CONSUMER PROTECTION IN INDONESIA: EXPLORING THE ADVERSE EFFECTS OF MISUSING EXONERATION CLAUSES ON CONSUMER RIGHTS IN LEGAL PERSPECTIVE

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ABSTRACT

Objective: This research examines the misuse of exoneration clauses disadvantaging consumers and explores methods for safeguarding consumers against their adverse effects.

Theoretical Framework: The research utilizes normative analysis of relevant legal regulations, drawing from primary, secondary, and tertiary legal sources.

Method: The employed method involves normative qualitative analysis to assess the impact of standard agreements embedding exoneration clauses on consumers.

Result and Conclusion: The study concludes that exoneration clauses within standard agreements often result in consumer losses. Such clauses arise from an imbalance in agreement dynamics, where the dominant party imposes terms, taking advantage of the other party's dependence. As these clauses necessitate mutual consent, their presence renders agreements invalid, thus violating legal norms.

Originality/Value: The research's contribution lies in recommending governmental oversight to supervise business entities in drafting agreements. This oversight aims to ensure the protection of consumer rights and adherence to legal standards.

Keywords: exconeration clause, standard agreement, consumer protection.

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PROTEÇÃO DOS CONSUMIDORES NA INDONÉSIA: EXPLORAR OS EFEITOS ADVERSOS DO USO INDEVIDO DAS CLÁUSULAS DE EXONERAÇÃO SOBRE OS DIREITOS DOS CONSUMIDORES NA PERSPECTIVA JURÍDICA

RESUMO

Objetivo: Esta pesquisa examina o uso indevido de cláusulas de exoneração que prejudicam os consumidores e explora métodos para protegê-los contra seus efeitos adversos.

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Estrutura teórica: A pesquisa utiliza a análise normativa das regulamentações legais relevantes, com base em fontes legais primárias, secundárias e terciárias.

Método: O método empregado envolve a análise qualitativa normativa para avaliar o impacto dos contratos padrão que incorporam cláusulas de exoneração sobre os consumidores.

Resultado e conclusão: O estudo conclui que as cláusulas de exoneração nos contratos padrão geralmente resultam em prejuízos para os consumidores. Tais cláusulas decorrem de um desequilíbrio na dinâmica do contrato, em que a parte dominante impõe termos, aproveitando-se da dependência da outra parte. Como essas cláusulas necessitam de consentimento mútuo, sua presença torna os contratos inválidos, violando, assim, as normas legais.

Originalidade/valor: A contribuição da pesquisa está em recomendar a supervisão governamental para fiscalizar as entidades comerciais na elaboração de contratos. Essa supervisão visa a garantir a proteção dos direitos do consumidor e a adesão às normas legais.

Palavras-chave: cláusula de exoneração, contrato padrão, proteção ao consumidor.

1 INTRODUCTION

Globalization's current advancement significantly aids the Indonesian economy. Business activities of companies, influencing a nation's economic progress, are impacted by globalization. The swift evolution within the business realm has brought forth several alterations in business conduct. Notably, major corporations now commonly employ standardized contracts when engaging with other entities. Collaborations between large corporations and governmental bodies often involve one-sided terms set for mutual gain within the organization. The opposing party, termed as 'wederpartij,' frequently holds a weaker economic stance, either due to imbalance or lack of information, leading them to generally accept the terms predetermined by the other party. Utilizing standardized contracts facilitates efficiency in cost, effort, and time for business entities, allowing them to streamline their operations due to the widespread adoption of these standard agreements.[2]

This type of standard agreement is often found in simple agreements, such as those found in agreement clauses on vehicle parking tickets, store purchase notes, motor vehicle service notes, electronic equipment, and the like. A standard agreement is a binding agreement for the parties who sign it, but in the context of a standard agreement, there is a term known as an exoneration clause. Exoneration clauses that are often found in standard agreements tend to shift the burden of responsibility from the party drafting the standard agreement to the other party. However, it should be noted that even if such

