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Examption Clausses in Digital Business Contracts: An Analysis of Contractual Justice in the Platform Economy Era

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ABSTRACT: The development of the digital economy through e-commerce platforms has encouraged the use of standard agreements as the primary instrument in digital business contracts. This practice has given rise to Examption Clausses unilaterally drafted by business actors and has the potential to create an imbalance in bargaining power between business actors and consumers. This study aims to analyze the characteristics of Examption Clausses in digital business contracts and their implications for contractual fairness in the platform economy ecosystem. The research method used is normative legal research with a statutory and conceptual approach. The results show that Examption Clausses in digital business contracts tend to reduce the substantive meaning of the principle of freedom of contract and weaken consumer protection due to the dominance of business actors in the contract formation process. Indonesian positive law, through Article 18 of the Consumer Protection Law, has established normative limits on Examption Clausses, but their implementation has not been fully effective in digital contract practice. This study concludes that Examption Clausses are only legally justifiable as long as they are drafted reasonably, proportionally, and based on the principle of good faith, and do not negate the balance of rights and obligations of the parties. Contractual fairness should be placed as the primary parameter in assessing the enforceability of Examption Clausses in digital business contracts.

KEYWORDS: Examption Clausses, Digital Business Contracts, Standard Agreements, Contractual Fairness, Consumer Protection.

I. INTRODUCTION

The development of information and communication technology has triggered significant changes in the patterns of economic relations in society. The digitalization of trade through various social media platforms has given rise to new business transaction models that occur quickly, on a large scale, and transcend national borders. The presence of e-commerce, as the primary manifestation of the digital economy, has not only revolutionized business marketing strategies but also impacted the position and role of consumers in contractual relationships. E-commerce has fundamentally changed the way consumers acquire products (Ranto, 2019). This change represents a shift from conventional trading mechanisms to a technology-based transaction system that minimizes direct contact and relies heavily on digital devices.

This transformation has simultaneously transformed the understanding of the market concept. The face-to-face interaction patterns between sellers and buyers that have characterized traditional markets have now been replaced by digital interfaces managed by social media platforms. The traditional market concept, which was based on physical meetings, has now transformed into a digital marketplace, where consumers can make purchases through online promotions, advertising, and product offerings (Sinaga & Fenetiruma, 2025). This situation means that agreements are no longer formulated through individual negotiations, but rather are presented in the form of standard contracts designed unilaterally by business actors or digital platform providers.

While the application of standard agreements in digital business contracts offers efficiency and legal certainty for businesses, it also raises the potential for serious consumer protection issues. One of the main issues raised is the presence of Examption Clausses in these contracts. The primary focus in standard agreements is the examption clausses, which typically contains a waiver or limitation of liability for the business actor (Amallia et al., 2025). Such clauses are often included inconspicuously in terms and conditions that are long, complicated, and difficult for consumers to understand.

The unequal bargaining power between businesses and consumers in digital contracts is increasingly apparent when consumers are only faced with the option of agreeing to or not using a service. This practice leaves little room for consumers to negotiate the substance of the contract. Disadvantageous standard clauses, drafted unilaterally, often create an imbalance of rights and obligations for consumers, necessitating better legal education for consumers (Putri et al., 2024). This situation confirms that freedom of contract in digital transactions is illusory, as it tends to benefit only one party.

The dominance of business actors in the digital contract drafting process creates room for abuse of the principle of freedom of contract. This situation opens up opportunities for business actors to insert Examption Clausses (Dewi et al., 2025). This leads to situations where important rights are ignored, and responsibilities are unfairly shifted (Chaubey, 2025).

Normatively, Indonesian contract law has established provisions regarding the requirements for a valid agreement. According to Article 1320 of the Civil Code, the requirements for a valid agreement include agreement, capacity, a specific object, and a lawful cause (Idayanti, 2020). Formal digital contracts can fulfill all four elements, but problems arise when the parties reach an agreement without adequate understanding and find themselves in a situation of unequal bargaining power.

Law Number 8 of 1999 concerning Consumer Protection explicitly regulates aspects of consumer protection in standard agreements, in addition to the provisions contained in the Civil Code. Normatively, Law Number 8 of 1999 concerning Consumer Protection (UUPK), through Article 18, prohibits the use of certain Examption Clausses that have the potential to harm consumers (Dika & Anggraini, 2024). These provisions demonstrate that legislative bodies and courts have attempted to suppress unfair provisions, with limited success (Cumyn, 2025).

