

## CONTROLLING MODEL OF STANDARD CONTRACT IN CARRYING OUT CONSUMER PROTECTION

Nurul Fibrianti<sup>1</sup>

---

### ABSTRACT

*A standard contract is defined as a contract which is set by one of the two parties and serves for both parties involved in the contract. The content of the standard contract frequently does not reflect proportionality and thus, the rights of the consumer as the second party of the contract are violated in the carrying out of the contract. Consumer Dispute Settlement Body (BPSK) is a body who has the authority to supervise the carrying out of standard contract. However, the controlling is restricted to repressive controlling while the preventive controlling is not apparently seen in the performance of the body's duty. This phenomenon is caused by a number of parties who make a contract in the form of standard contract whereas the number of personnel in Consumer Dispute Settlement Body is limited. The fact has made the researchers designed a controlling model of standard contract to carry out consumer protection. The objective of this paper is to provide protection for consumer in the making of standard contract. The controlling model should be performed by setting out a regulation requiring a standard contract to be initially examined by the authorized institution and labelled as a proportionate standard contract. This model is expected to mitigate the rate of complaint on consumer rights violence.*

Keywords: Standard Contract, Consumer Protection, Controlling Model

---

### 1. Introduction

A standard contract is a contract which is set by one of the two parties, and is copied and applied for all the contracting parties. This contract is considered as valid if it fulfills the provisions of the contract. The objectives of making this contract are effectiveness and efficiency.

Even though it serves as a legal contract, the making of a standard contract does not comply the common stages of making a contract, especially in the stage of negotiation and draft formulation. Consumers are only required to read and sign the contract. Such condition could create a space where the sellers might arrange the content and the wording of the contract using disproportionate clauses, i.e. the clauses does not fit its portion.

The standard contract containing disproportionate clauses will result on the consumer's loss and contravenes Article 18 of Law No. 8/1999 on Consumer Protection.

Article 30 of the Law on Consumer Protection cites that the controlling on consumer protection is carried out by the government, society and non-governmental consumer protection foundation. As a matter of fact, consumer rights have not been well protected. There are still a number of contracts which burden the consumers as the demanding party.

As its responsibility to carry out the consumer protection, the state has the authority to intervene the economic activity conducted by the entrepreneurs and the consumers through the Law on Consumer Protection. However, consumer protection, in the process of making the standard contract involving the entrepreneurs and the consumers, is not restricted to the regulation in the form of law, but also needs to be controlled through a mechanism conducted by the authorized institution.

Therefore, the writer is interested in explaining the controlling model of standard contract in carrying out consumer protection.

This research is generally intent on finding an appropriate controlling model of standard contract which reflects a thorough protection to the consumer.

The result of this research is expected to, scientifically, contribute in the development of legal science especially relevant to consumer protection. Socially, this research can be used as a source of information and study for the citizens of Semarang on the impact of standard contract containing exonerating clauses.

---

<sup>1</sup> Lecture of law Semarang State University (UNNES)

## 2. Methods of Investigation

This research uses juridical empirical approach, namely seeing the law not only as a set of normative principles or textual law (law in the book), but also how it interacts with the society (law in action)<sup>2</sup>.

The specification of this research is descriptive analytical research. A descriptive research is objected to provide detailed data of human, circumstances, or other indications<sup>3</sup>. This research requires two types of data from different sources, namely directly collected data from the authorized institution on consumer protection controlling, i.e. Consumer Dispute Settlement Body and from the study of literature relevant to the topic. According to Soerjono Soekanto and Sri Mamudji, primary data is acquired directly from the first-hand source, in which case, the behavior of the society through the research. Secondary data includes legal documents, books, research reports, journals, etc<sup>4</sup>.

The techniques of data collection in this research are interview and literature study. Interview is defined as a way to acquire data through asking direct questions to the interviewee. It is a form of interaction and communication process<sup>5</sup>. The interview used in this research is directive interview which uses initially designed questions<sup>6</sup>.

The acquired data in this research is analyzed using qualitative analysis. Qualitative analysis is a research design which produces descriptive-analytical data, namely the respondents statements and behavior are studied as an intact unit<sup>7</sup>.

