

ANALYSIS OF LEGAL CERTAINTY OF STANDARD CLAUSES IN SALE AND PURCHASE NOTES FROM THE PERSPECTIVE OF ISLAMIC ECONOMIC LAW AND CONSUMER PROTECTION LAW

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Abstract

This research concerns the analysis of the legal certainty of standard clauses of sale and purchase notes, which aims to find out and analyze the standard clauses of sale and purchase notes from the perspective of sharia economic law and consumer protection law as well as a comparison between the two perspectives of sharia economic law and consumer protection law and to find out and analyze the certainty of sharia economic law and consumer protection law regarding standard clauses of sale and purchase notes. The object of this research is the provisions of the standard clauses of sales and purchase notes where consumers must comply with the contents of the standard clauses of sales and purchase notes made by business actors. The method used in this research is library research. The aim of this research method is to collect data and information with the help of various materials available in the library, including primary data sources in the form of the book Compilation of Sharia Economic Law, the book Law Number 8 of 1999 concerning Consumer Protection, books on economic law and sharia contracts in Indonesia, and books on the basics of consumer protection. while secondary data comes from articles, magazines and journals related to sharia economic law and consumer protection law regarding standard clauses in sales and purchase notes. The results of this research show that the analysis of legal certainty in the standard clauses of sales and purchase notes from the perspective of sharia economic law and consumer protection law is that there are consumer rights and obligations of business actors in the standard clauses of sales and purchase notes in sharia economic law and consumer protection law and meanwhile in the legal certainty in the standard clauses of standard sales notes, consumers obtain their rights and the consumer protection regulations regulated by law are guaranteed.

Keywords : Standard Clauses, Sale and Purchase, Payment Notes

INTRODUCTION

The process of exchanging *wakaf* (endowment) objects, known as *istibdal* in *fiqh* (Islamic jurisprudence), is a practice with debated permissibility among Islamic scholars. The actual debate exists within every school of *fiqh*, ranging from very strict opinions to those that facilitate the *istibdal* process (Muhammad Abid Abdullah Al-Kabisi, 2003: 349). In the current development of *wakaf*, the discussion about *istibdal* practices not only raises the question of their permissibility but is far more comprehensive, concerning the necessity to develop the management of *wakaf* objects.

With the growing and increasingly complex needs, many retail stores across Indonesia have policies to create clauses in the form of proof of payment. These clauses are known as standard clauses or boilerplate agreements. Standard clauses are essentially an invention in agreements as a form of self-protection for business actors. As is known, a standard clause is a unilateral agreement designed or created by a business actor in a written document, usually located in the corner or middle of the paper (Husni Syawali, 2018: 7).

In contract law, standard clauses are also called exoneration clauses, and they fall under the principle of freedom of contract. According to Salim H.S., freedom of contract is a principle that gives parties the freedom to create or not create an agreement, to enter into agreements with anyone, to determine the content, implementation, and conditions of the agreement, and to choose its form, whether written or oral (Titik Triwulan Tutik, 2010: 229). A standard clause is a clause that has been predetermined by the business actor on the packaging of goods or in documents related to the goods or services purchased. A standard clause is an agreement containing specific conditions that tend to favor the business actor (Az Nasution, 2011: 15).

Standard clauses also contain conditions that limit or even completely eliminate the responsibilities that should be borne by the seller or business actor. Standard clauses often cause losses to consumers. The difference between a standard clause and a boilerplate agreement is that a boilerplate agreement is a written or oral agreement made by two or more parties, which generally consists of a collection of clauses. Meanwhile, a standard clause is a separate part of the agreement, namely a clause, condition, or provision that is predetermined (standard) and is part of the agreement to be drafted (Ahmad Fikri Assegar: 2014, 4).

Standard clauses are generally made by the party with a stronger position, which in reality is usually held by the business actor. The content of standard clauses often disadvantages the party receiving them, namely the consumer, because they are drafted unilaterally. If the consumer rejects the standard clause, they will not receive the goods or services they need, as similar standard clauses will be found elsewhere. This results in consumers more often agreeing to the content of standard clauses even if they are unfavorable. For business actors, this may be a way to achieve efficient, practical, and quick economic goals without being protracted, but for consumers, it is an unfavorable choice because they are only presented with one option: to accept even if reluctantly (Abdul Kadir Muhammad, 1992: 6).

The use of standard clauses in Indonesia ranges from very simple boilerplate agreements, such as purchase receipts or notes containing the standard clause "goods that have been purchased cannot be exchanged or returned," to very complex health insurance boilerplate agreements (insurance policies) that use terms or phrases that are not easily understood by the insured as consumers (Johannes Gunawan & Berndrette M. Waluyo, 2021: 7). A receipt or note is a written document involving the seller and the buyer. It contains details of the product and the amount to be paid by the buyer. This note can only be given after the buyer has paid in full. Therefore, a receipt becomes valid proof of payment (Zaenie Asyadie, 2004: 45).

