

## Legal Impact of Exoneration Clauses in Standard Contract Deeds with High Legal Risk

Feni Nur Fitria Dewi<sup>1)</sup> & Dahniarti Hasana<sup>2)</sup>

<sup>1)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [feninurfitriadewi@gmail.com](mailto:feninurfitriadewi@gmail.com)

<sup>2)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [dahniartihhasana@unissula.ac.id](mailto:dahniartihhasana@unissula.ac.id)

**Abstract.** *This study aims to analyze: 1) The position of the exoneration clause in a standard agreement deed according to the provisions of positive law in Indonesia. 2) The legal impacts arising on the parties of the exoneration clause included in a standard agreement deed that contains high legal risks. This type of research is normative legal research. The approach method in this study is the statute approach. The type of data in this study is secondary data. The data collection method uses library techniques (study document). The analysis in this study is prescriptive. The results of the study concluded: 1) The position of the exoneration clause in a standard agreement deed according to the provisions of positive law in Indonesia is legally very limited because it has the potential to eliminate the responsibility of business actors and create an imbalance in bargaining positions in contractual relationships. Although the principle of freedom of contract is recognized in Article 1338 of the Civil Code, the exoneration clause cannot be enforced if it is contrary to the law, public order, morality, and the principle of good faith. This provision is reinforced by sectoral regulations such as POJK 1/POJK.07/2013, air transportation regulations, and various other provisions that emphasize that business actors' responsibilities cannot be transferred through agreements. Jurisprudence such as the Bandung High Court Decision Number 459/PDT/2018/PT.BDG and the Supreme Court Decision Number 1391 K/Pdt/2011 also demonstrate the courts' consistency in rejecting the validity of exoneration clauses that are drafted unilaterally and are detrimental to the weaker party. 2) The legal impact that arises for the parties if the exoneration clause is included in a standard agreement deed that contains high legal risks is that the clause has broad legal consequences because it contradicts the principles of justice, propriety, and the provisions of Article 1337 of the Civil Code and Article 18 of the Consumer Protection Law. In civil law, this clause is generally declared invalid and non-binding. Administratively, business actors can be subject to sanctions by sector regulators such as the Financial Services Authority (OJK), the Ministry of Transportation, or*

*insurance authorities. Notaries who leave such clauses in deeds also risk facing administrative liability.*

**Keywords:** Agreement; Exoneration; Legal; Standard.

## 1. Introduction

Philosophically, Indonesia, as a country based on the values of Pancasila, places the principle of social justice as the nation's highest legal ideal. This is reflected in the fifth principle of Pancasila, which states, "Social justice for all Indonesian people." This value emphasizes that the administration of the state, both in the fields of government and law, must be directed towards realizing equitable prosperity and justice for all levels of society without favoring certain groups. This philosophical basis is also in line with Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "The economy is structured as a joint effort based on the principle of family." This provision reflects the spirit of social justice and togetherness that is the basis for managing resources and administering the state, so that the results of development can be enjoyed fairly by all Indonesian people.<sup>1</sup>

Law is something abstract, invisible, and intangible. However, one of the purposes of law is to regulate human life. This is because in human life, humans essentially establish relationships through communication with one another and have different goals and desires. Therefore, the function of law is to regulate and balance these different natures and desires so that relations between humans are peaceful and orderly.<sup>2</sup> Based on Article 1313 of the Civil Code, an agreement is an act in which one or more parties bind themselves to another party to carry out something, while a contract is a form of written agreement with a narrower scope. Indonesian contract law is based on six main principles, namely freedom of contract, consensualism, good faith, *pacta sunt servanda*, personality, and balance. The principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code gives the parties the freedom to determine the contents of the agreement, but remains limited by law, morality, and public order. According to Ridwan Khairandy, this freedom is a form of human rights in the field of private law that must be implemented in a balanced manner to prevent abuse of power by a stronger party.<sup>3</sup>

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<sup>1</sup>Mega Indah Fiani, 2024, Analysis of the Inclusion of Exoneration Clauses Reviewed from the Principle of Freedom of Contract in Indonesia, Jurnal Hukum Lex Generalis, Volume 5 Number 4, p. 2

<sup>2</sup>Ahmad Aniq and Denny Suwondo, 2023, Legal Analysis of the Ovo Application Use Agreement from a Civil Law Perspective, Sultan Agung Scientific Journal, ISSN: 2963-2730, p. 557

<sup>3</sup>Ridwan Khairandy, 2013, Indonesian Contract Law: The Principle of Proportionality in Commercial Contracts, FH UII Press, Yogyakarta, p. 45.

