

AZAS PROPORSIONALITAS SEBAGAI PERWUJUDAN DOKTRIN KEADILAN BERKONTRAK

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ABSTRACT

The objective of this article is to argue that the issue of equal and unequal position of the parties is irrelevant to commercial contract. The essence of commercial contract that ponders business relationship without interruption does not deal with the issue of mathematical equality; rather, it emphasizes on proportional exchange of interests of the parties irrespective of result obtained by the parties.

There are three important things in this paper found. First, the principle of proportionality is applied in the entire phases of contract, i.e. in negotiation, formation, and enforcement phases. Second, the principle of proportionality is not perceived from mathematical equality perspective but it is viewed from fair exchange process and proportionate result, which is acceptable by both parties. Third, the principle of proportionality is a doctrine of "fair contract", which improves the doctrine of freedom of contract that may lead to unfairness. It is recommended in this dissertation that jurists, currently, be not regard the doctrine of freedom of contract sacred; rather, they shall find other philosophical basis to develop "fair contract" procedurally as well as substantively.

Keywords: *Principle of proportionality - a doctrine of "fair contract" - proportionate result*

Dewasa ini perdebatan mengenai keseimbangan dan ketidakseimbangan berkontrak, khususnya apabila terkait dengan kontrak-kontrak bisnis komersial, tampaknya sudah waktunya untuk ditinggalkan. Bukan bermaksud apriori, namun demikian perbincangan mengenai posisi para kontraktan dalam perspektif kontrak-kontrak bisnis komersial seyogyanya perlu secara jernih dikaji bersama, terutama pada struktur bangunan azas-azasnya. Untuk itu penulis bermaksud mengajukan argumentasi baru di bidang hukum

kontrak, dengan satu asas yaitu turut meramaikan dan mengembangkan khasanah keilmuan hukum, khususnya terkait dengan konsep perkembangan hukum kontrak ke masa depan.

Tulisan ini bermaksud mengajak para pembaca budiman untuk berkontemplasi mengenai hakikat hubungan kontraktual yang diharapkan, dibangun dan dilaksanakan para pihak, terutama di dunia bisnis. Dalam bisnis, pertukaran kepentingan para pihak senantiasa dituangkan dalam bentuk kontrak mengingat "*Setiap langkah bisnis adalah*