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RECONSTRUCTION OF THE PRINCIPLE OF BALANCE IN STANDARD CONTRACTS TO ACHIEVE SUBSTANTIVE JUSTICE FOR CONSUMERS

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ABSTRAK

Penelitian ini mengkaji bagaimana asas keseimbangan dalam kontrak baku perlu direkonstruksi agar mampu menghasilkan keadilan substantif bagi konsumen di tengah dominasi asas kebebasan berkontrak dan ketimpangan daya tawar para pihak. Permasalahan penelitian terletak pada ketidakcukupan ukuran keabsahan formal kontrak untuk menjamin keadilan ketika konsumen hanya berada pada posisi menerima atau menolak klausul yang telah ditentukan sepihak. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, melalui analisis terhadap KUHPerdata, Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Undang-Undang Nomor 1 Tahun 2024 tentang Informasi dan Transaksi Elektronik, doktrin, serta putusan yang berkaitan dengan klausul baku. Hasil penelitian menghasilkan konstruksi hukum bahwa asas keseimbangan harus dimaknai sebagai standar substantif untuk menguji bukan hanya adanya persetujuan, tetapi juga kewajaran distribusi hak, kewajiban, dan risiko para pihak. Rekonstruksi tersebut bertumpu pada tiga unsur: perluasan fungsi itikad baik sebagai dasar koreksi terhadap klausul yang timpang; penilaian hakim terhadap keadilan materiil kontrak meskipun syarat formalnya terpenuhi; dan pengawasan preventif melalui penguatan serta standardisasi klausul baku pada sektor yang rentan. Kebaruan penelitian terletak pada perumusan asas keseimbangan sebagai instrumen korektif yang menghubungkan KUHPerdata dengan rezim perlindungan konsumen, sehingga kebebasan berkontrak dibatasi oleh ukuran proporsionalitas dan perlindungan pihak yang secara faktual lebih lemah. Dengan konstruksi ini, validitas kontrak baku tidak berhenti pada legalitas formal, tetapi juga mensyaratkan keadilan substantif.

Kata kunci: asas keseimbangan; kontrak baku; klausula tidak adil; keadilan substantif; hukum perlindungan konsumen indonesia

ABSTRACT

This study examines how the principle of balance in standard form contracts should be reconstructed to achieve substantive justice for consumers amid the dominance of freedom of contract and disparities in the parties' bargaining power. The research problem concerns the inadequacy of formal contractual validity as a measure of justice where consumers are placed merely in a position to accept or reject clauses unilaterally determined by businesses. This study employs normative legal research using statutory, conceptual, and case approaches, through an analysis of the Indonesian Civil Code, Law Number 8 of 1999 on Consumer Protection, Law Number 1 of 2024 on Electronic Information and Transactions, legal doctrines, and judicial decisions concerning standard clauses. The

findings establish a legal construction in which the principle of balance functions as a substantive standard for assessing not only the existence of consent, but also the fairness of the distribution of rights, obligations, and risks between the parties. This reconstruction rests on three elements: broadening the function of good faith as a basis for correcting unfair clauses; judicial assessment of the substantive fairness of contracts notwithstanding compliance with formal requirements; and preventive supervision through stronger regulation and standardisation of standard clauses in vulnerable sectors. The novelty lies in conceptualising the principle of balance as a corrective instrument linking the Civil Code with the consumer protection regime, thereby limiting freedom of contract through proportionality and protection of the factually weaker party. Under this construction, the validity of standard form contracts depends not only on formal legality but also on substantive justice.

Keywords: *principle of balance; standard form contracts; unfair contract terms; substantive justice; indonesian consumer law*

1. INTRODUCTION

The development of modern business and information technology has transformed the legal relationship between businesses and consumers. Standard form contracts have become indispensable in sectors such as banking, financing, insurance, transportation, telecommunications, and electronic commerce because they facilitate efficiency, legal certainty, and speed in mass transactions.[1] However, such contracts are generally drafted unilaterally by businesses, while consumers are merely given the choice to accept or reject predetermined terms. This *take-it-or-leave-it* structure creates an asymmetry of bargaining power and raises a fundamental question as to whether contractual consent can still be regarded as substantively fair where one party has no meaningful opportunity to determine the content of the agreement.[2]

Indonesian contract law continues to rest primarily upon the classical framework of Book III of the Civil Code (*Kitab Undang-Undang Hukum Perdata* – KUHPerdata). Article 1320 requires agreement, capacity, a specific subject matter, and a lawful cause for contractual validity. In standard form contracts, however, the requirement of agreement may be satisfied formally even though consumers have little or no influence over the substance of the contractual terms.[3] Article 1338 paragraph (1) further establishes the binding force of legally concluded agreements and constitutes the normative basis of freedom of contract.[4] This framework creates the central legal problem addressed in this study: Indonesian contract law recognises contractual autonomy and formal consent, whereas contemporary consumer transactions require legal mechanisms capable of correcting structural inequality and preventing

[1]Fransiska Novita Eleanora and Aliya Sandra Dewi, "Pelaksanaan Perjanjian Baku Dan Akibat Hukumnya Bagi Konsumen," *Jurnal Mercatoria* 15, no. 1 (June 27, 2022): 19–27, https://doi.org/10.31289/mercatoria.v15i1.6812.

