

Juridical Review of Standard Clauses in Car Rental Agreements Based on Good Faith Principles

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Abstract

Rental agreements are usually made in writing in a standardized form, namely the content, form and closing have been standardized unilaterally by the business actor. This agreement is coercive and causes losses for the lessee and even an imbalance in the position between consumers and producers. This study aims to: (1) determine the contents of the standard clauses in the car rental agreement at Komando Rent a Car whether or not they are in accordance with the principle of good faith (2) to determine the legal consequences of including the standard clause in the car rental agreement at Komando Rent a car. The type of research used in this study is empirical juridical by using data collection techniques through interviews and literature studies. The results of the study show that: (1) the car rental agreement at Komando Rent a Car is not in accordance with the principle of good faith because there is a standard clause in the form of delegation of responsibility for business actors to the detriment of one of the parties, does not reflect a sense of justice and violates the law (2) the legal consequence of the inclusion of a standard clause which contains the transfer of responsibility for this business actor is that the agreement is null and void and can be subject to imprisonment and fines.

Keywords: Lease Agreement; Standard Clause; Good Faith Principle; Legal Consequences.

Abstrak

Perjanjian sewa biasanya dilakukan secara tertulis yang sudah dalam bentuk baku yaitu isi, bentuk serta penutupannya telah dibakukan secara sepihak oleh pelaku usaha. Perjanjian ini bersifat memaksa dan menimbulkan kerugian bagi pihak penyewa bahkan terdapat ketidakseimbangan posisi antara konsumen dan produsen. Penelitian ini bertujuan untuk: (1) mengetahui isi klausula baku pada perjanjian sewa menyewa mobil di Komando Rent a Car telah sesuai atau tidak dengan asas itikad baik (2) untuk mengetahui akibat hukum dari pencantuman klausula baku pada perjanjian sewa menyewa mobil di Komando Rent a Car. Jenis penelitian yang digunakan dalam penelitian ini adalah yuridis empiris dengan menggunakan teknik pengumpulan data melalui wawancara dan studi kepustakaan. Hasil penelitian menunjukkan bahwa: (1) perjanjian sewa menyewa mobil di Komando Rent a Car tidak sesuai dengan asas itikad baik karena terdapat klausula baku berupa pelimpahan tanggung jawab pelaku usaha sehingga merugikan salah satu pihaknya, tidak mencerminkan rasa keadilan dan melanggar Undang-Undang (2) akibat hukum dari pencantuman klausula baku yang memuat pengalihan tanggung jawab pelaku usaha ini adalah perjanjian tersebut batal demi hukum dan dapat dikenai sanksi penjara dan denda.

Keywords: Perjanjian Sewa Menyewa; Klausula Baku; Asas Itikad Baik; Akibat Hukum.



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A. INTRODUCTION

An agreement is one of the many things regulated in the Civil Code, which means an act between one or more people that binds itself to one or more other people. An agreement can also be interpreted as a form of written promise or contract from a law called an agreement.^{1,2,3} Agreements in daily practice have various types, namely sale and purchase agreements, exchange agreements and lease agreements.^{4,5} According to the Big Indonesian Dictionary (KBBI), renting is the use of something by paying rent.

In Article 1548 of the Civil Code it states "that leasing is an agreement in which one party binds himself to provide the other party with the enjoyment of an item, for a certain time and with the payment of a price, which the party later agreed to pay. Based on this definition, in a lease agreement there are two parties, namely the lessee and the lessor. Business actors who run their business based on this lease agreement can lease various types of goods, both fixed and movable.⁶ This lease can only be made with the consent of both parties voluntarily without any coercion in carrying out the agreement made.

The agreement will be considered valid if the agreement has fulfilled the provisions regarding the validity of an "agreement contained in Article 1320 of the Civil Code which" reads that in order for a valid agreement to occur, four conditions need to be met, namely the agreement of those who bind themselves, the ability to make an agreement, a certain subject matter and a cause that is not prohibited. The first and second conditions in the wording of the article are subjective conditions because these two conditions must be fulfilled by the legal subject or the parties to the agreement, while the third and fourth conditions are objective conditions because they must be fulfilled by the object of the agreement or the goods to be agreed upon.

¹ Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, "Implementasi Asas Keseimbangan Bagi Para Pihak Dalam Perjanjian Baku," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 1 (May 2019): 61, <https://doi.org/10.24843/JMHU.2019.v08.i01.p05>.

² Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107–20, <https://doi.org/10.37893/jbh.v7i2.318>.

³ FuaD Luthfi, "Implementasi Yuridis Tentang Kedudukan Memorandum of Understanding (Mou) Dalam Sistem Hukum Perjanjian Indonesia," *Syariah Jurnal Hukum Dan Pemikiran* 17, no. 2 (February 2018): 179, <https://doi.org/10.18592/sy.v17i2.1971>.

⁴ Prawatya Ido Nurhayati, "Perjanjian Sewa Beli Rumah Negara," *Widya Yuridika: Jurnal Hukum* 4, no. 1 (2021): 27–40, <https://doi.org/10.31328/wy.v4i1.2264>.

⁵ Nur Putri Hidayah et al., "Modeling the Contract and Execution Fiduciary on Constitutional Court Decision," *Journal of Human Rights, Culture and Legal System* 3, no. 1 (May 8, 2023): 95–108, <https://doi.org/10.53955/JHCLS.V3I1.76>.

⁶ Mahalia Nola Pohan and Sri Hidayani, "Aspek Hukum Terhadap Wanprestasi Dalam Perjanjian Sewa Menyewa Menurut Kitab Undang-Undang Hukum Perdata," *Jurnal Perspektif Hukum* 1, no. 1 (2020): 45–58, <https://doi.org/10.35447/jph.v1i1.89>.

This lease agreement arises because of an agreement in which the parties who bind themselves have the aim of fulfilling their rights and carrying out their respective obligations.^{7,8} Rights and obligations are carried out on the principle of good faith which has been regulated in Article 1338 paragraph (3) of the Civil Code. This principle explains that the parties to the agreement must carry out the substance of the agreement based on firm trust or confidence as well as the good will of the parties. The principle of good faith is divided into two kinds, namely relative good faith and absolute good faith.

Rental agreements are usually made in writing in a standard form.^{9,10} This standard agreement, the contents, form and closing have been standardized unilaterally by the business actor.^{11,12,13} The nature of this agreement is coercive, namely non-negotiable and without seeing or considering the differences in conditions and situations that are owned by consumers. The contents or provisions contained in a standard contract are usually referred to as standard clauses. In fact, many standard clauses are detrimental to consumers and cause an imbalance or unequal position between consumers and producers because it seems that producers are imposing these clauses on consumers.¹⁴

In Lumajang Regency there are several car rental business actors who enter into rental agreements using standard agreements that contain standard clauses related to the obligations of the lessee, one of which is the Rent a Car Command. This rental agreement can be implemented if the lessee agrees to the terms provided by specifying how long the rental period will be and paying the rental fee by providing a down payment in advance and the remainder can be paid when returning the rented car. Also, do not forget, the party who rents out will later ask for the identity of the tenant to fill in the agreement data.

Despite the convenience of these requirements, this lease agreement does not always go according to what was agreed. This can happen because the lessor or the lessee cannot fulfill their obligations in accordance with what was previously agreed upon in the agreement. The clauses contained in this agreement are more burdensome to the lessee, while the obligations

⁷ Nabilah Amalia Balad, "Prinsip Ta'awun Dalam Konsep Wakaf dengan Perjanjian Sewa Menyewa Berdasarkan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *Jurnal Hukum Magnum Opus* 2, no. 1 (February 1, 2019): 18, <https://doi.org/10.30996/jhmo.v2i2.2176>.

⁸ Imman Yusuf Sitinjak, "Akibat Hukum Jual Beli Tanah Ladang Dalam Status Sewa Yang Belum Berakhir," *Jurnal Moralita: Jurnal Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 1 (April 15, 2020): 19–27, <https://doi.org/10.36985/jma.v1i1.294>.

⁹ Yastina Faradila, Azhari Yahya, and M. Adli, "Pelaksanaan Perjanjian Sewa Menyewa Safe Deposit Box," *Syiah Kuala Law Journal* 3, no. 2 (August 2019): 236–49, <https://doi.org/10.24815/sklj.v3i2.12135>.

¹⁰ Suradi Suradi, "Aspek Hukum Penerapan Perjanjian Baku Terhadap Perjanjian Sewa Beli Dalam Sistem Hukum Perdata," *Law, Development and Justice Review* 5, no. 1 (May 2022): 44–46, <https://doi.org/10.14710/ldjr.v5i1.15004>.

