



## Enhancing Consumer Protection in the Indonesian Financial Service Sector through the Utilization of Standardized Contracts

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### Article Information

Submitted : May 15, 2022  
Reviewed : October 27, 2022  
Revised : November 15, 2022  
Accepted : February 10, 2023

**Keywords:** consumer protection;  
financial service sector; standard  
contract

Doi: [10.20961/yustisia.v12i2.61271](https://doi.org/10.20961/yustisia.v12i2.61271)

### Abstract

The Financial Services Sector is a pioneer in developing standard contract regulations. This standard contract complements Contract Law that did not initially regulate standard contracts. This study aims to analyze the development of standard contract regulation in the Indonesian financial services sector. It examines aspects that require strengthening so that standard contracts can become a protecting consumer tool in the financial services sector. This study uses a normative juridical approach with a descriptive-analytical research specification. The results show that: 1) The development of standard contract regulations in the POJK on Consumer Protection used by Financial Service Business Actors (PUJK) contains the principles and prohibitions on including exoneration clauses and undue influence. This provision fills the legal vacuum regarding standard contracts that still refer to the freedom of contract principle and Book III of the Civil Code and other related regulations. The use of the standard contracts encourages PUJK to comprehend the importance of consumer protection; 2) OJK should strengthen regulatory aspects by issuing guidelines on standard contract formats and contain correct interpretations of the scope of undue influence and supervise the standards contract both directly and indirectly that have been implemented by PUJK.

### I. Introduction

A contract is a form of written agreement ([I Gst. Agung Rio Diputra, 2018](#)) that is commonly used in practice it is based on freedom of contract that has been recognized as a 'general principle of civil law' ([Irakli, 2017](#)). This written contract or agreement is one of the forms of agreement made by the parties besides the unwritten form (oral) and electronic form as the development of electronic-based forms of agreement ([Lastuti](#)

[Abubakar & Tri Handayani, 2018](#)). In addition to functioning as evidence, a written contract or agreement makes it easier for the parties to express their interests in clauses that contain the exact rights and obligations of the parties. A standard form of agreement or standard contract is generally interpreted as an agreement whose clauses or format are determined unilaterally by one of the parties. The terms or conditions of the agreement have been written (preprinted) in full and basically cannot be changed anymore. In practice, the contents of a standard contract have been made by one party so that the other party cannot express their interest freely ([Poernomo, 2019](#)). In its development, standard contracts have been widely used in organized trading transactions. In the mid-20<sup>th</sup> century, the adoption of standards contract was widely used as an important part of highly-elastic legal institutions aimed at protecting the goods and services market. Standard contracts are a means for various types of transactions based on the “take it or leave it” principle. ([Prasnowo et al., 2019](#)).

Standard contracts are considered in contract formation and are an important part of the world economic landscape. It is estimated that consistently, over the last few decades, more than 99% of the contracts used in commercial and consumer transactions are standard contracts ([Cornelius, 2018](#)). The benefits of standardization are well understood and have been explored extensively. As terms become increasingly common and well-known, they are easier for contracting parties and courts to interpret. They also confer various spillover effects, such as lower reading costs, increased certainty of legal interpretation, and reduced litigation risk ([Mattiacci & Marotta-Wurgler, 2022](#)).

Likewise, in Indonesia, using an agreement, also known as a standard contract, takes a lot of work, especially in industries doing mass services. In reality, it is realized that the standard contract is enforced without a negotiation process between the parties but has been designed by the business actor. The conditions prepared by the business actor are standardized and outlined in an agreement that has been printed and then submitted to the other party for approval, with almost no opportunity for the other to negotiate these conditions ([Rachmanto, 2018](#)).

From the perspective of contract law, standard contracts are considered an extension of an agreement, hence, there are no objections to the use of standard contract. ([Mahendar & Budhayati, 2019](#)). In addition to standard contracts in physical form, standard contract forms have developed into digital contracts ([Sektor Jasa et al., 2015](#)) that possess specific characters. Therefore, the principles and provisions governing contract law in the Civil Code apply to standard contracts. The only provisions relating to standard contracts are the provisions of Article 18 of Law Number 8 of 1999 on Consumer Protection (Consumer Protection Law) that regulates the prohibition of the inclusion of standard clauses in every document and/or agreement. Even though it does not explicitly state that the agreement in question is a standard contract, it can be interpreted that the prohibition of the inclusion of the standard clause is actually intended for business actors who make standard contract. The content of the prohibition in the Consumer Protection Law was

later adopted by the provisions governing the use of standard contracts in the financial services sector.