[2]Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Kencana, 2021), 27.

[3]Hernoko, 27.

[4]Pasal 1338 ayat (1) Kitab Undang-Undang Hukum Perdata menegaskan bahwa semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi para pihak yang membuatnya. Ketentuan ini menjadi dasar lahirnya asas kebebasan berkontrak yang memberikan kebebasan kepada para pihak untuk menentukan isi, bentuk, serta syarat perjanjian sepanjang tidak bertentangan dengan hukum, kesusilaan, dan ketertiban umum.

contractual terms that impose disproportionate burdens upon consumers. The problem is therefore not merely whether a standard form contract is formally valid, but whether its terms remain legally acceptable when the distribution of rights, obligations, risks, liabilities, and benefits is substantively unfair.[5]

This distinction is important because the principle of balance should not be equated simply with formal equality between the parties. Equality concerns the formal recognition of the parties as legal subjects with equal status; equity permits differentiated legal treatment where necessary to correct factual disadvantage; balance concerns the overall relationship between reciprocal rights and obligations; proportionality examines whether the allocation of contractual burdens, risks, responsibilities, and benefits is reasonably commensurate; while substantive fairness evaluates whether the actual content and effects of the contract produce an unjustifiable advantage for one party. Accordingly, balance in standard form contracts does not require mathematically identical rights and obligations. Rather, it requires a legally justifiable and proportionate distribution of contractual interests, taking into account differences in bargaining power, access to information, control over contract drafting, and the ability to bear contractual risks.

These concepts also determine how the theoretical framework is used in this study. Aristotle's conception of justice provides a basis for assessing whether contractual rights and burdens are proportionately allocated rather than merely formally distributed. Rawls' theory of justice strengthens this analysis by directing attention to institutional arrangements that protect those who occupy a comparatively weaker position.[6] In the context of standard form contracts, these theories are not employed merely as philosophical justification; they serve as normative criteria for determining whether contractual arrangements produce a defensible distribution of rights, risks, and benefits. The legal-protection perspective similarly requires the law to intervene where formal contractual autonomy is insufficient to safeguard a vulnerable party. This perspective has particular relevance to consumer contracts in which inequalities of information and bargaining power may expose consumers to clauses whose legal and economic consequences they are unable effectively to influence.[7] Thus, consumer protection operates as a corrective mechanism rather than as a rejection of freedom of contract: contractual autonomy remains recognised, but its exercise is limited where it produces disproportionate or exploitative consequences.[8]

Existing scholarship has addressed several aspects of this problem, but it has largely approached them in a fragmented manner. Eleanora and Dewi examine the

[5]Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2019), 1.
[6]John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 2005), 52.
[7]Yudhi Setiawan, "Perlindungan Hukum Terhadap Pemegang Kartu Kredit Dalam Klausula Baku," *Commerce Law* 2, no. 1 (June 28, 2022), https://doi.org/10.29303/commercelaw.v2i1.1362.
[8]Setiawan, 45.

implementation of standard agreements and their legal consequences for consumers,[9] while studies concerning standard clauses in credit-card relationships focus more specifically on consumer legal protection against predetermined contractual provisions.[10] Other contract-law scholarship has examined contractual non-performance and its legal consequences within the broader law of obligations.[11] These studies provide an important foundation for understanding standard form contracts and consumer vulnerability. Nevertheless, they do not fully formulate the principle of balance as an operational standard through which the fairness of contractual rights, obligations, risks, liabilities, and benefits can be systematically tested. Nor do they sufficiently integrate the classical principles of the Civil Code, the corrective function of consumer protection law, judicial control over unfair terms, and the distinctive problems arising from electronic standard form contracts. This unresolved issue constitutes the research gap addressed in the present study.

The need for such reconstruction is reinforced by Law Number 8 of 1999 on Consumer Protection. Article 18 restricts the use of standard clauses that transfer liability, exclude or restrict certain consumer rights, confer excessive unilateral authority upon businesses, or otherwise disadvantage consumers. Clauses that contravene the statutory requirements are null and void.[12] Importantly, consumer protection cannot be reduced to the prohibition of particular clauses. The principle of balance requires a broader substantive inquiry into whether businesses have exercised their contractual power in good faith and whether consumers have been given a fair opportunity to understand the legal consequences of the transaction. In this respect, statutory restrictions on standard terms should be understood as a legal correction to the assumption that formal consent alone is sufficient to establish contractual fairness.