¹¹ Dede Agus, "Perlindungan Konsumen Atas Penggunaan Perjanjian Baku Dalam Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Nurani Hukum* 1, No. 1 (December 1, 2018): 71, <https://doi.org/10.51825/Nhk.V1i1.4817>.

¹² Zakiyah Zakiyah, "Klausula Eksonerasi Dalam Perspektif Perlindungan Konsumen," *Al-Adl: Jurnal Hukum* 9, no. 3 (January 30, 2018): 435, <https://doi.org/10.31602/al-adl.v9i3.1052>.

¹³ Nieke Larasati, "Protection of Financial Consumers Through Setting Standard Clauses in Law Number 4 of 2023 Concerning Strengthening and Development of the Financial Sector," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan*, 2023, 44–60, <https://doi.org/10.24252/ad.vi.37056>.

¹⁴ Krismat Hutagalung, Hasnati Hasnati, and Indra Afrita, "Perlindungan Hukum Konsumen Terhadap Perjanjian Baku Yang Merugikan Konsumen," *Mizan: Jurnal Ilmu Hukum* 10, no. 2 (December 14, 2021): 207, <https://doi.org/10.32503/mizan.v10i2.1850>.

of the lessee are not clearly stated. So that the principle of good faith in the rental agreement must be emphasized to the parties involved in this agreement.

Therefore the author is interested in taking the research title related to "*Juridical Review of Standard Clauses in Car Rental Agreements Based on Good Faith Principles (Study of Car Rental Agreements at Komando Rent a Car Lumajang)*".

B. METHOD

The type of research used in this study is empirical juridical. Empirical juridical research or often referred to as field research, namely legal research by examining the conditions that occur in society by looking for facts related to the problems in this study which are caused by the gap between *das sollen* and *das sein*, namely the gap between general regulations or legislation with a concrete event that occurs in society or reality.¹⁵ The type of data used is from interviews, literature studies and legal dictionaries. The data collection technique is through interviews with the owner of the Komando Rent a Car car rental business, namely Wildan Lukmanul Hakim and literature studies as a support. Researchers in this empirical research used descriptive qualitative data analysis techniques.

C. RESULTS AND DISCUSSION

1. General Description of the Car Rental *Komando Rent a Car*

Komando Rent a Car is a form of car rental business owned by an individual named Wildan Lukmanul Hakim which has been around since 2019 to be precise on July 19 and now has 22 vehicles for rent. The location of the Komando Rent a Car rental business is on Jl. Musi Al Karomah 1, Sekarputih Hamlet, Sumberejo Village, Sukodono District, Lumajang Regency, East Java, 67316. This Komando Rent a Car rental is only in Lumajang Regency and does not have branches in other Regencies/Cities.

The rental agreement document belonging to Komando Rent a Car is in the form of a print out sheet containing the lessee's identity data in the form of name, address and contact telephone number. In addition, there is data on the car to be rented such as the type of car, police number, color and year. Don't forget the collection, return, length of rental and rental fee data. Furthermore, there are also clauses referred to as guidelines and rental conditions. In running its business, the Rent a Car Komando uses documents in the form of printed sheets containing everything related to the car rental. Also included are 7 (seven) clauses that must be complied with or implemented by the lessee.

Whereas renters who wish to rent a car at Komando Rent a Car must follow all the procedures set by Komando Rent a Car before agreeing to enter into an agreement. The rental procedure that must be followed by the lessee if they want to rent a car at Komando Rent a Car has 6 (six) stages and is the same as the procedure for renting a car in general.

¹⁵ Kornelius Benuf and Muhammad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

2. Analysis of the Contents of the Standard Clause in the Car Rental Agreement at Komando Rent a Car According to the Principle of Good Faith

a. Analysis of the terms of the car rental agreement at Komando Rent a Car

The Rent a Car Command Agreement has 7 clauses with different contents. The first clause discusses the prohibition for renters to transfer the rental car to a third party, this is appropriate because the third party is another party outside the rental agreement. The second clause contains the transfer of responsibility from the Rent a Car Command to the lessee regarding the imposition of compensation for damage or loss of the rental car due to force majeure, this is not appropriate because the damage was not caused by the lessee and he also did not want it. The third clause contains the responsibility of the lessee regarding the car or STNK which was detained/confiscated/taken hostage by a third party due to the fault of the lessee, this clause is appropriate because if the loss does arise due to the fault of the lessee, then it is the lessee who must redeem and release the object for lease with the effort and at their own expense.

