



## Consumer Protection Law Study: A Case Study of Ternate City

Wahda Zainal Imam; Husen Alting; Suwarti

Universitas Khairun Ternate, Indonesia

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### **Abstract**

In essence, the position of business actors and consumers has not been balanced since the beginning. Business actors have the ability to know the ins and outs of producing goods and providing services that exceed the level of consumer knowledge and also the ability to capitalize and a higher bargaining position. The imbalance that occurs in the contractual relationship between consumers and business actors is indicated by the number of unilateral agreements (standard contracts) that sometimes give and harm consumers. Seeing the characteristics of a standard agreement above, it is clear that a standard agreement tends to be more beneficial to the entrepreneur because the form and especially the content guarantees the legal interests of the entrepreneur and the consumer only approves and signs the agreement offered by the entrepreneur. Consumers are still entitled to legal protection in accordance with the Consumer Protection Law even though Business Actors take cover behind a disproportionate contractual relationship.

**Keywords:** *Consumer Protection; Agreements; Law; Ternate; Indonesia*

### **Introduction**

Since the promulgation of Law Number 8 of 1999 concerning Consumer Protection (UUPK) which was enforced by the government. Currently, there are still many weaknesses in its implementation, especially in terms of guaranteeing consumer rights and resolving consumer disputes. The more advanced the economic development of a country which also has an impact on the development of Industry and the world economy, the more it needs legal instruments that regulate and protect consumer rights in order to create a balanced business climate between consumers and business actors.

In essence, the position of business actors and consumers has not been balanced since the beginning. Business actors have the ability to know the ins and outs of producing goods and providing services that exceed the level of consumer knowledge and also the ability to capitalize and a higher bargaining position. The imbalance that occurs in the contractual relationship between consumers and business actors is marked by the number of unilateral agreements (standard contracts) which sometimes give and harm consumers (Ahmadi Miru dan Suratman Yodo, 2011). An unbalanced position will create a situation where consumers must simply accept the agreement that has been prepared by the business actor

or if they do not accept it, the consumer will not get the goods and / or services needed (take it or leave it) (Ahmad Miru, 2000).

In accordance with the constitution, the state is obliged to protect all its citizens, create general welfare, and create a just and prosperous society. One form of protection is the establishment of UUPK. In order to ensure this goal is achieved, the state intervenes in the contractual relationship between consumers and business actors. In UUPK article 2 it is explicitly stated that: "consumer protection is based on benefits, fairness, balance, security and consumer safety, as well as legal certainty" in particular the principle of balance is intended to provide a balance between the interests of consumers, the interests of business actors and the interests of the government in a material and spiritual. In addition, the UUPK also aims to increase the dignity of consumers by fostering awareness of consumer knowledge and concern for protecting themselves.

Consumer Protection is an integral part of healthy business activities. In healthy business activities, there is a balance of legal protection between consumers, business actors and the government, the absence of balanced protection causes consumers to be in a weak position. Even more so if the products produced by a business actor are of a limited type of product, the business actor can abuse his monopolistic position. This of course is detrimental to consumers (Ahmadi Miru, 2011).

The condition of consumers who suffer a lot of losses, requires increased efforts to protect them so that consumer rights can be upheld. On the other hand, it should also be noted that in providing protection to consumers, it is not permissible to kill the business of the business actor, because the existence of a business actor is also essential in the country's economy. Therefore, the provisions that provide protection to consumers must also be balanced with provisions that provide protection to business actors, so that consumer protection does not reverse the position of consumers from a weak position to a stronger one, and vice versa, a weak producer (H. Una Kartawisastra, 1980).

The desire to realize consumer protection law efforts in Indonesia has existed since the 1980s. This effort was only realized in 1999 with the issuance of Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Law. The promulgation of the Consumer Protection Law on April 20, 1999, gave a new spirit to empower consumers in Indonesia and put consumer protection into the order of the national legal system (Husni Syawali dan Neni Sri Imaniyati, 2000).

In the explanation of this law it is stated that, in the future there is a possibility for the formation of a new law which basically contains provisions that protect consumers, thus all consumer rights and all instruments that can be used to enforce these rights can be fully recognized. and can be implemented in an integrated and comprehensive (comprehensive) manner. This law is a legal basis that can integrate and strengthen the enforcement of consumer protection laws in Indonesia. The government together with the community and the Non-Governmental Organization for Consumer Protection (LPKSM) are the parties assigned the task of conducting supervision. In addition to the implementation of consumer protection and the application of statutory provisions by the community, supervision is also carried out on goods / services circulating in the market (Husni Syawali dan Neni Sri Imaniyati, 2000).

