



A DISCOURSE ON THE LEGAL IMPLICATIONS OF DIGITAL STANDARD CONTRACTS IN THE CONTEXT OF PERSONAL DATA PROTECTION

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ARTICLE INFO

Keywords:

Consumer; Digital Standard Contract; Exculpatory Clause; Legal; Personal Data; Surveillance.

ABSTRACT

This paper examines the legal aspects of the use of standard digital contracts with respect to the protection of users' personal data and the control of their use. This research takes a normative approach. Standard terms are not prohibited, but the inclusion of exculpatory clauses is prohibited under Article 18 of the Consumer Protection Act. Digital practices recognize standard digital contracts related to personal data. Article 20 of the Personal Data Protection Law requires a valid legal basis for the processing of personal data. The legal basis is set out in a digital contract between the personal data controller and the personal data subject. The standard contract must contain all the things required by the Personal Data Protection Act. The personal data subject has the right to obtain information about the clarity of identity, the basis of legal interests, the purpose of requesting and using the personal data and the responsibility of the party requesting the personal data. Supervision of the use of digital standard agreements is carried out by the BPSK and the OJK after the digital standard agreements have been implemented by business entities. This form of supervision is less effective in maintaining the balance of the parties.

A. INTRODUCTION

Indonesia is an archipelago that has the largest population in Asia with 278,752,361 million people or 3.51% of the world's total population¹ spread across 17,000 islands.² This geography poses challenges for equitable development and economic development, including financial inclusion. However, in the digital age, such conditions are not an obstacle³ as the Internet is able to reach all levels of society. The presence of the Internet network gave birth to a space known as the digital world⁴ and made the world borderless in various activities for both private and public interests.⁵ The most important factor in the birth of the digital economy is the Internet. The Internet has become a global marketplace for economic actors to meet.⁶

Indonesia is a country that is late in adopting technology in the field of communication, especially the use of the Internet. However, this delay can be overcome by the digital culture of people who respond quickly to the presence of technology. As a result, the digital culture of Indonesian society is generally categorized as a necessary digital culture⁷ characterized by the number of Internet users reaching 204.7 million.⁸

Cyberspace is able to redirect people's activities from the real world to the virtual world. The emergence of email, weblogs, chat, webcams to Facebook and Twitter, followed by the emergence of e-learning, e-commerce and e-banking produces new media as a place of activity.⁹ The digital era has succeeded in changing people's habits in enjoying various services from conventional to digital. The Covid-19 pandemic is a driving factor in the use of

- ¹ Monica Ayu Caesar Isabel. "Jumlah Penduduk Indonesia 2022." Kompas, April 27, 2022, [https://nasional.kompas.com/read/2022/04/27/03000051/jumlah-penduduk-indonesia-2022?page=all#:~:text=Worldometer%20merilis%20data%20jumlah%20penduduk,persen%20dari%20total%20penduduk%20dunia](https://nasional.kompas.com/read/2022/04/27/03000051/jumlah-penduduk-indonesia-2022?page=all#:~:text=Worldometer%20merilis%20data%20jumlah%20penduduk,persen%20dari%20total%20penduduk%20dunia.). Accessed on 4 November 2023.
- ² Dwi Latifatul Fajri. "Mengenal Jumlah Pulau di Indonesia Tahun 2021." Katadata, February 21, 2022. <https://katadata.co.id/safrezi/berita/621315ffe0ff0/mengenal-jumlah-pulau-di-indonesia-tahun-2021>. Accessed on 4 November 2023.
- ³ Sapta Hadiwijaya. "Digital Adalah: Pengertian, Sejarah, dan Manfaatnya." Accurate, December 6, 2023. <https://accurate.id/teknologi/digital-adalah/>. Accessed on 4 November 2023.
- ⁴ Khwarizmi Maulana Simatupang. "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital." *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 67.
- ⁵ Financial Stability Board. "Decentralised Financial Technologies, Report on Financial Stability, Regulatory, and Governance Implications." 2019. www.fbs.org. Accessed on 4 November 2023.
- ⁶ Thomas M. Lenard and Daniel B. Britton. *The Digital Fact Book*. Washington, D.C.: Foundation Washington, D.C., 2006.
- ⁷ Henry Aspan. "Peran Hukum Dalam Pengelolaan Perusahaan Di Era Digital." *Menara Ilmu: Jurnal Penelitian dan Kajian Ilmiah* 15, no. 2 (2021): 151.
- ⁸ Cindy Mutia Annur. "Ada 204,7 Juta Pengguna Internet di Indonesia Awal 2022." Databoks, March 23, 2022. <https://databoks.katadata.co.id/datapublish/2022/03/23/ada-2047-juta-pengguna-internet-di-indonesia-awal-2022>. Accessed on 4 November 2023.
- ⁹ Setyo Utomo. "Tantangan Hukum Modern Di Era Digital." *Jurnal Hukum Media Bhakti* 1, no. 1 (2017): 61.

digital in various sectors.¹⁰ People began to use technology and the Internet to support their business activities to be more efficient.

