



---

## The exoneration clause in the subsidized home sale and purchased agreement (a case study at PT Hadrah Aceh Pratama Banda Aceh)

Sheilla Maynisa Salman<sup>1</sup>, Sanusi<sup>2</sup>, Yusri<sup>2</sup>

<sup>1</sup> Student of Master Program of Law of Syiah Kuala University, Banda Aceh, Indonesia

<sup>2</sup> Lecture Master Program of Law of Syiah Kuala University, Banda Aceh, Indonesia

---

### Abstract

This study aims to explain the form and content of the exoneration clause contained in the subsidized home sale and purchase agreement at PT Hadrah Aceh Pratama, the legal consequences for business actors who include an exoneration clause in the agreement, as well as forms of legal protection for consumers against the inclusion of an adverse exoneration clause. The method used in this research is normative juridical and empirical research, with a statutory approach and a case approach. The data collection techniques were obtained from interviews, observations and documentation using primary and secondary data sources. The data obtained will be analyzed through descriptive-analytical method. The results showed that PT Hadrah Aceh Pratama is in the form of a clause that is used in the form of transfer of responsibility, stating the refusal to return the money paid for goods purchased by consumers, giving the rights to business actors to reduce service benefits or reduce consumer assets that are the object of buying and selling, which are also very detrimental to consumers in its implementation. As a result of violating the provisions contained in Article 18 paragraph (1) of the UUPK will result in the agreement being null and void. The form of legal protection for consumers is divided into two forms, namely: preventive legal protection (prevention) and repressive legal protection (dispute resolution). Likewise, the consumer should be more considerate and cautious in signing a standard agreement.

**Keywords:** exoneration clause, agreement, sale and purchase

---

### Introduction

Business developments have become more and more advanced. This development was also followed by demands for the use of contract models that are considered efficient, and can accommodate business actors to gain profits and avoid losses, through standard contracts. A standard contract is a contract that has been made standardly, or printed in large quantities with blanks or several parts that are the object of the transaction, such as the amount of the transaction value, type, and amount transacted and so on so as not to open up opportunities for other parties to negotiate regarding what will be agreed to be included in the contract (Rahman Hasanuddin, 2003, p. 197) <sup>[5]</sup>.

The existence of standard contracts currently in the midst of society is a separate necessity for business actors in protecting their losses. With the existence of a standard contract, business people have prepared the clauses set forth in a contract. A clause is a form of agreement between two or more people to create an obligation to do or not to do something special (Rai Widjaya, 2004, p. 11) <sup>[6]</sup>. The use of standard contracts as a form of efficiency in business by business actors, namely the dominant party in conducting a transaction, can also be used to gain profits by including an exoneration clause. The exoneration clause in principle aims to limit or even eliminate the responsibility of the creditor for certain risks that may arise in the future. The application of this clause can be detrimental to the weak party, and is included in the abuse of the situation (Ahmadi Miru & Sutama Yodo, 2008, p. 115).

In the process of transaction, besides applying a standard agreement, business actors also often apply an exoneration clause. The exoneration clause is a clause that limits itself from the responsibility to bear the risk (Syahmin AK, 2006, p. 152) <sup>[8]</sup>. One example of the application of an exoneration clause in a house sale and purchase agreement is found in a house sale and purchase agreement at PT Hadrah Aceh Pratama, Banda Aceh. namely "If the second party withdraws which is not due to the negligence of the Developer (development) and the Bank, then the DP money that has been submitted by the First Party to the Second Party will 100% be returned by 50% (or forfeited by 50% of the total DP) and if the First, just give 50% DP to the Second Party, then 50% DP will be forfeited"

In the house sale and purchase agreement with PT Hadrah Aceh Pratama, Banda Aceh the agreement is made and determined by the PT or in the form of a standard contract. In practice, the buyer does not participate in making or determining what is in the contract, the buyer only signs a letter of agreement without any explanation from the PT regarding what provisions are contained in the contract. In this agreement there is also an exoneration clause, which the consumer does not have the right to determine, this clause must be fulfilled by the

buyer if he has signed the agreement. Here the buyer is only given two choices, namely to continue or leave the agreement, without being allowed to interfere with the preparation of the contents of the agreement itself, if the buyer agrees then he can continue it, if he does not agree then there is no need to continue the agreement or do not need to sign the agreement. This clause violates the right of consumers to be treated fairly in the preparation of contracts.

