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A symmetric enforcement of good faith provisions: a systematic review of contractual remedies for weaker parties in common law systems

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ABSTRACT

This study aims to deconstruct the paralysis of the corrective function of objective good faith when confronted with exploitative boilerplate clauses. To distinguish its contribution from decades of conventional, descriptive-sociological research on contractual imbalance, this doctrinal-conceptual inquiry anchors its analytical structure by integrating Ian Macneil's Relational Contract Theory to dissect the social dimensions of contracts, alongside John Rawls's Theory of Distributive Justice to evaluate the moral legitimacy of contractual exchanges. Moving beyond generic literature reviews, this study employs a rigorous Meta-Doctrinal Thematic Synthesis, selecting legal literature and jurisprudence based on strict inclusion criteria: the evolution of the abuse of circumstances doctrine within civil law systems, and Indonesian Supreme Court precedents on the invalidation of exculpatory clauses over the past decade (2016–2026). Based on strict inclusion and exclusion criteria targeting the implied covenant of good faith, unconscionability, and algorithmic duress, a definitive legal corpus of 42 specialized sources (33 peer-reviewed journal articles and 9 landmark appellate precedents) was extracted and analyzed. The analytical synthesis uncovers a highly specific doctrinal gap: contemporary common law jurisprudence suffers from systemic stagnation by restricting the operability of good faith to a passive interpretive rule or binding unconscionability to a rigid, formation-stage audit. Crucially, the evidentiary basis demonstrating the weak implementation and judicial paralysis of these remedies is derived directly from a structural analysis of Appellate Case Law across Key Common Law Jurisdictions, exposing a fragmented judiciary that routinely retreats into formalistic positivism and prioritizes literal text over substantive equity. As a distinct theoretical intervention, this paper proposes a Model of Progressive Judicial Intervention Based on Asymmetric Equity, providing the necessary dogmatic legitimacy for common law judges to look past formal compliance, penetrate unconscionable exculpatory terms, and actively reconstruct remedies to restore relational equilibrium during the contractual performance stage.

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Introduction

Legal protection is one of the basic principles of a state governed by the rule of law(Habib et al., 2024), guaranteeing justice and equality for all citizens. Nevertheless, in practice, not all groups in society enjoy equal protection, especially those considered weak in terms of social, economic, or political standing.

Vulnerable groups such as workers, women, children, persons with disabilities, and the poor often face serious challenges in accessing justice, both substantively and procedurally. This reality highlights a structural imbalance that undermines the principle of equality before the law, thereby reproducing cycles of marginalization.

Studies and reports consistently show that the current legal system tends to favor those with stronger economic positions and greater access to legal resources. By contrast, vulnerable groups are often sidelined, leaving them with little bargaining power in contractual relations(Marzuki, 2013). This imbalance is further aggravated by weak law enforcement, limited legal awareness among disadvantaged communities, and restricted access to legal aid services. Such conditions perpetuate systemic inequality and hinder the achievement of justice in both theory and practice(Abdullah et al., 2019). Within this context, literature-based studies play a crucial role in identifying root causes, mapping forms of inequality, and proposing viable solutions to strengthen legal protection for weaker parties.

The purpose of this article is to analyze various strands of literature concerning the gap in legal protection for vulnerable groups from normative, empirical, and policy perspectives. By doing so, this study seeks to highlight systemic patterns of inequality in contractual relations. Furthermore, it intends to develop strategic recommendations that can contribute to the creation of a more inclusive legal system that embodies both justice and social equity. This approach underscores the importance of not only recognizing vulnerable groups but also actively empowering them through fair and enforceable contractual frameworks(Atmoko, 2022).

The urgency of applying the principle of good faith in Production Sharing Contracts (PSC), whether under the Cost Recovery or Gross Split system, lies in the pursuit of fairness in resource distribution. Good faith ensures that the division of contract value percentages reflects equitable justice for all parties involved. The application of this principle within PSCs is vital in guaranteeing that neither party is disadvantaged while both enjoy substantial economic returns. Thus, good faith functions not merely as a moral guideline but as a concrete mechanism to sustain fairness in high-value, complex contractual agreements.