This reality shows that consumer protection practices (Das Sein) are still different from what should be (das solen) as stipulated in the provisions of the Consumer Protection Act and other related regulations. The difference between the two poles gives rise to an issue (issue). In the explanation of this law it is stated that, in the future there is a possibility for the formation of a new law which basically contains provisions that protect consumers, thus all consumer rights and all instruments that can be used to enforce these rights can be fully recognized. and can be implemented in an integrated and comprehensive (comprehensive) manner. This law is a legal basis that can integrate and strengthen the

enforcement of consumer protection laws in Indonesia. The government together with the community and the Non-Governmental Organization for Consumer Protection (LPKSM) are the parties assigned the task of conducting supervision. In addition to the implementation of consumer protection and the application of statutory provisions by the community, supervision is also carried out on goods / services circulating in the market (Mansur Isna, 2001). Namely: "This consumer protection practice does not reflect the balance value in an effort to realize this does not reflect the balance value in an effort to realize people's welfare". Thus, this issue is very interesting to be questioned and then analyzed in depth through this research (Arfian Setiantoro, 2016).

Based on the background description, the formulation of the problem is found, including: What are the responsibilities of the parties (consumers, business actors and the government) so that they can create a balance in Consumer Protection? and how are the efforts of the government, consumer protection institutions, consumer dispute resolution, and supervision of the use of standard contracts that can support the realization of a balance in consumer protection?

### ***Research Methods***

This research is an empirical research or better known as normative juridical research using a statute approach and a case approach. Data collection techniques that researchers use in this research through library research, field studies and documentation studies. The data collection is classified into two parts, namely primary data and secondary data, primary data is obtained through field studies and secondary data is obtained from literature studies.

The results of the field study inventory were analyzed to obtain conclusions and then analyzed using an integrative and conceptual analysis method that tends to be directed to find, identify, process, and analyze legal materials to understand their meaning, significance, and relevance. The results of the analysis are used as a means to draw conclusions from the research results.

### ***Results and Discussion***

#### **A. The responsibility of the parties (consumers, business actors and the government) in creating a balance in consumer protection.**

In the explanation part of UUPK article 1 point 3 states that "business actors included in this definition are companies, corporations, BUMN, cooperatives, importers, traders, and distributors. Departing from this definition, the business actor has a fairly broad meaning because it includes wholesalers, retailers and so on. understanding the breadth of business actors in the UUPK, of course, will make it easier for consumers to demand compensation. Consumers who use products will have no trouble finding to whom the claims will be filed, because there are many parties that can be sued (Desy Ary Setyawati, 2017).

Business actors covering various forms / types as meant in the UUPK, should determine the order in which consumers should sue when they are harmed by the business actor. The sequence is as follows (Sindy Ch. Sondakh, 2014): *First, the first party to be sued is the business actor who made the product if it is domiciled in the country and the domicile is known to the consumer. Second, if the product that is detrimental to consumers is produced abroad, the importer will be sued, because the UUPK does not cover business actors abroad. Third, if the producer or importer of a product is unknown, then the one being sued is the seller from whom the consumer bought the item. The above sequences of course only*

*apply if a product experiences defects during production, because the possibility of a product being defective when it is out of control or outside the fault of the business actor producing the product.*

The consumer is the object that is intended in the production process. Meanwhile, the term consumer is a formal juridical definition found in Law Number 8 of 1999 concerning Consumer Protection, hereinafter known as UUPK article (1) point 2. The subject mentioned as a consumer in the UUPK is any person who is a user of goods or services. This is very different from the definition of a business actor in the UUPK which clearly separates between the two, with the words of an individual or a business entity, so that as such, the definition of a consumer as contained in the UUPK should not limit the meaning to individuals but also entities effort (Sri Redjeki, 2000).

This is as intended in the sense of business actors. Defining consumers narrowly as well as people who have personal contractual relationships with business actors or sellers is the simplest way of defining consumers (W.J.S. Purwadaminta, 1999). In America, this perspective has been abandoned. Consumers are no longer defined as buyers of goods and / or services, but include non-direct users, as long as they are harmed by the use of a product (Az. Nasution, 1994). As for the terms of goods and / or services as a substitute for the terminology, the UUPK defines goods with every object, whether tangible or intangible, movable or immovable, both consumable and non-consumable, which can be traded, used, used, or utilized by consumers. However, the UUPK does not explain the differences in the terms used, used or utilized. Meanwhile, service is defined as any service in the form of work or performance provided for the community to be utilized by consumers. The understanding provided to the community indicates that the service must be offered to the community.

