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Legal Protection for the Parties in an A Agreement (Civil Law Studies)

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Abstract Civil law is a branch of law that regulates relations between individuals or legal entities in terms of their personal interests. In civil law, a contract is considered a legal agreement between two or more parties who give each other promises to do or not do something. This research uses normative methods with qualitative research methods which use primary legal material sources, such as laws and the Criminal Code as well as secondary materials, such as books and journals. Contract law is an agreement between two or more people which creates an/an obligation to do or not do a specific thing. There are elements that are considered valid and binding. This includes the existence of an agreement from two or more parties, the desire or aim of the parties for legal consequences to arise, the legal consequences of the agreement only bind the parties and do not bind third parties, and certain agreements must be made in comply with the law. There are legal principles in contract law, including freedom of contract, consensualism, and pacta sunt servanda. The conclusion is that contract law contains elements that are considered valid and principles in making agreements as well as the influence of written evidence in making a contract which provides legal certainty and as proof of the agreement.There are two main doctrines in contract law, classical and contemporary doctrine. The classical doctrine emphasizes the legal certainty to be the core of legal issues in contract law. The doctrine noted that every single purpose of parties should be stated in contract in order to put binding eject to the parties. It also distinguishes the concept of breach of contract and tort. The petition for breach of contract should be based on the concept of breach of contract instead of tort. In reverse, the contemporary doctrine emphasizes the justice and appropriateness aspects in a contract. It recognized the contract as the whole process held by pre-contractual phase, contractual phase, and post-contractual phase. Hence, it realizes the existence of impact toward promises stated by one party to others which is distinctly related to the classical doctrine that neglects the impact of pre-contractual. The contemporary doctrine eliminates the distinction of breach of contract and tort as the basis of the lawsuit because breach of contract was the specific genus of tort.

Keywords: law, justice, agreement, legal

1. BACKGROUND PROBLEM

Introduction to Contract Law in Indonesian Civil Law Contract law is an agreement between two or more people and creates an obligation to do and also No to do a thing that is special. According to Y. Sogar Simamora, said that the main attention of proportionality is balance in distribution is not quite enough answer. According to Ian McLeod it gives an example about use principle of proportionality in the Atalanta case (1979), where law requires one of party/partner in giving guarantee To ensure implementation of a contract or agreement. In the Civil Code, a contract creates a behavior with binding party himself. Contract law, as a rule related laws with implementation agreement or agreement. According to C. Asser, the characteristics important from order are existence connection law between the parties, where the connection covers the rights (performance) and obligations (consideration) exchanged by the parties One each other. In general book third Civil Code No in a special way explains the meaning of engagement. But experts disclose its meaning

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Alone about task This, among other experts, the is Mariam Darus Badrulzaman, who provided understanding task as a "(legal) relationship" that is created between two people or more and lies in the field treasure object Where a party entitled on achievements and other parties are required to give performance that". In Indonesian law, a contract in particular, namely Burger King Wetboek (BW) is called overeenkomst which means contract in Indonesian translation. One of the reasons Why agreements made by many people are not always able to be equated with agreement is Because agreement according to Article 1313 of the Civil Code No contains the word "agreement" written". In the definition of contract in Article 1313 of the Civil Code it says, only mentions an action by which one person or more is tied to one person or more. The contract law arrangement system in Indonesia is an open system which means that everyone has the right/freedom to make/make an agreement whether that is already set up in the Constitution or those that have not been set up in law. In Article 1338 paragraph (1) of the Civil Code give a freedom to the parties to: 1. Make an agreement and also No make an agreement. 2. Implement or stage agreement with anyone / other party. 3. Determine Contents from an agreement, implementation, and requirements. 4. Determine a form of agreement, namely written or oral

Man is a social creature.Its summarized in a social universe Which existence requires interaction with each other. Interaction between fellow men give birth to dynamics Which A little Lots related to making an agreement (contract), Good agreement Which nature economical (in business field) and non-contractual agreement economical, for example in agreement workmanship a social religious project.

Realized interactions in an agreement Which agreed by two parties or more born from existence need each other complete One each other. Nature man is He No can live Alone, but agreement Which nature economical (in business field) and non-contractual agreement economical, for example in agreement workmanship a social religious project.

Realized interactions in an agreement Which agreed by two parties or more born from existence need each other complete One each other. Nature man is He No can live Alone, but needs help or involvement of other parties in realizing his life goals. Primordially, humans have to practice agreement - simple agreement within the framework of fulfilling everyday needs, for example exchange goods (goods exchange).

In practice, in making and carrying out an agreement which gives birth to a contract (agreement), problems are often found. The problem in contract can appear when Wrong One party No operate a performance or obligation in accordance with Which agreed or existence

dispute about meanings editorial in contract. The problem that is rooted in two matters often causes loss on one of the or second split parties. At the point this is it happens dispute between parties Which to tie up themselves on the contract.

