

EXONERATION CLAUSE ON LAW OF CONSUMER PROTECTION: EFFECTS AND LEGAL EFFORTS

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Abstract

Legal disputes between entrepreneurs and consumers are currently caused by several things, one of which is the inclusion of an exoneration clause. The inclusion of the clause has clearly contradicted Law Number 9 of 1999 concerning Consumer Protection and has detrimental to the rights held by the Consumer. In addition, in terms of the Agreement Law, the entrepreneurs that includes the exoneration clause clearly does not heed the principle of good intentions by utilizing the weak position of the consumer. The violation of the rights held by consumers, consumers can claim compensation and sue the entrepreneurs through various legal remedies. given by law. In this study also will discuss the legal consequences and legal efforts that can be submitted by the Consumer for the application of the Exoneration Clause in an agreement. The research method that will be used in this research is normative juridical, namely the approach using various data sources such as articles of legislation, various legal theories, and scientific works of scholars. The data used in this study comes from secondary data and tertiary data collected in accordance with the object written. After that, all legal materials that have been collected are inventoried and identified according to the problems that have been formulated. The conclusion of this study is to provide a legal understanding to consumers who are disadvantaged by the inclusion of an exoneration clause and provide advice in the form of legal remedies that can be taken.

Perselisihan hukum antara pelaku usaha dan konsumen pada saat ini ditimbulkan oleh beberapa hal, salah satunya adalah pencantuman klausula eksonerasi. Pencantuman klausul tersebut telah secara jelas bertentangan dengan Undang-Undang Nomor 9 Tahun 1999 tentang Perlindungan Konsumen serta merugikan hak-hak yang dimiliki oleh Konsumen. Selain itu, ditinjau dari Hukum

Perjanjian, maka pelaku usaha yang mencantumkan klausula eksonerasi secara jelas tidak mengindahkan asas beritikad baik dengan memanfaatkan lemahnya kedudukan konsumen Atas dilanggarnya hak yang dimiliki oleh konsumen, maka konsumen dapat menuntut ganti rugi serta menggugat pelaku usaha melalui berbagai upaya hukum yang diberikan oleh undang-undang. Dalam penelitian ini juga akan dibahas mengenai akibat hukum dan upaya hukum yang dapat diajukan oleh Konsumen atas penerapan Klausula Eksonerasi dalam suatu perjanjian. Metode penelitian yang akan digunakan dalam penelitian ini adalah yuridis normatif yaitu pendekatan dengan menggunakan berbagai sumber data seperti pasal-pasal perundangan, berbagai teori hukum, dan hasil karya ilmiah para sarjana. Data yang digunakan dalam penelitian ini berasal dari data sekunder dan data tersier yang dikumpulkan sesuai dengan obyek yang ditulis. Setelah itu, semua bahan hukum yang sudah terkumpul diinventarisir dan diidentifikasi sesuai dengan permasalahan yang telah dirumuskan. Kesimpulan dari penelitian ini untuk memberikan pemahaman hukum kepada konsumen yang dirugikan atas pencantuman klausula eksonerasi serta memberikan saran berupa upaya hukum yang dapat di tempuh.

Keywords: Contract Law, Consumer Protection Law, Standard Contract, Exoneration Clause, Legal Effort.

Introduction

Nowadays, legal disputes or disputes between entrepreneur and consumers have become commonplace in the Indonesian community. There are various things that cause the legal dispute to occur, one of which is caused by a dispute over the provisions contained in the agreement between the parties. In addition to the inaccuracies in the provisions of the agreement, the dispute occurs because entrepreneurs do not try to provide legal protection to consumers who have a position both psychologically and in a lower economy.¹ Legal protection can be interpreted as protection and recognition of every human right as a legal subject based on a legal provision that is binding and applies to everyone.²

¹ Hesti Dwi Astuti, "Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (Bpsk)", *Jurnal Mimbar Justitia*, vol. 1, no. 2 (2015), p. 576.

² Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987), p. 25.

