



Legal protection for consumers related to standard clauses according to law number 8 of 1999 concerning consumer protection

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Abstract

The application of standard clauses by business actors to consumers in business activities through standard agreements in Indonesia existed before issuing the Consumer Protection Law. It then creates a dispute or problem that must be resolved by filing a lawsuit to the court because the standard agreement has harmed consumers and is contrary to the principles in the agreement and is contrary to Article 1320 in conjunction with Civil Code Article 1338. The issuance of Law Number 8 of 1999 concerning Consumer Protection can also not minimize the risk of loss by consumers related to the application of standard clauses considering that these regulations are still minimal because there is only one article, namely Article 18. Due to the lack of regulation of standard clauses in the Consumer Protection Law, the practice of disputes between business actors and consumers related to standard clauses continues to be a legal problem in Indonesia that needs to be addressed. This study examines how entrepreneurs apply standard clauses in standard agreements with consumers, which in their implementation cause legal disputes and examine consumer protection against the application of standard clauses in terms of Law Number 8 of 1999 concerning Consumer Protection and includes several examples of cases relating to the standard application of clauses in the standard agreement which is settled through the civil court.

Keywords: legal protection, standard clauses, law, consumer protection

Introduction

Legal protection for consumers is an inseparable part of healthy business activities. There is a balance between legal protection between business actors and consumers in healthy business activities. Moreover, the absence of balanced protection leaves consumers in a weak position, if it is related to the agreement made by the business actor regarding the inclusion of standard clauses. Agreements that have been made unilaterally by business actors when presented to consumers, consumers do not have the opportunity to negotiate. Do not negotiate to read the agreement is very unlikely, for example, parking ticket, vehicle leasing agreement, Sale and Purchase Binding Agreement or Insurance.

In commercial practice, the unilateral agreement made by business actors regarding the application of standard clauses is a problem that has never been resolved because this was done before the enactment of Law Number 8 of 1999 concerning Consumer Protection. As a result of the application of standard clauses applied by business actors to consumers, consumers experience losses, even more so if they have to be resolved through court or criminal reports, which make consumers experience significant losses, including cost, time and effort.

The weak position of consumers in Indonesia is inseparable from the history of consumer protection, and the weak position of consumers causes the legal position of consumers to become weak. Prior to issuing the law governing consumer protection, law enforcement on problems with producers was very difficult, especially concerning filing lawsuits for losses suffered by consumers ^[1].

The formulation of the definition of consumer protection in Indonesia is regulated in Law Number 8 of 1999 in Article 1 Number 1, which reads ^[2]: "Consumer Protection is all efforts that guarantee legal certainty to protect consumers". The condition of consumers who suffer a lot requires improvement in terms of legal protection so that consumer rights can be enforced. However, in providing legal protection to consumers, it must not harm the interests of business actors.

Consumer protection law is a regulation that protects consumers, given the weak position of consumers. It must be implemented through laws and regulations, especially in consumer protection. According to Friedman, in order for the law to work, three conditions must be met, namely ^[3]: a) The rule must be communicated to the subject it governs; b) The subject it regulates can implement the rule, and c) The subject must have the motivation to carry out the rule.

Regulation of consumer protection issues is not only the concern and responsibility of every country but has also become the concern of international organizations, such as the United Nations. According to United Nations Resolution No. 39 it is stated that the nature of consumer protection implies consumer interests, which include ^[4]: a) Consumer protection from dangers to health and safety; b) Promotion and protection of consumers' socio-

economic interests; c) Availability of adequate information for consumers to provide their ability to make the right choices according to their personal needs; d) Consumer education; e) Availability of effective compensation measures, and f) Freedom to form consumer organizations or other relevant organizations and provide opportunities for these organizations to voice their opinions in the decision-making process concerning their interests.

