



Exoneration Clauses in Insurance Agreements: An Advantage or Disadvantage for Consumers

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Abstract

The rampant cases of troubled insurance companies in Indonesia, one of which is caused in addition to default due to the use of exoneration clauses contained in insurance agreements, cannot reach. So it is necessary to analyse more deeply the problem of the use of exoneration clauses so far in insurance agreements whether it is in accordance with the applicable rules or vice versa. This research is a normative legal research using case and concept approaches and supported by other sources of legal materials. The results of the analysis show that the use of exoneration clauses in insurance agreements is actually not allowed because it is detrimental to consumers. The problems that exist so far have a bad impact on consumers because the use of exoneration clauses conveyed in insurance agreements makes consumer equality unbalanced with the insurance industry. In the future, there needs to be a balance and mutual agreement in making an insurance agreement or policy that does not burden consumers and legal dissemination is needed for consumers to understand the essence of law, build legal awareness and foster a legal culture in the environment so as to minimise losses for other legal subjects so that public trust in the insurance industry remains good.

Keywords: *Exoneration; Agreement; Insurance; Consumer*

Introduction

The development of insurance in Indonesia is familiar. People in the regions and cities already know about the existence of the insurance industry.¹ The definition of insurance is a guarantee against unexpected and unexpected losses. This means that if you experience an unusual event in your daily life, and suffer a financial loss because of it, you can get compensation. For example, there is an accident on the way to work by car and the car is damaged. The insurance company may reimburse the repair costs in

¹ Heri Sasono and Paidi WS, "Prospek Industri Asuransi Di Indonesia," *Jurnal Ekonomi Dan Pembangunan Indonesia* 2, no. 1 (2024): 146–58.

this case. However, the insurance company will not compensate for reasonable damages such as headlights that stop working.²

By law, insurance is defined as a contract in which an insurance company agrees to compensate the insured for losses due to an unforeseen event. The contract also involves a consideration called a premium. The maximum amount of benefit available is called the sum insured or the sum insured. Another definition of insurance is a transfer of risk from one party to another. The transfer is governed by laws and regulations and the application of principles and teachings that are universally adopted by both the first party and the other party. In economics, insurance means a collection of funds that can be used to cover or compensate for people who suffer losses.³

The definition of insurance is also mentioned in the Law on Insurance Business. Article 1 point of Law Number 2 of 1992 states that insurance or coverage is an agreement between two or more parties, by which the insurer binds himself to the insured by receiving an insurance premium, to provide compensation to the insured due to loss, damage, or liability to third parties that the insured may suffer, arising from an uncertain event, or to provide a payment based on the death or life of an insured person.

Apart from being a form of (financial) risk control, insurance also has a variety of benefits that are classified into: primary function, secondary function, and additional function. The primary functions of insurance are risk transfer, premium collection, and fund balancing. The secondary functions of insurance are to stimulate business growth, prevent losses, damage control, have social benefits, and savings. Meanwhile, the additional functions of insurance are investment funds and invisible income.⁴

In its implementation so far, the basis for holding this insurance agreement is one of the clauses contained in the Deed of Granting Mortgage Rights (APHT), which states that the first party will insure the object of mortgage rights. This aims to secure the object that is used as credit collateral from things that can cause the object to be lost, as a result of which the credit does not run properly or what is commonly called bad credit. With the signing of the Deed of Granting Mortgage Rights (APHT), the insurance clause in the deed is binding and has forced power for the makers. According to Article 4 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to land, the objects of Mortgage Rights are property rights, business use rights, building use rights and use rights on state land, which according to applicable provisions must be registered and by their nature can be transferred. The granting of mortgage rights is carried out by making a Deed of Granting Mortgage Rights (APHT) made by a PPAT in accordance with applicable laws and regulations.⁵