The issue becomes more significant in electronic transactions. Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions recognises electronic contracts as legally binding within the Indonesian legal system.[13] Yet digital contracting may intensify existing inequalities because contractual consent is frequently expressed through a single click on an "agree" button, whilst extensive terms and conditions remain predetermined by the digital service provider. In such circumstances, formal electronic consent does not necessarily demonstrate informed or meaningful consent. The principle

[9]Eleanora and Dewi, "Pelaksanaan Perjanjian Baku Dan Akibat Hukumnya Bagi Konsumen," 19.

[10]Setiawan, "Perlindungan Hukum Terhadap Pemegang Kartu Kredit Dalam Klausula Baku," 45.

[11]Niru Anita Sinaga and Nurlely Darwis, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," *Jurnal Mitra Manajemen* 7, no. 2 (2021), https://doi.org/https://doi.org/10.35968/jmm.v7i2.534.

[12]Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Pasal 18 ayat (1), ayat (2), dan ayat (3).

[13]Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik memberikan penguatan terhadap pengaturan transaksi elektronik, perlindungan data, dan kepastian hukum dalam aktivitas digital. Regulasi ini juga menegaskan pengakuan terhadap kontrak elektronik sebagai bentuk perjanjian yang sah serta memiliki kekuatan hukum dan alat bukti yang mengikat para pihak dalam transaksi elektronik.

of balance must therefore operate together with transparency, comprehensibility, accessibility of contractual information, and good faith. Standard terms should be presented in a manner that enables consumers reasonably to identify their essential rights, obligations, risks, limitations of liability, and dispute-resolution consequences before consent is given. Difficult-to-read, obscure, excessively technical, or misleading contractual formulations may undermine substantive fairness even where an electronic agreement is formally valid. The digital environment consequently demonstrates why freedom of contract cannot be applied as an absolute principle when contractual autonomy exists primarily on the side of the drafting party.[14]

The legal gap therefore lies between a model of contract law centred upon formal consent and binding contractual autonomy, on the one hand, and the need for substantive control of predetermined contractual terms in structurally unequal consumer relationships, on the other. The reconstruction proposed in this study does not seek to eliminate freedom of contract, but to reposition it within a framework of good faith, proportionality, consumer protection, and substantive fairness. Consumers must be treated not merely as parties who formally express consent, but as legal subjects entitled to transparent information, reasonable contractual terms, and protection against disproportionate allocations of risk and responsibility.[15]

Against this background, this study examines how the principle of balance should be reconstructed as a substantive legal standard for standard form contracts in Indonesian consumer law. More specifically, it seeks to formulate parameters through which contractual balance may be assessed by examining the proportional distribution of rights, obligations, risks, liabilities, and benefits; the quality and transparency of consent; the parties' respective bargaining positions; good faith; and the substantive consequences of the contractual terms. The novelty of this study lies in conceptualising the principle of balance not simply as equality between contracting parties, but as a corrective legal instrument connecting the Civil Code, consumer protection law, judicial assessment of unfair terms, and the regulation of electronic contracts. Through this construction, contractual validity is assessed not only according to formal legality, but also according to whether the contractual arrangement produces substantive justice for the consumer.

2. METHOD

This study employs normative legal research using statutory and conceptual approaches. The statutory approach examines the Indonesian Civil Code (KUHPerdata), Law Number 8 of 1999 on Consumer Protection, Law Number 1 of 2024 on Electronic Information and Transactions, and other relevant regulations,

[14]Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*, 27.
[15]Sinaga and Darwis, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," 43.

whilst the conceptual approach analyses the principles of balance, freedom of contract, legal protection, proportionality, and substantive justice. Legal materials consist of primary, secondary, and tertiary sources collected through library research.[16] The materials are analysed qualitatively through legal interpretation, systematisation, and harmonisation, followed by deductive reasoning to formulate the principle of balance as a substantive standard for assessing fairness in standard form contracts.

3. DISCUSSION

3.1. Legal Regulation of Standard Form Contracts and Consumer Protection in Indonesia

Standard form contracts constitute a legitimate and practically necessary contractual mechanism in modern commercial transactions. Their defining characteristic is not unfairness in itself, but the prior formulation of contractual terms by one party for repeated use without individual negotiation. Such contracts facilitate efficiency, consistency, and legal certainty in sectors such as banking, insurance, financing, transportation, telecommunications, and electronic transactions.[17] The legal issue therefore does not arise merely from the use of a standard form, but from the possibility that unilateral control over contract drafting may result in an excessive allocation of rights, obligations, risks, or liabilities to consumers.[18]

The general legal framework governing contracts remains Book III of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* – KUHPerdata). Article 1320 establishes agreement, legal capacity, a specific object, and a lawful cause as requirements for contractual validity.[19] Article 1338 paragraph (1), in turn, gives legally concluded agreements binding force and provides the normative foundation for freedom of contract and *pacta sunt servanda*.[20] These provisions establish the general presumption that parties are entitled to determine their contractual relations and that agreements validly concluded should be performed. Accordingly, the absence of individual negotiation in a standard form contract does not, by itself, eliminate consent or automatically invalidate the agreement. The more precise legal question is whether particular predetermined terms remain enforceable when their content conflicts with mandatory consumer-protection rules, good faith, or substantive fairness.

