

Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors

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Abstract

Standard clauses are usually made by parties in a stronger position, which in reality can be held by business actors. The contents of standard clauses often harm the party receiving the standard clause, namely the consumer, because they are made unilaterally. If consumers reject the standard clause, they will not get the goods or services they need, because they will find similar standard clauses elsewhere. Article 1 number 1 UUPK states that, "Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers." Apart from that, regulations regarding consumer dispute resolution as a form of legal protection for consumers are reflected in Article 52, the institution given the authority to carry out supervision is the Consumer Dispute Resolution Agency. Business actors are prohibited from including standard clauses whose position or form is difficult to see or cannot be read clearly, or whose expression is difficult to understand. Business actors are obliged to adjust standard clauses that conflict with Law Number 8 of 1999 concerning Consumer Protection. Standard agreements provide many advantages in their use, but from the various advantages that exist there is another side to the use and development of standard agreements which has received a lot of critical attention from legal experts, namely the weakness in accommodating a balanced position for the parties.

Keywords: Legal Protection, Consumers, Business Actors, Standard Clauses.

INTRODUCTION

Consumer protection is an inseparable part of healthy business activities. In healthy business activities there is a balance of legal protection between consumers and producers. The absence of balanced protection leaves consumers in a weak position. Moreover, if the product produced by the producer is a limited type of product, the producer can abuse its monopoly position. This of course will be detrimental to consumers (Miru, 2013). Consumer protection is a guarantee that consumers should get for every product offered by producers or business actors. In several cases, many violations have been found that are detrimental to consumers, which of course is related to the inclusion of standard clauses that are detrimental to consumers, for example: we often find that when we buy an item, there is a statement on the

note/invoice/receipt that reads: "Goods that have been purchased, "cannot be exchanged or returned" this standard clause statement is of course very detrimental to consumers, if it turns out that the goods purchased are damaged, not functioning properly or the condition of the goods is not in accordance with what was promised, because of this statement, the business actor feel entitled to refuse to return the goods, or make a replacement. This is of course a very clear violation of UUPK article 18 paragraph 1 (b).

According to Law number 8 of 1999 concerning consumer protection, article 18 paragraph 1 letters (a) and (b) explains that business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/agreement. if it states the transfer of responsibility of the business actor and states that the business actor has the right to refuse to hand over the goods purchased by the consumer.

Standard clauses are usually made by parties in a stronger position, which in reality can be held by business actors. The contents of standard clauses often harm the party receiving the standard clause, namely the consumer, because they are made unilaterally. If consumers reject these standard clauses, they will not get the goods or services they need, because they will find similar standard clauses elsewhere.

This will cause consumers to agree more often with the contents of standard clauses even though they are cornered. For entrepreneurs, perhaps this is a way to achieve economic goals that is efficient, practical and quick without being long-winded. But for consumers, it is actually an unprofitable choice because they are only faced with one choice, namely accepting it, even though it is reluctant.

The Consumer Protection Law as a legal tool is not intended to kill the businesses of business actors, but as an effort to increase awareness so that when running a business you must act honestly and responsibly. Based on Article 1 point 1 of the Consumer Protection Law, it means that consumer protection is all efforts to ensure legal certainty to provide protection to consumers. Protection for consumers is necessary, considering that in reality consumers are always at a disadvantage.

Consumer rights contained in Article 4 of Law Number 8 of 1999 concerning Consumer Protection, namely:

1. The right to comfort, security and safety in consuming goods and/or services;
2. 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;
3. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services;
4. The right to have opinions and complaints heard regarding the goods and/or services used;
5. The right to obtain appropriate advocacy, protection and efforts to resolve consumer protection disputes;
6. The right to receive consumer guidance and education;
7. The right to be treated or served correctly and honestly and not in a discriminatory manner;
8. The right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
9. Rights regulated in other statutory provisions.

This research aims to determine the legal regulations related to the inclusion of standard clauses based on Indonesian positive law, to determine the legal consequences of the inclusion

of standard clauses on agreements between business actors and consumers. To find out about legal protection for consumers related to the inclusion of standard clauses.

RESEARCH METHOD

This research was conducted using normative legal research methods, considering the object/focus of this research study is a product of statutory regulations (Marzuki, 2017). The approach used is the statutory approach (Statue Approach), an approach that utilizes an analysis of statutory provisions that have a link or relevance to the legal issues in this study (Ibrahim, 2013) and the case approach (Case Approach), an approach to cases related to the issues examined by the author.

The data analysis technique that will be used in this study is to use a qualitative juridical analysis method in the form of interpretation of legal materials, then the results of the analysis will be linked to the problems abbreviated in this study in order to produce an objective assessment in answering the issues raised in this research. (Ali, 2013). The data sources used in this study are primary legal materials in the form of legal materials that have authority and are binding. Secondary legal materials are explanations related to primary legal materials such as legal books, scientific papers, internet materials, articles, opinions from legal experts, and other legal materials (Ibrahim, 2013).

