

***Reformulating Legal Protection Policies for Scrap Metal Sellers in Force Majeure Conditions within Sale and Purchase Agreements Oriented Toward Justice***

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**ABSTRACT**

This research aims to reformulate legal protection policies for scrap metal sellers in *overmacht* conditions in fairness-oriented sales and purchase agreements. The background of this research is based on the incompatibility between the prevailing legal norms and practices in the field, where sellers are often in a weak position and bear disproportionate risks when compelling circumstances occur. The problems studied in this study include: (1) How is legal protection for scrap metal sellers regulated under *overmacht*?; (2) How should such protection be reformulated to achieve justice? The research method used is normative juridical with a legislative approach and a conceptual approach. The legal materials used include primary, secondary, and tertiary legal materials that are analyzed qualitatively using legal interpretation methods and deductive reasoning. This research uses three main theoretical frameworks, namely Justice Theory as *the grand theory*, the Covenant Theory as *the middle theory*, and the *Overmacht* Theory as *the applied theory*.

The results of the study show that: (1) the current legal protection has not provided substantive justice because it is still formalistic and does not accommodate the imbalance of bargaining positions between sellers and buyers; (2) there are weaknesses in *the overmacht arrangement*, especially in risk sharing, proof, and contract clauses that tend to be detrimental to the seller; and (3) there is a need for legal policy reform that includes expanding the concept *of overmacht* to include *economic hardship*, strengthening the principles of proportionality and good faith in agreements, and improving a simpler and fairer dispute resolution mechanism.

***Keywords: Reformulation, Legal, Protection, Policies, Scrap, Metal, Sellers, Force Majeure Conditions, Sale, Purchase, Agreements, Oriented, Toward, Justice.***

## INTRODUCTION

### Background

The development of economic activities based on the trade of used goods, especially scrap metal, shows increasingly complex dynamics along with the increasing industrial demand for secondary raw materials. The practice of buying and selling scrap metal does not only involve large-scale business actors, but also small traders who are vulnerable to legal uncertainty. In this context, the sale and purchase agreement becomes the main instrument that regulates the legal relationship between the seller and the buyer. However, in practice, extraordinary conditions (*overmacht*) often arise that hinder the implementation of the agreement, such as natural disasters, government policies, or distribution disruptions. This condition raises significant legal problems, especially related to legal protection for sellers who are in a weak position. Therefore, it is important to reformulate legal protection policies that are able to respond to these challenges in a fair manner.<sup>1</sup>

The concept *of overmacht* in Indonesian civil law is normatively regulated in Article 1244 and Article 1245 of the Civil Code (KUHPPerda), which in principle exempts the debtor from the obligation of compensation if he is unable to fulfill his achievements due to compelling circumstances. However, the provisions are more formulated from a general perspective without taking into account the specific characteristics of certain trade sectors such as scrap metal. In practice, often the seller actually bears the losses even though the compelling circumstances occur beyond his control. This shows that there is a gap between legal norms and socioeconomic realities faced by small business actors. Thus, a new approach is needed in understanding and implementing the concept *of overmacht* that is more responsive to factual conditions in the field.<sup>2</sup>

The unfairness in the practice of scrap metal purchase and sale agreements is also affected by the imbalance of the bargaining position between the seller and the buyer. Buyers who are generally large companies or industries have better economic power and legal access than sellers. As a result, treaty clauses are often drafted unilaterally and do not provide adequate protection against the risk of *overmacht*. This condition is contrary to the principle

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<sup>1</sup> R. Subekti, *Treaty Law* (Jakarta: Intermedia, 2005), pp. 45–47.

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

of balance in treaty law which requires equality of rights and obligations between the parties. Therefore, the reformulation of legal protection policies needs to be directed at strengthening the position of sellers through more fair and proportionate arrangements.<sup>3</sup>

In addition, the development of the theory of justice in modern law requires the protection of weak parties in contractual relationships. Distributive and corrective justice theory emphasizes the importance of a balanced distribution of burdens and benefits and equitable recovery of losses. In the context of scrap metal trading, the application of this theory means that the risk due to *overmacht* should not be fully passed on to the seller. Instead, there needs to be a risk-sharing mechanism that takes into account the capabilities and positions of each party. This is in line with the principle of substantive justice that prioritizes fair outcomes over just formal adherence to the rules.<sup>4</sup>

