

COMPARATIVE ANALYSIS OF PENALTY CLAUSES IN CIVIL CONTRACTS: ENHANCING LEGAL CERTAINTY AND SUBSTANTIVE JUSTICE IN INDONESIAN LAW

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Abstract

Klausul penalti dalam kontrak perdata berfungsi sebagai instrumen preventif terhadap wanprestasi sekaligus sebagai mekanisme perlindungan hukum bagi pihak yang dirugikan. Namun, dalam konteks hukum Indonesia, ketentuan mengenai klausul penalti belum diatur secara eksplisit dalam KUHPerdata, sehingga menimbulkan ketidakpastian hukum dan inkonsistensi dalam praktik peradilan. Penelitian ini bertujuan untuk menganalisis secara komparatif pengaturan dan penerapan klausul penalti dalam sistem hukum Indonesia, Inggris (melalui konsep *liquidated damages*), dan Jerman (melalui *Strafklauseln*). Menggunakan pendekatan normatif, konseptual, studi kasus, dan perbandingan hukum, penelitian ini menemukan bahwa sistem hukum Indonesia masih bergantung pada diskresi hakim tanpa kerangka normatif yang kuat, berbeda dengan pendekatan yang lebih sistematis dan proporsional di Inggris dan Jerman. Penelitian ini merekomendasikan reformulasi pengaturan klausul penalti dalam hukum perdata Indonesia untuk memperkuat kepastian hukum dan menjamin prinsip keadilan substantif. Kebaruan kajian ini terletak pada analisis lintas sistem hukum serta dorongan terhadap reformasi hukum kontrak nasional.

Keywords: *Klausul Penalty, Wanprestasi, Keadilan, Hukum Kontrak, Perbandingan Hukum*

Abstract

Penalty clauses in civil contracts serve as a preventive mechanism against breach of contract and as a legal protection tool for the aggrieved party. However, the Indonesian Civil Code (KUHPerdata) does not explicitly regulate such clauses, resulting in legal uncertainty and inconsistent judicial practices. This study aims to comparatively analyze the regulation and implementation of penalty clauses in Indonesia, the United Kingdom (via the concept of *liquidated damages*), and Germany (through *Strafklauseln*). Employing normative, conceptual, case study, and comparative approaches, the findings reveal that Indonesia's legal framework remains weak and heavily reliant on judicial discretion, in contrast to the more

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structured and proportionate approaches found in the UK and Germany. The study recommends a reformulation of Indonesia's legal framework governing penalty clauses to strengthen legal certainty and ensure substantive justice. The novelty of this research lies in its cross-system legal analysis and emphasis on the need for contractual justice reform in Indonesian civil law.

Keywords: *Penalty Clause, Breach of Contract, Justice, Contract Law, Legal Comparison*

INTRODUCTION

Civil contracts are the main foundation in establishing legal relations between parties in the civil law system, which regulates rights and obligations based on the principle of consensualism (Arifin, 2022, p. 276). In practice, breach of agreement (default) is a legal issue that continues to arise and cause losses to the injured party. One mechanism that is often adopted to anticipate default is the inclusion of a penalty clause. This clause serves as a prevention effort, as well as a form of legal protection through the provision of measurable compensation to the injured party (Assaad & Abdul-Malak, 2020, pp. 04520013-1). However, in the context of Indonesian law, the implementation of penalty clauses still leaves serious problems, especially regarding the principles of proportionality, fairness, and legal certainty due to the absence of explicit arrangements in the Civil Code, especially Article 1243 which only generally regulates compensation for default (Hertanto & Djajaputra, 2024, p. 10379).

Various previous studies have addressed penalty clauses from the standpoint of contract law theory, the effectiveness of legal protection, and the role of courts in interpreting and applying such clauses. Research by Alqodsi, Serebrennikova, and Orsayeva (2024) highlights the role of judges' discretion in commercial contract disputes involving penalty clauses across different legal systems (Alqodsi et al., 2024, pp. 04523062-6). Their findings show that although penalty clauses serve as a means of compensation and deterrence, judges' discretionary power in reducing or canceling penalties based on the principle of proportionality has created legal inconsistencies across jurisdictions. On the other hand, research by Rahayu et al. (2024) confirms that although Indonesian positive law has provided a framework for the protection of parties harmed by default, its application still faces various obstacles, including the vagueness of contract clauses and the lack of effectiveness of legal remedies in court (Rahayu et al., 2024, p. 149). Meanwhile, another study conducted by Seran, Wijaya, and Nugraha (2025)



critically highlights the use of standardized clauses (including penalty clauses) in digital service agreements. This research shows that clauses drafted unilaterally by business actors often contain penalties that are disproportionate and weaken the position of consumers. This creates a conflict between the principle of freedom of contract in the Civil Code and the principle of consumer protection in Law No. 8/1999, which expressly prohibits provisions that harm consumers (Seran et al., 2025, p. 3676).

