Abstract

Disclaimer or exemption clause is a clause or statement used by business actors to restrict or transfer the liability on the rights and obligations of an agreement and legal action. The inclusion of this disclaimer seems to be a freedom for business actors to freely transfer their liabilities which aims to provide protection for themselves, while consumers are being disadvantaged because they cannot file claims or hold accountable in case a default occurs. Therefore, the ease of transferring these liabilities as outlined in the form of a disclaimer is considered a violation of the principle of freedom of contract. This study is a normative research approach carried out through library study with materials related to the examination problems. The data sources consisted of primary and secondary data. The collected data were analyzed qualitatively. The results of the study showed that: a). The status of the disclaimer according to the law of agreement was declared null and void because it did not fulfill the objective conditions in Article 1320 of the Civil Code, namely legal reasons, containing provisions that contravened the law and violation of the principle of freedom of association. b). The validity of electronic transactions viewed from Article 1320 of the Civil Code was only valid if it fulfilled the four valid conditions of the agreement, both subjective and objective conditions. If these subjective conditions are not met, then as a legal consequence the e-commerce sale and purchase contract would be canceled, and if the objective conditions are not met, the contract would be made null and void, c). The form of legal protection for consumers against the first disclaimer/exemption clause, through preventive protection, UUPK (the Consumers Protection Act) has designed a preventive provision by regulating prohibitions for business actors to include Exemption Clause and it is required to adjust the contents of the Exemption Clause regulated in Chapter V Article 18 of UUPK. Second, through repressive protection which aims to resolve disputes in order to protect consumers. The consumers can resolve the dispute through lawsuit (litigation) and without the intervention of the court (non-litigation).

Keywords: consumer protection, exemption clause, online transactions (e-commerce).

INTRODUCTION

The rapid development of technology affects the lifestyle of many people in today's digital era. Technology has also influenced the evolution of world civilization towards globalization. As a result, there has been a drastic shift in social interaction, making the world even more borderless. With the evolution of this technology, new lawsuits have also emerged because of the importance of safeguarding national interests with appropriate legal rules along with technological advances.

Increasingly sophisticated technology provides benefits to improve the quality of people's lives in various sectors, including the economy and trade. For instance, a lot of businesspeople rely on the internet to help them with their operations. This led to the development of an online transaction system where merchants and purchasers are not required to personally interact. Because they do not need a large space to display their goods or a large staff, retailers may cut prices. They can actually conduct business from wherever. Customers may shop conveniently, find what they want, pay for it, and then have the goods delivered to their houses in the meantime.

E-commerce offers a variety of benefits to numerous parties. E-commerce offers businesses the benefit of more effective product marketing, which reduces labor and administrative expenses. Due to the Internet's extensive use, e-commerce makes transactions quicker and more efficient. The introduction of numerous e-commerce platforms including Shopee, Berniaga, OLX, Lazada, BliBli, Bukalapak, Zalora, Elevenia, and others demonstrates the continued growth of e-commerce in Indonesia. Online business transactions are referred to as "e-commerce."
Chapter VIII of Law of the Republic of Indonesia No. 7 of 2014 concerning Trade (State Gazette 2014 No. 45, Supplement to the State Gazette No. 5512), which describes trade through electronic media, provides the legal framework for e-commerce activities in Indonesia. Government Regulation of the Republic of Indonesia No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (State Gazette 2012, No. 189, Supplement to the State Gazette No. 5348) and Law of the Republic of Indonesia No. 19 of 2016 Concerning Electronic Information and Transactions (State Gazette 2016 No. 251, Supplement to the State Gazette No. 5952) regulate matters pertaining to electronic transactions.

E-commerce brings a number of advantages, including allowing buying and selling transactions without being hindered by space and time constraints. Although there are advantages, there are also hazards, particularly those relating to transaction security and legal clarity. Security aspects in e-commerce include things such as authenticity, confidentiality, validity of transactions, and integrity of information until it is received by the recipient.

Although e-commerce is expanding quickly in the modern digital age, some careless individuals use this opportunity to engage in unlawful activities like conducting phony sales or creating phony online stores. Due to disclaimer terms imposed by companies or service providers, consumers who experience fraud in online transactions frequently encounter challenges when attempting to register complaints. Such provisions are used to transfer or restrict liability, as well as to set down the rights and obligations of parties in contracts or other legal dealings. While it may seem necessary for companies to incorporate Exemption Clauses in order to shield themselves from liability, doing so frequently hurts customers who feel they lack the right to file a claim or hold them responsible.