The problem of legal protection for scrap metal sellers in *overmacht* conditions is also inseparable from the weak sectoral regulations that specifically regulate the trade in second-hand goods. Until now, there are no laws and regulations that comprehensively regulate the legal protection mechanism in this sector. As a result, dispute resolution relies more on the interpretation of the judge or the agreement of the parties who are often not in favor of the seller. This condition shows the urgency of establishing a more specific and adaptive legal policy to the needs of the scrap metal trading sector.<sup>5</sup>

In the perspective of progressive law, law should not be seen as a static system, but rather should be able to adapt to the dynamics of society. Therefore, the reformulation of legal protection policies must be based on a humanist and social justice-oriented approach. The law must be present as a tool to protect the interests of the community, especially vulnerable groups. In this context, scrap metal sellers as small business actors need to receive special attention in the formulation of more inclusive and responsive legal policies.<sup>6</sup>

Furthermore, the practice of dispute resolution in *overmacht* cases often does not provide legal certainty for the parties. This is due to differences in interpretations of the

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

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

<sup>5</sup> Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2014), pp. 213–216.

<sup>6</sup> Satjipto Rahardjo, *Progressive Law: The Law that Liberates* (Jakarta: Kompas, 2009), pp. 67–70.

elements of *overmacht* and the absence of clear standards in determining the responsibilities of each party. As a result, sellers are often at a disadvantage because they do not have adequate access to effective dispute resolution mechanisms. Therefore, there is a need for policy reforms that not only regulate the substance of the law, but also a more fair and transparent law enforcement mechanism.<sup>7</sup>

In the context of globalization, the scrap metal trade is also affected by fluctuations in international market prices and cross-border trade policies. This condition adds to the complexity of the risks faced by sellers, including the risk of *overmacht* that is economic in nature. Therefore, legal protection policies must be able to accommodate these external factors so as not to disproportionately harm sellers. This approach is important to ensure that national laws remain relevant in the face of global economic dynamics.<sup>8</sup>

In addition to the economic aspect, social factors also affect the position of scrap metal sellers in contractual relationships. Many sellers come from the lower middle class who have limitations in understanding the legal aspects of the agreement. This leaves them vulnerable to exploitation and injustice in the treaty. Therefore, the reformulation of legal protection policies must also include aspects of legal education and empowerment for the public, so that they can better understand their rights and obligations.<sup>9</sup>

The urgency of reformulating legal protection policies is also strengthened by the principle of the rule of law which requires the protection of every citizen without discrimination. In this case, the state has an obligation to ensure that every individual, including scrap metal sellers, gets fair and effective legal protection. This is in line with the mandate of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which guarantees fair legal certainty for every citizen. Therefore, the reformulation of this policy is part of efforts to realize a just state of law.<sup>10</sup>

Taking into account these various problems, this study is important to reformulate legal protection policies for scrap metal sellers in *overmacht* conditions in fair-oriented sales

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<sup>7</sup> Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), pp. 101–104.

<sup>8</sup> UNDP, *Governance for Sustainable Human Development* (New York: UNDP, 1997), pp. 23–25.

<sup>9</sup> Soerjono Soekanto, *Factors Influencing Law Enforcement* (Jakarta: RajaGrafindo Persada, 2012), pp. 52–55.

<sup>10</sup> Jimly Asshiddiqie, *Indonesian Constitution and Constitutionalism* (Jakarta: Sinar Grafika, 2010), pp. 121–124.

and purchase agreements. The approach used is not only normative, but also considers empirical and theoretical aspects to produce a comprehensive policy formulation. Thus, it is hoped that this research can contribute to the development of treaty law that is more fair, responsive, and adaptive to the needs of the community.

## Research Question

1. How is legal protection for scrap metal sellers regulated under force majeure?
2. How should such protection be reformulated to achieve justice?

## THEORETICAL FRAMEWORK

### 1. Theory of Justice

The theory of justice is the main philosophical foundation in any legal analysis that is oriented towards the protection of the weak, including in the context of scrap metal purchase and sale agreements that face *over-macht* conditions. Justice in law is not only interpreted as conformity with applicable norms, but also as an effort to achieve a substantive balance of rights and obligations. In this context, the law should not be neutral alone, but must side with the vulnerable in order to create real justice. Therefore, the fairness approach is important to evaluate whether existing legal provisions have provided adequate protection for scrap metal sellers who experience coercive circumstances in the implementation of sale and purchase agreements.<sup>11</sup>

John Rawls' thought places justice as the main principle in the basic structure of society through the concept of *justice as fairness*. Rawls emphasized that justice must guarantee equal fundamental freedoms and regulate the distribution of social and economic benefits in such a way as to benefit the most disadvantaged. In the context of this study, scrap metal sellers can be categorized as disadvantaged parties due to limited economic and legal access. Therefore, the legal policies governing *overmacht* must be designed in such a way as not to create greater inequality for their position in contractual relationships.<sup>12</sup>

In addition to Rawls, the concept of justice can also be reviewed through an Aristotelian perspective that distinguishes between distributive justice and corrective justice. Distributive justice is concerned with the proportional distribution of benefits and burdens, while corrective justice serves to correct imbalances that occur due to certain actions. In the context of *overmacht*, distributive justice requires fair risk

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<sup>11</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 3–6.