In the context of society, Islamic economic law means Islamic economic law derived from the Islamic economic system that exists in society, which is the implementation of *fiqh* in the economic field by the community. Islamic *Sharia*, an Arabic word meaning Islamic law, has been mentioned in the Quran, meaning the right path, which Allah asked Prophet

Muhammad SAW to follow and not to follow the behavior of others who do not know about *Sharia* (Veithzal Rival, 2010: 45).

Islamic Economic Law is the law that regulates human relations with each other in the form of agreements or contracts, related to human relations with economic objects or goods, and related to legal provisions for objects that are the subject of economic activities (Arifin Hamid, 2008: 45). Article 1 of the Compilation of Islamic Economic Law (KHES) states that Islamic economics is an effort or activity carried out by individuals, groups of people, legal entities or non-legal entities in order to fulfill commercial and non-commercial needs according to Islamic principles (Beni Ahmad Saebani, 2018: 17).

This issue will be examined from the perspective of Islamic economic law and consumer protection law. Therefore, based on the above, the researcher feels it is necessary to conduct further research on "Analysis of Legal Certainty of Standard Clauses in Sale and Purchase Notes from the Perspective of Islamic Economic Law and Consumer Protection Law." Based on the background explanation above, the identification of problems in this study is elaborated into the following points: 1) What are the perspectives of Islamic economic law and consumer protection law on standard clauses in sale and purchase notes? 2) What is the legal certainty according to Islamic economic law and consumer protection law regarding standard clauses in sale and purchase notes?

This research aims to 1) understand and analyze Islamic economic law and consumer protection law regarding standard clauses in sale and purchase notes. 2) To understand and analyze the legal certainty according to Islamic economic law and consumer protection law regarding standard clauses in sale and purchase notes.

Relevant prior literature aims to prove originality and serve as a data source in this research. The researcher's search found several previous studies that raise identical issues to the research that will be conducted, as follows: First, a thesis written by Ratih Cahyaningsih (2022) entitled "Applying the Clauses 'Trying Means Buying' and 'No Trying Allowed' from the Perspective of Islamic Economic Law." This thesis examines the main problem in this research, which is to determine the practice of applying the clauses "trying means buying" and "no trying allowed" in stores in Karangmoncol District, Purbalingga Regency, and to determine the view of Islamic Economic Law on the clauses "trying means buying" and "no trying allowed" in stores in Karangmoncol District, Purbalingga Regency. This type of research is field research with a qualitative model. The approach used is a normative approach.

Second, a thesis written by Rosyidah Hanum Harahap (2022), entitled "Juridical Review of Defects of Consent in Standard Clauses in Consumer Financing Agreements." This thesis examines the analysis of the Peace Deed Decision No. 860/Pdt.G/2020/PN Mdn, which stated that the creditor legally violated consumer protection laws and regulations and violated the legal requirements of the agreement contained in the Civil Code.

Third, a thesis written by Mustaghfiroh (2022), entitled "Analysis of the Application of Standard Clauses in Offline Stores in Jepara from the Perspective of *Khiyar* and Law No. 8 of 1999." This thesis examines the transaction of applying standard clauses in offline stores, which causes much harm because it violates the provisions of Islamic law, namely the pillars and conditions in the object of sale and purchase, and the right of *khiyar* (option) is not fulfilled, so the right of *khiyar* in offline stores is not applied because the seller has included a standard clause written in the store's description.

RESEARCH METHODS

This type of research is library research, which is conducted to solve a problem that fundamentally relies on a critical and in-depth examination of relevant literature. It is usually carried out in a new way and/or for new purposes. The research approach used in this study is a normative comparative approach. According to Elisabeth Nurhaini Batubara (2018), a

comparative approach is a research approach used to compare two or more phenomena to identify similarities, differences, or patterns that may exist between them. Meanwhile, a normative approach is defined as an approach to legal rules, both reviewed from the perspective of the hierarchy of legislation (vertical) and the harmonious relationship of legislation (horizontal). Primary data is data obtained directly from the first source, whether in the form of literature containing new scientific knowledge or new understandings of known facts or ideas (Sarjono Soekanto & Sri Mamudji, 2006: 29). Data analysis is carried out after the data collection is considered complete. The first stage involves organizing the data, followed by grouping the data, categorizing the data, and interpreting the data according to the predetermined guidelines. This analysis aims to discover and examine the analysis of the legal certainty of standard clauses in sale and purchase notes from the perspective of Islamic economic law and consumer protection law. This will lead to conclusions that answer the questions raised in the main issues.

