

## Standard Clauses: Measuring Dilemmas in Theory

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### **Abstract**

*The study aims to measure this dilemma through the theories of natural law, utilitarianism, and positivism. It employs a qualitative approach using library research and normative juridical analysis. Despite their role in enhancing transactional efficiency, standard clauses often obscure critical rights and responsibilities, particularly for consumers who lack the bargaining power or legal literacy to fully comprehend or negotiate contract terms. This condition is increasingly urgent in the context of digital transactions on e-commerce platforms, etc where standard clauses are not only more prevalent but also more opaque. Existing scholarship has yet to explore how consumer legal literacy—or the lack thereof—affects the understanding, acceptance, and contestation of standard clauses in the digital marketplace. This study fills that gap by integrating legal theory with a critical analysis of consumer awareness, offering a novel perspective on the intersection between legal formalism and substantive justice in contemporary consumer contracting. The results indicate that standard clauses are deemed unjust based on natural law theory due to their formulation often violating universal moral principles, which demand mutual agreement and fairness for all parties. According to utilitarian theory, standard clauses are beneficial if they serve all parties; however, since they mainly benefit business actors, the usefulness is limited and creates imbalance. Meanwhile, positivist theory considers standard clauses legally valid as long as they adhere to the pacta sunt servanda principle—once written and agreed upon, the contract is binding law for the parties. Although standard clauses promote business efficiency, the imbalance in bargaining power may disadvantage consumers, who must therefore critically assess their ability to accept or reject the contract.*

**Keywords: natural law; positivism; standard clauses; utilitarianism.**

### **Abstrak**

Penelitian ini bertujuan untuk menakar dilema klausula baku untuk efisiensi pelaku usaha atau perlindungan konsumen melalui teori hukum alam, utilitarianisme, dan positivisme. Penelitian ini menggunakan pendekatan kualitatif dengan

menggunakan penelitian kepustakaan dan analisis yuridis normatif. Meskipun berperan dalam meningkatkan efisiensi transaksi, klausul standar sering kali mengaburkan hak dan tanggung jawab penting, khususnya bagi konsumen yang tidak memiliki daya tawar atau literasi hukum untuk memahami atau menegosiasikan ketentuan kontrak secara menyeluruh. Kondisi ini semakin mendesak dalam konteks transaksi digital pada platform e-commerce, dll., di mana klausula baku tidak hanya lebih lazim tetapi juga lebih buram. Kajian yang ada belum mengeksplorasi bagaimana literasi hukum konsumen—atau kurangnya literasi hukum—mempengaruhi pemahaman, penerimaan, dan penentangan klausul standar di pasar digital. Penelitian ini mengisi kesenjangan tersebut dengan mengintegrasikan teori hukum dengan analisis kritis kesadaran konsumen, yang menawarkan perspektif baru tentang persimpangan antara formalisme hukum dan keadilan substantif dalam kontrak konsumen kontemporer. Hasil penelitian menunjukkan bahwa klausula baku dianggap tidak adil berdasarkan teori hukum alam karena rumusannya sering melanggar asas moral universal, yang menuntut kesepakatan bersama dan keadilan bagi semua pihak. Menurut teori utilitarianisme, klausula baku bermanfaat jika melayani semua pihak; namun, karena lebih banyak menguntungkan pelaku usaha, kegunaannya terbatas dan menimbulkan ketidakseimbangan. Sementara itu, teori positivisme menganggap klausula baku sah secara hukum sepanjang klausula baku tersebut mematuhi asas *pacta sunt servanda*—setelah dibuat dan disetujui, kontrak tersebut menjadi hukum yang mengikat bagi para pihak. Meskipun klausula baku mendorong efisiensi bisnis, ketidakseimbangan dalam daya tawar dapat merugikan konsumen, yang karenanya harus menilai secara kritis kemampuan mereka untuk menerima atau menolak kontrak.

**Kata Kunci:** hukum alam; positivisme; klausula baku; utilitarisme.

## Introduction

Standard clauses are regulated under Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). These clauses are commonly used in B2C (Business to Consumer) contracts. The emergence of standard clauses in agreements stems from the need of business actors for contracts that are typically complex, costly, and time-consuming. With the use of standard clauses, operational costs are expected to be reduced, and the time required for transactions can be shortened. In such situations, parties with weaker bargaining positions tend to merely accept and sign the contract without having the ability to add, remove, or modify its content—ultimately benefiting the business party.