Business actors in digital business contract practices often ignore or circumvent the provisions of Article 18 of the Consumer Protection Law by using complex and multi-interpretable legal language. This situation reflects the gap between legal norms and the reality of digital business practices. The issue of Examption Clausses cannot be viewed solely as an issue of agreement validity, but rather as a matter of justice in legal relations. Furthermore, the issue of Examption Clausses is not only related to the validity of an agreement, but also closely related to the principles of contractual justice and good faith, which are the spirit of contract law (Hidayat et al., 2022).

The principle of contractual justice requires a balance between the rights and obligations of the parties, as well as the implementation of agreements in good faith. In the context of the platform economy, this principle is often marginalized by demands for efficiency and technological dominance. Examining Examption Clausses in digital business contracts is crucial for assessing the extent to which contract law is able to address the challenges of justice in the digital economy era.

Based on this description, this research urgently examines the existence and impact of Examption Clausses in digital business contracts from a contractual justice perspective. This study is expected to provide theoretical contributions to the development of modern contract law and formulate normative recommendations to strengthen consumer protection in the evolving platform economy ecosystem.

So far, academic studies on Examption Clausses in the context of digital contracts and contractual fairness have begun to attract the attention of researchers, both in the realm of standard electronic contract law and in the aspect of consumer protection. For example, Tiara Patricia and Richard C. Adam examine how Examption Clausses in e-commerce electronic contracts can weaken the position of consumers and conflict with the principles of Indonesian consumer protection, particularly regarding Article 18 of the Consumer Protection Law.(Patricia & Adam, 2023). Another study by Devinda Diana Valentina and Suraji also normatively reviews the inclusion of Examption Clausses in e-commerce contracts based on consumer protection provisions, showing a trend of studies that increasingly pay attention to normative legal settlements of digital standard contract practices (Valentina & Suraji, 2024). At the international level, studies on standard terms in digital contracts highlight the tendency of “clickwrap” and “browsewrap” contract practices that often create substantive unfairness for consumers due to very limited limits on responsibilities and negotiation options, an issue that aligns with the concept of unfair terms in the global literature on digital contracts (Admiral et al., 2025).

However, much of the literature still focuses on normative and descriptive analysis of the existence of such clauses and their impact on consumer protection, with little emphasis on constructing a theory of contractual justice and its strategic normative implications within the framework of the ever-evolving platform economy. This is where this research is novel: in addition to integrating empirical and normative-juridical findings from previous studies, this research seeks to build a more comprehensive theoretical framework of contractual justice to assess the validity and impartiality of digital contracts beyond legality, taking into account the dynamics of consumer and business bargaining power in the digital economy era. This approach goes beyond simply assessing the formal validity of agreements based on the elements of Article 1320 of the Civil Code and Article 18 of the Consumer Protection Law, but further links them to the comprehensive principle of substantive justice in the practices of the modern platform economy a focus that is relatively rarely discussed simultaneously in the existing literature.

II. RESEARCH METHODS

This research uses a normative legal research method (normative juridical) that focuses on examining legal norms regarding Examption Clausses in digital business contracts and their implications for contractual justice. This method was chosen because normative legal research aims to discover the truth of the coherence between legal norms and applicable legal principles (Marzuki, 2017). The analysis in this study is directed at the suitability of the substance of the clause with the legal principles of the agreement.

The approaches used include a statutory and conceptual approach. The statutory approach is carried out by examining the provisions of the Civil Code and Law Number 8 of 1999 concerning Consumer Protection, particularly those governing standard agreements and Examption Clausses. The Electronic Information and Transactions Law is not used as the main basis for the study, because this research does not focus on the technical aspects of electronic transactions, but rather on the substance of the agreement clauses. This law is used to a limited extent as a context for legal recognition of electronic contracts.

A conceptual approach is used to analyze the principles of freedom of contract, the principle of good faith, the principle of balance and contractual justice. Legal materials consist of primary and secondary legal materials collected through literature study. Analysis of legal materials is carried out qualitatively using prescriptive methods. Prescriptive analysis in legal research aims to provide arguments regarding what should be done based on applicable legal norms (Ibrahim, 2006).

III. RESULT AND DISCUSSION Characteristics of Examption Claussses in Digital Business Contracts

Contracts are a legal instrument that plays a crucial role in business activities, including digital business practices. Contracts serve as the legal basis that regulates the rights and obligations of the parties while protecting their respective interests. Economic activity in today's business practices is almost entirely inseparable from contractual relationships, whether direct or indirect. Contracts are a vital element that plays a role in framing and protecting various business processes. Every effort is made to incorporate the interests of all parties into contracts. This view aligns with DG Cracknell's opinion in Utiyafina's journal, which states that "contracts are one of the few areas of law with which almost everyone comes into day-to-day contact"(Hazhin, 2019). Contracts in digital business transactions are generally electronic and presented as standard agreements that consumers must agree to before using the service or making a transaction.

