Jurnal Impresi Indonesia (JII)
p-ISSN: 2828-1284 e-ISSN: 2810-062x
Vol. 5. No. 6. 2026

The Liability of the Parties for Unstated Clauses from the Perspective of Legal Certainty

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Keywords:
the responsibilities of the parties, the agreement, legal certainty.

Abstrack

Contracts, which serve as the basis for legal relationships between parties, often contain clauses that are not clearly disclosed to one of the parties. The existence of such hidden clauses has the potential to create injustice and harm parties with weaker bargaining positions. This is a significant issue from the perspective of legal certainty because it may affect the validity and enforceability of contracts. This study aims to analyze the liability of the parties regarding undisclosed clauses and examine their implications for legal certainty in contractual relationships. This study employs an empirical legal research method, focusing on the effectiveness and application of legal provisions in society. The data used consist of primary and secondary legal materials, which were analyzed qualitatively. The results of the study indicate that undisclosed clauses violate the principle of good faith and may lead to an imbalance of rights and obligations between the parties. Such clauses may be declared invalid or void because they fail to fulfill the requirements of a valid agreement. Furthermore, the aggrieved party has the right to pursue legal remedies.

INTRODUCTION

Legal relationships between parties in society are often established through agreements (Ahmad et al., 2024; Cologna et al., 2025; Rocca & Zielinski, 2022). For an agreement to be properly implemented, its terms must be clearly and thoroughly defined, including the rights and obligations of the parties. However, in practice, not all parties draft agreements with sufficient precision; often, only matters deemed important are addressed. This situation creates an opportunity for the inclusion of certain clauses that are not clearly disclosed, particularly in the use of standard-form contracts.

In practice, standard-form agreements or standard contracts often result in unbalanced provisions because they tend to favor the party in a position of advantage, particularly due to greater economic resources, such as business entities that generally draft the entire agreement, while the other party merely accepts it without the opportunity to negotiate (Aprilia et al., 2025; Mc Levis, 2025). This situation has the potential to result in clauses that are detrimental to consumers, especially if certain provisions are not communicated transparently (Debora et al., 2024; Aprilia et al., 2025). Consequently, this can lead to contractual imbalance (Ramsay & Williams, 2021; Debora et al., 2024), as parties who are unaware of or do not understand the existence of certain clauses may end up bearing consequences to which they never consciously agreed (Ramsay & Williams, 2021; Mik, 2021; Mc Levis, 2025).

A lack of transparency in the presentation of an agreement raises questions about the extent to which the parties can be held responsible for its enforcement. A party that inserts a clause without adequate notice may be deemed to have violated the principles of good faith and legal certainty. Meanwhile, the party harmed by such a clause is entitled to legal protection because its consent was not based on full knowledge.

Legal certainty in this context is understood as the existence of rules set forth in applicable laws and regulations that are clear, permanent, and capable of serving as guidelines. According to Krabbe, legal certainty is linked to the fulfillment of a living legal consciousness within the broader society, which is then affirmed through the will of the majority in order to achieve uniformity in the application of the law across the various perspectives of legal subjects. Based on this understanding, the elements of legal certainty include codification regulated by law, the establishment of binding authority, and strict sanctions.

Contracts play a vital role as instruments that establish legal relationships between parties. As stated by R. Subekti (2015), "A contract is a legal event in which two or more parties commit to carrying out a specific action."

Contracts themselves are an integral part of daily activities in a social context because, often without realizing it, almost every individual is constantly involved in various forms of agreements to meet daily needs, such as buying and selling transactions (Hodgson, 2025; Siregar et al., 2025). Through these contracts, the parties seek to obtain benefits, as well as ownership of an object or material rights, as the ultimate goal of the contract entered into (Wolff, 2020; Siregar et al., 2025). Furthermore, in the context of business activities, contracts play a crucial role as a means of establishing a legally binding relationship between the parties (Warsito et al., 2024; Kurnianingrum, 2024). They contain provisions governing the rights and obligations of each party as guidelines for the execution of the agreement (Warsito et al., 2024; Mardika et al., 2024), thereby providing legal certainty and preventing potential disputes in the future (Kurnianingrum, 2024; Mardika et al., 2024; Hodgson, 2025).

