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Humanizing Contract Law: A Human Rights-Based Reinterpretation of Freedom of Contract in Indonesia

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Abstract

The principle of freedom of contract constitutes a fundamental doctrine in Indonesian private law, rooted in liberal paradigms and the autonomy of individual will; however, in contemporary contractual practice, this principle frequently encounters structural challenges arising from unequal bargaining power, economic domination, and information asymmetry, rendering the promised freedom largely formal and potentially giving rise to substantive injustice. This article examines how the principle of freedom of contract should be interpreted and applied to align with human rights principles, particularly equality, non-discrimination, and the protection of weaker parties. Employing a normative juridical method with statutory and conceptual approaches, the research analyses the Indonesian Civil Code, sectoral regulations concerning consumer protection, labour relations, and digital transactions, as well as relevant legal doctrines and theories. The findings demonstrate that the classical, individualistic understanding of freedom of contract is no longer adequate to address the complexities of contemporary contractual relations. Accordingly, the principle must be reinterpreted through a human rights perspective by placing human dignity at the core orientation of private law. This reinterpretation is articulated

through the strengthening of normative, institutional, and educational dimensions, ensuring that freedom of contract functions not merely as an instrument of legal certainty, but also as a mechanism for human rights protection and the realization of substantive justice within the Indonesian private law system.

Introduction

In Book III of the Indonesian Civil Code (hereinafter referred to as the "Civil Code"), there are several fundamental principles that function as the foundation and primary sources for the regulation of contract law in Indonesia, forming the normative framework for the formation, validity, and performance of contractual agreements.[1] The principle of freedom of contract in Indonesian contract law is not explicitly stipulated in the Indonesian Civil Code; rather, its existence is implicitly reflected in the provisions of Articles 1320 and 1338 of the Civil Code. These provisions establish the requirements for the validity of contracts and contain normative statements concerning the freedom of the parties to enter into contractual agreements.[2] The primary legal basis of this principle is set forth in Article 1338 paragraph (1) of the Civil Code, which provides that "all legally executed agreements shall bind the parties as law".[3]

This provision constitutes an adoption of the concordance principle derived from the Dutch Burgerlijk Wetboek (BW), which states that "*Alle wettiglijk gemaakte overeenkomsten strekken dengenen die dezelve hebben aangegaan tot wet.*"[4] The meaning of this principle corresponds to Article 1338 paragraph (1) of the Indonesian Civil Code, namely that every legally executed agreement binds the parties

1 Agus Yudha Hernoko, *Hukum Perjanjian* (Jakarta: Prenadamedia Group, 2010), 104.

2 Dina Silvia Puteri et al., "Freedom of Contract Illusion in the Employment Agreement," *Media Iuris* 8, no. 2 (June 2025): 277, https://doi.org/10.20473/mi.v8i2.71236

3 Taufiq El Rahman, R. A. Antari Innaka, Ari Hernawan, Ninik Darmini, and Murti Pramuwardhani Dewi, "Asas Kebebasan Berkontrak dan Asas Kepribadian dalam Kontrak-Kontrak Outsourcing," *Mimbar Hukum* 23, no. 3 (October 2011): 584. https://doi.org/10.22146/jmh.16178

4 Jacob Hans Nieuwenhuis, *Drie Beginselen van Contractenrecht*, diss. (Deventer: Kluwer, 1979), 4.

as if it were law. Accordingly, the principle of freedom of contract serves as one of the fundamental pillars of Indonesian contract law, as it grants the parties autonomy to determine the content and form of their agreements, provided that such agreements do not contravene applicable laws, public order, or morality.

In other words, this provision positions agreements concluded by the parties as binding sources of law with authority equivalent to that of statutory law. Conceptually, this principle is rooted in nineteenth-century liberal thought, which emphasizes the autonomy of individual will, whereby every person is regarded as a rational and independent legal subject capable of determining his or her own legal destiny.[5]

The principle of freedom of contract reflects a fundamental human right in the form of free will to determine the content, form, and terms of an agreement, insofar as such determination does not contravene statutory law, public order, or morality. This freedom allows the parties to create various types of agreements, whether explicitly regulated in the Indonesian Civil Code or emerging from social and commercial practice. Nevertheless, such freedom remains subject to the provisions of Article 1320 of the Civil Code concerning the requirements for the validity of contracts, as well as to the principles of propriety and justice inherent in every legal relationship.

In practice, the principle of freedom of contract frequently encounters challenges arising from unequal bargaining power between the parties. Such imbalance occurs when one party possesses significantly greater economic or negotiating power, as in the relationship between employers and workers, financial institutions and debtors, or business actors and consumers. The stronger party often exploits this position by imposing standard clauses that are non-negotiable.[6] This situation creates the potential for injustice toward the weaker party. Consequently, agreements that are formally valid

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[5] The principle of freedom of contract cannot be separated from the influence of nineteenth-century liberal political and economic philosophies, particularly laissez-faire economics advanced by Adam Smith and utilitarian philosophy developed by Jeremy Bentham, both of which are grounded in individualism. Ridwan, Khairandy, *Kebebasan Berkontrak dan Pacta Sunt Servanda versus Iktikad Baik: Sikap yang Harus Diambil Pengadilan* (Yogyakarta: Faculty of Law, Universitas Islam Indonesia, 2015), 22–23.

[6] Ekacatra Hery Jatmiko, "Penerapan Asas Kebebasan Berkontrak dalam Kontrak Bisnis di Indonesia," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora* 2, no. 3 (July 2025): 91–99, https://doi.org/10.62383/humif.v2i3.1828.

may function as instruments of exploitation, contrary to the principles of justice and the protection of fundamental human rights. Considering these conditions, the legal issue that arises concerns how the principle of freedom of contract in Indonesian private law should be interpreted and applied so that it does not remain confined to formal freedom, but instead aligns with human rights principles, particularly substantive justice and the protection of weaker parties.

These conditions necessitate a rebalancing between the principle of freedom and contractual justice. Legal scholars emphasize that the application of the principle of freedom of contract must consider the principles of transparency, proportionality, and the protection of weaker parties. Law does not function solely to ensure legal certainty but must also uphold justice and utility. Accordingly, regulatory mechanisms are required to restrict the use of unfair contractual clauses and to strengthen legal protection for parties who are structurally disadvantaged.

