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Implementation of the Provisions the Inclusion of an Exoneration Clause for the Sale and Purchase of Houses in Property Companies in Mataram City

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Abstract
This research is to explain and analyze the arrangement and implementation of exoneration clauses in house sale and purchase agreements at property companies in Mataram City and analyze the legal consequences of the inclusion of exoneration clauses in the sale and purchase of houses at developers in Mataram City. The type of research used is normative legal research using statutory and conceptual approach methods. The sources of legal materials used are primary legal materials and secondary legal materials. The legal material collection technique used is document study. Data analysis in this research is prescriptive. The exoneration clause in the house sale and purchase agreement by the developer PT Varindo Lombok Inti and PT Alam Asri Properti in Mataram City regulates the transfer of responsibility in the agreement. PT Varindo Lombok Inti includes an exemption clause related to payments and fines, while PT Alam Asri Properti regulates unilateral cancellation by the developer. Based on Article 18 paragraph (1) letter c of the GCPL Law, the exoneration clause that exempts the developer from the obligation to return the money is contrary to the law, so that the agreement can be null and void in accordance with Article 1320 of the Civil Code concerning the requirement of a legal causa.

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1. Introduction

The three most basic needs that Indonesian people must have in living their daily lives are food, clothing and shelter [1]. housing or housing is one of them. Many Indonesian people are opposed to getting long-term housing. Renting a house is an additional alternative, but because the cost of renting a house continues to increase every year, this can also bring new problems for those who choose to live there.

For those who do not have permanent housing, the government provides a solution through housing developers which is a very good opportunity. Housing is a collection of houses in a settlement, both urban and rural, which is equipped with infrastructure and facilities (Article 1 number (2) of Law Number 1 of 2011 concerning Housing and Residential Areas). Those who want to buy a house but do not have the funds will certainly feel more burdened by having a house. People who have a place to live but lack funds can also take advantage of the home buying and selling program which often provides home sales in installments.

According to Article 1457 of the Civil Code, a sale and purchase is a reciprocal agreement in which the seller agrees to transfer ownership of an item to the buyer, who then pays a price that includes a certain amount of money in return for the ownership rights [2]. A sale and purchase is considered a mutual agreement under Article 1458 of the Civil Code. Simply put, this means

[1] Sudaryatmo, Tips for Avoiding Problematic Housing (Jakarta: Primedia, 2004), p. 1.
[2] Subekti, Various Agreements (Bandung: PT. Citra Aditya Bakti, 1995), p. 1.

that every acceptance, whether oral or written, basically includes the date it was made [3]. There are three parties involved in the implementation of a housing sale and purchase agreement that offers an installment program: the debtor, the creditor, and the housing entrepreneur (developer).

Housing developers provide the public with a relatively easy process, those who want to sign a housing sale and purchase agreement fill out a form and agree to the terms specified in the document. Business actors have decided and made this agreement themselves where there is no room for negotiation and this agreement cannot be changed. This kind of agreement is usually referred to as a standard agreement. A standard agreement is an agreement whose users have standardized almost every clause and the opposing party basically has no say in it or the ability to request adjustments [4]. Because the public interest and the existence of this freedom are closely related, the government issues or regulates this standard agreement [5].

According to contract law, a contract is considered valid if it meets the objective and subjective standards stated in Article 1320 of the Civil Code and the articles that regulate it. Housing purchase agreements are usually formed unilaterally by the developer so that they can be stated in a standard agreement with standard conditions. Article 1 number (10) of Law Number 8 of 1999 concerning Consumer Protection or better known as UUPK, further strengthens the definition of a standard clause. The article states that "every regulation or provision and condition that has been prepared and determined in advance unilaterally by a business actor which is stated in a document and/or agreement that is binding and must be fulfilled by the consumer".

The Housing Sale and Purchase Agreement at PT. Alam Asri Properti and PT. Varindo Lombok Inti, Mataram City is one example of provisions that are detrimental to consumers. In Numbers 4 and 5 in the agreement at PT. Alam Asri Properti states that consumers provide a booking fee and it cannot be returned if there is a cancellation of this agreement, and if within 1 (one) week from the date of the booking fee the consumer does not submit the files required by the developer, the consumer must be willing to have the agreement canceled if they do not meet the requirements by the specified deadline [6].

Likewise, what happened in the housing sale and purchase agreement at PT. Varindo Lombok Inti Kota Mataram, in Number 9 it states that the seller can make a unilateral cancellation and impose a sanction of forfeited *booking fee* if there is a cancellation by the buyer for any reason, and in Number 10 it states that the seller/ developer has the right to make a unilateral cancellation if the consumer/buyer does not complete the files no later than the specified date [7].

The ability to engage and agree to contracts cannot be freely implemented when standard contracts or clauses are used as when agreements are made directly by the parties through negotiation of agreement clauses. [8] Inaccuracy and low public awareness do not rule out the possibility of corporate actors taking advantage of this for personal gain. Because one of the purposes and functions of law is to protect the public, the position of customers like this needs to be protected by law. [9] In other words, consumer rights are very vulnerable because consumers are at higher risk than business actors. Consumer rights are at significant risk of being compromised because of their weak bargaining power [10].