Contracts entered into by the government are inherently multi-dimensional and possess distinctive characteristics. As a consequence of utilizing private law instruments for public administration commonly known as contractualization government contracts integrate both private and public law elements within their structure(Irawan, 2025). This hybrid nature distinguishes government contracts from purely private or commercial contracts. The involvement of public interests introduces obligations that are not present in purely commercial agreements, thus uniquely shaping the contractual landscape.

In commercial contracts, the parties usually enjoy wide-ranging freedom to regulate their rights and obligations. However, such freedom is not absolute when it comes to government contracts, particularly in the construction sector. In these cases, public law provisions impose binding obligations that override contractual autonomy. A clear example is the Indonesian Law No. 2 of 2017 on Construction Services (UU No. 2/2017), which introduces mandatory rules (dwingendrecht) governing construction contracts. These provisions are intended to safeguard public interests and prevent abuses of contractual freedom by ensuring compliance with statutory requirements(Widiyaningsih, 2020).

The distinction between government and private contracts highlights the complex interplay between justice, good faith, and legal protection. While private contracts may rely heavily on the principle of freedom of contract, government contracts necessarily balance autonomy with public law constraints. This dual nature raises significant challenges in ensuring that justice and good faith are consistently applied. Therefore, examining these dynamics through a literature review allows for deeper insights into how justice and good faith can act as corrective mechanisms against structural imbalances.

Against this backdrop, this study argues that principles such as justice and good faith should not be relegated to the realm of ethical ideals alone. Instead, they must be operationalized as enforceable legal standards capable of guiding judicial interpretations and legislative reforms. Only then can contractual practices, whether private or public, achieve their function as instruments of fairness, inclusivity, and sustainable social development. Thus, this research emphasizes the need to strengthen judicial activism and refine regulatory frameworks to protect weaker parties from systemic disadvantage.

The foundational myth of modern private law rests upon the classical assumption of party autonomy the presumption that a contract represents a voluntary, balanced meeting of minds between equal legal subjects. However, in the contemporary digital and financial ecosystem, this formalistic egalitarianism has transformed into what can only be described as a structural illusion. In Indonesia, this contractual injustice is manifested concretely in the ubiquitous proliferation of standard-form or adhesion contracts across consumer financing, fintech lending, and digital commerce platforms. These agreements are non-negotiable, presented on a rigid take-it-or-leave-it basis, and structurally embedded with highly exploitative exculpatory or liability-shifting clauses (klausul eksonerasi).

The structural failure to protect weaker parties within this matrix is deeply rooted in the archaic, formalistic interpretation of Article 1338 of the Indonesian Burgerlijk Wetboek (KUHPerdata). Courts routinely prioritize the absolute sanctity of pacta sunt servanda over the corrective mandate of objective good faith. This dogmatic rigidity creates a protective vacuum, as judges consistently treat standard-form digital contracts with the same egalitarian assumptions as traditional, negotiated commercial agreements, completely ignoring the fundamental absence of real consensus (wilsovereenstemming) (Makarim, E., & Hernoko, 2022)

The state's legislative and regulatory responses to this phenomenon have been remarkably toothless. While Article 18 of the Indonesian Consumer Protection Act (UU No. 8/1999) explicitly prohibits certain types of exculpatory clauses, and Financial Services Authority (OJK) regulations theoretically mandate the screening of standard contracts, these instruments suffer from severe enforcement paralysis. In the domestic landscape, the rapid expansion of peer-to-peer (P2P) lending and digital micro-finance has magnified this doctrinal gap. Empirical and legal analyses reveal that financial technology platforms systematically utilize complex adhesion algorithms to impose predatory terms, shifting all systemic risk onto economically distressed borrowers. Regulatory oversights by the OJK fail precisely because they evaluate contracts through a superficial, compliance-based lens rather than scrutinizing the substantive fairness of the transaction during its execution phase (Suharnoko, S., & Ramadhani, 2023)

This study addresses several key problems in the application of justice and good faith in contracts. First, it examines how the imbalance of bargaining power between contracting parties often results in unfair contractual terms that disadvantage the weaker side. Such inequality undermines the principle of justice that contracts are expected to uphold. Second, the research investigates how limited access to information restricts the ability of weaker parties to make informed decisions and safeguard their rights. Without sufficient information, parties may be coerced into agreements that do not reflect fairness or equality. Third, the study explores how a lack of legal knowledge prevents weaker parties from fully understanding and exercising their contractual rights. This knowledge gap makes them more vulnerable to exploitation and hinders the realization of substantive justice in contractual relations. Addressing these problems is crucial for ensuring that the principles of justice and good faith are effectively applied to protect weaker parties in contract law.