[2] Annurdi, Annurdi. "Larangan Klausul Eksonerasi sebagai Upaya Perlindungan Hukum terhadap Konsumen." Jurnal Hukum Media Bhakti, vol. 1, no. 1, 2017, https://doi.org/10.32501/jhmb.v1i1.7

clauses exist, the law prohibits the transfer of such liability.[3] Thus, losses arising in the future remain the responsibility of both parties in accordance with the provisions stipulated by the exoneration clause which is actually prohibited by law.[4]

The inclusion of a clause that limits the liability of a business actor in the performance of an agreement is known as an exoneration clause. The enactment of certain exoneration clauses can sometimes result in losses for consumers or debtors.[5] One example of an exoneration clause abuse case happened to Ishwar Manwani, a Platinum customer at Bank Internasional Indonesia (BII, which later changed its name to Maybank in October 2015), whose address is at Jalan M.H Thamrin No. 51 Central Jakarta. The incident occurred on 19 December 2008 when Ishwar Manwani and his spouse wanted to retrieve their deposits from BII's safe deposit box. At that time, Ishwar Manwani and his spouse saw damage to the safe deposit box key, so they conducted an inspection supervised by bank officers. However, the items they had stored in the safe were no longer there, including jewellery, some gold coins, and other valuable documents. The loss was measured in monetary value at IDR 1,500,000,000.

This incident was reported by Ishwar Manwani to Polda Metro Jaya through Police Report No.Pol: LP/31K/XII/2008/SPK Unit I on 19 October 2008, but because the report received no response, on 22 December 2008, Ishwar Manwani reported the incident again to the Central Jakarta Police with Police Report No.Pol: 1269/K/XII/2008/RES. During the police investigation, the bank did not show any goodwill to compensate for the lost items. Ishwar Manwani and his lawyer then filed a lawsuit against Bank Internasional Indonesia to the Central Jakarta District Court. However, the court rejected the lawsuit in Decision Number 21/Pdt.G/2009/PN.JKT.PST. Ishwar Manwani then appealed to the High Court, but his lawsuit was again rejected in Decision Number 96/PDT/2010/PT.DKI. Ishwar Manwani also filed an appeal to the Supreme Court, but his appeal was also rejected through Decision Number 897 K/Pdt/2011. The rejection of Ishwar Manwani's lawsuit creates the impression that there is no legal protection for customers who use safe deposit boxes.

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[3] Anna Maria Tri Anggraini, Simanjuntak, M., Safari, A., Halim, R. E., & Riyadi, S. (2022). Consumer Protection in the Retail and Financial Services Sectors against the Practice of Exoneration Clauses. Journal of Consumer Sciences, 7(2), 83–96. https://doi.org/10.29244/jcs.7.2.83-96

[4] Apandy, P. A. O., Melawati, & Adam, P. (2021). Pentingnya Hukum Perlindungan Konsumen Dalam Jual Beli. Jurnal Manajemen & Bisnis Jayakarta, 3(1), 12–18. https://doi.org/10.53825/jmbjayakarta.v3i1.85

[5] Kurniawan, F., & Parameswary, A. (2014). KONSTRUKSI HUKUM PERLINDUNGAN ADHERED PARTY DALAM KONTRAK ADHESI YANG DIGUNAKAN DALAM TRANSAKSI BISNIS. Perspektif, 19(3), 144. https://doi.org/10.30742/perspektif.v19i3.17

The inclusion of an exoneration clause in the Safe Deposit Box rental agreement limits the bank's responsibility in compensating customers in the event of loss of the rented safe.[6] In conclusion, the shortcomings in the Safe Deposit Box lease agreement cause the customer to be the party who loses and does not get proper legal protection. To provide protection to consumers in consumption activities, the government issued Law Number 8 Year 1999 on Consumer Protection (UUPK). One form of protection from the GCPL is the application of the reverse burden of proof as stipulated in Article 22 of the GCPL. With the application of the reverse burden of proof, it is the business actor who must prove the truth in a case. Agreements containing exoneration clauses are also known as agreements that regulate the limitation or elimination of liability. An exoneration clause in an agreement is expected to limit or release one party from legal responsibility.[7] However, the existence of an exoneration clause that absolves one's responsibility for legal consequences may result in the inability to pay compensation because the clause revokes the obligation to pay compensation. From a legal perspective, the inclusion of an exoneration clause is based on Article 1338 of the Civil Code which states that agreements made between two parties are laws for those who make them. Therefore, an agreement must be valid and fulfil the requirements as stipulated in Article 1320 of the Civil Code.

