



THE PRINCIPLE OF JUSTICE IN CONSUMER AGREEMENTS AND ITS INFLUENCE ON THE VALIDITY OF CONTRACTS ARE LINKED TO LAW NUMBER 8 OF 1999 CONCERNING CONSUMER PROTECTION IN ACHIEVING ECONOMIC DEVELOPMENT GOALS IN INDONESIA

Putri Maha Dewi¹, Itok Dwi Kurniawan^{2*}, Ismawati Septiningsih³

¹Faculty of Law Universitas Surakarta

^{2,3}Faculty of Law Universitas Sebelas Maret

*Corresponding email: itokdwikurniawan@staff.uns.ac.id

ABSTRACT

This article discusses the civil aspect in contract cases, which are used by many people in various business collaborations. This article uses a normative research method, and uses a statutory approach. The provisions limiting the authority to make this exoneration clause have not been explicitly regulated. The only provision is the UUPK, although it uses the term standard clause which turns out to be different in meaning from the exoneration clause. In this case the standard clause is defined as a clause made unilaterally by the business actor, but its contents may not lead to an exoneration clause. Meanwhile, the exoneration clause as explained earlier is a clause that contains an attempt to limit, or even completely eliminate, the responsibility that should be borne by one of the parties, in this case the business actor. Legal protection is to provide protection for human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law so that the achievement of business/economic development goals in Indonesia is achieved in accordance with the values of justice of the Indonesian people.

Keywords: Fairness, Validity of Contracts, Economic Development

A. INTRODUCTION

The progress of the times, accompanied by increasingly sophisticated technology, opens up new opportunities in the national economic development sector. This can be seen by the increase in various business opportunities that exist in society. Positively, it is hoped that this business opportunity can encourage the macroeconomic sector to become more advanced so that it can improve the level

of welfare of the Indonesian people as expected in the state goals stated in the preamble to the 1945 Constitution, namely improving the welfare of the Indonesian people.

Contracts are widely used by people in carrying out various business collaborations.¹ In fact, almost all business

¹ The term contract is often referred to as "agreement", as a translation of agreement in English, or overeenkomst in Dutch. Apart from

activities generally begin with making a contract first, even if the contract is very simple in appearance.² In business practice, it turns out that we still often find contracts whose contents are unclear, vague, overlapping and so on. This apparently cannot be separated from the observations of the creators of the Civil Code, which in several articles regulates the interpretation and method of interpreting contracts as an effort to obtain clarity on the meaning contained in the contract.³ KUH Perdata specifically provides regulations regarding the issue of interpreting contracts/agreements in the Third Book, Second Chapter, Fourth Part, starting from the provisions of Article 1342 to Article

that, there is also a term that is equivalent to the term contract, namely transaction, which is a translation of the English term transaction. However, the term contract is the most modern, widespread and commonly used, especially in the business world. See Munir Fuady's article, *Pengantar Hukum Bisnis Menata Bisnis Modern di Era Global*, Citra Aditya Bakti, Bandung, 2005, p. 9.

²Ibid. The term agreement (*overeenkomst*, agreement) according to Article 1313 of the Civil Code is an act by which one or more people bind themselves to one or more people. Another opinion states that an agreement is an event where one person makes a promise to another person or where two people promise each other to carry out something. See Subekti's article, *Contract Law*, Intermasa, Jakarta, 1996, p. 1. Almost the same understanding was put forward by Ahmadi Miru, *Hukum Kontrak Perancangan Kontrak*, RajaGrafindo Persada, Jakarta, 2007, p. 2 which states that a contract or agreement is a legal event in which one person promises to another person or two people promise each other to do or not do something.

³ Suhardana, *Contract Drafting: Kerangka Dasar dan Teknik Penyusunan Kontrak*, Universitas Atmajaya Yogyakarta, Yogyakarta, 2008, p. 65.

1351.

