



## Consumer protection against exoneration clauses in international e-transactions (analysis of the amazon.com EULA)

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### Abstract

The standard clauses of international electronic transaction set forth in the end-user license agreement are often not in accordance with the consumer protection rights stated in the PK Law and the ITE Law. This study aims to identify and analyze international electronic transaction dispute resolution based on Indonesian law (Consumer Protection Law (UUPK) and the Electronic Information and Transaction Law (UU ITE)). on the standard clauses of the Amazon.com end user license agreement. The approach method in this study uses a normative juridical approach, which is document research, using legal sources in the form of laws, regulations, court decisions, contracts, legal theory, and scientific opinions. Normative legal research is also known as doctrinal legal research, literature research, or document research. The results of the study show that in the context of civil law, an agreement is defined as an act in which one or more individuals are legally bound to another or more individuals. Article 18 of the Consumer Protection Law regulates the use of standard clauses in agreements. In the case of Amazon.com e-commerce, the terms and conditions of use are pre-set by Amazon and provided to the consumer as a standard agreement. In this context, consumers as users only have the option to accept or reject the contents of the agreement without the opportunity to discuss the details beforehand. The views of Indonesian legal experts indicate that the process of forming a standard contract has not fully complied with the legal requirements for an agreement as stipulated in Article 1320 paragraph (1) of the Civil Code, especially in terms of agreements that bind the parties involved. The agreement should refer to the harmony of will or agreement between the parties. Clear rules are needed to provide guidelines to economic actors so that transactions and contracts in e-commerce obtain legal certainty, especially to protect consumers. Legal protection arising from the rights and responsibilities of the parties to a transaction stipulates that in the context of a transaction, consumers should understand the rights guaranteed by Article 4 of the Consumer Protection Law. Legal protection for consumers in e-commerce transactions can be found in the Consumer Protection Law (UUPK) and the Electronic Information and Transaction Law (UU ITE). The UUPK provides a legal basis for protecting Indonesia's consumers in general, while the ITE Law provides a specific legal basis for consumers involved in e-commerce transactions. As previously explained, e-commerce transactions bring various problems, including consumer data privacy issues. In the context of trade transactions through electronic systems, opportunities for dispute resolution outside the court can be realized if the parties choose this option and state it in the contract. Article 18 paragraph (3) of the ITE Law gives authority to parties to determine legal options in resolving disputes. The Consumer Protection Law also provides alternative dispute resolution out of court, including amicable compensation (Article 19 of the Consumer Protection Law) and through the Consumer Dispute Settlement Agency (BPSK) in accordance with Article 23 juncto Article 1 point 11 of the Consumer Protection Law. In e-commerce consumer disputes, the role of BPSK can be utilized by consumers. Even though the BPSK decision is binding and final (Article 54 paragraph (3) of the Consumer Protection Law), dissatisfied parties can submit an objection to the District Court and proceed with cassation to the Supreme Court (Article 56 paragraph (2) and Article 58 paragraph (2) Consumer Protection Law). Nevertheless, the implementation of consumer dispute resolution in electronic transactions is still limited.

**Keywords:** Electronic transactions, standard clauses, e-commerce

### Introduction

In international electronic transactions, the parties interact through electronic media, such as the internet. When a consumer wants to make a purchase on a site, the seller discusses the agreement (terms and conditions) containing requirements that are considered standard clauses. The standard clause is set forth in the form of an End User License Agreement and is mandatory. The End User License Agreement is a legal agreement between seller and user. Hereinafter referred to as the End User License Agreement, which is subject to intellectual property rights (IPR) law and contract law. This agreement specifies in detail the rights and restrictions that apply to the use of

electronic transactions in international electronic transactions.

The form of the license agreement same as the agreement in general. However, the contents of the license agreement must comply with the provisions of the legislation. In Article 80 of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, this license is granted through a license agreement that is valid for a certain period of time and does not exceed the validity period of the copyright and related rights. The licensee will later pay royalties to the copyright holder or owner of related rights for the duration of the license, unless otherwise agreed.

In Indonesia, consumers get protection in electronic buying and selling transactions through mainly Law Number 8 of

1999 concerning Consumer Protection (UU PK) and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The standard clauses of international electronic transactions set forth in the End User License Agreement are often not in accordance with the consumer protection rights stated in the PK Law and the ITE Law. Article 18 paragraph (1) PK Law states that 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 when declaring consumer compliance with regulations in the form of new, additional, continued rules and/or further changes made unilaterally by business actors while consumers are using the services they have purchased. However, the standard clause agreement contained in the End User License Agreement is made by the seller/trader unilaterally in determining the terms of the agreement.

