THE IMPACT OF ECONOMIC CONSIDERATIONS ON CONTRACTING WITH COMPANIES UNDER THE ENGLISH LAW

Nooraini Dyah Rahmawati[1] Latifa Mustafida[2]
[1,2]Fakultas Hukum, Universitas Cokroaminoto Yogyakarta
Jl. Perintis Kemerdekaan Jl. Gambiran, Pandeyan, Kec. Umbulharjo, Kota Yogyakarta, Daerah Istimewa Yogyakarta, 55161
Email: nuradyahrahma@gmail.com

Abstract: Companies as the major contractual in the world as well as the biggest economical instrument, in which interconnected with one another by law and economy play an important role through their business activities in categorizing the core meaning and implementation of a contract and the evolution of its rules throughout centuries. This article offers a structural analysis and descriptive explanation on contract and consideration as well as the impact of economic consideration has on companies contractual relations by analysing some experts point of views, relevant cases, as well as practices under the English law through normative juridical with descriptive-analytical research specifications method. The gravity of the importance for companies in knowing how economical aspect is deemed crucial in formulating a business contract and how important its course for contract law in general, as it shows throughout time not only as part of companies preventive measure to avoid risks, but also an evolving mechanism within private law in general.

Keywords*: Company, Contract, Consideration, Economy, Private Law, International Private Law, English Law, Agreement, Adverse Risk.*

A. INTRODUCTION: THE UNDERSTANDING OF CONTRACT AND CONSIDERATION

A contract is often recognised out of the term of agreements or promises, and yet neither successfully fulfil to comply the whole fundamental definition of a contract. Under the American Restatement of Contracts, it is widely known that "a contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognize as a duty."[1] 'It is fundamental that there must be a promise or, in some cases, several promises, of such a nature to create legal duty of performance on the part of the person or persons making the promise.'[2] Promise itself means a statement made by someone to someone else which stated certain circumstances or affair exists, or in other word is going to do certain thing in the future.[3]

Nevertheless, Atiyah believed that the meaning of a contract defined by American Second Restatement is weak, for it disregard the bargain elements in contracts. A contract as a promise upon something that is done by one side of the party in return for certain thing to be fulfilled by the other side of the party means that a contract is two-sided relationship, which could not be found in the definition. Therefore, the definition leads to comprehension that a contract is merely 'a promise' without considering one side of the party obligations or promises existed that are given in return as a result of the other side party obligations or promises before they become a

[1] American Restatement of Contracts (Second)

[2] Janice E. Greider and William T. Beadles (1979), *Law and The Life Insurance Contract*, (Illinois: Richard D. Irwin., Inc.), p. 3

[3] A.G. Guest (1979), *Anson's Law of Contract*, (Oxford: Clarendon Press), p. 2

contract. Evenmore, although there might be 'a set of promises' existed in a contract, it is not certain in the definiton whether the set of promises are given in result of the other promise by which indicate reciprocal relationship in the contract. However, Atiyah argued that it is a mistake to think that all kind of contracts are authentic bargains that the object offered on one of the party is worth equally on the other party of the contract.[4]

In Common Law states where Anglo Saxon legal system is applied, there are at least three concepts that could pinpoint a contract, which are:

1) Series of actions that are done by the parties of the contract to express their approval on the agreement;
2) Legal document which signed by the parties of the contract as a proof of their consent;
3) And, the legal relationship caused by the behavior of the parties, which are arising rights and obligations in between them.

Atiyah arguments upon the definiton of contract under the American Second Restatement, drew the line on the absence of offer and acceptance element within the reciprocal legal relationship of the parties that caused by their behavior that arising rights toward one of the party and obligations toward the other party. However, it is indeed not an easy task to abide on one exact definition of a contract since the nature of contract depends on the type of the contract, the parties involved, their consent and agreement, as well as the object of the contract, thereof, in regards to those elements the value of the object of the contract might be or may not be equal. In Common Law

[4] P. S. Atiyah (1981), *An Introduction to the Law of Contract,* (Oxford: Oxford University Press), p. 29

system, there are three basic essentials for a contract to be made: first, agreement; second, contractual intention; third, consideration.

