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Unraveling Standard Agreements: Exploring Prohibited and Allowed Clauses in Legal Terms for Students

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ABSTRACT

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In general, it is not prohibited to include standard clauses in every agreement. The Consumer Protection Law stipulates that the prohibited provisions are only those that burden or harm consumers, with the inclusion of standard clauses not meeting the requirements of the eight prohibited standard clauses in the Consumer Protection Law. However, in reality, there is often a disparity in positions between consumers and businesses, where consumers find themselves in a weaker and less advantageous position. Considering the unequal standing of businesses and consumers, community engagement in the form of legal awareness campaigns is essential as both education and preventive measures to protect consumer rights. This community engagement, known as Community Service (PkM), takes the form of legal education. The implementation method involves interactive counseling sessions with material presentations, showcasing examples of standard clauses encountered in daily life. This is followed by quiz sessions and concludes with a Q&A session. The outcome of this PkM implementation is the successful realization of the Legal Awareness Campaign conducted at the SMAK Yos Sudarso Batam classroom.

Keywords: Standard Agreements, Consumer Rights, and Exculpatory Clauses

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INTRODUCTION

Contracts play a pivotal role in all business activities, whether conducted between individuals within the same country or multinational corporations. At least two parties are involved in entering into these agreements (Rahim, 2022). The principle of freedom to contract is a cornerstone in contract law, asserting that everyone is free to enter into an agreement with terms and conditions, provided it is done legally, in good faith, and in a manner not contrary to public order and morality (Yunus, 2019). Article 1338 paragraph 1 of the Civil Code upholds the principle of freedom to contract. One of its outcomes is the adoption of standard contracts in various consumer transactions, especially those occurring between consumers and commercial entities concerning human needs fulfillment (Irawati & Hutagalung, 2023).

Standard agreements are a specific type of contract where the terms and conditions are decided unilaterally by the business entity, with no room for negotiation or offers from other parties or consumers, unless they choose to do so (Hutagalung, Hasnati, & Afrita, 2021). It can be concluded that agreements are based on the contractual freedom of the parties. The freedom of society to make agreements or not, as well as the right to choose the terms and format of the agreement, is known as freedom to contract. Standard agreements often take the form of documents in which the business entity has established or standardized the content, form, and closing process. These agreements typically do not consider various conditions that consumers may have (take it or leave it). Standard clauses usually refer to the provisions or terms of standard contracts.

In essence, standard agreements aim to facilitate the ability of parties to transact. Therefore, the rapid development of standard agreements cannot be stopped when transactions need to be practical (Pradnyani, Puspawati, & Sutarna, 2018). Consumers often find themselves in a weaker position due to the imbalance of power between business entities and consumers in reality. The rights and legal interests of consumers are often ignored or even negatively impacted by agreements due to the unequal power relationship, where business entities dominate in all aspects, and consumers unilaterally determine the terms of standard agreements. Therefore, there is a need for education or awareness about forbidden and permissible clauses in standard agreements for the public, especially students at SMAK Yos Sudarso Batam.

The purpose of this legal socialization or outreach activity is to: 1) Provide insight to SMAK Yos Sudarso high school students about Standard Agreements; 2) Illustrate standard agreements encountered in daily life; 3) Foster understanding of prohibited and permissible clauses according to positive law. This Legal Socialization Program is also a student community service initiative, delivering

legal-themed outreach. The topics covered in this socialization activity include legal regulations, examples of standard agreements in daily life, and how to navigate detrimental clauses as consumers.

IMPLEMENTATION METHOD

Situated in the heart of Batam, Catholic High School (SMAK) Yos Sudarso Batam stands as one of the oldest private Catholic schools in the city, operating under the auspices of the Tunas Karya Foundation. Located at Jalan Dang Merdu No. 02, Kel. Teluk Tering - Kec. Batam Kota 29421, the school proudly holds an accreditation grade of A. Renowned for its stringent rules and commitment to upholding morality and ethics, this high school boasts a strong reputation, qualified teaching staff, and comprehensive facilities, including physics, chemistry, and biology laboratories, as well as language, computer, music, and sports facilities. The hallmark of SMAK Yos Sudarso is its high discipline standards, resulting in the cultivation of knowledgeable students prepared to thrive in the real world. Operating in alignment with its Vision and Mission, SMAK Yos Sudarso envisions itself as a “Community of Excellence in Quality and Leading in Educational Services,” with a mission to “Provide the best educational services to enhance education quality in accordance with universal and Catholic values.”

