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Review on The Inclusion Of The Exoneration Clause In The Standard Clause Based On Law No 8 Of 1999 Concerning Consumer Protection

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Abstract

This study aims to obtain information and analyze the law regarding consumer protection against standard agreements that include an exoneration clause and the responsibilities of business actors that include an exoneration clause. A standard agreement is an agreement where all the clauses are standardized by one party in the agreement without the participation of the other party which basically can eliminate the opportunity to request a change of the agreement, or hidden defects. The standard agreement that includes the exoneration clause is prohibited because it is very contrary to the principles of good faith, the principle of balance, the principle of justice and especially the principle of freedom of contract which has been accommodated in Article 1338 of the Civil Code, Law Number 8 of 1999 concerning Consumer Protection in Articles 19 to Article 28 regulates the responsibilities of business actors in being accountable for all business activities carried out. Protection and supervision of consumers and business actors can be achieved by the existence of concern, involvement, and cooperation between the government, community, business actors, and (LPKSM) the existence of BPSK is expected to be achieved a sense of justice for all parties in conflict in consumer disputes, the government and law enforcement in this case (Polri Investigators, Civil Servants, Prosecutors, Judiciary and Advocates), must play an active role in monitoring and implementing the existence of this Consumer Protection Act, especially Article 18 aya t 1 About inclusion clause containing exoneration clause.

Keywords: Consumer Protection, Standard Agreement, Exoneration Clause.

A. Introduction

Historically, an agreement was only made orally, not written, because an agreement was born when the parties had reached an agreement based on the principle of consensuality or an agreement was born on the achievement of an agreement, which after the agreement gave rise to rights and obligations for the parties (Rachman, 2018, p. 436).

As the times progressed, verbal agreements began to be written down, to reach an agreement in an agreement, usually the parties carried out the stages of negotiation which were then stated in a written agreement to be agreed upon by the parties. One form of written agreement includes a standard agreement, with the understanding that a standard agreement is an agreement made in standard form or has been prepared in form. (Rachman, 2018, p. 348) In the sense of an agreement where all clauses are standardized by one party in the agreement. agreement without the participation of other parties which can essentially eliminate the opportunity to request changes to the agreement.



The emergence of a standard agreement is a development that is needed in the world of the economy that requires fast, fast and all practical things to make it easier for the community. without being preceded by a negotiation process (bargaining) with other parties, 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 contained in an agreement, where one party avoids fulfilling its obligation to pay full or limited compensation, which occurs due to a broken promise or an unlawful act. (Muthiah, 2018, p. 17) The exoneration clause is used as an additional clause. in the agreement on essential elements and are generally found in a standard agreement (Bawarodi, 2014, p. 42)

The Consumer Protection Act defines a standard clause as a provision or condition that has been prepared unilaterally by business actors which is then poured into an agreement that must be fulfilled by consumers and is binding without a bargaining process. (Rohaya, 2018, p. 26) The regulations governing standard clauses are contained in article 18 paragraph 1 of the Consumer Protection Law which prohibits business actors from including standard clauses in every agreement. and documents if Stating p shifting the responsibilities of business actors, To declare that business actors have the right to refuse to return goods purchased by consumers, To state that business actors have the right to refuse to return the money paid for goods and/or services purchased by consumers, Declare the granting of power of attorney from consumers to business actors either directly or indirectly to take all unilateral actions related to goods purchased by consumers in installments, 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, To declare that consumers are subject to regulations in the form of new, additional, continued and/or follow-up changes made unilaterally by business actors while consumers are using the services they have purchased, Stating that the consumer authorizes the business actor to impose mortgage, lien, or security rights on goods purchased by consumers in installments.

In practice, we as consumers often experience dissatisfaction in the use of goods or services. Dissatisfaction is usually caused due to defects in products, services that are not as advertised, and many other things. However, consumers often find it difficult to make claims, exchange or get compensation for goods or services that are not in accordance with what we expect (M.Sadar, 2012, p. 54). or the exoneration clause which is usually stated on the proof of the transaction.

Based on the background of the above problems, the problem in this research is How is the legal protection for consumers who are harmed due to the exoneration clause? and What is the legal responsibility for business actors who include an exoneration clause.