The efficiency factor supports the use of standard agreements in business activities involving many people. The use of standard agreements when used in the digital world in digital standard agreements has increased along with the increasing number of Internet users. The term digital agreement or referred to as an electronic contract is a legal bond that is performed digitally by connecting a network of computer-based information systems.¹¹ The ITE Law, as a legal umbrella for the validity of electronic contracts, defines that electronic contracts are agreements between parties formed through the use of electronic systems.

Standard contracts in both digital and non-digital forms may contain exculpatory clauses. The exculpatory clause is an attempt by the creator of the standard contract to shift his responsibility to another party. In effect, the relationship bound by a standard form contract is based on the consumer's powerlessness,¹² even though the consumer understands that the legal consequences of the contract will burden him or her, but because of his or her needs, the consumer has no choice but to agree.¹³ The inclusion of an exculpatory clause is something to be concerned about in the use of the standard contract.

In 2021, the number of Indonesians who have used e-commerce will reach 32 million people. This number will increase by 88 percent compared to 2020, which only reached 17 million people. If there are 24,820,000 e-commerce transactions in one year, it can be determined that 24,820,000 digital standard contracts have been created, and there may be exculpatory clauses in them.¹⁴

The growth of technology has an impact on changes in people's daily lifestyles. Like a coin that has two sides, one side of technology makes it easier for people to carry out activities in various fields, and on the other side, it creates threats and fears. For example, artificial intelligence (AI), which is

¹⁰ Diana Silfiani. "Indonesian Legal Protection for Song Commercialization and Music Copyrights in Digital Platforms." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 9, no. 2 (2022): 155.

¹¹ Libera. "Kontrak Online, Apakah Tetap Sah Menurut Hukum yang Berlaku di Indonesia?" Libera, 2019. <https://libera.id/blogs/kontrak-online-apakah-sah-menurut-hukum-di-indonesia/>. Accessed on 24 March 2024.

¹² Muhamad Hasan Muaziz dan Achmad Busro. "Pengaturan Klausula baku dalam hukum perjanjian untuk mencapai keadilan berkontrak." *Law Reform* 11, no. 1 (2015): 76.

¹³ Agus Satory. "Perjanjian Baku dan Perlindungan Konsumen dalam Transaksi Bisnis Sektor Jasa Keuangan: Penerapan dan Implementasinya di Indonesia." *Padjadjaran Jurnal Ilmu Hukum*, 2, No. 2 (2015): 283.

¹⁴ CNN Indonesia. "Konsumen Belanja Online RI Melonjak 88 Persen pada 2021." CNN Indonesia, December 29, 2021. <https://www.cnnindonesia.com/ekonomi/20211229141536-92-740093/konsumen-belanja-online-ri-melonjak-88-persen-pada-2021>. Accessed on 24 March 2024.

currently being widely used and developed in various scientific disciplines, including law. However, the speed of data exchange and access to information can be abused by parties who want to benefit against the law.

The digital market is identified as markets within the digital economy where data-driven business models influence business processes extrapolated from consumer personal data¹⁵ Engaging in commercial transactions is a commonplace activity in daily life, characterized by a dynamic involving two primary participants: The seller, operating as a business entity, and the buyer, assuming the role of the consumer. However, these transactions frequently exhibit an inherent imbalance, particularly disadvantageous to consumers, manifesting in instances of dishonesty and fraudulent practices by sellers.¹⁶

Another challenge from the public side related to the use of digital agreements is the low literacy of the legal impact of using digital agreements. People use business services without first seeking information on the advantages and disadvantages of these services. In addition, the level of public awareness related to personal data security is also still minimal, because the use of digital agreements contains personal data.¹⁷ So that in the use of digital agreements the potential for data transfer and dissemination of personal data is greater than conventional agreements. Legal awareness, compliance, and community behavior also drive the practice of protecting and enforcing rights.¹⁸ The competitive strength of an online platform in the digital marketplace is directly proportional to the amount and quality of consumer data it collects. Companies strive to gain a data advantage.¹⁹

Previous research by Trias Palupi Kurnianingrum²⁰ found that the causes of misuse of consumer personal data include the lack of state protection and lack of consumer knowledge. Basically, the material of personal data protection has been regulated in several laws and regulations, but the scope of protection has not been maximized. The existence of several rules causes

¹⁵ German Federal Ministry for Economic Affairs and Energy – Commission. "Competition Law 4.0: A New Competition Framework for the Digital Economy". 2019. https://www.bmwk.de/Redaktion/EN/Pub-likationen/Wirtschaft/a-new-competition-framework-for-the-digital-economy.pdf?__blob=publicationFile&v=3. Accessed on 24 March 2024.