Legal Protection for Consumers related to applying standard clauses in Indonesia only started in 1999 when the issuance of Law Number 8 of 1999 concerning Consumer Protection. The birth of the Consumer Protection Law is a breath of fresh air that brings legal certainty for both business actors and consumers. In trading activities, there is a mutual relationship between consumers and business actors so that the parties concerned know what their rights and obligations are.

The application of standard clauses in business activities carried out by business actors certainly corners consumers as end users because they do not have a bargaining position, especially if the standard clauses are made so complicated by business actors, for example, standard agreements are made in small letters and are too small. Such as a vehicle leasing agreement, opening an insurance policy or opening an account at a bank. In addition, there is also the application of standard clauses using biased words, for example, the word "immediately", which is very often found in binding agreements for buying and selling houses or apartments.

The agreement made previously by the business actor is called the Standard Agreement. Standard agreement is an agreement that is prepared unilaterally in advance and built on standard terms offered by another party for approval with almost no freedom for the parties which are offered the offer to negotiate on what is being offered^[5]. It is in line with Sutan Remy Sjahdeni who argues that a standard agreement is an agreement in which the party who made the clause has standardised almost all of the clauses so that the other party does not have the opportunity to negotiate or ask for changes^[6].

The definition of Standard Clauses regulated in Article 1 point 10 of the Consumer Protection Law is any rules or provisions and conditions 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 consumers. The standard clause usually lists things that consumers must do, such as additional costs, responsibilities, and others. Often in standard clauses, business actors include sentences or words that contain uncertainty and cause confusion, so that often this causes a violation of rights against consumers^[7]. The regulation regarding the inclusion of standard clauses in the Consumer Protection Law is intended so that the position of consumers is equal to that of business actors.

Standard Clauses are expressly prohibited in Article 18 of the Consumer Protection Law. Article 18 of the Consumer Protection Law contains clauses that are prohibited from being included in the agreement, namely clauses which, because of their substance (in this case contains certain arrangements) and their form, cannot be identified by other parties in the agreement. It refers to Article 18 paragraph (1) and paragraph (2) of the Consumer Protection Law. And the Consumer Protection Law stipulates that violation of these provisions can invalidate the standard clause and declare the agreement or document declared null and void based on Article 18 paragraph (3) of the Consumer Protection Law.

One example of a case regarding standard clauses refers to the case of Anny Gultom and Hontas Tambunan against PT. Securindo Pactama Indonesia (secure parking) in mid-2000^[8]. Anny Gultom and Hontas Tambunan, through their lawyer David Tobing filed a lawsuit against the loss of their car by referring to Article 1366 in conjunction with Article 1367 of the Civil Code and Article 4 of Law Number 8 of 1999 concerning Consumer Protection. The secure parking party denies that they have no responsibility for the loss of the car, referring to the ticket. The case was decided on 26 June 2001 by the Central Jakarta District Court and was granted with one of its orders punishing secure parking for paying material losses of Rp. 60,000,000, - (sixty million rupiah). The District Court's decision was upheld by the Jakarta High Court on 22 August 2002, the Panel of Judges of Cassation at the Supreme Court on 14 July 2005 and the Secure Parking Party finally carried out the decision by providing compensation according to Anny Gultom's demands, even though they also filed for a judicial review, but the Panel of Judges for Judicial Review rejected the lawsuit in 2007.

Based on this description, the formulation of the problem is as follows: a) How is the application of standard clauses in standard agreements by business actors?, and b) What is the legal protection for consumers regarding the application of standard clauses according to Law Number 8 of 1999 concerning Consumer Protection? With the research objectives, namely a) To find out the application of standard clauses in standard agreements by Business Actors, and b) To find out legal protection for consumers regarding the application of standard clauses according to Law Number 8 of 1999 concerning Consumer Protection.