However, currently in practice, life insurance policies still contain the inclusion of standard clauses that are prohibited in the GCPL Law. Life insurance policies are made unilaterally by the insurer on the grounds that they are more time efficient and acceptable to the public. In fact, with the content and format of the insurance agreement, the insured has less legal protection and more profitable for the insurance company as the insurer.⁶ So far, it turns out that the Financial Services Authority (OJK) has revoked the business licence of insurance companies related to restructuring efforts against the insurance industry, such as: PT Asuransi Recapital, PT Asuransi Parolamas, PT Asuransi Jiwa Adisarana

² Wahyu Adi Wibowo, Siti Rodhiyah Dwi Istinah, and Ira Alia Maerani, "The Legal Position of Insurance Agreement (Borgtocht) as a Form of Credit Bindings," *Sultan Agung Notary Law Review* 4, no. 2 (July 29, 2022): 396, <https://doi.org/10.30659/sanlar.4.2a.396-408>.

³ Jessica Petra N Sianipar and Akhmad Budi Cahyono, "Insurance Policy Closure As The Implication of The Utmost Good Faith Principle in Life Insurance Claim Filing," *Jurnal Dinamika Hukum* 22, no. 2 (July 15, 2022): 231, <https://doi.org/10.20884/1.jdh.2022.22.2.3206>.

⁴ Markus Gunawan, "Implementation Of Legal Principles Of Agreement Between Policyholders And Insurance Companies," *Jurnal Hukum Dan Sosial Politik* 1, no. 1 (February 20, 2023): 177–86, <https://doi.org/10.59581/jhsp-widyakarya.v1i1.298>.

⁵ Yunita Deviani, "Kekuatan Hukum Terhadap Akta Pemberian Hak Tanggungan (Aph) Yang Penandatagannya Tidak Dihadiri Salah Satu Pihak," *Jurnal Notarius* 1, no. 1 (2022): 306–15.

⁶ Puspita Dewi Olga, Achmad Busyro, and Irma Cahyaningtyas, "TINJAUAN YURIDIS MENGENAI PENERAPAN ASURANSI JIWA DALAM KREDIT MULTIGUNA PADA PT. BANK RAKYAT INDONESIA (PERSERO) Tbk.," *Notarius* 13, no. 2 (2020): 619–28, <https://doi.org/10.14710/nts.v13i2.31083>.

Wanaartha, and PT Asuransi Jiwa Kresna Life and the Financial Services Authority (OJK) revoked one insurance industry, namely PT Asuransi Jiwa Proflife Indonesia in 2023.⁷

One example of an insurance company that experienced problems in 2020 is AJB Bumiputera 1912, which failed to manage insurance management and mismanaged the insurance company properly. In January 2018 the company admitted to experiencing delays in claim payments within 1 - 2 months due to the lack of premiums generated by the company and the company experienced solvency problems of IDR 20.72 trillion, where the recorded assets were only IDR 10.279 trillion but the company's liabilities reached IDR 31.008 trillion. This shows that in addition to default in the implementation of the insurance agreement, there are other things in the management of insurance that are not good and not in accordance with applicable laws and regulations.⁸

Based on this description, the author is interested in examining more broadly the existence of the insurance industry in terms of managing insurance agreements and analysing whether the application of exoneration clauses so far in insurance agreements has a good impact or not on the consumer side.

Research Methods

The research method used is normative legal research that discusses the essence of the exoneration clause in the existing insurance agreement whether it provides an advantage or disadvantage for consumers.⁹ This research uses a statutory approach, a case approach and also uses a conceptual approach. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials and the analysis of legal materials is used descriptively qualitative.¹⁰

Results and Discussion

a. The Essence of the Use of Exoneration Clauses in Insurance Agreements

In general, the provisions regarding agreements are contained in the Civil Code (KUH Perdata) Book III concerning Obligations. Article 1313 of the Civil Code states: "An agreement is an act by which one or more persons bind themselves to one or more persons" (Article 1313 of the Civil Code). Based on the formulation of Article 1313 of the Civil Code, it can be concluded that an agreement in this article is an agreement that creates an obligation, in other words, an agreement is the source of the obligation. However, this article has several weaknesses, namely:¹¹

- 1) It only concerns one party, whereas it should be binding on both parties because there is consensus from both parties.
- 2) The word conduct also includes no consensus, I should have used the term consent because conduct includes the act of organising interests. The term consensus should be used.
- 3) The definition of agreement is too broad, what is meant by agreement should be the relationship between debtors and creditors regarding property.
- 4) Without mentioning the purpose, an agreement should mention the purpose of entering into the agreement.

