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Application of Standard Clauses in Shipping Service Companies
in terms of Law Number 8 of 1999 concerning Consumer
Protection (Research Study of PT. Global Jet Express
Lhokseumawe City)

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Application of Standard Clauses in Shipping Service Companies in terms of Law Number 8 of 1999 concerning Consumer Protection (Research Study of PT. Global Jet Express Lhokseumawe City)

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Abstract

This research is about the application of standard clauses in terms of delivery of goods, which triggers business actors to provide easy delivery services for the community. One of the companies engaged in the delivery of goods is PT. Global Jet Express Lhokseumawe City. The rights and obligations of business actors and consumers have been regulated in Law Number 8 of 1999 concerning Consumer Protection. Some of the problems that will be discussed in this thesis are the application of standard clauses that exist in PT. Global Jet Express Lhokseumawe City, a form of responsibility carried out by PT. Global Jet Express Lhokseumawe City in dealing with problems that arise due to negligence on the part of PT. Global Jet Express Lhokseumawe City and legal remedies that can be taken by consumers to get their rights in full with the aim of providing understanding to the public and increasing awareness of business actors. Legal remedies that can be taken by consumers who feel aggrieved by business actors can be resolved through courts or courts, namely through established institutions, business actors who are proven guilty can be subject to criminal sanctions.

Keywords

Application, Standard Clause, Freight Forwarding, Consumer

1. Introduction

Along with the times in this era of globalization, people need something very important to support the needs of shipping goods, whether it's delivery within the city, outside the city, even abroad. This is certainly very helpful in facilitating the delivery of goods from one place to another by paying for services without having to bother. Therefore, many entrepreneurs start business opportunities by opening delivery services, it cannot be denied that in today's era online shopping has become the backbone for new ways of doing business, and that the potential offered through online buying and selling is enormous.

The Consumer Protection Law defines standard clauses as any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers. According to Abdulkadir Muhammad, a standard agreement is an agreement that becomes a benchmark, which is used as a benchmark or guide for every consumer who interacts with legal rules with business actors, which is standardized or standardized by including models, formulations, and measurements.

According to the Rikjen, an exoneration clause is a clause contained in a contractual relationship with an effort to avoid fulfilling an obligation in the form of compensation either in whole or in part due to a breach of the agreement. In Article 18 of Law Number 8 of 1999 concerning Consumer Protection, there are rules or restrictions for business actors in making clauses that will be used in offering goods or services to use the exoneration clause. The standard agreement does not violate the principle of freedom of contract (1320 Jo. 1338 of the Civil Code) because it is still given the choice to agree with the contents of the contract or choose to refuse the contents of the agreement submitted to him.

Based on preliminary research in March 2021, it was found that there was a sale and purchase agreement for an item whose transaction was carried out through a freight forwarder, namely PT. Global Jet Express, after the goods arrive, the buyer feels disappointed because the goods ordered are damaged so that consumers feel disadvantaged. As a result, consumers protested to the seller and after being confirmed by the seller it turned out that the goods sent to the buyer were in good condition and purely the fault of the delivery service so that the buyer took action by asking the delivery service for responsibility, but the freight forwarder only suggested to return the goods to the seller while for the return the shipping costs are borne by the consumer itself.

One of the cases as described previously became a reference in making the Consumer Protection Act, so that legal protection can be created for consumers who use services, especially in this study, consumers of goods delivery services. This Consumer Protection Act is a strong and concrete legal basis to regulate, protect and prevent consumers from the possibility of a freight forwarder doing things that might be misused by the freight forwarding company as a stronger party to do things. something for personal interest that can harm consumers themselves.