Standard agreements, which are still common in *real estate purchases*, are often ignored by consumers. Consumers are only shown the basic agreement and asked to sign it for practical reasons. Consumers can be influenced by credit agreements or letters of agreement because they often do not understand them.

The problem that will be discussed in this study is how to implement the inclusion of an exoneration clause in a house sale and purchase agreement at a property company in Mataram City and what the legal consequences are of including the exoneration clause.

2. Research Methods

Normative legal research is a form of legal research used in this study. The nature of this research is to research and study law as norms, rules, legal principles, legal doctrines, legal theories, and other literature to address the legal problems being investigated [11].

3. Discussion

Implementation of the inclusion of exoneration clauses in the sale and purchase of houses in mataram city

One of the standard clauses is the exoneration clause. In essence, the purpose of making standard provisions is to facilitate the parties in an agreement. An agreement is a concept of a written promise that is usually stated in a certain type of agreement that is unlimited in number without any discussion of its contents.

Standard agreements that are often found in society can be distinguished or grouped into several types, namely:

- A unilateral agreement is an agreement whose terms are determined by the party in the strongest position, which is usually the creditor, who is usually in a better financial position than the debtor; both parties are usually bound by an agreement within an organization, such as a collective work agreement.
- An agreement made by the government in which the government determines the standard agreement text for certain legal actions, such as agreements relating to land rights.
- To meet the needs of members of the public who seek assistance from a notary or advocate, a standard agreement is an agreement whose concept has been

[3] Made Somya Putra, "Sales and Purchase Agreement," accessed January 3, 2025, https://www.google.com/amp/s/lawyersinbali.wordpress.com/2012/03/31/perjanjian-jual-beli/amp/.
[4] Sutan Remy Sjahdeni, Freedom of Contract and Balanced Protection for Parties in Credit Agreements in Indonesia (Jakarta: Indonesian Bankers Institute, 1994), p. 53.
[5] Muliadi Nur, Principles of Freedom of Contract with Standard Agreements (Jakarta: Labels, 2008), p. 5.
[6] "Housing Sale and Purchase Agreement of PT. Alam Asri Properti, Mataram City" (Mataram, December 2024).
[7] "Housing Sale and Purchase Agreement of PT. Varindo Lombok Inti, Mataram City," (Mataram, December 2024).
[8] Ahmadi Miru and Sutarman Yodo, Consumer Protection Law, 7th edition (Jakarta: PT. Raja Grafindo Persada, 2011), p. 18.
[9] Shidarta, Indonesian Consumer Protection Law, Revised Edition (Jakarta: Grasindo, 2014), p. 112.
[10] Edmon Makarim, Compilation of Telematics Law (Jakarta: PT. Raja Grafindo Persada, 2003), p. 242.
[11] Muhaimin, Legal Research Methods (Mataram: Mataram University Press, 2020), p. 117.

determined from the start. An exoneration clause is a clause that contains provisions that limit or even completely eliminate the obligations of the producer (seller). This shows that the existence of an exemption clause causes an imbalance in bargaining power between consumers and producers.

A waiver clause is often used when a customer makes a purchase at a store without realizing that they are bound by an agreement, particularly in the form of a stated price. In this scenario, the customer has only two options: accept or reject the agreement in the form of a price. In addition, a phrase stating that "goods purchased are non-refundable" may be included in certain proofs of purchase. This is an unintentional element in an agreement that forces the customer to comply with the terms unilaterally set by the manufacturer.

The house sale and purchase agreement that occurred in Mataram City also contains standard provisions which include an exoneration clause. The developer whose contract contains a clause exempting responsibility regarding payment and fines, sells the house. One of the contents of the clause at PT. Varindo Lombok Inti in point 8 states "if the buyer is late in paying the installment on the date specified above, the buyer will be subject to a fine of 2% (two percent) per month of the amount of the installment to be deposited". Furthermore, the agreement at PT. Alam Asri Properti states "the developer has the right to unilaterally cancel the order for the house if there is a delay in payment of the agreed stages, and for cancellations due to this or upon request for an order will be subject to a fee of 2.5%".

This is essentially contrary to the valid requirements of an agreement concerning the agreement of the binding parties, which states that the parties have agreed or there has been a conformity of the will of the parties, there is no element of coercion, error, or fraud. However, in reality, consumers feel forced to sign a standardized house sale and purchase agreement regarding the method of payment and its sanctions, because they are required to obtain credit in order to make payments for the house they have purchased.

Business actors often include a liability waiver clause in electronic agreements with consumers, stating that the business actor is not responsible for the condition of the goods received by the consumer. Consumers must also bear the consequences of this loss due to the absence of an agreement between the business actor and the consumer, which can result in losses for the injured party — in this case the consumer — who has no other choice but to accept or reject the business actor's offer.