This means that it must be more than one person. Likewise, services of a special and individual nature are not covered by this definition. The formulation of the word consumer in Article 1 Number 2 UUPK ends with the sentence "... and not for trade." The definition of consumer in this provision only includes born consumers. Such limits are commonly used in consumer protection regulations in various countries. Indeed, theoretically this feels good enough to narrow the scope of the consumer, but in practice it is difficult to establish such boundaries (Gunawan Widjaja dan Ahmad Yani, 2000).

In the author's opinion, consumer boundaries should not be as rigid as those contained in the UUPK. This also shows that the consumer limitations in the UUPK and the consumer rights adopted therein still require further study. This is because there are many groups that are not included as consumers, while they must also be protected, such as legal entities, business entities, goods that are not offered in society and vague boundaries. Basically, previous Islamic jurists never defined the consumer and made it the object of special study. However, if it is returned to the general principles of business in Islam, consumers are defined as "every person, group or legal entity using an asset or service because of a legal right, whether it is used for final use or for the production process (Yusuf Shofie, 2000).

Consumers in Islam are not limited to individuals, but also include a legal entity such as a waqf foundation or certain companies and institutions. The word goods or services in Islamic economic law is briefly referred to as property (al-mâl) because property consists of goods and services. Meanwhile, the sentence "... whether it is used for final use or for the next production process". Thus in Islam there is no difference between end users and medium users or temporary consumers. Islamic jurists also do not differentiate property between consumer goods, production goods and intermediate goods as found in general economics.

This has an impact on the definition of consumers who must be protected in Islam, because consumers in Islam include all users of goods, whether the goods are used directly until they run out or used as an intermediary tool for further production. To make it easier to find out the differences and similarities in the scope of meanings of consumers and business actors, the authors try to put it in the

form of a table as shown below; Scope of Meaning According to what is regulated in the UUPK According to what is regulated in Islamic Law Business Actors Includes individuals and business entities Includes both individuals and business entities Consumers Only individuals Individuals and consumer business entities are limited to end consumers. Intermediate consumers are not included in the definition. Konmeh Consumers are not limited to end consumers or consumers between goods / services already available or have been promoted to the public Consumption All goods either already known to the public or not (H. Mulyadi Nitisusastro, 2012).

Study of Consumer Protection Law in Islamic Law Perspective Rights and Obligations of Consumers and Business Actors as regulated in the UUPK and Islamic Law In the UUPK, the rights and obligations of consumers and business actors are regulated. Based on the nine points of rights granted to consumers which are regulated in the UUPK Article 4, it can be seen that the issue of comfort, security and consumer safety is the main thing in consumer protection. Goods and or services whose use does not provide comfort, especially those that are unsafe or endanger the safety of consumers are clearly not suitable for distribution in the community. Furthermore, to ensure that the use of goods or services will be comfortable, safe or not endanger consumers, consumers are given the right to choose the goods or services they want based on the disclosure of correct, clear and honest information. If there is a detrimental deviation, the consumer has the right to be heard, to get advocacy, guidance, fair treatment, compensation to compensation (Janus Sidabalok, 2006).

Regarding the rights of business actors, it appears that the UUPK which regulates good faith, emphasizes more on business actors covering all stages in carrying out their business activities, so that it can be interpreted that the obligations of business actors in good faith start from the time the goods are designed or produced until the stage of retirement. On the other hand, consumers are only required to have good intentions in the purchase of goods and / or services. This is because the possibility of a loss for consumers begins when the goods are designed by the business actor, while for consumers the possibility of causing harm to the business actor or producer begins at the time of the transaction (Erman Rajagukguk, 2000).

When viewed from Islamic law, the use of the term right itself in Arabic actually occupies many meanings such as provision, certainty, explanation, truth, quota or part, nature and obligation. The term right by Islamic jurists as put forward by Wahbah Zuhaily as quoted by Nurhafni and Sanusi, namely "A special characteristic whereby syara" establishes a power for its owner or an obligation for its object ". This definition includes all rights, including the rights of consumers and business actors. This definition also shows that the source of ownership of rights comes from syara ', because rights in Islamic view are a gift from Allah SWT. Therefore, a right must be determined by syara law 'which regulates it (Nurhasni dan Sanusi Bintang, 2018).

