

Consumer Protection Due to Disclaimer Clause in Internet Site

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Abstract: A unilateral agreement that contains a transfer of responsibility or known as a disclaimer clause is deemed to be in conflict with the provisions of Law No. 8 of 1999 concerning Consumer Protection in article 18, an agreement which contains limits on responsibility is also contrary to the law of agreements where this is considered to have deviated or there is no compliance or conformity with one of the conditions for the validity of an agreement, namely "a legal cause", besides this having a negative impact on legal development and the health of the economy, law enforcement should be more detailed and firm regarding this matter. This research aims not to ignore a provision and as an enlightenment for legislative institutions to focus more on problems that are often overlooked, especially on law enforcement. The formulation of the problem is about the nature of the disclaimer clause according to contract law, consumer protection law and its impact in the future for business actors and consumers as a form of material or basic knowledge of legal certainty and the impact of the inclusion of the disclaimer clause. The method used in research is a type of normative legal research. The validity of an agreement according to the Civil Code must fulfill the four conditions stated in article 1320 of the Civil Code. The inclusion of standard clauses on internet sites remains based on the law of agreements in the Civil Code. Meanwhile, the inclusion of unilateral agreements on internet sites in consumer protection law is considered valid as long as it does not violate the rules in article 18. In conclusion, there is no truth in the inclusion of a disclaimer if viewed from consumer protection law, and in assessing the meaning and definition of a disclaimer which is clearly against the rules, its inclusion is considered does not conform to the requirements in article 1320 of the Civil Code regarding the existence of a legal cause. The impact of including the disclaimer clause will result in legal problems for consumers and business actors as well as a lack of justice.

Keywords: Consumer Protection, Disclaimer Clause, Law of Agreement



Abstrak: Suatu perjanjian sepihak yang mengandung pengalihan tanggung jawab atau dikenal dengan istilah klausul disclaimer dianggap telah bertentangan dengan ketentuan dari Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen pada pasal 18, perjanjian yang isinya membatasi suatu tanggung jawab ini juga bertentangan dengan hukum perjanjian yang dimana hal ini dianggap telah menyimpang atau tidak adanya kepatuhan maupun kesesuaian pada salah satu syarat sahnya suatu perjanjian yaitu suatu sebab yang halal, disamping hal ini berdampak buruk bagi perkembangan hukum maupun jalannya kesehatan perekonomian, penegakan hukum semestinya lebih detail dan tegas lagi terhadap hal tersebut. Adapun di dalam penelitian ini, penelitian ini bertujuan untuk tidak mengabaikan suatu ketentuan serta sebagai pencerahan bagi para lembaga legislatif untuk lebih fokus juga pada masalah yang sering terabaikan terkhusus pada penegakan hukumnya. Rumusan permasalahan ialah mengenai bagaimana hakikat klausul disclaimer menurut hukum perjanjian, hukum perlindungan konsumen serta dampaknya dimasa mendatang bagi pelaku usaha serta konsumen sebagai bentuk bahan ataupun dasar pengetahuan terhadap kepastian hukum serta dampak mengenai pencantuman klausul disclaimer tersebut. Penggunaan metode pada penelitian ialah jenis penelitian hukum normatif. Sah nya suatu perjanjian menurut KUHPerduta haruslah dengan terpenuhinya empat syarat yang tercantum dalam pasal 1320 KUHPerduta, pencantuman klausula baku dalam situs internet tetap didasarkan pada hukum perjanjian dalam KUHPerduta. Sedang dicantumkannya perjanjian sepihak pada situs internet dalam hukum perlindungan konsumen dianggap sah selagi tidak melanggar aturan pada pasal 18. Kesimpulannya, tidak ada kebenaran dalam dicantumkannya disclaimer jika ditinjau dari hukum perlindungan konsumen, dan didalam menilai arti maupun definisi disclaimer yang jelas menentang aturan, pencantumannya dianggap tidak menyesuaikan syarat pada pasal 1320 KUHPerduta terkait adanya sebab yang halal. Dampak pencantuman klausul disclaimer tersebut akan berakibat pada problematika hukum yang hadir pada konsumen dan pelaku usaha serta tidak adanya keadilan.

Kata Kunci: Perlindungan Konsumen, Klausul *Disclaimer*, Hukum Perjanjian

A. Introduction

The term standard clause (one-sided agreement) has actually existed since ancient Greece, in a buy and sale transaction where the seller determined the food's price unilaterally without paying attention to the quality of the food. In its development, standard clauses (unilateral agreements) are increasingly developing in line

with the needs of society, not just covering price, but more detailed conditions are also listed in a standard clause ¹.

The purpose of making a unilateral agreement is to provide an easier alternative for each party concerned. Therefore, starting from this vision, the definition of a standard agreement is the expression of the contents of the agreement in a form.²

The development of the current era of globalization is becoming increasingly rapid, triggering a lot of progress in various fields, including the economic sector in Indonesia. In line with economic development which is progressing, it cannot be separated from the aspect of buying and selling goods. Along with this, the use of various kinds of services via the internet is also experiencing more rapid progress as consumers are looking for convenience by exploring the world using the system device. Technological advances have created a connection between one individual and others, and they have even provided a wider and more open reach to various layers of the world of society, wherever and whenever. ³Especially at this time, the era of globalization has even made technological progress a *prestige* and a major indicator of the progress of a country where technology

¹ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, 7th ed. (Jakarta: Sinar Grafika, 2018), 138.

² Mariam Darus Badruzaman, *Perjanjian Kredit Bank* (Bandung: Citra Aditya Bakti, 1991), 58.

