



## Unilateral Termination in Law and Practice

Idzni Azhani Firdaus; Septriandiva Saraswati; Asmak Ul Hosnah; Nazaruddin Lathif

Department of Law, Faculty of Law Pakuan, Bogor, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v12i2.6628>

---

### **Abstract**

Unilateral termination in law and practice refers to the termination or cancellation of an agreement or contract by one party without the consent of the other party. This phenomenon often occurs in various contexts, both in business contractual relationships and personal relationships, such as rental agreements or employment contracts. Legally, unilateral termination is generally regulated to ensure legal certainty and protection of the rights of the parties involved. In law, unilateral termination can occur if one party materially breaches the terms of the agreement. These terms can include financial obligations, performance, or other agreed terms. Contract law usually provides an opportunity for the injured party to file a lawsuit or claim for damages. However, this process often involves legal complexities that require proof of violation and bad faith or negligence on the part of the party terminating the contract. In practice, unilateral termination often has significant impacts, such as financial losses, reputational damage, and social impacts on the affected party. Therefore, many contracts include dispute resolution clauses to deal with issues arising from unilateral termination. This can be in the form of mediation, arbitration, or court. The existence of this clause aims to minimize conflict and ensure a fair resolution mechanism for all parties. Overall, although unilateral termination is common in legal practice, it is important to thoroughly understand the applicable legal provisions and the implications of such action in order to protect the rights and interests of all parties involved.

**Keywords:** *Contract; Services; Breach; Dispute Resolution; Compensation*

### **Introduction**

Unilateral termination in law and practice is an important phenomenon in various types of agreements or contracts. This term refers to an act where one party to a contract chooses to terminate or cancel the agreement without the consent or agreement of the other party. This concept is not only relevant in the legal context, but also has implications for business practices and personal relationships. In the legal context, unilateral termination often involves complex issues related to rights and obligations, breach of contract, and the legal impact of the act. Practice in the field shows that although there are

regulations governing contract termination, their implementation and enforcement often pose various challenges.<sup>1</sup>

First of all, to understand unilateral termination in law, it is important to understand the basics of the contract itself. A contract is a legally binding agreement between two or more parties, where each party commits to fulfill certain obligations in return for promised benefits from the other party. When one party unilaterally terminates a contract, this often raises questions about the validity and legality of the action, as well as its impact on the parties involved. Contract law generally sets out the conditions that must be met for unilateral termination to be considered valid. For example, there may be provisions regarding a material breach, inability to fulfill obligations, or other reasons that may justify such action. However, enforcing unilateral termination is not always simple and often involves a lengthy and complex legal process.

In practice, unilateral termination can occur in various contexts, be it in a business relationship, employment agreement, lease, or service contract. For example, in a business relationship, termination of the contract by one party can result in significant financial losses, reputational damage, and other impacts. In the context of an employment agreement, unilateral action by one party can affect the stability of employment and employee welfare. Therefore, it is important for the parties involved to understand and agree on the terms of termination of the contract from the start, including the existence of a dispute resolution clause that can help deal with problems that may arise.

Dispute resolution clauses often include mediation, arbitration, or court procedures as mechanisms to resolve disputes arising from unilateral termination. Mediation is a process in which a neutral third party helps the disputing parties reach an agreement. Arbitration, on the other hand, involves a third party making a binding decision after hearing arguments from both parties. Courts are a last resort if mediation or arbitration fail to resolve the dispute. Each of these mechanisms has advantages and disadvantages, and the choice of the appropriate mechanism often depends on the nature of the dispute and the applicable contractual provisions.<sup>2</sup>

The impact of unilateral termination is not only limited to legal and financial aspects, but can also affect the social and professional relationships between the parties involved. In many cases, unilateral termination can lead to dissatisfaction, loss of trust, and prolonged tension. Therefore, it is important to handle this issue carefully and consider the long-term consequences of such actions.

Overall, unilateral termination is a complex and multidimensional topic. The legal processes governing it, the practical implications of the act, and its impact on all parties involved require a thorough understanding and careful approach. While the law provides guidance on how unilateral termination should be managed, practice on the ground shows that the real challenges often involve effective enforcement and dispute resolution. It is therefore important to understand both the legal and practical aspects of unilateral termination to ensure the protection of the rights and interests of all parties involved.

