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# Consumer Protection against the Inclusion of Standard Clauses Containing Exconeration Clauses in Parking Agreements

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## ABSTRACT

This research aims to analyze the legal consequences of the inclusion of standard clauses containing exoneration clauses in agreements based on the Civil Code, analyze consumer protection against the inclusion of standard clauses containing exoneration clauses in parking agreements based on the GCPL and analyze the responsibility of parking managers for the loss of consumer vehicles in the parking area based on the GCPL. The type of research used in this research is normative legal research using a statute approach, a conceptual approach, and a case approach. The legal consequences of including standard clauses containing exoneration clauses in agreements based on the Civil Code are null and void. In consumer protection against the inclusion of standard clauses containing exoneration clauses in parking agreements, there are two types of legal protection efforts: preventive and repressive. Preventive legal efforts in the scope of consumer protection against the inclusion of standard clauses containing exoneration clauses in parking agreements are Article 18, paragraph (1), letter (a), prohibiting business actors from including standard clauses in every agreement and document that states the transfer of responsibility. While repressive legal remedies aim to resolve problems that arise, consumers can claim compensation and choose to resolve disputes through or out of court. Regarding the responsibility of parking managers for the loss of consumer vehicles in the parking area, it is regulated in Article 19, paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection.

## KEYWORDS

Consumer Protection;  
Standard Clauses;  
Parking Agreement



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## INTRODUCTION

Standard agreements or contracts have advantages and disadvantages. The advantage of a standard contract is that the agreement or standard contract is more efficient and makes business practices simpler. Meanwhile, the disadvantages of a standard agreement/contract are that consumers cannot negotiate or determine the contents of the agreement, and the agreement can cause disputes or losses for consumers.<sup>1</sup> So that the agreement or contract has the potential for one-sided clauses. In principle, the use of standard clauses in standard agreements is permitted. However, what is not allowed is the inclusion of standard clauses that harm or burden consumers. This prohibition aims to ensure a balanced position between consumers and business actors, by the principle of freedom of contract.<sup>2</sup>

Regarding the prohibition of the inclusion of standard clauses, as stated in Article 18 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection, which states that:

“Business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if: a. states the transfer of responsibility of business actors; b. states that business actors have the right to refuse the return of goods purchased by consumers; c. states that business actors have the right to refuse the return of money paid for goods and/or services purchased by consumers.”

The stipulation of standard clauses based on the Consumer Protection Law is allowed as long as it does not violate the provisions of Article 18 of the Consumer Protection Law. Standard or default agreements are also applied in parking services, which usually take the form of parking tickets. This type of agreement does provide convenience for the parking business because neither the manager nor the consumer needs to prepare an agreement, and the agreement occurs quickly.<sup>3</sup> Consumers only need to park their vehicles and accept the ticket given by the manager, and that's when the agreement is made and the parking agreement is born.

However, in practice, parking agreements often include standard clauses, including standard clauses containing exoneration clauses in parking agreements, namely clauses stating that “for the loss of vehicles and/or goods in vehicles or damage to vehicles while in the parking area is the responsibility of the user of the parking lot”. This clause is an exoneration clause that becomes a weapon for business actors to avoid being responsible. This is certainly very detrimental to parking users because there is no balance of rights with the parking manager. So that the consequences of the parking agreement that includes the exoneration clause in the parking agreement are declared null and void by the provisions of Article 18 paragraph (3) of Law Number 8 Year 1999 concerning Consumer Protection.

One example of the cancellation of a standard agreement containing an exoneration clause in a parking agreement can be seen in Decision Number 345/Pdt.G/2007/PN.JKT.PST dated May 07, 2008. In the decision, one of the rulings of the panel of judges was related to the cancellation of the standard clause

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<sup>1</sup> J Sidabolok, *Hukum Perlindungan Konsumen di Indonesia* (Bandung: Citra Aditya Bakti, 2006).

<sup>2</sup> Putri Citra Purnawati, Achmad Busro & R Suharto, “Kajian Hukum terhadap Klausula Baku dalam Perjanjian Jasa Parkir PT Cipta Sumina Indah Satresna dengan Konsumen di Samarinda (Studi Kasus Putusan MA No 2157 K/PDT/2010)” (2017) 6:2 Diponegoro Law J 1–14, online: <<https://ejournal3.undip.ac.id/index.php/dlr/article/view/17453>>.