Therefore, the American Restatement emphasized the definition of a contract on the first point of the element of a contract which mentioned above, that is used to create an agreement. However, there is a different concept in which the Uniform Commercial Code (UCC) emphasized the third point that is regarding its legal relationship. According to UCC, a contract is a total obligation based on the law that arose from the agreement among the parties as it has affected by UCC and the other law. However, the utilization of that definition in practice is relatively unimportant, because the most important thing is the way to decide when a promise can be done based on the law and when the implementation of it can be excluded. In Common Law system, a contract has the meaning as an agreement between one party who make the offer and the other party who did the acceptance of the offer. Without mutual assent, then there is no contract. With that concept, it can be concluded that the main element in contract based on the Common Law is an offer and acceptance. The person who made the offer called as *offeror*, and the one who accept the offer called as *offeree*.[5]

The offer and acceptance, taken together, form the agreement to be given legal force, to simplify, the agreement in a contract must be supported by consideration to established an obligation, the parties must have a mutual consent on the agreement in order for it to have legal force (because the court will only enforce what the parties

[5] Ridwan Khairandy, *Definiton of Contract*, in *Jurnal Hukum Kontrak Indonesia dalam Perspektif Perbandingan* [Indonesian Contract Law in Comparative Perspective Journal], (Yogyakarta: Law Faculty of Universitas Islam Indonesia), p. 49

intend should be enforced), the parties should agree on the same thing (that is, their agreement must be mutual), the parties must be legally capable of reaching a binding agreement, and the subject matter of their agreement must not be against the applicable law. According to Beale, 'for a contract to be binding, it require the parties to be bound to it by which the law of contract gives remedies as a result.'[6] If all elements are present, the agreement will become a legally enforceable contract.[7] A legally enforceable contract is crucial for the parties to ensure that their rights and obligations are binding before the law, thereof, the law could then give protection as well as remedies in case a misconduct occur.

For contract to be legally enforceable, one of the requirements that should be fulfilled is consideration. As mentioned by Graw, consideration is an essential requirement needed in a contract. The similar point of view also drawn by Peel and Treitel, they believed that consideration in English law is one of the most important requirements for a contract to be binding beside the need of a promise to be in a form of a deed. Peel and Treitel also emphasize on the purpose of consideration which they believe is to 'put some legal limits on the enforceability of agreements even where they are intended to be legally binding and for it not to vitiated by any kind of negative issues varied from, mistake, misrepresentation, duress or illegality.'[8]

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[6] Beale and others (2010), *Contract Law*, (Oxford: Hart Publishing Ltd), p. 64

[7] Stephen Graw (1993), *An Introduction to the Law of Contract*, Second Edition, (Australia: The Law Book Company Limited), p. 9

[8] E. Peel and G. H. Treitel (2015), *The Law of Contract*: Fourteenth Edition, (London: Sweet & Maxwell, Thomson Reuters), Ch. 3, p. 1

However, for some scholars the existence of consideration is indeed fundamental, and yet its development is the most confound one.[9] Historically, there are two ways on how consideration entered into English law: 'first, is the doctrine of *causa* which found in Roman and Civil law that made its way into Common law system through Canon law and the Chancery court; second, is the analogous requirement of the action of debt, and the requirement of detriment in the action of trespass, which were somehow transferred to the action of *assumpsit* to give it form. Whichever might be, the exact detail on the development of doctrine of consideration is still vague. Nonetheless, there is one certain point where the requirement of consideration in informal contract came into place in the seventeenth century, and the law of contract began to evolve since then until it became the contract law that we know today.'[10]

The definition of consideration once mentioned by Patteson J in *Thomas v Thomas*, stated as follows:[11]

