



# Law Transformation of Civil Liability in Digital Business

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## Abstract

The transformation of civil accountability law in digital business is a complex and relevant topic digital era. Important aspect is the exoneration clause in digital business contracts. This study used a descriptive analytical approach using normative juridical methods. Research results show that many digital service providers use exoneration clauses to limit responsibility for losses from their service use. It highlights the importance of exoneration clauses in digital businesses, but also raises questions about its impact on consumer rights and protection. This study provides an in-depth understanding of the role and impact of exoneration clauses in digital business civil law, as well as providing a foundation for further research on consumer regulation and protection in emerging digital businesses. This study contributed to an understanding of the transformation of civil accountability law in digital businesses and provided the basis for better policies and regulations to protect consumers.

**Keywords:** law transformation, civil liability, digital business, exoneration clause.

## 1. INTRODUCTION

This research is very important to carry out considering that e-commerce is a daily community activity that has never been abandoned as long as there is the internet, and then agreements in e-commerce are a determining factor in e-commerce. The aim of this research is to determine the limits of civil liability of business actors in e-commerce, related to the existence of exoneration clauses in e-commerce which are very detrimental to consumers. This research is descriptive analytical in nature, using a normative juridical approach and the resulting data is analyzed qualitatively juridically.

The current development of information technology greatly influences conditions in society, including in the field of business transactions. The birth of the internet and the development of civilization in society gave birth to the idea of doing business more easily and efficiently, resulting in the emergence of electronic business transactions

carried out with the help of the internet and known as e-commerce (Yunita & Sholeh, n.d., p. 385).

The use of information and communication technology systems has a significant impact on the business environment, accelerating the pace of economic and business transactions. The rapid advancement of internet technology facilitates easy and swift access, allowing electronic-based trading transactions to be conducted seamlessly across any space connected to the internet, without constraints of time or location.

Electronic trade transactions in Indonesia are experiencing rapid growth, particularly in the e-commerce sector, which significantly impacts global trade. E-commerce has gained fame because of its quick speed, which has been accelerated by technology advancements and highly creative business practices. When compared to businesses that don't use e-commerce, the profits from this business strategy are much larger. E-commerce can reach a larger customer base and provide customers with continuous access to comprehensive information. Additionally, it encourages sellers to be creative and efficient, as information is distributed promptly and periodically. E-commerce is highly efficient, cost-effective, and informative, enhancing customer satisfaction with quick, easy, safe, and precise services. The expansion of online-based businesses in Indonesia is expected to continue growing annually due to the increasing public understanding of online information technology (Syarif et al., 2023, p. 8).

By using the internet for trading transactions, there are some advantages, but that doesn't mean e-commerce is problem-free. In fact, many cases are detrimental to consumers as a result of the use of internet media in trade transactions (Sanusi, 2016, n.d.). Since buying and selling transactions through e-commerce are relatively simple, online transactions are subject to legal relationships. The Information and Electronic Transactions Law serves as the foundation for controlling electronic transactions made through internet-based devices like computers, smartphones, and other gadgets, ensuring that these activities can be traced back to lawful actions (Anggraeni & Rizal, 2019). Aside from that, things frequently happen that might be considered illegal. Owing to the prevalence of illicit activities on the internet, individuals exercise caution when conducting online transactions (Pery Indrawan et al., 2021.). The following are some of the factors contributing to the extremely quick growth of electronic commerce, or e-commerce (Purbo & Wahyudi, 2001):

1. More clients can be reached through electronic commerce, and they can always access all information;
2. Sellers can be encouraged to be creative through electronic commerce, as long as they can deliver information fast and accurately and distribute it on a regular basis;
3. Electronic commerce can produce highly effective, affordable, and educational content;
4. The quick, simple, secure, and accurate service provided by electronic commerce can boost consumer satisfaction;

Online trade transactions are quite popular among producers as well as consumers because they are very profitable for many involved parties. Electronic commerce, or e-commerce for short, has generally been advantageous to both producers and consumers. Electronic commerce has altered how consumers get the goods they desire, but it has also simplified the process of product marketing for manufacturers. Domain names are among the most crucial components of using electronic commerce, since transactions in this context take place entirely online, without any face-to-face interaction between

the parties. The parties to an online transaction identify themselves through their domain name (Amirulloh & Sumayah, 2017).. E-commerce, or electronic commerce, involves a number of methods, including using domain names as the addresses of websites and social media accounts like Facebook, Instagram, Line, and others.

