

The Urgency of Legal Protection for Weak Parties in Contemporary Contract Law

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Abstract

*Contemporary contractual relations in Indonesia are marred by structural inequalities, where powerful entities exploit vulnerable parties (consumers, workers, MSMEs) through standard form contracts, undermining the Civil Code's principle of freedom of contract. Despite legal protections (e.g., Consumer Protection Law, Labor Law), weak enforcement and low awareness perpetuate injustice. This study examines the urgency of legal protection for weak parties, evaluates existing frameworks, and proposes reforms grounded in dignity justice to align contract law with social equity. A qualitative, normative-juridical approach analyzes legislation, jurisprudence (e.g., Supreme Court rulings), and scholarly theories. Exploitative clauses persist due to imbalanced bargaining power, but progressive judicial interpretation (*ex aequo et bono*) and dignity justice can mitigate inequities. The study advocates for legislative reforms, technological solutions (e.g., AI-assisted aid), and enhanced judicial training to ensure substantive justice, offering a blueprint for equitable contract law in Indonesia's digital economy.*

Keywords: *Legal protection, Contemporary contract law, Standard form contracts, Dignified justice, Jurisprudence*

Introduction

In social life, contracts are the main means that regulate legal relations between parties in various fields of life, ranging from trade activities, employment, to electronic transactions. Contract law serves as a foundation to ensure legal certainty, uphold justice, and regulate the rights and obligations of the parties involved in an agreement. However, in practice, there is often an inequality of position between the parties, especially in the context of a contract between the economically strong, legal, or informational parties, and the weak parties. The dominance of the stronger party in the contractual agreement creates the potential for abuse of power, which causes the weaker party to have no true freedom to express its will. This violates the basic principle of contract law, namely the principle of freedom of contract which should be based on equality and justice. In reality, the weak party is often only the "recipient" of the contents of the contract without room for negotiation, such as in outsourcing work contracts, house rental contracts, or digital service contracts.

The development of the business world and information technology has also brought changes in the form and pattern of contracts. The emergence of electronic contracts (*e-contracts*), agreements with standard clauses, and online transactions have strengthened the dominant position of large business actors. Meanwhile, consumers as weak parties often do not fully understand the content and implications of the contracts they have agreed upon. In this case, the urgency of legal protection becomes even more

urgent in order to maintain the balance and protect the rights of vulnerable parties. Legal protection for weak parties in a contract is not only a moral demand, but also a juridical necessity to realize substantial justice. The principle of justice in law cannot be enforced solely on the basis of the formality and legality of the contract, but must take into account the social context and factual conditions of the parties involved. In this context, the law is required to be more progressive and responsive to the reality of inequality that occurs in society.

Indonesia itself has regulated protection for weak parties in several laws and regulations, such as Law Number 8 of 1999 concerning Consumer Protection, as well as provisions on employment contracts in the Labor Law. However, the effectiveness of the implementation of these rules is still a problem. Many weak parties remain in a disadvantageous position due to a lack of legal understanding, limited access to justice, and weak supervision of business actors or employers. Furthermore, the existence of rigid contract principles and lack of adaptability to social change makes contemporary contract law must be reviewed. There is a need for a reformulation of contract law approaches that are not only based on the principle of freedom of contract, but also accommodate the principles of social justice and protection of unbalanced parties. In this framework, the law must not be neutral, but must be on the side of dignified justice.

This study aims to examine the urgency of legal protection for weak parties in the context of contemporary contract law. The main focus is on identifying forms of contractual inequality, analyzing legal protections that have been regulated, and evaluating the effectiveness of their implementation in the field. This research will also highlight how law can play an active role in creating equitable contractual relationships through normative and progressive approaches. Thus, this paper is expected to contribute to the development of more equitable contract law thinking and become an input for policymakers, business actors, academics, and the wider community in building a contract system that protects legally and socially vulnerable parties. The urgency of legal protection for the weak is non-negotiable in an effort to create an inclusive and civilized legal order.

The current research advances existing scholarship by integrating Prof. Teguh Prasetyo's *dignity justice* framework into contract law reform, offering a humanistic and morally responsive alternative to traditional formalistic approaches (Prasetyo, 2021). Unlike prior studies that focus narrowly on legal protections (Ekaputra & Zubaedah, 2024; Sinaga, 2020) or judicial interventions (Supreme Court Jurisprudence No. 3431 K/Pdt/1985), this study systematically links structural inequalities in contracts to broader socio-legal reforms, emphasizing the need for adaptive laws in the digital era (Widiarty & Saragih, 2024). It critiques the passive enforcement of Consumer Protection and Labor Laws (Chamdani et al., 2022; Rahmaniah, n.d.) and proposes proactive measures like standardized fair contracts and AI-assisted legal aid, which are underexplored in existing literature. Additionally, it expands on Roscoe Pound's *social engineering* theory (1954) by advocating for judges to contextualize contract clauses through *ex aequo et bono* principles, a progressive shift beyond the *pacta sunt servanda* dogma (Suharnoko, 2008).

