

VALIDITY OF STANDARD CLAUSES IN PRODUCT DETAILS ADVERTISED ON E-COMMERCE PLATFORMS IN INDONESIA

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Abstract

The existence of standard clauses contained in various types of agreements until now has always been a controversy over the validity of a contract or agreement. The Civil Code does not specifically regulate the standard clauses contained in the preparation of an agreement. This research is normative by using primary and secondary legal materials. The technique of collecting legal materials that the author uses in this study uses a literature study technique. The legal material analysis technique uses the deductive syllogism method. The results of the study indicate that as long as the agreement is made by the parties bound in the agreement, even though it contains standard clauses in it as long as it does not violate the applicable legal rules, the agreement remains valid and becomes law for those who make it. The best possible agreement is prepared by taking into account the principles of agreement formation such as the principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, the principle of good faith, and the principle of personality. Making an agreement that does not comply with subjective conditions can apply for cancellation of the agreement through the court and if it does not meet the objective requirements, then the agreement is null and void or deemed to have never existed.

Keywords: Agreement; E-Commerce; Standard Clause; Validity.

Introduction

The standard clauses that become elements in the agreement which then causes the agreement to be said to be a standard agreement have so far become the domination of one side of the agreement maker by

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a person or company entity which in most cases can benefit the first party making the agreement more than the second party or the party receiving or agreeing to a contract agreement (Khairandy, 2007). The standard agreement made has the intention to be more efficient in making the agreement by the agreement maker. The recipient or agreeer of the agreement only has a choice take it or leave it (Panggabean, 2010). However, it is possible that the agreeing party can negotiate the standard agreement if the agreeing party does not feel the suitability or fairness contained in the standard agreement. This also requires discretion and open-mindedness by the first party or standard agreement maker.

The use of standard agreements in the business world has several times created legal problems that require resolution. Standard agreements are not rigidly regulated in any laws in Indonesia. Actually the standard agreement also has an element of freedom of contract in it. However, the portion of freedom owned by the parties to the agreement is usually more dominantly owned by the maker, because the maker can change the clauses contained in the standard agreement while the agreeing party only has the choice of agreeing or not.

The development of the current technological era makes the form of a written agreement not only in the form of paper documents but can be in the form of electronic documents. For example, an agreement for approval for account creation when registering an E-Commerce account. E-commerce is referred to as electronic commerce. It means the electronic media and the internet for dealing with goods and services. E-Commerce entails a company accessing the internet as well as IT, such as the Electronic Data Interchange (EDI) (Jain & Arya, 2021). E-commerce concerns an internet vendor's website, trading goods or services to the user directly from the platform. The gateway uses a wireless purchase cart to pay by credit card, debit card or Electronic fund transfer (EFT). A further description is as follows: Electronic communications and digital information processes in business transactions are used to create, modify and redefine value generation relations between organizations and individuals. With the increasing spread of ICTs, specifically the Internet, the global corporate world pushes rapidly into E-Commerce (Business-to-Business). As the Internet enables consumers to enter the global economy, they can compare prices across areas, find out how they vary by request, and become aware of substitution. The buyers obtain a distinct advantage. To the market openness, consumers can conveniently compare E-Commerce offerings from different websites. The rivals would immediately be one click away from the customer if the company is electronic. If consumers aren't comfortable with certain e-goods, content's pricing or services, they can adjust even more quickly than

in traditional terms. They don't need a physical store from the point of view of the vendors.

E-Commerce account creating form which in this case is in the form of an electronic contract. Electronic contracts are one of the new forms of contracts that get special protection in Law Number 11 of 2008 concerning Electronic Information and Transactions (herein after referred to as the ITE Law), particularly through Article 1 number 17, electronic contracts are agreements between parties made through electronic systems. While the electronic system itself is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and or disseminate electronic information. This is regulated in Article 1 number 5 of the ITE Law (Roosdiyana, 2010).

The characteristics of an electronic contract are (Widarto, 2021):

1. Can occur remotely and even beyond the boundaries of a country via the internet;
2. The parties to an electronic contract have never met face to face (faceless nature), and may never even meet.

