

Implementation of the Principle of Balance in Partnership Agreements Made Unilaterally (Case Study on the Concession and use of Sppbe Agreement Between Pt Pertamina (Persero) and Pt Rejeki Berkah Empat Putra)



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ABSTRACT: The emergence of various standard agreements in today's society is a serious question regarding implementing the principle of balance in these standard agreements. Such as the partnership agreement regarding the exploitation and use of SPPBE between PT Pertamina (Persero) and PT Rejeki Berkah Empat Putra (PT. RBEP), where the agreement was made unilaterally and needed to be analyzed regarding the implementation of the principle of balance. This legal journal aims to determine whether the principle of balance has been accommodated in the agreement on the exploitation and use of the SPPBE and legal protection for parties who only have to sign the partnership agreement made unilaterally. The implementation of the principle of balance in the agreement on the exploitation and use of SPPBE between PT Pertamina (Persero) and PT RBEP has not been fully accommodated because the agreement contains illogical provisions regarding the rights and obligations imposed on PT RBEP as the second party. The agreement contains an exoneration clause that is burdensome for one of the parties, namely the existence of provisions on rights and obligations that need to be revised, and the implementation of the agreement is also illogical because it does not fulfill the principle of objective good faith. Legal protection for parties who only have to sign the partnership agreement made unilaterally is based on the principle of good faith. So, the form of legal protection is to set aside the agreement's contents in the form of cancellation of the agreement in which PT RBEP can file it with the court.

KEYWORDS: The Principle of Balance, Partnership Agreement, Made One-sided

I. INTRODUCTION

In fulfilling their various interests, the community does various things, one of them is by making agreements. The Civil Code regulates agreements in Book III, Chapter II, especially in Article 1313. Article 1313 of the Civil Code reads:

"Agreement is an act by which one person or more binds himself to one or more other people."

An agreement has elements: competent parties, agreed subject matter, legal considerations, reciprocal agreements, and reciprocal rights and obligations. Based on the above understanding, the agreement consists of The parties; There is an agreement between the parties; There are achievements to be carried out; In the form of oral or written; There are certain conditions as the contents of the agreement; and There is a goal to be achieved.

Today's emergence of various standard agreements is a serious question regarding implementing the principle of balance in these standard agreements. The purpose of the principle of balance in a standard agreement is that there is equality of position between the rights and obligations of the parties with the same terms and conditions. No party dominates the other party, such as the partnership agreement regarding the exploitation and use of SPPBE between PT Pertamina (Persero) and PT Rejeki Berkah Empat Putra (PT RBEP), which needs to be analyzed regarding the implementation of the principle of balance.

PT Pertamina (Persero) was assigned to carry out the energy conversion program. In practice, the biggest obstacle was the procurement of distribution line supply point infrastructure that allows users to quickly obtain LPG as a substitute for kerosene. Since the procurement of infrastructure is not easy and requires much money, even though the conversion program is simultaneously implemented, especially in Java Island, PT Pertamina (Persero) invites the private sector to participate in building infrastructure, especially SPPBE (Elpiji Bulk Filling and Transportation Station) with the consequences for the private sector and preparing investment and operational facilities. One of the private parties that received the principal permit to build the infrastructure is PT Rejeki Berkah Empat Putra domiciled in Kudus after this, abbreviated as PT RBEP.

PT Pertamina, on Thursday, 14 January 2016, inspected the location of the SPPBE Rejeki Berkah Empat Putra and issued the Minutes of Examination of SPPBE PT Rejeki Berkah Empat Putra. Four findings need to be corrected, namely:

1. 4 (four) pieces of fruit that have expired;

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2. When checking, there was no tube weight sampling process during production;
3. In order for a Leak Test of the cylinders to be carried out on all cylinders to avoid leaks when loaded into the agent fleet.;
4. Tank B, which uses a level gauge where the pointer can be shifted manually, has expired since 2014 so that the process can be accelerated.

