



## Exoneration Clausula In The Goods Delivery Agreement Through delivery Service

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### Abstract

Research entitled "Exoneration Clause in the Goods Delivery Agreement through the Delivery Service", due to the Exoneration Clause, it can harm consumers. Issues discussed regarding the form of exoneration clauses in goods delivery agreements through shipping services and legal protection for owners of goods that are harmed due to exoneration clauses. The study uses a normative approach and a concept approach, a conclusion is obtained as follows. The form of the exoneration clause in the goods delivery agreement via the shipping service is the contents of the exoneration clause that has binding power for the parties involved in it, the contents of the exoneration clause that do not have binding power for the parties involved in it. The exoneration clause has binding power for the parties involved in it as signed. Regarding the location, form and disclosure of standard clauses, it can also be seen from the intention of the business actor, that the obligation of the business actor is in good faith in carrying out his business activities. Legal protection for the owner of the goods that is harmed by the exoneration clause is a protection given to legal subjects in the form of legal instruments both preventive and responsive, both written and unwritten. If something happens to the goods sent, such as lost or damaged, it would be better if between the shipping service and the consumer together to resolve the case by way of peace first. Consumers can submit a claim first after that the freight forwarder can process the loss in accordance with the agreement and does not need to involve the court or the Dispute Settlement Agency (BPSK).

**Keywords:** Exoneration Clause, Goods Delivery Agreement, Consumer Protection

### I. Introduction

Agreement is a very important aspect in business activities both carried out between individuals in one country and relationships between companies that are cross-border in nature. These agreements were born with an agreement between a minimum of two related parties, it is certain that the existence of the agreement is based on freedom of contracting the parties concerned. Freedom of contract is defined as the freedom of the community to enter into or not enter into an agreement, the freedom to determine with whom to enter into an agreement and the freedom to determine the contents and form of the agreement.

Of the many freedoms given to members of the community to make agreements based on the principle of freedom of contract, the freedom that is closely related and often affected by the inclusion of certain conditions in an agreement, is the freedom to determine the contents of the agreement they will make. And in this case will also affect the freedom to make unilateral agreements or often referred to as standard agreements (standard clauses).

The standard agreement itself is part of an agreement that causes the regulation to be based on the rules contained in the Civil Code (KUHPerdota) in Chapter III Concerning Engagement in general. In addition, because in fact many of the Standard Clauses are detrimental to consumers and also the Standard Clause shows that there is an unbalanced position between consumers and producers with the impression that producers impose these clauses on consumers, arrangements are also contained in Law No.8 of 1999 concerning Consumer Protection hereinafter referred to as UUPK.

In practice in the business world, things that often use the Standard Agreement in it include:

1. Agreements / contracts (Banking, Insurance, Housing and others);
2. Purchase receipt;
3. Transportation Tickets Sea, Air, Train, Parking, Delivery of Goods and others.

Courier services or commonly referred to as shipping services are services that accommodate human needs for effectiveness and efficiency, especially in the field of shipping goods. Various services offered by this service, both in terms of timeliness to various types of guarantees (guarantees) for service users. This article analyses the exoneration clausula in the goods delivery agreement throughdelivery service.

## II. Method

The research methodology used in preparing this paper is the Normative Juridical method with the Statute Approach and Conceptual Approach approach, namely through an effort to approach the problem with a normative legal nature, emphasizing the search for norms and principles in statutory regulations, as well as other relevant regulations , and outlining the norms and articles, as well as the concepts and views or opinions of experts relating to the issues raised in this paper. So it can be seen clearly the adjustment of laws and regulations related to the problem

## III. Main Heading of the Analysis

The provisions governing this shipping service are based on Law Number. 6 of 1984 concerning Postal, but this law is no longer relevant to the development of the existing era. However, this provision has changed since the issuance of Decree of the Minister of Tourism and Post and Telecommunications (Kepmenparpostel) Number KM 38 / PT.102 / MPPT / 2004 concerning the Execution of Shipping Services. In the KEPMEN it is stated that a

shipping service entrepreneur is an activity carried out by a legal entity established under Indonesian law, in this case a Limited Liability Company or a Cooperative that has a Shipping Service Entrepreneur's license to receive, carry and / or deliver certain types of postal letters, the package and money from shipping to the recipient at a fee. Thus, in addition to SOEs, deposit services can also be carried out by private-owned companies (BUMS).

In practice, shipping services are often not in accordance with the provisions provided by the shipping service, which in the end consumers are disadvantaged. Based on the data obtained by the author from the website "consumer media" in general, consumers of shipping services complain about the problem of timeliness of delivery, damage to goods, as well as the arrival of the shipment to the destination, for example as experienced by Mina. Mina sent a package on April 17, 2018 using the YES package "Sure Tomorrow Arrives" but until April 19, 2018 the package had not arrived at its destination, it should have been if the YES package was sent until the next day. Because YES shipment packages are exclusive packages that offer guaranteed delivery of goods until the next day at a more expensive shipping rate. Events such as those experienced by Mina are of course very detrimental to consumers who use YES shipment services. Supposedly, the timeliness and integrity of the goods sent is the responsibility of the shipping service.