This distinction separates the formation of the contract from the substantive control of its terms. At the formation stage, the relevant inquiry concerns whether the requirements of Article 1320 have been satisfied. At the substantive-review stage, the

[16]Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2021), 13.
[17]Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial,* 15.
[18]Eleanora and Dewi, "Pelaksanaan Perjanjian Baku Dan Akibat Hukumnya Bagi Konsumen," 19.
[19]Pasal 1338 ayat (1) KUHPerdata menegaskan bahwa semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi para pihak yang membuatnya. Ketentuan ini melahirkan asas kebebasan berkontrak yang memberikan kebebasan kepada para pihak untuk menentukan isi, bentuk, dan syarat-syarat perjanjian.
[20]Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*, 20.

inquiry concerns whether the exercise of contractual freedom has produced clauses that disproportionately transfer risks, restrict consumer rights, exclude business liability, or confer excessive unilateral powers upon the drafting party. The economic and informational superiority of businesses is relevant at this second stage because it may affect the content and consequences of predetermined contractual terms, even where a formally valid agreement exists.[21] Exoneration clauses are particularly significant because they seek to restrict or exclude liability that would otherwise rest upon the business.[22]

Consumer protection law therefore operates not as a rejection of contractual freedom, but as a corrective regime applicable to contractual relationships characterised by structural asymmetry. Law Number 8 of 1999 on Consumer Protection (UUPK) establishes consumer rights to security, accurate information, and fair treatment, while simultaneously imposing good-faith obligations upon businesses.[23] Article 18 provides a more specific form of substantive control by restricting predetermined clauses that transfer liability, deny particular consumer rights, grant unilateral authority, or otherwise fall within the statutory prohibitions.[24] Where a clause falls within the prohibited categories, Article 18 provides legal consequences independent of the fact that the consumer formally accepted the contract. Thus, the binding force recognised under Article 1338 KUHPerdata cannot be understood as protecting contractual provisions that conflict with mandatory consumer-protection norms.

A systematic reading consequently establishes a relationship between general contract law and special consumer-protection law. KUHPerdata supplies the general principles of contractual validity, autonomy, binding force, and good faith, whereas UUPK corrects the operation of those principles where standard contractual terms undermine legally protected consumer interests.[25] This corrective relationship does not mean that every standard form contract is unfair. A standard clause is simply a predetermined contractual provision; an exoneration clause is a particular form of clause intended to restrict or exclude liability; a prohibited clause is one that falls within the statutory restrictions of Article 18; while an unfair term, in a broader substantive sense, is a term whose allocation of rights, obligations, risks, or remedies produces an unjustifiable disadvantage to the consumer. These categories may overlap but should not be treated as conceptually identical.[26]

[21] Siti Malikhatun Badriyah, "Perlindungan Konsumen Dalam Perjanjian Baku Di Era Digital," *Jurnal Dinamika Hukum* 21, no. 3 (2021), 311.

[22]Abdul Halim Barkatullah, "Perlindungan Konsumen Dalam Transaksi Elektronik Di Indonesia," *Yustisia Jurnal Hukum* 12, no. 2 (2023), 201.

[23]Barkatullah, 88.

[24]Pasal 18 ayat (1) & (3) Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

[25]Deviana Yuanitasari and Hazar Kusmayanti, "Eksistensi Bpsk (Badan Penyelesaian Sengketa Konsumen) Dalam Pengawasan Pencantuman Klausula Baku Dalam Sistem Hukum Perlindungan Konsumen Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 7, no. 3 (November 30, 2019): 425, https://doi.org/10.29303/ius.v7i3.676.

[26]Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2021), 41.

The same normative structure applies to electronic contracts. Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions recognises electronic contracting within the legal framework of electronic transactions.[27] The use of a digital "agree" mechanism may constitute contractual assent, but such formal assent does not prevent scrutiny of the transparency, accessibility, and substance of predetermined electronic terms. The central issue is therefore not whether electronic contracts are valid merely because acceptance occurs digitally, but whether the terms presented to consumers satisfy the protective standards applicable to standard form contracts.[28]

Accordingly, Indonesian law already contains two interacting normative layers: contractual autonomy under KUHPerdata and corrective consumer protection under UUPK. The weakness lies not in the absence of legal rules, but in the lack of a sufficiently operational standard connecting contractual validity with substantive evaluation. This gap provides the basis for examining the principle of balance as the doctrinal bridge between those two normative layers.