To date, studies on the principle of freedom of contract in Indonesia have predominantly adopted a doctrinal private law approach, focusing on the formal validity of agreements through subjective and objective requirements, as well as their conformity with public order and morality. While such approaches are essential, they tend to assume that contractual consent is inherently free and rational, thereby overlooking the structural inequalities that may undermine the authenticity of that consent.

Scholarly engagement with the principle of freedom of contract from a human rights perspective remains limited and fragmented. More importantly, existing studies have not critically interrogated the underlying assumption of equality between contracting parties, nor have they systematically positioned human rights as a normative framework for assessing whether contractual freedom genuinely reflects individual autonomy or instead conceals forms of structural coercion.

This article argues that the classical conception of freedom of contract in Indonesian private law is normatively inadequate, as it reduces freedom to formal consent while neglecting the substantive conditions necessary for genuine autonomy. In contexts marked by unequal bargaining power, such a formalistic approach risks legitimizing exploitative agreements under the guise of legal validity.

Accordingly, this article advances a human rights-based reinterpretation of the principle of freedom of contract, in which

freedom is understood not merely as the absence of coercion, but as the presence of conditions that enable meaningful and dignified choice. By placing human dignity at the centre of contractual analysis, this approach seeks to transform the principle of freedom of contract from a doctrine of formal autonomy into an instrument of substantive justice.

Therefore, the reinterpretation of the principle of freedom of contract through a human rights approach becomes relevant to ensure that contractual freedom does not generate structural injustice. Accordingly, a new conceptual framework is required that positions the principle of freedom of contract not merely as an expression of autonomy of will, but also as an instrument for the protection of human rights. Such reinterpretation is expected to create a balance between freedom and justice in contractual practice and to ensure that every legal relationship arising from an agreement genuinely reflects respect for human dignity and the principle of substantive justice within a modern state governed by the rule of law.

This article adopts a human rights-based approach to reinterpret the principle of freedom of contract, situated within a broader critical understanding of contractual inequality. In doing so, it draws upon selected insights from critical contract theory, including the work of Hugh, who highlights the structural nature of inequality in contractual relations and the limitations of formal consent.[7] However, this article does not position Hugh's theory as the primary analytical framework; rather, it is employed as one of several complementary perspectives to examine the extent to which contractual freedom in Indonesian private law aligns with human rights principles, particularly substantive justice and the protection of vulnerable parties.

Method

This research employs a normative juridical method, utilizing statutory and conceptual approaches, as well as a historical approach to trace the development of legal thought on the principle of freedom of contract and the concept of equality, from classical perspectives to a human rights-based approach, through an examination of positive legal norms, legal doctrines, and concepts of contractual justice from a human rights perspective.

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[7] Hugh Collins, "Distributive Justice through Contracts," *Current Legal Problems* 45, no. Part 2 (1992): 49, https://doi.org/10.1093/clp/45.Part_2.49.

Result and Discussion

In foreign legal literature, the principle of freedom of contract is commonly referred to as "freedom of contract" or "liberty of contract," and is also frequently described as "party autonomy." This principle is regarded as universal, in the sense that it is generally recognized and applied within contract law across legal systems in many countries. [8] Moreover, the principle occupies a fundamental position in the Indonesian private law system, as it affirms the right of every individual to freely determine the content, form, and parties involved in a contractual agreement. This principle is rooted in classical private law thought, which conceives human beings as rational and autonomous legal subjects possessing equal legal standing before the law.[9] In this context, freedom is understood as a manifestation of autonomy of will that enables individuals to regulate their own interests without external intervention, provided that such regulation does not contravene statutory law, public order, or morality.

Furthermore, contractual relations require the application of additional principles, one of which is the principle of proportionality, which is expected to promote fairness and equality within contractual relationships. The convergence of the parties' interests that gives rise to an agreement is also intended to create conditions that are conducive and fair for all parties involved.[10] Consequently, the parties are presumed to hold equal positions in the formation of the agreement. However, social and economic dynamics in modern society demonstrate that such an assumption of equality can no longer be fully sustained.

In contemporary contractual practice, many contractual relationships are formed in the context of unequal bargaining power.[11]

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[8] Subekti and Veronika Nugraheni Sri Lestari, *Perlindungan Hukum bagi Konsumen Rumah Tapak dalam Kontrak Jual Beli Berdasarkan Perjanjian Pengikatan Jual Beli* (Surabaya: Jakad Media Publishing, 2020), 230.

[9] Achmad Firjan et al., *Hukum Perdata dan Hak Asasi Manusia: Menjamin Keadilan Individu* (Jambi: Nawala Gama Education, 2025), 41.

[10] Mohammad Iqbal Rahmawan, Aminah Aminah, and Budi Ispriyarso, "Penerapan Asas Proporsionalitas dalam Perjanjian Waralaba," *Notarius* 12, no. 2 (2019): 917, https://doi.org/10.14710/nts.v12i2.29135.

[11] Bargaining power imbalance refers to a significant disparity in which one party to a contract possesses substantially greater power to dictate contractual terms than the other, often due to superior alternatives, market conditions, or informational advantages. Such imbalance undermines genuine freedom of contract, making the weaker party more likely to accept unfair terms, which may result in unconscionable agreements that courts may refuse to enforce. Factors such as

Such relationships may be observed, for example, between large business actors and consumers, between employers and workers, or between digital service providers and users. This situation gives rise to the phenomenon of contractual inequality, in which parties possessing greater economic and negotiating power can dictate contractual terms, while weaker parties are placed in a position of acceptance without meaningful opportunity for negotiation.[12]

This phenomenon gives rise to a fundamental problem in the application of the principle of freedom of contract. Normatively, every individual is indeed entitled to the freedom to enter into agreements; however, in practice, such freedom is often illusory.[13] Structurally weaker parties are not genuinely free to determine their will but are instead compelled to adapt to conditions unilaterally imposed by stronger parties. As a result, the principle of freedom of contract, which was originally intended to safeguard autonomy and legal certainty, may in practice generate substantive injustice.

This condition signifies the need for a reinterpretation of the principle of freedom of contract within the contemporary socio-economic context. The notion of freedom cannot be understood merely as formal liberty, but must encompass substantive freedom that takes into account the social, economic, and power conditions affecting the positions of the contracting parties.[14] Within this framework, private law must position the principle of freedom of contract not merely as an instrument of autonomy, but also as a means of safeguarding justice and balance in private legal relations.

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standard-form contracts, economic coercion, and a unique market position contribute to this imbalance. Richard Stone, *The Modern Law of Contract* (London: Cavendish Publishing Limited, 2005), 346.

