

The Principle of Freedom of Contract in Property Business Agreements in Indonesia

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ABSTRACT

The principle of freedom of contract is one of the fundamental principles in contract law that gives the parties the authority to determine the content and form of the contract according to their wishes. In the practice of property business in Indonesia, this principle plays an important role because property transactions involve high economic value and complex legal relationships. However, in reality, the application of the principle of freedom of contract is often faced with the issue of bargaining imbalance, especially between property businesses and consumers. This condition creates the potential for abuse of freedom of contract that can harm one of the parties. This study aims to examine the application of the principle of freedom of contract in property business agreements in Indonesia and to analyse the normative limitations that govern it. This study uses a normative legal research method with a legislative and conceptual approach. The results of the study indicate that the principle of freedom of contract in property business agreements in Indonesia is not absolute and must be limited by the principles of good faith, propriety, and fairness. The application of this principle in practice still tends to be formal, especially in standard agreements that limit the scope for negotiation for the weaker party. Therefore, the state and judicial institutions must play a role in ensuring that freedom of contract is applied in a balanced and fair manner and provides legal certainty for all parties involved in property business.

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1. INTRODUCTION

Business agreements are the backbone of economic activity in Indonesia, including in the property sector, which plays a strategic role in national development and investment. Within the framework of Indonesian civil law, the principle of freedom of contract is the fundamental basis governing

the legal relationship between parties entering into a business agreement. This principle is reflected in Article 1338 of the Civil Code, which states that all agreements made legally are binding on the parties, as long as they do not conflict with the law, public order, and morality [1].

In property business practice, the principle of freedom of contract gives the

parties the flexibility to determine the content, form and terms of the agreement in accordance with mutual agreement. This aspect is important for flexibility and innovation in property transactions, as contracts can be tailored to market needs and the specific characteristics of the property being traded [2]. However, this freedom is not absolute, as the determination of contract content must remain within the corridor of positive law and not violate the principles of justice and other legal protection rules [3].

Challenges arise when the bargaining positions of the parties are unbalanced, especially in relationships between large property developers and individual consumers. This economic power disparity can lead to standardised agreements that tend to disadvantage the weaker party, thereby rendering ideal freedom a substantive illusion [4]. Standard agreements that are dominated by one party often limit the other party's room for negotiation, even though in theory this principle requires a balance of bargaining power in order to achieve a truly free agreement [5].

Several studies highlight that although the principle of freedom of contract is recognised as a general principle in Indonesian contract law, in practice contracts are often drawn up unilaterally by the more powerful party in the industry, including in the property sector, thereby giving rise to contractual injustice [6]. Such injustice often results in consumers or weaker parties failing to defend their rights in the event of default or misinterpretation of the contract.

Empirical research in the context of land sale and purchase agreements shows that this principle does form the basis of the contract's validity, but it is not absolute because it is limited by legal rules to protect the weaker party, such as provisions regarding good faith and propriety [7]. This restriction is important so that freedom of contract does not become a tool of legal oppression that undermines substantive justice.

In the scientific realm, there are also studies showing that the principle of freedom of contract must be balanced with the

principle of proportionality, especially in agreements that contain clauses that could weaken the bargaining power of the other party, such as in franchise agreements [8]. This is also relevant to property transactions, where clauses often involve high risks for buyers or small investors.

Another aspect that needs to be considered is the challenge to the principle of freedom of contract amid unequal bargaining power between large businesses and individuals. Legal analysis shows that this imbalance can result in contracts that are formally valid but substantively do not reflect balanced freedom [9]. In addition, regulations regarding restrictions on freedom of contract are also a response to the need for legal protection for parties in a weak bargaining position. In practice, the courts have the role of assessing whether the content of a contract conflicts with the principles of justice or higher legal provisions [10].

Particularly in the property business, the characteristics of transactions, which are often high in value and complex, make the principle of freedom of contract both important and risky. Property business contracts not only bind property rights and financial obligations, but also affect legal certainty over long-term assets, so the interpretation of this principle must be combined with the principles of consumer protection and legal certainty [11].

