

# Standard Clause Problems in E-Commerce Based on Indonesian Civil Law

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## Standard Clause Problems in E-Commerce Based on Indonesian Civil Law

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### Abstract

Standard clauses are agreements determined by one party, usually a business actor. Standardized clauses are always part of e-commerce agreements, and this can be considered legal because it implements the principle of freedom of contract. This research aims to determine standard clauses in e-commerce in terms of civil law in Indonesia. The study is descriptive and utilizes normative juridical research through a legislative approach. Subsequently, secondary data collection techniques were employed using a literature review. The acquired data were then subjected to qualitative analysis. Based on the analysis in this research, it is known that standard clauses embody the principle of freedom of contract as regulated in Article 1338, paragraph (1) of the *Code of Civil Law*. However, they must still fulfill the legal requirements of the agreement as regulated in Article 1320 of the *Code of Civil Law*.

### A. INTRODUCTION

Indonesia is currently implementing national development in all fields, all of which have specific targets, and the results of this development have shown improvements in the achievement of development targets for the welfare of society. Development in the economic and infrastructure sectors is a form of development that is quickly felt by the community directly.<sup>1</sup> Among the many development activities carried out by the Indonesian Government to improve the

community's economy, especially in the trade sector in the era of globalization, is implementing a trading system using information technology.

The application of information and communication technology systems influences the climate of the business world in the form of economic and business sector transactions, which move in a fast rhythm and with easy access obtained through rapidly developing internet technology. Ease of access to information technology in every space

<sup>1</sup> Hartanto, "Karakteristik Penerapan Hukum Ekonomi Dalam Pembangunan Di Indonesia," *Jurnal Widya Pranata Hukum* 1, No. 2 (2019): 137-148, <https://doi.org/10.37631/widyapranata.v1i2.45>, p. 138.

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connected to an internet connection is not hindered by time and space when carrying out electronic-based trading transactions.<sup>2</sup>

Trade transactions can be carried out directly or indirectly via the Internet (cyberspace). Trade transactions using Internet facilities have changed the business world from traditional trading patterns to a more modern trading system, namely a virtual trading system known as electronic commerce (e-commerce). In principle, conventional transactions are not much different from e-commerce transactions.<sup>3</sup> In its development, apart from being caused by developments in information technology, e-commerce was also born because of society's demands for fast, easy, practical services and better quality.

Electronic trade transactions in Indonesia show rapid development, primarily e-commerce, significantly influencing global trade. Increasingly advanced technological developments and high levels of innovation by entrepreneurs have made the pace of e-commerce business faster and more widely known by the public. The profits obtained from this business model are

much more significant when compared to other companies that do not rely on e-commerce. In this context, e-commerce can reach a more substantial number of customers and provide customers with constant access to all information. Apart from that, e-commerce can encourage creativity on the part of sellers precisely and quickly, and the information transmitted occurs periodically. E-commerce can create high efficiency, cheap, and informative and increase customer satisfaction with fast, easy, safe, and accurate service. The growth of online-based businesses in Indonesia will continue to grow yearly due to the dynamics of public understanding of online-based information technology.<sup>4</sup>

Even though using the Internet in trade transactions promises various conveniences, this does not mean that e-commerce is a system free from problems, especially for countries that have not yet regulated e-commerce. In practice, many cases have caused harm to consumers because of the use of Internet media in trade transactions.<sup>5</sup> E-commerce is relatively easy to use in buying and selling transactions, so there is a legal relationship attached to Internet

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<sup>2</sup> Husna Yunita and Muhamad Sholeh, "Implementasi Teknologi Informasi Dan Komunikasi (TIK) Sebagai Media Penunjang Pembelajaran," *Jurnal Inspirasi Manajemen Pendidikan* 9, No. 2 (2021): 377-388, p. 385.

<sup>3</sup> Mersetyawati C. M. Lamber, "Legalitas Transaksi Penjualan Melalui Internet Ditinjau Dari Hukum Perdata," *Lex Privatum* 5, No. 8 (2018): 110-119, p. 116.

<sup>4</sup> M. Ikhwan Syarif, Misbah Hannum, Sri Wahyuni, and Nurbaiti, "Potensi Perkembangan E-commerce Dalam Menunjang Bisnis Di Indonesia," *Journal Of Computers And Digital Business* 2, No. 1 (2023): 1-14, <https://doi.org/10.56427/jcbd.v2i1.30>, p. 8.