Thus, rights in Islam are not absolute and without limits, but they are bound by having to be in the corridor of provisions. The issue of consumer rights and business actors is included in the section on public rights and human rights. For example, in situations where there are general violations such as monopolistic behavior in trade by business actors, protection rights for humans for their personal benefit, such as safeguarding property, buyers' rights to goods, seller rights to payment instruments. In Islamic economic law, the possibility of violation of consumer rights can occur before the sale and purchase transaction takes place, namely at the time of advertising or promotion.

It could also be when the transaction itself takes place and when the transaction is completed. Therefore, it is at these stages that legal protection should be provided. In the study of Islamic fiqh the truth and accuracy of information when a business actor promotes his merchandise occupies a significant study. Islam does not recognize the term that consumers must be careful or vice versa business actors must be careful. In Islam, the principle of balance applies.

Here, both consumers and business actors must be careful. Among the many consumer rights that have been discussed in the study of fiqh, the authors can attest to the following: (1) The right to obtain correct, honest, fair, educative information and service and avoid counterfeiting; (2) Availability of voting rights and fair exchange rates; to obtain product safety and a healthy environment; (4) The right to obtain advocacy and dispute resolution; (5) The right to receive protection from abuse of circumstances; (6) The right to get compensation for the negative consequences of a product. Based on the above rights, in the study of Islamic fiqh the truth and accuracy of information when a business actor promotes his merchandise occupies a significant study. Islam does not recognize the term that consumers must be careful or vice versa business actors must be careful (Hasan Aedi, 2011).

In Islam, the principle of balance applies. Here, both consumers and business actors must be careful. UUPK Article 18 regulates matters relating to the inclusion of standard clauses or further statements after the initial agreement by business actors regarding a product, which is only done unilaterally. For example, the form of cellular card promotion, which according to the explanation in the advertisement, provides Talk Mania (TM), unlimited calls for only 5000 rupiah. After a period of time when the level of consumers increases, then further information is issued in the form of advertisements or print media with the statement "Talk Mania (TM) is valid only until the specified date."

This is contrary to what is regulated in Islam which can be identified through the *ushûl* rule, namely; Execution that has not been discussed for specificity is not allowed. In this case it means that the conception of Islamic law understands that the contractual relationship of both parties can be considered good, honest, fair and balanced if it knows the nature and conditions of the agreement agreed at the beginning of the transaction or promotion process (general). Because there is no specification in the initial agreement to enforce the product with a certain time limit. In addition, in Islam the product information provided to consumers is not only related to the quantity and quality of an item (UUPK Article 4 letter C), but also related to side effects or dangers of use, belief in certain religions, such as halal or haram information, a product. The risk of using goods is imposed on business actors as the cause of loss because they violate the principle of caution or are arbitrary in the use of rights (Muhammad & Alimin, 2004).

In the matter of fulfilling consumer rights to prices that are not normal in the market, actually Islamic jurisprudence has offered many solutions, namely violations of *ribawi* practices, violations of monopoly and unfair competition. That is the thing concerning consumer rights in Islam. As a form of balance, consumers must also be burdened with obligations which, although not specifically explained, the authors can explain as follows: (1) Good faith in conducting transactions of goods and / or services; (2) Finding information on various aspects of a good and / or service to be purchased or used; (3) Pay according to the agreed price or value and based on mutual willingness, which is realized by the existence of consent and *qabul*; (4) Follow the legal settlement of disputes related to consumer protection. In order to realize consumer protection, in addition to the matters discussed in the previous discussion, this also very much depends on the obligations and responsibilities that business actors must fulfill towards consumers (Muhammad Ali hasan, 2014).

In the provisions of UUPK Article 27 letter (e) it is stated that, business actors producing goods are exempted from responsibility for losses suffered by consumers if; after the prosecution period of 4 years from the time the goods were purchased or the agreed period has passed. In Islam, all actions that can harm one party are not limited by the liability for a period of time as long as the losses incurred are indeed caused by that party, then accountability remains in order to achieve the prevailing principle of balance (Zulham, 2013).