Law should be used as a tool to protect the rights owned by consumers. Thus, consumer protection is a unit that cannot be excluded in achieving the objectives of honest business activities and to accommodate legal protection for consumers. In Indonesian law, various types of legal products have been established that regulate consumer protection, one of which is the Republic of Indonesia Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as “Consumer Protection Act”) as an umbrella act for legal actions related to consumer protection. Article 1 point 2 of the Consumer Protection Act states that consumers are all users of goods and/or services available in the community, both for their own interests, their families, other people, and other living beings and not for trafficking.

Whereas, in Article 1 point 3 of the Consumer Protection Act, Entrepreneurs are defined as each individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly the same through agreements to conduct business activities in various economic fields.

Furthermore, in Article 4 of the Consumer Protection Act it is stated about the types of rights held by consumers, including:

- a. the right to comfort, security and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised;
- c. the right to correct, clear and receive honest information regarding the condition and guarantee of goods and/or services;
- d. the right to be heard opinions and complaints about the goods and/or services used;
- e. the right to obtain advocacy, protection and efforts to properly resolve consumer protection disputes;
- f. the right to get consumer guidance and education;
- g. the right to be treated or served correctly and honestly and not discriminatory;
- h. the right to get compensation, compensation/replacement, if the goods and/or services received are not in accordance with the agreement or not as appropriate;

i. rights stipulated in other statutory provisions.

Although it has been explicitly regulated about the rights held by consumers, the violation of rights are often found by entrepreneurs by utilizing consumer positions, one of which is by transferring responsibilities that should be borne by entrepreneurs to consumers. Entrepreneur often use exoneration clauses or clauses to transfer these responsibilities in various forms through agreements, tickets, information boards and so on. Exoneration clause is a provision of an agreement that confirms the existence of a liberation or limitation of certain responsibilities that should be imposed on them.³

The existence of an exoneration clause is easily found in the midst of everyday community activities such as the inclusion of the phrase “damage to consumer goods is not the responsibility of the manager or entrepreneur”. Of course, the result of the clause as the author mentioned above will make the consumer who suffered losses due to loss and/or damage to his personal property will think to whom to ask for compensation or even just let the incident be completed without further legal efforts.

In fact, every Entrepreneur who has bound himself to consumers through contractual relations has the responsibility to provide consumer protection and fulfill his performance in accordance with the principle of the privity of contract.⁴ Therefore, the author will provide legal analysis of consumer protection associated with efforts to transfer the responsibility of entrepreneurs by using the exoneration clause in the perspective of Law Number 8 of 1999 concerning Consumer Protection.

The research methodology used is a normative juridical research method, namely by reviewing the principles and legal norms as well as legislation that has relevance to this research. In addition, this research is also carried out with specificity in the form of analytical prescriptions by comparing the application of standard agreements containing exoneration clauses in terms of the Civil Code and the Consumer

³ Juswito Satrio, *Hukum Perikatan, Perikatan yang Labir dari Perjanjian Baku* (Bandung: PT. Citra Aditya, 1995), p. 120.

⁴ Desy Ary Setyawati, Dahlan and M. Nur Rasyid, “Perlindungan Bagi Hak Konsumen dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik”, *Syah Kuala Law Journal*, vol. 1, no. 3 (2017), p. 33-51.

Protection Act and how legal consequences and legal efforts can be made by the Consumer to restore their rights to their original condition.

Based on the background mentioned earlier, this research will answer the issue of consumer protection in relation to the application of exoneration clauses, especially the legal consequences of the application of exoneration clauses by businesses in the provisions of legal consumer protection and also legal efforts by consumers to regain their rights.

The Legal Consequences for Applying an Exoneration Clause in Terms of Consumer Protection Act and Other Laws and Regulations

There are 3 different important terms in Indonesia consumer protection laws that related each other like standard contract, standard clause and exoneration clause. The exoneration clause is part of a standard contract and also a prohibited clause as referred to in Article 18 (1) of the Consumer Protection Act. So the author will explain this discussion systemically to get the answer about the validity and the consequences for applying an exoneration clause in a contract.