The research also introduces empirical urgency by highlighting low public awareness and weak institutional oversight, gaps not comprehensively addressed in prior works (Susanti, 2024; Sinaga, 2018).

Method

The research method used in this study aims to gain a comprehensive understanding of the urgency of legal protection for weak parties in the context of contemporary contract law. This study uses a qualitative approach that allows researchers to examine in depth the dynamics of inequality in contractual relationships and how the law responds to these inequality. This approach was chosen because it is able to describe complex social realities and legal practices, as well as examine normative and empirical aspects simultaneously. The methods applied in this study include literature studies, analysis of laws and regulations, and studies of court decisions and relevant legal literature. Data collection is carried out through the study of legal documents such as the Civil Code (KUHP), the Consumer Protection Law, the Employment Law, and jurisprudence related to the protection of weak parties in contracts. Data analysis is carried out in a descriptive-analytical manner by interpreting legal norms, examining the principles of justice, and evaluating its application in practice. Through this approach, the researcher seeks to gain an in-depth understanding of the challenges and weaknesses in the existing legal protection system, as well as explore the potential for strengthening regulations and a more equitable legal approach in contractual relations in Indonesia.

Result and Discussion

A. Inequality in Contemporary Contractual Relations

In contemporary contract law practice, the relationship between the parties often shows striking inequality. This is especially the case when one party has a significant advantage, both economically, legally, and informationally, which puts the other party in a very low bargaining position. In this condition, the agreement that should have been drafted on the basis of mutual agreement has turned into an instrument of unilateral domination. Weak parties are often not given the space to negotiate, but are simply given pre-designed contracts with burdensome terms, known as standard contracts. The phenomenon of standard contracts is a real reflection of the inequality of contractual relations. In the world of employment, for example, outsourced workers are often faced with employment agreements that do not provide adequate protection, both in terms of social security and certainty of employment period. Similarly, in the digital services sector, application users can only agree to long and complicated terms and conditions without really understanding the legal consequences. In the practice of buying and selling goods and services, consumers as weak parties are also often disadvantaged by clauses that transfer all responsibility to the buyer. This shows that imbalances in contracts have become part of an unfair system.

This inequality is fundamentally contrary to the principle of freedom of contract which has been the basis in civil law, as stated in Article 1320 of the Civil Code. The principle of freedom of contract should contain an element of equality, namely that each party has an equal position in determining the content of the agreement. If the parties have reached and agreed on an agreement, it reflects the freedom of will possessed by each party in making decisions consciously and without coercion. In the context of this freedom of will, there is a basic assumption that each party is in an equal position, at least in terms of the capacity to agree to the content of the agreement and understand its legal consequences. This minimum equality is an important prerequisite for the agreement that occurs to truly reflect free will and the absence of domination from one party over the other. But in practice, the principle tends to be pseudo-for structurally weak parties. The agreed contract is not the result of parallel negotiations, but rather resembles a covert coercion due to economic needs or limited choices. Therefore, there is a need for more progressive legal intervention and on the side of the weak to balance contractual relations. The law cannot continue to be neutral against this inequality, but must actively provide affirmative protection. Reforms to the contract law approach, especially in assessing the validity and fairness of the content of agreements, are an important step to ensure that the law truly functions as a protector of social justice. In this context, the law is required to not only look at the aspects of formal legality, but also consider the moral, social, and humanitarian values that underlie any contractual relationship.

B. Legal Protection That Has Been Regulated in the Legislation

Protection of weak parties in contractual relationships has been accommodated in various legal instruments in Indonesia. In Indonesia, consumer protection is comprehensively regulated through Law Number 8 of 1999 concerning Consumer Protection (UUPK). This law serves as the main legal basis that guarantees and strengthens the position of consumers in economic activities. Through the UUPK, it is regulated in detail regarding the obligations of business actors in running their business honestly and responsibly, the rights inherent in consumers, and procedures for resolving disputes in the event of disputes between consumers and business actors. This provision is an important foundation to correct the inequality between strong business actors and consumers who generally have lower knowledge and bargaining power. Law No. 8 of 1999 prohibits standard clauses that burden consumers (Article 18), such as the exculpation of liability, the refusal of the return of goods or money, and the unilateral power of attorney over installments. Such clauses are considered against the subjective rights of consumers and are declared null and void. Overall, this legal framework aims to restore the rights of parties aggrieved by defaults or unlawful acts in contracts, ensuring justice, legal certainty, and protection for consumers and business actors.