The use of a liability waiver clause in a housing sale and purchase agreement in Mataram City is common, both in conventional sales and purchases where buyers and sellers meet in person and in electronic agreements made through online media where buyers and sellers do not meet in person. Customers will suffer losses as a result of this because buyers and sellers do not agree.

The principle of freedom of contract essentially allows business actors to include standard clauses in agreements. The only exception is if the standard clause states the transfer of responsibility of the business actor (exoneration clause), so it is not permitted to include it in any document or agreement. Although Article 18 paragraph (1) letter a of the UUPK states this, some business actors still include exoneration clauses in contracts or proof of payment which can be detrimental to consumers.

The implementation of the provisions on the inclusion of exoneration clauses in the sale and purchase of houses by developers in Mataram City needs to pay attention to several legal aspects related to consumer protection and legal certainty.

The following are several things that need to be considered in the implementation of these provisions:

A. Compliance with Legislation

Developers or property companies in Mataram City are required to comply with applicable legal provisions, such as the Consumer Protection Act, which regulates that exoneration clauses do not unfairly harm consumers. In this case, developers must ensure that the exoneration clause included in the house sale and purchase agreement does not conflict with existing regulations, such as Article 18 of the Consumer Protection Act which prohibits clauses that harm consumers.

B. Transparency and Openness

Developers are required to include the exoneration clause clearly and transparently in the sales and purchase agreement. Consumers must be given adequate explanations regarding the contents and impacts of the clause. In practice, developers must avoid using confusing or hidden language so that consumers do not feel disadvantaged or forced to accept terms they do not understand.

C. Balance of rights and obligations

The inclusion of an exoneration clause must pay attention to the balance of rights and obligations between the developer and the consumer. Clauses containing unreasonable exemptions, such as exemptions from damage or delays caused by the developer's negligence, may be considered invalid or void. Therefore, developers need to be careful so that the clauses included do not violate the principle of justice in contract law.

D. The Role of government and OJK supervision

Supervision by government agencies or related authorities, such as the Financial Services Authority (OJK) or the National Consumer Protection Agency (BPKN), is also important in ensuring that the exoneration clauses in the home sale and purchase agreement are in accordance with existing provisions. This supervision aims to protect consumers from detrimental clauses and ensure that developers operate in accordance with applicable regulations.

E. Dispute Resolution

If there is a dispute regarding the exoneration clause in the sales and purchase agreement, the dispute resolution mechanism must be clear and available to consumers. This can be done through mediation, arbitration, or court in accordance with applicable legal provisions. In this case, the court or dispute resolution institution will consider whether the exoneration clause is valid or contrary to the principles of consumer protection.

Overall, the implementation of the provisions on the inclusion of exoneration clauses in the sale and purchase of houses by developers in Mataram City must prioritize the principles of openness, justice, and legal certainty, as well as comply with applicable consumer protection regulations to avoid clauses that could harm consumers.

The implementation of the provisions on the inclusion of exoneration clauses in the sale and purchase of houses by developers in Mataram City, if associated with the theory of legal effectiveness, can be analyzed from various aspects related to the application and supervision of the law in practice. The theory of legal effectiveness focuses on the extent to which norms or regulations are accepted, followed, and applied in real life, not just their existence in law.

Here are some points that can link the implementation of the exoneration clause with the theory of legal effectiveness:

A. Understanding and acceptance by the parties

In order for the provision of the inclusion of an exoneration clause in a house sale and purchase agreement to be effective, both developers and consumers must have a clear understanding of the provision. If the exoneration clause is written in complex or difficult to understand language, this can reduce the effectiveness of the law because consumers may not be fully aware of their rights or obligations that are excluded. In the context of the theory of legal effectiveness, the law is only effective if the norms or provisions can be understood and accepted by the community involved.

B. Supervision and law enforcement

The effectiveness of the law also depends on how strong the supervision and enforcement system is. If there are many exoneration clauses that are detrimental to consumers in home purchase agreements and there is no adequate supervision from the authorities (such as the National Consumer Protection Agency, the Financial Services Authority, or the courts), then even if the rules exist, the law will not be effective. Therefore, strict supervision of developers in including exoneration clauses and consistent and fair law enforcement are very important to ensure that the law is effective.

C. Compliance with consumer protection regulations

In the theory of legal effectiveness, compliance with regulations is the main key to achieving the desired results. Developers who include exoneration clauses in home purchase agreements must comply with existing regulations, such as the Consumer Protection Act, which stipulates that clauses that are detrimental to consumers are null and void. If developers do not follow this provision and there is no legal action against the violation, then the law itself is ineffective in protecting consumers.

D. Justice and balance in agreements

The theory of legal effectiveness also requires that the law must create justice and balance between the rights and obligations of the parties. An unbalanced exoneration clause, for example, which gives too much benefit to developers while burdening consumers will create injustice, which can reduce the effectiveness of the law. In this case, legal effectiveness is only achieved if the exoneration clause is designed in such a way that it does not harm consumers excessively.

