

Discourse on Consumer Legal Protection on The Inclusion of Exoneration Clauses (Standardised Contract) In An Agreement

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ABSTRACT

The purpose of this study is to find out whether the standard agreement reflects the principle of freedom of contract in an agreement and the form of legal protection against the inclusion of the standard clause in an agreement. The results of this study indicate that the application of the standard clause in an agreement does not reflect and does not realize the principle of full freedom of contract, because the consumer has only the freedom to decide whether he makes a contract or not and the freedom to vote with whom he will make the agreement. While the debtor has absolutely no freedom to make agreements on the substance of the treaty, the contents of the agreement, the form of agreement and the manner of making the agreement and the protection of the law in the inclusion of the standard clause is set forth in article 18 of the consumer protection legislation regarding the ban on the inclusion of the standard clause. However, if in the implementation of the standard agreement there is a difference of interpretation of the standard contract formulation made by the parties then one of the legal efforts that can be done to become a defense fortress or legal protection to the consumer so that in the implementation of the standard agreement does not incriminate one party in contract, especially the consumer. Then the standard contract formulation shall use the interpretation of an impartial agreement to the standard contractor.

Keywords: *Consumer, Protection, Exonertion Clauses*

INTRODUCTION

Humans in fulfilling their needs, both materially and spiritually, always relate and interact with others. Interaction in material matters such as buying and selling. Buying and selling is a transaction that cannot be separated from human life. Basically, everyone is given the freedom by law to enter into an agreement, as regulated in Article 1338 paragraph (1) of the Civil Code (hereinafter referred to as BW) which stipulates that: 'All agreements made legally shall apply as laws for those who make them'.

When viewed in this article, it can be seen that article 1338 paragraph (1) BW is the source of the enactment of the principle of freedom of contract. The principle of freedom of contract is a principle that gives everyone the freedom to make or not make agreements, enter into agreements with anyone, determine the

contents of the agreement, its implementation and requirements and determine the form of the agreement, namely written or oral¹.

Pitlo said the background of the growth of standard agreements is due to the socio-economic conditions. Large companies, and government companies enter into cooperation in an organisation and for their benefit, conditions are determined unilaterally. The opposing party generally has a weak position, either because of its principles or because of its ignorance, it only accepts what is offered. Ignorance, they only accept what is offered to them².

Actually, standard agreements or those containing standard clauses have been known since ancient Greek times, such as Plato (423-347 BC) who once described the practice of selling food whose price had been determined in advance unilaterally by the seller, without distinguishing the quality of the food. It cannot be denied that standard agreements are also widely present in the practice of agreements in modern law, especially in relation to business law. In its development, many business transaction agreements occur not through a balanced negotiation process between the parties that make it, because the agreement occurs by making in advance the provisions contained in the contents of the agreement by one party who usually has a higher bargaining position, which is usually by business actors. Therefore, when the party in the weaker bargaining position, which is mostly the consumer, enters into an agreement, it can only be subject to the contents of the agreement that has been made unilaterally.

In such circumstances, the consumer does not have the opportunity to be able to make changes regarding the provisions that have been included in the agreement, he only has the opportunity to take it or leave it the agreement. Such an agreement is called a standard agreement or standard agreement, where the standard agreement is the realisation of the principle of freedom of contract. A standard contract is an agreement in which almost all clauses are standardised by the maker and then presented to the other party. The party presented with the standard agreement basically has no opportunity to negotiate or request changes to its contents³. In other words, the standard agreement is unilaterally determined, then printed in form, reproduced and used repeatedly for similar agreements.

Standard agreements cannot be separated from the existence of additional clauses, in addition to the main clauses contained in the agreement. The additional clause taken by the author in this writing is the exoneration clause. What is meant by an exoneration clause is a clause that contains conditions that limit or even completely remove the responsibility that should be imposed on the manufacturer

¹ Salim H.S, 2010, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, Sinar Grafika, Jakarta. Hal. 9

² Wiryono Prodjodikoro, 1985, *Asas-Asas Hukum Perjanjian*, Bale, Bandung. Hal. 35

³ Sidartha, 2000, *Hukum Perlindungan Konsumen Indonesia*, Grasindo, Jakarta. Hal. 146

of the product distributor. The inclusion of standard clauses in agreements is undeniably rampant for reasons of effectiveness and efficiency in transactions. The existence of standard clauses is based on approval of the agreement so that it applies as a law to the parties. However, on the other hand, there are opinions that oppose the inclusion of standard clauses in agreements, especially based on the principles of balance and fairness in contracting.

