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# Consumer Legal Protection in the Perspective Of The Standard Clause In Tinujau In The Consumer Protection Law In The City Of Ternate

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### **Abstract**

This study aims to determine the inclusion of standard clauses in Supermarkets in Ternate City and consumer legal protection related to harmful standard clauses. The type of research used is juridical, a form of legal research that takes sources from library materials. However, empirical research is also needed to find out how to include standard clauses in the field to support juridical research. The study results indicate that so far, the standard clauses contained by business actors, such as supermarkets, are not entirely by the provisions stipulated in the Consumer Protection Act. This is evident from the results of the study that business actors will include unilateral provisions and submission to new or advanced regulations that can occur at any time in the future, for example, adding money or exchanging for other goods when consumers want to insist on exchanging goods that have been purchased and of course waiving the clause. Standards prohibited by the Consumer Protection Act Article 18 paragraph 1 point g. Due to the position of the parties listed in the standard clause, it is considered unbalanced or unequal between the creditor and the customer. Business actors and debtors, in this case, consumers, then are where the role of law is needed to provide legal protection for upholding justice. Therefore, it is necessary to enforce the rights of consumers by the mandate of Law Number 8 of 1999 concerning Consumer Protection Article 4, which regulates consumer rights such as the right to have their opinions and complaints heard on the goods and services used and the right to be treated or treated. Served correctly and honestly, and non-discriminatory. This is necessary for the sake of legal protection for consumers.

Keywords: Standard Clause; Consumers; Legal Protection

### **A. Introduction**

The 1945 Constitution in its Preamble stipulates that the objectives of the Republic of Indonesia are to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in world peace based on independence, eternal peace and social justice. To achieve this goal, we are faced with the progress of trade-economic activities that are increasingly open. Currently, Indonesia is faced with various challenges due to the free trade era. For that, we are required to be able to have strong competitiveness. This openness will provide many challenges for consumers, business actors and the government. Luan, The 1945 Constitution in its Preamble, states that the objectives of the Unitary State of the Republic of Indonesia are to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, participate in world peace based on independence, eternal peace, and social welfare. Justice. To achieve this goal, we are faced with the progress of trade-



economic activities that are increasingly open. Currently, Indonesia is faced with various challenges due to the free trade era. For that, we are required to be able to have strong competitiveness. This openness will provide many challenges for consumers, business actors and the government.

One aspect is that there will be more and more problems regarding the non-fulfilment of consumer rights. Consumers and business actors are like a coin with two different balances. Consumers need products (goods/services) from entrepreneurs' activities. However, the activities of business actors are redundant if there are no consumers who buy the results of their business. Therefore, balance in all aspects concerning the interests of both parties is ideal and must be considered. This is a reality. In maintaining the sustainability of the economy, the role of consumers is quite essential. However, ironically in terms of legal protection, the position of consumers is fragile.

Events that harm consumers often face standard clauses in which business actors determine the terms without involving consumers. However, standard clauses are needed regarding expenditure efficiency, cost and time. Imagine if a business actor does not apply standard clauses in running his business. Of course, business actors will have difficulty dealing with every consumer whose desires vary from one consumer to another. In carrying out their business, business actors apply the economic principle to get the maximum possible profit with the minimum possible expenditure.

The standard clause/standard agreement itself is part of an agreement, so the regulation on this matter must be based on the rules of the Civil Code (KUHPerdata) in Chapter III concerning Engagements in general. In addition, because many standard clauses are detrimental to consumers, standard clauses cause an imbalance in position between consumers. For business actors, the regulation of prohibited standard clauses is also contained in the provisions for the inclusion of standard clauses in Article 18 UUPK.

This prohibition is intended to place consumers on an equal footing with business actors based on the principle of freedom of contract. If, in an agreement, the position of the parties is not balanced, then the weak party is usually not in a state that is truly free to determine what is desired in the agreement.