2. Research Method

a. Formulation Of The Problem

- 1) How is the application of the standard clause at PT. Global Jet Express in Lhokseumawe City?
- 2) What is the form of accountability of PT. Global Jet Express Lhokseumawe City against consumer losses due to errors in the delivery process in accordance with the agreed standard clauses?
- 3) What legal remedies can be taken by consumers if they suffer losses due to the application of standard clauses stipulated by the shipping company?

b. Type Of Search

This type of research is qualitative research, the use of qualitative research in this study is to describe how the conditions / and or actual conditions are, so that the author can define how the responsibility of the shipping service company is. Qualitative research is research that uses a natural background, with the aim of discussing the phenomena that occur and is carried out by involving various existing methods. In qualitative methods which are usually used are interviews, observations, and use of documents.

c. Research Approach

Method The approach in this study uses an empirical juridical approach or often also referred to as sociological juridical. The approach in writing empirical juridical law is legal research that requires to go directly to the field, which is based on primary data, namely

data obtained directly from the community, and also the person concerned, in this case the goods service company PT. Global Jet Express (J&T) Lhokseumawe City is associated with Law Number 8 of 1999 concerning Consumer Protection and other related regulations.

d. Nature of Research and Data Sources

The nature of the research in this paper is descriptive, which aims to provide a clear picture of an object that is carried out through existing data, as well as reviewing applicable laws and regulations, then returning to legal theories that have existed until now with practice in implementation in relation to the problem to be studied. Research with the characteristics of the analysis that is being carried out also describes how the characteristics of an individual.

This research includes primary data, secondary data. Primary data is collected directly through question and answer/interviews and secondary data is obtained from library sources such as books or published legal journals. The source of legal material used in this research is primary law which includes Law Number 8 of 1999 concerning Consumer Protection, the Civil Code. Secondary legal materials include books, previous journals or theses, legal articles, and other legal materials that are still related to this research. And tertiary legal materials in this study are legal materials that provide additional explanation or support for existing data on primary legal materials and secondary legal materials. The legal materials used are searches on the internet. The data collection techniques in this research are field studies and library studies.

3. Research Result

a. Application of Standard Clauses at PT. Global Jet Express Lhokseumawe

If the shipper agrees with the standard clauses set by PT. Global Jet Express creates a legal relationship between the two parties to mutually comply with all the contents of the delivery agreement that has been determined, namely in the form of rights and obligations. In this case, PT. Global Jet Express has implemented the Shipping Terms and Conditions (T&Cs) which are used as the basis for goods delivery transactions at PT. Global Jet Express. The terms and conditions applied by PT. Global Jet Express are:

- 1) The sender must pack the goods properly to protect the contents of the goods during transportation. If a loss occurs due to imperfect packaging, the loss is the responsibility of the sender.
- 2) The weight used as a reference in billing is the original weight or dimensional weight which has a greater value. If there is an increase in weight caused by an additional packaging process carried out by J&T Express, then what is used as a reference in billing is the weight after being repackaged.
- 3) The sender is obliged to clearly and correctly notify the contents and value of the consignment. Incorrect information regarding this is entirely the responsibility of the sender.
- 4) J&T Express prohibits the delivery of goods such as corpses or parts thereof, living or dead animals, illegal drugs, weapons, ammunition, other flammable materials, high-value art items, securities, money, precious metals, high-value jewelry or the like and goods prohibited by applicable law in Indonesia under the 1945 Constitution

