

Standard Agreements and Legal Protection Customers of Financial Service Institutions

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Abstract

In carrying out its business activities, Financial Services Institutions carry out civil legal relations with the parties, and this is formalized in the form of a written agreement. This research analyzes how regulations are regulated in statutory regulations regarding standard agreements between customers and Financial Services Institutions and the extent of legal protection for customers of the Financial Services Institutions in question. The research carried out is normative juridical, using secondary data consisting of primary legal materials in the form of statutory regulations, supported by secondary legal materials in the form of books, literature, and legal journals. The research results show that the use of standard agreements is a common practice for Financial Services Institutions today. Not only is the standard agreement design formatted according to the interests of the Financial Services Institution as the more dominant party in the agreement, but it also contains extenuating clauses that burden other parties in the agreement. From the research results, it was concluded that customers' rights were more disadvantaged due to standard agreements made by Financial Services Institutions. In addition, standard agreements that contain exemption clauses give rise to legal consequences for customers, namely that the responsibility that should be borne by the Financial Services Institution changes to become the responsibility of the customer.

I. Introduction

In Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK) contains the definition of Financial Services Institutions (LJK) as institutions that carry out activities in the banking sector, capital markets, insurance, pension funds, financing institutions, and/or other financial services institutions. This institution has a legal relationship with customers in the form of an agreement, which is usually formalized in a written agreement. The agreement made in writing contains conditions that detail the rights and obligations of the parties involved in the agreement.

In many cases, the customer gives the LJK authority to design the construction and substance from agreement which will be agreed upon together.

This matter among others due to the customer's limited understanding of the matters to be agreed. However, the agreement to be designed by LJK must still follow the basic agreement that has been previously reached with the customer and must pay attention to the principle of freedom of contract and the principle of consensualism adopted in the Civil Code. The transfer of authority to LJK to design the agreement certainly provides benefits especially for customers because the time used to pour things that have been agreed upon together into a formal agreement becomes shorter. The use of standard agreements has expanded in various forms of financial services offered by business actors to their customers.¹ Nowadays, it is rare to find a drafting of a contract or agreement that starts from scratch. One party will take the initiative to design the basic substance of the agreement so that the time used to reach an agreement can be shorter. In reality, the agreement that will be mutually agreed upon has been made in such a standard way, so that the other party only focuses on the substantive matters concerning their rights and obligations.

The standard agreement made by customers with LJK as mentioned above contains issues about the extent of legal protection for customers, because the agreement designed by LJK tends to prioritize the rights of LJK to secure its interests and pays less attention to the interests of customers who sign the agreement. The need for legal protection adequate for customers LJK be the center of attention main in this study. The imbalance in bargaining power and position held by customers compared to that held by LJK is a trigger and determining factor for the growth of standard agreement practices in the LJK service provider environment.

2. Research Method

Legal research methods what is used is normative juridical. With a normative legal research method, the research will rely more on library research. Research is conducted by collecting, studying and analyzing legal materials and data considered relevant to answer the problem which will researched.² Data used in the research is normative law research. Using secondary data, which is obtained from primary legal materials, secondary legal materials, tertiary legal materials, and secondary legal materials-material or other laws.³ Then the secondary data obtained will be analyzed qualitatively, and then the results of the analysis meant to be presented descriptively, in accordance with its relevance to the formulation of the problem will researched.

The approach used in this research is the statute approach mix with the legal approach and conceptual. Data analysis with deductive logic, and attempts

¹ HP Panggabean, *Standard Contract Practices (Standard Agreements) in Banking Credit Agreements* (Bandung: PT. Alumni, 2012).

² Jhonny Ibrahim, *Normative Legal Research Theory and Methods* (Malang: Bayumedia Publishing, 2005).

³ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: Grafindo, 2006).

to explain something that is general and then draws it into a more specific conclusion.⁴

3. Results and Discussion

Regulations Financial Services Institution

There are various types of LJK in Indonesia, which are regulated by different laws and regulations for each LJK in question. LJK basically consists of banks, Non-Bank Financial Institutions (LKBB), pension funds, insurance, capital markets, and other types of LJK.

A bank is a business entity whose main activity is collecting funds from the public in the form of savings and distributing them to the public and businesses that need them in the form of credit or other forms of financing, in order to improve the standard of living of the people.⁵ Current laws and regulations separate the provisions intended for the conventional banking industry from the laws and regulations intended for Islamic banking.⁶ Conducting Sharia-based activities is a must for banking in Indonesia, which can be done by banks by forming a subsidiary in the form of a separate Sharia Bank, or by conducting Sharia-based activities within its parent conventional bank by forming a Sharia Business Unit (UUS). Unlike commercial banks that are permitted to accept various types of deposits from the public, this is not the case with People's Economic Banks (BPR) which are regulated with their own market share in the Banking Law. BPRs can only accept deposits in the form of time deposits or savings and are not permitted to accept public funds in the form of demand deposits and certificates of deposit, because the latter two types of deposits are included in the payment traffic system. According to the provisions of laws and regulations, BPRs do not participate in payment traffic.

