

STANDARD AGREEMENT WITH EXONERATION CLAUSE REGARDING ONLINE TRADING TRANSACTIONS FROM THE PERSPECTIVE OF LEGAL CERTAINTY

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ABSTRACT

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Standard agreements have the function of simplifying and speeding up transactions carried out by sellers and buyers both conventionally and *online*. In carrying out transactions that use standard agreements with exoneration clauses, sellers must continue to pay attention to matters permitted by law in order to continue to provide protection for consumers as stipulated in Article 18 of the Consumer Protection Law so that there is legal certainty for consumers. In general, if there is a dispute between business actors and consumers, it can be resolved using court/litigation or outside court/non-litigation. Settlement of disputes between business actors and consumers outside of court can be done through mediation, conciliation or arbitration. The government has formed the Community Independent Consumer Protection Institute (LPKSM) and BPSK to resolve producer-consumer disputes, however, the existence of LPKSM and the Consumer Dispute Resolution Agency (BPSK).

INTRODUCTION

The development of globalization is currently increasingly advanced and supports the economy in Indonesia. Supporting aspects of economic development can be seen in the rise of buying and selling goods via *the internet*, giving rise to the establishment of many companies operating in the field of *Marketplace/E-Commerce*. Carrying out *online* trading activities causes problems, so that consumers feel disadvantaged. So there is a need for legal protection that provides justice to consumers.

Article 1 point 2 of Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as UUIITE) states "electronic transactions are legal acts carried out using computers, computer networks and/or other electronic media.

Buying and selling is an agreement in which one party binds himself to hand over ownership rights to an item and the other party to pay the price that has been promised.

In this modern era, we can buy and sell very easily. There are many *platforms* that can be used for those who want to transact digitally through existing *e-commerce*, such as *Tokopedia, Bukalapak, Shopee*, and *Facebook Marketplace*.

Transactions in the *online system* involve at least two parties, namely the seller (*merchant*) as the party offering goods or services, and the consumer (*customer*) as the party interested in carrying out transactions to purchase or use goods or services offered by the seller (*merchant*) with a *danya platform*. This digital way of carrying out buying and selling transactions really makes things easier for both sellers and buyers.

online buying and selling agreement (*e-commerce*) is a commercial transaction carried out between a seller and a buyer or with another party in the same contractual relationship to send a number of goods, services and transfer of rights. In buying and selling transactions via *the internet*, the seller and the buyer enter into a legal relationship which is outlined in the form of an electronic agreement.

Agreements are regulated in article 1313 of the Civil Code, which explains that an agreement is an act by which one or more people bind themselves to one or more other people.

With this, a legal relationship can arise involving two or more people in an agreement, which will give rise to the rights and obligations of each party. Where these rights and obligations must always be fulfilled in order to create a perfect agreement, both verbally and in writing.

A standard agreement is an agreement in which there are certain conditions made by the business actor. Basically, standard agreements aim to provide practical convenience for parties in carrying out transactions. The development of standard agreements is unstoppable very rapidly in an era that demands practicality in carrying out transactions. The development of standard agreements in society is efficiency, both in terms of time and costs, because transactions for which standard agreements are made are carried out repeatedly and continuously. It is feared that the party determining the terms of the agreement will include a transfer of responsibility clause (exoneration clause).

An exoneration clause is "a clause in an agreement, which stipulates the exemption or limitation of certain responsibilities, which are normally according to law should be his responsibility." The exoneration clause is possible because of the principle of freedom of contract. It is conceivable that the possibility of people agreeing to an exoneration clause could have the consequence that the rights and obligations of the parties become far less balanced.

Consumer Protection Law, provisions regarding agreements with exoneration clauses are regulated in Chapter V concerning provisions for the inclusion of standard clauses consisting of one article, namely Article 18 of Law Number 8 of 1999 concerning Consumer Protection (UUPK). Article 18 UUPK in principle regulates two types of prohibitions that apply to business actors who make standard agreements with exoneration clauses. Article 18 paragraph (1) regulates the prohibition on the inclusion of standard agreements with exoneration clauses, while Article 18 paragraph (2) regulates the form and format as well as the writing of standard agreements with prohibited exoneration clauses.

