Strata Social and Humanities Studies, 2023, Vol. 1, No. 2, 127–136
E-ISSN: 2987-2537 | P-ISSN: 2987-3193
doi: 10.59631/sshs.v1i2.106
Advance Access publication November 02, 2023

STRATA
SOCIAL AND HUMANITIES STUDIES
journals.stratapersada.com/index.php/sshs

The Philosophical Function of Contracts in Realizing Justice

Niru Anita Sinaga

Universitas Dirgantara Marsekal Suryadarma, Indonesia. nirusinaga@unsurya.ac.id

Article History	Submitted	Revised	Accepted
	2023-10-17	2023-10-22 & 2023-11-01	2023-11-02

Abstract

This research aims to determine and discuss the philosophical function of a contract to realize justice. Therefore, what things must be fulfilled so that the philosophical function of the contract in realizing justice for the parties can be carried out is also included in the objectives of this research. This type of research is normative juridical research, using secondary data obtained from primary, secondary and tertiary legal material sources. The results of this research reveal that contracts have a fundamental philosophical function, namely realizing the value of justice in the social and economic order in society by facilitating, accommodating and regulating the contractual legal relationships of the parties in which there are balanced rights and obligations. In other words, contracts also function as legal instruments to eliminate or at least reduce imbalances in the social and economic order in society, especially in contracts made by parties as citizens or part of society.

Keywords: Contract, justice, philosophical function

INTRODUCTION

Contracts are developing rapidly as a logical consequence of the development of business cooperation between business actors (Noor, 2015; Verawati, 2022). Therefore, so that the output of a business activity in the form of profits (in the broadest sense), which is the aim and objective of the business activity, can be obtained by business actors, the processes that support the business activity need to pay attention to the contractual legal aspects that underlie and weave all their business activities (Syaifuddin, 2016). Regarding the development of legal rules and contract law practices, which are very important in supporting national and international business activities in the large current of economic globalization and legal globalization, which has penetrated the Indonesian economic system and legal system, it is necessary to understand the importance of a contract.

Talking about contracts cannot be separated from issues of justice (Sinaga, 2018). Talking about justice is often heard, but the correct understanding is actually complicated and even abstract, especially when it is linked to various complex interests (Hasibuan, 2009). Contracts create obligations that give rise to legal consequences for the parties. The legal consequence is the emergence of reciprocal rights and obligations between the parties. The parties will be bound to comply with the contents of the contract that has been made. With the existence of a contract, it is hoped that the parties involved in it can carry out in accordance with the agreed agreements, doing so in good faith. A contract forms a private entity between the parties where each party has the legal right to demand implementation and compliance with restrictions that have been agreed to by the other party voluntarily (Hardjowahono, 2013). Contracts have a vital role in business activities, generally functioning: Philosophical, juridical and economic.

The function and objectives of contract law cannot be separated from the purposes of law in general, namely, Justice, expediency and legal certainty. Several legal principles or principles are the basis for contract law. The main principles or principles considered the cornerstones of contract law provide an overview of the background of the way of thinking that forms the basis of contract law. One of the fundamental principles or principles in contract law is the principle of Justice.

Contracts are essential instruments that structure legal relationships and secure business transactions (Vonna et al., 2020). So, the contract is understood as an instrument of legal security (legal cover) for business activities. The contract contains concrete and individual legal norms (articles) which regulate the rights and obligations of the parties as a reflection of the will (aims and objectives) of the parties involved. They are making contracts to obtain profits (in the broadest and humanistic-commercial sense). The central role of contract law in structuring patterns of business legal relations among business people is increasingly being recognized as urgent. It is almost certain that there is not a single business activity that brings business people together to exchange their interests without being based on a contract. So, contracts have an extensive reach, in the sense that they reach a comprehensive range of public relations, especially the relations of business people. Contracts are a bridge to business activities that connect the rights and obligations of each business actor to create legal certainty in achieving business targets.