Non-Bank Financial Institutions (LKBB) can be in the form of finance companies, pension funds, insurance companies, venture capital companies, pawnshops, and other financial entities. One of the main characteristics of LKBB is that they are not allowed to accept deposits from the general public, because the activity of accepting deposits from the public can only be carried out by banks.

Finance companies offer products in the form of leasing, consumer financing, factoring, and credit card businesses. Insurance companies receive premiums from the insured and invest the funds in financial products that are in accordance with the investment guidelines provided by the OJK.⁷ Factoring companies carry out the activity of buying and selling receivables with companies that want to get cash flow before the company's bills are due to overcome mismatches in the company's cash flow. The bills that are bought and sold must meet certain qualifications, namely the bills in question must be

⁴ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2016).

⁵ Article 1 Point 2 of Law No. 10 of 1998 concerning Banking, which is re-incorporated in Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector.

⁶ Sharia banking is regulated in Law no. 21 of 2008 concerning Sharia Banking.

⁷ Law No. 21 of 2011 concerning the Financial Services Authority.

healthy and not yet due. The Pension Fund receives deposits or contributions from participants, and the funds received in an accumulated manner from Pension Fund participants are invested by the institution in accordance with the investment directions outlined by the OJK as the authorized authority for that.

Pawnshops provide financing to people who need funds by accepting securities or goods that are pawned to the institution in question, the value of the financing given to the pawning party is adjusted to the estimated price of the letter/goods that are pawned. Valuables or securities that are pawned will be controlled by the pawnshop company until the valuables are redeemed.

Capital market activities as part of LJK consist of various parties, including issuers, investors, stock exchange organizers, and other capital market supporting institutions. The Stock Exchange and Clearing Institution as well as the Settlement and Storage Institution are Self Regulatory Organizations (SRO) that have the authority to formulate regulations for themselves in order to facilitate transactions and business activities, which of course are aligned with the laws and regulations issued by regulatory and supervisory authorities in the capital market.⁸

The Nature of the Promise

Some literature distinguishes the meaning between a contract and an agreement. In general, a contract is a legally binding agreement made between two parties with the same interest. On the other hand, an agreement is an agreement that is restructured in such a way between the parties, but usually does not have the same level of legal validity as a contract. The above understanding leads to the understanding that a contract seems more sacred than an agreement. Thus, a contract is a stricter form of agreement, which has legal consequences and more formal rights and obligations than those adopted by an agreement. However, the principles and legal provisions that apply to both come from the same thing, namely civil obligations regulated in Book III of the Civil Code.

The definition of an agreement according to Article 1313 of the Civil Code is an act by which one or more people bind themselves to one or more other people. Leading scholars have also contributed their thoughts to enrich the understanding of an agreement. Subekti defines an agreement as an event in which one person makes a promise to another person, or two people promise each other to do something.⁹

On the other hand, M Yahya Harahap defines an agreement as a legal relationship between two or more people, which gives the power of the right to one party to obtain achievements and at the same time obliges the other party to fulfill the achievements.¹⁰ Meanwhile, Tirtodiningrat defines an agreement as a

⁸Jusuf Anwar, Capital Markets as a Means of Financing and Investment (Bandung: PT. Alumni, 21010, p. 128).

⁹ Subekti, Contract Law (Jakarta: Intermasa, 2002).

¹⁰ M. Yahya Harahap, Legal Aspects of Agreements (Bandung: PT. Alumni, 1986).

legal act based on an agreement between two or more people to give rise to legal consequences that can be enforced by law.¹¹

The requirements for the validity of an agreement are regulated in Article 1320 of the Civil Code, which consists of subjective and objective requirements. Subjective requirements for the validity of an agreement are the agreement of those who bind themselves and are competent to make an agreement. On the other hand, objective requirements are regarding a certain matter and the existence of a lawful cause. Violation of subjective requirements results in the agreement in question being voidable, while violation of objective requirements results in the agreement being null and void.

