Exoneration Clauses of E-commerce Platforms as a Form of Hidden Breach of Contract against Consumers in Indonesia

Adinda Dwi Larasati[1], Dinda Delfina[2], Fadhila Putri Sakina[3], Raisha Hafandi[4], Muhamad Aditya Syah[5]
[1,2,3,4,5]Law and Citizenship Department, State University of Malang
Jalan Semarang No.5, Malang, 65145, Indonesia.
adinda.larasati.fis@um.ac.id.

Abstract.
The rapid growth of e-commerce in Indonesia, with more than 221 million internet users and a projected growth rate of 30.5% in 2024, has intensified legal disputes between consumers and platform operators. A critical yet understudied phenomenon is the systematic incorporation of exoneration clauses into standard form contracts by major platforms such as Shopee, Tokopedia, Lazada, Blibli, and TikTok Shop, whereby platforms disclaim liability by positioning themselves merely as intermediaries. This normative legal research examines two issues: first, how exoneration clauses in e-commerce platform contracts may be legally construed as a form of hidden breach of contract under Indonesian civil law; and second, what legal protections are available to consumers against such clauses. Employing a statutory and conceptual approach, this study analyzes the Indonesian Civil Code (KUH Perdata), the Consumer Protection Law No. 8 of 1999 (UUPK), the Electronic Information and Transactions Law No. 1 of 2024 (UU ITE), and Government Regulation No. 80 of 2019 on Trade through Electronic Systems. The findings demonstrate that exoneration clauses violate Article 18 of the UUPK and constitute void agreements under Article 1320 in conjunction with Article 1337 of the Civil Code due to an unlawful causa, while simultaneously qualifying as a hidden breach of contract through the doctrines of anticipatory breach and misbruik van omstandigheden (abuse of circumstances). Consumer legal protection remains fragmented and inadequate, necessitating normative reconstruction through amendment of the UUPK and the strengthening of enforcement mechanisms.

Keywords: exoneration clause; e-commerce platform; hidden breach of contract; consumer protection; digital civil law.

1 Introduction

Over the past ten years, the development of e-commerce in Indonesia has experienced a very significant acceleration. Based on a report by the Indonesian Internet Service Providers Association (APJII) in 2024, internet users in the country have exceeded 221 million people, or equivalent to a penetration rate of 79.5% of the total population [1]. In line with that, the value of national e-commerce transactions is

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estimated to grow by 30.5% by 2024, making Indonesia one of the largest digital markets in Southeast Asia. Digital commerce ecosystem is dominated by platforms such as Shopee, Tokopedia, and TikTok Shop, which facilitate hundreds of millions of transactions every month.

This massive growth, however, has not been matched by adequate legal protection for consumers. YLKI (Indonesian Consumers Foundation) recorded that consumer complaints in the e-commerce sector accounted for 40% of the total throughout 2023, compared to the previous year, with the primary issues being goods that do not conform to their description, delivery delays, refusal of returns, and, most critically, the lack of clarity regarding the platform's liability when disputes arise [2]. This phenomenon is rooted in a practice now prevalent across virtually all Indonesian e-commerce platforms: The existence of an exoneration clause into the terms and conditions of service, which unilaterally transfers or limits the platform's liability to consumers.

Theoretically, this article rests upon three principal frameworks. The first is the Legal Protection Theory introduced by Philipus M. Hadjon, in which the theory highlight the difference between legal protection that is carried out before the occurrence of the violation (preventive) and that carried out afterwards (repressive). [3]. Afforded through normative instruments prior against the occurrence of a violation, as well as repressive legal protection, protection afforded past a violation has occurred through dispute resolution mechanisms. Second, the Theory of Breach of Contract (wanprestasi) developed by Subekti on the basis of Articles 1238 to 1244 of the Civil Code, under which breach of contract may take four forms: total non-performance of an obligation; performance that is not rendered in a timely manner; performance that is rendered improperly; and the doing of something expressly prohibited by the agreement [4]. Third, the doctrine of misbruik van omstandigheden, or abuse of circumstances, which serves as an analytical instrument for assessing the validity of agreements formed under conditions of structural bargaining-power imbalance [5].

In addition to these three principal theories, In this article, the concept of standard agreements adhesion contract is used as a foundation by using a modern perspective in civil law [6]. In the context of e-commerce, consumers possess no room to negotiate the terms of a contract that has been unilaterally predetermined by the platform. This take it or leave it condition creates an asymmetry of information and an asymmetry of power that constitutes fertile ground for the inclusion of exoneration clauses. This conceptual framework forms the foundation for constructing the legal argument that exoneration clauses amount to a hidden breach of contract, an argument that has not previously been advanced on a normative basis within Indonesian civil law scholarship.