In practice in the business world, things that often use standard agreements/standard clauses include banking, insurance, land/sea/air transportation tickets and finance. It is a fact that although there is a law that regulates standard clauses, it is often found in the field that there are biased standard clauses that are very detrimental to consumers. Therefore, this is what underlies the author to research and examine more deeply Consumer Legal Protection in the Perspective of Standard Clauses reviewed in the Consumer Protection Act in the City of Ternate.

## **B. Research Method**

This study uses empirical research that views law as a social phenomenon that cannot be separated from all aspects of community activities. This means that this study analyzes aspects of the activities of business actors in fulfilling consumer rights and the efforts made by the government to enforce consumer rights based on

applicable laws and regulations so that it is known whether consumers have received adequate protection.

a. Data Collection Techniques

The collection of legal materials is done by:

b. Literature Study

That is collecting legal literature by reading literature related to this research and equipped with several laws and regulations governing the issue of standard clauses in Indonesia.

c. Observation

This is done by using an observation technique, namely observing and recording the facts and symptoms of the subjects studied relating to the problems discussed, namely the responsibility of business actors to consumer losses. The observation technique used is Random Sampling, observations made randomly on several research objects.

d. Interview

They are collecting legal materials by conducting interviews with business actors, consumers and the relevant government regarding the issues discussed in this study.

Analysis Techniques, In this study, the analysis of legal materials used is descriptive qualitative, namely by paying attention to the facts that exist in practice, then compared with the data obtained from library research, so that answers and conclusions can be obtained about the problems that have been formulated.

## **C. Results and Discussion**

### **1. Application of Standard Clauses in Ternate City Supermarkets**

Legal Protection for Consumers in the Standard Clause Agreement, among others, aims at justice. The definition of justice is to complete rights and obligations. If we do not give the rights of others (our obligation), we have done injustice to the other person. However, if we do not take away our rights from others (which is what other people have to do to us), we have allowed others to be unfair to us. Moreover, at the same time, we do not do justice or oppress ourselves. Rights are the freedom to do or choose anything, as long as it does not conflict with the rights of others.

While obligations are responsibilities that are present as a consequence of the presence of rights, rights and obligations will always go hand in hand. The balance of rights and obligations is what creates what is called justice. The affirmation of the importance of rights, obligations, and justice must be put forward first to provide a framework for the core discussion of this paper. Moreover, complaints about the goods and services used" and "The right to be treated or served correctly and honestly and not discriminatory.". The standard clause was initially born from an agreement to support transaction effectiveness and efficiency.

However, in its development, some opinions support and reject the existence of standard clauses in the agreement. Opinions that support the existence of standard clauses are based on the willingness and trust of the parties who bind themselves in the agreement. In addition, conceptually, it is also based on the principle of freedom of contract and custom, as well as opinions that allow this standard clause because it can facilitate transactions. On the other hand, some opinions criticize the existence of

standard clauses in the agreement based on the imbalance of position and the absence of negotiation in the agreement. With the implementation of standard clauses, parties will feel aggrieved and feel their rights have been taken away—the application of standard clauses results in losses for the weak party, namely consumers.

This agreement was born because of the community's needs and can facilitate every transaction. Along with the development of the age of the agreement is also growing, where at this time, the standard agreement in the sale and purchase has been enforced. In this standard agreement, the seller determines and makes the contents of the regulations applied to transactions in written form without the buyer's knowledge. The contents of these regulations must be followed and obeyed by the buyer (unilateral agreement). These regulations are binding on both parties and become the legal basis for both of them.

From the results of the research that has been done, several important points can be used as material to be studied by reviewing the review of Law Number 8 of 1999 concerning Consumer Protection against standard clauses in the practice of implementing standard clauses in supermarkets in Ternate City. Generally, standard clauses applied to supermarkets are in the form of writing made by business managers. They make the contents of these clauses without the knowledge of consumers. From some of the data that has been collected, it has been explained in previous chapters to find out the practice of applying standard clauses in supermarkets.

