

Personal Liability For Loss Of Business Of Consumer In Electronic Transaction Using The Standard Contract

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*Abstract: Standard contract in electronic transactions in the business-to-consumer as contract online is offered by business actor to consumers in the form of 'take it or leave it'. Almost all standard contracts in electronic transaction cannot be negotiated. These contracts are businesses utilized to circumvent and ignore the rights of electronic consumers. This electronic transaction has its own characteristics when compared to conventional transactions. Based on the principle of contract freedom, then the contract can be made in any form and binding as law for the parties. Therefore the consumer protection should be equated with consumer conducting transactions conventionally. Under the provisions of UUPK stated that businesses are prohibited from creating a standard clause in the contract that the form of the transfer of responsibility. Consequently, the violation of the provisions of the standard clause that has been set by the business is declared null and void. The principle of responsibility is also adopted in principle of the presumption of UUPK is to always be responsible (presumption of liability principle) by the burden of reversed proof. For greater protection for consumers in electronic transactions, it is right in Indonesia to implement the principle of absolute liability in providing maximum legal protection for consumers in transactions in cyberspace.
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INTRODUCTION

With regard to the development of information and communication technology where goods and/or services can be traded to consumers past the boundaries of regions and countries, legal protection for consumers will always be an important issue that is so

pivotal. It is no longer a regional issue, but rather has become a global problem that affects consumers across the world.¹

1 Abdul Halim Barkatullah. 2009. *Transaksi Konsumen dalam Bisnis E-Commerce*. Bandung: Nusa Media, hlm. 4.

By having the characteristics of the electronic transactions, consumers will face a variety of legal issues. Acts relating to legal protection for consumers that exist today have not been able to protect consumers in electronic transactions. In electronic transactions, they are no longer in the state's jurisdiction. As a result, the laws of legal protection for consumers of each country, like those of Indonesia will not be enough to help, because it operates electronic transactions across borders (borderless transactions).²

In electronic transactions, being used electronic media, namely the Internet, so that the agreement or contract that is created is through online. Similar to the sale and purchase contracts in general, the online purchase agreement also consists of offer and acceptance. An agreement has always started with the offering by one of the parties and the acceptance by the other parties.³ In general, both performed nationally and internationally uniform electronic transaction raises some juridical questions.⁴

Message data problems are closely related to confidentiality, integrity and authenticity of the parties to a transaction. How to make sure that the message data is very closely related to subscriber privacy, confidentiality, the parties and order, integrity and authenticity.

Contract electronic transactions use standard contract and the signature, confirming the authenticity of a contract. Standard contract contained in the website, proffered if consumers want to buy a product. The

provisions of such contracts contain things that must be accepted by the consumer or the consumer. This type of electronic transactions contract in business-to-consumer is online contract that has been the standard contract offered to the public in the form of 'take it or leave it'. There is also a contract in the form of shrinkwrap contract and click wrap contract that are contract offering to its customers for the use of products with the requirements that comply such products, generally occurs in the contract the use of computer software.⁵

In the era of electronic commerce transactions, it seems businesses can easily make the contract terms (such as terms and conditions on a website) that contains a limitation of liability. The reference used is the principle of "take it or leave it." In fact, businesses are expected to ensure the principles of consumer's rights in the contract underlying relationship with consumers.⁶

Almost all standard contracts in electronic transactions cannot be negotiated (non-negotiable). These contracts usually contain terms that are not favorable to consumers. These contracts are utilized businesses to circumvent and ignore the rights of consumers. This resulted in an electronic transaction contract adds new complexities and uncertainties.⁷

Based on the background of the problem, the issues of concern are as follows:

1. How does the binding strength for standard contracts in electronic transactions according to the rule of law in Indonesia?

2 *Ibid.*, hlm. 5.