International electronic transactions are also regulated by the laws and policies of each country. The End User License Agreement issued by Amazon.com states that the transaction is governed by the laws of the State of Washington. The agreement provides that any dispute or claim relating in any way to the consumer's use of any Amazon service will be decided in the Federal state courts in King County, Washington, and the consumer consents to exclusive jurisdiction and place in these courts. Amazon waived rights to a jury trial. By using any Amazon service, the consumer agrees that applicable federal law, and the laws of the state of Washington, without regard to the principle of conflict of laws, will govern these Terms of Use and any disputes that may arise between the consumer and Amazon. Under the End User License Agreement issued by Amazon, consumers from any country doing business with Amazon are subject to the laws of the State of Washington. Amazon also states the contents of this agreement through a statement that cannot be changed or negotiated by consumers.

Therefore, consumers cannot refuse or revise the terms of the agreement because international electronic transactions that make agreements do not provide facilities to change. There are consumer rights in international electronic transactions that cannot be fulfilled, consumers do not get clear information when making agreements, consumers do not get guarantees that consumers have obtained all relevant or necessary information to make decisions in a transaction, the status of legal subjects of business actors not clear, there is no guarantee of privacy and transaction security, nor is there an explanation of the risks associated with the system, especially in the case of credit card and electronic cash payments, unequal risk imposition, the nature of unlimited transactions which gives rise to differences in the legal jurisdictions of which countries applicable.

In addition, considering that the official language of Indonesia is Indonesian, the question arises whether standard clause agreements written in a foreign language are valid or not. Law Number 24 of 2009 concerning Flags, Languages and National Emblems, as well as the National Anthem regulates the use of language in contracts. Article 31 paragraph (1) of Law Number 24 of 2009 states that "Indonesian must be used in memorandums of understanding and agreements involving state institutions, government agencies of the Republic of Indonesia,

Indonesian private institutions, or individual Indonesian citizens."

Based on these articles, it is clear that Article 31(1) agreements can be made in Indonesian and foreign languages. In addition, referring to Article 31 paragraph (2) of Law Number 24 of 2009 which states that "The memorandum of understanding or agreement as referred to in paragraph (1) involving foreign parties is also written in the foreign party's national language. and/or English." The phrase "also written" means that if the agreement is to be made in English or another foreign language, the Indonesian language must also be written so that the agreement is valid. In other words, the original agreement must be drawn up and signed in two languages (bilingual).

Based on these considerations, agreements made in English or other foreign languages are valid as long as they are also made in Indonesian. However, in the case of a standard clause agreement (End User License Agreement), only English is used, and not the language of the user's country of origin. Thus, according to Indonesian law, the legality of the End User License Agreement is debatable. There are several conflicts between the standard clauses of the Amazon.com End User License Agreement and Indonesian laws, especially the Consumer Protection Law (UU PK).

### Research method

The research method used in this study is normative juridical legal research. This approach is also known as a normative legal approach or research. The empirical juridical approach is the approach used by analyzing and examining the materials found in depth so that an event can be resolved.

### Result and discussion

#### Agreement between consumer and amazon

In the context of civil law, an agreement is defined as an act in which one or more individuals are legally bound to another or more individuals. Legal experts, such as Subekti, provide an explanation that agreements cover situations where there is a promise made by one party to another party, or there is a reciprocal promise between two parties that forms a legal relationship called an agreement. In using the Amazon E-commerce application, the interaction between consumers and service providers is reflected in a standard agreement. The consumer who registers an account and agrees to the terms and conditions set by Amazon effectively authorizes the agreement. Article 1338 paragraph (1) of the Civil Code states that a valid agreement has legal force equal to the law for the parties involved. In many cases, the agreement is pre-designed in a standard format by the service provider. Article 18 of the Consumer Protection Law regulates the use of standard clauses in agreements. In the case of Amazon.com e-commerce, the terms and conditions of use are pre-set by Amazon and provided to the consumer as a standard agreement. In this context, consumers as users only have the option to accept or reject the contents of the agreement without the opportunity to discuss the details beforehand.