2 EXCULPATORY CLAUSES THAT CAN HARM CONSUMERS

Exoneration clauses that are detrimental to consumers refer to clauses that significantly favour businesses while placing consumers in a vulnerable position, forcing them to accept the conditions set by businesses. The analogy is with abuse of power which is a form of action that is contrary to the law.

According to Asser Rutten as explained in Mariam Darus Badrulzaman's book, every individual who signs an agreement is responsible for the content of what he or she signs. The act of signing a predetermined agreement form gives rise to the belief that the individual signing it understands and consciously accepts the contents of the signed form.[8] Standard agreements are always drafted by the creditor unilaterally in the contract.

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[6] Nurhilmiyah, N. (2022). Klausula Eksonerasi Pada Perjanjian Pinjaman Online. Acta Law Journal, 1(1). https://doi.org/10.32734/alj.v1i1.10014

[7] Arifin, Moh., Maskur, A., & Noor, A. (2020). Legal protection of KSPPS members in the use of the exoneration clause in Central Java. Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam, 4(1), 17. https://doi.org/10.30659/jua.v4i1.11794

[8] Badrulzaman, Mariam Darus, dkk, 2001, Kompilasi Hukum Perikatan, PT. Citra Aditya Bakti, Bandung. Hlm285

The contract generally includes provisions that limit the creditor's obligations. This provision is known as an exoneration clause. [9]Although it is very detrimental to the debtor, the debtor cannot reject the provision because the contract only offers 2 (two) options, namely to accept it or reject it (take it or leave it). Due to the great need for the contract, the debtor is forced to sign it. This type of standardised contract is known in legal literature as a dwang contract.

In Article 1338, paragraph (1) of the Civil Code, one of the tenets regarding freedom of contract asserts that any legally established agreement holds binding force akin to law for the involved parties. Under this principle, parties possess the liberty to:[10]

a. Have the option to either engage in or abstain from forming an agreement.

b. Engage in a contractual arrangement with any chosen party.

c. Decide the specifics of the agreement, including its provisions, execution, and conditions.

d. Decide on the format of the agreement, whether it is documented in writing or agreed upon orally.

Determine the form of the agreement, whether it is written or oral. From the above explanation, it can be seen that contract making is often done unilaterally, which results in questions regarding the extent to which the principle of freedom of contract is fulfilled in standardised contracts.

The insertion of exoneration clauses within standard agreements often arises from an imbalance in the parties' positions, typically where the creditor holds a more dominant or superior position. This situation reflects the characteristics of exploiting circumstances. Concerning the validity criteria of an agreement, the exploitation of circumstances is regarded as a type of volitional defect. The Supreme Court of the Republic of Indonesia, in cases numbered 1904K/Sip/1982 dated 28 January 1984 and numbered 3431K/Pdt/1985 dated 4 March 1987, has established the exploitation of circumstances as a manifestation of a volitional defect. When the party establishing terms in a standard agreement, including an exoneration clause, engages in the exploitation of circumstances,

[9] Rohaya, N. (2018). PELARANGAN PENGGUNAAN KLAUSULA BAKU YANG MENGANDUNG KLAUSULA EKSONERASI DALAM PERLINDUNGAN KONSUMEN. Jurnal Hukum Replik, 6(1), 23. https://doi.org/10.31000/jhr.v6i1.1116

[10] Salim HS., (2010). Hukum Kontrak Teori dan Teknik Penyusunan Kontrak, Sinar Grafika, Jakarta, Hlm. 26.

it renders the agreement unable to meet the mutually agreed conditions, thereby failing to fulfill the prerequisites for agreement validity.[11]

> "*Agreement refers to the harmony between two wills that are expressed in mutual agreement. In the context of a standard agreement containing an exoneration clause where the terms are only set by one party, it makes the will and expression of will of the other party formed without any opportunity to negotiate on the terms that have been set. Making an offer to change the standard terms will be interpreted as a rejection of the agreement*."[12]

