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State policy on contracts as a means of realizing social welfare

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Abstract
Freedom of contract is a universal legal principle of agreement. The application of the principle of freedom of contract becomes a problem for the state of Indonesia as a welfare state, whether its application is driven to achieve social welfare or individual welfare. This article is an analytical normative juridical study. The data used is secondary data covering primary, secondary and tertier legal materials. The data is qualitatively analyzed using methods of interpretation through the approach of legal philosophy. The results of the study concluded that to create social welfare and view the contract from the side of society and the principle of freedom of contract is interpreted objectively by the legislature or the state. On the other hand, it can be said that the Anti-Monopoly Act and the Consumer Protection Act are forms of protection, respect, and fulfillment of individual Human Rights by the state.

Keywords: state policy, contract, social welfare

Introduction

Contract talks in the social welfare view of the glasses of state power relate to political policy and economic law, while from private glasses in view of individual welfare is the domain of individual autonomy (private) free from political power. These two aspects of the view have consequences for differences in understanding the basic practice of freedom of contract.

The contract in relation to social welfare is a focal point of his study talking political and legal policies on the economy of government, which is related to the government's view of freedom of contract. It affects his arrangements and the policies taken against him. If the government (state) sees freedom of contract as a means of realizing social welfare then the practice of freedom of contracting is controlled and can be limited for general purposes, on the contrary if the government views the freedom of contract is entirely intended as a means of pursuing the welfare of the individual (personal), then the freedom of contracting there is no need for government control and gives flexibility for individuals to operate.

Research Methods

This paper is a juridical study of normative analytics, a study based on critical thinking on legal norms regarding freedom of contract as the main principle of contract law. This study tries to reveal fundamentally about the meaning of freedom of contract as the basis for the establishment of legal norms in the traffic environment of individual personal relations (non-political power) and the treatment of the state or government against it, in an effort by the state government to carry out its function of realizing social welfare.

In relation to normative juridical research, the object is in the form of legal principles, legal methods, systematic law, legal theories and laws and regulations related to freedom of contract This research uses secondary data obtained through literature studies. Secondary data used include primary legal materials, namely the Indonesian Constitution 1945 [12], Law No. 8 of 1999 [14] on Consumer Protection (UUPK), Law No. 9 of 1999 on Prohibition of Monopoly Practices and Unfair Business Competition (Anti-Monopoly Law).

Discussion

Freedom of contract is a principle that applies to contract law which essentially concerns two things. First, the contract as the embodiment of human freedom. Second, contracts as a means of achieving economic prosperity people both personally and collectively. What is mentioned last relates to the needs (economy) of man and which is mentioned earlier about the freedom of human integrity. Of these two things, there is no denying that economic discussion is inseparable from freedom; and freedom itself an ancient concept rooted in political philosophy. (D.F. Scheltens, 1984) [1] Therefore, the regulation of both in the form of law is inseparable from the view of life (philosophy of life) of a nation (country) is no exception for the nation (country) Indonesia.

For the Indonesian nation the meaning of freedom and economy (welfare) became the basis of the struggle for Indonesian independence. Historical facts of Indonesia provide evidence, the Colonizers of the Indonesian nation have explored the human and natural resources (economy) of Indonesia to the lowest nadir that rapes the human side of humanity. That fact is clearly illustrated in the Preamble to the 1945 Constitution, and from there also unearthed the ideological values of the Indonesian state whose formal form is contained in Pancasila as the basis of the ideology of the Indonesian state.

For the Indonesian nation Pancasila is the source of all legal resources. The law that was built must be based on Pancasila. Pancasila itself is essentially talking about human beings. In human beings are added three things, namely as religious beings, social beings and possessive beings. (W. Poespoprodjo, 1986) [2] In Pancasila, human beings as religious beings can be seen from the precept of the One True God. Human beings as social beings

can be seen from the ethics of humanity that is just and civilized, the ethics of the Association of Indonesia, and the ethics of populism led by the wisdom of wisdom in representative deliberations. Human beings as possessive beings are reflected in the social justice principles for all Indonesians. The three things that are entrusted to man are the origin of human rights. The concept of man as a creature of God is related to the right to life and freedom. The concept of man as a social being is related to personal security rights. The concept of man as a possessive being is related to property rights. (Zulfirman, 2017) [3] The most basic essence of Pancasila is the determination to maintain, care for, protect and fight for life. From there the meaning of the law in the view of Pancasila is an ideal of living together how to treat human beings as human beings, in their capacity as religious beings, social beings and possessive beings. This has an influence on the vision of Indonesian law.