Furthermore, in the fourth clause contains the maximum limit for returning the rental car, if it is more than this provision, it will be reported to the authorities. This clause is appropriate if the lessee himself has no good faith in contacting the Rent a Car Command, but this clause can also be inaccurate because the Rent a Car Command should want to listen to the lessee's explanation first. The fifth clause is that the lessee is obliged to bear 50% of the rental costs during the repair process (second clause) and dispute resolution (third clause). This is appropriate if it is imposed on the problem of the third clause, but it is not appropriate if it is in the conditions in the second clause.

The sixth clause contains that the collateral will become the power of the Rent a Car Command until the agreed completion deadline. This is in accordance with good faith because the decision is made based on the agreement of the parties, namely the lessee and the Rent a Car Command. The seventh clause which is the last clause contains three points that discuss agreements related to dispute resolution and legal domicile. This is appropriate because the first step if a dispute occurs is to resolve it through deliberation to reach a consensus, if you do not find a solution then it can be done through litigation or in court. The legal domicile chosen is also correct, namely the Lumajang District Court in accordance with the provisions of Article 118 Paragraph (1) HIR which states that the district court where the defendant resides has the authority to try a case.

1) According to the terms of the validity of the agreement

According to Article 1320 of the Civil Code, there are 4 (four) conditions for the validity of an agreement, namely:

a) The agreement of those who bind themselves

In this case the car rental agreement owned by Komando Rent a Car has fulfilled the first legal requirement. The agreement of the two parties here means an agreement that arises between the lessee and the Komando Rent a Car.

b) The ability to make an agreement

In this case the car rental agreement also fulfills the second legal requirement because the tenant must already have a driver's license (SIM) and identity card (KTP) which are all obtained when they are 17 years old and over and are considered capable of driving a good vehicle. motorcycle or car.

c) A certain thing

What is meant by a certain thing here is the object of the agreement, namely achievement. So that here it is clear that the object of the lease agreement belonging to the Rent a Car Command is a movable object, namely a vehicle in the form of a car. The cars that are the objects of rent from Komando Rent a Car have guaranteed letters and permits and of course they provide facilities with comfort and the best conditions.

d) A lawful cause

What is meant by the word "cause" here is the contents of the agreement itself. So according to the author, this agreement is an invalid agreement because there are restrictions and the transfer of responsibility from the business actor, namely the Komando Rent a Car to the lessee. And in Article 1337 of the Civil Code it has also been explained that a cause is prohibited if the contents of the agreement conflict with the law, decency and public order.

2) According to force majeure

"The lessee is fully responsible to the Rent a Car Command to replace and or repair damage (return to its original form/shape) and loss of the car and or its equipment resulting from accidents, negligence, carelessness, riots, theft, embezzlement or due to natural disasters during the car is brought by the lessee. From the sound of the clause it can be seen that in this case the lessee is more disadvantaged because of the intention to impose responsibility on the lessee for damage or destruction of the leased object so that the lessee is not liable in the event of damage or destruction of the leased object even if it occurs under force majeure (overmacht).

In fact, Article 1553 of the Indonesian Civil Code has also explained that: "If during the rental period, the object being rented is completely destroyed due to an accidental incident, then the rental agreement is null and void."

The meaning of being killed by law is that each party is no longer able to demand anything from the opposing party, which means that the loss due to the destruction of the object of the leased object in the lease agreement is borne entirely by the party who is renting the object or the owner of the object.¹⁶ Meanwhile, the lessee cannot demand a refund of the rent that has been paid even though the rental time has not ended.

So that the imposition of responsibility on the lessee for damaged/destroyed goods in the car rental agreement at Komando Rent a Car is not appropriate/accurate. This is because in general, it is the owner of the object or leased object who is obliged

¹⁶ Debora da Costa, "Penyelesaian Wanprestasi Terhadap Perjanjian Sewa Menyewa Rumah," *LEX ET SOCIETATIS* 4, no. 2.1 (2016), <https://doi.org/10.35796/les.v4i2.1.11419>.

to bear all risks for his property and no one can say that he does not want to be burdened with risks for his own goods, because in a leasing agreement there is no surrender in transfer of property rights. Instead, there is only the transfer of power over an item to be enjoyed by the lessee.