RESULT AND DISCUSSION

Standard Clauses in Sale and Purchase Notes from the Perspective of Islamic Economic Law and Consumer Protection Law

Regarding economic transactions, Islam has granted freedom in commercial dealings. This freedom is based on broad and open legal principles to allow for continuous adaptation to evolving circumstances over time. This contrasts with matters of worship. In commercial dealings, there is a fundamental principle that explains why transactions in the economic sphere are so extensive (A. Djazuli, 2019: 130). Furthermore, Islam as a faith does not only instruct its followers to perform ritualistic acts of worship, which are forms of submission to Allah. The entirety of Islamic teachings is an interconnected unity aimed at bringing happiness and well-being to human life in this world and the hereafter. There is also a demand for Muslims to practice economics in a way that aligns with the values of Islamic teachings (Muhammad Julijanto, 2015: 225).

Standard clauses in boilerplate agreements are pre-designed by one party without involving the other. The other party is only given the opportunity to sign the content of the agreement that has been drafted. Subsequently, the consumer accepts and complies with the prepared clauses, with the risk of not obtaining the goods that are the object of the agreement if they do not sign it. This is because boilerplate agreements, with their various clauses, constitute a binding agreement for both parties (Ahmadi Miru & Sutarman Yudo, 2015: 120).

Agreement in a sale and purchase transaction should ideally involve the seller informing the consumer of unilaterally established rules before the consumer purchases the goods. However, these rules are often only written on the payment receipt. Generally, standard clauses are non-negotiable for consumers, meaning consumers are obligated to agree to purchase the related goods or services. Consequently, consumers will not receive the right to exchange goods and must bear the resulting loss. Regulations unilaterally imposed by business actors/standard clauses must comply with both Sharia and other applicable laws. As Sayyid Sabiq states in his book *Fiqh Sunnah*, a sale is "the exchange of property for property based on mutual consent or the transfer of ownership with a replacement in a permissible manner," and this is reinforced by the word of Allah SWT:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ
مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation: "O you who have believed, do not consume your wealth among yourselves unjustly but only [in lawful] business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is ever merciful to you." (Q.S An-Nisa: 29).

The principle of this verse is that any transaction must genuinely comply with applicable regulations and not be carried out solely for the sake of completing a transaction. The *sighat* (declaration and acceptance) in this transaction is not spoken directly, but the declaration occurs when the buyer makes a money transfer, and the acceptance occurs when the seller sends the goods according to the buyer's order. Thus, it can be concluded that the transaction is a sale and purchase transaction or *ba'i*.

In a sale and purchase note, a standard clause serves as proof of a sale and purchase transaction where the form of negotiation has been predetermined through an agreement binding the seller and buyer, stating that the purchased goods cannot be exchanged or returned. In this case, standard clauses should not be applied in sales because of the lack of willingness and satisfaction involved. Consumers feel unwilling and dissatisfied when purchasing goods from places that apply standard clauses, and they will feel disappointed with the products they are about to buy, especially if the purchased goods have defects or the quality of the goods delivered to the consumer does not match the price paid.

Therefore, one of the consumer's rights in Islam is the right to choose, known as *khiyar*. Through this right of *khiyar*, Islam provides ample space for consumers and producers to uphold their rights in trade, whether to continue the *aqad* (contract) or sale and purchase transaction or not. The right of *khiyar* is established by Islamic *Sharia* for those involved in sale and purchase transactions to avoid being harmed in their transactions, so that the intended benefit of a transaction is achieved in the best possible way. In the Compilation of Islamic Economic Law (KHES) Article 20 (8), the right of *khiyar* is the right of choice for the seller and buyer to continue or cancel the sale and purchase contract they have entered into (Mujahidin, 2010: 251). Looking at this definition, *khiyar* involves serious consideration, both negative and positive, for both parties before truly deciding to buy or sell. This is to avoid future losses for both parties. Thus, the right of *khiyar* is established in Islam to guarantee the mutual willingness and satisfaction of the parties involved in a sale and purchase.

Khiyar is the right of choice for one or both parties involved in a sale and purchase transaction when both the seller and the buyer have the right to assess whether they will truly buy, sell, cancel, or make a choice among the offered goods. The regulation of *khiyar* in the Islamic concept aims to provide an opportunity for each party for rational consideration before making a final decision in a transaction. *Khiyar* has a clear solution that is used by modern economists with a different term, known as a guarantee. Almost all modern goods production uses the term *khiyar* (guarantee) to attract consumer attention, and its application provides multiple benefits. This concept of *khiyar* illustrates the principle of freedom for all parties in carrying out transactions based on responsibility and reflects the principles of justice and equality of rights (Akhmad Farroh Hasan, 2018: 47).