Prior research has made important contributions to identifying the problems surrounding exoneration provisions in Indonesia e-commerce sector. Study Fista,

Machmud, and Suartini (2023) raising the issue of consumer protection in electronic transactions seen through the lens of the UUPK, which found that existing regulations have not kept up with the dynamics of the development of digital platforms [7]. Patria and Rokhim (2025), writing in the USM Law Review, analyzed exoneration clauses as a manifestation of structural inequality between platforms and consumers, drawing upon the doctrine of abuse of circumstances [5]. Suwandono, Suparto, Yuanitasari, and Kusmayanti (2024) specifically examined exoneration clauses in the context of voided warranties on the Shopee platform and found a violation of Article 18 of the UUPK [8]. Further, recent scholarship published on ResearchGate (2026) discussing consumer protection in electronic transactions according to the perspective of civil law and the UUPK, with the conclusion that platforms cannot be positioned simply as passive intermediaries [9].

Nevertheless, the existing body of research has, at most, identified exoneration clauses as a static violation of Article 18 of the UUPK or as evidence of structural inequality within the contractual relationship. No prior study has specifically constructed the legal argument that exoneration clauses imposed by e-commerce platforms may be qualified as a hidden breach of contract under the Civil Code [10]. It is precisely this normative gap that the present article seeks to fill.

The research gap this article addresses caused by the unavailability of a legal basis that explicitly defines e-commerce platforms, exoneration clauses as a hidden breach of contract from the perspective of Indonesian civil law. Prior studies have tended to treat the analysis of exoneration clauses (as a matter of contract law) separately from the analysis of breach of contract (as a matter of contractual non-performance), notwithstanding the close normative connection between the two. This article aims, first, in order to formulate legal reasoning that the e-commerce platform liability exemption clause includes a hidden form of breach of agreement based on the Civil Code and the UUPK, and second, to develop a comprehensive form of the form of legal protection provided to consumers in relation to the clause. Based on the above background description and gap analysis, addresses two research questions: (1) How may exoneration clauses imposed by e-commerce platforms be legally construed as a hidden breach of contract under the Civil Code and the UUPK? (2) What kind of legal protections are available to consumers to protect themselves from the liability exemption clause applied by e-commerce platforms in Indonesia?

2 Research Methods

The method in this study is the normative legal method, directs attention to the study of the applicable positive legal norms. The approach adopted combines a statutory approach, examining all relevant legislation in a hierarchical and systematic manner, and a conceptual approach, examining legal doctrines and concepts pertinent

to the issues under study. The nature of this research is descriptive-analytical, directed to detail the applicable legal norms and to critically analyze them in order to construct a new legal framework.

In this study, the legal materials used are divided into three types. The first type is primary legal materials, which consist of: Civil Code (Burgerlijk Wetboek); Law No. 8 of 1999 concerning Consumer Protection (UUPK) [11]; Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law) [12]; Government Regulation No. 80 of 2019 concerning Trade through Electronic Systems (PP PMSE) [14] ; and Regulation of the Minister of Trade No. 31 of 2023 concerning Business Licensing, Advertising, Coaching, and Supervision of Business Actors in Trade through Electronic Systems [18]. Second, secondary legal materials, comprising Sinta-indexed national law journals, international journals, and doctrinal treatises on civil law and consumer protection. The third, tertiary legal materials, includes dictionaries and encyclopedias in the field of law. The round-up of legal materials is carried out through literature research and documentary study, while analysis was conducted using a qualitative prescriptive method, that is, processing legal materials in order to render a prescriptive judgment as to how the law ought to be applied and developed.

3 Result and Discussion

3.1 The Legal Construction of E-Commerce Platform Exoneration Clauses as a Hidden Breach of Contract

An exoneration clause, also referred to in legal literature as an exemption clause, is a clause within an agreement that limits, reduces, or entirely extinguishes liability that one party would otherwise bear under law (Shidarta, 2006) [15]. In Indonesian e-commerce practice, such clauses are commonly found within platforms' terms and conditions of service. Shopee, for instance, includes a clause stating that the platform bears no liability for losses arising from a seller's conduct, non-conforming goods, or transaction failures caused by third parties. Tokopedia and TikTok Shop contain similar provisions positioning the platform solely as an intermediary, free from civil liability for disputes arising between buyer and seller.