3 Edmon Makarim. 2009. *Kompilasi Hukum Telematika*. Jakarta: PT RajaGrafindo Persada, hlm 228.

4 Nindyo Pramono., 2008. *Revolusi Dunia Bisnis Indonesia*. Yogyakarta: UKDW, hlm 23.

5 Abdul Halim Barkatullah., hlm 21-22.

6 *Ibid.*

7 Saami Zain. 2010. "Regulation of E-Commerce by Contract: is it Fair to Consumers?". *Los Angeles: The University of West Los Angeles*, hlm 171.

2. How is the responsibility of businesses actors for the losses of consumers in electronic transactions that use standard contract?

ANALYSIS AND DISCUSSION

A. The Binding Power of Standard Contracts in Electronic Transactions According to the Rule of Law in Indonesia

In the “traditional” contract occurs based on the principal of freedom of contract between two parties who have a balanced position. Both sides are trying to reach an agreement that is necessary for the contract through a negotiation between them. However, the growing trend shows that a lot of contracts in business transactions are not occur through a balanced process of negotiation between the parties. Instead, the contracts happen in the way on the one hand has prepared the terms of the standard on a form contract that has been printed and then proffered to the other parties for approval with no freedom at all to give the other parties to negotiate on the terms offered. Such contracts are called standard contracts or standard contracts or contracts of adhesion.⁸

Standard contracts or standard contract in general is “a written contract which has been formulated by a party in the form”.⁹ As for the reason for standard contracts held for efficiency and practical, raw contract is made

unilaterally by businesses, and consumers do not participate on it.¹⁰

In the opinion of Sutan Remy Sjahdeini,¹¹ a standard contract is a contract that almost all clauses have been standardized by the wearer and others which basically does not have opportunity to negotiate or ask for changes.

Standard contracts have advantages and disadvantages. One of the advantages of standard contract is that the standard contract more efficient, and more simple. This is very advantageous especially for bulk contracts, i.e., contracts made in large volumes (mass production of contract). One of the disadvantages of a standard contract is the lack of opportunities for the opposition to negotiate or change the clauses in the contract in question. Therefore, the standard contract has the potential to happen clause lopsided.¹²

On the issue of the validity of standard contract, experts have different opinions. Sluijter says that “standard contract is not a contract, because the position of business operators (dealing with customers) is like a private legislator.” Meanwhile Pitlo states that “the contract is as a contract force (*dwangcontract*).”¹³

In the ranks of the legal scholars who support the standard contract, among others, Stein says that “an acceptable standard contract as contracts based on their willingness and confidence fiction (*fictie van wilovertrouwen*) that evokes confidence that the parties commit themselves to the contract.” Hondius states that

8 Sutan Remy Sjahdeini. 2003. *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*. Jakarta: Institut Bankir Indonesia, hlm 65-66.

9 Man Suparman Sastrawidjaja. 2002. *Perjanjian Baku dalam Aktifitas Dunia Maya*. Bandung: Elips, hlm 17.

10 *Ibid.*

11 Sutan Remy Sjahdeini, *Kebebasan Berkontrak ...,loc.cit.*

12 Munir Fuady. *Hukum Kontrak: dari Sudut Pandang Hukum Bisnis*. Buku Kedua. Bandung: PT. Citra Aditya Bakti, hlm 77-78.

13 Sutan Remy Sjahdeini. *op.cit.*, hlm 69.

“the contract has a standard contract based on the binding force of “custom” (*gebruik*) prevailing in the society and trade traffic.”¹⁴

The validity of the standard contract is no longer questioned, because its existence is already a reality. That is, standard contracts that have been used widespread in the business world since more than 80 years. The fact is that the standard contract has already been applied and born out of the needs of the community itself.¹⁵

But even if the validity of the entry into force does not need to be questioned, it still needs to be questioned whether the contract is not to be so “biased” and contains “clause which unreasonably extremely burdensome to the other party”. As a result, the contract is oppressive and unfair.¹⁶

In a transaction of lack of balance in the bargaining position, consumers will lose business, because consumers do not have a dominant position like business actors. In addition, customers have no other choice but to follow the wishes of businesses.¹⁷

The factors that can intrigue standard contract to be very onesided, as follows:¹⁸

