Al- Kharaj : Journal of Islamic Economics and Business
Volume 8 (2), 2026
P-ISSN: 2686-262X; E-ISSN: 2685-9300

The Role of Business Contracts in Minimizing the Risks of Corporate Cooperation

Mulyani Santoso
santoso.mulyani01@gmail.com
Email: August 17, 1945 Semarang

Keywords *:*
business contracts, risk mitigation, corporate cooperation, risk allocation

Abstract

Intercompany collaboration is an integral strategy in the dynamics of the modern business world, but it carries with it various potential risks that can lead to losses and disputes. In this context, business contracts play a crucial role not only as a basis for agreements but also as a legal instrument for managing and minimizing collaboration risks. This study aims to analyze the role of business contracts as a risk allocation mechanism and examine the factors that contribute to their ineffectiveness in minimizing risk in practice.

This research uses a normative legal method with a statutory and conceptual approach. 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 books and journals relevant to contract law. The analysis was conducted qualitatively with a descriptive-analytical approach.

The research results show that, theoretically, business contracts function as risk allocation instruments capable of identifying, distributing, and controlling risks in corporate collaborations. However, in practice, contracts often fail to perform this function optimally because they are drafted without adequate risk analysis, use standardized templates, and lack operational clauses. Therefore, a risk-based contract development approach is needed, emphasizing risk identification, allocation of responsibilities, and the formulation of clear and applicable clauses.

Thus, a properly drafted business contract not only provides legal certainty, but also serves as an instrument for preventing disputes and protecting the interests of the parties in corporate cooperation.

INTRODUCTION

In modern business practice, contracts are no longer understood merely as agreement documents, but rather as strategic instruments for managing and allocating collaborative risks. This aligns with Ewan McKendrick's (2019) view, which asserts that contracts function as a *risk allocation mechanism* , a means of distributing risk in a measurable manner among the parties. Therefore, contracts should be able to anticipate potential losses arising from uncertainty in business relationships.

In the context of Indonesian law, the function of the contract actually has a strong normative basis. Subekti (2005) stated that an agreement is a source of obligations that give rise to rights and obligations, so that every agreed clause has binding legal consequences. Furthermore, Salim HS (2017) emphasized that an ideal contract should not only contain an agreement but also be able to anticipate the possibility of default by explicitly regulating risk clauses. In fact, Agus Yudha Hernoko (2014) criticized contract practices in Indonesia, which still tend to be *template-based* , often ignoring the contextual aspect of risk allocation.

Although contracts have been positioned doctrinally as risk mitigation instruments, empirical reality shows otherwise. Various business disputes that arise, whether in the trade, construction, or business partnership sectors, are rooted in weak contract construction, particularly

in terms of risk management. Contracts often do not contain adequate clauses related to *risk allocation* , such as division of responsibility, failure handling mechanisms, or protection against force majeure . This condition indicates a mismatch between the ideal function of contracts and the practice of drafting them.

The main problem that arises lies not in the absence of a contract, but rather in its inability to effectively allocate risk. In many cases, contracts serve only as formal legitimation of business relationships, not as risk management instruments. This demonstrates a fundamental weakness in the contract drafting approach: the failure to use risk analysis as a basis for drafting agreement clauses.

Thus, the focus of the problem in this article is formulated specifically as follows:

(1) What is the concept of a business contract as an instrument for risk allocation and mitigation according to the doctrine of contract law?

(2) Why do business contracts often fail to minimize the risks of corporate cooperation in practice?

(3) What is the model or construction of an effective contract clause in controlling the risks of corporate cooperation?

The aim of this paper is to examine theoretically and practically the role of business contracts in minimizing the risks of corporate cooperation, as well as formulating a more adaptive contract drafting approach based on risk mitigation.

LITERATURE REVIEW

1. Basic Concept of Contracts from a Civil Law Perspective

In civil law, contracts are the primary source of binding obligations between the parties. Subekti (2005) defines a contract as an event in which one person promises another, or where two people mutually promise to perform something. This definition emphasizes that a contract is not merely an agreement but also creates legal consequences in the form of rights and obligations that must be fulfilled.

Furthermore, Salim HS (2017) explains that contracts have a strategic function in creating legal certainty and protection for the parties. From this perspective, contracts serve not only as a means of proof but also as an instrument that comprehensively regulates legal relationships, including the division of responsibilities and risks.

In a normative context, the enforceability of contracts in Indonesia is based on the principle of freedom of contract , as reflected in Article 1338 of the Civil Code. This principle grants the parties the authority to determine the contents of the contract according to their interests, as long as it does not conflict with the law, morality, or public order. Therefore, theoretically, contracts have a high degree of flexibility to be designed as risk management instruments.

2. Modern Contract Theory: Contracts as a Risk Allocation Mechanism

The development of modern contract law theory demonstrates a paradigm shift from contracts as a means of agreement to contracts as a risk management instrument. Ewan McKendrick (2019) states that contracts are essentially a *risk allocation mechanism* , a means of distributing risk among the parties in a rational and measurable manner.