In relation to the subjective conditions mentioned above, an agreement can be considered to contain legal defects or the agreement can be considered not fulfilled if the following things exist.¹² First, there is coercion (*dwang*). Any unjust legal act or one that contains a threat that prevents the creation of freedom of will from the parties can be classified as an act of coercion. This act of coercion includes any threat with the aim that in the end the other party will give its rights. Second, there is fraud (*bedrog*), namely an act that contains trickery. Fraud is a reason permitted by law as a reason to cancel an agreement according to Article 1328 of the Civil Code. A person who is deceived can make a statement according to his will, but what he says is because there is a power of deception that is deliberately directed at something that is actually contrary to his true will. Third, there is error or mistake (*dwalig*). An error or mistake occurs because one or more parties have the wrong perception of the subject or object of the agreement. The error can be (i) error in persona, which is an error concerning a person, which can occur due to the similarity of name but the name listed in the agreement is not the person who has actually agreed to the agreement, and (ii) error in substantia, which is an error relating to the characteristics of the object to be agreed upon. Fourth, is the abuse of circumstances (*misbruik van omstandigheden*), which can occur when a person in making an agreement is influenced by things that can prevent him from making an assessment (judgment) so that the person concerned is unable to make an independent decision.¹³

A legally made agreement applies as a law for those who make it. Therefore, an agreement is very holistic for those who are bound by it. Every agreement made by the parties will have legal consequences or can be sued if the performance is not fulfilled. The legal consequences in question are rights and obligations, where rights are a pleasure and obligations are a burden.¹⁴

From the definition mentioned by the scholars above, it can be seen that an agreement must contain elements, namely there are at least two legal subjects, then there is agreement between the two parties (*consensus*), there is a clear

¹¹ A. Qirom Meilala, *Principles of Contract Law and its Development* (Yogyakarta: Liberty, 1985).

¹² Mariam Darus Badruzaman, *Civil Code Book III, Contract Law with Explanation* (Bandung: PT.Alumni, 1996, pp. 100-104).

¹³ *Ibid.*

¹⁴ Abdulkadir Muhammad, *Law of Contracts* (Bandung, Alumni Publisher, 1986), p. 53.

object object, there is a goal regarding the material (wealth), and there are certain forms, namely oral agreements or written forms.

Several principles contained in contract law were explained by Mariam Darus Badruzaman, such as the principle of freedom to enter into agreements (partij autonomy), the principle of consensualism (conformity of will), the principle of trust, the principle of binding force, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morals. , the principle of propriety, and the principle of habit.¹⁵Regarding the principle of freedom of contract, Friedman stated that this principle is still considered a very important aspect of individual freedom, even though today it is no longer as essential as it was hundreds of years ago.¹⁶

Although the law of contracts in the Civil Code is open, an agreement that binds the parties must be made by following other applicable laws and regulations. In other words, the open nature adopted by the law of contracts is not absolute. In addition, every contract must be fulfilled by the parties involved in it in accordance with the principle of *pacta sunt servanda*, meaning that the parties must fulfill what they have agreed to in the contract they have made previously.¹⁷ The adage *pacta sunt servanda* is recognized as a rule which stipulates that all agreements made by humans with each other, given the legal force contained therein, are intended to be carried out and ultimately can be enforced.¹⁸In its development in the Netherlands, contract law has receivedunderstand thatabuse of circumstances (*misbruik van omstandigheden*) as an element that causes an agreement to be cancelled, either in whole or in part from the agreement.¹⁹

Standard Agreement

The term standard agreement has a broader meaning, which is not only limited to the inclusion of clauses that have been prepared and determined in advance by one of the parties themselves, but also includes the formand contentsfrom the agreement in question.²⁰ In general, standard clauses are written conditions in an agreement made by only one party.who positions himself as a party who better understands the main points that need to be included in the standard agreement.²¹ In generalStandard agreements use small

¹⁵ Mariam Darus Badruzaman, *Civil Code, Book III, Contract Law and Explanation* (Bandung: PT. Alumni, 2001).

¹⁶ Wolfgang Friedman, *Legal Theory, Fourth Edition* (London: Steven&Sons Limited, 1960).

¹⁷ Arus Akbar Silondae and Wirawan B. Ilyas, *Principles of Business Law* (Jakarta: Salemba Empat Publisher, 2011).

¹⁸Herlien Budiono, *The Principle of Balance for Indonesian Contract Law* (Bandung: PT. Citra Aditya Bakti, 2006, p. 102)

¹⁹ J. Satrio, *Law of Contracts* (Bandung: Citra Aditya Bakti, 1992).

²⁰ Achmadi Miru and Sutarman Yodo, *Consumer Protection Law* (Jakarta: Raja Grafindo Persada, 2010).