The government's initiative to safeguard parties in a less advantageous position involves the implementation of Law Number 8 of 1999 on Consumer Protection (UUPK). Article 18 of this law encompasses specific prohibitions regarding the utilization of standard clauses within documents or agreements, including:

1. Business actors are prohibited from including standard clauses in documents or agreements if:[13]

a. The clause assigns the responsibility of the business actor.

b. States the right of the business actor to refuse the return of goods by consumers.[14]

c. States the right of the business actor to refuse a refund of the money paid by the consumer for the goods or services purchased.

d. Giving authority from consumers to business actors to take unilateral actions related to goods purchased in instalments.

e. Regulate the proof of the loss of benefits of goods or services purchased by consumers.

f. Giving the right to business actors to reduce the benefits of services or consumer assets that are the object of buying and selling services.

g. Stating the obligation of consumers to submit to new rules set unilaterally by business actors when consumers utilise the services.

h. Stating that the consumer authorises the business actor to impose a lien, pledge, or security right on goods purchased in instalments.

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[11] Yuwafi, R. Y., Nachrawi, G., & Miharja, M. (2022). Klausula Eksonerasi Dari Perspektif Asas Kebebasan Berkontrak Dan Asas Keadilan Studi Kasus Putusan Kasasi Nomor 8/K/PDT/2013. JURNAL HUKUM PELITA, 3(1), 78–101. https://doi.org/10.37366/jh.v3i1.1047
[12] Bernadetha. (2021). Hukumnya Mencantumkan Klausul Eksonerasi dalam Perjanjian. Jurnal Hukum Online
[13]https://konsumencerdas.id/en/klinik-hukum/law-of-inclusion-of-exoneration-clauses-in-agreement/ulasan-lengkap
[14] Lusita, L., Widiarty, W. S., & Tobing, G. L. (2022). Legal protection for consumers related to standard clauses according to law number 8 of 1999 concerning consumer protection. International Journal of Law, 8(2), 7–13. Retrieved from http://repository.uki.ac.id/id/eprint/9100

2. The prohibition also applies if the standard clause is difficult to see, unclear, or difficult to understand.

3. Any standard clause that violates these provisions is declared null and void.

4. Business actors are required to adjust standardised clauses that conflict with the GCPL.

Based on this provision, exoneration clauses that transfer responsibility from the business actor in a standard agreement will be considered null and void. An act is declared null and void because its cancellation comes from the law, so that the act is considered to have never occurred legally.[15]

3 FORMS OF CONSUMER PROTECTION AGAINST THE APPLICATION OF HARMFUL EXPONERATION CLAUSE

An exoneration clause is part of an agreement that relieves one party of its obligation to pay damages, either partially or fully, in the case of a breach of contract or unlawful act. Although this clause limits or absolves one party's liability, there are questions regarding the liability mechanism that can be implemented under an exoneration clause, particularly regarding the liability of business actors to consumers who suffer losses.

In the context of consumer protection according to Article 1 point 1 of Law Number 8 Year 1999 on Consumer Protection, the following principles apply:

a. Principle of Benefit: This principle emphasises that all efforts to protect consumers must provide the maximum benefit for the interests of consumers and business actors as a whole.

b. Principle of Fairness: This principle aims to ensure maximum participation for all people and provide fair opportunities for consumers and business actors to obtain their rights and obligations.

c. Principle of Balance: This principle is intended to create a balance between the interests of consumers, business actors, and the government in both material and spiritual terms.

[15] R.Setiawan, Pokok-Pokok Hukum Perikatan, Bina Cipta, Bandung, 1977, hlm. 123

d. Principle of Consumer Safety and Security: This principle aims to provide guarantees for the security and safety of consumers in the use, use, and utilisation of goods and services that they consume or use.

e. Principle of Legal Certainty: This principle ensures that both businesses and consumers comply with the law and obtain justice in the implementation of consumer protection, while the state guarantees legal certainty.