## 3. Result And Analysis

### A. Standard Contract Controlling by Consumer Dispute Settlement Body

Entrepreneurs who have the urgency to gain the most profit is more likely to make a standard contract using the clauses for the sake of their business and tend to inflict loss to their consumers as the second party by altering the responsibility or contravening Article 18 of the Law on Consumer Protection. Unequal bargaining position between the consumers and the entrepreneurs could be an undue influence. In this state, the consumer's economic necessity of the product and their lack of experience and knowledge are misused in the process of making the content of the contract which is disproportionate and unilaterally profitable for the entrepreneurs.

Freedom of contract principle gives unlimited access for the entrepreneurs to make a contract which sets out their interests by putting aside the consumer's interest. Even there could be an alteration of the entrepreneur's responsibility to the consumers. Freedom of contract principle which should be implemented is the responsible freedom of contract because basically, the making of standard contract is allowed if the formulation mechanism carried out by a party is the manifestation of freedom of contract principle for the company's effectiveness and efficiency.

According to the justification of the making of standard contract based on the freedom of contract principle and the Law on Consumer Protection along with a number of violence on consumer's rights in stating standard clauses, controlling towards the standard contract made by the entrepreneurs is inevitably required.

The duty and authority of controlling towards the inclusion of standard clauses as regulated in Article 52 of the Law on Consumer Protection should be conducted by Consumer Dispute Settlement Body (BPSK). Nonetheless, the duty has not been optimally done so that it creates a space for consumer rights violence. There has not been, so far, a controlling mechanism of standard contract which is profitable for the consumers. Controlling function conducted by Consumer Dispute Settlement Body is a controlling based on the consumer's complaints about their rights in the standard contract made by the entrepreneurs. The complaints becomes the starting point to protect the consumer rights related to the violence on standard clauses inclusion.

This controlling pattern requires the initial consumer loss before it is overtaken by the body or institution of standard clauses controlling. Thus the violence on consumer rights triggers consumer rights protection. Ideally, the controlling pattern is carried out by the body or institution designated by the government is conducted before the violence on consumer rights occurred. The controlling towards standard clauses should be done from the beginning of the making of the standard contract.

<sup>2</sup> Bustanudin Agus, **Pengembangan Ilmu-ilmu Sosial Studi Banding Antara Pandangan Ilmiah dan Ajaran Islam**, Gema Insani, Jakarta, 1999, hal. 71

<sup>3</sup> Soerjono Soekanto, **Pengantar Penelitian Hukum**, UI Press, 1986, hal. 10

<sup>4</sup> *Ibid*, hal. 11-12

<sup>5</sup> *Ibid*, hal. 57

<sup>6</sup> *Ibid*, hal. 60

<sup>7</sup> *Ibid*, hal. 250

## B. Controlling Model of Standard Contract

Several experts stated different definitions of the term controlling:

- 1) According to Lyandal F. Urwick, controlling is an effort to make everything conducted according to the designed regulation and issued instruction.
- 2) Sondang Siagian stated that controlling is an observation process of the carrying out of the organization's activities to ensure that all the activities are performed according to the master plan.
- 3) George R. Terry defined controlling as the process of determining what should be attained, that is the standard of the ongoing process, appraising the carrying out and even doing several reparation so that the implementation is appropriate to the master plan, namely suitable to the standard.
- 4) According to Stephen Robein, controlling is a process of going after the activity to ensure the carrying out of the work, thus it would be perfectly accomplished as what has been planned by doing corrections on the interrelated thoughts.
- 5) David Granick stated that, basically, controlling has three phases: legislative, administrative, and supportive phase.
- 6) Abdurrahman stated that there are some factors which facilitate the controlling and prevent any kind of authority deviation and misapplication, i.e. the philosophy professed by a certain group of people, the underlying religion, the running policy, the supporting expenditure budget, the placement and working procedure of the employee, and the steady coordination in the organization.
- 7) Winardi defined controlling as all activities carried out by the management in order to ensure the uniformity of the actual result with the desired result.
- 8) According to Basu Swasta, controlling is a function of ensuring that the activities could produce the expected output result.
- 9) Komarudin stated that controlling is correlated with the comparison between the actual planned executor and the beginning of correction steps towards significant deviation and plan.