Firstly, legal actions in the form of agreements are arranged in Book III of the Civil Code. Furthermore, Article 1313 of the Civil Code defines an agreement as an act where one person or more ties himself to one other person. Thus, the agreement is the basis for the occurrence of an agreement between one party and another. In addition, M. Yahya Harahap also explained that the Agreement is a relationship between the law of wealth/property between two or more people, which gives the power of rights to one party to obtain achievements and at the same time obliges the other party to perform achievements.⁵ Article 1320 of the Civil Code is explained about the legal requirements for an agreement, including:

- a. Agree that those who bind themselves;
- b. Capable to make an engagement;
- c. A certain object or object or can be determined;
- d. An allowed clause.

The standard agreement is considered as an instant solution that is used by entrepreneurs in making agreements with consumers. In

⁵ M. Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Bandung: Alumni, 1986), p. 6.

addition, the standard agreement indicates that the Entrepreneur has a stronger position than the Consumer because all the provisions in the agreement have been standardized or determined unilaterally by the Entrepreneur. Therefore, consumers are only placed in two answers, namely accepting or refusing the agreement. Therefore, the standard agreement is identified with the term “take it or leave it”.

Sutan Remy defines the standard agreement as an agreement that signifies almost all of the clauses have been unilaterally standardized by certain parties and the other party basically has no opportunity to negotiate or request changes.⁶ Thus, the agreement has the intensity to only list and highlight the rights owned by the party with a stronger position while the other party is forced to accept the situation due to its weaker position.⁷ In general, standard agreements have several characteristics, including:

- a. The form is written
- b. The format is standardized
- c. The conditions have been determined by the Entrepreneur unilaterally
- d. Consumers can only accept or reject
- e. Its contents always benefit entrepreneur.⁸

In addition to the standard agreement, entrepreneurs also often include standard clauses in agreements made with consumers. Basically the standard clause and standard agreement constitute an inseparable unity. The characteristics of the characteristics of the standard clause are as follows:

- a. A clause in an agreement made unilaterally by an entrepreneur, whose position is relatively stronger than the consumer;
- b. Consumers are not involved in determining the contents of the clause at all;
- c. Made in written and mass forms; and

⁶ Sutan Remi Sjahdeni, *Asas Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*, (Jakarta: Institut Bankir Indonesia, 1993), p. 66.

⁷ Hasanuddin Rahman, *Legal drafting: seri keterampilan mahasiswa fakultas hukum dalam merancang kontrak perorangan/ bisnis*. Citra Aditya Bakti, 2000), p. 134.

⁸ M. Syamsudin and Fera Aditias Ramadani, “Perlindungan Hukum Konsumen Atas Penerapan Klausula Baku”, *Jurnal Yudisial*, vol. 11, no. 1 April (2018), p. 91.

d. Consumers are forced to accept the contents of the agreement because of the need.

Article 1 number 10 of the Consumer Protection Act provides an understanding of standard clauses as every rule or provision and conditions that have been prepared and determined unilaterally by the Entrepreneurs as outlined in a binding document and/or agreement that must be fulfilled by consumers.

However, there was a debate among legal scholars regarding the differing views on the validity of the standard agreement form because it was considered contrary to the element of an agreement as stated in Article 1320 of the Civil Code. Does this actually violate? The author argues that the standard agreement does not violate the element of agreement as referred to in Article 1320 of the Civil Code.

Basically, the relationship of civil law is born as a result of an agreement between the parties to bind each other to achieve a common goal set forth in an agreement as referred to in the principle of consensus. In addition, Article 1338 paragraph (1) of the Civil Code confirms that agreements that have been agreed upon and made legally apply as Laws for the parties. Thus, the parties must obey and carry out all the provisions that are in the agreement that they have agreed to.⁹

In addition, it is also necessary to pay attention to the situation when the agreement was made and agreed upon by the parties because it will determine whether the agreement is valid or not. Furthermore, the agreement in this element must also be interpreted as a way to get the agreement itself, which means that it should not be in a way that is against the law. In Article 1321 of the Civil Code, there are 3 reasons that limit this, namely the existence of coercion, oversight, and fraud.¹⁰ In addition, the parties may not get a pressure that causes a defect in the realization of the will or agreement.¹¹

Based on these thoughts, that the standard agreement as well as the standard clause do not conflict with the element of agreement as

⁹ Muhamad Hasan Muaziz and Achmad Busro, "Pengaturan Klausula Baku Dalam Hukum Perjanjian Untuk Mencapai Keadilan Berkontrak", *Law Reform*, vol. 11, no. 1 (2015), p. 74.