Ideally, a contract does not require any interpretation, therefore the sentences or words in the contract should themselves be able to explain the meaning of the existing clauses. Therefore, if everything is clearly written in the contract, then interpretation of the contract is not only unnecessary, but is not permitted if such interpretation would actually have a meaning that deviates from what is implied.⁴

Consumer protection according to the Consumer Protection Law "Consumer protection is all efforts that ensure legal certainty to provide protection to consumers". *bid.* The term agreement (*overeenkomst*, agreement) according to Article 1313 of the Civil Code is an act by which one or more people bind themselves to one or more people. Another opinion states that an agreement is an event where one person makes a promise to another person or where two people promise each other to carry out something. See Subekti's article, *Contract Law*, Intermasa, Jakarta, 1996, p. 1. Almost the same understanding was put forward by Ahmadi Miru, *Contract Law of Contract Drafting*, RajaGrafindo Persada, Jakarta, 2007, p. 2 which states that a contract or agreement is a legal event in which one person promises to another person or two people promise each other to do or not do something. Az. Nasution stated that the definition of consumer

⁴ Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, PT. Citra Aditya Bakti, Bandung, 2007, p.53.

protection law is the overall principles and rules that regulate and protect consumers in the relationship and problem of providing and using consumer products (goods/services) between providers and users, in social life.⁵

Developing legal issues, the increasing openness of the market as a result of the process of developing market mechanisms is inevitable. Often in economic transactions there are problems involving disputes and consumer dissatisfaction due to the products they consume not meeting quality standards, some of which are even dangerous. Therefore, ensuring an increase in people's welfare as well as certainty regarding the quality, quantity and safety of the goods and services they obtain on the market is very important.

The issue of consumer protection is a problem that will never end and will always be a topic of discussion in society, as long as there are still many consumers who are harmed, the problem will never be resolved. Therefore, consumer protection issues need to be paid attention to.

The problems currently faced by Indonesian consumers, like those experienced by consumers in other

developing countries, are not only about how to choose goods, but are much more complex, namely regarding the awareness of all parties, both from entrepreneurs, the government and consumers themselves about the importance of consumer protection. Business actors should realize that they must respect consumer rights by producing quality goods and services that are safe to eat/use, comply with applicable standards and at appropriate prices.

B. PROBLEM FORMULATION

Does the principle of justice in consumer agreements and its influence on the validity of contracts in Law Number 8 of 1999 concerning Consumer Protection support the achievement of business/economic development in Indonesia?

C. LITERATURE REVIEW

The contract begins with a difference or dissimilarity interests between the parties. Formulation of contractual relationships in general always begins with a negotiation process between the parties. Through negotiations parties try to create forms of agreement to bring each other together something desired (interest) through a bargaining process.⁶

The world of commerce, which is

⁵ Az. Nasution, *Hukum Perlindungan Konsumen Suatu Pengantar*, Diadit Media, Jakarta, 2002, p. 3

⁶ Agus Yudha Hernoko, 2008, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, cet.1, LaksBang Mediatama, Yogyakarta, p. 1

carried out in various businesses, is good for maintaining business relationships, as well as in choosing the form of business dispute resolution, the agreement becomes the guideline and benchmark. Therefore, in making an agreement to maintain and resolve disputes, it must be based on the following provisions. legal provisions, especially contract law regulated in book III of the Book Civil Law Act, to avoid problem solving laws that can sometimes give rise to new legal problems.⁷

D. RESEARCH METHODS

This article uses normative research methods, and also uses a research approach, namely a statutory approach, because in this article it deals with cases of defamation which of course is an act that violates legal provisions. In this article what is used is Law Number 8 of 1999 concerning Consumer Protection Law, and also the KUHPer.

E. DISCUSSION

In principle, the provisions governing legal protection of consumers in the aspect of civil law are regulated in Article 1320 of the KUHPer. Article 1320 of the KUHPer regulates that four conditions are required for an agreement to be valid, namely:

1. The agreement of those who bind themselves (toestemming van degenen die zich verbiden);
2. The ability to make an agreement (de bekwaamheid om een verbintenis aan te gaan);
3. A certain thing (een bepaald onderwerp); and 4. A lawful cause (een geloofde oorzaak). Article 1234 of the Civil Code differentiates achievements based on:
 - a. Give something
 - b. Do something
 - c. Didn't do anything

Article 2 UUPK states "consumer protection is based on benefits, justice and balance, consumer safety and security and legal certainty". In the explanation of article 2 UUPK, it is stated that consumer protection is carried out as a joint effort based on 5 (five) principles that are relevant in national development, namely:

1. The benefit principle is intended to mandate that all efforts in implementing consumer protection must provide the greatest benefit for the interests of consumers and business actors as a whole.
2. The principle of justice is intended so that the participation of all people can

⁷ I Ketut Artadi, 2010, Hukum Perjanjian Kedalam Perancangan Kontrak ,Udayana University Press, Denpasar, p. 27.

be realized optimally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.