E. Consumer counseling and education

The effectiveness of the law can also be measured by the extent to which consumers are aware of their rights and are aware of the exoneration clauses contained in the sales and purchase agreement. If consumers are not given sufficient information or are not involved in the agreement-making process, then the effectiveness of the law can be questioned. Counseling or education regarding consumer rights and the consequences of exoneration clauses is important to increase the effectiveness of the law in consumer protection.

F. Dispte resolution mechanism

The existence of a clear and efficient dispute resolution mechanism is also an indicator of the effectiveness of the law. If consumers feel disadvantaged by an exoneration clause and there is no clear way to resolve the issue — for example through mediation, arbitration, or the courts — then the law is ineffective in providing protection. An easily accessible and fair dispute resolution mechanism will strengthen the effectiveness of the law in regulating the inclusion of an exoneration clause in a sales and purchase agreement.

The implementation of the provisions on the inclusion of exoneration clauses in house sale and purchase agreements by developers in Mataram City can be said to be effective if all parties understand and comply with applicable laws, there is strong supervision of the practice, and there is a fair dispute resolution mechanism. The law will be effective if the established norms are truly acceptable, implemented, and provide adequate protection to consumers, and create a balance between rights and obligations in house sale and purchase agreements.

Each party must have rights and responsibilities to create a balanced relationship pattern between developers/housing properties and consumers. Law Number 8 of 1999 concerning Consumer Protection further regulates this matter.

Law number 8 of 1999 concerning consumer protection article 6 states:

- The right to payment in accordance with the terms of the agreement regarding the conditions and exchange value of goods and/or services being traded.
- The right to legal defense against detrimental consumer behavior.
- The ability to use appropriate self-defense when resolving consumer issues in court.
- The ability to restore good name if it is legally determined that the transferred goods and/or services do not result in losses to consumers.

Law number 8 of 1999 concerning consumer protection, article 7 regulates the obligations of developers, which include:

- Act in good faith in carrying out business activities;
- Provide accurate, transparent and correct information regarding the condition and guarantee of goods and services, as well as an explanation of how to use, repair and maintain them;
- Treat and serve consumers fairly, honestly and without discrimination; d)
- Ensure the quality of goods and services produced and/or traded in accordance with applicable goods and/or services quality standards;
- Provide compensation, restitution and/or reimbursement for losses arising from the use, utilization and/or trade of traded goods and/or services;
- Providing compensation and/or services received or utilized that are not in accordance with the agreement;
- Providing consumers with the opportunity to test and/or try certain goods and services and providing guarantees and/or warranties for goods produced and/or traded.

In addition to the obligations mentioned above, developers are also bound by the limitations stipulated in Law Number 8 of 1999 concerning Consumer Protection, namely Articles 8 to 17.

In more detail, article 8 of law number 8 of 1999 concerning consumer protection regulates general limitations for business actors which can be broadly divided into two, namely:

- A ban on the product itself if it does not meet the provisions of laws and regulations that make it suitable for use or utilization by consumers;
- Prohibition on the dissemination of false, inaccurate and misleading information to consumers.

In addition to the rights and responsibilities that must be considered by developers (business actors), developers also have obligations (Product Liability) which are components of tasks that regulate their business operations. Therefore, it is undeniable that developers have an obligation to be careful every time they create a new product or service.

Legal consequences of exoneration clauses in housing sales and purchases with Developers in Mataram city

Conformity (statement) of will or agreement results in a contract when one party makes an offer to another party and the other party agrees to convey acceptance to the other party. Therefore, in essence, what occurs is a conformity of will because if it is not expressed or communicated, the other party will not accept it. As a result, there are two unilateral acts, an offer on one party and an acceptance on the other party.

Standard contracts are oppressive and unfair because they cause social injustice and an imbalance in legal protection for the parties. This means that if one party is not balanced in reaching an agreement, freedom of contract can result in provisions that represent injustice and are very burdensome for that party. Only one party has a stronger bargaining position in this general contract, which allows the stronger party to impose its will on the other party and make them agree to various terms that benefit it and harm the other party. The weakness of this standard contract is its inability to provide the parties with the same position and balance [12].

The legal consequences of including an exoneration clause in a housing sale and purchase agreement that is detrimental to consumers can be understood from the perspective of the Consumer Protection Law (UUPK) in Indonesia, especially in terms of protecting consumer rights.

An exoneration clause is a provision in an agreement that releases one party (for example the developer) from liability for losses that may arise due to a violation of the agreement. This type of clause is often used by developers to protect themselves from consumer claims or demands, for example related to delays in the handover of housing units, building defects, or other problems that may harm consumers.