In addition, the principle of consensualism affirms that an agreement is binding upon the achievement of an agreement between the parties regarding the main matters, as stated in Article 1320 of the Civil Code. This principle reflects the importance of mutual free will (*consensus ad idem*) in the formation of an agreement. On the other hand, the principle of good faith as stated in Article 1338 paragraph (3) of the Civil Code requires that the parties act honestly and fairly in implementing the agreement. According to Mariam Darus Badruzaman, this principle has two dimensions, namely subjective good faith which concerns honesty of intention, and objective good faith which concerns propriety in implementation.<sup>4</sup> Meanwhile, the principle of *pacta sunt servanda* asserts that every legally entered into agreement is valid as law for the parties making it. However, in practice, this principle cannot be applied absolutely, especially to standard agreements, as it can lead to injustice for the weaker party.<sup>5</sup>

Furthermore, the principles of personality and balance also strengthen the principle of justice in contractual relationships. Under Article 1315 of the Civil Code, an agreement is binding only on the parties who make it, except in certain cases as regulated by Article 1317 of the Civil Code. The principle of balance has developed as a corrective principle to modern contractual practices, particularly standard agreements, which tend to be unilateral.<sup>6</sup> According to Agus Yudha Hernoko, the principle of balance requires that the legal relationship between the parties be proportional, so that the rights and obligations arising from the agreement do not oppress each other.<sup>7</sup>

Along with the increasing complexity of economic activities and the need for efficiency in business transactions, a form of agreement emerged that was unilaterally drafted by business actors to be applied *en masse*, which was then known as a standard agreement. Based on the Circular Letter of the Financial Services Authority Number 13/SEOJK.07/2014 hereinafter referred to as SEOJK, it is stated that a Standard Agreement is a written agreement determined unilaterally by the PUJK and contains standard clauses regarding the content, form, and method of preparation, and is used to offer products and/or services to consumers *en masse*. A standard contract is a written contract made only by one of the parties in the contract, often even the contract is already (boilerplate) in the form of certain forms by one of the parties, in which case when the contract is signed generally the parties only fill in certain informative data with little or no changes in the clauses, where the other party in the contract has no opportunity

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<sup>4</sup>Mariam Darus Badruzaman, 2001, *Compilation of Contract Law*, Citra Aditya Bakti, Bandung, p. 35.

<sup>5</sup>Sri Gambir Melati Hatta, 2016, *Application of the Pacta Sunt Servanda Principle in Standard Agreements in Indonesia*, *Journal of Law and Development*, Vol. 46 No. 3, p. 412.

<sup>6</sup>Agus Yudha Hernoko, 2014, *Contract Law: The Principle of Proportionality in Commercial Contracts*, Kencana, Jakarta, p. 72.

<sup>7</sup>Rachmadi Usman, 2012, *Contract Law in the Perspective of National Law*, Mandar Maju, Bandung, p. 56.

or only a little opportunity to negotiate or change the clauses that have been made by one of the parties, so that standard contracts are usually one-sided.<sup>8</sup>

Despite various opinions and criticisms of the existence of standard agreements, in today's modern economy, standard agreements have become an integral part of business practices. Considerations of efficiency in terms of time, cost, and effort make standard agreements a commonly used form of agreement. This form of agreement is seen as a manifestation of the freedom of business actors to express their wishes regarding the content and terms of the agreement they make. Behind this practicality, standard agreements often contain provisions that are detrimental to other parties, especially consumers. One of the most common forms of provisions found in standard agreements is the exoneration clause. An exoneration clause is a clause that allows for the transfer of responsibility and limits burdensome actions that should be their obligations. From a sociological perspective, this clause raises problems because it has the potential to cause social injustice, especially when the weaker party in the contractual relationship is disadvantaged.<sup>9</sup>

An exoneration clause is a provision in a standard agreement that limits or eliminates the liability of business actors for losses resulting from their own negligence, thus being considered a high legal risk due to the potential violation of the principles of justice, balance, and consumer protection. This clause is often found in tickets, service agreements, and other commercial contracts. In Supreme Court Decision Number 1391 K/Pdt/2011, PT Indonesia AirAsia was found guilty of unilaterally canceling a flight and protecting itself behind an exoneration clause in the ticket; the Supreme Court deemed the clause invalid because it was detrimental to consumers and contrary to the Consumer Protection Law. Conversely, in Decision Number 459/PDT/2018/PT.BDG, a dispute between PT BSG Gases and PT Komatsu Undercarriage Indonesia ended with the lawsuit being dismissed because the exoneration provisions in the waybill were deemed unclear and unilateral. These two cases demonstrate that exoneration clauses have the potential to create contractual injustice and often weaken the position of the injured party in standard agreements.