### ***Purpose and Objectives***

To analyze the concept of unilateral termination in law and practice, aiming to understand its legal basis, implementation challenges, and impacts on the parties involved, while providing legal guidance and practical solutions for managing fair and effective unilateral termination, including the drafting of dispute resolution clauses in contracts.

---

<sup>1</sup>Kurniawan, MI (2021). Application of the principle of equality before the law in criminal justice practices (study of Bandung District Court Decision Number: 221/Pid. B/2019/PN. Bdg). *Journal of Criminal Law Studies*, 1, 29-36.

<sup>2</sup>Taqiuddin, HU, & Risdiana, R. (2022). Implementation of Restorative Justice in State Administration Practice. *JISIP (Journal of Social Sciences and Education)*, 6(1).

## **Literature Review**

Unilateral termination in law and practice is a fascinating and complex topic, involving various aspects of legal theory, contract principles, and practical implications. To fully understand this phenomenon, we need to explore the theories that underlie it, and how they translate into everyday legal and business practice.

In theory, unilateral termination is often discussed in the context of contract law. Contract law, as a branch of law, focuses on the legal relationship arising from an agreement between the parties involved. A contract is an agreement that has binding legal force, which requires the parties to fulfill their obligations as agreed. When one party terminates the contract unilaterally, without the consent of the other party, the fundamental question that arises is the validity and justification of such action.<sup>3</sup>

One of the important theories in contract law is the theory of "rescizio". This theory regulates the conditions under which a contract can be canceled or terminated legally. According to this theory, termination of a contract can be justified if one of the parties violates the essential provisions of the agreement (material breach) or if there are other legitimate reasons such as fraud, duress, or inability to fulfill obligations. In this context, a material breach is considered the main basis that can justify unilateral termination, because the violation shows that one of the parties is no longer able or unwilling to fulfill its contractual commitments.

This contract theory also includes the principle of "adequate performance" or "satisfactory performance". This principle requires that the performance of the parties to the contract must meet the expected and agreed standards. If one party fails to meet these standards, then the other party has the right to terminate the contract. However, the application of this principle in practice often faces challenges, especially in determining whether the performance provided is in accordance with reasonable expectations and how these standards are measured objectively.

In addition, the theory of "contractual continuity" also plays an important role in the discussion of unilateral termination. This theory argues that contracts must be executed in accordance with the agreed terms, and any termination of a contract must be carried out with careful consideration and following established procedures. In practice, termination of a contract must meet certain conditions that can ensure that the action does not unfairly harm the other party.

In the context of practice, this theory is implemented through various dispute resolution mechanisms, such as mediation, arbitration, and litigation. Mediation, as a form of dispute resolution involving a neutral third party, aims to help the disputing parties reach an agreement without having to go through the court process. Arbitration, on the other hand, involves an arbitrator or arbitration panel that renders a binding decision after hearing arguments from both parties. The court is the last option, where the case is brought before a judge to obtain a binding legal decision. These mechanisms are designed to ensure that the termination of the contract is carried out in a fair manner and in accordance with legal principles.

The principle of "good faith" is also a key theory in the regulation of contracts. This principle requires that all parties to a contract must act in good faith and not harm the other party. In the context of contract termination, this principle means that unilateral termination must be done for a legitimate reason and not solely to harm the other party. If the act of termination is deemed to be done in bad faith, then the party terminating the contract may face a claim for damages or a lawsuit from the injured party.

---

<sup>3</sup>Putri, NBP (2024). Default in Land Sale and Purchase Underhand Resulting in the Name Change Process (Study of Decision Number 347/Pdt. G/2022/PN SBY). *Jurnal Ilmiah Wahana Pendidikan*, 10(10), 593-607.

On the other hand, the "risk and reward" theory plays a role in determining whether a contract termination is legitimate. This theory states that the risks and rewards of a contract must be fairly distributed between the parties involved. In the case of unilateral termination, if one party feels that the risks faced are not commensurate with the rewards obtained, then the party may seek to terminate the contract to avoid further losses.<sup>4</sup>

In addition to the above theories, it is also important to consider the theory of "fair contract". This theory focuses on the balance of rights and obligations between the parties to a contract and ensuring that no party is unfairly advantaged. In the context of unilateral termination, this theory emphasizes the importance of ensuring that the act of termination does not cause injustice or unnecessary harm to the affected party.

In practice, the implementation of these theories often involves flexible interpretation and application, depending on the specific situation and terms of the contract. Contract law provides the basic framework, but the actual application of the theories may vary depending on the context and characteristics of the agreement in question.

