

Principle of Proportionality as a Reflection of the Theory of Justice and its Application by Judges in the Resolution of Business Contract Disputes

Abdul Rahman, Annisa Khusnur Rosyida, Nur Afifah Aminuddin, Saparyanto

Master of Legal Sciences Universitas Sebelas Maret

Jl. Ir. Sutami No.36 A, Kentingan, Kec. Jebres, Surakarta City

Email: abdulrahman@gmail.com

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Abstract

In the business world, contracts have an important role in shaping the pattern of legal relations between the parties. Every business effort carried out by business actors is essentially a legal step, and this is in the realm of contract law. Business contracts are important instruments to secure the exchange of achievements and as evidence that there is a legal relationship between the parties in carrying out business transactions. Proportional distribution becomes the basis of thought in formulating contracts that are able to accommodate the interests of the parties. The principle of proportionality is a reflection of the Theory of Justice because the perspective of the contractual relationship of the parties combines the concept of equal rights in exchange (achievement-counter achievement) as it is understood that the concept of distributive justice in which it has the meaning of proportional distribution. The research method used was normative juridical. The results showed that the Judge in resolving dispute using the principle of proportionality means to make a reasonable and fair decision based on the values of equality, freedom, and distribution of rational proportion that is not separated by the feasibility, propriety and the principle of accuracy.

Keywords: The Principle of Proportionality, Theory of Justice.

INTRODUCTION

Today, the development of Contract Law is growing rapidly in line with technological advances and problematic dynamics in society. In the world of business per business, the interests of the parties who always experience exchange are included in the form of contracts weighing "Every Step of Business Is a Legal Step" (Hernoko, 2016).

In the business world, contract has an important role to form a pattern of legal relations for the parties. Any action carried out by business people is essentially a legal step whose scope is in contract law. Business contracts are an important instrument for securing the exchange of achievements and as a means of proof that there is a legal relationship for the parties to the business transaction.

The relationship with which the parties are fundamentally very closely related and cannot be separated in relation to the matter of justice. A contract is a place / space that unites the interests of one party to another, in order to get a form of fair interest exchange. With this, it is appropriate and fundamental if in carrying out the study of contractual relations for the parties must begin with the philosophical aspect of justice (Hernoko, 2016).

Justice in Ulpinus's view was a will that *continued* to give him what he was entitled to. The point is that a justice can be realized if the given thing is balanced with the one that becomes a necessity to obtain. (Personal, 2018). Aristotle also proposed a principle of justice that "*justice consist in treating equals equally and unequally, in proportion to their inequality.*" It is born with an assumption that the same thing must be done equally, as well as the opposite that something that is not the same must be recognized incorrectly, because the treatment of both things must be done proportionally (Hernoko, 2016).

A judge needs to use the Principle of Proportionality in resolving a contract dispute. A fair process between the contracting parties not only needs to exist in each contractual phase but is also indispensable in the settlement phase of contractual disputes that may occur between the parties. Thus, each party has a balanced position (Rahmawan P et al., 2019). We are therefore interested in analyzing how the Theory of Justice in the Principle of Proportionality and the application of the Proportionality Principle by judges in resolving business contract disputes.

RESEARCH METHOD

The method used to obtain the necessary data was a qualitative method. Examine a phenomenon using a critical-normative attitude of human insight and existence and launch a critique of the practice of law and dogmatic law (Freeman, 1994).

DISCUSS AND ANALYSIS

Aristotle's Distributive Theory of Justice

Aristotle's work on justice, "*Nichomachean ethics,*" explains that doing good or doing justice is the ultimate good. In order to know about injustice and justice, it must discuss three important points, namely: first, any action with regard to the term, second, what is meant by a justice, and third whether there is justice between two extreme points (Safa'at, 2002).

Aristotle principled that, "*justice consists in treating equals equally and unequals unequally, in proportion to their inequality.*" Which is to begin with the assumption that "concerning the same things must be done equally, and vice versa that the unequal is also treated unequally, proportionately". In Aristotle's theory, he placed an emphasis on balance or in other words proportion. The emphasis of the balance or so-called proportion of justice can be seen from what it does, among the same people must have equal rights. This means that in one view it is true that if it is mentioned justice then it also has equal rights, but in another view must understand also that justice can mean equality of rights. Aristotle's theory of justice is based on the principle of equality. Another more modern meaning explains that the theory explains with a statement that reads: justice must be realized when the same thing is treated equally and vice versa.