B. Method

This research uses normative juridical, namely the approach that is carried out based on the main legal material by examining legal theory, legal concepts. legal principles, legal principles and comparative law, as well as statutory regulations sourced from primary and secondary legal materials by focusing on examining the

determination of rules or norms in positive law. (Sari & Artha, 2019, p. 5) The main approach to library data is research on secondary data which can be in the form of primary law itself. (Nachrawi & Dewi, 2021, p. 177) This study aims to find out and obtain legal information regarding consumer protection against standard agreements that include an exoneration clause and the responsibilities of business actors that include an exoneration clause.

C. Result and Discussion

1. Legal protection for consumers who are harmed as a result of the Exoneration Clause

According to Setiono, legal protection is an act or effort to protect the public from arbitrary actions by the authorities that are not in accordance with the rule of law, to create order and peace so that it allows humans to enjoy their dignity. as a human being. (Setiono, 2004, p. 72) Meanwhile, Consumer Protection is the provision of certainty provided by the Consumer Protection Act for consumers from all efforts that can harm in obtaining or using goods and services. Law No. 8 of 1999 concerning consumer protection article 1 states "consumer protection is all efforts that guarantee legal certainty to provide protection to consumers.

"Others have essentially no opportunity to negotiate or call for change. Meanwhile, the existence of an exoneration clause in the standard agreement is an effort to free and limit oneself from responsibility in carrying out the obligations specified in the contract. (Fidhayanti, 2014, p. 18) Meanwhile, Mariam Darus Badruzaman said that a standard agreement is an agreement whose contents are standardized on exoneration requirements and set forth in a form. (Kamil, Muhammad Ikhsan & Kusuma, 2021, p. 101).

Characteristics of a standard agreement that includes an exoneration clause has the following characteristics: 2016, p. 36)

- a. The contents of the agreement are determined by the party whose position is stronger
- b. The weak party is generally not included in the making of the contents of the agreement
- c. The weak party is driven by need and accepts the agreement
- d. The agreement is in written form
- e. Agreement Prepared in advance individually or in bulk

The standard clause has been regulated in Article 18 Paragraph 1 of the Consumer Protection Law which states with the following explanation:

- 1) This prohibition is intended to place the position of consumers on par with business actors based on the principle of freedom of contract;
- 2) Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosures are difficult to understand;
- 3) Every standard clause that has been stipulated by the business actor in the document or agreement that fulfills the provisions as referred to in paragraphs (1) and (2) is declared null and void;
- 4) Business actors are required to adjust standard clauses that are contrary to this law.

To find out validity of a contract, of course, it must meet the legal requirements of the contract as stated in Article 1320 of the Civil Code, the conditions for the validity of an agreement are: Agree with those who bind themselves, The ability to make an agreement (Sinaga et al., 2016, p. 5).

Included in the subjective conditions, namely the condition that if the agreement is violated it can be canceled A certain thing, The cause (a cause) is lawful (permissible).

The objective condition is that if the agreement is violated, the consequences are null and void. The on free will, without any element of coercion, misguidance, fraud, or hidden based . defects fact. (Rachman, 2018, p. 440) According to Article 1313 of the Civil Code, it provides a fairly clear understanding of what is meant by an agreement, namely an act by which one or more people bind themselves to another person. (Panggabean, 2010, p. 661) In addition, it is explained that every engagement is born either by agreement or by law, in other words, law and agreement are the source of the engagement itself

Itself is allowed or not prohibited as long as it does not conflict with the law Protection Article 08 paragraph 1 itself. In addition, the standard agreement is a valid agreement seen from the legal terms of the agreement contained in Article 1320 of the Civil Code. However, the standard agreement which includes clause is prohibited because it is very contrary to the principle of good faith, the principle of balance, the principle of justice and especially the principle of freedom of contract which has been accommodated in article 1338 of the Civil Code, because in essence each party is free to enter into an agreement as long as the agreement does not conflict with legal principles that apply in Indonesia by not violating public order because the principle of freedom of contract aims to place the position of consumers on par with business actors. (Yunita, 2018, p. 835).

Given that when an agreement has been signed, the contract agreement will bind the parties even though the agreement was only drafted by one of the parties. According to Aulia Mutiah, there are several things that must be considered in the standard agreement which includes an exoneration clause, including: (Muthiah, 2018, p. 172).

- a. Is prominent and clear, writing on the exception of liability must be written clearly and prominently or in bold so that consumers can easily read it
- b. Delivered on time, the actor conveys directly about the transfer of responsibility , namely at closing the contract is not when the contract is already running, this is so that consumers do not feel cheated
- c. Fulfillment purposes, limitation of liability cannot be carried out if the limitation will not fulfill the important purpose of a guarantee, for example, liability for hidden defects cannot be limited in a certain time limit, if the hidden defect is not found within that period.
- d. Fair, if the court finds an unfair contract, the court can refuse to implement it or the implementation of the contract without an unfair clause.