Law contracts as part of civil law experience development that is so rapid. One of the aspects that really stands out in the development of contract law is the doctrine of contract law. In the context of scientific contract law studies, contract law doctrine can be differentiated into two, namely classic doctrine and contemporary doctrine. Classic contract law doctrine emphasizes more on normative dimensions of contract law. Characteristics of classic doctrine is maintaining status quo rules and/or legal rules even though the case context has changed. Temporary That, contemporary doctrine emphasizes on efforts to uphold substantive justice, instead of being trapped in the status quo of procedural justice. For to uphold substantive justice, rule and/or rules law Which is considered to be shackle abandoned and switch to implementation of the law that puts forward a contextual approach. In here, room for freedom of thought for jurists and the parties get the place, because the emphasis is How to uphold substantive justice.

The most important issue in contract law protection is how to restore rights for parties which are harmed. Answer it it turns out No as simple as Which imagined. Lots of draft wandering around in contract law each of which has different context and implications, for example draft action opposition law, default, condition force (force majeure), principles engagement, And and so on. This paper makes an effort to expose, as far as the writer's ability, in a comprehensive draft protection law in contract law.

2. SUMMARY PROBLEM

Based onLots of draft wandering around in contract law each of which has different context and implications, for example draft action opposition law , default , condition force (force majeure), principles engagement , And and so onso the formulation of the problem is as follows:

a. Doctrine law in legal contract

b. Protection law contract in perspective law contract in perspective civil law;

3. RESEARCH METHODS

Study This uses a normative study method, the normative method is an approach in studying law that focuses on the analysis and interpretation of applicable legal norms. This method is based on the assumption that law is a system consisting of rules set by the legal authorities, and law research must understand and apply these norms. In the normative method, researchers or legal experts will do analysis to legal texts, such as laws, regulations, court decisions, or other law documents. They will identify the legal norms contained in texts and analyze the structure, context, and meaning of these norms. Normative methods can be used in various law study contexts, including in making legal decisions, analyzing the impact of law from a policy or regulations, or in evaluating compliance to law in a specific situation. The purpose is To identify applicable legal norms in the situation or the problems analyzed, and classify and apply it in a logical way. The research also uses qualitative and primary data. Qualitative research methods is a research approach used To understand phenomena or problems in a deep and complex way, with a focus on meaning, perception, and individual interpretation. Qualitative research methods involving a series of systematic steps For understanding phenomenon or problem in a way in depth . In the qualitative study method, several things to do, such as understanding the research context, data collection, and writing research reports. Qualitative data analysis process involves understanding deeply about the data collected. Next is primary data research method, primary data research method is that which has been processed in more detail and in-depth which is then served repeatedly by primary data collectors, such as Laws and Civil Code. Secondary data can also be said to be the data obtained from studies bibliography, such as books and journals . Uses of secondary data are For search for initial data or information as a basis for theory or law, get limitations, definitions, and meanings of a term.

4. RESEARCH RESULTS AND DISCUSSION

Man is a social creature.Its summarized in a social universe Which existence requires interaction with each other . Interaction between fellow men give birth to dynamics Which A little much is related to making an agreement (contract), Good need help or involved other party in realizing his life goals. Primordially, humans have to practice simple agreements within the framework of fulfilling everyday needs, for example exchanging goods (goods exchange).

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The most important issue in contract law protection is how to restore rights for parties which are harmed. Answer it it turns out not as simple Which imagined . Lots of draft wandering around in contract law each of which has different context and implications, for example draft action opposition law, default, condition force (force majeure), principles engagement, And and so on. This paper makes an effort to expose, as far as the writer's ability, in a comprehensive draft protection law in contract law.

Introduction to Contract Law in Indonesian Civil Law Contract law is an agreement between two or more people and creates an obligation to do and also not to do a thing that is special. According to Y. Sogar Simamora, said that the main attention of proportionality is balance in distribution is not quite enough answer. According to Ian McLeod it gives an example about Usage principle proportionality in the Atalanta case (1979), where law requires one of the party/ partner in giving guarantee To ensure implementation of a contract or agreement.In Civil Code , contract creates a behavior with binding party himself. Contract law, as a rule related laws with implementation agreement or agreement. According to C. Asser, the important characteristics of the order are the existence of a legal connection between the parties, where the connection covers the rights (performance) and obligations (consideration) exchanged by the parties One each other. In a general way book third Civil Code No in a special way explains the meaning of engagement . But experts disclose its meaning Alone about task This , among other experts, the is Mariam Darus Badrulzaman , who provided understanding task as a "(legal) relationship" that is created between two people or more and lies in the field treasure object Where a party entitled on achievements and other parties are required to give performance that ". In Indonesian law, a contract in particular, namely Burger King Wetboek (BW) is called with overeenkomst which means contract in Indonesian translation. One of the reasons Why agreements made by many people are not always able to be equated with agreement is Because agreement according to Article 1313 of the Civil Code No contains the word "agreement" written ". In the definition of contract in Article 1313 of the Civil Code says, only mentions an action by which one person or more is tied to one person or more. The system for arranging contract law in Indonesia is an open system which means that everyone has the right / freedom to make / make an agreement whether it is already set up in the Constitution or those that have not been set up in law. In Article 1338 paragraph (1) of the Civil Code give a freedom to the parties to:

1. Make an agreement and also No make an agreement.
2. Implement or stage agreement with anyone / other part.
3. Determine Contents from an agreement, its implementation and requirements.
4. Determine a form of agreement, namely written or oral.

