

The Concept of Fairness In The Principle of Decency Reviewed From Business Ethics In Business Contracts

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ABSTRACT

Business agreements are often made only for the benefit of one party so that one party benefits and one party is harmed which only continues to put forward the principle of *pacta sunt servanda*. It is as if freedom in making a contract is final and absolute without anyone being able to intervene in the contract. This research has the basic purpose of reviewing business agreements judged by the implementation of business ethics as a reasonable consideration or not of a business agreement. The research method used in this study is a normative juridical method with a statute approach. Based on the results of existing research, the principle of propriety is closely related to the reasonableness of the contract agreement. Business agreements are basically formed not only based on consideration of legal provisions but also pay attention to business ethics. So business ethics can be applied as an indicator of the reasonableness of a business contract for the achievement of fairness.

Keywords: Reasonableness, Business Ethics, Business Contract

1. INTRODUCTION

The economy is rife with cheating, but both the business world and the economy are expanding, and competition is getting tougher. (Octarina, 2022) Numerous implementation industry traders are currently engaging in unethical business practices. Businesses rely heavily on merchants, some of whom even grow to become major players. A nation's economy is greatly influenced by the market. The caliber of fairness in a business is greatly influenced by the market-engendered fair price. because moral values like veracity, fairness, and openness are obligatory and the responsibility of every market participant. Business or trade comportment withal reflects moral values or business ethics (Yustianti & Roesli, 2018). Consequently, it is critical for businesspeople to incorporate a moral component into their operations' framework and scope.

Since the engagement was carried out by the parties, fraud and cheating frequently occur, which is against morality and the law. Fraud can even be arduous to spot. It is additionally possible to interpret a breach of the law as an indirect infringement of society's morals and ethics. However, as long as these morals or ethics are not regulated by statutory regulations, they cannot be considered a contravention of the law, so moral and ethical infringements in society may not compulsorily be interpreted as such. The application of the principle of propriety to the engenderment and execution of contracts is another aspect of the

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principle of proportionality, which is withal referred to as the "principio de razonabilidad." Considerations that make it possible to quantify, control, and determine sundry things, either directly or indirectly, turn out to be predicated on the concept of fairness on the decency principle. Indirectly, in replication to the criteria of adequacy, cohesiveness, essentiality, balance, and benefit in cognation to the rights of the human person. In property law, fairness and equity are now an obligatory pair of concepts. Case law now shows how derogatory effects can be applied to fairness and equity.

Based on article 1313 of the Civil Code, it states that an agreement is an act in which one or more people bind themselves to one or more other people. There are many types of principle according to civil law, either of them there are the principle of decency and fairness (redelijkheid en billijkheid) can be found in the provisions in Nieuw Burgerlijk Wetboek, Book 6 Article 248 (2) (6:248 NBW) it reads as follows: "*Een tussen partijen als gevolg van de overeenkomst geldende regel is niet van toepassing, voor zover dit in de gegeven omstandigheden naar maatstaven van redelijkheid en billijkheid onaanvaardbaar zou zijn.*" From one of the paragraphs in Nieuw Burgerlijk Wetboek it can be translated as, the rules that apply between the parties as a result of the agreement are not valid, insofar as this is unacceptable in certain circumstances in accordance with fairness and fairness standards. Basically decency can also be called fairness because both have the same meaning. The concept of decency and fairness has been applied as a basis for making judgments regarding the validity of an agreement. In connection with these conditions, research and discussion on the principle of decency in relation to the personality values of the Indonesian people is important, because;

- (1) the principle of decency as the basis for considering the formulation of an innominaat agreement (onbenoemde overeenkomst),
- (2) the principle of decency can be used as an analytical tool to evaluate the occurrence of defaults in agreements, and
- (3) as a tool for resolving agreement disputes

2. RESEARCH METHOD

The type of this research is normative juridical research (*recherche juridique normative*) amalgamated with library and policy research. In general, normative licit research or literary law is carried out by examining literature or secondary data. Normative licit research is research that is predicated on literature studies or laws and regulations. The purport of this research is to find a solution after finding and formulating licit arguments by conducting an analysis of the quandaries that are the object of research. Peter Mahmud Marzuki described the purport of

conducting normative licit research, namely to answer and solve the licit quandaries under study after obtaining the congruousness of cases/phenomena with licit rules, licit principles, and subsisting licit doctrines. (Muhammad, 2004) If there is a true or false statement, it is only based on the suitability of the case with the legal basis, either the principle or the articles in the laws and regulations, without having to collect data in the community as is done for empirical legal research. (HS & Nurbani, 2014)

The statute approach is an approach that is carried out by examining and analyzing laws and regulations that are related or have a relationship either directly regulating or not directly involved with the legal issue being studied. The review of statutory regulations is not only on regulatory articles but also includes principles, synchronization/compatibility, etc. (Marzuki, 2014)

3. RESULTS AND DISCUSSION

Business ethics is rudimentally a guide to distinguish between right and erroneous, especially providing cognizance to any business actor to consider in making decisions cognate to involute moral issues. However, in authenticity, not all businesses have implemented business ethics felicitously, most business people ignore and often contravene subsisting business ethics.

