

# **A Normative Juridical Analysis of Standard Clauses in E-commerce: Consumer Protection and the Nullity of Exoneration Clauses on the Shopee Marketplace under Indonesian Law No. 8/1999**

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## **Abstract**

**Keywords:** Standard Clauses, Consumer Protection, E-commerce

*This study undertakes a normative juridical analysis of standard clauses (*klausula baku*) employed by business actors (*pelaku usaha*) in online sale and purchase transactions (*jual beli*) conducted via the Shopee marketplace in Indonesia. Driven by the observed prevalence of unilateral contractual terms that disproportionately shift risk and responsibility to the consumer, the research assesses their compliance with the fundamental prohibitions established in Article 18 of Law No. 8 of 1999 Concerning Consumer Protection (UUPK). Utilizing a descriptive analytical approach based exclusively on secondary legal materials, the study confirms that common seller clauses specifically those disclaiming liability for shipping damage or manufacturing variance, and those refusing product returns or refunds directly contravene UUPK Article 18. These clauses are primarily in violation of points (1)(a), which prohibits the transfer of responsibility of the business actor, and (1)(b), concerning the refusal of returns. The central legal finding is that, pursuant to UUPK Article 18(3), these non-compliant contractual terms are declared null and void by law (*batal demi hukum*). This statutory nullity legally reinforces the business actor's mandatory liability (Article 19) and underscores the necessity for proactive supervision and intervention by the Business Dispute Resolution Agency (BPSK). The paper concludes with recommendations for strengthening platform governance and consumer legal literacy to ensure contractual balance and legal certainty within the rapidly evolving digital commerce ecosystem.*

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## **INTRODUCTION**

The digital transformation has fundamentally reshaped global commerce, propelling the transactional modality from traditional, face-to-face exchanges toward sophisticated online sale and purchase (*jual beli online*) (Faizal, 2019). This technological shift is highly valued for its ability to optimize efficiency, reducing the constraints of time, cost, and physical location, thereby fostering a marketplace that is fast, simple, and practical (Hardika, 2015). This rapid expansion is readily observable in Indonesia through the increasing prominence of digital platforms such as Shopee, Lazada, TikTok, and Tokopedia, which serve as essential conduits connecting millions of business actors and consumers (Hayati, 2020). Shopee, launched in 2015, established itself as a tailored platform providing an accessible, secure, and rapid shopping experience, supported by

robust payment and logistics infrastructure. The move toward online commerce benefits sellers by reducing traditional operating overheads, notably marketing and distribution costs, allowing them to initiate and sustain operations with relatively lower capital input. For consumers, the appeal lies in the enhanced convenience, the extensive range of available goods, and the elimination of travel necessity, particularly for distant purchases. However, the transactional efficiency inherent in e-commerce depends heavily on the standardization of contractual terms, which requires the utilization of pre-formulated agreements, legally termed standard clauses (*klausula baku*). The core legal challenge stems from the definition provided in UUPK Article 1(10), which states that a standard clause is "every rule or provision and terms and conditions that have been prepared and stipulated *unilaterally* by the business actor... which is binding and must be fulfilled by the consumer." This inherently unilateral drafting mechanism fosters an "unbalanced position between business actors and consumers," often leading to the imposition of terms that are significantly detrimental to the purchasing party, such as the statement that "purchased goods cannot be returned" or that "damaged/lost goods are not the responsibility of the business actor." Such attempts to limit or transfer essential responsibilities are deemed highly prejudicial, particularly in cases where goods are received damaged or fail to meet the advertised specifications (Abib, 2015). In response to such systemic asymmetries, Indonesia's Law No. 8 of 1999 Concerning Consumer Protection (UUPK) was established to mandate legal certainty and robust consumer safeguards. Crucially, Chapter V, Article 18 of the UUPK, specifically regulates and restricts the use of standard clauses and aims to protect consumers from manipulative contractual drafting by business actors, thereby ensuring all individuals maintain an equal legal footing when exercising their rights.

