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Exoneration clauses in standard property agreements: between freedom of contract and consumer protection

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ARTICLE INFO	ABSTRACT
Keywords: *standard agreements; exonerating clauses; freedom of contract; consumer protection; contractual fairness* ***How to cite:*** *Junaidi*. (2026). Exoneration clauses in standard property agreements: between freedom of contract and consumer protection *Veteran Law Review*. 9(1). 41-50. Received:2026-02-15 Revised:2026-05-26 Accepted:2026-06-02	*Standard agreements are commonly used in property sales to accelerate economic transactions, but they also raise important issues regarding the differing bargaining power of sellers and buyers. A major issue that arises is the use of liability exemption clauses, which protect developers rather than consumers. Taking into account the principles of fairness in contracts and the balance of rights and obligations, this study examines the legitimacy of such clauses in standard property agreements. Furthermore, the study aims to create a model agreement that strikes a balance between contractual freedom and consumer protection. A normative legal study was conducted through legislation, legal concepts, and comparative law. The results indicate that the evaluation of liability exemption clauses must be based on formal legal rules, as well as on substantive justice, transparent communication and balanced risk sharing between the parties involved. To prevent the abuse of standard provisions, the study recommends redesigning property agreements to incorporate fairness testing and consumer protection principles based on risk analysis. By providing a more flexible evaluation framework for common contract practices in the property sector, these findings will contribute to the development of contemporary contract law.*

1. Introduction

Standard agreements, also known as standard clauses, are agreements whose contents have been determined by the employer without negotiation. Consumers can only accept or reject the terms of the agreement. These agreements are commonly used in the property sector, particularly in the early stages before the official contract is drawn up, for example in house reservation letters. This has the potential to create legal ambiguity for consumers. Studies in modern contract law show that standard agreements tend to reflect the greater economic power and structure of the party that drafts them. Consequently, the fairness of these agreements is a subject of debate (Hasanah et al, 2023; Perdana & Koto 2024).

Standardized agreements are generally drafted unilaterally and place the other party in a limited position: they can either accept or reject the entire contents of the agreement. This means that consumers are unable to negotiate the terms of the contract, even if those terms could potentially harm their interests. From a comparative law perspective, conventional agreements are considered cost-efficient; however, without adequate legal protection, they can lead to real injustice (Bassan & Rabitti, 2024; Junior, 2025).

In Indonesia, Article 1338 paragraph (1) of the Civil Code provides the legal basis for the use of standard agreements, emphasizing that legally binding agreements are akin to laws. This reflects the principle of autonomy in contracting, whereby anyone with legal rights and obligations can determine the content and format of their agreement. However, this freedom is not unlimited; it is restricted by the validity of the agreement, a sense of justice and the need to protect the weaker party (Siombo, 2023; Tantri et al, 2025).

Article 1338(1) of the Civil Code sets out several key principles, including the freedom to enter into agreements, the principle of *pacta sunt servanda* (agreements must be honoured), and the legal obligation to fulfil agreements. The former emphasizes that an agreement comes into existence when the parties reach an agreement, while the latter underlines the binding nature of agreements and the obligation to perform them in good faith. Conversely, freedom of contract enables each party to determine whom they enter into an agreement with, the agreement's content, and how the agreement is made. However, differences in bargaining power often result in these principles being applied differently in standard contract practice (Pratiwi, 2022; Agustini et al, 2024).

This has prompted property developers and other businesses to include liability exemption clauses that limit or remove their legal obligations. This practice is commonly found in house purchase agreements, where the deposit may be forfeited or the booking fee may be non-refundable, for example. Such clauses are considered unfair as they place all the risk on the consumer (Ratna & Djajaputra, 2024; Quintarti et al, 2025).

Even if agreed upon by all parties, exemption clauses in standard agreements are considered invalid under consumer protection law. Article 18(1) of the Consumer Protection Act clearly prohibits the transfer or limitation of business operators' liability. Therefore, standard clauses that are exclusive and detrimental to consumers do not fulfil the criteria for a valid agreement, particularly with regard to valid reasons and good faith (Lusita et al, 2022; Nugrahenti & Hernawan, 2024).