The fulfillment of the rights and obligations of the parties arises from the existence of a legal relationship, namely a relationship governed by legal provisions between several parties, in which certain parties have the right to demand the fulfillment of an obligation, while other parties are obligated to fulfill the established obligations. The emphasis on the parties' freedom to determine the content and form of a contract indicates that everyone is fundamentally granted the freedom to determine the content and form of a contract entered into based on the parties' will, provided that it complies with applicable legal provisions. Thus, a valid contract gives rise to legal consequences that are binding on the parties.

Reality shows that the implementation of agreements does not always proceed as planned. This discrepancy is clearly evident in the organization of a music festival scheduled for September 2025. This situation has sparked numerous complaints from consumers and partners regarding terms and conditions that were disclosed only after the transaction or agreement had been finalized. Some of these terms relate to access restrictions, changes to performer schedules, refund policies, and limitations on the organizer's liability, all of which were not clearly communicated from the outset.

The problem arises because these provisions are included only in supplementary terms and conditions that are accessible through digital links or follow-up notifications, meaning that they are not directly known or understood by the parties at the time the agreement is made. This situation creates an imbalance in legal standing, as one party is bound by clauses that entail legal consequences without prior notice.

A further consequence of this practice is that the aggrieved party's ability to seek enforcement of their rights becomes limited, while service providers tend to rely on clauses that, although formally included, were never transparently communicated. This phenomenon demonstrates that undisclosed clauses are still frequently used and have the potential to create legal uncertainty.

No research has been found that specifically analyzes the legal framework and the parties' liability arising from undisclosed clauses from the perspective of legal certainty. The existence of such clauses can lead to a lack of clarity regarding the respective rights and obligations of the parties, as well as undermine legal protection for the aggrieved party. The need to fill this gap involves analyzing the validity, enforceability, and legal consequences of clauses that are not clearly disclosed in order to achieve legal certainty accompanied by equal legal protection for the parties in the implementation of domestic agreements.

The urgency of this research is all the more significant given that current contractual practices often disregard transparency and balance between the parties. Various forms of cooperation agreements still frequently contain clauses that are not clearly communicated to one of the parties, even though the legal consequences are imposed upon them. This situation has the potential to undermine the meaning of the agreement and diminish legal certainty, which is the primary objective of contract law.

This study aims to provide clarity regarding the legal framework governing the parties in relation to previously undisclosed clauses. The absence of explicit legal provisions has led parties who include such clauses to avoid compensation obligations, while the aggrieved parties find themselves in a position of weak bargaining power and lack legal instruments to invalidate exploitative clauses. Therefore, this study aims to analyze the forms of legal liability that can be imposed on the parties, examine the legal consequences arising from the existence of undisclosed clauses, and identify legal protections that can be provided to parties who suffer losses due to the application of such clauses.

This study is important for addressing the research questions concerning how legal provisions should be established regarding the obligations of the parties with respect to previously undisclosed clauses and what form the parties' liability takes under such undisclosed clauses. Given that legal certainty serves as the primary foundation in this context, this discussion aims to provide a comprehensive understanding of the status of previously undisclosed clauses and their implications for the parties. Ultimately, this study emphasizes the extent to which the existence of such clauses affects the legal framework governing the parties' obligations and the nature of their legal liability, with the aim of strengthening protection for the aggrieved party and fostering more transparent, fair, and balanced contractual practices.

