

**APPLICATION OF THE PROPORTIONALITY PRINCIPLE IN
COMMERCIAL CONTRACTS TO ENSURE JUSTICE
FOR THE PARTIES**

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Abstract

Contracts play a very significant function in business. It is envisaged that applying the proportionality principle will aid in the realization of the contract's objectives and functions. The principle of proportionality governs the exchange of rights and obligations between parties in accordance with their proportions or parts, and it applies throughout the contract process, including the pre-contractual stage, contract formulation, and contract execution. Commercial contracts emphasize characteristics of partnership and business continuity, with the parties exchanging their rights and obligations in a fair and reasonable manner. To build a fair and mutually advantageous contractual partnership, ensure that the parties' interests (rights and obligations) are exchanged in balance. The notion of proportionality is vital not only for creating contracts that are just and mutually advantageous (substantial justice), but also for emphasizing fairness (fairness in procedures). The integration of contract law concepts is an analytical technique for dissecting the presence of contracts formed by the parties in order to manage the parties' various interests in a proportional manner

I. Introduction

Contracts play an extremely significant role in our daily lives. A contract is essentially a legal agreement between two or more parties that creates rights and duties as a result of the agreement. Contract law evolves in tandem with societal trends, particularly the globalization of corporate activity. Contracts play a vital role in business since they provide a venue for different parties to share their interests. A contractual connection emerges once the parties engage in a negotiating process. The negotiation process is required to provide a fair exchange of interests between the contractors. The negotiation process is required to provide a fair exchange of interests between the contractors. Negotiations allow the parties' interests to be brought together, resulting in an agreement. Negotiation abilities are one of the key components in obtaining an agreement. In other terms, negotiation is the skill of reaching a goal, specifically "agreement". Negotiations are conducted in good faith (based on confidence, enthusiasm, and honesty) in an interactive, communicative, and effective manner in order to reach an agreement on the parties' aims and objectives, which primarily reflect the parties' wishes to carry out definite, efficient, and fair business interests. Negotiations are conducted with the following factors in mind: legal expertise, language proficiency, and the technical and business sectors to be discussed. The use of basic contract concepts is supposed to aid in the realization of contractual goals and functions. Freedom of contract is one of the most essential concepts in a contract, with the goal of resulting in a fair and balanced agreement for the parties. However, in practice, many contract forms are still perceived as one-sided, unbalanced, and unjust, particularly in conventional contracts. In a conventional contract, two unequal forces exist: the party with a strong negotiation position, either due to ownership of capital/funds, technology, or skills, and the side with a weak bargaining position. Parties in a poor bargaining

position are simply forced to accept all of the elements of the contract (taken for granted), given the urgency of the situation. So the option is to accept or reject (take or leave it). This can be found in various conventional consumer contracts with one-sided stipulations, such as banking credit, hire buy contracts, sale and purchase agreements, and so on. Commercial contracts, on the other hand, must be researched carefully in order to avoid concluding that the contract terms are unbalanced or one-sided simply by reading the grammatical wording of the contract's substance. Many parties will easily fall into the trap of claiming that a contract is one-sided or imbalanced merely by reading the wording without a thorough understanding of the business operations in the linked industries. This raises concerns about the parties' contractual flexibility and balance. Is there any remaining free will or agreement in the contract? To respond to situations like this, a detailed understanding is required to evaluate clauses that are deemed unbalanced, for example, based only on disparities in the status of the parties. It would be more fair and objective to evaluate the existence of a contract based on its substance or the type of contract involved (consumer or commercial). Commercial contracts place a stronger emphasis on features of partnership and business continuity, as well as proportionality in the parties' sharing of rights and obligations. With the acceptance of universal principles such as good faith and fair or honest transactions (good faith and fair dealing; reasonableness and equity; redelijkheid en billijkheid; propriety and justice) in business practices, it demonstrates that the priority is to provide guarantees that differences in interests between the parties have been regulated through a mechanism for sharing the burden of obligations proportionally, regardless of the proportion of the final results. The issues raised above are undoubtedly a challenge for jurists to provide the best solutions for creating contracts that are mutually beneficial to the parties

(win-win solution contracts), provide legal clarity, and ensure justice. Despite the fact that combining all of this is extremely difficult, it is believed that by using contractual instruments that may accommodate disparities in interests proportionally, a contract that is mutually advantageous to the parties will be formed (win-win contract). Contractual arrangements are important in business because they ensure that the parties' interests (rights and obligations) are exchanged proportionally, resulting in a fair, mutually beneficial contractual partnership. The goal of commercial contracts is to foster equitable economic relationships, not to simply dispute contractual imbalances. A systematic and integrated approach is required to assess the relationship between the parties to a commercial contract. The integration of contract law concepts is an analytical technique for dissecting the presence of contracts formed by the parties in order to manage the parties' various interests in a proportional manner.