Figure 1. Observation



Source: Personal Documentation, 2023

The approach employed in this activity is a pioneering and interactive counseling method with presentation techniques. The legal awareness campaign is conducted within the premises of one of the classrooms at SMAK Yos Sudarso Batam. Following discussions between the author and partners, the event is scheduled for a duration of 2 (two) hours, starting from 09:00 to 11:00 Western Indonesian Time (WIB). The initial stage involves observing and interviewing partners at SMAK Yos Sudarso Batam to identify issues and provide legal counseling solutions. Permission is sought from the school's head, Mrs. Sumiyati,

S.Pd. This is followed by the development of a legal counseling plan based on the findings from the observations and interviews.

IMPLEMENTATION RESULTS

Humans, being inherently social beings, constantly engage in interactions with one another in their daily lives. These interactions often take the form of agreements. Initially, agreements were made verbally, but over time, there has been a shift towards documenting agreements in writing due to the inadequacy of oral agreements. Standardized agreements, or more specifically, boilerplate agreements, are crafted for the sake of efficiency and practicality. Article 1313 of the Civil Code defines an agreement or contract as an act that binds one party or more with another party or other parties. An agreement is a consensus, a mutual understanding between two individuals or parties to undertake a certain action. A written agreement is also referred to as a contract (Nurhafni & Bintang, 2018). Abdulkadir Muhammad defines an agreement as a legally binding pact between two or more parties to conduct a transaction involving money. From this definition, it is evident that there is an agreement or mutual consent among the participants. Signed agreements also relate to asset matters (Munggaran, Sudjana, & Nugroho, 2019).

Agreements must be executed in good faith, meaning they should align with morality and justice among all parties, and be grounded in good faith, responsibility, and self-awareness (Eleanora & Dewi, 2022). Such agreements are based on a freely made agreement between the two parties capable of taking action (meeting subjective criteria) to perform a task in accordance with applicable laws, decency, morality, public order, and prevailing social customs (meeting objective criteria). However, there are situations where the perspectives of the parties involved differ, resulting in agreements that are not beneficial to both parties (Syamsudin & Ramadani, 2018).

Figure 2. Material Presentation Slide

The slide features the UIN logo in the top left corner. The title 'Definisi Klausula Baku' is in blue. The text defines 'Klausula Baku' as a set of rules or conditions prepared and set in advance by a business actor, documented in a contract document that binds and must be accepted by consumers (Article 1 of Law No. 8/1999). The title 'Karakteristik Perjanjian Baku' is in orange. The text states that standard contracts have characteristics such as being made unilaterally by the business actor, consumers having no say in the terms, being written and final, and consumers being forced to accept terms due to need.

Definisi Klausula Baku	Karakteristik Perjanjian Baku
"Klausula Baku adalah setiap aturan atau ketentuan dan syarat-syarat yang telah dipersiapkan dan ditetapkan terlebih dahulu secara sepihak oleh pelaku usaha yang dituangkan dalam suatu dokumen dan/atau perjanjian yang mengikat dan wajib dipenuhi oleh konsumen. (Pasal 1 angka 10 UU 8/1999)	Sudaryatno menyatakan bahwa perjanjian baku mempunyai karakteristik sebagai berikut; <ul style="list-style-type: none"> Perjanjian dibuat secara sepihak oleh mereka yang posisinya relatif lebih kuat dari konsumen Konsumen sama sekali tidak dilibatkan dalam menentukan isi perjanjian. Dibuat dalam bentuk tertulis dan masa! Konsumen terpaksa menerima isi perjanjian karena didorong oleh kebutuhan.