Research purposes

The aim of this research is to determine the obstacles faced in order to protect consumers in *online trade transactions* and provide solutions to business actors and consumers in creating standard clauses for *online trade transactions*.

Benefits of research

The benefit obtained from this research is to contribute ideas in the field of civil law, especially regarding Standard Agreements with Exoneration Clauses as well as adding to the literature which can be used as data and reference material for further research.

RESEARCH METHODS

This research method uses a normative juridical approach, namely a legal research method carried out by examining library materials including statutory provisions and secondary data where from this data the concepts of "information" and "knowledge" will emerge as a basis for research.

RESULTS AND DISCUSSION

Standard Agreement with Exoneration Clause Regarding *Online Trade Transactions*

Agreements must not conflict with laws, public order, customs and morality. Article 1320 of the Civil Code states that the condition for the validity of an agreement is its existence agreement between the parties, the skills of the parties, a certain object and a lawful cause. Agreeing and being able is called a subjective requirement, because it concerns the subject making the agreement. If these conditions are not met, the agreement can be canceled by the interested party. The conditions for certain objects and halal causes are called objective conditions, namely regarding the object of the agreement. The legal consequences if the objective conditions are not met then the agreement is null and void.

Apart from having to pay attention to the conditions for the validity of an agreement, agreements must also be based on several general principles or principles found in contract law, namely: the principle of freedom of contract, *the principle of consensualism*, *the principle of pacta*

sunt servanda, the principle of good faith, the principle of personality, the principle of trust, the principle of legal equality, the principle of balance, the principle of morals, the principle of decency, the principle of habit, the principle of protection, etc.

The signed agreement generally begins with a negotiation process between the parties. In making an agreement there are several things that must be paid attention to, understanding the provisions of contract law, regulation of rights and obligations and in contract law there are principles of contract law that must be applied, this is necessary to avoid disputes or disputes in the future .

The agreement will give rise to rights and obligations for each party making the agreement. The parties will be bound to comply with the contents of the agreement that has been made. In the business world, agreements are very important as guidelines, guidelines, and evidence for the parties. With the existence of an agreement It is hoped that this can prevent disputes from occurring in the future, because everything has been clearly regulated. If a dispute arises in the future, it can help in resolving it. Agreements can provide guarantees and legal certainty for the parties. With the existence of an agreement, it is hoped that the parties involved in it can carry out in accordance with the agreed agreements, doing so in good faith.

As economic growth continues to develop, an agreement emerges between parties who have an equal position to reach an agreement So the agreement uses a more practical format by containing an exemplary clause in a standard agreement, in a very practical agreement but actually more profitable for the maker .

The inclusion of this exoneration clause occurs because the parties in the agreement are in an unequal position, so that one of the stronger parties determines the terms of the agreement, while the other party is in a pinched position and really needs the agreement. Conditions like this are vulnerable to giving rise to abuse of the situation by the party who determines the terms of the agreement towards the other party .

This exoneration clause is of course very detrimental to debtors, because debtors who want this agreement are only faced with 2 (two) choices, namely signing or rejecting the agreement offered to them without being able to negotiate what they want.

One concrete example is that in economic relations, consumers often enter into various agreements both verbally and in writing. One of them is a written agreement between consumers and business actors which is in standard form (*Standardized Contract*). Standard Agreements are usually in the form of forms whose contents, form and method of closing have been standardized or standardized unilaterally by business actors, and are mass in nature without considering differences in conditions that consumers have, these agreements cannot be bargained or negotiated by other parties (*take it or leave it*). The contents or provisions contained in a standard contract are usually called standard clauses.