³ Daryanto Setiawan, "Dampak Perkembangan Teknologi Informasi Dan Komunikasi Terhadap Budaya," *JURNAL SIMBOLIKA Research and Learning in Communication Study* 4, no. 1 (2018): 62.

provides many conveniences and various new ways of carrying out human activities.⁴

The positive impact that occurs with the increasingly rapid emergence of *e-commerce* is that it makes it easier for consumers to find something they need and this activity does not even have any restrictions regarding space and time. However, from the positive impact, there are also negative impacts related to various aspects, starting from the security aspect when carrying out transactions, which will definitely have a close relationship with the existence of certainty in the legal realm.⁵

Apart from these various things, when consumers make transactions on internet sites, it is not uncommon for there to be a one-sided agreement in which the business actor is the party who includes it and this becomes an obstacle for consumers to complain when the goods ordered are not suitable. An example quoted in CNN Indonesia news (9/22) "*By uploading a video from the TikTok Bagoes Vlog account, he shared a 02.11 second video entitled 'Package Fraud'. Bagoes, the account owner who often shares moments of delivery of goods, was seen sending a customer's online order. However, he was surprised, the order description said digital rice cooker but the item he sent was only paper covered with a brown folder.*"⁶ As an example and fact, this case continues to develop through various *e-commerce applications*, such as in the Steptavi case in 2022, which was blocked by the

⁴ Muh David Balya Al, "Kemajuan Teknologi Dan Pola Hidup Manusia Dalam Perspektif Sosial Budaya," *Tuturan: Jurnal Ilmu Komunikasi, Sosial Dan Humaniora* 1, no. 3 (2023): 3.

⁵ Abdul Halim Barkatullah, *Hukum Transaksi Elektronik Di Indonesia : Sebagai Pedoman Dalam Menghadapi Era Digital Bisnis e-Commerce Di Indonesia* (Bandung: Nusa Media, 2017), 89.

⁶ "Viral Modus Penipuan COD Di TikTok, Kiriman Tak Sesuai Pesanan," n.d.

seller when the goods ordered arrived but were not suitable or there were still shortages; or in a recent case, relying *on the code* for electronic goods via an application but what came instead was only a small package which clearly did not match the order. Most business actors actually include clauses that contains a *disclaimer* made by business actors to consumers to avoid losses and to limit the rights and obligations of an agreement and legal action. The inclusion of this is usually called a *disclaimer clause*, the business actor initially has responsibility for the thing or item until it reaches the consumer, but after *the disclaimer clause is introduced*, this has turned into a responsibility that has shifted to consumers. So the negative impact is that consumers cannot submit complaints or returns when something or goods purchased are not as expected because they are limited by the *disclaimer clause* included by the business actor.⁷ This phenomenon is actually becoming more widespread because standard agreements provide practicality for the parties involved in the agreement. Although there have been many critical highlights from legal experts regarding the weakness in accommodating the positions of the parties because there is no room for negotiation on the part of the consumer to express an agreement in the deal.⁸

The inclusion of a *disclaimer clause* seems to be mandatory for business actors who can freely transfer their responsibilities in order to provide legal protection for themselves to avoid losses and claims from consumers. Meanwhile, consumers themselves are greatly disadvantaged when the goods that arrive in their hands do

⁷ Heni Pratiwi, "Analisis Yuridis Klausul Disclaimer Oleh Pelaku Usaha Pada Situs Jual Beli Online (e-Commerce)," *Indonesian Private Law Review* 1, no. 1 (2020): 43.

⁸ Nizla Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen," *JHR (Jurnal Hukum Replik)* 6, no. 1 (2018): 2.

not match the reviews listed. When submitting complaints or returns, consumers are limited by the *disclaimer clause* included by the business actor. *Disclaimers* are included by business actors without any negotiations being carried out with consumers first, with this being something that consumers cannot oppose when they feel they have been disadvantaged. Therefore, obligations and responsibilities that were originally on the part of the business actor will be freely transferred to consumers simply by including a *disclaimer clause*.⁹ Substantively, in article 1337 of the Civil Code regarding legal principles that can be used as a material requirement to determine whether or not a standard contract is valid, contains irregularities or things that result in an imbalance to the detriment of one party. Article 1337 of the Civil Code contains limitative provisions that provide a prohibition on contracts whose contents or causes are prohibited by law.¹⁰

In contract law, the will of the parties which is manifested in the form of an agreement is a binding basis for an agreement in contract law. This is what is hereinafter referred to as the principle of freedom of contract. The will in question can be expressed in various ways, whether verbally or written and is binding on the parties with all legal consequences.¹¹ However, in standard clauses, agreements or wishes that are made with the inclusion of various kinds of certain conditions are only made by one party. A standard agreement is similar to an *adhesion agreement* in that the nature of the

⁹ Ni Putu Ria Dewi Marheni, "Perlindungan Hukum Bagi Konsumen Berkaitan Dengan Pencantuman Disclaimer Oleh Pelaku Usaha Dalam Situs Internet (Website)," *Jurnal Magister Hukum Udayana* 3, no. 1 (2014): 2.

¹⁰ Jein Stevany Manumpil, "Klausula Eksonerasi Dalam Hukum Perlindungan Konsumen Di Indonesia," *Lex Privatum* 4, no. 3 (2016): 37.