<sup>3</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia* (Jakarta: Grasindo, 2006).



containing an exoneration clause in the parking agreement which stated "Punishing the defendant to no longer include a standard clause transferring responsibility on the parking ticket containing: "Insurance of the vehicle and the goods inside and all risks for all damage and loss of the parked vehicle and the goods inside are the obligations of the vehicle owner himself (no reimbursement in any form from the parking provider)". The chronology of the case in decision number 345/Pdt.G/2007/PN.JKT.PST, namely, there was SUMITO Y. VIANSYAH as the Plaintiff against PT. SECURINDO PACKTAMA INDONESIA (SECURE PARKING) as the Defendant. In the lawsuit of DKI Jakarta Regional Regulation Number 5 Year 1999 concerning Parking.

Sumito lost his 2006 Honda Tiger 2000 CW motorcycle in the parking area of Fatmawati Mas Complex located at Jalan RS. Fatmawati, South Jakarta, which is managed by Secure Parking. Sumito felt that he had never told anyone else to move his motorcycle. As evidence, Sumito showed his motorcycle key, *STNK*, and parking ticket. Sumito did not accept that his vehicle was lost, so Sumito protested, but his protest was only responded to by Scure Parking by making a Certificate of Report (*STBL*).<sup>4</sup> Dissatisfied, Sumito brought the case to the Consumer Sangketa Settlement Agency (BPSK). At that time, Scure Parking was only willing to compensate for the loss of Rp. 7,000,000.00 (seven million rupiah), but Sumito did not accept. Sumito considers Scure Parking to have been negligent and must compensate for all losses. Because it did not find an agreement, this case then rolled to the Central Jakarta District Court.<sup>5</sup>

Every agreement made by the parties should be able to accommodate their respective interests, because, in the agreement contract implemented by the parties, both have interrelated interests. Based on the principle that an agreement is formed when the parties agree to bind each other, its implementation cannot be separated from the principle of consensualism. This principle is an important element in the formation of an agreement that plays a role in ensuring legal certainty for all parties involved.<sup>6</sup>

In agreements containing standard clauses, where the provisions have been determined unilaterally, the principles of agreement law regulated in Book III of the Civil Code tend to be ignored. This can be seen from the absence of a negotiation process, so that one party has a weaker bargaining position. This imbalance in the agreement leaves the weaker party without full freedom to determine the contents of the agreement according to its wishes. On the contrary, the more dominant party often utilizes this condition to stipulate certain clauses in the standard agreement. As a result, the agreement that should have been drafted jointly by both parties becomes fully determined by only one party.<sup>7</sup>

Standard clauses are not only regulated in Law Number 8 of 1999 concerning Consumer Protection. In the Financial Services Authority Regulation

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<sup>4</sup> Detik News, "MA Juga Pernah Vonis Pengelola Parkir Ganti Honda Tiger yang Hilang", (2012), online: <<https://news.detik.com/berita/d-1984527/ma-juga-pernah-vonis-pengelola-parkir-ganti-honda-tiger-yang-hilang>>.

<sup>5</sup> *Ibid*.

<sup>6</sup> R Subekti, *Hukum Perjanjian* (Jakarta: PT Intermasa, 2005).

<sup>7</sup> Singgih Purnomo et al, "Klausula Baku dalam Persfektif Perjanjian Dagang" (2021) 5:4 J Ilmu Sos dan Pendidik 1105-1112, online: <<https://ejournal.mandalanursa.org/index.php/JISIP/article/view/2422>>.



No.1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector in Article 22 Paragraph (1) also regulates standard clauses which states that: "The standard agreement as referred to in this paragraph is a written agreement that is determined unilaterally by Financial Services Business Actors and contains standard clauses regarding content, form, and method of manufacture, and is used to offer products and/or services to consumers in bulk".

## METHOD

The type of research used is the Normative Legal Research Method. Normative legal research is a research process to examine and study the law as norms, rules, legal principles, legal principles, legal doctrines, legal theories, and other literature to answer the legal problems under study. Normative legal research is usually "only" a document study, which uses sources of legal material in the form of laws and regulations, court decisions, contracts or agreements or contracts, legal principles and theories, legal theories, and doctrines or opinions of legal experts.<sup>8</sup> In this normative legal research or literature, data collection techniques in normative legal research are carried out using literature studies on legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials, and or non-legal materials. The search for legal materials can be done by reading, seeing, listening, or now, there are many searches for legal materials on the internet.<sup>9</sup>

## RESULT & DISCUSSION

### **I. Forms of Consumer Protection against the Inclusion of Standard Clauses Containing Exconeration Clauses in Parking Agreements Based on the Consumer Protection Law**

Law has the aim of creating a deeper order or peace, namely justice in society, to ensure an equal share.<sup>10</sup> Meanwhile, in the context of Indonesia, it is formulated firmly in Article 1 paragraph (3) of the 1945 Constitution regarding the conception of the State of Law or "Rechtsstaat" which states that "The State of Indonesia is a State of Law". Therefore, in the concept of the rule of law, that must be used as the commander in the dynamics of state life is the law.