¹⁶ Geraint Howells and Stephen Weatherill. *Consumer protection law*. London: Routledge, 2017. See also, Hans-W. Micklitz and Geneviève Saumier. *Enforcement and effectiveness of consumer law*. Springer International Publishing, (2018).

¹⁷ Cynthia K. Sanders and Edward Scanlon. "The digital divide is a human rights issue: Advancing social inclusion through social work advocacy." *Journal of human rights and social work* 6, no. 2 (2021): 133.

¹⁸ KN Sofyan Hasan and Taroman Pasyah. "Challenges of Indonesian halal industry in the digital economic era." *Sriwijaya Law Review* 6, no. 2 (2022): 322.

¹⁹ Inge Graef. "Market Definition and Market Power in Data: The Case of Online Platforms." *World Competi-tion: Law and Economics Review* 38, no. 4 (2015): 476.

²⁰ Trias Palupi Kurnianingrum. "Urgensi Pelindungan Data Pribadi Konsumen di Era Ekonomi Digital." *Jurnal Kajian* 25, No. 3 (2020): 201.

overlapping mechanisms and authorities in the protection of personal data itself, so that the most disadvantaged is the consumer.

Another study by Erna Priliyasi²¹ found that Indonesia already has rules that specifically protect consumer personal data, namely Law No. 27 of 2022 on the Protection of Consumer Personal Data. In the event of a personal data breach, the marketplace may be subject to administrative sanctions in accordance with applicable laws and regulations, and consumers may file a lawsuit based on the marketplace's negligence in accordance with Article 1366 of the Civil Code.

This paper discusses important legal issues related to the legal aspects arising from the use of digital standard contracts in Indonesia and how to supervise the use of digital standard contracts. The era of digital business is an era in which legal regulations are not yet specific and complete. Although Law No. 11/2008 on Information and Technology (ITE Law) has been accommodated in several areas, it still tends to have technical arrangements.

B. RESEARCH METHODS

The author examines the problems in this paper by applying a normative approach method²² using a statute approach related to the legal problems of using digital standard agreements. Researchers examine relevant regulations and documents that can contribute to solving the problems in this study.²³ Then, researchers use secondary data to be data or information obtained from the results of reviewing articles related to the topic of study. The research data was then analyzed using a descriptive analysis approach to describe the object of study.

C. DISCUSSION

1. Legal aspects of the use of digital standard contracts in Indonesia

The effectiveness of a legal system according to Lawrence Friedman is divided into 3 elements, ranging from legal substance, legal structure to legal culture in society. The legal substance is all the rules in written and unwritten form, both material and formal law. While the legal structure is a legal institution, legal apparatus and law enforcement system, the legal culture

²¹ Erna Priliyasi. Perlindungan Data Pribadi Konsumen Dalam Transaksi E-Commerce Menurut Peraturan Perundang-Undangan Di Indonesia (Legal Protection of Consumer Personal Data in E-Commerce According To Laws dan Regulations in Indonesia). *Jurnal RechtsVinding*, 12 No. 2 (2023): 263.

²² Bahder Johan Nasution. *Legal Research Methods*. Bandung: Mandar Maju, 2008.

²³ Bas Schotel. "Legislation, Empirical Research and Juridical Law." *The Theory and Practice of Legislation* 1, No.3 (2013): 502.

emphasizes in terms of culture in general, habits, opinions, ways of thinking that lead to a social force in society.²⁴

The existence of law is to realize the dreams of society, so law is dynamic. Law as a protector of the interests of society, but because the interests of society change and vary, the law must have the ability to follow the pattern of change so as not to be left behind or even cause a conflict of interests.²⁵ In order to respond to the interests of society, various new forms of contract law have emerged in the growth of contract law, which aim to be effective, simple, practical and time-saving in accordance with the application of the principle of freedom of contract.²⁶ The existence of a standard agreement is very effective in activities that directly involve many people.²⁷ Standard contracts are prepared by applying the principles of balance, justice and fairness. In the digital era, technological developments make the world borderless,²⁸ so standard agreements have also shifted from conventional to digital. Thus, the use of standard terms and conditions in digital form becomes a necessity for transactions in cyberspace.