<sup>12</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 15–18.

sharing between sellers and buyers, while corrective justice requires a remedy mechanism for the aggrieved party. Thus, this theory provides a comprehensive analytical framework for evaluating fairness in scrap metal purchase agreements.<sup>13</sup>

Furthermore, justice in law can also be understood through the utilitarianism approach put forward by Jeremy Bentham, who emphasized that law should provide the greatest benefit to as many people as possible. Nevertheless, this approach is often criticized for potentially ignoring the rights of individuals, especially vulnerable groups. In the context of this study, the application of pure utilitarianism can cause scrap metal sellers to be sacrificed for the sake of greater economic interests. Therefore, this approach needs to be combined with the principle of justice that better protects individuals so that structural injustice does not occur.<sup>14</sup>

Furthermore, the concept of social justice developed by Roscoe Pound emphasizes that law must function as *a tool of social engineering*. In this case, the law serves not only as a regulator, but also as an instrument to create a balance of interests in society. In the context of buying and selling scrap metal, the law must be able to balance the interests between large and small business actors, as well as provide adequate protection for weaker parties. Thus, justice is not only normative, but also practical and contextual.<sup>15</sup>

In modern developments, justice theory is also associated with the concept of substantive justice that emphasizes fair outcomes, not just correct procedures. This means that even if an agreement has been legally made, but if the outcome disproportionately harms one of the parties, then the agreement needs to be reviewed. In the context of *overmacht*, substantive justice requires an evaluation of the actual impact of the application of the agreement clause on scrap metal sellers. This approach is important to ensure that the law is not only formalistic, but also responsive to social realities.<sup>16</sup>

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<sup>13</sup> Aristotle, *Nicomachean Ethics* (Oxford: Oxford University Press, 2009), pp. 113–116.

<sup>14</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1907), pp. 12–15.

<sup>15</sup> Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1922), pp. 47–50.

<sup>16</sup> Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009), pp. 20–23.

In addition, the concept of justice is also closely related to the principle of legal protection which requires the state to protect the rights of citizens, especially vulnerable groups. In this context, scrap metal sellers as small business actors need stronger legal protection so as not to be harmed in the contractual relationship. This principle is in line with the concept *of the rule of law* which emphasizes that the law must provide equal protection for all. Therefore, the legal policy governing *overmacht* must be designed with the protection aspect of the weak party in mind.<sup>17</sup>

Justice also has a moral dimension that cannot be separated from the law. According to Lon L. Fuller, good law must meet internal moral principles, such as consistency, clarity, and justice. In this context, the legal policy governing *overmacht* must be clearly drafted and not give rise to interpretations that are detrimental to one of the parties. Thus, the law is not only a regulatory tool, but also reflects the moral values that live in society. This is important to create public trust in the legal system.<sup>18</sup>

Furthermore, justice theory in the perspective of progressive law emphasizes that law must side with humanity and social justice. Satjipto Rahardjo argued that the law should not be rigid and must be able to adapt to the needs of the community. In the context of this research, a progressive legal approach is particularly relevant to reformulate legal protection policies for scrap metal sellers facing *overmacht*. This approach allows for innovations in the law that are more in favor of substantive justice.<sup>19</sup>

In addition, justice must also be understood in the context of legal certainty and utility, as stated by Gustav Radbruch through the theory of three basic values of law. Radbruch stated that the law must contain elements of justice, certainty, and utility in a balanced manner. In practice, there is often a conflict between these three values, so the right priorities are needed. In the context of *overmacht*, justice must be a top priority so that there is no inequality in the application of the law against scrap metal sellers.<sup>20</sup>

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<sup>17</sup> Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), pp. 156–159.

<sup>18</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969), pp. 33–36.

<sup>19</sup> Satjipto Rahardjo, *Progressive Law: Liberating Law* (Jakarta: Kompas, 2009), pp. 5–8.

<sup>20</sup> Gustav Radbruch, *Legal Philosophy* (Cambridge: Harvard University Press, 1950), pp. 107–110.