¹¹ Suharnoko, *Hukum Perjanjian: Teori Dan Analisa Kasus* (Jakarta: Kencana, 2014), 3–4.

agreement depends on one party's interest in agreeing and canceling it. As a second party or consumer in entering into this agreement, they do not have the opportunity or can have only a small opportunity to negotiate or even change the clauses that have been made unilaterally by the business actor. Often one-sided agreements or standard clauses are usually very one-sided, because as a consumer or second party to the standard agreement do not have much opportunity or even no opportunity at all to negotiate and are only in a position *to take it or leave it*.¹²

In the Civil Code, an agreement can be considered valid if it meets the 4 conditions in article 1320 of the Civil Code, by fulfilling the 4 conditions in the form of an agreement, skills, certain things and a lawful cause, then the agreement is considered valid and legally binding on the parties who made it. ¹³And in article 1338 paragraph (1) of the Civil Code states that all agreements made legally are valid as law for those who make them. ¹⁴However, in sales and purchase agreements, especially sales and purchase transactions carried out online (*e-commerce*), the agreement made is by using standard clauses (one-sided agreements) where the business actor makes the agreement while the consumer does not have the opportunity to negotiate or in the case of Consumers only have two choices; agree or not.

In article 1 number 10 of Law no. 8 of 1999, the definition of a standard clause is every provision, rule or condition that has been prepared, made or determined in advance unilaterally by the business actor, which in this case is then outlined in a document or detailed binding agreement and this becomes obligations that must

¹² Wawan Muhwan Hariri, *Hukum Perikatan: Dilengkapi Hukum Perikatan Dalam Islam* (Pustaka Setia, 2011), 341–42.

¹³ Hariri, *Hukum Perikatan: Dilengkapi Hukum Perikatan Dalam Islam*.

¹⁴ Hariri.

be fulfilled by consumers.¹⁵In the law , article 18 paragraph (1), regulates the prohibition on the inclusion of standard clauses whose contents do not comply with the provisions. In this case it is called a transfer of responsibility (*disclaimer clause*). The inclusion of a *disclaimer clause* is usually to provide legal protection for business actors and avoid liability so that consumers cannot make claims or returns for goods they have purchased.¹⁶

In a standard agreement, the main principles of contract law must also be taken into account, namely: the principle of agreement between the wishes of the parties, the principle of risk assumption by the parties, the principle of the obligation to read , and the principle of customary contracts/agreements.¹⁷

A clause in an agreement that releases or limits the liability of one of the parties if an act of default occurs. This responsibility actually belongs to the business actor and should be borne by him. This is what then becomes a problem and is better known as the exoneration clause, which in Dutch is known as *exoneratie clausule* . And in the legal principles of consumer protection and in relation to the legal existence of standard agreements which have been determined in article 18 of Law no. 8 of 1999. In its provisions, standard clauses are prohibited by threatening to be null and void for things that occur, one of which contains a statement that transfers a business actor's responsibility.¹⁸

The difference between a unilateral agreement and the principle of freedom of contract is still a matter of debate among legal

¹⁵ Hariri.

¹⁶ Janus Sidabalok, *Hukum Perlindungan Konsumen Di Indonesia* (Bandung: Citra Aditya Bakti, 2014), 21.

¹⁷ Sidabalok, *Hukum Perlindungan Konsumen Di Indonesia*.

¹⁸ Hariri, *Hukum Perikatan: Dilengkapi Hukum Perikatan Dalam Islam*.

scholars, some accept it and some reject it, but the existence of this difference does not mean that the existence of a unilateral agreement is lost, this agreement was born out of necessity.¹⁹ Many studies that only focus on the principle of freedom of contract are not able to break the existence of unilateral agreements if legally the agreement still meets the four legal requirements in contract law. However, what is actually more problematic is whether the agreement meets the requirements as an agreement or is it the opposite.

From the explanation regarding the regulation of agreements in the Civil Code and regarding the inclusion of standard clauses in the UUPK, the existence of 4 conditions for the validity of an agreement and the principle of freedom of contract in the Civil Code is certainly an obstacle for the UUPK in enforcing applicable law regarding the inclusion of *disclaimer clauses* which are prohibited by the UUPK.²⁰

Thus, it can be seen that in practice the existence of an agreement is not all based on one rule or law, various kinds of rules which are even born out of necessity in society often become contradictory, especially in terms of agreements, between the Civil Code and UUPK it is very clear that differences regarding standard clauses or *disclaimer clauses*. If in the Civil Code business actors are deemed to be able to obtain legal protection in the inclusion of standard clauses, then the opposite is true in the UUPK.²¹

¹⁹ Yanti Malohing, "Kedudukan Perjanjian Baku Kaitannya Dengan Asas Kebebasan Berkontrak," *Lex Privatum* 5, no. 4 (2017).

²⁰ Niru Anita Sinaga, "Implementasi Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Mewujudkan Keadilan Para Pihak," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 1 (2018): 45.

²¹ Dicki Nelson, "Apa Itu Klausula Eksonerasi Dan Keabsahannya Dalam Perjanjian," *Hukumonline.com*, 2024.

This paper has a difference between previous papers regarding *disclaimer clauses*. Previous research only focused on violations of one regulation, namely consumer protection law, whereas in this paper it also focuses on applicable contract law as well as the challenges and impacts on the existence of existing regulations has come into force and is considered legally valid, which is a very important thing as a form of protection and conformity to norms in society.

B. Method

This research is normative legal research. Namely research whose nature is to conduct an assessment of legal issues and at the same time provide a description of what should be done.²²The type of normative legal research is a research whose nature is to examine legal issues and at the same time provide descriptions of what should be done.²³ This research is to place the law as a building system of norms. Then, a legislative approach was used to find out the form of legal protection for consumers as well as setting appropriate clauses for business actors by referring to the applicable laws and regulations. Next, it uses a conceptual approach (*conceptual approach*), namely by referring to legal principles put forward by legal scholars or various legal doctrines relating to the inclusion of *disclaimer clauses*. And then collecting primary legal materials whose nature is authoritative, then primary legal materials and tertiary legal materials. The approaches used in this research are the statutory approach (*Statute Approach*) and the conceptual approach (*conceptual approach*).