In addition, in the employment sector, Law Number 13 of 2003 concerning Manpower (which was later updated through Law Number 11 of 2020 concerning Job Creation (often called the "Omnibus Law")) plays an important role in maintaining a

balance in the relationship between employers and workers. Law Number 13 of 2003 concerning Manpower, which is the main legal basis in the employment sector in Indonesia, has provided a legal framework that regulates the rights and obligations of both parties. One of the main goals is to prevent the exploitation of labor, especially in the form of temporary employment relationships such as fixed-time employment contracts (PKWT) and outsourcing systems. This regulation requires employers to fulfill basic workers' rights, such as living wages, social security, and humane working conditions. However, in practice, many companies still circumvent these provisions by drafting unfair unilateral employment agreements, leaving workers in a weak and vulnerable position.

Meanwhile, in the Civil Code, Article 1320 requires four elements of the validity of the agreement, namely the agreement of the parties, legal competence, certain objects, and halal causes. Meanwhile, Article 1338 affirms the principle of *pacta sunt servanda*, which is that the agreement applies like a law to the parties. Then, the existence of Article 1233 describes an alliance born not only from an agreement, but also based on the law, including the obligation to compensate for damages due to unlawful acts (*onrechtmatige daad*) and natural alliances.

The main problems that hinder the effectiveness of this legal protection are the weak enforcement of the law and the lack of public awareness of their rights. The majority of consumers in Indonesia also do not understand that they have rights guaranteed by law. Not a few of them experience injustice from business actors but do not take any steps—either because they are ignorant of their rights or because they feel reluctant to face the complaint process which is considered complex and difficult. This inactivity ultimately reinforces the practice of violations by business actors, who feel safe and not threatened due to the low level of reports or demands from consumers. Law enforcement officials are often passive or unresponsive to violations, while communities, especially the weak, often lack access or courage to demand their rights. This situation is further exacerbated by information inequality and high costs to obtain legal assistance. As a result, well-designed legal rules become meaningless when their implementation is ignored in practice. Therefore, the legal protection that has been regulated in the legislation needs to be strengthened through increased supervision, legal education to the public, and strengthening institutions that function as guardians of justice. It is also necessary to carry out legal reform on an ongoing basis so that existing provisions are able to respond to new challenges in the context of contemporary contracts. The state must be actively present to ensure that justice does not stop at the text of the law, but is also real in the daily lives of the people, especially for those who are vulnerable and marginalized in legal relations.

C. Jurisprudence and Judge's Approach in Protecting the Weak Party

The role of judges in resolving contractual disputes has a major impact in strengthening legal protection for weak parties. In the Indonesian legal system, although the principle of freedom of contract is recognized, it does not mean that all the contents of a contract are absolute. The judge has room to assess whether a

contractual clause reflects fairness and equality between the parties. In practice, judges not only assess the validity of the contract from a formal aspect, but also look at the social context and bargaining position of the parties, especially when one of the parties is in a disadvantaged or oppressed position. Several Supreme Court jurisprudence has shown a progressive direction in protecting the weak. For example, in a number of decisions, the Supreme Court has invalidated standard clauses made unilaterally by business actors because they are considered contrary to the principles of justice and propriety. Clauses that give absolute power to one party, or that impose a complete risk on consumers or workers, are declared invalid and non-binding. Such a ruling reinforces the position of the weak party and sets an important precedent in directing fairer and more humane contractual practices.

In Indonesian judicial practice, the doctrine of "abuse of circumstances" (*misbruik van omstandigheden*) has been recognized by the Supreme Court as a reason for cancelling contracts burdened with unfreedom of will, although it is not explicitly stated in the law.