The principles of Islamic law in the responsibility of business actors include the principles of *tauhîd*, justice (*al'adl*), *amar ma'rûf nahiyy munkar*, the principle of independence or freedom (*al-Hurriyah*), the principle of *al-Ta'awwun* (help-help) and tolerance (Najmuddin, 2007). The aim of

avoiding exploitation of humans in Islam is broadly not much different from the objective of the UUPK in Indonesia, namely as a form of protection for consumers (Ahmad Muhammad al Assal, & Fathi Ahmad Abdul Karim, 1999). It's just that the definition of consumers referred to in the UUPK that distinguishes the scope between these two laws. Justice in Islamic law also means a balance between the obligations that must be fulfilled by humans and the human ability to fulfill these obligations. If justice is violated, there will be an imbalance in social life, because one party will be harmed or tormented while the other will benefit.

If the social system is damaged because justice is violated, then surely the whole society will suffer the damage which will affect many people. From several obligations of business actors stipulated in Article 27 of the UUPK, it can be concluded that the negative effects that will arise from these obligations in the event of a violation only include two parties between the consumer and the business actor (Gunawan Widjaja dan Ahmad Yani, 2000). In Islamic ethics in the field of business, an obligation is fulfilled or violated, the result must be with various considerations that not only affect both parties between consumers and business actors but also social and religious involvement.

The social responsibility of business is the implementation of business ethics which includes the production process, distribution of goods and services to environmental preservation from the threat of pollution and so on. Business actors or companies are not only responsible for fulfilling their obligations to meet the immediate needs of consumers, but also need to consider the long-term sustainability of human life and the ecology of the general benefit. As far as the author's discussion of the explanation above is about matters relating to the rights and obligations of consumers and business actors, there are several differences and similarities (Jusmaliani, 2008).

As for the differences and similarities in outline, the authors put it in the following table below; According to what is regulated in the UUPK According to what is regulated in Islam The rights of consumers and business actors are absolutely determined in the Law / UUPK. The rights of consumers and business actors are not absolute and are determined by the rules. The right to information received by consumers is related to the quality and quantity of the product. received by consumers in addition to quality and quantity also includes information on the halalness of a product. Consumer rights in freedom to choose goods are measured at an appropriate exchange rate for a product. Consumer rights in freedom to choose goods, apart from being measured by exchange rates, also consider the rights of other people who first do offers for a product Liability of business actors in good faith starts from the time the goods are designed to the after-sales stage Liabilities of business actors in good faith start from the time the goods are designed to the after-sale stage (Muslich, 2015).

Obligations for consumers in good faith begin when the transaction occurs. Obligations for consumers in good faith begin before the transaction or during the transaction. From all the similarities and differences that the authors put in the table above, it can be seen that all forms of rights for both consumers and business actors in Islam are regulated by syara '. In terms of producing a product in the form of goods or services, the halal and the benefit of the product are highly prioritized.

**B. Government efforts, consumer protection agencies, consumer dispute resolution, as well as supervision of the use of standard contracts that can support the realization of a balance in consumer protection. Government efforts, consumer protection institutions, consumer dispute resolution, and control over the use of standard contracts that can support the realization of balance in consumer protection.**

Consumer Protection for the Use of a Standard Agreement in Law Number 8 of 1999 concerning Consumer Protection Standardized Mass Contract or take it or leave it contract (UK). A standard

agreement is a written agreement that is drawn up without discussing its contents and is usually stated in an unlimited number of agreements which are certain in nature.

A standard agreement is an agreement that becomes a benchmark that is used as a benchmark or guideline for every consumer who has a legal relationship with an entrepreneur. What is standardized or standardized includes the model, formula, and size. Standard agreement is an agreement whose contents are standardized and set forth in the form of a standard agreement, the above meanings of standard / standard agreement can be concluded that a standard agreement is an agreement whose form and content have been standardized which is made unilaterally and en masse, and is used for all. agreement of the same type or an agreement that the manufacturing process does not involve the opposing party / is made unilaterally / is determined unilaterally (M. Syamsudin & Fera Aditias Ramadani, 2018).

The characteristics of a Standard Agreement in the business world, the existence of a standard agreement is a fact that cannot be avoided and is a very dominant thing for the creation of work efficiency of business actors, in the context of the increasingly fast and modern development of business transactions at this time. Therefore, the characteristics of a standard agreement follow and adapt to the demands and developments of the business world itself. The characteristics of the standard agreement raised by Fanny Kurniawan in his paper are, the form of the agreement includes the entire agreement text and proof of agreement documents that contain standard conditions (Badruzaman, M. D. 1990).

The words or sentences of the statement of the will contained in the standard conditions are made in writing in the form of an authentic deed or a deed under hand. Format that includes model, formula, and standardized size. The agreement model can be in the form of a complete form of a written agreement or a form attached with a text of the terms of the agreement, or a document of evidence.