Conventional transactions and e-commerce transactions are similar in principle (Amirulloh & Sumayah, 2017). In e-commerce business transactions there are parties involved, simply consisting of business actors and consumers. In practice, the parties involved in the electronic transaction process consist of:

1. Merchants or entrepreneurs who offer a product via the internet are referred to as business actors.
2. Everyone or everybody who accepts an offer from a business actor and wants to complete the transaction as presented by the business actor, as long as it is not against the law, is referred to as a consumer.
3. Banks as parties that distribute funds for payments for transactions from consumers to business actors, this is done because transactions between business actors and consumers occur in conditions where they are not facing each other or in different places, so another party is needed, in this case the bank, as an intermediary in the transaction payment process.
4. Provider is a party that provides internet access services. In this case, a Provider must be able to provide internet access services for 14 hours, so that whenever the parties want to carry out transactions, they are not hindered just because they are not accessible via the internet. Thus, the provider is an important part of the electronic transaction process.

In e-commerce business transactions, agreements are usually made online as well. The customer just needs to read the agreement in question and decide whether or not to accept it, as the business actor produced it. A sign of consumer agreement to the agreement in e-commerce is by clicking on a particular application. However, often e-commerce agreements, which are standard clauses, are not all legible and the writing is difficult to read. This means that consumers often miss out and miss important parts of the agreement, resulting in harm to consumers. Such an agreement clause is called an exoneration clause. The existence of an exoneration clause can cause harm to consumers, therefore the Consumer Protection Law prohibits the existence of exoneration clauses in an agreement. The existence of consumer losses caused by exoneration clauses is one of the problems that arises, because it is difficult to ask for responsibility from business actors, when consumers ultimately click on the application as a sign of agreement.

Several previous studies have examined standard clauses in e-commerce. One such study by Fadel Edo Romires, titled "Use of Standard Clauses in E-commerce Agreements Viewed from a Consumer Protection Perspective," discovered that an agreement is deemed void if the standards of the admissible standard provision are not fulfilled. Any standard clause created by a business actor in a document or agreement including the listed requirements is legally void, according to Article 18, paragraph (3) of the Consumer Protection Law. Consequently, so long as standard provisions in e-commerce transactions do not violate Article 1337 of the Civil Code or Article 18, paragraphs (1) and (2) of the Consumer Protection Law, they are valid (Fadel & Romires, 2022).

Ghazwan Aqrabin Faqih conducted another study named "Standard Clauses in Sales and Purchase Agreements via E-commerce." Standard agreements or standard provisions containing exoneration clauses do not meet the objective standards of a

legitimate agreement and are deemed null and void, according per Indonesian Positive Law (Faqih et al., 2023).

Jeremiah Immanuel Christian's third paper, "Good Faith in Standard Clauses in E-commerce," shows that standard e-commerce provisions that do not include the good faith principle are subject to legal ramifications. In the event that an online purchasing and selling agreement contains poor faith, the party displaying the bad faith may face civil prosecution (Christian, 2023).

This study focuses on a narrower topic: the existence of exoneration clauses in common e-commerce agreement clauses that can cause losses for consumers and hence hold business actors responsible. Recognizing these ramifications emphasizes the necessity of more consumer education and stringent regulations to guarantee honest and open e-commerce operations

## 2. LITERATURE REVIEW

According to Fadel Edo Romires's research, an agreement is void if the standard clause conditions are not satisfied. According to Article 18, paragraph (3) of the Consumer Protection Law, every standard clause that the business actor has placed in a contract or agreement that incorporates provisions as intended above is regarded legally void. Therefore, standard conditions in online transactions are lawful as long as they don't contravene the Consumer Protection Law's Article 18 and Article 1337, paragraphs (1) and (2) (Fadel & Romires, 2022). Standard agreements and standard provisions containing exoneration clauses are void since they do not satisfy the objective standards of a contract (Faqih et al., 2023). Additionally, the opposing view stated that ordinary e-commerce agreements containing the good faith principle would be subject to legal ramifications. A party engaging in bad faith in an online purchase and sale transaction may be subject to civil prosecution as a legal consequence.

