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Electronic Standard Contract Law From the Perspective of Consumer Protection

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Abstract

Electronic commerce (e-commerce) is now an established practice that is governed by national laws. Electronic agreement/contract is a conventional agreement with a propensity to harm consumers. A standard agreement is required in commercial practice, but its legality remains contested due to the nature of the agreement itself. However, its status is acknowledged and governed by the Consumer Protection Act. Consequently, the purpose of this study is to determine how the legislation of electronic standard agreements relates to consumer protection. This study is normative legal research employing both a statutory and a conceptual method. Results indicate that the standard electronic agreement is valid and does not contradict with Article 18 of Law No. 8 of 1999, Article 1320 of the Civil Law Law, and Article 9 of Law No. 11 of 2008. Research also found that so far the standard agreement tends to harm consumers because it is misused by producers by providing conditions that are very detrimental to consumers such as a standard clause that goods purchased cannot be returned, Damaged/lost goods are not the responsibility of the producer. From the research it was also found that BPSK and LPKSM as non-governmental institutions that have the task of protecting consumers have not carried out their roles properly.

Keywords: Consumer Protection, Legal Aspects, Standard Agreement, Electronic System

A. INTRODUCTION

Humans present on earth have actually been equipped with knowledge by the creator. The knowledge that humans get is used as a tool for survival (Powell & Snellman, 2004). This survival can occur because it is assisted by the five senses accompanied by the mind (Despres & Chauvel, 1999). According to Kuhn, knowledge exceeds science, because knowledge is basically everything that is known while science has led to one subject or more focused on one thing (Urry, 1973).

One type of science is the science of law which is the object of study. Legal Science is positive law that applies in a certain country at a certain time, namely the conceptual system of legal principles, legal rules and legal decisions as a product of legal awareness and legal politics, the important part of which is positive by the bearer of legal authority (authority). in the country concerned, as well as the legal institutions to actualize the conceptual system and its processes (Marmor, 2001; Kelsen & Trevino, 2017).

As one of the objects of study in legal science, electronic commerce (e-commerce) has now become a habit that has a legal basis that is regulated by each country (Stead & Gilbert, 2001; Jennex et al., 2004). Traditional markets are no longer the main destination to fulfill daily needs. The public is treated and pampered with many online shops through applications on Android and smart phones to meet their needs efficiently and effectively. Electronic commerce has a very significant impact on the growth of creativity and innovation among society (Edwards, 2005; Mirescu & Maiorescu, 2010).

In Indonesia, e-commerce is governed under Law No. 11 of 2008 pertaining to Information and

Electronic Transactions (UU.). ITE). In regulating e-commerce under the law, there are two crucial factors: First, the recognition of electronic transactions and electronic documents within the framework of the law of contract and the law of evidence, in order to guarantee the legal certainty of electronic transactions. Second, the categorization of actions that involve the qualification of illegal IT (Information Technology) misuse followed by criminal penalties (Putra, 2014; Ramli, 2018). With the recognition of electronic transactions and electronic documents, e-commerce activities at least have a legal basis and provide protection for e-commerce consumers. Article 1 point 1 of Law No. 8 of 1999 on Consumer Protection (UUPK) defines consumer protection as "any measures that offer legal certainty to protect consumers" (Ranto, 2019; Perkasa et al, 2016).

In conducting their economic activities, business actors adhere to the economic principle, which dictates maximizing profit with the smallest amount of capital. In other words, it is likely that consumers will be hurt either directly or indirectly as a result of this way of thinking (Rohendi, 2015). Every consumer obtains goods and or services through a legal relationship with a producer or business actor which is commonly called an agreement or contract (Charny, 1990). This is as stated by Janus Sidabalok (2020) which basically states that consumers who obtain products by buying from producers means that consumers are bound by a contractual relationship (agreement/contract) with the producer. On the other hand, consumers who do not buy are not bound by a contractual relationship with producers.

The standards for agreements and contracts in general are provided in Book III of the Civil Code, which, as is widely known, adheres to an open system. An open system supported by the principle of contract freedom results in parties being free to enter into agreements with anyone, determine the terms, implementation, form (written or oral), and are permitted to make agreements, both known in the Civil Code and outside the Civil Code, so long as they do not violate the law, public order, or decency (Agus, 2018). The availability of an open system results in contract law being supplemental law. This indicates that the provisions of Book III of the Civil Code may be set aside if the parties have made their own arrangements, and vice versa, if the parties have not made their own provisions, the provisions of Book III of the Civil Code will apply (Miru & Pati, 2020). As a complementary law, since the articles of contract law are considered to fulfill unfinished contracts.