- 5) J&T Express has the right but is not obliged to inspect the shipment to ensure that the goods sent do not violate applicable laws. If without the knowledge of J&T Express, the sender sends goods that are prohibited in point 4, then the sender hereby frees J&T Express from all damage or other costs and on demands from any party.
- 6) In carrying out the delivery, J&T Express does not guarantee that the entire process will run smoothly and properly, which is caused by events that may arise beyond the capabilities of J&T Express in the area that J&T Express transportation passes.
- 7) The sender is responsible for protecting the shipment with adequate insurance and bears the applicable premium costs. Compensation for goods insured is in accordance with the insurance provisions that apply at J&T Express. If the sender does not purchase insurance, then the payment of the replacement fee for lost or damaged shipments is a maximum of 10 x (ten times) shipping costs or the price of the goods is taken the lowest value, the maximum replacement value is Rp. 1.000.000,- (One Million Rupiah). Especially for document submissions, the maximum replacement value is Rp. 100,000, - (One Hundred Thousand Rupiah). If the sender buys insurance, then the payment of the replacement fee for lost or damaged shipments is a maximum of Rp. 20,000,000, - (Twenty Million Rupiah) or according to the value of the goods. Especially for document submissions, the maximum replacement value is Rp. 2,000,000, - (Two Million Rupiah) or according to the value of creating a new Document.
- 8) J&T Express will not provide compensation to the sender as a result of events or things beyond the control of J&T Express or damage due to natural disasters (Force Majeure).
- 9) If there is no complaint from the recipient when the consignment is delivered, then the consignment is deemed to have been received properly and correctly.
- 10) Complaints/claims for loss or damage must be submitted by the sender (not the recipient) no later than 3 (three) days from the receipt of the goods along with the related documents.
- 11) In addition to the agreement or terms and conditions written on this receipt, J&T Express cannot be prosecuted and burdened with agreements or other legal grounds except with a written agreement approved by the authorized person in charge of J&T Express.
- 12) When delivering goods to J&T Express, the sender is deemed to have read and agreed to all the terms and conditions of delivery listed on this receipt without any coercion from any party, and frees J&T Express from any claims or forms of compensation.

From the explanation of the Terms and Conditions of Shipping PT. Global Jet Express which has been described above, then we can know that PT. Global Jet Express has established agreement rules that must be approved by the consumer to make the delivery of goods. This makes the PT. Global Jet Express as the party that has a greater position in the agreement between the two parties, so that the sender is given the opportunity to choose to agree or disagree with the agreement that has been set by the company.

If viewed from the Law of Number 8 of 1999 concerning Consumer Protection, the application of standard clauses stipulated by PT. Global Jet Express actually has several exoneration clauses that are detrimental to the consumer. As stated in the T&C for Delivery points 6 and 8, it can be seen that PT. Global Jet Express transfers or releases responsibility for the services provided, which is not in accordance with Article 18 of the Consumer Protection Law which prohibits an exoneration clause in an agreement. In terms of content, it is prohibited to use standard contracts that contain unfair clauses, and in terms of their written form, these clauses must be written simply, clearly and clearly so that they can be read and understood well by consumers.[2] This is also stated in Article 18 paragraph (2) of the UUPK which explains that:

"Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosures are difficult to understand"

In the application of standard clauses that have been set by PT. Global Jet Express in Lhokseumawe City was found that the shipping company made an error in the agreement process. Based on information from Rizki Yanda Putra as a consumer user of PT. Global Jet Express Lhokseumawe City, it is known that PT. Global Jet Express Lhokseumawe City does not show the terms and conditions of delivery when it will make the delivery of goods, so consumers are not aware of the T&C of the Delivery

In Article 7 Paragraph Law Number 8 of 1999 concerning Consumer Protection, it is explained that the obligations of business actors are:

- a) Have good intentions in carrying out their business activities;
- b) Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance;
- c) Treat or serve consumers correctly and honestly and non-discriminatory;
- d) Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
- e) Provide opportunities for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded;
- f) Provide compensation, compensation and/or compensation for losses due to the use, use and utilization of traded goods and/or services;
- g) Provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

In this case the company PT. Global Jet Express Lhokseumawe City clearly violates the provisions in Article 7 of Law Number 8 of 1999 concerning Consumer Protection where PT. Global Jet Express Lhokseumawe City does not carry out its obligations as a business actor to notify and explain about the Shipping T&Cs that apply at PT. Global Jet Express before the consumer agrees or disagrees with the standard clauses set by PT. Global Jet Express Lhokseumawe City.