Contracts will protect business legal processes and relationships carried out by business actors (Maulidiana, 2014), if the contract in question is made legally because the validity of a contract determines the continuation of their business legal processes and relationships. Contracts as legal instruments to facilitate the exchange of rights and obligations are expected to take place in a fair, certain and efficient manner in accordance with the agreement of the parties making the contract. The rules of this exchange are the authority (authority and competence according to law) of the parties, unless within certain limits, intervention arises, either from coercive laws (positive-imperative legal norms) or from certain legal institutions (in the case of this is a judge in the judiciary). However, this intervention is aimed more at maintaining the legal process of exchanging rights and obligations in a fair, certain and efficient manner (Syaifuddin, 2016). The contract means "a promise must be kept" or "a promise is a debt". With a contract, it is hoped that each individual will keep their promises and carry them out. With the existence of a contract, it is expected that the parties involved will be able to carry out the business in accordance with the agreed agreements, do so in a balanced manner and as a basis for resolving if problems arise in the future. Balance is defined as something based on efforts to achieve a balanced state, which, as a result, must give rise to a legitimate transfer of wealth (Boediono, 2006). The principle of balance is a principle in Indonesian contract law which is a continuation of the principle of equality, which requires a balance of rights and obligations between the parties to a contract.

However, the implementation of the contract does not always go according to what has been agreed upon by the parties (a default occurs), so this gives rise to disputes. Business people often regret when a contract they make has problems, even though these legal problems should have been anticipated with knowledge, understanding and caution when agreeing to a contract. Generally, legal awareness is only awakened when the contract is problematic. Understanding the contents of the contract when the contract is drafted is a must, not after the agreed contract has problems. Many people think that business contracts are purely business matters and have nothing to do with legal science. As a result, contract design is often done simply by copying and pasting. In other words, many business people think that discussing the law when doing business is considered a step that will only slow down business activities, considering that everything will tend to be very careful (Syaifuddin, 2016).

If problems arise related to contract implementation, legal means are needed to resolve them. The existence of law is very necessary to be respected and legal principles to be upheld. Principles or principles in law function to protect the interests of society. The hope of obeying the law in practice should work well. The benchmark for this principle can be seen to what extent the parties receive legal protection if problems arise in implementing the contract. From the description above, the research objective, which is the main topic of discussion in this research, is: What things must be fulfilled so that the philosophical function of the contract in realizing justice for the parties can be carried out?

METHOD

This research uses normative legal research methods (normative juridical research). Using a statutory approach and a concept approach. The legislative approach is carried out by reviewing laws/regulations and other implementing regulations related to the philosophical function of

contracts in realizing justice in contract implementation in Indonesia. Conceptual approach by examining legal principles and contract law systems in relation to the philosophical function of contracts in realizing justice in contract implementation in Indonesia. Using secondary data obtained from primary, secondary and tertiary legal material sources. Data collection techniques and tools by researching and collecting library materials (library research). The analysis uses normative logic, namely based on logic and statutory regulations.

ANALYSIS DAN DISCUSSION

Contracts are made based on freedom of contract and agreement. Based on the principles or principles of justice, the injured party must receive protection. This aligns with the philosophical function of contracts, namely to create justice for the parties making the contract, even for third parties with a legal interest in the contract. Justice is what is aimed at with or through contract law. This broad understanding of justice can be developed by placing justice as the goal of contract law. One thing or another will depend on the point of view and way of understanding justice (Syaifuddin, 2016).

Talking about justice in business activities shows justice is reciprocally related to the parties involved, not only in the sense that realizing justice will create social stability that will support business activities but also in the sense that as long as the principles of justice are implemented, a better and more ethical business will emerge. On the other hand, good, ethical and fair business practices will contribute to realizing justice in society. On the other hand, rampant injustice will give rise to social unrest that will disturb business people (Keraf, 2005).

Some understandings or theories that explain justice are:

Plato understood justice as a practice of virtue and harmony (Feiblemen, 1985). Aristotle provides a formulation of justice, which he differentiates into two types, namely u: 1). Corrective justice, namely justice by equalizing achievements and counter-achievements, which is based on transactions both voluntary and involuntary, for example, in exchange agreements; 2). Distributive justice, namely justice that requires the distribution of rewards (Muchsin, 2004).

