

CONSUMER PROTECTION | RESEARCH ARTICLE

## Consumer Protection in the Retail and Financial Services Sectors against the Practice of Exoneration Clauses

Anna Maria Tri Anggraini<sup>1\*</sup>, Megawati Simanjuntak<sup>2</sup>, Arief Safari<sup>3</sup>, Rizal E. Halim<sup>4</sup>, Slamet Riyadi<sup>5</sup>

**Abstract:** The rapid development of the business world has resulted in several changes to business actors in carrying out their business activities. This encourages the emergence of standard agreements as practicality in conducting transactions. This study aims to analyze consumer protection law and apply the principles of freedom of contract in standard agreements in online and retail financial services businesses—the descriptive qualitative method with data collection techniques using in-depth interviews and documentation studies. Informants were selected by purposive sampling. The results show that standard clauses have been regulated in Article 18 of the Consumer Protection Law. However, in practice, clauses are still found that violate and transfer responsibility to the detriment of consumers. Furthermore, regarding consumer dispute resolution, there is an overlap issue between the Financial Services Authority (OJK) and the Consumer Dispute Resolution Agency (BPSK). Therefore, if viewed from the principle of freedom of contract, the standard agreement cannot fulfill the principle of freedom of contract, and consumer protection, so especially in the financial services sector and retail, needs to increase preventive and repressive supervision by providing several alternatives dispute resolutions for disadvantaged consumers.

**Keywords:** business actors, consumer protection, standard agreements, standard clauses, the principle of freedom of contract

**JEL Classification:** D18, P36, L81, G41



Anna Maria Tri Anggraini

### ABOUT THE AUTHORS

Anna Maria Tri Anggraini is an Associate Professor at the Law Faculty University of Trisakti, Indonesia, and Commissioner in the National Consumer Protection Agency (BPKN) the Republic of Indonesia. She can be reached via anna.mta@trisakti.ac.id.

Megawati Simanjuntak is an Associate Professor at the Department of Family and Consumer Sciences, Faculty of Human Ecology, IPB University, Indonesia, and Commissioner in the National Consumer Protection Agency (BPKN) Republic of Indonesia. She can be reached via mega\_juntak@apps.ipb.ac.id (ID: <http://orcid.org/0000-0003-1300-0280>).

Arief Safari is a lecturer at the IPB Business School and the Ahmad Dahlan Institute of Technology and Business. He also is a Commissioner of the National Consumer Protection Agency (BPKN) Republic of Indonesia. He can be reached via safari2606@gmail.com.

Rizal E. Halim is an Associate Professor at the Faculty of Economics and Business, University of Indonesia, and Head of National Consumer Protection Agency (BPKN) the Republic of Indonesia. He can be reached via rizaledy@gmail.com (ID: <http://orcid.org/0000-0002-3927-4653>).

Slamet Riyadi is Commissioner of the National Consumer Protection Agency (BPKN) Republic of Indonesia. He can be reached via slamet@bpkn.net.

### PUBLIC INTEREST STATEMENT

A standard agreement is an agreement made and standardized unilaterally by business actors and there is no negotiation process in it. The inclusion of an exoneration clause in a standard agreement is usually caused by an unequal position between the parties so that the party with a relatively stronger position tends to abuse its power to maximize economic benefits. Then because it is driven by needs, consumers are usually forced to accept these clauses even though they have the potential to be detrimental.

The prohibition on the inclusion of an exoneration clause in Article 18 of the UUPK (consumer protection law) has not yet been effective. This is due to the absence of a unified understanding from the authorities, that the aspect of restoring rights is an important matter in the consumer protection law enforcement system. Therefore, the consumer protection authority, especially in the financial services sector and retail trade, needs to improve supervision, both preventive and repressive, by providing several alternative dispute resolutions for disadvantaged consumers.

Standard agreements in the field of financial services and retail do not fully implement the principle of freedom of contract, because consumers are not given the opportunity to determine the content and form of the agreement, but only provide opportunities for parties who have a stronger bargaining position.



## 1. Introduction

One aspect that affects economic growth is the business activities carried out by a company in the form of business transactions. The rapid development of the business world has resulted in several changes to business actors carrying out their business activities. One of the changes made by giant corporations is the implementation of standard agreements when collaborating with other parties. This is closely related to progress in the economic field that demands efficiency in spending costs, time, and energy (Prasnowo & Badriyah, 2019). Therefore, the rapid development of standard agreements is unstoppable in an era that demands practicality in conducting transactions (Dinanda & Wita, 2018).

A standard agreement is a written agreement prepared and designed unilaterally by business actors (Rachmanto, 2018). It is "standard" because the other party cannot negotiate the agreement's contents (Prasnowo & Badriyah, 2019). Therefore, making a standard agreement provides convenience and practicality for the parties concerned (Rohaya, 2018). However, on the other hand, this form of agreement can place parties who do not participate in making the contents of the agreement (consumers) to be disadvantaged and weak position because they do not have the right to obtain a balanced position in carrying out the agreement (Nuhafni & Bintang, 2018; Rohaya, 2018; Munggaran, Sudjana, & Nugroho, 2019). Therefore, in realizing healthy business activities, there must be a balance of legal protection between consumers and business actors (Munggaran, Sudjana, & Nugroho, 2019).

