

The Standard Digital Agreement for Shopee Pay Later Users In Terms Of Consumer Protection Laws Perspective

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ABSTRACT

The technological landscape in Indonesia has rapidly evolved with the emergence of various platforms. One of significant technological advancement in Indonesia is Financial Technology (Fintech). Fintech is a form of financial-based application with various service features. Shopee PayLater (SPayLater) is one of the various types of Fintech in Indonesia. SPayLater is a service offered within the Shopee application. The service feature of SPayLater includes buyer-seller transactions facilitated using installment payment methods according to specified periods. This article differs from others that solely discuss conventional commercial transactions, **The purpose** of writing this article is to review the standard agreement on transactions carried out by Fintech and its users in the perspective of Consumer Protection Law. **The methodology** employed in this article adopts a normative juridical research approach. **The results** of this study indicate that transactions involving installment payments are formalized through a standardized agreement, a type of contract unilaterally prepared by SPayLater as the service provider, without any bargaining position. This arrangement may lead to an imbalance contrary to the principle of balanced agreements. The inclusion of exoneration clauses within standard agreements could potentially disadvantage users. Therefore, consumer protection measures are necessary to oversee service providers, who are the architects of contract clauses, in compliance with consumer protection laws as a form of reactive approach. Additionally, introducing agreement features involving user participation in negotiations with service providers is essential to establish a balanced bargaining position, ultimately ensuring equitable agreements as a preventive measure.

Keywords: Standard Agreement; Financial technology; Shopee
PayLater; E-Commerce.

INTRODUCTION

The evolution of technology has facilitated convenience for both sellers and buyers within a digital platform/application container, enabling seamless buying and selling transactions. In Indonesia, there are several online shopping applications (E-commerce) such as *Shopee*, *Tokopedia*, *Bukalapak*, *Lazada*, *Blibli.com*, *Zalora*, *Sociolla*, *JD.ID*, and others. The proliferation of online shopping applications is indicative of the increasing interest among the public in shopping through digital platforms. This is supported by survey results conducted by the Central Statistics Agency (BPS), which a 4.46 percent increase in the number of e-Commerce businesses in 2022, reaching a total of 2,995,986 enterprises. Among these enterprises, 43.02 percent are engaged in the sale of goods/services falling under the Food, Beverage, and Foodstuff Group. The second most commonly sold goods/services fall under the Fashion Group, accounting for 15.04 percent of enterprises. In third place are goods/services related to household needs, representing 8.11 percent of enterprises. Transportation and Delivery Services occupy the fourth position with 5.86 percent of enterprises. Cosmetic products rank fifth with 5.37 percent of enterprises (Biro Pusat Statistik, 2023). Based on the data obtained, that the Indonesian people are currently the largest consumers in conducting buying and selling transactions through applications or online.

Shopee is a digital application or platform based on online shopping (e-commerce) that offers a range of service features. The e-commerce platform offers a variety of goods and services, providing consumers with numerous options for purchasing goods and services. *Shopee* offers a service called *SPayLater*, which provides consumers with the option of deferred payment for goods purchased. This feature is a relatively recent addition to e-commerce platforms, with installment payments in commercial transactions being less common. However, the integration of technology through an application allows for the introduction of a range of installment tenors, defined payment deadlines, loan limits, loan interest rates, and other services that provide convenience for consumers in meeting their needs. The *SPayLater* payment system offers options to settle or pay in installments over 1, 3, 6, and 12 months on predetermined due dates (Gunawan et al., n.d.). The Financial Services Authority (OJK) as the supervisory

authority for every financial technology platform has granted *SpayLater* permission to operate as a financial technology service provider.

SpayLater facilitates transactions between buyers and sellers based on a contractual agreement. A standard agreement is a contract created by *SpayLater* as the provider that is carried out digitally or without face-to-face interaction (faceless). As with conventional face-to-face standard agreements, digital standard agreements entail one party drafting the contract clauses and the other party merely agreeing to them. Such circumstances have the potential to result in an imbalance that is contrary to the fundamental tenet of agreement equilibrium. However, a digital standard agreement, even when conducted online, can comply with the principle of freedom of contract if it does not contain exoneration clauses (Ade Pratiwi Susanty et al., 2022). Exoneration clauses are clauses that exempt, limit, or transfer the responsibility of the business operator, which in turn may burden or disadvantage consumers. Exoneration clauses prohibited by Law Number 8 of 1999 concerning Consumer Protection (Yetti, Miftahul Haq, 2022).