Standard contract models that are commonly used, particularly in the property sector, often give rise to significant legal disputes. These contracts' inability to accommodate consumer rights indicates the need to review and update their format to align with the principles of fairness, balance, and consumer protection. Therefore, studying liability exemption clauses in standard agreements is crucial for advancing contract law towards greater justice, from both theoretical and practical perspectives.

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2. Method

This normative legal research uses legislative, conceptual and comparative legal approaches. The analysis of exonerating clauses in standard agreements referred to the Civil Code and the Consumer Protection Act as legislative approaches. Meanwhile, the conceptual approach applies the principles of contractual justice, proportionality and reasonableness testing to examine these clauses. Furthermore, the comparative law method was employed to identify best practices in contract regulation and consumer protection across different legal systems. A qualitative analysis of primary, secondary and tertiary legal materials, employing prescriptive techniques, aims to produce a fair and balanced model of a standard agreement.

3. Analysis and Results

3.1. Exoneration Clauses in Standard Property Agreements: A Review of Contractual Fairness, Proportionality, and Consumer Protection

Standard agreements tend to create a power imbalance between the parties involved, whereby the buyer does not have the authority to amend the established agreement (Blawat, 2022: Junaidi, 2025). Liability exemption clauses are commonly found in standard property sale and purchase agreements. These are standardized contracts that are drafted unilaterally by developers. Although these contracts are intended to facilitate transactions, they tend to prioritize the interests of developers. Consumers often have no room for negotiation due to the predetermined structure of the contract. Research in modern contract law shows that an imbalance of bargaining power is the main cause of unfairness in conventional contracts, particularly when liability exemption clauses are used to limit or eliminate the developer's legal obligations (Kania, 2024; Juwenie, 2025).

This imbalance is exacerbated by the freedom of contract principle enshrined in Article 1338 of the Civil Code. While this freedom is legally justifiable, it is meaningless in standard contract practice, where consumers often have no option but to agree to predetermined terms. Modern contract law experts emphasize that freedom of contract should be understood not only formally, but also substantively, to ensure a balance of interests between the parties involved (Brampu et al, 2024; Rusli, 2024).

Contractual justice is an analytical approach that overcomes the shortcomings of the freedom of contract method, which tends to focus on formalities. This principle emphasizes that the validity and application of a contractual provision depend not only on consent, but also on whether the provision is fair, moral and protective of the weaker party. Exemption clauses, for instance, can be problematic as they conflict with the fundamental principle of contract law: balancing the rights and obligations of the parties involved (Dewi et al, 2025; Al Samadi et al, 2025).

The principle of proportionality is applied to assess the balance of interests between businesses and consumers in standard property agreements. This principle requires harmony between the reason for including a clause, how the clause is worded, and its consequences. Therefore, liability exemption clauses that burden consumers with all transaction risks, such as the cancellation of deposit refunds without compensation, violate the principle of proportionality. Cross-country studies on consumer law also demonstrate that such clauses are generally deemed to be unfair in contracts (Hapsari & Kurniawan, 2020; Rasmiaty, 2025).

This approach to contractual fairness and proportionality aligns with consumer protection regulations, particularly the provisions that prohibit standard clauses detrimental to consumers, as set out in the Consumer Protection Law. Modern law views government intervention in contractual freedom through the regulation of standard clauses as a corrective measure to create balance in market transactions. To ensure real fairness in conventional agreements, therefore, the evaluation of liability exemption clauses must emphasize assessment based on risk analysis to ensure fairness and protect consumers (Simarmata et al, 2025; Dewi & Hasana, 2025).