Based on the description above, it is clear that the inclusion of this exoneration clause is detrimental to one party, especially the buyer. In this study, the researcher focuses on the discussion on the form of the exoneration clause contained in the subsidized house sale and purchase agreement and the legal consequences of the inclusion of the exoneration clause in the subsidized house sale and purchase agreement. This study also explains the form of legal protection for buyers against the inclusion of an exoneration clause.

## Method

The method used in this research is the method of normative juridical law research and empirical legal research. Normative legal research or also known as library law research is legal research carried out by examining library materials or secondary data alone (Soerjono Soekanto and Sri Mamuji, 2009, pp. 13-14). The approach used in this research is a statutory approach and a case approach. The legal approach is an approach that is carried out by reviewing and analyzing all relevant laws and regulations related to the legal issues being handled (Bambang Sunggono, 2015, p. 91). The case approach is an approach that is carried out by examining cases related to the problems faced which have become court decisions that have permanent legal force. (Syamsudin, 2007, p. 58). This research uses consumer protection theory, legal liability theory and contract theory.

## Exoneration Clause in the Subsidized Home Sale and Purchase Agreement

The sale and purchase agreement is a reciprocal agreement, in which one party (the seller) promises to deliver an item, and the other party (the buyer) will pay the promised price (Article 1457 of the Civil Code). The main elements of a sale and purchase agreement are goods and prices. In accordance with the principle of consensualism that animates the law of the Civil Code agreement, the sale and purchase agreement was born at the moment of reaching an "agreement" regarding goods and prices, then a valid sale and purchase agreement was born. The consensual nature of buying and selling is emphasized in Article 1458 of the Civil Code which reads: "The sale and purchase is considered to have taken place between the two parties immediately after they have reached an agreement on the goods and the price, even though the goods have not been delivered or the price has not been paid".

A standard contract or standard agreement is a written contract made only by one of the parties to the contract, in fact often the contract is already printed (boilerplate) in the form of certain forms by one of the parties, which in this case is generally when the contract is signed. The parties only fill in certain informative data with little or no change in the clauses, where the other party in the contract does not have the opportunity or only a few opportunities to negotiate or change the clauses that have been made by one of the parties, so that the standard contract is usually very one-sided. The party who was offered the standard contract did not have the opportunity to negotiate and was only in a "take it or leave it" position.

An exoneration clause is a clause contained in an agreement where one party avoids fulfilling its obligations by paying full or limited compensation, which occurs because of a broken promise or an unlawful act. The exoneration clause which is usually contained in the agreement as an additional clause on the essential elements of an agreement, is generally found in the standard agreement. This clause is a clause that is very detrimental to consumers who generally have a weak position when compared to producers, because the burden that should be borne by producers or business actors, with this clause becomes the burden of consumers (Ahmad Miru & Sutarman Yodo, 2015, p. 116).

In the consumer protection act (UUPK) the term exoneration clause is not found, there is only a standard clause while what is meant by an exoneration clause is a contract whose contents transfer the obligations and responsibilities of business actors, so the standard clause and the exoneration clause are two different things, but these two things if not regulated will harm consumers.

According to Mariam Darus Badruzaman quoted by Ahmad Miru & Sutan Yodo, stating that the standard agreement with an exoneration clause which eliminates or limits the obligation of one party (the creditor) to pay compensation to the debtor, has the following characteristics: (Ahmadi Miru & Sutama Yodo, 2008, p. 117) <sup>[1]</sup>

- a. The contents are determined unilaterally by the creditor whose position is relatively stronger than the debtor.
- b. The debtor does not participate in determining the contents of the agreement which is an accidental element of the agreement.
- c. Driven by his need, the debtor was forced to accept the agreement.
- d. The form is written.
- e. Prepared in advance in bulk or individually.

If a contract has been signed, then the contract will be binding on the parties even though the contract was only drafted by one of the parties. So there are several things that need to be considered in a standard contract that includes an exoneration clause, namely: (Aulia Muthiah, 2018, pp. 172-173)

- a. Prominent and clear, writing about the exception of this liability must be written clearly and prominently, for example in bold or capital letters whose purpose is for consumers to easily see and read them.

- b. Delivered on time, the business actor conveys directly about the transfer of responsibility, namely closing the contract not when the contract is already running, this is so that consumers do not feel disadvantaged.
- c. Fulfillment of important purposes, the limitation of liability cannot be carried out if the limitation will not fulfill the essential purpose of a guarantee, for example, liability for hidden defects cannot be limited within a certain time limit, if the hidden defects are not found within that period.
- d. Fair, if the court finds the contract or contract clause unfair, then the court can refuse to enforce the contract without an unfair clause.