This investigation is structured to address the tension between the commercial necessity for standardized contracts and the imperative for statutory consumer protection. The primary research questions are: 1) What is the systematic mechanism of online sale and purchase transactions (*jual beli*) within the Shopee marketplace? and 2) How do the standard clauses (*klausula baku*) employed by business actors on the Shopee marketplace comply with the specific prohibitions and provisions established in Article 18 of Law No. 8 of 1999 concerning Consumer Protection? The primary objectives are threefold: first, to clearly outline the structured operational steps of *jual beli* on the Shopee marketplace; second, to conduct a rigorous legal assessment comparing observed standard clauses with the mandatory framework of UUPK Article 18; and third, to determine the resulting legal consequences of non-compliance. This research contributes significantly to the establishment of *kepastian hukum* (legal certainty) in the digital economy by supplying the necessary legal evidence for enforcement actions by regulatory bodies, particularly the Business Dispute Resolution Agency (BPSK), whose duties explicitly include the supervision

of standard clauses (UUPK Article 52). Furthermore, the study indirectly highlights the urgent need for preventative oversight and mandatory legal education directed at decentralized marketplace sellers.

## METHODS

This study employs the Normative Juridical Method (*Yuridis Normatif*), which is centered on the systematic examination of existing legal norms, principles, and statutory texts, contrasting them with observed commercial practices. This legal research uses the Statute Approach by rigorously analyzing the dictates of UUPK No. 8/1999, and the Conceptual Approach by defining and analyzing core legal terms essential to consumer protection law, such as *klausula baku* and the principles of *perlindungan hukum* (Mamudji, 2005). The investigative specification adopted is Descriptive Analytical (*Deskriptif Analis*), a methodology that requires the collection and description of specific phenomena the language and content of seller-drafted standard clauses followed by a comprehensive legal analysis to determine their conformity, or lack thereof, with the prevailing statutory law (Sugiyono, 2020). The essential input for this normative juridical study is Secondary Data (*Data Sekunder*), which encompasses a hierarchy of legal materials: primary law (UUPK), secondary legal literature (scholarly works and scientific articles concerning consumer law), and tertiary legal resources (indexes and official legal documents). Data acquisition is performed strictly through Library Research (*studi kepustakaan*), involving the systematic gathering, review, and synthesis of all relevant legal documentation, academic papers, and published research pertinent to standard clauses, commercial contracting, and Indonesian consumer rights law. The analysis is executed using the Normative Qualitative Analysis technique, which focuses on interpreting the binding legal norms contained within the UUPK and related regulations, and applying these norms to assess the legal status and consequences of the observed standard practices in the marketplace. The process involves Domain Analysis to accurately classify and relate key legal terms, ensuring the interpretative framework remains strictly grounded in the established statutes (Saleh, 2017).

## RESULTS AND DISCUSSION

### 1. Operational Mechanism of E-commerce Transactions in Shopee

Shopee functions as a sophisticated E-commerce platform, serving as a critical third-party intermediary that standardizes the complex flow of business-to-consumer (B2C) sales. The platform facilitates the sale of a wide array of goods, connecting large wholesalers and smaller vendors with final consumers. The purchasing mechanism converts the traditional

negotiation into a structured, four-stage digital contract process. The process begins with the consumer registering and then browsing the application to select the desired product. Once chosen, the item is moved to the digital shopping cart. The second stage involves checkout, where the consumer finalizes the transaction by confirming the delivery address, selecting a courier, and submitting payment. Critically, this payment is deposited with Shopee, acting as an escrow agent, rather than being transferred directly to the seller. The third stage involves payment verification by Shopee, followed by immediate notification to the seller. The seller then proceeds with packaging and coordination with the selected logistics provider. The process is completed in the final stage when the goods are safely delivered to the consumer, the consumer optionally verifies conformity, and Shopee subsequently releases the held funds to the seller. This mediated structure inherently places a significant obligation upon the marketplace platform. Because Shopee controls the transactional environment, including the display of seller terms and the holding of payments, the platform holds a crucial secondary responsibility to ensure that the terms and conditions presented by its business actors are compliant with the UUPK, even though the primary liability for the goods rests with the seller (Akbar, 2024).

## 2. Contractual Foundation: Sale and Purchase (*Jual Beli*) and Legal Principles

In the legal context, any commercial engagement in Indonesia, including *jual beli* facilitated by Shopee, must adhere to overarching legal principles. Conceptually, *jual beli* (or *al-ba'*) is defined as the exchange of valuable assets based on mutual consent (*suka sama suka*), resulting in the transfer of ownership via a binding agreement (Ghazaly, 2010). The validity of commercial terms within this context is primarily evaluated against the five core principles of the UUPK (Article 2): *manfaat* (benefit), *keadilan* (justice), *keseimbangan* (balance), security and safety, and *kepastian hukum* (legal certainty). The principle of *keseimbangan* is violated when standard clauses exploit the consumer's weak bargaining position, leading to unfair results. This requirement for balance, fairness, and reasonableness is emphasized even in financial regulatory guidance concerning standard agreements. The legal analysis must determine if the specific, unilaterally drafted clauses found on Shopee adhere to, or actively violate, these foundational principles.

