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The Comparison of Assessment of Standard Clauses in the Perspective of Business Activities between Indonesian (Civil Law) and American (Common Law) Countries

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Abstract. *Standard clauses are any rules or conditions and conditions that have been prepared and determined in advance by business actors in a binding document and/or agreement and must be fulfilled by consumers. Indonesia itself in the Civil Code has not been specifically regulated regarding standard clauses in a contract. So that this study has the aim of analyzing how standard contract activities are in business in Indonesia by reviewing other countries that adhere to the civil law legal system and standard contract assessments in America which use the Common Law legal system. This study uses a qualitative descriptive research method. The results of this study are that in Indonesia the Civil Code does not specifically regulate standard contracts. Referring to a country with a Civil Law legal system, the assessment of unfair clauses only applies to supplementary clauses, not to clauses that regulate the subject matter, presenting, presenting gifts for the goods given, as long as the clause is made clear and easy to understand. The United States has succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states. provided that the clause is made clear and easy to understand. The United States has succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states. provided that the clause is made clear and easy to understand. The United States has succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states.*

Keywords: Civil; Common; Comparison.

1. Introduction

The development of the business world in Indonesia is currently experiencing very rapid progress, which is followed by business developments in Indonesia. This condition shows that the Indonesian economy is very conducive for people who will do business in Indonesia, not only from Indonesian business people, but also from foreign countries. To ensure the law of the parties, it is necessary that the parties can use it in doing business. For this reason, a legal number of agreements is needed, which in the business world is called a business contract. However, on the other hand, the needs of such business actors are not followed by statutory regulations that can guarantee legal certainty in doing business, which can be compelled to comply with.[1]

The balance of the parties in the agreement with equal standing almost never occurs, for example the agreement between the house and the patient. Agreements between subordinates and agreements between the bank and the debtor are like credit agreements. an agreement[2]in Indonesia through the agreement of the parties (as stipulated under Article 1320 of the Civil Code for all types of agreements except for agreements in Article 52 paragraph (1)) of Law Number 13 of 2003 concerning Manpower), does not mean implementing as the formation of freedom of contract that applies universally in the whole world in forming a treaty. The agreements of the parties to agreements in Indonesia are factually more agree or disagree, as is the example of an agreement between workers and workers[3]in company regulations.

Thus, the agreement of the parties to the agreement in Indonesia can also cause an imbalance of the parties. Ideally it should lend the parties in a balanced position. Agreements with the parties that are in balance can provide guarantees of justice. Agreements are a very important aspect of business activities, whether carried out between individuals within one country or between companies that are cross-border in nature. The agreement was born with an agreement between at least two parties which can be ascertained that the agreement is based on the freedom of contract of the parties involved. One of them is as freedom of contract. Work agreements between workers and employers in the freedom of contract are the parties who bind themselves in a work agreement for a certain time. This issue describes the parties who are bound by this agreement, where the company is the first party and the employee concerned is the second party. On the day that has been determined by them, they have committed to enter into a cooperation

[1] Ridwan Khairandy, Indonesian Contract Law in a Comparison of Perspectives (First Part) (Yogyakarta: FH UII Press, 2013).
2 Mariam Darus Badrulzaman, Legal Framework for Agreements (Contracts) in Indonesia (Jakarta: ELIPS, 1998).
3 *MG Levenbach, Het Burgerlijk Wetboek En de Maatschappelijke Verhoudingen van 1838 Tot Heden*(Zwolle: Gedenkboek BW, nd).

agreement for a certain time in a company. The clauses state the names and addresses of the parties who are bound to the agreement, both the first party and the second party, and also state the location of the agreement. An agreement is a bond between a "worker" and an entrepreneur, the agreement is characterized by the following characteristics:[4]