C. Research Results

²² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2021), 141.

²³ Marzuki, *Penelitian Hukum*.

1. Disclaimer Clause According to Contract Law

An agreement is an event where someone makes a promise to another person or two people make a promise to each other to do something. The agreement is the most important source that gives birth to a deal.²⁴ The existence of an agreement that gives rise to a deal is an act in which the parties bind themselves to each other.²⁵ Article 1338 of the Civil Code states that all agreements made legally apply as law to those who make them. This has the meaning of being binding and becomes a basis for making demands for those who do not voluntarily comply.²⁶

In the context of standard agreements, basically what is used as the legal basis is not explicitly found in the Civil Code. Book III of the Civil Code adheres to an open system, in which the parties are given the freedom to carry out any legal relationship contained in an agreement, provided that the agreement does not conflict with law, public order and morality.²⁷

Validity of an agreement is binding and is valid as law when several appropriate conditions are met as stated in the applicable laws and regulations. As for a condition that states the validity of

²⁴ R. Subekti, *Hukum Perjanjian*, XI (Jakarta: Intermedia, 1987), 1.

²⁵ Abdul Atsar, "KEDUDUKAN JAMINAN FIDUSIA DALAM PERJANJIAN PEMBIAYAAN KONSUMEN DITINJAU DARI HUKUM EKONOMI ISLAM DAN HUKUM POSITIF DI INDONESIA," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 16, no. 1 (2022): 142.

²⁶ Edi Krisharyanto, "Anatomi Suatu Perjanjian," *Jurnal Perspektif* 10, no. 1 (2005): 35.

²⁷ Erlita Kusumawati, "ANALISIS YURIDIS KLAUSULA EKSONERASI YANG MENGAKIBATKAN SENGKETA KONSUMEN (Studi Kasus Putusan Mahkamah Konstitusi Nomor 23/PUU-XX/2022 Dan Putusan Nomor 527/PDT. G/2019/PN. JKT. PST)," *Jurnal Hukum Kenotariatan Otentik's* 5, no. 2 (2023): 162.

an agreement stated in article 1320 of the Civil Code, it can be said to be valid if four (4) conditions are met, they are the existence of an agreement, agreement, regarding certain matters, and the cause being lawful. These four conditions are divided into two, namely subjective and objective conditions. The first and second conditions are subjective conditions, because they concern the people or parties who in this case are referred to as the subjects or parties entering into an agreement. Meanwhile, the third and final condition is an objective condition, because it is related on the agreement itself or which is the object of the legal action carried out.²⁸The elements of an agreement were initially grouped into two elements, namely *essential elements* and *non-essential elements*. However, recently these elements have become better known as three elements of *essentialia*, *accidentalialia* and *naturalia*.²⁹

One legal act that can bind two people or two parties in law is an agreement. In *Burgerlijk Wetboek*, the view is that an agreement is a sign of a legal relationship where someone makes the basis of it a promise, the parties are obliged to carry out the promise once it is valid, then other people have the right to sue regarding the implementation of the obligations in the promise.³⁰ Furthermore, *Information Technology in E-Commerce* is a general term for digital technology which has the function of making things easier or helpful in human life to communicate, store, process changes and disseminate information. The development of information and

²⁸ Kusumawati, “ANALISIS YURIDIS KLAUSULA EKSONERASI YANG MENGAKIBATKAN SENGKETA KONSUMEN (Studi Kasus Putusan Mahkamah Konstitusi Nomor 23/PUU-XX/2022 Dan Putusan Nomor 527/PDT. G/2019/PN. JKT. PST).”

²⁹ Kusumawati.

³⁰ Wirjono Prodjodikoro, *Azaz-Azaz Hukum Perjanjian* (Bandung: PT. Eresco, 1989), 7.

communication technology is considered very rapid in all aspects, starting from social, economic and cultural aspects which are significant and take place in a fairly fast and short time. One of the reasons for this increase in changes attitudes and behavior as well as civilization that occurs in society if seen globally is the development of information and communication technology, especially when the Covid-19 pandemic broke out, almost all activities were transferred automatically via online media.³¹

Instrument relating to information technology is law number 11 of 2008 *jo* law number 19 of 2016. This law is a regulation of electronic information systems and various transactions, not limited to certain things, but covers all aspects in this domain. One of the legal acts in this case is the use of computers, computer networks or with other electronic media.³²

The validity of a contract/agreement in the electronic world is stated in article 18 paragraph (1) of the ITE Law "that every electronic contract will be binding on the parties carried out through electronic transactions", the guidance of this article is still on the law of agreements regarding the bindingness of the parties whose terms are regulated in article 1320 of the Civil Code. The regulations in the ITE Law also have legal force and consequences in regulating electronic signatures, which apply by fulfilling terms and conditions that do not violate the law.³³

³¹ Atikah Mardhiya Rohmy, Teguh Suratman, and Arini Indah Nihayaty, "UU ITE Dalam Perspektif Perkembangan Teknologi Informasi Dan Komunikasi," *Dakwatuna: Jurnal Dakwah Dan Komunikasi Islam* 7, no. 2 (2021): 313.

³² Rohmy, Suratman, and Nihayaty, "UU ITE Dalam Perspektif Perkembangan Teknologi Informasi Dan Komunikasi."

³³ Rohmy, Suratman, and Nihayaty.