However, the use of standard clauses also raises several issues. The main criticism lies in the imbalance of bargaining power between business actors and

consumers. Consumers are often faced with "take it or leave it" conditions, with no opportunity to negotiate the terms and conditions of the contract. This leads to the inclusion of unfair or even detrimental provisions for consumers. Standard clauses are frequently presented unclearly and non-transparently. They are often written in complex and technical language, making them difficult for the average consumer to understand. Additionally, these clauses are typically lengthy and detailed, resulting in consumers possibly not reading them thoroughly. What's more, they are often not accompanied by adequate explanations, leading consumers to be unaware of the implications of such terms. These clauses are also frequently embedded within long and complex documents, which consumers might overlook altogether.

To date, numerous studies have been conducted on standard clauses. Previous research has focused on several tendencies. The first examines standard clauses in relation to the Consumer Protection Law. The second highlights the perspective of consumers. Researchers have found that standard clauses clearly violate the Consumer Protection Law as they weaken the consumer's bargaining position in facing business actors. Sekararum, through a case study on PT Asuransi Bumi Putera Muda, found that the standard clauses implemented violated contractual principles and breached Article 18 of the Consumer Protection Law<sup>1</sup>. M. Roji Iskandar observed that standard clauses are governed under Islamic law based on Islamic contractual principles<sup>2</sup>. Fadel Edo Romires analyzed the inclusion of standard clauses from the perspective of consumer protection and available litigation routes in the event of disputes<sup>3</sup>. Agus Saiful Adib also reviewed standard

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<sup>1</sup> Bambang Daru Nugroho Sekararum Intan Munggaran, Sudjana, "Perlindungan Konsumen Terhadap Pencantuman Klausula Baku Dalam Perjanjian" 2, no. 2 (2019), <http://jurnal.fh.unpad.ac.id/index.php/jad/issue/archiveKORESPONDENPENULIS>.

<sup>2</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, <https://doi.org/10.29313/amwaluna.v1i2.2539>.

<sup>3</sup> Fadel Edo Romires, "Penggunaan Klausula Baku Dalam Perjanjian E-Commerce Ditinjau Dari Perspektif Perlindungan Konsumen," *Jurnal Inovasi Penelitian* 3, no. 4 (2022), [http://www2.warwick.ac.uk/fac/sci/whri/research/mushroomresearch/mushroomquality/fungienvironment%0Ahttps://us.vwr.com/assetsvc/asset/en\\_US/id/16490607/contents%0Ahttp://www.hse.gov.uk/pubns/indg373hp.pdf](http://www2.warwick.ac.uk/fac/sci/whri/research/mushroomresearch/mushroomquality/fungienvironment%0Ahttps://us.vwr.com/assetsvc/asset/en_US/id/16490607/contents%0Ahttp://www.hse.gov.uk/pubns/indg373hp.pdf).

clauses through the lens of the Consumer Protection Law<sup>4</sup>. Miko Susanto Ginting analyze validity or invalidity of standardized clause in contract where the standardized clause inclusion in contract is not prohibited, along do not contain substance or shape contrary with the Law<sup>5</sup>.

However, despite the breadth of this scholarship, little attention has been paid to how theory views the Standard Clause, facing the dilemma between business efficiency or consumer protection. There is a significant gap in literature concerning legal literacy among consumers and how it affects their ability to engage with or contest standard clauses embedded in every transaction. This study aims to fill that gap by critically examining the dilemma between business efficiency offered by standard clauses and the protection of consumer rights.

The advancement of technology and the digital economy introduces a new dimension in the use of standard clauses. Electronic contracts and online user agreements are increasingly prevalent, yet often agreed upon without being thoroughly read by users. This raises new concerns regarding the protection of consumer rights in the digital landscape. On the other hand, business actors argue that standard clauses are a necessary element in modern economies. Without them, operational costs would rise significantly, ultimately affecting the prices of goods or services paid by consumers.