This *khiyar* is based on two sources: first, the agreement between the parties organizing the contract, such as (a) *khiyar syarat*, which is defined as "a condition that allows one of the contracting parties or each party or other parties to have the right to cancel or affirm the contract during a specified period" (Siah Khosyi'ah, 2014: 130). (b) *khiyar ta'yin*, which is the buyer's right to choose goods of different qualities in a sale. According to Hanafi scholars, this type of *khiyar* is permissible because there are many similar products with different qualities that are not known with certainty by the buyer, so the buyer needs the help of an expert (Abdul Rahman Ghazaly, 2010: 103). Second, *syara'* (Islamic law), such as (a) *khiyar majelis*, which is the right of choice for both parties (seller and buyer) to continue or cancel the contract as long as they are in the same assembly or have not physically separated. This means that a contract is considered valid if both contracting parties have separated or one party has made a choice to sell or buy (Ending Hidayat, 2015). (b) *khiyar ru'yat*, which is the buyer's right to affirm or cancel a sale and purchase that they made on an object they had not seen when the contract took

place (Abdul Rahman Ghazaly, 2010: 101). And (c) *khiyar 'aib*, which is the right of a buyer to cancel the contract or continue it when they find a defect in the object of the contract that the other party did not disclose at the time of the contract (Ghufron A. Mas'adi, 2002: 112).

The application of standard clauses is frequently found on payment receipts/notes, written at the bottom in small font. Consequently, if consumers do not pay close attention to these receipts/notes, they will be unaware of the standard clauses. These clauses contain obligatory elements that consumers must fulfill to comply with the rules within the agreement. The application of standard clauses is also regulated by Law Number 8 Article 18 of 1999 concerning Consumer Protection. The presence of standard clauses means consumers are left with no recourse and must accept losses, while businesses bear no responsibility for damage to goods purchased by consumers. A contract created by parties should accommodate the interests of all involved. The existence of these interests is inseparable, as fundamentally, in contractual agreements, all parties have their own interests (Saipullah & Hildah, 2021: 3).

Consumer protection law defines standard clauses in Article 1 Paragraph (10) of Law Number 8 of 1999 concerning Consumer Protection, which states: "Standard clause is any rule or provision and conditions that have been prepared and predetermined unilaterally by the business actor and stated in a document and/or agreement that is binding and must be fulfilled by the consumer." In Article 18 of Law Number 8 of 1999 concerning Consumer Protection Law, the provisions regarding standard clauses are regulated in Chapter V concerning the Provisions for Inclusion of Standard Clauses, which consists of only one article.

If we examine the substance of Article 18 paragraph (1), which prohibits creating and/or including standard clauses in any document and/or agreement that states the transfer of responsibility of the business actor (letter a), this prohibition should ideally be limited to a period of 4 (four) years in accordance with the provisions of Article 27 letter e of the UUPK (Consumer Protection Law). This article stipulates that business actors who produce goods are released from responsibility for losses suffered by consumers if the claim period of 4 (four) years since the goods were purchased or the agreed-upon period has passed. Therefore, this provision is excessive, as it completely eliminates the possibility for business actors to evade responsibility by including it in a standard clause of a sales note (Ahmadi Miru & Sutarman Yodo, 2015).

Regarding the prohibition on including standard clauses stating that the business actor has the right to refuse the return of goods purchased by consumers as stated in Article 18 (letter b), there should be a reasonable time limit. This is the counterpart to the prohibition of standard clauses stating that the business actor has the right to refuse the return of money paid for goods and/or services purchased by consumers¹ (letter c). Thus, business actors are prohibited from refusing to accept the return of goods they have sold and from not returning the money they have received as payment for those goods, but of course, only if the return of the goods is for legally justified reasons. The prohibition in (letter d) of Article 18 paragraph (1) is appropriate. Standard clauses containing the granting of power of attorney from the consumer to the business actor to take any unilateral action related to goods purchased on installment are unfair. Furthermore, it can be qualified as an abuse of the consumer's situation, as are the provisions of Article 18 paragraph (1) letters f and h. The provision prohibiting business actors from creating standard clauses as mentioned in (letter e) of Article 18 paragraph (1) also appears to need revision. The prohibition for business actors to create standard clauses in letter e should not only concern the loss of the usefulness of goods or the utilization of services purchased by consumers, but also the reduction in the usefulness of goods or services. Thus, the complete wording of the prohibition should be, "shifting the burden of proof regarding the loss and reduction of the usefulness of goods or the utilization of services purchased by consumers" (Ahmadi Miru & Sutarman Yodo, 2015).