Overall, unilateral termination theories in law and practice illustrate the complexities involved in contractual arrangements and dispute resolution. These theories provide guidance on the conditions and procedures that must be met for a contract termination to be valid. However, the application of these theories in practice often faces challenges that require careful consideration and in-depth evaluation of each case. Therefore, a comprehensive understanding of these theories is essential to ensure that rights and obligations under the contract are properly managed, and any contract termination is carried out in a manner that is fair and in accordance with legal principles.<sup>5</sup>

## **Method**

### **1. Type of Research**

Descriptive qualitative research method is an approach used to understand a phenomenon or problem from the perspective of the subject being studied, with a focus on in-depth description and interpretation of various aspects of the phenomenon. In descriptive qualitative research, researchers seek to explore and understand the meaning, experiences, and views of the individuals or groups involved, without prioritizing hypothesis testing or statistical generalization. This approach emphasizes the collection of rich and detailed data, which is then analyzed to provide an in-depth picture of the research object.

Literature review in descriptive qualitative research plays an important role in providing the theoretical basis and conceptual framework needed to understand the phenomenon being studied. In this method, researchers usually start by conducting a literature review to identify theories, concepts, and previous findings that are relevant to the research topic. This literature review helps researchers formulate research questions, determine the focus of the study, and develop data collection instruments such as interviews or observations.

---

<sup>4</sup>ARIS YUDHARIANSYAH, ARIS (2024). LEGAL ANALYSIS OF CRIMINAL LIABILITY OF HEALTH WORKERS DUE TO MEDICAL MALPRACTICE FROM THE PERSPECTIVE OF LAW NUMBER 36 OF 2009 CONCERNING HEALTH (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 2033 K/Pid. Sus/2017) (Doctoral dissertation, FACULTY OF LAW, ISLAMIC UNIVERSITY OF NORTH SUMATRA).

<sup>5</sup>Sutrisno, S., Puluhulawa, F., & Tijow, LM (2020). Application of the Principles of Justice, Legal Certainty and Benefit in Judges' Decisions on Corruption Crimes. *Gorontalo Law Review*, 3(2), 168-187.

During the research process, data is collected through various qualitative techniques such as in-depth interviews, participant observation, and document analysis. In-depth interviews allow researchers to obtain information directly from participants regarding their experiences, views, and feelings regarding the phenomenon being studied. Participant observation provides an opportunity for researchers to be directly involved in the social context being studied, thereby gaining a more holistic understanding. Meanwhile, document analysis involves reviewing relevant texts or written materials to identify emerging themes or patterns.

Data analysis in descriptive qualitative research is done by organizing, classifying, and processing the information that has been collected to identify significant patterns, themes, and meanings. This process involves techniques such as coding, categorizing, and interpreting data, which aim to compile a comprehensive and detailed description of the phenomenon being studied. Researchers also strive to maintain the accuracy and credibility of the findings through triangulation techniques, which involve the use of multiple data sources or methods to ensure that the research results are unbiased and reliable.

Descriptive qualitative research methods are very useful in research that aims to explore and understand social, cultural, or individual contexts in depth. By providing detailed and contextual descriptions of the phenomena being studied, this method allows researchers to provide deeper insights and nuances to complex problems, as well as to develop new theories or concepts that are relevant to the object of research.

## **2. Data Presentation**

Data presentation in descriptive qualitative research refers to the process by which data that has been collected from various sources, such as interviews, observations, or documents, is organized and presented to provide an in-depth understanding of the phenomenon being studied. In this approach, data presentation aims not only to systematically reveal findings, but also to provide context and meaning that are relevant to the focus of the research. Data is usually presented in the form of a narrative or detailed description, describing themes, patterns, and relationships that emerge from the analysis. Researchers often use direct quotes from participants to give their voices to the report, and include thematic analysis that links the data to existing theories or concepts. This method allows readers to understand how the data was collected and interpreted, and how the results of the study can provide new insights into the topic being studied. Data presentation in this context is important to maintain the transparency and validity of the research, as well as ensuring that the findings presented are accurate and representative of the experiences or views of those being studied.