This research discusses the dilemma between business efficiency offered by standard clauses and the protection of consumer rights. This dilemma creates tension between two equally important interests—whether to prioritize business efficiency or consumer protection. It forces stakeholders to choose between two or more options, each with their own difficulties or disadvantages. This study aims to assess this dilemma through the lens of natural law theory, utilitarian theory, and legal positivism. This study offers a multidisciplinary theoretical analysis of standard clauses, addresses the gap linking legal theory and consumer legal literacy

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<sup>4</sup> A. Heru Nuswanto Agus Saiful Adib, Doddy Kridasaksana, “Penerapan Klausula Baku Dalam Melindungi Konsumen Pada Perjanjian Jual Beli Melalui E-Commerce,” *Jurnal Dinamika Sosial Budaya* 17, no. 1 (2015): 122, <https://doi.org/10.26623/jdsb.v17i1.508>.

<sup>5</sup> Miko Susanto Ginting, “Menegaskan Kembali Keberadaan Klausula Baku Dalam Perjanjian,” *Jurnal Hukum Dan Peradilan* 3, no. 3 (2014): 223–36.

in digital contracts, and contributes both practically and theoretically to developing fairer regulations and enhancing public legal awareness in the context of increasingly prevalent digital transactions.

### **Research Method**

This study employs a qualitative approach using normative juridical analysis. This method aims to examine and analyze the applicable legal norms and relevant legal theories in the context of the implementation of standard clauses in business contracts, particularly in relation to the principle of contractual justice in business-to-consumer relationships. The focus of this research lies in exploring how standard clauses, although formally lawful, can raise substantive injustice issues that contradict the core values of fairness in legal practice.

Data for this research were obtained through library research, relying primarily on secondary legal sources. These sources include primary legal materials such as Law Number 8 of 1999 concerning Consumer Protection and other relevant statutory regulations. Secondary legal materials such as national and international academic journals, textbooks, scholarly articles, previous research findings, and statistical data from the National Consumer Protection Agency (BPKN) of Indonesia were also reviewed. Tertiary legal materials such as legal dictionaries and legal encyclopedias were utilized to support the conceptual framework.

The analysis integrates three main legal theoretical approaches: natural law theory, utilitarianism, and legal positivism. Natural law theory is used to evaluate standard clauses based on universal moral principles and the ideal of justice. Utilitarian theory assesses the extent to which standard clauses provide overall benefit to society, particularly to consumers. Legal positivism is used to examine the legality of such clauses according to formal legal standards, such as the principle of *pacta sunt servanda*. In addition, the study incorporates John Rawls' theory of contractual justice and Ronald Coase's economic analysis of law to strengthen the analytical framework regarding the tension between efficiency and fairness in the use of standard form contracts.

The data were analyzed descriptively and analytically, by systematically

describing key legal concepts and critically assessing the practical implications of standard clauses in contractual practice. All findings are examined in relation to legal principles that aim to safeguard consumer rights, providing a comprehensive understanding of the ongoing dilemma between business efficiency and contractual justice in the use of standard clauses.

## Result and Discussion

### Contractual Justice

In recent developments, the study of standard clauses cannot be separated from the perspective of contractual justice, which demands a balance between the principle of efficiency and the protection of fundamental rights of the weaker party in civil legal relationships<sup>6</sup>. Contractual justice requires that an agreement, although formally valid, must still uphold the principle of substantive justice that does not place one party in a disadvantaged or manipulated position.

Contractual justice is commutative and proportional. Commutative justice demands equality of rights and obligations in a contract, while the principle of proportionality ensures balance and prevents excessive burden on one party. Both ensure that contracts are drawn up and executed fairly, without harm, and are adaptive to changing conditions<sup>7</sup>.

Referring to John Rawls' theory of justice, there are two main principles: the principle of equal liberty for all and the difference principle, which states that social and economic inequalities are justified only if they benefit the least advantaged members of society<sup>8</sup>. In the context of standard clauses, the inclusion of non-negotiated and burdensome terms for consumers constitutes a form of inequality that is ethically unjustifiable.

