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# Protection of Financial Consumers Through Setting Standard Clauses in Law Number 4 of 2023 concerning Strengthening and Development of the Financial Sector

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## **Abstract**

Consumers are often in a weaker position compared to business actors because consumers as a party need to understand in depth the business of a financial product or service. This study aims to determine the protection of financial consumers by setting standard clauses. This study uses a doctrinal research method. The results of this study, a form of consumer protection carried out in the law, are through regulation regarding standard agreements with standard clauses. The P2SK Law does not prohibit PUSK from using standard agreements in their business activities. Still, it regulates the prohibition of standard clauses that are felt not to fulfill the principles of balance and justice so that they have the potential to harm consumers as a party with a weaker position than PUSK. In this case, there must be a balanced relationship between PUSK and consumers, beginning with both parties' good faith. In addition, law enforcement efforts are also required through supervision by the financial sector authorities to ensure the application of consumer protection provisions by PUSK and the imposition of sanctions if there are violations. Legal certainty is also needed from the consumer side if PUSK violates consumer protection provisions that harm consumers, so consumers have the right to settle disputes by applicable regulations.

*Keywords: Consumer; Financial Services; Law Enforcement; Businessmen*

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## **INTRODUCTION**

In the perspective of consumer protection, the position between business actors in the financial sector and consumers is not balanced. Consumers are often in a weaker position compared to business actors because, as a group, they do not understand in depth the business of a financial product or service. This results in consumers being forced to accept terms or conditions that have been determined by financial sector business actors. Conversely, because business actors understand more about the ins and

outs of the financial products and services they offer, they take advantage of these advantages to avoid their responsibility to consumers<sup>1</sup>.

The current legal system's inability to deliver security, fairness, and clarity reinforces consumers' disadvantaged position. Current legislative procedures are insufficient to safeguard financial sector consumers when engaging directly with financial sector corporate players who are more powerful than consumers. In 2022, the OJK's National Financial Literacy and Inclusion Survey found that Indonesians' financial literacy index was 49.68%. The financial inclusion index will reach 85.10% in 2022<sup>2</sup>. Public literacy and financial product and service ownership are somewhat different, according to the poll. This indicates that many customers own or utilize financial goods or services without comprehending them.

Legal protection is a way to create a sense of security, certainty, and fairness for people who use financial products. This protection requires a balance between consumers and financial sector actors. The important thing to remember is that businesses need consumer support to be able to do their jobs well. There is a reciprocal relationship between business actors in the financial sector and consumers, so there is a need for a balanced approach between the two. In fact, many financial sector businesses exploit customer vulnerabilities and ignore consumer rights. Financial sector business operators frequently exploit customers using typical terms.

Currently, standard agreements are widely used in various fields of trade in goods and/or services, from ready-to-eat food and beverage products to financial products such as credit cards and insurance policies. Initially, standard agreements were used by business actors so that transactions with a large number of consumers could be carried out efficiently. The standard agreement is prepared unilaterally by business actors and is not discussed in advance with consumer users, so it has the potential to contain provisions that can be detrimental to consumers.

The standard agreement writing party's duties might be reduced, transferred to the receiver, or eliminated, which can harm consumers. In today's digital era, the issue of potential consumer losses from using standard agreements is increasingly coming to the fore. This is because one of them is that digital transactions, including the use of standard agreements, are carried out digitally or not face to face. In addition, transactions can be

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<sup>1</sup> Johanes Widijantoro et al., "Hukum Perlindungan Konsumen Jasa Keuangan Di Era Otoritas Jasa Keuangan: Edisi Revisi" (Cahaya Atma Pustaka Kelompok Penerbit Universitas Atma Jaya Yogyakarta, 2019).

<sup>2</sup> Otoritas Jasa Keuangan (OJK), "Infografis Hasil Survei Nasional Literasi Dan Inklusi Keuangan Tahun 2022," Otoritas Jasa Keuangan, 2022, <https://www.ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Infografis-Survei-Nasional-Literasi-dan-Inklusi-Kuangan-Tahun-2022.aspx>.

carried out across countries and languages, so of course this will further increase the potential loss for consumers.