Research Method

In his legal research, the author uses the type of normative research. Normative legal research is a legal research method by researching library materials^[9]. The collecting data is through a case approach and a legal approach. The case approach collects court decisions regarding the legal issues at hand, while the legal approach looks for laws and regulations relating to the issue. The nature of the research in legal research conducted by the author is descriptive, namely conducting research by providing a description or description of what things should be done arising from the results of the study carried out and must be in line with moral, legal ideas^[10]. The legal materials used by the researcher are primary legal materials consisting of statutory regulations, official records, minutes in making legislation and judges' decisions. The following are the primary legal materials that the author uses: a) the 1945 Constitution of the Republic of Indonesia; b) Civil Code; and c) Law Number 8 of 1999 on

Consumer Protection, which consists of 1) Regulation of the Minister of State for Public Works and Public Housing Number 11/PRT/M/2019 concerning the Sale and Purchase Agreement System; 2) Central Jakarta District Court Decision Number 53/PDT.G/2016/PN.JKT.PST, and 3) Central Jakarta District Court Decision Number 551/PDT.G/2000/PN.JKT PST dated 26 June 2001. In addition to primary legal materials, researchers also use legal materials, namely legal materials in the form of books or textbooks containing the principles of law. Basic principles of law and the classical views of highly qualified scholars ^[11]. The secondary legal materials that the author uses include scientific books in the field of law, papers, scientific journals, and scientific articles.

Discussion

Application of Standard Clauses in Standardized Agreements by Business Actors - Juridically, acts that include standard clauses in an agreement are prohibited by the Consumer Protection Law ^[12], but such inclusion often occurs in contract practice. Some business actors include an exoneration clause in the standard agreement format. Article 18 paragraph (1) of the Consumer Protection Law states that business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in each document and/or agreement if: a) declares the transfer of responsibility for business actors; b) stating that the business actor has the right to refuse to return the goods purchased by the consumer; c) stating that the business actor has the right to refuse to return the money paid for the goods and/or services purchased by the consumer; d) declare the power of attorney from the consumer to the business actor either directly or indirectly to take all unilateral actions related to the goods purchased by the consumer in installments; e) regulates the matter of proving the loss of the use of goods or the use of services purchased by consumers; f) giving rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services; g) declare that consumers are subject to regulations in the form of new, additional, continued and/or follow-up changes made unilaterally by business actors while consumers are using the services they have purchased; and h) stating that the consumer authorizes the business actor to impose mortgage, lien, or security rights on goods purchased by consumers in installments.

Furthermore, Article 18 paragraph (2) states that business actors are prohibited from including standard clauses whose location or shape is difficult to see, not read clearly, or whose disclosure is difficult to understand. Furthermore, if the business actor violates Article 18 paragraph (1) and paragraph (2), the agreement will be null and void as stated in Article 18 paragraph (3).

The Consumer Protection Law has clearly stated the prohibition on the inclusion of standard clauses in agreements, but in practice, many standard agreements include standard clauses prohibited by Article 18 paragraph (1). Standard agreements that contain standard clauses which were initially applied in business activities to support efficiency and effectiveness, in their development are considered to have the potential or have clashed with the balance of the parties in the agreement and violate the principles of agreement law or contract law applicable in Indonesia.

Problems begin to arise when a contract or agreement is determined unilaterally by one of the parties. It is usually carried out by business actors called a standard contract or an adhesion contract whose contents or clauses of the agreement contain conditions that tend to unfairness for consumers by the inclusion of a clause that limits the obligations of business actors in implementing the agreement, which is called an exoneration clause.

The application of standard agreements that include standard clauses carried out by business actors who deviate from Article 18 paragraph (2) of the Consumer Protection Law is also contrary to Article 1320 of the Civil Code regarding the terms of the agreement's validity. Article 1320 of the Civil Code [13] states that there are four (4) conditions for a valid agreement, namely: a). there is an agreement, b). the parties say, c). the existence of a certain object and d) a lawful cause. According to Mariam Darus Badrulzaman, the standard agreement eliminates the consensual principle. It does not distinguish the conditions of the debtor parties because this agreement does not meet the elements required by Article 1320 in conjunction with Article 1338 of the Civil Code ^[14].