The financial services sector is an industry that has been using standard forms of agreements or standard contracts. Referring to Point I.1 of Circular Letter of the Financial Service Authority (hereafter written as *SEOJK*) Number 13/SEOJK.07/2014 on Standard Contracts, what is meant by Standard Contract is a written agreement established unilaterally by Financial Services Business Actors (hereafter written as *PUJK*) and contains standard clauses regarding the content, form, and means of execution, and are used to offer products and/or services to consumers on a mass scale. Meanwhile, Point I.3 of the *SEOJK* defines Consumers as a party placing their funds and/or benefitting from the services available at the *PUJK*, including, but not limited to, customers in Banks, investors in the Capital Market, reinsurance companies, and participants in Pension Funds, based on the laws and regulations in the financial services sector. The policy of using standard contracts in the financial service sector is a repressive measure taken by OJK to provide legal protection for consumers ([Kadek Desy Pramita & Kadek Diva Hendrayana, 2021](#)). Consumer protection can be accomplished through a variety of different means. Often, how a country decides to provide consumer protection is dependent on its culture and norms. UNCTAD highlights six bodies often used to accomplish consumer protection goals: government agencies, statutory/non-statutory standards bodies, ombudsmen, professional and industrial associations, consumer associations, and self-regulation. Each of these bodies brings with it a unique set of advantages and disadvantages ([Samantha Kiel, 2019](#)).

Besides for the sake of efficiency, *PUJK*, especially banks, use standard contracts as a means to ensure that the agreements regulate matters that are in line with all applicable laws and regulations to ensure compliance with the prudence principle. ([Abubakar & Handayani, 2017](#)). In addition to banking, the capital market industry and other non-bank financial industries also utilize standard contracts. From the perspective of industry or business actors, the use of standard contracts is highly valued but differs from the perspective of consumers. There is a perception that standard contracts put consumers in a weaker position and do not have the power to fight for their interests. One of the legal issues that arise in the use of standard contracts in Indonesia is the doubt whether the standard contract meets the principles in the agreement, including the principle of equality. The meaning of this principle is that the parties have an equal position that places both parties equally both in rights and obligations. The agreement obtained in the agreement is the result of negotiations between the parties. Such a process is not found in standard contracts. ([Panggabean, 2010](#)) Concerns that the use of standard contracts will harm consumers can be understood considering the characteristics of standard contracts as stated by Mariam Darus Badruzaman, namely: ([Herlien Budiono, 2008](#)).

- a. the contents are determined unilaterally by the creditor whose position is relatively stronger than the debtor;

- b. the debtor does not participate in determining the contents of the contract;
- c. the debtor is forced or has no other options but to accept the agreement due to particular circumstances;
- d. it is in a written form;
- e. prepared in advance on a mass scale or tailored individually;

Based on the mentioned characteristics of the standard contract, there is a huge potential that one of the parties takes advantage of another party as having a stronger bargaining position to obtain an agreement from another party. Article 1321 of the Indonesian Civil Code stipulates that “there is no valid agreement if the agreement was given by mistake, or obtained by coercion or fraud”. The term of ‘agreement’ requires both parties to have free will. The parties are free from the pressure resulting in “defects” for the realization of their will. Any valid agreement represents the free will of the contracting subjects ([Saputra, 2022](#)).

