

ABSTRACT

M. Natsir Asnawi. DECONSTRUCTION OF CONTRACT LAW SYSTEM TOWARDS A RESPONSIVE CONTRACT LEGAL ORDER (Pre-contract, Contract, and Post-contract), under supervision Prof. Dr. Faisal Santiago, S.H., M.M., as The Promoter and Dr. Evita Isretno Israhadi, S.H., M.H., M.Si., as Co-Promoter.

The research is based on the uncomprehensive national contract law system due to its norms that has not yet ordered pre-contracts and the legal consequences. It separates pre-contract from the contract law system. Consequently, our contract law system was incapable to protect the parties from losses suffered due to violations of pre-contractual promises on the basis of bad faith. This research is a normative-empirical research that combines literature study and direct interviews with competent sources. There are three problem formulations studied, namely: i) why there is deconstruction between legal systems in the contract law order in Indonesia?; ii) how is the construction of a contract law system that can protect the parties?; and iii) what is the appropriate legal construction of the basis for the formation, validity and implementation of the parties' contract? There are three levels of theory used as the basis for analysis, namely: i) historical theory as grand theory; ii) justice theory and balance theory as middle theories; and iii) responsive and constructive theory as applied theory. The results of the research concluded several things. Firstly, the national contract law system regulated in the Civil Code needs to be deconstructed because it does not yet regulate pre-contracts as an integral part of the contract law system. The current contract law system does not yet provide norms that allow for instruments to recover losses experienced by parties due to violations of pre-contractual promises that are not based on good faith. Furthermore, the construction of a national contract law system that can protect the rights of the parties includes three subsystems, namely pre-contract, contract and post-contract. These three subsystems are related to each other, especially the pre-contract as the basis for forming an agreement between the parties and a reference in implementing and/or interpreting the contents of the contract when differences of opinion occur. Good faith in pre-contract negotiations needs to be regulated in such a way that pre-contract promises have juridical binding power. In conclusion, the construction of ideal contract law is based on strengthening philosophical aspects based on several basic principles in contract law. Contract law can function as a control tool as well as social engineering that encourages each individual to apply contract principles from pre-contract negotiations until an agreement is reached. In particular, the principle of good faith must animate the construction of a system of contractual legal norms (pre-contract, contract and post-contract) as a representation of the responsive character of law in order to create a just, orderly and prosperous social order.

Keywords: *deconstruction, contract law system, responsive, good faith, justice, expediency*