There needs to be various models of standard agreements that can be implemented that do not contain elements of exoneration clauses, and must meet the legal requirements for an agreement made by a notary office or notary organization, a standard agreement as an agreement, the terms of which are stated and completed in a deed that will be To provide legal certainty to the parties who are part of the agreement process, the use of exoneration clauses must be prohibited by law with the provisions that exoneration clauses contained in a standard agreement do not have binding legal force .

Legal certainty for consumers regarding goods purchased as a result of standard agreements containing exoneration clauses .

In making standard agreements for *online trade transactions* , business actors are required to follow procedures that have been determined in statutory regulations, namely the Law on Consumer Protection (UUPK). Based on the provisions of Article 48 paragraph (2) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PSTE), electronic contracts made with standard clauses must comply with the provisions regarding standard clauses which do not contain exoneration clauses as regulated in statutory regulations. . With these provisions, sellers should pay attention to the rights of consumers as parties who use the goods and/or services being sold so that there is a balance between the seller and the buyer and the seller does not only pursue profit.

Online sellers or service providers such as Tokopedia, Bukalapak, Shopee, and Facebook Marketplace, *when* offering goods or services on *the internet* must display an agreement that does not contain an exoneration clause which is carried out electronically, and are obliged to provide complete and correct information regarding the terms - contract terms, manufacturer of the goods or services offered, and complete description or information regarding the goods or services offered. Before buying, buyers are also obliged to read the information provided by the seller and ask first if there is any other information they want to ask about in order to know in detail the goods or services.

Consumer protection is any effort that ensures legal certainty to provide protection to consumers. Consumers are every person who uses goods and/or services available in society, whether for the benefit of themselves, their family or other people. **According to** Article 1 of Law No. 8 of 1999 concerning Consumer Protection, consumer protection is any effort that ensures legal certainty to provide protection to consumers.

In Article 3 of Law No. 8 of 1999 Consumer Protection aims to:

- a. increase consumer awareness, ability and independence to protect themselves ;
- b. raising the dignity of consumers by preventing them from negative excesses in the use of goods and/or services ;
- c. increasing consumer empowerment in choosing, determining and demanding their rights as consumers ;
- d. creating a consumer protection system that contains elements of legal certainty and information transparency as well as access to information ;
- e. raise awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude in business grows ;
- f. improve the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security and safety of consumers

Consumer protection in UUPK not only provides consumer rights, but business actors are given the obligation to provide rights to consumers in the form of providing compensation as stipulated in Article 7 letter (g) UUPK, namely providing compensation, compensation and/or replacement if goods and/or or the services received or utilized are not in accordance with the agreement.

The opinion of Indonesian civil law expert Mariam Darusbadruzaman states that a standard agreement is not an agreement because it contradicts the provisions of article 1320 of the Civil Code which states that: "A standard agreement is not an agreement because the position of the authority in the agreement is like that of a private lawmaker (*legio particuliere wetgever*). The conditions specified by the entrepreneur in the agreement are the law and not an agreement." Standard clauses have now become a necessity in the business world and have been accepted by the wider community as a form of agreement that is beneficial for sellers and buyers to provide convenience for both parties. To protect consumers as parties who are vulnerable to injustice in agreements containing exoneration clauses.

Article 18 UUPK states:

- (1) Business actors in offering goods and/or services intended for trading are prohibited from creating or including standard clauses in every document and/or agreement if:
 - a. declare the transfer of responsibility of the business actor;
 - b. states that business actors have the right to refuse to return goods purchased by consumers;
 - c. states that business actors have the right to refuse to hand over money paid for goods and/or services purchased by consumers;
 - d. states the granting of authority from consumers to business actors, either directly or indirectly, to carry out all unilateral actions related to goods purchased by consumers in installments;
 - e. regulates the matter of proving the loss of use of goods or use of services purchased by consumers;
 - f. gives business actors the right to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;

- g. states that consumers are subject to regulations in the form of new, additional, continued rules and/or further changes made unilaterally by business actors during the period when consumers use the services they purchase; And
 - h. states that consumers authorize business actors to impose mortgage rights, liens, or security rights on goods purchased by consumers in installments.
- (2) Business actors are prohibited from including standard clauses whose position or form is difficult to see or cannot be read clearly, or whose expression is difficult to understand.
 - (3) Every standard clause that has been stipulated by a business actor in a document or agreement that meets the provisions as intended in paragraph (1) and paragraph (2) is declared null and void by law.
 - (4) Business actors are obliged to adjust standard clauses that conflict with this Law.