The standard agreement has been known for a long time. A report in the Harvard Law Review in 1971 explained that 99 percent of agreements made in the United States were standard agreements (Rohaya, 2018). The standard agreement contains provisions commonly referred to as standard clauses. According to Law No. 8 of 1999 concerning Consumer Protection (UUPK) Article 1 Number 10, standard clauses are rules or provisions prepared or determined unilaterally by business actors that are poured into a binding and mandatory agreement document—fulfilled by consumers. Standard clauses can contain provisions regarding obligations that need to be carried out by the recipient and have the possibility of containing clauses that eliminate the responsibility of one party, which is often the responsibility of the clause maker (business actor) (Munggaran, Sudjana, & Nugroho, 2019).

Clauses that eliminate or transfer the responsibility of the party agreeing (business actors) are called exoneration clauses (Syamsudin & Ramadani, 2018; Windiantina, 2020). The forms of transfer of responsibility are carried out by including sentences, such as damage to goods that are not the responsibility of the business actor and lost or damaged goods that are not the responsibility of the business actor. The consumer agrees and binds himself to release the business actor from any or all claims in the form of whatever, from any party, and wherever that is submitted arising from the use of data by business actors (Hakim, 2019; Hidayah & Sulistyowati, 2022). Things like this can undoubtedly harm consumers as recipients of the agreement. Including an exoneration clause in a standard agreement is usually caused by an unequal position between the parties so that the party with a relatively stronger position tends to abuse its power to maximize economic benefits. Then because needs drive it, consumers are usually forced to accept these clauses even though they can be detrimental (Tobing, 2019).

When consumers are faced with a standard agreement, consumers only have two choices, namely, take it (approving the agreement and continuing the transaction) or leave it (rejecting the agreement and canceling the transaction) (Judge, 2019). That is why standard agreements are often referred to as take it or leave it contracts (Harianto, 2016). Regulations related to the prohibition on the inclusion and supervision of exoneration clauses already exist, but they are still considered ineffective because many business actors still dare to include them in standard agreements. Therefore, consumers need better protection so that they are protected and not harmed by the practice of exoneration clauses.

Several studies related to exoneration clauses have been carried out, including consumer protection against the inclusion of harmful standard clauses (Nuhafni &

Bintang, 2018; Rohaya, 2018; Syamsudin & Ramadani, 2018; Munggaran, Sudjana, & Nugroho, 2019), consumer dispute resolution due to standard agreements and standard clauses (Rachmanto, 2018), exoneration clauses in insurance agreements (Windiantina, 2020), and abuse of circumstances in the form of standard agreements (Yunus, 2019). This research aims to analyze the government's efforts to increase consumer protection, especially in the online and retail financial services sector, from the practice of exoneration clauses. Furthermore, the purpose of this research is to analyze the application of consumer protection law in standard agreements in the online and retail financial services business sector, which includes an exoneration clause, and analyze the application of the principles of freedom of contract in standard agreements in the online and retail financial services business sector.

## 2. Literature Review

### 2.1 Standard Agreement

The standard agreement has become an organized product in several business sectors, such as shipping, banking, and mass production. This agreement is a service contract between business actors and consumers (Cornelius, 2018). A standard agreement is defined as an agreement made and standardized unilaterally by business actors, and there is no negotiation process in it (Cornelius, 2018; Rachmanto, 2018). As a result, the parties' position in the standard agreement is not balanced. In addition, business actors have a more economically solid position than consumers. As a result, the rules made in standard agreements are sometimes one-sided and detrimental to consumers (Roesli, Sarbini, & Nugroho, 2019).

Standard agreements have several characteristics, including written form, standardized formats, conditions are determined by business actors unilaterally, and consumers can only accept or reject them (Syamsudin & Ramadani, 2018). In its application, there are four ways or methods of enforcing the standard conditions in the standard agreement, including (1) The signing of the agreement contains complete and detailed terms of the standard contract agreement; (2) Notification through agreement documents following applicable customs, where standard requirements are printed on agreement documents that consumers do not sign, such as acceptance letters, order letters, and purchase notes; (3) The appointment in the agreement document which in this case is not contained or written about the standard conditions but is only appointed; and (4) Notification via bulletin board (Roesli, Sarbini, & Nugroho, 2019).

The standard conditions determined by business actors are known as standard clauses. According to UUPK Article 1 Number 10, standard clauses are rules or provisions prepared or determined unilaterally by business actors, which are poured into a binding agreement document and must be fulfilled by consumers. Standard clauses are usually presented in the form of articles of agreement. The characteristics of standard clauses are that they are made unilaterally by business actors whose position is relatively stronger than consumers, consumers are not at all involved in making or determining the contents of the clauses, they are made in writing and bulk form, and consumers are forced to accept the contents of the agreement because they are encouraged by needs (Judge, 2019).

The weak position of consumers, no negotiation room, and only two choices (agree or disagree) make business actors take advantage of this condition to include clauses that only benefit the agreement maker (business actor) and harm the agreement recipient (consumer). Therefore, business actors intentionally include a clause that eliminates or transfers the responsibility of the party agreeing (business actor) to the recipient of the agreement (consumer); this clause is called the exoneration clause (Syamsudin & Ramadani, 2018; Windiantina, 2020). The exoneration clause has characteristics, including the transfer of business responsibility, that business actors have the right to refuse the return of goods purchased by consumers, and that business actors have the right to refuse refunds paid by consumers (Suryaningsih & Gorda, 2021).