<sup>5</sup> M. Arsyad Sanusi, "Transaksi Bisnis Dalam Electronic Commerce," *Jurnal Hukum* 16, No. 8 (2001): 10-29, <https://doi.org/10.20885/iustum.vol8.iss16.art2>, p. 13.

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transactions. The Information and Electronic Transactions Law is the basis for regulating electronic transactions via Internet media, such as computers, cell phones, etc., so that these activities result in legal actions that can be accounted for.<sup>6</sup> Apart from that, acts often occur that can be qualified as unlawful acts. Due to the frequent occurrence of illegal acts via the Internet, people are careful when carrying out e-commerce transactions.<sup>7</sup>

Currently, in Indonesia, there is Law Number 11 of 2008 concerning Information and Electronic Transactions, updated by Law Number 19 of 2016 and Law Number 1 of 2024 (in the future referred to as the Information and Electronic Transactions (ITE)). These provisions regulate someone's use of technology electronically, either directly or indirectly.<sup>8</sup> The Information and Electronic Transactions (ITE) Law has regulations regarding electronic transactions, including trading via the Internet. Still, they often cannot accommodate unlawful acts in electronic transactions because of the broad scope of the definition of illegal acts, which are

not regulated explicitly or specifically in the Information and Electronic Transactions (ITE) Law.

The use of the Internet for human activities makes the world limitless. Even though there are many uses for the Internet that people can enjoy in their daily lives, the presence of the Internet is open to various problems. The same applies to business activities described as online or e-commerce. In practice, e-commerce activities involve contracts regulated by civil law, the implementation of which often creates problems that are detrimental to various parties. Actions that cause losses are called unlawful acts. This act is regulated in Article 1365 of the Civil Code. Still, it is not explicitly regulated by the Information and Electronic Transactions (ITE) Law, even though one legal provision that applies to e-commerce in Indonesia is the Information and Electronic Transactions (ITE) Law. This situation causes many losses due to illegal activities in online trading.<sup>9</sup> Moreover, unlawful acts are often immediately considered criminal acts, giving rise to difficulties in claiming

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<sup>6</sup> R.R. Dewi Anggraeni and Acep Heri Rizal, "Pelaksanaan Perjanjian Jual Beli Melalui Internet (*E-commerce*) Ditinjau Dari Aspek Hukum Perdataan," *Salam: Jurnal Sosial Dan Budaya Syari* 6, No. 3 (2019): 223-238, <https://doi.org/10.15408/sjsbs.v6i3.11531>, p. 225.

<sup>7</sup> Putu Pery Indrawan, "Kontrak Perdagangan Melalui Internet (Electronic Commerce) Ditinjau Dari Hukum Perjanjian," *Jurnal Analogi Hukum* 3, No. 3 (2021): 388-392, <https://doi.org/10.22225/ah.3.3.2021.388-392>, p. 389.

<sup>8</sup> Aldo Ernandi Putra and Tantimin, "Kajian Hukum Pasal 27 Ayat 3 UU ITE Terhadap Kebebasan Berpendapat Masyarakat," *Jurnal Justitia Jurnal Ilmu Hukum dan Humaniora* 9, No. 5 (2022): 2366-2374, <http://dx.doi.org/10.31604/justitia.v9i5.2366-2374>, p. 2370.

<sup>9</sup> Stefanus Gandi and Ida Ayu Sadnyini, "Perspektif Hukum Tentang Perbuatan Melawan Hukum Dalam Transaksi Online Menurut Burgerlijke Wetboek Dan Undang-Undang Nomor 11 Tahun 2008," *Syntax Literate: Jurnal Ilmiah Indonesia* 7, No. 9 (2022): 14441-14447, <https://doi.org/10.36418/syntax-literate.v7i9.9555>, p. 14443.

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<sup>1</sup> material and immaterial losses because criminal sanctions only provide corporal punishment and/or fines whose aim is to have a deterrent effect on the perpetrator. Settlement of disputes regarding unlawful acts related to e-commerce often uses litigation mechanisms that are considered ineffective.<sup>10</sup>

This research studies the problems of using standard clauses in e-commerce agreements based on Indonesian civil law. This research was conducted because, in practice, many businesses' legal relationships are bound by agreements with standard clauses made unilaterally, usually by the business actor. The other party (consumer) only has the choice of agreeing or not (take it or leave it). These standard clauses need to be clarified, including consumers objecting to the standard clauses determined by business actors in the agreement. Still, consumers cannot convey these objections because there is only the option of agreeing or not (take it or leave it). Standard clauses can also give rise to the assumption that agreement as a condition for the validity of a contract is not fulfilled as regulated in Article 1320 of the Civil Code, so it needs to be analyzed in more depth.