In the end, the theory of justice provides a solid basis for evaluating and reconstructing legal protection policies in scrap metal purchase and sale agreements. By integrating various perspectives of justice, both classical and modern, this research can result in more comprehensive and equitable policy formulations. This approach is not only theoretically relevant, but also has practical implications in improving legal protections for scrap metal sellers in *overmacht* conditions. Thus, justice is not only the goal, but also the principle that guides the entire process of legal policy formulation.

## 2. Covenant Theory (The Principle of Balance and Proportionality)

Agreement theory is a conceptual framework that bridges the value of justice as a philosophical foundation and the concrete practice of legal relations in sales and purchase agreements. In Indonesian civil law, agreements are regulated in the Civil Code (KUHPercivil), especially Article 1313 and Article 1320 which regulate the definition and conditions for the validity of agreements. However, the development of contractual practice shows that the fulfillment of formal conditions does not always guarantee the achievement of substantive justice. In the context of buying and selling scrap metal, often agreements are made in conditions of imbalance of bargaining positions, so that it has the potential to harm the seller when there is *an overmacht*. Therefore, modern covenant theory emphasizes the importance of the principle of balance in contractual relationships.<sup>21</sup>

The principle of balance in treaty law requires equality of rights and obligations between the parties to a contract. In this case, Agus Yudha Hernoko's thoughts on the principle of proportionality are very relevant, because they emphasize that the division of rights and obligations must be done fairly in accordance with the contribution and risks of each party. In the practice of buying and selling scrap metal, this principle is often overlooked, especially when buyers with greater economic power dominate the drafting of agreement clauses. As a result, the risks arising from *overmacht* tend to be

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<sup>21</sup> R. Subekti, *Treaty Law* (Jakarta: Intermedia, 2005), pp. 17–20.

disproportionately charged to the seller, thus creating injustice in the contractual relationship.<sup>22</sup>

In addition to the principle of balance, the principle of freedom of contract as stipulated in Article 1338 of the Civil Code is also a fundamental principle in treaty law. However, this freedom is not absolute and must be limited by norms of propriety, custom, and law. In practice, freedom of contract is often abused by a stronger party to include clauses that are detrimental to the other party. In the context of *overmacht*, an unbalanced clause can cause the seller to remain burdened with liability even if compelling circumstances occur beyond his control. Therefore, it is necessary to reinterpret the principle of freedom of contract to be in harmony with the principles of justice and protection of the weak.<sup>23</sup>

Furthermore, modern treaty theory also emphasizes the importance of the principle of *good faith* in every stage of the agreement, both at the pre-contractual stage, implementation, and dispute resolution. Good faith means that the parties must act honestly, reasonably, and not harm the other party unlawfully. In the context of scrap metal, this principle is important to ensure that the *overmacht* clause is not used as a tool to avoid liability unilaterally or to burden the innocent party. Thus, good faith serves as a control mechanism against the abuse of freedom of contract.<sup>24</sup>

In the end, the theory of agreements with the approach of balance, proportionality, and goodwill provides a solid basis for conducting an analysis of injustices in scrap metal purchase and sale agreements, especially in *overmacht* conditions. This theory not only serves to identify weaknesses in existing contractual practices, but also as a basis for formulating a more equitable and legal protection-oriented model of agreements. Thus, the application of this theory is expected to be able to encourage the creation of a more balanced, transparent, and fair contractual relationship for all parties involved.

### 3. The Theory of Overmacht (*Force Majeure*) in Civil Law

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<sup>22</sup> Agus Yudha Hernoko, *Covenant Law: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), pp. 75–78.

<sup>23</sup> Mariam Darus Badruzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 2005), pp. 23–26.

<sup>24</sup> Ridwan Khairandy, *Good Faith in Freedom of Contract* (Jakarta: Faculty of Law, University of Indonesia, 2004), pp. 45–48.

The theory of *overmacht* or coercive circumstances is a fundamental concept in contract law that is used to determine whether or not there is a responsibility of a party who cannot fulfill the achievements in an agreement. In Indonesia's positive law, this concept is regulated in Article 1244 and Article 1245 of the Civil Code (KUHPercivil), which in principle states that the debtor is not obliged to compensate if the failure to meet the achievement is caused by circumstances beyond his fault. In the context of buying and selling scrap metal, this theory becomes very relevant because trading activities are very vulnerable to external disturbances such as changes in government policies, natural disasters, and market fluctuations. Therefore, *the overmacht theory* is the main basis for assessing the seller's legal responsibility under certain conditions.<sup>25</sup>