## 2.2 Online financial services

According to Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (POJK) Article 1 Number 1, financial services business actors are commercial banks, rural credit banks, securities companies, investment advisors, custodian banks, fund pensions, insurance companies, reinsurance companies, financing institutions, pawn companies, and guarantee companies, both implemented conventionally and sharia. As technological capabilities develop, many businesses switch from offline to online. The practice of financial services business carried out online is known as financial technology (fintech). Fintech is the combined result of financial services and technology that ultimately changes the business model from conventional to moderate (Suharini & Hastasari, 2020). For example, an online process has replaced the transaction previously carried out face-to-face through an application or website.

If consumers want to make financial service transactions online, they must register through the application. Consumers will face applicable terms and conditions during the registration process, which is the form or form of a standard agreement determined by financial services business actors. In contrast to offline practices, consumers are usually guided and accompanied in reading contracts by business actors. However, in online practice, consumers must read the contract independently. This condition makes consumers unable to communicate what is written in the agreement.

This, of course, can trigger business actors who do not have good faith to include an exoneration clause in the terms and conditions of the application. The problem with exoneration clauses that are often found in the financial services sector, namely business actors claiming the right to make changes or additions to new provisions in the future without the obligation to notify or ask for customer approval and transfer the responsibility of business actors to consumers for losses resulting from the use of services (Rizky & Rismawati, 2017; Lestari & Utomo, 2020; Rahmawati, Yuliati, & Santoso, 2020). In the financial services sector, an independent institution organizes an integrated regulatory and supervisory system for all activities in Indonesia, namely the Financial Services Authority (OJK) (Fadlia & Yunanto, 2015).

## 2.3 Retail

Retail is the sale of several commodities to consumers. Retail is divided into two types: modern retail and traditional retail. Modern retail is retail with an independent service system, selling various types of goods in retail in minimarkets, supermarkets, department stores, hypermarkets, or wholesalers in the form of wholesalers. Meanwhile, traditional retail is built and managed by the government (Dwiyananda & Mawardi, 2015). However, in the current 4.0 era, the retail sector has developed even more. Accompanied by technological sophistication, retail practices can now be done online, in the marketplace, or e-commerce.

Standard clauses are usually found on receipts, invoices or receipts, or other agreement documents in the retail sector (Nuhafni & Bintang, 2018). If carried out online, consumers will find standard clauses in an agreement form in terms and conditions, privacy policy, or disclaimer from the application. Problems with exoneration clauses that are often found in the retail sector both online and offline, namely refusal to return goods, refusal of complaints, refusal of refunds and compensation, refusal of consumers' freedom to choose product variants, and delegation of responsibility for business actors for risks when purchasing goods, goods errors, and delivery (Ardhya, 2019; Hayati, Hosen, & Hidayah, 2020; Pratiwi, 2020). Consumers should be empowered when they experience consumer protection incidents (Safari et al., 2020).

## 2.4 Regulation on Inclusion and Control of Standard Clauses

The stipulation of things that are prohibited in the inclusion of standard clauses has been regulated in Article 18 Paragraph 1 of the UUPK, namely that business actors are

prohibited from including standard clauses if they stated: (1) transfer of responsibility of business actors to consumers; (2) business actors have the right to refuse the return of goods purchased by consumers; (3) business actors have the right to refuse refunds paid by consumers; (4) granting power of attorney from consumers to business actors to take all unilateral actions related to goods purchased in installments; (5) regulates the matter of proving the loss of use or utilization of goods or services purchased by consumers; (6) business actors have the right to reduce the benefits of services or consumer assets that are the object of buying and selling services; (7) consumers are subject to new, additional, continued, or advanced changes made unilaterally by business actors; and (8) granting consumer authorization to business actors for the imposition of mortgage, lien, or security rights on goods purchased in installments.

Furthermore, Article 18, Paragraph 2 of the UUPK also explains the position and form of the prohibited standard clauses, namely, the location or shape are challenging to see, cannot be read clearly, or the disclosure is difficult to understand. According to Article 18, Paragraph 3 of the UUPK (consumer protection law), business actors include prohibited clauses in their arrangement, declaring them null and void by law. In addition, business actors who violate the provisions of Article 18, according to Article 62 of the Consumer Protection Law (UUPK), can be subject to a maximum imprisonment of five years or a maximum fine of two billion rupiah.

Specifically, in the financial services sector, the Financial Services Authority (OJK) also regulates the inclusion of standard clauses in agreements. According to the Financial Services Authority Regulation No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, financial services business actors must fulfill balance, fairness, and fairness in making agreements with consumers. Then further provisions related to the implementation instructions for adjusting the standard clauses included in the standard agreement are explained again in the Circular Letter of the Financial Services Authority No.13/SEOJK.07/2014 concerning Standard Agreements. Clauses in the standard agreement are prohibited from containing an exoneration clause whose contents add rights and reduce obligations of business actors or reduce rights and increase consumer obligations. In addition, the clause is also prohibited from containing abuse of circumstances; for example, business actors take advantage of urgent consumer conditions due to certain conditions or are in an emergency so that business actors intentionally or unintentionally do not explain the benefits, costs, and risks of the products or services offered.

Bank Indonesia also regulates the inclusion of standard clauses in the financial services sector in Bank Indonesia Regulation No.16/1/PBI/2014 concerning Consumer Protection for Payment System Services which prohibits the release or transfer of responsibilities of business actors, reduction of benefits, statements that consumers are subject to new rules, additions, continuations, or further changes made unilaterally by business actors during the period of utilization of the payment system by consumers. The supervision of circulating standard clauses has been regulated in Article 52 of the UUPK that the authority belongs to the Consumer Dispute Settlement Agency (BPSK).