Then on 22 January 2016, PT Rejeki Berkah Empat Putra received the First and Last Warning Letter No. 155/F14450/2016-S3, only seven days after receiving the Minutes. By directly imposing a sanction on reducing the allocation of 5 (five) MT/day for 1 (one) month starting from the issuance of this letter, it means that as a partner of PT Pertamina, in this case, the authorized official does not allow PT Rejeki Berkah Empat Putra to improve. Within the seven-day grace period, it was impossible to immediately replace finding number 4 because the storage tank with a capacity of 50 tons had to be emptied first.

Imposing sanctions by reducing the allocation of 5 (five) MT/day for 1 (one) month and only giving one week is very burdensome for PT Rejeki Berkah Empat Putra. It is because the process or stage of emptying the tank must go through some procedures, such as the provision of supporting equipment, the preparation of emptying officers, the number of storage tanks, and several other things that cannot be completed within one week.

Based on this, it is necessary to have a juridical study or analysis regarding implementing the principle of balance in the partnership agreement.

II. FORMULATION OF THE PROBLEM

From the research title above and the description that has been explained, the problems compiled by the author are as follows:

1. Has the principle of balance been accommodated in the agreement on the operation and use of the SPPBE?
2. What is the legal protection for parties left to sign a partnership agreement made unilaterally?

III. RESEARCH PURPOSES

This article aims to:

1. To find out if the principle of balance has been accommodated in the concession agreement and use of SPPBE.
2. To know the legal protection for parties left to sign a partnership agreement made unilaterally?

IV. RESEARCH METHODS

The approach method used in the author's research is empirical juridical, namely a method/procedure in research used to solve research problems by examining secondary data first, namely in the form of a literature review, and then submitting it by conducting primary data research in the field.¹

Data analysis is used after the data is collected; the compiler uses an induction mindset. Namely, the compiler tries to collect the facts contained in the data about the principle of balance that has been accommodated in the agreement on the exploitation and use of SPPBE. Legal protection for parties who must only sign the partnership agreement made unilaterally. Furthermore, based on the existing data, the author tries to conclude from facts specific to a more general conclusion.

DISCUSSION

A. The principle of balance in the Concession Agreement and the use of SPPBE

With the principle of freedom of contract (contained in Article 1338 paragraph 1 of the Civil Code), the principle of balance is needed in the agreement so that the parties agreeing have a balanced position. Understanding the principle of balance, in general, has a meaning as a balance in the position of the parties agree; there is a balance between the interests of both parties as each party expects it.²

Type of cooperation agreement SPPBE business can be categorized as a franchise agreement. Franchise agreements are generally standard agreements where the manufacturing process only involves one party. All clauses in the franchise agreement are, of course, made by the Franchisor and contain some terms and standards that must be complied with by the Franchisee so that the legal relationship between the Franchisor and the Franchisee is always characterized by an imbalance of bargaining power (unequal bargaining power). As is the case with franchise agreements in general, the SPPBE Concession Agreement, which has the characteristics of this franchise agreement, is formatted in standard form, and made by PT Pertamina (Persero) (not involving the entrepreneur) also stipulates some conditions and standards that must be met by SPPBE, including those regulated in Article 3 paragraph 4. This agreement also shows an imbalance between granting rights and the imposition of obligations on the parties. Entrepreneurs are burdened with various obligations, while PT Pertamina (Persero) is given more rights with fewer obligations.

¹ Soerjono Soekanto and Sri Mamudji. 1986. Introduction to Legal Research. Jakarta: UIPress. Page 52.

² Herlien Budiono, The Principle of Balance for Indonesian Contract Law, (Bandung: PT. Citra Aditya Bakti, 2006), page 305.

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In the Concession and Use of Bulk Elpiji Filling and Transportation Stations (SPPBE) Agreement between PT Pertamina (Persero) and PT Rejeki Berkah Empat Putra Number 081/Q10000/2019-S3, Article 6 explicitly regulates the rights and obligations of the second party (PT RBEP) while the rights and obligations of the first party (PT Pertamina (Persero)) are not explicitly regulated in the agreement. The existence of provisions that are considered illogical reflects the implementation of the principle of balance, which is burdensome to one party. The stipulation seems to have been made unilaterally, namely, PT RBEP as the second party, so that inevitably PT RBEP has to carry it out without any negotiations on these provisions regardless of the capacity of the second party in implementing it, whether capable or not.