Law is inseparable from human life. Humans, as individual beings or as social beings, each have their own needs or interests. Therefore, humans cannot live alone and need help from other humans. By cooperating with other humans, their needs or interests can be protected. The law protects the interests of a person by giving him power; an interest is the target of rights, not only because it is protected by law, but also because there is recognition of it. Rights not only contain elements of protection and interests, but also contain elements of will.

The concept of a welfare state is the goal of almost all countries around the world. Welfare state is the idea that the state is responsible for each of its citizens, namely by way of the welfare of its people through services, assistance, protection,

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<sup>8</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

<sup>9</sup> Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

<sup>10</sup> Soeroso, *Pengantar Ilmu Hukum* (Jakarta: PT. Sinar Grafika, 2011).



and prevention of social problems.<sup>11</sup> In Indonesia itself, the 1945 Constitution of the Republic of Indonesia places itself as a state of law to achieve the goals of a welfare state. Legal protection is defined as protection by law or protection using legal institutions and means. There are several ways of legal protection, including the following:<sup>12</sup>

- a. Making regulations (by giving regulations), the aim is to provide rights and obligations and guarantee the rights of the subjects of law.
- b. Enforcing regulations (by the law enforcement), through State administrative law which functions to prevent (preventive) violations of consumer rights, by licensing and supervision, criminal law which functions to deal with any violations of laws and regulations by enforcing legal sanctions in the form of criminal sanctions and civil law which functions to restore rights (curative, recovery) by paying compensation or compensation.

Referring to the theory of legal protection, legal protection in the Consumer Protection Law can be interpreted as an effort to protect consumers, to ensure consumers get fair legal protection in the form of methods, forms, and others, preventively or repressively, written and oral. This legal protection is a construction of the function of law that has a concept to provide justice, benefits, and legal certainty.

Furthermore, in the development of legal thought in Indonesia by Philipus M. Hadjon, legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions.<sup>13</sup> According to Philipus M. Hadjon, legal protection is divided into two, namely preventive protection and repressive protection. Preventive protection is a form of protection given to an object to his opinion before a government decision is made. Meanwhile, repressive protection is given after the rules of law have been violated or if someone feels their rights have been violated. Therefore, this idea supports the placement of Indonesia as a state of law in the constitution to realize a welfare state.

Consumer protection is a term used to describe the existence of laws that protect consumers from losses due to the use of goods and services. According to the legislation, consumer protection is all efforts to protect consumers. Meanwhile, what is meant by consumer is every person who uses goods and/or services available in the community, both for their own interests, families, other people, and other living creatures, and not for trade.<sup>14</sup>

The relationship between consumers and business actors bound in an agreement should ideally be in a balanced position. Both parties have their respective obligations and rights that must be fulfilled. However, in practice, consumers are often in a weak position compared to business actors. This is because the goods or services offered by business actors are needed by consumers, so the

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<sup>11</sup> Venatius Hadiyono, "Indonesia dalam Menjawab Konsep Negara Welfare State dan Tantangannya" (2020) 1:1 J Hukum, Polit dan Kekuasaan 23-33, online: <<https://journal.unika.ac.id/index.php/jhpk/article/view/2672>>.

<sup>12</sup> Rita Herlina, *Tanggung Jawab Negara Terhadap Perlindungan Konsumen Ditinjau Dari Hukum Perdata* (Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2017).

<sup>13</sup> Tim Hukum Online, "Perlindungan Hukum: Pengertian, Unsur, dan Contohnya", (2023), online: <<https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062/>>.

<sup>14</sup> S Burhanuddin, *Pemikiran Hukum Perlindungan Konsumen dan Sertifikasi Halal* (Malang: UIN Maliki Press, 2011).





term “take it or leave it” appears. In the imbalance of the position of business actors and consumers, business actors who are in a stronger position often use clauses that exempt, limit, or can be called a transfer of responsibility in the agreement. The term used in this type of clause is an exoneration clause.

Through Law Number 8 of 1999 concerning Consumer Protection, there is already legal protection for consumers against the enforcement of standard agreements. Article 18, paragraph (1) of the Consumer Protection Law regulates standard agreements that are prohibited from being included in an agreement, one of which is a standard agreement that shifts responsibility to consumers. This responsibility transfer clause is called an exoneration clause, and this clause is prohibited because it shifts responsibility to consumers. Examples of exoneration clauses are often found in various transactions. For example, a parking service company that refuses to take responsibility for the loss of a vehicle or items in a motorist's vehicle.