This has also violated Article 1320 of the Civil Code which states that:

In order for a valid agreement to occur, it is necessary to fulfill four conditions:

- 1) The agreement of those who bind themselves;
- 2) The ability to make an engagement;

- 3) A certain subject matter;
- 4) A cause that is not forbidden.”

b. Responsibilities of PT. Global Jet Express City of Lhokseumawe Against Consumer Losses Due to Errors in the Delivery Process Judging from the Agreed Standard Clauses

Responsibility is a manifestation of something that has been done intentionally or unintentionally. This is what business actors must do to provide rights to consumers in accordance with the applicable agreement. In consumer protection law, responsibility is very important to protect consumers from abuse of authority by business actors. In cases of violation of consumer rights, it must be known carefully in determining who should be responsible and how much responsibility is delegated to the related parties.

The responsibility of business actors is based on the existence of defaults carried out by the business actors in entering into agreements. Default itself consists of 4 types, namely:

- a) Not carrying out achievements;
- b) Carry out, but not as promised;
- c) Carry out something that was promised but not on time;
- d) Carry out something that is based on an agreement that is not allowed to be done.

The form of accountability carried out by PT. Global Jet Express is to compensate for negligence made by the shipping company. As previously explained, that at point 7 of the T&C Delivery of PT. Global Jet Express, explained that the company will indemnify the goods insured in accordance with the existing insurance provisions at PT. Global Jet Express where, the company will compensate a maximum of Rp. 20,000,000, - (Twenty Million Rupiah) for goods that are insured and for goods that are not insured by PT. Global Jet Express will compensate 10x (ten times) shipping costs or the price of the goods is taken with the lowest value, the maximum replacement value is Rp. 1,000,000, - (One Million Rupiah).

In this case, as explained in point 8, PT. Global Jet Express will not indemnify the sender as a result of events or things beyond the control of J&T Express or damage due to natural disasters (Force Majeure).

According to Wulandari as a consumer who uses the services of PT. Global Jet Express, he once felt the loss caused by the negligence of PT. Global Jet Express. Where the goods he sent were damaged and delayed so that the recipient also felt the loss. When Wulandari tried to complain about the goods he sent, the company reasoned that the shipping transportation had problems and PT. Global Jet Express Lhokseumawe City only apologizes and cannot provide compensation because it is beyond the control of the company.

Losses made by PT. Global Jet Express Lhokseumawe City is a default. As a company engaged in the delivery of goods, PT. Global Jet Express City of Lhokseumawe failed in carrying out its responsibilities to the detriment of consumers. As in Article 7 letter (f) of Law Number 8 of 1999 concerning Consumer Protection, business actors must provide compensation for losses suffered by consumers, but Article 462 paragraph (2) of the KUHD explains that:

"The carrier is obliged to compensate for all losses, which are caused by the goods wholly or as not being able to be delivered, or because of damage to the goods, unless it is

proven that the non-delivery of the goods or the damage was caused by a disaster that should not have been prevented or avoided, or defects in the goods, or by the fault of the person who sent them.”

Based on the statement from Muhammad Ridho as a courier at PT. Global Jet Express Lhokseumawe City, information was found that the obstacles or reasons for delays, loss or damage to goods were based on several factors, such as the occurrence of damage or obstacles to shipping transportation, obstacles to the long loading process to the destination city, weather or natural disasters that hampered the process. delivery, errors in data input resulting in delivery errors, damage to package packing so that the goods delivered are damaged, or other things that inadvertently cause losses to consumers.

Hendra Purnomo as Head of PT. Global Jet Express Lhokseumawe City provides a statement that, if there is a delay, damage, loss or other things that harm consumers, then it will be responsible for compensating for negligence committed by PT. Global Jet Express Lhokseumawe City is in accordance with what is stated in the standard clause that has been set by the company. Compensation is not for all consumer losses but first seen the form of negligence on the part of the party, whether it is purely the fault of the company or indeed because of something that cannot be calculated and prevented such as natural disasters.

As explained above, PT. Global Jet Express Lhokseumawe City is still based on the clause that has been set regarding compensation in the event of loss, damage, or delay. This also refers to Article 19 paragraph (1) of the Consumer Protection Law which states that "Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded".

