

ANALYSIS OF LEGAL CERTAINTY IN ARTICLE 1320 OF THE INDONESIAN CIVIL CODE REGARDING THE ELEMENT OF AGREEMENT BETWEEN THE PARTIES IN BUSINESS CONTRACTS: A REVIEW OF THE CONTRA PROFERENTEM THEORY

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ABSTRACT

This research examines the ambiguity in Article 1320 of the Indonesian Civil Code (KUHPerdata), particularly regarding the element of agreement between the parties in business contracts. The purpose of this study is to analyze the challenges related to the interpretation of this article and how it impacts the clarity and enforceability of contracts. The study utilizes a juridical-normative approach with an analysis of statutory regulations and legal doctrines, particularly focusing on the theory of contra proferentem as a solution for addressing ambiguities. The research shows that Article 1320 does not explicitly define how a valid agreement should be understood when one party does not fully comprehend the contract, leading to uncertainty and potential disputes. As a result, the study concludes that contra proferentem is a valuable interpretative tool to ensure legal certainty, especially when there is ambiguity in contract clauses. By applying this principle, the weaker party in a contract is protected, ensuring that the agreement is interpreted fairly, thus promoting justice and clarity in business transactions

Kata Kunci: *Ambiguity, Contra Proferentem, Business Contracts*

INTRODUCTION

In the business world, a contract is not merely a legal document but serves as the fundamental foundation that shapes the relationship between the parties involved. An effective business contract must include clear and detailed clauses regarding the rights and obligations of each party, as well as the procedures to be followed in the event of a dispute. In this context, transparency of information within the contract is crucial, as it can reduce the likelihood of misunderstandings or misinterpretations in the future. As explained in this study, the transparency contained in a contract provides a better understanding between the parties involved, minimizes the risk of conflict, and strengthens a healthy and productive working relationship.¹

Legal certainty in business contracts is an equally important element in ensuring that every provision stated in the contract can be properly executed. This certainty provides a sense of security for the parties involved, with the assurance that the applicable regulations will be enforced fairly and in accordance with the prevailing legal provisions.² This clarity not only pertains to how a contract can be executed, but also to how dispute resolution can be carried out in the event of a breach. Legal certainty ensures that the parties are not solely reliant on each other's good faith but also on a clear and reliable legal system.

One of the primary goals of drafting a contract is to reduce uncertainty and the potential for conflict that may arise in the future. Therefore, the clarity of clauses within the

¹ Agus Suwandono, "Pemahaman Aspek-Aspek Hukum Perjanjian dalam Perancangan Kontrak untuk Mewujudkan Perlindungan Para Pihak." *Abdibaraya: Jurnal Pengabdian Masyarakat* 2, no. 01 (2023): 1–8. <https://doi.org/10.53863/abdibaraya.v2i01.783>.

² Irawan Faiqa Syifa "Keseimbangan Hak dan Kewajiban Para Pihak dalam Hukum Kontrak." *Pemuliaan Keadilan* 2, no. 2 (2025): 51–65. <https://doi.org/10.62383/pk.v2i2.586>.

contract is crucial. Each clause must be carefully worded to avoid ambiguities that could lead to differing interpretations later on. In this regard, the parties involved in the contract can directly refer to the contract's content as a guide to fulfill their respective obligations.³ When each party clearly understands what is expected of them and their obligations, the potential for default or conflict can be minimized. This clarity also plays a crucial role in building trust between the parties involved, which ultimately fosters more productive and effective collaboration.

In the framework of legal theory proposed by Roscoe Pound, a business contract is not only viewed as a formal agreement but also as a tool to achieve a balance of interests in society. Pound, in his theory of "law as a tool of social engineering," emphasized that the law functions as a means to create social and economic harmony.⁴ In this context, a transparent and certain contract plays a role in ensuring that the rights and obligations of each party are respected fairly. A contract designed with the principles of openness and legal certainty can be seen as an implementation of the concept of balance of interests proposed by Pound. Thus, a well-drafted business contract not only protects the interests of the parties involved but also contributes to the creation of social justice through the enforcement of legal certainty.