Provisions for the inclusion of Standard Clauses (according to Article 18, Law Number 8 of 1999 concerning Consumer Protection), namely: Business actors in offering goods and services intended for trading are prohibited from making or including standard clauses in every document and agreement if the transfer of responsibility for business actors. They are stating that business actors have the right to refuse to return consumer goods. They are stating that business actors have the right to refuse to return the money paid for goods and services purchased by consumers.

They are stating the granting of power of attorney from consumers to business actors directly or indirectly to take all unilateral actions related to consumer goods in instalments. Regulates the matter of proving the loss of use of goods or the use of services purchased by consumers. Give rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services—stating that consumers are subject to regulations in the form of new, additional, continued and progressive changes made unilaterally by business actors when consumers use the services they buy.

Stating that the consumer authorizes the business actor to impose mortgage rights, liens, or guarantee rights on goods purchased by consumers in instalments. Every standard clause the business actor has determined in the document or agreement meets the provisions in paragraphs (1) and Paragraph (2) is declared null and void. Business actors are prohibited from including standard clauses whose location or shape is challenging to see, cannot be read clearly, or whose disclosure is difficult to understand.

Business actors are required to adjust standard clauses that are contrary to this law. Generally, standard clauses applied to supermarkets are in the form of writing made by business managers. They make the contents of these clauses without consumers' knowledge in supermarkets. The standard clauses are listed on payment receipts written at the bottom of the receipt so that if consumers do not pay too much attention to receipts, consumers will not know that there is a standard clause in supermarkets.

Article 1 point 1 of the Consumer Protection Law states that consumer protection is all efforts guaranteeing legal certainty to protect consumers. Consumer protection means questioning guarantees or certainty about the fulfilment of consumer rights. There are still many consumer rights that business actors violate. The lack of supervision of new regulations, especially regarding the standard clause rules in supermarkets, does not cause a big problem. However, the standard clause rules in the Supermarket limit the rights of consumers.

Consumer Protection has regulated or prohibited business actors who include rules of standard clauses that are not by the provisions of inclusion of standard clauses. Article 1, number 10 means that standard clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and agreement that is binding and must be fulfilled by consumers. Based on Article 18, point 1 letter g, which reads: declare that consumers are subject to regulations in the form of new, additional, continued and progressive changes made unilaterally by business actors during the period when consumers take advantage of the purchased goods. The standard clause rule "goods that have been purchased cannot be returned or exchanged" is a concrete form of a rule that is only made unilaterally by the Supermarket.

The rules prohibit returning and or exchanging goods that have been purchased, resulting in consumers wanting or not having to follow these rules. Where if the consumer wants to keep returning and or exchanging the goods that have been purchased, the Supermarket will not accept this because the Supermarket adheres to the standard clause, which is prohibited from returning and or exchanging goods that have been purchased because the Supermarket is the cashier before making the transaction process with the consumer has notified earlier to check the goods before making payment and bringing the goods home.

The Consumer Protection Law regulates or prohibits business actors who include standard clause rules that are not by the provisions for inclusion of standard clauses. For entrepreneurs, this may be a way to achieve economic goals that are efficient, practical and fast. However, it is an unfavourable choice for consumers because they are only faced with a choice to accept even though they are reluctant. The standard agreements that are widely available in the community can be divided into several types, among others:

A unilateral standard agreement is an agreement whose contents are determined by the party whose position is in agreement. The strong party here is the creditor, who usually has solid economic power compared to the debtor. Both parties are usually bound in an organization, for example, in a collective labour agreement.

A standard agreement determined by the government is a standard agreement whose contents are determined by the government for specific legal actions, for

example, an agreement with an object of land rights. A notary or lawyer determines the standard agreement. In the Dutch library, this type is called contract money. It is an agreement whose concept has been provided from the beginning to fulfil the request of a community member who asks for the assistance of the notary or the advocate concerned.

For sellers or business actors today, the Baku clause is the most powerful weapon to avoid losses. Including standard clauses in the buying and selling process will significantly benefit the seller; they will avoid liability for defective or damaged products. Meanwhile, for consumers, the inclusion of standard clauses is very detrimental. Consumers cannot return or exchange products that cannot be used, whether the product is defective or damaged.