One type of clause commonly found in digital business contracts is the examption claussses. Conceptually, this clause aims to regulate the limitation or transfer of a business actor's legal liability for certain risks. Simply put, an examption claussses is a clause or exemption that contains a release or exception from a particular responsibility (Nelson, 2024). In practice, Examption Claussses are often used by digital businesses to limit liability for consumer losses, system disruptions, service delays, and data loss. The presence of these clauses is a key characteristic of digital business contracts, which are drafted unilaterally and are primarily oriented toward the interests of the business owner.

An examption claussses is essentially a part of a standard clause, so its characteristics cannot be separated from the nature of the standard agreement itself. An examption claussses is one type of standard clause, therefore the characteristics of an examption claussses are similar to those of the standard clause itself. These characteristics are:covering (Sidik, 2021):

1. The contents of the clause are determined unilaterally by the party with greater economic power;
2. Other parties, namely consumers or debtors, are not involved in the clause formulation process;
3. Due to the need for goods or services, consumers are forced to accept these clauses;
4. The clause is stated in written form and is standard;
5. Clauses are prepared collectively and used en masse.

These characteristics show that the examption claussses arises from an unbalanced legal relationship.

The imbalance in digital business contracts is further exacerbated by platform systems that implement a "take it or leave it" principle. Consumers have no opportunity to negotiate or reject certain clauses, but can only choose to agree to the entire contract or not use the service at all. In essence, an examption claussses positions one party as the controller (subject) and the other as the object (Kurniawan, 2022). The business actor acts as the party that controls the contents of the contract, while the consumer is in a passive position and only accepts the legal consequences of the specified clauses.

The presence of Examption Claussses in digital business contracts shouldn't always be viewed negatively. From a business efficiency perspective, these clauses have certain benefits. The existence of Examption Claussses or standard agreements has several positive aspects, even though they may at first glance create inequality between one party and another. These include (Tobing, 2019):

1. More effective energy, time and costs;
2. It is more practical because the script has been determined so it only needs to be printed then filled in and signed;
3. Agreements are executed quickly because consumers only choose to agree or reject; and
4. Agreements can be made in large quantities and in a short time, thus facilitating business processes.

In a platform economy that demands speed and scale, standard agreements containing Examption Claussses are seen as a means of supporting operational efficiency.

The Implications of Examption Claussses for Contractual Fairness and Their Legal Limits in the Platform Economy Era

The existence of Examption Claussses in digital business contracts raises fundamental issues in the realization of contractual justice. In modern contract law theory, contractual justice is not only defined as the fulfillment of the formal requirements of a valid agreement, but also as the realization of a balance between the rights and obligations of the parties. According to Siti Malikhatun Badriyah, the purpose of an agreement is to achieve a balance of interests between the parties, which must be maintained from the pre-contractual stage, the contractual stage, to the implementation stage (Badriyah, 2016). Digital business contracts, which take the form of standard agreements, often arise from unequal bargaining power, as consumers lack the space to negotiate and businesses control the substance of the contract. This situation contradicts the meaning of the principle of freedom of contract.

Examption Clausses further emphasize this inequality because they serve to limit, or even shift, business actors' responsibility for risks that are, in principle, their responsibility. In platform economic practices, these clauses are often exploited to eliminate liability for system disruptions, third-party errors, or losses experienced by consumers due to the use of digital services. However, the principle of good faith requires that parties adhere not only to the terms of the agreement but also to consider the propriety and interests of the other party in the implementation of the contract (Khairandy, 2004).

Contractual justice views the excessive application of Examption Clausses as potentially transforming the function of contracts from a means of legal protection into an instrument of economic domination. Consumers bear the majority of transaction risks, while businesses enjoy substantial profits with minimal liability under these circumstances. This situation clearly contradicts the principle of contractual balance, which demands a fair and proportional distribution of risk. Contractual justice requires a balance between performance and counter-performance, as well as a fair distribution of risk between the parties (Fuady, 2016). An examption clausses cannot be justified if it eliminates or reduces the essence of contractual justice.

Normatively, positive law in Indonesia has actually set strict limits on the application of Examption Clausses. Through Article 18 of Law Number 8 of 1999 concerning Consumer Protection, business actors are prohibited from including standard clauses that transfer responsibility or unilaterally limit consumer rights. This provision demonstrates the law's bias towards protecting parties in a weak position in contractual relationships. The prohibition on standard clauses in this article represents a form of state correction against the abuse of the principle of freedom of contract (Miru & Yodo, 2017)However, in digital business contract practice, these provisions are often not implemented optimally and effectively.

