

Harmonizing Contractual Freedom and Consumer Protection in Indonesia's Digital Trade

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Abstract

The legal issue lies in the contradiction between consensual freedom under Article 1338 KUH Perdata and “take-it-or-leave-it” clauses that undermine meaningful consent in online transactions. This study aims to harmonize contractual freedom with consumer protection by defining the validity of standard clauses and promoting transparency and fairness in digital contracts. A normative juridical method is applied, using statutory analysis of the KUH Perdata, Law No. 8/1999 on Consumer Protection (UUPK), and Law No. 27/2022 on Personal Data Protection, supported by doctrinal literature to assess limits of standard clauses and regulatory oversight. The research finds that unilateral boilerplate clauses erode genuine consent and shift risks to consumers, creating a justice gap despite formal legality. Enforcement of Article 18 UUPK remains weak, leaving common harms—misdescriptions, refund issues, unilateral cancellations—largely undeterred. Strengthening transparency through pre-acceptance “key-term summaries” improves informed consent, while targeted regulations—model-clause guidance, unfair-term audits, and optional certification—supported by stronger coordination among OJK, Kemendag, and BPKN better align private drafting practices with public-law safeguards.

Keywords: Freedom of Contract; Standard Clauses; Consumer Protection; Digital Contracts

Introduction

Trade represents a mutually beneficial relationship between individuals or groups, where both parties engage in the exchange of goods and services to fulfill their respective needs (Nuri Aslami, 2022). Modern trade encompasses not only the physical exchange of goods but also a wide array of services that are commercially transacted across various economic sectors. Legally, trade activities fall under the scope of *engagements* as regulated by the Indonesian Commercial Code (*Kitab Undang-Undang Hukum Dagang* or KUH Dagang), which forms an integral part of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUH Perdata). The legal framework governing commerce covers human actions performed in mutual interaction to create legally binding obligations—rights and duties—between parties engaged in trade transactions (Izazi, Sajena, Kirana, & Marsaulina, 2024). Additionally, trade can be interpreted as a contract concluded between individuals or groups, who collectively agree upon their respective rights and obligations within the transaction (Wedayanti & Zulkifli, 2015).

The rapid advancement of technology in the digital era has significantly facilitated and streamlined commercial activities. However, this progress is not always matched by adequate legal protection for market participants, particularly consumers. This discrepancy creates a legal vulnerability, wherein consumers are often insufficiently protected when facing risks or disputes arising from modern commercial transactions. Accordingly, it becomes imperative for the legal system to adapt and enhance legal safeguards to meet the increasingly complex and dynamic nature of digital commerce.

Contracts in law may take the form of either written or unwritten (oral) agreements. Although oral contracts are not explicitly regulated within the Civil Code, they are nonetheless legally valid and enforceable. Article 1338 of the Indonesian Civil Code affirms that oral agreements can be substantiated through evidence demonstrating the existence of mutual consent between the parties. As such, oral contracts hold significant legal weight in civil law practice (Rasbin,

2023). In forming trade agreements—whether written or oral—parties are, in principle, free to determine the content of the agreement based on the doctrine of *freedom of contract*, which allows them to regulate their rights and obligations independently, subject to mutual agreement (Saisab, 2021).

However, in the current era of globalization, many commercial agreements and sales transactions no longer adhere strictly to the principle of contractual freedom. Instead, they often contain *standardized clauses* or *boilerplate provisions* (Mayasari & Rudy, 2021). Such clauses compel buyers to comply with the seller's predetermined terms, typically offering no room for negotiation (Harahap & Chrisanta, 2023).

Digitalization has introduced convenient shopping applications that enable most commercial activities, including buying and selling, to occur through digital platforms. These transactions often involve standardized clauses unilaterally imposed by business actors. Buyers are expected to accept all terms and policies without meaningful opportunity for negotiation (Taidi, 2023). One common manifestation of such standardized terms is the prohibition of product fraud by online marketplaces. The rise of digital transactions in Indonesia has led to significant legal challenges, particularly in relation to the widespread use of unilaterally imposed standardized clauses.

