



The Principle of Balance as an Instrument of Judicial Correction in the Collective Agreement on Industrial Relations

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ARTICLE INFO

Received: 29 May 2026

Accepted: 15 June 2026

Available Online: 2 July 2026

Keywords:

Principle of Balance; Settlement Agreement;
Industrial Relations; Judicial Correction;
Abuse of Circumstances.

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ABSTRACT

A Settlement Agreement is one of the legal instruments for resolving industrial relations disputes and becomes legally binding after being registered with the Industrial Relations Court. In practice, however, not all Settlement Agreements are concluded through negotiations that reflect an equal bargaining position between the parties. The imbalance of bargaining power between employers and employees often gives rise to *abuse of circumstances*, which may affect the substantive validity of the agreement. This study aims to analyze the legal validity of Settlement Agreements resulting from unequal bargaining positions and to examine the role of the Principle of Balance as an instrument of judicial correction in industrial relations dispute resolution. This research employed a normative legal research method using both the statutory approach and the case approach. The legal materials consisted of primary, secondary, and tertiary legal sources collected through library research and analyzed using a qualitative prescriptive method. The findings indicate that the binding force of a Settlement Agreement is determined not only by the fulfillment of formal legal requirements but also by the substantive requirements stipulated in Article 1320 of the Indonesian Civil Code. A Settlement Agreement concluded under abuse of circumstances may lack substantive validity because it does not reflect genuine consent. The study further finds that the Principle of Balance serves as a legal basis for judges to exercise judicial correction by disregarding exploitative contractual clauses without invalidating the entire agreement. This approach provides greater protection for employees' statutory rights while maintaining legal certainty and promoting substantive justice in the settlement of industrial relations disputes.

Introduction

Industrial relations are legal relations that are built on the basis of cooperation between workers, employers, and the government in realizing a harmonious, dynamic, and equitable employment climate (Febrianti et al., 2022; Safitri, 2020). However, the relationship does not always work in accordance with the interests of the parties. Termination of Employment (PHK) is still one of the most frequent sources of disputes because it concerns the loss of workers' livelihoods as well as the employer's obligation to fulfill normative rights guaranteed by laws and regulations. Disputes due to layoffs not only have legal consequences, but also have an impact on social and economic aspects, especially for workers who lose their source of income (Permana & Saepudin, 2022). Therefore, the Indonesian labor law system places the settlement of industrial relations disputes as an important instrument to ensure legal certainty while providing protection for the rights of the parties.

The development of national labor law has undergone significant changes after the enactment of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021. These changes have consequences for the regulation of termination of employment, workers' rights,

and industrial relations dispute resolution mechanisms (Hazilina & Soedagoeng, 2021). While the regulations aim to increase flexibility in employment relationships and encourage investment growth, changes to the amount of layoff compensation and dispute resolution mechanisms have raised debates about the balance between employers' interests and worker protections (Permana & Saepudin, 2022). In such conditions, dispute resolution through bipartite negotiations is gaining more attention because it is seen as able to provide a faster, more efficient, and more deliberative resolution than settlement through the litigation process.

Law No. 2 of 2004 concerning Industrial Relations Dispute Resolution places bipartite negotiations as the initial stage that must be taken before the parties use other dispute resolution mechanisms (Hazilina & Soedagoeng, 2021; Putri & Taupiqqurrahman, 2023). When negotiations result in an agreement, the parties are obliged to put it in a Collective Agreement which is then registered with the Industrial Relations Court. The Collective Agreement that has been registered has binding legal force and can be executed as a court decision that has acquired permanent legal force. This position shows that the law gives strong legitimacy to the agreement of the parties as a manifestation of the principle of freedom of contract (*freedom of contract*) and the principle of *pacta sunt servanda* as stipulated in Article 1338 of the Civil Code (Hardiati et al., 2021; Ramon, 2019). Every legally made agreement is in principle valid as a law for the parties who make it so that it must be executed in good faith.

The binding power of the Collective Covenant does not always reflect substantive justice. Industrial relations are basically legal relations that are not fully in an equal position because workers and entrepreneurs have different economic capacities, access to information, and negotiation skills (Satrio et al., 2020). Entrepreneurs are in a more dominant position because of their control of capital and the sustainability of their employment relationships, while workers are often in positions that depend on work as a source of livelihood. The inequality of bargaining position has the potential to give birth to an agreement that is not entirely based on the free will of the parties (Atmoko, 2023). In practice, there are still Collective Agreements that contain clauses on the reduction of workers' rights, the release of the right to file lawsuits, and other forms of agreements that are agreed to by workers due to economic pressure or concerns about losing their jobs. Such conditions show that an agreement born through a bipartite mechanism does not necessarily reflect the balance of rights and obligations of the parties.

