

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 9 No. 1

Submit: 05/02/2021

Revised: 07/03/2021

Published: 30/03/2021

LEGAL PROTECTION OF CONSUMER RIGHTS BASED ON ARTICLE 18 CONSUMER LAW PROTECTION AND THE IMPLEMENTATION OF BALANCE AND PROPORTIONALITY PRINCIPLES IN RAW CLAUSULA

Syafrida and Ralang Hartati

syafrida_01@yahoo.com

ralanghartati@yahoo.com

Faculty of Law Tama Jagakarsa University

Abstract

In business or trading activities, business actors use standard contracts. Standard contracts or standard clauses are contracts whose contents are determined by the party having a stronger or dominant position. In business contracts, business actors have a stronger or more dominant position than consumers in determining the standard class substance unilaterally. Article 18 of Law Number 8 of 1999 regulates the prohibition of business actors conducting business activities, among others in the standard class, business actors rejecting risks, refusing refunds, taking unilateral actions on new or additional regulations, burdening consumers with guarantees of security rights. in sales. and installment purchases as if it has received approval from the consumer, arranging the proof in case of breach of promise. Business actors who violate Article 18 of the UK result in the classification of standards being null and void by law. The imbalance between business actors and consumers in standard contacts is against the principles of balance and proportionality. Therefore, in order for the standard classification made by actors not only to realize the interests of business actors but also the interests of consumers, business actors in making standard contracts must pay attention to the provisions of Article UUPK 18 and apply the principles of balance and proportionality.

Keywords: Legal protection, consumer rights, standard clauses

INTRODUCTION

In everyday life, business people use the term "contract" ambiguously, which equates to the meaning of the term agreement. In law science and some legal experts' opinions differentiate between the terms contract and agreement. Burgerlik Wetboek, hereinafter abbreviated as BW, uses the terms overeenkomst and contract for the same meaning, which can be seen from the title of Book III of the second title about "Agreements born out of contracts or agreements." Legal expert Mariam Darus Badruzaman uses the terms contract and agreement in the same sense. Subekti gave different opinions regarding the terms of the agreement or the

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 9 No. 1

Submit: 05/02/2021

Revised: 07/03/2021

Published: 30/03/2021

agreement with the contract. According to Subekti, the term contract has a narrower meaning because it refers to a written agreement or agreement.(Hernoko, 2010)

The source of the law for the engagement is in Book III of the Civil Code (KUHPerdata) in book III. Article 1313 of the Civil Code provides a formulation, contract, or agreement as an act whereby one or more persons bind themselves to one or more people.(Dhini et al., 2016) Subekti provides the definition of an agreement as an event where a person promises to another person or where two people promise each other to do something.(Sinaga, 2018)

In business/trading activities, business actors are regulated by law which contains rights and obligations. Consumer rights are the obligations of business actors. The obligations of business actors are the rights of consumers. The relationship between consumers and business actors is regulated by contract law. The legal terms of the agreement and the principles in the law of agreement also apply in business contacts.

Many business actors in carrying out their business activities use standard contracts.(Muaziz & Busro, 2015) Standard contracts are contracts whose contents have been determined unilaterally by the party having a stronger or dominant position. In business activities, business actors have a stronger or dominant position than consumers who are in a weak position. Standard contracts in business activities, the contents of the agreement have been determined or prepared by the business actor, which is offered to consumers and is valid for all consumers.(Iskandar, 2017)

Article 18 of Law Number 8 the Year 1999 concerning Consumer Protection regulates actions that cannot be included in standard clauses. If the business actor violates the prohibition against the inclusion of standard clauses contained in Article 18 of the UK, the legal consequences are null and void.(Miru, 2016; Wowor, 2016)

The position of business actors that is stronger and more dominant than consumers in determining standard clauses causes an unbalanced position between business actors and consumers, which tends to be detrimental to consumers. An example of a standard clause that is detrimental to consumer rights is “goods that have been purchased cannot be returned, broken is considered to replace it. (Widiyaningsih, 2020)So that the standard class does not

cause harm to consumers, it is necessary to observe the principle of balance and the principle of proportionality in the standard contract. (Bukit et al., 2018) Based on this, the author is interested in writing this article with the title "**Legal Protection of Consumer Rights under Article 18 of the UPK and the application of the principles of balance and proportionality in standard clauses**". And the formulation of the problem that the author will discuss, there are two kinds, such as What is the form of a standard contract in business activities that protects consumer rights and How is applying the principle of balance and proportionality principle in the standard contract that protects consumer rights.