Although the three studies above have made important contributions in explaining the role, arrangements, and problems of penalty clauses, there is no study that comprehensively conducts a comparative analysis between the Indonesian legal system and the legal systems of other countries such as England and Germany. This research is present to fill the gap (gap analysis) by evaluating the regulation and practice of penalty clauses in the perspective of Indonesian civil law. In addition, this study also examines how the disparity in judges' interpretation of penalty clauses in Indonesia can interfere with legal certainty and contractual fairness, which are very important in business transactions and notarial practices.

The urgency of this research does not only stem from normative juridical aspects, but also has a broad impact on the practice of business agreements and the preparation of notarial deeds. The unclear norms governing penalty clauses have the potential to create a burden of legal risk for the parties and the notary as the party formulating the contract. When there is disparity in court decisions, this can disrupt the principle of *pacta sunt servanda* and create legal uncertainty. Moreover, this uncertainty disrupts the climate of certainty in civil law traffic and trust in business transactions. This research is important as a contribution in designing the formulation of fair penalty clause arrangements (*ius constituendum*), as well as providing references for legal practitioners and policy makers (Zuhdi et al., 2025, p. 48).

The main problem that is the focus of this research stems from the diversity of approaches to penalty clauses in different legal systems, as well as the implications for legal certainty and justice for the parties to the agreement. The first question to be answered is how penalty clauses are regulated in the legal frameworks of Indonesia, the United Kingdom, and Germany. The three countries are chosen because they represent three main legal system models: the Indonesian civil law legal system which largely adopts the Dutch legal heritage, the English common law system which emphasizes precedent and the precautionary principle in applying penalties (generally through the concept of liquidated damages), and the German civil law system which has a strict construction in the recognition



of Strafklauseln (penalty clauses) in its Civil Code. By comparing the three, it is hoped that a comprehensive picture can be obtained of how penalty clauses are designed, interpreted, and applied fairly in civil contracts, especially when default occurs.

Furthermore, the second question is directed at evaluating how penalty clauses should be regulated in Indonesian positive law in order to reflect the principle of balanced justice for both parties. Although in general, penalty clauses can be inserted in agreements based on the principle of freedom of contract, the practice of its regulation in the Indonesian legal system still leaves uncertainty because it is not explicitly regulated in the Civil Code. In many cases, judges' interpretation of penalty clauses relies on personal discretion, which is often not uniform. This certainly raises a big question about how to formulate rules that not only provide legal certainty, but also pay attention to aspects of justice, proportionality, and protection of weak parties in legal relations (Agustina, 2024, p. 50). Therefore, it is important for this research to offer an ideal legal formulation, both from theoretical and practical aspects, so that the penalty clause can truly function as a means of ensuring certainty and not as a potential injustice.

This research aims to systematically explain the regulation of penalty clauses in the Indonesian legal system, evaluate the practice of its application in civil contracts, and compare it with the regulation in England and Germany. The results of this research are expected to provide a concrete contribution in the formulation of fair legal rules and provide legal certainty towards the application of penalty clauses in Indonesia. Considering the complexity and diversity of approaches to penalty clauses in different legal systems, as well as the lack of explicit arrangements in Indonesian positive law that are oriented towards justice and legal certainty, this research is very relevant to be carried out. This study is not only important in the context of enriching academic literature, but also has practical urgency for the world of notaries, business, and civil law enforcement. Through a comparative and normative approach, this research is expected to be able to formulate the principles of a balanced and fair penalty clause arrangement, and make a real contribution to the development of a contract law system in Indonesia that is responsive to modern agreement practices and the needs of justice of the parties.

THEORETICAL BASIS

In order to analyze the regulation and implementation of penalty clauses in civil contracts, this research is based on several main theories that serve as conceptual footing. These theories serve to explain the relevant



legal norms, principles, and principles in answering the predetermined problem formulation, particularly related to legal certainty, protection of parties harmed by default, and justice in cross-jurisdictional contractual relationships.