The consequentiality of applying Business Ethics as a consideration in determining fairness on the principle of decency in contracts

According to the research of Millah in 2023, the presence of the concept of decency in the agreement demonstrates that the parties' positions, rights, and obligations are well balanced, and the principle of decency is a legal relationship parameter that is established by a sense of decency. The application of the principle of decency in an agreement is guided by fairness public both in terms of the clauses contained and the implementation of the agreement so that unlawful acts arise in the future while still referring to the applicable law. (Millah, 2023) Arrangements or licit substratum cognate to the application of the principle of decency can be visually perceived in Article 1339 of the Civil Code which states that "Acquiescents are not only binding for things that are expressly verbally expressed in them, but additionally for everything that according to the nature of the accedence is required by decency, custom or law." Predicated on this article, there is no further or more consummate explication on the principle of decency, so that the principle of decency is considered as an open or obscure standard, in the sense that its form is abstract and not concrete, so that the principle of decency in the German licit concept is "Generalklausen" or an open norm. if interpreted broadly. There is a concept cognate to the nature of transparency of the principle of decency as a consideration in contracts, namely

openness as an instrument for the development of equity in dealing with cases, because the legislators deliberately made it an open norm. However, even though due to the lack of pellucidity, querying the legitimacy of the court's decision because its considerations are predicated on the principle of decency is erroneous, given the provisions in Article 1339 of the Civil Code which states explicitly regarding the application of decency in acquiescents.

The concept of fairness that can be interpreted as "plausible" is not enough to be utilized as a vigorous consideration in interpreting a contract because it will be very subjective from the perspective of the pertinent parties' interpretation, according to him, something that is plausible, acclimated to each case. Because rudimentally the principle of decency can only be applied to concrete cases. (Bchart, 2020) It is not infeasible to interpret the fairness level in a contract but it is arduous to do so. However, it is still possible to do this in cases that have a fairly low caliber of fairness, such as in the case of investment acquiescents containing debts whose fairness level needs to be queried. Because the concept of fairness has an open nature, by considering the compatibility of the concept of decency utilized with the case, the authors will probe for fundamental theories and concepts that can become the substratum for consideration regarding the principle of decency and can narrow down the concept of fairness. The licit vacuum cognate to the esse of mixed acquiescents makes judgments in resolving disputes predicated on personal interpretations which are sometimes subjective regarding the construal of the principle of propriety. The concept of fairness in the principle of decency is not intended by the parties, but the revelation of what society believes to eschew the subjectivity of judgment. (Dimatteo, 1997)

Predicated on the concept of fairness according to DiMatteo, the inscriber will certainly optically canvass the caliber of fairness predicated on ethics in business. Business people need veracity, prudence, integrity, fairness, veneration for contracts and so on. Many business ethics issues revolve around the principle of veracity. Veracious business people seek to obtain value through productive actions and voluntary exchanges rather than by coercion or wile. Veracity designates sticking to authenticity. Veracious business people do not profit from other people's expenses. (Loan, 2016) Thus the openness of the concept will cause quandaries when it will be taken into consideration in considering a dispute. Because of this, the authors make business ethics a balancing concept of fairness in a business, especially in business contracts. In business ethics, there are sundry types of principles that can be utilized as benchmarks in determining the caliber of fairness in a business contract, including:

A. The principle of liberation (autonomy) or free will

Liberation is widely accepted as a human right in gregarious life. In general, the right liberation can indeed support competitive advantage, across sundry measures of financial

performance, innovation, and long-term prosperity in business. Autonomy is a principle that addresses the concept of independence. This is the essence of the principle of liberation which sanctions individuals the liberation to cull and act. Business people who are unable to make competent culls, such as children, and some individuals with noetic disabilities, should not be sanctioned to make decisions that could harm themselves or others. Thus in business ethics, liberation is consequential, but don't obstruct the fascinates of other people or others. Because innovation often occurs, especially in business, but it is not permissible to do things that are contrary to laws and regulations.

B. The principle of veracity

Veracity is the quality of being veracious and trustworthy because telling the veracity. Being veracious denotes telling the veracity all the time even at personal risk to yourself. Veracity in business is withal kenned as ethical demeanor in business. The principle of veracity is very pertinent and absolutely compulsory in the business world. Veracity is the key to prosperity for business people to maintain their business in the long term in a business world profuse of profound competition. Keraf verbally expressed that there are at least three reasons why the principle of veracity is very germane in the business world, one of which is cognate to the case under study is that veracity is germane in consummating the terms of accedences and business contracts. When making acquiescents, veracity is very consequential to determine the future of business relationships and the business continuity of the parties to the accedence. Because of course the other party will no longer want to work with the fraudster if the party commits an artifice in carrying out the terms of the accedence. The party genuinely engenders eradication for their own business by committing fraud. In additament, the formulation and matters regulated in the contract are withal taken into consideration.