Standard terms included in consumer loans for the purchase of motor vehicles present consumers with a "take it or leave it" option regarding the agreement's terms. Consumers signify their acceptance by signing the agreement. This research, however, identifies a novel approach in e-commerce: standard clauses implemented through electronic documents within specific software systems or applications. In electronic commerce, customers express their consent by clicking on a button supplied by the business entity, rather than by signing a document. Accordingly, the purpose of this research is to assess standard clauses in e-commerce from the standpoint of Indonesian civil law.

## 3. METHODOLOGY

The specification of this research is analytical descriptive, namely presenting facts systematically. The approach method that will be used is a normative juridical approach, in this case testing and studying secondary data regarding Civil Liability Of Business Actors Towards Consumers For Exoneration Clauses In E-Commerce. Every piece of data is qualitatively and legally assessed; in this instance, this means that the hierarchy of laws and regulations is taken into account to ensure that one piece of legislation does not clash with another or with legal certainty.

## 4. DISCUSSION

### 4.1 Development of Digital Business Law in Indonesia

Over the past few years, Indonesia has witnessed remarkable growth in its digital business sector. The increase in internet users, the development of technology, and the quick rise in e-commerce are all signs of this boom. As this sector grows, the necessity for adequate regulations to protect consumer rights and ensure fair and transparent business practices among digital enterprises has become more critical. The initial framework for digital business regulation in Indonesia was established with the enactment of the Electronic Information and Transactions Law (UU ITE) No. 11 of 2008. This law provided the first legal basis for regulating electronic transactions, digital signatures, and data protection. It was subsequently amended by Law No. 19 of 2016 to better address the evolving and dynamic nature of the digital landscape.

Apart from the UU ITE, the Indonesian government has implemented various regulations to enhance consumer protection within the digital business sphere. A notable regulation is Government Regulation No. 82 of 2012 on the Implementation of Electronic Systems and Transactions, which outlines the procedures for secure and reliable electronic transactions. It mandates service providers to safeguard consumer data. Additionally, in 2019, the Ministry of Communication and Information Technology issued Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems. This regulation sets forth standards for protecting personal data that electronic system operators, including e-commerce platforms, must follow. These measures aim to better safeguard consumers' personal data rights against misuse.

In order to regulate e-commerce more specifically, the government issued Government Regulation No. 1 (EEC). 80 of 2019 on Trade via Electronic Systems. These regulations cover various aspects of e-commerce, including the rights and obligations of business operators and consumers, as well as requirements for safe and transparent transactions. This regulation aims to create a more orderly and reliable e-commerce ecosystem.

In the fintech sector, Financial Services Authority Regulation (OJK) No. 77/POJK.01/2016 on Information Technology-Based Money Lending Services provides a clear legal framework for fintech services. These regulations regulate transaction security, dispute resolution, and consumer protection mechanisms, thereby creating trust among users of fintech services.

One aspect that is often in the spotlight in the digital business is the use of exoneration clauses in electronic contracts. Exoneration clauses are often used by service providers to limit their responsibility for potential consumer losses. Although this clause may provide legal protection for business operators, it often creates injustices for consumers. This raises the question of a balance between consumer protection and freedom of contract in the context of digital business.

### 4.2 Exnoration Clauses in Business Digital Agreement

According to Law Number 19 of 2016 (also known as the ITE Law), which updated the provisions of Article 1 number 2 of Law Number 11 of 2008 concerning Electronic Information and Transactions, electronic transactions are defined as legal acts carried out through the use of computers, computer networks, and/or other electronic media. Accordingly, in compliance with the terms of Article 18 of the ITE Law, an electronic transaction, including an electronic trading transaction, must be incorporated in an electronic contract that binds the parties.