### 3. Methods

This study applied a qualitative descriptive approach, which used verbal explanations from research sources to overview and answer research problems. The types of data used are primary and secondary data. Sources of data were collected through in-depth interviews with experts. Informants were selected using a purposive sampling technique, namely informants who understand and are involved with the practice of standard agreements, standard clauses, and exoneration clauses. This study has three informants: academics, business associations, and consumer protection activists. The data were analyzed by making a transcript of the interview results. Secondary data came from consumer protection laws, regulations, and journals to support this research.

#### 4. Findings

Based on the results of in-depth interviews, it was found that business actors are prohibited from listing standard agreements with elements of an exoneration clause under Article 18 of the UUPK. Standard agreements are considered unable to fulfill the principle of contract because this freedom is only controlled by one party whose position is relatively stronger. In addition, only two of the five principles of freedom of contract are fulfilled, namely the freedom to decide to make or not to make an agreement and the freedom to choose with which party to agree. So it is no longer possible for the principle of freedom of contract to be fulfilled using standard agreements. The principle of freedom of contract should be replaced with freedom to enter into contracts because consumers are no longer free to contract. However, until now, this study has not been officially adopted.

In resolving disputes in the financial services sector, there is an overlap between the authorities of OJK and BPSK. To avoid overlapping, OJK should focus on resolving disputes in the financial services sector, and BPSK resolving disputes in nine other sectors. For example, there is a Bank Indonesia circular that stipulates the principles of customer protection and prudence as well as increased security in the operation of payment instrument activities using a card with the inclusion of a standard clause that must use a font size of at least 10 with Times New Roman, Bookman Antiqua or Bookman Old Style letters and printed with dark color with a light color base. Examples of exoneration clauses found in the financial services sector are presented in Table 1.

Table 1. Examples of exoneration clauses in the financial services sector

No.	Type	The standard clause that violates the rules	Paragraph of Article 18 UUPK that is violated
1	Fintech P2P Lending	Information Technology-Based Lending and Borrowing Money (Fintech Lending), operated through the Danamas Service, is a civil agreement and decision between the Participants. All risks of working capital facilities agreed upon through the XXX Service will be entirely borne by each Participant. Therefore, no state agency or authority is responsible for the risk of default. Negligence or delay of a party in exercising a right, power of attorney, or legal remedy based on these XXX Participation Provisions does not apply as a waiver or waiver of such right, power, or legal remedy, and a full or partial exercise of such right, power, or legal remedy, does not negate the further exercise of such right, power, or legal remedy or does not negate the exercise of a right, power of attorney, or other legal remedies.	Paragraph 1(a) Paragraph 1(f)
2	Fintech P2P Lending	The acceleration site has the right to change the terms of this program at any time without giving notice via e-mail or other media to acceleration site users.	Paragraph 1(g)
3	Fintech P2P Lending	Information technology-based lending and borrowing services operated through the XXX service are a civil agreement and decision between the Lender and the Borrower so that all risks to the Loan will be borne entirely by each party.	Paragraph 1(a)

Table 1. Examples of exoneration clauses in the financial services sector (continue)

No.	Type	The standard clause that violates the rules	Paragraph of Article 18 UUPK that is violated
4	Fintech P2P Lending	<p>You understand and acknowledge that XXX is a civil agreement between the Lender and the Borrower so that all risks arising from the engagement between the Borrower and the Lender into the related Loan facility and/or into other investment alternatives chosen by the Lender are borne entirely by each party, including but not limited to credit risk or default, and the Lender bears all losses from or related to the engagement without any state institution or authority responsible for the risk of default and loss.</p> <p>XXX does not represent and guarantee to be responsible for any loss of profits, business/income or losses, damages, claims, costs, costs, and/or burdens or suffered by Users arising from legal relationships voluntarily carried out by Users through XXX, including but not limited to the failure of the Lender to make repayments to the Borrower. XXX does not represent and guarantee that the XXX Platform will always be available and fulfill your every desire and/or need, including access to the XXX Platform, which is always on time, without interruption, damage, delay, or error.</p> <p>XXX has the right from time to time at its discretion to change, including adding or subtracting the contents and parts of this T&amp;C and discontinuing a part or feature contained in the XXX Platform without any obligation or formality to obtain approval from or notify prospective Borrowers, Borrowers, prospective Lenders, Lenders or any third party. The new Terms and Conditions resulting from the amendments are effective immediately and legally binding on prospective Borrowers and Borrowers and potential Lenders and Lenders when XXX displays them on the XXX Platform from time to time. Therefore, you will be proactive in checking and monitoring the terms and conditions available on the XXX Platform to be able to continuously and actively find out the results of changes to the T&amp;C (if any) to understand the provisions in it that bind Prospective Borrowers, Borrowers, prospective Lenders, and Lenders. Without prejudice to the foregoing provisions, the commencement or continuation of the service after such changes occur will be deemed as approval from the prospective Borrower, Borrower, potential Lender, and/or Lender for continuing the change.</p>	Paragraph 1(a)  Paragraph 1(a)  Paragraph 1(f)  Paragraph 1(g)

Table 1. Examples of exoneration clauses in the financial services sector (continue)