DISCUSS AND ANALYSIS

Legal Protection for Consumers Based on Law Number 8 of 1999 concerning Consumer Protection

According to Article 1 point (2) UUPK states that "A consumer is every person who uses goods and/or services available in society, whether for the benefit of themselves, their family, other people or other living creatures and is not traded." Business actors in general are people or legal entities that produce goods and/or services by producing these goods and/or services to meet the needs of society or consumers by seeking profits from these goods and/or services. The consumer protection law (UUPK) seems to try to avoid using the word "producer" as opposed to the word "consumer". So the word "business actor" is used which has a broader meaning, where the term business actor can also mean creditors (fund providers), producers, distributors, sellers and other terminology that is commonly given. Article 1 number 1 UUPK states that, "Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers."

According to article 1 number (3) UUPK, what is meant by a business actor is "Every individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly. together through agreements to carry out business activities in various economic fields." 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 be realized optimally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.
3. 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, use and utilization of goods and/or services consumed or utilized.
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.

In general, actions that are prohibited for business actors are regulated in Chapter IV of the UUPK which consists of 10 articles, starting from articles 8 to 17. The provisions of Article 8 of the UUPK are the only general provisions for the business activities of manufacturers and distributors in Indonesia. This prohibition includes business activities to carry out production and/or trade in goods and services that:

1. does not meet or is not in accordance with the required standards and provisions of laws and regulations;
2. does not correspond to the net weight, net or net contents and the calculated quantity as stated on the label or label of the goods;
3. does not match the measurements, measures, scales and quantities calculated according to actual measurements;
4. does not comply with the conditions, guarantees, privileges or efficacy as stated in the label, label or description of the goods and/or services;
5. does not comply with the quality, grade, composition, processing process, fashion style, or specific use as stated in the label or description of the goods and/or services;
6. does not comply with the promises stated in labels, labels, information, advertisements or sales promotions for said goods and/or services;
7. does not include an expiry date or the best use/utilization period for the goods;
8. does not follow the provisions for halal production, as stated in the "halal" statement on the label;
9. do not put labels or make descriptions of goods that contain the name of the goods, size, net or net weight/content, composition, rules of use, date of manufacture, side effects, name and address of the business actor and other information for use that complies with the provisions must be posted/ created;
10. does not include information and/or instructions for using the goods in Indonesian in accordance with applicable regulations.

If a business actor, in carrying out his business, violates prohibitions and/or causes damage, pollution and/or loss to consumers as a result of consuming the goods and/or services being bought and sold, then the business actor is responsible for providing compensation. This compensation can be in the form of a refund or replacement of goods and/or services of similar

or equivalent value or health care and/or provision of compensation in accordance with the provisions of applicable laws and regulations. Compensation is provided within a period of 7 (seven) days after the transaction date.

Various studies on consumer protection have been carried out by consumer protection institutions and academic circles regarding standard clauses for various transactions. However, the studies that have been carried out have not provided a model of consumer protection in transactions in the form of standard clauses that can be accepted by both consumers themselves and producers/business actors.

Law number 8 of 1999 concerning Consumer Protection Article 52, the institution given the authority to carry out supervision is the Consumer Dispute Resolution Agency, which is then abbreviated as BPSK. The Consumer Dispute Resolution Agency is the body tasked with handling and resolving disputes between business actors and consumers (Article 1 point 11 of Law Number 8 of 1999 concerning Consumer Protection). BPSK supervises the inclusion of standard clauses by business actors, bearing in mind that standard agreements are starting to be widely used in legal relations between business actors and consumers and the possibility of losses that will be caused to consumers if the inclusion of these standard clauses is not monitored in practice. Apart from that, Non-Governmental Consumer Protection Institutions have the opportunity to play an active role in realizing consumer protection together with the Government and BPSK.

The role of LPKSM is very important, especially in protecting consumers against the inclusion of standard clauses that are detrimental to business actors, namely by carrying out prevention through outreach related to education and advice to consumers as well as collaborating with BPSK and the Government in monitoring violations of consumer rights, especially regarding the inclusion of standard clauses. which is detrimental. In addition, the National Consumer Protection Agency (BPKN) was formed as an effort to develop consumer protection (Miru & Yodo, 2011).

Prohibition of Including Standard Clauses Based on Law Number 8 of 1999 concerning Consumer Protection

An agreement is an act of binding the parties who agree to an agreement. The elements are the existence of more than one party, the goals to be achieved, the agreement between the parties, the achievements to be implemented, and the conditions (Simanjuntak, 2015). If you are guided by the terms of the agreement contained in Article 1320 of the Civil Code, the agreement must be agreed upon and binding on all people involved in the agreement. And the principle of agreement is freedom of contract which regulates agreements made by all legal subjects without coercion. The agreement is invalid if there are several things that conflict with the existing provisions. A standard clause is a type of agreement. This agreement can be interpreted as an agreement. According to Mariam Darus Badruzaman, it can be defined as an agreement that has been standardized or stated in a form (Sari et al., 2019). This shopping center Bakudi clause puts the position of business actors and consumers in an unequal position. As is the case on shopping receipts, there are the words "Goods that have been purchased cannot be exchanged". This is not very beneficial for consumers, because there is no form of responsibility from business actors.