Consequences law from a contract in essence produced is existence connection law from a engagement, in form rights and obligations. Fulfillment rights and obligations are one of the form consequence laws of a contract. So the issues and obligations That No more than reciprocal relationship between the parties. Obligations from party First is right from party

second and vice versa obligations party second is right party First . In this case, the result law is only in implementing the contract That Alone.

In fulfilling / implementing an agreement / contract with well, first of all need For in a way quickly and clearly in determining Contents about a contract or determining rights and obligations of each party . Usually, people enter into contracts and have not yet set / set in a way thorough their rights and obligations . For example, when sell buy , only determine the goods purchased , type , quantity and price. Without There is information / given about place delivery goods , delivery costs, place, etc. According to Article 1339 of the Civil Code, the agreement ties Not only For things that are firm mentioned in the agreement, but also for all something that is required (enforced) by propriety, custom and law Because characteristic agreement that. There are three (3) sources of norms that fill an agreement that are laws , customs and propriety , according to Article 1338 paragraph 3 of the Civil Code every agreement must be implemented with good faith . The meaning of implementation with faith Good that is an agreement The elements contained in a contract must be considered valid and binding According to Indonesian Civil Law.

In the contract there are elements that must be there to be considered valid and binding according to Indonesian civil law. There is an agreement between two parties or more involved. This means that work together as run through agreement can arise from two or more people who have the desire to form an agreement and reach agreement between them. Although only one person does agreement, contracts can still occur even though he acts alone and represented other parties. In the process of making a contract, the agreement must be approved by all parties involved. However, it is the will of the parties just No Enough To make the contract valid and binding. There is a desire or objective from the parties who caused it consequence law. When making an agreement, no always promise the will own consequence law, a promise made by someone will only cause social obligations. In practice, there is a difference between moral obligation that does not have its own legal implications and which it produces legal obligations. There is also the concept of Gentlemen's Agreement which results in moral obligation and not in a way that has direct legal implications. Apart from that, there is also a letter of intent that provides the basis and structure for the agreement that will be achieved by the parties. In addition, the agreement also requires element interest for One party or balanced load between the parties involved. Consequence law from A agreement only binding on the parties involved and not applicable for third parties, and No may cause loss for third parties. Form of agreement in general freely determined by the parties. However, there are a number of agreements certain regulations regulated by law For made in certain forms. Law confirms that in cases said , the

deed becomes condition absolute For the occurrence of action law mentioned . Example agreement that must be done through deed Notary Public including grant with exception giving things moving in nature substantial , letter billing debts that are intended in a way direct from hand to hand , stance company limited , guarantee fiduciary , and separation and division inheritance in situation certain.

The Basics of Contract Law in Indonesia, business activity naturally must be based on positive laws that apply. With made by him an agreement can be shown that an engagement between related parties own a valid and enforceable bond made into proof that engagement That is valid in court . In the arrangement agreement, there are the legitimate rules that are considered as parent arrangement agreement from For giving rules and regulations underlying formation, implementation, and interpretation of contract. There is the principle of freedom which means in making an agreement of the parties free To determine / make Contents of an agreement during No clash with regulatory legislation. This is because Book III of the Civil War Wetboek (BW) about engagement adheres to an open system which allows the parties to arrange Alone connection the law.

Principles Principles consensualism oblige / require the parties To reach an agreement or agreement in line about matters main in a the agreement they are made to create, based on Article 1320 in conjunction with Article 1338 of the Civil Code. This principle states that an agreement can only be formed with existence agreement in an oral way between the two sides parties, because the most important thing in an agreement is existence conformity will (meeting of minds) which is the main core of contract law. The word "agreement" refers to individuals who respect commitment and responsibility in transaction law, a person who has good intentions and adheres to the principle of "words and deeds are one".

Parties involved in a contract have been considered as people who behave with ethical heights then to weave a gentlemen's agreement. However, besides emphasizing the word, another aspect of Article 1320 of the Civil Code is considered as valid requirements in a contract.

The principle of pacta sunt servanda or principle of Power tie in a contract, meaning that agreement that has been made applicable as regulation for the parties who have made it, according to Article 1338 paragraph (1) of the Civil Code. This is show that besides the obligation To obey rule law, the parties are also obliged To obey and carry out the agreement that has been agreed. In Canon Law, recognizing principle nudus consensus obligate, pacta nuda servanda sunt containing understanding that an agreement (conformity) will) no need to vow with truly after swearing For tell the truth or activity certain. In the context of this, nudum

pactum, namely an agreement that is only based on agreement will or letter will, already fulfills requirements and binding Because Already existence agreement will / agreement testament.

In the making contract must own principle of good faith which refers to the provisions of Article 1338 paragraph (3) of the Civil Code in question with good faith that implementation of the agreement must be done with honesty and integrity that exists in someone's heart and mind. Important understood that draft faith good substantial in Article 1338 paragraph (3) of the Civil Code No only requires interpretation grammatical , meaning faith Good is only relevant at the stage of contract implementation . Stage pre-contractual, contractual, and implementation contract everything must include understanding faith good . In 1320 Burgerlijk Wetboek (BW), things that determine legitimacy whether or not in an agreement made by the parties, constitutes principle condition condition of legitimacy of an agreement . So that a valid contract must fulfill four conditions, namely as follows:

1. agree with those who bind themselves (de toestemming van degenen die zich verbinden). party willing to reach settlement in accordance with objective the main thing that is stated in terms and conditions agreement;
2. skills For making an engagement (de bekwaamheid om eene verbintenis aan tegaan). A capable person according to law is a person who is at least 21 years old, previously person Not yet Once married, people who have married before 21 years old, and not including married children, as regulated in Article 1330 of the Civil Code.
3. something main problem certain (een bepaald underwerp). Certain things show that an object promised in agreement , or at least the type of object in question in agreement;
4. A because it is not forbidden (een geoorloofde oorzaak) shows that No contradiction with law, morality, or general order.