The thread drawn from the definitions of controlling above is in the process of determining performance measurement and action taking to support the accomplishment of the desired result according to the designed performance. Controlling is a process of measuring performance and taking action to ensure the desired results. It is a process of ensuring that actual activities conformed the planned activities.

Controlling is a systematical effort to set standard performance in designing a system of feedback information to compare the actual performance to the desired standard, to decide whether or not a deviation had occurred, and to take the required reparation action to ensure that all the company or government resources had been used effectively and efficiently in accomplishing the company or government's goals.

From the definitions above, it can be concluded that controlling is important in carrying out a planning. Supported by controlling, the planning desired by the management could be accomplished. Controlling is basically directed to avoid any possibility of deviation towards the desired goals. Controlling is expected to help facilitating the defined policy to attain the desired goals effectively and efficiently. Moreover, controlling has created an activity which is closely related to the determination and evaluation on the progress of the working performance. It also could detect the effectiveness a policy through the performance and deviation occurred in the process.

The controlling concept proved that controlling is an integral part of management where it is considered as a form of appraisal and supervision from the upper parties to the parties in the lower position. In the art of management, controlling is placed as the last stage of management function. In the managerial perspective, controlling contains another sense, i.e. as an observation to the entire performance of the examined organization unit activities in order to ensure that the performance is carried out according to the desired plan and regulation. It is an effort in order to make a performance conforms as the desired plan and to reduce the resistance while the already hampered hindrances could be recognized immediately to be repaired.

Meanwhile, from the perspective of the state administration law, controlling is defined as a process of comparing between what is being performed, carried out, or conducted with what is being intended, planned, or ordered.

The result of controlling should perform the progress of showing compatibility and incompatibility as well as finding the cause of the recognized incompatibility. In the context of establishing good governance public management, controlling is a crucial aspect to maintain the governance function. In this context, controlling has become as important as the implementation of good governance itself.

In its correlation to public accountability, controlling is a way to build and maintain social legitimacy towards the government by establishing an effective controlling system, both internal and external control, while encouraging the social control.

The target of controlling is the findings which asserts deviation of the plan or target. Meanwhile, several actions which could be taken are:

- a. Directing or recommending correction;
- b. Suggesting to oppress redundancy;
- c. Optimizing the performance to accomplish the target plan

Basically, there are some types of controlling that could be conducted:

- a. Internal and external controlling

Internal controlling is a controlling carried out either by a person or an agency in the area of the related organization unit. This type of controlling could be conducted by doing either built in control or routinized control by inspectorate general of each ministry and local inspectorate of each area in Indonesia under the surveillance of Ministry of Home Affairs.

External controlling is a controlling done by controlling unit outside the controlled organization unit. In this case, the Supreme Audit Agency (BPK) is the state's highest independent institution. During its operation, BPK is not allowed to disregard government internal controlling officer's result of investigation, hence it is necessary to establish a harmonic relationship between both institutions in the process of state's financial controlling. Such process of harmonization will not reduce the independency of BPK for not taking side of any of the parties and will objectively evaluate the government's activities.

- b. Preventive and repressive controlling

Preventive controlling is defined as "a controlling towards an activity before it is carried out in order to prevent any deviation to occur." Normally, this controlling is carried out by the government with the view of avoiding any deviation in the state's financial operation which will lead to a bigger loss for the state. On the other hand, this controlling is intended to ensure that the budget performance system will perform as desired. Preventive controlling will be more advantageous if it is performed directly by the superiors so that the probability of deviation can be detected earlier.

On the other hand, repressive controlling is "a controlling towards an activity after it has been completed." This controlling model is generally performed at the end of budgeting year where the report of the defined budget is presented. It is then followed by cross-examination and controlling to find out the probability of any deviations.