Simply put, it is an agreement regulated in Article 1313 of the Civil Code, namely the parties who bind themselves in an agreement. In the *e-commerce system* itself, the use of digital data that binds business actors and consumers is a written agreement.³⁴

The freedom that the parties have according to article 1338 of the Civil Code has been violated because there is a unilateral agreement where the weak party is only required to obey and accept it, this makes the standard clause a coercive contract (*dwang contract*). Standard clauses have a characteristic that is considered same, all consumers who are attached to business actors in this case all still have the same conditions and this is included in one of the benefits of the contract, and one of the forms of standard clauses is that it must be clear and easy for consumers to read and understand and the clause is included in the agreement which is permissible or does not violate the law.³⁵

In *e-commerce agreements*, the clauses included by business actors actually contain limitations of responsibility which are formed in *the disclaimer clause*, also known as the principle of responsibility with limitations, where the principle is to delegate responsibility to consumers. The responsibility of the business actor will be transferred to the consumer in its entirety due to the existence of a *disclaimer clause* included by the business actor on its website. The manifestations of *the disclaimer clause* include that when a default occurs, the difference in position between the parties becomes a limitation for the weaker party in how to compensate, lawsuits and

³⁴ Pratiwi, "Analisis Yuridis Klausul Disclaimer Oleh Pelaku Usaha Pada Situs Jual Beli Online (e-Commerce)."

³⁵ Mariam Darus Badruzaman, "Kompilasi Hukum Perikatan Cetakan Kedua" (PT Citra Aditya Bakti, Bandung, 2016), 143.

demands from the weaker party are given a time limit and this gives freedom to the stronger party.³⁶

Article 1338 of the Civil Code in paragraph 3 states "Every agreement must be carried out in good faith". The principle of good faith can be applied in situations where the agreement has fulfilled certain conditions, so that this actually cannot protect parties who suffer losses in the pre-contract stage or at the negotiation stage in the implementation of the agreement, because at this stage the agreement still does not fulfill based on classical theory in contract law.³⁷

The Disclaimer Clause tends to be one-sided because business actors and consumers have an unequal position. This kind of position tends not to involve consumers in negotiations regarding an agreement, or in other words, the consumer does not have the authority to determine the contents of the agreement. The existence of a *disclaimer clause* is often considered inconsistent with the provisions contained in Article 1320 of the Civil Code regarding one of the conditions for the validity of an agreement, namely reaching an agreement between the parties, but some also argue that consumers still have the option not to make transactions on sites that include the *disclaimer clause*. There is an opportunity for consumers and there is a right for consumers not to carry out transactions on the site. To be clear, another opinion says that the agreement reached between business actors and consumers is that when consumers decide to buy goods and/or services on the site, then the conditions are valid. An agreement in article 1320 of the Civil Code is deemed fulfilled and applies as law for the parties. Consumers have an obligation to comply with the

³⁶ Pratiwi, "Analisis Yuridis Klausul Disclaimer Oleh Pelaku Usaha Pada Situs Jual Beli Online (e-Commerce)."

³⁷ Suharnoko, *Hukum Perjanjian: Teori Dan Analisa Kasus*.

issues of the standard agreement because they are considered to have agreed.³⁸

In drafting an agreement that is considered fair and balanced, it is usually necessary to apply important principles that must be the basis of the agreement.³⁹ Regarding the principle of freedom of contract in the Civil Code, especially in terms of agreements that adhere to the principle of freedom of contract, the principle of good faith, the principle of consensualism, the principle of legal certainty and the principle of personality. And each of these principles certainly has its own meaning, but they are still related to each other and are equally important in concluding an agreement.⁴⁰

The principles in contract law have their own meaning and significance, so that in implementing an agreement, the parties always apply them well in order to create good legal relations. These principles are the principle of good faith as stated in article 1338 of the Civil Code in paragraph 1 3, the agreement must be implemented in good faith. The principle of consensualism has a conclusion in article 1320 paragraph (1) of the Civil Code, agreement for those who bind themselves.⁴¹ The principle of legal certainty, this principle is usually also referred to as the principle of *pacta sunt servanda* as stated in article 1338 of the Civil Code in article 1, The application of the law to the parties is made by

³⁸ Suharnoko.

³⁹ Fiona Wiananda Adhyaksanti and Kadek Wiwik Indrayanti, "Ratio Decidendi Penafsiran Klausula Eksonerasi Dalam Perjanjian Baku Di Indonesia," *KRTHA BHAYANGKARA* 17, no. 1 (2023): 176.

⁴⁰ Adhyaksanti and Indrayanti, "Ratio Decidendi Penafsiran Klausula Eksonerasi Dalam Perjanjian Baku Di Indonesia."

⁴¹ Adhyaksanti and Indrayanti.

adapting the applicable law⁴². The consequences for the application of the principle of freedom of contract can be analyzed from the provisions in article 1338 of the Civil Code in article 1, all agreements made in accordance with the law apply as law to those who make them.

The public certainly continues to hope that the strictness of the law must always be upheld in implementation related to law, especially in universal principles that *apply* in contract law, namely principles freedom of contract. Due to the determination of jurisdiction and the applicability of these principles as well determined from the strictness of the enforcing law. There is the principle of freedom to choose the applicable law. However, in reality there are differences that really explain the freedom of business actors to close a transaction first before preparing the details of the agreement which will be printed or detailed on their sales stall. Even worse and worse, standard clauses actually provide a lot of protection for business actors who often misuse their authority and rights in making unilateral agreements. By transferring the responsibility that was originally to the business actor and automatically transferred entirely to the consumer. So, whether we want it or not, consumers are unaware or conscious when they really need to make a transaction on a website that contains a *disclaimer clause*. Consumers are required to comply and fulfill the contents of this clause. Whether we realize it or not, this has provided a limitation on the implementation of the principle of freedom of contract from its implementation in order to provide