For consumer protection, the government has taken preventive action in the form of establishing a Consumer Dispute Resolution Agency (BPSK) based on Article 49 paragraph (1) UUPK and the government also recognizes the existence of a Non-Governmental Consumer Protection Institution (LPKSM) based on Government Regulation Number 59 of 2001 concerning Non-Governmental Consumer Protection Institutions. It is hoped that the existence of BPSK and LPKSM can make a major contribution to consumer protection and be at the forefront in fighting for consumer rights.

Complaint where as a consumer who feels aggrieved, you can submit your complaint or complaint to the appropriate party. A place for complaints from consumers and business actors if there is a problem can be resolved through BPSK (Consumer Dispute Resolution Agency) and LPKSM (Community Independent Consumer Protection Agency).

Consumers can take legal action against standard agreements with exoneration clauses that have been determined by business actors by filing a lawsuit in court, this is possible to provide legal protection to consumers.

CONCLUSIONS

The agreement must pay attention to the conditions for the validity of an agreement, the agreement must not conflict with legislation, public order, customs and decency . Article 1320 of the Civil Code states that the condition for the validity of an agreement is its existence agreement between the parties, the skills of the parties, a certain object and a lawful cause. Agreeing and agreeing to subjective terms, regarding the subject making the agreement. If these conditions are not met, the agreement can be cancelled. Conditions for certain objects and lawful causes are objective conditions, regarding the object of the agreement, if the objective conditions are not fulfilled then the agreement is null and void .

In making standard agreements for *online trade transactions* , business actors are required to follow procedures that have been determined in statutory regulations and must not conflict with the law as regulated in the Consumer Protection Law, so that there is legal certainty for consumers.

BIBLIOGRAPHY

- Agus Saiful Abib et al " *Application of Standard Clauses in Protecting Consumers in Sales and Purchase Agreements via E-Commerce*" Journal of Socio-Cultural Dynamics Institute for Research and Community Service - Semarang University Volume 12 Number 1 2015
- Ariesta Dwicahyani Putri, Dewa Ayu; Sekar, I Dewa Nyoman. *Consumer Protection Against Exoneration Clauses in Standard Agreements for Goods Delivery Service Companies* Vol. 01, No. 09, September 2013 .
- Lukman Santoso Az, *Legal Aspects of Agreements : Comprehensive Study of Theory and Development*, Yogyakarta: Penebar Media Pustaka, 2019.
- Niru Anita Sinaga " *Implementation of the Rights and Obligations of the Parties in Contract Law*" Scientific Journal of Aerospace Law - Faculty of Law, Marshal Suryadarma Dirgantara University | Volume 10. p 1, September 2019.
- Subekti, *Contract Law* , Jakarta Intermedia, 2020.

Zakiah journal " *Exoneration Clauses in the Consumer Protection Perspective*" Al'Adl, Volume IX Number 3, December 2017 .

Civil Code (Civil Code), Intellectual Discourse, Wipress, 2007

Law Number 8 of 1999 concerning Consumer Protection.

Law Number 11 of 2008 concerning Electronic Information and Transactions.

Government Regulation Number 59 of 2001 concerning Non-Governmental Consumer Protection Institutions.

Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions .

Internet:

<https://heylaw.id/besar-perkerjaan-transaksi-jual-beli-cepat-online> , accessed 21 May 2023.

Directorate of Consumer Protection, Directorate General of Domestic Trade, Observe Standard Clauses Before Signing Contracts, [http://www . consumer protection directorate .](http://www.consumerprotectiondirectorate.gov.id)