According to a 2023 CNBC Indonesia report, the Indonesian Consumers Foundation (YLKI) received numerous complaints related to e-commerce fraud in 2022. The data below outlines the types and percentages of reported violations:

TABLE 1. Types of E-commerce Purchase Violations (2023)

No	Type of Violation	Percentage
1	Product Not as Described	20%
2	Refund Issues	32%
3	Unilateral Cancellations	8%
4	Undelivered Products	7%

Source: *CNBC Indonesia, 2023*

The most frequent complaints involved products not matching the description, often resulting in refund requests. These issues suggest seller negligence or misleading representations, highlighting serious deficiencies in consumer protection within digital trade. Furthermore, Indonesia's National Consumer Protection Agency (BPKN) received 1,136 complaints related to e-commerce in February 2023 alone, indicating that fraudulent practices by sellers remain prevalent. Such occurrences cause significant harm to consumers who frequently lack adequate legal remedies, particularly when purchased goods are either misrepresented or never delivered. These findings align with reports from other institutions emphasizing the urgent need for stricter regulation, oversight, and more effective dispute resolution mechanisms to protect consumers' rights amid the growing volume of digital transactions (Rachmawati, 2024).

The core legal issue lies in the contradiction between the principle of freedom of contract, as stipulated in the Civil Code, and the prevalent use of standardized clauses that effectively negate such freedom. In reality, consumers are seldom given an opportunity to negotiate contract terms; instead, they must either accept the agreement in its entirety or forgo the transaction altogether—commonly referred to as the *take-it-or-leave-it* approach (Mubarak et al., 2023). Normatively, Indonesian contract law upholds the requirement for consent arising from the parties' free will. However, when business actors impose unilateral terms and require consumers to accept them automatically, the ideal of voluntary consent becomes illusory. This results in a legal imbalance that undermines consumer rights, which the law is intended to protect. Consequently, it is necessary to assess whether the use of standardized clauses in digital contracts remains valid under the principle of freedom of contract.

In addition, there exists a regulatory gap in consumer protection when confronted with unfair standardized terms. Although Article 18 of Law No. 8 of 1999 on Consumer Protection explicitly prohibits contractual provisions that waive consumer rights, enforcement and supervision remain weak. Many business actors continue to draft digital contracts without regard for consumer protection norms, and such practices often escape regulatory scrutiny (Angriani, 2021). Existing regulations fail to comprehensively address the rapidly evolving

forms of digital contracts, such as agreements embedded in apps, digital service subscriptions, and cross-border e-commerce. As a result, consumers lack adequate avenues for redress when disputes arise, as these contracts frequently fail to explicitly guarantee their fundamental rights. This underscores the need for harmonizing the principles of contractual freedom, standard clauses, and consumer protection within Indonesia's positive law framework.

Previous research—including studies by Seran et al. (2025), Ali et al. (2022), and Feriska (2023)—has examined the legal aspects of contractual freedom and the validity of standard clauses in commercial transactions. However, these studies remain largely fragmented and have not yet integrated both issues into a unified analytical framework. Most research focuses on the legal validity of individual contract types without exploring the impact of power imbalances that arise from the use of standardized clauses on consumers' bargaining positions. Furthermore, no study has explicitly linked this imbalance to the effectiveness of consumer protection within the digital commerce ecosystem. This gap in the literature highlights the need for a comprehensive legal analysis that connects freedom of contract, standardized clauses, and the imperative of consumer protection.