⁴² Helena Primadianti Sulistyningrum and Dian Afrilia, "Klausula Baku Dalam Perspektif Asas Kebebasan Berkontrak Ditinjau Dari Undang-Undang Perlindungan Konsumen," *Simbur Cahaya* 27, no. 1 (2020): 123.

room for negotiation regarding the contents of the agreement that can be accepted by the other party.⁴³

From the explanation above, the existence of a *disclaimer clause* when viewed from contract law still raises many question marks regarding the incompatibility of the prohibitions regarding the inclusion of *disclaimer clauses* with the laws contained in contract law. The existence of standard clauses that give higher authority to business actors and are deemed to weaken one party (consumers) actually clearly violates the rules regarding the prohibition on including *disclaimer clauses* as contained in Law No. 8 of 1999. The freedom that one has regarding the legal binding that is to be implemented does not actually result in the right to have the freedom to contract or carry out an agreement according to one's wishes. This can also be considered not to be considered contradictory because as a consumer, you still have the right to refuse by not choosing to make a transaction on a site that contains a *disclaimer clause*. There is not yet a sufficiently firm explanation of standard clauses that weaken one party and give higher authority to another party. So far, when viewed and reviewed from the contract law itself, the prohibition on *disclaimer clauses* in contract law is not clearly explained in line with the prohibition stated in article 18 of the UUPK. The fact that the inclusion of a *disclaimer* on an internet site is also contrary to contract law, even though the consumer still has the opportunity in the realm of the principle of freedom of contract, namely to agree or not, the inclusion of the *disclaimer clause* still deviates from the legal terms of the agreement, one of which is that the cause must be halal.

Several principles in contract law are applied when someone wants to enter into a legal relationship in determining an

⁴³ R M Panggabean, "Keabsahan Perjanjian Dengan Klausul Baku," *Jurnal Hukum Ius Quia Iustum* 17, no. 4 (2010): 2.

agreement, including the principle of freedom of contract, among previous research. Many people think that the same standard clause does not apply the principle of freedom of contract because consumers do not have the opportunity to negotiate regarding transactions to be carried out on internet sites. With the principle of freedom of contract still being applied, consumers still have the opportunity to reject or accept it. However, whether the agreement made is valid or not still depends on the contents of the rules in contract law, one of the conditions of which is that it must be based on reasons that are considered halal. This means that the contents and contents of the agreed agreement do not deviate from social norms and applicable laws. Consumer rights apply according to the consumer protection law and are contained in article 4 of the Consumer Protection Law. However, with this disclaimer, the applicable rights cannot be applied at all by consumers to obtain their right to compensation if the product they purchase does not match what is stated on the site. The existence of a *disclaimer clause* does not provide an opportunity because the responsibility that originally belonged to the business actor has been transferred to the consumer since the consumer is deemed to agree with the contents of the agreement in other words (*checkout*) on the site. And the application of the principle of justice cannot be seen in this problem.⁴⁴

Then, in terms of the validity of the agreement, the inclusion of standard clauses which still contain *disclaimers* is not in line with the applicable law, because what is lawful in the applicable conditions cannot be considered to have been implemented. Because with the inclusion of a *disclaimer clause*, the rules in article 18 UUPK are not complied with and are actually violated. An agreement cannot be separated from the application of the principle of good faith. If the

⁴⁴ Panggabean, “Keabsahan Perjanjian Dengan Klausul Baku.”

agreement violates the provisions of article 18 UUPK then it is not impossible that the agreement is deemed not to comply with this principle.⁴⁵

2. Disclaimer Clause According to Consumer Protection Law

Consumer protection is a form of realization of the implementation of protection for consumers where this is done with every effort which provides a guarantee of legal certainty in force in Indonesia. Increasing the quality of business products and services which in their development can produce superior and competitive value whether marketed at home or abroad is a reason for the existence of laws that have a positive impact the. The presence of consumer protection laws has a significant impact on the business world. As for the current definition of consumers, it is not limited to individuals, but can also be legal entities or corporate agencies, which in this case are categorized as users or users of facilities, whether goods and/or services.⁴⁶

The principles and rules that regulate and have the nature of protecting things that are of interest to consumers are a definition of consumer protection law. And the principles and rules in this law provide legal regulations which contain all legal interactions in the realm of ties and problems that occur between parties that are directly related to goods and services to consumers.⁴⁷

Various principles that apply in legal protection for consumers are listed in article 2 of Law Number 8 of 1999, among which are

⁴⁵ Anggitariani Rayi Larasati Siswanta, "Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian Standar Yang Mengandung Klausula Eksonerasi Tanpa Menerapkan Asas Itikad Baik," *Jurnal de Jure* 15, no. 1 (2023): 466.

⁴⁶ Adrian Sutedi, *Tanggung Jawab Produk Dalam Hukum Perlindungan Konsumen* (Bandung: Ghalia Indonesia, 2008), 1.

⁴⁷ Sutedi, *Tanggung Jawab Produk Dalam Hukum Perlindungan Konsumen*.

the principles of benefit, justice, balance, security and safety and also legal certainty. From here, the difference is like a coin with two sides but attached to each other. Among the differences between these sides is that one side is the consumer while the other side is the business actor, which makes it impossible to use only one side. This is the same as legal protection for consumers.⁴⁸

Consumers have rights, broadly speaking these rights are divided into 3 parts, including rights that prevent harm to consumers, whether personal or non-personal harm, then the right to obtain goods and services at an appropriate exchange rate or price or within reasonable limits, as well as the right to obtain a problem resolution if a dispute or problem arises that he or she faces as a consumer inclusion of consumer rights in article 4 of Law Number 8 of 1999.⁴⁹

The presence of *the disclaimer clause* was motivated by the birth and enactment of standard clauses in the economic world, long before the enactment of laws regulating consumer protection. These points of thought are increasingly advanced and comprehensive, which is why it is very good to review and relate them to the standard clause arrangements in the laws that are currently in effect.⁵⁰ The presence of standard clauses is a possibility that gives rise to the inclusion of clauses where the essence of the content can be to carry out an action to limit

⁴⁸ Rizka Syafriana, "Perlindungan Konsumen Dalam Transaksi Elektronik," *De Lega Lata: Jurnal Ilmu Hukum* 1, no. 2 (2016): 438.