- c. Active and Passive Controlling

Close (active) controlling is "a form of controlling performed in the relevant venue." In the contrary, distant (passive) controlling performs its controlling by doing observation and experiment towards the letters of responsibility along with the evidences of income and outcome. On the other hand, right-based formal truth controlling (*rechmatigheid*) is "a controlling towards the outcome whether or not it complies the regulation, is expired, and is tried-and-true." Meanwhile, purpose-based material truth (*doelmatigheid*) is "an appraisal to ensure whether or not an outcome has fulfill the economic principles, namely the outcome is required and is minimally spent at cost. Associated to the state governance, controlling is performed to avoid any "corruption, deviation, and redundancy of state budgeting for the state apparatus and public servant." Through the process of controlling, the management and responsibility of budget and policy is expected to perform as the desired plan.

From the previous definitions of controlling, it can be concluded that controlling is an effort to make everything performs as the desired plan in which there is a preventive and repressive controlling.

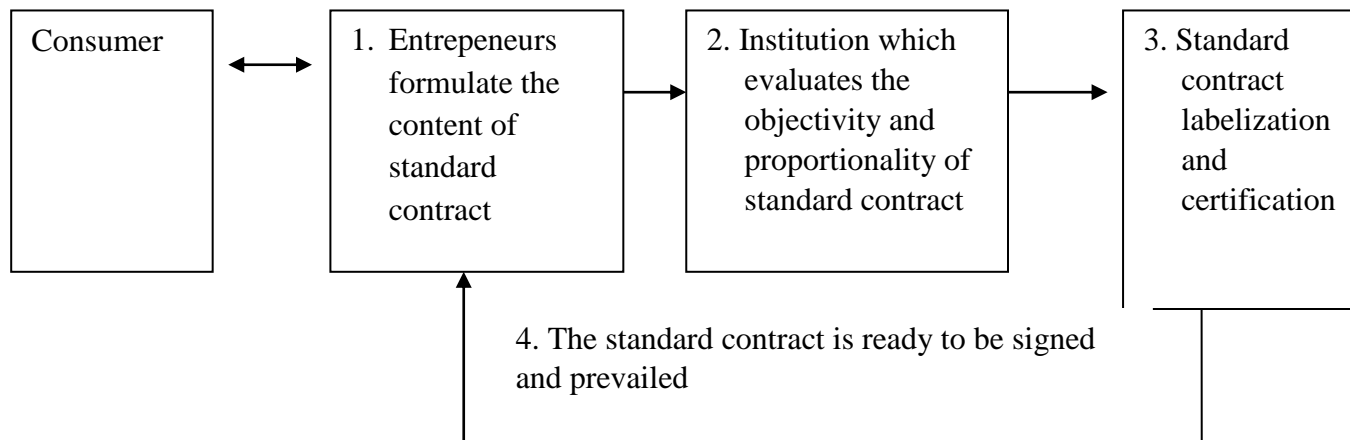
Law No. 8/1999 on Consumer Protection has regulated that the Consumer Dispute Settlement Body (BPSK) is designated as the institution which has the authority to control the inclusion of standard clauses. It means that the inclusion of standard clauses should be controlled right from the beginning of the making of the standard clauses up to the prevailing of the standard contract containing the relevant standard clauses.

As a matter of fact, controlling towards standard contract containing standard clauses is only performed in the form of dispute settlement after there is a reporting from the party who suffers a financial loss or whose right is violated.

This type of controlling has not reflected a thorough controlling, namely preventive and repressive controlling. The performed controlling is a form of dispute settlement if in which case the Consumer Dispute Settlement Body (BPSK) only functions as a place for dispute resolution. Controlling means doing a controlling in order to create a law order to ensure consumer rights protection.

According to the writer, the appropriate controlling pattern is the controlling prior to the emergence of the dispute in order to build a thorough controlling as an attempt to carry the consumer protection.

Controlling prior to the emergence of dispute could be performed by the Consumer Dispute Settlement Body through the following steps:



Explanation:

1. The entrepreneurs formulate draft of the standard contract which will bind the contracting parties (entrepreneurs and consumers).
2. The draft is submitted for its objectivity to be evaluated by the institution designated by the government who has the authority in evaluating and controlling.
3. After being evaluated, the original draft is certified and the copies of the draft are labelled which assert that it has fulfilled the proportionality principle and gives balance and justice for both contracting parties.
4. After that, the entrepreneurs can use the draft contract as a legal contract which binds both contracting parties.