No.	Type	The standard clause that violates the rules	Paragraph of Article 18 UUPK that is violated
5	Fintech P2P Lending	We do not guarantee that our Website and Services will always be available and uninterrupted. We are not responsible if our Website and Services become unavailable at certain times and periods  We do not guarantee that the site, our services, or any content will be available or uninterrupted. Access to our site is provided temporarily. We may suspend, withdraw, discontinue or change all or any part of our site without notice. We will not be liable if, for any reason, our website is not available at any time for any period.	Paragraph 1(f)
6	Fintech P2P Lending	Information technology-based lending and borrowing services are a civil agreement between the Lender and the loan recipient so that each party fully bears all risks arising from the agreement.  XXX is not responsible for any fraud, manipulation, error, or loss in connection with the use of User Data for the KYC process caused by the Partner and/or third parties who cooperate with the Partner to carry out the KYC process.	Paragraph 1(a)
7	Investment	The provisions and procedures for opening a Securities Account at PT XXX through online transaction facilities are determined by PT XXX with due observance of the applicable provisions and can be changed at any time without prior notification to the Applicant. Hereby, the Applicant submits and binds himself to create, sign, provide, and complete all data, agreements, and other documents required by PT XXX in connection with the changes.	Paragraph 1(g)

Then in the retail sector, primarily e-commerce, the concern is preventive/preventive actions from business actors against consumers who, without reading the terms and conditions, immediately agree to the agreement. This is necessary to prevent future conflicts. In the online retail (e-commerce) sector, standard clauses can be found in terms and conditions, ad prohibitions, and privacy policies. Terms and conditions are divided into five types: general, gifts, buyers, sellers, and users. The purpose of this distinction is to suit the needs, and there are limits of liability between buyers, sellers and e-commerce sites. The standard clauses in the terms and conditions include how the company manages information in the acquisition, collection, processing, analysis, storage, delivery, dissemination, and destruction. Through these terms and conditions, all parties have the same set of rules so that when a violation occurs, the marketplace site can take action. In addition, the e-commerce party uses the term disclaimer to emphasize the platform's position.

Basically, in determining the inclusion of standard clauses, e-commerce business actors must follow existing regulations in Indonesia. However, in practice, sometimes clauses still violate and transfer responsibility to the detriment of consumers. One example of an exoneration clause owned by e-commerce is that the platform does not control the website/application and is not responsible for policies when the user leaves the platform. So when a consumer clicks on an ad banner on the platform site, the consumer will be moved to the clicked ad banner site, and the platform is not

responsible for moving to the ad banner site. Examples of exoneration clauses found in the retail sector are presented in Table 2.

Table 2. Examples of exoneration clauses in the retail sector

No.	The standard clause that violates the rules	Paragraph of Article 18 UUPK that is violated
1	<p>We may change this privacy policy from time to time. We will publish the changes on the website and mobile app. Any changes we make take effect from the date we post them on the website and mobile app. If you have any questions regarding the privacy policy, please contact us at the contact details below.</p> <p>Third parties may provide links to direct you to XXX, which is not under the control of XXX. We are not responsible for checking, reviewing, or guaranteeing the accuracy of those offered through links that adopt or duplicate XXX. For your convenience, it is recommended that you double-check, pay attention to, and independently consider the link's validity.</p>	Paragraph 1(g), No personal notification. Only inclusion on the site, and users are asked to check personally
2	<p>XXX has the right to update and/or change the privacy policy from time to time if necessary for the security and convenience of User transactions on the XXX Platform. Therefore, the user hereby agrees that it is responsible for carefully reading and checking this privacy policy from time to time for any updates and/or changes. By continuing to access and use the services on the XXX Platform, it is deemed to agree to the updates and/or changes in this privacy policy. By providing user consent, the user waives the right to claims, losses, demands, and lawsuits that may occur on the acquisition, storage, use, utilization, and/or disclosure of data, including personal data, in the XXX system.</p>	Paragraph 1(g), No personal notification. Only inclusion on the site, and users are asked to check personally
3	<p>XXX may change these terms of service at any time by posting the revised terms of service on this site. After such changes are posted, your site use will constitute your acceptance of the revised terms of service.</p>	Paragraph 1(g), No personal notification. Only inclusion on the site, and users are asked to check personally
4	<p>To the extent permitted by law, the customer indemnifies XXX, all officers, employees, directors, agents, and contractors, for all damages, losses, costs, expenses, and legal fees incurred by the customer in connection with the statement and enforcement of XXX rights under these terms and conditions of sale.</p> <p>The customer accepts and acknowledges that XXX may suspend, discontinue and/or discontinue the purchase or redemption of gift cards at its sole and absolute discretion without prior notice or liability to the customer.</p>	Paragraph 1(f)

Table 2. Examples of exoneration clauses in the retail sector (continue)

No.	The standard clause that violates the rules	Paragraph of Article 18 UUPK that is violated
5	<p>We reserve the right to limit or not provide access or access to open the XXX site and its features to each user, replace one of the features, or enter new ones without prior notice.</p> <p>Users are entitled to products/services that are appropriate and have been fully paid for by the user, and products/services cannot be returned or canceled unilaterally by the user if they are not following the provisions set by us.</p> <p>Users understand that we may at any time make changes (reductions or additions) to the provisions of this agreement. Therefore, we recommend that Users periodically and carefully review this agreement. By continuing to access and/or use the XXX Site, the user is deemed to have agreed to the changes in this privacy policy.</p>	<p>Paragraph 1 (f)</p> <p>Paragraph 1(b)</p> <p>Paragraph 1(g), No personal notification. Only inclusion on the site, and users are asked to check personally</p>