### **The Form of the Exoneration Clause in the Subsidised Home Sale and Purchase Agreement at PT Hadrah Aceh Pratama Banda Aceh**

The agreement proposed by PT Hadrah Aceh Pratama is in the form of a standard agreement or an agreement using standard clauses regulated by PT Hadrah Aceh Pratama. In the agreement, the researcher found 2 (two) clauses in the form of an exoneration clause in the agreement, namely points number 8 (eight) and number 9 (nine), which contradict the provisions of Article 18 paragraph (1) UUPK, namely:

1. Clauses of transfer of responsibility, such as the return of the DP which is delayed by the developer, namely PT Hadrah Aceh Pratama before finding new consumers or new buyers, which indirectly burdens the consumer to bear the obligation for the late refund of the DP, and is very detrimental to the consumer.
2. The clause stating the refusal to return the money paid for the goods purchased by the consumer, as contained in the subsidy house sale and purchase agreement at PT Hadrah Aceh Pratama, namely:

"If the Second Party has submitted a DP (Down Payment) half or all of the value of the DP determined by the First Party, it turns out that the BANK does not accept or rejects the file of the Second Party (Riject), then the DP that has been submitted by the Second Party to the First Party will be returned ( entirely) by the First Party to the Second Party, but if the house has been bought back by another Consumer and the file has been approved by the Bank."

1. The clause that gives the right to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling, this is contained in point 8 which states that the down payment given by the consumer can be forfeited by 50% if the agreement is not implemented.

In point number 9 (nine) there is also an exoneration clause which states that if the customer's file is rejected by the Bank, the consumer cannot buy and sell the house and the DP that has been paid to the developer or PT Hadrah Aceh Pratama is returned if the house is to be sold. purchased by other consumers. As long as the house is not sold, the down payment that has been paid by the consumer whose file was rejected by the Bank will not be returned. This action is contrary to the provisions in Article 18 paragraph (1) letter c, namely that business actors may not refuse to return the consumer's money paid for the goods purchased by the consumer.

From the form of the agreement, the researcher saw that there was a transfer of responsibility from the developer, namely PT Hadrah Aceh Pratama to the consumer. In the home purchase agreement, it is stated that if the consumer withdraws, the DP that has been paid by the consumer to the developer (PT Hadrah Aceh Pratama) will be forfeited by 50% of the total DP that has been paid. And if the Bank does not accept or reject (reject) the file from the consumer or a second party, the DP that has been submitted to the developer will be returned (in full) by the developer to the consumer on the condition that the house has been purchased by another consumer, as long as the house is If the product has not been sold, the consumer does not get the down payment back, the consumer is required to wait.

Many consumers do not know the consequences of the clauses contained in the agreement letter, especially those contained in points number 8 (eight) and 9 (nine). The consumer knows the consequences of the clause after experiencing it himself, such as one consumer who has experienced this, where the file submitted by the consumer is rejected by the Bank because it is still tied to other dependents, so that he cannot make installments at the Bank and because he could not buy a subsidized house at the PT, but the consumers here have paid the full down payment to the developer.

From this case, it can be seen that there was a suspension carried out by the developer or PT that carried out the agreement point number 9 (nine) which previously the consumer did not know the purpose and use of the clause. Lack of information before signing a contract/agreement is very detrimental to consumers, it is necessary to provide information to consumers because it is an obligation of business actors and rights that must be obtained by consumers.

### **Legal Consequences for Business Actors Who Include Exoneration Clauses in the Subsidised House Sale and Purchase Agreement**

The legal consequences of applying the standard agreement contained in the Subsidized House Sale and Purchase Agreement at PT Hadrah, the researcher here explains that the standard agreement in the agreement is a standard agreement containing an exoneration clause. Regarding the standard agreement, although it has been regulated in Law Number 8 of 1999 concerning Consumer Protection, if further studied the standard agreement contained in the subsidized house sale and purchase agreement remains a binding agreement between the parties, namely PT Hadrah and the Customer/ subsidized home buyers at PT Hadrah. This is in accordance with the

provisions contained in Article 1320 of the Civil Code which states that the conditions for a valid agreement are in the form of:

1. There is an agreement between the parties who bind themselves.
2. The ability to make an engagement.
3. A certain thing.
4. A lawful cause.