The freight forwarding service company turns out to include a standard clause in the goods delivery agreement. The provisions determined unilaterally are written in proof of receipt of the shipment of goods as a guideline and delivery conditions, some of which contain a transfer of responsibility to the consumer. The standard clause in the goods delivery agreement is "The sender frees the shipping service provider if there is a delay, loss, damage and / or costs arising from negligence and shipping errors in meeting obligations". From the inclusion of a standard clause in the goods delivery agreement it appears that consumers are the most disadvantaged in the error of goods delivery.

The presence of a standard clause to be concerned about is the inclusion of an exoneration clause in the agreement. Exoneration Clause is a clause containing, limiting, or even completely eliminating the responsibility that should be borne by the freight forwarder.

In making standard agreements or those using standard conditions in practice, it is required to pay attention to the procedures and arrangements regarding matters that are prohibited in

the standard clause. Business actors as the party that most often uses standard agreements in every transaction, in their implementation often forget and do not heed the existing regulations. One way is to use the Exoneration Clause in a standard contract.

The Exoneration Clause according to Rijken is a clause contained in an agreement whereby one party will avoid fulfilling its obligations by paying full or limited compensation, which is caused by default or unlawful acts. This one-sided clause in Dutch is called *onredelijk bezwarend* or in English is called *unreasonably onerous*. In the library of United States Law, the clause is also referred to as the *exculpatory clause*; *warranty disclaimer clause* or *limitation of liability clause*.

The exoneration clause can only be used in the implementation of the agreement in good faith. Exoneration for losses arising from an entrepreneur's intentions is contrary to decency. Therefore the court can override the exoneration clause. However, exoneration can only be used if it is not prohibited by law and is not contrary to decency, and if there is a dispute regarding these responsibilities, consumers can submit an application to the court to test whether the exoneration specified by the entrepreneur is feasible. Not prohibited by law, and does not contradict decency.

In an agreement, an exoneration clause can be formulated because of a forced situation or because of the actions of the parties to the agreement. The actions of the parties may concern the interests of second parties and third parties. Thus there are three possibilities of exoneration that can be formulated in the terms of the agreement:

1. Exoneration due to force majeure;

Losses arising from forced conditions are not the responsibility of the parties, but in the terms of the agreement can be charged to the consumer so that the entrepreneur is freed from the burden of responsibility. For example in a sale and purchase agreement, the object of the agreement is destroyed because it is burning. Because the fire is not the fault of the parties, but in this case the buyer is obliged to pay its obligations that have not been paid off based on the exoneration clause.

2. Exoneration due to a mistake of a business actor that harms a second party to the agreement;

Losses incurred due to employer mistakes should be the responsibility of the entrepreneur. This can occur because it is not good or negligent in carrying out achievements of the

second party. But in the terms of the agreement, the loss is borne by the consumer, and the entrepreneur is freed from responsibility. For example in the transportation agreement it is determined that the default is damaged or lost, not the responsibility of the carrier.

3. Exoneration due to employer mistakes that harm a third party;

Losses incurred due to employer mistakes should be the responsibility of the entrepreneur, but in the terms of the agreement, the losses incurred are borne by the second party, which turns out to be a burden on the third party. In this case the entrepreneur is freed from responsibility, including the claims of third parties.

Basically Article 18 paragraph (1) letter a of the UUPK has stipulated that the exoneration clause or the transfer of responsibility clause is prohibited to be used, but actually in the Indonesian Civil Code there are arrangements for such a clause as stated in Article 1493-1512 of the Indonesian Civil Code.

Actually the essence of these articles is that the parties have the right to negotiate the extent to which the parties are accountable in an agreement. Article 1493 reads:

"Both parties are allowed with special agreements, expanding or reducing the obligations stipulated by this law even they are allowed to enter into an agreement that the seller will not be obliged to bear anything."

Furthermore Article 1506 of the Civil Code states that: "He is obliged to bear for hidden defects, even though he himself is not aware of the existence of the defect, unless he, in such a case, has asked to be promised that he is not obliged to bear anything."

From these articles it can be concluded that the transfer of responsibility is actually permissible as long as there is negotiation or agreement between the parties. So basically it takes an agreement of the parties not a unilateral decision that determines whether a party can transfer responsibility or not.