1. Lack of the opportunity for consumers to haggle, so that consumers who offered contract is not much chance to know the contents of the contract;
2. For the preparation of the contract unilaterally, then the document providers (business actors) have plenty of time to

think about the clauses in the document, even they may have consulted with experts or these documents can be made by the experts. While consumers don't have many opportunities and are often not familiar with these clauses;

3. Consumers' bargaining position is very low, so they can only be a “take it or leave it”. The lack of choice for consumers in this contract is likely to harm consumers. Moreover, the Indonesian verification system, prevailing in the country today, is obviously not easy for the aggrieved parties to prove the absence of an agreement at the time of the conclusion of the standard contract, or on a standard clause contained in the contract.

Consumer powerlessness in the face of business actors applies standard contract is obviously very detrimental to the interests of the consumer society. In general, business actors hide behind a standard contract that has been signed by both parties (between business actors and consumers).¹⁹

Standard contract clauses contained in the transaction business operators of electronic transactions, for example, contains a clause that states that the purchased goods cannot be returned, which is the annihilation of the rights of consumers, and which is unnatural and unfair. There is an imbalance in the position of standard contracts. This condition is likely to harm consumers and puts consumers in a weak bargaining position.

In the view of Civil Law in Indonesia, through the growing electronics contract outside the Civil Code, based on the doctrine

14 *Ibid.*

15 *Ibid.*, hlm 70-71.

16 *Ibid.*

17 M. Arsyad Sanusi. 2011. *E-Commerce Hukum dan Solusinya*. Bandung: Mizan Geafika Sarana, hlm 14.

18 *Ibid.*

19 Gunawan Widjaja dan Ahmad Yani. 2011. *Hukum Tentang Perlindungan Konsumen*. Jakarta: Gramedia Pustaka Utama, hlm 1.

is included in the category of so-called unnamed contract (*onbenoemde contract*). It is in connection with the open system in the Civil Code, where Article 1338 paragraph (1) of the Civil Code has provided considerable opportunities for the birth of new contracts.

According to the World Trade Organization (WTO), the scope of electronic transaction covers the production, distribution, marketing, sale and delivery of goods or services through electronic. Meanwhile, the OECD (Organization for Economic Cooperation and Development) explained that the electronic transaction is a transaction based on process of electronic data transmission. Aside from the two international bodies' opinions above, Alliance for Global Business, a leading trade association in the field of interpret electronic transactions, says that all transactions involving the transfer of the value of the information, products, services or payments should be implemented through electronic networks as a medium.²⁰

Electronic transactions have no legal basis so it needs to be studied regular trading provisions contained in regular trading. As an example of that is the usual buying and selling under Article 1457 of the Civil Code to Article 1540 of the Civil Code, the sale and purchase is a contract whereby one party to bind himself to submit a material and the other party to pay the price that has been promised. Furthermore, Article 1458 of the Civil Code states that selling is considered to occur between the parties, immediately after these people reach agreements on the material and the price, although the material has not been submitted and the price has not been paid.

Of the two conditions above can be known that:

1. Buying and selling through electronic (electronic transactions) is a contract. So that the provisions apply to her engagement in Book III of the Civil Code.
2. Buying and selling through electronic (electronic transactions) is a consensual contract which has been formed since there has been their agreement on goods and prices.
3. The rights and obligations of the parties have occurred since there has been the agreement even though the price has not been paid and the goods have not been delivered.

Thus the provision of electronic transactions in Indonesia is still based on the provisions of Book III of the Civil Code and the provisions concerning the sale and purchase in the Civil Code, with modification, that the electronic transactions have special properties. In other words, the electronic transaction is a modification of the contract of sale in the Civil Code, based on the principle of freedom of contract.

As described earlier that the contract in electronic transaction is standard contract. The condition is based on the existence of "the legal concept of open systems" set forth in Article 1338 paragraph (1) of the Civil Code. This concept is known from the phrase "all contracts binding as law for those who made it". Hereinafter, it is known as the principle of freedom of contract. With this principle gives the position of both parties in the same position strong in performing a contract.