There is a dilemma when using standard clauses in business. On the one hand, they can create an imbalance between the two parties. But on the other hand, the use of standard clauses is needed to help the business activities themselves<sup>3</sup>. The use of standard clauses does not always have a negative connotation; the purpose of making standard clauses is to provide convenience for the parties who are bound. Mariam Darus Badruzaman describes a standard agreement as a document with standardized content<sup>4</sup>. Business actors in the financial sector will experience difficulties if they have to make agreements with each of their consumers, while the number of consumers who use their services is very large and it is carried out across borders. However, what needs to be emphasized is that whatever the reason, the principles of balance, justice, and certainty must still be implemented.

With the release of Law No. 4 of 2023 on Building and Developing the Financial Sector, various financial sector issues related to the asymmetrical connection between corporate players and consumers must be expected (UU P2SK). The P2SK Law focuses on five pillars: strengthening financial sector authority institutions while ensuring independence, governance, increasing public confidence in the financial industry, encouraging the accumulation of long-term financial sector funds for welfare and sustainable development financing, consumer protection, and financial sector literacy, inclusion, and innovation. The P2SK Law defines consumer protection as legal certainty to safeguard customers. Legal certainty balances financial sector businesses and consumers. The P2SK Law prohibits typical terms to balance business-consumer ties. The P2SK Law defines a standard agreement as a written agreement, including electronic, that is unilaterally defined by financial sector business players, has standard terms for content, form, and production, and is used to mass-market items and services to customers. This research examines whether the P2SK Law's standard clause ban protects banking sector customers. Based on the things mentioned above, the researcher wants to conduct research with the aim of knowing the provisions in the P2SK Law regarding the prohibition for financial sector business actors to include standard clauses that reflect the principle of balance and can provide protection to consumers.

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<sup>3</sup> Denni Andini, "Klausula Eksonerasi Pada Sistem Garansi Terhadap Transaksi Jual Beli Kacamata Di Banda Aceh Dalam Perspektif Hukum Islam (Studi Tentang Implementasi Khiyar Syarat)" (UIN Ar-Raniry, 2021).

<sup>4</sup> Nizla Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen," *JHR (Jurnal Hukum Replik)* 6, no. 1 (2018): 23–42.

## METHOD

The research method in this proposal uses doctrinal research methods. This doctrinal research itself means conducting studies using applicable legal regulations and existing doctrines to answer the legal issues that have been formulated. In this proposal, the author collects data by conducting a literature study, where further analysis is carried out through the study. The data is also secondary. Primary and secondary legal sources were utilized to write this study. Through a literature study, a statutory approach is used to examine and identify legal regulations related to a particular problem or issue, such as those related to standard clauses in agreements on financial products and/or services and provisions regarding standard clauses in Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK). This journal article's conceptual approach differs from economic law theories, notably those linked to the P2SK Law's implementation.

## RESULT AND DISCUSSION

### **1. The urgency of consumer protection in the financial sector against the use of standard clauses that do not reflect the principle of balance**

When examined further, the term "consumer protection" relates to legal protection. The form of protection provided here is not just physical protection but also protection of abstract consumer rights. In other words, consumer protection is actually synonymous with the protection provided by law for consumer rights<sup>5</sup>. Legal protection can be interpreted as a way, a process of protecting based on law, or it can also be interpreted as a protection provided through legal means. In legal protection, there are two main indicators, namely: (1) there are norms that contain the substance of what is protected; and (2) there is the implementation and enforcement of norms, so that if there is a violation of norms, action can be taken accordingly with these norms.