As a result of the application of standard clauses applied by business actors to consumers, consumers experience losses and must resolve the dispute through the courts, including the following

- a. The Case of Standard Clauses in Parking Services (Anny R. Gultom and Hontas Tambunan against PT. Securindo Packtama Indonesia (Secure Parking)) ^[15].

After the UUPK came into effect, it turns out that Article 1365 of the Civil Code is still being applied in consumer lawsuits. The case of Anny R. Gultom and Hontas Tambunan against PT. Securindo Packtama Indonesia (Secure Parking) in 2000 was the first club to break down the resistance that relied on standard clause arguments in the agreement. Anny R. Gultom and Hontas Tambunan filed a lawsuit for the loss of their car based on Article 1367 of the Civil Code and Article 4 of the UUPK to the Central Jakarta District Court.

In this case, the judge discussed and considered the standard clause issue on the transfer of responsibility and the elements of an unlawful act. The Panel of Judges granted this lawsuit by punishing PT. Securindo Packtama Indonesia to pay material compensation of Rp. 60,000,000, - and stated that PT. Securindo Packtama Indonesia has committed an unlawful act. The judge's consideration in this case, which is important to underline, is that the standard clause or provision contained in the parking ticket or the board that is stuck in front of the entrance to

the parking area is essentially a legally flawed agreement. The decision of the Central Jakarta District Court was upheld by the decision of the DKI Jakarta High Court, the Panel of Judges at the Cassation and Review Level.

b. The Case of Standard Clauses in the Financial Services Business (Agus Sutopo against Standard Chartered Bank) ^[16].

The case of Agus Soetopo (Plaintiff) Soetopo against Standard Chartered Bank (Defendant) began with the opening of two accounts by Plaintiff at Defendant's Bank in April 1999. The first account was a time deposit of Rp. 10 million, while the second account is a savings account worth Rp. 5 million. The opening of the two accounts is a requirement for submitting the Master Gold All In One credit card application.

Four years after opening the account, the plaintiff found a withdrawal transaction as of 30 October 2003, coded as a description of Relationship Maintenance Fee activity with an amount of Rp. 200,000. In the account opening agreement between Plaintiff and Defendant, it has been agreed that there are fees that must be and/or will be paid by Plaintiff as Defendant's customer. However, the plaintiff never entered into an agreement with the defendant regarding the transaction with the statement "REL MINT FEE 0113061260590. It is evidenced by the fact that there were no withdrawal transactions with this information since the plaintiff opened the account in April 1999 until October 2003. As a result, the balance of the plaintiff decreased as of October 2009 to only Rp. 39,452.49. When the bank asked the matter, the plaintiff did not receive an adequate explanation.

In December 2009, the plaintiff filed a lawsuit to the South Jakarta District Court for suffering real losses, and the plaintiff demanded compensation in the form of a refund of his savings amounting to Rp. 7,638,000, - plus interest of 6% per year from November 2003 until the bank pays the full compensation. In addition to asking for material losses, the Plaintiffs also demanded immaterial compensation of Rp. 2 billion. The claim for immaterial compensation was based on the reason that this case took up the time and energy of the plaintiff. He also lost the opportunity to enjoy and take advantage of his business results on several funds placed in his bank account.

The panel of judges granted the lawsuit with Decision Number 1609/Pdt G/2009/PN.Jkt Sel dated 19 August 2010. The panel partially granted the plaintiff's claim by stating that the withdrawal of the account by the defendant unilaterally from November 2003 to October 2009 was null and void and did not have any rights. Binding legal force. The defendant was sentenced to pay compensation of Rp.7,638,566.53 a day after the case was decided and sentenced to pay interest of 6% with a note that the interest was calculated from the time the case was submitted South Jakarta District Court.