The implementation of standard clauses that do not provide room for negotiation and contain unilateral terms violates the principle of fairness as justice

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<sup>6</sup> J. Loos, M., & Luzak, "Wanted: A Bigger Stick. On Unfair Terms in Consumer Contracts with Online Service Providers," *Journal of Consumer Policy* 39 (2016): 63–90.

<sup>7</sup> Faradilla Meisya Valda, "Kedudukan Asas Proporsionalitas Dalam Perjanjian Timbal Balik Abstrak," *Pemuliaan Keadilan* 2, no. 2 (2025): 2025.

<sup>8</sup> Jon Mandle, *Rawls's "A Theory of Justice": An Introduction*, 1st ed. (England: Cambridge University Press, 2009).

(justice as fairness). Therefore, standard clauses must be formulated in such a way that they allow room for consumer objections or clarifications and avoid exploitative practices<sup>9</sup>. This condition may lead consumers to be unaware of their rights and obligations and unable to make informed decisions. Therefore, it is crucial for business actors to present standard clauses clearly and transparently, and to provide consumers with adequate explanations.

From the perspective of economic law, the existence of standard clauses can be understood as an effort to reduce transaction costs, namely the costs arising from negotiation and contract administration. Ronald Coase stated that economic efficiency is a primary goal in contractual arrangements. However, efficiency alone cannot justify practices that harm one of the parties<sup>10</sup>. In this context, regulation should ensure that the intended efficiency is accompanied by protective mechanisms, including transparency of information and limitations on unreasonable or disproportionately burdensome provisions.

Standard clauses must also be viewed from the standpoint of business ethics and corporate social responsibility (CSR). Companies are not only obligated to comply with positive law, but also bear a moral responsibility to protect consumers from exploitation. Business ethics emphasize that contracts must be drafted honestly and transparently, provide sufficient information, and not conceal significant risks from consumers. In other words, the principle of fair contracting should be embedded in the internal policies of companies when formulating standard clauses<sup>11</sup>.

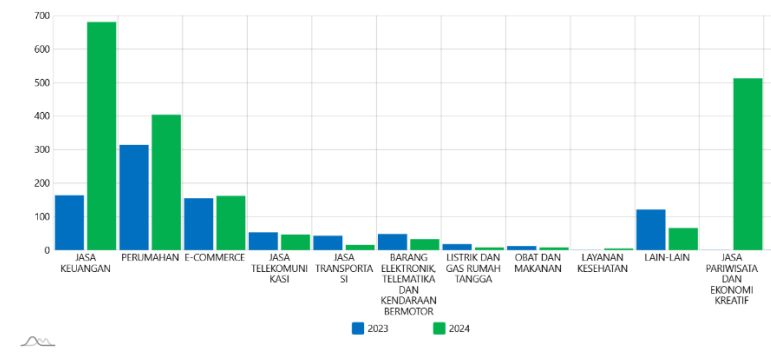
According to data from Indonesia's National Consumer Protection Agency (BPKN), there was a significant increase in consumer complaints throughout 2024, reflecting the dynamic state of consumer protection in the country.

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<sup>9</sup> Mbich Rebecca Mbilufeh, "A Critical Examination of Standard Form Contracts and Its Impact on Consumers in Cameroon," *International Journal of Legal Developments and Allied Issues* 8, no. 5 (2022): 36–51.

<sup>10</sup> Timothy J. Yeager, "The Coase Theorem: The Link to Institutions," in *Institutions, Transition Economies, And Economic Development*, 1st ed. (New York: Routledge, 2018), 10, <https://doi.org/https://doi.org/10.4324/9780429499760>.

<sup>11</sup> K. Lagioia, F., Jabłowska, A., Liepina, R., & Drazewski, "AI in Search of Unfairness in Consumer Contracts: The Terms of Service Landscape," *Journal of Consumer Policy* 45, no. 3 (2022): 481–536.



**Figure 1. Comparison of Number of Complaints in 2023 – 2024**

The number of complaints reached 1,733 cases, an increase of approximately 200% compared to 2023, which recorded 926 complaints. The estimated consumer losses amounted to IDR 424.26 billion, of which only IDR 44.82 billion, or about 10.6%, was successfully recovered. Data shows that the total number of complaints received by the National Consumer Protection Agency (BPKN) from 2020 to November 26, 2024, amounted to 10,799 cases. The significant increase in 2024 compared to the previous year signals a trend that must be taken seriously by all stakeholders.