There is a condition for the party that made a letter agreement besides the criteria mentioned above, one of them must have its own reasons healthy. Someone No can accept not quite enough answer moment make agreement If they are No Healthy mentally . Because they are Not yet adults and treated The same as children under age , those below guardianship No can with free manage treasure the object . Therefore that, the person who fulfills condition chapter That No can stage agreement. This is Because everyone who holds an agreement must be obliged, have the ability For that, and willing to be accountable his actions influence Absence of Written Evidence in Making A Contract To Proof and Interpretation Contract in Indonesian Civil Law.

Can it be said the agreement , that a civil connection agreement has there is, if the agreement That causes action law between two parties or more . Rights and obligations that arise for second split party become clear with existence of the agreement in question For giving clarity of law to the parties . Based on Article 1313 of the Civil Code that "the Agreement namely an action with which one person or more to tie up self with a or more than others, not determined in a way clear about “agreement” written ”. Oral agreement only requires the parties For disclosing their oral agreement whereas written agreement requires real action done in written form (contract).

1. Fixed Time Work Agreement. This is set up in Article 57 of the Employment Law Number 13 of 2003, which states : "The employment agreement Work For a certain time made in writing as well as must use Indonesian language and letters Latin ”. In the quote chapter the contains the definition that If agreement is made in a way No written so will be contradictory and cause an agreement stated as agreement Work For time No certain.
2. Agreement transfer right on shares exercised with transfer rights tool. This is set up in Article 56 of the Limited Liability Company Law Number 40 of 2007.
3. Agreement grant must be in written form in written notary, except agreement grant right on land (vide Article 1682 of the Civil Code).
4. Agreement diversion secured receivables with mortgage require document written notarized (vide Article 1172 of the Civil Code).

The contract which is proof written must anticipate obstacles that may arise in the future and it is also said that task contracts , among others.

1. Function of Law and Statutes. This is referring to Article 1338 BW, all the agreement valid is Constitution for those who make it that is used For show that agreement That is useful as foundation of the law that governs rights and obligations , what is allowed what the parties do and what they do not may be carried out by the parties . If one party violates (default), then other parties so other parties can demand his rights.
2. Function as preventing the emergence of problems in the future. This is key To prevent violation of contract. Agreement the give sanctions for parties who do not obey the agreement said , so that the implementation connection law can walk with fluent.

Negligence the violating party contract can be considered as negligence or violation contract. Definition of delay payment Alone is If the debtor does not fulfill his promise, then he is considered bankrupt. Form from default among others:

1. Not giving what was promised
2. Doing what was promised, but not perfect
3. Deliver what was promised but no exact time
4. Do what you think contract No allowed.

In reality agreement made in a way oral without through agreement in writing Good through agreement with deed authentic or agreement lower hand, still acknowledged on agreement of the parties and have strength law, but own weakness that is strength low evidence. For comfort, certificate must be made in a written way, so that it can be used as a reference If problems arise between the parties.

Protection law

Protection law is a fundamental element inlaw. He regards with effort uphold and restore civil rights subject to certain laws. Therefore, protection law can be interpreted as an effort to uphold and/or restore civil rights subject to certain laws.

Revelation The Sasongko defineprotection law as an action protection or action protect certain parties Which intended For certain parties with use of certain methods. From the definition that, then There are three elements in protection law, that are:

a. Element action protect ;
b. Element party Which protect ;
c. Element method or mechanismprotect . (Revelation Sasongko , 2007)

Concept of legal protection Actually is draft Which has long been known in legal studies. Because basically in every civil connection potential brings up problems, so draft protection law is a condition sine qua non in draft civil law. Protection law involving Lots means And institution law . Means law Which is used in protection law among other is legislation, besides naturally basis - principle related laws with civil law. Legislation And principles Which perspective is wider . Salim HS et al. to put forward that If referring to on definition agreement which was put forward by Van Dunne that agreement is a connection law between two parties or more based on agreement For cause consequence law, so contemporary doctrine sees agreement in understanding for that matter solely, but deeds previously or Which preceded it (Compare) with Salim HS).

Contemporary doctrine has introduced existence three stages in make an agreement, that is:

a. Precontractual stage, that is the process of bargaining or negotiation by parties Which will to tie up themselves in agreement;
b. Stage contractual , that is existenceconformity statement will from for party Which to tie up self in agreement ;
c. Yeshappiest contractual, namely the implementation of the agreement by the parties based on good faith (compare with Salim HS).

