

Justice-Oriented Legal Reform in Protecting Scrap Metal Sellers under Force Majeure in Commercial Sale Agreements

Setyo Adhi Wicaksono¹, Achmad Busro², Ery Agus Priyono³

¹Doctoral Program in Law, Faculty of Law, Diponegoro University, Semarang

^{2,3}Lecturer in Law, Faculty of Law, Diponegoro University, Semarang

Jl. Prof. Soedarto, SH., Tembalang, Semarang

setyoadhiwicaksono@students.undip.ac.id

ABSTRACT

This study aims to analyze the weaknesses of legal protection in *force majeure* conditions and formulate a fairness-oriented legal reform model in protecting scrap metal sellers in commercial sales agreements. The issues examined include: (1) what are the weaknesses in current legal protections during *force majeure*; and (2) what reform models can ensure fair protection for scrap metal sellers. The research method used is normative juridical with legislative, conceptual, and case approaches. The legal materials used consist of primary legal materials in the form of laws and regulations, as well as secondary legal materials in the form of relevant legal literature and doctrines. The analysis was carried out qualitatively using legal interpretation and construction methods.

The results of the study show that: 1) The current legal protection still has various weaknesses, including: a) the regulation of *force majeure* that is general and multi-interpreted so that it does not provide legal certainty; b) the dominance of the principle of freedom of contract which is not balanced with the principle of balance, thus harming the weak party; and c) limited access to justice and weak role of the state in protecting small business actors. 2) The proposed legal reform model includes: (1) a clearer and operational reconstruction of *force majeure* norms; (2) strengthening the principles of proportionality and fairness in contracts; and (3) integration of *the concept of hardship*, increased access to justice, and empowerment of small business actors.

Keywords: justice-oriented, legal, reform, protecting, scrap, metal, sellers, force majeure, commercial, sale, agreements.

INTRODUCTION

Background

Legal reform in the field of commercial agreements is a necessity in the face of the increasingly complex dynamics of modern economic development, especially in the context of protection for small business actors such as scrap metal sellers. In practice, the legal relationship between sellers and buyers is often not in a balanced position, thus creating potential injustice when force *majeure* occurs. Scrap metal sellers as vulnerable parties often do not have adequate legal protection, both from normative and implementing aspects. Therefore, a substantive justice oriented approach to legal reform is needed to ensure more effective and equitable protection for weak parties in commercial contracts.¹

The concept of justice in treaty law cannot be separated from the principle of balance of the parties involved in the contractual relationship. In the context of scrap metal trading, sellers are often in a weak bargaining position compared to large buyers or companies. This is even more complex when there is a force majeure situation that hinders the implementation of achievements. Existing legal provisions, especially in the Civil Code (KUHPercivil), are still general and have not provided specific protection for small business groups. Therefore, legal reform needs to be directed at strengthening the principles of distributive and corrective justice in contractual relationships.²

Force majeure as a legal concept has significant implications for the implementation of the agreement, especially in terms of the debtor's release of liability. However, in practice, the interpretation of force is often more favorable to those with greater economic power. Scrap metal sellers as small business actors often suffer losses due to the lack of legal certainty related to the recognition of the force majeure they experience. This shows that there is a gap between legal norms and social reality, so legal reform is needed that is able to bridge the two fairly.³

¹ R. Subekti, *Treaty Law* (Jakarta: Intermasa, 2005), pp. 45–47.

² Mariam Darus Badrulzaman, *Civil Code Civil Code Book III of the Law of Engagement with Explanation* (Bandung: Alumni, 2011), pp. 132–135.

³ Agus Yudha Hernoko, *The Law of Agreements: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), pp. 89–92.

In the perspective of justice theory, especially that put forward by *John Rawls*, justice must be understood as fairness that ensures a balanced distribution of rights and obligations. In the context of a commercial agreement, this means that each party must be protected proportionately according to its position. Scrap metal sellers as weak parties should get more protection in certain situations, including when there is a force majeure. However, the existing legal system does not fully reflect the principle of justice, so legal reform is an urgent need.⁴

In addition, the progressive legal approach developed by Satjipto Rahardjo emphasizes that the law must be on the side of justice and humanity, not solely on formal certainty. In the context of scrap metal seller protection, this approach is particularly relevant because it allows for flexibility in legal interpretation to achieve substantive justice. Justice-oriented legal reform must be able to accommodate human values and partiality towards the weak parties in contractual relationships.⁵

Another problem that arises is the weak enforcement of the law in protecting scrap metal sellers when disputes occur due to force majeure. Many cases show that sellers do not get adequate protection due to limited access to effective dispute resolution mechanisms. This shows that legal reform is not only needed in the normative aspect, but also in the institutional and law enforcement aspects. Without an effective law enforcement system, the expected legal protection will not be optimally achieved.⁶

In the context of economic law, the protection of small business actors is part of efforts to create a just economic system. Scrap metal sellers as part of the informal sector make a significant contribution to the economy, but often do not receive adequate legal protection. Justice-oriented legal reforms must be able to provide proportionate protection for small business actors, including in the case of commercial agreements involving the risk of force majeure.⁷

In addition, the development of globalization and free trade also puts additional pressure on small business actors, including scrap metal sellers. In this situation, they have to compete with business actors who have greater resources, making them more vulnerable to

⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 54–58.