This study offers a novel contribution by not only analyzing the principle of contractual freedom and standardized clauses independently—as done in previous research—but also by critically examining the inherent conflict between the two within the context of digital trade agreements in Indonesia. The study highlights the dominance of business actors in formulating unilateral terms, often disregarding contractual equity and limiting consumer participation in contract formation. A further novelty lies in its focus on digital contracts facilitated through rapidly evolving e-commerce platforms—an area that remains insufficiently regulated (Feriska, 2023). The current legal framework, particularly Law No. 8 of 1999, is deemed inadequate to address the complexities of modern, cross-jurisdictional digital contracts. Therefore, this research is highly relevant in advocating for responsive policy development and legal reform that aligns with technological advancements and enhances substantive consumer protection.

This research reveals a significant gap between the ideal of freedom of contract and the actual implementation of standardized clauses, which frequently conflict in contemporary trade practices, particularly in the digital era. This gap becomes increasingly apparent and problematic when the ideal legal protections promised by Law No. 8 of 1999 fail to effectively encompass the rapidly evolving landscape of modern digital contracts. The study thus centers on the issue of consumer protection, positioned at the intersection of two fundamentally opposing contract models—one based on mutual agreement and freedom of negotiation, and the other dominated by unilaterally imposed standardized terms. In this context, consumer rights must be safeguarded and upheld to ensure a secure and fair transaction environment (Angriani, 2021). Consumer protection encompasses strategic policies and legal measures designed to provide legal certainty and maximum protection for consumers—a shared responsibility clearly delineated by law (Maharani & Darya Dzikra, 2021). The enactment of Law No. 8 of 1999 signifies the urgency and importance of ensuring consumer protection, particularly amid the growing complexity of technology-based trade. This regulation not only affirms consumer rights but also lays the legal foundation for fair, transparent, and equitable commercial relationships between businesses and consumers.

Research Method

This research constitutes a legal study employing a normative juridical method. The selection of this method aims to obtain a deeper understanding of the issues at hand through the analysis of legal theories, legal norms, and prevailing legal principles (Anggono, 2020). The approach applied in this study is the statutory approach, wherein the analysis begins with a review of the regulation of the principle of freedom of contract and standard contract clauses (*klausula baku*) within the Indonesian legal framework. In examining consumer rights within commercial agreements, this research specifically refers to Law No. 8 of 1999 on Consumer Protection as the primary legal basis. The data utilized in this study are secondary data, comprising statutory regulations such as the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) and Law No.

8 of 1999. The primary legal materials used include assessments of legal theories, concepts, and principles, along with analyses of relevant statutory provisions. The research is further supported by secondary legal materials, such as expert opinions, legal doctrines, and theoretical frameworks drawn from a variety of legal literature sources (Disemadi & Gomes, 2021).

The data analysis technique employed in this research is qualitative in nature. The primary focus lies in examining statutory regulations and interpreting the relevant legal norms. The researcher utilizes a deductive analysis method to draw conclusions based on existing legal frameworks and to identify the implications of standard clauses on consumer rights. In addition, comparative analysis may be applied to evaluate the consistency between legal theory and actual practice in the realms of consumer protection and contractual freedom. Through this analytical framework, the study aims to provide a comprehensive understanding of how the law functions and its practical impact on individuals, particularly in the context of commercial agreements in Indonesia.

Results and Discussions

The Application of the Principle of Contractual Transparency and Standard Clauses in Commercial Contracts in Indonesia

The implementation of the principle of contractual transparency and the use of standard clauses (*klausula baku*) in commercial contracts in Indonesia plays a crucial role in safeguarding consumer rights—especially in legal relationships where there is often an imbalance of bargaining power between businesses and consumers (Sigit et al., 2023). In practice, modern commercial relationships frequently rely on standard-form contracts, which are drafted unilaterally by business actors. These contracts typically provide little or no opportunity for consumers to negotiate or modify their terms. It is in this context that the application of the principle of contractual transparency becomes

essential, as it is a fundamental doctrine of contract law that aims to ensure fair and proportionate legal protection (Tan et al., 2024).