The problem is closely related to the concept of abuse of circumstances (*Abuse of circumstances*) that develops in the law of the treaty. Agreements born due to economic pressure, dependence, or inequality of bargaining position can give rise to a defect of will (*Lack of will*) so that the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code are questionable (Salam & HS, 2023). In the context of industrial relations, the Collective Agreement is no longer only understood as the result of the consensus of the parties, but must be assessed whether the process of its formation truly reflects freedom of will and the balance of interests (Hardiati et al., 2021; Sindu et al., 2022). An approach that is only oriented towards formal legitimacy has the potential to override the legal purpose of providing protection to economically and socially weaker parties.

A lot of studies on the Collective Agreement in the settlement of industrial relations disputes have been done. Previous research has generally discussed the binding power of a Collective

Agreement after it has been registered with the Industrial Relations Tribunal, the effectiveness of dispute resolution through a bipartite mechanism, and the legal consequences if one of the parties does not implement the contents of the Collective Agreement (Hardiati et al., 2021; Hetarie, 2022; Kinasih & Siswanto, 2023; Setiawan, 2017; Sindu et al., 2022). Another study examines changes in employment regulations after the enactment of the Job Creation Law, especially regarding the protection of workers' rights in the termination process (Faizin, 2017; Ramon, 2019; Satrio et al., 2020). A number of studies have also discussed the application of the principle of freedom of contract in industrial relations as the basis for the formation of Collective Agreements. Although they have contributed to the development of labor law, these studies have focused more on the formal validity and executory power aspects of the Collective Agreement.

This condition shows that the discussion of the Principle of Balance as the basis for judicial correction of the Collective Agreement is still relatively limited. Existing studies have not placed the Principle of Balance as a parameter for judges in assessing the validity of the substance of the Collective Agreement born from an unbalanced legal relationship. In fact, legal protection in industrial relations is not enough to rely only on the principle of freedom of contract, but also requires a mechanism that is able to ensure that the agreements of the parties are truly formed based on free will and do not eliminate the normative rights of workers.

The urgency of this research lies in the importance of building a paradigm for resolving industrial relations disputes that is not only oriented towards legal certainty, but also provides space for the realization of substantive justice. The judge does not only play the role of the party who ratifies the agreement of the parties, but also has the responsibility to ensure that the Collective Agreement does not contradict the principles of justice, propriety and protection of parties in a weaker position. This perspective is important considering the increasing use of the Collective Agreement as an instrument for resolving industrial relations disputes after changes in labor regulations.

The novelty of this research lies in the analysis of the Principle of Balance as an instrument of judicial correction to the Collective Agreement in industrial relations. This study not only examines the binding power of Collective Agreements based on the provisions of laws and regulations, but also analyzes how the Principle of Balance can be used as a basis for judges to make corrections to Collective Agreements formed through unbalanced legal relations or contain abuse of circumstances.

This study aims to analyze the application of the Principle of Balance in assessing the validity of the Collective Agreement as an instrument for resolving industrial relations disputes and to examine the role of the Principle of Balance as the basis for judicial correction of the Collective Agreement that does not reflect substantive justice for the parties.

Method

This research is a normative legal research that aims to find, study, and analyze legal norms, legal principles, and legal doctrines in answering problems regarding the application of the Principle of Balance as an instrument of judicial correction to the Collective Agreement in industrial relations (Aditya, 2020; Pratiwi, 2020). This study uses a legislative approach (*Statute approach*) and case approach (*Case Approach*) (Yustisio et al., 2023). The approach to laws and regulations is carried out

by systematically examining various provisions that govern treaty law and labor law, especially those related to the establishment, validity, and binding force of Collective Agreements in the settlement of industrial relations disputes. The case approach is used to analyze the ratio decidendi of judges in the decisions of the Industrial Relations Court and the Supreme Court related to the application of the Principle of Balance and judicial correction to the Collective Agreement which allegedly contains an imbalance of rights and obligations of the parties.

The data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the Civil Code, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, Law Number 13 of 2003 concerning Manpower as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, Government Regulation Number 35 of 2021, as well as decisions of the Industrial Relations Court and the Court Agung which is the object of study. Secondary legal materials consist of books, scientific articles, research results, and expert opinions that discuss treaty law, labor law, the Principle of Balance, and industrial relations dispute resolution. Tertiary legal materials are in the form of legal dictionaries, legal encyclopedias, and other reference sources that are used to clarify concepts, terms, and definitions related to the object of research.