The inclusion of exoneration clauses is often found in a standard agreement, such as in the standard agreement on the purchase agreement letter for subsidized housing set by the developer, especially in the agreement at PT Hadrah Aceh Pratama which is the object of this research. The inclusion of an exoneration clause in a subsidized house sale and purchase agreement is an act that is prohibited by law, but the inclusion is still widely found in the subsidized house sale and purchase agreement. According to marketing employees working at PT Hadrah Aceh Pratama who were the sample in this study, they stated that the subsidized house sale and purchase agreement at PT Hadrah Aceh Pratama had been determined directly by the PT owner and they only submitted the agreement with the buyer, here they only be the only intermediary, who is directly related to the contents of the agreement and the agreement is the owner of the PT Hadrah Aceh Pratama.

As for treaty law in Indonesia, the use of standard clauses in agreements is not prohibited, the UUPK only prohibits the use of certain standard clauses, as contained in Article 18 paragraph (1) of the UUPK. Violation of the provisions contained in Article 18 paragraph (1) of the UUPK will result in the agreement with the violation being null and void, as described in Article 18 paragraph (3) of the UUPK which reads: documents or agreements that fulfill the provisions referred to in paragraphs (1) and (2) are declared null and void” (Article 18 paragraph (3) of Law No. 8 of 1999 concerning Consumer Protection).

The void by law of an agreement is also a violation of the provisions contained in Article 1320 of the Civil Code relating to the objective conditions of an agreement. The result of an agreement being null and void is a declarative cancellation of the agreement, namely the cancellation of all the contents of the articles contained in the agreement.

Regarding the legal consequences of an agreement containing an exoneration clause, there is a difference between the UUPK and the Civil Code. The UUPK states that if it violates the provisions of Article 18 paragraph (1) of the UUPK, the agreement can result in null and void, while according to the Civil Code if it does not meet the legal requirements in the agreement, then there are two legal consequences, namely null and void (Dauri *et al.* 2020, p. 107) <sup>[4]</sup>.

The standard agreement contained in the subsidy house sale and purchase agreement at PT Hadrah Aceh Pratama contains an exoneration clause which is prohibited by the UUPK. Even though the agreement has been agreed upon by the parties, there are clauses that are prohibited by law, so that if the consumer objected to the contents of the agreement, the consumer could or may request the cancellation of the subsidy house purchase agreement at PT Hadrah Aceh Pratama.

The standard agreement which contains an exoneration clause in the sale and purchase agreement of a subsidized house at PT Hadrah Aceh Pratama can legally result in null and void because it is contrary to the UUPK, therefore, so that the developer avoids legal risks, the letter of agreement on the sale and purchase of a subsidized house which is made in standard form in which there is an exoneration clause, it is required to provide a clear explanation to the consumer about the exoneration clause contained in the contract. The developer or PT Hadrah Aceh Pratama is not enough just to submit or submit the agreement to be read and signed, but also to explain in detail all the clauses contained in it. Although the explanation given by the developer legally does not have an effect on the effect of being null and void, but the explanation can have an impact on consumers, so that consumers who want to buy the subsidized house can know, understand and also understand the purpose of the application of the exoneration clause in the agreement.

### **The Form of Consumer Protection against Inclusion of Exoneration Clauses in Subsidised Home Sale and Purchase Agreements**

The legal protection provided by the Government to protect consumer rights is the existence of UUPK which regulates all provisions regarding the rights and obligations of business actors to consumers and protection of consumers who experience losses against the actions of business actors. One of the articles contained in the UUPK explains the provisions regarding the inclusion of standard clauses, the inclusion of standard clauses in an agreement must not be burdensome and detrimental to consumers.

Theoretically, the form of legal protection is divided into two forms, namely: preventive legal protection and repressive legal protection. Preventive protection is legal protection that is preventive in nature. This protection provides an opportunity for the people to submit objections (*inspraak*) to their opinions before a government decision gets a definitive form.

Preventive forms of legal protection in terms of consumer protection are contained in Articles of the UUPK which guarantee consumers from losses caused by business actors, such as Article 4 of the UUPK which regulates consumer rights, namely: the right to obtain correct, clear information, and be honest about the conditions and guarantees of goods or services, the right to get advocacy, protection, and efforts to settle consumer protection disputes properly, the right to get compensation, compensation and instigators if the goods received are not in accordance with the agreement, and rights other rights that should be accepted by consumers



(Article 4 UUPK number 18 of 1999). In addition, there is also Article 18 paragraph (3) which states that if the implementation of the agreement is contrary to the law and other provisions, then the agreement is declared null and void.