¹⁰ Nizla Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen", *Jurnal Hukum Replik*, vol. 6, no. 1, (2018), p. 24.

¹¹ Herniwati, "Penerapan Pasal 1320 KUH Perdata Terhadap Jual Beli Secara Online (E-Commerce)", *Jurnal Iptek Terapan*, vol. 8, no 1 (2017), p. 175.

stipulated in Article 1320 of the Civil Code. Furthermore, the word “agreed” in the article should not be interpreted narrowly as there was an agreement between the parties to determine the contents of the agreement. But it must be interpreted more broadly and in accordance with the principle of consensualism like how the agreement obtained.

If viewed from the Consumer Protection Act, the inclusion of such standard clauses is not prohibited as long as it does not exceed the limits provided by the law. Article 18 of the Consumer Protection Act, provides limits on entrepreneurs not to include provisions which basically state to declare the transfer of responsibility of entrepreneurs, stating the entrepreneurs have a right to refuse the return of goods purchased by consumers and etc. Thus, the standard clause is basically still permissible according to law as long as it does not conflict with Article 18 paragraph (1) and paragraph (2) of the Consumer Protection Act. So, if the Entrepreneur wants to make an agreement with a standard agreement, it must be adjusted to the regulation

So how about applying an exoneration clause in a contract? It is strictly prohibited by the law. Mariam Darus Badzrulman interpreted the exoneration clause as a provision contained in an agreement, in which one party avoids fulfilling its responsibilities in paying compensation in part or in whole due to broken promises or illegal acts.¹² In addition, David Yates defines the exoneration clause as any provision of an agreement that frees or manipulates the amount of compensation to one party arising from an injury to an agreement.¹³

Furthermore, Mariam Darus Badruzaman said that the exoneration clause contained in a standard agreement can be seen through the provisions that limit or transfer responsibility from the creditor to the debtor or from the entrepreneur to the consumer. The following are the characteristics of the exoneration clause contained in the standard agreement:¹⁴

- a. Its contents are unilaterally determined by creditors whose position is relatively stronger than the debtor

¹² Mariam Darus Badruzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 1994), p. 47.

¹³ David Yates, *Exclusion Clauses in Contracts* (London: Sweet & Maxell, 1982), p. 1.

¹⁴ Mariam Darus Badruzaman, *Aneka hukum...*, p. 48.

- b. The debtor did not participate in determining the contents of the agreement
- c. Encouraged by their needs, debtors were forced to accept the agreement
- d. The form is written
- e. Prepared in bulk or collectively.

Entrepreneurs often take refuge behind the principle of freedom of contract in applying the exoneration clause in the standard agreement as a step to pressure consumers by applying rules unilaterally.¹⁵ As explained earlier, Article 1338 paragraph (1) of the Civil Code states that all agreements made by the parties legally, then apply and bind like a law to those who make it. In the article, the phrase “all” can be interpreted that each party making an agreement can determine all the terms and forms of the agreement. Thus, this relates to the principle of freedom of contract which is embodied in the treaty law in Indonesia. Then, the principle of freedom of contract is the authority given by the law to the parties making the agreement to determine the content and form of the agreement which is in accordance with the needs of the parties.¹⁶

However, the principle of freedom of contract also cannot be interpreted in absolute that gives full freedom to the parties making the agreement. This principle must continue to pay attention to statutory provisions, public order and not harm one party in the agreement. In addition, the principle of freedom of contract has experienced a narrowing of meaning or limitation due to the strengthening of the teachings of good faith (*bona fide*) and the increasingly contradictory teachings of abuse of circumstances.¹⁷ In its development, the teachings of misuse do not only relate directly to the contents or clauses in the agreement, but also have a relationship with the events that occur at the time of the agreement, whether there is misuse of circumstances that cause a statement of will and automatically one party's agreement without defects.¹⁸

¹⁵ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Yogyakarta: Laksbang Mediatama, 2008), p. 95.