However, in the standard agreement that has been occurring so far, the transfer of responsibility from business actors is not based on negotiations but rather towards the conquest of one of the parties to the clause and also the tendency for the transfer of responsibility to be biased or just favor one party. Therefore, an arrangement is needed for this situation and this is regulated in the UUPK, precisely Article 18 paragraph (1) letter a

regarding the prohibition of standard clauses containing the transfer of unilateral responsibilities and harming other parties.

The form of exoneration clauses in the agreement of the shipment of goods by the shipping service are:

1. contents of the exoneration clause that have binding power for the parties involved in it (binding), namely;
  - a. The shipping service is not responsible if there is a late delivery.
  - b. If the shipping service is found guilty by the court, then the consumer must bear the decision.
  - c. The shipping service is not responsible for damage / loss due to the nature of the goods and confiscation by the authorities and due to forceful circumstances.
  - d. The shipping service does not serve demands after 15 (fifteen) days from the estimated storage.
  - e. The shipping service is not responsible for the goods as long as the goods are still under surveillance.
  - f. The shipping service is not responsible for damage / loss due to the nature of the goods and confiscation by the authorities and forceful circumstances.
  - g. The delivery service party does not serve demands after 14 (fourteen) days after the shipment is supposed to be received.

The exoneration clause above has binding power for the parties involved in it in accordance with, for those who (signed), R. Subekti stated, because both parties have signed the agreement documents, then it is bound to the contents of the agreement in it. Whereas for those who were not (not signed) Kelik Wardiono stated, because a notification (indication) by the company had been made to consumers and made clearly without ambiguity, and this notification was made when the agreement was made, the agreement was binding on the parties in it.

2. The contents of the exoneration clause used by the shipping service are:
  - a. The uninsured deposit, the value of liability is a maximum of 10 (ten) times the cost of the consignment item

- b. whose value exceeds 10 (ten) times the cost of the shipment, it must be insured by the consumer.
- c. The shipping service is only responsible for goods whose value does not exceed 10 (ten) times the cost of the shipment (for within Indonesia) and US \$ 100.00 for shipments outside Indonesia per shipment.

The technical limits set on the standard clause can be seen in Article 18 paragraph (2) of the UUPK which reads: "Business actors are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand".

The purpose of the Article above is that the inclusion of standard clauses which can be in the form of very small writing which is placed vaguely or where it is predicted will be missed by readers of the document, so that when the agreement occurs the consumer only understands a small portion of the agreement. This means that the agreement is only read at a glance, without being understood in depth juridical consequences, which makes consumers often do not know what is due.

Regarding the location, form and disclosure of standard clauses, it can also be seen from the intentions of business actors in accordance with Article 7 of the UUPK that the obligations of business actors are in good faith in carrying out their business activities, providing true, clear, and honest information regarding guarantees of goods and / or services as well as providing explanations the use of repairs and maintenance.

When seen in the print out on consignment notes of shipping goods through freight services, according to the author the location of these clauses is less visible. This is because the shipping guidelines and conditions are placed behind the consignment note (on the same sheet), so consumers tend to pay more attention to the consignment note rather than these shipping guidelines and conditions. In addition, the large number of clauses and the size of the paper which is only 20 cm x 30 cm causes the letters used in these guidelines and procedures to be quite small and difficult to read.

The transfer of responsibility is actually allowed as long as there is negotiation or agreement between the sender and the sender's service, not a unilateral decision that determines whether a party can transfer responsibility or not. Article 18 paragraph (1) letter a of the UUPK regulates violations of standard clauses, which contain the transfer of unilateral

responsibilities and disadvantage to other parties, which so far have seemed to benefit only one party. Technical limits on the inclusion of standard clauses are regulated in Article 18 paragraph (2) of the UUPK that the inclusion of standard clauses which can be in the form of very small writing that is placed vaguely or where it is predicted will be missed by the reader of the document, so that when the agreement occurs the consumer only understand a small part of the agreement. This means that the agreement is only read at a glance, without being understood in depth juridical consequences, which makes consumers often do not know what is due.

#### *A. Legal Protection for owner of goods which was due to the exoneration clausula*

Goods delivery agreement is a reciprocal agreement between the freight forwarder and the sender. Where the freight forwarding company is bound to find a good carrier for the sender, while the sender is binding to pay a number of provisions to the shipping service.

Based on the item delivery agreement stated above, the elements of a goods delivery service agreement are:

##### 1. There are parties

The parties to the goods delivery agreement are goods delivery services as the party who looks for the transporter and sender as the owner of the goods;

##### 2. There is approval

Approval in the agreement for the shipment of goods is an agreement to find a carrier in the context of shipping goods;

##### 3. There is a goal to be achieved The

Purpose of the service agreement for the sender of goods for the sender is the goods sent safely to the destination. As for the shipping service, the benefit is paid by the sender so that the company is known by other people;

##### 4. There is an achievement that is carried out.

Obligation of goods delivery service is to find a good carrier for the sender and carry out all matters of shipping goods. Whereas the right to send goods is to receive a provision of the shipment. The sender's obligation is to pay a provision for the shipping service and the



sender's right is to get good transportation for the goods. So that the shipment went smoothly.