⁷ Agustinus Yoga, "Asuransi Bermasalah Marak, Kepercayaan Publik Rendah," Kompas.id, 2023, <https://www.kompas.id/baca/ekonomi/2023/11/06/kepercayaan-masyarakat-jadi-tantangan-industri-perasuransian>.

⁸ Mentari Puspadini, "AJB Bumiputera Masih Kusut, Server Masalah & Jualan Aset Mandek," CNBC Indonesia, 2024, <https://www.cnbcindonesia.com/market/20240111055304-17-504616/ajb-bumiputera-masih-kusut-server-masalah-jualan-aset-mandek>.

⁹ Amirudin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Cetakan ke (Jakarta: Rajawali Press, 2018).

¹⁰ I made pasek Diantha, *Metode Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, ed. Winatsari, I (Jakarta: PT Interfajar Pramatama Mandiri, 2016).

¹¹ Budiono Herlien, *Perjanjian Dan Pengaturan Peraturan Perundang - Undangan Indonesia*, I (Jakarta: Kencana, 2010).

From these reasons it can be concluded that an agreement is an agreement between two or more people binding themselves to carry out a matter regarding property.¹² Based on Subekti states that an agreement is an event in which one person promises to another or two people promise each other to carry out a matter. Furthermore, according to Sudikno Mertokusumo, that an agreement is a legal relationship between two or more parties based on an agreement to cause legal consequences.¹³

An agreement is valid if the agreement is binding on the parties who make it and fulfils the conditions specified by law which have legal consequences. According to Article 1320 of the Civil Code, four conditions are required for the validity of an agreement:

1. There is an agreement between the parties making the agreement; The word agreed to enter into an agreement, means that both parties must have freedom of will. The parties do not have any pressure that results in a "defect" for the realisation of the will. This is stated in Article 1321 of the Civil Code that: "There is no valid agreement if the agreement is given due to oversight, or obtained by force or fraud.
2. Capability to make an agreement; The parties involved in an agreement must fulfil the conditions determined by the law. A person is said to be capable of performing legal acts if the person is an adult, the age limit for adulthood according to the Civil Code is 21 years or married. Meanwhile, Article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that children who have not reached the age of 18 years or have never married are under the authority of their parents.
3. There is a certain thing; A certain thing means that what has been promised must be a matter or an item that is quite clear or certain. An agreement must have a specific object that is the subject of an agreement, at least it can be determined that the specific object can be in the form of objects that now exist and will later exist. In terms of goods, the goods are goods that can be traded, their type can be determined, and goods that will only exist in the future.
4. A lawful cause; The law does not define cause (oorzaak, causa). According to jurisprudence, it is interpreted as causa. Kausa is the content or purpose of the agreement. The legislator has the view that an agreement may also be made without a cause prohibited by law or contrary to good morals or public order.¹⁴

According to Article 1335 of the Civil Code, agreements made with such causes have no legal force. Insurance itself in Article 246 of the Commercial Code is an agreement in which the insurer binds himself to the insured by obtaining a premium, to provide him with compensation for loss, damage, or loss of expected profit, which may be suffered due to an uncertain event.

The definition of insurance is also mentioned in the Law on Insurance Business. Article 1 point of Law Number 2 of 1992 states: "Insurance or coverage is an agreement between two or more parties, whereby the insurer binds itself to the insured by receiving an insurance premium, to provide compensation to the insured due to loss, damage, or liability to third parties that the insured may suffer, arising from an uncertain event, or to provide a payment based on the death or life of an insured person". From the above definition, it can be seen that the definition of insurance according to Article 246 of the Code of Commerce (KUHD) only includes loss insurance. Meanwhile, the definition of insurance according to Article 1 point of Law Number 2 of 1992 includes loss insurance and sum insurance.