3) According to the principle of good faith

Article 1338 of the Civil Code states that an agreement must be implemented in good faith. But the car rental agreement at Komando Rent a Car does not reflect this because in the agreement there are standard clauses that do not reflect a sense of justice and are detrimental, namely related to the placement of the person in charge due to the risk or destruction of the leased object which is burdensome for one party, namely tenant.

The agreement should state that if there is a riot, natural disaster, or other things that can cause damage or destruction of a leased object not due to intentional mistakes by the lessee, it can be included as force majeure or overmacht because the lessee does not want this to happen, so Losses due to destruction or damage to the object of lease can be negotiated between the lessee and the Rent a Car Command so that from this willingness it can be seen that the Rent a Car Command is still in good faith in running its business.

The principle of good faith is divided into two kinds, namely relative good faith and absolute good faith.¹⁷ In relative faith, one pays attention to the real attitudes and behavior of the subject. In terms of material law, this relates to the ethics and honesty of the second party (the lessee). The 7 clauses or conditions contained in the car rental agreement owned by Komando Rent a Car do not contain relative faith, because none of the requirements explain the attitude, ethics, behavior and honesty of the lessee.

Meanwhile, in absolute faith, judgment rests on common sense and fairness and an objective measure is made to assess the situation (impartial judgment) according to objective norms.^{18,19} So that the 7 clauses in the Komando Rent a Car rental car rental agreement are included in absolute faith, because these clauses discuss the object of the rental, namely the rental car.

4) According to consumer protection

In the car rental agreement at Komando Rent a Car it is written that "The lessee is fully responsible to Komando Rent a Car to replace and or repair the damage (return to its original form/form) and loss of the car and or its equipment caused by accidents, negligence , carelessness, riots, theft, embezzlement or natural disasters as long as the

¹⁷ Iwan Permadi, "Perlindungan Hukum Terhadap Pembeli Tanah Bersertifikat Ganda Dengan Cara Itikad Baik Demi Kepastian Hukum," *Yustisia Jurnal Hukum* 5, no. 2 (August 1, 2016), <https://doi.org/10.20961/yustisia.v5i2.8762>.

¹⁸ ariyanto Ariyanto, "Perbandingan Asas Iktikad Baik: Dalam Perjanjian Menurut Sistem Hukum Civil Law (Eropa Continental) Dan Common Law (Anglosaxon)," *Jurnal Komunikasi Hukum (JKH)* 2, no. 2 (September 18, 2016), <https://doi.org/10.23887/jkh.v2i2.8409>.

¹⁹ Imam Mahfud Qosam and Holil Nawawi, "Larangan Pengembalian Barang Yang Sudah Dibeli: Perbandingan Hukum Ekonomi Syariah Dan Hukum Perlindungan Konsumen," *ILTIZAMAT: Journal of Economic Sharia Law and Business Studies* 1, no. 2 (July 2022): 156–70, <https://doi.org/10.55120/iltizamat.v1i2.630>.

car is brought by the renter". In addition, the imposition of responsibility related to damage or destruction of the leased object is also added "during the replacement process and or repair process (number 2) and or the dispute settlement period (number 3), the lessee is obliged to bear 50% of the rental fee".

It can be seen that this clause is contrary to "Law Number 8 of 1999 concerning Consumer Protection to be precise in Article 18 Paragraph (1) letter a which reads: "Business actors in offering goods and/or services intended for trading are prohibited from making or including clauses standards in every document and/or agreement if: a. Declare the transfer of responsibility of business actors."

Selain itu bentuk perjanjian sewa menyewa mobil milik Komando *Rent a Car* ini bisa dikatakan sebagai salah satu bentuk perjanjian yang sangat sederhana, karena bentuk dan isi perjanjiannya tidak dituliskan secara lengkap dan jelas. Penulisan serta letak klausula baku pada In addition, the form of a car rental agreement owned by Command Rent a Car can be said to be a very simple form of agreement, because the form and content of the agreement are not written in a complete and clear manner. The writing and location of the standard clauses in the car rental agreement at Komando Rent a Car Lumajang is made in a small font size in the agreement which is contrary to the provisions of Article 18 Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection which reads: "Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand."

b. Analysis of car rental agreement procedures at Komando Rent a Car

The rental procedure that must be followed by the lessee if they want to rent a car at Komando Rent a Car, there are 6 (six) stages. The stages of this rental are the same as the procedure for renting a car in general. When he came to the Rent a Car Command office, the tenant had already been given an order form. Furthermore, the order form is filled in by the tenant in accordance with the questions, namely personal biodata, rental period and so on. After that, the lessee reads and understands in advance the clauses in the agreement. If the tenant agrees, he must submit collateral and rent. Furthermore, the parties sign the order form as proof that an agreement has been reached between the parties. And if these requirements are met, the lessee can bring the rental car.