The collection of legal materials is carried out through *library research* with the stages of inventory, classification, and systematization of all legal materials relevant to the focus of the research. All legal materials are then analyzed qualitatively using a prescriptive analysis method. This analysis not only aims to describe the legal provisions governing the Collective Agreement in the settlement of industrial relations disputes, but also to formulate legal *reasoning* regarding the application of the Principle of Balance as a basis for judicial correction of the Collective Agreement that does not reflect the proportionality of the rights and obligations of the parties. Through this analysis, it is hoped that a legal construction will be obtained regarding the limits of the judge's authority in making judicial corrections to the Collective Agreement without overriding the principle of legal certainty, while still ensuring the realization of substantive justice in industrial relations.

Results and Discussion

The Validity of Collective Agreements in the Perspective of the Principle of Balance in Industrial Relations

The Collective Agreement is one of the instruments for resolving industrial relations disputes produced through bipartite negotiations between workers and employers. The existence of the Collective Agreement is regulated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes as a form of dispute resolution outside the court that prioritizes deliberation to reach consensus (Putri & Taupiqqurrahman, 2023). If an agreement has been reached and registered with the Industrial Relations Court, the Collective Agreement acquires binding legal force and has executory force. The regulation shows that the law provides protection for the agreement of the parties as a form of respect for the principle of freedom of contract.

From the perspective of civil law, the binding power of the Collective Agreement cannot be separated from the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement. These provisions require the agreement of the parties, the ability to act, certain objects, and halal causes. The four conditions are cumulative so that the non-fulfillment of one of the conditions can affect the validity of an agreement. An agreement is the most important element because it reflects the free will of the parties to bind themselves in a legal relationship. Therefore, the validity of the Collective Agreement is not only measured by the fulfillment of the administrative procedures as stipulated in Law Number 2 of 2004, but must also pay attention to the fulfillment of material conditions as stipulated in the law of the agreement.

In industrial relations practice, the fulfillment of the elements of an agreement often faces problems because the relationship between workers and employers is not in a balanced position (Yunice et al., 2023). Employers have a stronger position in terms of economy and authority in employment relations, while workers are in a position that depends on the sustainability of their work as a source of livelihood. This imbalance affects the negotiation process when there is an industrial relations dispute, especially in the case of termination of employment. It is not uncommon for workers to accept the contents of the Collective Agreement not because they fully agree with the substance of the agreement, but because they are in a condition that makes it impossible to refuse or continue the dispute resolution process through litigation.

This condition is related to the concept of abuse of circumstances (*Abuse of circumstances*) that develops in the law of the treaty. Abuse occurs when one party takes advantage of the psychological, economic, and dependent conditions of the other party so that consent is given not based on a truly free will (Fidhayanti, 2019). In industrial relations, abuse of circumstances can arise when workers are forced to choose between accepting the contents of the Collective Agreement or facing uncertainty about their rights after termination of employment. Such a situation shows that the agreement that was born does not fully reflect the principle of freedom of contract because there are pressures that affect the formation of the will of the workers.

Analysis of the Industrial Relations Court's decision shows that the existence of a Collective Agreement is not always a guarantee of justice for the parties. In several cases, the panel of judges found that there were clauses that eliminated workers' normative rights, such as a reduction in the value of compensation, the release of the right to file claims at a later date, and clauses that exempted employers from certain obligations without providing balanced compensation. These clauses essentially not only create an imbalance of rights and obligations, but also show that the process of forming the Collective Agreement has not been fully grounded by an agreement free from pressure.

The issue shows that the binding power of the Collective Agreement cannot be understood through a formal approach alone. The registration of the Collective Agreement with the Industrial Relations Court does confer executory power, but it does not remove the obligation to assess whether the content of the agreement has met the principles of justice and balance. The material validity of a Collective Agreement must still be tested based on the fulfillment of the legal conditions of the agreement, especially regarding the existence of an agreement that is born freely without any abuse of circumstances. This approach is in line with the legal function of the agreement which not only guarantees legal certainty, but also protects the parties from practices that are contrary to

propriety and good faith.

The Principle of Balance has an important role in assessing the validity of the Collective Agreement because it requires proportionality between the rights and obligations of the parties. An agreement that gives excessive benefits to one party, while the other party loses its normative rights, does not reflect the balance that is the purpose of the formation of a legal relationship. The application of the Principle of Balance is also an instrument to assess whether freedom of contract has been exercised reasonably or is actually used as a means to maintain the dominance of parties with stronger bargaining positions.

Based on the analysis of the provisions of laws and regulations and the legal concept of the agreement, the validity of the Collective Agreement is not enough to judge from the fulfillment of the formal requirements in the form of signing and registration at the Industrial Relations Court. The validity must also take into account material aspects related to freedom of will, balance of rights and obligations, good faith, and the absence of abuse of circumstances in the process of its formation. If a Collective Agreement proves to be born out of an unbalanced relationship and deprives workers of normative rights, then the binding force of the agreement is questionable from the perspective of treaty law. This condition is an important basis for judges to test the substance of the Collective Agreement through judicial correction mechanisms as an effort to realize substantive justice in the settlement of industrial relations disputes.