C. The priciple of justice

Everyone must be treated equipollently according to equitable rules and criteria that are rational, objective and accountable in accordance with the principles of equity. This is in accordance with Adam Smith's verbal expression regarding the principle of equity. Keraf quoted Adam Smith as saying that the most rudimental principle of equity is the principle of "no harm", especially in terms of forfending the rights and intrigues of others. Deference for human rights and dignity is the substructure of this principle. The principle of "no harm", according to Adam Smith, is the most rudimentary and minimal requisite for human life and gregarious interaction. Any kind of gregarious interaction cannot be initiated or perpetuated without this fundamental principle. Because someone who cannot

stop hurting the rights and fascinates of other people will not optate to interact convivially with them. It is arduous to believe that good and ethical business practice would subsist without these principles. In any business relationship, neither party may harm the other.

If it is associated with the concept of fairness, there are the principles of fairness (redelijkheid) and fairness (billijkheid), both of which are related to one another. Fairness, of course, cannot be seen without considering the concept of justice. Fairness can be considered as a minimum standard of fairness. However, it cannot be considered that a fair business agreement is a completely fair business agreement. The presumption of not harming the other party is a form of reasonable justice that cannot be justified, sometimes a business agreement will indeed cause harm to the bound party, an example of a business loss. So what needs to be considered is whether the form of loss imposed on the parties is something that can be considered reasonable according to society.

D. The principle of mutual benefit

The principle of displeased equity if equity according to Adam Smith is not to harm other parties, this principle goes hand in hand with the principle of equity. The designation of equity in business ethics cannot be interpreted directly, but if it is linked to the principle of mutual benefits, it can be interpreted that the principle of equity by not harming other parties can withal denote that it is not sanctioned to cause harm to one party. Because the principle of mutual benefit additionally designates that it is not permissible to impose losses on one of the parties.

The principle of positive mutual benefit demands equipollent to the principle of equity, that no party is harmed by their rights and intrigues and all parties strive for mutual benefit. This principle largely takes into account the nature and objectives of the business. Profit is the main goal of business activity. Manufacturers want a sizably voluminous number of customers to buy or utilize their goods. Customers want remuneratively lucrative goods and accommodations that are affordable and of high quality. As a result, businesses must be run in a way that benefits both consumers and engenderers simultaneously. In other words, business must be run in a way that benefits all parties involved in business activities. This is injuctively authorized by the principle of mutual benefit.

E. The Principle of Moral Integrity

Integrity emanates from the Latin word "integrity" which denotes wholeness or unity. This shows that to achieve integrity, something must be whole and not divided. Moral integrity is a form of adherence to moral values and principles. If the principle of moral integrity is cognate to business, moral integrity can be interpreted as a business that adheres to moral

values and principles holistically. According to Hafoon, a person with moral integrity will directly commit to actions that are 'right', ideals that are 'desired', or principles that are 'fair'. Regarding the criteria for judging what is morally right, many refer to the objective standard that integrity is verbalizing and acting according to values that are morally justified on objectivist grounds. (Schöttl, 2015) Internal demands for business people to run their business while maintaining the good name and reputation of their company by applying the principle of moral integrity. Business people are required by this principle to conduct business in an ethical and trustworthy manner. In other words, this principle is a calling for excellence and pride from within the business.

F. Other principles

In addition to the principles put forward by Keraf, there are other principles that are still not included in the principles of business ethics. According to Sumarsid and Winarso, there are other principles besides the 5 principles above: (Sumarsid & Winarso, 2020)

- The Principle of Unity:
Unity can be interpreted if business ethics is not only optically discerned from an economic perspective but withal from political and convivial aspects because fundamentally it is a homogeneous unit. This betokens that every aspect is cognate to one another as a substructure for business ethics.
- The Principle of Equilibrium:
In contrast to the principle of justice put forward by Keraf, the principle of equity according to Sumarsid and Winarso is equilibrium which denotes balance and does not utilize the concept of "no harm". According to him, equity is balance, business people must act fairly (balanced) to the parties involved in their business. The concept of balance prioritizes how both parties are in an equal position both in terms of rights and obligations.
- The Principle of Responsibility:
This principle is a principle that circumscribes the principle of autonomy/principle of liberation, because rudimentally liberation cannot be arbitrary. Every action taken by business people additionally needs to be accounted for.