The e-commerce websites www.olx.co.id and www.lazada.co.id are two examples of those that limit their liability by including a Exemption Clause in their menu options. Notably, www.olx.co.id functions as an e-commerce and advertising platform. For instance, transactions on www.olx.co.id are carried out directly between sellers and purchasers without the involvement of OLX. As a service provider, OLX includes a disclaimer provision in their options menu's terms and conditions. The paragraph makes it clear that risks and potential losses throughout the transaction process are not OLX's responsibility, including but not limited to sellers' misrepresentations, issues with goods bought by buyers, and discrepancies in payment amounts.

Lazada is not liable for any risk of misunderstanding, damage or loss of any type, and other impacts, whether direct or indirect, according to the terms and conditions of the www.lazada.co.id website. Lazada reaffirmed that it was not accepting liability for the risk. According to this assessment, there are a number of situations that give the impression that www.olx.co.id and www.lazada.co.id are irresponsible when it comes to customer losses:

a. As an example, a woman from Jakarta lost tens of millions of rupiah after purchasing an iPhone X from an annisa257 account on OLX. She chose to transfer the funds despite the fact that the price offered was less than the market price because she trusted the receipt number the seller had provided. The receipt number could not be found after the transfer, and the offender quickly disabled his contact. The victim believed that OLX lacked sufficient safeguards against fraudulent or deceptive advertisements.

b. On June 19, 2018, Gunawan from Banten experienced issues with his Lazada order. Even though it says on the Lazada website that the items were delivered on June 11, it turns out that the address indicated for delivery is a different address. He tried numerous ways to contact Lazada customer support, but he received no response.

c. In another instance, a man by the name of Irwan purchased a Samsung Galaxy J7 Prime on Lazada. The order’s success was officially recorded, but the supplies were never delivered. After speaking with Lazada customer support, Irwan learned that his address had not been located. Irwan was surprised to learn afterward that his
order had been canceled because it had been rejected by customers, even though he had in no way declined or canceled it.

From the aforementioned incidents, it is evident that consumers frequently feel excluded when they suffer losses while shopping on websites like Lazada and OLX. These websites appear to be shielded from complaints or requests from irate customers, largely because of the Exemption Clauses they deploy. These provisions frequently don’t take into account the rights or interests of customers and are typically written to safeguard the interests of commercial entities. According to what was agreed upon in the Exemption Clause, this leads to a common perception among customers that they lack protection and/or bargaining power when they feel wronged.

According to the principle of freedom of contract, which is recognized in treaty law, each party is free to choose the details and content of the agreement. However, despite the freedom of contract, the treaty law contained in the Civil Code has several provisions that are binding and must be obeyed.19 As a result, attempts by commercial actors to transfer liability through Exemption Clauses may be regarded as a violation of the principle of contract freedom. Article 18 Paragraph (1) Letter A of Law of the Republic of Indonesia Number 8 of 1999 Concerning Consumer Protection contains the provisions relating to the proscription of this Exemption Clause. The article affirms that it is against the law to include Exemption Clauses in formats or locations that are challenging for customers to read, see, or comprehend. This demonstrates that e-commerce transactions already have a legal foundation and that customers who use e-commerce platforms to conduct transactions are protected by rules and laws.

The legitimacy of electronic transactions in conformity with current legal requirements will also be examined, as will the position of disclaimer provisions on e-commerce platforms in relation to treaty law. Additionally, this study will concentrate on consumer legal protection in relation to e-commerce Exemption Clauses in line with Law No. 8 of 1999 about Consumer Protection, or UUPK

**METHOD**

A legislative approach and a case approach are part of the normative legal technique used in this study. This research is prescriptive analytical in character. Both primary sources and secondary sources contributed data to this study. Additionally, qualitative methodologies will be used to assess the obtained data.

**DISCUSSIONS AND RESULTS**

**Position of Exemption Clause in E-commerce Platform in accordance with Legal Agreement**

E-commerce transactions essentially result in an engagement encompassing the rights and obligations of both parties, just like when buying and selling.22 The legal foundations of agreement outlined in Book III of the Civil Code serve as the foundation for e-commerce.23 This is due to the fact that every sale and buy transaction, whether done in person or online, is connected to the idea of an agreement as stated in Article 1313 of the Civil Code.24 Thus, the definition of an agreement in the article relates to a contract between two parties that binds them to one another. The agreement between business operators and customers using digital forms typically takes the form of a written agreement in the context of e-commerce.