12 Mafriyani K. Hamid, "Ketidakseimbangan Posisi Tawar Para Pihak dalam Perjanjian Franchise sebagai Dampak dari Perjanjian Baku Beserta Akibat Hukumnya" (Undergraduate thesis, Universitas Islam Indonesia, 2012), 6.

13 Illusory freedom refers to a condition in which an individual perceives themselves as free while being constrained or lacking genuine control over their life, often without conscious awareness. This condition arises from an illusion of autonomy that leads individuals to believe they possess meaningful choices, whereas those choices are in fact limited or shaped by external actors or structural circumstances, Graham Heath, *The Illusory Freedom: The Intellectual Origins and Social Consequences of the Sexual "Revolution"* (Amsterdam: Elsevier Science, 2013), 20.

14 Ayu Asih Kamiliyana et al., "Representasi Ruang Pembebasan dan Pemberdayaan: Telaah Sosiologis pada Agensi Sozo Creative Lab dalam Perspektif Development of Freedom Amartya Sen," *Titian: Jurnal Ilmu Humaniora* 9, no. 1 (June 2025): 305. https://doi.org/10.22437/titian.v9i1.44671

This conceptual gap is also evident in the academic sphere. The majority of legal scholarship in Indonesia continues to focus on the dogmatic aspects of the principle of freedom of contract, assessing the validity of agreements based on subjective and objective elements, without comprehensively examining the inherent human rights dimensions involved.[15] In fact, within a modern state governed by the rule of law, human rights principles are not limited to vertical relations between the state and citizens, but are also relevant to horizontal relations among individuals.[16] The principle of freedom of contract, when not accompanied by guarantees of substantive justice, has the potential to violate the principles of equality and respect for human dignity.

In this context, the state bears a constitutional responsibility to guarantee the protection of the rights of every citizen, as mandated by Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the "1945 Constitution"). This responsibility applies not only within the public sphere, but also within the private sphere, including private legal relations involving contractual arrangements. Accordingly, the state must ensure that the principle of freedom of contract is implemented in accordance with the principles of social justice and the protection of human rights.

For citizens as legal subjects, freedom of contract must also be understood in a proportional manner. Freedom cannot be construed as absolute freedom that negates moral and social responsibility. Rather, freedom must be exercised within the framework of justice, balance, and respect for human dignity. Accordingly, the reinterpretation of the principle of freedom of contract from a human rights perspective is essential to ensure that contractual relationships are not only legally valid, but also substantively just.

A. The Principle of Freedom of Contract within the Classical Private Law Paradigm

As previously discussed, the principle of freedom of contract occupies a central position in Indonesian private law as a manifestation of the autonomy of individual will in the formation of agreements. This principal functions not only as an instrument of legal

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15 Isharyanto, *Teori Hukum: Suatu Pengantar dan Pendekatan Tematik* (Jakarta: WR Penerbit, 2019), 24.

16 Sri Hastuti Puspitasari, "Paradigma Hubungan antara Kekuasaan Negara dan Perlindungan HAM di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 10, no. 23 (May 2003): 99, https://doi.org/10.20885/iustum.vol10.iss23.art6.

certainty, but also reflects a philosophical view of human freedom that regards individuals as sovereign legal subjects over their own affairs.[17] However, in order to comprehensively understand the position of this principle within the Indonesian legal system, it is essential to trace its conceptual and historical roots in the classical private law paradigm that developed in nineteenth-century Europe.[18]

The principle of freedom of contract is rooted in the individualistic outlook that dominated European legal thought during that period. Within this paradigm, individuals were viewed as rational and autonomous entities, fully capable of determining their own interests without interference from others. Classical private law was grounded in the principle of laissez-faire.[19] Under this approach, the state assumed a minimal role in private relations among citizens. State intervention was considered unnecessary, as contracts were

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[17] The principle of freedom of contract provides a philosophical and conceptual foundation that enables each party to an agreement to determine and negotiate contractual terms in accordance with their respective will and interests. This principle affirms that each party possesses full autonomy to formulate contractual provisions independently, without undue influence or intervention from external parties. In this context, the principle of freedom of contract also serves as a safeguard, protecting the parties from any form of pressure, coercion, or interference that may alter the substance of the agreement or compel a party to enter a contract contrary to their true intentions. Joseph Hugo Vieri Iusteli Sola Kira and Richard C. Adam, "Penerapan Asas Kebebasan Berkontrak dalam Perjanjian Kemitraan dan Pengaruhnya terhadap Praktik Persaingan Usaha Tidak Sehat," *JIHPP: Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 2 (2024): 1101. https://doi.org/10.38035/jihhp.v5i2.3762.

[18] Satjipto Rahardjo, *"Mempertahankan Pikiran Holistik dan Watak Hukum Indonesia," in Masalah-Masalah Hukum (Special Edition)* (Semarang: Faculty of Law, Universitas Diponegoro, 1997), 1–13. *As further explained by F. X. Adji Samekto, the modern legal system should be understood as a construct that emerged from the social order of Western Europe during the development of capitalism in the nineteenth century. This historical context demonstrates that modern law is not a neutral or universal system, but rather a product of specific socio-economic and ideological conditions*

[19] Laissez-faire is an economic theory that developed in the eighteenth century, premised on the belief that economic activity functions most effectively in the absence of government intervention. Under this theory, minimal state involvement is considered conducive to economic growth and societal prosperity. The principle of laissez-faire is further grounded in the assumption that individual self-interest, when exercised freely, will ultimately contribute to greater collective welfare. "Sistem Laissez-Faire," *Fortune Indonesia*, accessed October 7, 2025, https://www.fortuneidn.com/news/sistem-laissez-faire-00-fykp7-x1hmvvvid; *The laissez-faire principle is based on the view that individual freedom and self-interest motives will lead to greater overall societal welfare.* Ediarno, *Teori Ekonomi Bagi Hasil: Kegagalan Self-Regulating Ekonomi Kapitalis dan Konstruksi Teori Self-Regulating Ekonomi Bagi Hasil Berdasarkan Tujuh Norma Dasar Ekonomi* (Serang: Penerbit Empat, 2014), 37.

understood as the result of voluntary agreements between parties holding equal legal standing.[20]

This concept is consistent with legal liberalism, which places individual freedom as the highest value in social life. Law is viewed to ensure legal certainty and the protection of private property, rather than as an instrument for achieving social justice. Within this context, the principle of freedom of contract affirms that agreements lawfully entered are binding upon the parties with the force of law (*pacta sunt servanda)*. Accordingly, the law does not interfere with the content or substance of an agreement so long as the parties have consented and the legal requirements for a valid contract are fulfilled.