One of definitions Which Once put forward related to doctrinecontemporaryis the definition ofput forward by Charles M. Knapp And Nathan M. Crystal, as quoted by Salim HS et al (Compare with Salim HS). Charles M. Knapp and Nathan M. Crystal define contract (contract) as follows:

> "an agreement between two or more persons – not merely a shared belief, but a common understanding as to something that is to be done in the future by one or both of them"

Translation free :

"agreement between two parties or more, agreement Which Not only involves trust in between them, but also understanding about things Which promised And implemented on the time to come, either by one of the parties and also a second split party"

Definition the bring change perspective in understanding agreement. Definition thus cause stage -precontractual stage (p re l iminary negotiation) in which contained promises (promissory) tie And bring consequence law for for party Which do negotiation. In line with the matter, Suharnoko (Suharnoko, 2008) confirms that modern contract law doctrine tends to abolish formal conditions for legal certainty and more emphasize fulfillment of justice. If in the pre-contract stage of one of the parties to resign without reason Which can be justified according to law or according to propriety and cause loss on other parties, then matter That brings legal consequences for the party who withdrew themselves and mandatory replace losses suffered other party.

Court in the American Union has developed the doctrine of promissory estoppel For overcoming situations Where agreement Not yet fulfilled certain formal conditions (for example conditions about certain matter or certain objects), but one of their parties Because trust and put hope to promises Which party given against in process negotiation do action certain law, such as do investment or planting capital as condition introduction from will agreed upon an agreement between them. Implementation of the doctrine of promissory estoppel can be seen for example in the case of HoJman opposing Red Owl Stores (1965) 26

Wis.2d.683,133 NW.2d.267. In the case of the , for the party negotiate about the possibility of giving a franchise from Defendant a supermarket company that operates a number of shops in various regions to Plaintiff . In the negotiation process, Defendant promises to build a store in Chilton and fill it with goods merchandise. For sale by Hoffman. If Hoffman is willing to invest money as big as USD 18,000. Because of belief with promise said, then Plaintiff (Hoffman) buy A building in Chilton and rent a House place to stay For himself along with his family in Chilton. Will but , Then Defendant withdraws his promise And requests investment amount Which is bigger and Hoffman state Not able to fulfill the request Which on finally contract is negotiated previously No comes true . The Wisconsin Supreme Court adopted view law modern contract with ignore condition certainty law for the sake of achieving justice Which substantial And decide that Plaintiff entitled get change on loss Which suffered from Because believe And put hope on promises Plaintiff For give contract franchise (franchise contract) (Suharnoko, 2008).

Matter interesting in deciding the is replacement loss Which Court sets is real loss (reliance loss) due to No existence of faith Good from The defendant who has given promise to Plaintiff in negotiation contract franchise (franchise contract). Court set change make a loss No on change the emergence of profit Which expected (expectations loss) However loss real (reliance loss) due to in a way normative of course Not yet There is agreement, However in a way factually there is an action that is contradictory with propriety, that is violated promises Which has delivered and because promise That other parties expect something However No filled And arise real loss on party Which promised (Suharnoko, 2008).

Contemporary contract law doctrine seems to want to bridge the abyss between consideration in agreement with promissory or promises in pre contract . Consideration is performance certain things agreed upon by the parties in agreement (Suharnoko, 2008). Bibliography considerations national law , consideration known term performance And If referring to on Chapter 1320 Civil Code , so consideration matched the meaning with “object certain" Which promised for parties . The absence of normative strength from an underlying agreement a promise or promise overcome with will realize substantive justice on loss Which suffered by party Which promised , instead of stuck on principle certainty law Which is rigid and unable to accommodate development (dynamics) in modern contract law.

2. Protection law contract in p pleasure rsp pleasure kt at fh towards k towards mk pleasure ntrak Contemporary

a. Protection law againstagreement

Indonesian civil law knows two types of engagement, that is engagement which is born from agreement and engagement which is born because set by the Constitution. The engagement Which was born from agreement is the bond that was born from conscious effort from two parties or more For to tie up self in an agreement with notice terms and conditions valid an agreement as set up in chapter 1320 Criminal Code . Temporary That, engagement Which was born Because determined by law is the bond that was born Because law - law sets i there, between other legal status (action opposing law) And legal system (action appropriate with law) which includes warning (represent in a way voluntary For looking after other affairs), natural verbintenis (engagement nature), and overcoming begging (payment that is not required) (Provision about matter that can be seen in Chapter 1233).

Civil disputes can be understoodas a circumstance that arises consequence of existence inequality between rights and obligation parties involved in a commitment/ agreement . Dispute appears, besides Because existence inequality between right And obligation meant, Also due to Because Wrong One party No Really - Really obey And carry out Contents agreement, so that causes loss for other parties, both of a real loss nature

(real loss) and also the disappearance of expected profits from fulfilled an agreement (expected loss).

In Chapter 1338Criminal Code, mentioned that agreement applicable as law for parties involved or bound in it (pacta sunt servanda). A agreement Which made will give birth to obligation at a time right for parties Which to tie up self within The emergence of dispute from an agreement on basically due to by a number of conditions, namely existence defective (good) real and also hidden) in agreement, default (injury promise) and action opposing law (legality). The engagement Which is born, Good from agreement and also Because set by law gives birth to right And obligation between the parties involved therein. If one of the parties No comply clause in the agreement, so will appear dispute between the parties. However, if in a condition someone does an action which in a way opposes the law has caused loss on the part of another, then there will be a dispute because the Constitution has set the matter.