Standard clauses applied in parking agreements are usually in the form of parking tickets. This type of parking ticket agreement does provide convenience for the parking business. Because both parking managers and users of parking services no longer need to draw up agreements and agreements occur quickly. Consumers only need to park their vehicles, receive the key given by the manager, and that's when the agreement is made and the parking agreement is born. However, in practice, parking agreements often include standard clauses containing exoneration clauses in parking agreements which say that “the loss of vehicles and/or items in the vehicle or damage to the vehicle while in the parking area is the responsibility of the parking lot user”. This kind of clause is an exoneration clause or transfer of responsibility and becomes a weapon for business actors to avoid responsibility. Indonesia, as a state of law, must provide legal protection for its people. In parking agreements containing exoneration clauses, consumer protection efforts are carried out in a preventive and repressive manner.

#### **1. Preventive Protection Efforts against the Inclusion of Standard Clauses Containing Exoneration Clauses in Parking Agreements**

Preventive legal protection (prevention) is an effort to protect the State, in this case, the government, that takes preventive action before a violation of the law occurs and provides signs or prohibitions in carrying out an obligation. To overcome various problems related to losses experienced by consumers, Indonesia enacted Law Number 8 of 1999 concerning Consumer Protection, which was issued on April 10, 1999. Law Number 8 Year 1999 on Consumer Protection (UUPK) outlines the provisions of liability that must be borne by business actors to consumers.

Law Number 8 Year 1999 on Consumer Protection was enacted to maintain the relationship between consumers and business actors. Article 1 point 10 of Law Number 8 Year 1999 on Consumer Protection defines a standard agreement as “any rules or provisions and conditions that have been prepared in advance unilaterally by business actors as set out in a document and/or agreement that is binding and must be fulfilled by consumers”. Parking agreements often contain exoneration clauses that help businesses escape certain responsibilities. Article 18 of the Consumer Protection Law stipulates the Provisions for the Inclusion of Standard Clauses that:



- (1) Business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if:
  - a. Stating the transfer of responsibility of the business actor
- (2) Business actors are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand.
- (3) Every standard clause stipulated by business actors in documents or agreements that fulfill the provisions as referred to in paragraphs (1) and (2) shall be declared null and void.
- (4) Business actors must adjust standard clauses that contradict this Law.

Referring to the notion of preventive law, preventive legal efforts are efforts to prevent violations of the law that are carried out before the occurrence of a dispute. Preventive legal protection has the aim of protecting the public from disputes or problems. Regarding parking agreements, preventive protection efforts that can be made are as follows:

- (1) Improve supervision of parking attendants
- (2) Conduct an evaluation every year
- (3) Improving the safety and comfort of customer-owned vehicles
- (4) Conduct parking attendant training every year
- (5) Encourage consumers who use parking services to participate in safeguarding their belongings.

This can be done to reduce the occurrence of cases of loss of vehicles and/or valuables owned by consumers (in this case, parking service users).

## **2. Repressive Protection Efforts against the Inclusion of Standard Clauses Containing Exonerations in Parking Agreements**

Repressive legal protection is an effort to resolve disputes or violations that have occurred. This effort is carried out by imposing sanctions, such as fines, imprisonment, and collective punishment. Repressive legal efforts aim to restore the situation after the deviation of community values and norms and eradicate crime. Repressive legal efforts that can be made to protect consumers in the event of loss of vehicles due to parking agreements containing exonerations are that consumers can claim compensation. As emphasized in Article 19 of Law Number 8 Year 1999 on Consumer Protection, that:

- (1) Business actors are responsible for providing compensation for damage, pollution, and/or loss due to the consumption of goods and/or services produced or traded.
- (2) Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or compensation by the provisions of the applicable laws and regulations;
- (3) The granting of compensation shall be made within 7 (seven) days after the date of the transaction;



- (4) The provision of compensation as referred to in paragraph (1) and paragraph (2) shall not eliminate the possibility of criminal prosecution based on further proof of the existence of elements of guilt;
- (5) The provisions as referred to in paragraphs (1) and (2) shall not apply if the business actor can prove that the fault is the fault of the consumer.

Furthermore, it is explained in Article 23 of Law Number 8 Year 1999 concerning Consumer Protection that:

“Business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), may be sued through a consumer dispute resolution body or submit to a judicial body at the consumer's domicile.”