3.2. Implementation of the Principle of Balance in Standard Form Contracts and Issues of Substantive Justice for Consumers

The principle of balance should not be understood as requiring identical contractual positions or an arithmetically equal distribution of rights and obligations. Contractual relations frequently involve differences in economic interests, functions, risks, and responsibilities. Balance instead concerns whether those differences can be legally justified and whether the resulting allocation remains proportionate to the legitimate interests of the parties. This understanding distinguishes balance from formal equality and connects it more closely with proportionality and substantive fairness.[29] Consequently, unequal bargaining power is relevant but does not itself establish contractual unfairness; it becomes legally significant where that structural inequality is translated into contractual terms that impose excessive or unjustifiable disadvantages upon consumers.[30]

From this perspective, Article 1320 KUHPerdata performs a different function from the substantive assessment of contractual terms. The existence of agreement remains a requirement for contractual validity.[31] A consumer's inability to negotiate individual clauses should therefore not automatically be characterised as an absence of consent. The legal concern is instead that formal consent to a predetermined contract may coexist with substantive terms that require further examination. This distinction

[27]Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

[28]Undang-Undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. Dalam praktik transaksi digital.

[29]Sinaga and Darwis, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," 43.

[30]Yuanitasari and Kusmayanti, "Eksistensi Bpsk (Badan Penyelesaian Sengketa Konsumen) Dalam Pengawasan Pencantuman Klausula Baku Dalam Sistem Hukum Perlindungan Konsumen Indonesia," 439.

[31]Kitab Undang-Undang Hukum Perdata, Pasal 1320.

avoids equating standardisation with invalidity and allows consumer protection to operate without undermining the fundamental structure of contract formation.

Article 1338 paragraph (1) reinforces the binding character of a valid agreement through *pacta sunt servanda*.[32] However, the same contractual framework cannot be read separately from the obligation of good faith reflected in Article 1338 paragraph (3).[33] Freedom of contract determines the space within which parties may arrange their legal relationship, while good faith constrains the manner in which that contractual power is exercised. In standard form contracts, good faith therefore provides a doctrinal basis for questioning clauses that exploit informational or bargaining asymmetry even where the contract satisfies formal requirements.

UUPK strengthens that corrective function through specific mandatory rules.[34] Article 18 should be understood systematically rather than as a general declaration that all standard clauses are prohibited. First, standard clauses remain permissible as a contractual technique. Secondly, exoneration clauses require particular scrutiny because they may shift or exclude liability. Thirdly, clauses expressly falling within the prohibitions of Article 18 are subject to the statutory consequence provided by UUPK. Fourthly, clauses that are not expressly prohibited may nevertheless require substantive assessment where their operation disproportionately restricts consumer rights or remedies. This differentiated approach prevents the erroneous assumption that a standard contract is inherently unfair whilst retaining effective control over abusive terms.[35]

The interaction between KUHPerdata and UUPK may therefore be formulated as a general–corrective relationship. Freedom of contract and *pacta sunt servanda* remain the starting points, but their operation is not absolute in consumer relationships. UUPK intervenes where the exercise of private autonomy conflicts with mandatory protections designed to address factual inequality. Consumer law thus modifies the practical effect of general contract law without displacing it. The principle of balance performs the connecting function: it determines when formal contractual autonomy should yield to substantive protection.

For this purpose, substantive justice must be operationalised through identifiable legal parameters rather than invoked as an abstract objective. A standard term may be assessed through at least six interrelated parameters.

First, transparency and comprehensibility. The consumer must have a reasonable opportunity to know and understand material contractual terms, particularly those concerning price, liability, risk, unilateral modification, termination, and dispute

[32]Pasal 1338 ayat (1) KUHPerdata.
[33]Pasal 1338 ayat (1) KUHPerdata.
[34] Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen (UUPK).
[35]Kristiyanti, *Hukum Perlindungan Konsumen*, 41.

resolution. Lack of clarity is particularly significant in digital contracts, where extensive standard terms may be accepted instantaneously.

Secondly, bargaining position and control over contract formation. The assessment should consider whether one party exclusively drafts the terms, possesses superior information, and leaves the consumer with no commercially realistic alternative. A *take-it-or-leave-it* format does not by itself invalidate the agreement, but it strengthens the justification for substantive scrutiny.[36]

Thirdly, the distribution of contractual risks. The court or regulator should determine whether foreseeable risks are allocated to the party reasonably capable of controlling or preventing them, rather than systematically transferred to consumers.

Fourthly, limitation or exclusion of liability. Particular scrutiny is required where a clause excludes or substantially reduces the responsibility of the business while maintaining the consumer's obligations. Exoneration provisions that remove meaningful accountability may disturb contractual balance.[37]

Fifthly, proportionality between rights and obligations. The contractual benefits granted to one party should be compared with its corresponding burdens and responsibilities. The relevant test is not numerical equality, but whether there is a reasonable relationship between the advantage obtained and the obligation or risk imposed.