> '*Consideration means something which in of some value in the eye of the law, moving from the plaintiff, in may be some detriment to the plaintiff or some benefit to the defendant, but at all events it must be moving from the plaintiff.*'

Furthermore, in *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* consideration described by Lord Dunedin, which as follows:[12]

> '*An act or forbearance of one party, or the promise thereof, is the price for*

[9] T. Antony Downes (1997), *Textbook on Contract*, (London: Blackstone Press Limited), p. 48

[10] *Ibid*

[11] *Thomas v Thomas* (1842) 2 QB 851, p. 209

[12] *Dunlop Pneumatic Tyre Co Ltd v Solfridge & Co Ltd* (1915) AC 847, p. 855

which the promise of the other is bought, and the promise thus given for value is enforceable.'

As described in both definitions which are mentioned above, consideration regarded as 'something of value' that is not merely in a form of sum of money or other economical context, it could also be in the form of any kind of thing that is 'valuable in the eye of the law'[13] by which its purpose is to support the promise of the contracting party. However, just like what Patteson said, although consideration regarded as a valuable thing,[14] it can either be benefit or detriment depends on the point of view. As an example, in a sell of goods relationship, a payment made by the buyer is consideration for the seller's promise to hand over the goods, in which within this point of view can be assumed as detriment for the buyer and beneficial for the seller. In contrast, delivery of goods done by the seller is consideration for the buyer's promise to pay, with that being said, it can be concluded as detriment for the seller and beneficial for the buyer.'[15] Correspondingly, Lush J also mentioned in *Currie v Misa* that 'valuable consideration in the sense of law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other.'[16]

However, the point is not merely concerning on the contracting parties obligation in regards to the contract, consideration is likely lean on the action of the party that is bound to be done in results of the other party's promise, thereof consideration shall

[13] *Thomas v Thomas* (1842) 2 QB 851

[14] *Ibid*

[15] Peel and Treitel, *The Law of Contract*, Ch. 3, p. 2

[16] Currie v Misa (1875) LR 10 Ex 153

have executory nature. On that account, consideration cannot be regarded as a valid consideration if the existing promise is already done beforehand, for consideration exists upon the promise of to do or not to do certain thing that is bound to happen in the future based on direct relation between promise and consideration. The insufficiency of past consideration was also mentioned in the case of *Eastwood v Kenyon*[17] and *Roscorla v Thomas*[18] they have proven that in the eye of English contract law, past consideration is inadequate to support the contract. Nevertheless, in contrast with the idea that consideration must not be past, in the case of *Lampleigh v Brathwait* there is a condition when a past consideration can be good, the case concluded that 'a promise made after performance can be enforced, only if it was understood by the parties that there will have some kind of reward prior to the performance.'[19]

In accordance with what have been mentioned above, 'for a promise to be legally binding, it should gain something in return either to do certain thing in return of the promise, as well as to do, or refrain in doing certain thing in the future as a result of direct relationship between promise and consideration. In consequence, bargain principle come into play, there are two types of bargain principle (*quid pro quo*) in regards to consideration:'[20]

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[17] Eastwoon v Kenyon (1840) 11 Ad&E 438

[18] Roscorla v Thomas (1842) 3 QB 234

[19] Lampleigh v Brathwait (1615) 80 ER 255

[20] Emily M. Weitzenboeck (2012), *English Law of Contract: Consideration*, University of Oslo Hand Out, (Norway: Norwegian Research Center for Computers & Law), p. 3

1) In the case of consideration to do something in the future, or in other word is **executed consideration**:
   - consideration consisting of performance of act prior to formation of contract (promise only becomes binding when consideration has actually been executed, i.e. performed). This form of consideration typically arises with **unilateral contracts**.
2) In the case to do or refrain from doing something in the future, or in other word is **executory consideration**:
   - consideration consisting of promise, where something is to occur in the future, after the contract is formed. This form of consideration typically arises in **bilateral contracts.**