If the prohibition of standard clauses is limited only to the loss of the usefulness of goods or services, business actors can exploit the weakness of existing regulations by referring to the issue of reduced usefulness of goods or services in a standard clause. Regarding the prohibition in Article 18 paragraph (1) (letter g), it is understandable that this provision is intended to harm consumers, which will create uncertainty in its application. Ahmadi Miru states that the practice of creating standard clauses that currently contradicts the provisions of Article 18 paragraph (1) letter g has been going on for a long time, so the provisions of Article 18 paragraph (1) letter g are certainly intended to prohibit such clause-making practices (Ahmadi Miru & Sutarman Yodo, 2015).

Furthermore, the Consumer Protection Law in Article 18 paragraph (2) also prohibits business actors from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand. Any standard clause established by a business actor in a document or agreement that meets the provisions as referred to in paragraphs (1) and (2) is null and void by law. Consequently, business actors are obliged to adjust standard clauses that contradict the Consumer Protection Law. Of course, the Consumer Protection Law aims to create a balance between consumers and business actors. The regulation of the inclusion of standard clauses is not a bias towards the interests of consumers and detrimental to the interests of business actors (M. Roji Iskandar, 2017).

Consumer rights are rights that must be obeyed by producers, while consumer protection is a legal framework created to protect and fulfill consumer rights. For example, sellers are required to show a sales receipt indicating the price as proof of transaction to consumers. In Indonesia, the Consumer Protection Law Number 8 of 1999 concerning Consumer Protection explains that consumer rights include: the right to comfort, safety, and security in consuming goods and/or services; the right to choose goods and/or services and to obtain them in accordance with the exchange value and promised conditions and guarantees; the right to be treated or served correctly and honestly and without discrimination; the right to obtain compensation, indemnity, and/or replacement if the goods and/or services received do not comply with the agreement or are not as they should be; and so on (Rosmawati, 2018).

Current conditions and phenomena have resulted in an imbalance in the positions of business actors and consumers, placing consumers in a weak position. The main factor contributing to consumer weakness is the low level of consumer awareness of their rights (Christine S.T. Kancil, 2006). Among the consumer rights mentioned above, the right to comfort, safety, and security in consuming goods and/or services has the highest priority in consumer protection. This is because violations of these rights will directly impact consumer losses. Furthermore, to ensure that goods or services are safe, comfortable, and do not harm consumers in their use, consumers are given the right to choose the goods or services they desire based on the disclosure of true, clear, and honest information (Ahmad Yani & Gunawan Widjaja, 2000: 29).

To realize a good sale and purchase, a business actor is obliged to include all information related to the product. This aims to ensure that consumers know all the contents and information contained in a product they intend to buy. When consumers know the information about a product, they must be given the right to choose which product is suitable for their consumption to maintain their safety. Every consumer has the right to their rights according to their position as a consumer and based on applicable laws and regulations. This provision is expected to open up the development of new thinking about consumer rights in the future (Aulia Muthiah, 2023: 68).

Standard clauses are regulated in Article 18 paragraph (1) of Law No. 8 of 1999, which contains a limitative provision that business actors in offering goods/services intended for trade are prohibited from creating or including standard clauses in any document and/or agreement (contract) where these standard clauses result in the transfer of responsibility of the business

actor, refusal to return goods/money already paid, consumers being subject to new rules, changes, and continuations, power of attorney to take unilateral actions regarding installment goods, reducing the benefits/assets of consumers, and matters of consumer proof. The consequence of violating standard clauses is that the agreement is null and void by law, as regulated in Article 18 paragraph (3) of the Consumer Protection Law: "Every standard clause that has been determined by a business actor in a document or agreement that meets the provisions as referred to in paragraphs (1) and (2) is declared Null and Void by Law." In addition, Article 62 paragraph (1) of the Consumer Protection Law also regulates criminal sanctions for violations of standard clauses committed by business actors, as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letters a, b, c, e, paragraph (2), and Article 18, which are punishable by imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp 2,000,000,000.00 (two billion rupiah).

In the Indonesian consumer protection legal system, the body tasked with overseeing the inclusion of standard clauses by business actors is the Consumer Dispute Settlement Agency (BPSK). The consumer dispute settlement agency is tasked with overseeing the inclusion of standard clauses, in addition to resolving consumer disputes. However, BPSK is passive and only acts if there is a consumer complaint. BPSK is not authorized to take action against prohibited standard clauses. BPSK's action is limited to asking business actors to remove the prohibited clause if a dispute arises. Although the Consumer Protection Law states that prohibited standard clauses are null and void by law and requires business actors who include them to revoke them, BPSK states that it can only ask violators to revoke the violating clause.