⁵ Satjipto Rahardjo, *Progressive Law: The Law that Liberates* (Jakarta: Kompas, 2009), pp. 67–70.

⁶ Sudikno Mertokusumo, *Getting to Know the Law: An Introduction* (Yogyakarta: Liberty, 2007), pp. 101–104.

⁷ Adrian Sutedi, *International Trade Law* (Jakarta: Sinar Grafika, 2014), pp. 210–213.

injustice in contractual relationships. Legal reform must be able to anticipate this global challenge by providing stronger protections for small businesses, especially in the face of unavoidable force majeure.⁸

The regulation of force majeure in the Civil Code which is general is also one of the factors that cause legal uncertainty. The absence of clear definitions and strict criteria regarding force majeure often leads to differences in interpretation in practice. This has an impact on uncertainty for scrap metal sellers in defending their rights. Therefore, legal reform needs to be directed at the formulation of more specific and clear norms regarding force majeure in the context of commercial agreements.⁹

On the other hand, a social justice-based approach also needs to be integrated in treaty law reform. It is important to ensure that the law not only protects economic interests, but also pays attention to social aspects and people's welfare. Scrap metal sellers as part of economically weak communities need legal protection that is not only formal, but also substantive and fair.¹⁰

Furthermore, legal reform must also pay attention to the principle of legal certainty as one of the main pillars in the legal system. Legal certainty is needed to provide guarantees for the parties in carrying out the agreement, including in the face of forced circumstances. However, legal certainty must not ignore the aspect of justice, so a balance between the two is needed in the formulation of new legal policies.¹¹

Thus, justice-oriented legal reform in protecting scrap metal sellers under force majeure in commercial sales agreements is an urgent need. These reforms must include normative, institutional, and law enforcement aspects, and be based on the principles of substantive justice, legal certainty, and utility. Only with a comprehensive and justice-oriented approach can effective legal protection for scrap metal sellers be realized in the Indonesian legal system.

⁸ Erman Rajagukguk, *Indonesian Economic Law* (Jakarta: Faculty of Law UI, 2013), pp. 178–181.

⁹ Riduan Syahrani, *The Ins and Outs of Civil Law* (Bandung: Alumni, 2010), pp. 145–148.

¹⁰ Soerjono Soekanto, *Factors Influencing Law Enforcement* (Jakarta: RajaGrafindo Persada, 2012), pp. 8–11.

¹¹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2016), pp. 158–161.

Research Question

1. What are the weaknesses in current legal protection during force majeure?
2. What reform model ensures fair protection for scrap metal sellers?

THEORETICAL FRAMEWORK

1. Theory of Justice

The theory of justice as *a grand theory* in this study departs from the thought of John Rawls who places justice as *fairness*, which is a condition in which the distribution of rights and obligations is carried out proportionately and does not harm the weakest parties in the social structure. In the context of commercial agreements, particularly those involving scrap metal sellers, this theory has become particularly relevant due to their often unbalanced economic and negotiation positions. Rawls emphasized that the *difference principle* must provide the greatest benefit to the most disadvantaged parties, so that the law should not be formally neutral, but must be substantively biased. In relation to *force majeure*, this justice approach requires a fair distribution of risks and does not unilaterally burden the weak. Thus, justice theory provides a philosophical basis that the law of covenants is not enough to guarantee certainty, but must also guarantee distributive and corrective justice in practice.¹²

In addition to Rawls' approach, justice theory can also be enriched through Aristotle's thought which distinguishes justice into distributive justice and corrective justice. Distributive justice is concerned with the proportional division of rights and obligations based on contributions and needs, while corrective justice is concerned with recovering losses due to imbalances in legal relationships. In the context of scrap metal sellers, these two forms of justice are very important to answer the problem of *force majeure*. When a force majeure occurs, the law must be able to distribute the risk fairly (distributive) while providing a recovery mechanism for the aggrieved party (corrective). However, current legal practice tends to emphasize more on the formal aspects of contracts without considering those dimensions of justice. Therefore, legal

¹² John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 83–87.

reform must integrate these two concepts of justice so that legal protection becomes more comprehensive and oriented towards substantive justice.¹³

Furthermore, the theory of social justice developed by Amartya Sen provides the perspective that justice is not only measured by the distribution of resources, but also by the ability of individuals to achieve welfare. In the context of scrap metal sellers, this approach emphasizes the importance of paying attention to the real conditions of small business actors who often have limitations in accessing information, capital, and legal protection. Force majeure can exacerbate these conditions, so that without fair legal intervention, they will be further marginalized. Therefore, legal reform must pay attention to the aspects of affordability and accessibility, not just contractual formalities. Thus, the legal protection provided is not only normative, but also capable of increasing the capacity of scrap metal sellers to survive and thrive in uncertain situations.¹⁴

From the perspective of Indonesian law, the theory of justice can also be seen through the thought of Satjipto Rahardjo who emphasizes that law must be oriented towards justice and humanity, not just formal certainty. Progressive law rejects the view that law is a rigid text, but rather that it should be understood as a means to achieve social justice. In the context of the protection of scrap metal sellers, this approach is particularly relevant because it allows for a more flexible and responsive interpretation of the law to real conditions in the field, including in *force majeure* situations. The weakness of the current legal system that is too formalistic often ignores the substantive justice aspect, so a progressive approach is needed to redress these inequality. Legal reform that is oriented towards justice must be able to accommodate human values and partiality towards the weak.¹⁵

In addition, the concept of justice in law cannot be separated from the values of social justice as reflected in Gustav Radbruch's thought which states that law must contain three basic values, namely justice, certainty, and utility. In certain situations, when there is a conflict between legal certainty and justice, justice must take

¹³ Aristotle, *Nicomachean Ethics* (Oxford: Oxford University Press, 2009), pp. 113–118.