The parties who will make and carry out the agreement certainly have hope that they must continue to uphold the principles that apply in contract law, one of which is the principle of freedom of contract. Standard agreements contained in E-Commerce are usually contained in terms and conditions and some are contained in advertisements published by business actors on advertised E-Commerce products. Terms and conditions is one thing that is compiled by the trade organizer, which in this case is prepared by the E-Commerce platform which functions to gain trust by business actors and buyers in electronic transactions (Sahetapy, 2017). The E-Commerce Operator has prepared contract formats which can then be approved or approved by the user, both business actors or consumers who will use the E-Commerce platform.

In some cases, regarding the terms and conditions, in addition to agreeing to the terms and conditions provided by the E-Commerce platform, some business actors will make additional terms and conditions that will be included in the store profile and item description. The terms and conditions provided by the platform and business actors will be standard clauses, because the contents of these terms and conditions are determined unilaterally by the E-Commerce platform and the business actor. The consumer only has two options, either he must agree or reject the terms and conditions that have been provided. They as consumers cannot protest, ask to be changed or even change the contents of the terms and conditions because the E-Commerce platform page or transaction page does not provide a

feature to change the agreement. Business actors who include standard clauses have the intention that their products can be sold without any problems returning the goods. Consciously or not, this seems to have an influence on the element of freedom of contract.

The debate about the validity of an engagement arising from a standard agreement to bind or apply as the law of the contracting parties has become a long-standing problem, a continuation of the problems that have arisen in countries that have previously faced problems using the standard contract pattern, as reaction or efforts of the legal community to seek a measure of justice, especially for consumers who are more likely to be placed in a weak position.

This raises the question of whether there is a need for strict provisions governing standard clauses that allow for a lack of justice given by business actors to their consumers in processing electronic transactions through E-Commerce.

Research methods

The type of research uses normative legal research. The characteristic of the research used in this legal research is prescriptive applied. The types of legal materials uses primary and secondary legal materials. Primary legal material consists of Civil Code and Consumer Protection Law, and secondary consists of books, journals that related in standart clauses and consumer protection. The technique of collecting legal materials uses a literature study of books and literature as well as laws and regulations related to the problems studied, and the technique of analyzing legal materials used deductive syllogism method.

Results and Discussion

The internet and the world wide web have globalized the conventional trading process which is packaged in a form of platform, namely E-Commerce. The platform site that can be accessed by everyone from various countries makes the buying and selling transaction process no need to be done face-to-face between business actors and buyers. This of course provides convenience for the general public in economic activities. The emergence of E-Commerce has provided real prospects for the small business sector in developing countries to compete with companies at the world level (Gefen, 2000). Internet and E-Commerce often have links to developed countries. The revolution in business practices brought about by E-Commerce provides tremendous benefits for developing countries to achieve ideal business goals (Ohidujjaman et al., 2013). Besides electronic commerce will create great opportunities in the global economy, changing the concept of

commerce from conventional to modern is not as easy as imagined. They, business people, need to make gradual adjustments to the process of transforming traditional trading business methods into electronic commerce (Chesher & Kaura, 1998).

The benefits of trading through E-Commerce both obtained by buyers and business actors can be found in the form of significant improvements and time savings as well as easier access from anywhere in the world (Khan, 2016).

Benefits for buyers	Benefits for business actors
a. Reduce transaction costs in the process of interaction in the market.	a. Reduce operational and maintenance costs
b. Increased convenience with access 24 hours a day	b. Reduce purchasing and procurement costs
c. Saving time	c. Increase income
d. Fast and continuous access	d. Reduce transportation costs
e. Can switch from one store to another quickly	e. Developing a business brand
f. Buyers can buy a product that is rarely found in conventional stores	f. Improve sales process
g. Buyers can leave comments or reviews about the goods that have been purchased	g. The advertising process is cheap and affordable in many countries

To determine and assess the validity of an agreement, an assessment must be carried out in accordance with the terms of the validity of the agreement in accordance with the applicable law Article 1320 of the Civil Code contains provisions regarding the validity of an agreement, namely (Hasyim, 2020):

