

PENYELESAIAN SENGKETA KONTRAK BERDASARKAN AZAS PROPORSIONALITAS

Abstrak :

The objective of this article is to argue that the issue of equal and unequal position of the parties is irrelevant to commercial contract. The essence of commercial contract that ponders business relationship without interruption does not deal with the issue of mathematical equality; rather, it emphasizes on proportional exchange of interests of the parties irrespective of result obtained by the parties. There are four important issues that recommended in this paper. First, the principle of proportionality is applied in the entire phases of contract, i.e. in negotiation, formation, and enforcement phases. Second, the principle of proportionality is not perceived from mathematical equality perspective but it is viewed from fair exchange process and proportionate result, which is acceptable by both parties. Third, the principle of proportionality is a doctrine of "fair contract", which improves the doctrine of freedom of contract that may lead to unfairness. It is recommended that jurists, currently, be not regard the doctrine of freedom of contract sacred; rather, they shall find other philosophical basis to develop "fair contract" procedurally as well as substantively. Fourth, the principle of proportionality is applied as best choice of dispute settlement.

Keyword :

dispute settlement, principle of proportionality, fair contract