The procedures or stages that must be carried out by the lessee are in order and appropriate, but here regarding the collateral items it is not regulated or explained in detail. The Rent a Car Command did not explain their rights and obligations at all, they only showed or explained what the tenants had to do and could not do. I feel that this is unfair and there is a lack of openness on the part of the Rent a Car Command. The Rent a Car Command should also include their rights and obligations in the terms of the agreement.

3. The legal consequences of the inclusion of a standard clause in the car rental agreement at Komando Rent a Car

a. Standard clauses in accordance with the principle of good faith

Based on the explanation or results of the analysis that the author has previously described, it appears that the rental agreement made by the Rent a Car Command for the lessee includes the inclusion of a standard clause. Inclusion regarding this standard clause is permissible as long as it is in accordance with the principles of good faith and also the law.^{20,21,22}

But in fact the agreement owned by Command Rent a Car is not appropriate because in the agreement there is a standard clause which contains the transfer of responsibility of the business actor or also known as the exoneration clause which reads: "The lessee is fully responsible to the Rent a Car Command to replace and or repair damage (return to its original form/form) and loss of the car and/or its equipment resulting from accidents, negligence, carelessness, riots, theft, embezzlement or due to natural disasters while the car is being brought by the lessee".

The clause relating to losses due to force majeure beyond the power of the parties concerned, for example in the event of a natural disaster, riot or accident, can be stated in a different clause and is not equated with losses due to negligence or carelessness. So that the sound of the clause can be changed to: "If there is loss or damage due to force majeure (natural disasters, riots, accidents) during the rental period, the lessee and the Rent a Car Command can make a new agreement regarding the replacement or repair costs."

In contrast, if the loss occurs due to negligence, carelessness or is still under the power of the lessee, the clause related to liability and compensation can be borne by the lessee as follows: "The lessee is fully responsible to the Rent a Car Command to replace and or repair the damage (return to its original form/form) and loss of the car and/or its equipment resulting from negligence, carelessness and embezzlement while the car is being carried by the lessee.

If the Rent a Car Command agrees to have deliberations regarding the force majeure clause and between the lessee and the Rent a Car Command there is a mutual agreement that finally changes or replaces the sound of the clause, then the Rent a Car Command has good faith by being fair and selfless alone.

b. Legal consequences of the inclusion of standard clauses

The legal consequence received by the Rent a Car Command for the agreement containing the standard clause is null and void. The standard clause in the Commando Rent a Car agreement does not fulfill the legal requirements of the agreement, namely the objective conditions (lawful reasons) are not fulfilled according to Article 1320 in conjunction with Article 1337 of the Civil Code regarding the contents of the agreement may not be prohibited by law or contrary to decency and public order. This clause also

²⁰ Fransiska Novita Eleanor and Aliya Sandra Dewi, "Pelaksanaan Perjanjian Baku Dan Akibat Hukumnya Bagi Konsumen," *JURNAL MERCATORIA* 15, no. 1 (June 2022): 19–27, <https://doi.org/10.31289/mercatoria.v15i1.6812>.

²¹ Dika Ratu Marfu'atun, "Klausula Baku Tentang Pemberian Kuasa Dihubungkan Dengan Hukum Positif," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 1 (2022): 1–12, <https://doi.org/10.46306/rj.v2i1.24>.

²² Helena Primadianti Sulistyningrum and Dian Afrilia, "Klausula Baku Dalam Perspektif Asas Kebebasan Berkontrak Ditinjau Dari Undang-Undang Perlindungan Konsumen," *Simbur Cahaya* 27, no. 1 (2020): 119–33, <https://doi.org/10.28946/sc.v27i1.807>.

does not reflect a sense of justice and is detrimental which violates Article 1338 of the Civil Code, namely related to agreements that must be made in good faith.