Source: Personal Documentation, 2023

In our daily activities, various standard form contracts can be encountered. A standard form agreement is a type of written contract created by one party in the agreement (Yusuf, 2022). Sluitjer defines that a standard form agreement is not a true contract because the role of the entrepreneur in it is akin to how private law (*legio particuliere wet-gever*) is created. The conditions set by business actors or entrepreneurs in the contract are regulations, not contracts. Mariam Darus Badruzaman also asserts that standard form agreements do not adequately balance the positions of business owners and consumers. Standard form agreements are considered one-sided (Roesli, Sarbini, & Nugroho, 2019). Given the current trend of rapid and sophisticated business transactions, the existence of standard form agreements is an undeniable fact in the business world and plays a crucial role in promoting efficiency for business players. As a result, the characteristics of standard agreements reflect and adapt to the needs and changes in the business world (Agus, 2018).

Figure 3. Material Presentation Slide



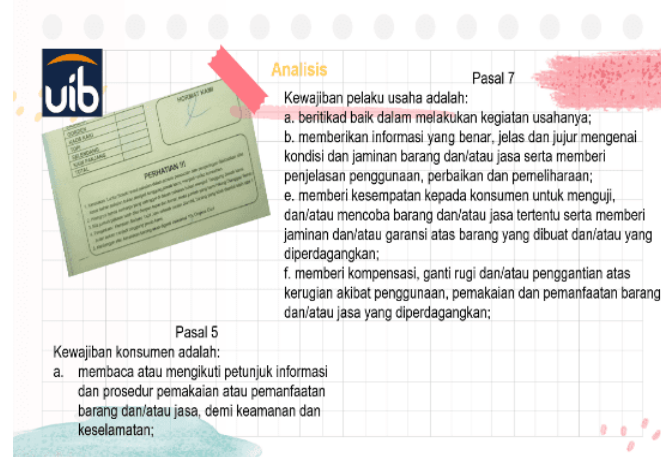
Source: Personal Documentation, 2023

In the realm of standardized agreements, the unequal positions of parties do not favor consumers in negotiating with businesses. In this scenario, consumers lack the authority to determine agreement terms, leaving them with no choice in the matter. Standard agreements are not always explicitly outlined in forms, though it's a common practice. Unilateral agreements from goods and services providers, also known as Standard Clauses, do not contradict the principle of freedom of contract, as consumers still have the option to accept or reject the proposed agreement. This is asserted under the belief that standard agreements do not violate the principles of freedom of contract (Article 1320 and 1338 of the Civil Code). According to Sudaryatmo, standard clauses exhibit the following characteristics: firstly, they are unilaterally drafted by businesses in a stronger position; secondly, consumers have no involvement in determining the

agreement's content; thirdly, agreements are created on a massive scale and in writing; fourthly, consumers are compelled to accept the terms due to their needs (Rohaya, 2018).

Standard clauses refer to any norms or conditions that are exclusively formulated and decided upon by businesses, documented in a legally binding agreement, and obligatory for consumers to fulfill, in accordance with the Consumer Protection Law (CPL) Number 8 of 1999. Examples include parking tickets or purchase receipts containing statements such as “the parking management is not responsible for any damage or loss in any form” and “purchased items cannot be exchanged or returned” (Kurniati & Tanudjaja, 2021). Such clauses are in direct contradiction to the CPL as Article 18 outlines provisions regarding the inclusion of Standard Clauses, prohibiting businesses from including clauses that transfer responsibility. Article 18, paragraph (1), letter (a) specifically forbids businesses from “declaring the transfer of business responsibility.” One prohibited clause is the exoneration clause (Sumayya & Humaira, 2022).

Figure 4. Material Presentation Slide



Source: Personal Documentation, 2023

Exoneration clauses are unilateral or standard agreement clauses that shift the responsibility away from the business entity. According to Rijken, an exoneration clause in contractual relationships seeks to avoid the fulfillment of obligations, either entirely or partially, in the event of a breach of the agreement (Windiantina, 2020). Essentially, it acts as a waiver of liability in contractual relationships, not intended to align with the specified liability waivers in the contract. By transferring responsibilities, the duty to assign accountability is redirected to secure the interests of one party. Mariam Darus Badruzaman asserts that typical agreements with exoneration clauses, which eliminate or restrict the obligation of one party (creditor) to provide compensation to the debtor, exhibit the following characteristics: a) The debtor is not involved in determining the terms of the agreement; b) The debtor is compelled to accept the agreement due

to necessity; c) It is in written form; d) Prepared either en masse or individually (Manumpil, 2016).