## 5. Discussion

The results obtained from this study are related to the application of consumer protection law in standard agreements in the online and retail financial services business sector, which include an exoneration clause. It is found that the consumer protection law against the exoneration clause has been regulated in Article 18 UUPK. In addition, there is an Article 52 UUPK which explains that there is already an institution authorized to supervise the inclusion of the exoneration clause, namely BPSK. However, in practice, the supervision model implemented through BPSK has weaknesses. BPSK did not take the initiative to examine the content of the standard clause. BPSK will only perform its role if the consumer files a lawsuit (Harianto, 2016). The role of BPSK is also still not adequate and passive in conducting supervision (Tobing, 2019; Amaliya, 2020).

Unlike in the Netherlands, the competent authority can examine the requirements contained in the standard clauses and does not wait for consumer complaints. It is different in the United States; limiting the authority of business actors in making exoneration clauses is mainly left to consumer initiatives. If a consumer feels aggrieved, the consumer can file a lawsuit in court. These court decisions are then used to improve existing legislation (Harianto, 2016). However, suppose you look at consumers in Indonesia who tend to be passive and have an "accepting" culture when they are harmed. In that case, consumers prefer to remain silent rather than fight for their rights because it is "destined" or "the amount of the loss is not large," It would be better if the practice supervision of the exoneration clause is carried out as in the Netherlands.

Furthermore, regarding applying the principles of freedom of contract in standard agreements in online and retail financial services, the standard agreement is considered unable to fulfill the principle of freedom of contract. This is in line with Harianto's research (2016) which explains that Mariam Darus Badrul Zaman said the standard agreement was contrary to the principle of responsible freedom of contract. However, on the other hand, it is also contrary to Dinanda & Wita's (2018) research, which says that standard agreements can fulfill the principle of freedom of contract when referring to articles 1330 and 1338 of the Criminal Code. Article 1338 of the Criminal Code explains a little about the agreement that will become law for the parties who make the agreement, and Article 1330 of the Criminal Code explains the freedom to choose the party who wants to be invited to agree.

According to Indonesian contract law, the principle of freedom of contract covers the following scopes: (1) Freedom to enter into or not to enter into an agreement; (2) Freedom to choose the party with whom to agree; (3) Freedom to determine or choose the cause of the agreement made; (4) Freedom to determine the object of the agreement; (5) Freedom for the terms of an agreement, including the freedom to accept or deviate from the optional provisions of the law (annulled, optional) (Harianto, 2016). Therefore, the position of a standard agreement with the principle of freedom of contract means that the principle of freedom of contract provides space for the parties to make an agreement. It is just that in the case of standard agreements, consumers are not allowed to determine the content and form of the agreement (Roesli, Sarbini, & Nugroho, 2019).

Another finding that contradicts the results of this study, namely the application of the take it or leave it concept in a standard agreement, is under the principle of freedom of contract related to the fulfillment of freedom informal aspects. This formal order relates to legal subjects, namely the freedom to make or not make an agreement, the freedom to choose with whom to make an agreement, and the parties' free to determine the form of the agreement (Mahendar & Budhayati, 2019). According to Mahendra and Budhayati's research (2019), the standard agreement still fulfills the principle of freedom of contract even though it only fulfills three of the five principles.

## 6. Conclusions

The prohibition on including an exoneration clause in Article 18 of the UUPK has not yet been effective. This is due to the absence of a unified understanding that restoring rights is essential in the consumer protection law enforcement system. Therefore, the consumer protection authority, especially in the financial services sector and retail trade, needs to improve preventive and repressive supervision by providing several alternative dispute resolutions for disadvantaged consumers.

Standard agreements in financial services and retail do not fully implement the principle of freedom of contract because consumers are not allowed to determine the content and form of the agreement but only provide opportunities for parties with a stronger bargaining position.

## 7. Recommendation

Consumers must understand the standard agreement, standard clause, and exoneration clause. Smart and empowered consumers must know about this because almost all agreements are made and standardized unilaterally by business actors in the rapidly growing economic condition. Actions that can be taken by consumers when facing an exoneration clause include objecting and refusing the existence of an exoneration clause, discussing further with business actors to find solutions; if discussions with business actors do not find a bright spot, then consumers can seek assistance from protection agencies consumers to solve the problem.

In addition, the government also needs to increase consumer protection against the practice of exoneration clauses. There needs to be cooperation between the Ministry of Trade, the National Consumer Protection Agency (BPKN), and the Consumer Dispute Settlement Agency (BPSK) in terms of formulating guidelines regarding the duties and authorities of BPSK in supervising standard clauses so that the implementation of supervision can run even better. Furthermore, the Ministry of Trade and BPSK need to work together to provide training for BPSK members regarding understanding UUPK, especially standard agreements and clauses. In the financial services sector, the Financial Services Authority (OJK) must have firmness and courage in law enforcement efforts and sanctions related to the provisions of standard clauses in the financial services sector.

The high level of digital inclusion in society causes the government to increase digital transaction literacy, especially in understanding the exoneration clause. The

government also needs to prepare an institution with authority to oversee the enforcement of standard agreements and clauses, especially in online trading (e-commerce) of retail goods and financial services that are practiced online. This is because the UUPK has not explicitly or explicitly regulated this digital transaction. In addition, the government needs to establish a system for handling consumer complaints of online financial services to enforce the law on protecting consumers of financial services.