A previous research theme discussed standard clauses in e-commerce when this research was conducted. First, research was conducted by Fadel Edo Romires with the title "Use of Standard Clauses in E-commerce Agreements Viewed from a Consumer Protection Perspective." The results of his study stated that if the standard clause requirements that are allowed are not fulfilled, then the agreement is null and void. Article 18, paragraph (3) of the Consumer Protection Law confirms that every standard clause the business actor has stipulated in a document or agreement that includes provisions as intended above is declared null and void by law. So, standard clauses in e-commerce transactions are valid if they do not violate Article 1337 of the Civil Code and Article 18, paragraphs (1) and (2) of the Consumer Protection Law.<sup>11</sup>

Second, research was conducted by Ghazwan Aqrabin Faqih titled "Standard Clauses in Sales and Purchase Agreements via E-commerce According to Indonesian Positive Law." The research results show that the validity of standard agreements or standard clauses containing exoneration clauses does not meet the objective requirements

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<sup>10</sup> Alfred Yetno, "Penyelesaian Kasus Hukum Pada Transaksi Elektronik Atau E-commerce Bagi Konsumen Di Era Digital Di Indonesia," *Satya Dharma Jurnal Ilmu Hukum* 5, No. 2 (2022): 168-186, <https://doi.org/10.33363/sd.v5i2.912>, p. 172.

<sup>11</sup> Fadel Edo Romires, "Penggunaan Klausula Baku Dalam Perjanjian E-commerce Ditinjau Dari Perspektif Perlindungan Konsumen," *Jurnal Inovasi Penelitian* 3, No. 4 (2022): 5799-5813, <https://doi.org/10.47492/jip.v3i6.1956>, p. 5809.



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of a contract and, as a result, is null and void.<sup>12</sup>

Third, research was conducted by Jeremiah Immanuel Christian titled "Good Faith in Standard Clauses in E-commerce." The research results show legal consequences if there is no good faith principle in standard clauses in e-commerce. The legal implications of bad faith in an online buying and selling agreement can result in civil prosecution for the party with bad faith.<sup>13</sup>

In previous research, an analysis of standard clauses in consumer financing for purchasing motorized vehicles was carried out. In this case, consumers only have the choice of agreeing or disagreeing (take it or leave it) with the contents of the standard agreement. Approval of the contents of the agreement is marked by the affixing of a signature by the consumer. Meanwhile, a novelty emerged in this research: standard clauses in e-commerce, which are realized in electronic documents in a particular software system or application. In this e-commerce, the choice to agree or disagree with the standard clause is not marked with a regular signature but simply by clicking on the option provided by the business actor. Thus, this research

aims to determine standard clauses in e-commerce in terms of Indonesian civil law.

## B. RESEARCH METHODS

The specifications of this research are descriptive with a type of normative juridical research that uses secondary data with primary, secondary, and tertiary legal materials through a statutory approach. This data was obtained using data collection techniques through a literature study of various kinds of literature and statutory regulations, then the data obtained was analyzed qualitatively.

## C. RESULTS AND DISCUSSIONS

Trade transactions carried out via electronic media are known as e-commerce, where the parties wishing to carry out transactions do not have to meet face to face but can be carried out in conditions where each party is in a different place. Transactions like this are carried out via the Internet, which is familiar in society, including Indonesia. E-commerce transactions involve buying and selling goods related to the

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<sup>12</sup> Ghazwan Aqrabin Faqih, Djumardin, and Aris Munandar, "Klausula Baku Dalam Perjanjian Jual Beli Melalui E-commerce Menurut Hukum Positif Indonesia," *Jurnal Risalah Kenotariatan* 4, No. 2 (2023): 844-851, <https://doi.org/10.29303/risalahkenotariatan.v4i2.188>, p. 847.

<sup>13</sup> Yeremia Immanuel Christian, "Itikad Baik Dalam Klausula Baku Pada E-commerce," *Jurnal Sosialita* 2, No. 1 (2023): 85-95, p. 89.

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taxation system.<sup>14</sup> Based on Article 46 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, electronic transactions can be carried out based on electronic contracts or other contractual forms as a form of agreement made by the parties. An electronic contract is considered valid if:

1. There is an agreement between the parties;
2. Carried out by competent legal subjects or those authorized to represent them by the provisions of statutory regulations;
3. There are certain things, and
4. The object of the transaction must not conflict with laws and regulations, morality, and public order.