The first legal construction that must be established is the recognition that the relationship between an e-commerce platform and a consumer is not merely a technical or administrative arrangement, but rather a contractual legal relationship governed by the Civil Code. The moment a consumer clicks “I Agree” on a platform's terms of service, an obligation is formed pursuant with the provisions of Article 1313 of the Civil Code. Consequently, the platform is obliged to carry out every clause agreed, including the responsibility to provide safe and accountable transaction services, in line

with the principle of good faith required by Article 1338 paragraph (3) of the Civil Code.

The main idea of this article about the existence of a covert breach of contract rests on two doctrines. First, the doctrine of anticipatory breach, denoting a situation in which one party to an agreement has, from the very moment of contract formation, devised a mechanism by which to avoid fulfilling its future obligations [4]. The exoneration clause embedded within a platform's terms and conditions is a clear manifestation of anticipatory breach: the platform, from the outset, prepares an “exit” from its contractual liability through a clause systematically designed to shift the burden of responsibility onto the consumer or seller. This constitutes a breach of contract insofar as it contravenes the doctrine of pacta sunt servanda is stated in Article 1338 paragraph (1) of the Civil Code, requires agreements to be fulfilled with honesty and good faith.

Second, doctrine of misbruik van omstandigheden, or abuse of circumstances, reinforces this qualification of hidden breach [5]. Within the standard form contracts characteristic of e-commerce, the consumer occupies a structurally powerless position: unable to negotiate the contract's terms, lacking access to an alternative platform free of exoneration clauses, and psychologically compelled to accept the entirety of the terms in order to obtain the platform's services [6]. This condition of structural duress, recognized under the doctrine of misbruik van omstandigheden as applied in the judicial practice of the Supreme Court of the Republic of Indonesia, it is seen as wilsgebrek (defect of will) which results in the agreement of non-fulfillment of the subjective element in Article 1320 of the Civil Code, rendering it voidable (vernietigbaar). Exoneration clauses therefore not only violate formal legal norms but also undermine the substantive fairness that ought to animate every contractual relationship.

3.2 The Legal Status of Exoneration Clauses under the Civil Code and the Consumer Protection Law

Examine normatively legal position of the exoneration clause, the starting point is Article 18 paragraph (1) of the UUPK [12]. Article clearly prohibits business actors from formulating or involve standard clauses in documents or agreements in which there is a transfer of business actors' obligations. This provision is a mandatory norm and cannot be denied through the agreement of the parties. Furthermore, Article 18 paragraph (3) of the UUPK states that the standard clauses set by business actors and meet the requirements in paragraph (1) must be declared invalid for the sake of the law (nietig van rechtswege). Accordingly, exoneration clauses contained within e-commerce platforms' terms and conditions, which expressly transfer the platform's liability to the consumer or seller, are null and void under the UUPK.

From the perspective of the Civil Code, this nullity may be analyzed through two avenues. The first avenue concerns the objective validity requirements of an agreement, specifically the requirement lawful causa (geoorloofde oorzaak) under Article 1320 paragraph (4) of the Civil Code. According to Article 1337 of the Civil Code, causa that is not halal is causa that is forbidden by laws and regulations or that violates morality and public order. Because the exoneration clause is explicitly prohibited by Article 18 of the UUPK [12], the clause contains causa that is not halal, so that the agreement containing it is state null and void based on Article 1335 of the Civil Code. The second path concerns Article 1338 paragraph (3) of the Civil Code, so that the agreement must be fulfilled on the basis of good faith (te goeder trouw). Inclusion of an exoneration clause that systematically prejudices consumers manifests an absence good faith from very stage of contract formation (in contrahendo), a phenomenon known in legal doctrine as culpa in contrahendo.

The legal status of platforms as Electronic System Based Trade Operators (PPMSE) has likewise been is clearly regulated Government Regulation Number 80 of 2019 [13]. Provisions of Articles 21 and 22 in the regulation require PPMSE to bear responsibility for electronic transactions carried out, accompanied by the responsibility of ensuring that the electronic systems used are safe and reliable. This norm directly forecloses the argument that platforms function merely as passive intermediaries. Consistent with research published in the USM Law Review (2026), digital platforms exercise genuine control over transactions, the determination of payment mechanisms, and dispute resolution, and therefore cannot lawfully absolve themselves of civil liability through an exoneration clause [5]. From a normative standpoint, therefore, the legal status of e-commerce platform exoneration clauses is invalid both in form and in substance.