²¹ Suradi and Baiq Ratna Utama, "Legal Aspects of the Application of Standard Agreements to Hire Purchase Agreements in the Civil Law System," *Law, Development & Justice* 5, no. 4 (2022): 46.

letters and very technical legal language.²²Such an agreement is already printed in the form of a specific form (boiler plate) prepared by the party the dominant one and thus other parties (*counterparty*) only need fill in certain information data only with little or no changes at all to the clauses.²³St. Remy Sjahdeini in his doctoral dissertation also mentioned that the standard agreement like this is an agreement in which almost all the clauses have been standardized and the other party basically has no chance at all to negotiate or request changes.²⁴ Even if one party requests changes to the standard agreement clauses, the likelihood of success is relatively very small. The large limitations in freedom of contract as a result of the use of standard agreements result in remaining freedom for customers or counter party only a choice between accepting or rejecting (take it or leave it) the terms in the agreement that was presented to him.²⁵

If you pay attention more carefully material or content and conditions from a standard agreements, an imbalance is often found between business actors and their customers, where customers are always on the weaker side compared to business actors.²⁶The substance of the standard agreement has been determined independently and unilaterally by business actors by securing more interests from the business actor alone, so that the interests of other parties in the standard agreement are practically become neglected.²⁷ Formally, such a standard agreement is made based on mutual agreement between the parties so to speak till valid and binding legally for those who make an agreement. In such a situation, the weak party formally still affixes his signature as approval of the contents of the agreement, it was done solely because of pressure by position and his needs.²⁸

In the mid-20th century, standard agreements which is mentioned above is considered to be one of the serious problems in contract law.²⁹Regarding this, Tan Kamello stated that if there is pressure from one party to another party through an imbalance of bargaining power in a standard agreement, then such a clause actually violates the principle of *iustum pretium* which results in the agreement in question being able to be cancelled. The party who is legally disadvantaged actually has the right not to receive and did not sign an agreement drafted by another party that does not protect the rights and interests of from the injured party.³⁰

²² Sudaryatmo, *Consumer Law & Advocacy* (Bandung: PT. Citra Aditya Bakti, 1999).

²³ Wiwoho, *Contractual Justice* (Jakarta: Penaku, 2017).

²⁴ St. Remy Sjahdeni, *Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia* (Jakarta: Indonesian Bankers Institute, 1993).

²⁵ Ibid, p. 65.

²⁶ Hulman Panjaitan, "Enforcement of Standard Agreements and Consumer Protection," *Jurnal Hukum to-ra* 2, no. 1 (2016): 262.

²⁷ Ibid.

²⁸ Fransiska Novita Eleanora and Aliya Sandra Dewi, "Implementation of Standard Agreements and their Legal Consequences for Consumers," *Mercatoria Journal* 15, no. 1 (2022): 20.

²⁹ PS Atiyah, *An Introduction to the Law of Contract* (New York: Clarendon Law Series, 1989).

³⁰ Tan Kamelo, "The Character of Civil Law in Banking Functions Through the Relationship Between Banks and Customers" (Medan: University of North Sumatra, 2011).

PS Atiyah emphasized that the weakening of the values mark contained in the principle of freedom of contract has actually been going on for quite a long time, which is valid until now. This can be seen from the development of several existing laws and regulations in society.³¹ Long before, at the end of the 19th century, academics in the United States had felt uncomfortable with the relationship between the classical contract model and the doctrine of consideration.³² The Doctrine of Consideration is intended to be wrong one feature typical in the Common Law system, where the parties to a contract cannot enforce the contract if the contract does not contain consideration -consideration which is considered Enough relevant. Considerations that relevant the rights referred to include, among other things, right, interests, advantages, or benefits that will obtained by one party, and which will provided or borne by another party (*counterparty*) in contracting.

Amidst the differences in understanding regarding the standard agreement mentioned above, there are also opinions that justify the existence of a standard agreement. From standard agreements do not need to be questioned anymore legally. The reasons underlying this opinion are supported by the fact that the use of standard agreements in the business world has been going on for more than 80 years.³³ This opinion is associated also with the fact that the emergence of agreements like this is closely related to the needs of society itself.³⁴ The rapid development of standard agreements is a necessity in an era that demands practicality in conducting trade transactions. These standard agreements are commonly found in form business or trade contracts, including agreements in scope LJK sector.³⁵ If in time the community think that they no longer need such standard agreements, then the agreement standard intended to disappear by itself. Regardless of the justification from parties who support or object to it the standard agreement, agreements like this need attention Which seriously so as not to contain clauses that are clearly unreasonable, unfair and oppressive to one of the parties.³⁶

Standard Agreement with Exemption Clause

Discussions about standard agreements are always closely related to and cannot be separated at all from agreements with terms or exception clauses. Standard agreements are not always detrimental to customers, as long as the principles of an agreement are adhered to legitimate clearly contained therein. This means that a standard agreement may be created, but substance and the process of compiling it made with fair and rights and obligations from both parties agree to be included in agreement clearly and in a balanced manner. If the standard agreement contains conditions that are burden some to the customer

³¹ PS Atiyah, *The Rise and Fall of Freedom of Contract* (New York: Oxford University Press, 1979).