Meanwhile, according to Article 47 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, electronic contracts with standard clauses must comply with the provisions regarding standard clauses regulated in statutory regulations, including the Consumer Protection Law.

The validity of an electronic transaction cannot be separated from the underlying legal provisions, in this case referring to the principle of freedom

of contract. Electronic transactions are based on the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code, that every person is free to determine the form, type, and content of the agreement as long as it meets the conditions for the validity of the agreement by the provisions of Article 1320 of the Civil Code, does not violate public order and morality, so that every agreement is binding like law for the parties to the agreement in question. The agreement not only states the rights and obligations of the parties, but the force majeure provisions are an essential part of the grounds for canceling the agreement.<sup>15</sup> Likewise, in electronic transactions, the parties involved are legal subjects; individuals and legal entities are free to enter into agreements in the form, method, and content determined based on the parties' agreement. In this case, the parties carry out an agreement in the form of a transaction via the Internet with the contents of the agreement agreed upon by the parties via the Internet. So, they communicate with each other via the Internet.

According to the provisions of Article 1320 of the Civil Code, the conditions for the validity of an agreement consist of the following:

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<sup>14</sup> Johannes Johny Koynja, Sofwan, Rusnan, and Erlies Septiana Nurbani. "Transaksi Perdagangan Melalui Sistem Elektronik Oleh Pelaku Usaha E-commerce Dalam Memenuhi Target Penerimaan Perpajakan," *Jurnal Kompilasi Hukum* 4, No. 2 (2019): 77-96, <https://doi.org/10.29303/jkh.v4i2.19>, p. 82.

<sup>15</sup> Andi Risma and Zainuddin, "Tafsir Pandemi Covid-19 Sebagai Alasan Force Majeure Yang Mengakibatkan Pembatalan Perjanjian," *Jurnal Wawasan Yuridika* 5, No. 2 (2021): 100-112, <https://doi.org/10.25072/jwy.v5i1.420>, p. 108.

1. Agreement between the parties;
2. Skills of the parties;
3. A particular thing; and
4. A lawful cause.

The agreement between the parties regarding something that gives rise to a legal agreement/relationship gives rise to rights and obligations; if it is not carried out as agreed, there will be sanctions.<sup>16</sup> The agreement between the parties means there must be a conformity of will between the parties, whether expressed expressly or tacitly. Likewise, in electronic transactions, an agreement occurs after there is an agreement from the parties entering into the transaction. Based on the principle of consensualism, an agreement is considered to exist simultaneously as an agreement to agree arises. In carrying out electronic transactions, including online-based buying and selling, there are four fundamental theories about agreements, including listings theory (theory when giving birth to a will), verzend theory (theory when sending an acceptance letter), ontvangst theory (theory when receiving an offer letter), and vernemings theorize (theory when knowing the acceptance letter). An electronic transaction such as one carried out via the Facebook application can be

valid if it fulfills the legal conditions of the agreement implemented via electronic media. If one of the conditions for the agreement's validity is not fulfilled, the transaction can be canceled or null and void by law.<sup>17</sup>

The UNCITRAL Model Law on Electronic Commerce is a soft law that allows countries to enact regulations regarding the validity of smart contracts. Parties who use intelligent contracts in e-commerce transactions can refer to national law if the parties use them on a national scale. Meanwhile, if smart contracts are used in cross-border transactions, then a choice of law and jurisdiction clause must be affixed along with the smart contract. Article 15 of the UNCITRAL Model Law on Electronic Commerce (1996) states that the legal place for data messages to be sent or received, unless otherwise regulated, in this case, the sending of news takes place at the place where the sender of the news has a legal place of business (place of business).<sup>18</sup> This appointment to the 1996 UNCITRAL Model Law was made considering that electronic data interchange follows standard business or trade data exchange methods in a format commonly agreed upon by the parties.

<sup>16</sup> Niru Anita Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 10, No. 1 (2019): 1-20, <https://doi.org/10.35968/jh.v10i1.400>, p. 3.

<sup>17</sup> Stephanie Nathania Maramis, Merry Elisabeth Kalalo, and Rudolf Sam Mamengko, "Kajian Hukum Tentang Keabsahan Jual Beli Online Pada Aplikasi Facebook," *Lex Privatum* XI, No. 4 (2023): 1-8, p. 2.

