



Legal Aspects of Business Contracts with the Threat of Punishment: Perspectives on the Protection of the Injured Party and Fairness of the Contract

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Abstract

Business contracts are important legal instruments regulated by the Civil Code, particularly those related to agreements between parties in business activities. This study discusses various important aspects of business contracts, including the main components, forms of legal protection, the advantages and disadvantages of legality, elements of agreements, and the concept of force majeure. Based on Article 1320 of the Civil Code, a business contract must meet four valid requirements: agreement, capacity, a certain thing, and a lawful cause. Legal protection in business contracts is divided into two forms: preventive and repressive. Although the legality of business contracts provides various benefits such as legal certainty and protection for the parties, there are also several limitations such as costs, time, and unforeseen risks. In the context of force majeure, this condition can be a forgiving reason for debtors who cannot fulfill their obligations due to circumstances beyond their control. A thorough understanding of these aspects is important to create safe and sustainable business relationships within the applicable legal framework.

I. INTRODUCTION

Due to the fact that humans are social creatures, they need other people to survive. In this case, all activities carried out by humans to fulfill their needs affect their well-being. R. Subekti defines a contract as "the activity of people attracting others by committing to do something in a business context." Because of the alignment of wills regarding the desired goals, a contract is created. This cooperation is carried out to expedite transactions between the parties. The presence of performance is closely related to the presence of a contract. A contract, in a business context, is an agreement made by one party to another with commercial value. (Habehan & Siallagan, 2021) In the business world, this type of interaction can occur through business transactions such as buying and selling, renting, debts, guarantees, patent infringement, and default, among others. (Dewi et al., 2024).

According to Subekti in (Pratiwi, 2020) A business contract agreed to by the parties is an agreement that binds both parties. Article 1313 of the Civil Code states that "An agreement is an act

by which one or more persons bind themselves to one or more other persons." Both parties are bound to carry out the promises contained in the business contract. In line with the principle of binding contracts, which means that all parties who sign the agreement are bound to carry it out.

Business contracts have become very important in the increasingly advanced modern world.

This is because a contract contains many rights and obligations that are intended to reach an initial agreement. Both parties can achieve a mutually beneficial relationship in a good contract, where rights and obligations are balanced. (Innolita & Mediawati, 2024).

Furthermore, contracts serve the purpose of ensuring security in business activities. This is because contracts at the very least outline the rights and obligations of the parties, when and where the contract is executed, and the rights and obligations of each party. (Reumi & Yanuarita, 2021).

Business contracts are a crucial foundation for commercial transactions between the parties

involved. In the business world, contracts serve not only as an agreement between the parties but also as a legal instrument that regulates the rights and obligations of the parties and provides solutions to potential disputes that may arise. One aspect frequently included in business contracts is the threat of penalties or sanctions for violations of the contract's terms. The purpose of imposing penalties in business contracts is to provide a deterrent effect, ensure fulfillment of obligations, and create legal certainty in business relationships.

However, in its implementation, the threat of punishment in contracts often raises questions about the extent to which such provisions are acceptable in the existing legal system, especially regarding protection for the injured party and the principle of fairness in contracts. Therefore, a more in-depth study is needed regarding how the legal aspects of business contracts with the threat of punishment can protect the injured party while maintaining the principle of fairness in contracts. Protection of the injured party in business contracts with the threat of punishment is important, considering that the imbalance in the position between the parties in the agreement can give rise to the potential for exploitation. This study aims to analyze the legal aspects contained in business contracts with the threat of punishment, with a focus on the protection of the injured party and the application of the principle of fairness in contracts.

Through this research, it is hoped that solutions can be found that can correct the imbalance that may occur in business contracts and provide guidance on the application of the threat of punishment in accordance with fair legal principles.

II. RESEARCH METHODS

This research was conducted using a normative juridical approach, namely legal research that positions law as a system of norms, encompassing discussions of the principles, norms, and rules contained in legislation, court decisions, agreements, and doctrines (teachings). According to Soerjono Soekanto and Sri Mamudji, normative legal research is a type of research conducted through the study of literature (secondary data). This research includes the study of legal principles, legal systematics, horizontal and vertical legal synchronization, legal comparisons, and legal history.(Nugroho et al., 2020).