An agreement that contains standard terms. The terms of the agreement (terms) are determined by the entrepreneur, because the terms of the agreement are monopolized by the entrepreneur, so the entrepreneur tends to favor the entrepreneur more than the consumer. 4) The consumer only accepts or rejects: If the consumer agrees, the agreement is signed. The signing shows that the consumer is willing to bear the burden of responsibility, and if he does not agree, the consumer cannot negotiate the terms that have been standardized (Barkatullah, A. H. 2008).

Standard agreements always benefit entrepreneurs. This is because it is designed unilaterally by the entrepreneur, so that it will always benefit the entrepreneur, especially in: efficiency of costs, time and energy; practical because the script is available; fast settlement because consumers only agree and / or sign; homogeneity of the promise made in large numbers; assignment of responsibility. Meanwhile, Mariam Darus Badruzaman stated that the characteristics of a standard agreement are: a) Its contents are determined unilaterally by a party with a strong (economic) position; b) The community (debtor) did not jointly determine the contents of the agreement; c) Driven by their needs, the debtor is forced to accept the agreement; d) Certain form (written); e) Prepared en masse and collectively (Kristiyanti, C. T. S. 2009).

Looking at the characteristics of a standard agreement above, it is clear that a standard agreement tends to be more profitable for the entrepreneur because the form and especially the content guarantees the legal interests of the entrepreneur and the consumer only approves and signs the agreement offered by the entrepreneur. Types of Standard / Standard Agreements Quantitatively there are many standard agreements that live and develop in society (the business world), because business actors (companies) always prepare standard standards in managing their business. Nowadays, in almost all areas where contracts are made, there are standard conditions. Some of the important activities in making agreements contain standard conditions, such as: banking, employment agreements, service delivery sector, trade and commerce, guarantees (mortgage, mortgage, Fiducia), notary practices and others. Mariam Darus Badruzaman which divides the types of standard agreements into four (4) types, namely: Unilateral



standard / standard agreement, namely an agreement whose contents are determined by the party with a strong position in the agreement. Strong parties, namely creditors, generally have a stronger economic position compared to debtors (Muhammad, A. K. 1992).

Protection Agreement standard reciprocity, namely an agreement whose contents are determined by both parties. The two parties are usually bound in an organization, for example in a collective labor agreement (PKB). Standard agreement / standard set by the government, namely a standard agreement whose contents are determined by the government for certain legal actions, for example an agreement with the object of land rights (land sale and purchase deed), an agreement for the procurement of government goods and services.

Standard agreement / standard determined in the notary or advocate environment, namely an agreement that was originally provided to fulfill requests from members of the public who asked for the assistance of the Notary or Advocate concerned. The Strength of Binding Standard / Standard Agreements Even though a standard agreement is in fact required in the practice of the business world, legal scholars have different opinions about the existence of a standard agreement, in the sense that there are those who support it, there are those who object, and some who support it with certain conditions and supervision (Shidarta, 2006).

A standard contract can be accepted based on the fiction of the will and trust (*fictie van wil en vertrouwen*), namely the willingness and trust to bind oneself into the contract. Asser-Rutten, states that a person binds to a standard contract, signs the contract, so that he must be deemed to know, as well as want and therefore be responsible for the contents of the contract. that a standard agreement has legal force based on habit (*gebruik*) in effect in society (Munir Fuady, 2003).

Salim H.S, stated that the emphasis on strength is to tie a standard agreement because of the prevailing habits in society. Basically, the community wants things that are pragmatic in nature, a standard contract is not actually a contract, because the position of the party that makes the contract form has become like a private law maker (*legio particuliere wetgever*). The terms stipulated by the employer in the agreement are laws and not agreements. Pitlo, stated that the standard contract is a forced contract which in Dutch is called a *dwangcontract*.

Zeylemaker in Sudikno Mertokusumo, states that people want (standard agreement), because people feel submissive to a safe arrangement, arranged expertly and not one-sidedly, or because people cannot do other than submit, but people want and people know that people want. Mariam Darus Badruzaman, stated that the difference in the position of the parties when the standard agreement was made did not give the debtor the opportunity to hold real bargaining with the entrepreneur (creditor). The debtor does not have the power to express his will and freedom in determining the contents of the agreement. Therefore, the standard agreement does not fulfill the desired elements in Article 1320 BW jo.338 BW (Muhammad Sadar Makarao, M. T., & Mawadi, H. 2012).