Contract drafting practices in the property sector also reveal the phenomenon of developers with greater bargaining power using standard clauses. This opens up opportunities for further research into how the principle of freedom of contract is applied and restricted in order to protect the interests of weaker parties [12]. Furthermore, research on the limits of freedom of contract in business agreements notes the need for harmonisation between this principle and the broader principle of contractual justice, including legal norms that guarantee human rights and equality before the law [13]. Thus, scientific studies on the principle of freedom of contract in property business agreements in Indonesia are not only theoretically relevant, but also practically important. This research is

expected to provide a more comprehensive picture of the application of this principle, including the challenges and opportunities for more equitable law enforcement in the context of the property industry.

In addition to the issue of bargaining imbalance, the application of the principle of freedom of contract in property business agreements also faces challenges from the complexity of land and licensing regulations in Indonesia. Property transactions are not only subject to contract law, but also to agrarian law, spatial planning, building permits, and other administrative provisions. This complexity often results in parties with greater legal knowledge and access to information being in a dominant position when formulating agreement clauses.

In practice, property developers often draft agreements with clauses that unilaterally transfer risk to consumers, such as limitation of liability clauses, exonerating clauses, and clauses delaying the delivery of the subject matter of the agreement. Although such agreements are formally agreed upon by the parties, this situation raises questions about the extent to which such agreements truly reflect substantial freedom of contract rather than mere illusory freedom. The principle of freedom of contract in property business agreements must also be understood within the framework of the principle of good faith. This principle requires that the parties not only comply with the text of the agreement, but also act honestly, appropriately, and without harming the other party. In property law, violations of the principle of good faith often occur when developers do not provide complete and transparent information regarding the legal status of the land, permits, or building specifications.

Economic developments and property market dynamics also influence the application of the principle of freedom of contract. Fierce business competition encourages businesses to create efficient and standardised contract models, but this often compromises contractual fairness. This situation places consumers in a difficult position when it comes to negotiating the

terms of an agreement, especially when the need for housing is urgent.

The role of the state is important in ensuring that the principle of freedom of contract is not abused in property business practices. Through the establishment of legislation and consumer protection policies, the state seeks to create a balance between the interests of business actors and protection for weaker parties. However, the effectiveness of these regulations is still debatable, especially with regard to law enforcement and supervision of the implementation of property contracts.

In normative arrangements, the role of judicial institutions is also decisive in interpreting and limiting the application of the principle of freedom of contract. Judges have the authority to assess whether a contractual clause is contrary to law, morality, or propriety. Court decisions in property business disputes often serve as important references in developing doctrines regarding the limits of freedom of contract in Indonesia.

A study of the principle of freedom of contract in the property business shows a paradigm shift from absolute freedom to responsible freedom. This shift emphasises that freedom of contract must be accompanied by protection of the public interest and social justice. This paradigm is in line with developments in modern civil law, which no longer treats contracts as solely a private matter between the parties.

Globalisation and the influx of foreign investment in the property sector have added to the complexity of applying the principle of freedom of contract. Property business agreements involving foreign parties often use international contract standards that may not be fully compatible with the national legal system. This raises the need to examine how the principle of freedom of contract is applied in a cross-border context without disregarding the principle of national legal sovereignty.

Another relevant issue is the public's lack of legal understanding of the content and implications of property business agreements. Low legal literacy causes many parties to sign contracts without fully understanding their

rights and obligations [14]. This condition further weakens the position of certain parties in the practice of applying the principle of freedom of contract and has the potential to cause disputes in the future.

Based on these various issues, research on the principle of freedom of contract in property business agreements in Indonesia has become increasingly relevant and urgent. This study is expected to contribute academically to clarifying the limitations and implementation of the principle of freedom of contract, while also providing recommendations for the formation of contracts that are more fair, balanced, and provide legal certainty for all parties involved in the property business.

2. METHODS

This study uses a normative legal research method, which is research that studies law as written norms or rules. The main focus of this study is on legal rules, legal principles, and expert opinions related to the principle of freedom of contract in property business agreements in Indonesia. This method was chosen because the issues studied are normative in nature and directly related to the legal regulation of agreements in the national legal system [15]. The normative juridical approach conducted through an examination of relevant legislation and legal doctrine. This approach enables researchers to understand how the principle of freedom of contract is regulated, restricted, and interpreted in Indonesian positive law, particularly in the context of property business agreements.