METHODOLOGY

In writing this article, the writer uses literature research methods. The library research results are secondary data in the form of primary legal materials, secondary materials, and tertiary legal materials. Primary legal materials in the form of statutory regulations include Law Number 8 of 1999 concerning Consumer Protection and the Civil Code (KUHPerdata), especially book III relating to agreements. Secondary legal material is in the form of books related to contract law and consumer protection law.(Asikin, 2016) Tertiary legal materials are in the form of a legal dictionary or Big Indonesian Dictionary (KBBI), which is used to define the terms used in this writing.(Rahayu, 2020)

RESULT AND DISCUSSION

1. Use of Standard Contracts in Business Contracts

In the protection law, Article 8 of the UUPK prohibits business actors in carrying out business activities to include a clause in the standard contract for business actors to refuse risks, for example, "goods that have been purchased cannot be returned," "broken is considered replacing," damage to goods is beyond responsibility. What if the goods purchased have hidden defects that are not known by the consumer at the time of the goods transaction. In that case, defective goods are caused by mistakes, negligence, or inaccuracy of the business actor from the business actor. If an event like this occurs, then

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 9 No. 1

Submit: 05/02/2021

Revised: 07/03/2021

Published: 30/03/2021

the business actor rejecting the risk is unfair because there is a business actor's fault, but the business actor is not willing to be responsible for the risk that causes loss to consumers. The clause "Broken is considered replacing," what if the product breaks due to negligence or carelessness of the business actor in placing the product? An incident like this is unfair if the business actor continues to reject the risk even though the fault lies with the business actor.

If we pay attention to the function of the principle of proportionality in a contract, including a standard contract, it is to balance, harmonize the interests of business actors with consumers both during the pre-contract period, the contract implementation period, and at the time of the dispute so as not to harm the interests of both parties, both consumers and business actors.

In online buying and selling, which is currently trending, especially in urban communities, there are still business actors who, in carrying out their business activities, commit acts that are contrary to Article 18 of the UPK, including items purchased that are not in accordance with orders, consumers return products and ask for refunds of money already paid. This is also rejected by business actors.

Law Number 8 of 1999 concerning Consumer Protection does not prohibit business actors from carrying out business activities by using standard clauses that violate consumer rights. Article 18 of Law Number 8 of 1999 regulates the prohibition of business actors from making clauses in business contracts that state the transfer of responsibility, rejecting risks, refusing to return money that has been paid, giving the perpetrator the authority to take unilateral actions in the sale and purchase of installments. efforts to regulate evidence if goods are lost, use or benefit of goods purchased by consumers, give business actors the right to reduce the benefits of consumer services or assets that are the object of sale and purchase, the state that consumers must comply with new regulations, additions made unilaterally by consumers without notifying first to consumers, authorizing business actors to impose mortgage, pledge or other collateral for goods purchased by consumers in installments, if previously not

agreed. Include standard clauses that are difficult for consumers to read and understand. Business actors carrying out business activities using standard classrooms violate Article 18 paragraph (1) are declared null and void, and the agreement is invalid.

2. **Application of the Principles of Balance and Proportionality in Standard Contracts**

Standard contracts are widely used by business actors in carrying out their activities. Because of the many benefits for business actors, the position of the dominant actor determines the substance of the clause unilaterally is not given the opportunity for consumers to bargain, it is more efficient for the birth of a contract, the business actor's signature is attached to the standard contract. which has been prepared is deemed to have had an agreement which gave birth to contact. In the standard clause, the strong and dominant position of the business actor in determining the substance of the contract may create an imbalance between the interests of the business actor and the consumer, which in turn will cause losses to consumers. In accordance with several opinions of legal experts described above, so that there is no imbalance between the interests of consumers and the interests of business actors, it is necessary to intervene from the government in using standard clauses in business contexts. One form of government intervention in standard clauses on business activities is in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as UUPK. Article 18 UUPK regulates prohibitions for business actors that include clauses that may cause loss of rights to consumers.

There are still many found in the business practices of actors using contracts that do not pay attention to the principle of balance and the principle of proportionality. On the basis of the principle of balance and the principle of proportionality, the objective is that business actors make business contracts to realize the interests of business actors and consumers interests in a balanced, equal, and appropriate manner and realize a profit in a win-win solution.

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 9 No. 1

Submit: 05/02/2021

Revised: 07/03/2021

Published: 30/03/2021

Characteristics of a party's standard clause that has a stronger or dominant position that determines the substance of the contract. In business activities, the position of a strong and dominant steward determines the substance of the contract. The limitation on the position of a dominant and strong business actor in determining the substance of the contract is limited by Article 18 of the UUPK so that the contract that has been prepared by the actor does not violate the rights of the consumer, which tends to be in a weak position.

Apart from Article 18 UUPK, business actors in carrying out business activities using standard contracts are the principle of balance and the principle of proportionality. The principle of balance means that business actors in using business contracts to run a business must balance or align the interests of business actors with those of consumers. For example, in Article 18 of Law Number 18, it is stated that business actors may not refuse risks, so if there is a risk to goods purchased by consumers due to the fault of the business actor, the principle of balance is that the business actor must be responsible for the risks incurred by the consumer by providing compensation in accordance with the losses suffered by consumers. Compensation can be in the form of money or replacement of similar goods or other goods of the same value as agreed. Likewise, if in online transactions the products purchased by consumers are not in accordance with consumer orders, then the application of the principle of balance is that the business actor must exchange goods so that the business actor must replace the goods back in accordance with the order if there is damage to the goods or defects, then the application of the principle of equilibrium, the actor must replace it with goods that are not damaged, which is not damaged or the business actor must return the money paid by the consumer.

