



Inclusion of The Exoneration Clause in The Agreement as an Unlawful Action (Study of Decision Number 930 K/Pdt/2019)

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ARTICLE INFO	ABSTRACT
<p>Keywords: Exoneration Clause, Agreement, Tort</p> <p>How to cite: Lucianto, Wilsin. (2023). Inclusion of The Exoneration Clause in The Agreement as an Unlawful Action (Study of Decision Number 930 K/Pdt/2019). <i>Veterans Law Review</i>. 6 (2). 241-251.</p> <p>Received: 2023-09-05 Revised: 2023-09-08 Accepted: 2023-11-27</p>	<p><i>In Decision Number 898/Pdt.G/2016/PN.Jkt.Sel, decided that the Plaintiff's claim was blurred and unacceptable because it had mixed up breach of contract with a lawsuit against the law. Meanwhile, at the appeal level regarding the Decision, the Jakarta High Court through Decision Number 164/Pdt/2018/PT.DKI. which was upheld at the cassation level through Decision Number 930 K/PDT/2019, granted the cancellation of the exoneration clause on the grounds of default and not on the basis of an unlawful act. So it is interesting to discuss the inclusion of the exoneration clause in the agreement as an unlawful act. To answer this, the research method used is juridical-normative legal research. The results showed that in submitting the cancellation of the exoneration clause through a tort lawsuit, in the posita section of the plaintiff's lawsuit, the plaintiff must first describe the elements of the unlawful act as follows: Unlawful Act, Error, Loss and. With regard to the inclusion of the exoneration clause in the Agreement, the Panel of Judges in Decision Number 930 K/Pdt/2019 was wrong in its considerations in assessing that the exoneration clause which had been standardized by the Defendant whose contents excluded or released the Defendant from demands and/or responsibilities was declared invalid. This is because if the Defendant does not want to accept the Plaintiff's claim, the Defendant should have made a selection in such a way as to require the Plaintiff to do a medical check first. Without carrying out a health check, then when the Plaintiff suddenly becomes ill and the Defendant does not want to bear it, it can be interpreted that the Defendant did not have good intentions and committed an unlawful act and was not a default.</i></p>

1. Introduction

In this globalization era, almost every transaction is based on a written agreement or contract. In fact, for reasons of practicality and efficiency, it is not uncommon for various transactions to tend to use standard agreements or standard agreements, namely agreements made unilaterally.¹ However, because the agreement is made unilaterally, it is not uncommon for one of the parties to include clauses that provide benefits for themselves, such as

¹ Roesli, Muhammad, Sarbini Sarbini, And Bastianto Nugroho. (2019). "Kedudukan Perjanjian Baku Dalam Kaitannya Dengan Asas Kebebasan Berkontrak." *Dih: Jurnal Ilmu Hukum*. 15(1). Hlm. 1-8.

exoneration clauses. An exoneration clause or exoneration clause is a clause that limits or frees one party from the responsibilities imposed on them.² The liability referred to is responsibility for claims by other parties for non-performance of the agreement as it should be.³ In other words, basically exoneration clauses tend to benefit only one party.

Even so, it is still possible for agreements containing exoneration clauses to be agreed upon by the parties, one of which can be due to the existence of an unequal bargaining position between the two.⁴ When one of the stronger parties has proposed an agreement containing an exoneration clause, the weaker party usually does not have much opportunity to negotiate it. The only option for the weak party is to agree to the entire contents of the agreement including the exoneration clause or leave it (take it or leave it).⁵ Under these conditions, the agreement given in the agreement is likely to have a defective will. This is because there is an element of compulsion about the need to carry out the agreement.

Based on the legal requirements of the agreement as stipulated in Article 1320 to Article 1337 of the Civil Code, the agreement does not meet the subjective requirements, namely the element of agreement. As a result, the agreement becomes cancelable.⁶ However, the government is more assertive that it is also trying to protect weak parties by limiting the use of the exoneration clause through Article 1494 of the Civil Code and Article 18 Paragraph (1) letter a of Law Number 18 of 1999 concerning Consumer Protection. This provision stipulates that the use of clauses that transfer the responsibility of one party (exoneration clause) is prohibited. As for the consequences of violating these provisions, the agreement made is null and void by law. Thus, even though it has been agreed upon by the parties with perfect will, the clause remains null and void and is deemed to have never existed.