## 3. Legal Analysis of Standard Clauses (*Klausula Baku*) under UUPK

The statutory control mechanism for standard clauses is anchored in UUPK Article 1(10) and elaborated in Article 18. The formal definition highlights the key problem: terms are unilaterally established by the business actor and are binding upon the consumer. To determine validity, clauses must be measured against the protective framework of the UUPK. Consumers

are afforded essential rights (Article 4), including the right to security and safety, the right to receive goods matching the promised condition and guarantee, and the right to truthful information. Correspondingly, business actors bear mandatory obligations (Article 7), including operating in good faith, guaranteeing product quality, and providing compensation (*ganti rugi*) if the delivered goods fail to comply with the contractual agreement. Any clause that attempts to subvert these statutorily defined rights and obligations is inherently illegal under Article 18.

#### 4. Incompatibility Analysis: Seller Clauses and UUPK Article 18 Prohibitions

Article 18 of the UUPK establishes an explicit list of clauses that are absolutely prohibited in standard agreements. These prohibitions are the primary mechanism for preventing the misuse of contractual power by business actors. The investigation documented common exoneration clauses utilized by business actors on the Shopee marketplace:

- "*barang yang sudah dibeli tidak dapat dikembalikan*" (purchased goods cannot be returned).
- "*kerusakan saat mengiriman diluar tanggungjawab kami, karena barang sudah di cek sebelum pengiriman*" (damage during shipment is outside our responsibility, as the goods were checked before shipping).
- "*Jika terjadi perubahan kemasan dari pabrik, maka kami tidak dapat menerima komplainan retur karena gambar dan judul tidak sesuai dengan yang dikirimkan*" (We cannot accept complaints for return if there is a change in factory packaging, making the item inconsistent with the picture/title).

##### a. Violation of Article 18(1)(a): Transfer of Responsibility

The clauses attempting to shift liability for shipping damage or quality variance directly contravene Article 18(1)(a), which prohibits standard clauses from "stating the transfer of responsibility of the business actor. By declaring non-liability for damage during transit, the seller attempts to shed the strict liability regime mandated by UUPK Article 19(1), which requires compensation for consumer losses resulting from the consumed goods. This violation also undermines the business actor's obligation (Article 7) to guarantee quality and provide accurate information, reinforcing the legal principle that liability remains with the seller until the consumer safely receives and utilizes the product as promised.

##### b. Violation of Article 18(1)(b) & (c): Refusal of Return or Refund

The clauses asserting that "purchased goods cannot be returned" or that the seller will "not accept complaints" explicitly violate the consumer's rights under Article 4 and run directly counter to UUPK Article 18(1)(b), which prohibits a clause stating that the business actor has the "right to refuse the return of goods purchased by the consumer." The use of

these clauses attempts to negate the seller's duty under UUPK Article 7(7) and Article 19(1) to provide compensation or replacement for goods that are non-compliant or defective. The law confirms that such attempts at absolute refusal of redress are inadmissible, as they directly conflict with the statutory mandate for justice and balance in commerce.

Table 2: Mapping of Non-Compliant Standard Clauses against UUPK Article 18

| Observed Seller  | UUPK Article 18   | Legal  | UUPK Justification  |
|--|---|--|---|
| Clause (Example)   | Paragraph 1   | Consequence                                      |   |
|  | Provision Violated  |  |   |
| "Damage during shipment is outside our responsibility."  | Point (a): Declaring the transfer of responsibility of the business actor.                        | Null and Void by Law ( <i>Batal demi hukum</i> ) | Contradicts Art 19 (Mandatory Liability) and Art 7 (Obligation to provide guarantee)      |
| "Purchased goods cannot be returned/We do not accept returns."   | Point (b): Stating that the business actor has the right to refuse the return of purchased goods. | Null and Void by Law ( <i>Batal demi hukum</i> ) | (Consumer's right to choose goods as promised) and Art 7(7) (Mandatory compensation)      |
| "We cannot accept complaints if the item is not consistent with the picture due to packaging changes." | Point (a): Declaring the transfer of responsibility (for product variance/quality guarantee).     | Null and Void by Law ( <i>Batal demi hukum</i> ) | Contradicts Art 4 (Right to clear/honest information) and Art 7(4) (Guaranteeing quality) |