The importance of legal certainty and transparency in business contracts also includes the protection of the rights of the weaker parties, such as consumers or workers. In many cases, business contracts function to ensure that consumer rights are protected by establishing standards for the quality of products or services, as well as mechanisms for addressing complaints or claims. Similarly, in the context of the relationship between companies and employees, contracts can ensure that workers' rights are protected, such as fair payment, protection against discrimination, or the fulfillment of other obligations. Therefore, the legal certainty reflected in contracts not only protects business interests but also plays a crucial role in creating a fair environment for all parties involved.

Legal certainty in business contracts is vital to maintaining the smoothness and clarity of relationships between the parties involved. However, misunderstanding or ambiguity in contract clauses can lead to legal uncertainty, undermining the primary objective of the contract itself. When clauses in a contract are not clearly formulated, each party may have a different interpretation of their rights and obligations. This creates confusion in fulfilling the agreed-upon duties, which can ultimately increase the potential for disputes in the future.

The impact of unclear clauses is significant in the fulfillment of obligations and rights of the parties involved. The parties may have different understandings of what is expected of them. One party may feel that they have met their obligations, while the other may believe otherwise. This lack of clarity can lead to negligence in fulfilling obligations or even result in default, leading to financial or reputational damage. Additionally, ambiguous clauses can prolong the negotiation and decision-making process, as each party strives to ensure that their rights are protected according to what was agreed upon.⁵

The issue arising from the lack of clarity in drafting contract clauses is the increased potential for disputes that are difficult to resolve without judicial intervention. When a

³ Nalini, Widyantoro. "Penerapan One Clause One Concept Pada Surat Perjanjian Pemborongan (Kontrak) Rumah Tinggal Nomor. 67/SPK/XII/2019 PT. Timur Jaya Pratama." *Jurist-Diction*, July 31, 2022. <https://doi.org/10.20473/jd.v5i4.37341>.

⁴ Lestari, Sri. "The Legal Certainty for Resolving Consumer and Business Actor Disputes from the Perspective of Social Engineering Justice from Roscoe Pound." *Jurnal Ius: Kajian Hukum Dan Keadilan*, December 27, 2023. <https://doi.org/10.29303/ius.v1i1i3.1309>.

⁵ Santoso, Muhamad Adi, And Muhamad Nur Sopin. "Ketidakpastian Hukum Dan Mitigasi Risiko." *Deleted Journal*, February 1, 2024. <https://doi.org/10.61722/jmia.v1i1.941>.

dispute occurs, the court must interpret vague clauses, which often extends the litigation process and adds to the costs.⁶ This contradicts the primary purpose of drafting a contract, which is to avoid disputes and save time and costs. Ambiguity in the contract can also damage long-term business relationships, as the tensions arising from misunderstandings or differing interpretations can erode trust between the parties.

Moreover, in the element of agreement between the parties as regulated in Article 1320 of the Civil Code, there is ambiguity regarding whether an agreement can be considered valid if one of the parties does not fully understand the contents of the contract. This article only states that agreement is one of the requirements for the validity of a contract, but it does not provide further explanation on how the understanding and consent of each party should be achieved.⁷ This ambiguity becomes problematic when one party feels that they do not fully understand the contents of the contract they have signed. The question arises whether this means the agreement is invalid, or whether the signature alone is sufficient as a formal expression of consent. In many cases, the party who does not understand the contract may feel disadvantaged, as they believe their consent was not based on a clear and complete understanding, but rather merely fulfilling a formality.

This often becomes a source of disputes, especially in agreements that are complex or involve parties with differing levels of knowledge. For example, in business agreements that involve technical jargon or complicated clauses, the party with less understanding of the contract may find themselves trapped in an agreement that is unfair to them. However, Indonesian civil law does not explicitly regulate what should be done if one of the parties does not understand the contract, leaving the court to determine whether the party truly did not understand or if their consent is still valid despite being unaware of certain key aspects of the contract.

As a result, the question arises as to whether an agreement can be considered valid if one of the parties does not fully understand the contract's content. In practice, to protect the rights of the party who does not understand, the principles of good faith and the obligation to explain the contract clearly are crucial and should be enforced. Without clear explanation regarding the element of understanding in the agreement, legal uncertainty can arise, causing what should be a valid contract to become vulnerable to challenges in court. Therefore, even though there is no direct explanation in Article 1320, it is important for the party drafting the contract to ensure that each party fully understands the contents of the agreement before giving their consent.