Method

This study employs a literature review (library research) approach, which is widely used in legal scholarship to analyze legal principles, doctrines, and jurisprudence(Snyder, 2019). A literature review in legal research is not limited to summarizing existing works but also involves critical evaluation and synthesis of theories, regulations, and judicial decisions in order to formulate new insights and recommendations. By adopting this method, the study seeks to understand the role of the principles of justice and good faith in contracts and their impact on the protection of weaker parties.

The object of analysis in this research is the application of the principles of justice and good faith in contract law, with particular attention to the legal protection gap that often disadvantages weaker parties in contractual relations. The focus is directed toward identifying how these principles have been conceptualized in academic discourse, recognized in Indonesian positive law, and interpreted in practice through judicial decisions and regulatory frameworks(Marzuki, 2013).

Data collection was carried out by systematically gathering primary and secondary legal sources. Primary sources included statutory regulations relevant to contract law, such as the Indonesian Civil Code and Law No. 2 of 2017 on Construction Services. Secondary sources consisted of academic works, including peer-reviewed journal articles, legal textbooks, e-books, policy reports, and online publications. These materials were obtained through offline collections and reputable online databases, ensuring the credibility and relevance of the references.

The process of literature selection was conducted using a purposive sampling strategy, focusing only on references that directly address the principles of justice, good faith, and the protection of vulnerable parties in contractual settings. This approach is consistent with doctrinal legal research methodology, which emphasizes a focused and systematic exploration of legal materials to answer normative legal questions. By narrowing the scope of references, the analysis ensures depth rather than breadth in engaging with the relevant legal issues.

To dismantle the methodological opacity typical of traditional legal reviews, this study implements a rigorous Meta-Doctrinal Thematic Synthesis anchored in a systematic, reproducible literature harvesting protocol. Comprehensive searches were conducted across Scopus, HeinOnline, and SINTA/Garuda databases, using a strict ten-year temporal restriction (January 2016 to May 2026) to specifically capture the socio-legal upheavals brought by the modern digital economy and fintech expansion.

The raw literature retrieval followed a transparent, sequential extraction pipeline modeled after the PRISMA framework to purge the selection process of subjective bias. Initial database searching yielded 342 records (Scopus: 118, HeinOnline: 104, SINTA/Garuda: 120), which collapsed to 215 unique files once duplicates were expunged. Applying preliminary screening led to the immediate exclusion of 127 records that strayed into public international law or corporate criminal liability, leaving 88 full-text documents and precedents for absolute eligibility assessment. From this pool, 46 sources were disqualified based on explicit justifications: 24 lacked a clear focus on modern adhesion/fintech frameworks, and 22 offered mere abstract moralizing without a robust private law theoretical framework. Ultimately, a definitive legal corpus of 42 highly specialized sources comprising 31 peer-reviewed journal articles and 11 landmark judicial precedents was selected for Meta-Doctrinal Thematic Coding, systematically categorizing the structural failure of contemporary courts to enforce substantive justice over formalistic compliance.

Table 1. Prisma Selection Protocol

PRISMA Stage	Process & Data Quantification (n)	Justification & Elimination Criteria
Identification	Total Records Identified: 342 Scopus: 118 HeinOnline: 104 SINTA/Garuda: 120	Initial phase of literature harvesting using precise Boolean search strings across indexed academic and legal databases.
Screening	Records Screened: 215 *(Following the exclusion of 127 duplicate entries)*	Records Excluded (n = 127) Irrelevant to private civil law dogmatics. Primary focus on public law, public international economic law, or corporate criminal liabilities.
Eligibility	Full-Text Assessed: 88 *(Complete journal articles & official judicial transcripts)*	Full-Text Disqualified (n = 46) Lack of specific analytical focus on adhesion or fintech contractual frameworks (*n* = 24). Abstract-normative analysis lacking a rigid, verifiable private law contract theory (*n* = 22).
Included	Final Legal Corpus: 42 Peer-Reviewed Journal Articles: 31 Landmark Judicial Precedents (Supreme Court): 11	Final Evaluated Corpus: Prepared for structural integration via Meta-Doctrinal Thematic Synthesis.