⁴⁹ Abdul Halim Barkatullah, "Urgensi Perlindungan Hak-Hak Konsumen Dalam Transaksi Di e-Commerce," *Jurnal Hukum Ius Quia Iustum* 14, no. 2 (2007): 256.

⁵⁰ David M L Tobing, *Klausula Baku: Paradoks Dalam Penegakan Hukum Perlindungan Konsumen* (Gramedia Pustaka Utama, 2019), 1.

liability, which is carried out by the business actor, also called an exoneration clause or *disclaimer clause*.⁵¹

The Consumer Protection Law defines the standard clause in article 1 number 10 "every rule or provision and conditions that are prepared and determined in advance unilaterally by business actors which are stated on a form/document or in an agreement that provides bonds and obligations to be fulfilled by consumers". The emphasis is on unilateral creation, and this does not include the content. The problem with *the disclaimer clause* is not just reference only in its creation, also regarding the suitability of the content which does not challenge norms, such as not containing limitations on the responsibilities of each party.⁵²

The emergence of standard clauses which were the trigger for the birth of *disclaimer clauses* is not something to be blamed, because standard clauses were born because of an urgent need in society. This situation, which is too much exploited by business actors, is about the importance of awareness of the implementation of obligations and the legal limits that should be applied are too underestimated and become a situation that is most exploited to avoid losses and even places pressure on the responsibility that is shifted to the consumer, which in turn is even greater known as the problematic *disclaimer clause*. Business actors, with the authority they have regarding the right to make agreements unilaterally, actually abuse this situation, in which case consumers are considered victims in the conditions created by business actors because of the inclusion of *a disclaimer clause*. Many things are

⁵¹ Kusumawati, "ANALISIS YURIDIS KLAUSULA EKSONERASI YANG MENGAKIBATKAN SENGKETA KONSUMEN (Studi Kasus Putusan Mahkamah Konstitusi Nomor 23/PUU-XX/2022 Dan Putusan Nomor 527/PDT. G/2019/PN. JKT. PST)."

⁵² Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen."

prohibited in standard clauses if they result in something that is not acceptable to the parties or one of the parties, for example resulting in losses. The problem *with the disclaimer clause* is that consumers are increasingly complaining about it because if there is a loss, the consumer cannot receive their rights and in fact the legal certainty that applies is only a rule that is not applied at all.⁵³

Law no. 8 of 1999 article 18 paragraph 1 letter (a), it is prohibited to create or include standard clauses in every document and/or agreement if it states the transfer of responsibility of the business actor. The prohibition on the inclusion of *disclaimer clauses* by business actors is clear in the applicable regulations, and again in paragraph (3) of article 18 of the Consumer Protection Law, it is stated that every standard clause that has been stipulated by business actors in documents or agreements meets the provisions as intended in paragraph (1) and (2) are declared null and void by law. Then in paragraph (4) it is also stated that business actors are obliged to adjust standard clauses that conflict with the law.⁵⁴

Violation of the provisions of article 18 is a cause that makes a binding agreement null and void and when the losses incurred do not result in consumers not even receiving proper compensation. The rules of the Consumer Protection Law do not apply regarding consumer rights in article 4 point 3, the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services. And in number 8, the right to receive compensation, compensation and/or replacement, if the goods

⁵³ Rohaya.

⁵⁴ Republik Indonesia, “Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen (LN. 1999/ No. 22, TLN NO. 3821)’ (1999) Pasal 18.” (1999).

and/or services received do not comply with the agreement or are not as they should be.⁵⁵

Then the position of *the disclaimer clause* by the business actor is deemed not to conform to what has been regulated in Law number 11 of 2008.⁵⁶ Law number 11 of 2008 in article 15 paragraph (1) letter e which states that every electronic system operator has a mechanism that continuously to maintain the novelty, clarity and accountability of procedures or instructions, and paragraph (2) of the applicable provisions in accordance with paragraph 1 is further regulated by government regulations.⁵⁷

One of the legal acts that uses the internet as a computer or network or through the use of other media is in the provisions of article 1 paragraph 2 of the ITE Law. And business via the internet is also one of the manifestations of the rules stated in this article. Meanwhile, when carrying out online transactions, each person has an attachment when carrying out a correlation of rules, which is then stated in an online agreement and synchronizes the provisions of article 1 paragraph 17 of the ITE Law. Then electronic buying and selling transactions (*e-commerce*) usually have their own characteristics compared to ordinary trading, the special characteristic in *e-commerce* is usually being able to carry out

⁵⁵ Republik Indonesia, “Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen (LN. 1999/ No. 22, TLN NO. 3821)’ (1999) Pasal 4.” (1999).

⁵⁶ Pratiwi, “Analisis Yuridis Klausul Disclaimer Oleh Pelaku Usaha Pada Situs Jual Beli Online (e-Commerce).”