¹² Djaja S Meliala, "Perkembangan Hukum Perdata Tentang Benda Dan Hukum Perikatan," in *Hukum*, 1st ed. (Bandung: PT Nuansa Aulia, 2015), 1–276, https://repository.unpar.ac.id/bitstream/handle/123456789/2432/Djaja_142541-p.pdf?sequence=1&isAllowed=y.

¹³ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Cahya Atma Pusaka, 2014).

¹⁴ Meliala, "Perkembangan Hukum Perdata Tentang Benda Dan Hukum Perikatan."

Article 1 point 2 of Law Number 2 of 1992 concerning Insurance Business states that the objects of insurance are objects and services, life and body, human health, legal liability, and all other interests that can be lost, damaged, lost, and or reduced in value. Article 250 KUHD: "If a person who is insured for himself, or a person on whose behalf a third party is insured, at the time of the insurance has no interest in the insured object, the insurer is not obliged to compensate for the loss". This provision is known as the principle of insurable interest. This shows that the absolute requirement of insurance and at the same time the object of insurance is interest.¹⁵ Based on the definition of insurance according to Article 246 of the KUHD as mentioned earlier, it can be concluded that in insurance law there are at least 2 (two) parties, namely the insurer and the insured: a) The insurer is the party who bears the burden of risk in exchange for the premium he receives from the insured and b) The insured is the party in insurance who is obliged to pay the premium to the insurer.

Therefore, as a financial services company, insurance companies have an obligation to provide protection to consumers (the insured) who are users of their products and services. This is because insurance collects public funds from the amount paid by the insured in the form of insurance premiums in return for the agreed risk transfer, and the insurance company and the insured have equal rights and obligations because they have to bear it. Insurance is a contract between two parties, namely the insurance company and the policyholder, and becomes the basis for the insurance company to receive insurance premiums. As a form of consensus building, the drafting of an agreement usually involves parties agreeing or disagreeing on certain points and those points are incorporated into the agreement.

However, the situation is different when creating an insurance contract with high strength and relatively the same content. In view of practicality and efficiency, insurance companies often conclude a standard contract with a disclaimer, which allows the insurance company to accept or reject the insurance contract to the insured only if it is made unilaterally. If the insured decides to accept, he declares his agreement and will comply with all the terms of the insurance contract. An interpretation is a clause included in the contractual relationship with the aim of avoiding the full or partial performance of obligations in the form of damages for breach of contract. In terms of content, what can be conveyed from the several notices in this article is that this additional clause is a waiver clause in a contractual relationship and does not concern contractually agreed waivers of liability. In order to protect the interests of the parties through the transfer of duties, it is necessary to transfer responsibility.¹⁶

Subjectivity can affect invalidity because the terms and conditions of a contract contain elements that can directly or indirectly cause harm to others. Article 251 of the Criminal Code stipulates that to reduce the amount and scope of coverage, the insured must provide information about all insured circumstances known to him, the whereabouts of the insured's property and the goods under his control. The obligation to provide information about this can compensate for the risk borne by the insured. To avoid losses due to the release of liability clause, in entering into a contract, it is necessary to include Article 1320 of the Civil Code as a subjective requirement and Article 251 of the Civil Code as a contract guideline. The aim is to create equal rights and obligations of the parties.

The inclusion of an exculpatory clause that burdens the insured party can be said to be a restriction on the principle of freedom of contract (Article 1338 of the Civil Code), because this freedom is only controlled by one party whose position is relatively stronger. So that the exoneration clause in the standard agreement is only determined by the insurer without involving the insured party, this allows the insurer to freely abuse this situation. Losses that may arise from the exoneration clause will be experienced by the insured party.

¹⁵ Bonanda Japatani Siregar et al., "Aspek Hukum Terkait Dengan Perjanjian Asuransi Menurut Kitab Undang-Undang Hukum Perdata," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 3 (2023): 299, <https://doi.org/10.46930/jurnalrectum.v5i3.3641>.