This view is reinforced by *the law and economics approach* , which views contracts as a tool for achieving economic efficiency. From this perspective, risk is not avoided but rather managed

through appropriate contractual arrangements. Therefore, contract clauses such as *force majeure* , *limitation of liability* , and *indemnity clauses* are crucial as instruments for risk management.

Furthermore, Agus Yudha Hernoko (2014) emphasized that contracts must be drafted contextually, taking into account the characteristics of the legal relationship being regulated. Contracts that fail to consider the specific risks that may arise will only serve as formal documents, not as instruments of legal protection.

3. Risks in Corporate Cooperation

Corporate collaborations inherently involve various risks that can impact the sustainability of the business relationship. These risks can be classified into several categories, including legal risks, financial risks, and operational risks.

Legal risk relates to the possibility of contract breaches or disputes between parties. Financial risk encompasses losses arising from failure to meet payment obligations or an imbalance in profit distribution. Meanwhile, operational risk relates to failures in the implementation of business activities that are the subject of the collaboration.

According to modern business literature and contract law, these risks cannot be completely eliminated, but they can be minimized through appropriate contractual arrangements. Therefore, contracts play a crucial role in identifying and allocating these risks from the outset of the collaboration.

4. Previous Research and Research Position (*Research Gap*)

Several previous studies have discussed the role of contracts in business relationships, but still have limitations in examining contracts as a comprehensive risk mitigation instrument.

Hernoko's (2014) research focuses more on the fairness and balance aspects of contracts, without specifically addressing the construction of risk-allocation-based clauses. Meanwhile, Salim HS (2017) examines contracts from a general civil law perspective, but has not yet deeply linked them to risk mitigation practices in corporate partnerships.

On the other hand, international studies such as those presented by McKendrick (2019) have positioned contracts as risk allocation instruments, but have not been fully contextualized in the Indonesian legal system, particularly in corporate cooperation practices.

Based on this description, research gaps can be identified, namely:

1. There has been no study that specifically integrates modern contract theory with the practice of drafting business contracts in Indonesia in the context of risk mitigation.
2. There is minimal analysis of contract clause models that can be concretely used to manage corporate cooperation risks.

Thus, this research is positioned to fill this gap by examining business contracts not only as a legal instrument, but also as a strategic tool in minimizing the risks of corporate cooperation.

RESEARCH METHODS

This research is a normative legal study that focuses on the analysis of legal norms governing business contracts and their role in minimizing the risks of corporate cooperation. The approaches used in this research are the statute approach *and* the conceptual approach . The statutory approach is carried out by examining legal provisions related to agreements, particularly in the Civil Code, particularly Articles 1320 and 1338 which regulate the valid conditions of agreements and the principle of freedom of contract. Meanwhile, the conceptual approach is carried out by examining the developing doctrines of contract law, including the theory of contracts as a risk allocation instrument put forward by experts.

The legal sources used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to contract law, while secondary legal materials include books, scientific journals, and expert opinions such as Subekti (2005), Salim HS (2017), and Agus Yudha Hernoko (2014) discussing contract law and risk mitigation aspects. Tertiary legal materials are used to support understanding of the terms and concepts used in the research.

The legal material collection technique was conducted through library research , which involved inventorying and reviewing various literature relevant to the research topic. Furthermore, the legal material analysis technique was conducted qualitatively using descriptive-analytical analysis methods. This analysis aims to outline legal concepts related to business contracts and then link them to the research problem to identify the relationship between contract construction and risk mitigation efforts in corporate collaboration.

With this method, this research is expected to be able to provide a comprehensive analysis of the role of business contracts as a legal instrument in minimizing risks, as well as formulating more effective contract constructions in corporate cooperation practices.

RESULTS AND DISCUSSION

A. Business Contracts as a Risk Management Instrument: From Concept to Practice

Discussions on the role of business contracts in minimizing the risks of corporate collaboration must begin with the understanding that no business relationship is inherently risk-free. Risk is a logical consequence of uncertainty in performance, changes in economic conditions, or differences in the interests of the parties. Therefore, contracts can no longer be understood narrowly as formal documents of agreement, but rather as legal instruments consciously designed to manage these risks.

From a modern contract law perspective, as argued by Ewan McKendrick (2019), contracts function as a *risk allocation mechanism* , a means of determining how risks are distributed among the parties. Thus, the essence of a contract lies not only in what is promised, but also in how the risks arising from the implementation of that agreement are shared and controlled.

This concept aligns with Subekti's (2005) view, which positions agreements as a source of obligations that bind the parties, much like laws. However, in the modern business context, "binding" means not only an obligation to fulfill obligations, but also an agreement regarding who is responsible in the event of failure to implement the agreement. Therefore, a good contract must address two issues simultaneously: certainty of implementation and certainty of risk management.