³² *Ibid*, p. 687.

³³ St Remy Sjahdeini, *opcit*, p. 70.

³⁴ *Ibid*.

³⁵ Muhamad Hasan Muaziz, "Setting Standard Clauses in Contract Law to Achieve Contractual Justice," *Jurnal Law Reform* 11, no. 1 (2015): 75–76.

³⁶ *Ibid*, p. 71.

and on the other hand provide limits on liability for business actors unfairly, that's it certainly has violated the principles contained in an agreement. As previously mentioned, Mariam Darus Badruzaman mentioned that principles that must be considered when drafting an agreement as contained in Book III of the Civil Code are the principle of freedom to enter into agreements (partij autonomy), the principle of consensualism (conformity of will), the principle of trust, the principle of binding force, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morals, the principle of propriety, and the principle of custom. These principles remain important to adhere to, even for standard agreements with exception clauses.

The use of standard agreements in business transactions can create an imbalance between Financial Services Providers (PUJK) on the one hand with customers as consumers on the other hand, so a strong legal basis is needed for the government as a regulator and society as a PUJK service user to do effort-protection and empowerment efforts party consumers. This effort is important especially for can offset the trend of PUJK prioritize to implementing economic principles for the sake of get maximum profit with capital which as minimal as possible.³⁷ Standard agreements in everyday practice are difficult to avoid because they have become a real necessity for the community, but standard agreements also often contain elements of injustice, especially those containing clauses-clause exenoration. This in justice can be seen start from the manufacturing procedure which tend unilaterally, also the contents are Lots contains provisions for the transfer of obligations or responsibilities, or even completely eliminates the responsibilities that should be borne or borne by the producer/business actor. If we examine the substance from Consumer Protection Act, in fact the standard agreement is still can justified. However, in Article 18 of the Consumer Protection Law the expressly prohibits any standard agreement clause whose contents attempt to For shifting responsibility for business actors, either as producers or distributors/sellers.

As previously mentioned, something that customers, including LJK customers, must avoid is if a standard agreement contains an exclusion clause. Previously it has also been described that the exoneration clause is a provision that limits or eliminates the responsibility that should be the burden of business actors including LJK. If observed carefully Furthermore the substance contained in the provisions of Article 18 Law No. 8 of 1999 concerning Consumer Protection, it will be seen that the rules contained in the Article are exoneration clauses which are prohibited by law because they shift the responsibility of business actors/LJKs to partyc onsumers, as mentioned below.³⁸

³⁷ Agus Satory, "Standard Agreements and Consumer Protection in Financial Services Sector Business Transactions: Application and Implementation in Indonesia," *Journal of Legal Studies* 2, no. 2 (2015): 270-271.

³⁸In Article 1 point 38 of Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector, it is stated that Consumers are any person who owns and/or utilizes products and/or services provided by Financial Sector Business Actors.

First, business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement, if: (i) states the transfer of responsibility of the business actor, (ii) states that the business actor has the right to refuse to return the goods purchased by the consumer, (iii) states that the business actor has the right to refuse to return the money paid for the goods and/or services purchased by the consumer, (iv) states the granting of power from the consumer to the business actor either directly or indirectly to carry out all unilateral actions related to the goods purchased by the consumer in installments, (v) regulates matters of proof of loss of use of goods or use of services purchased by the consumer, (vi) gives the business actor the right to reduce the benefits of services or reduce the consumer's assets that are the object of the sale and purchase of services, (vii) states that the consumer is subject to regulations in the form of new, additional, continued and/or further changes made unilaterally by the business actor during the period the consumer uses the services purchased, and (viii) states that the consumer gives the business actor the power to impose a mortgage, lien or guarantee right on the goods purchased by the consumer in installments. installments.

Second, business actors are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosure is difficult For understood. Third, every standard clause that has been set by the business actor in a document or agreement that meets the provisions as referred to in the paragraphs above is declared null and void by law. Fourth, the business actor is required to adjust the standard clause that is contrary to this Law.

Matter needs attention substance Article 18 of the Consumer Protection Law above is that the law in question does not differentiate between the meaning of standard clauses and exception clauses. In fact, both have different meanings as explained. Previously, this means that not all standard clauses are burden some or scary for customers or consumers, and what should be avoided just if the standard agreement in question contains a clause-clause exoneration.