The digital business era is a new medium, but it does not yet have a specific and complete regulation. Although in some areas it has been accommodated in Law No. 11 of 2008 on Information and Technology (ITE Law). However, the regulation of the ITE Law is still rather technical in nature. ITE Law as a legal umbrella for the validity of digital contracts or known as electronic contracts in ITE Law is an agreement between the parties made by using an electronic system. Electronic contracts or digital agreements are not named agreements.

Although not listed in the Civil Code as a Named Agreement, the Digital Standard Agreement must comply with the provisions of Article 1320 of the Civil Code in addition to the State has enacted the ITE Law. The principle of freedom in Article 1338 of the Third Book of the Civil Code basically does not make the regulation of agreements as free as possible. However, the Civil Code still contains some mandatory provisions, such as Article 1320 of the Civil Code.²⁹ Articles 1337 and 1339 of the Civil Code. After accepting the standard contract offered by the merchant to the consumer based on the discounted price. by signing or pressing the approval button or signature or OK on the

²⁴ Lawrence M. Friedman. *The legal system: A Social Science Prespective*. New York: Russel Sage Foundation, 1975.

²⁵ Sudikno Mertokusumo. *Teori Hukum*. Yogyakarta: Cahaya Atma Pustaka, 2014.

²⁶ Achmad Busro. *Kapita Selekta Hukum Perjanjian*. Yogyakarta: Pohon Cahaya, 2013.

²⁷ Abdul Karim Munthe. "Penggunaan Perjanjian Buku dalam Transaksi Bisnis Menurut Hukum Islam." *AHKAM: Jurnal Ilmu Syariah* 15, No. 2 (2015): 214.

²⁸ Roy Marten Moonti. "Pengaruh Internet Dan Implikasinya Terhadap Perjanjian Jual Beli." *Jurnal Legalitas* 5, No. 1 (2012): 3.

²⁹ Daryl John Rasuh. "Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 Dan Pasal 1245 Kitab Undang-Undang Hukum Perdata." *Lex Privatum* 4, No. 2 (2016): 173.

consumer's website for the operator, which contains the standard contract included in the offer, it means that the contract is binding on the parties.³⁰

The key to successful collaboration is the content of the agreement. Unfortunately, business actors who have the privilege to make agreements first often ignore the standards and procedures for formalizing agreements. When concluding an agreement, one should not only pay attention to systematic drafting, but also not neglect the purpose of concluding the agreement, namely as a means of realizing the wishes of each party and avoiding conflicts that may arise in the future during the implementation of the contract.³¹ Therefore, consumers must apply the principle of caution in reading and understanding the content of the agreement before signing or conducting transactions.³²

The characteristics of digital contracts are:³³

1. An agreement by electronic mail (e-mail) is a valid agreement made by e-mail communication. Offers and acceptances may be exchanged by e-mail or combined with other electronic communications, written documents, or faxes.
2. A digital agreement can also be formed through websites and other online services, where a website offers the sale of goods and services, then the customer can accept the offer by filling out and submitting a form displayed on the screen.
3. Digital contracts involve the direct online transfer of information and services.

Standard terms arise from the need for parties to enter into agreements quickly and efficiently. The existence of standard terms, however, tends to create unilateral benefits, namely for the drafter. If business actors have enough time to prepare the terms of the agreement, this is different from consumers who do not have the opportunity to negotiate the content of the agreement. Even consumers themselves do not know the terms of this clause.

³⁰ Sri Lestari Poernomo. "Standar Kontrak Dalam Perspektif Hukum Perlindungan Konsumen (Standard Contract in Legal Perspectives of Consumer Protection)." *Jurnal Penelitian Hukum DE JURE* 19 No. 1, (2019): 111.

³¹ Tim Publikasi Hukumonline. "Rincian Syarat Sah Perjanjian Pasal 1320 KUH Perdata." Hukumonline, 2024. <https://www.hukumonline.com/berita/a/syarat-sah-perjanjian-di-mata-hukum-lt6273669575348/>. Accessed on 24 March 2024.

³² Siti Yuniarti. "Perjanjian Baku dalam Fintech." *Business Law Bina Nusantara*, 2018. <https://business-law.binus.ac.id/2018/12/31/perjanjian-baku-dalam-fintech/>. Accessed on 24 March 2024.