In Aristotle's theory of justice there are two differences: distributive and commutative justice. What is included from distributive justice is to ask everyone to get a responsibility for what is rightfully his, then this is proportional in nature. It can be said to be fair when people

get their rights proportionally. And distributive justice is concerned with the division and determination of equitable rights in public and state relations, with a meaning that is as true as given by the state to its citizens. What is given about these rights can be objects that cannot be divided or in other words called *undivided goods* such as mutual benefits such as protection, good public facilities and administrative and physical and various other rights, which citizens can enjoy without having to interfere with the rights of others in the process of completion. In addition to the above, the objects that are divisible or called *divided goods*, such as rights and / or things that can be established and allocated to meet the needs of individual citizens and their families, as long as the state is able to provide the needs of its citizens fairly, this can be interpreted also that where there is distributive justice, then the situation will be close to the so-called state where social justice is achieved (Bahder, 2014).

The complexity of contractual relationships in the business world triggers the emergence of opportunities for dissent between the parties. To establish a contractual relationship based on justice for each contracting party, a concept is needed that accommodates the exchange of prestige between the parties. The description of justice in a contract must combine the rights or must have equal rights in exchange (achievements - counter achievements) which is reflected in the concept of justice according to Aristotle (Hernoko, 2016).

Justice according to Aristotle's theory is divided into two, first, distributive, and second is commutative. Distributiveness is justice that requires people to get what they are entitled to. Whereas in the theory of distributive justice that everyone gets what is entitled proportionally. While with regard to the determination and equitable division of rights in the relationship between citizens and the state is called distributive justice, which can be interpreted that what should be given by the state to its citizens and based on the concept of proportional distribution (Bahder, 2016).

It can be understood from the concept of distributive justice that the context of justice in relation to the state and citizens in distributive justice can be applied in the relationship between the contracting parties. Distributive justice can be drawn into the perspective of contractual relationships and used as a basis for realizing proportional contractual relationships because in the two concepts of justice there is also the meaning of proportional distribution.

Proportional distribution becomes the basis of thought in formulating contracts that are able to accommodate the interests of the parties. Justice in performing contracts will become more manifest or manifestation if the metamorphosis of the interests of the parties can be distributed in proportion to their respective rights and obligations. This is in line with Aristotle's statement that "*justice consists in treating equals equally and unequal's unequally, in proportion to their inequality*" which can be interpreted that the same principles are treated in the same way, and the same are also treated unequally, proportionately) (Wacks, 2007).

Based on the values of proportionality in the concept of justice underlying these considerations, the Principle of Proportionality in the contract can be expressed as a reflection of the concept of justice, especially in accordance with the concept of distributive justice. Therefore, the Principle of Proportionality is generally interpreted as principle which

is the basis of the exchange of rights and obligations of the parties according to its proportions or parts.

When viewed from the lexical understanding, the Principle of Proportionality comes from the word "*proportion*" or (proportion- English; *proportie*-Dutch) which means comparison, balance; and the word "proportional" or (proportional-English; *proportioneel*-Dutch) which means in accordance with proportion, comparable, balanced. P.S. Atijah provides a rationale on the Principle of Proportionality as a meeting of the parties with market mechanisms in line with what they *want* to ebb the fair form of the exchange (Atijah, 2016).

The principle of proportionality can be used as a judicial benchmark in finding the best solution in the case of commercial contracts that are handled. The principle of proportionality can be a thread of straightening the true meaning of then tactual relationship, which in essence does not weigh on the proportion of the division of rights and to the mathematical obligation. But with the search of the principle of proportionality of the bag by the panel of judges, it is expected that every contractual case that is gain will be resolved properly and appropriately (*reasonableness and fair*) in order to achieve the middle ground or the best solution between the parties to the dispute (Harissa, 2007).

The Principle of Proportionality is not only used as a rationale for establishing a fair exchange in business transactions or a form of fair exchange based on the will of the parties in the formulation of the contract, but the Principle of Proportionate should also remain the basis of thought for judges in the resolution of disputes that may arise between the contracting parties. Although the legal proof process does not guarantee the certainty of proof as in exact science, but the Principle of Proportionality applied by the judge in the process of proving a case of business dispute can help give birth to a logical analysis (Atijah, 2016).

The application of the Principle of Proportionality by the judge in the evidentiary process provides benefits for the judge in producing justice in the resulting verdict. In relation to business contract disputes, the fairness of a judge's ruling based on the use of the Proportionality Principle may result in a fair suspension of liability for both parties to the dispute. In the process of proving a business contract dispute, the judge needs to trace the contractual process of the parties. The judge may consider the entire contractual process that has taken place between the parties to determine whether the contractual relationship of the parties has taken into account the elements of proportionality, especially in the determination of rights and obligations. Considering the Principle of Proportionality is one of the foundations of determining the rights and obligations of the parties in the contract that triggers many business contract disputes in the future (Yahya Harahap, 2006). But unfortunately, there are not many judges who make the principle of proportionality to achieve distributive justice through their rulings.