Doctrinally, *overmacht* is divided into two forms, namely *absolute overmacht* (absolute coercive state) and *relative overmacht* (relative coercive state). *Absolute overmacht* occurs when achievements are completely impossible to achieve, while *relative overmacht* occurs when the achievement is still possible, but with a very large or unreasonable sacrifice. In the practice of buying and selling scrap metal, conditions such as a drastic increase in the price of raw materials or distribution disruptions can be categorized as *relative overmacht*. However, Indonesia's positive law has not explicitly accommodated this category in detail, often giving rise to differences in interpretation in dispute resolution.<sup>26</sup>

Furthermore, the application of *the overmacht theory* in the practice of agreements is highly dependent on the proof of certain elements, namely the existence of unforeseen events, beyond the control of the parties, and cannot be accounted for to the debtor. In this context, the burden of proof usually lies with the party who submits *the overmacht* postulate. This is often an obstacle for scrap metal sellers who have limited access to evidence and legal resources. As a result, even if there is a factually compelling circumstance, the seller still has the potential to be

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<sup>25</sup> Mariam Darus Badruzaman, *Civil Code Civil Code Book III of the Law of Engagement with Explanation* (Bandung: Alumni, 2011), pp. 136–139.

<sup>26</sup> J. Satrio, *The Law of Engagement: An Alliance Born from Covenant* (Bandung: Citra Aditya Bakti, 1995), pp. 243–246.

considered a default. This condition shows the need for a reformulation of legal policies that are more in favor of fair evidence and do not burden the weak.<sup>27</sup>

In the development of modern contract law, the concept *of overmacht* has also been expanded through the doctrine *of hardship or change of circumstances*, which recognizes that significant changes in economic conditions can affect the balance of contracts. This doctrine has been adopted in various international legal instruments, such as *the UNIDROIT Principles of International Commercial Contracts*. In the context of scrap metal, fluctuations in global market prices and changes in export-import policies can be categorized as *hardship* conditions that require contract adjustments. Therefore, the integration of this concept in national law is important to create more adaptive legal protection.<sup>28</sup>

In the end, *the theory of overmacht* as an applied theory in this study is not only used to understand the applicable legal provisions, but also to identify weaknesses and legal gaps in the protection of scrap metal sellers. With a more contextual and justice-oriented approach, this theory can be the basis for reformulating legal policies that are more responsive to real conditions on the ground. This reformulation is expected to be able to create a legal system that not only provides certainty, but also fairness and benefits for the parties to the sale and purchase agreement, especially in dealing with *over-macht* conditions.

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<sup>27</sup> Subekti, *Principles of Civil Law* (Jakarta: Intermedia, 2003), pp. 150–153.

<sup>28</sup> UNIDROIT, *UNIDROIT Principles of International Commercial Contracts* (Rome: UNIDROIT, 2016), pp. 187–190.

## RESEARCH METHODOLOGY

This study uses a normative juridical approach that aims to analyze and examine legal norms related to legal protection for scrap metal sellers in *overmacht* conditions in sale and purchase agreements. This approach was chosen because the research focuses on the analysis of laws and regulations, legal doctrines, and relevant legal principles. In addition, this study also examines the compatibility between the applicable legal norms and the principle of justice as a philosophical foundation in formulating legal policies. Thus, this research is not only descriptive, but also analytical and prescriptive in providing recommendations for improving existing legal policies.<sup>29</sup>

The approaches used in this study include a statutory *approach* and a *conceptual approach*. The legislative approach is carried out by examining various legal provisions related to agreements and *overmacht*, especially in the Civil Code (KUHPerdata), as well as other relevant regulations. Meanwhile, a conceptual approach is used to understand legal concepts such as justice, balance, and *force majeure* based on the views of legal experts. The combination of these two approaches is expected to provide a comprehensive understanding of the problems being studied.<sup>30</sup>

The sources of legal materials in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as the Civil Code and other provisions related to agreements and legal responsibilities. Secondary legal materials are in the form of legal literature, scientific journals, research results, and the opinions of experts who discuss justice theory, treaty theory, and *overmagacht* theory. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias that are used to clarify legal terms. The use of various sources of legal materials aims to enrich the analysis and strengthen the arguments in the research.<sup>31</sup>

The technique of collecting legal materials in this study is carried out through library *research*, which is by collecting, reading, and analyzing various literature relevant to the research topic. This process involves identifying credible legal sources, classifying legal

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<sup>29</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2016), pp. 35–38.

<sup>30</sup> Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), pp. 302–305.