<sup>18</sup> Afina Azzahra, Patricia Audrey, and Hikmatul Ula, "Keabsahan Smart Contract Berdasarkan Uncitral Model Law On Electronic Commerce (Studi Komparatif Ketentuan Hukum Di Indonesia Dan Singapura)," *Brawijaya Law Student Journal* 1, No. 1 (2023): 283-296, p. 284.



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The competence of the parties is a general requirement to be able to carry out valid legal actions. A person is legally competent (*rechtsbekwaamheid*) if he is an adult, of sound mind, and is not prohibited by statutory regulations. Likewise, in an electronic transaction, the parties involved must meet these skill requirements, but one party needs to know whether the other party meets the skill requirements. Electronic transactions must be based on an element of trust in each other. The validity of agreeing online is fundamental because it is a subjective requirement that must be fulfilled based on Article 1320 of the Civil Code, especially the second requirement regarding skill in carrying out legal acts. After all, the parties do not meet face-to-face in online buying and selling transactions. Directly, the parties only carry out transactions through an electronic system.<sup>19</sup>

A specific thing in the agreement means that the goods that are the object of the agreement can be traded as regulated in Article 1332 of the Civil Code. A specific

thing is the subject of the agreement, an achievement that must be fulfilled and is the object of the agreement. The achievement must be exact; at least its type can be determined, and what is promised must be straightforward.<sup>20</sup> The agreed-upon object must be transparent regarding the type and quantity of electronic transactions.

A lawful cause is another objective condition for the validity of the agreement. Based on Article 1335 of the Civil Code, an agreement without cause or which has been made for a false or prohibited reason has no force. Halal cause means that the agreement's contents do not conflict with public order, morality, and the law.<sup>21</sup> Article 1320 of the Civil Code must explain the meaning of *oorzaak* (halal cause). In Article 1337 of the Civil Code, prohibited causes are stated. A cause is forbidden if it conflicts with law, morality, and public order provisions. So, the agreement made is permissible according to law.<sup>22</sup>

In contract law, the principles of contract law are known, namely: the

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<sup>19</sup> I Nyoman Rekyadi Jayadinata and I Wayan Novy Purwanto, "Urgensi Kecakapan Dalam Perjanjian Jual Beli Secara Online," *Jurnal Kertha Semaya* 8, No. 6 (2020): 970-981, p. 972.

<sup>20</sup> Imelda Yosina Lopo, Agustinus Hedewata, and Helsina Farnsiska Pello, "Tinjauan Yuridis Terhadap Perjanjian Jual-Beli Yang Dibuat Melalui Medi Elektronik Berdasarkan Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *JHO Jurnal Hukum Online* 1, No. 1 (2023): 34-40, <https://doi.org/10.59141/cerdika.v3i5.602>, p. 35.

<sup>21</sup> Tri Wahyu Surya Lestari and Lukman Santoso, "Komparasi Syarat Keabsahan 'Sebab Yang Halal' Dalam Perjanjian Konvensional Dan Perjanjian Syariah," *Jurnal Pemikiran Hukum Dan Hukum Islam* 8, No. 2 (2017): 281-298, <http://dx.doi.org/10.21043/yudisia.v8i2.3240>, p. 290.

<sup>22</sup> Endi Suhadi and Ahmad Arif Fadilah, "Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Jurnal Inovasi Penelitian* 2, No. 7 (2021): 1967-1977, <https://doi.org/10.47492/jip.v2i7.1078>, p. 1968.

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principle of consensual, the principle of freedom of contract, the principle of binding power (*pacta sunt servanda*), the principle of good faith, the principle of trust, the principle of personality, the principle of legal equality, the principle of balance, the basis of legal certainty, the basis of morality, the basis of decency, the basis of custom, and the basis of protection. These principles are the basis for the parties in determining and agreeing on day-to-day legal activities. Thus, the entire basis is an important matter and must be observed by the agreement makers so that the final goal of an agreement can be achieved and implemented as desired by the parties.<sup>23</sup> Transactions carried out electronically are also bound by the principles stated above.