To ensure consumers are on an equal footing with businesses and prevent businesses from taking advantage of actions that harm consumers due to ignorance and unfair positioning, restrictions and requirements regarding the use of standard clauses are based on the principle of contractual freedom. As consumers, society must pay closer attention to their rights and utilize them when they feel aggrieved. However, many individuals overlook their rights and aspects that can be detrimental to consumers. The Consumer Protection Law (UUPK) serves as a legal framework for safeguarding consumer rights in Indonesia (Rachmaniyah & Wahyoeno, 2022).

Article 45, Paragraph 1 of UUPK states that “every aggrieved consumer can sue the business entity through the institution responsible for resolving disputes between consumers and businesses or through the court within the jurisdiction of the general judiciary.” Consumers can file lawsuits against businesses in court or outside of court. According to Article 61 of UUPK, which states that business entities and/or their executives can be criminally prosecuted, dispute resolution through the courts can be punishable by imprisonment for up to 5 years or a maximum fine of IDR 2,000,000,000. Article 47 of UUPK explains that out-of-court consumer dispute resolution is conducted to reach an agreement on the form and amount of compensation and/or specific actions to ensure the prevention of future losses or harm suffered by consumers if the parties choose dispute resolution outside the court.

Exemption clauses are often encountered in one form of agreement, namely standard form contracts (Kurniasih, Fahmi, & Triana, 2022). A notable case of an exemption clause is the incident involving Anny and Hontas, visitors to Plaza Cempaka Mas in Jakarta on March 1, 2000. They parked their Toyota Super Kijang with license plate B 255 SD in Secure Parking, a managed parking facility. Upon entering the location, a parking ticket was issued. With Hontas holding the entrance ticket, car keys, and vehicle registration, they both believed their car was secure. However, upon completing their shopping, they were shocked to discover that the car was no longer in its original location. The 1994 Kijang van disappeared without a trace after a thorough examination of the parking area. Despite having the ticket, keys, and registration in hand, the fact that the car could leave without detection was hard to fathom. The two consumers attempted to file a complaint about the missing vehicle. As expected, the parking facility management invoked the standard clause stating, “We are not responsible for the loss of vehicles.” Unhappy with this, the consumers took legal action, leading to Supreme Court Decision No.124 PK/PDT/2007 in favor of the plaintiffs, Anny R Gultom and Hontas Tambunan, against the defendant, PT Securindo Packatama Indonesia (SPI). PT SPI

was ordered to compensate material losses amounting to Rp.60,000,000. The consumers won the case based on Supreme Court Decision No. 3416/Pdt/1985, which states: "Parking activities constitute a contract for the custody of goods, and therefore, the loss of goods or vehicles by the owner as a user of parking services is the responsibility of the parking facility management." Hence, consumer protection includes convenience, security, and safety, along with clear and accurate information about product and service conditions, as well as advocacy and guidance to ensure consumers are treated fairly. If consumers receive products and services that do not conform to the agreed-upon terms in regulations, they are entitled to compensation (Putra, 2020).

Execution of Legal Devotion: Unveiling the Legal Dedication Process

The implementation of the legal socialization activity began with an observational agenda conducted by students who visited Mr. Benediktus Raditya, S.Pd, acting as a teacher and liaison to the school principal. This visit aimed to seek permission and convey the purpose of the visit to conduct legal socialization at SMAK Yos Sudarso Batam. The results of this observation included the determination of the time, implementation date, and classroom for the legal socialization. The organizers and partners continued their discussion before the socialization through WhatsApp to confirm the number of attendees and the time needed for the legal socialization. The activity was equipped with presentation materials in the form of slides and videos, laptops, and gifts for active students during the material explanation. Here are the documented results during the legal socialization in Yos Sudarso Batam class on March 31, 2023.