The following are some of the legal consequences of including an exoneration clause in a housing sale and purchase agreement that is detrimental to consumers, based on the perspective of the UUPK:

- **Consumer Protection:** UUPK (Law Number 8 of 1999) provides protection for consumers so that they are not harmed in buying and selling transactions. The inclusion of an exoneration clause that is detrimental to consumers can be considered an act that violates consumer rights guaranteed by UUPK. Article 4 of UUPK stipulates that consumers have the right to comfort, security, and safety in consuming goods and/or services. Clauses that limit the developer's liability can violate this principle.
- **Unfair Clauses:** UUPK also stipulates that in agreements made with consumers, there must be a balance between the rights and obligations of both parties. Exoneration clauses that are unilateral and detrimental to consumers can be considered unfair clauses. Article 18 of UUPK stipulates the prohibition on including clauses that are detrimental to consumers, one of which is an exoneration clause that does not provide adequate protection for consumers.
- **Cancellation or Invalidity:** In cases where the exoneration clause is considered detrimental and unfair, then in accordance with Article 19 of the Consumer Protection Act, the clause can be canceled or deemed invalid. In other words, even though there is an exoneration clause in the agreement, if it is proven to be detrimental to consumers, the court or authorized institution can decide that the clause is invalid.
- **Developer Liability:** Developers who include unfair exoneration clauses can be held liable for losses caused to consumers. Article 4 of the Consumer Protection Act states that business actors, in this case developers, must be liable for losses arising from the goods or services they offer.

The inclusion of an exoneration clause in a housing sale and purchase agreement that is detrimental to consumers may be contrary to the principles of the UUPK, which prioritizes the protection of consumer rights and creates a fair relationship between consumers and business actors. The clause may be canceled or deemed invalid, and the developer may be held responsible for the losses incurred.

In inserting an exoneration clause into a standard clause, it is necessary to pay attention to the provisions of Article 18 of the UUPK related to the relationship between business actors and consumers. The participation of the UUPK in the provisions of Article 18 is directly related to and often appears in house sale and purchase agreements, especially in Mataram City.

The limitation of Article 18 UUPK which prohibits the use of standard contracts is related to the writing style and content of the contract. Although it is illegal to use a standard contract with unfair clauses in its content, the writing style of the clause must be straightforward and easy to read and understand by the customer [13].

The weaker party is usually not in a position to decide what it wants in the agreement because of the unequal positions of the parties. As a result, the stronger party usually takes this opportunity to decide on certain provisions in the basic agreement. Because the format and content of the agreement are made by the parties in a stronger position, the agreement that should have been reached by the parties concerned can no longer be found in the standard form of the agreement.

The house sale and purchase agreement made by property in Mataram City is an agreement that is usually made unilaterally by the developer, and consumers only have the option to accept or reject it, as explained in the previous chapter.

[12] Djoni S. Gazali and Rachmadi Usman, Banking Law (Jakarta: Sinar Grafika, 2010), p. 340.
[13] Janus Sidabalok, Consumer Protection Law in Indonesia, p. 27.

The following can be described regarding the valid requirements of an agreement contained in article 1320 of the civil code if it is related to a house sale and purchase agreement:

A. An agreement that binds the parties

The written agreement between the creditor and the debtor at PT. Alam Asri Properti has permanent legal force because it contains the date of agreement and the signing of the house sale and purchase agreement form between the consumer and the developer. Furthermore, it is not much different from what is in PT. Varindo Lombok Inti contains the date of agreement and the signatures of the parties consisting of the finance department, sales and also the buyer/consumer and at the end of the agreement it is written "the buyer states that he is bound by all these terms and conditions since this form was signed".

The word "bound" indicates that the people who make and sign the agreement have a will, the agreement is final and cannot be disputed. The statement or agreement of a will must be a statement of free will, meaning that neither party is under any pressure or coercion; instead, the statement or agreement must reflect the true voluntary will of the parties. The statement contains the idea of consensualism, which states that an agreement and the responsibilities arising from it have existed from the beginning.

"All agreements made legally are valid as law for those who make them, people can freely make any agreement as long as it does not violate or conflict with applicable regulations," according to Article 1338, Paragraph 1. Therefore, the phrase "all agreements made legally" shows the idea of freedom of contract. On the other hand, the phrase “apply as law” describes the idea of pacta sunt servanda, or binding force.

A standard agreement has the same legal consequences as a general agreement, which begins when the debtor and creditor parties reach an agreement. Furthermore, the legal consequences of a standard agreement will end after the agreement is executed, revoked, or legally cancelled.

However, once again it can be seen that the making of agreements, both those made by PT. Alam Asri Properti and PT. Varindo Lombok Inti, is done in a homogenous manner, with agreements made in various forms that cannot be changed by consumers. The only choice available to consumers is to accept the agreement or reject it. Undoubtedly, there are still agreements that conflict with the UUPK. The principle of freedom of contract, which states that everyone has the right to make or not make any agreement, whether regulated by law or not, can support this. In this case, freedom refers to the structure and content of the agreement.

According to contract law in Indonesia, the principle of freedom of contract covers the following areas [14]:

- A person's freedom to make or not make an agreement;
- his freedom to choose the party with whom he wishes to conclude an agreement;
- freedom to determine the reasons for making an agreement;
- his freedom to determine the purpose of the agreement;
- its freedom to determine the form of the agreement; And
- his freedom to accept or deviate from optional legal provisions.

