

ABSTRAK

Penerapan klausula *Take or Pay* dalam perjanjian jual beli gas bumi (*Gas Sales Agreement/GSA*) antara Badan Usaha X dan PT Y menimbulkan persoalan hukum terkait keseimbangan hak dan kewajiban para pihak dalam perspektif hukum perjanjian di Indonesia. Tujuan penelitian ini adalah untuk menganalisis penerapan asas proporsionalitas dalam klausula *Take or Pay* serta mengidentifikasi akibat hukum yang timbul dari klausula tersebut terhadap hubungan kontraktual para pihak. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Hasil penelitian menunjukkan bahwa klausula *Take or Pay* memberikan perlindungan ekonomi kepada penjual melalui jaminan pembayaran minimum atas volume gas yang telah disepakati, namun di sisi lain menimbulkan pembebanan risiko yang lebih besar kepada pembeli, sehingga berpotensi menciptakan ketidakseimbangan dalam hubungan kontraktual yang bertentangan dengan asas proporsionalitas. Tindakan pembeli yang tidak mengambil gas dalam mekanisme *Take or Pay* tidak dapat dikategorikan sebagai wanprestasi, melainkan merupakan pelaksanaan hak kontraktual yang sah sepanjang kewajiban pembayaran minimum tetap dipenuhi sesuai ketentuan perjanjian. Penelitian ini menyimpulkan bahwa penerapan asas proporsionalitas dalam *Gas Sales Agreement* menghendaki adanya keseimbangan dan proporsionalitas yang nyata antara hak dan kewajiban para pihak, sehingga klausula *Take or Pay* perlu dirancang secara cermat agar tidak hanya melindungi kepentingan penjual, tetapi juga memberikan keadilan dan kepastian hukum yang setara bagi pembeli dalam kerangka hukum perjanjian Indonesia.

Kata Kunci: Hukum Perjanjian, Asas Proporsionalitas, *Take or Pay*, Perjanjian Jual Beli Gas Bumi, *Gas Sales Agreement*

ABSTRACT

The application of the Take or Pay clause in a natural gas sale and purchase agreement (Gas Sales Agreement/GSA) between Business Entity X and PT Y raises legal issues concerning the balance of rights and obligations of the parties from the perspective of Indonesian contract law. This study aims to analyze the application of the principle of proportionality in the Take or Pay clause and to identify the legal consequences arising from such clause upon the contractual relationship of the parties. This research employs a normative juridical method with a statute approach and a conceptual approach. The findings indicate that the Take or Pay clause provides economic protection to the seller through a guaranteed minimum payment for the agreed volume of gas, yet simultaneously imposes a disproportionately greater risk upon the buyer, thereby potentially creating an imbalance in the contractual relationship that is inconsistent with the principle of proportionality. The buyer's failure to take delivery of gas under the Take or Pay mechanism cannot be categorized as a breach of contract (wanprestasi), but rather constitutes a valid exercise of a contractual right, provided that the minimum payment obligation is fulfilled in accordance with the terms of the agreement. This study concludes that the application of the principle of proportionality in a Gas Sales Agreement demands a genuine balance and proportionality between the rights and obligations of the parties, and therefore the Take or Pay clause must be carefully drafted so as not merely to protect the seller's interests, but also to afford equal justice and legal certainty to the buyer within the framework of Indonesian contract law.

Keywords: *Principle of Proportionality, Take or Pay, Natural Gas Sale and Purchase Agreement, Contract Law, Gas Sales Agreement*