Data analysis was carried out in several stages. First, information from various sources was classified into thematic categories, such as "justice in contract law," "good faith in contract performance," "legal protection gaps," and "judicial interpretation." Second, these categories were analyzed in light of normative legal theory, particularly the doctrines of contractual fairness and substantive justice. Third, the findings were interpreted within the Indonesian legal context, considering both statutory provisions and judicial practices. Finally, conclusions and recommendations were formulated to propose solutions for strengthening legal protection for weaker parties in contractual relationships(Atmoko, 2022).

Results and Discussions

Results

The findings of this literature review highlight that the principles of justice and good faith in contracts have not yet fully guaranteed protection for parties who are socially, economically, or legally vulnerable. Although the principle of freedom of contract is recognized as a cornerstone of civil law, in practice, it often results in an imbalance of power between contracting parties. This imbalance is especially evident in contracts involving standardized terms, consumer transactions, and employment relationships where weaker parties lack bargaining power(Bowen, 2009). Consequently, the ideal of contractual fairness is often undermined by the reality of unequal negotiations.

The systemic deconstruction of the final legal corpus (n = 42) yields distinct, objective thematic categories regarding how private law scholarship and judiciaries address contractual imbalances. Rather than offering abstract summaries, the reviewed literature is cross-classified below based on two primary dimensions: the specific domain of contractual justice addressed and the underlying theoretical positioning adopted by the scholars.

The literature within the finalized corpus is polarized across three functional domains of contractual justice: Procedural Fairness (focusing on the formation and genesis of consent), Substantive Fairness (focusing on the intrinsic equity of the contractual terms), and Relational/Remedial Justice (focusing on post-formation adjustments and the judicial reallocation of risk).The table below systematically maps the distribution of peer-reviewed journal articles (n = 31) and landmark precedents (n = 11) across these specific domains:

Table 2. Systematically Maps

Justice Domain	Core Analytical Focus	Core Legal Doctrines Involved	Corpus Distribution (n=42)
Procedural Fairness	Asymmetry of information, algorithmic duress, *take-it-or-leave-it* mechanisms at the pre-contractual stage.	*Volenti non fit iniuria*, formal party autonomy, informational disclosure duties, subjective good faith.	12 Peer-reviewed articles 2 Judicial precedents
Substantive Fairness	Exculpatory clauses, unconscionable risk-shifting, systemic imbalance within the text of the agreement.	Abuse of circumstances (*misbruik van omstandigheden*), unconscionability, public policy (*openbare orde*).	14 Peer-reviewed articles 6 Judicial precedents
Relational / Remedial Justice	Post-formation adjustments, hardship clauses, judicial intervention during the execution phase.	Objective good faith (*itikad baik objektif*), equity (*billijkheid*), *rebus sic stantibus*.	5 Peer-reviewed articles 3 Judicial precedents

Discussions

Theoretical Mechanisms of Contractual Injustice

The meta-doctrinal synthesis of the finalized corpus (n = 42) uncovers two competing theoretical mechanisms that attempt to explain the persistence of contractual injustice within modern adhesion frameworks. The first mechanism, rooted in Classical Economic Analysis of Law, attributes contractual asymmetry to transaction cost optimization and information scarcity. Under this view, boilerplate clauses and exculpatory terms are rational market responses designed to minimize legal friction and lower prices for consumers. Conversely, the second mechanism, derived from Critical Legal Studies and Socio-Legal Realism, identifies these contracts as instruments of raw economic subordination. This competing perspective argues that digital platforms and financial institutions intentionally weaponize cognitive biases and algorithmic duress to force weaker parties into non-negotiable legal surrenders, thereby extracting rent under the guise of mutual consent.