Article 1338 paragraph (1) of the Civil Code which is the pillar of development of

20 Ade Maman Suherman. 2002. *Aspek Hukum Dalam Ekonomi Global*. Jakarta: Ghalia Indonesia, hlm. 179.

contract law, relating to the elaboration of the principle of freedom of contract, namely:

1. Free to create any kind of contract
2. Free to organize the contents
3. Free to set the shape.

Thus the standard contract in electronic transactions has a strong legal basis, namely, Article 1338 Civil Code. Accompanying this principle, should not be forgotten restrictions to be the arbitrary actions of the parties, ie specifying the terms are not contrary to law, morals and public order, and do not forget to uphold that all contracts must be implemented with the principle good intention. The conditions also apply to standard contract in electronic transactions, does not distinguish between media used in performing a contract.

Consent principle has a close relationship with the principle of freedom of contract and the principle of binding force contained in Article 1338 paragraph (1) of the Civil Code in conjunction with Article 1320 of the Civil Code. This provision reads “all agreement made legally valid as law for those who made it”. All means includes contracts, both known and unknown name by the law, including contract undone raw through the electronics.

Importance of Article 1320 of the Civil Code resulting in the aforementioned article regulates the terms validity of a contract, namely: (1) the existence of an agreement; (2) their prowess; (3) there is a specific object, and (4) there are lawful causes. These requirements are of two kinds. The first on the subject (to a contract) and the second about the object which is what is promised by each, which is the contents of the contract or what is intended by the parties to make the contract.²¹

21 R. Subekti. 1992. *Aspek-Aspek Hukum Perikatan Nasional*. Bandung: PT. Citra Aditya Bakti, hlm.

All electronic transactions including eligible Article 1320 of the Civil Code are recognized as contract and binding for the parties. This article is also related to Article 1337 of the Civil Code regarding prohibited Causes (contrary to morality and public order).²²

In Indonesia, the government has enacted Law No. 11 of 2008 on Information and Electronic Transactions substantively arrangements regarding the validity of electronic information, documents and electronic signatures which have been set firmly on the subject, defined in Article 5, as follows:

1. Electronic Information and/or Electronic Document and/or prints with valid legal evidence.
2. Electronic Information and/or Electronic Document and/or printout referred to in subsection (1) is an extension of the valid evidence in accordance with the Law of Procedure applicable in Indonesia.
3. Electronic Information and/or Electronic Records declared valid when using the Electronic Systems in accordance with the provisions stipulated in this Law.
4. Provisions on Electronic Information and/or Electronic Documents referred to in act (1) shall not apply to:
 - a. The letter, according to the Act must be made in writing; and
 - b. Letter along with the documents that under the Act must be made in the form of notarial deed or deed made by deed officials.

16.

22 Ahmad M. Ramli. 2004 *Cyber Law dan Haki Dalam Sistem Hukum Indonesia*. Bandung: Alumni, hlm. 36.

Electronic transactions in general website/businesses use raw or standard contract clauses. Act No. 8 of 2009 on Consumer Protection (UUPK) governing clause standard, among other provisions permitted by the inclusion of a standard clause UUPK with the provisions set forth in Article 18 of UUPK, as follows:

1. The perpetrator shall be prohibited from making or include a standard clause in every document and/or contract if:
 - a. Declaring the transfer of responsibility;
 - b. Stating that business actors are entitled to reject the handover to the goods bought by consumers;
 - c. Stating that business actors are entitled to reject the handover to the money paid for the goods and/or services purchased by consumers;
 - d. Arranging concerning proof of loss of use of goods or utilization of services purchased by consumers;
 - e. Entitling business actors to reduce the benefits of the services or reduce the wealth of consumers who becomes the object of sale and purchase of services;
 - f. Stating the submission of consumers to the regulations in the form of new regulations, additional, secondary and/or advanced conversion made unilaterally by businesses in the future consumers utilizing the services that they purchase.
2. The perpetrator is prohibited to include a standard clause that location or shape is hardly visible or cannot be read clearly, or the disclosure of which is difficult to understand.