For business actors today, standard clauses in sales notes are the most powerful weapon to avoid losses. The inclusion of standard clauses in sales notes during the sale and purchase process will be very beneficial for business actors, as they will be protected from liability for defective or damaged products. Meanwhile, based on the application of standard clauses by business actors, it can cause losses for consumers where the notification in the sales note states that purchased goods cannot be returned or exchanged. This is because business actors place the notification about the content of the standard clause in a position visible to buyers, which is located in the middle or corner of the note/receipt in a small font size. Thus, the standard clause listed in the sales note cannot be applied because it contradicts the law and the principles of propriety and justice. Business actors should not include standard clauses in sales notes that state the consumer's submission to these rules; at the very least, business actors should inform consumers about the existence of these standard clauses in the sales note.

Standard clauses in sales notes under Islamic Economic Law and Consumer Protection Law: According to Islamic Economic Law regarding standard clauses in sales notes, these are any rules and conditions that have been prepared in advance by the business actor and must be fully complied with by the consumer. Meanwhile, in Consumer Protection Law, standard clauses in sales notes are any rules or provisions and conditions that have been prepared and predetermined unilaterally by the business actor and stated in a binding document or agreement that must be fulfilled by the consumer. Furthermore, the provisions of consumer rights according to Islamic Economic Law are found in Article 20 concerning the right of *khiyar*, which is the right to choose to continue or cancel a transaction. Meanwhile, consumer rights according to Consumer Protection Law are found in Article 4, which includes the right to comfort, safety, the right to choose, the right to information, the right to be heard, the right to advocacy in consumer dispute resolution efforts, the right to guidance, the right to be treated properly, the right to compensation, and rights regulated in other laws and regulations.

In this regard, there is a clear and significant difference that causes a shift in legal norms, interpreted by various legal experts. Regarding the sanctions for violating standard clauses in sales notes, according to Islamic Economic Law, these are found in Article 38, which requires payment of compensation, transfer of risk, fines, and payment of court costs. Meanwhile, the

sanctions for violating standard clauses in sales notes according to Consumer Protection Law are in Article 62 paragraph (1), which stipulates a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah). Furthermore, ensuring the fulfillment of consumer rights provisions regarding standard clauses in sales notes will always be supervised according to Islamic Economic Law. Meanwhile, according to Consumer Protection Law, this supervision is carried out by BPSK (Consumer Dispute Settlement Agency). Based on the explanation above, the comparison of standard clauses in sales notes from the perspective of Islamic Economic Law and Consumer Protection Law can be simply described in the following table of differences and similarities:

Table 1. Differences and Similarities of Standard Clauses in Sale and Purchase Notes from the Perspective of Islamic Economic Law and Consumer Protection Law

No	Type	HES and HPK	
		Equality	Difference
1	Contents	In order to include standard clauses in a sales and purchase note, there must be information from the business actor to the consumer	In the HES there are no other provisions, whereas in the HPK there are provisions in Article 18 regarding the inclusion of standard clauses.
2	Consumer Rights	Consumer rights provisions include the right to choose options	The provisions on HES consumer rights are contained in the right to <i>khiyar</i> , Article 20 paragraph 8, while the provisions on HPK consumer rights are contained in Article 4, which includes the right to obtain security, comfort, safety, etc.
3	Sanctions		In the HES sanctions, there is Article 38 which states that compensation must be paid, risk transfer, fines and court costs, while HPK is contained in Article 62 paragraph (1) which states that the penalty is a maximum prison sentence of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).
4	Supervision		In HES regarding supervision by OJK. Whereas regarding supervision, while in UUPK it is contained in by the Consumer Dispute Resolution Agency (BPSK)

Based on the author's analysis, the differences and similarities regarding standard clauses in sale and purchase notes represent an appropriate form of legislative policy to inform business actors about the inclusion of standard clauses for consumers. This is because the content and form of the clauses are predetermined unilaterally by the business actor, and consumers are obligated to comply with them. This legal policy mandates that business actors must provide information about the inclusion of standard clauses in sale and purchase notes before agreeing to a sale and purchase transaction, as a form of rights and obligations that must be fulfilled by the business actor.

Legal Certainty of Standard Clauses in Sale and Purchase Notes Regarding Islamic Economic Law and Consumer Protection Law

Legal certainty, as one of the objectives of law, can be considered part of the effort to achieve justice. The concrete form of legal certainty is the implementation or enforcement of law against an action regardless of who commits it. With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is necessary to realize the principle

of equality before the law without discrimination (Bodenheimer & Satjipto Rahardjo, 2006: 277).