¹⁶ Mohammad Hifni, "ASPEK HUKUM PERJANJIAN ASURANSI DALAM PERSPEKTIF HUKUM PERDATA DI INDONESIA," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 6, no. 1 (March 29, 2024): 25–32, <https://doi.org/10.47435/al-ahkam.v6i1.2677>.

b. Analysis of the Implementation of Exoneration Clauses in Insurance Agreements

The definition of insurance is coverage. Article 246 of the Code of Commerce (KUHD) states that insurance or indemnity is a contract according to which the insurance company promises to compensate the insured for loss, damage or loss by accepting a premium from the insured to him as a result of an event. Regarding this article, the characteristics of insurance can be explained as follows: an insurance is essentially a contract of indemnity. In this case, it is clear that the insurance company has an obligation to compensate the insured because the insured suffers a loss and the amount of compensation is in accordance with the actual loss suffered. Furthermore, insurance is a conditional contract, meaning that the insurance company's obligation to provide benefits only arises if certain events that are excluded from insurance occur, and insurance is a reciprocal contract, meaning that the insurer's obligation to compensate is faced with the obligation of the insured to pay the premium that is not conditional or not dependent on one condition.¹⁷

Insurance regulations in Indonesia are regulated in the Commercial Code (KUHD) and Insurance Law No. 40 of 2014 (Insurance Law), as well as Article 246 of the Criminal Code. According to Article 1 Paragraph 1 of the Insurance Law, insurance is essentially a promise by an insurance company to provide compensation for loss, damage, or destruction to the insured in exchange for a premium.¹⁸ Defined as a contract between two or more parties. The loss of expected profits or legal liability to third parties that the insured may incur due to an uncertain event or payment due to the death or survival of the insured. According to Article 246 of the Criminal Code, insurance or indemnity is defined as an insurance policy under which the insurance company compensates the insured for "any loss, damage, or loss of expected profits that the insured may suffer" by receiving a premium. It is a contract that binds the insured to a specific event.¹⁹

The exoneration clause itself is a clause in an agreement, which stipulates the release or limitation of certain responsibilities, which normally according to the law should be their responsibility. The exoneration clause is possible because of the principle of freedom of contract. It can be imagined that the possibility of people agreeing to an exoneration clause can have the effect that the rights and obligations of the parties become far from balanced. The existence of this exoneration clause is certainly very detrimental to the debtor, because the debtor who wants this agreement only has two choices: sign or reject the proposed agreement, and cannot negotiate what he wants. This waiver clause is inserted because the parties to the contract are in an unbalanced position, where one party has more power to determine the terms of the contract, while the other party is in a difficult position and desperately needs the agreement. This situation allows one party to exploit the situation against the other party by setting the terms of the contract.

The addition of an exoneration clause in an insurance contract that "burdens the insured" can be considered as a limitation of the principle of freedom of contract (Article 1338 of the Civil Code). This is because this freedom can only be controlled by one party. It is relatively strong that the interpretation of the standard contract does not involve the "insured" and is only determined by the insurance company. This leaves the insurance company free to take advantage of this situation. Any damage caused by this becomes the responsibility of the insured. The problem always faced by the insured is the difficulty in obtaining compensation in the event of a loss. Indonesian legal provisions regulate standard clauses

¹⁷ Purwanto, "Pembaruan Definisi Asuransi Dalam Sistem Hukum Di Indonesia (Insurance Definition Renewal in Law System in Indonesia)," *Risalah Hukum Fakultas Hukum Risalah Hukum Unmul* 2, no. 2 (2006): 87–93, <https://webcache.googleusercontent.com/search?q=cache:UulmGj3VXHAI:https://e-journal.fh.unmul.ac.id/index.php/risalah/article/download/130/80/+&cd=11&hl=id&ct=clnk&gl=id>.

¹⁸ Shinta Rachmaniyah and Dipo Wahyoeno, "Perjanjian Baku Yang Memuat Klausula Eksonerasi Dalam Perspektif Hukum Perlindungan Konsumen," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 2 (2022): 714–24, <https://doi.org/10.53363/bureau.v2i2.100>.