Within this framework, a contract is positioned as the product of a free and equal meeting of minds. This assumption gives rise to the belief that every individual possesses the same capacity to determine their rights and obligations. Consequently, classical private law places greater emphasis on formal freedom rather than substantive freedom. Under this view, justice is considered to have been achieved once an agreement is formed based on voluntary consent, without considering the socio-economic conditions that may constrain the freedom of one of the parties.

This line of thought was subsequently adopted into the Indonesian legal system through the principle of concordance from the BW", which was later translated and enacted as the Indonesian Civil Code, Article 1338 paragraph (1) of the Indonesian Civil Code, which states that "all agreements lawfully entered into shall have the force of law for those who have concluded them," constitutes a direct reflection of legal liberalism that emphasizes the autonomy of individual will. Although this principle emerged within the socio-political context of nineteenth-century Europe, it was adopted with minimal adjustment to the socio-economic realities of Indonesian society, both during the colonial period and in the post-independence era.

However, the classical approach that emphasizes formal freedom in contractual autonomy reveals fundamental weaknesses when applied to the context of modern societies that are increasingly complex and socio-economically stratified. This paradigm is premised on the assumption that all individuals possess equal legal standing and

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[20] Ari Hernawan, "Hukum dan Kekuasaan dalam Hubungan Industrial," in *Mimbar Hukum, Special Edition* (November 2011): 90.

an equal capacity to negotiate their will within a contract. Nevertheless, this assumption does not always correspond with social reality. In practice, contractual relationships often reflect sharp structural inequalities, in which parties with greater economic, political, or technological power can unilaterally determine the content, form, and direction of contracts. This condition gives rise to unequal legal relations that undermine the premise of genuine contractual freedom. Such conditions prevent the parties from occupying genuinely equal positions and cause the freedom of contract to lose its substantive meaning.[21]

This inequality undermines the equal standing of the contracting parties and causes the principle of freedom of contract to lose its substantive meaning. The weaknesses of this formalistic approach become even more apparent when applied to societies characterized by high levels of social and economic stratification. Modern society is not composed of homogeneous individuals, but rather of groups with differing levels of access to resources and information. In such circumstances, structurally stronger parties possess significantly greater bargaining power in determining contractual terms, while weaker parties are often reduced to passive recipients of agreements that have been unilaterally designed in advance. As a result, the principle of freedom of contract, which was originally intended to guarantee autonomy of will, may instead function as an instrument that legitimizes the dominance of stronger parties.

Furthermore, widening socio-economic disparities generate social consequences that cannot be ignored. As gaps in economic power and access to information between social groups become increasingly pronounced, the potential for horizontal conflicts among groups likewise increases. Parties who feel marginalized within an unjust economic and legal system may lose confidence in contractual mechanisms as instruments of justice. Such conditions risk eroding social trust, which constitutes a fundamental prerequisite for the stability of legal and economic relations within society.

Beyond the issues outlined above, critical perspectives have also emerged toward the classical private law paradigm when social realities

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[21] Kutut Suwondo, "Pluralitas Civil Society dan Upaya Demokratisasi Lokal," *Jurnal Analisis Sosial* 7, no. 2 (June 2002): 2. https://media.neliti.com/media/publications/486-ID-demokratisasi-dan-kemiskinan.pdf

demonstrate that freedom of contract may operate as a mechanism for legitimizing injustice rather than as a means of achieving balance and protecting rights. Accordingly, there arises a need to reconstruct the understanding of the principle of freedom of contract so that it becomes more responsive to the values of substantive justice and human rights protection within modern law.

This transition toward a new paradigm signifies a shift from an individualistic conception of freedom toward an approach that is more oriented toward social justice. The following section examines how the principle of freedom of contract may be reinterpreted through a human rights perspective, emphasizing the balance between individual autonomy and the protection of weaker parties in contractual relationships. This discussion demonstrates that the application of the principle of freedom of contract based solely on formal freedom is no longer sufficient to meet the demands of substantive justice and human rights protection in contemporary contractual relations.

B. Contractual Inequality and Violations of Human Rights

Socio-economic developments and technological advancements in the modern era have fundamentally transformed perspectives on the concept of freedom of contract. Legal behavior in contemporary contractual practice can no longer be separated from the influence of socio-economic structures and digitalization processes that shape patterns of interaction among legal subjects.[22] whereas in the past this principle was understood as the manifestation of a free agreement between two parties holding equal legal standing, in contemporary practice such an assumption has become increasingly difficult to sustain.

The ideal condition of balanced bargaining power between contractual parties is rarely found. One party often occupies a more dominant position, whether due to economic, social, or power-related factors, enabling it to impose its will upon the other party. Such dominance allows the stronger party to determine or dictate the content of the agreement in accordance with its own interests, while the weaker party lacks adequate space for meaningful negotiation. In

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[22] Afrizal Mukti Wibowo et al., *Perkembangan Hukum Keperdataan di Era Digital* (Banten: Sada Kurnia Pustaka, 2024), 176, https://repository.sadapenerbit.com/index.php/books/catalog/book/197.

situations of this nature, freedom of contract no longer reflects equality of will, but instead functions as an instrument for maintaining inequality. Consequently, the government or the state frequently intervenes by imposing limitations on contractual freedom with the aim of providing protection for weaker parties. Such limitations may be implemented through statutory regulations or through judicial decisions that uphold the principle of substantive justice. [23] In many cases, one party possesses significantly greater economic power, resources, or influence than the other. As a result, the equality that constitutes the foundation of the principle of freedom of contract often remains merely formal in nature, failing to reflect substantive justice in the actual legal.

Social and economic inequality constitutes one of the primary factors contributing to the shifting meaning of freedom of contract. Individuals or small business actors often occupy a weak bargaining position when confronted with large corporations. In such circumstances, the freedom to determine the content and form of contracts becomes severely constrained. Many weaker parties are compelled to accept unfavorable contractual terms due to the absence of viable alternatives. Consequently, freedom of contract in the modern context can no longer be understood as a manifestation of equality of will but rather resembles an illusion that conceals structural injustice underlying contractual relations.