¹⁴ Amartya Sen, *The Idea of Justice* (London: Penguin Books, 2009), pp. 231–235.

¹⁵ Satjipto Rahardjo, *Progressive Law: Liberating Law* (Jakarta: Kompas, 2009), pp. 82–85.

precedence. In the context of *force majeure* in commercial agreements, this means that the law should not only adhere to contract clauses rigidly, but must take into account the real conditions experienced by the parties, especially the scrap metal sellers. Thus, legal reform must be directed at a balance between these three values, while still placing justice as a top priority. This approach will result in a legal system that is not only certain, but also fair and beneficial to society.¹⁶

2. Theory of Treaty Law and the Principle of Proportionality

The theory of agreement law as *the middle theory* in this study departs from the principle of balance which is the foundation in modern contractual relationships. Agus Yudha Hernoko's thinking emphasized that contracts are not only based on the principle of freedom of contract, but must also reflect the principle of proportionality that demands a balance of rights and obligations of the parties. In the practice of scrap metal sales agreements, the seller is often in a weaker position so that they do not have sufficient bargaining power in determining contract clauses, including *force majeure* clauses. As a result, when a force majeure occurs, the risk of loss is more imposed on the seller. This shows that the application of the principle of freedom of contract without being balanced by the principle of proportionality can give birth to injustice. Therefore, this theory is important to explain the need for legal reform that prioritizes contractual balance as a form of protection for the weak.¹⁷

In addition, the principle of good *faith* is a fundamental principle in treaty law that functions as a means of control over the implementation of contracts. Ridwan Khairandy's thinking emphasizes that good faith must be present from the pre-contractual, contractual, to post-contractual stages. In the context of *force majeure*, this principle is crucial because it determines whether a party is really unable to carry out its achievements due to circumstances beyond its control. However, in practice, *force majeure* clauses are often used by stronger parties to avoid unilateral liability.

¹⁶ Gustav Radbruch, *Legal Philosophy* (Cambridge: Harvard University Press, 1950), pp. 107–110.

¹⁷ Agus Yudha Hernoko, *Covenant Law: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), pp. 101–105.

Scrap metal sellers who have limited legal understanding are often disadvantaged because they are unable to prove the existence of good faith from other parties. Therefore, this theory emphasizes the importance of strengthening the principle of good faith in legal reform in order to create a fair and transparent contractual relationship.¹⁸

Furthermore, the theory of risk distribution in contracts is an important part of understanding how liability is imposed in a *force majeure* situation. Ewan McKendrick's thinking explains that modern contracts must be able to clearly regulate the allocation of risks between the parties, including risks due to unforeseen events. In practice in Indonesia, the regulation of risk distribution still relies heavily on often unbalanced contractual clauses. Scrap metal sellers often have to bear risks that should be proportionately shareable. This shows that there are weaknesses in the treaty legal system that has not been able to regulate the distribution of risks fairly. Therefore, legal reform needs to lead to the establishment of clearer and fairer standards for risk regulation in commercial contracts.¹⁹

In addition, the concept of *hardship* in international contract law also makes an important contribution to the development of this theory. Michael Joachim Bonell's thoughts in the UNIDROIT Principles emphasize that significant changes in circumstances can be the basis for renegotiating contracts. Unlike *force majeure* which removes obligations, *hardship* provides room for contract adjustments to remain fair to the parties. In the context of scrap metal sellers, this concept is particularly relevant because it allows flexibility in dealing with unexpected changes in economic or social conditions. However, the national legal system has not explicitly accommodated this concept, so legal reform is needed to integrate the hardship principle as part of a more adaptive and equitable legal protection.²⁰

Finally, the theory of legal protection in contracts emphasizes the importance of the state's role in maintaining a balance between the parties. Mariam Darus

¹⁸ Ridwan Khairandy, *Good Faith in Freedom of Contract* (Jakarta: Postgraduate FH UI, 2004), pp. 56–60.

¹⁹ Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (Oxford: Oxford University Press, 2012), pp. 645–649.

²⁰ Michael Joachim Bonell, *An International Restatement of Contract Law* (New York: Transnational Publishers, 2005), pp. 189–193.