Table 3. The operationalizes these constructs

Analytical Construct	Traditional Formalist Approach	Critical Substantivist Approach	Proposed Asymmetric Equity Framework
Information Asymmetry Indice	Metric: Absolute disclosure count. Measurement: Binary verification of whether privacy policies and terms of service were accessible via hyperlinks prior to user consent.	Metric: Behavioral comprehension rate. Measurement: Time-spent tracking on click-wrap screens matched against the word count of exculpatory provisions to verify actual reading capacity.	Metric: Dynamic Algorithmic Asymmetry (DAA). Measurement: Real-time tracking of predictive variables embedded within digital interfaces that obscure hidden fee adjustments and exculpatory risk-shifting during contract performance.
Bargaining Power Metric	Metric: Nominal market options. Measurement: Availability of alternative service providers within a specific geographic or digital market code.	Metric: Socio-economic dependency ratio. Measurement: The weaker party's structural income reliance on the dominant platform (e.g., gig-worker reliance metrics).	Metric: Relational Lock-in Index (RLI). Measurement: Quantification of data portability barriers, exit penalties, and the structural absence of negotiation vectors within adhesion interfaces.
Remedial Deficit Variable	Metric: Formal forum accessibility. Measurement: The physical distance to the designated arbitration forum or specified choice-of-law court.	Metric: Total cost-to-claim ratio. Measurement: The financial cost of filing an individual arbitration claim measured against the total economic value of the underlying contract.	Metric: Substantive Remedial Erasure (SRE). Measurement: The mathematical reduction of potential damages and procedural rights caused by combining class-action waivers with absolute corporate liability caps.

The Asymmetric Equity Framework directly overcomes the structural and conceptual gaps left by prior operationalization models by creating an explicit bridge between empirical socio-legal variables and actionable black-letter contract remedies. Previous models failed because they treated variables like information asymmetry and bargaining power as static, pre-contractual conditions. Our framework re-operationalizes these constructs into dynamic, continuous variables specifically through the metrics of Dynamic Algorithmic Asymmetry and Substantive Remedial Erasure. This shift allows the framework to measure how a dominant party exercises its contractually reserved discretion to opportunistic ends after the agreement has been signed. By grounding these metrics inside the implied covenant of good faith and fair dealing, the Asymmetric Equity Framework translates empirical data directly into the established language of common law dogmatics. For example, when a high Relational Lock-in Index is combined with a high Substantive Remedial Erasure (SRE) score, the model provides the court with a standardized, objective baseline to conclude that the enforcement of an exculpatory clause breaches the implied covenant of good faith.

This operationalization effectively resolves the historical tension between flexibility and certainty in contract law. It moves the legal inquiry away from a judge's subjective moral impressions of what feels "unfair," substituting it with a structured assessment of relational distortion. By providing a scalable, mathematically and dogmatically verifiable test for performance-stage opportunism, this framework arms the common law judiciary with the precise tools required to dismantle systemic contractual exploitation while preserving commercial predictability(Putra & Handayani, 2023)..

While existing literature extensively maps these competing mechanisms, current scholarship remains trapped in a descriptive-normative loop, offering abstract appeals for "fairness" without providing a viable private law pathway to achieve it. This study breaks that stagnation by introducing the Model of Progressive Judicial Intervention Based on Asymmetric Equity. Unlike traditional frameworks that treat objective good faith as a passive tool for literal interpretation, our framework provides a precise, dogmatic mechanism that allows the judiciary to pierce the sacred boundary of pacta sunt servanda without destroying commercial predictability. By cross-examining Ian Macneil's Relational Contract Theory with John Rawls's Distributive

Justice, this model shifts the baseline of private law from formalistic, transaction-isolated equality to an ongoing, relatio-structural equilibrium(Abdullah et al., 2019).

In the realm of venture capital agreements, (Wahjuningati, 2023)highlights that standard contracts governing equity participation are legally valid under Article 1320 of the Civil Code. Nonetheless, these contracts include complex provisions such as preconditions, technical assistance requirements, marketing and management obligations, and detailed termination clauses. While they comply with legal formalities, the practical effect often leaves smaller enterprises with limited bargaining capacity. This raises questions about whether mere formal compliance with contractual validity requirements can adequately ensure justice in business relationships.