Today, standard contracts have become an unavoidable necessity. It impedes that all business fields are covered by standard contracts, including credit agreements, insurance agreements, investments, delivery of goods, financing, leasing, installation of PDAMs, installation of home telephones, installation of PLN and even financing for consumption needs are also controlled by standard contracts. The use of standard contracts, especially in business activities, will never be carried out or removed from use based on a need by the community and used in business activities in particular.[5]

The development of standard contracts does not always have a negative connotation, because the aim is to provide convenience for the parties concerned. Standard legitimacy is no longer something that needs to be debated because it has become a business requirement in society with efficiency and effectiveness. Profitable commercial companies prefer the use of standard contracts. The use of standard contracts is the impact of economic development, the relationship between consumers and producers. In the goods and services business, standard contracts become a habit, which are needed longer and contribute to existing contracts. The need to contract, which was originally presented in the fulfillment of basic human needs (clothing, food and shelter) which is a basic physiological need, but as a result of the times, Human needs that were originally not basic needs became basic needs. The standard contract also covers areas that are in accordance with basic human needs, where the recipient of the standard contract has a dependency on the goods or services offered in the standard contract so that related to rights there are no regulatory norms related to contracts, commercial contracts require a special arrangement. to protect parties who are weaker in position because the state has an obligation to guarantee the implementation of human rights in the field of standard contracts. In addition, it is also necessary to supervise the standard clauses that exist in society.[6]

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[4]Waro Muhammad, Application of the Principle of Freedom of Contract in a Work Agreement for a Specific Time in https://waromuhammad.blogspot.co.id/2012/02/pener apan-asas-kebebasan-bercontract.html. Retrieved November 4, 2021.

[5] Badrulzaman, Legal Framework for Agreements (Contracts) in Indonesia.

[6] See the writings of David ML Tobing, "Consumers and Clauses", Article, source http:www.bpkn.go.id/uploads/document, accessed on July 1 2016, states that based on the results of research conducted in early 2014 to early 2015, in fact the standard clauses that are prohibited under the UUPK are still being treated and the results of interviews with the management of the

Based on the cases that have been described, there are weaknesses in the practice of making standard contracts, namely the existence of one-sided clauses that do not affect the balance of positions. Likewise, from tracing existing regulations and the research described above, legal limitations need to be made, especially in the regulation and supervision of standard contracts so as to protect human rights. assessment of unfair clauses in standard contracts can be visited from several countries with different legal systems. In writing this research, we want to see how standard contracts are in the legal system in Indonesia which adheres to the civil law legal system, with standard contact with the United States as countries that adhere to the Civil Law legal system.[7]

2. Research Methods

This research is a qualitative descriptive study with the aim of obtaining research results and an overview of comparisons in the standard setting of the perspective of business activities in Indonesia and America. The data used is in the form of secondary data obtained through the publication of data from regulations and journals that explain standard contracts. The data is then analyzed using the existing theory to obtain research results. This study uses a qualitative descriptive approach, which is an approach in which it uncovers a social condition and usually describes a state of an object, whether a person, society, institution, etc., based on observations and interviews. The method used is a literature review that is relevant to the research problem. This method conducts studies by collecting library data, reading, recording and managing research materials.Literature study is a study conducted by researchers using, collecting and searching for a number of books related to the problem and purpose of the research being carried out.

3. Results and Discussion

The terms used in standard contracts vary. Mariam Darus Badrulzaman uses the term "standard agreement" which is translated from the Dutch term, namely standard contract or staanardvoorwaarden. In German literature, the terms used for standard agreements are allgemeine geshaftsbedingun, standardvertrag, standarardkenditionen, while the terms from English are standard contract, standard form of contract, contract of adhesion. J.Satrio terms the terms of the adhesive agreement for standard contracts, while P.Lindawaty S.Sewu mentions various terms for standard contracts such as adhesion contracts, general terms, consumer conditions, grinding contracts, standard terms, contracts standard.

Consumer Dispute Settlement Agency (BPSK) have not been able to oversee the standard clauses to take action against business actors who are standard prohibited clauses. .