Data collection in this study was conducted through library research. Library research was conducted by examining various written legal materials related to the research topic, including legislation, law textbooks, and scientific journal articles. These materials were selected because they provide a strong theoretical and normative basis for analysing the principle of freedom of contract. The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include

laws and regulations governing contract law and property business. Secondary legal materials include books and scientific journals discussing the principles of freedom of contract, contract law, and business law. Meanwhile, tertiary legal materials are used as supplements to help understand legal terms and concepts.

The collected data was then analysed using qualitative descriptive analysis. This analysis was conducted by systematically and logically describing, explaining, and interpreting legal provisions and expert opinions. The purpose of this analysis was to obtain a clear picture of the position and application of the principle of freedom of contract in property business agreements. Through qualitative analysis, researchers not only explain the content of legal norms, but also examine their meaning and implications in legal practice. In this way, research is able to assess whether the principle of freedom of contract has been applied fairly or has instead caused injustice to one of the parties in a property business agreement.

The normative approach in this study uses deductive legal reasoning, which draws conclusions from general legal provisions to specific issues. This reasoning helps researchers understand the relationship between applicable legal norms and the issue of freedom of contract in property agreement practices. The qualitative descriptive method was chosen because this study does not aim to measure data numerically, but rather to understand and explain legal concepts in depth. This approach allows researchers to present comprehensive and contextual legal analyses in line with the dynamics of property business law in Indonesia. The use of normative legal research methods supported by literature studies and qualitative descriptive analysis is considered most appropriate for answering research questions. This method is expected to provide a comprehensive understanding of the principle of freedom of contract and its limitations in property business agreements in Indonesia.

3. RESULTS AND DISCUSSION

3.1 *Concept and Implementation of the Principle of Freedom of Contract in Property Business Agreements*

The principle of freedom of contract is a fundamental principle in Indonesian contract law that gives the parties the freedom to determine the content and terms of a contract in accordance with their mutual wishes, as long as it does not conflict with the law and public order [16]. This principle is explicitly recognised in Article 1338 of the Civil Code, which states that all agreements made legally are binding as law upon the parties who made them. This principle reflects the free will of the parties to bind themselves in a legal and binding relationship [17].

The application of the principle of freedom of contract in property business practices reflects the freedom of parties to determine the content of business contracts by considering their own interests. This freedom provides room for contract innovation in line with market dynamics and the complex needs of the property business. This can be seen in various conceptual studies which show that property business contracts can be flexibly adjusted by the parties in accordance with the needs of the transaction concerned [18]. The principle of freedom of contract is not absolute. It remains subject to higher legal rules, public order, and the principle of good faith. These restrictions are important to prevent the abuse of contractual freedom that could potentially harm certain parties, especially those who are weaker or have less bargaining power in contract negotiations [19].

The principle of freedom of contract is also closely related to the principle of autonomy of will. However, in the property business, autonomy of will is often limited by administrative provisions and technical regulations, such as building permits and spatial planning.

These restrictions show that freedom of contract is contextual and not absolute.

In practice, contract forms such as standard agreements often arise in business relationships with consumers or small businesses. Standard agreements tend to be drawn up unilaterally by the party with greater bargaining power, so that the content of the contract does not reflect free negotiation between the parties [20]. This situation shows that in the context of the property business, freedom of contract is sometimes based on unequal economic realities. In long-term property business relationships, the principle of freedom of contract also plays a role in determining the stability of the legal relationship between the parties. Contracts that are drafted in a balanced and transparent manner tend to reduce the potential for disputes, so that freedom of contract contributes to legal certainty.

The development of digital-based property transactions has also influenced the implementation of the principle of freedom of contract. Electronic contracts and online agreements present new challenges in ensuring that agreements are truly born out of the free will of the parties involved. The conceptual strengthening of the principle of freedom of contract in the property business needs to be carried out continuously through normative studies. This approach is important to ensure that contractual freedom remains in line with the objectives of the law, namely justice, certainty and benefit.