In this case, the judge considered the validity of the standard clause of Article 1320 of the Civil Code because there was no agreement in the agreement. The judge cancelled the standard clause for violating Article 18 of the UUPK, although it did not detail the paragraphs and letters of Article 18 of the UUPK that the defendant violated. For this decision, the defendant did not file an appeal and returned the plaintiff's money deducted for three and a half years.

c. The Case of Standard Clauses in the House Sale and Purchase Binding Agreement (Pepi Puspita against PT Paramount Serpong) ^[16].

The case of Pepi Puspita (Plaintiff) against PT Paramount Serpong (Defendant) occurred in connection with an order for a housing unit marketed by the defendant. Interested in the defendant's offer, the plaintiff made a payment of Rp. 10,000,000,- and choose the payment process via KPR from BNI. Subsequently, the plaintiff made a down payment I of Rp. 84,000,000, - and down payment II of Rp. 94,000,000. The total amount paid by Plaintiff is Rp. 178,000,000. After the payment was made, the defendant asked the plaintiff to sign an agreement sent via facsimile, but the plaintiff protested because the agreement that stipulates the clauses or provisions listed is not legible. Although it was not legible, the defendant still asked the plaintiff to immediately sign it and stated that the clause in the order letter was not much different from the provisions in the price list whose brochure was given to the plaintiff.

It turned out that BNI did not grant the KPR application submitted by the plaintiff, so the house transaction was not continued. The plaintiff notified the defendant and asked for down payment to be returned and did not ask for a sign because it had been explained in brochure, and defendant refused because the plaintiff had signed the order letter. The difference of opinion between the plaintiff and the defendant continued to the court. The plaintiff stated that the defendant had committed an unlawful act because his reluctance to return the money was contrary to Article 8 paragraph (1) letter f and letter c, paragraph (2) and paragraph (3) of the UUPK. The defendant denied that there was no coercion to sign an order letter because the procedure for buying a house required a letter of order. The defendant also stated that the order letter did contain a clause: the sign-up money and down payment would be forfeited in the event of a unilateral cancellation by the buyer.

In its consideration, the Judges stated that the plaintiff's interest in buying a house was influenced by the price list, which in the notes at the end stated explicitly that the purchase and rejection cancellation of the mortgage payment was forfeited, and what was meant by the finished payment was Rp. 10,000,000. The assembly also considered that the order letter had included a standard clause whose writing was blurry-although it could still be read-which essentially stated that if the buyer had a unilateral cancellation, the payment receipt and the down payment would be forfeited. The inclusion of a standard clause in the price list only states that the payment is forfeited and does not mention the down payment, so the assembly said that the inclusion of a standard clause in the house reservation letter is contrary to Article 18 paragraph (1) letter c of the UUPK, and is following Article 18 paragraph (3) then such agreement is null and void.

Based on these considerations, the panel of judges decided that the defendant had committed an unlawful act so that he had to pay compensation to the plaintiff, namely to return the plaintiff's money in the amount of Rp. 178,

000, 000,- plus interest of 0.5% per month from the down payment as of the lawsuit filing until the decision has permanent legal force referring to the Tangerang District Court Decision No. 290/PDT.G/2008/PN TNG dated 10 February 2009. The defendant was also sentenced to pay a case management fee of Rp. 25,000,000 and immaterial losses of Rp. 100,000,000.

Based on this decision, the defendant appealed, and the high court granted the defendant's appeal and annulled the Tangerang district court's decision which stated that the defendant had not committed an unlawful act because he was bound by the order letter according to the Banten High Court Decision No. 76/PT/2009/PT BTN dated 25 August 2009.

Based on this decision, the plaintiff filed an appeal, and it was granted referring to the Supreme Court's Decision No. 1063K/PDT/2010 dated & September 2010. The judge's consideration of the Supreme Court that the defendant had committed an unlawful act because he did not return the down payment. Moreover, the purchase cancellation by the plaintiff was not due to the plaintiff's will but because of a mortgage application that BNI did not approve. The Supreme Court overturned the decision of the High Court and corrected the decision of the District Court. The judge sentenced the defendant to return an advance of Rp. 178,000,000 plus interest of 12% per year calculated from the case registration. In this case, the judge has considered the standard clauses from the Civil Code, namely the conditions for the agreement and the UUPK validity, especially regarding the prohibition of certain standard clauses and how to sell.