Bank loan agreements are one example of a standard contract category. In distributing credit, the bank generally prepares a blank agreement or form as a model credit agreement. The contents have been determined unilaterally by the bank as the party whose position is stronger in the credit agreement. Thus, the nature of the standard agreement is more favourable to the bank than the debtor customer as a weaker party. The formulation of the terms in the standard agreement prepared by the bank, in detail outlined in the form of certain clauses containing certain meanings that are only understood and understood by the bank, while the debtor customer is difficult or unable to understand it in a short time. The bank deliberately does not inform the debtor customer about this. Thus, the standard agreement is contrary to the principle of freedom of contract.

The principle of freedom of contract, which in Dutch is called *contracts vrijheid*, means that people have the freedom to make agreements according to their will and interests. The freedom in question includes: the freedom of each person to decide whether he will make an agreement or not make an agreement, the freedom of each person to choose with whom he will make an agreement, the freedom of the parties to determine the form of the agreement, the freedom of the parties to determine the contents of the agreement, and the freedom of the parties to determine how to make an agreement⁴.

In the open system of Book III of the Civil Code and Article 1338 paragraph (1) of the Civil Code, it is stated that, 'all agreements made legally shall apply as a law to those who make them'. It can be said that the word 'all' in the article is a way to conclude the principle of freedom of contract. Thus it can be said that Article 1338 paragraph (1) of the Civil Code seems to state that anyone is allowed to make an agreement in any form and bind the parties who make it as binding as the law. The only restriction on that freedom is 'public order and decency'.

Freedom of contract gives freedom to the parties to make agreements in any form or format, whether written, oral, non-authentic, unilateral, standard and others, as well as with the content or substance as desired by the parties. Thus, according to the principle of freedom of contract, a person generally has a free choice to enter

⁴ Sutan Remy Sjahdeini, 1993, *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia*, Institut Bankir Indonesia, Jakarta. Hal. 47

into an agreement⁵. It is important to note that freedom of contract and the provisions of Article 1338 paragraph (1) of the Civil Code do not stand alone. The principle is in a whole system and is related to other provisions. The principle of freedom of contract that can be inferred from the provisions of Article 1338 paragraph (1) of the Civil Code is often not in accordance with the reality prevailing in standard agreements made by business actors. In other words, there is a gap between the theory (*das solen*), namely the provisions of Article 1338 paragraph (1) of the Civil Code which reflects the principle of freedom of contract and the prevailing reality or practice (*das sein*), namely the application of standard agreements in agreements by business actors.

The purpose of writing in this journal is First, to find out the application of standard agreements in an agreement reflecting the principle of freedom of contract. Second, to find out the form of consumer legal protection against the inclusion of standard clauses in an agreement.

RESEARCH METHODS

The types and sources of legal materials used in writing this journal are primary legal materials, namely legal materials derived from laws and regulations related to standard agreements, secondary legal materials, namely legal materials derived from references or scientific works in the field of law, articles, journals, books, speeches, and academic papers related to the law of standard agreements. In this research, techniques for obtaining legal materials are used, namely through library research, where researchers conduct searches in the form of laws and regulations concerning standard agreements, scientific works and so on that have to do with the subject matter of this research.

Legal materials are analysed in the form of legal issues related to the application of standard clauses in an agreement. By first describing the facts in the field regarding the application of standard clauses in an agreement. Furthermore, the results will be interpreted by using deductive thinking, which is a way of drawing conclusions that depart from general discussions to specific discussions. After that, researchers will provide prescriptions regarding the application of standard clauses in an agreement.

RESEARCH RESULTS AND DISCUSSION

Application of the Exoneration Clause in an Agreement

In the Civil Code itself, there are no provisions that provide an understanding of standard clauses. Standard clauses are built based on the opinions of legal scholars that develop in doctrine and writings that discuss this matter. However, basically among legal scholars there is no uniformity of understanding. However, through the opinions below, it can be described what is meant by standard

⁵ Peter Mahmud Marzuki, 2003, *Batas-Batas Kebebasan Berkontrak*, Yuridika. Hal. 195

clauses. A standard contract is a written contract made only by one of the parties to the contract, so it is usually very one-sided. In order to invalidate it is necessary to highlight whether the contract has undermined the bargaining position, so that the existence of the element of 'agreement' between the parties is not actually fulfilled.