Standard agreements are often utilized across various financial sectors, to facilitate efficiency and effectiveness for service providers and to avoid future risks that could be detrimental to the provider. However, standard clauses may restrict the terms of the agreement, potentially disadvantaging consumers financially (Atmoko, 2022). The principle of balance is of paramount importance in the drafting of agreement clauses, particularly in regard to the balancing of the respective bargaining positions when formulating the terms of the agreement. *SpayLater* facilitates purchasing and selling transactions through installment methods based on standard agreements. Consequently, *SpayLater* users, while enjoying the convenience of this payment method, also consent to the stipulations outlined in the agreement made by *SpayLater* as the service provider.

Law Number 8 of 1999 concerning Consumer Protection, in Article 1 Number 10, defines Standard Clause as: “any rules, provisions, and terms that have been prepared and unilaterally determined by a business actor, incorporated into a document and/or agreement that binds and must be complied with by the consumer.” The Consumer Protection Law also does not prohibit business actors from including standard clauses in any document and/or transaction agreement for the trade of goods and/or services, as long as the business actors do not create documents or agreements as outlined in Article 18 paragraphs (1) and (2) (Purnomo et al., 2021).

Basically, an agreement is an agreement made by the parties that is valid if it is in accordance with article 1320 of the Civil Law (KUHPER) regarding the validity of an agreement must fulfill 4 (four) conditions (Mahkamah Agung RI, 2014):

- a) Agreement of the parties;
- b) Capacity to make an agreement;
- c) Specific subject matter;
- d) Legal clause.

Regulations regarding consumers have been stipulated in consumer protection laws, but potential losses may still occur as standard agreements are made unilaterally by one party, namely *SpayLater* as the provider. As users of the *SpayLater* application, individuals are presented with a “take it or leave it” concept. If users agree to the standard agreement, it is symbolized by “take it”; if they reject the agreement, it is symbolized by “leave it” (Mahendar & Budhayati, 2019). This presents two sides: users benefit from the installment payment method offered by *SpayLater* to meet their needs, or they face potentially disadvantageous consequences if there are clauses in the agreement that they do not understand. The objective of this research is to analyse the contents of the digital standard agreement for *Shopee PayLater* users from the perspective of consumer protection legislation.

Based on the background described above, the research problems can be formulated as follows:

1. How is the analysis of the implementation of standard agreements on digital platforms?
2. What is the review of consumer protection laws regarding *Shopee PayLater* users in relation to digital standard agreements?

RESEARCH METHOD

This article employs doctrinal legal research methods with qualitative studies that examine aspects of theory, structure, and legal explanations in the form of descriptive-analytical narrative descriptions. This type of research underscores the notion that the legal system can be conceptualized as a systematic arrangement of laws and regulations, structured according to a specific order. This order must have a certain character, namely the existence of harmonization and synchronization both vertically and horizontally (Suteki., & Taufani, 2018). So that this research examines and explains precisely and analyzes regulations through a statutory approach (Junimart Girsang, 2020). The writing of this scientific journal is expected to elaborate on all

normative realities regarding The Standard Digital Agreement for Shopee Pay Later Users In terms of Consumer Protection Laws Perspective.

RESULTS & DISCUSSION

1. Application Of Standard Agreements on Digital Platforms

The parties two or more people who make a bond to fulfill each other's rights and obligations can be outlined in an agreement. there are two kinds of agreements, namely written agreements and oral agreements. A Standard Agreement is one of the written agreements that is determined unilaterally. Shopee PayLater or *SPayLater* is a payment method provided by PT Commerce Finance within the Shopee application. In the *SPayLater* service feature, detailed information regarding the agreement for using *SPayLater* services is outlined in the “Terms and Conditions of *SPinjam* Service for Loan Recipients,” which includes the following clauses(Shopee, n.d.):

- 1) Introduction
- 2) Definitions
- 3) Use of the Service
- 4) Points to Note
- 5) Statements and Guarantees of Fund Recipients
- 6) Data Protection and Confidentiality
- 7) Intellectual Property Rights
- 8) Limitation of Liability
- 9) Indemnification
- 10) Waiver
- 11) Prohibited Uses
- 12) Amendments to the Terms and Conditions of Service
- 13) Termination of Service
- 14) Severability
- 15) Applicable Law and Dispute Resolution
- 16) Contact Us

The aforementioned clauses are those utilized by *SPayLater* in accordance with the established norms governing digital platform agreements. A clause is a detailed explanation contained in an agreement. The clauses delineate the fundamental tenets of the agreement, elucidating its objective and delineating the respective rights and obligations of the parties involved. The parties are granted the autonomy to determine the content and terms of the agreement, its implementation, and its conditions. Provided that it does not contravene any legislation, public order, or moral principles.