Thomas Aquinas, groups justice into two, namely:

1. General justice, namely justice according to the will of the law, which must be carried out in the public interest;
2. Special justice, namely justice based on the principle of equality or proportionality, which is divided into three, namely:
    a. Distributive justice (justitia distributiva) is justice that is proportionally applied in the field of public law in general. For example, the state will only appoint someone to be a judge because they have the skills to be a judge;
    b. b. Communitive justice is justice by equalizing achievements and counter-achievements;
    c. c. Vindicative justice is justice in imposing punishment or compensation in accordance with the amount of discipline that has been determined for the criminal act committed. (Darmodihardjo & Sidharta, 1995).

Doi: 10.59631/sshs.v1i2.106

Related to the philosophical function of contracts in realizing justice, there is the "Theory of the Role of Contract Law in Modern Society" developed by Robert A. Hillman, which emphasizes that "Contract law serves an important role facilitating private arrangements and supporting freedom of exchange" (Hillman, 1997), which means that contract law provides a role in facilitating civil legal relations and supporting the free exchange of interests in society (Syaifuddin, 2016).

Furthermore, Hillman emphasized in his theory that "Contract law contributes to distributive justice through its program of mandatory terms and policy standards (Hillman, 1997), which means that contract law plays a role in realizing distributive justice through its normative clauses which are formed in accordance with established legal standards has been determined.

Contracts as a means of realizing distributive justice were also emphasized by Kronman, who stated that: "Contract law enforces principles of distributive of justice, constitute the most implausible version of the thesis that contract law serves the ends of justice simply because, unlike, for example, principles of corrective justice, principles of distributive justice specify what it takes to secure a just distribution of the resources of an entire community among all of its members. The scope of distributive justice is too great to serves as a basis for contract law" (Contterrell, 1992).

According to Kronman, contract law upholds the principles of distributive justice. It serves the simple purpose of justice, as well as specializing in that justice, to ensure a distribution of resources in society, especially among the various members of that society. The scope of distributive justice is very broad to serve citizens as a basis for contract law.

Beauchamp and Bowie proposed five principles that must be upheld in order for distributive justice to be realized, namely if it is provided:

1. to everyone an equal share;
2. to each person according to their individual needs;
3. to everyone according to their rights;
4. to each person according to their individual efforts;
5. to each person according to his services (merit) (Kan & Beekhuis, 1990).

According to Agus Yudha Hernoko, distributive justice is seen as the beginning of all types of theories of justice, although in various versions and views. Justice in contracts is more manifested if the exchange of interests of the parties is distributed according to their rights and obligations proportionally (Hermoko, 2008). Furthermore, Agus Yudha Hernoko explained that legal thinkers, including John Locke, J.J. Rosseau, Immanuel Kant, and John Rawls, realized that without contracts and the rights and obligations they create, business society would not function and people would not be willing to be bound and depend on the statements of other parties. Contracts provide a way of guaranteeing that each individual will fulfil their promises, further allowing transactions to occur between them (Hermoko, 2008).

Adam Smith. His theory has several similarities with Aristotle's theory of justice but has one important difference besides other differences. Adam Smith only accepted one concept or theory of justice, commutative justice, arguing that "True justice only has one meaning, namely commutative justice which concerns equality, balance, harmony in the relationship of one person or party with another person." Adam Smith argued that there are 3 main principles of commutative justice, namely:

1. The principle of no harm or not harming other people. In any social interaction, each person must restrain himself from harming the rights and interests of others, just as he himself does not want his rights and interests to be harmed by anyone.
2. The principle of non-intervention. This principle demands that for the sake of guaranteeing and respecting the rights and interests of everyone, no one is allowed to interfere in the lives and activities of others.
3. Principle of exchange fairness. According to Smith, "justice aims to protect people from harm suffered due to the actions of others". The principle of communicative justice primarily concerns restraining or restraining oneself in such a way as to avoid carrying out actions that harm other people, whether as humans, members of a family or citizens. (Haakonssen, 1981; Keraf, 2005).