Protection law contractin Indonesia on basically refers to on One goal, namely to restore or restore the rights of the injured party in an agreement. Recovery rights for party consequence No fulfilled an agreement (breach of contract) based on on existence loss Which suffered Wrong One party based on expectations loss or the disappearance of profit Which expected and also real loss Which suffered (reliance loss). In here seen existence shift understanding from classic doctrine about change makes a loss on injury promise . Originally, doctrine classic differentiate in a way firm institution change make a loss consequence injury promise, namely expectations loss No dependability loss. According to classic doctrine, reliance loss is institution change make a loss on action opposing law the previous parties No bound a certain agreement.

In the common law tradition (classic doctrine about contract law), the drafts are implications from connection because result. Injury promise known with term breach of contract Which causes expectations loss And recovery of his rights based on on doctrine "put the plaintiJ to the position if he would have been in the presence of the contract having been performed ", i.e. put Plaintiff on position if agreement implemented by Defendant (Suharnoko, 2008). Temporary that, the act of opposing law is called tort, that is action Which contradictory legal norms as well as norms of propriety and morality in society. In tort, the party previously No bound in agreement, However Because of an incident Which was born from action or neglect Wrong One party caused real loss on the other hand. This is where Then draft tort gives birth to consequence law in the form of replacement loss real or dependability loss from party Which causes loss to party Which suffers loss .

Doctrine classic about lawcontract of course firm differentiate fundamental things about agreement And consequence the law . As introduction discussion part This, the writer identifies at least two main matters in doctrine classic contract law, both in the country adhere to civil law and also common law, that is:

1) Agreement different with pre contract or pre agreement (often also called with negotiation or memorandum of understanding). Agreement contains consideration or a firm achievement And agreed temporarily in pre contract, No There is consideration but promise or promise One party to another party that causes hope will be signed by an agreement. The difference brings different legal consequences. Violation to agreement cause He can request accountability replace loss Which party suffered other, temporary violation or interesting promise in pre contract ti no cause Which concerned can ask for accountability on loss Which party suffered other Because of

course Not yet There is contract Which agreed ;

Doctrine classic differentiate in a way firm institution request accountability consequence injury promise or breach of contract with accountability consequence action opposition law or tort . According to classic doctrine, in an agreement, losses suffered by one of the party is "the disappearance of profit Which expected" or expected loss, so that For demand change loss said, then the institution that used is breach of contract, No tort. In its history, Court in Indonesia tends to follow doctrine This so that If demands request change make a loss on violation of a promise based on action opposing law (tort, legality) father) or mix stir injury promise with action opposing law, so lawsuit the considered disabled formal And stated No can be accepted.

Protection law contractin Indonesia, according to the character of civil law, put forward aspects of certainty law. Matter This seen from a number of decisions Court Which is based on doctrine classic law contract Which differentiates in a way firm action oppose law with injury promise as well as negate existence consequence law tie for promises pre contract. Jurisprudence on at first differentiate in a way nature and effects law default with action opposing law. The implication is if a lawsuit is based on a contractual existence connection, so the posita and lawsuit lawsuit must describe default, No action against the law. If use base action opposing law in lawsuit or mix default with action opposing law , so lawsuit considered disabled formal.

However, in its development, there was a shift in thinking about base lawsuit violation of an agreement (breach of contract). Court Great do breakthrough with No to contradict Again nature and effects of action opposed with injury promise in a contractual connection (agreement). Case lawsuit agreement distributorship between PT. Two Diamond with Lee Cum Kee co, Ltd. is description How act of defiance law underlying lawsuit violation agreement Which is done in a way secretly (silent agreement).

In 1987 it was achieved agreement between Lee Kum Kee co. Ltd with PT. Two Diamond Jakarta. PT. Two Diamond Jakarta appointed by Lee Kum Kee to become sole distributor of sauce food Lee Brand Cum Kee in all over region Indonesia with method import use facility letter of credit by PT. Two Diamonds Jakarta. Agreement distributorship This applicable until January 1 9 9 3 . Even though the reality agreement is applicable until January 1993, however After that Lee Kum Kee still sends the sauce product to PT. Dua Berlian Jakarta and PT. Dua Diamond Jakarta accept it with publish dozens of letters of credit Which in progress until with June 1994. On June 1994 This disagreement occurred

between Lee Cum Kee with PT. Two Diamond Jakarta which resulted in Lee Kum Kee terminating contract with PT. Dua Berlian Jakarta and at a time appointing a new distributor, that is PT. Promex . Termination agreement in a unilateral way This considered by PT. Dua Berlian Jakarta as action oppose law And cause loss, Good operational loss (reliance loss) a number of Rp. 1,585,322,135,- , loss of benefits that expected a number of Rp. 11,834,129,362,- and losses consequence lost Name Good a number of Rp. 10,000,000,000,- (Suharnoko, 2008).

Case This checked in three stages of justice, justice level First, appeal, and cassation. In Court First level, Court Country Jakarta North ignore exception from Defendant Which state that lawsuit is blurry Because base lawsuit is violation agreement lawsuit Plaintiff precisely demand change However make a loss on base action opposition. P messenger with registration 2/ Rev.G /1995/ PN.Jkt.Ut . grant lawsuit Plaintiff (PT. Two Diamond Jakarta) by stating L ee K um K ee do action oppose law . Will but, decision This canceled in level appeal with register decision Number 301/Pd/1996/PT.DKI with consideration that termination connection agency Defendant to Plaintiff No is action opposing law appointment of an agent is action unilateral And party pointer can decide in a way unilateral agency meant.