Based on the existing cases and interpretation of consideration, it is undeniably true that consideration plays an important role in English contractual relationship or even contractual relationship in general. The importance of consideration according to Atiyah is particularly in its adequacy, 'in regards to the interpretation of contract, the existing amount of considerations in the contract can be a helping hand in interpreting the contract or the intention of the parties.'[21] Correspondingly, Lord Somervell stated in *Chappell & Co Ltd v Nestle Co Ltd* that 'a contracting party can stipulate for what consideration he chooses. A peppercorn does not cease to be good consideration if its established that the promises does not like pepper and will throw away the corn.'[22] 'The consideration given in the contract as well as the point that one of the party

[21] P. S. Atiyah (1986), *Essays on Contract* [Consideration: A Restatement], (Oxford: Clarendon Press), p. 179

[22] Chappell & Co Ltd v Nestle Co Ltd (1959) AC 87

entitled to receive an adequate amount of valuable thing, are likely to be asked by the court implicitly, whether the valuable have been handed off to the party who's entitled or not. Furthermore, in the moment when the amount of consideration is poorly inadequate, it will increase the chance of suspicion of fraud or undue influence by which in results justify the court to disregard the contract in the proceeding'[23] since the contractual force of a promise will be gone if something of a value is fail to be given.

In accordance with the above explanations, consideration has proven its stance as an important part that should not be left out for a contract to be legally bound throughout the history of English contract law. However, the complexity of consideration in English contract law has risen up along with the development of business relations and the type of contracts which are assorted throughout time. Within the business realm, companies as a major economical instrument in the world play an important role as the business actor, correspondingly, contracts and economics are two important things which are needed in companies business relations. This article will discuss the ties between companies contract and economic considerations within the contract, particularly its impact on contracting with companies.

[23] Atiyah (1986), *Essays on Contract*

B. COMPANIES CONTRACT AND ECONOMIC CONSIDERATION

Companies as contracting party is surely had different nature as oppose to a person, whilst both are a legal entity. Lord Hoffmann stated in *Meridian Global Funds Asia Ltd v Securities Commission*:[24]

> 'Any proposition about a company necessarily involves a reference to a set of rules. A company exists because there is a rule (usually in a statute) which says that a *persona ficta* shall be deemed to exist and to have certain of the powers, rights and duties of a natural person. But there would be little sense in deeming such a *persona ficta* to exist unless there were also rules to tell one what acts were to count as acts of the company. It is therefore a necessary part of corporate personality that there should be rules by which acts are attributed to the company. These may be called the rules of attribution.'

However, entering into a contracting relationship for a company is never as simple as a person to enter into a contract, since a company had legal relationship to their shareholders and other third parties that any kind of actions done by the company would affect those who are having legal relationship with the said company.

Consequently, for a company to draw a decision or to constitute a decree would have to depend on the major final votes of the board members or approval on appointed representative, thereof, someone cannot act on behalf of the company or enter into legal relationship as the representative of the company without the consent or approval of the company board members or shareholders that can be in a form of constitution. According to Article 43 of the UK Companies Act (2006), the way for a

[24] Meridian Global Funds Management Asia Ltd v Securities Commission (1995) 2 AC 500

company to become a party in the contract are as follows:[25]

a) by a company, by writing under its common seal, or
b) on behalf of a company, by a person acting under its authority, express or implied.

Griffiths in his book stated that 'the former method derives from the company's legal nature as a corporation. It also reflects a common tendency to treat a company as if it were a real person and could somehow act on its own behalf. It obscures the fact that it is the company's officers who must physically sign or execute a contract made under a company's common seal. Their authority to do this is governed by and therefore can be limited by the terms of the company's constitution. A contract made by writing under a company's common seal therefore raises the same kind of legal issues as one made by the officers of a company acting as its agents.[26]

The description upon 'company's constitution stated in the Article 257 of the Companies Act 2006':[27]

a) any resolution or other decision come to in accordance with the constitution, and;
b) any decision by the members of the company, or a class of members, that is treated by virtue of any enactment or rule of law as equivalent to a decision by the company.