RESEARCH METHODS

In the research titled "Analysis of Legal Certainty in Article 1320 of the Indonesian Civil Code Regarding the Element of Agreement Between the Parties in Business Contracts: A Review of the Contra Proferentem Theory," the relevant research method is the normative juridical research method combined with a legal analysis approach. This method is used to analyze and examine in-depth the legal provisions found in Article 1320 of the Civil Code and their relevance in the practice of business contracts in Indonesia, particularly in relation to the contra proferentem theory. The aim of this method is to identify how the legal provisions within Article 1320 of the Civil Code are applied in drafting clear and binding contracts, and how the contra proferentem theory can serve as a tool for interpreting ambiguous clauses in contracts.

⁶ Chivers, Emily, dan Shawn Curran. "Ambiguity is the last thing you need." *Preprint, arXiv*, 2024. <https://doi.org/10.48550/ARXIV.2410.20222>.

⁷ Kadir, Nasrul, Andi Risma, and Ahyuni Yunus. "Pembatalan Perjanjian Berdasarkan Penafsiran Dalam Kitab Undang-Undang Hukum Perdata." *Journal of Lex Philosophy (JLP)*, January 1, 2021.

The first approach in this method is through an in-depth literature review of Article 1320 of the Civil Code, the contra proferentem theory, and various relevant legal doctrines, such as freedom of contract, good faith, and legal certainty. In this case, the literature study will be used to gain a comprehensive understanding of the rules governing contracts, as well as to analyze the views of legal scholars on the application of the contra proferentem theory in the context of drafting unambiguous and fair clauses. The literature analyzed will include books, journal articles, and related legal documents.

Additionally, the second approach involves using case analysis or case studies, where the research will examine the application of Article 1320 of the Civil Code in the practice of business contracts. By studying court rulings related to unclear contract clauses and the application of the contra proferentem theory, this research aims to understand how courts assess and interpret ambiguous clauses in business contracts. This approach also allows for an evaluation of how the courts prioritize legal certainty and justice in resolving contract disputes caused by unclear clauses, and how the contra proferentem theory is used to reduce ambiguity in drafting contract clauses.

RESULTS AND DISCUSSION

Ambiguitas dalam Pasal 1320 Tentang Unsur “Kesepakatan Para Pihak” dalam KUHPerduta

The ambiguity in Article 1320 of the Civil Code, particularly regarding the element of agreement between the parties, is a significant issue in Indonesian contract law. This article states that for a contract to be valid, there must be an agreement between the parties involved. However, the lack of clarity on how this agreement should be reached often leads to problems. The article does not explicitly explain whether an agreement can be considered valid if one of the parties does not fully understand the contents of the contract. This creates room for various interpretations, which could potentially lead to legal disputes in the future.

According to Subekti, an expert in Indonesian civil law, the agreement in a contract must be a statement of intent that is free from coercion or mistake. He asserts that every contract made must be based on a clear understanding and awareness of what is being agreed upon.⁸ However, Article 1320 does not provide a detailed explanation of how the mechanism of understanding between the parties is guaranteed. When one of the parties does not fully understand the consequences of the agreement they have signed, the agreement could be considered invalid or void by law, even though a formal agreement may appear to have been reached.

In some cases that arise in court, this lack of understanding often occurs in agreements involving parties with different levels of legal knowledge. In such situations, one party may feel trapped in a complex or unclear clause, while the other party, who is more experienced or has more legal knowledge, may consider the agreement valid simply because of the signature.⁹ This situation certainly has the potential to create injustice and harm one of the parties involved. As explained by Wijayanto, a contract law expert, ignorance or a clear lack of understanding of a clause in the contract can be grounds for annulment of the contract..¹⁰

⁸ Asih, Mochamad Moro, and Tunjung Fitra Wijanarko. “Fungsi Hukum Nota Kesepahaman Sebagai Perikatan Perjanjian Menurut Kitab Undang-Undang Hukum Perdata (KUH Perdata),” March 26, 2021. <https://doi.org/10.33592/JSH.V17I1.1174>.

⁹ Perkara Perdata Nomor 463/PDT/2022/PT.BDG tentang Wanprestasi

¹⁰ Susanti, Nia. “Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata.” *Indragiri Law Review*, August 31, 2024. <https://doi.org/10.32520/ilr.v2i2.32>.