Legal Protection for Consumers related to the application of Standard Clauses according to Law Number 8 of 1999 concerning Consumer Protection - The demand for a consumer protection law in Indonesia that can protect the interests of consumers has echoed along with the emergence of the Indonesian Consumers Foundation in 1973 [17; 18]. The Consumer Protection Law was promulgated on 20 April 1999, and this marked a new era in Indonesia in the field of consumer protection after waiting for almost 26 years.

The new era in consumer protection focuses more on regulating the position of consumers at the level of the law as a legal umbrella that aims to provide legal protection to consumers regarding the application of standard clauses [19]. The idea of legal protection and standard clauses has been carried out since 1980 in various ways, namely: a) In the form of an Academic Paper on the Basic Bill of Consumer Protection in 1980-1981; b) Symposium on Legal Aspects of Consumer Protection Issues organized by the National Legal Development Agency (BPHN) on 16 – 18 October 1980 in Jakarta; c) Academic Draft Law on Consumer Protection 1992, and d) Law Number 8 of 1999 concerning Consumer Protection.

The objectives of the Indonesian Consumer Protection Law are ^[20]: a) Increasing consumer awareness, ability and independence to protect themselves; b) Elevating the dignity of consumers by preventing them from the negative excesses of using goods and/or services; c) Increasing the empowerment of consumers in choosing, determining, and demanding their rights as consumers; d) Creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information; e) Growing awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude grows in doing business; f) Improving the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security and safety of consumers.

The philosophical foundations of the establishment of the Consumer Protection Law are ^[21] a) to increase consumer awareness and ability to protect themselves from losses; b) elevating the dignity of consumers by avoiding the negative side of using goods and services; c) increasing the empowerment of consumers in choosing, determining, and demanding their rights as consumers; d) creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information.

Concerning standard clauses, aspects of socio-economic interests and legal interests are inseparable from the discussion of standard clauses. The importance of setting standard clauses in protecting the socio-economic interests of consumers is so important that almost all factions in the House of Representatives (DPR) highlight this issue. Therefore, the Consumer Protection Law regulates the rights and obligations of consumers and business operators to regulate or protect the interests of consumers and the interests of business actors in a balanced way ^[22].

The Consumer Protection Law stipulates the rights of consumers ^[23] as follows: a) the right to comfort, security, and safety in consuming goods and/or services; b) the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees; c) the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services; d) the right to have their opinions and complaints heard on the goods and/or services used; e) the right to obtain proper advocacy, protection and efforts to resolve consumer protection disputes; f) the right to receive guidance and consumer education; g) the right to be treated or served correctly and honestly and not discriminatory; h) the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly; and i) rights regulated in the provisions of other laws and regulations.

The idea of consumer protection and standard clauses has become a study of the new order era. There is a standard clause related to the unequal position between business actors and consumers ^[24]. Such a situation is detrimental to consumers because they cannot negotiate, so consumers have to choose "take it or leave it". The prohibition on the inclusion of standard clauses in the Consumer Protection Law is one of the results of developing consumer protection principles so that business actors must submit and obey in applying standard clauses by referring to Article 18.

The Consumer Protection Law explains that all efforts guarantee legal certainty to protect consumers ^[25]. The phrase consumer protection indicates that consumer protection focuses on consumers. However, it should be realized that the existence of consumers is impossible without the presence of business actors. And vice versa, the existence of business actors is impossible without the presence of consumers. Therefore, the existence of consumers and business actors is mentioned as "two sides of the same coin" (two sides of the same coin).