- a. The element of agreement of those who will make the agreement
- b. The ability of the parties to enter into an engagement
- c. There must be a certain thing

d. There must be a lawful reason

The above requirements are subjective and objective conditions of making an agreement. Subjective terms and objective terms of the agreement relate to the cancellation of the agreement. An agreement can be null and void or can be canceled through a court decision. An agreement that is null and void is an agreement that has been canceled from the start and the agreement is considered to never exist, which is related to the objective conditions of the agreement. Meanwhile, an agreement that can be canceled through a court is an agreement that does not meet the subjective requirements of the agreement. Can be canceled means that one of the parties can request the cancellation by the court, and the party entitled to request the cancellation is the party who is incompetent, harmed, or who gave his/her agreement freely.

Basically the agreement starts from the difference or unequal interests between the parties. The formulation of the contractual relationship generally always begins with a negotiation process between the parties. Negotiation of the parties creates forms of agreement to bring together something they want through a bargaining process (Aprilia, 2018).

In connection with the agreement, Article 1313 of the Civil Code provides the definition "Agreement is an act in which one or more persons bind themselves to one or more persons". Based on the theory in civil law, a good agreement is an agreement that contains the following 5 principles, namely:

1. The principle of freedom of contract, which means that everyone is free to: (1) make or not make an agreement, (2) enter into an agreement with anyone, (3) determine the content of the agreement, its implementation and requirements, and (4) determine the form of the agreement, whether written or unwritten, which this principle is the conclusion of article 1338 paragraph (1) of the Civil Code which contains "all agreements made legally valid as law or legislation for those who make them " (Maya & Yunianto, 2022).

2. The principle of consensualism can be concluded in Article 1320 paragraph (1) of the Civil Code. In the article it is determined that one of the conditions for a valid agreement is the existence of a gesture of agreement between the two parties. This principle is a principle which states that agreements are generally not held formally, but only with the agreement of both parties. An agreement is an agreement between a will and a statement made by both parties (M. Muhtarom, 2014).

3. The principle of Pacta Sunt Servanda is considered a fundamental principle because it underlies the made of an agreement. The principle

of *pacta sunt servanda* comes from Latin which means 'agreements must be kept', so that in positive law the formulation of the norm becomes: every agreement made legally applies as law for those who make it. Purwanto in his writing entitled "The Existence of the *Pacta Sunt Servanda* Principle in International Agreements" says that basically the *pacta sunt servanda* principle is related to contracts or agreements made between individuals which contain the meaning: the agreement is a law for the parties who make it, and implies that denial of obligations in the agreement is an act of breaking a promise or default (Purwanto, 2009).

4. The principle of good faith is contained in Article 1338 of the Civil Code which reads "All agreements made in accordance with the law apply as law for those who make them. This agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be carried out in good faith." So when viewed from the provisions of the article, good faith is a principle that must be fulfilled by the parties agreeing in the agreement (Wijaya & Dananjaya, 2018). The notion of good faith means that the agreement made must be carried out by heeding the existing norms that arise from the inner attitude of each person.

5. The principle of personality is one of the main principles in contract law. This principle relates to the entry into force of an agreement contained in Article 1315 jo. Article 1340 of the Civil Code. This means that an agreement only applies to the parties who made it (El et al., 2011).

Agreements that occur electronically between E-Commerce providers, business actors, and buyers through E-Commerce are a modernization of conventional buying and selling agreements such as buying and selling transactions at offline stores in general. In its implementation, in order to shorten the time and efficiency of the process of making a sale and purchase agreement format in electronic transactions through E-Commerce, a standard agreement is made provided by the E-Commerce platform operator. Not only the E-Commerce platform, sometimes business actors also make certain clauses or agreements in the standard form in the product descriptions belonging to business actors.