#### Citation information

**Cite this article as:** Anggraini, A. M. T., Simanjuntak, M., Safari, A., Halim, R. E., & Riyadi, S. (2022). Consumer protection in the retail and financial services sectors against the practice of exoneration clauses. *Journal of Consumer Science*, 7(2), 83-96. doi: <https://doi.org/10.29244/jcs.7.2.83-96>

#### References

- Amaliya, L. (2020). The role of the Karawang Consumer Dispute Resolution Agency (BPSK) on the application of standard clauses in terms of the consumer protection law (Peran badan penyelesaian sengketa konsumen (BPSK) karawang terhadap penerapan klausula baku ditinjau dari undang-undang perlindungan konsumen). *Jurnal Ilmu Hukum*, 5(1), 1-13. doi: 10.36805/jjih.v5i1.1266
- Ardhya, S. N. (2019). Product liability and relevance of standard clauses containing exoneration in electric guitar transactions (Product liability dan relevansi klausula baku yang mengandung eksonerasi dalam transaksi gitar elektrik). *Ganesha Law Review*, 1(2), 90-105.
- Bank Indonesia. (2014). Bank Indonesia Regulation No. 16/1/PBI/2014 concerning Consumer Protection of Payment System Services (Peraturan Bank Indonesia No. 16/1/PBI/2014 tentang Perlindungan Konsumen Jasa Sistem Pembayaran). Retrieved from <https://peraturan.bpk.go.id/Home/Details/136965/peraturan-bi-no161pbi2014-tahun-2014>
- Cornelius, K. B. (2018). Standard form contracts and a smart contract future. *Internet Policy Review*, 7(2), 1-18.  
doi:10.14763/2018.2.790
- Dinanda, I. P., & Wita, I. N. (2018). The principle of freedom of contract in a standard agreement (Asas kebebasan berkontrak dalam perjanjian baku). *Kertasemaya*, 6(9), 1-6.
- Dwiyananda, O. M., & Mawardi, I. (2015). Effect of product, price, place, promotion of modern retail on the sustainability of traditional retail business in Gresik (Pengaruh produk, harga, tempat, promosi ritel modern terhadap keberlangsungan usaha ritel tradisional di gresik). *JESTT*, 2(9), 759-771.
- Fadlia, D. H., & Yunanto. (2015). The role of the financial services authority (ojk) in legal protection for investors for alleged fictitious investments (Peran otoritas jasa keuangan (OJK) dalam perlindungan hukum bagi investor atas dugaan investasi fiktif). *Jurnal Law Reform*, 11(2), 207-215.
- Hakim, J. (2019). Exoneration clause on the law of consumer protection: effects and legal efforts. *Jurnal Hukum dan Peradilan*, 8(2), 297-314. doi: 10.25216/JHP.8.2.2019.297-314
- Harianto, D. (2016). The principle of freedom of contract: the problems of its application in standard contracts between consumers and business actors (Asas kebebasan berkontrak: problematika penerapannya dalam kontrak baku antara konsumen dengan pelaku usaha). *Jurnal Hukum Samudra keadilan*, 11(2), 145-156.
- Hayati, P. W., Hosen, M., & Hidayah, L. N. (2020). Legal protection for consumers on Shopee online shopping site in terms of legislation. *Zaaken Journal of Civil and Business Law*, 1(1), 73-88.

- Hidayah, S. A., & Sulistyowati, E. (2022). Juridical analysis of the inclusion of an exoneration clause in the terms and conditions of the ovo application (pt. visionet internasional) (Analisis yuridis pencantuman klausula eksonerasi pada syarat dan ketentuan aplikasi ovo (PT. Visionet Internasional)). *NOVUM: JURNAL HUKUM*, 9(1), 161-170.
- Law of the Republic of Indonesia. (1999). Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection. State Gazette of the Republic of Indonesia (Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Perlindungan Konsumen. Lembaran Negara Republik Indonesia). Jakarta.
- Lestari, A. P., & Utomo, L. (2020). Certainty of legal protection in standard clauses in online loan agreements in Indonesia (Kepastian perlindungan hukum pada klausula baku dalam perjanjian pinjaman online di Indonesia). *Supermasi Jurnal Hukum*, 2(2), 174-193.
- Mahendar, F., & Budhayati, C.T. (2019). The concept of take it or leave it in a standard agreement is in accordance with the principle of freedom of contract (Konsep take it or leave it dalam perjanjian baku sesuai dengan asas kebebasan berkontrak). *Jurnal Ilmu Hukum ALETHEA*, 2(2), 97-114.
- Munggaran, S. I., Sudjana, & Nugroho, B. D. (2019). Consumer protection against the inclusion of standard clauses in the agreement (Perlindungan konsumen terhadap pencantuman klausula baku dalam perjanjian). *Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, 2(2), 187-199. Retrieved from <http://jurnal.fh.unpad.ac.id/index.php/jad/issue/archive>
- Nuhafni, & Bintang, S. (2018). Consumer legal protection in electronic standard agreements (Perlindungan hukum konsumen dalam perjanjian baku elektronik). *Kanun Jurnal Ilmu Hukum*, 20(3), 473-494. doi: 10.24815/kanun.v20i3.10969
- [OJK] Otoritas Jasa Keuangan. (2013). Financial Services Authority Regulation No. 1/POJK/07/2013 concerning Consumer Protection in the Financial Services Sector (Peraturan Otoritas Jasa Keuangan No. 1/POJK/07/2013 tentang Perlindungan Konsumen Sektor Jasa Keuangan). Retrieved from <https://www.ojk.go.id/id/regulasi/Documents/Pages/POJK-tentangPerlindungan-Konsumen-Sektor-Jasa-Keuangan/POJK%201%20-%202013.pdf>
- [OJK] Otoritas Jasa Keuangan. (2014). Financial Services Authority Circular Letter Number 13/SEOJK.07/2014 concerning Standard Agreements (Surat Edaran Otoritas Jasa Keuangan Nomor 13/SEOJK.07/2014 tentang Perjanjian Baku). Retrieved from <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/regulasi/surat-edaran-ojk/default.aspx>
- Prasnowo, A. D., & Badriyah, S. M. (2019). Implementation of the principle of balance for the parties in the standard agreement (Implementasi atas keseimbangan bagi para pihak dalam perjanjian baku). *Jurnal Magister Hukum Udayana*, 8(1), 61-75. doi: 10.24843/JMHU.2019.v08.i01.p05
- Pratiwi, H. (2020). Juridical analysis of disclaimer clauses by business actors on online buying and selling sites (e-commerce) (Analisis yuridis klausul disclaimer oleh pelaku usaha pada situs jual beli online (e-commerce)). *Indonesian Private Law Review*, 1(1), 43-54. doi: 10.25041/iplr.v1i1.2047
- Rachmanto, A. D. (2018). Settlement of consumer disputes due to standard agreements and standard clauses after the enactment of law number 21 of 2011 concerning financial services authorities (Penyelesaian sengketa konsumen akibat perjanjian baku dan klausula baku pasca

