



Consumer Protection and Legal Effort Related to the Exoneration Clause in Buy-Buying Transactions

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Abstract

The type of research used in this research is normative legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. The exoneration clause applied by the entrepreneur will make consumers who suffer losses due to loss and/or damage to their belongings will think about whom to ask for compensation or even just let the incident finish without further legal action. An exoneration clause is a provision set forth in an agreement, in which one party avoids fulfilling its responsibility in paying compensation in part or in full due to a broken promise or an unlawful act. Under Law No. 8-1999, the application of the exoneration clause will bring legal consequences in the form of null and void.

Keywords: *Consumer Protection; Legal; Exoneration*

Introduction

Legal disputes or disputes between entrepreneurs and consumers have become commonplace in Indonesian society. There are various things that cause legal disputes, one of which is caused by disputes regarding the provisions contained in the agreement between the parties. In addition to inaccuracies in the terms of the agreement, disputes occur because entrepreneurs don't try to provide legal protection to consumers who have a position both psychologically and in a lower economy. (Astuti, n.d.) Legal protection can be interpreted as the protection and recognition of every human right as a legal subject subject based on legal provisions that are binding and apply to all. (Hadjon, 1987)

Consumer protection according to Law Number 8 of 1999 concerning Consumer Protection Article 1 number 1 is "all efforts that guarantee legal certainty to provide protection for consumers". The principle adopted by business actors in carrying out their economic activities is the economic principle, which is to get the maximum profit possible with the minimum possible capital. That is, with this general thought, it is very likely that consumers will be harmed either directly or indirectly. (Sri & Poernomo, 2020)

Regarding the limitation or prohibition on the use of this exoneration clause, we can find it in positive law in Indonesia, namely in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, which reads as follows: "Business actors in offering goods and/or services aimed at being traded is prohibited from making or including standard clauses in every document and/or agreement if: a). Declaring the transfer of responsibility of business actors; b). To declare that business actors have the right to refuse to return goods purchased by consumers; c). To state that business actors have the right to refuse to return the money paid for goods and/or services purchased by consumers; d). To declare the power of attorney from consumers to business actors either directly or indirectly to take all unilateral actions related to goods purchased by consumers in installments; e). Regulates the matter of proving the loss of the use of goods or the use of services purchased by consumers; f). Give rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services; g). Declaring that consumers are subject to regulations in the form of new, additional, continued and/or advanced changes made unilaterally by business actors when consumers use the services they buy; h). Stating that the consumer authorizes the business actor to impose mortgage, lien, or security rights on goods purchased by consumers in installments.

Employers often use exoneration clauses or clauses to transfer responsibility in various forms through agreements, tickets, information boards and so on. An exoneration clause is a provision of an agreement that stipulates the exemption or limitation of certain responsibilities that must be imposed on the entrepreneur. The existence of an exoneration clause is easy to find in the midst of everyday people's activities, such as the inclusion of the phrase "damage to consumer goods is not the responsibility of the manager or entrepreneur". Personal property will think about who to ask to apply for compensation or even allow the incident to be resolved without further legal action. In fact, every entrepreneur who has bound himself to the consumer through a contractual relationship has the responsibility to provide consumer protection and fulfill its performance in accordance with the privacy principle contract. (Setyawati et al., 2017)

Based on the description above, it is interesting to provide an analysis of the Consumer Protection Law related to efforts to transfer the responsibility of entrepreneurs by using the exoneration clause in the perspective of Law Number 8 of 1999 concerning Consumer Protection (Law No. 8-1999) as well as legal efforts made by consumers to get their rights back.

Research Method

The type of research used in this research is normative legal research. (Mamudji, 2011) By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.

Discussion

Standard Clause (Exoneration)

Rijken (*Hukum Kontrak Dan Perancangan Kontrak - Ahmadi Miru - Rajagrafindo Persada*, n.d.) states that the exoneration clause is a clause contained in a contractual relationship with an effort to avoid fulfilling an obligation in the form of compensation either in whole or in part due to a breach of the agreement. In simple terms, this exoneration clause is defined as a clause on the exclusion of obligations or the transfer of responsibility in the agreement.

Sutan Remy (Sjahdeni, 1993) defines a standard agreement as an agreement which indicates that almost all clauses have been standardized unilaterally by certain parties and the other party basically doesn't have the opportunity to negotiate or request changes. Thus, the agreement has the intensity to only

mention and focus on the rights of the stronger party. While the position of the other party was forced to accept the situation because of a weaker position. (Rahman, 2000) In general, standard agreements have several characteristics, including: a). The form is written; b). The format is standard; c). The conditions have been determined by the entrepreneur unilaterally; d). Consumers can only accept or reject; e). Its contents always benefit entrepreneurs.