3. The principle of balance is intended to provide balance between the interests of consumers, business actors and the government in both material and spiritual terms.
4. The principle of consumer security and safety is intended to provide guarantees for security and safety to consumers in the use, utilization and utilization of goods and/or services consumed or used.
5. The principle of legal certainty is intended so that both business actors and consumers obey the law and obtain justice in implementing consumer protection, and the state guarantees legal certainty.

The development of standard clauses and agreements is closely related and driven by symptoms of developments in the mass economic sector as well as acceleration in the distribution and production processes, including increasing demands for the provision of professional

services.⁸ It is also estimated that the use of standard clauses is influenced by the number of companies undertaking nationalization. The use of standard clauses and standard agreements has several practical advantages, such as reducing long-winded negotiations, forgetting to regulate certain things and saving costs.

Most business transactions are currently carried out using standard clauses, whether they occur in developed countries or in developing countries such as Indonesia. In fact, the widespread use of standard clauses prompted an American writer named Slawson to report that: "Standard form contracts probably account for more than ninety percent of all the contracts now made. Most people have difficulty remembering the last time they contracted differently than by standard form".⁹

Officially, the definition of a standard clause that we can use as a reference is the definition given by the UUPK, namely: "every regulation or provision and conditions that have been

⁸ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Bandung, Citra Aditya Bakti, 2007, p. 134.

⁹ Mariam Darus Badruzaman, "Consumer Protection Seen from the Point of Standard Agreement," (Paper presented at the Symposium on Legal Aspects of Consumer Protection Issues, organized by the National Legal Agency of the Ministry of Justice, Jakarta, 16-18 October 1980), p. 4

prepared and determined in advance unilaterally by the business actor as outlined in a document and/or agreement which are binding and must be fulfilled by consumers”.¹⁰

In civil law, there is a legal relationship between legal subjects which is characterized by the existence of an agreement between the parties, with the existence of this agreement the parties are bound by the agreement to carry out their obligations and rights. If one party does not carry out this obligation, this will result in the violation of the rights of the other party so that the injured party must receive legal protection.

Legal relations occur because of a relationship between business actors, namely every individual or business entity, whether in the form of a legal entity or not, which is established and domiciled in carrying out activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements for carrying out business activities in various in the economic sector as in article 1 number 3 UUPK with consumers, namely every person who uses goods and/or services available in society, whether for the benefit of themselves, their families, other people or other living creatures and not for trading.

This legal relationship gives rise to legal consequences, generally based on an agreement that has been determined unilaterally by the business actor (standard/standard agreement). The agreement contains provisions that apply generally (mass) and consumers only have two choices: agree or refuse. The concern that arises regarding the standard agreement is the inclusion of an exception clause. An exoneration clause is a clause that contains conditions that limit or even completely eliminate the responsibilities that should be borne by business actors. Article 18 paragraph (1) letter a UUPK regulates the prohibition on including standard clauses in every document or agreement if it states the transfer of responsibility of a business actor.

The provisions that limit the authority to make exoneration clauses have not been clearly regulated. The only provision is the UUPK, although it uses the term standard clause, which apparently has a different meaning from the exoneration clause. In this case, a standard clause is defined as a clause made unilaterally by the business actor, but its contents must not lead to an exoneration clause. Meanwhile, the exoneration clause as previously explained is a clause that contains an attempt to limit, or even completely

¹⁰ Article 1 number 10 UUPK

eliminate, the responsibility that should be borne by one of the parties, in this case the business actor.

In general, several articles in the Civil Code can be pointed out which also prohibit the creation of exoneration clauses. One of them is Article 1337 of the Civil Code, which states that "an agreement may not be made contrary to law, morality or public order". However, to be able to test the extent to which the agreement is contradictory, it needs to be processed through a lawsuit in court.