Badrulzaman's thinking emphasizes that the state must not completely surrender contractual relations to market mechanisms, but must be present to protect the weak. In the context of scrap metal sellers, state intervention is urgently needed to ensure that contract clauses do not harm unilaterally, especially in *force majeure* situations. Without adequate legal protections, scrap metal sellers will continue to be in a position vulnerable to exploitation. Therefore, this theory leads to the need for stricter regulations and legal policies that favor fairness in contractual relationships.²¹

3. Progressive Legal Theory and Legal Protection

Progressive legal theory as *applied theory* in this study provides an implementive basis to reconstruct fairer legal protection for scrap metal sellers in *force majeure* conditions. Satjipto Rahardjo's thinking emphasizes that law must function as a means of liberation and alignment with humans, not just as a rigid and formalistic rule. In current treaty law practice, an overly textual approach often ignores the social realities faced by small business actors, including scrap metal sellers. When a force majeure occurs, the law tends to only look at the contractual clauses without considering the concrete conditions that lead to the inability to perform the performance. Therefore, the progressive legal approach encourages a more flexible and substantive justice-oriented interpretation of the law. Legal reform built on the basis of this theory must be able to provide real protection for the weak, so that the law truly becomes a tool to achieve social justice.²²

In addition, the theory of legal protection developed by Philipus M. Hadjon provides an important framework in understanding how the state should protect the rights of citizens, including small business actors. Hadjon distinguishes between preventive and repressive legal protection, where preventive protection aims to prevent violations, while repressive protection aims to resolve disputes that have occurred. In the context of scrap metal sellers, these two forms of protection are still not running optimally, especially in the face of *force majeure* situations. Many sellers

²¹ Mariam Darus Badrulzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 1994), pp. 75–79.

²² Satjipto Rahardjo, *Law Enforcement: A Sociological Review* (Yogyakarta: Genta Publishing, 2009), pp. 121–125.

do not have access to preventive protection mechanisms, such as fair contract standards, nor repressive protections, such as access to effective justice. Therefore, legal reform must integrate these two forms of protection in order to create a comprehensive and equitable legal system.²³

Furthermore, the theory of restorative *justice* can also be applied in the context of resolving contract disputes due to *force majeure*. Tony F. Marshall's thinking emphasizes that dispute resolution should be oriented towards the restoration of relations and justice for all parties, not just condemnation or enforcement of formal rules. In the practice of commercial agreements, this approach can be applied through a *renegotiation* mechanism or mediation that allows the parties to reach a fair and mutually beneficial solution. For scrap metal sellers, this approach is very important because it provides space to maintain business continuity without having to bear disproportionate losses. Legal reforms that adopt the principle of restorative justice will be able to create a more humane and equitable dispute resolution system.²⁴

In addition, the theory of *access to justice* developed by Mauro Cappelletti provides the perspective that justice is not only determined by the existence of legal norms, but also by the ability of the community to access the legal system. In the context of scrap metal sellers, economic limitations and legal knowledge are often obstacles to obtaining justice, especially in situations of disputes due to *force majeure*. The existing legal system has not fully provided easy access for small business actors, so they tend to be in a disadvantaged position. Therefore, legal reform should include efforts to improve access to justice, such as simplifying legal procedures, providing legal aid, and strengthening alternative dispute resolution institutions.²⁵

Finally, the theory of *law and economics* pioneered by Richard A. Posner provides a pragmatic approach in designing an efficient and equitable model of legal reform. Posner emphasized that the law must be able to create economic efficiency without sacrificing justice. In the context of *force majeure*, a fair distribution of risk not only provides protection for scrap metal sellers, but also creates certainty and

²³ Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: Bina Ilmu, 1987), pp. 25–29.

²⁴ Tony F. Marshall, *Restorative Justice: An Overview* (London: Home Office Research Development and Statistics Directorate, 1999), pp. 5–9.

²⁵ Mauro Cappelletti and Bryant Garth, *Access to Justice: The Worldwide Movement to Make Rights Effective* (Milan: Giuffrè, 1978), pp. 21–25.

efficiency in commercial transactions. When risk is proportionately shared, the parties will be more motivated to perform the contract rationally and responsibly. Therefore, legal reform must consider aspects of economic efficiency as part of efforts to create a just and sustainable legal system.²⁶

²⁶ Richard A. Posner, *Economic Analysis of Law* (New York: Aspen Publishers, 2014), pp. 119–123.

RESEARCH METHODOLOGY

The research method used in this study is a normative juridical method that focuses on the analysis of legal norms that govern commercial agreements, especially related to *force majeure* and protection of scrap metal sellers. This approach is used because the problems studied are closely related to the absence of norms, unclear arrangements, and imbalances in legal protection in the positive legal system. Normative juridical research allows researchers to examine law as a system of norms consisting of applicable principles, rules, and doctrines. In this context, primary legal materials such as the Civil Code, as well as secondary legal materials in the form of expert doctrines, are the main focus of the analysis. With this approach, the research is expected to be able to identify existing regulatory weaknesses and formulate a concept of justice-oriented legal reform.²⁷

The approaches used in this study include the statute *approach*, the conceptual *approach*, and *the case approach*. The legislative approach is carried out by examining the provisions in the Civil Code, especially those related to engagement and *force majeure*. Conceptual approaches are used to understand the concepts of justice, proportionality, and legal protection in modern legal theory. Meanwhile, the case approach is carried out by examining relevant court decisions to see how legal norms are applied in practice. The combination of these three approaches provides a comprehensive picture of the current legal situation and serves as a basis for formulating a legal reform model that is fairer and more responsive to the needs of scrap metal sellers.²⁸

The types and sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as the Civil Code, as well as other regulations related to commercial agreements. Secondary legal materials include legal literature, scientific journals, and the results of previous research that discuss *force majeure*, legal protection, and fairness in contracts. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias that help understand legal terms. The use of various sources of legal materials aims to obtain a comprehensive and in-depth

²⁷ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2016), pp. 35–39.