The views of Indonesian legal experts, such as Djumadi, indicate that the process of forming a standard contract has not fully complied with the requirements for a valid agreement as stipulated in Article 1320 paragraph (1) of the Civil Code, especially in terms of agreements that are binding on the parties involved. The agreement should refer

to the harmony of will or agreement between the parties. However, if the clause in the agreement only comes from one party, then the agreement does not fully reflect the principle of freedom of contract. Another opinion from Mariam Darus Badruzaman concluded that the standard agreement is not in line with the principle of freedom of contract.

In addition to the aspect of freedom of contract, the principle of balance is also not reflected in standard agreements. This principle of balance represents an effort to achieve a fair situation. In this context, balance refers to equality between the rights and obligations of the parties in an agreement, with the same terms and conditions. Neither side dominates or puts pressure on the other. Article 1320 of the Civil Code provides guidance regarding the conditions needed to conclude a valid agreement, such as: First, the agreement of the parties is the essence of the agreement. This agreement is reached when the parties agree and bind themselves to the contents of the standard agreement. There are several theories that underlie the concept of agreement, such as the theory of will, delivery, knowledge, and trust. In the case of Amazon's terms and conditions, the agreement is deemed fulfilled through the consent that the consumer gives to the terms and conditions when registering an account on the platform. The second condition is the ability to conclude agreements. This capability refers to the ability to take legal action independently without interference. Usually measured through factors of age and a healthy state of mind. Amazon users, for example, demonstrate this ability through the identity they use when registering. Meanwhile, Amazon must also demonstrate the ability to enter into agreements based on the legality and status of their business. The third condition is about a certain thing. This relates to the object or substance of the agreement which is the agreement of the parties. The object of the agreement must be clear and in accordance with applicable law. Article 1333 of the Civil Code mandates that the agreement must have an object of at least a specified type. J. Satrio explained that this refers to the object of achievement of the agreement which must be clear or at least the type can be determined. The fourth requirement is the existence of a valid reason, which means that the agreement must be in accordance with applicable legal norms. The parties are not allowed to make agreements that violate existing legal norms.

### **E-Commerce user legal protection**

Legal protection arising from the rights and responsibilities of the parties to a transaction stipulates that in the context of a transaction, consumers should understand the rights guaranteed by Article 4 of the Consumer Protection Law. The article details consumer rights as follows:

1. The right to comfort, security and safety in consuming goods and services.
2. The right to choose goods and services and obtain them according to the promised exchange rate, conditions and guarantees.
3. The right to accurate, clear and honest information regarding the conditions and warranties of goods and services.
4. The right to voice opinions and complaints regarding the goods and services used.
5. The right to obtain support, protection and fair consumer protection dispute resolution.

6. The right to consumer coaching and education.
7. The right to be treated fairly, honestly and without discrimination.
8. The right to receive compensation, compensation or reimbursement if the goods and services are not in accordance with the agreement or the standards that should be.
9. Other rights regulated in other laws and regulations.

Legal protection for consumers in e-commerce transactions can be found in the Consumer Protection Law (PK Law) and the Electronic Information and Transaction Law (ITE Law). The PK Law provides a legal basis for protecting consumers in Indonesia in general, while the ITE Law provides a specific legal basis for consumers involved in e-commerce transactions. As previously explained, e-commerce transactions bring various problems, including consumer data privacy issues. Privacy is the right of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is conveyed to other parties. Although privacy in Indonesia is not yet a major issue, in other countries privacy is considered a very important personal right. The definition of privacy is different from confidentiality; Privacy includes more than confidentiality, involves the right not to be disturbed, to maintain independence, not to be interfered with, and to control the use of information about individuals and how it is used.

### **Consumer dispute resolution in amazon transactions**

In the case of electronic transactions that are international in nature or involve parties from various countries, the parties can determine the choice of law to resolve the dispute. However, if the choice of law is not determined, the applicable law will refer to the principles of international private law (Article 18 paragraph (2) and paragraph (3) of the ITE Law). In addition, in accordance with the nature of civil law, the parties also have the authority to determine alternative dispute resolution institutions, such as courts, arbitration, or other institutions authorized to resolve disputes that may arise from international electronic transactions carried out by the parties (Article 18 paragraph (4) of the ITE Law). However, if in the electronic contract the parties do not mention a dispute resolution forum or institution, then disputes arising in international electronic transactions will be resolved based on the principles of international private law (Article 18 paragraph (5) of the ITE Law).