5. There are certain forms, oral or written

Goods delivery agreements do not require written, so it can also be done verbally or in writing based on the agreement of the parties.

Goods delivery agreement made by the shipping service with the sender of goods must be written orally and in writing and there are certain conditions as the contents of the implementation of the agreement. The contents of the agreement made must not conflict with law, public order and morality.

Article 1320 of the Civil Code determines that an agreement is considered valid if it meets the requirements, namely:

- a. Agree that they bind themselves;
- b. The ability to make an agreement;
- c. A certain thing;
- d. A lawful cause.

The first two conditions, called subjective conditions, because of the people or subjects who entered into an agreement, while the last two conditions are called objective conditions because of the agreement itself or the object of the legal act carried out.

Therefore, in an agreement must meet all four of these conditions, both subjective and objective. If subjective conditions are not met then one of the parties has the right to request that the agreement be canceled. However, if the objective conditions are not fulfilled, the agreement is null and void.

#### **IV. Conclusion**

From the explanation of the several chapters above that discuss the form of exoneration clauses in goods delivery agreements via shipping services, the following conclusions are drawn: There are three possibilities that can be formulated in the terms of the goods shipment agreement through the shipping service, namely exoneration of forced conditions arising from forced conditions not the responsibility of the parties, the exoneration of the wrongdoing of the business actor which is detrimental to the sending party due to wrongful

delivery services due to negligence in carrying out the agreement, the exoneration due to the fault of the employer which harms a third party. Obligation of goods delivery service is to find a good carrier for the sender and carry out all matters of shipping goods. Whereas the right to send a service is to receive a provision of a shipment. The sender's obligation is to pay the provision to the shipping service. The sender's right is to get good transportation for his goods. Legal protection is all forms of efforts to protect human dignity and the recognition of human rights in the field of law.

Suggestions that the author wants to suggest that might provide some benefits include: Business actors who include exoneration clauses should pay more attention to the principles in the law of the agreement so that both parties equally benefit from the implementation of the agreement. And the government must be more assertive in regulating the provisions of standard agreements and especially the exoneration clause. So that business actors pay more attention to the use of exoneration callus when running their business. This legal protection is a right for citizens, so the state must socialize if there are new laws and regulations, so that the public will also be aware of the law, aware of their rights protected by the state. If in the community grows legal awareness, legal protection in this country will run well.

## V. References

- Ahmad Miru. (2011). *Hukum Perlindungan Konsumen*. Jakarta: PT Raja Grafindo Perkasa .
- \_\_\_\_\_. (2014). *Hukum Perlindungan Konsumen*. Jakarta: Rajawali Pers.
- Badruzaman, Mariam Darus (1994). *Aneka Hukum Bisnis*. Bandung: PT Citra Aditya Bakti
- Fuady, Munir (1999). *Hukum Perjanjian*. Bandung: PT Citra Aditya Bakti.
- \_\_\_\_\_ (2013). *Hukum Kontrak*. Bandung: PT Citra Aditya Bakti.
- Hariri, Wawan Muhwan (2011). *Hukum Perikatan*. Bandung: Pustaka Setia.
- Kristiyanti, Cellina Tri (2011). *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika.
- Lenina Patay. (2011). *Definisi Perlindungan Hukum* Available online from: <https://prasxo.wordpress.com/2011>. [Accessed May 16, 2018].
- Muljadi, Kartini (2014). *Perikatan yang Lahir dan Perjanjian*. Jakarta: Raja Grafindo Persada

- Samadam, Adil (2013). *Dasar-Dasar Hukum Bisnis*. Jakarta: Mitra Wacana Media.
- Sidabalok, Janus (2000). *Pengantar Hukum Ekonomi*. Medan: Bina Media.
- Siahaan (2005). *Hukum Konsumen Perlindungan Konsumen dan Tanggung Jawab Produk*. Jakarta: Pantai Rei.
- Setiawan (1979). *Pokok-Pokok Hukum Perikatan*. Bandung: Binacipta.
- Subekti (1994). *Hukum Perjanjian*. Bandung: Intermasa.
- Susilo, Zumrotin (1996). *Penyambung Lidah Konsumen*. Jakarta: Puspa Surya
- Taqyudin Kadir. (2018). *Klausula Baku*. Available online from :  
<https://taqlawyer.com/2018/klausulabaku.html>. [Accessed June 20 , 2018].
- Triwulan, Titi (2011). *Perlindungan Hukum Konsumen*. Jakarta: PT Raja Grafindo Persada.
- Kitab Undang-Undang Hukum Perdata
- Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.