Even though the clause is null and void by law, consumers or injured parties must have the courage to submit a request for cancellation. This is because the party who makes the exoneration clause will certainly insist that the clause is valid and binding on the parties. Therefore, based on Article 1266 jo. Article 1267 of the Civil Code, parties who wish to cancel the agreement need to ask

² Sarjana, Made. (2016). "Pembatasan Klausula Eksonerasi." *NOTARIIL Jurnal Kenotariatan* 1(1). Hlm. 109-127.

³ Bandem, I. Wayan, Wayan Wisadnya, And Timoteus Mordan. (2020). "Akibat Hukum Perbuatan Wanprestasi Dalam Perjanjian Hutang-Piutang." *Jurnal Ilmiah Raad Kertha*. 3(1). Hlm. 48-68.

⁴ Abdurrahman Konoras. (2007). *Aspek Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan-Rajawali Pers*. Jakarta: Rajagrafindo Persada. Hlm. 75.

⁵ Zakiyah. (2018). "Klausula Eksonerasi Dalam Perspektif Perlindungan Konsumen." *Al-Adl: Jurnal Hukum*. 9(3). Hlm. 435-451.

⁶ *Ibid.*

the judge. A request to cancel the agreement must be submitted by the objecting party through a lawsuit and not an application. This is because canceling an agreement requires a constitutive decision.⁷

A lawsuit filed to cancel the agreement may use the basis of an unlawful act. This is because violating the prohibition on using the exoneration clause is an element of unlawfulness, namely, violating the law. Thus, compensation that can be requested includes material and immaterial losses as long as the aggrieved party is able to prove it.⁸ However, because the granting of agreement cancellation and compensation depends on the judge's discretion in making the decision, the judge's assessment of the existence of an exoneration clause in an agreement is very important. Moreover, in Indonesia there is no provision that binds judges to decide in accordance with the previous judge's assessment of the same case, so it is possible for there to be differences in the assessments of each judge. As in Decision Number 898/Pdt.G/2016/PN.Jkt.Sel, it was decided that the Plaintiff's claim was vague and could not be accepted because it had mixed up a breach of contract with a claim for an unlawful act. Meanwhile, at the appeal level regarding the Decision, the Jakarta High Court through Decision Number 164/Pdt/2018/PT.DKI. which was confirmed at the cassation level through Decision Number 930 K/PDT/2019, even though the Plaintiff had agreed to an agreement containing an exoneration clause, the judge granted the annulment of the exoneration clause on the grounds of breach of contract and not on the basis of an unlawful act.

Therefore, it is important to know the tendency of judges in Indonesia to decide on the cancellation of an agreement that contains an exoneration clause.

2. Method

This type of research the author uses normative legal research methods. Normative legal research uses normative case studies in the form of legal behavior products, such as reviewing laws. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrine, legal findings in in concreto cases.⁹ Regarding the legal research used, in this writing, the data sources in the form of legal materials used are as follows: Primary Legal

⁷ Abidarini, Lutfira. (2021). "Keberlakuan Perjanjian Kredit Menggunakan Akta Pemberian Hak Tanggungan Atas Objek Harta Bersama Yang Cacat Hukum (Putusan Mahkamah Agung Republik Indonesia Nomor: 224K/PDT/2020)." *Indonesian Notary* 3(3). Hlm. 21.

⁸ Djatmiko, Andreas Andrie, Fury Setyaningrum, And Rifana Zainudin. (2022). "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia." *Nomos: Jurnal Penelitian Ilmu Hukum*. 2(1). Hlm. 1-10.

⁹ Benuf, Kornelius, And Muhamad Azhar. (2020). "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan*. 7(1). Hlm. 20-33.

Materials, namely binding legal materials consisting of statutory regulations and Court Decisions, as well as Secondary Legal Materials, legal materials that provide explanation of premier legal materials, such as books, papers/journals and legal expert opinions. Data collection techniques are an important part of research.