An error, coercion, and fraud are defects in entering into an agreement, which results in the agreement being void (*vernietigbaar*) ([Mariam Darus Badruzaman, 2015](#)). In its development, the Dutch *Nieuw Burgerlijk Wetboek* (NBW) since January 1992 stipulates that the agreement can be canceled if one of the parties to the agreement is in a state of emergency or forced or in a situation where the opposing party has a stronger psychological state and abuses the circumstances (Article 3:44 NBW) ([Herlien Budiono, 2008](#)). Thus, NBW has added “abuse of circumstances (*misbruik van omstandigheden*) as another type of disability that is not regulated in Book III of the Indonesian Civil Code. In addition, abuse of circumstances can also occur when a person is in a difficulty, such as psychological imbalance, inexperience or dependence on other people to make decisions. In practice, the consumer often complains of the inclusion of exoneration clauses such as setting interest rates that are deemed burdensome to the debtor if one day the credit interest is raised. ([Muliatio et al., 2020](#)) The inclusion of a clause regarding changes in interest rates, for instance, is a debate whether this includes an exoneration clause that is prohibited or can be allowed, considering that bank interest rates refer to the *Bank Indonesia* (hereafter written as *BI*) rate set by BI as the monetary authority. The *BI* rate is the policy interest rate that reflects the monetary policy stance set by Bank Indonesia and announced to the public. The BI rate is announced by the Board of Governors of Bank Indonesia at each monthly Board of Governors Meeting. ([Departemen Statistik \(DSta\) Bank Indonesia, 2016](#)). With regards to this definition, changes in interest rates over time have a clear legal basis, while announcements to the public can be interpreted that these changes should be known by the public. Therefore, the inclusion of changes in interest rates at any time cannot be categorized as an exoneration clause. However, there is an opinion that classifies ‘changes in interest rates at any time without notification as an exoneration clause and requires banks to properly convey the changes in interest rates.

It seems that OJK is aware of the need for proper regulation regarding the use of standard contracts by Financial Services Businesses (*PUJK*). The interesting part about

standard contracts in financial services activities such as those in banking, insurance and financing institutions is the regulation on the use of standard contracts which are intended to provide optimal legal protection for consumers in the financial services sector ([Handayani, 2022](#)). This interpretation refers to Article 4 letter c of Law No. 21 of 2011 on the Financial Services Authority (hereafter written as Law on *OJK*) stipulating that one purpose of the *OJK* establishment is that all activities in the financial services sector are able to protect the interests of consumers and the public, including protection against violations and crimes in the financial sector such as manipulation and various forms of embezzlement in financial services activities. Furthermore, Article 5 of the *OJK* Law stipulates that *OJK* functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. Based on these two articles, *OJK* issues regulations that specifically regulate consumer protection in the financial services sector, including specifically regulating the use of standard contracts in financial services sector activities. Therefore, it can be interpreted that the use of standard contracts should be able to provide optimal protection to consumers and the public to support the function of *OJK*.

This article is different from other articles, in this article the emphasis is on the standard contract issued by the *OJK* which is a step to provide legal protection to consumers. In addition, the use of standard contracts is a means for *OJK* to ensure and supervise that the legal relationship between *PUJK* and consumers fulfils the principles and objectives of a good contract. Thus, the use of standard contracts will become a means for *OJK* to oversee the implementation of agreements between *PUJK* and consumers based on consumer protection principles as regulated in *POJK* Number 1 of 2013 on Consumer Protection in the Financial Services Sector which was revoked by *POJK* Number 6 of 2022 concerning Consumer and Public Protection in the Financial Services Sector (*POJK* Consumer and Public Protection), which was followed by the issuance of *SEOJK* Number 13/*SEOJK.07/2014* on Standard Agreement (*SEOJK* Standard Agreement). This article is different from other articles; in this article, the emphasis is on the standard contract issued by the *OJK*, which is a step to provide legal protection to consumers. In addition, using standard contracts is a means for *OJK* to ensure and supervise that the legal relationship between *PUJK* and consumers fulfills the principles and objectives of a good contract. Thus, the use of standard contracts will become a means for *OJK* to oversee the implementation of agreements between *PUJK* and consumers based on consumer protection principles as regulated in *POJK* Number 1 of 2013 on Consumer Protection in the Financial Services Sector which was revoked by *POJK* Number 6 of 2022 on the Consumer and Public Protection in the Financial Services Sector (*POJK* Consumer and Public Protection), which was followed by the issuance of *SEOJK* No. 13/*SEOJK.07/2014* on Standard Agreement (*SEOJK* Standard Agreement). This study aims to examine and analyze the development of regulations regarding standard contracts to protect consumers in the financial services sector. This study also manages to initiate the strengthening of legal aspects to optimize the use of standard contracts. The results of

this study can provide an understanding that the standard contracts used by *PUJK* are a means for *OJK* to monitor and ensure that *PUJK* places consumers in an equal and fair position. As stated by Lawrence M. Friedman, the success or failure of law enforcement depends on three elements of the legal system: the legal structure, legal substance, and legal culture. The legal structure concerns law enforcement officers, legal substance includes statutory instruments, and legal culture is a living law that is adhered to in a society ([Friedman & Lawrence M, 1987](#)).