The freedom of contract principle is directly tied to the nature, substance, and structure of an agreement (Jamilah, 2012). Article 1338, paragraph 1, of the Civil Code contains the aforementioned principle of contract freedom, which stipulates that "all legally binding agreements apply as law to individuals who make them." According to Harianto (2016), the principle of freedom of contract can be deduced from the five meanings of the word "all," namely: a) Everyone is free to enter into or not enter into an agreement; b) Everyone is free to enter into an agreement with anyone; c) Everyone is free to determine the form of the agreement he makes; d) Everyone is free to determine the content and terms of the agreement he makes; and e) Everyone is free to make a choice of law.

The existence of the principle of freedom of contract causes the emergence of various kinds of agreements in society in accordance with what is needed by the community (business world) including agreements whose form and content have been standardized and made en masse (standard/standard agreements) (Rokhim, 2016). The standard agreement is essentially born of an open system and the principle of freedom of contract, but its contents limit the freedom of contract itself. According to Nindyo Pramono (2010) in standard agreements (standard) the opposing party only needs to be presented and asked for his approval and the opposing party does not have the freedom to bargain. If he agrees, it means that he accepts the entire contents of the contract and if he does not agree, it means that he does not accept the entire contents of the contract. Restrictions on freedom of contract arise and are regulated both in Book III of the Civil Code (article 1320), the emergence of forms of formal agreements (formale contracten) and real agreements (reile contracten), the emergence of

standard agreements (standard), as well as intervention (interference).) ruler of the treaty.

Making an agreement or electronic contract is a form of engagement or agreement made among the business community based on the principles stipulated in the Law of Agreement (Setyawati et al, 2017). Richard Burton Simatupang (2007) said that it is necessary to know the 3 (three) principles of the agreement and their exceptions. The three principles of the agreement are the principle of freedom of contract, the principle of binding power, and the principle that the agreement only creates bonds between the parties who make it. The agreement contained in an online shop website or better known as an electronic contract is a must that binds the parties in the online trade (Kalangi, 2015). The parties in an electronic trade are not only actual business actors but also business actors who provide websites or often termed as facilitators of electronic commerce (e-commerce) between business actors and consumers. This electronic contract is also made for legal purposes as well as the convenience and security of business actors and consumers (Dewi, 2015).

Based on the above, the authors think that it is very important to conduct research on the Legal Aspects of Electronic Standard Agreements from the perspective of Consumer Protection according to Law Number 8 of 1999 concerning Consumer Protection and Law Number 11 of 2008 which was later amended by Law Number 19 2016.

B. METHOD

To address the aforementioned issues, a normative legal research method is employed. The purpose of normative juridical research is to gather legal resources for examination. Commonly utilized in the legal area, normative juridical research is a distinct sort of research distinct from empirical research and other types of research (Soekanto, 2007). This study employs the standard methodologies for doing legal research, namely the statutory approach and the conceptual approach. This research employs the statutory method since it evaluates numerous laws and regulations. (Efendi & Ibrahim, 2018), in particular substances associated with legal elements of internet trading activities. In addition, a conceptual approach based on concepts, doctrines, and habits in practice is also employed.

There are three sorts of legal resources to be analyzed: primary, secondary, and tertiary legal documents. The Civil Code / Burgelijk Wetboek (Staatsblad 1847/23) (BW), Law Number 11 of 2008 pertaining to Information and Electronic Transactions (UU ITE), and Law Number 8 of 1999 pertaining to Consumer Protection (UUPK) are examples of authoritative legal documents. Secondary legal materials are legal materials that explain primary legal materials, such as books, magazine and newspaper articles, and related papers. While tertiary legal materials are supporting legal materials that give instructions for elementary and secondary legal materials, such as legal dictionaries and language dictionaries, tertiary legal materials are supplementary legal materials.