The dilemma between business efficiency and consumer protection in the implementation of standard clauses is not merely a normative discourse but has proven to have significant practical implications, as reflected in the consumer complaint data in Indonesia. According to the 2024 report by BPKN, there were 1,733 consumer complaints—almost double that of 2023. Of the total potential consumer loss amounting to IDR 424.26 billion, only around IDR 44.82 billion (10.6%) was successfully recovered<sup>12</sup>. This reflects a disparity in consumer protection that may stem from imbalanced contractual practices, including the unilateral use of standard clauses by business actors.

The total potential consumer loss reported in 2024 reached IDR 424.26 billion, but only about IDR 44.82 billion (approximately 10.6%) was successfully recovered. This low recovery rate highlights the limitations of the existing consumer dispute resolution mechanisms. According to data from BPKN, as shown

<sup>12</sup> Arnelia Triwardini, “BPKN RI Paparkan Catatan Akhir Tahun 2024, Terima 1733 Pengaduan Selama Tahun 2024,” *Kabar DKI*, 2024.



in Figure 1, there was a significant increase in the number of consumer complaints in 2024, indicating the ongoing challenges in consumer protection in Indonesia.

Most consumer complaints in the services and e-commerce sectors—which saw the sharpest rise in reports—are closely related to the use of standard form contracts. These contracts often include standard clauses that are non-negotiable and substantively harmful to consumers, even though they are formally valid. These statistics serve as empirical validation of the concerns discussed in this article—namely that business efficiency through standard clauses must not come at the expense of contractual justice and fundamental consumer rights<sup>13</sup>.

From the perspective of natural law theory, these statistics can be interpreted as a violation of universal moral principles, as consumers are placed in unfair positions<sup>14</sup>. The utilitarian approach shows that the imbalance of benefits between businesses and consumers demonstrates that standard clauses have yet to provide optimal utility for the wider society. Meanwhile, from the standpoint of legal positivism, the high number of complaints—even though the clauses are legally valid—highlights the limitations of a formalistic approach in achieving substantive justice.

Thus, the statistical data from BPKN reinforces the urgency of re-evaluating the standard contract model in business-to-consumer (B2C) relationships. More progressive regulation and the adoption of user-centered legal design are crucial to ensure that standard clauses remain tools for efficiency without neglecting the principles of protection and contractual justice.

### Evaluating Standard Clauses in Legal Theories

Standard clauses serve to simplify and expedite transactions between sellers and buyers, both in conventional settings and in e-commerce<sup>15</sup>. The characteristics

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<sup>13</sup> M. Durovic and J. Poon, “Consumer Vulnerability, Digital Fairness, and the European Rules on Unfair Contract Terms: What Can Be Learnt from the Case Law Against TikTok and Meta?,” *Journal of Consumer Policy* 46, no. 4 (2023): 419–43, <https://doi.org/10.1007/s10603-023-09546-7>.

<sup>14</sup> & Dewa Gede Pradnya Yustiawan Putu Laksmi Noviyana, “Contractual Fairness in International Trade: An Analysis of Business Law Standards,” *International Journal of Law, Crime and Justice* 2, no. 1 (2025): 174–186.

<sup>15</sup> Agus Saiful Adib, Doddy Kridasaksana, “Penerapan Klausula Baku Dalam Melindungi

of standard contracts or standard clauses are as follows: 1) The contents are unilaterally determined by the creditor, who has a relatively stronger position than the debtor; 2) The debtor has no role in determining the terms of the contract; 3) The debtor is compelled to accept the agreement due to necessity; 4) The contract is in written form; 5) It is pre-prepared, either in mass or individual form. These characteristics reflect the economic principle and legal certainty applied in relevant jurisdictions, often from the business interest rather than the consumer perspective<sup>16</sup>.