In addition to articles on consumer protection, the UUPK also regulates institutions that can protect consumer rights, which is contained in Article 44 which regulates Non-Governmental Consumer Protection Institutions. One of the institutions that has a role to protect consumers in Indonesia is YLKI (foundation of the Indonesian Consumers Institute), which was established on May 11, 1973. The existence of YLKI aims to increase consumers' critical awareness of their rights and obligations in protecting themselves, their families, and the environment. The existence of this YLKI institution can help consumers in dealing with their problems, consumers get a defense from the institution if they experience losses caused by business actors.

### Conclusion

The exoneration clause contained in PT Hadrah Aceh Pratama is in the form of a transfer of responsibility clause, a clause that states the refusal to return the money paid for goods purchased by consumers, a clause that gives the right to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of sale. purchase that is very detrimental to consumers in its implementation.

The standard agreement contained in the subsidized house sale and purchase agreement remains a binding agreement between the parties, namely PT Hadrah and the customer/buyer of the subsidized house at PT Hadrah. The inclusion of an exoneration clause in a subsidized house sale and purchase agreement is an act that is prohibited by the UUPK because it can harm consumers. Violation of the provisions contained in Article 18 paragraph (1) of the UUPK will result in the agreement with the violation being null and void, as described in Article 18 paragraph (3) of the UUPK which reads: documents or agreements that meet the provisions as referred to in paragraphs (1) and (2) shall be declared null and void".

The form of legal protection for consumers is divided into two forms, namely: preventive legal protection and repressive legal protection. Preventive forms of legal protection are contained in Articles of the UUPK which guarantee consumers from losses caused by business actors, such as Article 4 of the UUPK which regulates consumer rights, Article 18 paragraph (3) concerning legal consequences, and Articles others contained in the UUPK. Repressive protection is the existence of institutions and agencies for consumer dispute resolution. With the existence of legal arrangements and the existence of institutions and legal entities that supervise and resolve consumer problems, it can guarantee legal protection for consumers who suffer losses from business actors.

### References

1. Ahmadi Miru & Utama Yodo, *Hukum Perlindungan Konsumen*, Jakarta: PT Raja Grafindo, 2008.
2. Ahmadi Miru, *Prinsip-Prinsip Perlindungan Hukum bagi Konsumen di Indonesia*, Jakarta: Rajawali Pers, 2011.
3. Dhanang Widijawan, *Dasar-Dasar Hukum Kontrak Bisnis*, Bandung: CV Keni Media, 2018.
4. Dauri dkk, Akibat Hukum Terhadap Penerapan Klausula Eksonerasi dalam Perjanjian Baku, *Jurnal Humani (Hukum dan Masyarakat Madani)*, 2020:1(10):1 Mei.
5. Rahman Hasanuddin, *Contract Drafting*, Bandung: Citra Aditya Bakti, 2003.
6. Rai Widjaya, *Merancang Suatu Kontrak (Contract Drafting)*, Jakarta: Megapoin, 2004.
7. Supandriyo, "Analisis Normatif Filosofis Tentang Klausula Eksonerasi dalam Perjanjian Jasa Pengiriman Barang pada PT. Pos Indonesia (Persero)", Program Studi Magister Ilmu Hukum, Pascasarjana Universitas Islam Indonesia, Yogyakarta, 2008.
8. Syahmin AK, *Hukum Kontrak Internasional*, Jakarta: PT Raja Grafindo Persada, 2006.
9. Syamsudin, *Operasional Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2007.
10. Surat Perjanjian Kerjasama Pembelian Rumah pada PT. Hadrah Aceh Pratama.
11. Pasal 1320 KUHPerduta.
12. Pasal 1457 KUHPerduta.
13. Pasal 4 Undang-Undang Nomor 18 Tahun tentang Perlindungan Konsumen, 1999.
14. Pasal 8 ayat (2) Undang-Undang Nomor 8 Tahun tentang Perlindungan Konsumen, 1999.
15. Pasal 18 ayat (3) Undang-Undang Nomor 8 Tahun tentang Perlindungan Konsumen, 1999.
16. Pasal 49 Undang-Undang Nomor 8 Tahun tentang Perlindungan Konsumen, 1999.
17. <https://hadrahgroup.com>
18. <https://ylki.or.id/profil/tentang-kami/>, diakses pada, 2017.