<sup>31</sup> Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: RajaGrafindo Persada, 2015), pp. 13–15.

materials based on their relevance, and systematically recording the information obtained. Furthermore, the legal material analysis technique is carried out qualitatively using legal interpretation methods, both grammatically and systematically, and teleologically. This analysis aims to find the exact meaning of legal norms as well as identify gaps or weaknesses in their regulation.<sup>32</sup>

In the end, this study uses the deductive reasoning method in drawing conclusions, namely by relating general legal theories to concrete problems that occur in the practice of buying and selling scrap metal. Through this method, research is expected to produce a logical, systematic, and justice-oriented legal construction. The results of the analysis are then used to formulate legal policy recommendations that are more responsive and adaptive to *the overmacht* conditions, so as to be able to provide more effective legal protection for scrap metal sellers in sale and purchase agreements.

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<sup>32</sup> Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: RajaGrafindo Persada, 2012), pp. 118–121.

## RESEARCH RESULTS

### Legal protection for scrap metal sellers regulated under the *Overmacht*

Legal protection for scrap metal sellers in *overmacht* conditions basically relies on the construction of the law of engagement as stipulated in Articles 1244 and 1245 of the Civil Code (KUHPerda), which provides exemption from liability to the debtor if they are unable to fulfill their achievements due to compelling circumstances. Nevertheless, these arrangements are still general and have not specifically accommodated the characteristics of the scrap metal trade which are highly susceptible to external fluctuations. From the perspective of Justice Theory, this condition poses a problem because these general norms do not always produce substantive justice for sellers who are in a weak position. Therefore, legal protection is not enough to rely solely on textual norms, but must be interpreted contextually taking into account the socio-economic conditions of scrap metal sellers.<sup>33</sup>

Within the framework of John Rawls's Theory of Justice, legal protection for scrap metal sellers must be directed to the principle *of difference*, which is to provide the greatest benefit to the most disadvantaged parties. Scrap metal sellers who generally come from the lower middle economic group can be categorized as disadvantaged parties in the contractual structure. Therefore, in the case of *overmacht*, the law should provide greater protection to sellers than buyers who have greater economic power. This means that the burden of risk due to coercive circumstances should not be done unilaterally, but should be distributed fairly.<sup>34</sup>

Furthermore, in the perspective of the Middle Theory, legal protection for scrap metal sellers is highly dependent on how the *overmacht* clause is formulated in the agreement. The principle of freedom of contract regulated in Article 1338 of the Civil Code does give freedom to the parties to determine the content of the agreement, but this freedom must be limited by the principles of balance and propriety. In practice, many *force majeure* clauses are drafted unilaterally by the buyer so that they do not provide adequate protection for the seller. Therefore, the application of the principle of proportionality is important to ensure that the clause reflects a fair sharing of risk.<sup>35</sup>

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<sup>33</sup> Mariam Darus Badruzaman, *Civil Code Civil Code Book III of the Law of Engagement with Explanation* (Bandung: Alumni, 2011), pp. 140–143.

<sup>34</sup> John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), pp. 42–45.

<sup>35</sup> Agus Yudha Hernoko, *Treaty Law: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), pp. 112–115.

In addition, the principle of good faith also plays an important role in providing legal protection for scrap metal sellers. In this context, the parties must act honestly and not abuse the circumstances of *the overmacht* to avoid liability or unreasonably burden the other party. In practice, it often happens that the buyer continues to demand the fulfillment of the performance or compensation despite the existence of compelling circumstances that are clearly beyond the seller's control. This shows that the principle of good faith has not been fully implemented in contractual relationships. Therefore, strengthening this principle is an important part of the reformulation of legal protection policies.<sup>36</sup>

Within the framework of Applied Theory, legal protection for scrap metal sellers is also determined by how the elements of *overmacht* are interpreted and proven. The main elements of *overmacht* include the occurrence of unforeseen events, beyond their control, and cannot be accounted for to the debtor. However, in practice, proving these elements is often a heavy burden for sellers, especially those who have limited resources. Therefore, a legal policy is needed that provides ease of proof or even a certain presumption for sellers under certain conditions.<sup>37</sup>

Furthermore, in the practice of scrap metal trading, *overmacht conditions* are not only physical like natural disasters, but can also be in the form of drastic changes in economic conditions, such as price increases or supply chain disruptions. In modern contract law, this condition is known as *hardship*, which allows for the renegotiation of the contract. However, this concept has not been explicitly accommodated in the Civil Code. Therefore, from the perspective of fairness and contractual balance, it is necessary to consider adopting the concept of *hardship* in the national legal system in order to provide more adaptive protection for scrap metal sellers.<sup>38</sup>

In the perspective of progressive law, legal protection must not stop at the text of the law, but must be able to answer the needs of society in real terms. Satjipto Rahardjo emphasized that the law must be on the side of people and social justice. In this context, legal protections for scrap metal sellers should be formulated in a more responsive manner taking

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<sup>36</sup> Ridwan Khairandy, *Good Faith in Freedom of Contract* (Jakarta: Faculty of Law, University of Indonesia, 2004), pp. 78–81.