John Locke, J.J. Rosseau and Immanuel Kant, although their theories of justice were contract-based, were criticized by John Rawls because they tended towards utilitarianism and intuitionism (Rawls, 1971). Rawls's theory of justice starts from his criticism of the failure of previously developed ideas of justice, which were caused by their substance being heavily influenced by utilitarianism and intentionalism (Ujan, 1999). Rawls places freedom as the first principle of justice in the form of the "principle of equal freedom". This principle states: "Every person must have equal rights to the most extensive system of basic freedoms compatible with a system of similar freedoms for all" (Rawls, 1971). Nevertheless, Rawls criticized the market economic system because, from another perspective, the market actually creates and even widens the gap in economic inequality between the rich and the poor. On this basis, Rawls then proposed his second principle of justice, in the form of the Difference Principle, namely that social and economic inequalities must be arranged in such a way that these inequalities benefit those who are most disadvantaged, and in accordance with the duties and positions open to all, under conditions of equal opportunity. Thus, according to Rawls, the way out of economic inequality is to rely on a combination of market mechanisms and selective government policies aimed at helping groups who are objectively unable to take full advantage of market opportunities.

Rawls offers a form of resolving justice problems by building a contract-based theory of justice, which makes the principles of justice chosen together indeed the result of mutual agreement of all free, rational and equal people who can guarantee the implementation of rights while distributing obligations equally. Fair for everyone. A good concept of justice must be contractual so that any idea of justice not based on a contract must be put aside in the interests of justice itself (Ujan, 1999). Rawls defines justice as "fairness" (justice as fairness) (Rawls, 1971) which, according to K. Bartens' explanation, in the linguistic meaning (dictionary), means fair and fair. However, there is a difference, namely that it means fair according to its content (substance), which is called substantive justice, while fair means fair according to the procedures, which is

called procedural justice. As for fairness, it means justice that is based on reasonable procedures (not engineered, not manipulated) (Bartens, 2000) Then, Rawls explains that there are two principles of justice, namely: "First, each person is to have an equal right to the most extensive basic liberty compatible with similar liberties for others; second, social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all." (Rawls, 1971).

Paying attention to the essence of the contract-based theory of justice developed by Rawls as described above, it can be understood that justice as fairness contains two principles of justice, namely:

1. The principle of greatest equality, meaning that justice will be realized if everyone has the same rights to the broadest fundamental freedoms, as comprehensive as the same freedoms for everyone;
2. The principle of difference (the different principles) and the principle of equal and fair opportunity (the principles of fair equality opportunity), meaning that justice will be realized if social and economic inequality must be regulated in such a way so that it is hoped that it will provide the most significant benefits for the people who disadvantaged, which emphasizes that with equal conditions and opportunities, all positions and positions must be open to everyone (Bartens, 2000; Keraf, 2005; Ujan, 1999).

According to Agus Yudha Hernoko, the greatest equal principle referred to by Rawls is none other than the "principle of equal rights", which provides equality of rights and is inversely proportional to the burden of obligations that each person (i.e. the contractee) has. This principle is the spirit of the principle of freedom to make contracts. Furthermore, the different principles and the principles of (fair) equality of opportunity referred to by Rawls are "principles of objective differences, which guarantee the realization of proportionality in the exchange of rights and obligations of the parties, so that it is reasonable (objective) to accept exchange differences, as long as they fulfil requirements of good faith and fairness (redelijkheid en billijkheid). So, the first principle and the second principle cannot be separated from each other because justice will be realized only if these two principles are implemented comprehensively (Hermoko, 2008).

Rawls's theory of justice is, in many ways, effective in dealing with social problems. However, on the other hand, this theory has also been criticized, especially the difference principle, which, according to its critics, actually creates injustice because there is an opportunity for state intervention to violate a person's rights.