The unilateral drafting of contract forms by legal experts is commonly known as a "standard agreement," where the contents are predetermined and embedded in a template. This type of agreement has emerged due to the development of modern society and shifts in socio-economic conditions. Standard agreements aim to achieve efficiency and practicality<sup>17</sup>. To reduce costs and increase efficiency, business actors rely on standard clauses, which are often prepared with legal consultation to ensure compliance with both consumer and business rights.

Standard clauses reduce transaction costs and improve business efficiency in several ways. First, they simplify contract processes and reduce the need for lengthy and complex negotiations. By using standard clauses, businesses avoid costs associated with drafting complex contracts and protracted discussions. Additionally, standard clauses help mitigate contract-related disputes because the terms are predetermined and mutually agreed upon the parties.

Standard clauses also enable businesses to focus on core activities rather than on drafting and negotiating individual contracts. This focus allows more attention to product development, marketing, and customer service. Furthermore, businesses can reduce legal costs by minimizing disputes, as the clear and prearranged nature of standard clauses decreases legal risk.

Moreover, standard clauses can speed up transactions, helping businesses

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Konsumen Pada Perjanjian Jual Beli Melalui E-Commerce.”

<sup>16</sup> Melisa Aquaria Putri S, “Kedudukan Klausula Baku Dalam Perjanjian Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen,” *Jurnal Gagasan Hukum* 2, no. 02 (2020): 122–34, <https://doi.org/10.56301/juris.v7i2.1043>.

<sup>17</sup> Mauritz Pray Takasenseran, “Perjanjian Antara Bank Dan Nasabah Menurut Undang-Undang Nomor 10 Tahun 1998,” *Lex Et Societatis* IV, no. 7 (2016): 41–48.

respond faster to consumer demands and increasing customer satisfaction. In the long run, the use of standard clauses improves operational efficiency and reduces overhead.

However, standard clauses must be carefully and transparently drafted to ensure that consumers understand their rights and obligations. Business actors must ensure that these clauses do not harm consumers and that consumers are given adequate opportunity to understand and consent to the terms.

In the long term, the use of Standard Clauses can help business actors to improve business efficiency and reduce transaction costs. By using Standard Clauses, business actors can increase transaction speed, reduce the risk of disputes, and save costs associated with handling disputes. This can allow business actors to focus more on their core business activities and increase consumer satisfaction.

However, it should be noted that Standard Clauses must also be drafted carefully and transparently to ensure that consumers understand their rights and obligations. Business actors must ensure that Standard Clauses do not harm consumers and that consumers have the opportunity to understand and agree to the clauses in the contract.

In practice, Standard Clauses can be used in various types of transactions, such as sales transactions, service transactions, and other transactions. Business actors can use Standard Clauses to simplify the contract process and reduce transaction costs, as well as improve business efficiency. Thus, Standard Clauses can be an effective tool to improve business efficiency and reduce transaction costs. However, it should be noted that Standard Clauses must be drafted carefully and transparently to ensure that consumers understand their rights and obligations.

In conclusion, Standard Clauses can help reduce transaction costs and improve business efficiency by simplifying the contract process, reducing the risk of disputes, and saving costs associated with handling disputes. By using Standard Clauses, business actors can increase transaction speed, reduce transaction costs, and improve customer satisfaction. Therefore, Standard Clauses can be an effective

tool to improve business efficiency and reduce transaction costs <sup>18</sup>.

The use of Standard Clauses can also help increase consumer trust in business actors. By using transparent and fair Standard Clauses, business actors can demonstrate a commitment to fairness and transparency in transactions with consumers. This can increase consumer trust and enable business actors to build better relationships with consumers.

In the long term, the use of Standard Clauses can help businesses improve their reputation and build trust with consumers. By using transparent and fair Standard Clauses, businesses can demonstrate their commitment to fairness and transparency in their transactions with consumers. This can improve the reputation of businesses and enable them to be more successful in business.

Therefore, Standard Clauses can be an effective tool to improve business efficiency, reduce transaction costs, and increase consumer confidence. By using transparent and fair Standard Clauses, business actors can increase transaction speed, reduce transaction costs, and increase consumer satisfaction. In the long run, the use of Standard Clauses can help business actors to improve their reputation and build trust with consumers.

