. Contracts are no longer understood solely as expressions of private will, but also as instruments subject to the values of the public interest. Thus, freedom of contract is placed within a framework of social responsibility. These restrictions reflect the transformation of civil law from contractual liberalism to protection-oriented contract law.

State intervention in restricting freedom of contract is a logical consequence of the unequal bargaining power in modern society. The state no longer maintains absolute neutrality but actively corrects unfair contractual relations.³⁰ Through the establishment of sectoral laws, the state limits contractual freedom to protect vulnerable groups such as consumers, workers, and debtors. This intervention is not a denial of freedom of contract, but rather an effort to ensure that such freedom does not violate social justice. The state acts as a guardian of the balance between economic interests and human values. Thus, state intervention strengthens the moral legitimacy of contract law.

Besides the state, judges play a central role in limiting freedom of contract through their interpretive and corrective functions. Judges not only serve as mouthpieces of the law, but also as guardians of the value of justice in contractual relationships. Based on Article 1338 paragraph (3) of the Civil Code, judges have the authority to assess whether an agreement is executed in good faith. If a contract is formally valid but substantively violates propriety or justice, judges can deviate from or annul it. The doctrine of abuse of circumstances provides a basis for judges to correct contracts born of extreme inequality.

This role of judges emphasizes that freedom of contract is not immune from moral and social judgment.

Restrictions on freedom of contract have direct implications for the achievement of substantive justice. Substantive justice does not stop at procedural conformity or legal formalities, but rather assesses the actual consequences of the agreement for the parties.³¹ With restrictions, contracts are no longer a tool for legitimizing injustice, but rather a means for a more proportional distribution of rights and obligations. Weaker parties gain more effective protection from exploitative contractual practices. Judges and the state serve as counterweights to private power in contracts. Therefore, restrictions on freedom of contract strengthen civil law's orientation toward justice that is prevalent in society.

On the other hand, restrictions on freedom of contract also have implications for the concept of legal certainty. At first glance, these restrictions appear to reduce certainty because agreed-upon agreements can be canceled or amended.³² However, from a modern legal perspective, legal certainty is no longer interpreted solely as textual certainty, but rather as normative, just certainty. Legal certainty is actually strengthened when society recognizes that unfair contracts will not be protected by law. Thus, legal certainty transforms from formal to substantive certainty. Restrictions on freedom of contract ultimately create a legal order based on contract that is not only certain but also just and dignified.

CONCLUSION

The principle of freedom of contract in modern civil law governance is no longer understood as absolute freedom, but rather as

³⁰ Fitria, F. R., Astutik, A. D. P., Sonia, M. A., Bilhaq, M. H., Putri, E. W. M., & Adimahendra, M. F. (2024). BATAS DAN TANTANGAN NEGARA DALAM MENENTUKAN PILIHAN HUKUM PADA PERJANJIAN INTERNASIONAL. *Multidisipliner Knowledge*, 2(2), 122-130. <https://e-journal.stai-almaliki.ac.id/index.php/mk/article/view/145>

³¹ Satriawan, H. A., Alqindy, F. H., & Umami, A. M. (2025). Keadilan Substantif dalam

Transaksi Properti: Pendekatan Teori Interpretatif Konstruktif Ronald Dworkin terhadap Putusan 144/Pdt. G/2022 Pn. Smr. *Commerce Law*, 5(2), 335-353. <https://doi.org/10.29303/rzmsf318>

³² Negara, D. S., & Susilo, E. Independensi Kekuasaan Kehakiman Dalam Menjatuhkan Putusan Ditinjau Dari Perspektif Undang-Undang Sebagai Perjanjian. *Mimbar Hukum*, 37(1), 83-106. <https://doi.org/10.22146/mh.v37i1.18891>

freedom that is limited and directed by the values of good faith, propriety, balance, and justice. The freedom of the parties to determine the content and form of the agreement as guaranteed in Article 1338 paragraph (1) of the Civil Code remains recognized as the foundation of private autonomy and economic dynamics, but its implementation is corrected through normative limitations, state intervention, and the role of judges to prevent abuse of bargaining position that is detrimental to the weaker party. These limitations are not intended to eliminate legal certainty, but rather to transform it into legal certainty that is just and oriented towards substantive justice. Thus, the problem of how freedom of contract is implemented and limited in modern civil law is answered through a paradigm shift from formal freedom to freedom that is responsible, proportional, and in line with the public interest and the values of social justice.

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