The term standard agreement comes from the translation from English, namely standard contract. A standard contract is an agreement that has been determined and outlined in a form. This contract has been determined unilaterally by one party, especially the strong economy against the weak economy. Standard contract according to Munir Fuadi in Salim HS⁶ is a written contract made by only one of the parties to the contract, even often it has been printed (boilerplate) in certain forms by one of the parties, which in this case when the contract is signed, generally the parties only fill in certain informative data with little or no change in the clauses where the other parties to the contract have no opportunity or only a few opportunities to negotiate or change the clauses that have been made by one of the parties, so that usually the standard contract is very one-sided.

According to Treitel, 'freedom of contract' is used to refer to two general principles. The first general principle states that 'the law does not limit the terms on which parties may contract: it does not exempt the terms of an agreement simply because they are cruel or unfair to one party. So the scope of the principle of freedom of contract includes the freedom of the parties to determine for themselves the contents of the agreement they want to make, and secondly that generally a person according to the law cannot be forced to enter into an agreement. The point is that freedom of contract includes the freedom for the parties to determine with whom they want or do not want to make an agreement⁷.

Without an agreement from one of the parties making the agreement, the agreement made is invalid. People cannot be forced to give their agreement. Agreement given by force is *contradictio interminis*. The existence of coercion indicates the absence of agreement. What the other party may do is to give the party to him, namely to agree to bind himself to the agreement in question or refuse to bind himself to the agreement in question. With the result that the desired transaction cannot take place. This is what happens with the enactment of standard agreements in the business world today. However, the above freedom of contract cannot apply absolutely without limit. This means that freedom of contract is not unlimited.

Before researchers examine further the inclusion of standard clauses in an agreement in relation to the principle of freedom of contract, it is better to first examine the opinions of legal experts both pro and contra to standard agreements.

⁶ Salim HS, 2007. *Perkembangan Hukum Kontrak Diluar KUHPerdara*, PT. Rajagrafindo, Jakarta. Hal 145

⁷ Sutan Remy Sjahdeini, 1993, *Op.cit*, Hal. 39

Opinions that are pro to the enforceability of standard clauses, namely Stein, state that standard agreements can be accepted as agreements based on the fiction of will and trust (*fictie van wil en vertouwen*) which arouses the belief that the parties bind themselves to the agreement, if the debtor accepts the agreement document it means voluntarily agreeing to the agreement⁸.

Munir Fuady argues that the existence of standardised clauses cannot be completely prohibited, because although they have the potential to violate the doctrine of contract law, they can also be justified by several other principles of contract law, in addition to the reasons for freedom of contract that are very commonly used in court⁹. Some principles of civil law that strongly support the existence of a standard contract, are the following legal principles: The principle of agreement of the will of the parties, the principle of assumption of risk by the parties, the principle of duty to read and, the principle of contract following custom¹⁰.

As for the understanding that is contrary to the standard agreement, namely Sluitjer in Mariam Darus Badruzaman, says that this standard agreement is not an agreement, because the position of the entrepreneur in the agreement is like a private lawmaker (*legio particuliere wetgever*). The conditions specified by the entrepreneur in the agreement are laws not agreements¹¹. Stein argues that the basis for the enactment of a standard contract is *de fictie van will of vertrouwen* so that real freedom of will does not exist for the parties, especially creditors¹².

The researcher himself in this case does not take sides with one of the two understandings. On the one hand, the researcher sees that the standard agreement is theoretically juridically contrary to the principle of freedom of contract by not fulfilling the provisions of the governing law. But on the other hand, it cannot be denied that developments have occurred regarding this matter, where in reality, the needs of the community tend to run in the opposite direction to the wishes of the law and have even become a custom that applies in the community and trade traffic, taking into account efficiency factors both in terms of cost, energy and time, and others. However, in this case, the use of this standard agreement should not be allowed to grow wildly and therefore needs to be disciplined, with the main consideration being the aspect of protection for debtors/consumers.