Juridically, contract law gives the broadest possible freedom to the public to enter into agreements containing anything if it complies with statutory regulations and does not violate public order and morality. However, in practice, agreements are often made in standard agreements by one of the parties. It is, among other things, caused by the imbalance in the parties' positions. The imbalance in the parties' position causes the principle of freedom of contract to reduce its meaning and value.<sup>24</sup>

Standard clauses, which implement the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code, are often used in various business agreements, including e-commerce. Standard clauses are made unilaterally by one of the parties to the agreement, usually the business actor, and this causes the consumer as one of the parties to the agreement to be in a dilemma position between agreeing to whatever content of the agreement has been determined unilaterally and is often burdensome for the consumer. (take it) or disagree with the agreement's contents, which have been determined unilaterally by the business actor. It means that the legal relationship as intended in the agreement will not occur (leave it). Meanwhile, Article 1320 of the Civil Code confirms the conditions for the validity of an agreement as described above, including the parties' agreement. In this case, an agreement is considered legally valid if there is a conformity of will between the parties to the agreement so that no elements of coercion, error, or fraud are permitted by the provisions of Article 1321 of the Civil Code. However, in agreements that use standard clauses, the agreement's contents are determined unilaterally so that the other parties do not necessarily agree with the contents

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<sup>23</sup> Ghea Kiranti Shalilah, "Tinjauan Terhadap Peranan Asas Hukum Perjanjian Dalam Mewujudkan Hakekat Perjanjian," *Lex Privatum* 10, No. 2 (2022): 1-13, p. 2.

<sup>24</sup> Anggitariyani Rayi Larasati Siswanta and Maria Mu'ti Wulandari, "Penerapan Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Perjanjian Kerja," *Soedirman Law Review* 4, No. 4 (2022): 409-420, <https://doi.org/10.20884/1.slr.2022.4.4.221>, p. 410.

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of the standard provisions. Still, in some conditions, consumers need to realize the agreement, even though they disagree with the contents. Agreement, the agreement is still signed. From a formal juridical perspective, the parties' signature in an agreement is a sign that the parties agree to the agreement's contents, even though some parties feel forced to do so.

In practice, using standard clauses in agreements, especially business agreements, both conventionally and through electronics systems (e-commerce), is a form of efficient implementation of the accords amid today's advances, where parties can carry out business transactions without meeting face-to-face. Anyone can do it wherever they are without being limited by space and time (borderless). One of the benefits of information technology is that it supports efficiency in business relationships.

Likewise, in e-commerce, as an agreement whose form is made and agreed upon online and the contents of the agreement are determined unilaterally by the business actor, it is an implementation of the principle of freedom of contract, basically as long as and if the parties agree on the contents of the agreement (standard clauses), then the agreement is considered legally valid. Statements of approval for electronic

agreements are carried out online using various methods, including clicking on the features provided by the business actor as a sign that the consumer agrees to all the provisions in the e-commerce in question.

The conditions for the agreement's validity are the main factor for electronic and conventional transactions. Apart from that, there are also elements of agreements based on civil law, namely first, the essential elements, namely the basic elements that absolutely must be present in an agreement, such as the identity of the parties and the deal in the agreement. Second, naturalia elements exist in the agreement even if the parties do not specify them explicitly, such as good faith in the agreement and no hidden defects in the object of the agreement. Third, accidental elements are added to the agreement by the parties.<sup>25</sup> These elements must also be applied in electronic transactions.

Based on the provisions of Article 1 Number 2 of the Information and Electronic Transactions (ITE) Law, electronic transactions are legal acts carried out using computers, computer networks, and/or other electronic media. In line with this, an electronic transaction, including electronic trading transactions, must be included in an electronic contract that binds the parties

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<sup>25</sup> Ikka Puspita Sari, "Keabsahan Perjanjian Kontrak Elektronik Dalam Transaksi ECommerce Di Tinjau Dari Hukum Perdata," *JA: Jurnal Al-Wasath* 3, No. 2 (2022): 105-112, <https://doi.org/10.47776/alwasath.v3i2.613>, p. 105.



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by the provisions of Article 18 of the Information and Electronic Transactions (ITE) Law.

E-commerce is relatively easy to use in buying and selling transactions, so there is a legal relationship attached to Internet transactions. The Information and Electronic Transactions (ITE) Law is the basis for regulating electronic transactions via Internet media such as computers, cell phones, etc., so these activities give rise to legal actions that can be accounted for.<sup>26</sup> In general, e-commerce can be defined as all forms of trade transactions in goods or services (trade of goods and services) using electronic media. Apart from what has been mentioned above, these commercial activities are part of business activities (e-commerce is apart from e-business).