¹⁶ Christiana Tri Budhayati, “Asas Kebebasan Berkontrak Dalam Hukum Perjanjian Indonesia”, *Jurnal Widy Sari*, vol. 10, no. 3 (2009), p. 232.

¹⁷ Ridwan Khairandy, *Itikad Baik Dalam Kebebasan Berkontrak* (Jakarta: Universitas Indonesia, 2004), p. 38.

¹⁸ Van Dunne, *Diktat Kursus Hukum Perikatan*, translated by Sudikno Mertokusumo, Yogyakarta: 1987, p. 9.

Entrepreneurs as parties with a stronger position actually exploit their position by including an exoneration clause that bestows responsibility on consumers for losses caused by violations committed by entrepreneurs. By applying the exoneration clause, the actions of the Entrepreneur are clearly in conflict with the principle of good faith and have misused the conditions for the personal interests of the entrepreneur. Therefore, Article 18 paragraph (3) of the Consumer Protection Act provides legal protection to consumers by explicitly stating that Entrepreneurs that include standard clauses in Article 18 paragraph (1) and paragraph (2) in the Consumer Protection Act will have null and void.

The author agrees with Article 18 paragraph (3) of the Consumer Protection Act which expressly states the inclusion of an exoneration clause must have consequences in the form of “null and void” and not “can be canceled”. As has been developed in the teachings of treaty law in Indonesia, it can be canceled if it does not meet the subjective requirements in Article 1320 of the Civil Code, namely the existence of an agreement and a party that is bound by the law. Cancellation can be interpreted as the agreement remains binding on both parties as long as it is not canceled by the judge at the request of the party who has the right to cancel the agreement.¹⁹

Whereas, null and void by law occurs when the objective element in Article 1320 of the Civil Code is not fulfilled, namely the element of an agreed upon object and an allowed cause. Canceled by law is defined as something that becomes invalid or invalid because it is based on the law (or in a narrow sense, based on the laws and regulations) that is true. Thus, null and void indicates that an invalid or invalid agreement occurs instantly, spontaneously, automatically, or by itself, insofar as the conditions or circumstances that make it null and void are fulfilled.

The author argues that the exoneration clause listed by the Entrepreneur has violated Article 1320 of the Civil Code by applying a prohibited cause. The prohibited causes can be interpreted as causes that are contrary to law, public order and morality.²⁰ So that, when linked to the Consumer Protection Act, the inclusion of an exoneration

¹⁹ Elly Erawati and Herlien Budiono, *Penjelasan Hukum Tentang Kebatalan Perjanjian* (Jakarta: Nasional Legal Reform Program, 2010), p. 45.

²⁰ I Ketut Oka Setiawan, *Hukum Perikatan* (Jakarta: Sinar Grafika, 2016), p. 69.

clause by entrepreneurs in an agreement is contrary to Article 18 paragraph (3) of the Consumer Protection Act which results in the agreement being null and void due to prohibited causes.

Furthermore, if in a situation the consumer is harmed as a result of using goods and/or services produced by the Entrepreneur, then based on Article 19 paragraph (1) of the Consumer Protection Act, the entrepreneur has the responsibility to provide compensation for damage, pollution and losses suffered by consumers as a result of consuming the goods and/or services they produce. In this case, even though the entrepreneur has included the exoneration clause to avoid the demands of losses experienced by consumers, it does not have legal force because the clause is null and void by law.

For violations of consumer rights, the aggrieved consumer may hold the entrepreneur accountable in the form of a refund or replacement of goods or other similar services as mentioned in Article 19 paragraph (2) of the Consumer Protection Act. Then, if examined further, Article 19 of the Consumer Protection Act classifies legal relations between entrepreneurs and consumers into two groups, namely consumers who have contractual relationships with business people (privity of contracts) and consumers who do not have contractual relationships with entrepreneurs (no privity of contract).²¹ Legal relations can be in advance between entrepreneurs and consumers through an agreement both a sale and purchase agreement, a safekeeping agreement for goods and so on. In addition, there can also be no contractual relationship between entrepreneurs and consumers, but there are losses experienced by consumers that cause the legal relationship to occur.