Supporting Parties with Certain Conditions and Supervision Munir Fuady, stated that standard contracts in daily practice cannot be avoided because they are real needs, but on the other hand there are many legal signs that try to limit the validity of these standard contracts, especially if they contain elements injustice. One of the door bars that become a bulwark of defense so that the implementation of standard contracts does not burden one of the parties is the availability of various methods of interpreting contracts which do not favor the standard contract maker (Suardhana, C. V. 2019).

These methods are if there is a conflict between the standard clause and the non-standard clause in a contract, then the non-standard clause that is won is won; the interpretation of the standard clause must be for the loss of the party providing the standard contract (*contra professional*); and the

interpretation of standard clauses is carried out by looking more at the parties' intentions than just looking at the word for word in the contract (historical / teleological interpretation method). To strengthen the above opinions regarding the binding strength of the following standard agreements are known some legal doctrines regarding standard contracts, namely: An Sich Standard Contract Doctrine: if the contract is one-sided, then the contract or part of the contract is null and void or can be canceled. The Doctrine of Willing Agreement of the parties: that the agreement is one of the conditions for the validity of the contract (article 1320 BW) (Susanto, H. 2008).

Non-fulfillment of subjective conditions is the agreement can be canceled. The doctrine of a contract should not conflict with decency: if there is a clause that is deemed contrary to decency, then the contract is considered null and void (article 1337 BW). The doctrine of a contract should not conflict with public order: if there is a clause that is deemed contrary to the element of public order, then the contract is considered null and void (article 1337 BW). The doctrine of injustice (Unconscionability): a contract or clause of a contract must be declared null and void if the clause is very unfair to one of the parties because it will deeply touch the sense of justice or conscience of the people.

Undue Influence: a contract is canceled / can be canceled on the grounds that the contract contains (clauses) matters which constitute improper influence. Contract doctrine according to good faith: a contract that is not made in good faith, then the contract can be considered null and void (article 1338 BW). Lawful causal doctrine: a contract that is made not with a lawful cause, then the contract can be considered null and void (Sutedi, A. 2008).

Consumer Protection for the Use of Standard Agreements in Law Number 8 of 1999 concerning Consumer Protection regulates that the return of money paid for goods and / or services purchased by consumers; 4) states that the power of attorney from consumers to business actors is either directly or indirectly to carry out all unilateral actions relating to goods purchased by consumers in installments; regulate evidence regarding the loss of use of goods or use of services purchased by consumers; give business actors the right to reduce the benefits of services or reduce the assets of consumers which are the object of sale and purchase of services; declare the consumer's submission to regulations in the form of new, additional, advanced and / or further amendments made unilaterally by the business actor during the period when the consumer utilizes the service purchased; states that the consumer authorizes the business actor to impose a mortgage, lien, or security right on goods purchased by consumers in installments (Lenny Rachmad, 2009).

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. Any standard clauses that have been stipulated by business actors in documents or agreements that meet the provisions as referred to in paragraph (1) and paragraph (2) declared null and void. Business actors are obliged to adjust standard clauses that are contrary to this law. The elucidation of Article 18 paragraph (1) of the UUPK states the objective of the prohibition of inclusion of standard clauses, namely that: "This prohibition is intended to place consumers' positions on par with business actors based on the principle of freedom of contract. The mention of standard agreements (standards) is only found in the general explanation of the fourth paragraph of the UUPK, namely: "Consumers become objects of business activities to reap the maximum possible profit by business actors through promotional methods, sales methods, and application of standard agreements that harm consumers".

Likewise, the term exemption clause is not found in the UUPK. The exonation clause is a clause that eliminates or limits responsibility. Although the UUPK does not explicitly mention standard agreements, if you look at the opinion of Yohanes Sogar Simamora which states that the heart of a contract is the clause that is regulated in it (main and supporting clauses), and also according to Salim HS, part of the contents of the structure and anatomy of the contract is a clause -clauses (definition clauses,

transactions, specifics and general provisions clauses), then the standard agreement also contains clauses. So the UUPK regulates in substance (the clauses) not the agreement, because as stated in Article 1 point 10 of the UUPK that standard clauses can be stated in a document and / or a binding agreement and must be fulfilled by consumers. So setting standard clauses can also mean setting standard agreements.