They as E-Commerce platform operators, business actors, and buyers need to pay more attention to their rights and obligations in running their business, especially to business actors and buyers where they will interact a lot in the form of transactions. In order to maintain the rights and obligations of business actors and buyers in order to continue to perform well as they should, they need to pay attention to several things regulated in Law Number 8 of 1999 concerning Consumer

Protection. Article 7 of the Indonesian Consumer Protection Law contains obligations for business actors to (Dewi et al., 2020):

1. Have good faith in running their business.
2. Provide true, honest and accurate information regarding goods and services, as well as include an explanation of how to use and maintain the goods or services offered
3. Serving consumers well, honestly, and non-discriminatory
4. Guarantee the quality of goods or services offered based on the applicable quality standards of goods or services.
5. Provide opportunities for consumers to try out, guarantee and guarantee the goods or services offered.
6. Give compensation if the goods received by consumers are not appropriate, have defects, or are different from the goods offered in the advertisement.

In addition, referring to Article 5 of the Consumer Protection Law, consumers have an obligation to transact, in this case transacting via E-Commerce, including (Nawi, 2018):

1. Read or follow the procedure for using information on the use of goods or services
2. Have good faith in transacting the purchase of goods or services.
3. Pay according to the agreed exchange rate.
4. Follow dispute resolution efforts in the event of a dispute between two parties, between the seller and the consumer.

A standard agreement is an agreement that already has standard content and structure that is often used by companies with the aim that the agreement can be carried out quickly and practically (Supramono, 2013). The standard agreement is an agreement that has been determined and has been stated in the form of a form. This agreement has been determined unilaterally by one of the parties, especially the strong economic party against the weak economists. According to Munir Fuady, a standard agreement is a written contract made only by one of the parties to the contract, often it 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 in little or no change in the clauses, where the other party to 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 to whom the standard contract was

offered does not have the opportunity to negotiate and is only in a “take it or leave it” position. Thus, by law it is doubtful whether there really is an element of agreement which is a condition for the validity of the contract in the contract (Salim, 2007, Pujiyono, 2020).

In a standard agreement, the principle of take it or leave it is known, meaning that if the consumer agrees with the agreement that has been prepared by the business actor, the consumer can agree to it, on the other hand if the consumer does not agree, the consumer only needs to leave the agreement or not enter into the agreement. According to Sutan Remi Syahdeini, almost all of the clauses in the standard agreement have been standardized by the maker and other parties, so there is no opportunity to negotiate or request changes to the contents of the standard agreement (Riyanta, 2020).

Terms and conditions are one of the standard agreements that E-Commerce users often encounter when they register an account or when they are about to make electronic transactions. If the terms and conditions are not considered properly by E-Commerce users, then it is possible that unwanted things will happen to E-Commerce users when using the E-Commerce platform facilities they use.

Viewed from a time efficiency perspective, one could argue that it is completely rational for a consumer to accept the terms and conditions without actually reading through the terms and conditions. In addition to the content of the text, the terms and conditions are generally long, often the text of the terms and conditions does not all use language that is easily understood by the reader (Elsen et al., 2019, Suwadi, 2022).

Not only the organizers of the E-Commerce platform who make terms and conditions for approval by E-Commerce users, some business actors sometimes also include a clause "goods that have been purchased, cannot be returned". The inclusion of the clause makes the format of the sale and purchase agreement for the product that business actors advertise into a standard sale and purchase agreement. Because it is not possible for the buyer to change the detailed description of the product belonging to the business actor, including the standard clause. They as buyers can only buy the goods or choose other similar goods.

In the case of buying and selling transactions electronically, it is necessary to formulate a format regarding terms and conditions which seems to also take into account the rights of consumers. Most of the terms and conditions prepared by business actors or E-Commerce platforms by default seem to be too concerned with the interests of business actors. The obligations of business actors are often ignored by not being included in the terms and conditions they make. With this

incident, the compliance of business actors with the obligations of the electronic sale and purchase agreement will be weak because the terms and conditions they have compiled do not include strict rules and sanctions if the business actor makes an omission or mistake in carrying out a transactions. Consumers in this case need to get special attention in making terms and conditions, because in fact transactions are carried out by two parties who must agree, namely business actors and buyers. If the portion of consumers or buyers gave more attention to in making terms and conditions, it will increase confidence and trust in business actors that they will not be harmed. The clearer it is that business actors make provisions for terms and conditions that pay attention to a greater portion of consumers, the less likely it is for consumers to be trapped in unwanted things in electronic transactions. This is reinforced by the opinion of WL Sahetapy in the importance of the format of terms and conditions which at least contains provisions for the identity of business actors to be clear and original; guarantee of returning goods/products if the goods/products received are not as advertised; guarantee of conformity of product information with information on goods sold; as well as guaranteed delivery of goods to the place.