The freedom of contract principle in Indonesia often clashes with the widespread use of standard clauses, particularly in digital transactions. Pursuant to Article 1338 of the Indonesian Civil Code (KUH Perdata), legally formed agreements shall bind the parties as law. However, in contemporary e-commerce practices, standardized clauses are frequently employed without offering consumers a genuine opportunity for negotiation (Harahap & Chrisanta, 2023). The principle of contractual transparency is grounded in the idea that each party must be free to express its will in formulating the content and conditions of an agreement, provided that it does not contravene statutory law, public order, or morality (Eugenia & Markoni, 2024). Within commercial contexts, this principle is intended to ensure that consumers—who generally occupy the weaker legal position—have a clear understanding of the rights and obligations that arise from a contract, and that they provide consent based on free will, rather than under duress, coercion, or undue pressure.

In reality, however, the application of this principle continues to face significant challenges, especially when confronted with rigid and non-negotiable standard clauses. Standard clauses, or *boilerplate terms*, refer to pre-drafted provisions prepared unilaterally by business entities and applied across multiple transactions in mass-consumer contexts (Prayitno et al., 2021). For instance, in service subscriptions, transport ticket purchases, digital application use, and e-commerce transactions, consumers are generally presented with a binary choice: to accept the terms in full or not engage in the transaction at all—commonly referred to as the "take it or leave it" model (Mubarak et al., 2023). On platforms such as Tokopedia or Shopee, users typically indicate agreement by checking a box labeled "I agree to the terms and conditions," despite the contract often being long, complex, and rarely read in its entirety. This scenario raises concern, as consumers are deemed to have consented to all terms merely by ticking a box, without truly understanding their rights and responsibilities. In cases of dispute—such as non-delivery of goods or quality issues—the platform may

disavow responsibility by claiming that the consumer accepted all applicable terms, to the consumer's detriment.

Such contractual arrangements clearly give rise to a significant legal imbalance between parties. Consumers frequently face the difficult position of having to accept a contract in its entirety or walk away, with no possibility to contest or negotiate potentially harmful terms. This practice contradicts the freedom of contract principle, which presupposes mutual, voluntary, and equitable agreement between contracting parties, as mandated by contract law principles (Mubarak et al., 2023). According to Satjipto Rahardjo's theory of legal certainty, good law must not only provide formal certainty but must also achieve substantive justice within society (Yuhelson, 2017). In this context, one-sided standard clauses—where all terms are unilaterally imposed by businesses without regard for consumer rights—undermine justice, which should be the cornerstone of any legal system.

This injustice is exacerbated when consumers, as the weaker party, are unable to assert their rights due to lack of legal knowledge, limited access to information, or a significantly inferior bargaining position compared to business entities with greater economic and legal resources. The application of unbalanced standard clauses not only undermines the principle of contractual freedom but also negates the substantive justice envisioned in Satjipto Rahardjo's legal theory. This calls for more assertive regulatory intervention by the state to ensure that consumer protection is fully realized and that the legal imbalance between consumers and business actors is effectively minimized.

A common example of harmful standard clauses involves the shifting of full liability to the consumer in the event of lost goods during delivery, even though the delivery service is contracted by the seller. In such instances, the consumer suffers dual harm: loss of the item and lack of compensation. Law No. 8 of 1999 on Consumer Protection explicitly prohibits unfair standard clauses, as stipulated in Article 18, Paragraph (1), points a, b, and g. However, enforcement of these provisions remains weak, both in terms of government oversight and the initiation of legal claims by consumers (Kusumadewi & Sharon, 2022).