C. RESULTS AND DISCUSSION

Standard Agreement

Generally speaking, the conditions of many contracts are spelled out printed standard forms that are used for all contracts of the same kind, and are only altered so far as the circumstances of particular contracts need (Treitel, 2003). A standard agreement, according to Hondius (1978), is one that is prepared in writing without prior discussion of its contents and can be used as a template for an infinite number of agreements of a particular type. In legal parlance, a "standard agreement" is a "form agreement" in which the terms are predetermined and laid down in a uniform manner. According to Mariam Darus Badrulzaman (1980), a "standard agreement" is one in which the terms for exoneration are predetermined and spelled out in a consistent manner throughout all agreements.

Based on the foregoing definitions, it is safe to say that standard agreements are those whose form and content have been standardized, and that they are made unilaterally and in bulk, and that they are used for all agreements of the same type or agreements whose making process does not involve the opposing party.

Typical contracts evolve and change in accordance with the needs and trends of the business sector. Conventional contracts share the following features: (Hendrawati, 2011):

a) Form of written agreement: The form of the agreement contains both the agreement's text and the document providing the standard terms and conditions that serves as evidence of the agreement. Typically, the terms or clauses of a statement of will must be expressed in writing in the form of an authentic deed or a private deed.

b) The format that includes the model, formulation, and size specification. The agreement model may consist of a complete agreement text, a form accompanied by a text of the terms, or a document defining standard conditions.

c) The entrepreneur determines the agreement's (terms') conditions: Because the entrepreneur controls the terms of the agreement, they often favor the entrepreneur over the consumer.

d) If the consumer accepts the agreement's terms, the document is signed. The consumer's signature confirms his willingness to bear responsibility; if he refuses, he cannot negotiate the standard conditions.

e) Conflicts are resolved by deliberation or judicial authorities. In the event that a dispute arises in the future, standard clauses for conflict resolution are included.

f) Because it is designed unilaterally by the entrepreneur, the standard agreement is always in the best interests of the entrepreneur, especially in terms of cost, time, and energy efficiency. practicable because there is already a script; quick settlement because the consumer need only consent or sign; The similarity of several contracts; Assignment of responsibility.

Some essential agreement-making activities, such as banking, job agreements, the service delivery sector, trade and commerce, guarantees (mortgages, mortgages, fiduciary), and notary procedures, have standard requirements. Nevertheless, Hondius (1978) does not classify the different sorts of standard agreements. However, the sorts of standard agreements can be gleaned from Mariam Darus Badrulzaman's (1980) categorization, which separates them into four (4) categories:

a) Unilateral standard/standard agreement, i.e., an agreement in which the terms are decided by the side with the strongest position. Typically, the strong side, typically the creditor, has a stronger economic position than the debtor.

b) Standard agreement / reciprocal standard, i.e., an agreement whose terms are mutually agreed upon. Typically, both sides are bound in the organization, such as in a collective labor agreement (PKB).

c) Government-set standard/standard agreements, essentially standard agreements whose contents are established by the government for specific legal activity, such as land sale and purchase deeds and agreements for the acquisition of government products and services.

d) Standard/standard agreements determined by a notary or advocate, particularly an agreement initially presented to a member of the public who requested assistance from the notary or advocate in question.

Standard Agreement According to Law No. 8/1999 on consumer protection

In the articles of the UUPK the term standard agreement is not found, there is a standard clause. Article 1 point 10 UUPK provides the definition of standard clauses, namely: "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 the business actor. consumer". Article 18 of the UUPK contains arrangements for the inclusion of standard clauses in documents and/or agreements, namely:

a) It is unlawful for business actors selling goods and/or services intended for trade to create or include standard clauses in every document and/or agreement.

b) It is unlawful for business actors to include standard provisions whose location or shape is obscure or illegible, or whose disclosure is difficult to comprehend.

c) Every standard clause stated by the business actor in a contract or agreement that satisfies the requirements of paragraphs (1) and (2) is ruled void.

d) Businesses are compelled to modify standard provisions that violate this statute.

This limitation is intended to level the playing field between consumers and business actors on the basis of the principle of contract freedom, as stated in paragraph 1 of Article 18 of the UUPK. It is not until the fourth paragraph of the UUPK's explanation that standard agreements are specifically mentioned: "Consumers become the object of business activity in order for business actors to reap the maximum profit through promotional tips, sales methods, and the application of standard agreements that are detrimental to consumers." Similarly, the UUPK does not include a "exoneration clause." An exoneration clause is a clause that mitigates or eliminates liability.