In the practice of buying and selling electronically through E-Commerce, it can be said that there are almost no negotiations relating to the contents of the agreement contained in the standard agreement in the product description advertised in E-Commerce. The standard clauses listed in the product description have been prepared and made by the business actor, whereupon the buyer only has a choice, namely to continue to check-out or choose similar items but with no standard clauses listed in the other product descriptions.

Moreover, the standard clauses listed in the product description will confuse consumers. Consumers will think many times to buy products from business actors who include standard clauses in their product descriptions. Problems that will arise with the inclusion of standard clauses in product details advertised by business actors are when there is a defect, damage, and discrepancy in the goods, which then the buyer wants to return the goods. On the other hand, the buyer can provide his testimony in the form of facts contained in the goods he received which he thinks are not appropriate, the seller can also include the standard clause in the proof according to him in the forum for resolving the problem of returning goods.

Consumers or buyers who have just realized that from their purchase of the advertised product there is a standard clause, they can cancel the transaction as long as the "cancel order" button is still active or the goods have not been forwarded to the expedition to be sent to the buyer. This has not become a problem on the part of business actors

because it is possible that the goods have not been packaged at all. So that business actors do not experience significant material losses.

Another way for consumers to avoid losses when purchasing products in which there is a standard clause in the product description is to pay attention to the assessments of other buyers who have made previous transactions on the products chosen by consumers. Assessment of products in which there are many negative comments can make the assumption that the goods chosen by consumers, especially those with standard clauses in the product description, should be avoided (Korobkint et al., 2002). Moreover, business actors who persist in maintaining their business where the products they sell have a bad reputation, they will damage their own reputation causing losses to them. Consumers can use the reputation of the business actor as an indicator of quality which can then become knowledge to prevent them from unexpected losses (Bakos et al., 2014, Wiwoho, et.al, 2017).

Conclusion

As long as it does not violate the rules and fulfills the legal requirements of an agreement contained in Article 1320 of the Civil Code, the agreement containing standard clauses in this case the standard clauses contained in the product description contained in E-Commerce advertisements belonging to business actors is still considered valid. If the agreement does not meet the subjective requirements, the agreement can be canceled through a lawsuit for cancellation of the agreement in court. If the agreement does not meet the objective requirements, the agreement will be null and void. Therefore, regarding the validity of the standard agreement is no longer too much of a problem, what needs further attention is whether the agreement contains content that violates the rules prohibit in the applicable law. Agreements that contain standard clauses basically still adhere to the principles of the formation of agreements, especially on the principle of freedom of contract. However, regarding the portion of the principle of freedom of contract, it seems that inequality will occur, some dominate and some are dominated, unless the agreement-making process can be negotiated with the contents of the agreement itself. The provisions governing the law of making agreements in Indonesia emphasize that the agreement reached by the parties is one of the fundamentals for the formation of a valid agreement without coercion, fraud and oversight from the parties making the agreement. regarding the portion of the principle of freedom of contract, it seems that inequality will occur, some dominate and some are dominated, unless the agreement-making process can be negotiated with the contents of the agreement itself. The provisions governing the law of making

agreements in Indonesia emphasize that the agreement reached by the parties is one of the fundamentals for the formation of a valid agreement without coercion, fraud and oversight from the parties making the agreement. regarding the portion of the principle of freedom of contract, it seems that inequality will occur, some dominate and some are dominated, unless the agreement-making process can be negotiated with the contents of the agreement itself. The provisions governing the law of making agreements in Indonesia emphasize that the agreement reached by the parties is one of the fundamentals for the formation of a valid agreement without coercion, fraud and oversight from the parties making the agreement.

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