3.3 Forms of Legal Protection for Consumers against E-Commerce Platform Exoneration Clauses

Drawing on the theory of legal protection put forward by Philipus M. Hadjon, legal protection for consumers on the exoneration clause is divided into two main forms [3]. The first is in the form of preventive legal protection. consisting of normative instruments designed to prevent exoneration clauses from being included in the first instance. The normative foundation for such protection already exists in Article 18 of the UUPK, which prohibits exoneration clauses within standard-form contracts. This preventive protection, however, has not operated effectively, as there exists no proactive oversight mechanism on the authority owned by the National Consumer Protection Agency (BPKN) and the Ministry of Trade to supervise the platform terms and conditions prior to their application to consumers. While the PP PMSE (Government Regulation No. 80 of 2019) requires PPMSE registration, that obligation

does not expressly extend to a substantive audit of platforms' terms and conditions against the prohibition on exoneration clauses [14].

The second form is repressive legal protection, consisting of dispute resolution mechanisms available after harm has occurred [3]. Consumers harmed by exoneration clauses have several avenues of legal recourse. The first step is to report the problem to the Consumer Dispute Resolution Agency (BPSK) in accordance with Article 45 of the UUPK. BPSK itself is given the authority to resolve consumer disputes through three mechanisms: mediation, conciliation, and arbitration. The second attempt is in the form of a civil lawsuit to obtain compensation according to Article 1243 of the Civil Code, regulates compensation for default, with the argument that the exoneration clause is classified as a hidden violation as built in the previous subsection [4]. The third attempt is a lawsuit on the basis of unlawful acts according to Article 1365 of the Civil Code, on ground inclusion a statutorily prohibited exoneration clause constitutes an unlawful act causing harm to the consumer [14]. Fourth, consumers may bring a class action pursuant to Supreme Court Regulation No. 1 of 2002, given that platform exoneration clauses are applied on a mass scale and cause harm to large numbers of consumers simultaneously.

Nevertheless, each of these four repressive avenues continues to face significant practical obstacles. The cost and duration of litigation are disproportionate to the individual value of consumer losses in typical e-commerce transactions [2]. BPSK, moreover, lacks sufficient authority to compel platform compliance with its decisions, while the internal dispute resolution mechanisms offered by platforms themselves tend to favor the platform's own interests owing to a lack of independence. A comprehensive normative reconstruction is therefore required. The pending revision of the UUPK currently under deliberation by the Indonesian House of Representatives (DPR RI) should expressly classify digital exoneration clauses as a form of breach of contract that consumers may challenge directly, without being required first to establish complex proof of material loss. In addition, the BPKN's authority should be strengthened to permit periodic audits of e-commerce platforms' terms and conditions, and platforms should be burdened with the obligation to provide an independent, transparent, and fair Online Dispute Resolution (ODR) system as a affirmative manifestation of platform legal responsibility.

4 Conclusions and Suggestions

Based on the foregoing analysis, this article advances two principal conclusions. First, e-commerce platform exoneration clauses may be legally construed as a hidden breach of contract on the basis of two complementary doctrines: anticipatory breach and misbruik van omstandigheden. A platform that, from the very formation of the contract, has designed a clause to shift its own liability has never genuinely intended to

fully discharge its legal obligations, the very essence of breach of contract under Articles 1238–1244 of the Civil Code. Based on normative studies, such a clause is declared null and void by Article 18 paragraph (3) of the Civil Code and is classified as a causa that is not halal in the sense of Article 1320 junto Article 1337 of the Civil Code, and consequently lacks binding force.

Second, normative legal protection for consumers from e-commerce platform exoneration clauses available through preventive instruments, namely the prohibition under Article 18 of the UUPK and the obligations imposed on PPMSE under Government Regulation No. 80 of 2019, and through repressive instruments, namely recourse to BPSK, a claim for breach of contract under Article 1243 of the Civil Code, a tort claim under Article 1365 of the Civil Code, and class action proceedings. Nevertheless, the implementation of such protection remains far from effective owing to the absence of proactive oversight mechanisms, limited power of BPSK, and consumers' limited access existing dispute resolution mechanisms.

On the basis of these two conclusions, this article offers three recommendations. First, the pending amendment to the Consumer Protection Law should expressly classify the inclusion of exoneration clauses in digital contracts as a form of breach of contract directly actionable by consumers, without requiring complex proof of material loss. Second, the Ministry of Trade and the BPKN should be granted authority to conduct periodic audits of the terms and conditions of all e-commerce platforms operating in Indonesia, as a concrete form of preventive protection. Third, it is appropriate for e-commerce platforms to be burdened with the obligation to present an independent, accountable, and neutral Online Dispute Resolution (ODR) facility as a form of manifestation. of platforms' affirmative legal responsibility toward consumers, in keeping with the Indonesian government's broader commitment to strengthening citizens' resilience within the digital ecosystem.

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