The issue of ambiguity becomes even more complicated when an agreement is tested in court. If one party claims that they do not understand the contents of the contract or do not agree with certain clauses, the court will be faced with the challenge of interpreting the intentions of the parties involved. This can lead to legal uncertainty, as the court's decision depends on the interpretation made by the judge, which may vary from one case to another. As stated by Barda Nawawi Arief, a well-known legal expert in Indonesia, courts often have to rely on subjective interpretations, which can risk misinterpreting the intentions of the parties..¹¹

The confusion is further compounded because Article 1320 only states that agreement is a requirement for the validity of a contract, without providing more detailed provisions on how the process of agreement should be carried out. The law does not clarify whether an agreement can be considered valid if one party does not fully understand or has not been given sufficient explanation about the contents of the contract. In this case, the theory of justice, which is highly valued in contract law, should serve as a guideline to assess whether an agreement has truly been made in good faith and without coercion. As emphasized by Andi Hamzah, a legal expert, justice in business contracts can only be achieved if each party fully understands their rights and obligations.

The importance of a clear agreement, mutually understood by both parties in a contract, is also emphasized by Sudikno Mertokusumo, who states that a contract must be based on the principles of transparency and honest disclosure. In every contract, if one party is not provided with sufficient understanding of the contents of the contract, then the agreement could be considered flawed.¹² Ambiguity in clauses can lead to legal uncertainty, which in turn can damage the legal relationship between the parties. Therefore, a mutual understanding of the contract's contents is fundamental, to ensure that neither party feels disadvantaged due to their lack of understanding of the contract.

Additionally, Article 1320 does not provide an explanation regarding whether an agreement can be annulled if one of the parties feels they were coerced or did not have sufficient understanding of the contract they signed. This lack of clarity creates room for different interpretations, which could lead to further issues. According to Satjipto Rahardjo, the agreement in a contract must not only be clear but also must result from a process free from pressure, coercion, or fraud. If one party feels that there was coercion or deceit in the agreement, then the agreement could be annulled.¹³

The potential for misunderstanding in contracts caused by the ambiguity in Article 1320 highlights the need for caution in drafting contract clauses. This is particularly important when the contract involves a party with a weaker legal position or less understanding of legal provisions. In this case, the *contra proferentem* theory applied in contract law becomes relevant. According to this theory, if there is ambiguity in a contract, the ambiguous clause must be interpreted against the party who drafted it, which is usually the more dominant party in the agreement. This provides legal protection for the weaker party.

¹¹ Umarudi, Farkhan, Ganindya Kayantri, Nelfia Kusuma, Muhamad Kholid, and Uu Nurul Huda. "Analisis Putusan Mahkamah Agung Nomor 126b/Pdt.Sus-Arbit/2021 Tentang Putusan Perjanjian Yang Mengandung Tipu Muslihat Dalam Pekerjaan Kontruksi Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa." *Indonesian Research Journal on Education*, May 30, 2025. <https://doi.org/10.31004/irje.v5i3.2748>.

¹² Nabila, Andita Putri, and Gunawan Djayaputra. "Urgensi Pelaksanaan Kebebasan Berkontrak Dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak." *Unes Law Review*, December 31, 2023. <https://doi.org/10.31933/unesrev.v6i2.1246>.

¹³ Arifin, Syamsul. "Penyalahgunaan Paksaan Sebagai Dasar Pembatalan Perjanjian," October 1, 2023. <https://doi.org/10.61722/jssr.v1i1.450>.

Overall, the ambiguity in Article 1320 regarding the agreement between the parties has a significant impact on the clarity and fairness of contractual relationships. Therefore, it is crucial for legal practitioners to be more careful when drafting contract clauses to avoid potential disputes caused by differing understandings or interpretations of the contract clauses. The parties in a business contract must ensure that every clause is clear, unambiguous, and understandable by all parties involved, in order to maintain legal certainty and prevent legal issues from arising in the future.

Findings of Ambiguity in Business Contracts

1. Civil Case Number 463/PDT/2022/PT.BDG regarding Default (Wanprestasi)

This case began on August 6, 2018, when the Plaintiff ordered apartment unit 1115 at Bandung Technoplex Living through an Order Letter. Payments were made in several stages, starting with a Booking Fee of Rp 5,000,000, followed by two down payments (DP) of Rp 30,992,894 and Rp 35,992,894 in September and October 2018. The payments continued with monthly installments of Rp 8,895,000 until the 18th installment, which was completed in May 2020. The total amount paid by the Plaintiff reached Rp 300,939,074, but the delivery of the apartment unit promised by the Defendant did not occur as agreed in the contract.