In addition, the Consumer Protection Law also regulates the option of resolving disputes through the courts or through an out-of-court settlement mechanism based on the voluntary choice of the parties involved in the dispute (Article 23 and Article 45 of the Consumer Protection Law). Thus, the resolution of disputes in trade transactions through the electronic system can be pursued in various ways, including through the courts. However, litigation usually has the potential to create ongoing conflicts between the parties involved. What's more, litigation in the context of international economic actors can have impacts such as differences in legal systems, determination of jurisdiction, damage to business relations, as well as questions regarding the implementation and enforcement of decisions.

In the context of trade transactions through electronic systems, opportunities for dispute resolution outside the court can be realized if the parties choose this option and

state it in the contract. Article 18 paragraph (3) of the ITE Law gives authority to parties to determine legal options in resolving disputes. The Consumer Protection Law also provides alternative dispute resolution out of court, including amicable compensation (Article 19 of the Consumer Protection Law) and through the Consumer Dispute Settlement Agency (BPSK) in accordance with Article 23 juncto Article 1 point 11 of the Consumer Protection Law. In e-commerce consumer disputes, the role of BPSK can be utilized by consumers. Even though the BPSK decision is binding and final (Article 54 paragraph (3) of the Consumer Protection Law), dissatisfied parties can submit an objection to the District Court and proceed with cassation to the Supreme Court (Article 56 paragraph (2) and Article 58 paragraph (2) Consumer Protection Act). Nevertheless, the implementation of consumer dispute resolution in electronic transactions is still limited.

### Conclusion

In discussing Laws and regulations in Indonesia, including the Consumer Protection Law (PK Law) and the Electronic Information and Transaction Law (ITE Law), have tried to regulate consumer protection against standard clauses in international electronic transactions. However, this arrangement is still a complex issue and continues to evolve along with technological developments and business trends. Consumer Protection Law (PK Law) No. 8 of 1999 provides a basic framework for protecting consumers in trade transactions, including electronic transactions. The PK Law regulates consumer rights, obligations of business actors, consumer dispute resolution, and other aspects related to consumer protection. Although the PK Law regulates the basic principles of consumer protection, the implementation and effectiveness of protection against standard clauses in international electronic transactions still needs to be updated and improved. Electronic Information and Transaction Law (ITE Law) No. 19 of 2016 regulates the legal aspects of electronic transactions, including trading transactions through electronic platforms. The ITE Law provides a legal basis for the use of electronic transactions, recognition of electronic contracts, as well as legal procedures and requirements. However, the ITE Law tends to focus more on technical and administrative aspects of electronic transactions than regulates in depth consumer protection against standard clauses.

Standard clauses in the End User License Agreement which stipulate that transactions are governed by the laws of other countries and written in English can create potential conflicts with the Consumer Protection Law (PK Law) and related laws and regulations in Indonesia. PK Law aims to protect consumers in trade transactions, including electronic transactions, by regulating consumer rights, obligations of business actors, and dispute resolution procedures. In this context, standard clauses that select the laws of other countries and foreign languages can lead to ambiguity in understanding the rights and obligations of Indonesian consumers, as well as hinder consumers access to adequate information in languages they can understand. In addition, such clauses may also raise questions regarding jurisdiction and dispute resolution. In the event of a dispute, consumers may face obstacles in pursuing legal proceedings in other countries with different laws and different languages. This can result in consumers being vulnerable to unfair practices or unequal legal protection. Therefore, there is a need to

ensure that the standard clauses in the agreement do not violate the principles of consumer protection regulated in PK Law and other related laws and regulations in Indonesia, and continue to ensure consumer access to clear and adequate information in the language they use. Understand. International electronic transaction dispute resolution in the context of standard clauses of End User License Agreements abroad can refer to the Consumer Protection Law (PK Law) and the Information and Electronic Transaction Law (ITE Law) in Indonesia. PK Law provides the basis for consumer protection in electronic transactions by regulating consumer rights and obligations of business actors. If there is a dispute regarding standard clauses that direct dispute resolution abroad, the PK Law provides a choice of settlement through legal processes in Indonesia or through an out-of-court settlement mechanism, such as the Consumer Dispute Settlement Agency (BPSK). Even though the authority to settle disputes outside the court is usually the consumer's right, if the consumer chooses settlement abroad, the service provider abroad also needs to ensure that the process continues in accordance with the principles of consumer protection in Indonesia. Meanwhile, the ITE Law regulates electronic transactions and establishes principles that must be followed in international electronic commerce. However, in the case of dispute resolution referred abroad, questions may arise regarding the jurisdiction and implementation of foreign decisions in Indonesia.

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