The researcher observed that the form and layout of the inclusion of standard clauses in supermarkets violate the provisions contained in Article 18 paragraph (2), which states that business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand. From the results of research with several consumers, 60% of consumers said that the standard clause was challenging to read because the letters were tiny, and 30% of consumers said that the clause could be read but did not know that the text was a standard clause.

In an agreement, the parties can limit or even to the extent justified by law can avoid responsibility for losses that befall themselves or other people's property. So, the consumer's lack of clarity in a standard clause is not only the legal language that cannot be understood, but it is a bit inconvenient to read because the writing is small, so many consumers feel reluctant to read and research it further. Finally, consumers only have the option to receive goods that have been purchased at the Supermarket.

The people of Ternate City do not know what standard clauses are. Law on consumer protection regulates the application of these standard clauses, which is the weakness and obstacle for consumers in dealing with standard clauses in Ternate City. This is based on the results of interviews with several consumers. Including Mrs Yuni as a Consumer, she said that: 'she does not know what standard clauses are, and it turns out that there is a law that regulates Consumer Protection, which she knows is just an ordinary text that reads that goods that have been purchased cannot be exchanged or returned and consumers must comply with the writing.

Consumer Legal Protection related to the Adverse Standard Clause The purpose of the law is to obtain certainty, benefit, and justice. The self-service party can notify the contents of the standard clause through a banner or banner or writing more clearly and in a placement that consumers can reach. Thus, consumers will know the regulations set in the Supermarket and be more careful and thorough when buying because if they are not careful, there will be a risk they will bear.

BPSK supervises the inclusion of standard clauses by business actors, considering the widespread use of standard agreements in legal relations between business actors and consumers and the possibility of losses that will be caused to consumers if the inclusion of standard clauses is not monitored in practice. Based on an interview with Mr Lakasimi, S.E., Head of Company Registration at the Department of Industry and Trade of Ternate City, stated that for the City of Ternate itself, supervision of standard clauses has often been carried out through socialization both to business

actors and to consumers and if there are violations of these standard clauses a warning will be given but if the warning is not heeded then the Ternate City DISPERINDAG will report to the Provincial DISPERINDAG for further action against the violation because the Ternate city DISPERINDAG does not yet have a Head of Consumer Protection Division. However, that authority is under the Provincial Industry and Trade Office and BPSK\_ Based on As mentioned above, the inclusion of standard clauses that are detrimental to consumers is the responsibility of BPKN in supervising and taking legal administrative action against business actors who violate consumer rights through Lui inclusion of the standard clause.

The participation of the police, prosecutors, and even judges are very much needed when the problem of the inclusion of this standard clause leads to a legal framework that involves the law enforcers acting. The police or investigators will usually investigate when there is a report or complaint from the injured party. In the process of proceeding in a criminal case, it is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code. In addition, resolving disputes through the courts can be done through general courts (Civil, Criminal and State Administration).

Article 19 of Law Number 8 of 1999 concerning Consumer Protection also contains the responsibilities imposed on business actors: Business actors are responsible for compensating for damage, pollution, and consumer losses due to consumer goods and services produced/traded. As referred to in Paragraph (1), the compensation can be in the form of a refund or replacement of goods and services of a similar/equivalent value or health care and compensation by the applicable laws and regulations. The compensation is given within a grace period of 7 (seven) days after the transaction date.

The provision of compensation, as referred to in paragraphs (1) and (2), does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error. The provisions referred to in Paragraph (1) and Paragraph (2) shall not apply if the business actor can prove that the error is the consumer's fault. \_ A standard clause that violates Article 18 paragraphs (1) and (2) can be declared null and void because the act does not adhere to the principle of propriety by shifting responsibility, twisting the situation, fraud, regulating something that is less/unclear and there are elements of coercion and abuse of circumstances.