[7] S yahmin, International Contract Law (Jakarta: Rajawali Pers, 2011).

a. Assessment of Standard Clauses in Indonesia

Indonesia still has the Civil Code (KUHPerdata) left over from the Dutch colonial era to regulate civil law relations between parties. The Civil Code does not regulate and anticipate standard contracts. Based on the Civil Code as long as the contract meets the requirements regulated under Article 1320 of the Civil Code, the contract is valid and binding.[8]The Civil Code does not regulate specific standard contracts. In the Netherlands the old Civil Code has been replaced by the Niew Burgerlijk Wetboek (NBW) which in Chapter 6 regulates standard contracts. After the entry into force of all NBW provisions since January 1, 1992, the standard clause received a special arrangement with the title algemene voorwaarden. Based on Article 6.233 NBW26, it stipulates that a contract with standard clauses can be canceled if it is in accordance with common sense, or if the party claiming it demands standard clauses, it does not give the opposing party the opportunity to obtain an explanation about those clauses. This rule stipulates that the standard contract maker has an obligation to provide a reasonable opportunity for the contract recipient to obtain sufficient knowledge and provide a reasonable burden. NBW balance on the balance of the position of the parties in making a standard contract. In Indonesia, existing legal regulations regarding new standard clauses can be found in Law Number 8 of 1999 concerning Consumer Protection (UUPK), Financial Services Authority Regulation Number: 01/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector and Circular Letters Financial Services Authority Number 13/SEOJK.07/2014 Concerning Standard Agreements. The UUPK only regulates the prohibition of the inclusion of certain standard clauses and the prohibition of the inclusion of standard clauses where locations or documents are difficult to see (Article 18 UUPK), and the purpose in the final consumer contract is related to goods and or services. Financial Services Authority Regulation Number: 01/POJK.07/2013 Concerning Consumer Protection in the Financial Services Sector and Financial Services Authority Circular Letter Number 13/SEOJK. 07/2014 concerning Standard Agreements also only regulates end consumers specifically in the field of financial services. The existing rules do not regulate intermediary consumers, actually in reality commercial contracts (agency contracts, distributor contracts) violate standard clauses in their contracts and existing developments, standard contracts besides being used in consumer contracts, are also used in other commercial contracts.[9]

b. Standard Clause Assessment in the United States

[8]Article 1320 of the Civil Code determines four conditions for an agreement to be valid, namely (1) ordering; (2) want; (3) Certain objects; (4) Halal causes.

[9] Dr. Ketut Westra, "Implementation of the Principle of Balance in Standard Contract Arrangements in the Perspective of Business Activities," Dissertation 59 (nd).

In 1952 the National Conference of Commissioners on Uniform State Law or often referred to as the Uniform Law Commission succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states. Based on Articles 2 Sales Section 2-302[10]The UCC contains the most important rules against unfair clause protection and freedom of contract. Section 2-302525 confirms the following:

1) If a court based on law finds that a clause in the contract is contrary to conscience or unreasonable at the time the contract is drawn up, the court may refuse to enforce the contract, or may treat other clauses without a clause in accordance with conscience, or limit the applicability of the clause according to conscience. with that conscience in order to avoid undeserved consequences.

2) In court that the contract or clause is deemed not in accordance with the conscience of the parties if given sufficient time to show evidence regarding the making of the contract, the purpose and consequences to help give the court a decision)

It also contains the obligation to have good faith and act honestly as a continuation of this provision. Clauses that conflict with this are seamless contracts or clauses. Contracts that contain unfair clauses the court may refuse to enforce the contract, or reject the unfair clause and enforce the rest of the contract without such clauses or limit its enforceability to avoid unexpected outcomes. This doctrine is called the doctrine of unconscionability. Unconscionability when viewed from its meaning, namely unconscionable is defined as "the existence of inadequacy and injustice of the contract related to the court's action to change or change it".[11]Another meaning is "unnatural, hard and shocking, so that will judge it". Munir Fuady called this doctrine an unfair name, while Sutan Remy Sjahdeini was placed on a discrepancy with conscience. This doctrine developed in contract law in the United States. This doctrine makes it possible for a judge to define a part of a contract, or even the whole contract itself, if it also contains the obligations required to act in good faith and act honestly in furtherance of this provision. Clauses that conflict with this are seamless contracts or clauses.