Sixthly, access to remedies. A clause should not effectively prevent consumers from asserting rights, seeking compensation, challenging unilateral action, or obtaining an effective dispute-resolution mechanism. Legal rights that cannot realistically be enforced provide only formal rather than substantive protection.[38]

These parameters transform the principle of balance from an abstract aspiration into an analytical standard. They also explain why substantive justice differs from mere contractual validity. A contract can satisfy the requirements of formation and remain binding as a legal relationship, while a particular term within it may nevertheless require correction because of its substantive effect. The judicial task is therefore not simply to determine whether consent exists, but to assess whether the disputed term exceeds the legitimate limits of contractual autonomy.

Regulatory and administrative supervision complements judicial scrutiny. Consumer protection institutions can address imbalance preventively by monitoring the formulation and use of standard terms rather than waiting until individual consumers initiate disputes.[39] Legal scholarship has likewise emphasised that legal

[36]Salmin Achmad and Moh. Saleh, "Kajian Yuridis Terhadap Klausula Baku Barang Yang Sudah Di Beli Tidak Dapat Ditukar Kembali Menurut Undang-Undang Nomor 8 Tahun 1999," *Commerce Law* 2, no. 2 (2022), https://doi.org/10.29303/commercelaw.v2i2.2044.

[37]Achmad and Saleh, 112.

[38]M. Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Jakarta: Alumni, 2020), 56.

[39]Yuanitasari and Kusmayanti, "Eksistensi Bpsk (Badan Penyelesaian Sengketa Konsumen) Dalam Pengawasan Pencantuman Klausula Baku Dalam Sistem Hukum Perlindungan Konsumen Indonesia," 439.

protection in standard contractual relationships requires mechanisms capable of addressing the practical weakness of consumers.[40] Although earlier discussions occasionally connected misleading contractual practices with fraud provisions under Article 378 of the former KUHP,[41] the present study does not use criminal liability as an analytical basis because the reconstruction proposed here concerns the civil and consumer-protection dimensions of contractual balance. The citation is retained only to delimit the earlier line of discussion, not as a foundation for the proposed model.

The principle of balance therefore operates on two levels: it respects the validity and efficiency of standard form contracts as a transactional mechanism, while providing substantive scrutiny where the resulting terms create an unjustifiable contractual disadvantage. This approach reconciles legal certainty with consumer protection and avoids both extremes of treating contractual consent as conclusive and treating every standard form contract as inherently unfair.[42]

3.3. Reconstruction of the Principle of Balance in Standard Form Contracts to Achieve Substantive Justice for Consumers

The need for reconstruction arises because the existing contractual framework contains a structural gap between formal contractual validity and substantive contractual fairness. The existing construction can be described as follows: Article 1320 KUHPerdata determines whether a contract is validly formed; Article 1338 gives the valid contract binding force and recognises contractual autonomy; and UUPK prohibits particular forms of standard clauses that undermine consumer protection. This framework provides important protection but does not by itself formulate a single operational test through which courts, regulators, or businesses can determine when the overall allocation of contractual rights and burdens has become substantially imbalanced.[43]

The reconstruction proposed in this study therefore does not replace the existing principles of contract law. Instead, it repositions the principle of balance as a substantive corrective standard situated between contractual validity and contractual enforcement. Under this model, satisfaction of Article 1320 remains relevant to the formation of the agreement, while the binding force recognised by Article 1338 remains applicable in principle. However, the enforceability of predetermined terms must additionally be assessed through good faith, mandatory consumer-protection norms, and substantive proportionality.[44] This formulation avoids characterising consumer consent as illusory merely because negotiation is absent. Consumers may

[40]Sinaga and Darwis, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," 43.
[41] Pasal 378 KUHP.
[42]Harahap, *Segi-Segi Hukum Perjanjian*, 56.
[43]Abdul Kadir Muhammad, *Hukum Perikatan* (Bandung: Citra Aditya Bakti, 2021), 224.
[44]Badriyah, "Perlindungan Konsumen Dalam Perjanjian Baku Di Era Digital," 311.

validly consent to a standard contract, yet individual clauses may still be subjected to substantive control.[45]

The reconstructed principle consists of three interrelated layers.

The first layer is normative correction. UUPK functions as a corrective instrument to the general regime of contractual freedom by establishing mandatory limits on the content of standard clauses.[46] This correction should not be interpreted as a prohibition of contractual standardisation, but as a mechanism for distinguishing legitimate standardisation from contractual exploitation. Its substantive orientation requires attention not only to the formal wording of a clause but also to its practical effects upon the allocation of liability, risk, remedies, and consumer rights.[47] The objective is thus not simply to broaden prohibitions, but to read Article 18 systematically with good faith and proportionality so that equivalent forms of unfair risk allocation cannot escape scrutiny merely because they are drafted differently.[48]

The second layer is judicial substantive review. Judges should distinguish between the validity of the agreement as a whole and the fairness or enforceability of particular predetermined provisions. The principles of good faith and reasonableness provide a doctrinal basis for assessing whether a business has exercised contractual power beyond a justifiable limit.[49] Judicial evaluation should employ the six substantive parameters identified above: transparency and comprehensibility; bargaining position; distribution of risk; limitation of liability; proportionality of rights and obligations; and effective access to remedies. A significant deficiency in one parameter does not automatically establish unfairness; rather, the parameters should be assessed cumulatively to determine whether the clause creates a substantial and unjustifiable imbalance.