- keberlakuan undang-undang nomor 21 tahun 2011 tentang otoritas jasa keuangan). *Jurnal Hukum dan Pembangunan*, 48(4), 826-860.  
doi:10.21143/jhp.vol48.no4.1805
- Rahmawati, I. A., Yuliati, & Santoso, B. (2020). Legal protection for consumers for the inclusion of an exoneration clause in the information technology-based money-lending business in Indonesia (Perlindungan hukum bagi konsumen atas pencantuman klausula eksonerasi dalam bisnis pinjam-meminjam uang berbasis teknologi informasi di Indonesia). *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, 5(2), 202-212.
- Rizky, T., & Rismawati. (2017). Consumer protection against the exoneration clause in the safe deposit box rental agreement at the Banda Aceh branch of Mandiri Bank (Perlindungan konsumen terhadap klausul eksonerasi dalam perjanjian sewa-menyewa safe deposit box pada bank mandiri cabang banda aceh). *Bidang Hukum Kependataan*, 1(2), 158-172.
- Roesli, M., Sarbini, S., & Nugroho, B. (2019). The position of the standard agreement in relation to the principle of freedom of contract (Kedudukan perjanjian baku dalam kaitannya dengan asas kebebasan berkontrak). *DiH: Jurnal Ilmu Hukum*, 15(1), 1-8.
- Rohaya, N. (2018). Prohibition of the use of standard clauses containing exoneration clauses in consumer protection (Pelarangan penggunaan klausula baku yang mengandung klausula eksonerasi dalam perlindungan konsumen). *Jurnal Hukum Replik*, 6(1), 23-42.  
Retrieved from <http://jurnal.umt.ac.id/index.php/replik/index>
- Safari, S., Dalimunthe, A.R.L., Anggraini, A.M.T., Parman, A., Muslim, E., & Simanjuntak, M., (2020). Unboxing of Consumer Protection in Indonesia (Unboxing Perlindungan Konsumen di Indonesia). ISBN. 9786232561915. Penerbit : IPB Press. 114 halaman
- Suharini, & Hastasari, R. (2020). The role of financial services authorities against illegal fintech in Indonesia as an effort to protect consumers (Peran otoritas jasa keuangan terhadap fintech ilegal di indonesia sebagai upaya perlindungan pada konsumen). *Jurnal AKRAB JUARA*, 5(3), 25-38.
- Suryaningsih, K. Y., & Gorda, N. T. (2021). The new clause in the bank credit agreement concerning the consumer protection act. *Public Inspiration: Jurnal Administrasi Publik*, 6(1), 1-7. doi: 10.22225/pi.6.1.2021.1-7
- Syamsudin, M., & Ramadani, F. A. (2018). Consumer legal protection for the application of standard clauses (Perlindungan hukum konsumen atas penerapan klausula baku). *Jurnal Yudisial*, 11(1), 91-22.  
doi: 10.29123/jy.v11i1.252
- Tobing, D. M. (2019). Standard clause: paradox in the enforcement of consumer protection laws (*Klausula baku: paradoks dalam penegakan hukum perlindungan konsumen*) (1 ed.). Jakarta: Gramedia Pustaka Utama.
- Windiantina, W. W. (2020). Exoneration clause as standard agreement in insurance agreement (Klausula eksonerasi sebagai perjanjian baku dalam perjanjian asuransi). *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, 11(1), 71-84.
- Yunus, A. (2019). Misuse of circumstances in the form of a standard agreement (Penyalahgunaan keadaan dalam bentuk perjanjian baku). *Kanun Jurnal Ilmu Hukum*, 21(2), 173-186. doi: 10.24815/kanun.v21i2.12854