¹⁹ Irius Yikwa, "Asuransi Hukum Pelaksanaan Perjanjian Asuransi," *Lex Privatum* 3, no. 1 (2015): 136, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7033>.

commonly used in business relationships or contracts. In this case, Article 18 of the Consumer Protection Law clarifies the rules regarding the existence of standardised terms and conditions as follows:²⁰

- a) States the transfer of responsibility of the business actor;
- b) State that the business actor has the right to refuse the return of goods purchased by the consumer;
- c) State that the business actor has the right to refuse the return of money paid for goods and/or services purchased by consumers;
- d) States the granting of power from the consumer to the business actor either directly or indirectly to take all unilateral actions related to the goods purchased by the consumer in instalments;
- e) Regulate the matter of proof of the loss of use of goods or utilisation of services purchased by consumers;
- f) Give the business actor the right to reduce the benefits of services or reduce the consumer's property which is the object of sale and purchase of services;
- g) State that consumers are subject to regulations in the form of new rules, additions, continuation and/or further changes made unilaterally by business actors during the period when consumers utilise the services they buy;
- h) States that the consumer authorises the business actor to "encumber mortgage rights, lien rights, or security rights against the goods purchased by the consumer in instalments".

If we look at the facts on the ground, we see many provisions that do not protect the interests of consumers. Since the information previously provided by the insurer is not detailed in the terms of the insurance contract, but the details of the clause are supposed to be the basis of the claim, the claim procedure is time-consuming and final. The insurer will argue that the basis of the consumer's claim is not protected.²¹ The Consumer Protection Law does not prohibit business actors from making standard clauses on every document and business transaction agreement for trade in goods or services, as long as and to the extent that the standard clause does not include provisions as prohibited in Article 18 paragraph (1), and does not take the form of an exoneration clause as prohibited in Article 18 paragraph (2) of the Consumer Protection Law. This prohibition aims to ensure that consumers are treated equally with entrepreneurs, based on the principle of freedom of contract. The legal position of the exculpatory clause has not been clearly regulated in the current legislation in Indonesia, it is only explicitly seen in Article 18 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection.⁵ However, if there is a concern in its application, it is not a matter of using a standard clause but the inclusion of an exculpatory clause.

Standard agreements in the form of insurance account opening applications still contain waiver clauses that are prohibited in the Consumer Protection Regulation and OJK on consumer protection in the financial services sector. This is because, although agreed by both parties, it contains clauses that are prohibited by law. Therefore, if a consumer objects to the contents of the insurance opening document, he or she can ask the court to remove the insurance opening document with an exculpatory clause. A standard contract that contains a disclaimer in the initiation application may become invalid as it contravenes the Consumer Protection Regulation and OJK, thus avoiding legal risks for the insurance.²²

²⁰ Devinda Diana Valentina and Suraji Suraji, "Analisis Pencantuman Klausula Eksonerasi Dalam Perjanjian E-Commerce Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *TERANG: Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 1 (2024): 361–69.

²¹ Nizla Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen," *Jurnal Hukum Replik* 6, no. 1 (2018): 23, <https://doi.org/10.31000/jhr.v6i1.1116>.

²² Siregar et al., "Aspek Hukum Terkait Dengan Perjanjian Asuransi Menurut Kitab Undang-Undang Hukum Perdata."

Therefore, in order to create a new insurance opening form in the form of a standard contract that contains an exclusion clause, consumers not only need to read and understand the standard contract, but also explain the exclusion clause to consumers. Even though this statement does not have an invalid legal effect, it is intended to ensure that consumers who use financial services know, understand and understand the purpose of applying the exculpatory clause in the insurance agreement to consumers. The insurance party can convey to the consumer notifying the company at the time of opening the account for the first time. Insurance companies generally realise that the standard contract is contrary to current regulations, but still use forms that include exoneration clauses when opening new accounts for consumers.²³

The real purpose of prohibiting the inclusion of exclusion clauses is to put consumers and economic actors on an equal footing based on the principle of freedom of contract, which is one of the main principles of Indonesian contract law. However, parties cannot agree on content that is contrary to law, decency, or public order and decency. If a business actor stipulates a prohibited standard clause in a document or contract, the legal effect is that the standard clause is declared invalid.