In general, two visions of law are known, namely the vision of spiritual ideality and the vision of sociological materalistis. The first-mentioned vision of the law is the embodiment of absolute ideas, while the last mentioned legal vision of the law is seen as a product of society reality or social reality. This last mentioned legal vision is absolutely viewed solely as a product of human ratio. (John Gilissen and Frits Gorle, 2005) [4] The two visions of the law had an influence on the formation of the law. Adherents of the idealistic vision of spirituality rely on revelation or spiritual beliefs, while adherents of sociological materialist visions are based on ratios or reason in examining the phenomena of human social life.

The vision of Indonesian law based on Pancasila is a vision of ideality of spirituality. This can clearly be seen from Article 29 paragraph (1) of the 1945 Indonesian Constitution which mandates the "State of Indonesia based on the One True God" which is further described in the power of the judiciary. In Article 2 paragraph (1) of Law No. 48 of 2009 concerning The Power of Justice says: The judiciary is conducted "FOR JUSTICE BASED ON THE ALMIGHTY GOD". The legal vision of spiritual ideality based on Pancasila is a starting point to discuss all laws in Indonesia including contract law, especially to interpret the principle of freedom of contract that applies in Indonesian contract law in relation to realizing social welfare that is the duty of the Government of Indonesia. The One True God is essentially the realm of religion and a form of worship to God. Without worship of God human life it becomes shrinking and lowering the level of man to the lowest level that has no meaning of life at all. Thus, religion plays an important role because it adds something important to human substance and if it is rejected or ignored it seems to produce crippling consequences on human life. (Henryk Skolimowski, 2004) [5]

In this paper, two laws were chosen to be observed related to the operationalization of freedom of contract in relation to social welfare, namely the Anti-Monopoly Law and the Consumer Protection Act. In the Anti-Monopoly Law on power control the validity of the principle of freedom of contract can be seen the provisions of the legal norms prohibiting making contracts as contained in Article 4 on oligopoly, Articles 5,6, 7 and 8 on pricing, Article 9 on the division of marketing territories, Article 10 on boycotts, Article 11 on cartels, Article 12 on trusts, Article 13 on oligopsoni, Article 14 on vertical integration, Article 15 on closed agreements, and Article 16 on foreign treaties.

The background of the establishment of the legal norms of prohibition of treaties in the Anti-Monopoly Act as explained in the general explanation that explained before the Anti-Monopoly Law was born the form of government policy is not appropriate so that the market becomes distorted. On the other hand, the development of private businesses in reality is largely the embodiment of unhealthy business conditions.

The above phenomenon has developed and is supported by the related relationship between decision-making and business actors, either directly or indirectly, thus making matters worse. The implementation of the national economy is less referring to article 33 of the 1945 Constitution, and tends to show a very monopolistic pattern. Entrepreneurs close to the power elite get excessive facilities that impact social inequality. The emergence of conglomerates and a small group of powerful entrepreneurs who are not supported by a true entrepreneurial spirit is one of the factors that result in economic resilience becoming very fragile and incapable of competing. From this general explanation can be seen the basis of the thought of the establishment of the Anti-Monopoly Law contains at least three things, namely:

1. Economic development should be directed to the realization of people's welfare;
2. Democracy in the economic field requires equal opportunities for every citizen to participate in the production and marketing process of goods and/or services, in a healthy, effective, and efficient business climate, so as to encourage economic growth and the employment of a reasonable market economy;
3. Everyone who tries in Indonesia must be in a healthy and reasonable competitive situation, so as not to cause economic power to certain businesses.