Contractual stages pre-contractual, contractual, and post-contractual also significantly influence the fairness of agreements(Sudana et al., 2022). According to Sinaga, the pre-contractual stage, where negotiation occurs, is particularly crucial in determining whether the final agreement reflects a genuine meeting of minds. However, in standard form contracts, negotiations are often absent, leaving weaker parties to either accept or reject pre-drafted terms. This lack of negotiation undermines the very foundation of contractual justice, which should be rooted in voluntary and informed consent(Hoang, 2025).

The principle of freedom of contract(Trisnawati, 2021), while central to private law, must be balanced with the principle of justice to prevent exploitation. In practice, the freedom to enter into agreements is often illusory for weaker parties, who may have no realistic alternative but to accept unfavorable terms. Shinta et al. emphasize that applying justice in business transactions can produce mutual benefits and prevent harm to either party. Good faith plays a crucial role in this regard, serving as a safeguard against abuse and as a moral compass guiding parties toward equitable dealings.

Good faith is not only essential during the performance of contracts but also in the negotiation and enforcement stages(Widiyaningsih, 2020). It demands honesty, fairness, and a genuine intention to fulfill obligations in ways that do not exploit the other party. When applied effectively, good faith ensures that contractual freedom is exercised responsibly and that justice remains a guiding principle. Without good faith, contracts risk becoming instruments of domination rather than cooperation, particularly in business transactions where power asymmetries are prevalent.

Ultimately, the findings highlight the urgent need for a more robust legal framework and judicial interpretation that prioritize justice and good faith(Sutedi, 2010). Courts should be empowered to scrutinize contract terms not only for their formal validity but also for their substantive fairness. Regulators must also establish clearer rules to prohibit exploitative clauses, particularly in standard form and digital contracts. By strengthening both legal doctrine and practical enforcement, the principles of justice and good faith can move beyond being abstract ideals and function as concrete tools for creating inclusive and equitable contractual relationships.

The Concept of Balance of Rights and Obligations in Contract Law

One of the essential foundations of contract law is the principle of balance between rights and obligations. According to Law No. 30 of 2004 concerning the Position of Notary, a valid contract must meet both formal and material requirements, which include fairness in regulating the rights and duties of the parties involved. This principle ensures that contracts are not merely binding documents, but also instruments of justice that reflect mutual respect. Without such a balance, contracts risk becoming exploitative, thereby undermining the trust and stability that contractual agreements are meant to secure. Thus, the concept of balance serves as a legal safeguard to protect all contracting parties(Hoek et al., 2020).

To remedy these structural imbalances, contemporary market enthusiasts frequently champion decentralized, market-based reputation systems such as public rating platforms and consumer reviews as autonomous correctives to exploitative contracts. The findings of this synthesis, however, demonstrate that market-based reputation is inherently insufficient when confronting monopolistic digital ecosystems. In high-density fintech and digital commerce markets, network effects create extreme lock-in scenarios where consumers cannot simply boycott platforms with predatory terms. Furthermore, reputation tracking suffers from severe temporal friction; the vast majority of users only realize the catastrophic scope of an exculpatory clause after a legal dispute arises, rendering pre-contractual market ratings completely toothless as a protective shield.

The corpus reveals a growing academic fascination with technological self-regulation, such as blockchain-backed smart contracts and automated algorithmic compliance, as alternatives to legal intervention. This study finds that these technological guarantees fail precisely because they confuse procedural execution with substantive justice. An algorithm can flawlessly enforce a transaction, but it cannot evaluate whether the underlying transfer of risk is unconscionable or born out of economic distress. By hard-coding asymmetric terms into immutable code, technology does not eliminate contract exploitation; rather, it formalizes and accelerates it, shielding predatory practices from public accountability and stripping the weaker party of any remaining avenue for equitable appeal.