Researchers use data collection techniques to obtain more accurate data, with library research (library research), which is carried out to obtain the information needed in order to achieve research objectives. The legal materials obtained will be analyzed qualitatively. This is a research approach used to examine natural objects, where the researcher is the key instrument.

3. Results & Analysis

3.1. Based on The Research

In decision Number 930 K/PDT/2019 is the Cassation Decision on 898/Pdt.G/2016/PN.Jkt.Sel at the First level and Decision Number 164/Pdt/2018/PT.DKI. at the appeal level which is a case involving a lawsuit against the law between Efi Yusliana v. PT Asuransi Jiwa Manulife Indonesia with Efi Yusliana as Plaintiff and PT Asuransi Jiwa Manulife Indonesia as Defendant. The case began on November 3 2015 when the Plaintiff signed a Confirmation Letter of Request for Electronic Sharia Life Insurance sent by the Defendant's insurance agent to become a prospective insurance participant at the Defendant Company. Furthermore, on the same date the application was approved by the Defendant and known to the agent and the Defendant's agent coordinator.

As for the Plaintiff's data contained in the Life Insurance Request Letter (SPAJ), the Defendant or through his agent never asked the Plaintiff for information to obtain these data. In fact, the Defendant never conducted a medical examination of the Plaintiff as a Participant candidate. Then on November 10 2015, the Defendant issued an Insurance Policy in the name of the Plaintiff so that the Plaintiff legally became an insurance participant in the Defendant's company. In February 2016, the Plaintiff submitted an insurance claim worth Rp. 35,814,100.00 (thirty-five million eight hundred and fourteen thousand rupiah) for his treatment at Mayapada Hospital, Lebak Bulus from 31 January to 7 February 2016. Furthermore, on 19 February 2016 The Plaintiff again submitted an insurance claim worth S\$ 22,478.51 (twenty two thousand four hundred seventy eight point fifty one Singapore Dollar cents) for the treatment he underwent at Gleneagles Hospital, Singapore from 11 to 17 February 2016.

The claim submission is in accordance with the provisions of the Plaintiff's Insurance Policy. However, after the Plaintiff met with the Defendant's investigator twice from March 16 2016 to May 2016, no agreement was reached

between the Plaintiff and the Defendant regarding the value of the claim submitted by the Plaintiff. In fact, the Defendant canceled the Plaintiff's Insurance Policy unilaterally without any prior notification. With this cancellation, on May 11 2016 the Defendant returned the premium and investment returns that had been paid by the Plaintiff amounting to Rp. 19,579,598.00 (nineteen million five hundred seventy-nine thousand five hundred and ninety-eight rupiah). This was done by the Defendant on the grounds that the Plaintiff did not provide correct information, namely that he had suffered from antiphospholipid syndrome (APS) before becoming an insurance participant at the Defendant's company.

With the cancellation of the Plaintiff's Insurance Policy, the Plaintiff's Insurance Policy is deemed to have never existed and the claim filed by the Plaintiff cannot be paid. Against this case, the Plaintiff filed a lawsuit against the law on the basis of a unilateral cancellation by the Defendant without any reason. It was said that there was no underlying reason because there was no official diagnosis report from the hospital or doctor stating that the Plaintiff was suffering from APS as argued by the Defendant. Moreover, the fact is that the Plaintiff never suffered from this disease. Precisely in this case the Defendant had bad faith in seeking prospective insurance participants because he did not conduct interviews to obtain the actual data of the Plaintiff at the time of submitting the insurance request. For the unlawful actions committed by the Defendant, the Plaintiff filed for compensation for material and immaterial losses. Furthermore, the Defendant in his response argued that interviews and medical examinations were not conducted on the Plaintiff because the information provided by the Plaintiff in the Life Insurance Application Letter (SPAJ) was deemed sufficient. As the Plaintiff's statement regarding the questions in SPAJ that during the last five years the Plaintiff has never undergone inpatient/outpatient care or laboratory tests. Meanwhile, the results of questions and answers between the Defendant and the Plaintiff dated 16 March 2016 found that the Plaintiff had been inpatient and/or outpatient before filling out the SPAJ on 3 November 2015. Thus, the Plaintiff has been proven to have provided incorrect information in filling out the SPAJ so that Insurance policy becomes void.