In practice, business actors can use Standard Clauses to improve business efficiency and reduce transaction costs. By using transparent and fair Standard Clauses, business actors can increase transaction speed, reduce transaction costs, and increase consumer satisfaction. Therefore, Standard Clauses can be an effective tool to improve business efficiency and reduce transaction costs.

Standard Clauses can also help improve business standards in an industry. By using transparent and fair Standard Clauses, businesses can demonstrate their commitment to fairness and transparency in their transactions with consumers. This can improve business standards in an industry and enable businesses to be more successful in business.

It's just that what makes consumers feel disadvantaged by the inclusion of

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<sup>18</sup> Russell Korobkint et al., "Bounded Rationality , Standard Form Contracts , and Unconscionability Percent of All Contracts Did Not Resemble the Platonic Ideal of a List Of," *The University of Chicago Law Review* 70, no. 4 (2023): 1203–95.

standard clauses is the consumer's inability to fulfill the demands contained in the standard clause, thus throwing the blame on the business actor as if it were the business actor's fault. In fact, consumers can measure their inability. If they feel unable to fulfill the standard clause in the agreement, then consumers still have options elsewhere.

In this context, standard clauses reflect economic principles that prioritize efficiency, but often at the expense of fairness. Consumers are faced with a “take it or leave it” choice, which reduces the opportunity to negotiate the terms and conditions of the contract. This raises the risk of including unfair or even illegal clauses.

### **Analysis Based on Natural Law Theory**

Natural law thinkers believe that law cannot be neutral and must be guided by universal morality. Universal moral principles—such as prohibitions against killing, stealing, or taking the rights of others, as well as acts that are generally considered wrong—must be obeyed by all humans in order to achieve justice everywhere and at all times. Therefore, laws that do not conform to these universal principles are considered unjust and cannot be called “law.” If there is behavior that deviates from these moral principles, then that behavior is an anomaly that must be corrected because it is contrary to the basic values of goodness.<sup>19</sup> If we look at this theory, the standard clause agreement is considered unfair because it violates universally applicable morality that is believed by society. Especially if we look at the principle of consensualism which requires that every agreement made must be based on the agreement of both parties, not just one party. This means that the agreement must be drafted by the parties before it can be said to have a value of justice. More specifically, the natural law theory evaluates the standard clause as something that has the potential to conflict with universal moral principles. This emphasizes the inconsistency between the drafting of a unilateral clause and

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<sup>19</sup> Endang Pratiwi, Theo Negoro, and Hassanain Haykal, “Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?,” *Jurnal Konstitusi* 19, no. 2 (2022): 269–93, <https://doi.org/10.31078/jk1922>.

substantive justice that should be the basis of the contract. The natural law theory views that law must be based on universal moral principles that apply to all humans. In the context of the standard clause, this theory considers that:

- a) The unilateral drafting of standard clauses violates the principle of consensualism which requires agreement from both parties.
- b) Standard clauses containing provisions that are detrimental to consumers are considered to be in conflict with universal moral values that demand fair treatment of all parties.

For example, the inclusion of a clause that exempts the business actor from liability may be considered a violation of the moral principle of justice. According to natural law theory, such agreements should be avoided because they do not meet universal moral standards.

### **Analysis Based on Utilitarianism Theory**

The formulator of the theory of utilitarianism is Jeremy Bentham. He is known as the Father of Utilitarianism, and his theory focuses on actions that produce the greatest good for the greatest number of people. In addition to Bentham, John Stuart Mill also contributed to the development and refinement of the concept of utilitarianism. This theory looks at whether an action/phenomenon/event has benefits. So if it has greater benefits, the action/phenomenon/event has automatically been useful for society and vice versa. Therefore, utilitarianism is more suitable to be used as an ethical evaluation tool whether something that happens is useful for the wider community or not.<sup>20</sup> The utilitarian approach provides a perspective that assesses whether the clause provides greater benefits to the wider community. The imbalance of benefits that only favors business actors is an important concern that threatens distributive justice. A standard clause agreement is said to fulfill benefits if the agreement is beneficial to all parties. This theory assumes that if it is only beneficial to 1 party, then the agreement cannot be said to have benefits. If consumers feel that the agreement does not have many