As is the case concerning the agreement regarding the terms of statements and guarantees, statements and guarantees are only from the second party (PT RBEP). There are no statements or guarantees from the first party, especially regarding the certainty of the minimum allocation received by the second party.

Regarding the rights of the second party, which must have the approval of the first party, it should not be a written agreement but only a written notification, and the buyer or the person authorized must comply with or fulfill all the provisions in the agreement. If it is fulfilled, the authorized party can continue because PT RBEP gets a filing fee allocation from the first party, in this case PT Pertamina (Persero).

The agreement does not stipulate matters that can be carried out by the private party (SPBE), in this case, PT RBEP, if PT Pertamina (Persero) does not carry out its obligations. In practice, it was found that obligations were not carried out by PT Pertamina (Persero) even though these provisions were made by Pertamina itself, including:

1. The agreement stipulates that in Article 7, the billing of the Filling Fee can be done one month two times, but in practice, SPBE can only collect once a month; And
2. SPPBE will bear the cost of transporting damaged cylinders, even though this is an obligation of PT Pertamina (Persero) (article 5 (e)).

In addition, there are also SPPBE rights granted by PT Pertamina (Persero) without further detailing how they will be implemented, including those regulated in attachment 6 of the Agreement, namely regarding the procedure for receiving and distributing LPG at SPBE, it states that "if the scale reading does not match the amount of LPG listed in the BPP (outside the tolerance limit as stated in the contract), then SPPBE can question the weight of the LPG for further correlation of the scales with the PT Pertamina (Persero) scales.

However, in practice, the delivery of bulk from PT Pertamina (Persero) to SPPBE when there are deficiencies has yet to be regulated for the claim procedure. It can lead to potential losses equal to industry prices, which means far above the price of 3 kg of LPG. Although the provisions regarding the Losses claim procedure have been regulated in attachment 6 to this Agreement, in practice, this has never been implemented because there are no technical guidelines governing it.

Based on this, it resulted in the non-realization of the principle of justice in contracts. The embodiment of the principle of justice in a contract made by the parties must be the realization of the principle of balance that must exist in the agreement. The principle of balance, according to Herlien Budiono, is a principle that aims to align legal institutions and the basic principles of contract law known in the Civil Code, based on the thoughts and background of individualism on the one hand and the other hand, on the way of thinking, Indonesian nation. The principle of balance in making agreements is fundamental to ensure equal rights and obligations between the parties agreeing. Thus there is harmony in the implementation of the agreement.³

This analysis reflects the non-accommodation of the principle of balance in the partnership agreement regarding the use of SPPBE between PT Pertamina (Persero) and PT RBEP. It reflects the unequal position of the parties. In every agreement, all parties to the agreement place high hopes for the creation of a balance of positions, rights, and obligations for the parties agreeing. However, this hope cannot always be realized perfectly because sometimes the hopes for creating this balance have never been realized or only partially been realized. The imbalance of rights and obligations in an agreement is usually related to factors that can disrupt the balance in the agreement. Therefore, related to the finding of inequality of position in the agreement, it should be suspected that it also occurs in contracts or partnership agreements.

The agreement has some aspects, namely the parties' actions, the contents of the agreement agreed upon by the parties, and the implementation of the agreement. The three interrelated aspects of the agreement above can be raised as test factors regarding the working power of the principle of balance. The partnership agreement has no content of the agreement agreed upon by the parties, so the principle of balance is not accommodated in the partnership agreement. It is due to making the agreement unilaterally, or it can be said as a standard agreement.

The standard agreement does not reflect the balance principle of the parties to the contract. An imbalance of position in a standard agreement is caused because the parties have unequal bargaining positions, giving rise to "unreal bargaining." Several things cause the imbalance of position in the standard agreement:

³ Herlien Budiono, *General Teachings of Agreement Law and Its Application in the Field of Notary Affairs*, (Bandung, Citra Aditya Bakti, 2010), page 29.