To get legal protection, legal norms (rules) are needed, and there is law enforcement if someone violates these rules or norms. To get legal certainty, regulations need to be made properly and followed by everyone. So that legal protection has a close correlation with legal certainty<sup>6</sup>. The P2SK Law defines consumer protection as legal certainty to

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<sup>5</sup> Rabiah Z Harahap, "Aspek Hukum Perlindungan Terhadap Penumpang Bus Dalam Mewujudkan Perlindungan Konsumen," *De Legis Lata: Jurnal Ilmu Hukum* 1, no. 1 (2016): 211-33.

<sup>6</sup> Advent Pateh, "Kepastian Hukum Kepemilikan Hak Milik Atas Tanah Badan Keagamaan (Studi Yuridis Pada Kongregasi Misionaris Hati Kudus Indonesia)" (UNIVERSITAS ATMA JAYA YOGYAKARTA, 2022).

safeguard customers. Ahmadi and Sutarman argue that "any measures to establish legal clarity" should function as a bull to stop commercial actors from harming consumers<sup>7</sup>.

Legal certainty in consumer protection includes all efforts based on the law to empower consumers to obtain or make choices about the goods and/or services they need and to defend their rights if they are harmed by the behavior of business actors. Meanwhile, consumer empowerment is carried out by increasing consumer awareness, ability, and independence in protecting themselves. Financial Sector Business Actors (PUSK) are our Finance Companies (institutions that carry out activities in the banking sector, capital market, insurance, pension funds, financing institutions, and other financial service institutions based on the provisions of the laws and regulations on financial services), financial market infrastructure actors, payment system business actors, and supportin.

Globalization and technology advancement have made the financial system increasingly interconnected without temporal or geographical borders. Financial product innovation is becoming more complicated and diversified, which might exacerbate financial system instability. It may potentially weaken financial consumer protection. One reason is because Indonesia's financial customers require more empowerment than the financial sector's progress.

After the global financial crisis of 2008, the OECD views financial literacy as a very important individual life skill in the economic field. This is due to various financial risks being transferred by business actors to consumers, an increasingly complex financial landscape, an increasing number of business actors and financial consumers, and the ineffectiveness of regulations that can provide protection to consumers<sup>8</sup>.

Consumer protection is one of the issues that needs to be considered by financial authorities, given that consumer protection that consumers trust will have a positive impact on financial system stability. In general, the benefits of consumer protection are to raise awareness among business actors regarding the importance of consumer protection, increase the level of consumer empowerment so that consumers are able to protect themselves, reduce the imbalance of power between business actors and consumers, eliminate the dissemination of misinformation, abuse of authority, and fraud, as well as encourage the development of responsible and efficient financial product and service innovations.

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<sup>7</sup> Tarisa Aprilliani, Sri Handayani, and Mardiana Mardiana, "Perlindungan Hukum Pihak Debitur Terhadap Perjanjian Pinjam-Meminjam Dengan Layanan Berbasis Peer To Peer Lending Pada Penggunaan Shopee Paylater" (Sriwijaya University, 2022).

<sup>8</sup> OECD OECD, "INFE High-Level Principles on National Strategies for Financial Education," *Paris, August, 2012*.

The 2011 High-Level Recommendations on Financial Consumer Protection from the OECD Committee on Financial Markets Task Force on Financial Consumer Protection emphasize financial consumer protection (CMF). The High Level Principles protect G20 and other financial institution customers. Consumer protection ideas enhance international rules. Each country and sector must adapt these ideas<sup>9</sup>.

The principles of financial consumer protection, or the G20 High Level Principles on Financial Consumer Protection, are as follows :

a. *Legal, Regulatory and Supervisory Framework*

- 1) Financial consumers need an integrated legal, regulatory, and supervisory framework. It must reflect national circumstances, global markets, and financial sector regulation.
- 2) Arrangements must be proportionate to product and customer features, kinds, and variations (rights and responsibilities, responsiveness to new products, design, technology, and product delivery mechanisms).
- 3) Laws, supervision, and judicial mechanisms must be able to help consumers avoid fraud and abuse.
- 4) Relevant stakeholders, such as industry and consumer organisations and research communities, must go through consultations when developing consumer education and protection policies.