These rules fundamentally regulate or contain general provisions that serve as guidelines for the behavior of every individual in society. The existence of such legal rules and their implementation will create legal certainty, which, in Peter Mahmud's view, has two meanings: first, the existence of general rules allows individuals to know what is permissible and what is not; and second, it provides legal security for individuals from government arbitrariness because with these general rules, individuals can know what the state is allowed to impose or do to them (Peter Mahmud Marzuki, 2008: 136).

The significant development of Islamic economics in Indonesia demands a set of laws and regulations that can provide legal certainty to practitioners of Islamic economics in carrying out Islamic economic activities. Standard clauses have developed rapidly, originating from the need for parties to create fast and efficient contracts (Muhammad Hasan Muaziz, 2015: 83) with the intention of achieving efficiency, certainty, and greater practicality. In Islamic economic law related to standard clauses in sale and purchase notes, they tend to favor the drafter, in this case, the business actor, who has ample time to create a standard clause note included in the sales note. Meanwhile, the buyer does not have sufficient time to negotiate the existence of these standard clauses. Moreover, some members of the public are unaware or not yet aware of the content of standard clauses in sale and purchase notes. Additionally, the buyer is in a weak position, meaning they have no choice other than to accept or reject the standard clause agreement created by the business actor.

Standard clauses in sale and purchase notes within an agreement can contain obligations that the buyer needs to fulfill, as well as possibilities that eliminate the responsibility of one party, namely the business actor (Sekararumu Intan Munggarang, 2019: 188). The definition of a standard clause itself is an agreement made by two parties where one party standardizes its clauses to the other party, who has no freedom to bargain and no choice but to accept them (Syamsul Anwar, 2010: 318).

Based on the principle of legal certainty, the inclusion of the clause "Goods purchased cannot be exchanged/returned" on the payment receipt created by the business actor is a manifestation of legal certainty for both the business actor and the consumer. As mentioned, the sale and purchase agreement binds the parties like a law. Both parties and third parties must respect the substance of the contract that has been made. Thus, the business actor obtains certainty over the goods sold to the consumer, which have been approved and explicitly sold. Consumers cannot suddenly exchange or return the goods they bought at any time according to their wishes, as this is considered a violation of the agreed-upon terms of the agreement. Consequently, with this certain agreement, the business actor has obtained legal clarity over the goods being traded (Imam Mahfud Qosam & Holil Nawawi, 2022: 166).

The conformity between intention and expression is the basis for the formation of an agreement. Although there is conformity between intention and expression, a legal act can still be canceled if there is a defect in the intention. A defect in intention occurs when someone performs a legal act with an imperfect intention (Herlie Budiono, 2010: 98). Agreement in a contract is actually based on the idea of the need for legal certainty and legal protection of rights among the parties, which must be fulfilled through the implementation of obligations. Legal acts to create agreements in contracts are carried out to ensure fair treatment for all parties involved in the contract (Reinhard Politon, 2017: 137).

To avoid losses in the inclusion of standard clauses in sale and purchase notes, buyers should be more selective and careful before purchasing goods. This is to minimize disputes if one party suffers a loss. Because sometimes in a sale and purchase transaction, if the buyer forgets to make an agreement regarding the condition of the goods and the payment to be made at the beginning of the transaction, the purchased goods cannot be returned. The offer in the

transaction is a sales activity carried out by the seller, where the seller utilizes the inclusion of standard clauses in the sale and purchase note. The buyer's initial acceptance must clearly state the initial agreement so that the right of *khiyar* in the sale can become a legal certainty for the parties, because sometimes sellers do not have it (Wahyu & Rahmadi Indra Tektona, 2020: 12). The legal position of consumer protection is within the study of economic law. Legal protection for consumers has many dimensions, one of which is legal protection that, when viewed both materially and formally, will increasingly feel very important. Thus, efforts to provide legal protection for the interests of consumers are important and urgent to find solutions and resolve problems as soon as possible (Eli Wuria Dewi, 2015: 5). Furthermore, consumer protection is closely related to aspects of legal protection, where what receives legal protection is not merely physical but primarily the protection of the abstract rights of consumers (Sri Lestarringsih, 2013: 398). In other words, consumer protection is essentially identical to the protection provided by law to consumer rights (Shidarta, 2006).