If examined more deeply about how the standard agreement is issued, juridically it does not fulfil the elements required by Article 1320 jo 1338 paragraph

⁸ Mariam Darus Badruzaman, 1980, *Perjanjian Baku (Standaraad), Perkembangannya di Indonesia*, Pidato Pengukuhan Jabatan Guru Besar, PT. Alumni, Bandung. Hal. 58

⁹ Munir Fuady, 2007, *Hukum Kontrak "Dari Sudut Pandang Hukum Bisnis"*, Citra Aditya Bakti, Bandung. Hal. 39

¹⁰ *Ibid*, Hal. 39

¹¹ Mariam Darus Badruzaman, 1980, *Op.cit*, Hal. 14

¹² Hasanudin Rahman, 2003, *Contract Drafting*, PT Citra Aditya Bakti, Bandung, Hal. 197

1 of the Civil Code. Based on the provisions of Article 1320 of the Civil Code, an agreement is declared valid if it fulfils 4 (four) cumulative requirements. The four conditions for the validity of the agreement include: (1) Agreement between those who bind themselves. This means that the parties to the agreement have agreed or agreed on the main matters or materials being agreed upon. And the agreement is deemed absent if given due to error, oversight, coercion or fraud; (2) Capacity to enter into an agreement. The meaning of the word capability in this case is that the parties have been declared adults by law, namely in accordance with the provisions of the Civil Code, those who have reached the age of 21 years, have been or have been married. Capable also means a person who is an adult, of sound mind, and is not prohibited by a statutory regulation to perform a certain act. And people who are considered incapable of performing legal acts, namely: people who are not mature, according to Article 1330 of the Civil Code jo. Article 47 of Law Number 1 of 1974 concerning Marriage; persons placed under guardianship, according to Article 1330 jo. Article 433 of the Civil Code; as well as people who are prohibited by law to perform certain legal acts such as people who have been declared bankrupt by the court; (3) A Certain Thing. This means that in making an agreement, what is being promised must be clear so that the rights and obligations of the parties can be determined; (4) A Halal Cause. This means that an agreement must be based on a halal cause that does not conflict with the provisions of Article 1337 of the Civil Code, namely not against public order, not against decency and not against the law.

As explained above, the first and second conditions are called subjective conditions, because they talk about the subject entering into an agreement, while the third and fourth are called objective conditions, because they talk about the object agreed upon in an agreement. In an agreement where the subjective conditions are not met, the agreement can be cancelled by the judge at the request of the party who is incapable or who gives an agreement unfreely. As long as it is not cancelled, the agreement remains binding. Meanwhile, if the objective conditions are not fulfilled, the agreement is null and void. The meaning of null and void is that, from the beginning, it is considered that there was never an agreement so that there is no basis for suing each other in court.

By looking at the formulation above, it can be interpreted that the standard clause does not reflect an agreement because it is not certain that when the debtor signs the contract, an agreement is reached in the sense of the will of the parties to the agreement. Thus, the standard agreement also does not reflect the principle of freedom of contract, although there are still other freedoms, for example, the freedom to determine with whom he will enter into a contract or whether he wants to enter into a contract or not.

The author's analysis of the application or implementation of the principle of freedom of contract in standard contracts in the world of business or trade. The use of standard contracts causes the principle of freedom of contract to be less or not even realised, for example: (1) Freedom of the parties to determine the form of the agreement, because the agreement is always in writing; (2) Freedom of the parties to determine the contents of the agreement, because in standard unilateral, reciprocal, or pattern agreements, the contents of the agreement are predetermined by one of the parties, organisations or experts; (3) Freedom of the parties to determine the form of the agreement, because the way of making it has been determined by parties, organisations or experts.

Although basically everyone is given freedom by law to enter into an agreement, as stipulated in article 1338 paragraph (1) of the Civil Code which stipulates that 'All agreements made legally shall apply as laws for those who make them'. If seen in the article, it can be seen that article 1338 paragraph (1) BW is the source of the enactment of the principle of freedom of contract. The principle of freedom of contract is a principle that gives everyone the freedom to make or not make agreements, enter into agreements with anyone, determine the contents of the agreement, its implementation and requirements and determine the form of the agreement, namely written or oral.

From the above information, it can be seen that there is no absolute freedom of contract. The government can regulate or prohibit a contract that may adversely affect or harm the interests of society. The restrictions on the principle of freedom of contract that have been known and recognised by contract law as explained above have been increased by new restrictions that were previously unknown by treaty law, namely restrictions that come from the court in the context of carrying out its function as a law maker, from the legislature, especially from the government, and from the introduction and enforcement of adhesion agreements or standard agreements arising from business needs.