The inclusion of an exoneration clause containing limitations or transfers of responsibility is essentially possible as an application of the principle of freedom of contract. Through this principle, the parties are given the freedom to determine the agreed-upon terms, even to a certain extent, overriding complementary statutory provisions (*aanvullend recht*). However, when an exoneration clause is

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<sup>8</sup>Novita Ratna Deviani, 2017, Legal Analysis of the Standard Contract for Opening an Account at PT. Dana Reksa Sekuritas Based on the Principles of Contract Law and Article 18 Paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, Journal of the Faculty of Law: Brawijaya University, Malang, Volume 1, Number 2, p. 102

<sup>9</sup>Raofan Devara, 2023, Legal Review of Exoneration Clauses in Notary Legal Products reviewed from Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (Case Study of Susanti, SH Notary Office), Dinasti Reviwe, Volume 3 Number 4, Page 2454

included in a standard agreement and creates an unbalanced burden on consumers, it constitutes a violation of the principle of freedom of contract.<sup>10</sup> The inclusion of an exoneration clause in a standard contractual agreement raises serious legal issues. This clause essentially represents an attempt by one party to limit or even eliminate legal responsibility for the consequences arising from the implementation of the agreement. In practice, the public, especially those without adequate legal understanding, often accepts the existence of an exoneration clause without understanding its legal implications. This has the potential to lead to injustice, particularly when the agreement involves high legal risks and is unilaterally entered into by a party with a stronger economic or legal position.

## **2. Research Methods**

This research is normative legal research. The approach used is a statute approach. The data used is secondary data. The data collection method uses library research (document study). The analysis used is prescriptive.

## **3. Results and Discussion**

### **3.1. The Position of the Exoneration Clause in a Standard Agreement Deed According to Positive Legal Provisions in Indonesia**

Standard contracts that carry high legal risks are generally characterized by clauses that have the potential to reduce or even eliminate the rights of the weaker party in the contractual relationship. Such clauses often take the form of exoneration clauses, which are clauses that release or reduce the liability of the drafting party even if an error or negligence occurs in the contract's execution. According to Rachmat Trijono, the greatest risk in standard contracts lies in their "take it or leave it" nature, which prevents the party receiving the contract from engaging in meaningful negotiations regarding its contents.<sup>11</sup> As a result, business actors may introduce biased provisions without adequate control mechanisms.

The high legal risks of standard contracts become even more apparent when they are implemented in sectors that significantly impact the public interest, such as banking, financial services, air transportation, insurance, telecommunications, healthcare, and the distribution of vital goods. In these sectors, the power imbalance between service providers and consumers is even more pronounced, so standard contracts have a direct impact on the rights of the wider community. Standard contracts in the financial services and transportation sectors fall into the

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<sup>10</sup>Johanes Napitupulu, Budiharto, and Siti Mahmudah, 2019, Legal Consequences of Including an Exoneration Clause in a Safe Deposit Box Rental Agreement (Case Study of the Safe Deposit Box Burglary at Bank Internasional Indonesia (BII)), *Diponegoro Law Journal*, Volume 8, Number 1, p. 488

<sup>11</sup>Rachmat Trijono, 2007, *Contract Law: The Principle of Proportionality in Contracts*, Prenada Media, Jakarta, pp. 112–114.

category of contracts that carry high legal risks because they involve property, safety, and public access to basic services.<sup>12</sup>

Furthermore, standard agreements carry high legal risks if they contain provisions that conflict with the law, particularly Law Number 8 of 1999 concerning Consumer Protection, Law Number 21 of 2011 concerning the Financial Services Authority, the Transportation Law, the Insurance Law, and other sectoral regulations that prohibit certain standard clauses. The state expressly prohibits the inclusion of clauses that limit business actors' liability for consumer losses, so the existence of such clauses can lead to the validity of the contract being questioned at a later date. According to Shidarta, business actors' non-compliance with consumer protection provisions causes standard agreements to carry legal risks because such clauses can be considered null and void or non-binding.<sup>13</sup>