²⁸ Johnny Ibrahim, *Theory and Methodology of Normative Law Research* (Malang: Bayumedia, 2006), pp. 302–306.

understanding of the problems being studied, so that the resulting analysis has high validity and relevance.²⁹

The technique of collecting legal materials in this study is carried out through library *research*, which is by examining various literature sources that are relevant to the research topic. This technique was chosen because normative juridical research does not require field data, but rather emphasizes on the analysis of available legal materials. All legal materials obtained are then classified and systematized according to the problems studied. This process is important to ensure that the analysis carried out can answer the formulation of the problem appropriately and systematically. In addition, the literature study also allows researchers to identify the latest developments in legal theory and practice related to *force majeure* and legal protection.³⁰

The analysis of legal materials in this study was carried out qualitatively using legal *interpretation* and legal *construction*. Legal interpretation is used to understand the meaning of existing norms, especially related to the concept of *force majeure* and legal protection in commercial agreements. Meanwhile, legal construction is used to formulate new concepts as part of the proposed legal reforms. The analysis is carried out systematically and logically by relating between legal norms, legal theories, and empirical conditions faced by scrap metal sellers. Thus, the results of the study are not only descriptive, but also prescriptive, that is, providing concrete recommendations for improving the legal system that is fairer and oriented towards the protection of the weak.³¹

²⁹ Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: RajaGrafindo Persada, 2015), pp. 13–17.

³⁰ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: RajaGrafindo Persada, 2012), pp. 68–72.

³¹ M. Syamsudin, *Operationalization of Legal Research* (Jakarta: RajaGrafindo Persada, 2007), pp. 56–60.

RESEARCH RESULTS

Weaknesses in Legal Protection That Exist Today in Force Majeure Conditions

The first weakness in the current legal protection during *force majeure* lies in the still general and abstract nature of the arrangements in the Civil Code, in particular Articles 1244 and 1245. The norm only provides general limitations on the exemption of liability without providing clear parameters regarding the type, criteria, and proof of force majeure. As a result, there is multi-interpretation in practice, which often harms weak parties such as scrap metal sellers. This ambiguity leads to a lack of legal certainty in determining whether an event can be categorized as *force majeure*. In the practice of commercial contracts, this condition opens up space for the dominance of the stronger parties to interpret the clause unilaterally. Therefore, this normative weakness becomes one of the main factors of injustice in legal protection during a state of force.³²

The second weakness is the dominance of the principle of *freedom of contract* which is not balanced with the protection of the weak. In the practice of commercial agreements, *force majeure* clauses are often formulated unilaterally by parties with greater economic power, so they do not reflect the balance of the parties. Scrap metal sellers as small business actors often only accept the contents of the contract without having room to negotiate. This causes the *force majeure* clause to be more favorable to the buyer or large company. This condition shows that the principle of freedom of contract has shifted to become a tool of domination, no longer a means of fair freedom. Therefore, it is necessary to limit this principle through legal intervention that is more in favor of justice.³³

The third weakness relates to the absence of a standard in the drafting of *force majeure* clauses in commercial contracts. Each contract has different clauses, thus causing inconsistency in the application of the law. This irregularity causes difficulties in determining the limits of the responsibilities of the parties in the event of a state of force. Scrap metal sellers who do not have adequate legal capabilities often do not understand the implications of the agreed clause. As a result, they are at a disadvantage when a dispute occurs. Therefore,

³² Subekti, *Treaty Law* (Jakarta: Intermasa, 2005), pp. 69–72.

³³ Salim H.S., *Contract Law: Theory and Techniques of Contract Drafting* (Jakarta: Sinar Grafika, 2011), pp. 98–102.

the absence of a standard clause is one of the structural weaknesses in current legal protection.³⁴

The fourth weakness is the limited recognition of the concept of *force majeure* in judicial practice which tends to be formalistic. Judges often only refer to the text of contracts and laws and regulations without considering the social and economic conditions of the parties. This approach ignores the reality that scrap metal sellers often do not have the capacity to meet obligations due to circumstances beyond their control. As a result, court decisions are less likely to provide fair protection for the weak. This shows that there is a gap between normative law and implementation in judicial practice. Therefore, a paradigm shift in law enforcement that is more oriented towards substantive justice is needed.³⁵

The fifth weakness is the lack of explicit regulation of the contract renegotiation mechanism in *force majeure conditions*. The Indonesian legal system has not accommodated the concept of *hardship* that allows for contract adjustments when there is a significant change in circumstances. As a result, the options available are limited to cancellation or full performance of the contract, in the absence of a fairer middle ground. Scrap metal sellers who are experiencing difficulties due to force majeure do not have room to adjust their obligations. This causes disproportionate losses and has the potential to threaten the sustainability of their business. Therefore, the absence of a renegotiation mechanism is one of the important weaknesses in the current legal system.³⁶