In addition to compensation, consumers (in this case, parking service users) can choose to resolve disputes through the court (litigation) or outside the court (non-litigation). Article 52 of Law Number 8 Year 1999 on Consumer Protection stipulates that the institution authorized by the Law to carry out supervision is the Consumer Dispute Resolution Agency (BPSK). Based on Article 1, point 11 of Law Number 8 Year 1999 on Consumer Protection, BPSK is a body that has the task of handling and resolving disputes that occur between business actors and their consumers. Based on Article 42 of Law No. 8/1999 on Consumer Protection, the costs for the implementation of the National BPSK duties are borne by the State budget and other sources by applicable laws and regulations. In addition to BPSK, there is also the Non-Governmental Consumer Protection Agency, which also has a role in protecting consumers, together with BPSK.<sup>15</sup>

## **II. Parking Manager's Responsibility for Loss of Consumer Vehicles in the Parking Area Based on the Consumer Protection Law**

According to Hans W. Micklitz, two policy models can be adopted in consumer protection. First, complementary policies are obligations that require businesses to provide adequate information to consumers (right to information). Second, a consensual policy is a policy that contains protection of the economic interests of consumers (right to safety and health). The principle of responsibility is a very important issue in consumer protection law.<sup>16</sup>

Based on the law, in essence, when someone parks their vehicle in a parking area managed by the parking manager, a vehicle entrustment agreement has occurred. The entrustment agreement is stated in Article 1694 of the Civil Code, that “Entrustment of goods occurs when one person receives an item from another, with the condition that he will keep it and return it in its original form”. Based on the sound of the article, it can be said that when someone parks their vehicle in a parking area managed by the parking manager, then, in essence, there has been a custody agreement. The evidence of the entrustment agreement is in the form of a “parking

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<sup>15</sup> Alifiah Muthmainnah & Abd Rais Asmar, “Perlindungan Hukum Bagi Konsumen dalam Perjanjian Parkir yang Mengandung Klausula Eksonerasi” (2023) 5:3 Alauddin Law Deveplopment J 561–570, online: <<https://journal.uin-alauddin.ac.id/index.php/aldev/article/view/22055>>.

<sup>16</sup> Herlina, *supra* note 12.





ticket". With the existence of the entrustment agreement, the rights and obligations between the parties have legally arisen.

Based on Law Number 22 of 2009 concerning Road Traffic and Transportation, parking is defined as a situation where a vehicle stops or does not move for a while and is abandoned by the driver. The legal relationship between parking managers and vehicle owners is a relationship that gives birth to rights and obligations that are concretely regulated in two main legal bases. First, the Civil Code, which generally stipulates that the relationship between parking managers and consumers stems from a goods custody agreement. Second, Law Number 8 Year 1999 on Consumer Protection, which specifically regulates legal relationships based on the legal position of each party as business actors and consumers.

Given that in the context of parking is a facility provided by business actors engaged in parking services by taking advantage in the form of a certain tariff to consumers as users of these services, it is certain that the relationship between the two is an obligation stemming from an agreement or agreement and/or statutory orders as regulated in Article 1233 jo Article 1234 of the Civil Code,<sup>17</sup> reads: "An obligation is born by agreement or by law," and Article 1234 of the Civil Code reads "An obligation is intended to give something, to do something, or not to do something".

Based on the explanation of Prof. Dr. Telly Sumbu in his book Introduction to Indonesian Law, it explains that in the law of engagement which explains the relationship originating from the agreement or agreement as referred to in the articles above which binds the parties, namely between the parking manager and consumers, it is known as a "named agreement" because its name is clearly stated in the Civil Code which in the context of the legal relationship between the parking manager and consumers is classified as a "goods custody agreement".<sup>18</sup>

About parking, the vehicle owner hands over their vehicle to the parking manager. The parking manager has the responsibility to care for, maintain, and return the vehicle in its original condition, by the provisions of Articles 1706 and 1714 paragraph (1) of the Civil Code. Meanwhile, the vehicle owner is obliged to pay the parking fee. The following rights of the trustee (in this case, the parking manager) are as follows:<sup>19</sup>

1. The right to obtain payment (wages) from the entrustor (in this case, the parking service user) by the agreement of the contents of the agreement.
2. The right to obtain legal protection from the actions of entrustors who do not act in good faith.

While the trustee (in this case, the parking manager) has obligations, among others:<sup>20</sup>

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<sup>17</sup> Silvia Sari Sumitro, Ronny Adrie Maramis & Herlyanty Y A Bawole, "Tanggung Jawab Pengelola Parkir terhadap Kehilangan Kendaraan Konsumen di Area Parkir Berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen" (2024) 13:1 Lex Priv 1-14, online: <<https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/53603>>.

<sup>18</sup> *Ibid.*

<sup>19</sup> Rudyanti Dorotea Tobing, *Hukum Perlindungan Konsumen Sebuah Bunga Rampai* (Yogyakarta: LaksBng Justitia, 2021).