The jurisprudence of the Supreme Court No. 2230 K/Pdt/1985 (PT Adamson vs. BSN) and the Supreme Court No. 2464 K/Pdt/1986 (Hotel Medan Utara vs. Bank Exim) affirm that situational pressure or social domination can paralyze the freedom of the weak, so that contracts born under such conditions should be canceled. The most concrete example can be seen in MA No. 3431 K/Pdt/1985 (Sri Setianingsih vs. Boesono), where loan interest of 10% per month and hostage holding of pension books were considered inappropriate; The judge lowered the interest rate to 1% per month and considered the overpayment as principal repayment, based on the considerations *ex aequo et bono*. Meanwhile, in Supreme Court No. 1904 K/Sip/1982 (Luhur Sundoro vs. Soetardjo), a house sale and purchase agreement prepared as a substitute for a debt deed is seen as a unilateral contract that forces the debtor in a desperate situation. From the series of rulings, it can be seen that the judge's progressive approach to protecting the weak party is seen: first, the judge is not fixated on the formal text of the contract, but rather assesses the social and economic context in which the agreement is made. Second, they apply the principle of *justice ex aequo et bono* to adjust contract performance to be reasonable and proportionate, not solely to recover *expectation loss*. Third, the judge upholds the principle of good faith by canceling or adjusting clauses that are exploitative such as excessive interest or detrimental guarantees. Through this jurisprudence, the Supreme Court functions as a balance of power, ensuring that contracts are not used as tools of oppression, but rather as instruments of justice that humanize all parties, especially those in vulnerable positions

The judge's approach that prioritizes substantive justice over contractual formalities is proof that the legal system is not rigid, but adaptive to evolving social values. However, consistency is still needed in this approach. Not all judges show the same sensitivity to contractual inequality, so legal protections for vulnerable parties can vary depending on the court's ruling handling the case. In addition, limited access to the courts is also an obstacle for weak parties to obtain justice through litigation.

Thus, it is important to encourage increased capacity of judges in understanding the social dimension of contracts as well as building legal awareness that is sensitive to structural injustices. In addition, the publication of jurisprudence that protects weak parties needs to be expanded to become a reference in handling same-sex disputes. The role of the judiciary as a guardian of justice must be carried out actively and progressively, in order to ensure that the law does not become a tool of domination by powerful parties, but an instrument of protection for those who are vulnerable and need the law's favor.

D. Progressive Approach in Contract Law Reform

Inequality in contemporary contractual relationships has raised the awareness that traditional contract law is no longer sufficient to address the problems of injustice that arise in society. The principle of freedom of contract, which has been used as the main foothold, is often abused by parties with more economic power and information. In these conditions, the weaker parties are often forced to accept agreements without a choice or fair negotiation space. Therefore, a new, more progressive approach is needed in formulating and interpreting contract law, which guarantees balance and protection for all parties. The progressive approach developed by Satjipto Rahardjo emphasizes that law should not stop at text and formalities alone, but should live and function as a tool to achieve substantive justice. In the context of a contract, this means the need for rules that protect the interests of vulnerable parties through controls over the content of the agreement, the regulation of standard clauses, and the obligation of information transparency. The law must be responsive to social dynamics and able to dismantle unequal power relations in order to realize ethical and equal contractual relationships. In addition, there is also Roscoe Pound's view that the law functions as "*social engineering*," an approach that requires judicial officials, especially judges, to have the courage to interpret contract clauses contextually. Thus, the principle of *pacta sunt servanda* which emphasizes that the agreement is lawful for the parties is combined with the value of propriety and good faith so that the implementation of the contract reflects substantive justice, not just formal certainty.

Contract law reform can be carried out through revisions to the Civil Code, which is currently considered inadequate in responding to the challenges of the times, especially in the digital era. In addition, there is a need for special regulations that regulate electronic agreements in more detail and are oriented towards consumer protection. In practice, oversight of digital platforms and online service providers should be strengthened to ensure that the clauses used are not exploitative. A prompt and affordable grievance and dispute resolution mechanism is also important to ensure access to justice for the general public. By prioritizing a progressive approach, contract law will not only become a static collection of rules, but will develop into an instrument of social justice. These changes must involve the active role of policymakers, academics, and civil society in pushing for regulatory reform that favors vulnerable groups. A law that is partisan does not mean a discriminatory law, but a law that is aware of inequality and seeks to overcome it. This is the tangible

manifestation of the law as a tool of social engineering and a defender of justice that lives in practice.

E. Dignity Justice and Protection of the Weak

The concept of dignified justice introduced by Prof. Teguh Prasetyo provides a new framework for thinking in assessing how the law should work to protect human dignity. In this view, the law should not only be a cold and neutral normative system, but should live and side with the values of truth, justice, and humanity. Especially in contractual relations, dignity justice demands that the protection of weak parties be the main concern in the process of making and enforcing contracts. Often, contracts are drafted based on the principle of freedom of contract without considering the inequality of the negotiating position of the parties. In many cases, weak parties such as consumers, workers, or small business actors do not have the power to negotiate the contents of the contract and are forced to accept adverse terms. If the law only assesses the validity of a contract from formal aspects such as agreement and skill, then true justice will never be achieved. This is where it is important to apply a dignified justice approach, which looks deeper into the social context and human values.