E-commerce is a modern buying and selling transaction model that applies technological innovations such as the Internet as a transaction medium. Thus, if there is no other agreement, the general provisions regarding agreements, sales, and purchase agreements regulated in Book III of the Civil Code apply as the legal basis for e-commerce activities in Indonesia. Suppose a dispute arises

between parties directly or indirectly involved in e-commerce, such as sellers and buyers. In that case, for third parties such as financing institutions and providers such as electronic transaction media, the resolution is carried out by the legal provisions regulated in Book III of the Civil Code.<sup>27</sup>

The validity of electronic contracts in e-commerce transactions must comply with the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement. Suppose the standard clauses in an e-commerce transaction are proven not to fulfill the conditions for the agreement's validity subjectively. In that case, if they do not meet the parties' agreement or the parties' capabilities, then the e-commerce transaction can be canceled, meaning that if the parties to the agreement do not cancel it, then the agreement is still in effect. In e-commerce transactions, standard clauses are determined by only a few parties, such as the seller, the payment system provider, and the expedition. At the same time, the buyer only has the choice to agree or disagree.<sup>28</sup>

E-commerce business transactions must be expressed as an electronic

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<sup>26</sup> Yanci Libria Fista, Aris Machmud, and Suartini, "Perlindungan Hukum Konsumen Dalam Transaksi E-commerce Ditinjau Dari Perspektif Undang-Undang Perlindungan Konsumen," *Binamulia Hukum* 12, No. 1 (2023): 177-189, <https://doi.org/10.37893/jbh.v12i1.599>, p. 177.

<sup>27</sup> Didik Kusuma Yadi, Muhammad Sood, and Dwi Martini, "Perlindungan Hukum Bagi Para Pihak Dalam Transaksi E-commerce Menurut Tata Hukum Indonesia," *Jurnal Commerce Law* 2, No. 1 (2022): 141-152, <https://doi.org/10.29303/commercelaw.v2i1.1368>, p. 142.

<sup>28</sup> Ridwan Romadhoni and Dona Budi Kharisma "Aspek Hukum Kontrak Elektronik (E-Contract) Dalam Transaksi E-commerce Yang Menggunakan Bitcoin Sebagai Alat Pembayaran," *Jurnal Privat Law* 7, No. 1 (2019): 49-54, <https://doi.org/10.20961/privat.v7i1.30098>, p. 50.



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contract to embody the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code. In this case, every person is free to make and determine an agreement's form, type, and content if it meets the requirements for the agreement's validity as regulated in Article 1320 of the Civil Code and does not violate public order and morality. Such a contract is binding and applies as law to the parties.

According to Article 1 point 17 of the Information and Electronic Transactions (ITE) Law, an electronic contract is an agreement between parties through an electronic system. Meanwhile, based on Article 1 number 5 of the Information and Electronic Transactions (ITE) Law, an electronic system is a series of electronic devices and procedures that prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information in this case, the Internet.

Article 1 number 1 of the Information and Electronic Transactions (ITE) Law explains that electronic information is one or a collection of electronic data including but not limited to writing, sound, images, maps, plans, photos, electronic data interchange, electronic mail, telegram, telex, telecopy or similar, letters, signs, numbers, access codes, symbols, or perforations that have been processed that have meaning or can be understood by people who can understand them. The abovementioned instruments used and applied in online business contracts are paperless, but

their validity is still recognized, and they have the same legal force as conventional contracts. Therefore, all actions and legal actions in online business contracts must be considered because the legal consequences have the same legal impact as conventional legal actions or in the real world. Electronic business transactions involving legal instruments and actions in cyberspace and are paperless have also given rise to an electronic proof system.

In practice, almost all the contents of e-commerce agreements are standard clauses determined unilaterally by the business actor, be it the seller or the service provider of the electronic system. Not all standard clauses are agreed upon by consumers because sometimes there are standard clauses that are contrary to fairness for a consumer so that, in the end, it is detrimental to the consumer. However, consumers only have the choice to agree or disagree (take it or leave it). If the consumer agrees, they must convey their approval through various methods, such as digital signatures or other signs prepared by the business actor through the e-commerce application that has been provided. Such standard clauses are considered exoneration clauses prohibited from being included in agreements, including in e-commerce, as regulated in Article 18 paragraphs (1) and (2) of Law Number 8 of 1999 concerning Consumer Protection.