In cassation level, Supreme Court cancel decision appeal Which cancel decision court level First . Court Great to argue that factual evidence in matter This Court DKI Jakarta height is wrong in applying law. Between Plaintiff And Defendant happen agreement in a way secretly (silent agreement), Because after the end of the agreement distributorship in accordance with term time Which written, Defendant still send the product to Plaintiff for more than One year. Thus, between Plaintiff and Defendant considered still continuing a distributorship agreement, although according to formal agreement, agreement meant has ended . Action termination in a way unilateral by Defendant in a way real cause loss big to Plaintiff Which has invested capital in amount big. Termination agreement in a unilateral way contradicts legislation and propriety in business activity. Top base that, the Defendant (Lee Kum Kee) is considered to have done action opposing the law and therefore must replace a number of losses suffered by the plaintiff ((Suharnoko, 2008).

Seen clear existence shiftthoughts regarding the interrelationship between violation contract with action opposing law. Court Great introduces contemporary law doctrine Which No Again differentiates in a way firm violation contract or injury promise (default, breach of contract) with action opposing law. The existence of contractual connection No Again becomes barrier submitted lawsuit action opposition law . After all, in violation agreement,

very open possibility of loss Which caused is real loss or loss consequence of operational activity (reliance loss), alongside the appearance of expected profit (expectation loss).

M. Yahya Harahap to put forward that default in principle is specific genus (form) special) from action opposing law. Default in credit agreements can be viewed as contrary actions or opposing creditors' rights on payment of a number of his receivables (M. Yahya Harahap, 1986). The nature of resistance right this is what it is legal ratio from the development of an understanding that is not differentiated in a way firm between action opposing law with injury promise.

Interpretation in a wide way on understanding action opposing law in line with development theory or doctrine in law contract (agreement) that agreement must be made with good faith which means must notice the principle of propriety. The agreement contains achievements that are not balanced. No in harmony with the principle of propriety so that clause that is not balanced can be stated null and void and not binding on the parties involved in the agreement (Suharnoko, 2008).

One of the very interesting issues related to protection law contracts is consumer protection. Consumer protection is the concept that was born from the prevalence of facts that show that the connection between producers and consumers is often not balanced with consumers as the most frequent party is in a weak or inferior position.

Constitution Number 8 of 1999 concerning Consumer Protection provides settings that can be said to be Enough complete and protective of consumers' rights. One of the emphasis in Constitution This is prohibited to list a number of clauses in contracts the standard that is considered No fair and unfair consumer rights as well as No in accordance with principles of propriety.

Existence contracts standard contracts indeed have been recognized and accepted in Indonesian law. However, the standard contract made or arranged unilaterally is very prone to with load callus which is heavy adjacent to and burdensome consumers. Because That, Chapter 18 Law - Invite Number 8 of 1999 confirms prohibitions clause in contract standard, that is clause Which:

1) State diversionnot quite enough answer (exoneration clause, exemption clause);
2) State thatperpetrator business entitled reject handover return goods Which purchased consumers ;
3) State thatperpetrator business entitled reject handover return Money paid for on goods and/or services Which purchased by consumers ;
4) State givingpower from consumer to perpetrator business Good in a direct way and also No direct For do all one-sided action related to goods Which purchased by consumer in a way installment;
5) Arrange regarding evidenceon the disappearance of utility goods or utilization services Which purchased by consumers ;
6) Give right toperpetrator business For reduce benefit service or reduce consumer treasure riches Which becomes object sell buy service;
7) State submission consumerto regulations in the form of rule new , addition , advanced and/or change advanced Which made unilaterally by the perpetrator business in time consumer utilization service Which bought it ;
8) State that consumer gives power to perpetrator business For loading right liability , right pawn, or right guarantee to goods Which purchased by consumer in a way installments.

The clauses are clause Which nature opposes rights subjective consumers , Good Which is set by Constitution and also according to propriety . By Because its nature opposes right (legality), so clauses the If listed in my contract between producers and consumers are canceled for the sake of law (negligible).

Protection law against pre-contract

Like Which has put forwardthe in on that in modern contract doctrine, for party Which will do an agreement, moreover in contract business scale large, commonly done negotiation pre contract or contract introduction (preliminary contract). Negotiation pre contract on in principle aiming explore various possibilities on plan the holding of agreement between the parties . In stages This often appears or delivers various promises One party to another party with hope the other party agrees For stage agreement as act carry on

negotiation . Other party promised put hope on the promise Which marked with willingness to do a number of action law (legal protection), for example deliver Money or goods as signed So. Problems appear when one of the parties who places trust and has delivered a number of Money as prerequisite in doing agreement Then it turns out No to obtain rights Which expected as promised by other party in negotiation. Whether injured party can request change loss to the party who denies his promise temporarily between them. Isn't there a signed contract or agreement yet?