The controlling pattern which can provide balance and justice for both contracting parties (entrepreneurs and consumer) is by requiring registration or verification to the content of the standard contract made by the entrepreneurs after it is formulated so that the consumer will feel secure in signing the contract because the contract will not contain exonerating clauses, that are clauses which alter the responsibility to another party. The contract has also performed according to the Law No. 8/1999 on Consumer Protection by not containing articles which violate the consumer rights.

Such controlling pattern requires socialization related to the labelling of a standard contract. The socialization emphasizes on the consumer as the involved party in the contract, however has no authority in putting their interest into the content of the contract.

The purpose of labelling in the draft of the contract is to provide security for the consumer who is about to make a standard contract with the entrepreneurs. Consumers are usually reluctant to read and comprehend the content of the contract. Whereas the signed contract will create legal consequences for the contracting parties, including the consumer.

The purpose of labelling before the draft is copied and used as the standard contract is similar to concept of halal labelling on the packages of food products by MUI.

The products which are labelled as halal by MUI will affect the consumer's trust and security to consume the relevant products. Consumers will believe that the products are halal and free from haram substances. Consumers do not need to research or investigate the products up to their companies or factories to convince themselves whether or not the products are halal.

The same concept goes to the draft of standard contract. To sign the standard contract, the consumer does not need to be an expert in comprehending the content of the contract, even though basically, both parties are required to understand the content of the contract, consumer as the party which is not involved in the formulation of the draft will feel secure because the formulated draft has been verified as objective. The contract is objective because it has been evaluated by the authorized institution designated by the government before it is copied and signed by the entrepreneurs.

It will provide protection to the consumers in order to establish the consumer rights protection. Such preventive action will reduce the number of violence on consumer rights and mitigate dispute between the contracting parties. Hence consumers do not need to suffer before their rights are protected.

#### 4. Conclusion And Recommendation

BPSK controlling pattern towards the inclusion of standard clauses has so far only been done if there is any report related to the violence on consumer rights. Controlling pattern should be carried out right from the beginning of the making of the standard contract draft involving the governmentally authorized institution to evaluate the objectivity and proportionality of the draft in order to minimize the possible dispute between the contracting parties. Objectivity certification of the standard contract is essential to the consumer trust in signing the contract.

This research is expected to give recommendation to the government to make a regulation on the controlling model of the inclusion of standard clauses according to the controlling model or pattern made by the researcher although the authorized institution for labelling can be discussed in further discussion. Controlling should be performed thoroughly starting from the formulation of the draft up to the establishment of balance and consumer protection principles. The purpose of the entrepreneurs in using standard contract model is due to its effectiveness and efficiency. However, the contract should fulfill proportionality principle and its clauses do not contravene the Law on Consumer Protection thus rights and responsibility of both parties are proportional.

#### References

- Adi Nugroho, Susanti. 2011. *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara serta Kendala Implementasikannya*. Cet 2. Jakarta : Kencana.
- Ashshofa, Burhan. 2010. *Metode Penelitian Hukum*. Jakarta : Rineka Cipta.
- Halim Barkatullah, Abdul. 2008. *Hukum Perlindungan Konsumen Kajian Teoretis dan Perkembangan Pemikiran*. Banjarmasin : FH Unlam Press.
- Miru, Ahmadi dkk. 2004. *Hukum Perlindungan Konsumen*. Jakarta : Rajawali Press.
- Salim, HS. 2004. *Perkembangan Hukum Kontrak Innominaat di Indonesia*. Cet. 2. Jakarta : Sinar Grafika
- Shidarta. 2000. *Hukum Perlindungan Konsumen Indonesia*. Jakarta, : Grasindo.
- Sutedi, Adrian. 2008. *Tanggung Jawab Produk dalam Hukum Perlindungan Konsumen*. Bogor : Ghalia Indonesia.
- Tri Siwi Kristiyanti, Celina. 2008. *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika.
- Darus Badruzman, Mariam. 1994. *Aneka Hukum Bisnis*. Cet 1. Bandung: Alumni.
- Yudha Hernoko. Agus, 2010, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial* , Cet 1, Jakarta: Kencana

#### Laws/Acts :

- Civil Code
- Law on Consumer Protection