This study uses a normative juridical approach, namely research that uses secondary data, both primary legal materials in the form of laws and regulations relating to the problem under study; secondary legal materials, such as books, articles, journals, research results, and papers relevant to the problem; and tertiary legal materials, namely legal dictionaries that provide an understanding of primary and secondary legal materials. Furthermore, the data collected was qualitatively and legally analyzed. This study specifies analytical description; namely, the results of processing and data analysis are described in the form of a description in a complete and detailed manner.

## II. Findings and Discussion

### A. Standard Contract Regulation in the Financial Service Sector

The standard contracts issued by the *OJK*, especially banking contracts, result from adopting international institutions issued by the Basel Committee. In addition, there are other committees whose function is to provide guidelines on the practices of financial institutions in the financial services sector, such as the Committee on Payment and Market Infrastructure, which guides in providing contract standards so that one country and another are the same. However, in practice in Indonesia, it will be readjusted with generally accepted legal principles so that regulatory disharmony does not occur. Standard contracts are not specifically regulated in Book III of the Civil Code either as a type or as a form of agreement. Therefore, the standard contract is a development of the form of practice agreement. The development of this standard form of contract is based on the principle of freedom of contract as regulated in Article 1338 Paragraph (1) and an open system of contract law as regulated in Article 1319 of the Civil Code. Basic principles of freedom of contract demand that parties are sovereign to agree to whatever they like, with some exceptions made based on public policy (such as illegally). It may be that “good faith” will be viewed as a doctrine required by public policy that cannot be excluded ([Davies, 2019](#)).

According to Indonesia Contract Law, the principle of freedom of contract covers the following scopes: 1) freedom to enter into or not to enter into an agreement; 2) freedom to choose the party with whom to agree; 3) freedom to determine or choose the cause of the agreement made; 4) freedom to determine the object of the agreement; 5) Freedom for the terms of an agreement, including

the freedom to accept or deviate from the optional provisions of the law (annulled, optional). ([Anna Maria Tri Anggraini et al., 2022](#)).

As a form of agreement that develops in practice, as long as it fulfils the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code, the standard contract is accepted as a form of agreement. Thus, the principles in Book III of the Civil Code as “*lex generale*” still apply to standard contracts. The use of standard contracts, which admittedly have many loopholes for abuse, has prompted *OJK* to specifically regulate standard contracts. Based on the function of regulating and supervising the financial services sector activities, *OJK* issues *POJK* on Consumer and Public Protection to create a reliable consumer protection system, increase consumer empowerment, and raise awareness of *PUJK* with regards to the importance of consumer protection so as to increase public trust in the financial services sector. The *POJK* on Consumer and Public Protection specifically pays attention to the use of standard contracts. Referring to Articles 28-34 of the regulation, there are several aspects that must be considered by *PUJK* in composing standard contracts, namely:

1. *PUJK* must fulfil the principle of equality, fairness, and propriety in making agreements with consumers (Article 28-29)
2. Standard contracts must be based on the applicable laws and regulations (Article 30 paragraph 1)
3. The standard contracts can be in the digital or electronic form to be offered by the *PUJK* through electronic media (Article 30 paragraph 2)
4. Standard contracts are prohibited from containing clauses as regulated in Article 30 paragraph 4 and 5.

Furthermore, the prohibited clauses in the standard contract are:

1. Exoneration/exception clause, namely the content of adding rights and/or reducing the obligations of the *PUJK*, or reducing the rights and/or increasing the obligations of the Consumers.
2. Abuse of circumstances, namely a condition in a standard contract that shows indications of abuse of circumstances. An example of this condition is taking advantage of an urgent condition of consumers due to certain conditions or in an emergency and the *PUJK* intentionally or unintentionally does not explain the benefits, costs and risks of the products and/or services offered.