3. Any standard clause that has been set by the business documents or agreements that comply with the provisions referred to in paragraph above paragraph is declared null and void.

UUPK defines consumer protection law as principles and rules of the overall principles of the rule of law that regulate and protect consumers in the relationship and the various problems with the providers of goods and/or services the consumer. Legal relationship that occurs between the providers of goods and/or services to the consumer eventually gives rise to a right and obligation that underlies the creation of a responsibility. A responsibility on the same principle is part of the concept of legal obligations.

Article 18 UUPK has banned eight (8) types of standard clause that contains the exoneration clause. In addition, Article 18 of UUPK also has standard clause which prohibits the location, shape, or disclosure is not easy to read, unclear and difficult to understand.

Standard clauses are prohibited under Article 18 of UUPK, not closing likely to occur in standard contracts in electronic transactions. In addition for having the advantages are efficient and flexibility in conducting electronic transactions. In practice, it also has weaknesses. For the provision of standard clauses through online media must consistently apply the principles of Article 1 point 10 jo Article 18 of UUPK.

Seeing this reality, the parties, in reading the bids in a consumer website, should be more careful. If the offer is in the form of standard contractual obligations more burdensome to consumers rather than producers, better not to make a deal. Because inevitably if it has

already agreed to close the contract, whatever in the standard contract is binding.

Standard contracts in electronic transactions contain the legal basis for the principle of freedom of contract and the agreement of the parties set forth in the electronic media, the principle of freedom of contract and the principle is exactly the deal that becomes the basis of the binding force of the contract. It does not shut down the possibility of violation of the principle of Undue Influence, but the basic agreement has been binding on the parties to the agreement of any origin is not contrary to law, public order and morality. In a longterm, the role of government in contract manufacturing of standard mainly in electronic transactions, given the use of high technology, the role of the government in the field of regulation is necessary to provide protection for the parties to a contract through the electronics, especially for supervision in the inclusion of standard clauses which may harm consumers.

B. Responsibility of Business Executors for Consumer Losses in Electronic Transactions that use Standard Contract

The regulation of the use of standard contracts in electronic transactions in addition to the applicable provisions of the UUPK and UUIITE for contract also standard is basically a contract. The provisions in Book III of the Civil Code are still applicable to the standard contract through the electronic.

As a standard contract, in addition to the electronic contract contains the characteristics of raw contract, as noted above, also contains characteristics of electronic contracts as follows:

1. The electronic contract can occur remotely, even beyond the borders of the country via the Internet;
2. The parties to the contract electronics in general have never met face to face, even perhaps will never meet.

Article 1320 of the Civil Code regulates the validity of a contract. So even if the medium used is the internet requirements validity of electronic contracts remains subject to Article 1320 of the Civil Code is for no more specific regulations governing it.²³ Another goal is to fill the void that occurs civil law.

According to Article 1243 of the Civil Code, Article stipulates the losses due to violation of contract/breach of contract/non-performance/default. In the aforementioned article states that: "Replacement costs, damages and interest for non-fulfillment of a commitment, then begin required, if the debt, after being failed to meet engagement, fixed relent, or if something should be given or made, may only be given or made within the time limit has been passed through."

It has been clearly stated that the contractual liability in the Civil Code is subject to Article 1243 of the Civil Code, any form of the contract, as well as the media uses. So the responsibility of the parties in the event of default against the contents of a standard contract through the electronics can be prosecuted under this article.

Which meant losses that may be recovered, not only in the form of costs that truly has been issued (*kosten*), or the loss of a truly override the indebted property (*schaden*), but also in the form of lost profits (*interessen*), the benefits to be gained if the debt was not

23 Subekti. 1979. *Hukum Perjanjian*. Cetakan Keenam. Bandung: Alumni, hlm. 15.

negligent (*winstderving*).²⁴ But not all losses can be recovered. Laws impose restrictions in this regard, by setting only losses that can be calculated, estimated or expected at the time the contract was made and who truly can be considered as a direct result of the negligence of the debt alone may be recovered.