b. *Role of Oversight Bodies*

- 1) There is a clear mandate for the consumer protection supervisory authority, including clear and objective responsibilities, good governance, operating independently, being accountable, having sufficient authority, capable resources, a clear supervisory framework, and consistent regulatory processes.
- 2) Supervisory institutions must have high professional standards, including standards for maintaining consumer confidentiality, obtaining proprietary information from consumers, and being able to resolve conflicts of interest.
- 3) Cooperation with financial sector supervisory institutions must be prioritized, including international cooperation related to consumer protection for international transactions.

c. *Equitable and Fair Treatment of Consumers*

Financial service providers must treat all customers fairly, honestly, and equally. All financial service providers practice this. Providers must also prioritize special-needs consumers.

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<sup>9</sup> Organisation for Economic Co-operation and Development, "G20 High-Level Principles on Financial Consumer Protection" (OECD Paris, 2011).

d. *Disclosure and Transparency*

- 1) Financial service providers and their agents must provide important information (key information) for consumers related to benefits, risks, and product conditions, including information related to conflicts of interest with agents who sell these products.
- 2) Information must be provided for all aspects of financial products and made available at every stage of the relationship with the operator.
- 3) Product promotion materials must be accurate, honest, easy to understand, and not misleading.
- 4) Standard clauses must be properly adopted to facilitate comparisons between products and services within the same product category.
- 5) Special disclosures, for example, warnings, must be prepared especially for complex and high-risk products.

e. *Financial Education and Awareness*

- 1) Stakeholders must prioritize financial literacy. Consumer protection, rights, and obligations are readily available.
- 2) Consumers must be educated to comprehend risks, especially financial hazards and possibilities, and to learn about the financial industry.
- 3) As part of a national education and consumer protection plan, national conditions, financial education, and sensitivity should be publicized via suitable channels at an early age and available to consumers of all ages. Financial education programs should target disadvantaged customers.
- 4) OECD-INFE principles and recommendations should be implemented by all parties (the International Network on Financial Education).
- 5) Relevant agencies must evaluate and improve the effectiveness of the implementation of financial education.

f. *Responsible Business Conduct of Financial Services Providers and Authorized Agents*

- 1) Financial service providers and their representatives must safeguard customers.
- 2) The financial service provider must be responsible for the actions taken by the appointed agent.
- 3) Before offering goods and services, financial service providers must assess customers' financial capabilities, position, and requirements based on the transaction and connected consumers.
- 4) The staff serving customers must be properly trained and qualified.
- 5) Financial service providers and agents must avoid conflicts of interest that may occur with consumers. When there is a conflict of interest, financial

service providers and agents must ensure that information is disclosed, have internal mechanisms to resolve the conflict, or even refuse to provide the product, advice, or service to consumers.

- 6) Financial service providers and agents must foster ethical business practices, customer equality, and conflict-free compensation. When conflicts of interest are unavoidable, customers are informed of the compensation structure.
- g. Protection of Consumer Assets against Fraud and Misuse*  
Information, controls, and consumer protection methods must be employed to safeguard customer financial assets like deposits, savings, and others against fraud, abuse, and others.
- h. Protection of Consumer Data and Privacy*
  - 1) Consumer control tools must safeguard financial and personal data. The procedure must address the intended use of data gathered, processed, utilised, and disclosed, particularly for third parties.
  - 2) The mechanism must also cover consumer rights to be informed about data-sharing, to access data and obtain data correction, to delete data because it does not match what was given, or to collect or process data illegally.
- i. Complaints Handling and Redress*
  - 1) Consumers must have easy, affordable, independent, fair, accountable, quick, and efficient complaint and compensation methods under applicable legislation.
  - 2) The mechanism must not contain unexpected costs, delays, or additional costs for consumers.
  - 3) Financial service providers and agents must have a complaint and compensation mechanism.
  - 4) A compensation processing line through an independent channel must be available if complaints cannot be handled properly by financial service providers and agents through an internal complaint resolution mechanism.
- j. Competition*
  - 1) Competitive markets both nationally and internationally must be encouraged to create in order to provide the best choice for consumers and increase business competition, increase innovation, and maintain high service quality.
  - 2) Consumers must be able to research, compare, or even replace products and service providers easily and at a reasonable cost, which must be disclosed in advance.