Law No. 8-1999 doesn't formulate the definition of a standard agreement but uses the term standard clause which according to Article 1 paragraph (10) of Law No. 8-1999 formulated "Standard clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers".

Gunawan Widjaja and Ahmad Yani (Yani, 2000) stated: "Law No. 8-1999 doesn't prohibit business actors from making standard clauses for every document and/or agreement on electronic transactions for trading goods and/or services, as long as and as long as the standard agreement and/or standard clause doesn't include provisions as prohibited in Article 18 paragraph (1), and not "shaped" as prohibited in Article 18 paragraph (2) of Law No. 8-1999." In Law No. 8-1999 the use of standard clauses is not prohibited in principle, but what needs to be worried about is the inclusion of an exoneration clause in the agreement. An exoneration clause is a clause that contains conditions that limit, or even completely eliminate, the responsibility that should be borne by the entrepreneur (seller). (Poernomo, 2020)

The purpose of using standard clauses in business activities is actually to save time in every buying and selling activity, it is very inefficient if every sale and purchase transaction occurs between the seller and the buyer they discuss the contents of the sale and purchase contract. Therefore, a standard contract includes clauses that are generally used in a sale and purchase contract.

In *e-commerce*, the use of standard clauses is absolute. Because in e-commerce the parties don't interact directly but interact using electronic media, one of which is the internet. When a consumer wants to buy an item on a website, the seller/merchant will offer an agreement (*terms and conditions*) that contains the requirements like a general sale and purchase agreement. [11]

This agreement (*terms and conditions*) can be categorized as a standard clause, because the contents of the agreement are determined unilaterally by the seller/merchant. Here the consumer cannot protest the contents of the agreement, because the website that displays the agreement doesn't have the option to change the agreement. Here consumers only have two choices, namely accepting or canceling the order.

Legal Effort

There are three legal remedies that can be taken by consumers to regain their rights which have been harmed by entrepreneurs due to the application of the exoneration clause as a justification for entrepreneurs to transfer these responsibilities, including: a). Resolve the dispute only between the entrepreneur and the consumer; b). File a lawsuit against the entrepreneur through the Consumer Dispute Settlement Agency; or c). File a lawsuit through a court within the General Court. (*Hukum Perlindungan Konsumen Pengguna Rumah Indekost Di Kota Makassar - Dr. Hj. Sri Lestari Poernomo, SH., MH - Google Buku*, n.d.)

Settlement of consumer disputes outside the court is held to reach an agreement on the form and amount of compensation and/or regarding certain actions to ensure that the losses suffered by consumers will not occur again (Article 47 of Law No. 8-1999). Settlement of consumer disputes through non-litigation channels is used to overcome the twists and turns of the court process. In Article 45 paragraph 4 of Law No. 8-1999 states that "if an out-of-court consumer dispute resolution effort has been chosen, a

lawsuit through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the disputing parties". Dispute resolution through non-litigation channels can be reached through NGOs – the Indonesian Consumers Foundation, Directorate of Consumer Protection Disperindag, Consumer Dispute Settlement Agency and business actors themselves.(Makarim, 2005)

Law No. 8-1999 authorizes consumers to claim compensation directly from entrepreneurs for losses suffered by consumers due to goods and/or services produced by entrepreneurs. Article 19 paragraph (3) of Law No. 8-1999 states that: compensation is given by the entrepreneur within 7 (seven) days after the date of the transaction between the entrepreneur and the consumer. However, if the entrepreneur refuses and doesn't fulfill the compensation proposed by the consumer as referred to in Article 19 paragraph (1) to paragraph (4) of Law No. 8-1999, then based on article 23 of Law No. 8-1999, the consumer can sue the entrepreneur through the Consumer Dispute Settlement Agency or to the court at the consumer's place of residence.

Based on Article 45 paragraph (1) and paragraph (2) of Law No. 8-1999, entrepreneurs who harm consumer rights can be sued by consumers through institutions that have the authority to settle disputes between consumers, in this case the Consumer Dispute Settlement Agency. Dispute resolution through the Consumer Dispute Settlement Agency is considered a dispute resolution out of court if it has been agreed upon by the disputing parties. Compensation claims (compensation) submitted through the Consumer Dispute Settlement Agency can only be made by consumers individually or independently. In addition, based on Article 47 of Law No. 8-1999, dispute resolution through this institution is expected to reach an agreement on the form and amount of compensation for losses suffered by consumers due to actions taken by entrepreneurs and to prevent the recurrence of losses suffered by consumers in the future.