## ***Analysis***

Unilateral termination in law and practice is an interesting and complex phenomenon, with implications for various aspects of contract law and the relationship between the parties involved. To fully understand the impact and implications of unilateral termination, it is important to analyze it from a legal perspective, with reference to relevant laws and regulations as well as prevailing practices. In the context of Indonesian law, unilateral termination of a contract is regulated by the Civil Code (KUHP) and several other specific laws, which provide a framework for understanding and assessing the validity and consequences of such an act.<sup>6</sup>

---

<sup>6</sup>Elizar, C., Markoni, M., Kantikha, IM, & Saragih, S. (2024). Legal Protection for Doctors Suspected of Malpractice Reviewed from the Applicable Laws and Regulations (Case Study of Supreme Court Decision Number 233 K/Pid. Sus/2021). *ALADALAH: Journal of Politics, Social, Law and Humanities*, 2(2), 168.

According to Article 1238 of the Civil Code, “Every agreement must be executed in good faith.” This article emphasizes the principle of good faith as the main basis in the implementation of the contract. When one party decides to terminate the contract unilaterally, the fundamental question that arises is whether the action was carried out in good faith and whether the party terminating the contract has fulfilled the obligations stipulated in the agreement. Violation of the principle of good faith can be considered a material breach, which can provide a legal basis for the other party to claim compensation or declare the contract void.

Furthermore, Article 1243 of the Civil Code states that “If one party to an agreement does not fulfill the obligations stipulated, then the other party may request implementation or cancel the agreement.” This article regulates the rights of the non-violating party to request implementation of the agreement or cancel the contract if the other party does not fulfill its obligations. In the context of unilateral termination, this article provides a legal basis for the aggrieved party to file a lawsuit to cancel the contract or request fulfillment of obligations. However, for a valid contract cancellation, the party terminating the contract must meet the requirements stipulated in this article and provide the other party with the opportunity to correct the violation that occurred.

Article 1266 of the Civil Code is also relevant in this analysis, which states that “Termination of an agreement may be carried out if one of the parties fails to carry out its obligations after being given a deadline.” This article stipulates that termination of a contract may be carried out if there is a failure to carry out obligations after being given an opportunity to improve. This shows that termination of a contract must consider whether the party terminating the contract has given the other party sufficient time to fulfill its obligations before unilaterally terminating the contract. This principle also reflects the procedural fairness that must be met in the contract termination process.<sup>7</sup>

In practice, unilateral termination often involves complex legal aspects and requires careful assessment of the applicable contract terms and conditions. For example, in a business agreement, unilateral termination of a contract can cause significant financial losses and affect the professional relationship between the parties involved. Therefore, many contracts include dispute resolution clauses to deal with issues arising from unilateral termination. These clauses usually include mediation, arbitration, or litigation procedures as mechanisms to resolve disputes fairly.

Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution also provides guidance on dispute resolution arising from contract termination. Article 1 paragraph (1) of this law states that arbitration is a method of dispute resolution through an arbitrator's decision agreed upon by the parties. In the context of contract termination, arbitration can be an alternative to resolving disputes without going through the court process. Arbitration provides the advantage of a faster and more binding decision, which can help the disputing parties to reach a fair and efficient solution.

In addition, Article 1365 of the Civil Code regulates “Unlawful Acts”, which states that “Any act that is contrary to the law and harms another person, results in an obligation to compensate for the loss.” This article can be applied in cases of contract termination if the unilateral termination is considered unlawful and causes loss to the other party. In this case, the injured party can file a claim for damages against the party that carried out the unilateral termination if it is proven that the action violates the rights or obligations stipulated in the contract.

The practical aspects of unilateral termination also involve social and ethical considerations. In many cases, unilateral termination of a contract can lead to long-term dissatisfaction and reputational damage. It is therefore important for the parties involved to approach the matter with care, considering the

---

<sup>7</sup>Ismail, N., & Mujib, A. (2023). Position of Al-Hisbah Territory in Court Decision Number: 1083/Pdt. G/2023/Pa. Btl Regarding Rahn and Ijarah Disputes. *QISTHOSIA: Journal of Sharia and Law*, 4(2), 141-151.

long-term impact of the action, and ensuring that the action taken is in accordance with legal and ethical principles. In practice, a prudent and fair approach can help to minimise conflict and ensure a constructive and effective resolution.<sup>8</sup>

Overall, unilateral termination in law and practice involves complex considerations and requires a thorough understanding of legal provisions, contract principles and dispute resolution mechanisms. By referring to relevant laws and considering the practical aspects of the act, a better understanding of the rights and obligations of the parties involved and the steps to be taken to ensure that the termination of the contract is carried out in a lawful and fair manner can be achieved.