Based on the description of the principles above, financial consumers do need protection both before using financial products and services and during their use (the



product life cycle). When selecting financial products or services, consumers have the right to obtain information regarding the benefits, costs, and risks of the products or services they are considering. Often, consumers experience losses due to ignorance or a lack of understanding of the products or services used, including the standard agreements that have been prepared unilaterally by PUSK. Consumers are in a weak position because they must agree to these standard clauses if they want to use the products or services required from PUSK, both for fundraising products such as savings and time deposits and fund distribution products such as lending or financing, as well as payment system products and services such as transfers. In this case, standard clauses must also be transparent and easily understood by consumers so that they can compare similar products and decide which product or service is most suitable for their needs.

## **2. Standard Clause in the Agreement**

Civil Code Article 1313 makes an agreement a contract. Article 1320 of the Civil Code authorizes the arrangement. Article 1338, Paragraph 1 of the Civil Code permits parties to make any agreement that does not contradict the law, public order, or decency. Abdul Kadir said the agreement has stated, implicit, and waiver provisions<sup>10</sup>. Strict terms are conditions that are specifically stated and agreed upon by the parties at the time of making the agreement. A tacit condition is a condition that is not expressly specified regarding a matter in the agreement. Meanwhile, the waiver clause is used to limit the liability of one party, usually the seller or the business actor. In practice, this exclusion clause is also known as a standard clause, which is intended by business actors as an attempt to transfer responsibility.

The use of standard clauses is a phenomenon that is currently occurring in business activities in the financial sector. It cannot be denied that the use of standard clauses provides advantages in their use because they are seen as practical, especially in mass activities. However, on the other hand, its use has also received criticism, especially from legal experts who view that in practice it does not reflect the existence of a balance principle in the relationship between business actors and consumers. Weaknesses in the use of standard clauses include the fact that the preparation is carried out unilaterally in the form of a standardized agreement, which does not provide an opportunity for consumers to negotiate the contents of the agreement. Often, because the agreement is drawn up by the PUSK, it will tend to provide benefits to the PUSK, and vice versa, it will be felt to be unfair or burdensome for the consumer.

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<sup>10</sup> Stefen Potoboda, "Akibat Hukum Kegagalan Dalam Pemenuhan Kewajiban Kontraktual," *LEX ET SOCIETATIS* 2, no. 1 (2014).

According to Sutan Remy Syahdeini, a standard agreement is one in which the wearer has standardized practically all of the provisions and the other party has little room for negotiation or amendment. Only price, kind, amount, color, location, time, and certain agreement-specific items have not been standardized. The business actor creates a form for this agreement, and the customer simply needs to approve if he wants to utilize the goods or service<sup>11</sup>. Mariam Darus Badruzaman believes that a standard agreement's contents are unilaterally defined by a powerful (economic) party, the community (the debtor) does not jointly choose the agreement's contents, and the debtor is obliged to accept the agreement in a specific shape due to their necessities. (written) and assembled<sup>12</sup>. In a conventional agreement, unreasonable and onerous provisions hurt the customer. "Exemption" or "exoneration" clauses are these. Execution clauses reduce or eliminate seller or business actor liability<sup>13</sup>.

Mariam Darus Badruzaman describes an exoneration provision as a clause in an agreement in which one party avoids paying full or partial restitution owing to a broken promise or illegal behavior<sup>14</sup>. Based on the opinions above, it can be concluded that exoneration clauses are clauses made in agreements, both standard agreements and non-standard agreements, where the clause is intended to limit or transfer responsibility from one party to another. The standard clause, or exoneration clause, is usually prepared by a party that has a stronger position than the opposing party<sup>15</sup>. In this case, PUSK is usually the stronger party, while consumers are the weaker party.