The sixth weakness is related to the low access to justice for scrap metal sellers in dealing with disputes due to *force majeure*. Economic limitations and legal knowledge are the main obstacles for them to fight for their rights. Lengthy judicial processes and high costs further exacerbate the condition. As a result, many sellers choose to accept losses rather than take legal routes. This shows that the legal system has not fully provided equal access for all parties. Therefore, the existing legal protection is still elitist and not inclusive.³⁷

The seventh weakness is the lack of state role in providing protection for small business actors in commercial contracts. The state tends to leave contractual relations to market

³⁴ Munir Fuady, *Contract Law (From the Perspective of Business Law)* (Bandung: Citra Aditya Bakti, 2013), pp. 211–215.

³⁵ Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 2006), pp. 134–138.

³⁶ Ridwan Khairandy, *Indonesian Contract Law in Comparative Perspective* (Yogyakarta: FH UII Press, 2013), pp. 156–160.

³⁷ Mauro Cappelletti and Bryant Garth, *Access to Justice* (Milan: Giuffrè, 1978), pp. 34–38.

mechanisms without making adequate interventions. In fact, in conditions of economic power imbalance, state intervention is urgently needed to protect the weak. Without strict regulation, scrap metal sellers will continue to be in a position vulnerable to exploitation. Therefore, the weak role of the state is one of the factors that cause injustice in legal protection during *force majeure*.³⁸

The eighth weakness is the lack of integration between the principles of justice and legal certainty in the *force majeure* arrangement. The current legal system tends to emphasize legal certainty through normative texts, without considering substantive justice aspects. This causes the law to be rigid and unresponsive to the real conditions faced by the parties. Scrap metal sellers who experience forced labor often do not get the protection they deserve because the law does not allow for flexibility. Therefore, a balance is needed between certainty and justice in the legal arrangement.³⁹

The ninth weakness is the low legal awareness and contract literacy among scrap metal sellers. Many small business actors do not understand the content and implications of the contracts they sign, including *force majeure* clauses. This condition makes them vulnerable to harmful practices. Without an adequate understanding, the available legal protections cannot be utilized optimally. Therefore, increasing legal literacy is an important part of efforts to strengthen legal protection for scrap metal sellers.⁴⁰

The tenth weakness is the lack of an adaptive legal approach to economic and social dynamics, especially in the face of extraordinary situations such as *force majeure*. The existing legal system is still static and has not been able to respond to changes quickly and effectively. In crisis conditions, such as natural disasters or economic disruptions, scrap metal sellers are the most affected group. However, the law has not provided adequate solutions to protect them. Therefore, legal reform is needed that is more adaptive and responsive to change, so as to be able to provide fair protection for all parties.⁴¹

³⁸ Adrian Sutedi, *International Trade Law* (Jakarta: Sinar Grafika, 2014), pp. 223–227.

³⁹ Gustav Radbruch, *Introduction to Legal Philosophy* (Oxford: Clarendon Press, 1950), pp. 122–126.

⁴⁰ Soerjono Soekanto, *Legal Awareness and Legal Compliance* (Jakarta: RajaGrafindo Persada, 2010), pp. 45–49.

⁴¹ Satjipto Rahardjo, *Law* (Bandung: Citra Aditya Bakti, 2012), pp. 201–205.

A model of reform that ensures fair protection for scrap metal sellers

The model of legal reform that ensures fair protection for scrap metal sellers must begin with the reconstruction of *force majeure norms* in laws and regulations to make them more specific, operational, and fair. The provisions in the Civil Code, which are still general, need to be updated by including clear criteria regarding the type of event, the parameters of proof, and the legal consequences of the force majeure. This reform is important to avoid multiple interpretations that have been detrimental to the weak. In addition, the norm must accommodate the real conditions of small business actors who have limited resources. Thus, the law not only provides certainty, but also guarantees substantive justice in practice. These normative reforms are the main foundation in creating fairer and more proportionate legal protection for scrap metal sellers in commercial agreements.⁴²

Furthermore, the reform model must integrate the principles of distributive and corrective justice in the arrangement of commercial contracts. Aristotle's thought emphasized that distributive justice is concerned with the proportional distribution of burdens and benefits, while corrective justice serves to recover losses due to imbalances. In the context of *force majeure*, these two principles can be applied through fair risk sharing between the parties and the provision of compensation or adjustment of obligations for the aggrieved party. Scrap metal sellers as vulnerable parties must get more protection in the distribution of these risks. Therefore, legal reform must ensure that contracts do not become a tool of exploitation, but a means to create balanced justice.⁴³

The next reform model is the strengthening of the principle of proportionality in treaty law, as developed by Agus Yudha Hernoko. This principle requires a balance between the rights and obligations of the parties, so that neither party is disproportionately harmed. In current practice, *force majeure* clauses often do not reflect this principle because they are drafted unilaterally by a stronger party. Therefore, legal reform should encourage the drafting of contracts based on balance, including through oversight of standard clauses. Thus, scrap metal sellers will get fairer protection in contractual relationships.⁴⁴

⁴² Mariam Darus Badrulzaman, *Civil Code Book III of the Law of Engagement with Explanation* (Bandung: Alumni, 2011), pp. 147–150.