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1. The standard agreement or contract maker generally controls resources higher than the party receiving the standard contract. One form is seen in the clauses contained in the standard or standard form whose content tends to be one-sided or referred to as exclusion or exoneration clauses. This clause provides a limitation and or transfer of responsibility for a business risk to another party so that it can cause an unfair loss or gain to one of the parties. The existence can see this position imbalance of clauses in the standard contract, which are solely concerned with the interests of the first party.⁴ In this case, PT Pertamina (Persero), as the party that agreed, has resources that exceed PT RBEP and delegate more responsibility for risk, in this case, the use and operation of SPPBE;
2. In signing a standard contract, the recipient only focuses on essential matters; matters such as choosing a dispute resolution forum, compensation in case of default, changing policies, Etc, are not a concern. Limitations in the right to express opinions in the contract hampered because the contract recipient is faced with the choice of “take it or leave it,” especially if the contract recipient is faced with a contract object that fulfills basic needs such as the need for clothing, food, and shelter. This choice will create a dilemma.⁵ Based on the partnership agreement regarding the exploitation and use of SPPBE, PT RBEP only has the position to accept or not accept. In this case, signing an agreement made unilaterally by PT Pertamina (Persero) only remains. Even though, based on this agreement, there are many illogical obligations and other provisions, it can be said that the agreement is not balanced; PT RBEP continues to carry out or carry out the partnership agreement with PT Pertamina (Persero) because, in its implementation, there are still many benefits to be gained. PT RBEP, like PT RBEP, still gets an allocation of the filing fee and LPG supply from PT Pertamina (Persero).

B. Legal Protection for Parties Remaining to Sign a Partnership Agreement Made One-sided.

In general, in making partnership contracts, this is made by default. It is after this known as the standard agreement or standard contract. This standard agreement or standard contract is the same as an agreement made unilaterally by a party with a dominant position in forming and implementing an agreement. In connection with the case of the partnership agreement regarding the use of SPPBE between PT Pertamina (Persero) and PT RBEP is a standard contract because the agreement or contract was made by PT Pertamina, which has a dominant position, and PT RBEP only has to approve or not approve the contract.

Normatively, all agreements made by business actors, including partnership agreements for the use of SPPBE, must comply with the provisions of Article 1320 of the Civil Code. The partnership agreement for the use of SPPBE between PT Pertamina (Persero) and PT RBEP has fulfilled the terms of the agreement, namely:

1. Agreed;
2. Competent;
3. Certain things; And
4. Halal cause.

Standard agreements are prepared uniformly for many people, usually with one agreement object and one achievement. The purpose of a standard contract is to provide convenience and practicality for the parties concerned without having to go through negotiations related to the clauses in the contract.

There is an exoneration clause, namely the exclusion clause of obligations or responsibilities in the standard agreement.⁶ This exoneration clause is burdensome to either party. In the concession agreement and use of SPPBE between PT RBEP and PT Pertamina (Persero), there is an exoneration clause in which there are illogical provisions on the rights and obligations of PT RBEP.

In addition to the provisions in the agreement, the implementation of the agreement was also illogical where PT Pertamina (Persero) gave the first and last warning letter to PT RBEP by imposing a sanction on reducing the allocation of five MT per day for one month and not allowing PT RBEP to improve because it was only given a grace period of one week. Based on this, PT Pertamina (Persero) is not in good faith because the agreement and its implementation tend to burden PT RBEP.

Article 1338, paragraph (3) of the Indonesian Civil Code regulates suitable faith arrangements in contracts, which states that agreements must be implemented in good faith. According to PL Wery, the implementation of good faith in the Article means that both parties must act towards each other without deception, deception without disturbing the other party, not only looking at their interests but also the interests of the other party.⁷ What must be underlined from this is an agreement based on good faith, not only looking at the interests of one party but also the interests of other parties.

Good faith in contract execution refers to objective good faith. Standards used in objective good faith are objective standards that refer to an objective norm. Provisions of good faith refer to unwritten norms that have become legal norms as a separate source

⁴ Ibid., page 50.

⁵ Ibid., page 51.

⁶ Ibid., page 41.

⁷ Ridwan Kairandy, Indonesian Contract Law in a Comparative Perspective (Part One),(Yogyakarta: FH UII Press, 2014), p. 131.

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of law. These norms are said to be objective because behavior is not based on the parties' assumptions, but the behavior must be by the general assumptions about good faith.⁸

In this case, the principle of good faith must fulfill every element of the agreement's provisions. It is because the agreement is legal protection for the parties in it, so when there are provisions that do not fulfill the elements of good faith, the legal consequence is to fill the legal void or set aside the contents of the agreement.