<sup>20</sup> *Ibid.*



1. The entrustee is obliged to keep or maintain the entrusted goods; Article 1706 of the Civil Code obliges the entrustee, regarding the care of the goods entrusted to him, to maintain them with the same interest as he maintains his goods. This provision, based on Article 1707 of the Civil Code, must be carried out even more rigorously in several cases, namely (1) if the entrustee has offered to keep the goods; (2) if he has asked for an agreed fee for the storage; (3) if the entrustment has occurred more or less for the benefit of the entrustee; and (4) if it has been agreed that the entrustee will bear all kinds of negligence.
2. Based on Article 1712 of the Civil Code, the entrustee is not allowed to use the entrusted goods for his purposes without the permission of the person who entrusted the goods, which is explicitly asked or suspected, under the threat of reimbursement of costs, losses and interest if there is no reason for that.
3. Based on Article 1714 of the Civil Code, the entrustee is obliged to return the same goods he has received.

Some of the rights of the party who entrusts the goods to the entrustee include:<sup>21</sup>

1. The depositor is entitled to comfort, security, and safety in terms of custody services
2. The depositor is entitled to the protection and guarantees promised in the deposit
3. The entrustor has the right to collect the entrusted goods in natura or the original state.

As for some of the obligations of the party who entrusted the goods, among others:<sup>22</sup>

1. The party entrusting the goods is obliged to pay a fee to the party receiving the goods
2. The entrustor shall reimburse the entrustee for all expenses incurred in the safekeeping of the entrusted property, and shall also reimburse him for any loss caused by the entrustment.

In a goods entrustment agreement, the responsibility managed by the business actor, in this case the parking manager, towards parking consumers is to maintain the goods entrusted by consumers as well as maintain their property and return the vehicle in its original condition. Regarding parking agreements, standard clauses that are exonerating are often found. In general, in the parking agreement in the form of a parking ticket, there is a standard agreement that contains an exoneration clause in the parking agreement, namely a clause that says that "the loss of the vehicle and/or items in the vehicle or damage to the vehicle while in the parking area is the responsibility of the parking lot user". So that if a loss event occurs, it is not the responsibility of the parking manager, and the loss of the vehicle or items inside the vehicle or damage to the vehicle while in the parking lot is the responsibility of the parking lot user. Based on Law Number 8 of 1999 concerning Consumer Protection, the clause contains an exonerating standard clause that eliminates the obligation to

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*



compensate for the occurrence of loss, which is contrary to and not in line with Law Number 8 of 1999 concerning Consumer Protection.

If there is a loss of consumer vehicles in the parking area, the parking manager must still be responsible. This is because the parking manager is proven to have made a default by failing to fulfill his obligations in the custody agreement to maintain and return the consumer's vehicle in the same condition as before. The parking manager's responsibility for consumer vehicles lost in the parking area, according to the Consumer Protection Law, is oriented towards compensation.

According to K. Martono, in general, responsibility can have 3 (three) meanings, among others, namely, Accountability is a responsibility that has to do with finance or trust, for example, accountants must take responsibility for their accounting reports. Furthermore, responsibility in the sense of Responsibility is responsibility in the sense of public law. The perpetrator can be prosecuted in front of a criminal court based on applicable laws and regulations, both criminal offenses and crimes, or can also be subject to administrative sanctions by his superiors if the person does not perform his duties as stated in his appointment decision letter. Meanwhile, responsibility in the sense of Liability is legal responsibility according to civil law. The obligation to pay compensation for the loss or suffering suffered by the victim as a result of the perpetrator's actions. The victim can sue before the civil court to pay damages to the perpetrator, either the person or legal entity that caused the loss.<sup>23</sup>

Based on the principles of responsibility in law, broadly speaking, the principles of responsibility in consumer protection law consist of the following:<sup>24</sup>

1. Fault (liability based on fault). This principle states that responsibility will never be born without fault, so that fault is the only factor that gives birth to responsibility. This means that a person can only be held legally responsible if there is an element of fault committed by them.
2. Presumption of liability. This principle states that the defendant is presumed to be responsible for all losses incurred.
3. Presumption of nonliability. This principle states that the business actor cannot be held liable.
4. Strict liability. In civil law, this principle is liability in the absence of fault, where liability is based on unlawful acts.
5. Limitation of liability. This principle limits the amount of compensation that can be claimed to reduce the financial risk of one or both parties.

In law, there are three (3) categories of tort, namely:<sup>25</sup>

1. Wrongful act due to intent
2. Wrongful acts without fault (without elements of fault or negligence)
3. Unlawful act due to negligence/negligence.