Based on the statement, it is clear that the developers PT. Alam Asri Properti and PT. Varindo Lombok Inti unilaterally made an agreement and set its terms. Consumers can only agree because the two *developers* have made and set the agreement, consumers cannot negotiate its contents, and consumers only follow the process because they want to get a house. The parties are free to make their own agreements as long as they do not violate the law, public order, and morality, in accordance with the principle of freedom of contract.

Freedom - in this principle is not the absolute freedom, because the law provides limitations, which are contained in Article 1337 of the Civil Code, namely a cause is prohibited, if it is prohibited by law, or if it is contrary to morality or public order. Restrictions can be by law, or by government intervention, in the sense that not all individuals are free to determine the contents of the agreement, for example with the existence of a standard or standard agreement.

Does he have the authority to have the right or act. regarding the contents of the agreement, it can be seen that there are still some that are detrimental to consumers because they are contrary to the consumer protection law.

B. Ability to make an agreement

A person or party who has sufficient capacity certainly carries out the provisions contained in the agreement in the Property Company in Mataram City. This is proven when an agreement is made that already includes the identities of the parties and includes a photocopy of the KTP (Resident Identity Card) so that the parties have the legal capacity to be held accountable if there are things that conflict in the future. Article 1329 of the Civil Code further regulates the capacity to make contracts, which states that everyone is capable of making contracts, unless deemed legally incompetent. A person who is capable of performing legal acts is deemed capable of making contracts. In general, a person who is sane and considered legally mature, not those under the supervision of a guardian, is a person who can file a lawsuit. Regarding the limit of maturity, a person is generally considered an adult if he or she has married even though he or she is not yet 21 years old or has reached the age of 21.

Article 1330 of the civil code regulates people who are not competent to make agreements, namely:

- Immature person
- Those under custody
- Female persons in cases stipulated by law and in general all persons to whom the law has prohibited making certain agreements

The court has the right to cancel an agreement at the request of the authorized party, if one of the parties to the agreement is found to be incompetent to make it.

C. For certain reasons

In making an agreement, the purpose of the agreement must be clear or at least can be ascertained based on the type of product agreed upon. This is in accordance with Article 1333 of the Civil Code which states that an agreement must contain conditions as its subject matter, at least its type. An object in the agreement must be about something specific, according to the definition of a certain thing. At least someone can identify the purpose or achievement in material or immaterial

[14] Hasanuddin Rahman, Business Contract Drafting Skills Series, Contract Drafting (Bandung: PT. Citra Aditya Bakti, 2003), p. 15.

matters. Given that the purpose of the agreement is achievement, the purpose can be to provide something, do something, or not do something. Therefore, the object of the agreement is not always an object.
An agreement between the consumer and the property party, namely PT. Alam Asri Properti and PT. Varindo Lombok Inti, the existence of certain things has been clearly regulated in the agreement, a more detailed description of the object to be sold, in the agreement is written as follows:
Form. PT. Alam Asri Property

Type: ☐ Building Area: ☐ Land Area: ☐

Mortgage _______ YEAR SELLING PRICE Rp. _________ DOWN PAYMENT Rp. ________
- Down payment paid in one lump sum of Rp. ________ Will be paid on the date: ___
- Down payment in installments with the following installment schedule:

Phase I Rp. ___________________ Will be paid on the date: ___
Phase II Rp. ___________________ Will be paid on the date: ___
Phase III Rp. ___________________ Will be paid on the date: ___
Stage IV Rp. ___________________ Will be paid on the date: ___
Stage V Rp. ___________________ Will be paid on the date: ___

I am able to submit the required files no later than 1 week from the date of the booking fee and I am willing to cancel if I do not meet the requirements by the specified deadline.

Fig 1

Housing: _____________ Block/No: _____________
Type/Area: _____________ Selling Price: _____________
Payment: KPR (Home Ownership Credit) / Cash / Cash in Installments
House Price: Rp. ______________
Discount: Rp. ______________
Net Price: Rp. ________________
"The buyer states that he has filled in his personal data correctly and states that he agrees and is willing to fulfill all the terms and conditions listed in this form and states that he is bound by all these terms and conditions since signing this order form."

Fig 2: Form. PT. Varindo Lombok Inti

According to Article 1332 of the Civil Code, only goods that can be traded can be the subject of an agreement. Article 1334 Paragraph (1) of the Civil Code also states that goods that will only exist in the future can also be the subject of an agreement. Thus, it is clear that the subject of an agreement is an object or goods that already exist and an object or goods that will still exist.