Lawrence M. Friedman's opinion is that there are three elements that influence the operation of law, namely:

- a. Legal structure (legal structure)
- b. Legal substance
- c. Legal culture (legal culture)¹¹

Judging from the legal substance, it includes improving regulations. It is necessary to add detailed articles related to the transfer of responsibility for business actors and the authority to limit the creation of exoneration clauses so that legal issues for consumers who are still disadvantaged will receive legal certainty so that if there is a standard agreement, they will feel justice and security in the

standard agreement offered by business actors.

Efforts to overcome the legal structure include more supervision from the Government regarding the company's implementation in carrying out its business. When there are company actions that often violate applicable regulations and cause a lot of losses suffered by its customers, they should immediately take sanctions to close the company because it is misleading, public.

The establishment of the PK Law aims to provide legal protection to consumers who generally have a weak position compared to business actors. So the meaning of legal protection is the legal protection provided by the state to the people based on applicable laws and regulations, both preventive and repressive. Legal Protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law so that the achievement of business/economic development goals in Indonesia is achieved in accordance with the values of justice of Indonesian society.

The terms of the agreement contain standard clauses regarding dispute resolution. If a dispute occurs in the

¹¹ Achmad Ali, "*Kepurukan Hukum di Indonesia, Penyebab dan Solusinya*", Ghalia Indonesia, Jakarta, 2002, p. 2

implementation of the agreement, the resolution will be carried out through arbitration. However, if there is a party who wishes, it is possible to resolve the dispute through the District Court. In accordance with Pancasila values, entrepreneurs in Indonesia before resolving disputes in court, resolve disputes through deliberation.

F. CONCLUSION

Consumer protection law has recently received attention because it involves regulations for the welfare of society, not only does society as consumers receive protection, but business actors also have the same right to obtain protection where each party receives the same protection from the law. . Where the government plays a role in regulating, supervising and controlling, so that a conducive system is created that is interconnected with each other with the goal of broad prosperity being achieved.

It is necessary to add detailed articles related to the transfer of responsibility for business actors and the authority to limit the making of exoneration clauses so that legal issues for consumers who are still disadvantaged will receive legal certainty so that if there is a standard agreement, they will feel justice and security in the standard agreement offered by business actors. Apart from that, with more

supervision from the Government regarding the company's implementation in carrying out its business, when there are company actions that often violate applicable regulations and cause a lot of losses suffered by its customers, they should immediately take sanctions to close the company for misleading the public.

The establishment of the PK Law aims to provide legal protection to consumers who generally have a weak position compared to business actors. So the meaning of legal protection is the legal protection provided by the state to the people based on applicable laws and regulations, both preventive and repressive. Legal Protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law so that the achievement of business/economic development goals in Indonesia is achieved in accordance with the values of justice of Indonesian society.

BIBLIOGRAPHY

- Achmad Ali, 2002. *Kepurukan Hukum di Indonesia, Penyebab dan Solusinya*, Ghalia Indonesia: Jakarta.
- Agus Yudha Hernoko, 2008, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, cet.1, LaksBang Mediatama, Yogyakarta.

Ahmadi Miru,2007. *Hukum Kontrak Perancangan Kontrak*, RajaGrafindo Persada: Jakarta.

Az. Nasution,2002 *Hukum Perlindungan Konsumen Suatu Pengantar*, Diadit Media: Jakarta.

Herlien Budiono, 2007. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, Citra Aditya Bakti: Bandung.

I Ketut Artadi, 2010, *Hukum Perjanjian Kedalam Perancangan Kontrak* , Udayana University Press, Denpasar

Mariam Darus Badruzaman,1980. ”*Perlindungan terhadap Konsumen Dilihat Dari Sudut Perjanjian Baku (Standard)*,” (Makalah disampaikan pada Simposium Aspek-aspek Hukum Masalah Perlindungan Konsumen, diselenggarakan oleh Badan Hukum Nasional Departemen Kehakiman: Jakarta.

Munir Fuady, 2005. *Pengantar Hukum Bisnis Menata Bisnis Modern di Era Global*, Citra Aditya Bakti: Bandung

Munir Fuady,2007. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, PT. Citra Aditya Bakti: Bandung.

Subekti,1996. *Hukum Perjanjian*, Intermasa: Jakarta.

Suhardana, 2008. *Contract Drafting: Kerangka Dasar dan Teknik Penyusunan Kontrak*, Universitas Atmajaya Yogyakarta: Yogyakarta, 2008.

Undang-Undang: Pasal 1 angka 10 UUPK