⁴³ Aristotle, *Nicomachean Ethics* (Oxford: Oxford University Press, 2009), pp. 120–124.

⁴⁴ Agus Yudha Hernoko, *The Law of Agreements: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), pp. 132–136.

In addition, legal reform needs to adopt the concept of *hardship* in the national legal system to complement *the force majeure* arrangement. This concept allows for contract adjustments when there is a significant change in circumstances without having to cancel the contract in its entirety. Michael Joachim Bonell's thoughts in the UNIDROIT Principles show that *hardship* can be a more flexible and fair solution for the parties. In the context of scrap metal sellers, this concept provides space to renegotiate obligations so that they do not cause disproportionate losses. Therefore, the integration of *the concept of hardship* is an important part of the adaptive and equitable legal reform model.⁴⁵

The reform model should also include the establishment of fair and uniform *force majeure* clause standards in commercial contracts. This standardization is important to avoid inequality in the preparation of contracts that have been detrimental to the weak. The clause must contain a clear definition, evidentiary procedure, and fair dispute resolution mechanism. With a standard standard, scrap metal sellers can better understand their rights and obligations in the contract. In addition, this standard can also be a guideline for judges in deciding disputes related to *force majeure*.⁴⁶

Fair legal reform must also strengthen the state's role in protecting small business actors. The state should not only play the role of a passive regulator, but should be active in ensuring a balance in contractual relationships. This can be done through the establishment of regulations that protect scrap metal sellers, as well as oversight of unfair contract practices. With state intervention, economic power inequality can be minimized so that fairer contractual relations are created.⁴⁷

Furthermore, the reform model must integrate a progressive legal approach that places justice as the primary goal of the law. Satjipto Rahardjo's thinking emphasized that the law must be flexible and able to adapt to social developments. In the context of *force majeure*, this approach allows the judge to not only stick to the text of the contract, but also to consider the real conditions of the parties. Thus, the resulting verdict can better reflect substantive

⁴⁵ Michael Joachim Bonell, *An International Restatement of Contract Law* (New York: Transnational Publishers, 2005), pp. 201–205.

⁴⁶ Munir Fuady, *Contract Law (From the Perspective of Business Law)* (Bandung: Citra Aditya Bakti, 2013), pp. 223–227.

⁴⁷ Erman Rajagukguk, *Indonesian Economic Law* (Jakarta: FH UI, 2013), pp. 190–194.

justice. Progressive law-based legal reform will be able to answer the weaknesses of the legal system that is too formalistic.⁴⁸

The next reform model is to strengthen access to justice for scrap metal sellers through simplification of legal procedures and the provision of legal aid. Mauro Cappelletti's thinking emphasizes that justice must be accessible to all levels of society. In today's practice, the cost and complexity of legal processes are obstacles for small business actors. Therefore, legal reform must create a more inclusive and accessible system, so that scrap metal sellers can fight for their rights effectively.⁴⁹

In addition, legal reform also needs to encourage the use of *alternative dispute resolution mechanisms* such as mediation and arbitration. This mechanism is faster, cheaper, and more flexible than formal judicial processes. In the context of *force majeure*, mediation can be a means to reach a fair agreement between the parties without having to go through a lengthy litigation process. For scrap metal sellers, this mechanism provides an opportunity to resolve disputes more effectively and efficiently.⁵⁰

Finally, the reform model must integrate a legal literacy-based approach and the empowerment of small business actors. Scrap metal sellers need to be given an understanding of their rights and obligations under the contract, including the implications of *force majeure* clauses. Improving legal literacy can be done through legal education, training, and counseling. Thus, they become not only objects of protection, but also subjects capable of fighting for their rights. Ongoing legal reform must include this aspect of empowerment in order to create a truly fair legal system.⁵¹

⁴⁸ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), pp. 95–99.

⁴⁹ Mauro Cappelletti and Bryant Garth, *Access to Justice* (Milan: Giuffrè, 1978), pp. 40–44.

⁵⁰ Gary Goodpaster, *A Review of Dispute Resolution* (Jakarta: Ghalia Indonesia, 1995), pp. 67–71.

⁵¹ Soerjono Soekanto, *Sociology of Law in Society* (Jakarta: RajaGrafindo Persada, 2007), pp. 155–159.