Standard clauses in a standard agreement can contain obligations that need to be carried out by the recipient of goods or services and there may be clauses that remove responsibility from one of the parties, namely the maker of the standard agreement or the business actor. Business actors can unilaterally eliminate the obligations they should bear. As a result, if consumers sue business actors for "minor" mistakes, then business actors can make excuses. Such types of errors are not covered by the agreement. Consumers can be in a weak position if there is no balanced protection so that consumer protection is an inseparable part of healthy business activities.

The use of standard clauses in an agreement is deemed not to violate the provisions of civil law, especially those relating to the principle of freedom of contract. This is because in standard agreements not all of the contents of the agreement are standardized, it just reduces the existence of the principle of freedom of contract. The position of standard clauses in contract law in Indonesia can be traced from the legal basis that regulates standard clauses, as well as the use of standard clauses in civil relations between the parties. Regarding the position of standard clauses, it can be seen from the legal rules that regulate them as well as several examples of agreements that use standard clauses. The application of standard clauses by the seller who has a stronger position towards the buyer who has a weaker position can have a huge loss impact on the buyer, namely that the buyer cannot freely make an offer for the goods he wants to buy, so that this situation can be called as an abuse of circumstances.

According to Article 18 Paragraph (1), business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document/or agreement if:

1. declare the transfer of responsibility of the business actor;
2. states that business actors have the right to refuse to return goods purchased by consumers;
3. states that business actors have the right to refuse to hand over money paid for goods and/or services purchased by consumers;
4. declare the granting of authority from consumers to business actors, either directly or indirectly, to carry out all unilateral actions relating to goods purchased by consumers in installments;
5. regulates the matter of proving the loss of use of goods or use of services purchased by consumers
6. gives business actors the right to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
7. states that consumers are subject to regulations in the form of new, additional, continued rules and/or further changes made unilaterally by business actors during the period when consumers use the services they purchase;
8. states that the consumer authorizes the business actor to impose mortgage rights, lien rights or security rights on goods purchased by the consumer in installments.

Business actors are prohibited from including standard clauses whose position or form is difficult to see or cannot be read clearly, or whose expression is difficult to understand. Business actors are obliged to adjust standard clauses that conflict with Law Number 8 of 1999 concerning Consumer Protection. Standard agreements provide many advantages in their use, but from the various advantages that exist there is another side to the use and development of standard agreements which has received a lot of critical attention from legal

experts, namely its weakness in accommodating a balanced position for the parties. The weaknesses of this standard agreement stem from the characteristics of a standard agreement which in its form is an agreement made by one party and a standardized agreement which leaves little or even no room for the other party to negotiate the contents of the agreement. The highlight of legal experts and the enactment of standard agreements, apart from their validity, is that there are clauses that are unfair and very burdensome for one of the parties.

CLOSURE

Conclusion

Article 1 number 1 UUPK states that, "Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers." Apart from that, regulations regarding consumer dispute resolution as a form of legal protection for consumers are reflected in Article 52, the institution given the authority to carry out supervision is the Consumer Dispute Resolution Agency, which is then abbreviated as BPSK. The Consumer Dispute Resolution Agency is the body tasked with handling and resolving disputes between business actors and consumers (Article 1 point 11 of Law Number 8 of 1999 concerning Consumer Protection). BPSK supervises the inclusion of standard clauses by business actors, bearing in mind that standard agreements are starting to be widely used in legal relations between business actors and consumers and the possibility of losses that will be caused to consumers if the inclusion of these standard clauses is not monitored in practice. Apart from that, Non-Governmental Consumer Protection Institutions have the opportunity to play an active role in realizing consumer protection together with the Government and BPSK.

Business actors are prohibited from including standard clauses whose position or form is difficult to see or cannot be read clearly, or whose expression is difficult to understand. Business actors are obliged to adjust standard clauses that conflict with Law Number 8 of 1999 concerning Consumer Protection. Standard agreements provide many advantages in their use, but from the various advantages that exist there is another side to the use and development of standard agreements which has received a lot of critical attention from legal experts, namely its weakness in accommodating a balanced position for the parties. The weaknesses of this standard agreement stem from the characteristics of a standard agreement which in its form is an agreement made by one party and a standardized agreement which leaves little or even no room for the other party to negotiate the contents of the agreement. The highlight of legal experts and the enactment of standard agreements, apart from their validity, is that there are clauses that are unfair and very burdensome for one of the parties.

Suggestion

Business administrators should evaluate the standard clause agreement so that it is in accordance with and does not deviate from what is regulated by the UUPK. With the aim of ensuring equality and fairness of rights and obligations between business operators and consumers so as to achieve justice which is one of the goals of the law.

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