However, despite its many disadvantages, the existence of the standard contract itself is very necessary, especially in businesses that involve a large number of contracts. The disadvantage of the standard contract is the lack of opportunity for the opposing party to negotiate or change the clauses in the contract. So that the contract is very potential for one-sided clauses. Meanwhile, standard contracts still have advantages, namely that they are more efficient, can make business practices simpler, and can be signed immediately by the parties. Considering that standard contracts have become a necessity in practice and have become a daily habit. The problem is when the standard contract contains elements that are unfair to one of the parties, so that if such a thing is justified by law it really touches the sense of justice in society.

The existence of an extenuation clause in a standard contract further shows the unfreedom and unequal of the parties in determining the risk bearer, because the extenuation clause is realised or not obliged to be obeyed by the debtor. So in essence, the meaning of the principle of freedom of contract must be avoided from the meaning of the freedom of the parties to form their own laws. The parties have absolutely no ability to make laws for them. They are only given the freedom to choose the law, which law to use as the basis of the contract made.

Consumer Legal Protection Against the Inclusion of an Exoneration Clause in an Agreement

Agreements in the business field that are generally in standard form are always remembered as unbalanced agreements. This can be seen in the fact that in various models of standard agreements are often dominated by options that benefit one party, especially those whose economic position is strong. The inclusion of standard clauses in agreements is undeniably rampant for reasons of effectiveness and efficiency in transactions. The existence of standard clauses is based on the agreement so that it applies as a law for the parties. However, on the other hand, there are opinions that oppose the inclusion of standard clauses in agreements, especially based on the principle of balance and the principle of justice as well as the principle of freedom of contract in contracting.

Regarding the principle of freedom of contract as stipulated in Article 1338 paragraph 1 of the Civil Code which reads: "*All agreements that are legally entered into are valid as law for those who make them*". On this basis, in the implementation of contracts, especially in the business field, an agreement or contract is needed that is efficient in terms of time, cost and energy and effective in terms of the content or content of the agreement, so business actors in carrying out their business activities often use the type of standard contract (standard contract).

However, in practice, especially in the standard/standard agreement in the agreement, it is associated with the creation of a standard agreement that is unilateral, causing various problems where the content or content of the standard agreement can be seen as an imbalance in the bargaining position between the parties. The position between debtors and creditors is often uneven, where we often find that the content of the agreement is made in words that are difficult to understand and made in small writing. The explanation provided by the creditor is incomplete and unclear so that the debtor only understands a small part of the standard agreement. Often the agreement is only read at a glance and the creditor provides a not deep understanding even though the juridical consequences are high so that the debtor often does not know what is his right. Often we find the fact that debtors do not know the essence of making standard agreements. The debtor or consumer only knows the juridical consequences where the standard agreement

made by the creditor is more concerned with the interests of the business actor than the consumer.

Standard agreements, especially in the practice of the business world, are actually still justified and various laws have actually provided protection to consumers and business actors in a balanced manner. If we carefully examine and construct it in article 18 of Law Number 8 of 1999 concerning Consumer Protection which reads:

"(1) 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:

- a) Declare the transfer of responsibility of business actors*
- b) States that the business actor has the right to refuse the return of goods purchased by the consumer*
- c) 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*
- d) Stating the granting of power of attorney from consumers to business actors, either directly or indirectly, to carry out all unilateral actions related to goods purchased by consumers in installments*
- e) Regulates the proof of loss of usefulness of goods or the use of services purchased by consumers*
- f) Giving business actors the right to reduce the benefits of services or reduce the wealth of consumers who are the object of buying and selling services*
- g) States the consumer's submission to regulations in the form of new, additional, advanced and/or further changes made unilaterally by business actors during the period when consumers use the services they buy*
- h) states that the consumer authorizes the business actor to impose the right of dependency, lien, or guarantee rights on goods purchased by the consumer in installments.*

"(2) 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 to understand".

Based on article 18 mentioned above, if we interpret it in a *contrario* way, the standard/standard agreement can be carried out as long as it does not violate the provisions mentioned above. According to article 18 of Law Number 8 of 1999 concerning Consumer Protection, standard agreements are allowed but must be placed in a place that is easily visible and can be clearly read and easy to understand, if this provision is not fulfilled then the agreement becomes null and void.

In Article 18 of Law Number 8 of 1999 concerning Consumer Protection, it prohibits the exoneration clause; also a clause that states the granting of power of attorney from consumers to business actors, either directly or indirectly, to carry

out unilateral actions related to goods purchased by consumers in installments (credit); or a clause that states that business actors have the right to refuse the return of goods purchased by consumers.