2. Results and Discussion

A principle is something that can be utilized as a foundation, support, place to rely on, or to refer back to something that has to be explained. Principles are also viewed as fundamental teachings or truths that guide the development of comprehensive legal regulations. Principles as basic ideas/abstract legal principles play an important role in the formulation of actual law, as well as the regulation and construction of contracts. Commercial contracts often strive to exchange mutual interests. According to Roscoe Pound, "interest" is "a demand or desire which human beings, either individually or through groups or associations in relations seek to satisfy." In business, the parties' exchange of interests is expressed through a contract.

In terms of contracts, Niewenhuis determined that at least three principles apply to contract law, namely:

- a. The principle of contract freedom (form and content), with the exception of contracts in formal and real form and permitted causal conditions.
- b. The principle of power to bind contracts, with the exception of limiting good faith and overmacht.
- c. The principle that contracts only create obligations between the parties involved, with the exception of promises made for the benefit of a third party.

Meanwhile, UNIDROIT's commercial contract principles are as follows:

- a. The contractual freedom principle.
- b. The principle of good faith and honesty (fair dealing).
- c. Recognizing commercial transaction habits in the local country.
- d. The idea of agreement is expressed through offer and acceptance or action.
- e. The notion of not engaging in bad faith discussions.
- f. The principle of maintaining confidentiality.
- g. The notion of shielding weaker parties from standard conditions.
- h. Principles governing contract validity
- i. The notion that a contract may be canceled if there is a significant discrepancy (gross disparity).
- j. When analyzing ordinary contracts, apply the contra proferentem principle.
- k. The notion of respecting contracts when difficulties arise (hardship).
- l. The idea of exemption from responsibility is currently in force majeure.

These principles are part of a "check and balance" system that promotes proportional

legal relations in contracts. They, along with the idea of proportionality, are essential for achieving just contracts. Based on the check and balance system, the principle of proportionality corrects the principles of contract freedom and balance, which, when implemented, do not provide justice to either side. Peter Mahmud refers to the idea of proportionality as a "equitablity contract" with components of justice and fairness, implying that it is a principle that plays a role in underlying contractual agreements so that they can operate proportionally and fairly. This is strongly related to the *aequitas praestasion* principle, which demands a guarantee of balance, and the *justum pretium* theory, which teaches about legal appropriateness. This is predicated on the parties' lack of commonalities, however this cannot be used to justify the dominating party imposing its will on the other party.

The idea of proportionality, which is inextricably linked to the general principles of contract law, plays a significant role in commercial contracts. Contracts in the business sector are essential; contracts that govern legal interactions for businesspeople are critical to ensuring the continuance of transactions and the delivery of promised results. Contracts can also be interpreted as attempting to defend the parties' fundamental interests and rights. Niewenhuis noted that the necessity for a contract stems from the desire to attain a worthy goal in the form of a fair exchange of assets, which he believes can be accomplished if there is fairness between achievements and counter-achievements. Agus Yudha Hernoko believes that this is particularly relevant to the implementation of the proportionality principle, which mandates equality of position and achievement in contracts. According to Soebekti, the basis for an event in which someone makes a promise to another person or where two or more people promise each other an achievement must be based on general principles in the law of engagement because of contracts, particularly the principle of proportionality as a rejection measure the achievement of a proportional exchange of rights and obligations or achievements and counter-achievements.

The application of the basic principles of contracts, combined with the principle of proportionality, which requires fairness in the contract process, will aid in the realization of the contract's objectives and functions; conversely, without the principle of proportionality, the contract's objectives and functions will not be realized. The scope and usefulness of the proportionality principle appear to be increasingly prevalent in commercial contracts. With the basic assumption that the characteristics of commercial contracts put the parties' positions on an equal footing, the contractors' business profit-oriented aims will be accomplished if there is a fair (proportional) exchange of rights and obligations. The principle of proportionality is considered not in the context of mathematical balance (equilibrium), but in the process and method of equitable exchange of rights and obligations. Contracts, as a

venue for bringing together the interests of one party and another, necessitate a fair exchange of interests. As a result, it is both acceptable and necessary to conduct an investigation of the principle of proportionality in contracts, beginning with the philosophical component of contractual justice.