Robert Nozick, a libertarian philosopher, has liberalistic thoughts about distributive justice that are different from Rawls' views, which he calls "entitlement theory", which understands that all types of distribution of benefits and burdens are fair if they allow individuals to exchange goods fairly. Freedom. Nozick developed his theory of justice using a radical free-market approach and placing the state's role as a night watchman, meaning that state interference with individual freedom must be limited to a minimum (the principle of minimal state interference) (Morrison, 1998).

According to Nozick, a person is considered to own something fairly if that ownership comes from a free decision that has a "right" basis that relies on three principles, namely:

1. The principle of "original acquisition", which means acquiring something for the first time, for example by producing it yourself;
2. The principle of "transfer", meaning ownership of something based on a transfer or being given through another person;
3. The principle of "rectification injustice", which means the recovery of something that was previously taken from a person so that any intervention from outside is a violation of freedom (Bartens, 2000).

Nozick's principle clearly relies on the principle of justice in ownership based on rights, in the sense that ownership of something (goods and services) must be based on recognising the rights of individuals free to carry out a fair exchange process (goods and services). It turns out that Nozick's liberalistic thinking regarding distributive justice, as described above, has also received criticism from philosophers.

Nieuwenhuis explains the balance of exchange justice (*ruilrechtvaardigheid*), namely the balance of bargaining positions rather than equality of achievements, which forms the core of material exchange justice (Nieuwenhuis, 1979). xisting legal rules are not (ever) adequate to regulate or resolve all problems that arise in certain societal situations. However, the law must still provide a fair resolution to all these problems. Nieuwenhuis explains that "*De rechtvaardigheid als een formele categorie die gelijke behandeling voorschrijft miet worden ingevuld met een behulp van een materieel criterium dat op zijn beurt de neerslag vormt van het vigerende waardenpatroon*", which means towards justice as a formal category that advocates equal legal treatment to similar cases or disputes, material criteria must be added which in turn can become the basis for a balanced assessment pattern (Nieuwenhuis, 1979).

Herlien Budiono explains his thoughts on the meaning of Indonesian justice and its scope in national contract law. The meaning of justice, which can be divided into procedural meaning and substantive meaning, is embedded and rooted in the conditions of society. The procedural meaning of justice is related to the legal system or legal state. On the other hand, the substantive meaning of justice is related to social conditions, which provide an overview of legal politics and society's legal awareness. The relationship between the two meanings of justice depends on the choice of the legitimacy of the principles that underlie life together or by establishing a pattern of values as the basis for material criteria for the meaning of justice. For Indonesian people, the principle of living together is based on Pancasila (Boediono, 2006).

Paying attention to explanations that rely on legal theories as described above, contracts have a fundamental philosophical function, namely realizing the value of justice in the social and economic order in society by facilitating, accommodating and regulating the contractual legal relationships of the parties in which there are rights and balanced obligations. In other words, contracts also function as legal instruments to eliminate or at least reduce imbalances in the social and economic order in society, especially in contracts made by parties as citizens or part of society (Syaifuddin, 2016). To realize the philosophical function of a contract, several things must be understood and adhered to when making a contract, namely: Basic terms and understanding of contracts and contract law, Function of contracts, Subject and object of contract law, Principles of contract law, Conditions for the validity of a contract, Forms and types of contracts, drafting,

anatomy of deeds and legal language of contracts, interpretation of contracts, general terms and provisions in contract law, resolution of disputes in the field of contracts and the end or cancellation of contracts and agreements.

CONCLUSION

Contracts have a fundamental philosophical function, namely realizing the value of justice in the social and economic order in society by facilitating, accommodating and regulating the contractual legal relationships of the parties in which there are balanced rights and obligations. In other words, contracts also function as legal instruments to eliminate or at least reduce imbalances in the social and economic order in society, especially in contracts made by parties as citizens or part of society. To realize the philosophical function of a contract, several things must be understood and adhered to when making a contract, namely: Basic terms and understanding of contracts and contract law, Function of contracts, Subject and object of contract law, Principles of contract law, Conditions for the validity of a contract, Forms and types of contracts, drafting, anatomy of deeds and legal language of contracts, interpretation of contracts, general terms and provisions in contract law, resolution of disputes in the field of contracts and the end or cancellation of contracts and agreements.