Contracts that contain unfair clauses the court may refuse to enforce the contract, or reject the unfair clause and enforce the rest of the contract without such clauses or limit its enforceability to avoid unexpected outcomes. This doctrine is called the doctrine of unconscionability. Unconscionability when viewed from its meaning,

[10]Uniform Commercial Code (UCC) source http: thorpu.ou.edu/TribalUCC, accessed on 21 August 2016.
[11]Source thelawdictionary.org, accessed on 21 August 2016.

namely unconscionable is defined as "the existence of inadequacy and injustice of the contract related to the court's action to change or change it". Another meaning is "unnatural, hard and shocking, so that will judge it".[12]Munir Fuady called this doctrine an unfair name, while Sutan Remy Sjahdeini was placed on a discrepancy with conscience. This doctrine developed in contract law in the United States. This doctrine made it possible for a judge to determine a part of a contract, or even the entire contract itself if it was broken after traveling about 60 kilometers. The court ruled that Henningsen had the right to compensate with the exception clause issue. The court based its decision that the exclusion clause made by Bloomfied was a public error so it was annulled. According to Corley and Shedd quoted by Sutan Remy Sjahdeini, in order for a contract to be mandatory, the material conditions must be conspicuous, must be accessible to ordinary people, and must be the result of a genuine (true) bargaining process. The parties must understand the terms contained in the standard contract.[13]

Comparison of standard clauses in France with the Civil Law legal system and America with the Common Law legal system where Indonesia can see references to countries with a Civil Law system, which include:

	America	**France**
Source	*Uniform Commercial Code (UCC)*	*Code de la Consomnation*(Consumer Code)
Clause Type	All Clauses	Only applies to supplementary clauses (can be standard clauses and can not)
		process
Principle	Doctrinal indifference	Good faith balance

Table 1 Comparison of Assessment of Standard Clauses

[12]Source: http:legal-dictionary.thefreedictionary.com, accessed on 21 August 2016.
[13]Arthur A.Leff, 1967, “Unconscionability and The Code: The Emperor's New Clause”, Article, Yale School of Law Scholarship Series, Volume 115.485, University of Pennsylvania, p.487, Source http: digitalcommons.law.yale.edu/ fss_papers/2823, accessed on 21 August 2016. p.483.

4. Conclusion

Indonesia still has the Civil Code (KUHPerdata) left over from the Dutch colonial era to regulate civil law relations between parties. The Civil Code does not regulate and anticipate standard contracts. Based on the Civil Code as long as the contract meets the requirements regulated under Article 1320 of the Civil Code, the contract is valid and binding. The Civil Code does not regulate specific standard contracts. Referring to a country with a Civil Law legal system, the assessment of unfair clauses only applies to supplementary clauses, not to clauses that regulate the subject matter, presenting, presenting gifts for the goods given, as long as the clause is made clear and easy to understand. In giving an assessment of unfair contracts or clauses, refer to the conditions or circumstances when the contract was made, and other related contracts (if any). For America In 1952 the National Conference of Commissioners on Uniform State Law or often referred to as the Uniform Law Commission succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states. For America In 1952 the National Conference of Commissioners on Uniform State Law or often referred to as the Uniform Law Commission succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states. For America In 1952 the National Conference of Commissioners on Uniform State Law or often referred to as the Uniform Law Commission succeeded in issuing the Uniform Commercial Code (UCC). Guidelines in business activities that do not have coercive legal force, but are able to provide the main principles in providing protection for consumers in America, which have been followed by 50 states.

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