The third layer is preventive regulatory supervision. Consumer protection should not depend exclusively upon litigation after harm has occurred. Regulatory and consumer-protection bodies should evaluate commonly used contractual terms in sectors characterised by mass transactions and significant informational asymmetry.[50] Standardisation, model clauses, disclosure requirements, and preventive review can reduce the repeated use of problematic terms in banking, transportation, digital services, insurance, and other consumer sectors. Preventive supervision is particularly important where individual consumers may lack the resources or incentives to challenge relatively small losses through litigation.

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[45]Michelle Cumyn, "Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?," *The American Journal of Comparative Law* 73, no. 1 (September 1, 2025): 129–63, https://doi.org/10.1093/ajcl/avaf016.

[46]Eleanora and Dewi, "Pelaksanaan Perjanjian Baku Dan Akibat Hukumnya Bagi Konsumen," 19.

[47]Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen (UUPK).

[48]Janus Sidabalok, *Hukum Perlindungan Konsumen Di Indonesia* (Bandung: Citra Aditya Bakti, 2021), 95.

[49]Yuanitasari and Kusmayanti, "Eksistensi Bpsk (Badan Penyelesaian Sengketa Konsumen) Dalam Pengawasan Pencantuman Klausula Baku Dalam Sistem Hukum Perlindungan Konsumen Indonesia," 439.

[50]Ahmad Miru, *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia* (Jakarta: Rajawali Pers, 2022), 55.

Under this model, substantive justice becomes an assessable legal condition rather than a general policy aspiration. It is achieved where the consumer has adequate access to material information; contractual language is reasonably comprehensible; risks are allocated according to the parties' capacity to control or bear them; liability is not unreasonably excluded; reciprocal rights and obligations remain proportionate; unilateral powers are objectively justified and procedurally constrained; and effective remedies remain available. Substantive injustice arises when the combined operation of contractual terms places a disproportionate burden upon the consumer without a legitimate contractual justification.[51]

This reconstructed conception also clarifies the distinction between equality, balance, proportionality, and fairness. Equality concerns the formal legal status of the parties. Balance examines the relational structure of contractual rights, duties, and risks. Proportionality assesses whether differences in treatment or allocation are reasonably commensurate with legitimate contractual purposes. Substantive fairness evaluates the actual legal and economic consequences produced by those arrangements. The reconstructed principle of balance therefore does not require identical contractual positions; it requires proportionate and justifiable differentiation.

In this respect, the classical Civil Code should be interpreted dynamically rather than displaced. Freedom of contract remains essential for private autonomy and commercial efficiency, but its legitimacy depends upon the exercise of that freedom in accordance with good faith and mandatory legal protection.[52] The principle of balance thus functions as an interpretative bridge: it preserves contractual autonomy whilst ensuring that the binding force of an agreement does not legitimise clauses that exploit structural vulnerability.

The legal construction generated by this study may therefore be formulated as follows:

> *A standard form contract remains valid and binding when it satisfies the requirements of contract formation, but the enforceability of its predetermined terms is subject to substantive control where disparities in bargaining power are translated into a disproportionate allocation of rights, obligations, risks, liabilities, benefits, or remedies. The principle of balance operates as the corrective standard for that assessment through good faith, proportionality, mandatory consumer protection, judicial review, and preventive regulatory supervision.*

This proposition distinguishes the proposed reconstruction from a general recommendation to strengthen consumer protection. The reconstruction changes the doctrinal function of the principle of balance: from an abstract aspiration that parties should be "equal" into an operational legal standard for reviewing contractual substance. It consequently connects the Civil Code with the consumer-protection

[51]Budi Santoso, *Hukum Perlindungan Konsumen* (Yogjakarta: Pustaka Baru Press, 2021), 144.

[52]Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Jurnal Binamulia Hukum* 7, no. 2 (2018), 107.

regime and provides a common framework that can be used by businesses in drafting contracts, regulators in preventive supervision, and judges in resolving contractual disputes.[53]

Accordingly, the reconstruction of the principle of balance does not negate freedom of contract or *pacta sunt servanda*. It determines their legitimate limits in standardised consumer relationships. Contract law thereby retains its function of ensuring certainty and transactional efficiency while simultaneously recognising that legal certainty cannot justify disproportionate contractual burdens. Such an approach places substantive justice within the operation of contract law itself rather than treating it merely as an external policy objective.[54]