³³ Agus Santoso and Dyah Pratiwi. "Tanggung Jawab Penyelenggara Sistem Elektronik Perbankan Dalam Kegiatan Transaksi Elektronik Pasca Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik." *Jurnal Legislasi Indonesia* 5, no. 4 (2018): 76.

Moreover, in situations and circumstances where consumers are weak, there is no choice but to accept or reject the clause.³⁴

Standard form contracts, both digital and non-digital, may contain exculpatory clauses. The exculpatory clause is an attempt by the creator of the standard contract to shift his responsibility to another party, namely the consumer. From a legal point of view, the State has established a balanced position between consumers and economic operators through the Consumer Protection Act No. 8 of 1998. However, in its implementation, consumers are driven by needs that must be met, so they do not have the same opportunity except to comply with the clauses set by economic actors.³⁵ A standard contract as stated in Article 10 of the Consumer Protection Law, if it contains an exculpatory clause as stated in Article 18 of the GCPL, then the contract is recognized as null and void. Consumer law, in its broadest sense, comprises principles and rules that regulate and protect consumer interests. In this context, consumer protection law emerges as a critical component of the extensive field of consumer law.³⁶

Entrepreneurs who take actions to transfer responsibility to consumers have violated or failed to comply with the provisions of Article 15 (1) and (2) and Article 16 (1) of the ITE Law, as well as Article 16 (2) of the Government Regulation on the Implementation of Electronic Transaction Systems or PP PSTE. The act of shifting the responsibility is carried out with the intention of strengthening the economic operators and exempting them from their responsibility for the provisions of the obligations established by the law for the economic operators as the organizers of electronic systems. Article 47 paragraph (2) of the PP PSTE stipulates that the legal requirements for digital standard agreements still refer to the provisions of Article 1320 of the Civil Code regarding the legal requirements for agreements, which include: agreement of the parties; capable legal subjects; existence of certain things; *halal causa*.³⁷

The GCPL and the Civil Code are regulations that existed long before the rapid development of technology and digitalization. Therefore, there are gaps in the GCPL and the Civil Code regarding the regulation of human

³⁴ Muhamad Hasan Muaziz dan Achmad Busro. "Pengaturan Klausula baku dalam hukum perjanjian untuk mencapai keadilan berkontrak." *Law Reform* 11, no. 1 (2015): 76.

³⁵ M. Syamsudin. "Perlindungan Hukum Konsumen atas Penerapan klausula Baku." *Jurnal Yudisial* 11, No.1 (2018): 102.

³⁶ Natali Helberger, Frederik Zuiderveen Borgesius, and Agustin Reyna. "The Perfect Match: A Closer Look at the Relationship between EU Consumer Law and Data Protection Law." *Common Market L. Rev.* 54 (2017): 1427.

³⁷ Retna Gumanti. "Syarat Sahnya Perjanjian (Ditinjau Dari Kuhperdata)." *Jurnal Pelangi Ilmu* 5, No. 1 (2015): 3.

activities in cyberspace.³⁸ The widespread use of digital agreements is accompanied by increased opportunities for the leakage of consumers' personal data.³⁹ The use of digital contracts allows business actors to collect personal data from consumers or potential consumers, thus creating a gap for business actors to misuse consumers' digital data.⁴⁰

Data in the context of the digital economy includes many types of data, namely personal data, business data, and data protected by intellectual property rights. The function of personal data has become very important in the development of the digital economy because it can provide new or better services. The availability of customers' personal information is considered a side effect or by-product of using the Platform. Users' personal information is not a traded product or commodity, although personal information is treated as an asset, but personal information has characteristics that are not the same as other assets.⁴¹

Awareness of the importance of protecting personal data needs to be raised not only among consumers, but also among business actors who use the data. The need for privacy protection is becoming increasingly important. As digital contracts are in direct contact with customer data, there is a risk of data breaches or data theft, both from a public and financial perspective. Consumers have a right to be protected by economic actors, including the protection of their personal data. Personal data is a sensitive issue because there are different types of personal data that need to be protected so that there is no leakage of personal data. The government has enacted Law No. 27 of 2022 on the Protection of Personal Data, which acts as a preventive protection of personal data of individuals. In terms of business, companies as controllers of personal data are required to protect consumers' personal data by obtaining consent before transferring personal data.⁴² Not only users are responsible for their personal data, but legally through the PDP Law, business actors are responsible for processing personal data.

³⁸ Yustina Dhian Novita dan Budi Santoso. "Urgensi Pembaharuan Regulasi Perlindungan Konsumen di Era Bisnis Digital." *Jurnal Pembangunan Hukum Indonesia Program Studi Magister Ilmu Hukum* 3, No. 1 (2021): 47.