Article 3 of Law Number 8 Year 1999 on Consumer Protection sets out several objectives in consumer protection which include:

a. Increasing Consumer Awareness, Capability, and Independence: This objective is to increase consumers' understanding, skills, and capacity to protect themselves.

b. Raising the Honour and Dignity of Consumers: Achieve this goal by preventing consumers from using goods and services that have a negative impact.

c. Enhancing Consumer Empowerment: Giving consumers the ability to choose, determine, and demand their rights as consumers.

d. Creating a Consumer Protection System Based on Legal Certainty and Information Disclosure: Aims to create a system that provides legal guarantees and access to information for consumers.

e. Raising the Awareness of Business Actors of the Importance of Consumer Protection: This aims to change the attitude of business actors to be more honest and responsible in providing services to consumers.

f. Improving the Quality of Goods and Services for Consumer Safety and Health: Aims to improve the quality of products or services offered to consumers, so as to provide better security, comfort, and safety.

Considering the principles and aims outlined in Law No. 8/1999 concerning consumer protection, the delineation of both consumer rights and responsibilities and those of businesses engaged in transactions involving the sale of goods and provision of services to consumers is also provided.[16]

Consumers who experience losses possess the entitlement to hold businesses accountable for the incurred losses. Accountability, in this context, entails the responsibility of the party at fault to bear the consequences of their actions, and those

[16] Rendra Topan.Hukum Positif Indonesia. Asas Dan Tujuan Perlindungan Konsumen Menurut Undang-Undang. Hlm 2

actions can be challenged or litigated. Should business entities fail to meet their obligations, they must assume the risks stemming from their actions and can, if necessary, face scrutiny or legal action. When consumers feel aggrieved, they retain the right to lodge complaints and seek recompense from businesses. Conversely, businesses are duty-bound to accept complaints and fairly compensate consumers. The avenues for compensation available to business entities encompass various approaches, such as issuing refunds, replacing goods or services that do not meet consumer expectations, providing healthcare, or offering compensatory measures in line with Article 19, paragraph (2) of the Consumer Protection Law. This compensation is required to be disbursed within seven days from the transaction date with the consumer, as per Article 19, paragraph (3) of the Consumer Protection Law. According to Kristiyanti in her book on Consumer Protection Law, this type of compensation is intended to reinstate the previous condition that was compromised or damaged due to the utilization of goods or services not meeting consumer expectations or requests. The liability of business entities, which includes exemption clauses, adheres to absolute liability, based on the principle of absolute responsibility. This principle is commonly implemented because consumers are perceived to be in a disadvantaged position. Under this principle, business entities are mandated to be accountable for the losses endured by consumers as a result of using the products they offer.[17]

In Law No. 8/1999 on Consumer Protection (Consumer Protection Law), Article 19 paragraph (1) regulates the responsibility of business actors for losses and damages suffered by consumers due to consumption of goods or services by providing compensation. Although the Consumer Protection Law does not provide a direct definition of an exoneration clause, the term refers to agreements with terms of limitation or elimination of liability, as explained earlier. An exoneration clause is an agreement that involves various conditions related to the authority of one party, in this case, the producer, to shift its liability or responsibility for products that may cause harm to consumers.[18] This clause seems to remove the burden of responsibility imposed by laws and regulations through certain conditions stated in the agreement. According to Henri P. Panggabean, an exoneration clause is a form of agreement that has conditions related to

[17] Athallah Zahran Ellandra. (2021). Konsumen Dirugikan Pelaku Usaha? Kenali Dulu Klausula Eksonerasi dan Bentuk Tanggung Jawabnya. Hlm. 1

[18] Prematura, A. M., & Suryani, S. (2023). Consumer Protection Against Standard Clauses in Business Transactions Through E-Commerce. Pena Justisia: Media Komunikasi Dan Kajian Hukum, 21(2). https://doi.org/10.31941/pj.v21i2.2709

the transfer of authority of one party, here, the producer, to its obligations or responsibilities for products that have the potential to harm consumers.[19]