Consumer protection guaranteed by this law is directed towards legal certainty regarding all acquisitions of consumer needs. Legal certainty includes all legal efforts to empower consumers to obtain or determine their choices of goods and/or services and to maintain or defend their rights if harmed by the behavior of business actors. While the Consumer Protection Law is still an ideal and a struggle of the consumer movement, we need to continue to socialize consumer protection issues to the wider community, especially to the educated, students, scholars, and activists in general (Az Nasution, 1995), to create legal certainty as part of the goal of consumer protection law and to clarify the rights and obligations of each interacting party, as well as the explanation and elaboration of the rights and obligations of business actors (Happy Susanto, 2008).

Protection for consumers is closely related to aspects of legal protection, where what receives legal protection is not merely physical but primarily the protection of the abstract rights of consumers. In other words, consumer protection is essentially identical to the protection provided by law to consumer rights. In addition, there is also ease in the process of handling consumer disputes arising from losses due to damage to property, safety, and health, as well as the use and/or utilization of consumer products. The opening of a special dispute resolution space by the Consumer Protection Law provides various benefits not only for consumers but also for business actors themselves and even for the government. The benefits for consumers include obtaining compensation for losses suffered and protecting other consumers from experiencing the same losses, because one complaint can help many others. Complaints submitted by consumers through public spaces and receiving mass media coverage will encourage a more positive response from business actors and demonstrate to the public that business actors pay more attention to consumer interests. For business actors, the space for dispute resolution or consumer law enforcement has certain meanings and impacts; the benefits include that complaints can serve as a benchmark and starting point for improving product quality and correcting other deficiencies, can provide information about the possibility of counterfeit products, and for the government as a policymaker and controller of various public interests, this development is important because it provides benefits such as easier supervision and control of products circulating in the market, identifying weaknesses in the implementation of government regulations or standards, and revising existing standards. Consumer disputes are not meant as disputes in a broad sense, encompassing criminal law and state administrative law, because the Consumer Protection Law regulates dispute resolution that is dual and alternative (Dian Wahyulinal & Febry Chrisdanty, 2018: 87-88).

The Consumer Protection Law upholds and provides legal certainty to consumers in guaranteeing and fulfilling their rights, as well as providing limitations and responsibilities for business actors to be honest in sale and purchase transactions, thereby creating fairness between consumers and business actors. The regulation of standard clauses in consumer protection law

is not intended to discredit business actors and ignore their interests but aims to create balance and fairness in terms of consumer legal protection (Ahmadi Miru & Sutarman Yodo, 2012: 119). Legal certainty to protect consumer rights in the inclusion of standard clauses in sale and purchase notes is strengthened through special laws, giving hope that business actors will no longer act arbitrarily and always harm consumer rights. With the Consumer Protection Law and other legal instruments, consumers have equal rights and positions, and consumers can sue or demand if their rights have been harmed or violated by business actors.

CONCLUSIONS

Based on the research findings and the analysis of the discussion regarding Standard Clauses in Sale and Purchase Notes from the Perspective of Islamic Economic Law and Consumer Protection Law, it can be concluded that: In the perspective of Islamic Economic Law, standard clauses in sale and purchase notes are not permissible because they eliminate consumer rights as stipulated in Article 20 paragraph (8) of KHES concerning the right of *khiyar*. This right of *khiyar* serves as a form of consumer protection. Therefore, standard clauses in sale and purchase notes lead to injustice and unilateral loss for consumers. On the other hand, Consumer Protection Law already has regulations in place regarding standard clauses in sale and purchase notes, as outlined in Article 4 of Law Number 8 of 1999, which includes the right to safety and security, the right to information, the right to choose, the right to be heard, the right to compensation, and the right to receive goods in accordance with the value exchanged. Consequently, standard clauses in sale and purchase notes contradict the principles of fairness and eliminate consumer rights. Furthermore, the comparison of standard clauses in sale and purchase notes from the perspective of Islamic Economic Law and Consumer Protection Law reveals a form of legislative policy aimed at informing business actors about the inclusion of standard clauses for consumers.

In Islamic Economic Law, the legal certainty regarding the specific inclusion of standard clauses in sale and purchase notes is not explicitly mentioned. However, if such clauses are detrimental, unjust, or eliminate consumer rights, they are not permissible. Conversely, in Consumer Protection Law, legal certainty concerning standard clauses in sale and purchase notes is found in Article 1 number (1) of Law Number 8 of 1999 concerning Consumer Protection. This legal certainty encompasses all legal efforts to empower consumers in obtaining or determining their choices regarding necessary goods and/or services and in maintaining or defending their rights if harmed by business actors and providers of consumer needs. Furthermore, legal certainty is provided in Article 18 paragraph (1) letter (a) and Article 18 paragraph (3) of the Consumer Protection Law, which can prevent consumers from arbitrary actions by business actors who include standard clauses in sale and purchase notes.

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