<sup>37</sup> J. Satrio, *The Law of Engagement: An Alliance Born from Covenant* (Bandung: Citra Aditya Bakti, 1995), pp. 250–253.

<sup>38</sup> UNIDROIT, *UNIDROIT Principles of International Commercial Contracts* (Rome: UNIDROIT, 2016), pp. 190–193.

into account the real conditions they face, including economic limitations and access to justice. This approach allows for innovations in the law that are more in favor of substantive justice.<sup>39</sup>

In addition, legal protection is also related to legal certainty and usefulness as stated in Gustav Radbruch's theory. In the context of *overmacht*, there is often a conflict between legal certainty and justice, where the rigid application of norms actually causes injustice for sellers. Therefore, a balance is needed between the three basic values of law, namely justice, certainty, and utility, by placing justice as the top priority. It is important to ensure that the law not only provides certainty, but also provides fair protection for all parties.<sup>40</sup>

Furthermore, the role of the state in providing legal protection is also an important aspect of this study. The state as an administrator of the law has an obligation to ensure that every citizen receives fair protection, including in contractual relationships. This is in line with the principle of the rule of law which emphasizes the protection of individual rights. In this context, the state needs to formulate more specific policies to protect scrap metal sellers in *overmacht*, both through regulations and more effective dispute resolution mechanisms.<sup>41</sup>

Ultimately, legal protection for scrap metal sellers in *overmacht* conditions should be seen as part of efforts to bring about justice in treaty law. By integrating the Theory of Justice, the Theory of Covenants, and the Theory of Overmacht, a more comprehensive and equitable legal policy can be formulated. This approach not only provides protection to the seller, but also creates a balance in the contractual relationship. Thus, the law can function optimally as a tool to create justice and prosperity in society.

### **Existing models of protection reform must be reformulated to achieve justice**

The model of legal protection reform for scrap metal sellers in *overmacht* conditions is essentially an urgent need born of the incompatibility between the prevailing legal norms and the reality of contractual practices in the field. So far, existing legal protection tends to be formalistic and does not fully reflect the value of substantive justice, especially for those in a weak position. Within the framework of Justice Theory, this condition shows a disproportionate inequality in the distribution of risk between sellers and buyers. Therefore,

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<sup>39</sup> Satjipto Rahardjo, *Law* (Bandung: Citra Aditya Bakti, 2014), pp. 224–227.

<sup>40</sup> Gustav Radbruch, *Introduction to Legal Philosophy* (Oxford: Clarendon Press, 1950), pp. 115–118.

<sup>41</sup> Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers, 2013), pp. 198–201.

legal protection reform should be directed at creating a fairer balance in the sharing of risks due to *overmacht*. This reform is not only about changing norms, but also about a legal paradigm that is more in favor of social justice.<sup>42</sup>

From the perspective of distributive justice, the existing legal protection model needs to be reformulated in order to be able to distribute burdens and benefits proportionately. Currently, the risk due to *overmacht* is often unilaterally imposed on the seller, without considering the ability and economic position of the parties. This is contrary to the principle of justice which requires a balance in the sharing of risks. Legal reform must ensure that each party bears the risk according to its contribution and capacity. Thus, the new legal protection model must integrate the principle of distributive justice in every clause of the agreement.<sup>43</sup>

Furthermore, within the framework of the Treaty Theory, legal protection reform should be focused on improving the contract structure to better reflect the principles of balance and proportionality. So far, *the overmacht* clause has often been drafted unilaterally by the stronger party, to the detriment of the seller. Therefore, a contract standard is needed that clearly regulates the division of responsibilities in *overmacht*. These reforms must also include restrictions on excessive freedom of contract, so that they are not abused to create injustice.<sup>44</sup>

In addition, the principle of good faith must be the main principle in legal protection reform. In practice, many agreements are formally valid, but are substantially detrimental to one of the parties. This shows that good faith has not been fully implemented in contractual relationships. Legal reform must place good faith as the standard of evaluation at every stage of the agreement, including in the determination of *overmacht* clauses. Thus, each party is expected to act honestly and not abuse its dominant position.<sup>45</sup>

Within the framework of the Overmacht Theory, legal protection reform must also include the redefinition of the concept of *overmacht* to be more adaptive to the times. So far, the concept of *overmacht* in the Civil Code is still limited to absolute physical conditions, so it

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<sup>42</sup> John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), pp. 42–45.