Yusuf Shofie stated that the regulation of limitations and prohibitions as stated in Article 18 of the Consumer Protection Law above is intended to place the position of customers or consumers on an equal footing with business actors based on the principle of freedom of contract.³⁹This matter also for the time being the party is considered own The aim is to encourage the formation of smart customers or consumers who are independently capable for protect yourself and your environment.⁴⁰However, despite the desire for consumers to be able to protect themselves his business actors themselves are required to remain

³⁹ Yusuf Shofie, *Selected Chapters on Consumer Protection Law in Indonesia* (Bandung: PT. Citra Aditya Bakti, 2008).

⁴⁰ Sekararum Intan Munggaran, Sudjana, and Bambang Daru Nugroho, "Consumer Protection Against the Inclusion of Standard Clauses in Agreements," *Acta Djurnal* 2, no. 2 (2019): 191.

responsible for the circulation of goods/services that meet the security, safety and health aspects of consumers as users the goods/services in question.⁴¹

Legal Protection for Customers of Financial Services Institutions

A form of legal protection in fact related close with the law enforcement efforts themselves.⁴²As with legal protection for the general public, legal protection for LJK customers must also pay attention to certainty, benefits, and justice. In this regard, the delivery of product information by LJK providers to their customers should be delivered fairly, proportionally, and responsibly. This means that LJK should not only merely informing about the advantages or distinctive characteristics from only the product, but also needs to explain the security system for using the products offered and the interest calculation system for all types of services to consumers.⁴³

In the introduction, it has been mentioned that the legal relationship between LJK and customers is in the civil area. H. Moch Isnaeni stated that legal protection reviewed from a civil law perspective can be divided into 2 (two) parts, namely internal legal protection and external legal protection.⁴⁴Internal legal protection is linked to the existence of clauses contained in the agreement between the LJK and its customers, where LJK customers as consumers are expected to have the courage and freedom to fight for their will to be included in the agreement. The essence of internal legal protection is a fortress of protection for the interests of the customer in an agreement built on the basis of mutual agreement.⁴⁵Therefore, the purpose of internal legal protection is primarily to provide adequate protection for customers as consumers because in many cases the position of customers as weak parties is not balanced compared to the position of LJK. The bargaining position of LJK customers is in a weak position compared to the position of the LJK. LJK customers must fight hard so that the exoneration clause in the standard agreement is removed, as part of internal legal protection that he has.⁴⁶LJK customers should nottoohope that LJK will put forward a standard agreement with relatively fair clauses, and therefore LJK customers must fight for this with all their mightwhich exists.

On the other hand, external legal protection is a type of protection created by the competent authorities through regulations in the form of statutory regulations.applicable.⁴⁷This external legal protection is prepared by lawmakers

⁴¹ *Ibid.*

⁴² Lambang Siswandi, "Creditors and Debtors with Legal Protection Rights in Unsecured Credit Agreements," *DiH: Journal of Legal Studies* 15, no. 1 (February 1, 2019): 87–94, <http://jurnal.untag-sby.ac.id/index.php/dih/article/view/2268>.

⁴³ Yusuf Shofie, *Consumer Protection and Its Legal Instruments* (Jakarta: Citra Aditya Bakti, 2003).

⁴⁴ H. Moch. Isnaeni, *A Collection of Contract Law Dioramas* (Surabaya: PT. Revka Petra Media, 2018).

⁴⁵ *Ibid*, p. 42.

⁴⁶ Shinta Rachmansyah and Dipo Wahyoeno, "Standard Agreements Containing Exemption Clauses in the Perspective of Consumer Protection Law," *Bureaucracy, Journal of Law & Social Political Governance* 2, no. May-August 2022 (2022): 720.

⁴⁷ H. Moch. Isnaeni, *opcit*, p. 41.

to anticipate the possibility of exploitation by one party who has a more dominant position over the other party whose position is weak within an agreement.⁴⁸ In the context of external legal protection according to Moch Isnaeni's teachings above, OJK is the only institution that is competent to regulate and supervise the financial services sector according to the Financial Services Authority Law.

In general, if LJK customers as consumers feel disadvantaged by standard agreements containing exoneration clauses, then one of the laws and regulations that LJK customers can use to protect their interests is by using the Consumer Protection Law as previously mentioned. Article 28 of the OJK Law states that in order to protect the public, OJK has the authority to take measures to prevent public losses, which include the following. First, providing information and education to the public Lots on the characteristics of financial services, services, and products. Second, ask financial services institutions to quick stop its activities if the activities have the potential to harm the community. Third, take other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.