The Consumer Protection Law does not regulate Standard Agreements but regulates the contents of standard agreements called Standard Clauses. Consumer Protection against the application of Standard Clauses is only regulated in one article, namely Article 18. Although it is only regulated in one article, as a result of a standard agreement that contains standard clauses and has been made unilaterally by business actors, the potential losses that consumers will experience must be mitigated as follows ^[26]:

- a. Standard Clauses containing exoneration clauses - Potential losses experienced by consumers if business actors include exoneration clauses in the standard agreements they use include: 1) additional consumer obligations that should not be consumer obligations; 2) additional rights of business actors, which should not be rights of business actors; 3) reduction of obligations of business actors which should be obligations of business actors; 4) reduction of consumer rights which should be consumer rights; and 5) limiting the obligations of business actors which should be the obligations of business actors; 'limiting consumer rights which should be consumer rights'.

There are several ways to mitigate consumer losses in the use of standard clauses in standard agreements, among others through a) Making laws and regulations that prohibit the inclusion of standard clauses containing exoneration clauses; b) Out-of-court proceedings if consumers suffer losses due to the application of standard clauses containing exoneration clauses, they can request justice from non-litigation institutions which in Indonesia are resolved through BPSK (Consumer Dispute Settlement Agency); and c) The judicial process if the business actor if the consumer suffers a loss due to the application of the standard clause containing the exoneration clause, can file a claim for compensation through the judiciary. It follows Article 1 paragraph (3) of the Constitution of the Republic of Indonesia. Indonesia is a state of law ^[27]. If the law rule is related to the rule of law theory, the supremacy of a state does not lie with that state but the law.

- b. Violation of the Contemporaneous Principle - The contemporary principle always applies in making agreements. This principle states that before an agreement is closed or at least when the agreement is closed, the parties must know and have the same understanding of all the agreement provisions agreement. However, because the standard agreement containing the standard clause is made unilaterally by the business actor when the consumer closes the agreement, it does not necessarily have the same knowledge and understanding as to the business actor regarding the standard clause in the standard agreement. It can harm consumers, especially if the standard agreement contains an exoneration clause.
- c. Abuse of Circumstances (undue influence) - Abuse of Circumstances is a doctrine that states that business actors as parties who design, make and offer standard agreements unilaterally, abuse consumer conditions (weakness, doubt or urgency) so that they cannot make decisions to make or not make standard agreement freely.

Conclusion

Based on the discussion of this study, it can be concluded that the application of standard clauses by business actors to consumers in business activities has led to disputes that have led to legal proceedings through the courts. Besides, legal protection for consumers related to standard clauses in the Consumer Protection Law is still too minimal so that in practice, business actors still apply standard clauses in standard agreements that are detrimental to consumers. Therefore, the government must issue laws and regulations specifically related to the limits on applying the standard clauses referred to in Article 18 of the Consumer Protection Law or the Consumer Protection Law that needs to be revised. Because there are still shortcomings related to legal protection for consumers regarding the application of standard clauses; and in addition, the government must also form a new institution that oversees the standard clauses so that supervision can be carried out thoroughly whose scope of authority covers the entire territory of Indonesia.

References

1. Beales III, Howard J, Timothy J. Muris. "FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers." *Geo. Wash. L. Rev*,2014;83:2157.
2. Ramadhani, Firda Ayu, Gianto Al Imron. "Consumer Protection Law On Vehicle Leasing Agreement In Indonesia." *PalArch's Journal of Archaeology of Egypt/Egyptology*,2020;17:3:1716-1722.
3. Freedman, Martin, and Bikki Jaggi. "Global warming, commitment to the Kyoto protocol, and accounting disclosures by the largest global public firms from polluting industries." *The International Journal of Accounting*,2005;40(3):215-232.
4. Izaguerri Vila. A. "International Consumer Protection at the United Nations: Towards Global Governance?." *Journal of Consumer Policy*,2020;43(1):91-103.
5. Kristiyanti, Celina Tri Siwi. "Fulfillment of Good Faith Principle in Preparation of Standard Clauses." *Notariil Jurnal Kenotariatan*,2019;4(2):114-122.
6. Fissell, Brenner M. "The Dual Standard of Review in Contracts Clause Jurisprudence." *Geo. LJ*,2012;101:1089.