There are several aspects that can be used as a basis for the Judge to determine the proportionality of the parties' contractual relationship. Some of these aspects include proportional distribution, freedom, accuracy, feasibility, propriety, and equality. Thus, the determination of the measure of proportionality in realizing a fair decision for the parties is not based on the balance of results mathematically. The mathematical balance in question is when each party gets the result of the judge's verdict in the form of the same amount of responsibility. But a fair decision is based on the outcome of the judge's consideration by measuring from some of these aspects. So that the results of the judge's consideration allow

the emergence of a different final result for the parties. The results of the judge's ruling other than on the one hand must provide justice for the parties, on the other hand must also provide legal certainty. With the realization of justice and legal certainty for the parties, the judge's decision is considered to be able to realize a *win-win solution* for the parties (Hernoko, 2016).

The meaning of the Proportionality Principle sometimes overlaps with the meaning of the Balance Principle because the two principles have a connection in their use in the formulation to the implementation of the contract of the parties. But of course, there is a difference between the two principles. The principle of balance is more emphasized in *the bargaining position* process in the pre-contractual phase until the contract formulation phase. While the Principle of Proportionality is emphasized on the realization of equality of the position of the parties from the pre-contractual phase to the settlement of the contract even to the phase of dispute resolution that may arise between the parties. In the case of resolving business contract disputes, a Judge needs to understand the differences between the two principles. The rationale on the Balance Principle should be used in conjunction with the Proportionality Principle so that the two principles can go together to formulate a fair verdict outcome for the parties. This is because in resolving business contract disputes, a judge not only considers aspects of balance in the bargaining process, but the justice to be created in the judge's decision must be based on all contractual phases considered by the Principle of Proportionality.

In addition, proper methods of interpretation are also required by a judge in adjudicating business contract disputes. The method of interpretation of the judge in relation to the contractual relationship of the parties shall be concerned with any symbol of mutual expression manifested orally or in writing by the parties and has been set forth in the substance of the parties' business contract. The judge's interpretation of the parties' contractual relationships may improve the judge's understanding of the substance of the contract more comprehensively. With a comprehensive understanding of the substance of the contract, it will make it easier for judges to analyze business disputes that occur between the parties (Hernoko, 2016). Relationship between judges. The principle of proportionality and the theory of justice lies in the will of the judge to harmonize aspects of proportionality and the values of justice in each of his rulings.

Legal Issues of Contract Dispute Resolution

PT. Duta Graha Indah as a contractor through an offer to get a contract from PT Slipi Indopuri to build a hotel and Residential Hotel located on S.Parman Kav. 93-94 West Jakarta. After negotiating from all construction service work that has been done by PT Duta Graha Indah has been agreed by both parties, that the remaining payment must be paid by PT Slipi Indopuri is Rp. 10,617,482,295 on the grounds that the company does not have enough funds to complete financing, then PT Duta Graha Indah agreed to the proposal to replace the remaining obligations by providing land assets in Sanur Bali, including PT Slipi Indopuri which bears the cost of land sharing, but in its realization PT Indopuri does not carry out its obligations in fulfilling payments which then offer the option to be made installments, which in the end are also not fulfilled.

The analysis of the Supreme Court judge's ruling rejected the cassation lawsuit conducted by PT Slipi Indopuri, because PT Slipi Indopuri provided unjustifiable

reasons because *judex facti* did not wrongly apply the law, in addition to some of the objections given, recognizing that the assessment of the results of proof is an assessment of facts that cannot be considered at the cassation level, because the level of cassation is only willing to check whether the law obligations are carried out or whether there is an error in the application of the law, whether or not there is a violation of the law committed, there is negligence in fulfilling its obligations in accordance with the laws and regulations that will have an impact on the cancellation of the verdict as described in "Article 30 of Law No.14 of 1985 as amended by Law No.5 of 2004".

The ruling that has been handed down by the Supreme Court has been in accordance with the principle of proportionality because in its implementation does not apply the principle of proportionality that PT Slipi Indopuri does not fulfill its obligations in the agreement that has been agreed and it harms the pt Duta Graha. In addition, if there is a dispute in the contractual relationship, then the burden in terms of proof, the weight or lightness of the level of error or other related issues, should be measured using the perspective of proportionality principle to obtain a fair settlement and *win-win solution*. In the reality of the above case, PT Indo Slipi was declared negligence in fulfilling the required conditions.

CLOSURE

Conclusion

The principle of Proportionality is a reflection of the Theory of Justice because the perspective of the contractual relations of the parties combines the concept of equal rights in exchange (achievements counter achievements) as understood from the concept of distributive justice in which the meaning of proportional distribution. The Principle of Proportionality can be used by the Judge as a reference in resolving business contract disputes. The Judge may see the implementation of the Proportionality Principle on the contractual relationships of the parties as a consideration for the Judge to formulate a decision that can provide a middle ground or the best solution for the parties to the dispute.

Suggestion

The use of the Principle of Proportionality in dispute resolution by judges is to make fair and reasonable decisions based on the values of equity, freedom, proportional distribution that are inseparable from the principles of accuracy, worthiness and propriety.

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