The cancellation made by the Defendant was in accordance with the provisions of the Plaintiff's Insurance Policy, namely:

“6.1 In the case of providing false information, statements or explanations in the Request for Sharia Life Insurance, apart from providing information, statements or explanations as referred to in Article 4, the manager has the right to refute the correctness of the policy, either when the coverage is still valid or when claim process except for information, statements or explanations as well as the death of the Participant and/or the end of coverage occurs after a period of 2 (two) years from the Issuance date of the

Policy or Addendum resulting in the latest risk selection or issuance date of the latest Policy recovery

- 6.2 In the event that providing information, statements or explanations in the Sharia Life Insurance Request Letter contains elements of fraud and/or forgery or other criminal acts, the Manager has the right to dispute the validity of the Policy at any time.
- 6.3 If there is a claim submitted within the 2 (two) year period as intended in Article 6.1 which causes the need for re-risk selection, then the Manager has the right to cancel the coverage at any time without any time limitation due to this incorrectness.
- 6.4 If the Manager disputes the Police's permission, then the Manager has the right to cancel the coverage."

Based on the description above, the Plaintiff requests that the Chairman of the South Jakarta District Court cq. The panel of judges examined and decided by giving the following verdict: Menerima dan mengabulkan gugatan Penggugat untuk seluruhnya;

1. Declare that the Insurance Policy Number 4240049405 is valid according to law in the name of Policy Holder Efi Yusliana/Plaintiff and is binding between the Plaintiff and the Defendant;
2. Declare that the Plaintiff as the Policy Holder has the right to receive payment for Insurance Claims;
3. Declare legally that the Defendant has committed an unlawful act;
4. Sentence the Defendant to pay immediately and in cash for all material and immaterial losses experienced by the Plaintiff, namely: Material Losses: Rp. 35,814,100.00 (thirty-five million eight hundred and fourteen thousand rupiah) and S\$ 22,478 .51 (twenty two thousand four hundred seventy eight point fifty one Singapore Dollar cents) and the immaterial losses suffered by the Plaintiff cannot be valued in money, however it is appropriate and reasonable for the Plaintiff to demand immaterial compensation of Rp. 750,000,000.00 (seven hundred and fifty million rupiah);
5. Declare that the decision in the a quo case can be carried out beforehand even though there are legal remedies for verzet, appeal and cassation;
6. Charge the costs incurred in the a quo case to the Defendant;

Against the Plaintiff's lawsuit, the South Jakarta District Court in its decision Number 898/Pdt.G/2016/PN.Jkt.Sel ruled that the Plaintiff's claim was blurred and unacceptable because it had confused default with a lawsuit against the law.

Against this decision, the Plaintiff then filed an appeal and changed the arguments of his lawsuit. The appellant/original plaintiff based his lawsuit on the argument of breach of contract. Thus, even though the Appellant/originally

the Plaintiff in his lawsuit put forward the argument for unlawful acts in addition to arguing for default, however, because the claim posita has clearly outlined the legal relationship of the parties, namely the existence of an insurance claim that was not fulfilled as mentioned above and bearing in mind the principle of a quick, simple trial and cheap, then the mention of the term unlawful act in the petitum of a lawsuit that should be in default, does not result in the lawsuit being obscure libel, legally flawed or unacceptable.