Thus, when evaluating liability exemption clauses in standard property agreements, it is important to emphasize fairness in contracts and align the interests of the parties involved. Applying the principles of proportionality and contractual fairness provides a more comprehensive basis for analysing and limiting the use of such clauses, while improving consumer protection without negating contractual freedom under the law.

3.2. Reconstruction of the Standard Property Agreement Model in an Effort to Prevent Abuse of Exoneration Clauses Against Consumers

In the property sector, standard agreements tend to prioritize smooth and rapid sales over protecting buyers' rights. While the use of ready-made formats makes it easier for developers to reduce costs and accelerate marketing, it also opens the door to the abuse of liability exemption clauses (Ramadani et al, 2024; Sasmitaningrum et al, 2025). Such clauses are commonly used by businesses to minimize or eliminate their obligation to pay compensation, as they allow them to escape responsibility, even when they are clearly at fault. However, Indonesian legislation, including the Consumer Protection Law and the Civil Code, protects consumer rights by invalidating such clauses if it is proven that they have caused harm (Kania, 2024; Junaidi et al, 2025).

Studies in modern contract law show that ignoring the principle of fairness in agreements does not result in sustainable economic benefits, particularly when the agreement is designed to benefit the stronger party at the expense of the weaker party (Parisi & Bix, 2025; Narwadi et al, 2025)). Therefore, the core of the problem lies not in the existence of standard agreements, but in the drafting and interpretation of clauses. Therefore, it is important to redraft standard agreement models to prevent disparities in rights and obligations. Experts emphasize that standard contracts must be reviewed based on the principle of fairness, meaning assessing whether the contract's content is reasonable for consumers in equal market conditions (Howells, 2020; Hoshi, 2021).

Clarity is an integral part of this improvement process. This means that consumers must understand not just the literal meaning of each clause, but also its legal and financial implications. Complex liability disclaimer clauses, or those employing technical jargon, may violate the principle of clarity and could be deemed unfair, as determined by cross-border consumer law research (Schwarcz et al, 2023; Blasie, 2024). According to the author, it is crucial for all parties involved to understand and agree to the details of each party's obligations in an agreement, as this allows them to grasp the legal basis of the contract (Isrofani et al, 2022; Junaidi, 2023).

Standard property agreement templates must be redrafted to incorporate clarity and oversight mechanisms for liability exemption clauses. A fairness test is applied to assess whether a clause places an unfair burden on consumers by giving them unbalanced rights and obligations, thereby harming them. Various jurisdictions commonly use this practice to cancel or revise clauses that transfer all risks to consumers without providing adequate compensation. This approach focuses on fundamental fairness when determining the validity of contract provisions (Daiza, 2018; Nottage et al, 2019).

Fair reconstruction requires a balanced distribution of risk between developers and buyers. An imbalance arises when liability exemption clauses release developers from all obligations, for example by cancelling advance payments without good reason. According to the risk-based consumer protection approach, as the party with greater ability to manage risk, developers should bear greater responsibility (Yuanitasari et al, 2023; Sulaiman et al, 2023).

Therefore, transparency, fairness testing and balanced risk sharing must be prioritized when redrafting standard property agreement frameworks. Such contract designs provide legal protection for consumers and reduce costs. This approach is consistent with modern contract law developments that emphasize fairness and balance as key principles for the validity of large-scale transaction agreements.

4. Conclusion

Given the formal nature of the clause and the imbalance of bargaining power between developers and buyers, the liability exemption clause in standard property sale and purchase agreements cannot be fully justified by relying solely on freedom of contract. To ensure a reasonable distribution of rights and obligations, the clause must be assessed taking into account contractual fairness and proportionality. Fairness testing and consumer protection are crucial to balancing the efficiency of property transactions with legal protection for consumers, and control over standard clauses is key to this.

Standard property agreement models must be reconstructed to include clarity, fairness testing and balanced risk distribution to prevent the improper use of disclaimer clauses. This approach aims to balance the freedom of contracting parties and consumer protection, ensuring that the agreement is economically beneficial and in accordance with the principles of justice and applicable law.

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