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<sup>20</sup> Pratiwi, Negoro, and Haykal.

benefits, consumers still have the opportunity not to sign the standard agreement and have the option to find an agreement that suits their preferences and abilities. So, there is no coercive element in the standard clause agreement. However, it will be coercive when consumers choose to be bound by it even though they already know the consequences contained therein. That is why consumers must also be smart in seeing their abilities before signing an agreement. Standard clauses provide efficiency and reduce operational costs, which can ultimately lower the price of products or services. So if the standard clause is drafted fairly, consumers can enjoy cheaper and more efficient services. When the standard clause only benefits business actors and harms consumers, the benefits generated are uneven. This theory also highlights the importance of consumer awareness in assessing their ability before agreeing to a standard clause. If consumers feel that the clause does not match their preferences or abilities, utilitarianism theory suggests that consumers should seek other more profitable alternatives.

BPSK as a Consumer Dispute Resolution Body is a manifestation of the implementation of the utilitarian theory. For supervision of the standard clauses carried out by the BPSK, it has been regulated in CHAPTER V Article 18 of the UUPK which discusses the provisions for the inclusion of standard clauses carried out by business actors, where the BPSK only plays a role as a supervisor of the standard clauses issued by business actors <sup>21</sup>.

### **Analysis Based on Positivism Theory**

The difference between the legal positivism school and Jeremy Bentham's utilitarianism theory lies in how they view the end of the goal of legal certainty. In the legal positivism school, legal certainty ends when a decision, decree, or statutory regulation has been determined, while Jeremy Bentham's utilitarianism theory views that legal certainty does not only end there, but must also go through ethical evaluations, in order to determine the continuity and sustainability of the

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<sup>21</sup> Djulaeka Novia Rani Aliftian Hadi, "Peranan BPSK Dalam Sengketa Perjanjian Kredit (Studi Putusan Mahkamah Agung Nomor 592 K/Pdt.Sus BPSK/2016)," *Rechtidee* 13, no. 2 (2018): 2018.

legal product. Positivism bases its assessment on legal certainty, where standard clauses are valid as long as they meet formal regulations. However, this approach is less able to capture complex moral and social dynamics, leaving room for substantive injustice even though it is formally legal. The principle of *pacta sunt servanda* is a manifestation of the theory of positivism. In order for an agreement to have legal force, the agreement must be stated in writing. This principle also believes that every agreement is a law for the parties who make it <sup>22</sup>. This theory emphasizes that standard clauses that comply with Article 18 of the Consumer Protection Law have valid legal force. If it is valid and agreed to by the parties, then the agreed agreement is considered a law for the parties who made it. However, this theory has limitations in evaluating aspects of justice and morality. A standard clause that is formally legal is not necessarily substantively fair, so it requires an additional approach to identify its impact on consumers.

## Conclusion

In the context of modern civil legal relations, standard clauses cannot be separated from the demand for contractual justice. Although standard clauses have an important function in increasing business efficiency by reducing transaction costs and simplifying the contract process, their application must be limited so as not to violate the principles of substantive justice, especially for parties in a weaker bargaining position, namely consumers. The application of standard clauses must pay attention to the balance between the interests of economic efficiency and the protection of consumer rights. Empirical data from BPKN in 2024, which recorded a significant spike in consumer complaints, confirms that the practice of substantively unfair standard clauses contributes to the inequality of legal protection.

Standard clauses provide benefits to business actors in terms of efficiency and cost reduction, but create a significant imbalance in the bargaining position for

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<sup>22</sup> Harry Purwanto, "Keberadaan Asas *Pacta Sunt Servanda* Dalam Perjanjian Internasional," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 155–70, <https://doi.org/10.22146/jmh.16252>.



consumers. There are often clauses that are detrimental to consumers. However, if you look at the perspective of business actors, standard clauses are solely for efficiency, not to be unfair to consumers. The author concludes that there is no violation of consumer rights because at the beginning before agreeing to the agreement, consumers are given the choice of take it or leave it. Therefore, consumers from the beginning must be able to measure their ability whether they can fulfill the clause or not. If you feel capable, take it, if you are not capable, leave it.

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