Responsibilities of PT. Global Jet Express, when viewed from point 7 of the Terms & Conditions of Delivery, seems to limit the responsibility that should be done, because if the goods are sent and insured by PT. Global Jet Express exceeds the maximum compensation that has been set, then the consumer will still suffer losses. This is what should be a comparison material to increase consumer confidence in services at PT. Global Jet Express, so that consumers can feel the responsibility that should be carried out by PT. Global Jet Express and protect the rights of consumers of service users.

c. Legal Efforts By Consumers Who Have Lost Due to Standard Clauses Stipulated by the Freight Forwarding Service Company

The more the times, and the increasing need, the more business actors are arbitrary in determining the rules that are detrimental to the consumer. Because of this, the Consumer Protection Act was made to protect consumers from harmful actions caused by business actors.

In this case, the government plays a major role in assisting, fulfilling and protecting consumer rights in order to create a good business environment between business actors and consumers.

Article 29 paragraph (1) of the consumer protection law states that "The government is responsible for fostering the implementation of consumer protection which guarantees the acquisition of the rights of consumers and business actors as well as the implementation of obligations of consumers and business actors".

To support and develop the creation of legal protection for consumers, the Government also established the National Consumer Protection Agency or commonly called

BPKN. This National Consumer Protection Agency has an important task in protecting consumers which is explained in Article 34 Paragraph (1) that the duties of the National Consumer Protection Agency are:

- a) Provide advice and recommendations to the government in the context of formulating policies in the field of consumer protection;
- b) Conduct research and study on the applicable laws and regulations in the field of consumer protection.
- c) Conduct research on goods and/or services concerning consumer safety;
- d) Encouraging the development of non-governmental consumer protection institutions.
- e) Disseminate information through the media regarding consumer protection and promote the attitude of taking sides with consumers;
- f) Receive complaints about consumer protection from the public, non-governmental consumer protection institutions, or business actors;
- g) Conducting surveys concerning consumer needs.

Legal remedies that can be taken if a consumer feels aggrieved by a business actor can make a lawsuit to a consumer dispute settlement agency or through a general court in the consumer's own area in accordance with Article 23 of the UUPK. Indonesia itself has an out-of-court institution that is responsible for dealing with consumer disputes, the agency is appointed to be an out-of-court consumer dispute settlement agency, the agency is the Consumer Dispute Settlement Agency (BPSK), this has also been mentioned in Article 49 paragraph (1) Law Number 8 of 1999 concerning Consumer Protection.

Article 45 of Law Number 8 of 1999 concerning Consumer Protection explains that:

- 1) Every consumer who is harmed can sue business actors through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.
- 2) Settlement of consumer disputes can be reached through the courts or out of court based on the voluntary choice of the disputing parties.
- 3) Settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as stipulated in the Law.
- 4) If an out-of-court consumer dispute resolution effort has been chosen, a lawsuit through the court can only be taken if the attempt is declared unsuccessful by one of the parties or by the disputing parties.

From the description of Article 45 of the UUPK above, we are given the freedom to choose the dispute resolution we want to do, whether it is a settlement through an institution outside the court or through a court. However, if this dispute involves consumer groups, consumer protection agencies, or the government, it must be resolved through the courts which is in accordance with Article 46 paragraph (2) of the UUPK.

Tajuddin Noor is of the opinion that the regulation on legal remedies described in Law Number 8 of 1999 concerning Consumer Protection is quite complete, in fact it does not only regulate how to file a lawsuit for consumer protection disputes, but also explains administrative sanctions and criminal sanctions. that can be imposed on business actors who violate the rules in consumer protection. The Consumer Protection Law itself is actually quite old, but it is still suitable if used as a basis for consumer protection, he also hopes that

more consumers will dare to voice their rights so that they are not abused by irresponsible business actors.