First, the principle of the privity of contract contained in contractual relations requires that the entrepreneur has the responsibility to protect the rights and interests of the consumer. This brings logical consequences where entrepreneurs cannot be blamed for things that are outside the agreement between entrepreneurs and consumers. Therefore, consumers can still sue the entrepreneur based on achievements not carried out by the entrepreneur by basing the claim

²¹ Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia* (Bandung: Citra Aditya, 2010), p. 10.

as a contractual liability.²² As is well known, a breach of default arises because an achievement is not carried out properly. Article 1234 of the Civil Code states 3 (three) types of achievements, namely:

- a. Giving something;
- b. Doing something;
- c. Not doing something.

In addition, if the losses suffered by consumers do not originate from contractual relationships with entrepreneurs, according to the authors consumers can still demand compensation from the head of the entrepreneur by using a lawsuit as referred to in Article 1365 of the Civil Code. The article basically states that every act that violates the law that causes harm to another person, gives it an obligation to the person who is due to his mistake to provide compensation caused by it. Furthermore, to fulfill the qualifications for Unlawful Actions, the following elements must be fulfilled:

- a. There is an act;
Actions are actions that are carried out actively, besides that also includes actions carried out by inactivity which means there is no action.²³
- b. This act is against the law;
The acts carried out by the legal subject must be seen as contrary to the law, public order and decency.²⁴
- c. There is an error from the perpetrator;
In law, there are two kinds of errors, namely errors in an objective and subjective sense. An objective mistake is a person deemed to have committed an unlawful act because he made a mistake, if he acted rather than supposed to be done by people in that situation in the community. Meanwhile, errors in the subjective sense by looking at the person who committed the act, whether according to the law can be accounted for means that the physical person is normal or still a child. This is a requirement for someone to be prosecuted using Article 1365 of the Civil Code.

²² Muhammad Marafwansyah, Sanusi Bintang and Darmawan Darmawan, "Perjanjian Baku dalam Perjanjian Sewa Beli Kendaraan Bermotor pada Perusahaan Pembiayaan di Kota Banda Aceh", *Kanun: Jurnal Ilmu Hukum*, vol. 20, no. 2 (2018), p. 219.

²³ Achmad Ichsan, *Hukum Perdata* (Jakarta: PT. Pembimbing Masa, 1969), p. 250.

²⁴ Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung: PT. Citra Aditya Bakti, 2000), p. 4.

d. There is a loss for the victim;

The victim's loss in a lawsuit against the law can be in the form of material losses and immaterial losses which can subsequently be valued by money.

e. There is a causal relationship between actions and losses.

To find out whether an action is the cause of a loss, the writer will use the theory of "adequate veroorzaking" from Von Kries. According to him, what is considered a cause is an action which according to normal human experience should be expected to have an effect, in this case a loss. So between the actions and losses that arise must have a direct relationship.²⁵

The entrepreneur has the burden of proof in order to state that the damage or loss of consumer property is not due to the mistakes of the entrepreneur made. This is in line with the way of proof mandated in Article 28 of the Consumer Protection Act. However, a number of decisions have explicitly stated that business people are indeed responsible for all losses suffered by Consumers as long as this is their responsibility.

For example, in the inclusion of an exoneration clause carried out by park managers, the Supreme Court Decision Number 1367K/Pdt/2002 states that the parking manager (Defendant) is fully responsible for the loss of the consumer's vehicle (Plaintiff) in the parking area managed by him. In addition, the Supreme Court Decision Number 1264K/Pdt/2003 states that the indifference (passivity) carried out by the parking manager can be said to be an illegal act as referred to Article 1365 of the Civil Code.

Legal efforts and settlement of disputes between entrepreneurs and consumers due to the inclusion of the exoneration clause

Consumers who experience damage and/or loss of personal property arising from the mistakes of the Entrepreneur can basically ask for accountability to the Entrepreneur to provide compensation for losses suffered by natural consumers even though the Entrepreneur uses an exoneration clause in the form of "lost or damaged goods not the responsibility of the Actor Business".

²⁵ Abdulkadir Muhammad, *Hukum Perdata ...*, p. 5.