4. CONCLUSION

This study concludes that the principle of balance in standard form contracts should be reconstructed from an abstract notion of equality into an operational standard for substantive contractual fairness. The reconstructed model does not invalidate standard form contracts merely because their terms are predetermined or non-negotiable. Rather, contractual validity under Article 1320 and the binding force of agreements under Article 1338 of the Civil Code remain applicable, while the content and enforceability of standard clauses are subject to corrective control through good faith, proportionality, and the mandatory consumer-protection rules contained in the Consumer Protection Law. The reconstruction consists of three interrelated dimensions: normative correction through consumer-protection rules, judicial substantive review of unfair contractual terms, and preventive regulatory supervision of standard clauses. Substantive imbalance is assessed through six parameters: transparency and comprehensibility of terms, the parties' bargaining positions, distribution of contractual risks, limitation or exclusion of liability, proportionality of rights and obligations, and effective consumer access to remedies. Accordingly, the principle of balance functions as a doctrinal bridge between freedom of contract and consumer protection. Its function is not to require identical contractual positions, but to ensure that differences in rights, obligations, risks, liabilities, and benefits remain objectively justified and proportionate. Under this model, substantive justice is achieved when contractual autonomy is preserved without allowing the binding force of a standard form contract to legitimise terms that impose a substantial and unjustifiable disadvantage on consumers.

[53]Ayu Futriani jannah and H. Djumardin Djumardin, "Tinjauan Yuridis Terhadap Perjanjian Antara Perusahaan Daerah Air Minum Dengan Pelanggan Air Minum," *Private Law* 4, no. 1 (February 21, 2024): 255–72, https://doi.org/10.29303/prlw.v4i1.3932.

[54]Miru, *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*, 55.

DAFTAR PUSTAKA

Achmad, Salmin, and Moh. Saleh. "Kajian Yuridis Terhadap Klausula Baku Barang Yang Sudah Di Beli Tidak Dapat Ditukar Kembali Menurut Undang-Undang Nomor 8 Tahun 1999." *Commerce Law* 2, no. 2 (2022). https://doi.org/10.29303/commercelaw.v2i2.2044.

Badriyah, Siti Malikhatun. "Perlindungan Konsumen Dalam Perjanjian Baku Di Era Digital." *Jurnal Dinamika Hukum* 21, no. 3 (2021).

Barkatullah, Abdul Halim. "Perlindungan Konsumen Dalam Transaksi Elektronik Di Indonesia." *Yustisia Jurnal Hukum* 12, no. 2 (2023).

Cumyn, Michelle. "Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?" *The American Journal of Comparative Law* 73, no. 1 (September 1, 2025): 129–63. https://doi.org/10.1093/ajcl/avaf016.

Eleanora, Fransiska Novita, and Aliya Sandra Dewi. "Pelaksanaan Perjanjian Baku Dan Akibat Hukumnya Bagi Konsumen." *Jurnal Mercatoria* 15, no. 1 (June 27, 2022): 19–27. https://doi.org/10.31289/mercatoria.v15i1.6812.

Futriani jannah, Ayu, and H. Djumardin Djumardin. "Tinjauan Yuridis Terhadap Perjanjian Antara Perusahaan Daerah Air Minum Dengan Pelanggan Air Minum." *Private Law* 4, no. 1 (February 21, 2024): 255–72. https://doi.org/10.29303/prlw.v4i1.3932.

Harahap, M. Yahya. *Segi-Segi Hukum Perjanjian*. Jakarta: Alumni, 2020.

Hernoko, Agus Yudha. *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*. Jakarta: Kencana, 2021.

Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2021.

Kristiyanti, Celina Tri Siwi. *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika, 2021.

Miru, Ahmad. *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*. Jakarta: Rajawali Pers, 2022.

Muhammad, Abdul Kadir. *Hukum Perikatan*. Bandung: Citra Aditya Bakti, 2021.

Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 2005.

Santoso, Budi. *Hukum Perlindungan Konsumen*. Yogjakarta: Pustaka Baru Press, 2021.

Setiawan, Yudhi. "Perlindungan Hukum Terhadap Pemegang Kartu Kredit Dalam Klausula Baku." *Commerce Law* 2, no. 1 (June 28, 2022). https://doi.org/10.29303/commercelaw.v2i1.1362.

Sidabalok, Janus. *Hukum Perlindungan Konsumen Di Indonesia*. Bandung: Citra Aditya Bakti, 2021.

Sinaga, Niru Anita. "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian." *Jurnal Binamulia Hukum* 7, no. 2 (2018).

Sinaga, Niru Anita, and Nurlely Darwis. "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian." *Jurnal Mitra Manajemen* 7, no. 2 (2021). https://doi.org/https://doi.org/10.35968/jmm.v7i2.534.

Subekti. *Hukum Perjanjian*. Jakarta: Intermasa, 2019.

Yuanitasari, Deviana, and Hazar Kusmayanti. "Eksistensi Bpsk (Badan Penyelesaian Sengketa Konsumen) Dalam Pengawasan Pencantuman Klausula Baku Dalam Sistem Hukum Perlindungan Konsumen Indonesia." *Jurnal IUS Kajian Hukum Dan Keadilan* 7, no. 3 (November 30, 2019): 425. https://doi.org/10.29303/ius.v7i3.676.