³⁹ Eddy Dwinanto Iskandar. "Percaturan Waralaba Indonesia: Kobarkan Gairah Waralaba." 2013. <https://swa.co.id/swa/business-strategy/buku-percaturan-waralaba-indonesia-kobarkan-gairah-waralaba>. Accessed on 14 March 2024.

⁴⁰ Sahat Maruli Tua Situmeang. "Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber." *Jurnal SASI* 27, No. 1 (2021): 43.

⁴¹ Tying Sih Yuliana Wahyuningtyas. "Dampak Persaingan Bisnis Platform dengan Menggunakan Sarana Privacy Policy." *Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 14, No. 1 (2023): 43.

⁴² Adithya Asmara Dhewa and Herkin Yossyafaat Lontar Merah. "Aspek Hukum Perlindungan Konsumen Pada Transfer Data Pribadi Oleh Korporasi Dalam Hukum Positif Indonesia." *Fiat Justisia Jurnal Ilmu Hukum Faculty of Law, Universitas Lampung, Bandar Lampung* 6, No. 1 (2023): 34.

2. Supervision of the Use of Digital Standard Agreements in Indonesia

In the era of digitization, communication between companies has become even more convenient. Globalization continues to be driven electronically through digital media, economic activities that used to be done personally and concretely have now moved to the digital world. This change will inevitably lead to disagreements arising from both traditional business practices and digital events.⁴³ As a result of the Industrial Revolution 4.0, the potential loss of the recipient of a digital standard contract is increasingly evident when a digital standard contract is used. Digital standard contracts are made in faceless conditions and the location of the digital standard contract maker and the recipient may be in different countries with different languages, so the recipient of the digital standard contract can experience greater potential losses.⁴⁴ If there is anything to worry about with the existence of digital standard agreements, it is the inclusion of an extenuation clause in the agreement and the act of misuse of personal data.⁴⁵ For this reason, an institution that oversees the use of standard agreements is needed. The definition of supervision varies greatly and many experts express their opinions about supervision, but basically these opinions have in common, namely an activity that compares the results in reality (*dassein*) with the desired results (*das sollen*).

In principle, the use of standard clauses is not something that is prohibited. However, in its application, business actors often commit violations. In fact, Law No. 8 of 1999 concerning Consumer Protection (UUPK) and POJK No. 1 of 2013 concerning Consumer Protection in the Financial Services Sector, have provided signs of standard clauses that are prohibited to be applied. In digital standard agreements, consumers have a weak position compared to the position of business actors. This situation is due to the need for the product and the level of knowledge of the product. When consumers transact online, but receive fraudulent treatment from business actors, consumers will face difficulties in filing complaints due to the disclaimer clause contained in the digital standard agreement. Business actors have shifted their responsibilities, thus limiting the rights and obligations of an engagement and legal action. The impact of this disclaimer clause gives freedom to business

⁴⁴ Johannes Gunawan and Bernadette M. Waluyo. *Perjanjian Baku Masalah dan Solusi*. Pelangi Grafika Rancangmedia, 2021.

⁴⁵ Anak Agung Ketut Junitri and I Nengah Suharta. "Perlindungan Hukum Terhadap Konsumen Atas Penerapan Klausula Eksonerasi Dalam Perjanjian Baku". *Kertha Semaya* 04, No. 01 (2016): 4.

actors from their responsibilities, so that consumers who suffer losses due to the inability to submit claims or hold them accountable.⁴⁶

In this digital era, legal personnel need to be equipped with the ability to use information technology. In the absence of a good legal information and communication system, the substance of law is difficult to access by the public and will not form a good law enforcement apparatus and legal culture.⁴⁷ In accordance with the objectives desired by the parties, namely the existence of rules that are able to accommodate the interests of the parties and realize legal protection not only for business actors but also for consumers. For this reason, in the development of agreement law, new forms of agreement law have emerged that are effective, simple, practical, and do not require a long process and time, made possible by the application of the principle of freedom of contract.⁴⁸

Business actors include standard clauses without realizing the provisions on the prohibition of the inclusion of standard clauses, while consumers do not have an understanding of the inclusion of standard clauses is prohibited. This lack of understanding is also related to not putting up any resistance to business actors when they suffer losses, nor making complaints due to lack of knowledge regarding the procedures for such complaints. Responding to this situation, it is appropriate for the government to be more responsive. However, until now there has been no renewal of regulations related to consumer protection in the digital business era. The UUPK and ITE Law are ineffective in practice due to the lack of technical rules governing consumer protection in the digital business era.⁴⁹

In the corridor of UUPK Article 54 letter c assigns duties to the Consumer Dispute Settlement Body to monitor the use of standard clauses. However, the mandate is not supported by further regulations. The absence of follow-up regulations has resulted in the supervisory institution that has been established to be minimal in carrying out its supervisory duties. BPSK's supervision of the use of standard clauses is general in nature. Therefore, in the implementation of digital transactions, BPSK also plays a role in supervising the use of digital standard agreements.