The development of the theory of dignified justice is a legal theory initiated by Teguh Prasetyo, who states that the goal of justice is essentially justice that humanizes humans. That the values of justice arise from the results of the Proclamation and also the Indonesian Constitution as universal moral principles. This justice is manifested in the form of fulfilling the values of Pancasila in it which is a form of the values of independence of the Indonesian nation over the actions of political events.

By placing human beings and their dignity as a starting point, this approach invites lawmakers and law enforcers to be more sensitive to social and structural inequalities. In practice, this can be implemented by giving judges room to strike down exploitative clauses, encourage pro-weak party legislation, and establish a system of fair supervision of businesses and employers. The law should provide more protection to the vulnerable from falling victim to unequal contractual power. Finally, dignity justice reminds us that the essence of law is not just order, but the restoration and glorification of human dignity. Legal protection for the weak is not just an option, but a moral and constitutional obligation in creating a just and civilized society. In this spirit, contract law must evolve from a mere legal document to a tangible means of achieving a social order that upholds human values.

Conclusion

Contractual relations in Indonesia remain marked by structural inequalities, favoring powerful entities over vulnerable groups like consumers, workers, and small businesses, leading to exploitative practices that contradict the Civil Code's principle of freedom of contract. Despite protections under Consumer Protection and Labor Laws, weak enforcement and low public awareness limit their effectiveness, necessitating judicial intervention through fair interpretation, invalidation of unfair clauses, and principles like *ex aequo et bono*. Reform should adopt a progressive, humanistic

approach, integrating Prof. Teguh Prasetyo's dignity justice framework to align law with social justice, while legal stakeholders must prioritize substantive equity. Future research should explore judicial activism, regulatory gaps, and technological solutions (e.g., standardized fair contracts, AI-assisted legal aid), alongside strategies like legal empowerment and collective bargaining, to strengthen contractual justice and ensure systemic fairness in Indonesia's evolving socio-economic landscape.

BIBLIOGRAFI

- Ekaputra, R. A., & Zubaedah, R. (2024). Pentingnya Hukum Perjanjian dalam Mempertahankan Keseimbangan dan Keadilan Sosial. *Jurnal Ilmiah Wahana Pendidikan*, 10(23), 945-953.
- Sinaga, N. A. (2020). Keselarasan Asas-Asas Hukum Perjanjian Untuk Mewujudkan Keadilan Bagi Para Pihak Dalam Suatu Perjanjian. *Jurnal Mitra Manajemen*, 7(1).
- PERJANJIAN, PEMBUATAN KONTRAK BAKU PADA AKTA. "Caroline Mesalina. DO NOT COPY."
- Susanti, N. (2024). Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata. *Indragiri Law Review*, 2(2), 33-39.
- Sinaga, N. A. (2018). Implementasi Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Mewujudkan Keadilan Para Pihak. *Jurnal Ilmiah Hukum Dirgantara*, 9(1).
- Widiarty, W. S., & Saragih, R. V. (2024). Hukum Perlindungan Konsumen di Era Globalisasi.
- Chamdani, C., Endarto, B., Kusnadi, S. A., Indrajaja, N., & Syafii, S. (2022). Perlindungan Hukum Terhadap Pekerja/Buruh Yang Putus Hubungan Kerja Sebelum Masa Kontrak Kerja Berakhir. *Jurnal Kepastian Hukum dan Keadilan*, 4(1), 1-16.
- Rahmaniah, A. Pentingnya Kesadaran Hukum Konsumen Akan Hak-Haknya. *Fakultas Syariah UIN Antasari Banjarmasin*.
- Gr. Van der Burght, Buku Tentang Perikatan, saduran F. Tengker, Bandung: Mandar Maju, 1999
- Suharnoko, Hukum Perjanjian: Teori dan Analisa Kasus, Jakarta: Kencana, 2008
- Roscoe Pound, An Introduction to the Philosophy of Law, London: Yale University Press, 1954
- Hotma P. Sibuea, "Konsekuensi Yuridis Proklamasi Kemerdekaan Bagi Indonesia Dalam Kehidupan Berbangsa dan Bernegara", *Jurnal Law Review*, Vol. 12, No. 3, 2013
- Teguh Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy", *Jurnal Hukum*, Vol. 24, Special Issue 1, 2021

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