In the agreement on the exploitation and use of SPPBE between PT Pertamina (Persero) and PT RBEP, the legal consequence is to override the agreement's contents. Setting aside the contents of the agreement means that it can be requested for cancellation, and PT RBEP can submit it to the court. It is because PT RBEP, as the party that gave the agreement not freely, or in this case, PT RBEP just signed the agreement without being involved in making the agreement which concluded that PT Pertamina (Persero) in making and implementing the agreement did not fulfill the principle of objective good faith.

In practice, even though PT RBEP was burdened with the obligations given by PT Pertamina (Persero), PT RBEP did not cancel the agreement because the agreement still provided PT RBEP with many advantages in running its business, such as still being given an allocation of filling fees and LPG supply from other parties. PT Pertamina (Persero). If you set aside the contents of the agreement by asking for an annulment in court, it will also be detrimental to PT RBEP because it will incur high costs in carrying out the legal action.

V. CONCLUSION

- a. The principle of balance in the agreement on the exploitation and use of SPPBE between PT Pertamina (Persero) and PT RBEP has yet to be fully accommodated because the agreement contains illogical provisions regarding the rights and obligations imposed on PT RBEP as the second party. The adoption of the principle of balance can be seen from the provisions of Article 1320 to Article 1337 of the Civil Code, which indirectly require a balance of will, balance of skills, and balance of information between the parties;
- b. Legal protection for parties who only have to sign the partnership agreement made unilaterally is based on the principle of good faith, where PT RBEP can set aside the contents of the agreement by submitting an annulment in court, but this is not done because PT RBEP still benefits from the agreement process. If you go to court, it will be detrimental because it costs a lot.

REFERENCES

A. book

- 1) Ananda Budiono, Herlien, *The Principle of Balance for Indonesian Contract Law*, (Bandung: PT. Citra Aditya Bakti, 2006).
- 2) _____, *General Teachings of Agreement Law and Its Application in the Notary Field*, (Bandung: Citra Aditya Bakti, 2010).
- 3) Kairandy, Ridwan, *Indonesian Contract Law in a Comparative Perspective (Part One)*, (Yogyakarta: FH UII Press, 2014).
- 4) Mohammad Jafar Hafsa, *Business Partnership* (Jakarta: Pustaka Sinar Harapan, 2000).
- 5) Patrik, Purwahid, *Legal Basics of Engagement*, (Jakarta: Mandar Maju, 2018).
- 6) R, Setiawan, *Fundamentals of the Law of Engagement*, (Bandung: Bina Cipta, 2007).
- 7) Salim HS, *Development of Contract Law outside the Civil Code* (Jakarta: Raja Grafindo Persada, 2006).
- 8) _____, *Introduction to Written Law*, (Jakarta: Sinar Grafika, 2002).
- 9) Yohannes Ibrahim and Lindawaty Sewu, *Business Law in Modern Human Perception*, PT Refika Aditama, Bandung, 2004).
- 10) Yudha Hernoko, Agus, *Legal Agreements Principle of Proposality in Commercial Contracts*, (Jakarta: Laksbang Mediatama Yogyakarta, 2008).

B. Journals

- 1) Ery Agus Priyono, *Legal Protection for the Parties in the Livestock Partnership Agreement*, (Diponegoro Private Law Review, Volume 2, Number 1, 2018).
- 2) LPG Conversion Paper dated 28 October 2010, Marketing Manager of Central GasDom.
- 3) Niru Anita Sinaga and Tiberius Zaluchu, *The Role of Balance in Realizing the Purpose of the Agreement*, (Scientific Journal of Aerospace Law, Faculty of Law, Dirgantara University, Marshal Suryadarma, Volume 8, Number 1, 2017).

C. Legislation

- 1) Code of Civil law.
- 2) Civil Procedure Code.
- 3) Government Regulation Number 44 of 1997 concerning Partnerships.

⁸ Ibid., p. 136.

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- 4) Law Number 9 of 1995 concerning Small Businesses.
- 5) Law Number 8 of 1999 concerning Consumer Protection.



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