Freedom of contract and restrictions in Business Ethics

In general, liberation is a form of the most rudimental human rights. Liberation is a consequential component of business ethics, but this liberation must still fixate on the rights of other parties, namely by not harming collective fascinates. Individual intrigues can be in sundry

aspects. In business ethics there is the principle of liberation, while the perpetrators utilize the term "autonomous business actor" which can be interpreted as an individual who is plenary cognizant that the decisions and actions taken will be in line with or contrary to certain moral standards or values. Albeit their culls and actions conflict with certain moral standards and values that apply in society, autonomous business people understand and accept this. The facility of business actors to act independently and ethically is not ensured by liberation predicated on autonomy. A business person can do whatever he wants regardless of whether his activity is good or not. Conversely, business actors engage in unethical demeanor as a result of the freedoms they are given, such as the liberation to make business contracts that benefit themselves. Autonomous business actors ken and are cognizant of their actions, are in liberty to carry them out, and are withal responsible for their actions. (Keraf, 1998) In this principle liberation does not mean the arbitrariness of business actors so that the consideration of this principle does not only rely on liberation (including liberation of contract), another aspect that requires to be considered is how a good business relationship between Engenderer-consumer, Investor-investee, Creditors-debtors, and so on can be intertwined predicated on subsisting business ethics. The concept of liberation in business ethics withal needs to be linked to other principles in order to evade imbalances in business relationships.

The following is an analysis of the concept of liberation of contract from Article 1338 paragraph (1) of the Civil Code: "All accedences made licitly apply as laws to those who make them." Fundamentally an accedence has binding power because of the principle of "Pacta Sunt Servanda", the expression Pacta Sunt Servanda designates, simply, that the pact/acquiescent must be venerated. Pacta Sunt Servanda if translated from a linguistic perspective, the word "Pacta" is an entity which denotes a plural accedence emanates from the word "Pactum" while "Sunt" is the result of conjugating the verb (to be) for the third person plural pronoun, "servanda" is verbs in the gerund form can mean to be accoladed/venerated. This principle is often additionally called the principle of licit certainty for the parties who are bound as can be visually perceived in article 1338 paragraph (1) of the Civil Code, on the other hand in the Civil Code in France which withal contains the principle of pacta sunt servanda in article 1103. In the rules of civil law in Indonesia and in France, the two articles state that the acquiescent/contract that the parties have made supersedes it as law. Judges and third parties will certainly appreciate the subsistence and substance of the acquiescent that the parties have concurred on according to the law. (HS, 2017)

Predicated on the principles of business ethics that have been explicated antecedently, the author can formulate designators of what are considered as infringements of a business ethics in

the form of an essentiality that requires to be carried out as a form of implementing business ethics:

- Business actors are autonomous, which designates they are free and cognizant of their every action,
- Business people must do business veraciously and are not sanctioned to capitalize on other parties' losses,
- Business actors are not sanctioned to harm other parties and predicated on balance in business cooperation,
- Business actors must prioritize mutual benefits (the parties involved),
- Business people must adhere to the values and moral principles that subsist in society,
- Business actors not only make economic aspects in implementing business ethics but withal gregarious and political aspects,
- Business actors must be fair in every aspect by prioritizing a balance between business actors and other parties,
- Business people must be held accountable for their actions.

Resoluteness Liberation in doing business, namely in the form of liberation in contracting, of course, remains annexed to everyone. However, business people in engaging in business contracts need to consider the material content so as not to contravene the provisions in Article 1339 of the Civil Code regarding the implementation of the principles of custom, the principle of decency, and the law. The principle of decency which from the commencement had an open meaning has now become pellucid because of the interpretation of the concept of fairness predicated on business ethics. Thus it will appear more pellucid if one of the parties breaches the principle of decency both at the pre-contractual, contractual and post-contractual stages.

4. CONCLUSION

Because of the openness of the construal of the concept of fairness in the principle of decency makes its application subjective without any designators of consideration in determining fairness in business contracts. So that there is a desideratum for a categorical explication regarding this matter. Business ethics have an influence regarding the interpretation of the principle of propriety in business contracts. Both have a correlation so that business ethics can be utilized as a substructure in considering fairness in contract accedences. Moreover,

business ethics is more concrete and can be utilized as a reference in the formulation of accedences.

The concept of liberation in contracting and adhering to the principle of *pacta sunt servanda* cannot ascertain that the contract formulated together is in accordance with the principle of decency. Liberation of contract can additionally be a loophole for fraud to arise if implemented without any restrictions. As in business ethics, even though there is a principle of liberation, there are other principles that limit it, such as the principle of veracity, the principle of fairness, the principle of mutual benefit, the principle of moral integrity and so on. Contract law additionally has circumscriptions on liberation of contract, one of which is Article 1339 of the Indonesian Civil Code.

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