Technological advancement has further deepened these inequalities. Large corporations with advanced technological capabilities possess significant advantages in managing and exploiting information effectively, whereas individuals or consumers frequently lack adequate understanding of complex contractual terms. Information asymmetry refers to a situation in which one party holds substantially more information than the other. For example, corporate management generally possesses more extensive knowledge than investors in capital markets. The degree of information asymmetry may vary, ranging from very high to very low, and such conditions exert a tangible influence on decision-making processes, both in legal and financial contexts.[24] As a consequence, freedom of contract loses its

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[23] Joko Sriwidodo et al., *Memahami Hukum Perikatan* (Yogyakarta: Kepel Press, 2021), 149.

[24] Esther Masri et al., *Buku Ajar Hukum Perlindungan Konsumen* (Surabaya: Jakad Media Publishing, 2023), 102.

substantive meaning because weaker parties do not possess equal opportunities to understand or reject contractual risks.

This phenomenon is commonly referred to as contractual inequality, reflecting a shift in private law relationships from those that were originally horizontal and equal to ones that are increasingly subordinative in nature.[25] In subordinate contractual relations, one party exercises greater control, whether due to economic, political, or technological factors. If such conditions are not counterbalanced by principles of justice and respect for human rights, the principle of freedom of contract may instead function as a mechanism for legitimizing practices that are detrimental to weaker parties.

Contractual inequality is clear across various areas of legal life. In employment relations, for example, contracts unilaterally drafted by employers often contain provisions that place excessive pressure on workers, such as excessive working hours, wages below statutory standards, or restrictions on freedom of association. Such practices are contrary to the right to decent work and a humane livelihood as guaranteed under Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Similar conditions also arise in relationships between business actors and consumers. The use of standard form contracts unilaterally prepared by business actors frequently results in injustice, as consumers are afforded no meaningful opportunity to negotiate contractual terms. Freedom of contract, which should be voluntary in nature, is transformed into disguised coercion (economic coercion), contradicting the principles of consumer protection as regulated under Law Number 8 of 1999 on Consumer Protection (hereinafter referred to as the "Consumer Protection Law").

In more contemporary contexts, contractual inequality is also apparent in relationships between digital service providers and users. Online service agreements often contain clauses that allow providers to collect, process, or share users' personal data without clear and informed consent. Such practices not only threaten the right to privacy as guaranteed by Article 28G paragraph (1) of the 1945 Constitution but also contradict the spirit of Law Number 27 of 2022 on Personal Data Protection (hereinafter referred to as the "Personal Data Protection Law").

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[25] Martijn Willem Hesselink, *Justifying Contract in Europe: Political Philosophies of European Contract Law* (Oxford: Oxford University Press, 2021), 273.

A relevant judicial illustration can be found in the Constitutional Court Decision Number 284/PUU-XXIII/2025, which reviewed Article 20 paragraph (2) letter (a) of the Personal Data Protection Law concerning the requirement of "valid consent" in personal data processing. Although the decision does not explicitly address the doctrine of freedom of contract, it critically engages with its foundational element, namely the validity of consent. [26]

In this case, the petitioner challenged the notion of consent in digital practices, arguing that such consent is often obtained without explicit, informed, and meaningful understanding by data subjects. From the perspective of contract law, this issue directly relates to the principle of consensualism as the foundation of freedom of contract, which presumes that agreements arise from genuine autonomy of will. However, the case demonstrates that in electronic agreements, consent is frequently reduced to a formal requirement rather than a substantive expression of free will, due to information asymmetry and the absence of meaningful negotiation.

Consequently, although such agreements may satisfy formal requirements of validity, they fail to reflect substantive contractual freedom. This illustrates that the principle of freedom of contract, when applied in a purely formalistic manner, may obscure structural inequalities and potentially legitimize practices that are inconsistent with the protection of human rights, particularly the right to privacy and control over personal data.

The foregoing analysis demonstrates that contractual freedom in contemporary practice often operates within structurally unequal conditions, thereby raising a fundamental question concerning the adequacy of formal equality as the underlying assumption of contract law. This necessitates a shift toward a more substantive understanding of equality as a normative foundation for assessing the legitimacy of contractual relations. As a universal value, equality serves as both a moral and juridical benchmark for the realization of social justice. This principle is closely linked to the principle of non-discrimination, which requires that every individual be treated regardless of race, gender, religion, or social status.

However, the understanding of equality is dynamic and continues to evolve in response to changing social realities. This development has occurred alongside a growing awareness of the

[26] Constitutional Court Decision Number 284/PUU-XXIII/2025

complexity of social relations, economic structures, and the increasing diversity of human conditions within modern society. In the history of legal thought, the concept of equality was initially understood within the framework of formal equality. This view is rooted in Aristotle's principle that like cases should be treated alike (treating likes alike). In legal practice, formal equality demands legal neutrality and rejects any form of differential treatment. Although seemingly ideal, this approach is abstract and tends to be formalistic, as it overlooks the real social inequalities that exist in society. Consequently, formal equality merely guarantees equal treatment on paper, while failing to create equal positions or opportunities in social reality.

These limitations have given rise to new paradigms through the concepts of equality of opportunity and substantive equality. Equality of opportunity emerged as a critique of formal equality by emphasizing the importance of equalizing starting points. This approach acknowledges that historical inequalities and systemic discrimination require affirmative measures to remedy them. Substantive equality, or equality of outcomes, goes even further by assessing the actual results and impacts of legal policies. It affirms that differential treatment may be justified insofar as it aims to achieve equitable justice, in line with the principles of distributive justice and substantive fairness.

The most advanced stage in the evolution of equality is the human rights–based approach to equality. This approach emphasizes that every individual must be treated as an equal, rather than merely equally. The principle of human dignity serves as the central foundation linking substantive equality with social justice and respect for diversity. Accordingly, the shift from formal equality to substantive equality reflects a transformation in legal thought that is more responsive to social and moral realities, ensuring that law is not only normatively just but also effective in addressing structural inequalities and realizing inclusive and dignified justice.

Consequently, freedom of contract that is not accompanied by substantive justice and respect for human rights may instead generate new forms of inequality within society. For this reason, the paradigm of modern private law must move from formal equality toward substantive equality, an approach that situates individual freedom within a framework of social responsibility and respect for human dignity. This transformation requires a reinterpretation of the principle of freedom of contract so that it aligns with the ideals of

Pancasila and the principles of the Indonesian rule of law, which guarantee social justice for all citizens.

In this context, the principle of freedom of contract must be re-evaluated not only as a legal doctrine, but as a normative construct that must be aligned with the demands of substantive justice and human rights protection.