Related to that, it can be understood that the basis of legislative thinking forms legal norms with respect to the operationalization of freedom of contract in general and in the business world in particular, considering contracts related to the economy or the welfare of society. The ratio of the provisions of the prohibition on making contracts in anti-monopoly laws is to realize distributive justice (Mokhamad Khoitul Huda, 2016) [6] owned by the state by applying the principle of proportionality over the utilization of economic resources and natural resources. The need for regulation on the utilization of natural and economic resources by the state is due to these two things as supporters of human life. (Justice Forum, 2017)

The prohibition of treaties in antitrust law is aimed at the regulation of the fundamental rights of individuals about ownership or wealth that are viewed from an economic aspect. The utilization of economic resources and natural resources is seen from the utility public side aimed at social welfare rather than the arrangement of individual freedom of integrity. In this point of view, the contract is viewed from the side of society where all property has a social function. What is mentioned last is illustrated that the state of Indonesia is a welfare state in accordance with what is determined in the Preamble to the 1945 Constitution that requires the realization of economic democracy in Indonesia.

Social functions in Indonesia's view become the center of rights regulation including the application of freedom in the economic field. Therefore, the legislature considers the current contract not to be subjectively interpreted solely in economic activities or social welfare, but the contract has been interpreted objectively i.e. the societal side of a contract. It should also be emphasized, this objective interpretation is used to use economic resources and natural resources as a public utility that is public and free. In this regard, the legislature considers all parties to have the same opportunity to utilize Indonesia's economic resources and natural resources based on the principles of economic democracy with the aim of how to realize a proper life.

Now comes the time to discuss the operationalization of the principle of freedom of contract in the Consumer Protection Act. The legal norms governing the contract are determined in Article 1 point 10 of the Consumer Protection Law which says: Standard Clauses are any rules or conditions and terms that have been prepared and set forth unilaterally by businesses as set forth in a document and/or agreement that is binding and must be fulfilled by the consumer. In relation to the standard clause further described in Article 18 paragraph (1) of the Consumer Protection Law which says: Businesses in offering goods and/or services intended for trading are prohibited from making or listing standard clauses on any documents and/or agreements if (a) stating the transfer of responsibility of businesses (b) states that businesses have the right to refuse the re-delivery of goods purchased by consumers (c) stating that businesses have the right to refuse the re-delivery of money paid for goods and /or services purchased by consumers (d) declare the granting of power from consumers to businesses either directly or indirectly to take all unilateral actions related to goods purchased by consumers in installments (e) regulates the evidentiary of the loss of the usefulness of goods or the utilization of services purchased by consumers (f) gives rights to businesses to reduce the benefits of services or reduce consumer property that becomes the object of buying and selling services (g) states the submission of consumers to regulations in the form of new rules , additional, continued and / or further changes made unilaterally by businesses in the consumer period utilizing the services purchased (h) states that the consumer authorizes businesses to sacrifice dependent rights, mortgage rights, or guarantee rights to goods purchased by consumers in installments.

Further article 18 paragraph (2) of the Consumer Protection Act is said: Businesses are prohibited from listing standard clauses that are difficult to see or cannot be read clearly, or whose disclosure is difficult to understand. In Article 18 paragraph (3) of the Consumer Protection Law stated: Every standard clause that has been determined by businesses in documents or agreements that meet the provisions as referred to in paragraphs (1) and (2) shall be declared null and void.

In the general explanation of the Consumer Protection Act in the third aliea explained the background of the issuance of the Consumer Protection Act is based on the fact the position of businesses and consumers become unbalanced and consumers are in a weak position. Consumers become the object of business activities to reap the most profit by businesses through promotional tips, sales methods, and the implementation of standard agreements that harm consumers. Based on this general explanation and linked to the legal norms contained in Article 18 paragraph (1), paragraph 2), paragraph (3) of the Consumer Protection Law can be quoted the meaning of the general purpose of the Consumer Protection Act, the legislature seeks to protect the freedom of human integrity in making contracts. The right to human freedom to convey his will freely cannot be treated as an economic object. This is clearly evident from the coercive provisions that must be fulfilled by businesses in making standard contract documents that in principle should not include the clause of transfer of responsibility and the delivery of complete and correct information about the products and/or services to be distributed.