D. A lawful cause

If an agreement is made without a valid reason, then the agreement will be considered null and void. Therefore, because the contents of the agreement will be implemented, the agreement must be definite (can be determined) and valid (not prohibited). The parties enter into an agreement with the aim of implementing the provisions of the agreement based on Article 1320 Jo. Article 1337 of the Civil Code. The contents of the agreement must not be contrary to law, morality, and public order.
A lawful cause is the final requirement for a valid agreement. Article 1335 of the Civil Code states that an agreement without a cause, with a false cause, or a prohibited cause has no force. The purpose of the cause is the content and purpose of the agreement.
If you consider the prerequisites for the validity of an agreement, then there may be a standard agreement. Because the position of business actors is higher than consumers and gives them the opportunity to abuse their power, standard agreements with exoneration clauses conflict with the concept of responsible freedom of contract. Not all business actors give responsibility to consumers; they just rule in their own right. Standard agreements do not fulfill the requirements outlined in Article 1320 and Article 1338 of the Civil Code.
Tighter supervision is needed to ensure that the agreement complies with applicable laws and regulations and does not conflict with these laws because the agreement between the property companies, namely PT. Alam Asri and PT. Varindo Lombok Inti with consumers/buyers violates the principle of freedom of contract and does not meet the provisions of Article 1320 of the Civil Code. The misuse of the standard agreement is also caused by the lack of consumer understanding of the contents of the agreement, including not reading or reviewing it, which can harm customers personally.
The standard agreement emphasizes that the attitude of the business actor is more important than the attitude of the consumer. As a result, business actors can abuse their authority. This is because some business actors shift responsibility to consumers, while others only regulate their own rights. As a result, the standard agreement still contains a number of provisions that are contrary to the UUPK. Therefore, the preparation of standard agreements requires stricter supervision.
Based on the previous explanation, if an agreement meets the requirements listed in Article 1320 of the Civil Code, then the agreement is considered valid. If the agreement does not violate the law, morality, and public order, then the agreement is legally binding on all parties.
Abdulkadir Muhammad is of the opinion that an agreement has coercive and binding power. The party in default is obliged to pay compensation (Article 1243 of the Civil Code) and bear the risk (Article 1237 paragraph (2) of the Civil

Code) [15]. A legally binding agreement cannot be cancelled or annulled unilaterally because it binds the parties.

There are two types of cancellation that have legal consequences [16]:

1. Null and void, namely if the objective conditions are not met, then the agreement is null and void from the start, or is considered never to have happened. The contract is null and void. At the beginning, there was no bond or agreement.
2. Voidable, namely Although one party can file a request for cancellation, the agreement is not void if one of the subjective requirements is not met. As long as the judge does not revoke the agreement at the request of the authorized party (the incompetent party or the party who does not accept voluntarily), the agreement itself will remain legally binding for both parties.

Meanwhile, the author argues that the standard agreements in property companies at PT. Alam Asri Propoerti and PT. Varindo Lombok Inti do not meet the provisions of Article 1320 and Article 1338 of the Civil Code. Consumers are not given the opportunity to submit an offer on the standard agreement, which shows a difference in position between entrepreneurs and consumers.

The principle of freedom of contract is violated when consumers are not allowed to freely voice their choices when deciding what is included in the agreement. There is no negotiation about the terms of the agreement because this is a situation that is either acceptable or not. Although it violates the principle of freedom of contract and does not meet the requirements of Article 1320 Jo. 1338 of the Civil Code, the agreement remains null and void and cannot be enforced.

Especially in the house purchase agreement that the author found in the contract at PT. Alam Asri Properti and PT. Varindo Lombok Inti, standard agreements that still contain exoneration clauses are increasingly common in trade activities. Their usefulness and ease in reaching agreements are the reasons. In accordance with Article 1338 of the Civil Code which states:

"All agreements that are made are valid as law for those who make them. An agreement cannot be withdrawn other than by agreement of both parties or for reasons that the law states are sufficient for that. An agreement must be executed in good faith."

Based on the description mentioned above, this common agreement can be enforced against the parties. However, this agreement must be used seriously. This means that clauses that burden the customer or transfer of obligations can be grounds for cancellation of the agreement in court.

The imbalance between the rights and obligations of property companies in both developers and consumers causes a transfer of responsibility. The implementation of UUPK is a response to the imbalance in the regulation of rights and obligations between business actors and consumers in credit agreements/ordinary contracts, in which case [17]:

- It is prohibited or at least limited to include standard clauses with exoneration clauses in standard agreements or contracts that do not place consumers in an equal position with business actors. This applies both in terms of content (Article 18 paragraph (1) letters a to h) and in terms of disclosures that are difficult to understand or the location or
- form of which is difficult to see or read clearly (Article 18 paragraph (2)).
- Business actors must be legally responsible, because as referred to in Article 18 paragraph (3) and paragraph (4), standard clauses contained in standard agreements or contracts which conflict with this Law are essentially null and void by law and business actors are required to change them.
- In accordance with Article 19 paragraph (1) to paragraph (5) which regulates financial and immaterial rewards, business actors are obliged to be responsible for their actions.
- Sanctions against business actors can be in the form of a maximum fine of IDR 2,000,000,000.00 (two billion rupiah) or imprisonment for a maximum of five (five) years.
- Although Law Number 8 of 1999 concerning Consumer Protection has been issued quite clearly, the process of its realization has not been optimal. In other words, the rules contained in this law are not in accordance with community customs. In general, business actors in standard agreements are only responsible for what is stated and agreed upon in the standard agreement. Business actors in this case PT. Alam Asri Properti and PT.Varindo Lombok Inti are also responsible for violations of Article 18 of the Consumer Protection Law, especially if the violation is detrimental to consumers, because the law regulates restrictions for business actors.