"A written agreement, including in electronic form, is defined unilaterally by PUSK and comprises standard provisions covering content, form, and method of manufacturing, and is used to supply items and services to customers in bulk," according to P2SK Law Article 1 number 42. From the description above, it can be stated that a standard agreement is a written agreement in the form of a document whose contents, form, and method of closing have been standardized unilaterally by one of the parties, then duplicated, and used en masse without considering the differences in conditions owned by the parties (take it). or leave it contract).

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<sup>11</sup> Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107-20.

<sup>12</sup> Dede Agus, "Perlindungan Konsumen Atas Penggunaan Perjanjian Baku Dalam Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Nurani Hukum* 1, no. 1 (2018): 71-82.

<sup>13</sup> Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen."

<sup>14</sup> Dian Ekasari, "Perlindungan Hukum Terhadap Konsumen Atas Klausula Baku Dalam Perjanjian Kredit Perbankan Di Kabupaten Tolitoli, Sulawesi Tengah," 2012.

<sup>15</sup> M Roji Iskandar, "Pengaturan Klausula Baku Dalam Undang-Undang Perlindungan Konsumen Dan Hukum Perjanjian Syariah," *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 1, no. 2 (2017): 200-216.

The relationship between the parties in an agreement is defined as a series of reciprocal rights and obligations (reciprocal relations). The principle is that what is the right of one party is the obligation of the other party. As standard agreement makers, business actors already understand what is being offered to consumers and what they want to get from them. Meanwhile, consumers must understand the formulation of the provisions regarding rights and obligations regulated in the standard clause. This, of course, causes the legal relationship between the two parties to become unbalanced and has the potential to become victims of the arbitrariness of business actors. Conditions like this should encourage the government to protect consumers who generally have a weak position.

Remy Sjahdeini believes legislation and courts are essential to prevent stronger parties from abusing freedom of contract. Consequently, the only option to protect freedom of contract is to restrict corporate actors' exoneration provisions<sup>16</sup>. Consumers in the US restrict corporate actors' exoneration clause power. Consumers may sue under the 1978 Uniform Commercial Code. This court ruling will inform rules, including how much the government may design contracts<sup>17</sup>.

The new Dutch Civil Code includes standard agreements. It stipulates that rules must establish the commercial areas that may adopt standard agreements, and only the Minister of Justice can decide, alter, or cancel agreements. The stipulation, change, or revocation only becomes legitimate once the King/Queen approves it in the State Gazette. Additional sections allow the manufacturer, seller, or creditor to terminate this basic agreement if they know or should know that the customer will not accept it if he learns its contents<sup>18</sup>.

### 3. Setting Standard Clauses in Legislation

Indonesian Consumer Protection Law Number 8 of 1999 governs standard clause production (UUPK). Article 1 point 10 defines standard provisions as business actors' unilateral terms and conditions in a commercial agreement that consumers must respect<sup>19</sup>. Thus in this article the emphasis is on making the clause unilateral. Article 18, paragraph (1) of UUPK prohibits business actors selling products and services for trade from incorporating standard terms in every document and agreement if they transfer

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<sup>16</sup> Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen."

<sup>17</sup> Muhammad Roesli, Sarbini Sarbini, and Bastianto Nugroho, "Kedudukan Perjanjian Baku Dalam Kaitannya Dengan Asas Kebebasan Berkontrak," *DiH: Jurnal Ilmu Hukum* 15, no. 1 (2019): 1-8.

<sup>18</sup> Rohaya, "Pelarangan Penggunaan Klausula Baku Yang Mengandung Klausula Eksonerasi Dalam Perlindungan Konsumen."

<sup>19</sup> Republik Indonesia, "Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," 1999.

liability<sup>20</sup>. Under Article 18, paragraph (2), standard clauses must be accessible, legible, and understandable. The standard clause is invalidated by law if the business actor fails to comply with paragraphs (1) and (2)<sup>21</sup>.