The terms and conditions that have been prepared and determined in advance by business actors are included in a document or agreement that is binding and must be obeyed by consumers. This type of agreement is known as a standard or standard agreement that applies en masse to all debtors or consumers without considering the differences in situations between one consumer and another. Article 18 paragraph (1) of the Consumer Protection Law prohibits business actors from including standard clauses in documents or agreements with the following content:

usiness actors are not allowed to include standard clauses in documents or agreements if:

a. Shifts the responsibility of the business actor.

b. Give the right to business actors to refuse to return goods purchased by consumers.

c. Give the right to the business actor to refuse to refund the money paid by the consumer for the goods or services purchased.

d. Give power of attorney from consumers to business actors to take unilateral actions related to goods purchased in instalments.

e. Determine evidence of the loss of benefits of goods or services purchased by consumers.

f. Give the right to business actors to reduce the benefits of services or consumer wealth that are the object of sale and purchase.

g. Determine that consumers are subject to new rules, additions, extensions, or changes made unilaterally by business actors during the consumer's use of the service.

h. Authorise business actors to enforce liens, pledges, or guarantees on goods purchased by consumers in instalments.

Business actors are prohibited from including standard clauses that are difficult to see, unclear to read, or difficult to understand.

Any standard clauses that have been regulated by business actors in documents or agreements that fulfil the provisions in paragraphs (1) and (2) shall be declared null and void. Business actors are required to adjust standard clauses that conflict with this Law.

[19] Amad Mirudan dan Sutarman Yodo, Hukum Perlindungan Konsumen, Raja Grafindo Persada, Jakarta, hal.117

The existence of an exoneration clause in a standard agreement is declared null and void based on these provisions. However, to cancel the exoneration clause in a standard agreement requires the awareness of consumers who feel aggrieved to file a lawsuit for cancellation. The role of the government, especially through the Consumer Dispute Resolution Agency (BPSK), is also important in supervising the inclusion of standard clauses so that the protection provided is proactive, not just reflective. Article 62 Paragraph 1 of the Consumer Protection Law also confirms sanctions for violators who include exoneration clauses in agreements, with a maximum imprisonment of 5 years or a maximum fine of Rp 2,000,000,000.00.[20]

Based on the case examples above, the implementation of consumer protection law does not seem to be running optimally. Therefore, it is necessary to revise the consumer protection law regarding the provision of the inclusion of an exculpatory clause in a standard agreement. This is because there is still discretion for business actors in shifting responsibility for losses suffered by consumers. Standard agreements containing exoneration clauses must be declared void and must not be used by business actors in making standard agreements. This is important considering that such agreements can harm consumers, do not fulfil their rights, and can release business actors from responsibility for the losses incurred.[21]

4 CONCLUSSION AND RECOMMENDATION

An exculpatory clause that is detrimental to consumers describes a situation where the clause clearly benefits the business while at the same time weakening the position of consumers and forcing them to accept the conditions set by the business. Analogously, this is similar to an abuse of power which is an unlawful act. A standard agreement is usually drafted by the creditor unilaterally in a contract, where the contract often contains conditions that reduce the creditor's obligations, known as an exoneration clause. The form of responsibility of business actors in a standard agreement containing an exoneration clause, as a whole, can be declared void by a judge if there is a standard agreement containing an exoneration clause. In this case, business actors are fully responsible for the losses suffered by consumers. The responsibilities of business actors

[20] Dewa Ayu Ariesta.et.al. Perlindungan Konsumen Terhadap Klausula Eksonerasi Dalam Perjanjian Baku Perusahaan Jasa Pengiriman Barang. Laporan Hasil Penelitian. Fakultas Hukum Universitas Udayana. Hlm.4.

[21] Jein Stevany Manumpil. (2016). Klausula Eksonerasi Dalam Hukum Perlindungan konsumen Di Indonesia. Laporan Hasil Penelitian.hlm. 40

in various aspects, starting from Article 19 to Article 28, also include obligations related to standard agreements containing exoneration clauses.

There is a need for government supervision of business actors when they make standard agreements containing exoneration clauses, so that consumer rights are fully fulfilled and provide the necessary legal protection for consumers. There is a need to revise Article 18 of the Consumer Protection Law because this article still gives businesses the discretion to enter into standard agreements containing exculpatory clauses.

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