Online agreements are also made in e-commerce. The business actor sets the terms

in its own right and presents them as typical contract stipulations. In today's sophisticated economy, standard terms in agreements provide an effective means to execute transactions, whether in traditional corporate settings or through e-commerce. These transactions demonstrate the advantages of information technology in improving corporate efficiency because they can take place without in-person encounters and are not limited by time or location.

In e-commerce, standard clauses are implemented through electronic documents within specific software systems or applications. Consumers agree or disagree with these clauses by clicking on an option provided by the business actor, rather than signing a document. Standard terms found in consumer agreements that require customers to sign the agreement to indicate their acceptance or rejection of the conditions (i.e., "take it or leave it") were exercised in the earlier research. The principle of freedom of contract, as outlined in Article 1338 paragraph (1) of the Civil Code, is implemented through standard clauses in e-commerce. This means that parties are free to choose the form, nature, and content of their agreements, provided that they comply with legal requirements and don't violate public morals or order.

An agreement is considered to occur as soon as there is a mutual agreement between the parties, in line with the principle of consensualism outlined in Article 1338 paragraph (1) of the Civil Code. This applies even when the agreement is made via electronic media, such as the internet, and the entire content of the agreement has not been finalized or physically documented but is written online. As previously mentioned, the conditions for a valid agreement, as stipulated in Article 1320 of the Civil Code, also apply to electronic transactions. The essential requirements for the validity of such an agreement are as follows:

1. agreement of the parties
2. the skills of the parties
3. a certain thing
4. a lawful cause

The parties' agreement implies that there must be mutual conformity of intent between them, whether it be explicitly stated or implied. This agreement is one of the subjective requirements for the legitimacy of the agreement since it can be canceled if it results from coercion, error, or mistake. This means that the agreement is still valid until it is revoked by a judge at the parties' request. Consensualism holds that an agreement begins to exist when there is a mutual agreement to enter into one, but when exactly does the agreement start to exist? There are various beliefs on agreements that can help with this, including:

1. The theory of *Uitings* (the theory of giving birth to a will) states that an agreement takes place when a will arises from the offer of the other party and that this will is deemed to exist when the other party begins to write a letter of acceptance.
2. *Verzend* theory (acceptance letter theory): This theory states that an agreement is reached at the time the bidder receives the acceptance letter.
3. *Onvang's* hypothesis, often known as the theory of getting an offer letter, states that an agreement is made when the bidder receives the acceptance letter at their address.
4. The theory of *Vememings* (knowing the acceptance letter) states that if the bidder has opened and read the acceptance letter, a new agreement takes place.

One general criterion for being able to conduct lawful legal actions is the parties' competency. Legal competence, or *rechtsbekwaamheid*, is the state in which an adult who is of sound mind and is not barred by statutory regulations is able to act. Article 47 of Law Number 1 of 1974 regulating Marriage defines an adult as someone who is either married or 18 years old. Being of sound mind is defined as not having a mental disability, not being a spendthrift, and not being subject to guardianship under Civil Code Article 1330 in conjunction with 433. As mentioned in the preceding section, an agreement may be canceled if the skill requirements—which are also subjective requirements—are not met. *Rechtsbekwaamheid* is a general requirement for carrying out legal acts, whereas *rechtsbevoegheid* is a special necessity. A person who possesses *Rechtsbekwaamheid* is not always authorized to carry out legal acts.

An agreement must pertain to a specific object, which is an item that can be traded, as stipulated in Article 1332 of the Civil Code. According to Article 1333, the object of the agreement must be certain or at least the type must be specified, although the exact quantity does not need to be determined initially, as long as it can be identified or calculated later. Article 1334 paragraph (1) states that items that will exist in the future can also be the subject of an agreement. However, Article 1334 paragraph (2) specifies that items which will be part of an inheritance cannot be the subject of an agreement, as this would be considered a violation of morality, unless the item has been previously gifted by the future heir to the prospective beneficiary.