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<sup>23</sup> Faizal Kurniawan, *Perkembangan Hukum Perikatan: Doktrin Unjustified Enrichment sebagai Dasar Tuntutan Ganti Rugi untuk Mewujudkan Keadilan Berperikatan* (Malang: Cita Intrans Selaras, 2017).

<sup>24</sup> Ririn Yulandari Abbas, "Tanggung Jawab Hukum Pengelola Parkir Atas Kehilangan dan Kerusakan Kendaraan Bermotor Perspektif Perlindungan Konsumen" (2024) 5:2 J Lex Theory 850-860, online: <<https://pasca-umi.ac.id/index.php/jlt/article/view/1924>>.

<sup>25</sup> Ana Fauzia, Fathul Hamdani & Deva Gama Rizky Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law" (2021) 3:1 Progress Law Rev 12-25.



Regarding the issue of parking manager liability when a customer's vehicle is lost in the parking area, referring to the principle of liability based on fault, which states that a person can only be held legally responsible if there is an element of fault or negligence committed. Based on the principle of liability based on fault, if the vehicle belonging to the parking service user is parked in the parking area is lost and meets the elements of fault or negligence of the parking manager in maintaining the parking area based on the Civil Code, the relevant parking manager can be held liable in the form of compensation even though the parking attendant argues not to be responsible because the ticket in the parking area contains the phrase "loss and damage to vehicles or goods is not the responsibility of the parking manager".

Furthermore, business actors must provide compensation based on strict liability if the performance of the business actor can be measured, damage, pollution and/or consumer losses due to utilization of services produced or traded because the business actor violates the prohibitions as stated in Article 8 through Article 17 of Law Number 8 of 1999 concerning Consumer Protection. Civil sanctions, if the responsibility of the business actor is based on direct civil liability, then the compensation that can be demanded from the business actor is regulated in Article 19 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, namely:

1. Refunds
2. Reimbursement of services of a similar or equivalent value, and/or
3. Provision of compensation by the provisions of applicable laws and regulations.

In the event of the loss of a vehicle owned by a consumer, the parking lot manager cannot simply disclaim responsibility. Parking lot managers can be sued civilly for unlawful acts based on Articles 1365, 1366, and 1367 of the Civil Code as follows:

Article 1365:

"Every unlawful act that causes damage to another person obliges the person who caused the damage through his fault to compensate for the damage".

Article 1366:

"Every person is liable, not only for damages caused by his actions, but also for damages caused by his negligence or recklessness".

Article 1367:

"A person is liable not only for damages caused by his actions, but also for damages caused by the actions of those who are his dependents or by goods under his supervision".

The responsibility of the parking manager for consumer vehicles lost in the parking area, according to the Consumer Protection Law, is a responsibility oriented towards compensation. Legal responsibility that can be imposed on business actors (in this case parking managers) who in carrying out their business activities still deviate and are not based on the provisions of Law Number 8 of 1999 concerning Consumer Protection can be analyzed based on the theory of Contractual Liability or contractual responsibility, namely civil liability based on agreements or contracts from business actors (both goods and services), for losses suffered by consumers as



a result of consuming goods produced or utilizing and using services provided by business actors.<sup>26</sup>

What is included in contractual responsibility is the implementation of a standard contract or agreement. This is because the contents of the standard contract are only determined by one party, so in general, the contents of the standard contract contain more rights of business actors and obligations of consumers. Such provisions in standard agreements are called an exonerating clause (exoneration clause) or exemption clause (limitation, exemption of responsibility or transfer of responsibility), which standard agreements containing this exoneration clause are very burdensome or even tend to harm consumers.

Regarding parking service agreements, exoneration clauses are often found. In general, in the parking agreement in the form of a parking ticket, there is a standard agreement that contains an exculpatory clause, namely a clause that says that "the loss of vehicles and/or items in the vehicle or damage to the vehicle while in the parking area is the responsibility of the parking lot user" this writing is a form of transferring the responsibility of parking management for lost vehicles or lost items in vehicles. The problem for consumers in this standard agreement is not about the standard clause, but the existence of an exoneration clause or transfer of responsibility that is detrimental to consumers.