The supervision currently conducted by BPSK can be said to be ineffective. The state has established a prohibition on standard clauses but has

⁴⁶ Heni Pratiwi. "Analisis Yuridis Klausul Disclaimer Oleh Pelaku Usaha Pada Situs Jual Beli Online (E-Commerce) Juridical Analysis Of Disclaimer Claims By Entrepreneurs On Online Trading (E-Commerce)." *Jurnal Private Law Review* 1, No. 1 (2020): 47.

⁴⁷ H.R. Benny Riyanto. "Pembangunan Hukum Nasional di Era 4.0." *Jurnal Rechtsvinding* 9, No. 2 (2020): 164.

⁴⁸ Achmad Busro. *Kapita Selekta Hukum Perjanjian*. Yogyakarta: Pohon Cahaya, 2013.

⁴⁹ Mira Erlinawati and Widi Nugrahaningsih. "Implementasi Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Bisnis Online." *Serambi Hukum* 11, no. 01 (2017): 29.

not been equipped with further regulations. The emptiness of the follow-up rules makes the supervisory institution that has been formed still lacking in its supervisory duties. Consumer protection and supervision of the use of standard clauses have never been prioritized by the government in economic development.

Article 18 of Law No. 8/1999 on Consumer Protection has regulated the prohibition of the use of standard clauses. If violated, there are criminal provisions for business actors. However, these provisions have not been effective due to the factors mentioned above.

In addition to BPSK, there is also another institution that has a role that coincides with BPSK, namely the Financial Services Authority or commonly referred to as OJK. OJK is an independent institution established based on Law Number 21 of 2011 which has the role of organizing an integrated system of regulation and supervision of all activities in the financial services sector. BPSK and OJK are institutions that have the role of supervising the inclusion of standard clauses.⁵⁰

Based on the authority stipulated in the UUPK Law, BPSK has limitations in supervising the use of standard clauses so that BPSK is less active and only handles complaints from consumers. BPSK is generally hesitant and unsure in exercising its authority to take action against the inclusion of prohibited standard clauses. BPSK's action is limited to asking business actors to remove prohibited clauses if a dispute has occurred. Supervision of the use of standard clauses is carried out by OJK and the Consumer Dispute Resolution Agency (BPSK). For the financial services sector, supervision is under the OJK OJK restricts new standard clauses through Circular Letters. However, Circular Letters do not have strong legal implications, so OJK should issue rules in the form of OJK Regulations.

⁵⁰ Diah Wahyulina and Febry Chrisdanty. "Pengawasan Pencantuman Klausula Baku Oleh BPSK Dan OJK." *Jurnal Ilmiah Hukum* 12, No. 2, (2018): 89.

Table 1. Monitoring the Use of Digital Standard Agreements

No	Element	BPSK	OJK
1	Legal Foundation	Law No. 8 of 1998 on Consumer Protection	Law No. 20 of 2011 on the Financial Services Authority Circular Letter POJK No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector
2	Elements	Government	Authority
3	Scope of Authority	Educate and supervise business actors in using standard clauses. Report to investigators if there are violations.	Regulators and supervisors of the financial services sector and educating the public about financial services
4	Supervision Methods	There are no further regulations regarding how to select and assess standard clauses	1. Offsite, through reports submitted to OJK 2. Onsite, through direct inspections either scheduled or at any time
5	Penalty	Criminal Sanctions due to legal grounds at the statutory level and Administrative Sanctions	Administrative sanctions are not in the form of law, but are still limited to OJK regulations

Based on the Table 1, the supervision conducted by both BPSK and OJK is supervision after the digital standard agreement is implemented. OJK should not only be the supervisor after it is implemented, but can be the party that verifies all agreements of financial service business actors before they are given to consumer customers and so on.⁵¹ Indonesia currently does not have a good instrument to provide protection for consumers. The existence of the state must take over control of supervision in the digital sector. For the safety