Business actors can be held responsible for their obligations in accordance with article 7 of the Consumer Protection Law that the obligation of business actors is to be in good faith in carrying out their business activities, providing true, clear and honest information regarding the guarantee of goods and/or services and providing explanations regarding the use and maintenance. If the creditor in this case does not want to be responsible, then according to Article 62 paragraph 1 of Law Number 8 of 1999: *"(1) Business actors who violate the provisions as intended in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah)"*.

The aspect of legal protection provided is related to the existence of an exoneration clause in the standard agreement made by business actors, namely if the goods purchased have hidden defects / invisible things, then consumers who consume or use the goods must receive legal protection. In practice, the legal protection received by consumers is usually only limited to product liability, namely consumers will only get compensation in the form of products or goods according to what they buy.

Based on Article 1366 of the Civil Code, it is entirely the responsibility of business actors to deal with losses caused by mistakes, negligence and negligence. Business actors are obliged to compensate consumers for losses suffered by consumers. The compensation provided can be in the form of goods or money equivalent to the losses suffered by the consumer. Then regarding the aspect of legal protection provided related to the existence of an exoneration clause in the standard agreement made by business actors in practice, if there is a complaint about the goods purchased by the consumer, it is only limited to *product liability* for the use of goods used by consumers who suffer losses. Consumers are entitled to compensation in accordance with the losses suffered, after consuming these goods and/or services.

If there is a dispute in the implementation of the standard agreement, it can be pursued through the court or outside the court based on the choice of the parties to the dispute. consumers can ask for help from the Non-Governmental Consumer Protection Agency, in this case the Indonesian Consumer Institute Foundation (YLKI) related to its duty to assist consumers in fighting for their rights and receiving consumer complaints and complaints. Consumers can also report to the Consumer Dispute Resolution Agency regarding their duties to supervise the inclusion of standard clauses. Law Number 8 of 1999 concerning Consumer

Protection has regulated legal protection for consumers, especially related to matters that are prohibited in the inclusion of standard clauses in an agreement. Because, on the one hand, the existence of standard agreements in daily practice is inevitable because it has become a real need, but on the other hand, there are many legal signs that must be considered.

According to the Researcher, if in the implementation of the standard agreement there is a difference in interpretation of the formulation of the standard contract made by the parties, then one of the legal remedies that can be taken to become a fortress of defense or legal protection for consumers so that in the implementation of the standard agreement does not burden one of the parties in contracting, especially the consumer, then the formulation of the standard contract must use an interpretation of the agreement that is not in favor of the maker standard contract. The way to interpret the contract is as follows: (1) If there is a conflict between the standard clause and the non-standard clause in making an agreement, what is used is the non-standard agreement; (2) The interpretation of the standard clause must be for the loss of the party providing the standard contract; (3) The interpretation of standard clauses should be done by looking more at the intentions of the parties than just looking at the words of the contract.

Because consumers are always in a weak position in the implementation of standard agreements, using the methods of interpretation mentioned above will provide more legal protection, especially to consumers in the implementation of standard agreements. Thus, business actors cannot act arbitrarily in making standard agreements that can harm consumers.

CONCLUSION

The conclusion in writing this journal is that first, the standard agreement of its existence is recognized in trade traffic and has become a habit and need of the community. However, juridically, the Standard Agreement does not fully realize the principle of freedom of contract. Because consumers to obtain the goods or services they need only have two options, namely accepting or rejecting the standard agreement. Meanwhile, the principle of freedom of contract prioritizes the freedom and equality of each human being. The principle of freedom of contract also means that people have the freedom to make agreements in accordance with their own interests. Second, in general, the form of legal protection against the implementation of standard agreements has been regulated in article 18 of Law number 8 of 1999 concerning consumer protection. The arrangement is to provide legal certainty for all needs of consumers/debtors and maintain their rights if they are harmed by business actors, especially in the implementation or implementation of standard agreements. The goal is to place consumers on an equal footing with business actors. According to the Researcher, if in the implementation of the standard agreement there is a difference in interpretation of the formulation of the

standard contract made by the parties, then one of the legal remedies that can be taken to become a fortress of defense or legal protection for consumers so that in the implementation of the standard agreement does not burden one of the parties in contracting, especially the consumer, then the formulation of the standard contract must use an interpretation of the agreement that is not in favor of the maker Standard Contract.

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