<sup>43</sup> Aristotle, *The Politics* (Cambridge: Cambridge University Press, 1992), pp. 128–131.

<sup>44</sup> Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (Oxford: Oxford University Press, 2014), pp. 256–259.

<sup>45</sup> Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford: Oxford University Press, 1996), pp. 576–579.

has not accommodated economic conditions that can affect the implementation of agreements. Therefore, it is necessary to expand the concept of *overmacht* to include *economic hardship*, so that sellers are not always considered defaulters when there is a significant change in economic conditions.<sup>46</sup>

Furthermore, legal protection reform must pay attention to the evidentiary mechanism in *overmagacht* cases. Currently, the heavy burden of proof is often an obstacle for sellers in proving the existence of compelling circumstances. Therefore, a policy is needed that provides ease of proof for weak parties, for example through reversal of the burden of proof under certain conditions. This is important to ensure that justice is not only normative, but also accessible to the parties.<sup>47</sup>

In addition to the normative aspect, reform must also include institutional aspects, especially in dispute resolution mechanisms. Nowadays, dispute resolution related to *overmacht* is often time-consuming and costly, making it ineffective for small sellers. Therefore, simpler, faster, and cheaper dispute resolution mechanisms are needed, such as mediation or arbitration specifically for the second-hand goods trade sector. This approach is expected to improve access to justice for scrap metal sellers.<sup>48</sup>

From a progressive legal perspective, legal protection reform should be oriented to the needs of the community and not bogged down in mere formalities. The law must be able to provide solutions to real problems faced by scrap metal sellers, including in *overmacht*. Therefore, the formation of legal policies must involve community participation and consider existing socio-economic conditions. Thus, the law can serve as a tool to achieve social justice.<sup>49</sup>

Legal protection reform must also consider the principle of legal certainty so as not to create uncertainty in contractual practices. Although justice is the main goal, legal certainty is still needed to provide clear guidelines for the parties. Therefore, reforms must produce legal

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<sup>46</sup> Hugh Collins, *The Law of Contract* (London: LexisNexis, 2003), pp. 312–315.

<sup>47</sup> Treitel, *The Law of Contract* (London: Sweet & Maxwell, 2011), pp. 890–893.

<sup>48</sup> Bryan A. Garner, *Black's Law Dictionary* (St. Paul: West Publishing, 2009), pp. 739–742.

<sup>49</sup> Satjipto Rahardjo, *Let the Law Flow: A Critical Note on Human Struggle and Law* (Jakarta: Kompas, 2007), pp. 89–92.

norms that are clear, consistent, and easy to understand, so that they can be effectively applied in practice. This is important to create a balance between justice and legal certainty.<sup>50</sup>

Ultimately, the reformulated model of legal protection reform must be able to comprehensively integrate the three theoretical frameworks, namely Justice Theory, Covenant Theory, and *Overmacht*. These reforms aim not only to correct existing legal weaknesses, but also to create a legal system that is more fair, responsive, and adaptive to societal developments. Thus, it is hoped that legal protection for scrap metal sellers in *overmacht* conditions can be realized optimally and sustainably.

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<sup>50</sup> Lon L. Fuller, *The Principles of Social Order* (Oxford: Hart Publishing, 2001), pp. 210–213.

## CONCLUSION

The results of the study show that:

1. The current legal protection model does not reflect substantive justice because it still places the seller as a party that bears the risk disproportionately in overmacht. This shows an imbalance in the structure of the agreement and the weak implementation of the principles of proportionality and good faith. Therefore, it is necessary to reformulate legal policies oriented to the Theory of Justice by emphasizing fair risk distribution, protection of weak parties, and strengthening the principle of balance in contractual relationships.
2. Legal protection reform must be carried out comprehensively by integrating the renewal of the concept of overmacht, improving the structure of treaty clauses, and strengthening law enforcement mechanisms. This includes expanding the meaning of overmacht to include aspects of economic hardship, the preparation of fairer contract standards, and the simplification of the mechanism for proving and resolving disputes. Thus, the new legal policy model is expected to be able to create legal certainty as well as justice for scrap metal sellers in dealing with overmacht conditions in sale and purchase agreements.

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