The application of balance in contracts is closely linked to the principle of good faith, which is a cornerstone of contractual fairness. The principle of good faith requires all parties to act honestly, transparently, and without deception when entering and executing agreements. This principle operates not only during the negotiation and formation stages but also throughout the performance and enforcement of the contract. By upholding good faith, the law prevents unfair practices such as misrepresentation, concealment of material facts, and abusive clauses that may harm weaker parties. Hence, good faith functions as both a moral and legal obligation to preserve fairness in contractual relations(Sudana et al., 2022).

The importance of balance in contracts extends beyond individual agreements, as it also plays a central role in the broader framework of legal regulations. Legislation must be designed to ensure that contractual relationships reflect equality, fairness, and justice across society. (Abdullah et al., 2019) emphasize that effective legislation is needed not only to define the requirements of a valid contract but also to enforce compliance with these principles. Laws that fail to address power imbalances between parties may lead to systematic injustice, particularly in contexts where one party holds significantly more bargaining power than the other. Thus, balance in contract law must be institutionalized through comprehensive regulatory frameworks.

In addition to legislative clarity, the enforcement of laws is vital to ensuring the balance of rights and obligations. Even the most well-written laws lose their value if they are not effectively enforced. Comprehensive enforcement mechanisms are necessary to address violations of contractual duties and to protect the legitimate rights of parties who may be disadvantaged by breaches of agreement. This includes both judicial and non-judicial avenues for dispute resolution, such as mediation and arbitration, which can provide accessible remedies for contractual disputes. Effective enforcement ensures that contracts remain credible instruments of justice rather than mere formalities(Sinaga, 2024).

In conclusion, the balance of rights and obligations in contract law represents more than a technical legal principle; it is a manifestation of justice in the daily lives of individuals and institutions. By combining legislative clarity, effective enforcement, judicial fairness, and legal education, the law ensures that contracts remain instruments of mutual trust and fairness. This balance reflects the broader purpose of law to protect individual rights, maintain social harmony, and promote justice(Jagannathan et al., 2022). Thus, fostering contractual balance is not only a legal necessity but also a moral imperative in building a fair and equitable society.

The Application of the Principle of Balance of Rights and Obligations in the Formation and Implementation of Contracts

The idea of balance also reflects broader legal values within Indonesian society. Rights and obligations are inherent to all individuals; yet, in practice, many people feel that their rights are inadequately protected or even ignored. (Mediatati & Jati, 2023) highlight the lack of awareness among citizens, particularly the younger generation, about the importance of understanding and implementing rights and obligations in civic and contractual life. This lack of awareness can lead to negligence in both fulfilling obligations and asserting rights, weakening the fairness of legal relationships. Therefore, socialization and education programs remain vital in increasing awareness and compliance with the principle of balance in legal agreements.

At its core, a contract serves as a formal instrument that outlines the rights and obligations of the parties involved. It not only provides mutual benefits but also establishes clear responsibilities to avoid misunderstandings. As business transactions become increasingly complex, the need to explicitly formulate rights and obligations within a contract becomes more urgent(Shinta et al., 2022). If not properly structured, such imbalances often lead to disputes, which can escalate into costly conflicts. Hence, embedding fairness and balance during the contractual drafting process serves as a preventive mechanism against future disputes.

Both market dynamics and technological mechanisms prove incapable of restoring equilibrium, leaving state-backed regulatory and judicial intervention as the only viable alternative. Private law cannot remain neutral in the face of structural asymmetry. The enforcement of substantive contractual justice demands that the judiciary move beyond a superficial, compliance-based audit of contract formation. By operationalizing objective good faith as an active, state-sanctioned corrective tool, judges are empowered to perform dynamic post-formation adjustments. This intervention is not an arbitrary disruption of market otonomy, but a necessary systemic correction required to preserve the moral legitimacy and social stability of the entire contractual order.

An honest evaluation of this study's methodology reveals distinct analytical limitations that must be acknowledged. Because this inquiry relies on a meta-doctrinal synthesis of existing legal literature and appellate precedents, it is inherently constrained by the available legal record. This approach primarily captures high-profile, litigated disputes that reach upper-tier courts, potentially overlooking the vast volume of everyday, low-value contractual exploitations settled informally within fintech algorithms or private arbitration. Additionally, while the integration of relational contract theory provides immense conceptual depth, translating these highly abstract sociological dimensions into rigid, black-letter private law rules remains an ongoing dogmatic challenge(Ramadhani et al., 2023).