⁵⁷ Republik Indonesia, “Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik (LN.2008/NO.58, TLN No.4843, LL SETNEG: 25 HLM)” (n.d.) Pasal 15;” (2008); Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik (LN 2024 (1), TLN (6905): 21 Hlm)” (n.D.).” (2024).

transactions without certain restrictions when carrying out transactions, *e-commerce* has a wider domain reaching all corners of the world.⁵⁸ However, this is regulated in the provisions of article 38 of the ITE Law and consumers can also report losses they receive to the minister as this is also stated in the provisions of article 18 of PP No. 50 of 2019 which will be followed up further if business actors or site operators on the application do not complete the report. Business actors or site operators will be included in the monitoring priority list.⁵⁹

The absence of special rules regarding *disclaimer clauses* means that the substance of the inclusion of *disclaimers* falls within the realm of standard agreements according to consumer protection law.⁶⁰ When viewed in the Consumer Protection Law,⁶¹ the inclusion of a *Disclaimer* is generally categorized as an *exoneration clause*. Inclusion *The Disclaimer Clause* according to the provisions of consumer protection law is declared to be contrary to article 18 and is considered null and void. This refers to or is based on the Consumer Protection Law, the existence of a *disclaimer clause* is

⁵⁸ I Putu Yogi Krisna, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti, "PERLINDUNGAN HUKUM TERHADAP KONSUMEN AKIBAT KERUGIAN YANG DITIMBULKAN OLEH PELAKU USAHA TOKO ONLINE DI FACEBOOK," *Jurnal Preferensi Hukum* | ISSN 2746 (n.d.): 28.

⁵⁹ Actaviani Carolina Laromang Putri, "TINJAUAN YURIDIS TERHADAP KLAUSULA BAKU DALAM SYARAT DAN KETENTUAN APLIKASI ONLINE E-COMMERCE" (Universitas Atma Jaya Yogyakarta, 2020).

⁶⁰ Marheni, "Perlindungan Hukum Bagi Konsumen Berkaitan Dengan Pencantuman Disclaimer Oleh Pelaku Usaha Dalam Situs Internet (Website)."

⁶¹ Rachmat Taibu, "Pencantuman Disclaimer Dalam Transaksi E-Commerce Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Akademika Jurnal* 17, no. 1 (2020): 23.

contrary to the applicable regulations. Unilateral agreements (standard clauses) are present to meet the needs of the community and this is considered invalid or null and void by law.

3. Setting the Disclaimer Clause on Internet Sites in the Future

Changes and developments have been experienced by various countries, including Indonesia. The changes and developments behind the use of various forms of agreements cannot be separated from the influence of technology. And the influence of this development provides freedom for everyone to determine their position.⁶²

The presence of a *disclaimer clause* in the economic world has an unhealthy impact on future economic developments for consumers. This becomes a compulsion when you cannot make another choice other than agreeing with the contents of the clause because of the circumstances that sometimes form the basis. For business actors, this may free them from responsibility and from the losses they will incur. Deepening the meaning of contract law, consumer protection law, and the ITE Law, the inclusion of a *disclaimer clause* actually makes the situation worse for both consumers and business actors. Because if this continues to be allowed without being expressly prevented and dealt with, it will increase the number of losses experienced by consumers and more disputes will occur between business actors and consumers. In Indonesian contract law, there is no clear prohibition regarding the inclusion of standard clauses. Consumer protection law number 8 of 1999 in article 18 paragraph (1) which further clarifies the prohibition on including this *disclaimer clause*. And violations of the

⁶² Marcel Seran and Anna Maria Wahyu Setyowati, "Penggunaan Klausula Eksonerasi Dalam Perjanjian Dan Perlindungan Hukum Bagi Konsumen," *Jurnal Hukum Pro Justitia* 24, no. 2 (2006): 2.

UUPK still result in the nullity of the agreement that has been made.⁶³

Restrictions on the use of clauses containing transfer of responsibility are necessary and highly necessary to provide protection for parties in weak positions, taking into account statutory principles, principles of contract law and jurisprudence. The use of a *disclaimer* clause that does not take into account these limitations is used as a basis for filing a lawsuit against the party charged with responsibility as a means of freeing himself from losses he should not have experienced by declaring the contract to be canceled or null and void by law.⁶⁴

D. Conclusion

From this discussion, *clause A disclaimer* is a mandatory limitation of responsibility that a business actor has, which is transferred due to the inclusion of a standard transfer clause. The rules in article 1320 of the Civil Code provide confirmation and conditions for the validity of a legal act in the form of a binding agreement, where one of these conditions is that it must be for a lawful reason or not violate applicable rules, the *disclaimer clause* is clearly deviant and cannot be considered subject to applicable norms. Article 18 of the Consumer Protection Law provides more detailed confirmation that standard clauses whose content, location or intent is to limit or transfer responsibility cannot be considered valid and can be declared null and void .

The impact of including *a disclaimer* is not very positive for economic development and legal certainty for the parties, because

⁶³ Dauri Dauri and Nadya Waliyyatunnisa, "Akibat Hukum Terhadap Penerapan Klausula Eksonerasi Dalam Perjanjian Baku," *Humani (Hukum Dan Masyarakat Madani)* 10, no. 1 (2020): 107.

⁶⁴ Made Sarjana, "Pembatasan Klausula Eksonerasi," *NOTARIAL Jurnal Kenotariatan* 1, no. 1 (2016): 127.

the validity of the agreement and the rules in legal protection are not implemented properly and only provide benefits for one party and cause losses for the other party.

Regulations regarding restrictions on the use of *disclaimer* clauses containing transfer of responsibility are very much needed to provide protection for parties in weak positions, by paying attention to statutory principles, legal principles of agreements and jurisprudence that provide balance between the parties involved in the transaction.

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