According to Griffiths, the 'role of the company's constitution can be interpreted

[25] United Kingdom Companies Act (2006), Section 43

[26] Andrew Griffiths (2005), *Contracting With Companies*, (Oxford: Hart Publishing), p. 6

[27] United Kingdom Companies Act (2006), Section 257

as the company legal source of its contractual power by which is conformable with the economic role of the company as a tool to facilitate the organization of production. Further, the constitution also regarded as the core of legal instrument of the company upon its relationship with their shareholders in regards to the provision of equity capital and the organization of their rights as members. It sets out the terms of the board's discretionary powers of management that enable the company to engage in production over an indefinite period of time. It governs the power of the body of shareholders from time to time to revise these powers of management or to alter their own powers. The power of revision is a necessary element of flexibility in a governance structure that is designed to persist over time and which should therefore have the capacity to respond and adapt to changing circumstances and an uncertain future.'[28]

The legal standing of Companies was once explained in the Section 14 of Companies Act 1985 as 'subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.'[29]

However, Steyn LJ argued in *Bratton Seymour Service Co v Oxborough* that:[30] "*the contract can be altered by a special resolution without the consent of all the contracting parties. It is also, unlike an ordinary contract, not defeasible on the*

[28] Griffiths, *Contracting With Companies*, p. 74

[29] United Kingdom Companies Act (1985) Section 14 (1)

[30] Bratton Seymour Service Co v Oxborough (1992) BCC 471 (CA)

grounds of misrepresentation, common law mistake, mistake in equity, undue influence or duress. Moreover, it cannot be rectified on the grounds of mistake."

In accordance with Steyn, the decision maker in a company is not always derived solely through the shareholders decision, although shareholders would likely hold the authority in drawing an acquiescence decision. The act on behalf of the company could also be done through the directors power or an agent appointed, however, 'both had limitation on their actions as directors power is limited under the scope of Section 172 of the Companies Act 2006'[31] which regulate various duties of the director to promote the company as an important underlying rules or obligations of the directors to acts for the benefit of the company, its members and creditors. However, Section 172 strongly obliged the director to take shareholders opinion into account before making a decision for the company.

On the other hand, an agent also had requirements to fulfil in performing their act on behalf of the company. 'The principal is bound by a contract an agent purports to make on his behalf if:'[32]

a) the agent has real or express authority;
b) the agent has usual, customary or implied authority;
c) the agent has apparent or ostensible authority, or authority by holding out which estops the principal from denying the authority of the agent.

Steyn LJ also emphasized the limitation of shareholders in *Bratton Seymour Service Co v Ocborough*:[33]

[31] United Kingdom Companies Act (2006), Section 172

[32] David Milman (2016), *Corporations in International Business Law* – Hand Out, (Lancaster: Lancaster University)

"*If [the constitution] contains provisions conferring rights and obligations on outsiders, then those provisions do not bite as part of the contract between the company and the members, even if the member is coincidentally a member. Similarly, if the provisions are not truly referable to the rights and obligations of members as such, it does not operate as a contract*."

Apart from capabilities of company in making a contract, there are variety type of companies contracts that are just as much as important. According to Milman, they are as follows:[34]

a) Preincorporated Contract, is a contact made by the company before its officially incorporated. The issue of this type of contract is completely different with other contracts;
b) Ultra Vires Contract, is a contract made by the company that goes beyond its contractual capacity. Stated in *Ashbury Railway Carriage and Iron Co v Riche* 'the difficulty with the ultra vires rules was that those dealing with a company would have to check that it had capacity to enter into the contract by looking at its memorandum in the Register of Companies, otherwise they risked finding themselves unable to enforce a contract that the law would consider void unless the contract entered into was within its object clause. This was quite impractical.'[35]