A fundamental barrier to effective consumer protection lies in low legal literacy among consumers. Many are unaware of their legal rights and tend to disregard contract content, either due to limited legal understanding or because contracts are often drafted in technical, inaccessible legal language. This creates a disconnect between consumers and their own awareness of their rights and obligations (Rahayu, 2021). The widespread use of standardized clauses—prepared and imposed unilaterally by businesses—further widens this gap, especially when consumers are compelled to comply without the opportunity to negotiate. Although Article 1338 of the Civil Code provides for freedom of contract, this freedom becomes illusory in the context of non-negotiable standard contracts. Such conditions expose consumers to legal vulnerability, as businesses can embed provisions that limit or even eliminate consumer rights, including disclaimers of liability or restrictions on compensation claims.

Nevertheless, the effectiveness of the principle of transparency and the limitation of standard clauses in practice largely depends on the extent to which consumers possess legal awareness and understanding of the agreements they enter into. In many cases, consumers sign contracts without thoroughly reading or comprehending their legal implications. Contributing factors include a lack of legal education, insufficient public awareness of consumer rights and obligations, and time constraints or psychological pressure to conclude transactions quickly. As a result, consumers often find themselves in vulnerable positions, exposed to unfair clauses, even though the contracts in question may formally comply with existing legal standards (Seran et al., 2025).

On the other hand, the role of consumer protection institutions and consistent law enforcement remains a crucial task to ensure that consumer protection norms are effectively upheld. These institutions must improve their oversight capacity, provide legal education, enforce violations firmly, and impose deterrent sanctions against business actors that violate consumer protection laws. Moreover, coordination among key stakeholders—such as the government, consumer protection agencies, and civil society organizations—must be strengthened to ensure a cohesive and sustainable protection system. Only through such integrated efforts can legal safeguards be meaningfully enforced,

thereby fostering a more equitable and transparent commercial environment (Syamsudin & Ramadani, 2018).

In conclusion, the implementation of the principle of contractual transparency and regulation of standard clauses in commercial contracts is not merely a normative issue; it also involves consumer education, ethical business conduct, and the state's responsibility to ensure justice in commercial relations. With fair regulation and effective implementation, these legal instruments can serve as powerful tools in securing consumer rights and achieving a more balanced legal relationship between business actors and consumers in Indonesia.

Balancing Contractual Freedom and Standard Clauses in Indonesian Commercial Agreements: Legal and Regulatory Imperatives

The imbalance between the freedom to contract and unilaterally imposed standard clauses in commercial agreements in Indonesia often gives rise to legal challenges in transactions. The principle of freedom of contract is enshrined in Article 1338 of the Indonesian Civil Code (KUH Perdata), which states: "All legally executed agreements shall serve as binding law for the parties involved. An agreement may not be revoked other than by mutual consent of the parties, or for reasons recognized by law. Every agreement must be performed in good faith."

However, in practice, standard-form contracts are typically drafted and imposed unilaterally by one party—usually the economically dominant party. The weaker party, often consumers, is merely required to provide basic personal information without any real opportunity to negotiate or alter the contractual terms. Consequently, such agreements are frequently one-sided, favoring the party that drafted them (Ali et al., 2022).

Enhancing transparency in contract content, especially in standard contracts used by digital service providers, is crucial. Many consumers fail to fully comprehend the terms due to the legalistic and technical language employed and the unilateral nature of their formation. Therefore, digital contracts should

contain clear and comprehensible terms, particularly concerning personal data protection and information security, to ensure that consumers are well informed about how their data is collected, processed, and stored. This aligns with the provisions of Law No. 27 of 2022 on Personal Data Protection, which emphasizes data confidentiality, grants data subjects full control over their information, and obliges data controllers to prevent misuse. Contracts must also clearly articulate the parties' responsibilities, data use limitations, audit rights, and safeguards such as encryption to uphold data integrity and confidentiality (Sebahi & Yusuf, 2024).