RESEARCH METHODOLOGY

This study employed an empirical legal methodology with a sociological and statutory approach. The sociological approach was used to examine law as it operated within society, while the statutory approach was applied to analyze the legal instruments and regulations relevant to the issue under investigation. The study used primary data obtained directly from society and secondary data collected through literature reviews, including books, journals, and other legal documents. The data were analyzed qualitatively by examining the substance and legal meaning of the sources obtained and relating them to relevant legal theories and doctrines

RESULTS AND DISCUSSION

A. Legal provisions regarding the parties' obligations concerning undisclosed clauses.

A person's obligation to do what is demanded by another party arises from legal liability, which is fundamentally closely linked to rights and obligations. Therefore, a person must bear such legal liability for the legal consequences if their actions deviate from applicable regulations (Nuralisha & Mahmudah, 2023).

The organization of music concerts—often referred to as concert promotion—involves individuals or entities responsible for planning, executing, and managing the entire series of activities related to a music concert (Samatha & Silalahi, 2025). In addition, promoters serve as intermediaries who coordinate various stakeholders, including performers, event supporters, sponsors, and the public as the audience.

The involvement of various parties in organizing a concert creates cooperative relationships that are inextricably linked to legal aspects. Every form of interaction between the promoter and these parties is essentially outlined in an agreement that serves as the basis for regulating rights and obligations. Such agreements are crucial instruments for maintaining balance and preventing disputes during the event's execution. Clarity regarding the legal provisions in the agreement is essential to ensure legal certainty and protection for the parties involved.

The legal framework governing the obligations of the parties to a contract can be examined through the legal provisions of Article 1313 of the Civil Code, which states that a contract is a legal act in which one or more parties make a declaration to the other party. Based on this provision, it can be said that a contract creates a legal relationship that binds the parties. However, for the contract to be valid, it must meet the requirements set forth in Article 1320 of the Civil Code, namely mutual consent of the parties, legal capacity, a specific subject matter, and a lawful cause.

With regard to undisclosed clauses, the elements of a contract are crucial to its content. In practice, the agreement reached is not entirely based on a complete understanding, as certain information is not disclosed transparently. This indicates that the contract formed may be defective, since one party is unaware of the full contents of the agreed-upon contract.

This requirement is closely linked to the principle of contract performance set forth in Article 1338 of the Civil Code; this provision affirms that all validly formed contracts are binding as law upon the parties who entered into them. This provision also incorporates the principle that contracts must be performed in accordance with the principle of good faith. In practice, the absence of a specific clause indicates a deviation from the principle of good faith, which entails the obligation to be honest, open, and transparent in conveying the entire content of the agreement. This is because one of the parties was not provided with sufficient information to understand their rights and obligations.

Based on facts gathered in the field—particularly through an interview with a representative of a subsonic promoter—it is possible to conclude that agreements between promoters, artists, vendors, and audiences generally follow a standard format. These agreements are typically drafted in advance by the party in the more dominant position, so the terms tend to favor that party's interests. During the drafting process, the agreement generally does not go through a negotiation phase with other parties or consumers. As a result, the parties involved are presented with only two alternatives: to accept all the existing terms or to reject them. Thus, the promoter plays a leading role in determining the substance of the agreement, while the other parties are in a relatively passive position, simply following the established terms (Hutagalung et al., 2021).

On-the-ground evidence also shows that not all clauses are clearly communicated, such as refund policies, changes to event schedules, and limitations of liability. These clauses are often included only in additional terms and conditions that are not communicated to the parties or are not easily understood by them. The promoter explained that this lack of transparency is influenced by several factors, including the efficiency of using standard contracts, a lack of outreach regarding the agreement's contents, and an imbalance in bargaining power between the parties. Under such conditions, parties in a weaker position tend to accept the terms of the agreement without fully understanding the resulting legal consequences.

From the perspective of legal protection, the informants stated that when losses occur due to undisclosed clauses, dispute resolution is generally carried out through negotiation or deliberation. Resolution through legal channels remains possible if no agreement is reached. Thus, it can be concluded that the parties—particularly the promoter, who drafts the agreement—have a legal obligation to provide clear, complete, and transparent information regarding all clauses. If this obligation is not fulfilled, the validity of undisclosed clauses may be questioned, and they may lack binding force within the agreement, thereby failing to meet the principle of legal certainty.