In principle, the inclusion or use of standard clauses is not prohibited except for standard clauses whose contents are detrimental to consumers, and standard clauses that are prohibited, are those containing 8 negative lists (Article 18 paragraph (1) of the UUPK) which are: (1) The contents reduce, limit, eliminating obligations or responsibilities of business actors, and (2) Its contents create obligations or responsibilities imposed on consumers, as well as its location and form (Article 18 paragraph (2) UUPK), namely: (1) Difficult to see, (2) Cannot be read with clear, and (3) the expression is difficult to understand (Desy Ary Setyawati, 2017).

According to Az. Nasution, every condition in the document (purchase receipt, parking bill, washing receipt, delivery receipt, hospital / doctor fee payment receipt and the like), or agreement (bank credit, house purchase, purchase of motorized vehicles or equipment electronics, insurance, and the like) are prohibited from being used as long as they are contrary to the provisions of Article 18 of the UUPK, as well as clauses that are listed with their location and form that are difficult to see or cannot be read clearly or whose disclosures are difficult for consumers to understand.

This opinion is in accordance with the standard clause in article 1 number 10 of the UUPK, namely, in essence, any rules or conditions and conditions that have been prepared and determined unilaterally by the business actor as outlined in a binding and mandatory document and / or agreement. filled with consumers. So the broad coverage includes standard clauses set forth in a document or agreement. In addition to the standard prohibited clauses above, Munir Fuady mentioned that there are several other standard clauses that are usually found in contracts that have the potential to harm consumers so that it needs to be watched out for, namely: clauses stating that they do not provide after-sales guarantees for goods sold, clauses that limit liability in case of default of after-sales guarantees for goods sold, clauses that impose improper proceedings, clauses that remove legal repercussions against the assignee, cross collateral clauses, and clauses transfer of wages / salaries of debtors to creditors (Sutan Remy Sjahdeini, 1993).

Thus the standard of position agreement is recognized and its use is permitted in practice by the UUPK as long as the standard clauses contained therein do not conflict with the UUPK itself. The regulation of standard agreements in the UUPK shows that indeed standard agreements exist and are developing and needed in business practice today, but in accordance with the character of standard agreements that tend to benefit business actors and harm consumers, it is necessary to have more firm and fair arrangements.

Janus Sidabalok (2006) said that the lawmaker (UUPK cursive writer) accepts the fact that the enforcement of contract standards (standards) is a need that cannot be avoided because of the fact that is born from the needs of society. However, it is deemed necessary to regulate it so that it is not misused and or causes harm to other parties. Consumer Protection for the Use of Standard Agreements in Law Number 8 of 1999 concerning Protection of paragraphs (1) and (2) of the UUPK, is null and void, and business actors who have made standard clauses and contradict Article 18 paragraphs (1) and (2) are obliged to change and adapt it to the article. Article 18 paragraph (3) and (4) UUPK reads: Every standard clause that has been stipulated by business actors in documents or agreements that fulfill the provisions as intended in paragraphs (1) and (2) shall be declared null and void by law (Muhammad Umar Kelibia, 2011).

Business actors are required to adjust standard clauses that are contrary to this law. What is declared null and void is the standard clause not the agreement as a whole (Article 18 paragraph (3)

UUPK). However, if the standard clause is related to essential elements that are subject to compelling legal provisions, it is very likely that it will cancel the entire agreement.

## Conclusion

A standard agreement is a living, developing reality and has become a necessity in the practice of the business world, but its validity is still legally debated, due to the character of a standard agreement that better protects the interests of one party. So that differences of opinion arise about the existence of a standard agreement, in the sense that there are those who support it, there are those who object, and some who support it with certain conditions and supervision. Even so, their position is recognized and regulated in consumer protection, in terms of inclusion or use of standard clauses, namely article 18 of the UUPK. the position of the standard agreement is legally valid in the sense that it has binding power for both parties if the inclusion and use of the standard clause does not conflict with / is not prohibited by the Consumer Protection Law (Article 18 UUPK). If it is contradictory, the standard agreement is null and void. This is in order to create a balance between the parties (justice), namely, especially the consumer when dealing with the law with producers or business actors. With regard to standard agreements in daily business practice it is inevitable because it is a real need and in accordance with the purpose of the existence of a standard agreement are reasons of efficiency and practical reasons, but in the inclusion of standard clauses, it is necessary to pay attention to and comply with the provisions of the inclusion of standard clauses regulated in article 18. UUPK and besides that it is hoped that the active role of the agency / agency / institution authorized to supervise and take legal action against the misuse of the inclusion of standard clauses for protection.

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