REFERENCES

Bartens, K. (2000). *Pengantar Etika Bisnis*. Kanisius.

Boediono, H. (2006). *Asas Keseimbangan bagi Hukum Perjanjian Indonesia: Hukum Pejanjian Berlandaskan Asas-asas Wigati Indoonesia*. PT.Citra Aditya Bakti.

Contterrell, R. (1992). *JURISPRUDENCE: A Crititical Introduction to Legal Philosophy*. University of Pennsylvania Press.

Darmodihardjo, D., & Sidharta. (1995). *Pokok-pokok Filsafat Hukum*. Gramedia Pustaka Utama.

Feiblemen, J. K. (1985). *Justice, Law and Culture*. Martinus Nijhoff Publishers Dordrecht-the.

Haakonssen, K. (1981). *The science of a Legislator, The Natural Jurisprudence of David Hume and Adam Smith*. Cambridge University Press.

Hardjowahono, B. S. (2013). *Naskah Akademik Rancangan Undang Undang Hukum Kontrak, Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Ham RI*.

Hasibuan, F. Y. (2009). *Harmonisasi Prinsip Unidroit Kedalam Sistem Hukum Indonesia Untuk Mewujudkan Keadilan Berkontrak Dalam Kegiatan Anjak Piutang*. Universitas Jayabaya.

Hermoko, A. Y. (2008). *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*. LaksBang Mediatama Bekerja Sama dengan Kantor Advokat Hufron & Hans Simaela.

Hillman, R. A. (1997). *The Richness of Contract Law: An Analysis and Critique Contemporary Theories of Contract Law*. Kluwer Academic Publishers.

Kan, J. van, & Beekhuis, J. H. (1990). *Pengantar Ilmu Hukum*. Ghalia Indonesia.

Keraf, A. S. (2005). *Etika Bisnis tuntutan dan relevansinya*. Kanisius.

Maulidiana, L. (2014). Bisnis Waralaba Dalam Perspektif Hukum Kontrak. *PRANATA HUKUM*, *9*(1), 62–70. https://doi.org/10.36448/PRANATAHUKUM.V9I1.147

Morrison, W. (1998). *Jurisprudence: from the Greeks to post-modernism*. Cavendish Publishing Ltd.

Muchsin. (2004). *Ikhtisar Materi Pokok Filsafat Hukum*. STIH "IBLAM."

Nieuwenhuis, J. H. (1979). *Drie Beginselen van Contractenrecht*. Kluwer.

Noor, M. (2015). PENERAPAN PRINSIP-PRINSIP HUKUM PERIKATAN DALAM PEMBUATAN KONTRAK. *Mazahib*, *14*(1), 89–96. https://doi.org/10.21093/MJ.V14I1.338

Rawls, J. (1971). *A Theory of Justice*. Oxford University Press.

Sinaga, N. A. (2018). Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian. *Binamulia Hukum*, *7*(2), 107–120. https://doi.org/10.37893/JBH.V7I2.318

Syaifuddin, M. (2016). *Hukum Kontrak-Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik, dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. Mandar Maju.

Ujan, A. A. (1999). *Keadilan dan Demokrasi (Telaah Filsafat Politik John Rawls)*. Kanisius.

Verawati, D. E. (2022). Pendampingan Perancangan Kontrak Kerja Pada Usaha Mikro Kecil Menengah Di Desa Minggirsari Kabupaten Blitar. *DiH: Jurnal Ilmu Hukum*, *18*(2), 147–156. https://doi.org/10.30996/DIH.V0I0.6179

Vonna, Z., Rahayu, S. W., & Nur, M. (2020). PERAN DAN FUNGSI NOTARIS DALAM PEMBUATAN KONTRAK BAGI HASIL MINYAK DAN GAS BUMI DI INDONESIA. *Jurnal Hukum & Pembangunan*, *50*(1), 200–229. https://doi.org/http://dx.doi.org/10.21143/jhp.vol50.no1.2491