Standard clauses containing exoneration clauses, apart from not describing the existence of an agreement between the parties, which is a subjective

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condition of the agreement, also do not fulfill the objective requirements of an agreement, namely a lawful cause. A lawful cause as an objective condition in an agreement must not conflict with statutory regulations, public order, and morality. Apart from that, the exoneration clause contradicts Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, which confirms that every standard clause stipulated by business actors in documents or agreements is declared null and void by law. Article 1335, in conjunction with Article 1337 of the Civil Code, states that every cause is prohibited if it is not permitted by law, is contrary to the public interest, and is contrary to morality. Thus, an exoneration clause in the standard clause in e-commerce does not fulfill the subjective and objective terms of the agreement, so the agreement can be canceled and/or null and void by law.

Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection confirms that business actors in offering goods and/or services intended for trade, including in e-commerce, are prohibited from making or including standard clauses in every document and/or agreement if:

1. Declare the transfer of responsibility of the business actor;
2. States that business actors have the right to refuse to return goods purchased by consumers;

3. State that business actors have the right to refuse to hand over money paid for goods and/or services purchased by consumers;
4. Declare the granting of authority from consumers to business actors, either directly or indirectly, to carry out all unilateral actions related to goods purchased by consumers in installments;
5. Regulates the matter of proving the loss of use of goods or use of services purchased by consumers;
6. Gives business actors the right to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
7. Declare that consumers are subject to regulations in the form of new, additional, continued rules and/or further changes made unilaterally by business actors during the period when consumers use the services they purchase or
8. State that the consumer authorizes the business actor to impose mortgage rights, liens, or security rights on goods purchased by the consumer in installments.

Article 18 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection states that business actors are prohibited from including standard clauses whose location or form is challenging to see, cannot be read clearly, or whose expression is difficult to understand. This provision is an

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exoneration clause prohibited from being included in the standard clause.

Therefore, sellers as business actors in e-commerce are civilly responsible for consumer losses caused by such agreements. Suppose the action of a business actor that contains an exoneration clause in e-commerce is carried out intentionally to harm consumers if it can be proven. In that case, it can be considered an unlawful act by the provisions of Article 1365 of the Civil Code, which states that every illegal act that causes losses to other parties guilty of publishing the loss must compensate for the loss.

Compensation claims can be made through a lawsuit to the Consumer Dispute Resolution Agency or a general court institution in the consumer's jurisdiction as regulated in Article 23 of Law Number 8 of 1999 concerning Consumer Protection. If a business actor who uses an exoneration clause in a standard agreement, including in e-commerce, harms consumers and the business actor does not want to provide compensation, then by Article 61 of Law Number 8 of 1999 concerning Consumer Protection, the business actor and/or its management can be prosecuted. Criminally.

Based on the information above, the verification process is an important part that must be considered in an agreement or contract, including e-commerce contracts. According to Article 5, paragraph (1) of the Information and Electronic Transactions (ITE) Law,

electronic information and/or electronic documents and/or printouts are valid evidence. It means that electronic information and/or electronic documents and/or printouts are considered the same as written evidence as determined in the order of proof regulated in Article 1866 of the Civil Code jo. Article 164 HIR. Furthermore, Article 5, paragraph (2) of the Information and Electronic Transactions (ITE) Law states that electronic information and/or electronic documents and/or printed results are an extension of legal evidence by the procedural law in force in Indonesia. The word "expansion" means that the Information and Electronic Transactions (ITE) Law has provided more expansive space than conventional evidence, so there is no legal vacuum in proving all electronic activities, including online business transactions. Thus, talking about online business transactions must be distinct from the provisions of Book III of the Civil Code and the Information and Electronic Transactions (ITE) Law.

#### **D. CONCLUSIONS**

Based on the legal analysis that has been carried out, it can be concluded that the existence of standard clauses in an agreement, including in e-commerce, is a manifestation of the principle of freedom of contract as long as the conditions for the validity of the agreement in Article 1320 of the Civil Code remain fulfilled. The existence of proof of approval of the agreement's contents as standard clauses

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determined unilaterally, in formal juridical terms, is proof of agreement in an agreement. However, sometimes, some parties feel they do not agree with some of the contents of the standard clauses in the agreement. However, the take it or leave it the choice is a determinant that must be made by the parties to the agreement, so it is deemed not to fulfill the subjective terms of the agreement, so the agreement can be canceled, meaning that as long as the parties do not cancel it, the agreement is still valid. The existence of an exoneration clause in the standard clause in e-commerce, which is detrimental to consumers, is deemed not to meet the objective requirements of the agreement. Thus, the agreement is null and void, meaning that from the start, it was considered that there had never been an agreement.

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