The decision was later annulled by the DKI Jakarta High Court through decision Number 164/Pdt/2018/PT.DKI. The DKI Jakarta High Court decided independently with the following verdict:

1. Granted the Appellant's claim/original part of the Plaintiff's
2. Declare Insurance Policy Number 4240049405 on behalf of the policyholder, namely the Comparator/original Plaintiff (EfiYusliana) legally valid;
3. Declare that the Comparator/original plaintiff as the policyholder has the right to receive payments for insurance claims filed by the comparator/original plaintiff;
4. Declare that the Appellee/originally Defendant has defaulted;
5. Punish the Appellant/original Defendant to pay immediately and at once and in cash all maintenance and medical expenses incurred by the Appellant/original Plaintiff in the amount of IDR 35,814,100.00 (thirty five million eight hundred and fourteen thousand one hundred rupiah) and SGD 22,478.51 (two twenty-two thousand four hundred seventy-eight point fifty-one Singapore dollars);
6. Reject the remaining claims of the Appellant/Plaintiff;

The Panel of Judges in their considerations considered that the exoneration clause that had been standardized by the Defendant whose content excluded or released the Defendant from demands and/or responsibilities was declared invalid. This is because if the Defendant does not want to accept the Plaintiff's claim, the Defendant should have made a selection in such a way as to require the Plaintiff to do a medical check first. Without carrying out a health check, then when the Plaintiff suddenly becomes ill and the Defendant does not want to bear it can be interpreted that the Defendant is not in good faith. Furthermore, against this decision the Defendant filed an Cassation, but was rejected by the Supreme Court through decision Number 930 K/Pdt/2019.

3.2. Inclusion of The Exoneration Clause in The Agreement as an Unlawful Action (Study of Decision Number 930 K/Pdt/2019)

Rikjen said the Exoneration Clause is a clause included in an agreement whereby one party avoids fulfilling its obligation to pay full or limited

compensation, which occurs due to a broken promise or unlawful act.¹⁰ An exoneration clause is an act of violation of one's own obligations, which is the same as committing an unlawful act as decided by HR Netherlands 31 January 1919. In this jurisprudence, one of the things that is meant as an unlawful act is the person who commits the act contrary to his own obligations, so it can be used reasons for demanding compensation based on Article 1365 BW Indonesia.¹¹

In submitting the cancellation of the exoneration clause through a lawsuit against the law, in the *posita* section of the lawsuit the Plaintiff must first outline the elements of the unlawful act as follows:

1. Unlawful Acts. The basis for unlawful acts for the inclusion of the exoneration clause can refer to several types of unlawful nature, namely:
 - a. Violates Article 1494 of the Civil Code. In this case, the perpetrator has violated his legal obligations as regulated in Article 1494 of the Civil Code, which states that the seller remains responsible for something that is the result of his actions. All agreements that conflict with this are declared void. By referring to these provisions, the Plaintiff in his lawsuit needs to prove that the exoneration clause constitutes an exemption from responsibility for losses caused by the Defendant's actions.
 - b. Violating Article 18 paragraph (1) Letter a of Law Number 8 of 1999 concerning Consumer Protection Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection stipulates that business actors are prohibited from including standard clauses stating the transfer of responsibility business actor in every agreement. A contrario, business actors have a legal obligation not to include clauses stating the transfer of responsibility or exoneration clauses. Therefore, by making an exoneration clause in an agreement, basically the Defendant has violated his legal obligations as regulated in positive law.¹² Thus, in explaining this element, the Plaintiff is expected to be able to show in detail the agreement clause which is an exoneration clause.
 - c. Apart from that, it should also be noted that this basis can only be used by parties regulated in Article 46 of the Consumer Protection Law, namely: 1) a consumer who has been harmed or the heir concerned; 2) a group of consumers who have the same interests; 3) a non-governmental consumer protection institution that meets the requirements, namely in the form of a legal entity or foundation, the

¹⁰ Manumpil, Jain Stevany. (2016). "Klausula Eksonerasi Dalam Hukum Perlindungan Konsumen Di Indonesia." *Lex Privatum*. 4(3).

¹¹ Sarjana. (2016)

¹² Syamsudin, Muhamad, And Fera Aditias Ramadani. (2018). "Perlindungan Hukum Konsumen Atas Penerapan Klausula Baku." *Jurnal Yudisial*. 11(1). Hlm. 91-112.

purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association; 4) the government and/or related agencies if the goods and/or services consumed or utilized result in large material losses and/or many casualties.