Furthermore, standard contracts that are prohibited are agreements that contain matters as regulated in Article 30 Paragraph (5) of the *POJK* on Consumer and Public Protection (previously regulated in Article 22. Par 3 *POJK* No.1/2013) which is then reloaded in *SEOJK* on Consumer Protection Number II. 4, namely:

1. To state any transfer of responsibilities or obligations of the *PUJK* to Consumers;

2. To state that the *PUJK* has the right to refuse the refund of money that has been paid by the Consumer for the product and/or service purchased;
3. To state that the Power of Attorney from the Consumer to the *PUJK*, either directly or indirectly, to take all unilateral actions on goods pledged as collateral by the Consumer, unless the unilateral action is carried out based on the applicable laws and regulations;
4. To place the burden of proof on consumers at the time *PUJK* stated that the loss of use of the products and/or services purchased by the Consumers is not the responsibility of the *PUJK*.
5. To grant the *PUJK* the right to reduce the use of products and/or services or reduce the Consumer's assets that are the object of the product and service agreement;
6. To declare that the Consumer is subject to new, additional, continued and/or changes made unilaterally by the *PUJK* during the period when the Consumer is using the products and/or services purchased; and/or
7. To state that the Consumer authorizes the *PUJK* to charge mortgage, pledge, or guarantee for products and/or services purchased by Consumers in instalments payment.

To ensure that the *PUJK* has complied with the applicable regulations with regards to the use of standard contracts, *POJK* Number 1 of 2013 Article 54 of the Transitional Regulations stipulates that the *PUJK* is obligated to adjust the standard contracts that have been made to the provisions in Article 22 no later than the time the *POJK* on Consumer Protection takes effect. Meanwhile, Article 57 confirms that the *POJK* on Consumer Protection takes effect 1 year after the promulgation, namely 6 August 2013. Thus, as of 6 August 2014, standard contracts made by *PUJK* must pay attention to the obligations and prohibitions in standard contracts. In the event that the *PUJK* has complied with the clauses of the standard contract as regulated in article 54 of the *POJK* on Consumer Protection, the *PUJK* must notify the consumer. The notification is made by including a statement in the standard contract as follows, "This agreement has complied with the applicable laws and regulations including the Regulation of the Financial Services Authority".

The provisions governing standard contracts in *POJK* on Consumer and Public Protection are mandatory and must be complied with by *PUJK*. This can be seen in Article 45 Paragraph (1) which regulates sanctions. *OJK* may impose administrative sanctions on *PUJK* that violate the *POJK* on Consumer Protection, including but not limited to:

- a. written warning;
- b. fines, namely the obligation to pay a certain amount of money;



- c. limitation of business activities;
- d. Suspension of business; and
- e. revocation of business license.

The sanctions as regulated in Article 45 Paragraph (1) letter b - letter g may be imposed with or without a written warning as provided for in Article 45 Paragraph (1) letter a. With regards to the imposition of sanctions, the Financial Services Authority may announce the sanctions to the public. This is in line with OJK's objective to provide optimal legal protection for consumers.

## **B. The Substance of Standard Contracts used by PUJK**

One of the characteristics of a standard contract is that the contents or clauses are determined by one of the parties (in this context, the *PUJK*). Although determined by the *PUJK*, the standard contract must comply with the *POJK* on Consumer and Public Protection provisions and the *SEOJK* on Standard Contracts that aim to provide an equal position between the *PUJK* and consumers. Thus, standard contracts will have no potential to harm consumers. The *PUJK* must consider several aspects in making and determining the contents of a standard contract, namely:

1. In making standard contracts, *PUJK* is obliged to apply the principles as regulated in Article 21 of the *POJK* on Consumer Protection (Article 29-30 *POJK* Number 6 of 2022), namely the principle of equality, fairness, and propriety. What is meant by equality, for example, in the event that consumers have provided honest and true information/documents, the *PUJK* is obliged to keep and use the information and documents solely for the benefit of the consumers. Meanwhile, the principle of fairness in standard contracts is interpreted as the obligation of the *PUJK* to provide products and/or services at the agreed price. The principle of propriety in standard contracts can be seen from the pricing or fees charged for products and/or services in accordance with the costs incurred.
2. Standard contracts are prohibited from containing clauses as regulated in Article 22 Paragraph (3) *POJK* on Consumer Protection (Article 30 Paragraph 4, 5 *POJK* 6 of 2022). In principle, these prohibitions are aimed at holding *PUJK* accountable for their obligations or not being allowed to transfer their responsibilities and impose them on the consumers. To take a case in point, a standard clause is considered to waive the *PUJK* responsibility in a credit card issuance agreement stating "the cardholder releases the credit card issuer from liabilities to provide compensation in any form arising from complaints or claims filed by the cardholder or those given the authorization by the cardholder". This clause transfers responsibilities that are legally the responsibility of the *PUJK*.