## **Conclusion**

Unilateral termination in law and practice is a complex phenomenon that requires a thorough understanding of the principles of contract law and the practical implications of such action. Based on the analysis, it can be concluded that unilateral termination of a contract must consider various legal aspects that have been regulated in the Civil Code (KUHPperdata) and other related laws. Indonesian law, as stated in Article 1238 and Article 1243 of the Civil Code, emphasizes the importance of good faith and the implementation of obligations according to the agreement. Violation of these provisions can provide a legal basis for the injured party to request cancellation of the contract or compensation.

In practice, unilateral termination often has a significant impact on the relationship between the parties involved. The consequences of unilateral termination of a contract can include financial losses, reputational damage, and strained professional or personal relationships. Therefore, it is important to carefully consider the reasons and procedures for contract termination, and to ensure that such action is in accordance with legal provisions and principles of justice. Dispute resolution mechanisms, such as mediation, arbitration, or litigation, can play an important role in dealing with conflicts arising from contract termination.

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides additional guidance on how disputes related to contract termination can be resolved outside the courts. Arbitration and other alternative methods offer a faster and more efficient solution, allowing disputing parties to reach an agreement without having to go through a lengthy court process. This approach can help reduce tensions and facilitate a fair settlement that is in accordance with the terms of the contract.

On the other hand, the principles of justice and good faith must remain the main focus in any decision regarding termination of contract. Article 1365 of the Civil Code regulates unlawful acts and the obligation to compensate for losses, which can be applied in cases of termination of contract if the act is deemed to be unfairly detrimental to the other party. Enforcing these principles is important to ensure that the rights and obligations of all parties involved are respected and that the termination of contract is carried out in a lawful and fair manner.

Overall, unilateral termination in law and practice requires a comprehensive understanding of the relevant legal provisions, as well as a careful and fair approach in handling each case. By considering both the legal aspects and the practical impact of the action, the parties involved can reach an adequate settlement and ensure that their rights and interests are properly protected.

---

<sup>8</sup>Ismail, N., & Mujib, A. (2023). Position of Al-Hisbah Territory in Court Decision Number: 1083/Pdt. G/2023/Pa. Btl Regarding Rahn and Ijarah Disputes. *QISTHOSIA: Journal of Sharia and Law*, 4(2), 141-151.

## References

- Aris Yudhariansyah, Aris (2024). Legal Analysis of Criminal Liability of Health Workers Due to Medical Malpractice from The Perspective of Law Number 36 of 2009 Concerning Health (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 2033 K/Pid. Sus/2017) (Doctoral dissertation, Faculty of Law, Islamic University of North Sumatra).
- Elizar, C., Markoni, M., Kantikha, IM, & Saragih, S. (2024). Legal Protection for Doctors Suspected of Malpractice Reviewed from the Applicable Laws and Regulations (Case Study of Supreme Court Decision Number 233 K/Pid. Sus/2021). *ALADALAH: Journal of Politics, Social, Law and Humanities*, 2(2), 168.
- Ismail, N., & Mujib, A. (2023). Position of Al-Hisbah Territory in Court Decision Number: 1083/Pdt. G/2023/Pa. Btl Regarding Rahn and Ijarah Disputes. *QISTHOSIA: Journal of Sharia and Law*, 4 (2), 141-151.
- Kurniawan, MI (2021). Application of the principle of equality before the law in criminal justice practices (study of Bandung District Court Decision Number: 221/Pid. B/2019/PN. Bdg). *Journal of Criminal Law Studies*, 1, 29-36.
- Putri, NBP (2024). Default in Land Sale and Purchase Underhand Resulting in the Name Change Process (Study of Decision Number 347/Pdt. G/2022/PN SBY). *Jurnal Ilmiah Wahana Pendidikan*, 10 (10), 593-607.
- Sutrisno, S., Puluhalawa, F., & Tijow, LM (2020). Application of the Principles of Justice, Legal Certainty and Benefit in Judges' Decisions on Corruption Crimes. *Gorontalo Law Review*, 3 (2), 168-187.
- Taqiuddin, HU, & Risdiana, R. (2022). Implementation of Restorative Justice in State Administration Practice. *JISIP (Journal of Social Sciences and Education)*, 6 (1).

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).