Businesses often include Exemption Clauses—clauses that restrict their liability—in the e-commerce contracts they create. According to this theory, customers may take on accountability. Here are a few examples of Exemption Clauses:

a. The person in a more dominant position is exempt from liability when an agreement is broken.
b. There are restrictions on the type and quantity of compensation that can be sought from less defenseless parties.

c. There are deadlines for filing claims, including claims from defenseless parties.

The Exemption Clause's justification is to improve the speed and effectiveness of the contracting process. The goal of the Exemption Clause, in Soedjono Dirdjosisworo's opinion, is to standardize language so that business transactions can go more easily. Exemption Clauses are typically included on e-commerce websites under the Terms of use and Privacy policy sections, which are typically found at the bottom of the page. Websites like www.olx.co.id and www.lazada.co.id are two instances of e-commerce sites that contain disclaimers in the Terms of use and Privacy policy. Customers typically need to click the offered link on these websites in order to read the Exemption Clause.

Exemption Clauses have been put in place by websites like Olx and Lazada to reduce their liability to customers. Both websites state in these terms that they are not liable for any risk or loss that may occur during the transaction, including discrepancies in the seller's information, variations between the goods ordered and those received by the buyer, or price variations at the time of payment.

To give an example, if a customer purchases an item on Olx or Lazada and discovers that the item received differs from the image shown on the site, or if there is a problem with the item's delivery or damage to the item received, both of these sites can avoid liability by referencing the Exemption Clause they listed. However, this type of behavior may be viewed as a breach of consumers' rights, including the right to accurate information about the terms and warranties of a good or service.

Disclaimer provisions, according to Mariam Darus Badrulzaman, are frequently discriminatory because consumers and employers hold unequal power. Consumers typically have no say in deciding the terms of the agreement because they were not involved in discussing its content. It could be argued that the Exemption Clause violates the rules outlined in Article 1320 of the Civil Code as a result. In addition, the Exemption Clause is also recognized in Article 1 number 10 of the Law.

Based on the observations, it appears that the UUPK and the ITE Law are the only rules that directly address disclaimer provisions in Indonesia at the moment. On the other side, the presence of a Exemption Clause that disproportionately burdens one party indicates that there is injustice, particularly when the clause states the absence of a duty to pay compensation.

Business people who waive responsibility for obligations that are violated or not in accordance with the provisions of the ITE Law, especially Article 15 paragraphs (1) and (2) and Article 16 paragraphs (1) and (2) of the Government Regulation on the Implementation of Electronic Transaction Systems (PP PSTE), should not be allowed to do so. Considering these obligations are things that must be complied with in accordance with the law and should not be ignored by business actors as operators of electronic systems. Meanwhile, Article 47 paragraph (2) of PP PSTE stipulates criteria for the validity of electronic contracts in line with Article 1320 of the Civil Code regarding the terms of validity of an agreement. The terms include: agreement between the parties; legal prowess of the subject; the existence of a specific object of agreement; and legitimate purpose or cause. These conditions can be grouped into two categories: subjective and objective terms.

According to my research, it appears that Exemption Clauses in contracts are illegal. This is based on paragraph 3 of Article 18 of the UUPK, which states that any Exemption Clause stipulated by business actors in agreements or contracts is deemed legally unenforceable. The presence of such a clause nullifies the consumer protections outlined in Article 4 of the UUPK Law.

The clause also disregards the laws' provisions in Articles 7 and 19 pertaining to business actors' duties and obligations to pay compensation and other forms of recompense. While this is going on, businesspeople who shirk responsibility for breaking or failing to comply with the ITE Law's rules, particularly those found in Article 15
Validity of Electronic Transactions According to Legal Regulations

The Civil Code’s provisions must serve as the primary rule for the validity of electronic transactions, with the Law serving as a supporting regulation. The parameters of the agreement as specified in Book III of the Civil Code regarding engagements are referred to as the terms of legality of the transaction in the field of business law. Conventional agreements typically include written documentation that make it simpler to identify agreements. Deals can, however, become more complicated when conducted online through e-commerce since they use digital media. Furthermore, there is sometimes no room for negotiating because the items and prices advertised on the e-commerce site have already been determined by the vendor.

The validity of electronic transactions can be seen through Article 1320 of the Civil Code which talks about the terms of validity of the agreement. Although this article generally talks about traditional forms of agreements, its principles can be applied to e-commerce transactions provided that all the legal conditions of the agreement referred to in Article 1320 of the Civil Code are met. In addition, the ITE Law in Article 18 Paragraph (1) states that any electronic contract made through electronic transactions is binding on the parties involved. Nevertheless, the article still refers to the legal principles of treaties contained in the Civil Code regarding the validity of agreements. Furthermore, the ITE Law also confirms that electronic signatures have legal force and legal consequences as long as they meet the requirements determined by applicable regulations.

