

GOOD FAITH TO STANDARD CONTRACT IN THE BUSINESS LAW PERSPECTIVES

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The problem with the standard contract, that the debtor is a weak party, is often unable to conduct bargaining position, making it less favorable for the debtor, therefore the implementation of good faith in standard contract is preferred as a guarantee that benefits both parties in the standard contract. The formulation of the problem, how the influence of good faith to the standard contract in the perspective of business law.

The purpose of this study is to analyze the influence of good faith towards standard contract in business law perspective. The usefulness of this research is useful for the parties to understand good faith in the standard contract in the business law perspective.

The research method used is normative law, this research is done by literature study. The data analysis technique used is juridical analysis, the object which is the data of this research is the study of the law based on the judge's decision in its consideration to cancel a standard contract that is not based on good faith in business law perspective.

The result of this research is that good faith in a standard contract is a barrier against a standard contract made unilaterally by the creditor, in the absence of a bargaining position on the debtor. So the judge can cancel the contract, based on the principle of good faith, which is based on a sense of propriety and justice in society to uphold the rule of law, especially business law. A good faith is accepted as a justification to cancel the contract as a consideration of one party's imbalances.

The conclusion that the good faith to the standard contract is a disability-containing agreement of abuse of undue influence to the judge's judgment to cancel the agreement in the contract. Suggestion, that good faith is expected to be a positive law and regulated in contract law, thereby enriching the repertoire of business law.

Keywords: Good faith, Standard contract, and business actor.

A. Introduction

The standard contract position was born because of the demands of the needs of the times. Standard agreements are required and are therefore accepted by the public. The problem is that the standard agreement only stipulates the rights of either party, namely the party preparing the standard agreement, without specifying what the obligations of the parties. On the contrary, it only includes the obligations of others, while what other rights are not mentioned (Sutan Remy Syahdeni, 1993: 71). Apart from that the problem in the business world against the standard agreement is the inclusion of an unnatural clause which is very burdensome for the opposite side.

The issue of the unnatural clauses of this very grave constitutes one of the concerns of judges facing a dispute over a standard agreement in various jurisprudence, the concern being to protect the interests of the weak consumer in the standard agreement (Sutan Remy Syahdeni, 1993: 72). The clause considered to be incriminating in the standard agreement shall be an excitation clause. According to Mariam Darus Badruzaman, the exoneration clause is a clause containing the limitation of liability of the creditor (Mariam Darus Badruzaman: 1981: 109).

The fundamental problem of standard contracts, that these activities require effective and efficient service. So standard contracts must be set in advance in writing, which contains the terms of the provisions in the form of forms, and then can be reproduced to make it easier to react. So consumers only approve the contents of the form offered. But consumers can not bargain according to their wishes, when the contents of the standard contract is not in accordance with the conditions. (Syahmin AK, 2006: 140).

If in an agreement, the position of the parties is unbalanced, the weaker party is usually not in a state that is completely free to determine what is desired in the agreement. In such cases, stronger positions usually use the opportunity to specify certain clauses in the standard contract, so that the agreement that should be made or designed by the parties involved in the agreement is no longer found in the standard contract, due to the respect and contents of the contract is designed by a stronger party (Ahmadi Miru: 2007: 40). Because the designer of the contract format and content is the party with a stronger position, it is certain that the contract contains clauses that are profitable for him, or waives certain obligations which should be the burden commonly known as an exoneration clause.

B. Problem Formulation

From the background on the above problem, then the formulation of the problem is how the influence of good iktikat against the standard contract in the perspective of business law?

C. Good Faith to Standar Contract in the Business law perspectives

Standard contracts are indispensable to the business world, given that standard contracts simplify business operations and reduce costs, because they involve large amounts of contracts, so standard contracts simplify the contract work, as standardized on the contract. But sometimes standard contracts often cause problems. Where, in a treaty, the positions of the parties are unbalanced, the weak are usually not in a state that is completely free to determine what is desired in the agreement. In such cases, stronger positions usually use the opportunity to specify certain clauses in the standard contract, so that the agreement should

be designed by the parties to the treaty, but in the standard contract it is not so determined by one party only, because the format and contents have been designed by parties who have a strong position (ahmadi Miru: 2007: 40).

In the standard contract the freedom to contract and the agreement to the contract are not carried out as freely as the agreement made directly by involving the parties in negotiating the agreement clause. According Meriam Darus Badruzaman, that the standard contract against the debtor does not have the authority to determine the contents of the agreement. Thus the standard contract contains an exoneration clause, as is characterized by:

1. In general, the content is determined by the party whose position is stronger;
2. The weak party on the mum does not participate in determining the contents of the agreement which is an element of accident in the agreement.
3. Driven by its needs, the parties are forced to accept the agreement.
4. The form is written
5. Prepared in advance in bulk or individual.

As is often the case in the housing ad brochure, where the developers lure consumers by pledging the advertising brochure, such as promising to build fishing and recreation facilities at Taman Naronggong Indah Housing, all of which are listed in brochures that are distributed as advertisements, so that consumers become interested in buying the house. But the fact that after the housing facility was built as promised as in the brochure, was never realized, then consumers feel aggrieved. Under modern contract theory the promise of a pre-contract should be based on good faith, so that the developer who breaks a promise can be sued against the law. His premise is that the plaintiffs as consumers buy the house because they believe and put the hope in the promise contained in the brochure (Suharnoko, 2004: 8). Thus Article 1338 Paragraph (3) of the Civil Code, which should be applied not only at the signing and execution of the agreement, but also prior to the signing of the agreement, it means that the agreement should be done in good faith, not only in implementation, but also at the time before the implementation of the agreement. (Suharnoko, 2004: 9). Thus, good faith is the most important element in modern contract law, in the Anglo-American legal system, the provision of good will is widely recognized as fundamental in law, the court consistently interpreting this provision as a binding obligation for parties to the contract. Good faith is a doctrine that refers to the rationality and propriety that lives in society. Thus, the covenant is not only binding on things that are firmly in it, but also anything that is by nature of the covenant, necessitated by propriety, custom, or law (Ridwan Khairandy, 2004: 7-8). Thus all legally-made agreements shall apply as laws to those who make them, provided that any free agent makes arrangements, as well as the standard agreement, provided that it is not contrary to law, propriety and custom. This means that from the beginning has a good faith to the agreement that will be made, and the consumer feel not harmed by the promise contained in the standard contract.

D. Conclusions

That goodwill should be done from the outset by the contracting parties, even though everyone is free to enter into contract either determine its parties, its contract form or its contents, but the freedom of contract to be acknowledged shall not be contrary to law, decency and habits, thereby that the standard contract from the beginning of its formation applies the principle of good faith, both in terms of easy-to-read writing, as well as the

promises written in the brochures circulated in the advertisement must be carried out in good faith, so as not to harm the consumer. Like the United States, the courts apply the promissory estoppel doctrine to provide legal protection to disadvantaged parties by believing and putting reasonably relied on the promises of their opponents in the preliminary negotiation stage.

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