As mentioned earlier, contractual liability/accountability are contractual civil liability on the basis of the contract/contracts from businesses (both goods and/services) for their losses due to the consumption of consumer goods produced/services provided to the harness. Thus in this contractual liability there is a contract/contract (direct) between business actors and consumers.

The imbalance setting rights and obligations between business actors and consumers in the standard contract, that is by UUPK stipulated in Article 18 of UUPK has banned eight (8) types of standard clause that contains the exoneration clause. The Article basically prohibits exoneration clause in the form of standard clauses in standard contracts. In addition, Article 18 of UUPK also standard clause which prohibits the location, shape, or disclosure is not easy to read, unclear and difficult to understand. According to the Article 18 of UUPK, a ban on the inclusion of standard clauses in standard contracts is intended to place the consumer position equivalent to business actors, based on the principle of freedom of contract.

Arrangements regarding the inclusion of standard clauses in a standard contract documents covering matters mentioned above are intended to prevent the transfer of responsibility held by the offender.

Businesses to consumers, so the inequality of rights and responsibilities between the parties is not expected to occur. In other words, the prohibition is intended to place the consumer position equivalent to businesses based on the principle of freedom of contract.

The concept of balance in freedom of contract should be applied. Another view of the statement stated by Mariam Darus Badruzaman who states that the contract was contrary to the principle of freedom of contract is responsible, especially more so in terms of the principles of national law, in which ultimately the interests of society that takes precedence. In the standard contract, the position of business operators and consumers are not balanced. The position was dominated by the business, opening vast opportunities for him for abusing his position. Business actors only regulate their rights and obligations. According to him, this standard contract should not be allowed to grow wild and therefore needs to be curbed.²⁵

In UUPK there are two (2) Articles that describe the product liability systems in the consumer protection laws in Indonesia, namely the provisions of Article 19, Article 23 of UUPK.

UUPK Article 19 defines the responsibilities of the manufacturer as follows:

- a. Business communities are responsible for providing compensation for damage, contamination, and/or loss of customers due to the consumption of goods and/or services produced on trade.
- b. Compensation referred to in act (1) may be either refund or replacement of goods and/or services similar or equivalent

²⁴ *Ibid*, hlm. 148.

²⁵ Mariam Darus Badruzaman. 2004. *Aneka Hukum Bisnis*. Bandung: Alumni, hlm. 54.

value, or a health care and/or donations in accordance with the provisions of the legislation in force. Indemnity carried out within a period of seven (7) days after the date of the transaction.

- c. Compensation referred to in act (1) and act (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error.
- d. The provisions referred to in act (1) and act (2) do not apply if businesses can prove that the error is a mistake of the consumer.

The provisions of Article 19 of UUPK then developed in Article 23 of UUPK which states: “businesses that refuse and/or provide feedback and/or do not meet the compensation for the demands of consumers as referred to in Article 19 act (1), act (2), act (3), and act (4), can be sued by the Consumer Dispute Settlement Board or tort to the judiciary in the domicile of the consumer.”

The formulation of Article 23 of UUPK seem to have arisen by and frame of mind, first, that Article 19 of UUPK adheres to the principle of presumption of inattentive/innocence (Presumption of Negligence). This principle assumes that if manufacturers do not make mistakes, so consumers do not suffer losses, means that the manufacturer has made a mistake. As a consequence of this principle, the UUPK implement compensation payment deadline of 7 (seven) days after the transaction. Examining the context of Article 23, the deadline of 7 (seven) days is not intended to undergo a verification process. But only provides the opportunity for businesses to pay or find other solutions, including the settlement of disputes through the courts.

Product liability system in Indonesia is still using the principle of responsibility based on fault. Reversed burden of proof has not introduced a system of strict liability. The idea that UUPK Article 19 act (1) adheres to the principle of presumption of innocence least based on differences in formulation with Article 1365 of the Civil Code, as follows: First, Article 1365 of the Civil Code explicitly contains a basic responsibility for errors or omissions someone, while Article 19 act (1) does not include the word error.