B. Critical Points of Contract Failure in Corporate Cooperation Practices

While conceptually, contracts serve a strategic role in risk mitigation, in practice, many business contracts fail to fulfill this function. This problem lies not in the absence of contracts, but rather in the quality of the contract's construction itself.

As Agus Yudha Hernoko (2014) points out, the main weakness of contracts in Indonesia is the tendency to use standard contracts *that* are not tailored to the specific nature of the collaboration. These types of contracts typically contain only general, normative clauses without addressing the specific risks that may arise.

As a result, there are several critical points that cause contracts to fail to minimize risk:

First, there's a lack of risk identification from the outset. Many contracts are drafted without analyzing potential risks that may arise during the collaboration. Without risk identification, contracts cannot adequately anticipate problems.

Second, unclear allocation of responsibility. Many contracts don't specify which party is responsible for which risks. This situation opens the door to disputes because each party has a different interpretation.

Third, the absence or weakness of risk mitigation clauses. Clauses such as *force majeure* , indemnity, and limitations of liability are often drafted in a general and non-operational manner. As a result, when a risk actually occurs, these clauses cannot be effectively enforced.

Fourth, ambiguous contract language. The use of unclear or multi-interpretable terms causes contracts to lack legal certainty, thus becoming a source of new conflict.

Thus, it can be emphasized that the failure of contracts to minimize risk is not caused by weaknesses in contract law itself, but rather by the approach to drafting them which is not yet risk-based.

C. Risk Allocation-Based Contract Reconstruction in Corporate Cooperation

To make contracts an effective risk mitigation instrument, a paradigm shift in their development is required, namely by placing risk analysis as the primary foundation for contract design. In this regard, contracts must be developed through systematic and structured stages.

The first stage is risk identification. At this stage, the parties must map all potential risks that may arise, including legal, financial, and operational ones. For example, in a distribution partnership, risks could include late delivery, damaged goods, or payment failure. This identification serves as the primary foundation for drafting the contract.

The second stage is risk allocation. Once the risks have been identified, the next step is to determine the most appropriate party to bear the risk. The principle used is that risks should be allocated to the party with the greatest ability to control or minimize them. This approach aligns with the efficiency theory in modern contract law.

The third stage is the formulation of operational contract clauses. The allocated risks must be outlined in clear, concise, and enforceable clauses. In this regard, some key clauses include:

- *A force majeure* clause that not only defines force majeure, but also regulates the procedures and consequences;
- An indemnity clause *which* regulates in detail the form and limits of liability;
- *Limitation of liability* clause to control the extent of financial risk;
- *Warranty* clause to ensure the quality of performance;
- Efficient dispute resolution clauses that provide legal certainty.

As emphasized by Salim HS (2017), a good contract must be able to anticipate the possibility of default and provide a clear solution when it occurs. Therefore, every clause in the contract must be designed not only to regulate but also to control risk.

D. Practical Implications: Contracts as a Dispute Prevention Instrument

The risk-allocation -based contract approach has significant implications for corporate collaboration practices. Contracts no longer function solely as dispute resolution tools, but also as preventive *legal instruments* .

With a risk-based contract, the parties have clear guidelines on how to deal with various eventualities. This reduces uncertainty, minimizes the potential for conflict, and increases trust in the working relationship.

Furthermore, an effective contract will also provide efficiency in dispute resolution, as a clear and agreed-upon mechanism is in place from the outset. Thus, the contract not only provides legal protection but also supports the continuity and stability of business collaborations.

Based on the overall analysis, it can be emphasized that the core problem in business contract practices lies not in a lack of regulation, but rather in the suboptimal use of contracts as a risk management instrument. Therefore, shifting the approach from contracts as formal documents to contracts as risk management tools is an urgent need in corporate collaboration practices.

CONCLUSION

Business contracts can no longer be understood simply as formal agreements, but rather as strategic instruments for managing and minimizing the risks of corporate collaboration. Based on the discussion, it can be emphasized that a contract's effectiveness in minimizing risk is largely determined by how it is designed, not simply by its existence.

In theory, contracts serve as a risk allocation mechanism, allowing parties to identify, distribute, and control risks proportionately. However, in practice, business contracts often fail to fulfill this function because they are drafted without adequate risk analysis, use standard, non-contextual approaches, and lack operational clauses for addressing potential disputes.

Therefore, the role of contracts in minimizing the risks of corporate collaboration will only be optimal if they are structured using a risk-based approach, which includes risk identification, determining the allocation of responsibilities, and formulating clear, firm, and enforceable clauses. In this context, contracts transform from mere binding tools into instruments for risk management and dispute prevention.

Thus, it can be concluded that the success of a corporate partnership is determined not only by the business agreement reached, but also by the quality of the contract structure, which effectively anticipates and manages risks. Without a properly drafted contract, business partnerships have the potential to become a source of conflict and future losses.

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