## 5. Legal Consequences and Enforcement of UUPK Article 18

The inclusion of any clause that violates UUPK Article 18(1) results in the most severe penalty in contract law: the clause is declared null and void by law (*batal demi hukum*) under Article 18(3). This doctrine of absolute nullity means the term is deemed non-existent from the moment of formation and cannot be legally enforced against the consumer. The nullity, however, is limited only to the prohibited clause, ensuring the fundamental agreement of sale and purchase remains valid (fadel edo romires, 2022). The essential consequence of this nullity is the activation of mandatory business actor responsibility under UUPK Article 19. The business actor must provide compensation (*ganti rugi*) for consumer losses, irrespective of their

voided attempt to limit liability. Compensation must be prompt, taking the form of money return, replacement of goods of equal value, or appropriate service, and must be delivered within seven days of the transaction date.

#### **a. Dispute Resolution Pathways**

Consumers who suffer loss due to non-compliant clauses possess defined legal avenues for dispute resolution (UUPK Article 45): 1) **Non-Litigation:** This route utilizes the Business Dispute Resolution Agency (BPSK), which provides convenient mechanisms such as mediation, arbitration, or conciliation. This is frequently the preferred method for consumers due to its speed in achieving a resolution regarding compensation. **Litigation:** Consumers may pursue legal action through the General Courts. A critical provision is found in UUPK Article 23, which allows consumers to file the lawsuit in their area of residence, thus streamlining the process and reducing the burden of pursuing legal action against distant marketplace sellers.

#### **b. The Compliance Challenge**

The BPSK plays a central role in protecting consumers, with explicit authority to handle disputes and, crucially, to monitor the insertion of standard clauses (UUPK Article 52). However, the analysis reveals a significant gap between statutory protection and real-world compliance, primarily driven by the low legal literacy among marketplace business actors, many of whom admit to not understanding the UUPK's scope. This widespread ignorance means that the powerful legal sanctions of UUPK Article 18 and 19 are often invoked repressively (after damage has occurred) rather than proactively preventing the insertion of illegal clauses. Consequently, the legal certainty intended by the UUPK remains a challenge to fully realize without intensified preventative enforcement and education efforts targeting the decentralized environment of e-commerce (Ghazaly, 2010).

## **CONCLUSION**

The Shopee marketplace, while an effective facilitator of modern *jual beli*, faces critical legal friction points concerning the proliferation of non-compliant standard clauses (*klausula baku*). The analysis has demonstrated that many clauses routinely employed by sellers specifically those attempting to disclaim responsibility for goods damaged during delivery or those refusing returns are in direct violation of the absolute prohibitions established in UUPK Article 18(1)(a) and (b). The legal consequence is clear and uncompromising: under UUPK Article 18(3), these specific terms are null and void by law (*batal demi hukum*). The legal system thus mandates that the business actor remains strictly liable for consumer losses, requiring them to provide compensation or

replacement goods as stipulated by Article 19. While mechanisms for redress exist through the BPSK or the courts, the effectiveness of consumer protection remains challenged by the systemic lack of legal compliance literacy among many marketplace business actors.

Based on these findings, specific recommendations are necessary. The Shopee platform must cease relying solely on reactive dispute resolution and implement rigorous, proactive mechanisms for monitoring and vetting seller-drafted clauses against UUPK Article 18 requirements. Regulatory bodies, particularly the BPSK, must prioritize its supervisory duty (Article 52) to ensure that marketplace terms adhere to the principles of balance and fairness and must impose administrative sanctions against persistent non-compliant business actors. Business actors operating on e-commerce platforms must immediately adjust their terms (UUPK Article 18(4)) to align with the statute, particularly regarding liability for product quality and delivery integrity. Sellers must recognize that any attempt to transfer responsibility or refuse compensation for non-compliant goods is legally ineffective and exposes them to mandatory compensation duties under Article 19. Finally, consumers are advised to exercise increased diligence in reviewing seller descriptions and contractual terms prior to purchase. Furthermore, widespread dissemination of information regarding the nullity of prohibited clauses and the convenient access to dispute resolution via the BPSK is necessary to empower consumers to demand their statutory rights when a violation occurs.

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