Justice Theory

The theory of fairness is an important normative basis in assessing the enforceability and feasibility of penalty clauses in contracts. In civil law, the principle of fairness demands that every provision in the agreement, including penalties, does not injure the rights of one party disproportionately. Fairness is not only understood formally, but also substantively, that is, there is a balance in assessing the consequences of a contract violation. In the Indonesian context, fairness has strong constitutional roots through the fifth principle of Pancasila, namely "Social Justice for All Indonesian People", which demands that the application of contract law not only benefits economically strong parties, but also protects weaker parties.

This view is in line with the principle of retributive justice which emphasizes that punishment should be proportional to the wrong done. According to the Stanford Encyclopedia of Philosophy, retributive justice is committed to three main principles: (1) individuals who commit wrongful acts morally deserve proportionate punishment; (2) providing appropriate punishment is intrinsically morally good; and (3) it is morally impermissible to punish innocent individuals or provide disproportionate punishment (Walen, 2023).

In the context of penalty clauses, this principle implies that the penalty stipulated in the contract should reflect the seriousness of the breach and should not be excessive. The imposition of disproportionate penalties may be considered a violation of the principle of fairness, as it may unfairly burden one party. Therefore, it is important for the parties to the contract to ensure that the agreed penalty clause reflects the balance between the breach and the consequences, in order to ensure fairness for all parties involved.

Principle of Proportionality

The principle of proportionality serves as an analytical tool to measure the reasonableness of penalty clauses in contractual relationships. Proportionality demands a balance between the rights and obligations of the parties to the contract, especially when one party defaults. In this case, the penalty should be proportional to the level of loss or fault incurred, rather than serving as an excessive punishment. This principle is conceptually close to the idea of fair exchange, where the penalty should



not be unilaterally detrimental, and should reflect the fair value of the agreed contractual risk (Agus Yudha Hernoko, 2016, p. 447).

Legal Protection Theory

This theory underlines that the law must be present to protect the injured party in legal relations, including in cases of default. Such protection may take the form of restitution (fulfillment of contractual obligations), compensation (damages), or even cancellation of the contract (Indraswari, 2024, p. 140). In the context of penalty clauses, this theory encourages the importance of the existence of a mechanism capable of correcting excessive or unfair penalty provisions, which can be done through the role of the court. The Civil Code, particularly Article 1246, has regulated the right of the injured party to obtain compensation, but does not specifically regulate the penalty limit, so the role of the judge becomes crucial in balancing the rights and obligations of the parties based on the principle of justice.

This view is in line with Hanoch Dagan's analysis in his article "Restitutionary Damages for Breach of Contract: An Exercise in Private Law Theory," in which he highlights the importance of restitution as a legal protection mechanism in breach of contract cases. Dagan argues that restitution serves not only to restore the injured party to their original position, but also to prevent unjust enrichment by the party who committed the breach of contract (Dagan, 2001, p. 153). In this context, restitution acts as a corrective tool that ensures that no party benefits from their breach of contract. Dagan also emphasizes that the restitution approach can strengthen the principle of fairness in contract law by ensuring that the injured party is adequately protected through available legal mechanisms.

Comparative Law Theory

To see and evaluate whether the regulation of penalty clauses in Indonesia is sufficient to provide certainty and justice, comparative law theory is used. In the English legal system, the doctrine of liquidated damages is known, where penalty clauses are considered valid as long as they reflect a reasonable estimation of loss, not punishment. Meanwhile, in the German legal system, penalty clauses (Strafklauseln) are recognized as long as they do not contradict the principles of Treu und Glauben (good faith) and are not excessive towards one of the parties. This theory is important to show how best practices in other countries can inspire the reformulation of penalty clause arrangements in Indonesia, which currently has not been explicitly accommodated in positive law.

This approach is in line with the views of Doug Jones in his article "Navigating Penalties and Liquidated Damages Across Common Law and Civil Law Jurisdictions," where he emphasizes the importance of



understanding the differences between common law and civil law legal systems in dealing with penalty clauses (Doug Jones AO, 2018, p. 542). Jones notes that in common law systems, such as England, penalty clauses that are punitive in nature tend to be unenforceable, while in civil law systems, such as Germany, such clauses are enforceable as long as they do not violate fundamental principles of law, such as good faith and proportionality. This comparison shows that different approaches to penalty clauses can provide valuable insights for legal reform in Indonesia, especially in creating a legal framework that balances legal certainty and fairness for parties to a contract.