III. RESULTS AND DISCUSSION

A. Key Components of a Business Contract

The parties involved in a collaboration will certainly enter into an agreement that covers the rights and obligations that must be fulfilled. This is done so that the parties in the agreement feel confident that everything stipulated in the agreement will be carried out properly. Article 1313 of the Civil Code states that "An agreement is an act in which one or more people bind themselves to one or more people." Each party wishing to enter into an agreement must comply with all the requirements listed in Article 1320 of the Civil Code relating to the valid conditions of the agreement. These requirements include:(Aryani & Samsithawrati, 2024):

1. Agreement

All parties involved in the agreement must reach a conscious and voluntary agreement regarding the matters to be agreed upon, without any pressure, coercion or misunderstanding.

2. Skills

In this condition, capacity means that the parties to the agreement must be of sufficient age and legal capacity to act according to the provisions. Under Article 1330 of the Civil Code, those considered legally incompetent include minors, those under guardianship, and married women. However, with the enactment of SEMA No. 3 of 1963, married women are now legally recognized and have the right to act independently.

3. A Certain Thing

Every agreement definitely involves objects that need to be clearly regulated in the contents of the agreement.

4. Halal Reason

In an agreement, there is usually an object that forms the basis of the agreement. This object must comply with legal provisions, moral norms, and public order.

B. Forms of Legal Protection

Muchsin differentiates legal protection into two types, namely preventive and repressive protection:(PUTRA, 2021).

1. Preventive Legal Protection Preventive legal protection is a government effort aimed at preventing and minimizing legal violations to ensure that citizens' rights are fulfilled. This protection is regulated by law to prevent violations and provide rules or limitations on fulfilling obligations.

2. Repressive Legal Protection is a therapeutic effort to provide balance in legal violations.

C. Advantages and Disadvantages of Legality

Advantages of Business Contract Legality:

1. All parties involved have legal certainty thanks to the legality of business contracts. This ensures that each party's rights and obligations are clearly outlined in the contract to minimize the risk of future uncertainty. Written agreements, especially those between the parties involved, must be notarized to be legally binding.
2. A valid business contract provides legal protection for all parties involved, preventing violations or defaults. If one party violates the agreement, the injured party has the right to seek legal redress, such as seeking compensation or demanding fulfillment of agreed-upon obligations. With written agreement clauses, legally binding, and signed by the parties on a Rp10,000 stamp, the contract is difficult to dispute or ignore.
3. During the negotiation process, a high level of trust is established between the two parties, which allows for the formation of a strong relationship even after the agreement is made.
4. If a dispute arises between the parties, contract law provides a structured framework for dispute resolution. This facilitates fair and effective conflict resolution, whether through mediation, arbitration, or court litigation.

Weaknesses of Business Contract Legality:

1. The cost and time required to resolve disputes through legal channels can be very expensive and time-consuming. Litigation or arbitration, especially complex and protracted ones, can be expensive and time-consuming. This is due to the time the parties spend reaching an agreement. In business agreements, formal drafting of the deed is generally done through a notary. Before an agreement is entered into, the parties need time to negotiate, which can open up opportunities for competitors in the same industry. The costs of litigation are significant, especially for financially valuable legal cases, and the need for legal counsel to act as legal counsel in court during the legal dispute process.

2. Although business contracts guarantee legal certainty, not all risks can be anticipated or included in the contract. If an unforeseen or unaddressed risk arises, one or both parties could potentially suffer losses that could impact the contract's performance. Therefore, the parties involved in drafting the agreement need to engage in discussions to reach a mutually agreed-upon agreement.
3. The parties have doubts about drafting more specific and measurable agreement clauses. Prior to drafting these final written clauses, specific expert expertise as a consultant is required. This is because the parties still have doubts about each other's abilities or expertise in drafting business agreements.
4. Another weakness is that while business contracts can provide legal protection, the law cannot address all circumstances. Sometimes, clauses in contracts are difficult to enforce or dispute in court. As a result, legal protection is limited. (Dewi et al., 2024).