Despite the UUPK's omission of standard agreements, Yohanes Sogar Simamora (2005) argues that a contract's clauses (primary and supporting clauses) are its most important parts, and Salim (2021) argues that a contract's structure and substance are its most important parts. The basic agreement has clauses because contracts have clauses (such as definition clauses, transaction clauses, special clauses, and general clauses) to define and govern its operation. According to Article 1 Number 10 of the UUPK, which says that standard clauses can be placed in a legally binding document and/or agreement that consumers must comply with, the UUPK governs the substance (provisions) of the agreement and not the agreement itself. Because of this, it is possible that standardizing provisions will also require standard contracts to be governed.

The inclusion or usage of standard provisions is not banned in general, except for standard clauses whose contents are damaging to consumers. The following eight negative lists (paragraph (1) of article 18 of UUPK) describe the types of standard clauses that are prohibited: (1) the contents reduce, limit, or eliminate the obligations or responsibilities of business actors; (2) the contents create obligations or responsibilities imposed on consumers; and (3) the contents reduce, limit, or eliminate the rights of consumers.

In addition to the above standard provisions that are prohibited by the UUPK (article 18 paragraphs (1) and (2)), Munir Fuady (2014) lists a number of other standard clauses typically found in contracts that can harm consumers and should be avoided. Not providing after-sale guarantees for products, limiting culpability in the case of default on after-sale guarantees for products, and imposing impossible-to-pay fines for breaching these provisions are all examples of such clauses.

Therefore, the UUPK acknowledges the standard agreement's standing and permits its application in practice so long as the standard provisions included within it do not contradict with the UUPK. The UUPK's arrangement of standard agreements demonstrates that such agreements do exist, are evolving, and are necessary in modern business practices; however, stricter and more fair arrangements are required because standard agreements typically favor business actors at the expense of consumers (Abbas, 2020). According to Bukit et al. (2018), these lawmakers recognize that the reality that is born from the requirements of the community makes the application of contract norms (standards) a need that cannot be ignored. Regulating it, however, is vital to prevent its misuse and the resulting harm to other parties.

Business actors that have already produced standard terms that are opposed to Article 18 paragraphs (1) and (2) of the UUPK are obligated to amend and adjust them, and the standard agreement is null and void if it clashes with the provisions of the UUPK. by use of that write-up. Paragraphs 3 and 4 of Article 18 of the UUPK state: Each and every boilerplate provision that has been included in a document or agreement by commercial actors that satisfies the requirements of (1) and (2) is thus declared to be void and of no force or effect. When a legislation changes, it is incumbent upon businesses to revise their standard contracts to comply with the new rules. Article 18(3) of the UUPK declares only the standard phrase to be invalid, rather than the entire

agreement. It is possible to terminate the entire agreement, however, if the standard clause pertains to an essentialia element that is the subject of mandatory legal provisions.

Electronic standard agreement law Seen from the Consumer Protection Aspect

Since the Civil Code does not apply to electronic contracts, they fall under the category of anonymous agreements. For an agreement to be legally binding between its parties, it must satisfy the conditions for validity set forth in Article 1320 of the Civil Code and Law No. 11 of 2008 Regarding Information and Electronic Transactions, which provides, among other things, that commercial actors who offer products via electronic systems must provide full and accurate information regarding the terms of the contract, the producers of the products, and the products themselves. There is no further clarification on this issue even in the explanation. as reported by (Syahrani, 2010).

The conditions for the validity of an electronic contract are laid out in Article 47 of Government Regulation no. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. These conditions include an agreement between the parties, carried out by a competent legal subject or authorized to represent in accordance with the provisions of laws and regulations, and the object of the transaction not being in conflict with the regulations. legal framework, moral principles, and public stability. The importance of good faith in an agreement to protect the parties from losses is not explicitly stated above, despite the fact that this is a key element that should be made apparent in the clauses above. This electronic contract's legal requirements are not clarified even by the explanatory material for Government Regulation no. 82 of 2012 concerning the Operation of Electronic Systems and Transactions.

For example, point (b) of Article 18 of Law No. 8 of 1999 Concerning Consumer Protection regulates standard terms that are forbidden from being included in standard agreements, and this is one of the prohibited standard clauses that relates to the issues in this study. The safe and secure handling of the goods being sold and the absence of any latent faults are two things that businesses must ensure to their customers. According to Article 1504 of the Civil Code, it is the responsibility of the business actor to compensate customers for any hidden flaws in the product. Article 1505 of the Civil Code states that a business actor is not required to provide a warranty on products if the defect is obvious to the customer. The term "hidden faults" refers to flaws in products that aren't immediately obvious to the buyer or seller, and hence can apply to online buying and selling transactions involving any and all types of commodities provided by business players.