Article 18 paragraph (1) of Law Number 8 Year 1999 on Consumer Protection states that business actors in offering goods and/or services intended for trade are prohibited from including standard clauses in every document and/or agreement if:

Contents:

- 1) Stating the transfer of responsibility of the business actor
- 2) Stating that business actors have the right to refuse the return of goods purchased by consumers
- 3) Stating that business actors have the right to refuse the return of money paid for goods and/or services purchased by consumers
- 4) Stating that the granting of power from consumers to business actors, either directly or indirectly, to take all unilateral actions related to goods purchased by consumers in installments
- 5) Regulates the proof of the loss of usefulness of goods or the utilization of services purchased by consumers
- 6) Give the right to business actors to reduce the benefits of services or reduce consumers' property, which is the object of buying and selling services
- 7) Stating that consumers are subject to regulations in the form of rules in the form of new rules, additions, continuation, and/or further changes made unilaterally by business actors during the period when consumers utilize the services they buy
- 8) Stating that consumers authorize business actors to encumber mortgages, liens, or guarantees against goods purchased by consumers in installments.

Location and shape:

- 1) Hard to see
- 2) Cannot be read clearly

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<sup>26</sup> Isdiana Syafitri, "Analisis Perlindungan Hukum terhadap Konsumen atas Produk Skincare Ilegal Universitas Amir Hamzah Medan" (2022) 5:2 J Insituti Politek Ganesha Medan Juripol.





3) The disclosure is difficult to understand.

If the business actor (in this case the parking manager) if in carrying out his business still includes a standard clause with the content, location, form as contained in Article 18 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection, then the parking manager can be subject to civil sanctions and also criminal sanctions.

Civil Sanctions, there are two consequences of this civil sanction for business actors, namely:

1. If this standard agreement is sued before the court by consumers, the judge will have to make a declaratory decision, namely that this standard agreement is null and void. Based on Article 18 paragraph (3) of Law Number 8 Year 1999 on Consumer Protection)
2. Business actors are obliged to adjust standard clauses that conflict with the Consumer Protection Law, based on Article 18 paragraph (4) of Law Number 8 Year 1999 on Consumer Protection.

Criminal sanctions for business actors who do not comply with the provisions as contained in Article 18 of Law Number 8 of 1999 concerning Consumer Protection are that business actors will be punished with imprisonment for a maximum of 5 years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). In addition, criminally, the provisions regarding this matter are contained in Article 406 of the old Criminal Code (KUHP) and Article 521 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) which will come into force 3 (three) years from the date of enactment, namely in 2026 namely:

Article 406 of the Criminal Code	Article 521 of Law No. 1/2023
(1) Any person who, with deliberate intent and unlawfully destroys, damages, renders useless, or removes property which wholly or partially belongs to another person, shall be punished by a maximum imprisonment of 2 years and 8 months or a maximum fine of Rp. 4.5 million.	(1) Any person who unlawfully damages, destroys, renders useless, or removes property which belongs wholly or partly to another person shall be punished by a maximum imprisonment of 2 years and 6 months or a maximum fine of category IV, namely IDR 200 million (200 million). (2) If the criminal offense as referred to in paragraph (1) results in a loss with a value not exceeding 500 thousand, the perpetrator of the criminal offense shall be punished with a maximum imprisonment of 6 months or a maximum fine of category II, namely Rp. 10 million.



However, in the Article of the Criminal Code above, there is an element of “intentionally” that must be met. So that if it turns out that the parking lot manager does not deliberately remove the consumer's vehicle, but is caused by negligence or carelessness on the part of the parking manager. Then the parking manager cannot be prosecuted based on the provisions stipulated in the Criminal Code above.

## **CONCLUSION**

Consumer Protection Against the Inclusion of Standard Clauses Containing Exoneration Clauses in Parking Agreements Based on the GCPL is regulated in Law Number 8 of 1999 concerning Consumer Protection, more specifically in Article 18 paragraph (1) letter (a) prohibiting business actors from including standard clauses in every agreement and document that states the transfer of responsibility. The form of consumer protection against the inclusion of standard clauses containing exoneration clauses in parking agreements is in a preventive form, namely by using Law Number 8 of 1999 concerning Consumer Protection, related to parking agreements, preventive efforts that can be made are increasing supervision of parking officers, conducting evaluations every year, improving services and comfort for vehicles owned by consumers, conducting parking attendant training every year, and urging consumers who use parking services to participate in protecting their belongings. Meanwhile, repressive legal efforts that can be made to protect consumers in the event of loss of vehicles due to parking agreements containing exoneration clauses are that consumers can claim compensation, as emphasized in Article 19 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection. In addition to compensation, consumers (in this case, parking service users) can choose to resolve disputes through the court (litigation) or outside the court (non-litigation).

The responsibility of parking managers for the loss of consumer vehicles in the parking area based on the Consumer Protection Law, that the responsibility of parking managers for consumer vehicles lost in the parking area according to the Consumer Protection Law is a responsibility oriented towards compensation. The responsibility is confirmed in Article 19 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, namely: Refunds, replacement of services of a similar or equivalent value, and/or compensation by the provisions of applicable laws and regulations.

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