According to Article 7 paragraph 7.2 of the Agreement on the Right to Use, the delivery of the apartment unit should have been completed by July 31, 2019, or within 14 days after written notification. However, despite the Plaintiff fulfilling their payment obligations, Defendant I, responsible for the construction and delivery of the unit, failed to deliver the apartment on the promised date. Even though Defendant I promised delivery again in January 2020, this promise was also not fulfilled without adequate explanation.

The repeated delays led the Plaintiff to feel disadvantaged and question Defendant I's seriousness in completing the apartment construction. Eventually, the Plaintiff stopped paying monthly installments after the 24th installment in November 2020, feeling that Defendant had not fulfilled their obligations. The Plaintiff then sent requests for a refund of the payments made on April 20 and October 28, 2020, but received no response from Defendant I or Defendant II.

Seeing the lack of response from the Defendants, the Plaintiff filed a lawsuit in October 2021, based on the default (wanprestasi) by Defendant I, II, and III. The Plaintiff requested the cancellation of the agreement, a refund of all payments made, along with penalties and damages for the failure to enjoy the apartment unit. Additionally, the Plaintiff sought a lien on the assets of Defendant I and Defendant II to guarantee the refund of the money paid by the Plaintiff.

Defendant I rejected the lawsuit by raising an "error in persona" exception, claiming that the Plaintiff wrongly sued Defendant II personally, as Defendant II was only the director of Defendant I and was not personally liable for the company's obligations. Defendant I and II also objected to the request for a lien on assets, arguing that the request was invalid since the assets requested for seizure belonged to Defendant III, not Defendant I.

Furthermore, Defendant I argued that the Plaintiff had not fully met their obligations related to the payment for the right to use the apartment unit, and thus the lawsuit should be dismissed. Defendant I and II emphasized the discrepancy in the amount of payments received, which they claimed did not match the data held by the Defendants. The Defendants also argued that the lawsuit contained "obscure libel," meaning the dispute and claims made in the petition were unclear.

The Plaintiff, on the other hand, asserted that they had met all their obligations in payment, and Defendant's failure to deliver the apartment unit at the agreed time was an act of default. The Plaintiff also claimed that contract clauses that harmed consumers, such as

an exoneration clause prohibiting refunds if the contract was canceled, should be annulled in accordance with consumer protection laws.

As a result of the legal proceedings, the Plaintiff demanded that the contract signed between the parties be annulled and that all the payments made, including penalties and interest, be refunded. The Plaintiff also requested that Defendant I, II, and III be penalized for the damages caused by the failure to deliver the apartment that should have been handed over since August 2019. Furthermore, the Plaintiff requested reimbursement for the costs incurred to manage the apartment unit, including transportation and legal consulting fees, from the Defendants.

In this case, the Bandung District Court ruled in favor of most of the Plaintiff's demands. The court declared that Defendant I, Defendant II, and Defendant III had committed default by failing to fulfill their obligation to deliver the apartment unit as promised in the agreement. Despite a promise of delivery on August 15, 2019, Defendant I failed to deliver the unit on the agreed date, and even the second promise of delivery in January 2020 was not fulfilled. As a result of this failure, the court annulled the agreement made between the Plaintiff and Defendant I, as well as the Agreement on the Right to Use for 30 years No. 130 dated May 20, 2019, ruling that the agreement held no legal force.

The court also ruled that Defendant I, Defendant II, and Defendant III must return all the money paid by the Plaintiff, including the Booking Fee, down payments (DP), and installments, totaling Rp 300,939,074. In addition to the refund, the Defendants were ordered to pay a fine of 5% of the total payments received, equivalent to Rp 15,046,950. Furthermore, the court granted the Plaintiff's claim for damages resulting from the inability to enjoy the apartment unit already paid for, which was calculated based on the rental cost of a similar apartment for 25 months, amounting to Rp 37,500,000.

Additionally, the court ruled that the Defendants must pay interest of 1.5% per month on the money paid by the Plaintiff, calculated from the date the lawsuit was filed until the full amount is refunded by the Defendants. This interest will continue to accrue during the legal proceedings. The court also approved the Plaintiff's request for reimbursement of other expenses incurred during the management of the apartment unit, such as transportation, accommodation, and legal consulting fees, which amounted to Rp 50,000,000.