RESEARCH METHODS

This research uses normative legal research, which is research that focuses on the study of positive law by examining applicable legal norms (Soerjono Soekanto, 2014, p. 63), which aims to analyze the regulation of penalty clauses in legal protection against default of civil contracts. The choice of normative method is based on the characteristics of the problem which is directly related to positive legal norms, legal principles, and developing doctrines. In accordance with the approach used in legal research as explained by I Made Pasek Diantha, this method is used to formulate juridical arguments against lacunae, vagueness, or conflicts of legal norms, as well as to formulate legal reforms that are fair and adaptive to modern contractual practices (Diantha, 2016, p. 12). This research is descriptive-analytical in nature, which aims to systematically describe, explain, and analyze how penalty clauses are regulated and applied in the Indonesian legal system, as well as compare them with practices in other countries such as the UK and Germany. This approach was chosen so that the research results are not only theoretical, but also offer concrete solutions to the legal problems described in the background.

In this research, four legal approaches are used to examine the penalty clause comprehensively and multidimensionally. First, the statute approach is applied to examine the relevant legal provisions (Marzuki, 2017, p. 93). Second, the conceptual approach is used to examine the principles of fairness, proportionality, and freedom of contract which become the normative basis in evaluating the balance of the content of the penalty clause, as explained in the theoretical framework (Efendi & Rijadi, 2022, p. 188). Third, the case study approach is carried out by examining several court decisions, to see how judicial practice interprets and applies penalty clauses in the settlement of civil contract disputes (Laurensius Arliman S, 2018, p. 114). Finally, the comparative approach is used to compare the regulation of penalty clauses in Indonesia with the concept of

1018



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liquidated damages in the English legal system and Strafklauseln in German law, which is expected to be a reference in formulating a fairer, proportional, and certain model of penalty clause regulation in Indonesia (Rizkia & Fardiansyah, 2023, p. 134). These approaches are used in an integrated manner to provide sharp, relevant, and solutive analysis in answering the legal issues studied.

In this research, the type of legal data used consists of three main categories. Primary legal materials include laws and regulations such as the Civil Code and relevant court decisions, which serve as an authoritative basis in examining penalty clauses (Marzuki, 2017, p. 181). Secondary legal materials include textbooks, journal articles, and opinions of legal experts that provide theoretical context and deepening of legal norms (Rizkia & Fardiansyah, 2023, p. 20). Meanwhile, tertiary legal materials are used as a complement to the analysis, such as legal dictionaries, encyclopedias, and reliable sources from the internet that help explain the legal terms and context used (Firmanto et al., 2024, p. 94). Data collection techniques were carried out through library research by means of documentation and systematic classification of legal materials. The data that has been collected is then analyzed qualitatively with an interpretative approach, through three main forms: systematic interpretation, which is used to link the penalty clause with the principles of civil law as a whole; formal (logical) interpretation, to understand the meaning of norms based on legal logic and deductive reasoning; and hermeneutic interpretation, which explores the substantive meaning and values of justice, proportionality, and legal protection in the context of contractual relationships (Susanti, 2021, p. 86). With this comprehensive approach, the research is expected to be able to provide the right answer to the issue of penalty clauses and contribute to strengthening a fairer and more effective contract law system in Indonesia.

RESULTS AND DISCUSSION

Urgency of Penalty Clause in Indonesian Civil Law System

In Indonesian civil contract practice, penalty clauses have a strategic role as a preventive mechanism against default. By establishing financial sanctions for breach of contract, these clauses encourage parties to comply with their obligations, while providing certainty regarding the consequences of such breaches. However, despite its importance, the regulation of penalty clauses in Indonesian positive law has not been explicitly regulated, resulting in uncertainty in its application (Hernawan, 2018, p. 18). This lack of clarity has an impact on judicial practice, where judges have wide discretion in interpreting and assessing the reasonableness of penalty clauses. As a result, there is disparity in court

1019



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decisions regarding penalty clauses, which in turn can reduce the effectiveness of such clauses as a deterrent to default. This points to the need for clearer and stricter regulation of penalty clauses in the Indonesian legal system (White & Case, 2021).