Article 18 of the Consumer Protection Act has open loopholes for LJK customers to reject agreements made unilaterally by LJK providers, if the standard requirements are detrimental to them. However, there are opinions that consider that the legal protection for LJK customers as consumers provided by the Consumer Protection Law above is still felt not enough adequate, because such agreements are more individual in nature, which do not involve dominant customer groups as is the case with LJK customers. Kartini Muljadi and Gunawan Widjaja stated that the provisions in Article 18 paragraph (1) of the Consumer Protection Law are primarily provisions that apply generally to organizers of manufacturing and non-manufacturing business activities or distributors in Indonesia.⁴⁹ Referring to the opinion of Kartini Muljadi et al above, the Consumer Protection Law seems to be less suitable for use in measuring the magnitude legal protection for LJK customers in responding to standard agreements, because the nature of the financial industry is different from the industry regulated in the Consumer Protection Law. However, the Regulations issued by the OJK based on the mandate of the OJK Law can be used as a reference that specifically provides legal protection for LJK customers.

One of the institutions that has a fairly large market share in the financial services industry is a bank. The role of the bank as a creditor is very dominant in designing standard credit agreements, most of which contain exoneration clauses. As previously mentioned, what often becomes a legal problem in terms of this is an imbalance between the bank's rights as a creditor and the obligations of the borrowing customer as a consumer of LJK.⁵⁰ The same thing can

⁴⁸Ibid, pp. 41-42.

⁴⁹ Kartini Muljadi and Gunawan Widjaja, *The Union Born from the Law* (Jakarta: Raja Grafindo Persada, 2004).

⁵⁰ Salim HS, *Law of Contracts, Agreements, Loans and Grants* (Jakarta: Sinar Grafika, 2015).

also be seen in motor vehicle financing agreements distributed by financing companies or leasing companies. In financing agreements made by leasing companies, it is often found that the leasing company has the authority to recall motorized vehicles at any time which deemed necessary, when the consumer is late or in pay its obligations.⁵¹

To create legal protection for customers mandated by the OJK Law as a regulatory and supervisory institution for the LJK industry, OJK will serve complaints which include, among other things, preparing adequate tools for complaint services for customers who feel disadvantaged by the behavior of LJK. This is realized by creating a complaint mechanism for customers and facilitating the resolution of customer complaints at the operational level, OJK has issued SE No. 13/SEOJK.07/2014 which regulates the Standard Agreement. The provisions in Article I.1. SENo. 13/SEOJK.07/2014 states that with a standard agreement intended as agreement written unilaterally determined by the LJK and inside it contains clauses-clause standard regarding the content, form, and method of making, and used to offer products and/or services to consumers en masse. Furthermore, it is regulated that (i) LJK providers are required to fulfill the principles of balance, justice, and fairness in making agreements with consumers, and (ii) in designing, formulating, establishing, and/or offering standard agreements to consumers, then LJK providers are required to base this on the service provisions mentioned above.

Clauses prohibited in SE OJK No. 13/SEOJK.07/2014 concerning standard agreements concerning matters as follows. First, Exoneration/exemption clause, namely the content of which increases the rights and/or reduces the obligations of LJK providers, or reduces the rights and/or increases the obligations of customers as consumers. *Second*, abuse of circumstances is a condition in a standard agreement that has indications of abuse of circumstances. An example of this condition is taking advantage of the customer's condition as a consumer who is in dire straits due to certain conditions or in an emergency, and intentionally or unintentionally the LJK provider does not explain well benefits, costs and risks of the products and/or services offered.

Further in Article II.3SE OJK No. 13/SEOJK-07/2014 contains more details on matters that are prohibited from being included in standard agreements as follows. First, the clause that stating the transfer of responsibility or obligation of the LJK provider to the consumer. Second, a clause stating that the LJK provider has the right to refuse a refund of money that has been paid by the consumer for the products and/or services purchased. Third, a clause stating the granting of power from the consumer to the LJK provider, either directly or indirectly, to take any unilateral action on goods pledged by the consumer, unless the unilateral action is carried out based on statutory regulations applicable. Fourth, a clause that requires consumers to prove the LJK provider's argument stating that the loss of usability of the product and/or service purchased by the consumer is not the responsibility of the LJK provider. Fifth, a clause that gives

⁵¹Ibid, p. 61.

the LJK provider the right to reduce the usability of the product and/or service or reduce the consumer's assets that are the object of the product and service agreement. Sixth, a clause stating that consumers are subject to new, additional, continuation and/or changes made unilaterally by the LJK provider during the period the consumer uses the product and/or service purchased. Seventh, a clause stating that consumers must authorize LJK providers to impose mortgage rights, pledge rights, or guarantee rights on products and/or services purchased by consumers in installments.