Protection and supervision of consumers and business actors can be achieved through concern, involvement, and cooperation between the community, the actors of the Non-Governmental Consumer Protection Agency. The community (LPKSM) and the government take LPKSM seriously in monitoring business actors who produce

goods only for profit and ignore their obligations in terms of compensation, because one of the duties of LPKSM in article 44 of the Consumer Protection Act is to assist consumers in fighting for their rights. their rights include receiving complaints or complaints from consumers. (NJCLD, 2016, p. 109) The government, in this case must also be firm in carrying out its role in fostering and supervising the implementation of consumer protection, without compromising the rights and obligations of business actors. This can be realized, one of which is with government support in the establishment of the Consumer Dispute Settlement Agency (BPSK in each Level II or City area as mandated by Article 49 of the Consumer Protection Law.

In addition to having the task of resolving consumer disputes out of court, BPSK is an institution Independent parties have the authority, among others, to handle dispute resolution through mediation, consolidation and arbitration, in addition to supervising the inclusion of standard clauses, receiving consumer complaints both in writing and verbally, summoning business actors who commit violations and conducting research and examination of consumer protection disputes, deciding whether or not there are whether or not there is a loss on the part of consumers, as well as imposing administrative sanctions on business actors who violate the provisions of the Consumer Protection Act. (Rinaldi, 2019, p. 321)

Settlement of consumer disputes at BPSK is carried out based on the principles of fast, cheap, easy, and simple. Currently, the establishment of BPSK is an urgent matter given the complexity of the relationship between consumers and business actors. With the establishment of BPSK, it is hoped that a sense of justice will be achieved for all parties in conflict in consumer disputes, especially since BPSK members consist of elements of the government, consumers, and business actors.

2. Legal accountability for business actors which includes an exoneration clause

Of Law Number 8 of 1999 concerning Consumer Protection in Articles 19 to 28 regulates the responsibilities of business actors in being responsible for all business activities carried out. Article 19 of the Consumer Protection Law stipulates the liability of business actors for the products produced or traded by providing compensation for damage, pollution, damage to consumer losses. Article 20 of the Consumer Protection Act advertising business actors are responsible for the advertisements produced and all the consequences caused by the advertisements. Article 21 of the Law on Consumer Protection. The importer of goods is responsible for the imported goods if the import of goods is not carried out by a foreign agent or service provider. Article 22 of the Consumer Protection Law is the burden and responsibility of business actors without closing the possibility for prosecutors to prove. Article 23 of the Consumer Protection Act, business actors who refuse and or do not respond and or do not fulfill compensation for consumer demands can be sued through BPSK or the Consumer Dispute Settlement Agency at the consumer's domicile. Article 24 of the Consumer Protection Law, business actors are responsible for compensation to consumers for goods and/or services without making changes to the goods and/or services, and the changes are not in accordance with the sample, quality and composition. Article 25 of the Consumer Protection Law, business actors are responsible for claims for compensation and/or consumer claims if they do not provide spare parts or fail to fulfill the agreed guarantees and/or guarantees. Article

26 of the Consumer Protection Law, business actors are required to fulfill the guarantees and/or guarantees that have been agreed upon. Article 27 of the Consumer Protection Law, businesses are free from responsibility if the goods should not be circulated or are not intended to be circulated, defects in goods arise at a later date, defects arise due to compliance with provisions regarding the qualifications of goods, negligence caused by consumers, and over a period of time. The prosecution period is 4 (four) years since the goods were purchased or after the agreed period. And Article 28 of the Consumer Protection Law, proving the element of error in a claim for compensation in Articles 19-23 is the burden and responsibility of the business actor. All forms of responsibilities of business actors that have been regulated above also include liability for standard agreements that include an exoneration clause.

In practice, it is still common for standard agreements made by business actors to include an irresponsible exoneration; in this case the perpetrators will be responsible if consumers file a lawsuit to court. (MAYRA, 2016, p. 844) some examples a case where a business actor enters into a standard agreement using an exoneration clause, including.