In the context of comparative law, other legal systems such as England and Germany have developed a more structured approach to penalty clauses. In England, for example, there is a liquidated damages doctrine that distinguishes between legitimate damages and unenforceable penalties. Meanwhile, in Germany, penalty clauses are recognized as long as they do not contradict the principles of *Treu und Glauben* (good faith) and are not excessive to either party. These approaches can be a reference for Indonesia in formulating clearer and fairer arrangements regarding penalty clauses (Fransiscus Rodyanto & Fadhira Mediana, 2023). Therefore, the urgency of regulating penalty clauses in the Indonesian civil law system lies not only in the protection of the injured party, but also in the creation of legal certainty and justice in contractual relations. By formulating clear and proportional arrangements, penalty clauses can function effectively as instruments of default prevention and legal protection for parties in civil contracts.

The Uncertainty of Penalty Clause Arrangements and its Challenges in the Courts

In the Indonesian civil law system, penalty clauses have not been explicitly regulated in the Civil Code (KUHPerdata) (Hedar et al., 2023, p. 722). This creates legal uncertainty in its application, especially when there is a default in the contract. This uncertainty provides room for judges to interpret penalty clauses freely, which can result in different verdicts in similar cases (Vianney Bagus Raditya et al., 2024). Judges' discretion in assessing the fairness and validity of penalty clauses often leads to disparities in court decisions. Some judges may consider penalty clauses as valid and enforceable, while others may judge them as unfair or contrary to the principles of fairness, thus unenforceable. This disparity reflects the lack of clear guidelines in assessing and applying penalty clauses in civil contracts (Nugrahenti, 2024, p. 15).

This uncertainty affects the parties to the contract, especially those who are economically weaker or have a low bargaining position (Soekasah, 2023, p. 62). They may be reluctant to enforce their rights through legal channels due to the uncertainty of the results that will be obtained. Moreover, this uncertainty may also hinder the development of fair and balanced contractual practices in Indonesia. To overcome this challenge, legal reforms are needed that regulate penalty clauses more clearly and



explicitly in the Civil Code or other laws and regulations. The regulation must consider the principles of justice, proportionality, and protection of the injured party. Thus, it is expected to create legal certainty and justice in the application of penalty clauses in civil contracts in Indonesia.

The Principle of Proportionality and the Principle of Justice in the Evaluation of the Penalty Clause

In civil contract practice, penalty clauses serve as a mechanism to encourage compliance with agreements and provide compensation for breaches. However, it is important to ensure that such clauses are not excessive or unfair to the breaching party. The principle of proportionality emphasizes that the sanction set should be proportional to the harm that may arise from the breach of contract (Prihatin et al., 2023, p. 189). This aims to prevent the misuse of penalty clauses as a tool to punish disproportionately, which can harm the weaker party to the contract (Cleveland, 2019).

The principle of fairness also plays an important role in the evaluation of penalty clauses. Courts often consider whether the clause reflects a reasonable estimate of damages and does not aim solely to punish the breaching party (Woollard, 2024). For example, in the case of *Cavendish Square Holding BV v Talal El Makdessi*, the UK Supreme Court confirmed that penalty clauses must protect the legitimate interests of innocent parties and must not impose disproportionate harm on the breaching party (Amara, 2024, p. 12). This approach demonstrates the importance of balancing the interests of both parties to the contract. Therefore, in drafting and assessing penalty clauses, it is important to consider the principle of proportionality and the principle of fairness. This not only ensures that such clauses are legally enforceable, but also that they serve to encourage compliance with the contract without imposing unfair sanctions. As such, the application of these principles helps to create a fair and balanced contractual environment for all parties involved (Aqmadea Eshafia et al., 2024; Lutfiah et al., 2024).

Comparison of Penalty Clause Arrangements in Indonesia, England, and Germany

In the Indonesian civil law system, penalty clauses have not been explicitly regulated in the Civil Code (KUHPerdata) (Auli, 2024). This creates legal uncertainty in its application, especially when there is a default in the contract. This uncertainty provides room for judges to interpret penalty clauses freely, which can result in different verdicts in similar cases (Cahyono, 2025). In contrast, the English legal system, which adheres to the common law tradition, has a more structured approach to penalty clauses

1021



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(McKenna, 2008). In *Cavendish Square Holding BV v Talal El Makdessi*, the UK Supreme Court held that a penalty clause that imposed disproportionate damages on the breaching party was unenforceable. Conversely, if the clause reflected a reasonable estimate of damages and protected the legitimate interests of the innocent party, then the clause was enforceable. This approach demonstrates the importance of balancing the interests of both parties to the contract (McDermott, 2015).