This is because consumers in online buying and selling cannot see for themselves the real condition of the goods chosen by the business actor to be sent to him. Article 1507 of the Civil Code states that in the cases referred to in Articles 1504 and 1505, the buyer can choose to return the goods while demanding the purchase price money back or will continue to have the goods while demanding a return of part of the purchase money as determined by the judge. after hearing experts about it. So we can conclude that the provisions regarding this hidden defect can also be applied to electronic agreements.

When creating standard terms and conditions for transactions, organizational participants in internet commerce must comply with the legislation, specifically UUPK. As stated in Paragraph 2 of Article 48 of Government Regulation of the Republic of Indonesia Number 82 of 2012 Concerning the Implementation of Electronic Systems and Transactions, electronic contracts containing standard clauses must comply with the provisions regarding standard clauses as outlined in laws and regulations (hereinafter referred to as PP PSTE). So that there is a fair balance between the seller and the customer, and so that the seller is not simply pursuing profit, but also pays attention to the seller's rights, this clause requires the seller to consider the consumer's rights as the person consuming the goods and/or services offered. Buyer's Rights - the legal safeguards offered to consumers.

Article 7 letter (g) of the UUPK requires producers to provide consumers with the right to receive compensation, compensation, and/or replacement if the goods and/or services they receive or use are not in accordance with the agreement. Therefore, the UUPK does more than simply guarantee consumers' rights when it comes to protecting them from defective products.

In e-commerce, consumers have the option to "take it or leave it," rendering them passive participants. Standard clauses are defined in Article 1 number 10 of Law no. 8 of 1999 concerning Consumer Protection (henceforth referred to as UUPK) as any rules or provisions and conditions that have been prepared and determined in advance unilaterally by business actors and outlined in a legally binding document and/or agreement that consumers must comply with.

LPKSM, being a non-governmental entity involved in consumer protection, must be registered with and recognized by the government before it may carry out its obligations. The author believes that the non-governmental organisations BPSK and LPKSM, which are responsible for mediating conflicts between business actors and consumers, have fallen short of their goal of providing the highest level of consumer protection possible. The limited authority of BPSK and LPKSM to provide non-litigation assistance/consumer dispute resolution outside of court is indicative of this. Consumers in precarious financial situations are impacted since they must take their cases to District Court if they are unable to settle their differences amicably. Consumers suffer because court-based conflict resolution is time-consuming, costly, and difficult to really carry out.

When it comes to resolving disputes in court, you can sue businesses that hurt their customers, utilize standard terms that don't comply with the law, or engage in any number of other legal steps to get what you're owed. In this case, violating Article 1365 of the Civil Code by bringing a lawsuit is illegal. With the goal of compelling business actors to compensate customers for harm they've suffered.

D. CONCLUSION

A standard agreement is a living, changing truth that has become mandatory in the business world, but its legality is still being questioned due to the fact that it protects one side's interests more than the other. As a result, there are varying perspectives regarding the presence of a standard agreement, as there are those who support it, those who oppose it, and those who accept it under particular conditions and supervision. Nonetheless, its status is recognized and governed in terms of consumer protection, specifically by Article 18 of the UUPK, which regulates the insertion or use of standard provisions. Therefore, the stance of the standard agreement is legally binding if its presence and usage are not prohibited by the Consumer Protection Act or in conflict with it (Article 18 UUPK). Article 18 paragraph 3 confirms that every standard clause set by the business actor and incorporated in a contract or agreement fulfilling the aforementioned requirements is void. Therefore, normal terms in e-commerce transactions are permissible if they do not violate Article 18 paragraphs 1 and 2 of the Consumer Protection Act.

In order for the E-commerce sale and purchase agreement to be deemed genuine, certain factors must be taken into account, namely, the consumer must be given ample time to read and comprehend the terms of the agreement, and the consumer may review the terms of the agreement at any time. This is very significant because it eliminates the risk of a misunderstanding of the contract and makes the consumer feel at ease because they are not in a rush to make a decision, so ensuring the appropriateness of online business behavior. To prevent abuse of circumstances, it is also vital to pay attention to the conditions of the agreement so that it does not take the form of an imbalanced relationship or scenario.

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