Assessing whether a standard agreement is detrimental to one party or not is based on the balance in outlining the rights and obligations of each party. An agreement is considered imbalanced if it only lists the rights of one party (i.e., the party preparing the standard contract) without specifying their obligations, or if it predominantly lists the obligations of the other party while omitting their rights (Budiman, 2024). In the standard digital agreement clauses contained in the *SPayLater* service feature, there is detailed information regarding the agreement for using the *SPayLater* service, which is outlined in the agreement title “Terms and Conditions of SPinjam Service for Loan Recipients.” This information provides details about the rights and obligations of *SPayLater* users with the *SPayLater* provider, thereby demonstrating that *SPayLater* has adhered to the fundamental principle of balance that must be applied in the creation of agreements. It is anticipated that this principle of balance will encompass the interests of all parties involved in the transaction or economic activity.

In creating standard agreements, there are several aspects that need to be considered, including prohibitions outlined in Article 18 paragraphs (1) and (2) of the Consumer Protection Law (UUPK) regulate four prohibited elements in a standard agreement, namely (Gunawan et al., n.d.):

- 1) Content of standard agreements, which prohibits the inclusion of 8 (eight) types of standard clauses in documents and/or standard agreements (Article 18 paragraph (1) of the Consumer Protection Law);
- 2) Placement of standard clauses, which prohibits placing standard clauses in documents and/or standard agreements in obscure locations, for example placing standard clauses on the back of parking tickets (which constitute standard agreements) (Article 18 paragraph (2) of the Consumer Protection Law);
- 3) Form of standard clauses, which prohibits the use of font sizes for standard clauses in documents and/or standard agreements that are difficult to read, for example using unreadable font sizes to save paper (Article 18 paragraph (2) of the Consumer Protection Law);
- 4) Disclosure of standard clauses, which prohibits the disclosure of words and/or phrases of standard clauses in documents and/or standard agreements that are difficult to understand by laypersons, for example including provisions in a credit agreement (in the form of a standard agreement) that supersede the application of Article 1266 of the Civil Code, without explaining the legal consequences of superseding Article 1266 of the Civil Code (Article 18 paragraph (2) of the Consumer Protection Law).

Disputes in e-commerce transactions may occur. based on the explanation above, it can be concluded that the dispute resolution mechanism that can be pursued by consumers is through the court and out of court as follows(Setiantoro A, Putri FD, Novitarani A, 2018):

- a. Settlement of Consumer Disputes Through the Court
- b. Dispute Settlement Outside the Court:
 - 1) Settlement of immediate compensation (directly) by peaceful means
 - 2) Claims for compensation through the Consumer Dispute Settlement Agency (BPSK)
 - 3) Settlement of disputes through Online Dispute Resolution (ODR)
 - 4) Settlement of consumer disputes through the ASEAN Committee on Consumer Protection (ACCP)

Standard agreements that have been made by business actors may not fully provide legal protection to consumers, because they have not provided legal certainty as consumers by not making the principles of consumer protection in accordance with Law Number 8 of 1999 concerning Consumer Protection and consumer good faith as legal considerations, conditions and circumstances of consumers who are in a weak position have no other choice but to accept or reject the predetermined clause(Hutagalung et al., 2021). Based on the standard agreement that has been offered to the *SPayLater* with what is received by consumers, it can be concluded that this standard agreement has two sides, namely the side of the consumer and the side of the business actor. If consumers can properly understand the contents of the agreement, they will benefit from this feature, and the other side of the shoppe that offers the *SPayLater* feature needs to provide clarity of protection for consumers who are harmed from using this feature.

2. Review of Consumer Protection Laws for *Shopee PayLater* Users Regarding Digital Standard Agreements

Consumers are the parties who benefit from an economic transaction they undertake. Consumers using *Shopee PayLater* benefit by purchasing goods with installment payments, which is one of the features provided by the digital platform *SPayLater*. The Consumer Protection Law defines a consumer in Article 1 paragraph (2) as “Every individual who uses goods and/or services available in society, whether for personal, family, other individuals, or other living beings, and not for resale.” From this definition, it can be seen that the definition

of a consumer under the Consumer Protection Law falls within the scope of an end consumer, with the following elements:

- 1) Individual (*naturlijk* person);
- 2) Goods and/or services or products;
- 3) For personal, family, or other individuals' purposes;
- 4) Not for resale.

The Consumer Protection Law mentioned above provides legal certainty and protection for consumers. With this law, efforts are made to ensure legal certainty and provide protection to consumers through the principle of balance. This means that protection is not only given to consumers but also to honest, good faith, and responsible business operators. The form of protection provided by the Consumer Protection Law is by recognizing both the rights and obligations of consumers on one hand and the rights and obligations of business operators on the other hand (Syamsudin, 2018).