- a. On a bank bill payment form in which one of the conditions that must be fulfilled or approved by the customer states that "the bank is not responsible for negligence or omission, action or negligence and the bank itself or its employees or correspondents, other sub-agents, or their employees" (M.Sadar, 2012, p. 54) In fact, the role of banking is to become a medium for storing people's assets and thus to become a sector in the dynamics of a country's economy. (Dauri & Waliyyatunnisa, 2020)
- b. A Ticket Parking, in this case the ticket is usually already sold prepared in advance by the parking manager. In the ticket there is an exoneration clause which usually reads "all forms of loss and damage to vehicles or other items in this parking is the responsibility of the owner of the vehicle "or also like "For the loss of the vehicle or other items outside the responsibility of the parking lot"
- c. On the receipt/invoice for the purchase of goods which states "Items that have been purchased cannot be exchanged or returned" or also such as "Items that are not picked up within timenote sales we cancel it."

Some examples of the inclusion of the exoneration clause above state the transfer of responsibility for all losses incurred by business actors so that they fulfill the rights of the consumers themselves Business actors will only carry out their responsibilities when the consumer has filed a lawsuit in court.

One of the cases will be the rise of business actors who include an exoneration clause, namely the case experienced by a consumer named Bruno Adrian against parking services. The inaccuracy and carelessness which secure parking results in the loss of a consumer's vehicle is considered an illegal act. The decision of the Central Jakarta District Court (PN) in this case the judge ordered Secure Parking not to include an exoneration clause which aims to prevent parking managers from evading responsibility when a lost vehicle And Secure Parking must pay a loss to the plaintiff in the amount of Rp. 30,950,000. in the legal considerations section "the judge qualifies the agreement between the parking manager and the consumer as a custody

agreement, so that the defendant is responsible for the security and safety of the plaintiff's vehicle.

Based on the case examples above, it is clear that consumer protection in Indonesia has not been implemented properly, especially in standard agreements that include an exoneration clause, or maybe even the Consumer Protection Law itself has not been socialized to business actors so that business actors can freely include an exoneration clause in the agreement. (M. Sadar standard, 2012, p. 59) Therefore, it is possible to revise the Consumer Protection Law, especially in terms of provisions for the inclusion of standard agreements/clauses containing Protection Consumer. Standard agreements that include an exoneration clause must be canceled and are not allowed to be used by business actors in making a standard agreement considering that this standard agreement eliminates the rights of consumers and benefits business actors.

It cannot be denied that article 18 paragraph 1 of the Consumer Protection Act has not provided a good enough impact to protect consumers, in fact many business actors are still making standard agreements by including an exoneration clause. In this case, there is a need for a legal reform or *ius constituendum* regulations regarding standard clauses to prevent business actors from including exoneration clauses including:

- a. To and in bold/bold from other writings, with the aim of making it easier for consumers to detect the existence of the exoneration clause. So that there is no opportunity for business actors to escape from the transfer of responsibility and compensation;
- b. The government makes regulations in the form of fines or sanctions for business actors who still include or use an exoneration clause without having to wait for consumers to sue in court; (Rosmawati, 2018, p. 90)
- c. In online buying and selling transactions, the government makes mandatory regulations for service providers. application or e-commerce not to give permission to business actors/traders to include an exoneration clause in their transactions without exception;
- d. The existence of these regulations aims to protect the rights of consumers because any form of agreement containing an exoneration clause is not justified and is not allowed considering that consumers are victims who are harmed by an unequal position in an agreement.

D. Conclusion

A form of legal protection for consumers can be seen in the contract law in Indonesia, the standard agreement itself is allowed or not prohibited as long as it does not conflict with the Consumer Protection Law Article 08 paragraph 1 itself. In addition, the standard agreement is a valid agreement seen from the legal terms of the agreement contained in Article 1320 of the Civil Code. However, a standard agreement that includes an exoneration clause is prohibited because it is very contrary to the principles of good faith, the principle of balance, the principle of justice and especially the principle of freedom of contract which has been accommodated in article 1338 of the Civil Code, because in essence each party is free to enter into an agreement as long as the agreement does not conflict with the legal

principles that apply in Indonesia without violating public order because the principle of freedom of contract aims to place the position of consumers on par with Business actors . conducted. Including the form of responsibility of business actors in the standard agreement that includes an exoneration clause, in its entirety it can be null and void by law or canceled by a judge, and business actors are obliged and responsible for all losses received by consumers. Perpetrators who refuse and provide responses that do not fulfill compensation for consumer demands can be sued through the Consumer Dispute Settlement Agency (BPSK) or submitted to the judiciary at place consumer.

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