Standard contracts also carry high legal risks when implemented without adequate transparency. Lack of transparency regarding, for example, hidden costs, consequences of breach of contract, or limitations of liability, can potentially lead to disputes because consumers do not fully understand the contractual implications. In research by Ita F. Nadia, unclear information is a major source of disputes in standard contracts, particularly in the financial services and transportation sectors.<sup>14</sup>

Exoneration Clauses are defined in various ways. According to legal expert Mariam Darus Badruzaman, exoneration is also known as an exoneration clause. According to legal expert Rikjen, an exoneration clause is a clause in an agreement in which one party avoids fulfilling the obligation to pay full or limited compensation for breach of promise or unlawful acts.<sup>15</sup> An exoneration clause is a kind of statement that limits or eliminates responsibility that should be an obligation.<sup>16</sup>

The position of exoneration clauses in standard contracts is a crucial issue in Indonesian civil law, as it is closely related to the principle of balance between the parties and the protection of those with a weaker bargaining position. In practice, business actors often incorporate exoneration clauses into standard contracts or agreements as an effort to limit or even eliminate their legal liability. Meanwhile,

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<sup>12</sup>Sri Gambir Melati, 2010, *The Risk of Standard Agreements in the Financial Services Sector*, *Ius Quia Iustum Law Journal*, Islamic University of Indonesia, pp. 189–192.

<sup>13</sup>Shidarta, 2017, *Standard Contracts in the Perspective of Substantive Justice*, *Indonesian Legislation Journal*, Ministry of Law and Human Rights, pp. 145–148.

<sup>14</sup>Ita F. Nadia, 2019, *Abuse of Dominant Position in Standard Agreements*, *Jurnal Juridika*, Faculty of Law, Airlangga University, pp. 530–534.

<sup>15</sup>Dara Qurratu Aini Yusuf, 2022, *Consumer Protection Against Exoneration Clauses in Standard Agreements for Goods Delivery Services Companies (Study on Goods Delivery Companies in Binjai City PT. JNE)*, *IURIS STUDIA: Journal of Legal Studies*, Volume 3 Number 2, p. 203

<sup>16</sup>Mohamad Hilal Nu'man, 2021, "Application of Sharia Principles in Musyarakah Mutanaqishah Contracts in Sharia Banks in the Form of Notarial Deeds Containing Exoneration Clauses," *Bayani*, Volume 1 Number 2, p. 106



consumers or other parties receiving standard contracts generally do not have the opportunity to negotiate the terms of the agreement. This situation results in a contractual imbalance (inequality of bargaining power), so the position of exoneration clauses needs to be analyzed from the perspective of Indonesian positive law.

Freedom of contract in Indonesian contract law doctrine is not absolute freedom. This freedom is subject to restrictions in the form of public order, morality and law as confirmed in Article 1337 of the Civil Code.<sup>17</sup> Therefore, an exoneration clause that unilaterally absolves a business actor from liability for their errors or negligence may be deemed contrary to the principles of justice and good faith. Standard contracts require legal oversight because the clauses within them have the potential to create injustice.<sup>18</sup>

The prohibition on exoneration clauses is expressly stipulated in Law Number 8 of 1999 concerning Consumer Protection, specifically Article 18, which prohibits business actors from including provisions that reduce liability, transfer liability, or state that business actors cannot be sued for consumer losses. This regulation arose from the need to protect consumers from exploitative clauses. According to Shidarta, this prohibition is a form of legal intervention to ensure a balanced relationship between business actors and consumers in standard contracts.<sup>19</sup> Thus, normatively, the position of the exoneration clause in a standard agreement is very limited and can be declared invalid if it violates these provisions.

Despite the existence of normative prohibitions, the practice of using exoneration clauses is still widely found in various types of agreements, both in the form of notarial deeds and agreements outside of notarial ones. Notaries, as public officials, remain obligated to ensure that the deeds they draw up do not contain clauses that are contrary to law or detrimental to the interests of the parties, as notaries can be held accountable if they allow a deed to contain provisions that are not in accordance with the law.<sup>20</sup> However, because standard agreements are often drafted by business actors before being submitted to a notary, the responsibility for substantive assessment of standard clauses must still be carried out to prevent the inclusion of prohibited exoneration clauses.

The position of exoneration clauses in standard contracts is not only questioned in theory, but has also become the object of real disputes in court. In several court decisions, it is clear that exoneration clauses can give rise to serious legal issues when used as a basis for shifting all responsibility to a weaker party. Exoneration clauses are often a source of disputes because they have the potential to eliminate the responsibility of business actors and violate the principle of contractual

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<sup>17</sup>R. Subekti, 2002, *Contract Law*, Intermasa, Jakarta, p. 45.