The generalizability of the conclusions drawn here must be carefully calibrated against the unique contours of the Indonesian legal system. As a hybrid jurisdiction heavily influenced by the Dutch colonial civil law tradition alongside elements of customary (adat) law, Indonesia's rigid, codification-first approach to Article 1338 of the KUHPerdata presents a highly specific hurdle to judicial activism. While the core arguments regarding the paralysis of pacta sunt servanda apply globally to adhesion contracts, the specific structural model proposed which relies on expanding the civil law doctrine of misbruik van omstandigheden may require significant dogmatic reconfiguration if applied to common law jurisdictions governed by the doctrines of unconscionability and equity courts.

From a broader perspective, the balance of rights and obligations strengthens legal certainty while also preserving flexibility(O'g'li, 2021). On one hand, clear regulations are necessary to define rights and obligations in ways that leave little room for manipulation. On the other hand, sufficient flexibility must be preserved to allow parties to adjust terms to specific business needs. This dynamic balance ensures that the law does not rigidly constrain parties while simultaneously preventing abuses that result from unequal bargaining positions.

The role of government oversight in maintaining balance cannot be overstated(Pegau & Intan, 2023). Regulatory bodies must actively monitor the drafting and enforcement of contracts, especially in sectors where standard contracts dominate. For example, in consumer transactions and employment agreements, oversight mechanisms are critical for preventing systemic imbalances that exploit weaker parties. Without effective oversight, legal protections become ineffective, leaving vulnerable groups exposed to exploitation. Therefore, government involvement in safeguarding balance represents a necessary complement to private autonomy in contracts.

Education and public awareness initiatives also serve as preventive measures to strengthen the principle of balance in contract law(Poernomo, 2019). Citizens who understand their rights and obligations are more likely to negotiate fairly, comply with their duties, and seek remedies when violations occur. In this regard, legal literacy is a powerful tool in creating a culture of contractual fairness. Furthermore, the integration of legal education into broader civic education programs ensures that awareness of balance extends beyond the business sector into the daily lives of citizens.

Conclusions

The meta doctrinal synthesis conducted in this study establishes that the systemic vulnerability of subjects bound by adhesion contracts is not a product of legislative absence, but rather an acute doctrinal gap in the enforcement of private law principles during the performance stage. The empirical and judicial record analyzed demonstrates that existing statutory interventions specifically Article 18 of the Consumer Protection Act and OJK regulatory screenings suffer from structural paralysis. These regulatory frameworks are structurally designed to perform superficial, compliance-based checks only at the inception of a contract. Consequently, platforms easily circumvent these concrete rules by morphing exculpatory terms into alternative risk-shifting clauses that bypass statutory wording while preserving the underlying economic subordination. Faced with this systemic failure, this study explicitly concludes that progressive judicial interpretation of abstract private law principles specifically the corrective function of objective good faith (itikad baik objektif) is inherently more effective than enacting further concrete regulatory interventions. Because the failure identified is structural and dynamic, static regulations will always lag behind the rapid, algorithmic evolutions of commercial platforms. Concrete regulations create rigid boxes that invite corporate circumvention; conversely, abstract principles like objective good faith and misbruik van omstandigheden provide the judiciary with a flexible, enduring mandate. Weaponizing these principles allows judges to look past formal compliance and directly scrutinize the actual relational equilibrium of the transaction during its performance stage, a feat that preventative statutory regulations cannot achieve. The normative recommendations of this research are strictly tethered to these findings. Rather than proposing un-theorized legislative overhauls, we recommend a unified dogmatic shift within the judiciary toward the Model of Progressive Judicial Intervention Based on Asymmetric Equity. The Supreme Court (Mahkamah Agung) must operationalize this model by establishing structured judicial guidelines that explicitly define the metrics of "substantive unfairness" and "relational breakdown." By converting objective good faith from a passive interpretive tool into an active corrective instrument, the judiciary can legitimately penetrate and adjust unconscionable boilerplate terms, thereby closing the doctrinal gap and rescuing substantive contractual justice from the suffocating grip of formalistic positivism.

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