In such cases, Article 19 of UUPK confirms that producers (entrepreneurs)’ responsibility appears when experiencing losses due to consumption of the products traded. Second, Article 1365 of the Civil Code does not regulate the payment period, while Article 19 of UUPK sets payment term, ie 7 days.

The second thought which is contained in Article 23 of UUPK is that businesses do not pay compensation within the time limit specified. The attitude of business people is an opportunity for consumers to file a lawsuit to the Court or to the Consumer Dispute Settlement Board.

Conditions continued relevant and significant to Article 23 of UUPK are the provision of Article 28 of UUPK, as follows: “The proof of the presence or absence of the element of fault in tort as referred to in Article 19 and Article 23 of the burden and responsibility of businesses” Formulation chapter is then known as the inverted authentication system. Thus, the formulation of Article 23 shows that the principle of responsibility is also adopted in principle of the presumption of UUPK that is for always being responsible (presumption of liability principle). This principle is one modification

of the principle of liability based on fault with the burden of reversed proof.

Obviously, the construction of such a law describes the progress of the system of responsibility before, but not fully embrace the principle of absolute liability as to the explicit formulated in positive law in some other countries. This is reflected also in the final opinion when giving approval to the Draft Law on Consumer Protection (RUUPK) which states: "In this Act, inserted chapter enables the reversed evidence in both criminal and civil. This is a new breakthrough in the Indonesian legal discourse. "These developments show that Indonesia is still in the level of modifications to the principle of responsibility based error, a step behind the principle of absolute liability.

The burden of proof reversed in practice has not been implemented consistently. That is, although there are already rules on evidence in the UUPK, but some are up to court are still using the old principle of the burden of proof on the consumer.

While on the other hand, it appears the notion that the burden of proof reversed in practice needs to be applied in a limited manner, especially on the risks of consumers who are already apparent. Reversal of the burden of proof in the UUPK can be a blunder for consumers, because businesses have the ability to prove his innocence and consumers overwhelmed the ability of business to do the verification.

In the responsibility of businesses, to give greater legal protection for consumers of electronic transactions, Indonesia should apply the principle of strict liability. The substance of consumer protection law changes characteristic of repressive laws, in the form of the principle of responsibility based on the

error to the principle of responsibility in favor of or responsive to the interests of consumers in the form of absolute liability. This can be done to cope with the development of global trade aiming to protect the rights of consumers. In electronic trading adoption of strict liability can better provide legal protection for consumers in the transaction.

With the enactment of the principle of strict liability is expected that businesses can realize the importance of maintaining the quality of the products they produce, let alone the transaction was carried out in a virtual world using a standard contract. If the principle of strict liability is imposed in a consumer protection law, the businesses will be more cautious in reproduce goods before distribute them into the market. The consumers both inside and outside the country will not hesitate to buy their products.

CONCLUSION

The electronic trading has its own characteristics when compared to conventional transactions. As a result, the provisions on consumer protection in the conventional nature of transactions cannot be fully implemented in the transaction through electronic transactions.

Based on the open system principle in Book III of the Civil Code, which is reflected in the principle of freedom of contract made in any form as law binding on the parties. The consumer protection should be equated with consumers conducting transactions conventionally. Under the provisions of UUPK stated that business actors are prohibited from creating a standard clause in his contract in the form of the transfer of responsibility, and business actors are prohibited include standard clauses that location or shape is hardly visible

or cannot be read clearly, or the disclosure of which is difficult to understand. Consequences for violation of these provisions, the standard clause that has been set by business actors such documents or contracts that meet those conditions is declared null and void.

Product Responsibility, which is a civil liability of businesses for their losses due to consumer use of products that it produces the principle of responsibility, was adopted in principle of the presumption of UUPK is to always be responsible (presumption of liability principle). This principle is one modification of the principle of liability based on fault with the burden of proof is reversed. In anticipation of a global trend of paying attention to the protection of consumer electronic transactions that have a weak bargaining position, then the application of strict liability can better provide legal protection for consumers in the transaction.

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