According to the author, there are 3 legal efforts that can be taken by Consumers to regain their rights that have been harmed by the Entrepreneur due to the application of the exoneration clause as a justification from the Entrepreneur to transfer these responsibilities, including:

- a. Resolving such disputes only between Entrepreneurs and consumers;
- b. Submit a lawsuit against an entrepreneur through the Consumer Dispute Settlement Agency (BPSK); or
- c. Submit a claim through a court in the general court environment.

Legal efforts demand direct compensation to entrepreneurs

The Consumer Protection Act gives authority to consumers to demand compensation directly to entrepreneurs for losses suffered by consumers due to goods and/or services produced by entrepreneurs. Article 19 paragraph (3) of the Consumer Protection Act states that the award of compensation by Entrepreneurs is carried out within 7 (seven) days after the date of the transaction between the entrepreneur and the consumer. However, if the entrepreneur refuses and does not fulfill the compensation submitted by the consumer as stipulated in Article 19 paragraph (1) to paragraph (4) of the Consumer Protection Act, then based on article 23 of the Consumer Protection Act, consumers can sue entrepreneurs through a dispute resolution body consumers or to the judiciary in the consumer's place of residence.

Legal efforts through the consumer dispute settlement agency (BPSK)

Based on Article 45 paragraph (1) and paragraph (2) of the Consumer Protection Act, entrepreneurs who harm consumer rights can be sued by consumers through institutions that have the authority to resolve disputes between consumers, in this case the Consumer Dispute Settlement Agency (BPSK). Dispute resolution through BPSK is considered as a settlement of a dispute outside the court if it has been agreed upon by the parties to the dispute. Compensation claims submitted through BPSK can only be done by consumers personally or independently. In addition, based on Article 47 of the Consumer Protection Act, dispute resolution through this institution is expected to reach 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 day.

Based on Article 52 of the Consumer Protection Act and Minister of Industry and Trade Decree No.350/MPP/Kep/12/2001 concerning the Implementation of Duties and authority of BPSK, it can be concluded that BPSK has important duties and functions, including:

- a. BPSK as an institution to resolve disputes between consumers and entrepreneurs outside the court (non-litigation), by using mediation methods or through arbitration methods.
- b. BPSK supervises the inclusion of standard clauses (including exoneration clauses) applied by Entrepreneurs.²⁶

Unfortunately, the decisions made by BPSK do not have executive powers as the decisions made by district courts have. Thus, Article 57 of the Consumer Protection Act states that the decision formed by the BPSK assembly must be requested to determine the execution of the district court where the consumer is harmed.

Submit a claim through a court in the general court environment

Article 45 (1) of the Consumer Protection Act reveals that every aggrieved consumer can file a claim for compensation to the public court, which in this case is a district court. In addition, the thing that distinguishes compensation claims submitted by consumers through BPSK and the District Court can be seen from the legal subject who filed the lawsuit. Based on Article 46 paragraph (1) and paragraph (2) of the Consumer Protection Act explicitly states that claims filed by consumers, a group of consumers through class action, consumer self-help organizations (LPKSM) and the government can only be submitted through the public justice agency. Thus, those who can file compensation claims through the general court have a wider legal subject capacity.

²⁶ Dahlia, "Peran BPSK Sebagai Lembaga Penyelesaian Sengketa Konsumen Dalam Perspektif Undang-Undang Nomor 5 Tahun 1999 Tentang Perlindungan Konsumen", *Jurnal Ilmu Hukum Litigasi*, vol. 5, no. 1 (2014), p. 84.

Conclusion

The exoneration clause applied by the entrepreneur will make the consumer who experiences loss due to loss and/or damage to his personal property will think to whom should ask for compensation or even only allow the incident to be completed without further legal remedies. Exoneration clause is a provision stated in an agreement, where one party avoids fulfilling their responsibilities in paying compensation in part or in whole due to broken promises or illegal acts. Under the Consumer Protection Act, the application of an exoneration clause will bring legal consequences in the form of null and void. In addition, to restore the rights held by consumers, consumers can demand compensation and restore their rights through business actors, BPSK, 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 value of appropriateness and whether it is in accordance with the principles and norms in the treaty law in Indonesia.

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