B. The Nature of the Parties' Liability for Undisclosed Clauses.

The nature of the parties' liability for undisclosed clauses in the organization of a concert can be analyzed as a consequence of the failure to uphold the principles of agreement, transparency, and good faith in the contract. From the interview results, it was found that in the practice of organizing concerts, promoters tend to use standard contracts that are not fully accompanied by clear disclosure of clauses, which has the potential to cause harm to the other party. When there are undisclosed clauses, the elements of the contract are not fully met, as the contract is entered into without a comprehensive understanding.

Based on the promoters' statements during the interviews, clauses that are not clearly disclosed tend to be difficult to enforce in the event of a dispute. This indicates that such clauses may not be binding, as they are unknown to certain parties and cannot be considered part of the agreement; thus, legally, these clauses may be disregarded or deemed nonexistent. This situation is also related to the principle of freedom of contract under Article 1338(1) of the Civil Code, which requires that a contract to be legally binding must be validly formed. If such a clause has a significant impact on the entire content of the contract, this may serve as grounds for seeking the annulment of the contract.

Such a revocation is related to defects in the will, such as errors, fraud, or coercion, which result in consent not being freely given. Thus, the failure to disclose a clause can be categorized as a form of misleading information that influences the will of one of the parties. The promoter in the interview also argued that the other party still bears the responsibility to read and understand the contents of the agreement that was provided. In this case, the allocation of responsibility is determined by assessing the degree of fault or negligence on the part of each party, thereby creating a balance in the enforcement of contract law.

The assessment of the parties' liability must also be based on the principle of good faith as stipulated in Article 1338(3) of the Civil Code. This principle imposes an obligation on the parties to act honestly, transparently, and not to conceal information that could harm the other party. In practice, the failure to disclose such a clause constitutes a deviation from the principle of good faith, as the party in the stronger position has not provided sufficient information to the other party. Therefore, the party that fails to fulfill this obligation may be deemed to have violated the fundamental principles of contract law.

This provision indicates that the primary form of liability is the obligation to pay damages. The party drafting the agreement—particularly the promoter—may be held liable if it is proven that the losses suffered by the other party resulted from the failure to include that clause. In the context of breach of contract under Article 1243 of the Civil Code, it is stipulated that parties who fail to fulfill their obligations may be required to pay damages. Furthermore, the legal basis for this compensation may refer to the provisions of Article 1365 of the Civil Code regarding unlawful acts, which states that any unlawful act resulting in damages imposes an obligation on the perpetrator to compensate for such damages. Therefore, the failure to include a clause may be classified as a form of negligence that causes harm to the other party.

The parties' liability for undisclosed clauses can be summarized as including the obligation to provide compensation, the invalidity of the clause, the possibility of contract rescission, proportional allocation of liability, and assessment based on the principle of good faith. All these forms of liability underscore the importance of transparency and openness in drafting agreements to ensure legal certainty and fair protection for the parties involved.

CONCLUSION

The existence of undisclosed clauses in an agreement, particularly in the practice of organizing concerts, reflects problems in the application of the principles of transparency and mutual consent. Agreements, which should serve as the basis for fair legal relationships, may create imbalances, especially when standard-form contracts drafted by parties in stronger bargaining positions are used. This situation may prevent the other party from fully understanding their rights and obligations, thereby rendering the agreement imperfect and potentially legally defective. Such a condition is inconsistent with the provisions of the Civil Code, particularly those governing the validity of contracts and the principle of good faith.

Based on the results of the discussion, forms of liability for undisclosed clauses include the obligation to pay damages, the non-binding effect of the clause, the possibility of contract termination, and the proportional allocation of liability among the parties. Furthermore, all forms of liability must be assessed based on the principle of good faith, which requires honesty and transparency in every contractual relationship. The interview results also indicate that practices in the field were not fully aligned with applicable legal provisions, resulting in a discrepancy between the law and its implementation. Therefore, transparency in the disclosure and resolution of clauses is crucial to ensuring legal certainty and fair, balanced protection for the parties.

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