⁵¹ Fitri Novia Heriani. "OJK Diminta Terbitkan Aturan Klausula Baku di Sektor Jasa Keuangan." *Hukumonline*, 2020. <https://www.hukumonline.com/berita/a/ojk-diminta-terbitkan-aturan-klausula-baku-di-sektor-jasa-keuangan-lt5f6ee0f0ebf1d/?page=2>. Accessed on 24 March 2024

and and convenience of the community and the country, personal data collected through the use of through the use of smart devices is considered personal data that must be protected by law.⁵²

Supervisory action before being offered to service users, will minimize the imbalance between the parties bound by the digital standard agreement. The use of standard clauses should be supervised by conducting selection and review to be registered before being offered to the public. In order to minimize the negative impact of using digital standard agreements, regulations are needed to prioritize good governance in order to create consumer protection.⁵³ The legal substance that regulates the use and supervision of standard agreements is scattered in various laws and regulations. Sporadic regulation and supervision have an impact on the uncertainty of the legal structure in carrying out its duties and authorities. For this reason, it is necessary to harmonize the UUPK and OJK Law in order to strengthen the authority to supervise, especially the use of standard clauses. However, the State could interfere with the right only if it is supported by a valid law.⁵⁴

Developments in information and communication technology have people's lives by creating new opportunities for consumers and businesses. Consumers and businesses. In the digital economy, an increasing number of e-commerce, which provides easier and faster access to products and services, but also and faster access to products and services, but it also poses some challenges for consumers that are from offline commercial transactions. The impersonality of e-commerce weakens the relationship between businesses and consumers, increasing consumer vulnerability, which can lead to unfair business practices, and consumer uncertainty and lack of trust. Therefore, there is a need for government and business to promote and protect consumer confidence in digital markets so that it does not markets so that it does not hinder the development of the digital economy.⁵⁵

D. CONCLUSION

Cyberspace is able to shift people's activities from the real world to the virtual world. began to use technology and the Internet to support their business activities to be more efficient. The efficiency factor supports the use

⁵² Reni Budi Setianingrum, Mukti Fajar ND, and Anis Mashdurohatun. "The Social Media Algorithms & Personal Data Protection: The Comparative Study Of European Union, China & Indonesian Law." *Jurnal Pembaharuan Hukum* Volume 11, No. 1 (2024): 38.

⁵³ Thalís Noor Cahyadi. "Aspek Hukum Pemanfaatan Digital Signature Dalam Meningkatkan Efisiensi, Akses dan Kualitas Fitnech Syariah." *Jurnal Rechtsvinding* 9, No. 2 (2020): 223.

⁵⁴ Manjula Raghav and Sanjana Sharma Marwaha. "Indian Legal Framework on the Right to Privacy in Cyberspace-Issues and Challenges." *FIAT JUSTISIA. Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia* 17, No. 1, (2023): 3.

⁵⁵ Sinta Dewi Rosadi and Zahra Tahira. "Consumer Protection In Digital Economy Era : Law In Indonesia." *Yustisia* 7, No. 1 (2018): 65.

of digital standard agreements in business activities involving many people. Standard contracts in both digital and non-digital forms have the potential to contain exculpatory clauses. The exculpatory clause is an attempt by the creator of the standard agreement to shift responsibility to another party. The inclusion of an exculpatory clause is something to be concerned about when using the standard form contract. In the use of digital agreements, business actors can collect personal data from consumers or potential consumers, so there is a gap for business actors to misuse consumers' digital data. The GCPL and the Civil Code are regulations that existed long before the rapid development of technology and digitalization.

Therefore, there are gaps in the GCPL and the Civil Code regarding the regulation of human activities in cyberspace. The government has passed Law No. 27 of 2022 on the Protection of Personal Data, which serves as a preventive protection of personal data of individuals. Not only are users responsible for their personal data, but the PDP Law makes business actors legally responsible for processing personal data. Supervision of the use of both digital and conventional standard agreements is carried out by the BPSK and OJK. Supervision by the BPSK and OJK is supervision after the digital standard agreement has been implemented.

Therefore, this form of supervision is less effective in maintaining the balance of parties in the standard agreement. The OJK and the BPSK should be the party that examines all agreements of financial services business actors before they are given to consumer customers and so on. Supervisory action before being offered to service users will minimize the imbalance between the parties bound by the digital standard agreement. The use of standard clauses should be supervised by conducting selection and review to be registered before being offered to the public. In order to minimize the negative impact of the use of digital standard terms, regulations are needed that prioritize good governance to create consumer protection. The legal approach is intended to provide clarity for all data controllers, data processors, and personal data subjects. Another approach that could be considered is the ecosystem and human resources approach. Field executors in personal data processing play a crucial role. Regardless of the technological advancements, the effectiveness of personal data protection is contingent on the dedication and reliability of the field executors.

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