Figure 5. Implementation of Activities



Source: Personal Documentation, 2023

On the scheduled day, precisely on March 31, 2023, students in the classroom prepared themselves for the legal socialization after attending the 2nd class period. The students also promptly prepared the tools to be used for presenting the material. The implementation activity began with a self-

introduction session, conveying the purpose and objectives, and expressing gratitude from the students for the willingness of Yos Sudarso Batam students to participate. After that, the students started the socialization by showcasing an example image related to standard clauses. The hope was for the students to gain a better understanding of their rights as consumers.

Figure 6. Implementation of Activities



Source: Personal Documentation, 2023

The inaugural interactive legal awareness session kicked off by gauging students understanding of standard contracts. After gathering insights from the students, the facilitators shed light on prevalent consumer violations, notably the often encountered prohibition of exculpatory clauses in positive law.

Figure 7. Implementation of Activities



Source: Personal Documentation, 2023

Business entities are prohibited from “declaring a transfer of responsibility,” as stated in Article 18, paragraph 1, letter (a) of the Consumer Protection Law. Exculpatory clauses are expressly forbidden in contracts, though for businesses, standard contracts serve as a swift, easy, and effective means to achieve financial objectives. However, consumers find themselves in a vulnerable position, often left with only one option—to accept, albeit reluctantly.

Figure 8. Implementation of Activities

Source: Personal Documentation, 2023

As the legal awareness session concluded, a quiz and Q&A session were opened with the students regarding the presented material. The students' responses showcased enthusiasm after gaining insights into standard contract clauses prevalent in daily life, indicating the success of the session. Some students also shared personal experiences related to standard clauses. The quiz and Q&A session concluded with expressions of appreciation and the presentation of souvenirs, in the form of books, to actively participating students.

Figure 9. Implementation of Activities

Source: Personal Documentation, 2023

Figure 10. Implementation of Activities

Source: Personal Documentation, 2023

The legal awareness initiative at SMAK Yos Sudarso unfolded smoothly, receiving positive responses from partnering institutions. One SMAK Yos Sudarso student named Rice expressed that the presented material was interesting and easy to comprehend, considering they are consumers. The partnering institution demonstrated openness to student-led legal awareness activities, evident in the support from teacher Mr. Benediktus Raditya, S.Pd. The students also expressed appreciation through applause at the end of the material presentation. Consequently, the legal awareness initiative was deemed successful and beneficial for the students.

CONCLUSION

The legal outreach program is a commitment to serve the community by conducting legal-themed awareness sessions. The focus of this session revolves around understanding legal regulations and exploring common standardized agreements in everyday life. The program also delves into dealing with potentially harmful clauses for consumers. The selected target audience for this outreach is the students of SMAK Yos Sudarso Batam, totaling 40 individuals. The initiative stems from the realization of a lack of understanding regarding forbidden and permissible clauses in standardized agreements within the community, particularly among the students of Yos Sudarso, concerning legal regulations and their rights as consumers. This was acknowledged by one of the students who shared an experience of responsibility transfer by a parking business, referred to as an exculpatory clause.

The outreach activities are conducted in a premiere and interactive manner, utilizing presentation techniques to showcase examples of standardized clauses encountered in daily life as an introduction. The tangible outcome of the

Community Service Program (PkM) is that the presenter imparts knowledge to the community, specifically the students of SMAK Yos Sudarso Batam, about the legal framework of standardized agreements and the legal consequences of violations. The program aims to provide preventive measures to ensure that consumers do not forfeit their rights and to enhance understanding of forbidden and permissible clauses under positive law. The legal awareness session at SMAK Yos Sudarso Batam has received positive responses from the collaborating partners. Mr. Benediktus Raditya, S.Pd, the teacher, has expressed appreciation for the engaging and comprehensible material presented. A suggestion from the presenter is for the students of SMAK Yos Sudarso Batam to exercise caution in dealing with potentially detrimental standardized agreements and to be aware of their rights as consumers, both in standardized clauses and exculpatory clauses. Therefore, it is advised that students, as learners, expand their literacy and knowledge about consumer rights under the law through reading various literatures and news. This serves as a preventive measure to protect the community from businesses that may exploit consumers.

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