Another issue that arises is the imbalance in bargaining power between large developers and small consumers or investors. A number of studies show that this imbalance can lead to contracts that are formally valid but do not substantially reflect balanced freedom of contract [21]. This situation demonstrates the need to review the limits of the implementation of the principle of freedom of contract in the context of property business legal relationships.

Judicial interpretation may also limit contractual freedom when certain clauses are deemed to violate the principles of justice and higher legal provisions. Indonesian courts often perform a corrective function with regard to contract terms that are detrimental to one party in order to uphold substantive justice [22]. This shows that the implementation of the principle of freedom of contract does not only depend on the will of the parties, but also on the interpretation of the law by judicial institutions.

The dynamics of international trade also influence the implementation of the principle of freedom of contract in a global context, including in cross-border contracts that are often related to international property businesses [23]. Legal variations and choice of law in international contracts add to the complexity of understanding this principle in an increasingly open business world.

Comparative studies with other countries such as Malaysia show that the principle of freedom of contract in land sales has different characteristics of implementation between national legal systems, thus requiring cross-jurisdictional understanding for fairer and more efficient property contracts [24]. This is relevant given the increasing amount of foreign investment in Indonesia's property sector.

Clauses derived from this principle must be limited by the principle of proportionality, which maintains a balance between the positions of the parties. Examples in franchise practice show how contract clauses can put the weaker party at a disadvantage due to the dominant position of the powerful party in the drafting of the contract [25]. The impact of freedom of contract in the property business must ultimately be viewed from both sides: as an instrument of economic freedom that provides room for negotiation, and as a principle that is prone to abuse without clear legal

restrictions. Therefore, normative studies remain relevant to strengthen the existence of this principle in a fair and balanced legal framework for contracts in the context of the property business in Indonesia.

3.2 *Limitations and Challenges in Applying the Principle of Freedom of Contract in the Property Business*

Although the principle of freedom of contract provides freedom in determining the content of a contract, it is not without limits. The main limitations come from legal norms themselves, including rules regarding public order, morality, and protection of the weaker party in a contractual relationship [26]. In high-value property deals, these restrictions are absolutely necessary to avoid any abuse of power during contract negotiations.

One clear limitation lies in the legal principle governing the minimum requirements that must be met in a contract for it to be valid under Indonesian civil law, for example, certain requirements in Article 1320 of the Civil Code. These requirements include the existence of an agreement, legal competence, a specific object, and a cause that is not prohibited [27]. This restriction ensures that freedom of contract is exercised in an orderly manner and does not harm the public interest.

Another limitation arises from the corrective function of judges, who can assess whether contract clauses are unfair or disproportionate. Normative studies show that judges have the authority to adjust or reject contract clauses that contradict the principles of justice and other positive legal principles [28]. This demonstrates the important role of jurisprudence in ensuring that freedom of contract remains within the bounds of substantive justice.

Standard agreements are a form of contract that often challenges the implementation of the principle of freedom of contract. Standard contracts tend to be drawn up unilaterally by the

stronger party, so that their terms are often disadvantageous to the weaker party [29]. In the property business, these standard contracts can be found in land sale and purchase agreements, leases, or investment partnerships.

In addition, consumer protection becomes an important limitation when the principle of freedom of contract meets the relationship between business actors and individual consumers. Legal protection regulated in consumer protection laws is relevant to prevent contractual practices that are detrimental to parties who are not on an equal footing in negotiations [30]. This shows that contractual freedom is only effective if it does not have the potential for exploitation.

Another factor that limits contractual freedom is the need for legal certainty in property business contracts. Legal certainty is one of the fundamental objectives of contracts, so that contracts that are unclear or ambiguous can be invalidated by the courts in order to achieve certainty and justice [31]. Limitations on contractual freedom also exist through notarial practices. Notaries, as formal officials in the drafting of contracts, must ensure that contracts are drawn up in accordance with the law and the interests of the parties, thereby strengthening legal restrictions to prevent abuse of contractual freedom [32].