Legal Protection for Consumers Related to Exemption Clause on E-commerce Platform According to Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection

In comparison to risks carried by corporate actors, consumer rights when making online purchases on e-commerce platforms tend to be more fragile and have higher risks. However, in the modern world of global trade, consumers are parties who require security guarantees in order to transact. The presence of an Exemption Clause in an online transaction is one factor that influences how consumer rights are protected. The UUPK regulates consumer protection from the effects of this Exemption Clause. Increased consumer protection is anticipated as a result of UUPK’s formation. Before and after the transaction, consumers are entitled to legal protection. There are two types of legal protection available to consumers:

a. Preventive Protection

In reality, consumer legal protection prevents infractions by acting as a preventative measure. The government can adopt this preventative measure by creating laws or other regulations that restrict the movement of business actors that could harm consumers.

These precautionary safety precautions are intended to shield consumers from danger, especially when it comes to Exemption Clauses on e-commerce websites. As required by Article 29 paragraph 1 of the Law, there is a need for a legal framework that governs online transactions through consumer counseling. The importance of consumer protection is emphasized throughout the text. Preventive clauses have been controlled in the context of the UUPK by reiterating that business actors are not permitted to insert a Exemption Clause. Business actors are obligated to modify Exemption Clause language in accordance with Chapter V Article 18 of the Law. The objective is to safeguard customers from any abuse of the Exemption Clause that business operators may impose unilaterally. Additionally, the Law’s Article 18 Paragraph 1 outlines precise restrictions on the employment of disclaimer provisions. The prohibition is founded on the idea of contractual freedom with the intention of giving consumers an equal footing with commercial actors. Additional guidelines about the type, language, and presentation of Exemption Clauses that are prohibited are provided in Article 18 Paragraph 2, with a focus on making them simple for consumers to see, read, and comprehend.

b. Repressive Legal Protection
After a breach occurs, legal protection in the form of repression is an action conducted with the intention of punishing the offending party with fines, jail, or other further consequences. The party who feels wronged might file a lawsuit if there is a breach in the transaction, such as a default or loss to one of the parties. Customers who feel wronged by the Exemption Clause on the e-commerce website may pursue the following legal remedies:

1) Dispute Resolution Through Court (Litigation)
   The Non-Community Consumer Protection Agency (LPKSM) and class action lawsuits are two ways that consumers can bring legal action. The government has recognized LPKSM, a non-governmental organization with the specific responsibility of defending consumer rights.

2) Out-of-Court dispute resolution (non-litigation)
   This attempt aims to resolve the dispute amicably between the parties without resorting to legal action. In order to prevent such losses, it is important to decide on the type, scope, and value of compensation and guarantees. The UUPK's Article 47 regulates this. UUPK has formed a Consumer Dispute Settlement Agency (BPSK) to enable out-of-court dispute resolution. As a result, consumer complaints can be settled by the BPSK or a relevant court. According to Article 48 of the Law, there is a general judicial process that is used to settle disputes. According to Article 62 paragraph 1, business actors that break the law by failing to include a disclaimer provision in accordance with Article 18 of the law will face criminal penalties. The perpetrator of the crime faces a maximum penalty of 5 years in prison or Rp 2,000,000,000.00 in fines.

CONCLUSION

The Exemption Clause on the e-commerce site might be ruled illegal in the context of the legal agreement. This is because the existence of a legitimate reason or cause in an agreement conflicts with one of the requirements in Article 1320 of the Civil Code. As a result, the clause goes against legal precedent and the idea of contract freedom. Four requirements, including both subjective and objective elements, are outlined in Article 1320 of the Civil Code in order for an electronic transaction to be considered legal in terms of international law.

In Article 18 of the Law, the consumer is protected from the Exemption Clause. According to this article, Exemption Clauses cannot be used on e-commerce websites. Customers have the right to seek redress through the courts or outside of them if they feel wronged by the provision in order to receive fair treatment and protection.

E-commerce site users should use caution while making purchases, especially if the site has a liability-avoidance disclaimer provision. To build a peaceful and secure transaction environment, every business actor should be accountable and have good intentions. They should not plan to damage consumers or avoid their obligations.

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Juridical Analysis of Disclaimer Claims by Entrepreneurs on Online Trading (E-Commerce)