As articulated by John Rawls, the principle of social justice requires that individual freedom may be limited only to the extent necessary to protect the least advantaged members of society.[27] By embracing this spirit, freedom of contract becomes not merely a symbol of autonomy of will, but also an instrument for achieving substantive justice in Indonesia's legal and social life.

C. Integration of Human Rights Principles into the Freedom of Contract

The problem of contractual inequality demonstrates that the principle of freedom of contract can no longer be understood in a purely formalistic manner, as if the contracting parties always possessed equal bargaining positions within legal relationships. The classical understanding of this principle, which is grounded in the principle of commensalism, assumes that contractual obligations arise solely from the free consent of the parties and that such consent is sufficient to ensure fairness in contractual relations.

However, contemporary contractual practices reveal that consent is often shaped by structural inequalities, power imbalances, and socio-economic pressures that undermine genuine freedom of will. *consensualism*[28] and *autonomie de la volonté*,[29] Accordingly,

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[27] John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Harvard University Press, 1999), 3.

[28] Consensualism occupies a superior position to formalism in contract law. Formalism is therefore regarded as a limited exception and, conceptually, even as a principle that stands in opposition to consensualism. Flour, Aubert, and Savaux argue that consensualism is morally superior to formalism because form or formalities are not essential to the formation of a contract. In a similar vein, Carbonnier emphasizes that a contract derives its legal validity solely from the agreement of wills between the parties, rather than from any formality or validation imposed by a higher authority. In other words, consent does not form constitutes the primary requirement for the validity of a contract. Abry, Construction, Sources, and Implications, 6.

[29] The principle of autonomie de la volonté (autonomy of will) constitutes the philosophical foundation of consensualism in civil law. According to this principle, a contract derives its legal force solely from the agreement of wills (meeting of

autonomie de la volonté constitutes the philosophical foundation of *consensualism*, while *consensualism* represents the doctrinal application of the principle of autonomy of will in contract law practice. Autonomy of will explains why contracts are binding namely because they originate from free consent whereas *consensualism* explains how contracts become legally valid, that is, through agreement without the necessity of formalities.

Both principles are fundamentally premised on the assumption that every individual possesses full freedom to determine the content, form, and parties to a contract. However, within the realities of modern society, this assumption is increasingly difficult to sustain. Contracts no longer arise from equal bargaining positions, but rather from unequal structures of power and economic relations, in which dominant parties such as large corporations, business actors, or employers frequently impose unilateral contractual terms without affording meaningful opportunities for negotiation to weaker parties.[30]

These conditions give rise to what is referred to as structural contractual inequality, namely a situation in which formal freedom is not accompanied by substantive freedom. In this context, the principle of freedom of contract, when not supported by corrective mechanisms, has the potential to perpetuate injustice. Law, which should function as an instrument of protection, may instead transform into a means of legitimizing exploitation.[31] Therefore, the reinterpretation of the principle of freedom of contract becomes a normative necessity to ensure that such freedom does not contradict humanitarian values and human rights.

The integration of human rights principles into the freedom of contract does not constitute a restriction on individual freedom; rather, it represents an effort to situate that freedom within a framework of social responsibility and respect for human dignity.[32]

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minds) between the parties, rather than from formal requirements or validation by an external authority. Consequently, form is not an essential condition for contractual validity; what is determinative is the existence of consent arising from the free will of the parties. Kane Abry, *The Construction, Sources, and Implications of Consensualism in Contract: Lessons from France* (London: Springer International Publishing, 2023), 6.

30 Gunawan Widjaja, *Asas Kebebasan Berkontrak dalam Hukum Perdata Indonesia* (Jakarta: RajaGrafindo Persada, 2018), 43.

31 Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), 79.

32 Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2020), 135.

The principles of equality, non-discrimination, substantive justice, and the protection of vulnerable groups must serve as benchmarks at every stage of a contractual relationship, from its formation and performance to its enforcement and dispute resolution.

Accordingly, the principle of freedom of contract should not merely affirm autonomy of will as be emphasized in classical doctrine but must also reinforce human dignity and justice as the core values of the national legal system. This reinterpretation is consistent with the perspective of social justice contract theory, which views contractual freedom not as an absolute individual entitlement, but as a legal construct that must operate within a framework of social responsibility and fairness[33] which emphasizes that individual freedom in contracting must be subject to the principles of social justice.[34] From this perspective, the validity of a contract cannot be assessed solely on the basis of the parties' formal consent, but must also be evaluated in terms of the substantive justice of its content and its impact on social equilibrium. In other words, freedom of contract is no longer conceived as absolute freedom, but rather as responsible freedom, namely, freedom exercised with moral awareness and responsibility toward other parties.

The state's positive obligations require the state to facilitate and ensure that the freedoms guaranteed by law can be effectively realized. This obligation also serves to ensure that freedom of contract is not misused as an instrument of exploitation against structurally weaker parties.[35] Within a human rights framework, the state's positive obligations encompass the responsibility to protect individuals from human rights violations committed by non-state actors, including those arising within the sphere of private legal relations. This principle is consistent with Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which affirms that "the protection, promotion, enforcement, and fulfillment of human rights are the

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33 Social contract theory, which is nearly as old as philosophy itself, holds that an individual's moral and/or political obligations arise from a contract or agreement among members of society to establish and govern the community in which they live. Celeste Friend, "Social Contract Theory," in *Internet Encyclopedia of Philosophy*, accessed October 7, 2025, https://iep.utm.edu/soc-cont/.

34 Hugh Collins, *Justice in Contract Law: Doctrinal, Comparative, and Theoretical Perspectives* (Oxford: Oxford University Press, 2013), 56.

35 Jimly Asshiddiqie, *Konstitusi dan Hak Asasi Manusia* (Jakarta: Konstitusi Press, 2017), 96.

responsibility of the state, particularly the government."[36] Accordingly, contractual relationships between individuals and corporations also constitute a domain in which the state must be present through regulation, supervision, and corrective policies.

The role of the state in balancing individual freedom and social interests has been reflected in several regulatory frameworks that explicitly incorporate human rights dimensions. First, Article 18 of the Consumer Protection Act prohibits the inclusion of standard clauses that unfairly disadvantage consumers.[37] Clauses such as "purchased goods cannot be returned" or "the seller is not responsible for damages" represent forms of liability shifting that are inherently unbalanced and have been deemed contrary to the principle of contractual fairness. Similar cases have drawn public attention in online transactions where the return of defective goods was denied under the pretext of internal store policies, highlighting the weak bargaining position of consumers in digital contracts.