The sale and purchase agreement with installments in the event of a change in price or an increase in new prices, the business actor may not act unilaterally but must notify consumers. During the Covid 19 pandemic, many consumers experienced difficulties in repaying credit because the company made layoffs, was laid off, so that bad credit

occurred. To overcome this, the perpetrator is prohibited from taking unilateral action by confiscating the consumer's assets without prior notification to the consumer. It is recommended that business actors take settlement using a win-win solution.

According to Peter Mahmud Marzuki, in a contract, the principle of proportionality shows an equal relationship is not one-sided. In standard contract, even though the substance is determined unilaterally by the business actor, the business actor must apply the principle of proportionality so that the contract that is made is a balance between the interests of the business actor and the interests of consumers, creating a reasonable relationship that is not partial and no one is harmed. In business practice, it is still found that business actors do not apply the principle of proportionality, namely the balance between the interests of business actors and consumers. Perpetrators tend to pay attention to their interests so that consumer rights are violated; for example, standard clauses that state goods that have been purchased cannot be returned. Consumers bind themselves to standard contracts because they are pressed into need, for example, in bank credit, financing institutions, and insurance.

The function of the principle of proportionality in implementing standard contracts used in carrying out business activities:

- a. At the pre-contract stage, it opens up opportunities to negotiate a fair exchange of rights and obligations.
- b. In the formation of a contract, guarantees equal rights and freedom in regulating the proportion of rights and obligations of the parties in a fair manner.
- c. The execution of the contract guarantees the realization of the distribution of rights and obligations according to agreed proportions.
- d. If there is a failure in the contract, it must be assessed proportionally so that there is no abuse for the benefit of either party.
- e. If a contract dispute occurs, the burden of proof must be divided according to fair considerations.

If we pay attention to the function of the principle of proportionality in a contract, including a standard contract, it is to balance, harmonize the interests of business actors with consumers, both during the pre-contract period, the contract implementation period, and at the time of the dispute so as not to harm the interests of both parties, both consumers and business actors. Business actors in carrying out their business activities must pay attention to the principle of proportionality to grant consumer rights according to their portion.

CONCLUSION

1. Business actors in carrying out business activities using standard contracts must pay attention to the provisions regarding standard contracts regulated in Article 18 of the Company Law. Business actors who do not heed the provisions contained in Article 18 of the UUPK are due to the law, the standard class is made invalid and null and void by law.
2. The application of the principles of balance and proportionality in standard contracts aims to balance the interests of business actors and consumers so that no one is disadvantaged. Standard clauses in business activities contain the rights and obligations of business actors and consumers, with the principles of balance and proportionality, how to create win-solution benefits for business actors and consumers

BIBLIOGRAPHY

Asikin, Z. (2016). *Pengantar metode penelitian hukum*. Rajawali press.

Bukit, J., Warka, M., & Nasution, K. (2018). Eksistensi Asas Keseimbangan Pada Kontrak Konsumen Di Indonesia. *DiH: Jurnal Ilmu Hukum*.

Dhini, C., Maharani, N., & Amarulloh, R. (2016). Harmonisasi Buku III Kitab Undang-Undang Hukum Perdata Dengan Convention on Contracts for the International Sales of Goods

- dan United Nation Commission on International Trade Law Terhadap Kontrak Dagang Internasional. *Privat Law*, 3(2), 163537.
- Hernoko, A. Y. (2010). *Hukum perjanjian asas proporsionalitas dalam kontrak komersial*. Kencana.
- Iskandar, M. R. (2017). Pengaturan Klausula Baku dalam Undang-Undang Perlindungan Konsumen dan Hukum Perjanjian Syariah. *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah*, 1(2), 200–216.
- Miru, A. (2016). Larangan Penggunaan Klausul Baku Tertentu dalam Perjanjian antara Konsumen dan Pelaku Usaha. *Jurnal Hukum Ius Quia Iustum*, 8(17), 107–119.
- Muaziz, M. H., & Busro, A. (2015). Pengaturan Klausula baku dalam hukum perjanjian untuk mencapai keadilan berkontrak. *Law Reform*, 11(1), 74–84.
- Rahayu, D. P. (2020). Metode Penelitian Hukum. *Yogyakarta: Thafa Media*.
- Sinaga, N. A. (2018). Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian. *Binamulia Hukum*, 7(2), 107–120.
- Widiyaningsih, W. (2020). KEBEBASAN BERKONTRAK TERHADAP PERJANJIAN STANDAR BAKU DALAM MENCAPAI KEADILAN BERKONTRAK. *Journal Presumption of Law*, 2(1), 72–115.
- Wowor, G. (2016). Kajian Yuridis Tentang Perjanjian Baku Antara Kreditur dan Debitur Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. *Lex Privatum*, 4(1).