Based on Article 52 of Law No. 8-1999 and the Decree of the Minister of Industry and Trade No.350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency, it can be concluded that it has important duties and functions, including: a). The Consumer Dispute Settlement Agency as an institution to resolve disputes between consumers and entrepreneurs out of court (*non-litigation*), by using the mediation method or through the arbitration method. b). The Consumer Dispute Settlement Agency oversees the inclusion of standard clauses (including exoneration clauses) applied by entrepreneurs.

Unfortunately, the decisions made by the Consumer Dispute Settlement Body do not have the executional power as decisions made by the District Courts. Thus, Article 57 of Law No. 8-1999 states that the decision made by the Consumer Dispute Settlement Agency must be requested for an execution decision from the District Court where the consumer is harmed.

Conclusion

The exoneration clause applied by the entrepreneur will make consumers who suffer losses due to loss and/or damage to their belongings will think about whom to ask for compensation or even just let the incident finish without further legal action. An exoneration clause is a provision set forth in an agreement, in which one party avoids fulfilling its responsibility in paying compensation in part or in full due to a broken promise or an unlawful act. Under Law No. 8-1999, the application of the exoneration clause will bring legal consequences in the form of null and void. In addition, to restore the rights of consumers, consumers can claim compensation and recover their rights directly to business actors, Indonesian Consumers Foundation, the Consumer Dispute Resolution Agency, or through the courts. Furthermore, the exoneration clause can be limited or avoided by reviewing the contents of the requirements in the standard agreement and examining the behavior of the parties in an agreement by prioritizing the principle of good faith. Thus, it can be determined whether the inclusion of the classification is in accordance with the values of propriety, principles and norms in contract law in Indonesia.

References

- Astuti, H. D. (n.d.). KENDALA PENYELESAIAN SENGKETA KONSUMEN MELALUI BADAN PENYELESAIAN SENGKETA KONSUMEN (BPSK). *Jurnal Hukum Mimbar Justitia Fakultas Hukum Universitas Suryakencana, Vol 1, No.* <https://jurnal.unsur.ac.id/jmj/article/view/41>
- Hadjon, P. M. (1987). *Perlindungan Hukum Bagi Rakyat Indonesia*.
- Hukum Kontrak dan Perancangan Kontrak - Ahmadi Miru - Rajagrafindo Persada.* (n.d.). Retrieved January 27, 2022, from <https://www.rajagrafindo.co.id/produk/hukum-kontrak-dan-perancangan-kontrak/>
- Hukum perlindungan konsumen pengguna rumah indekost di Kota Makassar - Dr. Hj. Sri Lestari Poernomo, SH., MH - Google Buku.* (n.d.). Retrieved January 27, 2022, from https://books.google.co.id/books/about/Hukum_perindungan_konsumen_pengguna_rum.html?id=vaA4EAAAQBAJ&redir_esc=y
- Makarim, E. (2005). *Pengantar Hukum Telematika*. PT Raja Grafindo Persada.
- Mamudji, S. S. and S. (2011). *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Raja Grafindo Persada.
- Poernomo, S. L. (2020). PERLINDUNGAN HUKUM NASABAH DALAM PERJANJIAN TELEMARKEETING BANK. *Jurnal Hukum & Pembangunan, 49(4)*. <https://doi.org/10.21143/jhp.vol49.no4.2341>
- Rahman, H. (2000). *Legal Drafting: Seri Keterampilan Mahasiswa Fakultas Hukum Dalam Merancang Kontrak Perorangan/Bisnis*. Citra Aditya Bakti.
- Setyawati, D. A., Ali, D., & Rasyid, M. N. (2017). Perlindungan Bagi Hak Konsumen dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik. *Syah Kuala Law Journal, 1(3)*, 46–64. <https://doi.org/10.24815/sklj.v1i3.9638>
- Sjahdeni, S. R. (1993). *Asas Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*. Institut Bankir Indonesia.
- Sri, H., & Poernomo, L. (2020). ANALISIS PERLINDUNGAN HUKUM KONSUMEN PRODUK MAKANAN KEMASAN YANG BEREDAR DI KOTA MAKASSAR. *Gorontalo Law Review, 3(1)*, 40–58. <https://doi.org/10.32662/GOLREV.V3I1.911>
- Yani, G. W. dan A. (2000). *Hukum Tentang Perlindungan Konsumen*. Gramedia.

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