D. Elements of an Agreement

According to Ahmadi Miru, there are several elements contained in a contract, including: (Priyono & Saka Birauti, 2022):

1. Essential Elements are the main elements that must be present in every agreement, because these elements ensure that the agreement is valid and binding on the parties to the agreement.
2. Naturalia elements are elements that are regulated in law, but can be modified by the parties.
3. Accidental elements are additional elements created by the parties which aim to complement the two elements above.

E. Force Majeure as a Reason for Forgiveness

Force majeure, also known as force majeure, is a condition that occurs after a contract is made and prevents the debtor from performing what he or she is required to do. The debtor is not to blame for this and does not have to bear the risk. Force majeure that occurs due to unforeseen events may be caused by factors beyond the debtor's control, so this can be a basis for releasing the debtor from the responsibility to pay compensation. Exempted from the obligation to pay compensation on the basis of force majeure, according to Subekti, force

majeure is a situation in which the debtor cannot fulfill its obligations due to an unforeseen event that the debtor could not have predicted at the time of making the agreement. In this case, the debtor is not to blame, does not have to bear the risk, and did not have the ability to predict the condition at the time the agreement was made. This is because the situation occurred before the debtor failed to fulfill its responsibilities due to the emergence of the condition. (KARTIKAWATI, 2014).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

A business contract is an agreement regulated by the Civil Code and has several important components and requirements. To be valid, a business contract must meet four main requirements as stipulated in Article 1320 of the Civil Code: free consent of the parties involved, legal capacity of the parties, a clear object of the agreement (a specific matter), and a lawful or legitimate cause.

In terms of legal protection, there are two main forms: preventive, which serves to prevent violations before they occur, and repressive, which imposes sanctions after a violation has occurred. Legal business agreements have several advantages, such as providing legal certainty, protecting the parties, building trust, and providing a structured dispute resolution mechanism. However, they also have several limitations, such as the cost and time required, the presence of unforeseen risks, and the potential for doubt among the parties.

In the context of force majeure, this study explains that it is a condition that can be an excuse for a debtor not to fulfill their obligations. Force majeure occurs due to an unforeseen event beyond the debtor's control, occurring after the agreement was made. In this situation, the debtor can be excused from the obligation to pay compensation because the event was unforeseen at the time the agreement was made.

Overall, this study emphasizes the importance of a thorough understanding of the legal aspects of business contracts, including requirements, legal protection, and the rights and obligations of the parties involved to create a safe and sustainable business relationship.

B. Suggestion

When drafting a business contract, be sure to pay attention to and fulfill all the legal

requirements of an agreement as stipulated in Article 1320 of the Civil Code. This is crucial to ensuring the contract is legally binding.

It's recommended to involve a legal expert or notary in drafting business contracts to ensure all clauses are clearly and concisely written. While this may increase costs, it can reduce the risk of future disputes.

Allocate sufficient time for the negotiation and contract drafting process. While time-consuming, this process is crucial for building understanding and trust between the parties. When drafting a contract, consider not only essential elements but also natural and accidental elements. Add specific clauses that may be necessary to anticipate future situations.

Include a clear and detailed force majeure clause in the contract, outlining situations that could constitute force majeure and the procedures for handling them. Consider including alternative dispute resolution mechanisms such as mediation or arbitration before resorting to litigation, as the litigation process is time-consuming and expensive.

Document all negotiation and approval processes well, including keeping a copy of the signed contract on a stamp for future evidence.

Conduct regular evaluations of contract implementation to ensure all parties fulfill their agreed rights and obligations, thereby preventing disputes. Consider creating a flexible contract that still provides legal certainty, allowing for changes in business circumstances without requiring a new contract.

Take advantage of preventative legal protection by ensuring that contracts comply with applicable laws and regulations, thereby preventing legal problems in the future.

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