To ensure the enforcement of the ruling, the court decided to seize assets from Defendant I and Defendant II, including land and buildings owned by Defendant II, as well as other properties owned by Defendant III, as collateral to guarantee that the money paid by the Plaintiff will be refunded in accordance with the court's decision. Finally, the court decided that this ruling could be executed immediately, even if there is an appeal or cassation, to protect the rights of the Plaintiff, who has been harmed by the Defendants' default.

This ruling reflects the importance of certainty and clarity in contract agreements and the obligations that both parties must fulfill. The court emphasized that failure to meet obligations in a contract can lead to default, which in turn can harm the party who has fulfilled their obligations. Therefore, this ruling provides justice for the Plaintiff and upholds the principle of consumer protection in business transactions..

2. Civil Case Number 3/Pdt.G.S/2023/PN.Jkt.Utr

This case originated from a lawsuit filed by Imelda Bungawati (the Plaintiff) against PT Hoghock Kuliner Indonesia (the Defendant). Both parties had signed a franchise agreement on December 19, 2019, which governed the business relationship between the Plaintiff, as the franchisee, and the Defendant, as the franchisor. The agreement outlined the Plaintiff's obligation to pay franchise fees and the Defendant's responsibility to grant the franchise rights for the Hoghock restaurant located at Citywalk Sudirman, Central Jakarta.

However, a dispute arose due to a lack of understanding in implementing and interpreting the terms of the contract.

One of the clauses that became a key point of contention was Article 16 paragraph (2) regarding dispute resolution. The clause stated that both parties agreed to resolve any disputes through the legal domicile set at the Registrar's Office of the North Jakarta District Court. However, this clause did not provide a detailed explanation on how the dispute resolution would be applied if the circumstances and situation of the parties changed over time. This lack of clarity increased the potential for differing interpretations between the Plaintiff and Defendant on how this clause should be applied and its effectiveness in their case.

Additionally, confusion arose regarding the operational obligations outlined in the franchise agreement. Franchise agreements typically regulate the operational standards that the franchisee (Plaintiff) must adhere to when running the restaurant. However, this contract did not clearly define what was meant by "operational standards" to be followed by the Plaintiff. Without further clarification, the Plaintiff and Defendant could have differing interpretations on how the franchise business should be run, leading to tension and dispute.

The payment obligations also became a source of misunderstanding. The Plaintiff was required to pay franchise fees to the Defendant, but there was no detailed explanation in the agreement about how these fees should be paid or when the payments should be made. This ambiguity created confusion regarding whether the Plaintiff had met their obligations correctly or if there had been changes to the payment terms that had not been mutually agreed upon. If one party feels that an obligation has not been properly fulfilled, this can lead to further tension. Another issue involved the amendment of the agreement. The document did not mention any changes or amendments to the contract after signing. This lack of provision could lead to confusion on how both parties should adjust the contract if there were significant changes in operational conditions or market conditions. Unspecified changes in the contract could lead one party to feel that their rights or obligations had changed without mutual agreement, thus creating ambiguity in the execution of the contract.

The ambiguity in the contract was also compounded by the absence of more detailed provisions regarding the dispute resolution procedure. While both parties agreed to resolve disputes at the North Jakarta District Court, there was no further explanation about the stages or process of dispute resolution. This lack of understanding could cause one party to feel that the process they followed did not meet expectations or even violated the terms agreed upon in the contract. This worsened the relationship between the Plaintiff and Defendant.

An unclear contract also opens the door to misinterpretations of the original intentions of the parties when they entered into the agreement. For instance, if there were economic changes affecting the viability of the franchise, but the contract did not include a mechanism for adjusting or changing costs, both parties could have different views on their respective obligations in such a situation. This could lead to prolonged disputes, where one party feels that the contract is no longer relevant or does not reflect the actual circumstances.

Overall, this case underscores the importance of clarity when drafting business agreements, especially those involving significant financial and operational obligations. Misunderstandings in business contracts, such as the one in this franchise agreement, can lead to disputes that not only harm both parties but also have the potential to damage previously established business relationships. Therefore, it is essential to ensure that every clause in the contract is explained in detail and clearly to prevent ambiguity, which could lead to misunderstandings and legal disputes in the future.