Business actors can be held accountable for their business activities towards consumers. The liability of business actors can be categorized into three forms, namely contractual liability (namely civil liability on the basis of agreements or contracts from business actors for both goods and services for losses experienced by consumers), product liability (namely civil liability for products directly from business actors for losses experienced by consumers) and criminal liability (namely criminal liability of business actors as a relationship between business actors and the state)(Kalalo & Wahongan, 2021). The liability of business actors to consumers is contained in The Consumer Protection Law regulates the responsibilities of business operators in Article 19 and 28. Article 19 that:

- 1) Business operators are responsible for compensating consumers for damages, pollution, and/or losses resulting from consuming goods and/or services produced or traded.
- 2) Compensation as referred to in paragraph (1) may be in the form of a refund of money or replacement of goods and/or services of similar kind or equivalent value, or healthcare or appropriate benefits according to prevailing regulations.
- 3) Compensation must be provided within seven days of the transaction date.
- 4) Compensation as referred to in paragraph (1) and paragraph (2) does not preclude the possibility of criminal prosecution based on further evidence of fault.
- 5) The provisions of paragraph (1) and paragraph (2) do not apply if the business operator can prove that the fault lies with the consumer.

Consumers and business operators are clearly outlined in the above-mentioned Consumer Protection Law, which can be used as a repressive measure. Besides the Consumer Protection Law that regulates the assurance of legal protection for both consumers and business operators, these parties need to be provided with a feature of agreements involving users and service providers to allow for bargaining positions in making agreements that ultimately achieve a balanced agreement as a preventive measure. Legal protection according to Hadjon can be divided into 2 (two), namely preventive protection and repressive protection. Preventive protection is a form of protection to file an objection before a government decree or government decision. Meanwhile, repressive protection is carried out after the applicable legal rules have been violated or if they violate someone's rights (Rusly & Fajar, 2020).

The digital platform Shopee, with its *SPayLater* service feature, as a business operator, must apply the principle of good faith in conducting its business. The principle of good faith plays an important role in the existence of agreements made by the parties (Khalid, 2023). In the standard agreement offered by business operators, it must be based on Article 18 of Chapter V of the Consumer Protection Law (UUPK), which contains the following provisions (Presiden Republik Indonesia, 1999):

- 1) Business operators are prohibited from including standard clauses in any document and/or agreement if they:
 - a) State the transfer of responsibility from the business operator;
 - b) State that the business operator has the right to refuse the return of purchased goods by the consumer;
 - c) State that the business operator has the right to refuse the return of money paid for goods and/or services purchased by the consumer;
 - d) Grant authority from the consumer to the business operator, directly or indirectly, to unilaterally take actions related to goods purchased by the consumer on installment basis;
 - e) Regulate the burden of proof regarding the loss of usefulness of goods or utilization of services purchased by the consumer;
 - f) Grant the business operator the right to reduce the benefits of services or reduce the wealth of the consumer that is the subject of the service transaction;
 - g) Subject the consumer to rules in the form of new, additional, extended, and/or subsequent modifications made unilaterally by the business operator during the consumer's utilization of the purchased services;

- h) State that the consumer grants authority to the business operator for encumbrance of mortgage rights, pledge rights, or collateral rights on goods purchased by the consumer on installment basis.
- 2) Business operators are prohibited from including standard clauses that are difficult to locate or read clearly, or clauses whose disclosure is difficult to understand.
- 3) Any standard clause established by business operators in a document or agreement that meets the provisions of paragraph (1) and paragraph (2) is considered null and void.
- 4) Business operators must adjust standard clauses that contradict this law.

The agreement between the parties—which encompasses *SPayLater* users as consumers and *SPayLater* as the service provider—is legally binding for all parties involved. It is incumbent upon both parties to comply with and execute the terms of the agreement, as the agreement itself creates legal obligations. Consequently, any contravention of the agreement will result in consequences and constitute an act that can be legally accountable. Agreements that have been made by the parties can be used as a basis for evidence in the form of documents contained in what is agreed and as an effort to resolve problems that arise to obtain legal certainty, and justice (Sinaga, 2018).

CONCLUSION

In this installment payment transaction, it is formalized through a standard agreement known as a unilateral agreement, where *SpayLater* as the service provider drafts the agreement, and users simply agree to its terms without any bargaining position. This arrangement may lead to an imbalance contrary to the principle of balanced agreements. Exoneration clauses are likely included in standard agreements, potentially disadvantaging users. It is therefore incumbent upon users as consumers to be protected through the oversight of service providers who are responsible for designing clauses in agreements. This can be achieved through the implementation of consumer protection laws, which serve as a reactive measure. Furthermore, it is essential to incorporate user participation in service provider agreements to establish a fair bargaining position and achieve a balanced agreement as a preventive measure. In light of these considerations, it becomes evident that the implementation of preventive protection represents a crucial strategy for averting potential losses that may be incurred by either consumers or service providers. Conversely, repressive protection can be employed as a means of guaranteeing legal certainty in the event of incurred losses.

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