<sup>18</sup>Mariam Darus Badruzaman, 1983, *Contract Law*, Alumni, Bandung, p. 65.

<sup>19</sup>Shidarta, 2006, *Indonesian Consumer Protection Law*, Grasindo, Jakarta, p. 121.

<sup>20</sup>Habib Adjie, 2013, *Civil and Administrative Sanctions Against Notaries as Public Officials*, Refika Aditama, Bandung, p. 55.

fairness. In Bandung High Court Decision Number 459/PDT/2018/PT.BDG, the dispute between PT BSG Gases and PT Komatsu Undercarriage Indonesia began with a standard agreement in the Delivery Note regarding the loan of gas cylinders. When 27 cylinders were lost, PT BSG Gases sued for breach of contract, but the court rejected the claim because the agreement used as the basis for the lawsuit contained a unilateral exoneration clause that was invalid under Article 18 of the Consumer Protection Law. The court considered the clause weakened the defendant's position and lacked evidentiary force. Meanwhile, in Supreme Court Decision Number 1391 K/Pdt/2011, PT Indonesia AirAsia was sued by a passenger for unilateral flight cancellations. AirAsia argued that the clause in the ticket exempted it from liability for cancellations, but courts at all levels declared the clause void because it was detrimental to consumers. The Supreme Court emphasized that the exoneration clause is invalid if it negates consumer rights, and AirAsia is still required to provide compensation. These two decisions indicate that courts tend to reject the implementation of exoneration clauses that are unilateral and contrary to the principles of justice and consumer protection.

Exoneration clauses in standard contracts have a legal standing that is strictly limited by Indonesian law, primarily due to their potential to eliminate business actors' responsibilities and harm weaker parties. In modern contractual practice, standard contracts are used in almost all service sectors, from banking and transportation to trade in goods and digital services. However, in Indonesia, the validity of standard contracts cannot be separated from the principles of contract law in the Civil Code, the obligation of fairness, and specific provisions regarding consumer protection. This legal construction places exoneration clauses as clauses whose existence is not legally prohibited, but their application is strictly limited, especially if the clause transfers all responsibility to a party that does not have an equal bargaining position.

The legal status of an exoneration clause must first be placed within the framework of the Civil Code, specifically Articles 1320 and 1338 of the Civil Code which regulate the conditions for a valid agreement and the principle of *pacta sunt servanda*. However, Article 1338 paragraph (3) of the Civil Code provides a clear limitation that every agreement must be carried out in good faith, so that a clause that aims to prevent a business actor from being responsible for its own negligence can be considered contrary to this principle. In addition, Article 1337 of the Civil Code states that a cause of agreement is invalid if it is contrary to law, morality, or public order. Therefore, from the basic level of contract law, an exoneration clause that eliminates the responsibility of a business actor for consumer losses can be classified as a clause that is contrary to public order and therefore has no binding force.<sup>21</sup>

The legal status of exoneration clauses in Indonesia is strictly limited by various laws and regulations to protect consumers and prevent the abuse of contractual

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<sup>21</sup>R. Subekti, 2002, *Contract Law*, Intermasa, Jakarta, p. 45.



power. Article 18 of Law Number 8 of 1999 concerning Consumer Protection (UUPK) prohibits business actors from including clauses that transfer responsibility, refuse reimbursement, or exempt themselves from compensation obligations, and such clauses are considered null and void. Similar restrictions are emphasized in the Government Administration Law, the Electronic Information and Transactions Law, and POJK No. 1/POJK.07/2013, which prohibits financial services businesses from including provisions that eliminate liability for negligence. Jurisprudence, such as the Bandung High Court Decision No. 459/PDT/2018/PT.BDG and the Supreme Court Decision No. 1391 K/Pdt/2011, reinforces this principle by rejecting the validity of exoneration clauses that are drafted unilaterally and disadvantage the weaker party. In these two decisions, the court emphasized that such clauses have no binding force if they create an imbalance of responsibility and are contrary to the principle of consumer protection.