[33] Bratton Seymour Service Co v Oxborough (1992)

[34] *Ibid*

[35] Ashbury Railway Carriage and Iron Co v Riche (1875) LR 7 HL 653

c) Contracts involving an excess officers authority, is a contract made by company after incroporation, within its capacity but its given to someone or company officers who has beyond their contractual capacity;

d) Other defective company contracts, can also regarded as international companies contracts. These companies has to follow the part 34 of the Companies Act 2006 which regulate overseas companies. The issue is when the company enter into the English law and yet does not comply with the provision under part 34 of the Companies Act 2006, will the contract still valid, and the answer is yes. The contract is still binding for it is only a procedural error, however, the issue in international contract is that the representative of the company (i.e. director) likely resite outside England. Therefore, it will be difficult to imposed santion to the director if they did worng. Another issue is that there is technical fees for a company who did not comply to the part 34 of the Companies Act, since it requires the detail of company in partiular where a legal proceeding can be serve in the company. In contrast, foreign company litigation in the United Kingdom add economic benefit to the UK

Futher, the question would be how and which companies contract evolves in the economic realm and how do economic views companies contract. In that light, 'according to some economists, a contract is an agreement under which two parties make reciprocal commitments in terms of their behavior – a *bilateral coordination arrangement*.'[36]

[36] Eric Brousseau and Jean-Michel Glachant (2002), *The Economics of Contracts*: Theories and applications, (Cambridge: Cambridge University Press), p. 3

The history of 'contract economics was born in 1970s from a two fold movement of dissatisfaction *vis-à-vis* Walrasian market theory:'[37]

- 'On a *theoretical* level, new analytical tools were sought to explain how economic resources they trade in face-to-face encounters. If these agents are subject to transaction costs, if they can benefit from international advantages, or if there are situations in which irreversible investments must be made, then it is reasonable to expect that one will not see the same goods traded at the same price under th same rules as on a Walrasian market. Price theory and, by extension, the analysis of the formation of economic aggregates (prices, traded quantities and qualities, etc.), were fundamentally affected by the work of Akerlof (1970), Arrow (1971), and Stiglitz (1977), among others;'
- 'On an *empirical* level, problems associated with the regulation of competition drove a renewal of economic thinking. The analysis of certain tyles of inter-firm contracts, such as selective distributorship agreements, long-term cooperation agreements, etc., was revamped. Previously considered anti-competitive, the beneficial welfare effects of these arrangements had been ignored. The devices available to public authorities for creating incentives and controlling producers of services of public interest were also subjected to a reexamination. Economic theory had not considered the possibility that either party could appropriate the rent from monopolistic operation of such services. Demsetz and Williamson, Baron and Laffont, to name only a few, renewed the approach of these issues of "regulation".'

[37] *Ibid*, p. 4

The two contract theories explained above, has been a stepping stone on the development of contract throughout times. On top of that, economic aspect has become an important point in business contracting relationship ever since old days. In view of the foregoing, Deakin and Hughes categorized three advantages of economic concepts as for the analysis of legal rules, which first is to help gives an in depth understanding upon the law within the economic scopes where economic concept can be used to explain rigid and complex economic matter and/or as simple as complicated terms in regards to legal relations that involves commercial or economical factors. Second, it can also help to foresee changes in the regulation. Lastly, it could help to provides justification or analysis in legal matters in correspondence with economic efficiency.[38]

Liao wrote in his book the importance of economic aspect in the performances of contract, as according to him the 'value of transaction is easy to be realized when the exchange between two parties occurs instantly and simultanously.'[39] However, the idea of having an immediate and simultanous transcation is not that easy to be done in practice, as a simple sale and purchase transaction for instance, it would need time in completing its deal. Moreover, a transnational transaction that involves two different state which might take a lot more time in finishing its transaction, not to mention

[38] S Deakin and A Hughes (1999), *Economic Efficiency and the Proceduralisation of Company Law*, ESRC Centre for Busincess Research, (Cambridge: University of Cambridge)

[39] Wenqing Liao (2015), *The Application of the Theory of Efficient Breach in Contract Law*: A Comparative Law and Economic Perspective, (United Kingdom: Intersentia Publishing Ltd), p. 18

there are many factors that could affect the value of the goods such as, market price, exchange rates, the change in quality, etc.