For consumers to be adequately protected, they must fully understand their rights in every transaction. Continuous legal education and awareness initiatives are therefore essential. Consumers need clear explanations of the risks and legal consequences associated with standard contractual provisions, along with knowledge of legal recourses in case of future disputes (Rahayu, 2021). These educational efforts should involve the government as regulator, consumer protection agencies as watchdogs and advocates, and businesses themselves as stakeholders in fair commercial practices. Outreach can utilize modern communication channels, such as social media, mobile apps, or official websites, to ensure information is disseminated efficiently and accessibly. By doing so, consumers move from being passive recipients of contracts to becoming informed, critical, and proactive participants in protecting their own rights.

Business actors bear the legal and ethical responsibility to explain contractual terms transparently, clearly, and thoroughly, especially to parties who may lack legal literacy. This ensures that agreements are truly based on informed and voluntary consent, rather than arising from coercion, misunderstanding, or fraudulent misrepresentation. In line with Article 1321 of the Civil Code, an agreement is void if it is made under duress, mistake, or deceit (Maharani & Darya Dzikra, 2021). Therefore, providing adequate explanation before contract execution is essential to uphold the principle of mutual consent, a cornerstone of contract validity under Indonesian civil law.

In modern digital transactions, consumer protection can be strengthened through the integration of contract notification systems within digital platforms.

These systems could present users with summaries of key contract terms—in simple and understandable language—before acceptance. Key points might include return policies, personal data usage, and the party responsible in case of disputes. This approach improves consumer comprehension, even when full legal documents are not read, thus fostering more informed decision-making. It also aligns with the principle of transparency, which businesses are expected to uphold in digital interactions, ensuring fair, open, and mutually beneficial relationships.

The government must take a more active and strategic role in supervising and regulating standard-form contract content, especially where such terms may harm consumers—typically the weaker party in contractual relationships. Relevant institutions such as the Financial Services Authority (OJK), the Ministry of Trade, and the National Consumer Protection Agency (BPKN) should be empowered to formulate binding regulations mandating that businesses draft contracts with fair, balanced, and transparent provisions. For example, contracts should explicitly enumerate consumer rights, including the right to complete and accurate information, and must not include clauses that unilaterally waive or restrict the consumer's right to lodge complaints, pursue claims, or seek compensation in the event of contractual breaches (Nurlaili Janati et al., 2023). The goal of these rules is not only to ensure formal legal validity under Indonesian law but also to achieve substantive fairness, thereby protecting consumer interests and promoting an equitable commercial environment.

From a long-term perspective, the implementation of standard clause certification mechanisms—issued by state authorities or industry associations—may serve as a powerful instrument of accountability. Such certification would confirm that standard clauses do not contravene the principle of freedom of contract and would act as an administrative prerequisite for businesses to engage in lawful digital transactions in Indonesia. By integrating these comprehensive solutions, the freedom of contract principle can evolve from a purely normative concept into a practically enforceable standard in digital commerce. Consequently, the legal validity of standard clause-based contracts would be more defensible, provided they truly reflect free will and consumer protection.

Therefore, contract law must continue to evolve in step with increasingly complex social and technological developments (Taidi, 2023).

Conclusion

The study concludes that while the principle of freedom of contract, as enshrined in Article 1338 of the Indonesian Civil Code, theoretically allows all parties to formulate agreements based on mutual consent, its practical implementation in commercial transactions often falls short—particularly due to the prevalence of unilateral standard clauses imposed by business actors. These clauses limit consumer participation, placing them in a weak legal position where they must accept terms that may be unjust or unfavorable. This illustrates a clear gap between the normative principle of contractual freedom and effective consumer protection, particularly in the digital marketplace. To address this disparity, it is essential for all stakeholders—government, businesses, and consumers—to take active roles. The government must strengthen its regulatory oversight to ensure fair and balanced contract terms. Business actors should draft agreements transparently and allow room for negotiation, while consumers must improve their legal literacy to better understand and assert their rights. With consistent implementation, these efforts can ensure that the principle of freedom of contract is upheld without compromising substantive justice and legal protection for consumers in the evolving digital trade ecosystem.

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Competing Interest

The authors declare that there are no competing interests.

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