If there is no exoneration clause in the standard agreement as stipulated in Article 18 of the UUPK, then the standard agreement is valid and does not conflict with laws and regulations. A clause may be void by law if it is contained in the standard agreement as stipulated in Article 18 of the UUPK (exoneration clause). Standard agreements are a fundamental part of society, especially for business actors.

Business actors can save time and implement agreements more effectively if there is a standard agreement. The problem lies in the content of the standard agreement. The formation of a standard agreement, which in this case is unilateral, allows business actors to use its provisions to release or even transfer obligations to customers. One of the things that makes people wonder about the use of standard agreements in business is this.

Consumers can suffer losses if they do not understand the information needed and do not understand the provisions of the standard agreement offered by business actors. In reality, most people do not read the standard agreement carefully before ratifying or signing it. This can result in business actors misusing the standard agreement or acting arbitrarily in making its contents.

An exoneration clause is a provision in an agreement that releases or limits the liability of one party. In the sale and purchase of housing in Mataram City, this clause is often used by developers to avoid responsibility for construction delays,

[15] Abdulkadir Muhammad, Indonesian Insurance Law (Bandung: PT. Citra Aditya Bakti, 2006), p. 65.
[16] Zainal Abidin, "Exoneration Clause in Financing Agreement (Study at Adira Sumbawa)" (Mataram, University of Mataram, 2021), p. 113.
[17] HP Panggabean, Standard Contract Practices in Banking Credit Agreements (Bandung: Alumni, 2012), p. 9.

building defects, or other defaults.

Based on the theory of legal consequences, the impact of the application of the exoneration clause can be analyzed as follows:

A. Causal theory of law

According to this theory, legal consequences occur as a direct consequence of certain legal actions [18]. If the exoneration clause is used to release the developer from liability for default, then the home buyer may suffer losses without being able to claim compensation. In this context, the legal consequences that arise are [19]:

- Loss of the buyer's right to demand developer responsibility.
- The developer has no legal burden even if there is a breach of the agreement.
- Potential legal imbalance between developers and consumers.

B. Legitimacy theory of contract

In civil law, the validity of an agreement must meet the requirements in Article 1320 of the Civil Code, including a lawful cause [20].

If the exoneration clause in a housing sale and purchase agreement causes an imbalance of rights and obligations, then the clause can be considered:

- Null and void because it is contrary to legal provisions and the principles of justice.
- Can be cancelled (voidable) at the request of the injured party, in this case the buyer.

If the developer uses an exoneration clause to avoid responsibility for late house handover or building defects, the buyer can still sue on the basis of breach of contract (Article 1243 of the Civil Code). As a legal consequence, the developer can be sued to fulfill its obligations in accordance with the agreement and the buyer can file a claim for damages against the developer. If breach of contract is proven, the agreement can be canceled through a court decision.

Exoneration clauses in housing purchase agreements in Mataram City can have negative impacts on consumers, such as the loss of the right to demand developer responsibility. However, the laws in force in Indonesia provide protection for buyers, so that detrimental clauses can be canceled or ignored based on the principles of justice, consumer protection, and provisions on default in the Civil Code.

4. Conclusion

Based on the discussion description in the previous chapter, a conclusion can be drawn, namely that the implementation of the provisions for including an exoneration clause in the sale and purchase of houses by developers in Mataram City is found in the agreements found in the developer companies at PT. Varindo Lombok Inti and PT. Alam Asri Properti. One of the contents of the exoneration clause at PT. Varindo Lombok Inti is regarding the release of responsibility related to payments and fines, which is contained in Number 8 of the agreement and at PT. Alam Asri Properti is contained in Number 4 regarding unilateral cancellation by the developer. Based on Article 18 paragraph (1) letter c of the UUPK, business actors who offer goods and/or services for trading are not allowed to include an exoneration clause in any document or agreement stating that the business actor has the right to refuse a refund of money that has been paid for goods and/or services that have been purchased by consumers, this provision violates the rules. Legal consequences for the house sale and purchase agreement made with an exoneration clause in the agreement at PT. Varindo Lombok Inti and PT. Alam Asri Properti, namely the legal consequences of violating Article 1320 of the Civil Code, especially the requirement for a lawful cause, then the agreement is null and void because it conflicts with Article 1337 of the Civil Code where the contents of the agreement have included an exoneration clause in the standard agreement where this is contrary to Article 18 Paragraph (1) and Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection. On the other hand, the legal consequences of violating Article 18 of the UUPK are that the agreement can be declared null and void and the business actor is obliged to adjust it as stated in Article 18 Paragraph (3) and (4).

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