Discussion

Review of the Element of Agreement Between the Parties in Contra Proferentem Theory

In Article 1320 of the Indonesian Civil Code, the agreement between the parties is one of the essential elements for the validity of a contract. This agreement signifies that the parties involved in the contract have mutually agreed to the terms of the agreement with free will and without coercion.¹⁴ However, in the practice of business contracts, the success of a contract does not only depend on the achievement of an agreement but also on a clear understanding of the contents of the agreed contract. Without proper understanding, the agreement reached risks causing misunderstandings or differing interpretations between the parties, which in turn can trigger legal disputes.

A key issue that often arises in the context of agreement between the parties is the ambiguity in contract clauses. Unclear or ambiguous clauses can lead to misunderstandings about the rights and obligations of each party. This lack of clarity often occurs due to the use of technical language or poorly drafted clauses, making it difficult for the weaker party in the contract—such as a consumer or employee—to fully understand the terms. In many cases, the stronger party, such as large corporations or financial institutions, drafts clauses that favor their interests, while the weaker party does not have adequate opportunities to negotiate or thoroughly understand the terms. This can lead to differing interpretations that disadvantage one party in the contract.

In addition to ambiguity, the imbalance of power during negotiations is also a major factor that hinders the achievement of a true agreement between the parties. The stronger party in a contract often has full control over the drafting of the contract clauses. In many cases, the weaker party is given only two options: accept or reject the one-sided contract, without adequate opportunity to understand or negotiate the existing terms. As a result, even though there is a formal agreement, the contract does not always reflect the true intent and free will of both parties, but rather reflects the will of the more dominant party in the drafting of the contract. Furthermore, the lack of transparency in the contract formulation often leads to the parties' misunderstanding of the contract's contents. When the contract clauses are drafted with complex language and without sufficient clear and understandable explanations, the weaker party often fails to gain a comprehensive understanding of what they are agreeing to.

In the context of business contracts, especially those involving standard contracts or template agreements, this lack of clarity can lead to the weaker party not realizing the obligations or potential risks they may face after the contract is signed. For example, in insurance agreements or lease contracts, clauses regarding additional fees or cancellation terms that are unclear often become a source of misunderstanding for the consumer party. To address this issue of misunderstanding, it is essential for every business contract to be drafted in clear and easily understandable language for all parties involved. Each clause should be formulated with clarity and transparency, ensuring that each party can fully understand their rights and obligations as stated in the contract. This is crucial to ensure that the agreement truly reflects the free will and mutual understanding between both parties.

Although business contracts should be drafted in clear and easily understandable language for all parties involved, in reality, ambiguity in the drafting of clauses still frequently occurs. Every clause in the contract must be formulated with clarity and transparency so that all parties can properly understand their rights and obligations, without

¹⁴ Chivers, Emily, dan Shawn Curran. "Ambiguity is the last thing you need." *Preprint, arXiv*, 2024. <https://doi.org/10.48550/ARXIV.2410.20222>.

any ambiguity or confusion. This aims to prevent differing interpretations that could lead to disputes in the future. To address these differences in understanding and provide legal certainty, the parties can use the Contra Proferentem theory as a solution when interpreting ambiguous contracts. This theory states that if there is any uncertainty or ambiguity in a contract clause, that clause should be interpreted against the party who drafted it, which is usually the stronger party.

The contra proferentem principle provides a solution to address such ambiguities by interpreting unclear clauses against the party who drafted the contract—usually the stronger party. This principle is particularly relevant in standard contracts commonly used by large corporations or financial institutions, where one party has full control over the drafting of the contract.¹⁵ The weaker party, such as a consumer or employee, typically does not have the opportunity to negotiate the terms of the contract and may not fully understand the provisions. In this context, contra proferentem serves to protect the weaker party by ensuring that any ambiguity in the contract is not exploited by the stronger party to disadvantage the party who does not fully understand the contents of the contract.

For example, in a business contract between a large company and a consumer, unclear or ambiguous clauses, such as payment terms, warranties, or liability limits, can easily lead to differing interpretations between the parties. In this case, the weaker party, often the consumer or employee, may not fully realize the legal implications of the ambiguity. The contra proferentem principle would guide the court to interpret such clauses in a way that favors the weaker party, to prevent exploitation caused by the misunderstanding arising from the contract's ambiguity.