Sanctions that can be imposed on violators of the Consumer Protection Law can be divided into two types, namely administrative sanctions and criminal sanctions. Article 60 paragraph (1) of the Consumer Protection Law stipulates that the administrative sanction that can be imposed by the Consumer Dispute Settlement Agency is in the form of determining compensation for a maximum of Rp. 200,000,000.- (Two hundred million rupiah).[10] Meanwhile, Article 62 of the Consumer Protection Law explains that the criminal sanctions that can be imposed by the Consumer Dispute Settlement Agency are:

- a) Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (Two Billion Rupiah).
- b) Business actors who violate the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16 and Article 17 paragraph (1) letter d and letter f shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (Five Hundred Million Rupiah).
- c) Violations that result in serious injury, serious illness, permanent disability or death shall apply the applicable criminal provisions.

4. Conclusion

Based on the results of the research and discussion drawn from the formulation of the problem that the authors did, the authors concluded that the application of standard clauses at PT. Global Jet Express Lhokseumawe City still has a defect in the agreement procedure, where in the Shipping T&C made by PT. Global Jet Express still contains elements of an exoneration clause which of course is detrimental to service users. As in the process of shipping transactions, the sender is not notified about the Shipping Terms and Conditions at PT. Global Jet Express so that the sender has not provided an answer whether he agrees or disagrees with the standard clauses set. Of course this violates the provisions of Article 1320 of the Civil Code.

The responsibility of PT. Global Jet Express City of Lhokseumawe to the problems faced are still based on the Shipping Terms and Conditions that have been set by the company. Meanwhile, in the Shipping T&C set by PT. Global Jet Express still contains an exoneration clause that is detrimental to consumers, even in some cases such as delays, damage, loss and other things that harm consumers, PT. Global Jet Express Lhokseumawe City tends to argue that the things experienced are beyond the control of the company so that in accordance with the existing standard clauses, it cannot be compensated. In fact this has not even been proven true, so that it is still a reason to release the company from its responsibilities and this is certainly a violation of Article 18 of Law Number 8 of 1999 concerning Consumer Protection.

Legal remedies that can be taken by consumers to obtain rights as consumers have been regulated and protected by Law Number 8 of 1999 concerning Consumer Protection,

so that if the business actors take arbitrary actions or other things that can harm consumers, they can be punished according to the law. provisions that have been in effect. Legal remedies that can be taken by consumers who feel aggrieved are to report to the National Consumer Protection Agency. If the consumer wants to continue the dispute seriously, the consumer can submit a dispute resolution through the court or outside the court through an institution that has been established by the Government, namely the Consumer Dispute Settlement Agency. Legal sanctions that can be imposed on business actors who are proven to have committed actions prohibited by law may be subject to administrative sanctions to criminal sanctions as stipulated in Law Number 8 of 1999 concerning Consumer Protection.

5. References

- M. Arsyad Sanusi, *Information Technology and E-Commerce Law*, Jakarta: PT. Dian Ariesta, 2004.
- Janus Sidabalok, *Consumer Protection Law in Indonesia*, PT. Citra Aditya Bakti, Bandung, 2014.
- Rizki Yanda Putra, *Consumer of PT. Global Jet Express Lhokseumawe City*, interview, 07 August 2022
- Shidarta, *Consumer Protection Law*, Grasindo, Jakarta, 2000.
- R. Subekti, *Covenant Law*, Second Printing, Period Advisor, Jakarta, 1970.
- Wulandari, *Consumer of PT. Global Jet Express Lhokseumawe City*, Interview, 05 August 2022.
- Muhammad Ridho, *Delivery Courier PT. Global Jet Express Lhokseumawe City*, Interview, 08 August 2022.
- Hendro Purnomo, *Head of PT. Global Jet Express Lhokseumawe City*, Interview, 08 August 2022.
- Tajuddin Noor, *Lecturer at UISU Faculty of Law*, Interview, 09 August 2022.
- M. Syamsudin & Fera Aditias Ramadani, *Consumer Legal Protection on the Application of Standard Clauses*, Journal, Universitas Islam Indonesia Yogyakarta, 2018.