One of the research results from IPB University shows that Most of the terms and conditions originating from 56 agreement forms and receipts in the financial services and retail sectors clearly violate Article 18 of the Consumer Protection Law because they contain exoneration clauses.⁵²The Consumer Dispute Resolution Agency (BPSK) as an institution that supervises the inclusion of exoneration clauses based on the Consumer Protection Law still appears to be weak and only passive respond to this. This Conditions is one thing and another related to the absence of technical instructions and implementation instructions regarding the procedures for monitoring the existence of the exception clause in practice.⁵³

So far, we have not heard of any agreements with standard clauses being cancelled by the court.⁵⁴Matter like this could be a trigger for a standard agreement so increasingly developing in practice. Since the Consumer Protection Law was enacted, there has not been much change in the attitudes of business actors towards their customers, and in almost all transactions business and pertradean there is a violation of consumer rights.⁵⁵In the future, it is hoped that business actors will pay more attention to existing legal regulations so that they do not conflict with the principles of mutual agreements which are one of the requirements for validity aagreement. In order to avoid problems arising in the future, business actors should first explain in detail to customers, the contents of an agreement, especially those containing standard clauses, even though the customer has previously read the contents of the agreement.⁵⁶

With the increasingly complex business developments lately, the legal relationship between consumers and producers tends to shift in the legal construction itself, and this will be more beneficial for LJK customers as consumers in general. The legal relationship that was originally built on the principle of caveat emptor which emphasizes the need for consumers to be

⁵² Directorate of Strategic Studies and Academic Reputation, Bogor Agricultural University, "Consumer Protection Against Exemption Clauses in the Financial Services and Retail Sectors," last modified 2024, <https://dkasra.ipb.ac.id/perlindungan-konsumen-terhadap-klausula-eksenorasi-pada-sektor-jasa-keuangan-dan-retail>.

⁵³ *Ibid.*

⁵⁴ Gatot Supramono, *Banking and Credit Problems, A Review in the Legal Field* (Jakarta: Rineka Cipta, 2009).

⁵⁵ Yusuf Shofie, *Consumer Protection and Its Legal Instruments*, Second. (Bandung: Citra Aditya Bakti, 2003).

⁵⁶ Alexandra Rantung, Friend Anis, and Christine S. Tooy, "The Use of Standard Contracts in the Presentation and Acceptance of the Parties Involved Therein," *Jurnal Lex Privatum* VIII, no. 2 (2020): 30.

careful in making transactions with producers, has gradually shifted towards the principle of *caveat venditor* which emphasizes the need for producers to be aware of protecting their consumers.⁵⁷ Thus, the understanding that initially held that LJK providers were always the dominant party in compiling the substance from an agreement, will gradually shift to the understanding that customers are stakeholders who cannot simply be negated its importance in designing the contents of the agreement.

4. Conclusion

The Legal relationship between customers as consumers and LJK providers is a civil relationship that based on an agreement. An agreement applies as a law for those who make it. Statutory provisions state that an agreement must adhere to some principles such as principle autonomy party, principle of consensualism, principle of trust, principle of binding power, principle of equality under law, principle of balance, principle of legal certainty, principle of morality, principle of propriety, and principle of custom. In many cases, LJK has a more dominant role in designing agreements, and tends to lead agreements in a standard direction by including exception clauses that benefit LJK and on the other hand very detrimental to customers.

However also, customers as consumers legally have the right to obtain legal protection adequate, which can be built through the customer's efforts to include terms of the agreement that protect his interests. The government as the authority holder is also required for create external legal protection through laws and regulations that support the interests of LJK customers intended. Legal protection for LJK customers is provided externally by the Consumer Protection Law and also by OJK as a regulatory and supervisory institution for the financial services sector, by issuing SE No. 13/SEOJK.07/2014 concerning Standard Agreements as an implementation of Article 28 of the OJK Law.

The current Consumer Protection Law is considered inadequate to provide legal protection for LJK customers. To overcome this, SE No. 13/SEOJK.07/2014 concerning Standard Agreements as the implementation of Article 28 of the OJK Law has included a prohibition on exception clauses that may not be included in standard agreements. Besides than it's in SE No. 13/SEOJK.07/2014 has set up also that (i) LJK providers are required to fulfill the principles of balance, justice and fairness in making agreements with consumers, and (ii) in terms of designing, formulating, establishing and offering standard agreements, LJK providers are required to base this on the service provisions contained in the SE.

Seeing the reality that there is still an exception clause invarious standard agreement, expected that the standard agreement does not deviate much from existing laws and regulations. LJK must pay more attention to existing legal regulations, so that they do not conflict with the principles and validity of an agreement, and do not cause problems serious at a later time.

⁵⁷ Inosentius Samsul, *Consumer Protection: Possibility of Implementing Absolute Liability* (Jakarta: Postgraduate Program of the University of Indonesia, 2004).

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