The authors consider the reason for the exercise of control over the practice of freedom of contract on the basis that the absence of a balanced bargaining position between the contracting parties has caused serious problems with personal life that attack one's freedom. Therefore, the principle is no longer interpreted subjectively in protecting one's civil rights but changes make the contract interpreted objectively for the sake of existence and respect for civil liberties (human rights). In its current development, consumer rights are the fourth generation of human rights in the development of humanity in the future. (Firman Tumantara Endipradja, 2016) Ideologically, legal policy in Indonesia includes consumer protection, the Indonesian people adhere to the prism between individualism and collectivism with a heavy point on general welfare and social justice. (Mahfud MD, 2010) [9] Saving the author of legal policy embraced by the Indonesian nation is to layer the value of individualism and the value of collectivism or in other words to layer the value of freedom with the value of equality. Related to consumer protection, the point is to create social welfare and at the same time do social protection while maintaining the existence of individuals as the wheels of social life activities. However, it is inevitable that without human beings, it is not possible to live sustainably.

From the explanation above can be seen the legislature controlling the principle of freedom of contract, especially the inclusion of standard clauses, all of which are to protect one's basic freedom to enter into a contract and prevent the risk of direct attack on freedom, self-safety of the contractor. What is mentioned last can be understood through the provisions of Article 19 of the Consumer Protection Act the obligation of businesses to compensate for damage, pollution, and / or loss of consumers due to consuming goods and / or services produced or traded. Even further there are criminal sanctions for businesses if there is an element of wrongdoing in it.

From the two laws reviewed in this paper can be seen that control over the practice of the principle of freedom of contract in the anti-monopoly law and consumer protection law in principle is to create social welfare and view the contract from the public side and the principle of freedom of contract is interpreted objectively by the legislature or state. On the other hand, it can be said that both laws are a form of protection, respect, and fulfillment of individual human rights by the state. Hassmann explained that human individuals have their human rights, while countries and other entities are obliged to respect, protect, and fulfill their rights. Respecting human rights means not violating them, protecting human rights means ensuring that human rights are not violated by others, fulfilling human rights means implementing positive measures to ensure that individuals enjoy their rights. (Rhoda E. Howard-Hassmann, 2012) [10]

The effect of protection and respect for civil rights as human rights has given its own color to the principle of freedom of contract. Government or state control over the freedom of contract, especially in the Anti-Monopoly Law and UUPK, as a form of government or state obligation to human rights. Henry Shue explains the state's obligations to human rights, namely forbearance duties, protection duties and assistance duties. The first and second types of obligations emphasize prevention efforts from human rights violations. This obligation includes fulfilling positive and negative human rights. The third type is more dominant positive human rights state. (El Majda Muhtaj, 2009) The obligation of this country basically leads to how life can be maintained, protected and maintained for the sake of human life both in its position as a social being and an individual being.

From the restrictions on the power of the freedom of contract in the Anti-Monopoly Act and the Consumer Protection Act encourage efficient trade and investment. First, one could argue that companies sometimes don't maximize profits and, because of systematic cognitive errors made by the people who run them, are unable to do so should they try. Thus, a law that supposes it will maximize profits becomes misguided. Second, companies that maximize profits sometimes do bad things such as polluting the environment, the law should try to block it. Third, the state should promote fairness in contracts other than efficiency. Fourth, countries must pursue distribution goals even though they are sometimes at odds with efficiency. (Alan Schwartz and Robert E. Scott, 2017)

From the above analysis can be abstracted, the issuance of anti-monopoly law and consumer protection law is intended to protect, fulfill, and respect the freedom of contract as human rights and as an effort to regulate business behavior to realize social welfare. The goal is to keep life running as it should. Control over the practice of freedom of contract is to give the opportunity to all parties to be able to develop themselves appropriately and appropriately in people's lives and create a balance of interests between businesses and the community so that a proper life will be realized. At that point social welfare shows itself that man as an individual being as well as a social being. That's where the lives of all human beings can continue.

Conclusion

In an effort to create social welfare and view the contract from the side of society and the principle of freedom of contract is interpreted objectively by the legislature or the state. On the other hand, it can be said that the Anti-Monopoly Act and the Consumer Protection Act are forms of protection, respect, and fulfillment of individual Human Rights by the state. This law is also an effort to regulate business behavior to realize social welfare.

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