If related to the provisions of Article 18 Paragraph (1) and (2) of Law Number 8 of 1999 concerning Consumer Protection where agreements should not be made to transfer the responsibility of business actors and the writing of standard clauses in the agreement must be clearly visible and easy to read, then this agreement has fulfilled the elements of Article 18 Paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, namely: "Every standard clause that has been determined by business actors in documents or agreements that fulfill the provisions referred to in paragraph (1) and paragraph (2) is declared null and void."

Another reason why the agreement owned by Command Rent a Car is null and void is because the standard clause contained therein was made with the intention of imposing responsibility on the lessee regarding the damage/destroy of the leased object while the lessee does not bear damage or destruction of the leased object even in forceful circumstances (*Overmacht*). This is not in accordance with Article 1553 of the Civil Code which explains that: "If during the rental period, the object being rented is completely destroyed due to an accidental incident, then the rental agreement is null and void by law."

In addition, the car rental agreement at Komando Rent a Car is also not in accordance with the principle of freedom of contract. The car rental agreement at Komando Rent a Car is an agreement that contains restrictions so that it does not have binding force because it is made illegally and harms one of the parties.

The Rent a Car Command can also be subject to sanctions for violating the provisions in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, namely being punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp. 2,000,000,000.00 (two billion rupiah) in accordance with the sound of Article 62 Paragraph (1). Furthermore, Article 63 of Law Number 8 of 1999 concerning Consumer Protection also explains that: "Regarding criminal sanctions as referred to in Article 62, additional penalties may be imposed, in the form of: confiscation of certain goods, the announcement of verdict, payment of compensation, orders to stop certain activities that cause consumer losses, the obligation to withdraw goods from circulation; or revocation of business license".

So that in this case, the party who is obliged to be responsible for the risk of damage to or destruction of the leased object due to force majeure (*overmacht*) such as natural disasters is the party who rents out and it is precisely so in accordance with Article 1553 of the Civil Code because basically every owner of the goods is obliged to bear all the risks of his belongings and the tenant who experiences force majeure cannot be held responsible because the incident is beyond human control unless the damage arises as a result of the fault or negligence of the tenant which can be proven. Conversely, the lessee also cannot demand anything from the lessor if the item is completely destroyed due to force majeure.

If there is a dispute in the implementation of the agreement, the settlement can be carried out through non-litigation or alternative dispute resolution first,^{23,24} namely settlement outside the court,²⁵ or by reporting to BPSK. The Consumer Dispute Settlement Agency (BPSK) is the body tasked with handling and resolving disputes between business actors and consumers. But if the non-litigation settlement has not yet found a middle ground, then a settlement is forced through litigation or through the court, this is in accordance with the clause in the agreement.

D. CONCLUSION

The use of standard clauses in an agreement is indeed permissible but must pay attention to the principle of good faith and not harm one of the parties, from the results of the research and discussion that has been carried out by the author it can be seen that the car rental agreement at Komando Rent a Car cannot be said to be a legal agreement because it does not meet the objective requirements, namely a lawful cause, in this case, there is a standard clause in the form of delegation of responsibility from the business actor to the lessee, so this agreement is not in accordance with the principle of good faith because it has harmed one of the parties, does not reflect a sense of justice and violates Constitution. The legal consequence of the inclusion of a standard clause which contains the transfer of responsibility for this business actor is null and void. In addition, the Rent a Car Command can also be subject to sanctions for violating the provisions in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, namely being punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp. 2,000,000,000. 00 (two billion rupiah). So that those who are responsible for the risk of damage or destruction of the leased object due to force majeure (overmacht) are the responsibility of the business actor as the owner of the goods. Dispute resolution can be done through non-litigation or outside the court, you can also report to BPSK and if you haven't provided a solution, then do it through litigation or through the courts.

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²⁴ I Dewa Ayu Dwi Mayasari and Dewa Gde Rudy, "Urgensi Rekonstruksi Pengaturan Praktek Perjanjian Perdagangan Melalui E-Commerce," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (February 2021): 235, <https://doi.org/10.23887/jkh.v7i1.31473>.

²⁵ Dion Amando Sihombing and Heru Suyanto, "Mediasi Sebagai Salah Satu Alternatif Penyelesaian Sengketa Kontrak Showbiz Di Luar Pengadilan," *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 8, no. 2 (2021): 348–57, <https://doi.org/10.31604/justitia.v8i2.348-357>.

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