Furthermore, business actors who violate the provisions of the standard prohibition clause are threatened with a maximum imprisonment of five years or a maximum fine of IDR 2 billion. In reality, standardised terms and conditions are often used in contracts, especially those that are closely related to everyday life. Examples include parking contracts, insurance, house buying and selling, credit cards, bank loans, product delivery, and rentals. Interpretation as a standard insurance contract explains a common example as follows: The insurance contract stipulates that the insured is subject to regulations in the form of new, additional, continued and/or further changes made unilaterally by the insured during the policy period without the consent of the insured.²⁴

Thus, the legal effect of an insurance agreement that uses an exoneration clause is null and void. This is because the inclusion of the clause in a contract is a form of transferring the entrepreneur's responsibility for consumer protection, to the detriment of consumers.²⁵ Resolving disputes arising from the use of exoneration clauses in insurance contracts based on Article 45 Paragraph 1 of Law Number 8 Year 1999 on Consumer Protection. It can be concluded that dispute resolution against the inclusion of exoneration clauses in insurance agreements based on Article 52 letter a of Law Number 8 Year 1999 on Consumer Protection is through the Consumer Dispute Resolution Agency (BPSK).

Therefore, the legal effect of an agreement that uses an exoneration clause is null and void. This is because the inclusion of an exoneration clause in an insurance contract is a form of business transfer and the responsibility of the perpetrator for consumer protection, resulting in harm to consumers. In accordance with the provisions of Article 18 Paragraph 1 of the Consumer Protection Law, consumers are no longer treated as vulnerable parties in contracts with business actors, so that the position of business actors and consumers becomes equal. Therefore, are exoneration clauses prohibited? Yes, exoneration clauses in an agreement, including standardised agreements (contracts) are prohibited. This is also confirmed in Article 46 paragraph (2) POJK 22/2023 which states that financial service business actors are prohibited from making and using standard agreements that contain exoneration/exclusion clauses.

²³ Jein Stevany Manumpil, "Klausula Eksonerasi Dalam Hukum Perlindungan Konsumen Di Indonesia," *Journal of Chemical Information and Modeling* 53, no. 9 (2016): 35–41.

²⁴ Dara Qurratu Aini Yusuf Yusuf, "Perlindungan Konsumen Terhadap Klausula Eksonerasi Dalam Perjanjian Baku Perusahaan Jasa Pengiriman Barang," *Jurnal Kajian Hukum* 3, no. 2 (2020): 207, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/6691/5100>.

²⁵ Yohannes Unggul Julius, "KLAUSUL EKSONERASI DALAM KONTRAK: PERLINDUNGAN TERHADAP KONSUMEN," *Jurnal Darma Agung* 32, no. November 2023 (2024): 134–43.

Conclusion

Based on the description above, the existence of the use of exoneration clauses is actually detrimental to consumers, because according to Article 18 of Law Number 8 of 1999 concerning Consumer Protection, it is clearly stated that it is not allowed to be conveyed in an agreement. For the making of an insurance agreement, it must be in accordance with Article 1320 of the Civil Code and in accordance with other applicable financial services regulations. However, the application of an exoneration clause in an insurance agreement can cause a loss to the insured because the making of the contents of the contract is made unilaterally by the insurance company and makes the position of the parties unbalanced and much more favourable to the party making the agreement, in this case the insurance company. The inclusion of an exoneration clause in the insurance policy is prohibited by law, so the agreement can be cancelled and null and void because it does not cover the validity of the agreement in terms of "agreement". If the insured party feels aggrieved, the insured can take legal action by filing a lawsuit in litigation. For this reason, in the future, in order to maintain public trust in insurance products, it is necessary to increase legal literacy and financial inclusion, which are important to be considered by stakeholders amid the lack of public trust in the insurance industry.

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