UUPK is a law that seeks to protect consumers through regulation regarding standard clauses. The regulation regarding standard clauses in the UUPK will likely increase consumer empowerment so that they have an equal position with business actors and can claim their rights as consumers as stipulated in the law. However, along with the development of technology and innovation, especially in products and services in the financial sector, the challenges faced by financial consumers are greater. PUSK usually have a higher position than consumers, so it can exploit consumers and potentially harm them. Financial consumers are in a weak and lame position because they are in a "take it or leave it" position where consumers need the financial product or service, so they have no choice but to agree to the standard agreement or clause proffered by PUSK.

In this regard, concrete steps are required to ensure that there are legal measures to protect financial consumers when dealing with PUSK that can protect the interests of financial consumers comprehensively and can be implemented effectively. The need to balance the relationship between PUSK and consumers has prompted the government to issue regulations that can strengthen efforts to protect consumers in the financial sector.

Article 238 of the P2SK Law regulates the prohibition of Financial Sector Business Actors (PUSK) from making and using Standard Agreements, which contain standard clauses containing certain matters, with the following description<sup>22</sup>:

- (1) PUSK fulfills balance, fairness, and fairness in consumer agreements.
- (2) The Agreement referred to in paragraph (1) is written.
- (3) The written Agreement, as referred to in paragraph (2), maybe a Standard Agreement containing standard clauses, except those prohibited under this Law.
- (4) PUSK is prohibited from making and using Standard Agreements which contain standard clauses containing:
  - a. Declare the transfer of PUSK's responsibilities or obligations to consumers;
  - b. Announce that the Consumer authorizes PUSK, directly or indirectly, to take all unilateral measures on the commodities pledged as collateral, unless such unilateral acts are justified on laws and regulations.

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<sup>20</sup> Republik Indonesia.

<sup>21</sup> Republik Indonesia.

<sup>22</sup> Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan," 2023.

- c. Requires Customers to prove that PUSK is not responsible for loss of use of items and services bought.
  - d. Allow PUSK to minimize product and service utilization or consumer assets.
  - e. Declare that the Consumer permits PUSK to incur mortgage, lien, or guarantee rights for installment-purchased items and services.
  - f. Stating that PUSK can add, change and provide further rules unilaterally after the Agreement is approved/agreed on;
  - g. Declare that the Consumer is subject to unilateral changes by PUSK to the rules as stipulated in letter f after the Consumer signs the Agreement;
  - h. Give authority to PUSK to avoid or limit the applicability of a clause;
  - i. Stating that PUSK has the authority to interpret the meaning of the Agreement unilaterally;
  - j. Stating that PUSK limits its liability for errors and negligence of employees and third parties acting in the interests of PUSK;
  - k. Limiting the Consumer's right to sue PUSK when there is a dispute related to the Agreement; And
  - l. Limiting the evidence that consumers can provide when there is a dispute related to the Agreement.
- (5) Further provisions regarding the Standard Agreement, as referred to in paragraph (3), are regulated in the regulations of the financial sector authorities by their respective authorities.

Based on the rule prohibiting standard provisions, the P2SK Law does not ban standard agreements using PUSK for commercial operations. PUSK cannot utilize the standard language in Article 238 to ensure balance, justice, and fairness in consumer agreements. PUSK is prohibited from entering into agreements containing standard clauses that may place consumers in a weak position or have the potential to harm consumers. In preparing standard agreements, PUSK must still pay attention to the principle of balance in the relationship between PUSK and consumers. The standard clause arrangements in the P2SK Law, when compared to the standard clause arrangements, are more specifically aimed at products/services in the financial sector, which have different characteristics from the available products/services stipulated in the UUPK. However, the regulation regarding the standard clauses in the P2SK Law and the UUPK are both imperative because they are followed by legal sanctions in case of a violation of Article 18 of the UUPK and Article 238 of the P2SK Law.

Business players that violate Article 6, Article 11, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter (a) letter (b) letter (c) letter (e), Paragraph (2), and Article 18 may be imprisoned for five years or fined Rp. 2,000,000,000.00. (two billion rupiahs).