The Principle of Balance as an Instrument of Judicial Correction to the Rigidity of *the Sunt Servanda Pacta*

The discussion in the previous section shows that the Collective Agreement born from the abuse of circumstances has the potential to not meet the legal requirements of the agreement, especially regarding the element of free agreement as stipulated in Article 1320 of the Civil Code. This condition raises problems when the Collective Agreement has been registered with the Industrial Relations Court and obtains final and binding legal force based on Article 13 of Law Number 2 of 2004. In such circumstances, it is not enough for the judge to stick to the legal formalities, but also to assess whether the substance of the Collective Agreement has met the principles of justice and balance.

When there is a conflict between legal certainty and substantive justice, the Principle of Balance serves as a basis for judges to make corrections to Collective Agreements that contain inequality of rights and obligations (Fidhayanti, 2019). This principle is a limiting norm for the application of the principle of *pacta sunt servanda*, so that the binding power of an agreement cannot be maintained if its formation is influenced by the abuse of circumstances (*Abuse of circumstances*) (Salam & HS, 2023). Thus, freedom of contract cannot be interpreted as absolute freedom, but must be carried out based on the good faith, propriety, and balance of the parties.

The case approach in this study shows that the panel of judges not only examines the fulfillment of the formal requirements of the Collective Agreement, but also assesses the substance of the agreement and the process of its formation. The judge's consideration is directed to find out whether the worker gave consent freely or was in a condition that caused his rights to be reduced through an exploitative clause. Waiver of rights clause (*waiver clause or release and discharge*) which

eliminates the normative rights of workers is one of the indicators of an imbalance in the Collective Agreement (Fidhayanti, 2019). In these conditions, the judge has a legal basis to make corrections to the content of the agreement to ensure that workers' rights continue to be protected in accordance with the provisions of laws and regulations.

Judicial correction is not always carried out through the annulment of the entire Collective Agreement. An analysis of the verdict that is the object of the study shows that the judge can overrule certain clauses that are contrary to the Principle of Balance, while the substance of the agreement regarding the termination of the employment relationship is maintained. This approach reflects the application of the concept of partial validity, i.e. the Collective Agreement is still recognized as an instrument for resolving industrial relations disputes, but clauses that eliminate or diminish workers' normative rights are not given binding force. Through this mechanism, the judge still respects the autonomy of the parties in resolving disputes, but at the same time ensures that the agreement reached does not conflict with the principles of justice.

The application of judicial correction through the Principle of Balance shows that the function of judges in resolving industrial relations disputes is not only to apply the law textually, but also to assess the proportionality of the rights and obligations of the parties. The judge's decision is not intended to eliminate the applicability of the Collective Agreement, but rather to restore the balance of legal relations that have been disturbed due to the abuse of circumstances. In practice, the form of correction can be in the form of an order to fulfill the normative rights of workers who were previously eliminated, including the payment of compensation in accordance with the provisions of laws and regulations.

The application of the Principle of Balance shows that the binding power of the Collective Agreement is not absolute, but depends on the fulfillment of the material conditions of an agreement. The Collective Agreement still receives legal protection as long as it is formed based on the free will, good faith, and balance of rights and obligations of the parties. On the other hand, if it is proven that there is an abuse of circumstances that causes workers to lose their normative rights, then the judge can carry out judicial correction as a form of legal protection without eliminating the function of the Collective Agreement as an instrument for resolving industrial relations disputes.

Conclusion

This study shows that the validity of the Collective Agreement in the settlement of industrial relations disputes cannot be assessed solely based on the fulfillment of formal requirements in the form of signing and registration at the Industrial Relations Court. The validity of the Collective Agreement must also meet the material requirements as stipulated in Article 1320 of the Civil Code, especially regarding the existence of an agreement that is born freely without abuse of circumstances (*misbruik van omstandigheden*). The imbalance in the bargaining position between workers and employers has the potential to give birth to a Collective Agreement that eliminates the normative rights of workers, so that even though it formally has binding legal force, its validity can be questioned materially.

This study also found that the Principle of Balance has an important role as an instrument of judicial correction to the Collective Agreement which contains inequality of rights and obligations.

Through a legislative approach and a case approach, the research shows that judges are not only oriented towards the application of the principle of *pacta sunt servanda*, but also consider substantive justice through testing the substance of the Collective Agreement. Judicial correction can be made by setting aside clauses that are exploitative without having to cancel the entire Collective Agreement, so that the balance of rights and obligations of the parties is maintained. Thus, the Principle of Balance serves as the basis for legal protection for workers while maintaining the validity of the Collective Agreement as an instrument for resolving industrial relations disputes that are fair, proportionate, and in accordance with the legal principles of the agreement.

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