The dynamics of international contracts present their own challenges. The choice of law and forum in cross-border contracts can affect the application of the principle of freedom of contract and result in different interpretations in court, particularly in property business matters involving global players [33]. The imbalance in bargaining power between businesses and consumers necessitates further restrictions on public legal mechanisms, including consumer protection and agrarian laws, to ensure that property business contracts remain fair to all parties [34]. Thus, the principle of freedom of contract remains within

legal limits that guarantee substantive justice.

Restrictions on the principle of freedom of contract in property business agreements are becoming increasingly relevant as the legal relationships and economic value of transactions grow in complexity. In this context, restrictions are not intended to negate freedom, but rather to ensure that such freedom does not harm the legal interests of other parties. One of the main challenges is the existence of exonerating clauses that are often used in property contracts. These clauses serve to limit or transfer the responsibility of business actors, thereby substantially reducing legal protection for consumers.

From a normative perspective, clauses that negate unilateral responsibility are contrary to the principles of fairness and propriety. Therefore, restrictions on contractual freedom are necessary to maintain a balance between the rights and obligations of the parties.

Another challenge arises from the implementation of standardised contracts, which are dominant in the digital age and modern transactions, sometimes strengthening the bargaining position of certain parties and weakening others. This shows that restrictions on freedom of contract must continue to be developed in order to remain relevant to today's economic reality [35]. Restrictions on the principle of freedom of contract do not merely reduce the freedom of the parties, but rather provide space for the creation of contracts that are fair, balanced, and based on strong laws, as well as ensuring legal certainty and protection in the property business in Indonesia. Consumers' dependence on basic needs such as housing often places them in a position where they are forced to agree to contracts. This situation raises serious questions about the existence of free will in contracts.

In academic circles, there is a tendency to interpret the principle of

freedom of contract restrictively when dealing with standard contracts and unequal legal relationships. The next challenge is the harmonisation of civil law and sectoral property regulations. Regulatory inconsistencies often give rise to legal uncertainty in the implementation of contracts. Therefore, restrictions on the principle of freedom of contract should be understood as a corrective mechanism that ensures property business contracts remain within the bounds of fair and socially just law.

4. CONCLUSION

This study confirms that the principle of freedom of contract is the main foundation in contract law, which gives the parties the freedom to regulate their legal relationship, including in property business agreements. This principle allows the parties to adjust the content of the agreement to their respective needs and interests. However, this freedom cannot be understood as unlimited freedom, but must be placed within the applicable legal framework. Based on normative studies, it was found that the application of the principle of freedom of contract in property business practices in Indonesia often faces problems of bargaining imbalance. This condition is particularly evident in the use of standard agreements drafted unilaterally by property businesses. In such situations, the other party, particularly consumers, often has very limited room for negotiation, so that freedom of contract is more formal than substantive.

This study also shows that restrictions on the principle of freedom of contract are an integral part of efforts to achieve fairness in agreements. These restrictions are reflected in the application of the principles of good faith, propriety, and fairness, which serve to prevent abuse of freedom by parties in a stronger position.

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Thus, freedom of contract must always be accompanied by legal and moral responsibility. In terms of regulation, the state has sought to regulate and control the practice of freedom of contract in the property business through various legal provisions, including regulations in the areas of consumer protection and land. However, this study found that the effectiveness of these regulations still needs to be strengthened, particularly in terms of supervision and law enforcement, so that the normative provisions are actually implemented in practice.

The role of judicial institutions is crucial in maintaining balance in the application of the principle of freedom of contract. Through progressive legal interpretations oriented towards substantive justice, judges have a strategic role in assessing the fairness of contract terms and limiting the applicability of clauses that could potentially harm one of the parties. In this way, contracts are not only viewed as formal agreements, but also as instruments that reflect justice. This study confirms that understanding of the principle of freedom of contract must continue to be adapted to the times. Changes in transaction patterns, technological advances, and the increasing complexity of the property business require a more adaptive interpretation of this principle, without neglecting the fundamental values of national law and the interests of the wider community.

Overall, this study concludes that the principle of freedom of contract in property business agreements in Indonesia needs to be applied in a balanced and responsible manner. This freedom must go hand in hand with legal protection, justice, and legal certainty, so that property business agreements are not only economically beneficial, but also fair and sustainable for all parties involved.

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