CONCLUSION

The results of the study show that:

1. The current legal system still contains various fundamental weaknesses from normative, structural, and cultural aspects. Normatively, *the force majeure arrangement* in the Civil Code is still general and multi-interpreted, so it does not provide adequate legal certainty for the parties, especially scrap metal sellers as weak parties. Structurally, the predominance of the principle of freedom of contract without strengthening the principle of balance has given rise to inequality in contractual relationships, where *force majeure* clauses are often drafted unilaterally by the stronger party. Meanwhile, culturally, low legal literacy and limited access to justice further worsen the position of scrap metal sellers in dealing with disputes due to force majeure. All of these conditions show that the current legal protections have not been able to realize substantive justice in the practice of commercial agreements.
2. The proposed model of legal reform emphasizes the need to reconstruct a more responsive, adaptive, and justice-oriented legal system. The reforms include a clearer and more operational *update of force majeure norms*, strengthening the principle of proportionality in contracts, and integrating the concept of *hardship* as a more flexible contract adjustment mechanism. In addition, reforms must also involve the state's active role in monitoring and protecting small business actors, strengthening access to justice through simplifying legal procedures and providing legal aid, and developing alternative dispute resolution mechanisms that are more efficient and fair. The progressive legal approach is an important foundation in ensuring that the law not only functions as a tool of certainty, but also as an instrument for realizing social justice. The proposed legal reform model includes: (1) a clearer and more operational reconstruction of *force majeure* norms; (2) strengthening the principles of proportionality and fairness in contracts; and (3) integration of *the concept of hardship*, increased access to justice, and empowerment of small business actors.

BIBLIOGRAPHY

- Amiruddin, and Zainal Asikin. *Introduction to Legal Research Methods*. Jakarta: RajaGrafindo Persada, 2012.
- Aristotle. *Nicomachean Ethics*. Oxford: Oxford University Press, 2009.
- Badruzaman, Mariam Darus. *Various Business Laws*. Bandung: Alumni, 1994.
- Badruzaman, Mariam Darus. *Civil Code, Book III of the Law of Alliances with Explanation*. Bandung: Alumni, 2011.
- Bonell, Michael Joachim. *An International Restatement of Contract Law*. New York: Transnational Publishers, 2005.
- Cappelletti, Mauro, and Bryant Garth. *Access to Justice: The Worldwide Movement to Make Rights Effective*. Milan: Giuffrè, 1978.
- Fuady, Munir. *Contract Law (From the point of view of Business Law)*. Bandung: Citra Aditya Bakti, 2013.
- Goodpaster, Gary. *Review of Dispute Resolution*. Jakarta: Ghalia Indonesia, 1995.
- Hadjon, Philipus M. *Legal Protection for the Indonesian People*. Surabaya: Bina Ilmu, 1987.
- Hernoko, Agus Yudha. *Treaty Law: The Principle of Proportionality in Commercial Contracts*. Jakarta: Kencana, 2010.
- Abraham, Johnny. *Normative Law Research Theory and Methodology*. New York: Bayumedia, 2006.
- Khairandy, Ridwan. *Indonesian Contract Law in Comparative Perspective*. Yogyakarta: FH UII Press, 2013.
- Khairandy, Ridwan. *Good Faith in Freedom of Contract*. Jakarta: Postgraduate Faculty of Law UI, 2004.
- Marshall, Tony F. *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate, 1999.
- Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana, 2016.
- McKendrick, Ewan. *Contract Law: Text, Cases, and Materials*. Oxford: Oxford University Press, 2012.
- Mertokusumo, Sudikno. *Indonesian Civil Procedure Law*. Yogyakarta: Liberty, 2006.
- Mertokusumo, Sudikno. *Getting to Know the Law: An Introduction*. New York: Liberty, 2007.
- Posner, Richard A. *Economic Analysis of Law*. New York: Aspen Publishers, 2014.

- Radbruch, Gustav. *Introduction to Legal Philosophy*. Oxford: Clarendon Press, 1950.
- Radbruch, Gustav. *Legal Philosophy*. Cambridge: Harvard University Press, 1950.
- Rahardjo, Satjipto. *Progressive Law: The Law of Liberation*. Jakarta: Kompas, 2009.
- Rahardjo, Satjipto. *Progressive Law: A Synthesis of Indonesian Law*. Yogyakarta: Genta Publishing, 2009.
- Rahardjo, Satjipto. *Legal Sciences*. Bandung: Citra Aditya Bakti, 2012.
- Rahardjo, Satjipto. *Law Enforcement: A Sociological Review*. Yogyakarta: Genta Publishing, 2009.
- Rajagukguk, Erman. *Indonesian Economic Law*. Jakarta: Faculty of Law UI, 2013.
- Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.
- Salim H.S. *Contract Law: Theory and Techniques of Contract Drafting*. Jakarta: Sinar Grafika, 2011.
- Sen, Amartya. *The Idea of Justice*. London: Penguin Books, 2009.
- Soekanto, Soerjono. *Factors Affecting Law Enforcement*. Jakarta: RajaGrafindo Persada, 2012.
- Soekanto, Soerjono. *Legal Awareness and Legal Compliance*. Jakarta: RajaGrafindo Persada, 2010.
- Soekanto, Soerjono. *Sociology of Law in Society*. Jakarta: RajaGrafindo Persada, 2007.
- Soekanto, Soerjono, and Sri Mamudji. *Normative Law Research: A Brief Overview*. Jakarta: RajaGrafindo Persada, 2015.
- Subekti, R. *Covenant Law*. Jakarta: Intermasa, 2005.
- Sutedi, Adrian. *International Trade Law*. Jakarta: Sinar Grafika, 2014.
- Syahrani, Riduan. *The ins and outs and principles of Civil Law*. Bandung: Alumni, 2010.
- Syamsudin, M. *Operationalization of Legal Research*. Jakarta: RajaGrafindo Persada, 2007.