2. Error. In the event that an exoneration clause is loaded which tends to benefit the Defendant, it can be seen that basically the act was committed by the Defendant intentionally.¹³ Therefore, in explaining the elements of this error, the Plaintiff can explain in detail the process of forming the agreement, including the exoneration clause.
3. Loss. Regarding the element of loss, the Plaintiff can describe in detail the losses he experienced as a result of the exoneration clause. Because the exoneration clause is a clause that transfers responsibility, the Plaintiff can explain the material losses he has experienced because he has borne the responsibility referred to in the exoneration clause.
4. Causality. In explaining the element of causality, the Plaintiff must be able to explain that the losses as stated previously are the result of the responsibility borne by the Plaintiff based on the existing exoneration clause.

Finally, after outlining the elements of the unlawful act, in the petitum part of the lawsuit the Plaintiff may submit to the judge as follows: Mengabulkan gugatan Penggugat untuk seluruhnya;

1. Declare that the Defendant has committed an unlawful act;
2. Declare the default clause on the transfer of responsibility in the agreement null and void and has no binding legal force;
3. Punish the Defendant to pay material and immaterial damages in the form of a sum of money.

In the case discussed, namely the lawsuit against the law occurred between Efi Yusliana v. PT Asuransi Jiwa Manulife Indonesia with the position of Efi Yusliana as the Plaintiff and PT Asuransi Jiwa Manulife Indonesia as the Defendant is interesting to discuss where the basis of the lawsuit at the first level is a lawsuit against the law, but after being rejected by the Panel of Judges, the plaintiff changed the basis of his lawsuit to default which the Panel of Judges at the Appeal level granted the appeal of the appellant/plaintiff and was upheld at the cassation level.

In this case, in the petitum of his lawsuit the Plaintiff did not explicitly request cancellation of the clauses in his insurance policy, but instead asked the judge to declare the policy agreement still valid and the Plaintiff had the right to accept the claim. In his answer, the Defendant stated that the actions he took were in

¹³ Zulham. (2017). *Hukum Perlindungan Konsumen*. Jakarta: Prenada Media. Hlm. 68.

accordance with clauses 6.1, 6.2, 6.3 and 6.4 of the Insurance Policy made between the Defendant and the Plaintiff. Therefore, to grant the lawsuit, clauses 6.1, 6.2, 6.3 and 6.4 of the insurance policy regarding cancellation of coverage must first be cancelled.

Regarding this matter, the Panel of Judges at the DKI Jakarta High Court considered that this clause was an exoneration clause which was made standardly by the Defendant unilaterally with the aim of freeing the Defendant from his responsibilities so that it was declared invalid. In this case, the Panel of Judges was wrong in stating that the Defendant had committed a breach of contract, where the Defendant should have committed an unlawful act because clauses numbers 6.1, 6.2, 6.3 and 6.4 in the Insurance Policy were exoneration clauses. Thus, the Panel of Judges should decide that the clause does not apply on the basis of an unlawful act and not a breach of contract.

4. Conclusion

In submitting the cancellation of the exoneration clause through an unlawful act lawsuit, in the *posita* section of the plaintiff's lawsuit must first outline the elements of the unlawful act as follows: Unlawful act on the inclusion of the exoneration clause which refers to several types of unlawful nature, Errors regarding the formation process the agreement, including related to the exoneration clause, Losses suffered as a result of the existence of the exoneration clause, and Causality which describes that the loss as previously stated was the result of the responsibility borne by the Plaintiff based on the existing exoneration clause.

With regard to the inclusion of the exoneration clause in the Agreement, the Panel of Judges in Decision Number 930 K/Pdt/2019 was mistaken in its considerations in assessing that the exoneration clause which had been standardized by the Defendant whose contents excluded or released the Defendant from demands and/or responsibilities was declared invalid . This is because if the Defendant does not want to accept the Plaintiff's claim, the Defendant should have made a selection in such a way as to require the Plaintiff to do a medical check first. Without carrying out a health check, then when the Plaintiff suddenly becomes ill and the Defendant does not want to bear it, it can be interpreted that the Defendant did not have good intentions and committed an unlawful act and was not a default.

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