The problem about the consequences of law pre contracts in Indonesia is depicted in the case of Jeffry Binalay et al. escort Head Staff Force The sea. The position of the case is as follows:

Jeffery Binary et al. is Residents from House TNI-AL service . The deceased person Tua J e ff ry B inalay et al was a retired Indonesian Navy. They inhabit House service Indonesian Navy based on Letter Permission Housing area (SIP) Which is issued by the Indonesian National Armed Forces Service- AL. In 1 9 9 2 KASAL issue Letter His decision Number: 1212/III/1992 date 23 March 1992 which stipulates that House Service Indonesian Navy In Region Jakarta As House Service Indonesian Navy Non Strategic.

- Consideration CHIEF OF OFFICER issue letter decision Number : 1212 is to increase the welfare of members of the Indonesian National Armed Forces AL and generally House service the Already aged more than three tens years and occupied part big by for Retired / Warakawuri. Letter decision CHIEF OF OFFICER on Then made into base law For letters decision And letters as well as Which other policies as implementation guidelines pro ses release / sale buy House service ;
- On letter decision on , Indonesian Navy issue policy For release houses service the to for members Which inhabit House service the . Further policy This has been forwarded to the Minister of Defense / Commander of the Indonesian Armed Forces. Head of Regional Office Director General Budget Jakarta pointing the letter has agreed And Head of National Land Agency North Jakarta pointing the letter, stated that release process House service can be implemented;
- On policy said , the member who inhabits House service the welcome him with Like ambition And take action continue with prepare as well as complete files Which required by the Indonesian Navy, including is submit application in a way written to the Indonesian Navy until do measurement on the land that is inhabited by, Which is done

by Indonesian Navy in collaboration with National Land Agency Jakarta North etc;

However until at the beginningyear 2003 process release House service the Not yet Also can be realized , even with letter his decision Number : Decree/344/II/2003 dated 24 February 2003 , About Regulation Main Point Indonesian Navy Service Housing , KASAL issued policy , for member Which has retired , at the latest contract or stage negotiation Because in stage This agreement Not yet fulfilled condition "matter certain" (Suharnoko, 2008).

> Like Which has put forwardpreviously that in negotiation pre contract , very allow existence promise - a promise made by one party Which result other party put trust And hope that later the agreement will be agreed upon and signed . In Country common law has developed the doctrine of promissory estoppel, that is a doctrine Which forbid party Which has a promise interesting to return his promise without reason Which can be justified according to law and/or propriety. With this doctrine, so parties in negotiation No may deny his promise so just without There is reason Which legitimate And worthy, moreover If matter That real-real cause loss on other party. Indonesia it seems Not yet applied draft This in a way intact And tends Still struggling on doctrine classic who considers Not yet There is consequence law from a negotiation . Meanwhile, provisions about faith Good in the Civil Code should be able to become door enter in applying doctrine promissory estoppel For protecting party interests Which disadvantaged consequence of a promise that is not implemented by other parties N number 8 Yes hun 1 9 9 9 concerning Protection Consumers;

Related with consequence law precontract, practice justice in Indonesia Still stick to the classic legal doctrine that distinguishes in a way firm consequence law an agreement with pre counter (pre agreement). However. In many cases, there are parties Which disadvantaged in pre contract consequence No fulfilled promise by other party. Should draft protection law contract in Indonesia adopts contemporary doctrine Which acknowledges existence consequence law from pre contract in order to realize justice and substantive.

5. CONCLUSION

In an agreement carried out by two parties or more that causes an obligation that must be fulfilled / fulfilled. Use the principle of proportionality in a case, then law requires one of the parties to give guarantees in an agreement. The system of arrangement of law contracts in Indonesia is of a nature open Because everyone has freedom To make an agreement both that is already set up and also Not yet set up in law. There is consequence from A the resulting agreement from connection law from a binding agreement rights and obligations. Contract must fulfill certain elements For considered valid and binding . This is covering there is an agreement from both parties or more, desire or the objectives of the parties For the emergence consequence law, consequence law agreement only binding on the parties and not tying third parties, and some certain agreements must be made in accordance with law . There are legal principles in law contracts, including freedom contract, consensualism, and pacta sunt servanda. Although contracts can be made in an oral way, written contracts are more prioritized because they give legal certainty to the parties and make it easier to prove if future disputes occur. Therefore that, it is recommended For make contracts in a written way use facilitate the proof process and become a reference If a dispute occurs.

Conclude a number of matters following :

Protection law to contract (agreement) in Indonesia based on the principle of certainty law Which emphasizes formality of an agreement. However, in its development, protection law contracts have noticed in a way more significant aspect of substantive justice. Related to standard contracts, protection law contracts more emphasize the principle of justice and/or balance position, right, and obligation between manufacturer and consumer and also creditors with debtor. Clause in contract standard No may violate provisions Chapter 18 Law Number 8 Yes hun 1 9 9 9 concerning Protection Consumers;

Related with consequence law precontract, practice justice in Indonesia Still stick to the classic legal doctrine that distinguishes in a way firm consequence law an agreement with pre counter (pre agreement). However. In many cases, there are parties Which disadvantaged in pre contract consequence No fulfilled promise by other party. Should draft protection law contract in Indonesia adopts contemporary doctrine Which acknowledges existence consequence law from pre contract in order to realize justice and substantive.

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