7. Johnston, Jason Scott. "The return of bargain: An economic theory of how standard-form contracts enable cooperative negotiation between businesses and consumers." *Michigan Law Review*, 2006:104(5):857-898.
8. Budiarti, Rita Triana. "David Tobing: Belajar Membela Konsumen.", 2014.
9. Dobinson, Ian, and Francis Johns. "Legal research as qualitative research." *Research methods for law*, 2017, 18-47.
10. Webley Lisa. "Qualitative approaches to empirical legal research." *The Oxford handbook of empirical legal research*, 2010:927-927.
11. Fried, Charles. *Contract as promise: A theory of contractual obligation*. Oxford University Press, USA, 2015.
12. Gerhards, Eleanor Vaida. "Your Store Is Gross-How Recent Cases, the FTC, and State Consumer Protection Laws Can Impact a Franchise System's Response to Negative, Defamatory, or Fake Online Reviews." *Franchise LJ*, 2014:34:503.
13. Devi, Ria Sintha, Gomgom Siregar, Maurice Rogers. "Law Perspective Business Competition on The Motorcycle (Matic) Priceagreements Among Enterpreauners." *Journal of Advanced Research in Dynamical and Control Systems*, 2021:12(6):565-572.
14. Butarbutar, Elisabeth Nurhaini. "Implementation the Principle of in Good Faith in the Standart Contract." In *Proceeding-Kuala Lumpur International Business, Economics and Law Conference*, 2015:7:128-136.
15. Subekti, Raden, Raden Tjitrosudibio. "Kitab undang-undang hukum perdata.", 1999.
16. Tobing, David ML. *Klausula Buku: Paradoks Dalam Penegakan Hukum Perlindungan Konsumen*. Gramedia Pustaka Utama, 2019.
17. Carroll, Toby, Darryl SL Jarvis. "The new politics of development: Citizens, civil society, and the evolution of neoliberal development policy." *Globalizations*, 2015:12(3):281-304.
18. Lindsey, Timothy, ed. *Indonesia, law and society*. Federation Press, 2008.
19. Pridgen, Dee. "Sea changes in consumer financial protection: Stronger agency and stronger laws." *Wyo. L. Rev*, 2013:13:405.
20. Los Banos, Jessica, and Gwendolyn Ingrid Utama. "Social justice in consumer protection: The Indonesian framework." *Jurnal Undang-undang dan Masyarakat*, 2013:17:45.
21. Mehta, Pradeep S. "Economic regulations, competition, and consumer protection in ancient India." *The Antitrust Bulletin*, 2018:63(3):316-329.
22. Nissenbaum, Helen. "Respecting context to protect privacy: Why meaning matters." *Science and engineering ethics*, 2018:24(3):831-852.
23. Xu Junke. "Who Will Protect Chinese Consumers-The Past, Present and Future of Consumer Protection Legislation in China." *Loy. Consumer L. Rev*, 2011:24:22.
24. Fuchs, Doris, Agni Kalfagianni, and Tetty Havinga. "Actors in private food governance: the legitimacy of retail standards and multistakeholder initiatives with civil society participation." *Agriculture and human values*, 2011:28:3:353-367.
25. Widiarty, Wiwik Sri. "Halal label packaging of food products circulation consumer protection." *International Journal of Law* 7, 2021:(3):172-176.
26. Becher, Shmuel I. "Behavioral science and consumer standard form contracts." *La. L. Rev*, 2007:68:117.
27. Suryawati, Nany. "Criticize the Constitutional Rights of Citizens on Era and Post Pandemic Covid 19 in State of the Republic of Indonesia.", 2020, 554-564.