Secondly, oversight of personal data violations by the Ministry of Communication and Information Technology reflects a new form of contractual imbalance in the digital era.[38] User consent to the "terms and conditions" of online services is often obtained without adequate understanding, frequently through unilateral click-wrap agreements. Between 2019 and 2022, the Ministry of Communication and Information Technology received dozens of reports on personal data breaches and misuse, including major cases such as the data leaks of Tokopedia customers and BPJS Kesehatan.[39] These cases demonstrate that the right to privacy and control over personal data, which form part of human rights, are often neglected in modern contractual practices.

Thirdly, proposed revisions to Law Number 11 of 2008 on Electronic Information and Transactions, as most recently amended by Law Number 1 of 2024; referred to hereafter as the "ITE Law" as

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36 Nabilla Farah Quraisyta and Ilham Dwi Rafiqi, "Legal Protection for Persons with Disabilities Due to Work Accidents After the Job Creation Law," *Hang Tuah Law Journal* 7, no. 2 (2023): 189–205, https://doi.org/10.30649/htlj.v7i2.162.

37 Law No. 8 of 1999 on Consumer Protection article 18.

38 Ministry of Communication and Information Technology of the Republic of Indonesia, *Laporan Penanganan Kasus Pelanggaran Data Pribadi 2019–2022* (Jakarta: Kominfo, 2023).

39 "Kebocoran Data Tokopedia dan BPJS Kesehatan: Tantangan Penegakan UU PDP," *CNN Indonesia*, 2023, accessed October 7, 2025, https://www.cnnindonesia.com.

well as updates to the Consumer Protection Law, aim to strengthen the norms governing electronic contracts to make them fairer and more transparent.[40] These updates are expected to explicitly regulate clauses in online transactions, valid consent mechanisms, and the responsibilities of digital service providers in safeguarding the security and confidentiality of user data. Such measures reflect a shift in private law orientation toward a more humanistic approach grounded in social justice.

In an academic context, the reformulation of the principle of freedom of contract based on human rights can be seen as part of the humanization of private law. That is, the process of making civil law more oriented toward human beings and humanitarian values, rather than merely formal legal certainty.[41] Ideally, private law should not stop at legitimizing the freedom of will but must ensure substantive justice that favors those vulnerable to economic domination. This approach also aligns with the principles of good faith and fair dealing, universally recognized as the essence of modern contract law.

Thus, the principle of freedom of contract in the new paradigm should be understood as dignified freedom, freedom that is subject to humanistic values, justice, and the protection of vulnerable parties.[42] Civil law is no longer merely a guardian of formal legal certainty or a tool to legitimize free will; it has become a means to ensure that every contractual relationship reflects respect for human dignity and the balance of social interests. This reformulation is not only an ethical imperative but also a constitutional requirement within the framework of a rule-of-law state grounded in social justice, as mandated by the Preamble of the 1945 Constitution of the Republic of Indonesia.[43]

The issue of contractual imbalance demonstrates that the principle of freedom of contract can no longer be understood formalistically, as if the parties always possess equal bargaining power in a legal relationship. In modern social reality, contracts often emerge within skewed power and economic structures, where the dominant party can impose unilateral clauses while the weaker party has little

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40 Government of the Republic of Indonesia, *Draft Amendments to the Law on Electronic Information and Transactions and the Consumer Protection Law*, Government Draft, 2023.

41 Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 83.

42 Muhammad Djumhana, *Hukum Perdata dan Pembangunan Ekonomi* (Bandung: Citra Aditya Bakti, 2016), 212

43 Djumhana, *Hukum Perdata dan Pembangunan Ekonomi*, 212.

meaningful room for negotiation.[44] This imbalance creates an urgency to reinterpret the principle of freedom of contract so that it does not become a tool that violates human rights but rather an instrument to uphold substantive justice.

The integration of human rights principles into freedom of contract is not a limitation on individual liberty; rather, it is an effort to situate that liberty within a framework of social responsibility and respect for human dignity. Principles of equality, non-discrimination, substantive justice, and the protection of vulnerable groups must serve as benchmarks at every stage of a contract, its formation, performance, and enforcement. Thus, freedom of contract not only affirms the autonomy of will as in classical doctrine but also reinforces humanistic values and justice as the core of the national legal system.[45]

The state, in this context, has a positive obligation to ensure that freedom of contract is not misused as an instrument of exploitation against weaker parties. The state cannot merely act as a guarantor of formal freedom; it must actively regulate, supervise, and protect citizens in private relationships. This obligation is rooted in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the protection, promotion, enforcement, and fulfillment of human rights are the responsibilities of the state, particularly the government. Accordingly, this constitutional responsibility also extends to civil relationships involving individuals and corporations.

The state's tangible role in balancing the relationship between individual freedom and social interests has been evident in several regulations that explicitly incorporate human rights dimensions. First, Article 18 of the Consumer Protection Law prohibits the inclusion of standard clauses that impose undue burdens on consumers.[46] For example, clauses such as "purchased goods cannot be exchanged" in online transactions are considered detrimental to consumers because

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44 Jatmiko, "Penerapan Asas Kebebasan Berkontrak," 91–99.

45 Herlina Ratna, *Asas-Asas Umum Hukum Perdata dalam Perspektif Modern*, (Padang: Takaza Innovatix Labs,2025), 60

46 In comparative constitutional practice, the Philippines established a Constitutional Commission, Thailand formed a Constitutional Drafting Assembly, and South Africa, in the post-apartheid era, created a Constitutional Assembly. In contrast, constitutional amendments in Indonesia were carried out by the People's Consultative Assembly through an Ad Hoc Committee, with a Constitutional Commission later formed primarily to harmonize drafting and technical language. Denny Indrayana, "Urgensi Komisi Konstitusi," *Kompas*, September 5, 2001.

they eliminate the right to compensation or the return of defective goods.[47] Second, the oversight of personal data protection by the Ministry of Communication and Information Technology indicates that privacy violations and data misuse represent a new form of contractual imbalance in digital transactions.[48] Third, the proposed revisions to the ITE Law, along with updates to the Consumer Protection Law, aim to strengthen the norms governing electronic contracts to make them fairer and more transparent.