According to Koffman and Macdonald (2007), this principle acts as a safeguard for the party that has no control over the wording of the contract, particularly in standard agreements that cannot be negotiated. This ensures that the weaker party is not disadvantaged by unclear or ambiguous clauses that they may not fully understand or have the power to negotiate.¹⁶ This is where Article 1320 and the contra proferentem principle are interconnected, as the agreement between the parties in a business contract is often influenced by an imbalance of information or power between the parties. When one party does not fully understand the contents of the clauses, any ambiguity in those clauses can exacerbate this misunderstanding and open the door for the stronger party to exploit the uncertainty for their advantage. The contra proferentem principle serves to protect the weaker party by ensuring that such ambiguities are interpreted against the party who drafted the contract, thus preventing abuse of the lack of clarity..

Slater (2016) also emphasizes that this principle not only protects the interests of the weaker party but also encourages transparency in the drafting of contracts. In the context of Article 1320 of the Indonesian Civil Code, where the agreement between the parties is a condition for the validity of a contract, the contra proferentem principle can serve as a tool to ensure that the agreement reached is not based on coercion or misunderstanding. By applying this principle, the contract is interpreted in a way that upholds fairness and mutual understanding, ensuring that both parties are fully aware of their rights and obligations.¹⁷

¹⁵ Leib, Ethan J., and Steve Thel. "Contra Proferentem and the Role of the Jury in Contract Interpretation." *Temple Law Review*, January 1, 2015.

¹⁶ Prihandini, Nadia Aurynnisa, and Ery Agus Priyono. "Justice for the Parties to the Standard Agreement Relating to the Freedom Contract Principle." *Alauddin Law Development Journal*, March 26, 2024. <https://doi.org/10.24252/aldev.v6i1.45452>.

¹⁷ Fernanda Martinus Napitupulu, Reza Siregar, and Roida Nababan. "Legal Protection Against Debtors in a Standard Agreement with the Existence of Freedom of Contract." *Formosa Journal of Multidisciplinary Research*, August 26, 2025. <https://doi.org/10.55927/fjmr.v4i8.365>.

Thus, if ambiguity occurs in a clause, this principle will help interpret the contract in a fairer manner and ensure that the contract is not used to worsen the position of the weaker party. By applying the *contra proferentem* principle, the interpretation of unclear clauses will be aligned with protecting the weaker party from exploitation, ensuring that the agreement reflects a fair and equitable understanding between all parties involved.

However, as stated by Williams (2019), the application of *contra proferentem* cannot be done arbitrarily, as it may limit the freedom of contract, which is a fundamental principle in Indonesian civil law. The freedom to negotiate and draft contracts is a core aspect of civil law, and while *contra proferentem* protects the weaker party, it must be applied carefully to avoid undermining the autonomy of the parties to create agreements based on their mutual consent and understanding.¹⁸ Nevertheless, when ambiguity exists in a contract clause, this principle can be applied as an interpretive tool to protect the weaker party, while ensuring that a genuine agreement is reached and does not disadvantage one party who may not have the ability to fully understand the provisions of the contract. By applying *contra proferentem*, the contract is interpreted in a way that upholds fairness and ensures that the weaker party's interests are safeguarded, without undermining the overall integrity of the contract.

CONCLUSION

Based on the discussion above, it can be concluded that Article 1320 of the Indonesian Civil Code regarding the requirements for the validity of an agreement, particularly in relation to the agreement between the parties, still leaves room for ambiguity in practice. This article merely states that agreement is one of the conditions for the validity of a contract, without providing clear guidance on how free consent and mutual understanding between the parties should be achieved. This opens the door for differing interpretations, which could lead to misunderstandings and disputes, especially when there are ambiguous or unclear clauses in the contract. In this context, the *contra proferentem* principle can be a suitable solution to provide legal certainty. This theory asserts that if there is ambiguity in a contract clause, the interpretation of that clause should be made against the party who drafted the contract, typically the stronger party. Thus, the application of the *contra proferentem* principle can protect the weaker party and ensure that the agreement truly reflects the free will and clear understanding of both parties, thereby creating more fair and transparent legal certainty in business contracts.

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¹⁸ Moh Ali., and Bhim Prakoso. "The Freedom of Contract: The Indonesian Court's Decisions on Internasional Bussiness Disputes." *Indonesian Journal of Law and Society*, March 31, 2023. <https://doi.org/10.19184/ijls.v4i1.38486>.

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