Philosophically, the limitations on exoneration clauses align with Aristotle's theory of justice (distributive and corrective justice) and John Rawls's theory (difference principle), which emphasizes the need for proportional balance between parties and protection for the weaker party. Aristotle argued that justice demands proportionality in the distribution of rights and obligations, while Rawls asserted that inequality can only be justified if it benefits the most disadvantaged party. In the context of standard contracts, exoneration clauses that shift all risk to consumers clearly violate this principle. This view is reinforced by modern contractual justice theory, which rejects "substantive unfairness" in the content of agreements and emphasizes that fair contracts must meet standards of substantive fairness. Thus, the limitations on exoneration clauses in Indonesia are not only based on positive legal norms but also rooted in the principles of social justice, proportionality, and the moral responsibility of business actors.

### **3.2. Legal Impacts on the Parties If an Exoneration Clause is Included in a Standard Agreement Deed Containing High Legal Risks**

The inclusion of an exoneration clause in a standard agreement deed that has high legal risks has significant legal impacts for the parties, especially because the clause is often drafted unilaterally by the business actor without providing room for negotiation for the other party. From a contract law perspective, this clause is contrary to the principles of balance and good faith that are the foundation of contractual relations as outlined by Mariam Darus Badruzaman, that every clause that limits liability must be tested strictly so as not to disadvantage the party in a weak position.<sup>22</sup> Therefore, the existence of an exoneration clause not only raises the issue of contract validity, but also creates impacts in three major areas, namely: civil impacts, administrative-regulatory impacts, and impacts on the profession and business reputation.

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<sup>22</sup>Mariam Darus Badruzaman, 1983, Contract Law, Alumni, Bandung, p. 112.

The legal impact of including an exoneration clause in a standard agreement covers civil, administrative, and professional aspects, and has implications for the reputation of the business actor. From a civil perspective, this clause can be declared null and void if it conflicts with Article 1337 of the Civil Code or Article 18 of the Consumer Protection Law, as seen in Supreme Court Decision No. 1391 K/Pdt/2011 (AirAsia), which annulled the exoneration clause for violating contractual fairness. Administratively, violations of sectoral provisions such as POJK No. 1/POJK.07/2013, the Insurance Law, or the Aviation Law can result in sanctions in the form of warnings, orders to correct contracts, and even revocation of business licenses. Meanwhile, for notaries, including an exoneration clause in a notarial deed without correction can result in civil and administrative liability due to negligence in implementing the principle of prudence. From a business perspective, invalid exoneration clauses undermine public trust and the legitimacy of contractual relationships, as Hugh Collins has argued, that substantive unfairness in contracts can disrupt business continuity and economic stability.

Based on Philipus M. Hadjon's Legal Protection Theory, the impact of exoneration clauses not only touches the realm of private relations, but also the state's responsibility in guaranteeing citizens' rights. Hadjon divides legal protection into two, namely preventive and repressive. Preventive protection is carried out through explicit prohibitions in regulations such as the UUPK, POJK, and sectoral laws to prevent arbitrary actions by business actors, while repressive protection is realized through judicial mechanisms and administrative supervision when violations have occurred. Supreme Court Decision No. 1391 K/Pdt/2011 and Bandung High Court No. 459/PDT/2018/PT.BDG are examples of the application of repressive protection, where the court annulled exoneration clauses that gave rise to unequal responsibility. Conceptually, Hadjon's theory emphasizes that the state is obliged not only to restore the rights of the injured party, but also to establish legal behavior that encourages business actors to act fairly and proportionally. Thus, the limitation of exoneration clauses is a form of legal protection that is transformational, ensuring the creation of balance, justice and legal certainty in contractual practices in Indonesia.

#### **4. Conclusion**

The position of exoneration clauses in standard agreements under Indonesian positive law is severely restricted because they have the potential to eliminate business actors' responsibilities and create an imbalance in bargaining power. Although Article 1338 of the Civil Code guarantees the principle of freedom of contract, this clause is invalid if it conflicts with the law, public order, morality, or the principle of good faith. This strict limitation is stated in Article 18 of the Consumer Protection Law, which prohibits the inclusion of standard clauses that eliminate or limit business actors' responsibilities, and is reinforced by sectoral regulations such as POJK 1/POJK.07/2013 and air transportation regulations. Jurisprudence such as the Decision of the Bandung High Court No.

459/PDT/2018/PT.BDG and the Supreme Court No. 1391 K/Pdt/2011 confirms that unilaterally drafted exoneration clauses are not legally binding. Consequently, these clauses can be declared void in civil proceedings, triggering administrative sanctions for business actors and notaries, and threatening the certainty and balance of contractual law. Based on Philipus M. Hadjon's Legal Protection Theory, the exoneration clause thwarts preventive protection for the weak, so that the solution must be taken through repressive mechanisms such as the judiciary and regulatory sanctions.

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