Since the essence of product liability is a liability based on unlawful acts, then the four elements in liability based on unlawful acts, namely: The element of unlawful acts; the Error element; The element of loss, and the element of the causal relationship between the unlawful act and the resulting loss, are still a requirement to obtain compensation in the case of product liability. Only proving the element of guilt is no longer the burden of the consumer but is the burden of the business actor to prove that he is innocent (back proof). Article 19 is the burden and responsibility of the business actor.

Provisions regarding reverse evidence are also regulated in the Civil Code as contained in Article 1244 BW. By applying the premise of "the presumption of fault", the burden of proving the existence of an error is reversed. The defendant/producer is required to prove his innocence. According to the results of the study, so far, supermarket consumers in Ternate City to obtain their rights as consumers have not

been maximized because not many people are aware of the Consumer Protection Act, which regulates standard clauses.

Consumer Legal Protection related to the Adverse Standard Clause The purpose of the law is to obtain certainty, benefit, and justice. What does certainty mean by knowing the obligations and rights between the two parties, namely business actors and consumers? The parties must benefit from carrying out this, which is regulated in the Law (UU). Justice is a balance between these two things for the parties. In other words, no one is harmed. The existence of standard clause agreements regulated by UUPK, especially in supermarkets where shopping is very detrimental to consumers. Indirectly violated regulations, legal objectives were not achieved, and consumer rights were not fulfilled. What is meant by violating the regulations is that it is contained in Article 18, Paragraph (1) letters b and c of the UUPK, namely that business actors are allowed to refuse goods and services returned by buyers and refunds of money paid by consumers for the goods that have been purchased.

Moreover, the rights of the buyer who are violated are contained in Article 4 letters a, b, c, and h of the UUPK, namely the right to comfort, to choose, to obtain complete information or instructions about goods or services, and to receive compensation for goods that have been purchased not by the agreement. Rights and obligations must be in line, which must be confirmed in an agreement. Chapter V regarding the provisions for the inclusion of Standard Clauses, which only consists of one article, Article 18 of the Consumer Protection Act. In Article 18 of the Consumer Protection Act.

Regulates two kinds of prohibitions imposed on business actors who make standard agreements and or include standard clauses in the agreements made. Article 18, paragraph 1 of the Consumer Protection Law regulates the prohibition of the inclusion of standard clauses. Article 18 paragraph 2 regulates the "form" or format and the writing of standard agreements that are prohibited. Standard clauses are unilateral rules in receipts, invoices, agreements, or other documents that are detrimental to consumers in buying and selling transactions. The existence of standard clauses causes the position of consumers to be fragile compared to business actors. Violations committed by business actors are not only against their products or products but also violations of rights related to decency or propriety, which should be their responsibility. However, that responsibility is imposed on consumers, as in the standard clause, to the detriment of consumers. The government has enacted Law Number 8 of 1999 concerning Consumer Protection to protect consumer rights and implement standard agreements that are detrimental to consumers. This can be seen in the general explanation section. In the general explanation section, it turns out that the legislators have identified standard agreements as part of consumer issues that can weaken the consumer's position. Therefore, the Consumer Protection Law should regulate the use of standard agreements and their standard clauses.

#### **D. Conclusion**

The standard clauses applied by business actors, such as supermarkets, are not entirely by the provisions stipulated in the Consumer Protection Act. This is evident from the results of the research that business actors will include unilateral provisions and submission to new or advanced regulations that can occur at any time in the

future, for example, adding money or exchanging for other goods when consumers want to insist on exchanging goods that have been purchased and of course renege on the clause. Standards prohibited by the Consumer Protection Act Article 18 paragraph 1 point g.

Due to the position of the parties listed in the standard clause, it is considered unbalanced or unequal between the creditor and the customer. In this case, business actors and debtors, in this case, consumers. Then this is where the role of the law is needed to provide legal protection for the sake of upholding justice. Therefore, it is necessary to enforce consumer rights by the mandate of Law Number 8 of 1999 concerning Consumer Protection Article 4, which regulates consumer rights such as the right to have their opinions and complaints heard on the goods and services used and the right to be treated or treated. Served correctly and honestly, and non-discriminatory. This is necessary for the sake of legal protection for consumers.

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