This can be seen in the diverse beliefs and ideas of philosophers and scholars. Experts have differing perspectives on the notion of justice. Aristotle's work "Nicomachean ethics" states that doing good, or fairness, is the most important virtue. As Aristotle put it, "justice consists in treating equals equally and unequals unequally, in proportion to their inequality." This principle differs from the notion "that things that are the same are treated equally, and things that are not the same are also treated unequally, proportionally". P.S. Atijah presents a reason for the principle of proportionality in connection to the role of contracts as a basis for fair exchange in the business world, stating that the contractual parties' transactions are proportionate to what they want.

Based on the ideas presented above, we should avoid focusing on traditional distinctions of fairness in business transactions. This means that an analysis of justice in business contracts must integrate the concept of equal rights in exchange (performance-contr-performance) as interpreted in the context of commutative justice with the concept of distributive justice as the foundation of contractual relationships. Concept fairness in commercial contracts must not lead to a monolithic mentality (a single concept), but rather must be broad. Commutative justice, which is the foundation of human relationships, including contracts, should not be interpreted as mere equality because this perspective will result in injustice if the contracting parties are unequal. Commutative justice also includes the concept of proportional distribution. Similarly, in distributive justice, which is based on the connection between the state and its citizens, the concept of proportional distribution can be viewed through the lens of the parties' contractual relationships.

According to Konrad Zweigert and Hein Kotz, the idea of contract freedom is not the only principle that applies in the formulation of contract law, but it must also take into account the principle of "contractual justice". The fulfillment of contractual justice is determined by two methods. First, there is the procedural approach, which focuses on the question of free will in a contract. The second technique, the substantive approach, focuses on the contract's content or substance as well as its implementation. In a substantive approach, it is vital to consider the existence of various interests. The principle of proportionality does not only consider the fairness of the contract's final value/result, implying that the distribution of rights and obligations in contractual legal relations occurs without regard for the ongoing process, as the principle of balance does. However, the principle of proportionality

emphasizes equal rights, namely the parties' power to judge whether the substance of the contract is fair to them or not. The principle of proportionality is important not only for producing contracts that are just and mutually beneficial (substantial justice), but it is also important to emphasize fairness (fairness in procedures), so the principle of proportionality should always be included in every contract formation process.

4. Conclusion

The principle of proportionality refers to the notion that governs the exchange of rights and obligations between parties in accordance with their proportions or parts, and it applies throughout the contract process, including the pre-contractual stage, contract formulation, and contract execution. The idea of proportionality does not call into question the mathematical balance (equality) of results, but rather highlights the proportion of rights and obligations distributed fairly and reasonably among the parties. This principle, which is an integral part of the general principles of contract law, plays a vital role in commercial contracts by assisting in the realization of contract goals and functions. The function of the principle of proportionality in the process of forming and implementing commercial business contracts is: (i) In the pre-contract stage, opening up opportunities for fair negotiation for the parties; (ii) In forming contracts, guarantee equality of rights and freedom in determining/regulating the proportion of rights and obligations of the parties in a fair manner; and (iii) In the implementation of the contract, guarantee the realization of the exchange; (iv) If there is a failure in contract implementation, it must be determined appropriately whether the fault is fundamental (basic breach) or a simple matter/small error (minor importance). (v) In the event of a contractual disagreement, underline that the burden of proof between the parties must be divided fairly. The application of the proportionality principle in commercial contracts to ensure justice for the parties, which includes the full contract process from pre-contractual stages to formation, contract implementation, and even contract disputes. Contracts, as a venue for bringing one party's interests together with those of another, necessitate a fair exchange of interests. Understanding fairness in commercial contracts must not lead to a monolithic mentality (a single concept), but rather must be broad. The idea of proportionality emphasizes equal rights, namely the parties' power to judge whether the substance of the contract is fair to them. The notion of proportionality is vital not only for producing contracts that are equitable and mutually profitable (substantial justice), but also for emphasizing fairness.

Coffee by registering Geographical Indications with the Directorate General of Intellectual Property Rights.

Whereas in repressive legal protection, by anticipating disputes over the misuse of Geographical Indications by other parties, the owner or holder of the rights to Geographical Indications has the right to file a claim for compensation to the Commercial Court due to violation of the rights to Geographical Indications or use of Geographical Indications without rights or against the law. Theories in this legal protection are Risk Theory and Economic Growth Stimulus Theory.

Constraints Factors in the Implementation of Legal Protection for Lampung Robusta Coffee in Economic Improvement of West Lampung Coffee Farmers include the low level of public education, lack of awareness of coffee farmers in West Lampung Regency in including geographical indications of West Lampung Robusta coffee in product design, and the absence of regulations at the government level. West Lampung Regency in implementing the inclusion of West Lampung Robusta coffee geographical indications and the weak legal awareness of the community towards the importance of geographical indications.

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