Article 63 also allows additional penalties for criminal sanctions as stated in Article 62, including confiscation of goods, announcement of the judge's decision, compensation payment, orders for certain activities that cause consumer losses, obligation to withdraw goods from circulation, and business license revocation. PUSK who violate Article 236 paragraph (3) letter c, letter f, letter g, letter h, letter I, letter l, or letter m, or paragraph (4) letter a, letter b, letter d, letter e, or letter f, or Article 238 paragraph (a) will be imprisoned for 2-10 years and fined Rp. 25,000 (two hundred and fifty billion rupiahs).

Based on the above arrangements, the imposition of sanctions for violations of the standard clause provisions in the P2SK Law is more severe when compared to the provisions in the UUPK. This is because the violations committed by PUSK against consumers in the financial sector are more serious. After all, it can result in a decrease in the level of consumer confidence in the financial sector, meanwhile, as it is known that trust is very important in the financial sector. So to ensure that PUSK implements these provisions, the sanctions imposed are heavier than criminal sanctions in the goods and services sector. As previously described, there are 2 (two) indicators in the concept of consumer protection, namely the existence of norms that contain the substance of what is protected and the implementation and enforcement of norms so that if there is a violation of the norms, action can be taken by these norms.

By taking these norms into account, it can be stated that legal norms containing substances to protect consumers are contained in the P2SK Law as regulated in Article 238 which regulates the use of standard clauses by PUSK. The provisions in Article 238 are also imperative because there are provisions regarding the imposition of criminal sanctions in Article 306 paragraph 1 if PUSK violates the provisions in Article 238 paragraph 4 regarding the prohibition of the standard clause. The provisions in Article 238 paragraph (4), followed by Article 306 paragraph (1), illustrate that the two indicators in the concept of legal protection, namely the existence of arrangements regarding protected substances and law enforcement when there is a violation, have been fulfilled by the P2SK Law. However, it is necessary to understand that the products and services of the financial sector have a very wide variety, so that the P2SK Law also stipulates that further provisions regarding standard agreements are regulated in the regulations of the financial sector authorities in accordance with their respective authorities. What financial sector authorities mean here are Bank Indonesia (BI) and the Financial Services Authority (OJK). In this regard, further arrangements are required by each of these authorities by their respective authorities to ensure legal certainty regarding the implementation of the P2SK Law by PUSK.

## CONCLUSION

Based on the preceding definition, Law Number 4 of 2023 about the Development and Strengthening of the Financial Sector is a significant government attempt to safeguard financial customers. One form of consumer protection in the law is regulation regarding standard agreements with standard clauses. The P2SK Law does not prohibit PUSK from using standard agreements in their business activities. Still, it regulates the prohibition of standard clauses that are felt not to fulfill the principles of balance and justice so that they have the potential to harm consumers as a party with a weaker position than PUSK. Furthermore, to implement these regulations well, it is necessary to socialize and educate both PUSK and consumers so that they understand their rights and obligations. PUSK must understand the prohibition on using standard clauses as stipulated in Article 238 paragraph (4) of the P2SK Law.

On the other hand, consumers must also know and understand these provisions to protect themselves when conducting financial transactions with PUSK. In this case, there must be a balanced relationship between PUSK and consumers, beginning with both parties' good faith. Furthermore, to ensure that PUSK has implemented the provisions regarding this standard clause, further efforts are needed from the financial sector authorities, among others, by making further arrangements regarding implementing the provisions stipulated in the P2SK Law as a legal umbrella. These further arrangements are needed to provide certainty regarding implementation in each financial sub-sector with different characteristics. In addition, law enforcement efforts are also required through supervision carried out by financial sector authorities to ensure the implementation of consumer protection provisions by PUSK and the imposition of sanctions if there are violations. From the consumer side, legal certainty is also needed if PUSK violates consumer protection provisions that harm consumers, so consumers have the right to settle disputes by applicable regulations.

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