One of the main problems lies in the cross-border, technology-based nature of electronic contracts. Digital businesses often argue that the inclusion of Examption Clausses is part of international standards or a technical requirement of the platform system they use. As a result, consumers are in a weak position to demand legal protection, especially when such clauses are formulated in complex and difficult-to-understand legal language. This situation demonstrates the gap between normative legal provisions and the practice of digital contracts in practice. Consumer protection in electronic transactions is not sufficient only to be regulated normatively; it also requires legal enforcement and progressive interpretation (Shidarta, 2018).

Article 1343 of the Civil Code and the provisions of Article 1349 of the Civil Code explain that in making a standard examption clausses, it must benefit the consumer because the business actor has requested that the agreement be made, this is solely based on and refers to the doctrine of injustice or one-sided circumstances (unconscionability) and the doctrine of abuse of circumstances (misbruik van omstandigheden) due to economic or psychological superiority (MS Hidayat, 2020). The principle of good faith plays an important role as a corrective tool against the unfair use of Examption Clausses. Judges and law enforcement officials can use this principle as a basis for assessing the reasonableness of a clause, even if the clause has been formally agreed to by the consumer. This approach aligns with the development of modern contract law, which no longer views contracts merely as a manifestation of the free will of the parties, but rather as a legal relationship that must meet the standards of propriety and social justice.

Based on the above description, it is clear that the presence of Examption Clausses in digital business contracts significantly impacts contractual fairness. On the one hand, these clauses provide convenience, efficiency, and certainty for business actors in conducting economic activities. Examption Clausses have the potential to diminish consumer rights and create structural injustice in contractual relationships if their use is not reasonably restricted. The regulation and implementation of Examption Clausses must always be placed within the framework of consumer protection, the principle of good faith, and the principle of contractual fairness.

The principle of balance is a concrete manifestation of the principle of contractual justice in contract law. The principle of balance is not only understood as the existence of equality of performance between the parties who bind themselves in the agreement, but also requires the existence of an agreement that is consciously born from the parties, as stated that the principle of balance in question is not only seen from the existence of equality of performance between the parties who remind themselves in the agreement, but with the existence of an agreement from the parties who make the agreement (Bina, 2023). In addition, the balance of an agreement is not solely determined by the position of the parties, but there are three aspects so that balance in the agreement can be achieved, namely the actions of the parties, the contents of the agreement and the implementation of the agreement (Rusli, 1996). In the context of standard and unilateral digital business contracts, the principle of balance is often reduced by the dominance of business actors and the logic of platform efficiency. Contractual justice in the digital economy must be understood substantively as a corrective instrument against exploitative contract practices, not merely as an abstract concept, so that modern contracts not only reflect the free will of the parties, but also are subject to the values of propriety, protection of the vulnerable, and social justice as the goals of contract law.

This discussion emphasizes that contractual fairness in digital business contracts cannot be reduced to merely fulfilling the formal requirements of a valid agreement, but must be assessed comprehensively through a balance between the contract formation process and the substance of the clauses binding the parties. The principle of balance serves as a normative instrument for assessing whether contractual relationships reflect proportional rights and obligations and do not impose unreasonable risks on the weaker party. In the context of the platform economy, characterized by standard contracts and the dominance of business actors, Examption Clausses must be positioned as limited exceptions and rigorously tested for reasonableness. This substantive approach is necessary to ensure that contract law remains responsive to the dynamics of the digital economy while simultaneously ensuring the realization of contractual fairness as a fundamental goal in private legal relationships.

IV. CONCLUSIONS

This study concludes that Examption Clausses in digital business contracts emerge as a consequence of the use of standard agreements in the platform economy ecosystem, which is oriented towards efficiency and large-scale. The practice of unilaterally including Examption Clausses by business actors creates an imbalance in bargaining power between business actors and consumers, thereby rendering the principle of freedom of contract unsubstantial and tending to function as an instrument that benefits one party. Contract law and consumer protection law in Indonesia have established normative limits on the use of Examption Clausses, particularly through Article 18 of the Consumer Protection Law, which prohibits standard clauses that are disproportionate and detrimental to consumers. Therefore, Examption Clausses can only be justified if they are drafted reasonably, proportionally, and based on the principle of good faith as part of the business actor's risk management. Examption Clausses that exceed the limits of reasonableness and unilaterally eliminate the business actor's responsibilities are contrary to the principle of contractual fairness and cannot be maintained in digital business contracts.

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