If an agreement involves an object that violates these provisions, it fails to meet the objective conditions for validity and is therefore null and void. This means that the agreement is considered never to have existed, providing no grounds for legal action or litigation in court. Another objective requirement for the agreement's legitimacy is a lawful cause. Article 1335 of the Civil Code states that an agreement made for fraudulent or unlawful purposes, or without cause at all, is void. There are several explanations for the word "cause", including:

1. The notion of "cause" in the context of legal science differs from that of other disciplines, and it is one of the prerequisites for an agreement's legitimacy.
2. Since motive is a mental issue that is unaffected by the law, the term "cause" is thus not the same as a motive, which is an inner desire that propels someone to take a particular action.
3. The term "cause" literally derives from the Dutch word "*oorzaak*" (or the Latin word "*causa*"), which denotes the objective, that is, what both parties meant when they entered into an agreement; put another way, "cause" refers to the substance of the agreement. By yourself.
4. Since the agreement is the substance and not the space that needs to be filled, the possibility of an agreement without cause, as specified in Article 1335 of the Civil Code, is one that won't happen.

The legal requirements for the aforementioned agreement also apply to electronic transactions; in other words, should these requirements not be met, the agreement reached in this electronic transaction may be revoked or declared legally void.

In e-commerce, business players typically make agreements on their own. This type of agreement is referred to as a standard clause since it is produced in accordance with the wishes of the business actor; in this instance, the customer merely needs to click to accept or reject the offers presented in the e-commerce application. Among other reasons, customers do not find many standard clauses created by business players profitable, or the explanations provided are insufficient.

Establishing or including terms in any document and/or agreement is forbidden for business actors providing goods and/or services meant for trading, including e-

commerce, according to Law Number 8 of 1999 concerning Consumer Protection, Article 18 paragraph (1);

1. Announce the business actor's transfer of responsibilities.
2. Declares that commercial entities are free to reject customer returns of items.
3. Declares that companies are free to withhold payment for goods and/or services that customers have purchased.
4. Announce that customers have given business actors the right, either directly or indirectly, to undertake any unilateral acts pertaining to goods that customers have paid for in installments.
5. Controls issues pertaining to proving a customer's inability to use products or services they have paid for.
6. Offers corporate actors the power to reduce the benefits of services or the assets of clients who buy and sell services.
7. Declare that clients are subject to regulations when they are using the paid services, which may take the shape of new rules, extra rules, or adjustments that are implemented at the behest of business actors.
8. State that the client consents for the business actor to attach security rights, mortgage rights, or liens to goods the client has purchased in installments..

According to Law Number 8 of 1999 concerning Consumer Protection, Article 18 paragraph (2), business actors are not allowed to include standard clauses that are found in e-commerce and that are unilaterally determined by the seller or business actor. Examples of such provisions include those that state that the seller is not responsible for the goods that customers bought and that the seller does not accept returns of the goods that customers bought. This clause, which is an exoneration clause, cannot be part of the standard clause.

As a result, as e-commerce merchants, sellers are civilly liable for consumer losses resulting from these kinds of agreements. This is according to Article 1365 of the Civil Code, which states that any unlawful act that causes harm to another party and is done by a business actor using an exoneration clause in e-commerce, as long as it can be demonstrated, is considered an unlawful act. You have to make up for the loss if publishing the information was incorrect.

As stipulated in Article 23 of Law Number 8 of 1999 concerning Consumer Protection, claims for compensation may be brought through litigation to the Consumer Dispute Resolution Agency or to a general judicial institution within the consumer's jurisdiction. According to Article 61 of Law Number 8 of 1999 concerning Consumer Protection, a business actor and/or its management may face criminal charges if they use an exoneration clause in a standard agreement, including one involving e-commerce, to harm customers and they refuse to give compensation.

## **5. CONCLUSION AND RECOMMENDATION**

Based on the analysis and discussion above, it can be concluded that e-commerce is an implementation of the principle of freedom of contract, which includes standard agreements. Article 18 of the Consumer Protection Law states that business actors are not permitted to include standard clauses in e-commerce that have disclosures that are difficult to understand or whose position or shape is difficult to see or read clearly. In practice, these standard agreements frequently contain exoneration clauses that are made unilaterally by business actors, and this is very detrimental to consumers.



Therefore, business actors are accountable for consumer losses, and customers have the option to sue them outside of court or through legal authorities.

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