In the sense of company contracts, economic factors are obviously play an important part in affecting the performance of company promises since they deal with shares and market price. Nonetheless, at the early stage of formulating promises, the parties involved must have wanted to perform their promise as scheduled without changing the quality of the goods, nor changing the price. However, regardless of the initial intention amongst the parties, the time gap in between formulating the promises and the time to carry out the promises, widened up the possibility on risks of not being able to carry on the promises as written in the contract.

In those events, the promisor has to bear an extra burden or lose an excellent opportunity if he wants to carry out what he has promised. So the cost of performing agreements will be increased or the value of the transaction will be decreased, which is called as "bad events" *adverse risks*.'[40]

A long term contract is indeed susceptible with adverse risks, when parties enter a long-term contract they are aware that unforeseen developments may render performance by the seller too costly to complete. Likewise, contingencies could eliminate all opportunities for the buyer to make profitable use of the product or service to be purchased. In an ideal world, the parties would plan for such events and explicitly list appropriate responses in their contract. Bounded rationality and limits to the effectiveness of courts diminish the possibility of achieving this ideal. Consequently, random events can produce a situation in which breach is the most efficient choice, in the sense of maximizing the sum of the buyer's and seller's profit.

[40] *Ibid*, p. 19

The question of whether contracts and contract law provide the proper incentives for breach is the question of *optimal breach.*[41] The question whether the breach can be categorized as an intended breach or not, since the circumstances within the long-term contract forced the breach to be taken into place.

The kind of circumstances and the action of the promisor on breaking their promise explained by Liao, for people will participate in the transaction when it can create an economic surplus for each party. However, when the time comes, completion of the original agreement might not be desirable anymore for the promise, for instance, if he cannot earn any surplus. In this case, a promissor may just change his mind and break his promise.'[42] In the light if such matter occur, economic factor could definitely help to prevent an adverse risk in the future, by which economic knowledge likely could predict the economic circumstances ahead.

Further, Liao categorized the functions of economic in contract law into four point which are: 'first, is to deter inefficient opportunism and increase guarantee to trust; second, is to fill the gaps in contracts; third, to disambiguate contract terms; last, is to "regulate contracts" through mandatory rules.'[43]

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[41] Michael J. Meurer (1989), *Law and Contemporary Problems*, Vol. 52 No.1, (The United States: Duke University School of Law), p. 4

[42] Wenqing Liao (2015), *The Application of the Theory of Efficient Breach in Contract Law*, p. 19

[43] *Ibid*, p. 31-33

C. CONCLUSION

Based on the explanations above, it is now come into light on how important economic consideration as a tool to form a much more reliable contract for a company to prevent future breach caused by adverse risks. However, it doesn't really left a strong guarantee on how it will not change the condition of the market and would not affecting the performance of the promisor in carrying out his promise, not to mention that it is a mere prediction.

Nonetheless, it is better for business enterprises, especially multinational company, to recognized the need of having economic aspects as their consideration in creating a contract, which supposedly better than naught. As for multinational company will likely deal with foreign rules with different concept of economics view as well as different market price or exchange rate, which risen up the probability of having an adverse risks. Even though the contract has been formulated in accordance to prevent the risks, in any kind of way it does not exempt the probability on having a broken promise in the future.

On top of that, having a strong economic consideration could also enhanced the certainty of the parties performances since the trust supported by a strong basis of consideration that will make an efficient contract.

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