Furthermore, strengthening the principle of freedom of contract based on human rights also requires a paradigm shift in legal enforcement and legal education practices in Indonesia. In an institutional context, the judiciary must be willing to engage in judicial activism through progressive interpretation of contractual clauses that may violate human rights, particularly for vulnerable parties such as workers, consumers, and users of digital services.[49] In applying the law to a legal event, judges do not essentially exercise their function entirely independently, as their role is often perceived merely as enforcers of the law (*la bouche de la loi or spreekbuis van de wet*).[50] However, this paradigm is now expected to shift toward the application of judicial activism. Judges are no longer merely "mouthpieces of the law" but serve as guardians of substantive justice in civil relationships. This approach aligns with John Rawls' theory of justice, which emphasizes that freedom must be accompanied by a responsibility to protect the most vulnerable or disadvantaged groups in society.

Moreover, at the societal level, legal literacy becomes a crucial aspect in promoting awareness of contractual rights and obligations. The public's limited understanding of contract terms, particularly in online contracts and adhesion agreements, exacerbates the imbalance

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47 Sutta Dharmasaputra, "Komisi Konstitusi Masih Jadi Imajinasi," *Kompas*, August 12, 2002.

48 Law No. 27 of 2022 on Personal Data Protection

49 Judicial activism refers to a philosophy of judicial decision-making in which judges base their rulings, among other considerations, on their views regarding emerging developments or evolving public policies. These considerations guide judges in deciding cases, particularly where new circumstances arise or where such decisions depart from previous rulings in similar cases. Bryan A. Garner, ed., *Black's Law Dictionary*, 8th ed. (St. Paul, MN: West Group, 2004), 862.

50 Josef Mario Monteiro, *Mengenal Mahkamah Konstitusi: Teori, Gagasan, dan Pembentukan Peradilan Konstitusi* (Yogyakarta: KBM Indonesia, 2025), 16, under "Wewenang MK."

of bargaining power. Therefore, public policies oriented toward legal education and the strengthening of access to justice need to be systematically developed. This can be achieved through the integration of human-rights-based legal education at various educational levels and through legal outreach conducted by state institutions as well as civil society organizations.

The reformulation of the principle of freedom of contract based on human rights thus constitutes a strategic step toward a civil law system that ensures not only formal freedom but also substantive justice. In this new paradigm, freedom of contract should be understood as dignified freedom that is subject to the principles of humanity, justice, and the protection of vulnerable parties. Thus, private law no longer functions merely as a guardian of the autonomy of will but also serves to ensure that every agreement reflects respect for humanistic values within the framework of a rule-of-law state grounded in social justice.

Accordingly, this article asserts that the principle of freedom of contract can no longer be understood solely as formal freedom based on the autonomy of the parties' will; rather, it must be reconstructed within the framework of human rights values. The integration of principles such as equality, substantive justice, and the protection of vulnerable parties constitutes a normative prerequisite to prevent freedom of contract from becoming an instrument that legitimizes inequality and the violation of human dignity.

D. Model For Reinterpreting Freedom of Contract Based on Human Rights

The discussion on the integration of Human Rights principles into the freedom of contract highlights the need for a new approach to understanding this principle in the context of modern law. Freedom of contract can no longer be seen as an absolute right standing alone; rather, it must be understood dynamically in relation to social responsibility and the protection of weaker parties. Therefore, a model for reinterpreting the principle of freedom of contract is needed, one that positions human rights values as normative, institutional, and educational dimensions within Indonesia's civil law system.

The model for reinterpreting the principle of freedom of contract based on Human Rights) can be realized through strengthening three interrelated dimensions: normative, institutional, and educational. In the normative dimension, it is necessary to update

and strengthen legal instruments that can limit exploitative contractual practices and ensure transparency in every contractual relationship. Regulations must clearly define limits on the use of clauses that are detrimental, particularly in standard contracts and digital transactions, to prevent the freedom of contract from being misused as a means of violating fundamental rights. This effort aligns with the principles of fairness and good faith, long recognized as fundamental elements in civil law, ensuring that freedom of contract is always balanced by justice and the protection of weaker parties.

Next, in the institutional dimension, the strategic role of judicial bodies and consumer protection institutions must be strengthened to ensure the enforcement of contractual justice principles. Judges have a central function in interpreting the freedom of contract progressively and contextually, considering human rights principles and the socio-economic conditions of the contracting parties. In addition, institutions such as the Consumer Dispute Settlement Agency (BPSK), the Financial Services Authority (OJK), and the Ministry of Manpower need to enhance their effectiveness in overseeing contractual practices that may violate individual human rights. Strengthening institutional capacity is essential to ensure that the freedom of contract is not merely a written norm but is truly alive and implemented in practice.

Meanwhile, in the educational dimension, improving public legal literacy is a crucial factor in realizing equitable freedom of contract. Legal awareness must be cultivated so that individuals understand their contractual rights and obligations, particularly in the context of modern legal relationships such as digital transactions, platform-based economies, and flexible employment arrangements. Legal education, both formal and non-formal, should also aim at fostering an ethical and social contracting paradigm, emphasizing that freedom is always accompanied by responsibility, and that justice cannot be realized without the moral awareness of the parties involved.

Thus, this model for reinterpreting the principle of freedom of contract based on human rights underscores the need to shift from a rigid and formalistic understanding toward a more humanistic and justice-oriented approach. The principle of freedom of contract no longer merely guarantees the autonomy of individual will but must function as a normative instrument to ensure a balance between freedom and social justice. This reformulation simultaneously places human dignity at the center of all private law activities, enabling civil

law to play an active role in realizing substantive justice amid the dynamics of modern socio-economic life.

Conclusion

Based on the overall discussion, this article asserts that the principle of freedom of contract in Indonesian civil law is no longer adequate if understood in a formalistic and individualistic manner, as in the classical paradigm. In the modern socio-economic reality, characterized by imbalances in bargaining power, freedom of contract often proves illusory and has the potential to generate injustice and human rights violations. Therefore, through a normative-juridical approach with a human rights perspective, this article proposes a model for reinterpreting the principle of freedom of contract based on normative, institutional, and educational dimensions, placing the principles of equality, substantive justice, and protection of vulnerable parties at its core. This reinterpretation affirms that freedom of contract should be understood as dignified and responsible freedom, with the state acting as a guarantor of justice in private relationships. Accordingly, the principle of freedom of contract does not merely serve to guarantee autonomy of will but also functions as a constitutional instrument to realize social justice and respect for human dignity within the framework of the Pancasila-based rule-of-law state.

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