Meanwhile, the German legal system, which adheres to the civil law tradition, recognizes the concept of *Strafklauseln* which is regulated in the *Bürgerliches Gesetzbuch (BGB)* (Zur Übersicht, 2022). In this system, penalty clauses are considered valid as long as they do not contradict the principles of *Treu und Glauben* (good faith) and are not excessive towards one of the parties. German courts have the power to adjust the amount of the penalty if it is deemed disproportionate, thus providing protection to the weaker party in the contract. A comparison between these three legal systems shows that clear and proportional penalty clause arrangements are essential to create legal certainty and fairness in contractual relationships. Indonesia can learn from the approach of the UK and Germany in formulating stricter arrangements regarding penalty clauses, by considering the principles of fairness, proportionality, and protection of the injured party.

Reformulation of Penalty Clause Arrangements as an Effort to Realize Equitable Legal Protection

Penalty clauses in civil contracts in Indonesia currently do not have explicit arrangements in the Civil Code (KUHPerdata), resulting in legal uncertainty in their application. This uncertainty provides room for judges to interpret penalty clauses freely, which can result in different verdicts in similar cases. Therefore, it is necessary to reformulate the regulation of penalty clauses more clearly and firmly to create legal certainty and justice for the parties in civil contracts. This reformulation can be done by adopting principles from other legal systems that have more structured arrangements for penalty clauses. For example, the English legal system recognizes the doctrine of liquidated damages that distinguishes between valid damages and unenforceable penalties (Obrien Kaawoan et al., 2024; Zaki Mahfuz Ridha et al., 2024). Meanwhile, the German legal system recognizes penalty clauses as long as they do not contradict the principle of *Treu und Glauben* (good faith) and are not excessive towards one of the parties (Adolf, 2024, p. 27). These approaches can be a reference for Indonesia in formulating clearer and fairer arrangements regarding penalty clauses.



In the Indonesian context, the reformulation of penalty clause arrangements must also consider the role of notaries and judges in regulating and assessing penalty clauses in a fair, balanced, and in favor of legal certainty. Notaries as public officials authorized to make authentic deeds have an important role in ensuring that penalty clauses contained in contracts do not conflict with the principles of fairness and proportionality (Yuhelson et al., 2020, p. 363). Meanwhile, judges must have clear guidelines in assessing the reasonableness and validity of penalty clauses to avoid disparities in court decisions. In addition, the reformulation of penalty clause arrangements must also pay attention to the principle of social justice as stated in the fifth principle of Pancasila, namely "Social Justice for All Indonesian People". A fair and proportional penalty clause arrangement will provide better legal protection for weak parties in civil contracts, and encourage the creation of balanced and equitable contractual relationships (Sayuti, 2021; Syaidi, 2024).

Thus, the reformulation of penalty clause arrangements in the Indonesian civil law system is an important step to create legal certainty and justice in contractual relationships. Clearer and stricter arrangements regarding penalty clauses will provide better legal protection for the parties in civil contracts, as well as encourage the creation of balanced and equitable contractual relationships.

CONCLUSION

This study finds that the current regulation of penalty clauses within the Indonesian civil law framework remains insufficient to ensure legal certainty and fairness, due to the absence of explicit provisions in the Civil Code. This legal ambiguity has led to excessive judicial discretion, resulting in inconsistent rulings and undermining the predictability of legal outcomes. Comparative analysis with the legal systems of the United Kingdom and Germany reveals that a more structured regulatory model – grounded in the principles of proportionality, fairness, and good faith – can promote both clarity and equitable legal protection. These comparative insights highlight the need for Indonesia to adopt a more progressive legal framework by explicitly regulating penalty clauses and encouraging active roles for notaries in drafting balanced contractual provisions, as well as for judges in upholding substantive justice in contractual disputes. The novelty of this research lies in its cross-jurisdictional approach, which integrates doctrinal and normative perspectives to propose regulatory reform. Unlike previous studies, this research emphasizes the function of penalty clauses not merely as punitive instruments, but as essential components of a just and effective contract enforcement mechanism. Therefore, this study calls

1023



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for future legislative action to codify clear, proportionate, and fair standards for penalty clauses in Indonesia's positive law.

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