3. Referring to Article 22 Paragraph (3) letter d, it can be concluded that the *PUJK* (has the burden of proof) is obliged to prove if the consumer loses the use of the product and/or service purchased as Consumer Protection in the Financial Services Sector.
4. Standard contracts are prohibited from containing a clause that consumers are subject to the new regulation, additional, extension and/or amendment made unilaterally by the *PUJK* during the period when the consumer utilizes the product and/or service he/she purchases. Based on the principle of propriety, the consumer as a party to the agreement is bound by the terms of the agreement that have been known in advance, the parties may not be able to know and understand the terms that do not yet exist. In practice, the inclusion of this clause is found in the agreement to open a new bank account at the *PUJK*.
5. In the event that the *PUJK* imposes a guarantee, be it mortgage, lien or security rights for products and/or services purchased by consumers in instalments, they must use a separate power of attorney from the main agreement.

In addition to regulating and providing guidelines with regards to the substance of standard contracts used by *PUJK*, *SEOJK* on Standard Contract also regulates formats for standard contracts, namely:

1. A standard contract which contains the rights and obligations of consumers and requirements that are legally binding on consumers must use letters, scripts, symbols, diagrams, marks, terms, phrases that can be read, and/or sentences in Indonesian that are easily understood by consumers.
2. *PUJK* is required to provide explanation terms, phrases, sentences and/or symbols that are not yet understood by consumers, both in writing and orally before the agreement is signed.
3. In the event that the contract uses terms, phrases, and/or sentences from other languages, it must be accompanied by terms, phrases, and/or sentences in Indonesian.
4. Standard contracts can be in digital or electronic form (e-contract) to be offered by the *PUJK* through electronic media.
5. In the case of a standard contract in printed form, the *PUJK* is obligated to ensure that there is written approval by, among others, affixing a signature to the standard contract or other documents that are an integral part of the standard contract stating the consumer's approval; The *PUJK* may duplicate the standard contract for the purposes of effectiveness, efficiency, repeatable and providing legal certainty; The *PUJK* provides sufficient time for consumers to read and understand the contents of the contract before it is signed or before the contract is effective; and *PUJK* is required to comply

with the applicable laws and regulations, including the law on Information and Electronic Transactions (ITE Law).

### C. Optimization of Standard Contract as a Means for Consumer Protection in the Indonesian Financial Service Sector

Referring to the *POJK* on Consumer Protection and the *SEOJK* on Standard Contract, the making of standard contracts in the financial services sector has a legal basis to provide legal protection for consumers. Through the principles and the prohibition as well as clauses such as exoneration clauses, the standard contract made by the *PUJK* will place consumers in an equal position with the *PUJK* and *PUJK* will pay more attention to fairness and propriety in making contracts. Legal loopholes in the Indonesian Civil Code that do not specifically regulate standard contracts are complemented and regulated explicitly and in detail in both the *POJK* on Consumer Protection and the *SEOJK* on Standard Agreement. The issue of abuse of circumstances (*misbruik van omstandigheden*) that has the potential to harm consumers is expressly prohibited from being included in the standard contract clauses. The doctrine of abuse of circumstances is currently widely used and discussed by judges, legal observers, and legal advisers among academics. Although the doctrine of abuse of circumstances has not been enshrined in legislation of the Civil Code, the judges have used the doctrine and poured the reasons as the reasons used in their decisions. Currently, judges in Indonesia make jurisprudence the principle of abuse of circumstances. Misuse (*misbruik van omstandigheden*) is a situation where one party commits an act or action against the other party bound by the agreement by taking advantage of the unbalanced position of one party to take advantage of the other party ([Wiwin Dwi Ratna Febriyanti, 2022](#)).

The *SEOJK* on Standard Contract also regulates aspects that should not be included in a standard contract. However, in the implementation of both the *POJK* and the *SEOJK*, the correct interpretation is still required. In addition, *OJK* needs to ensure or create a supervisory mechanism for the implementation of standard contracts that have been made. Therefore, to optimize the use of standard contracts as a means of consumer protection, the following efforts are needed.

1. The interpretation of “abuse of circumstances” based on the *SEOJK* on Standard Contract.

The regulation on the prohibition of abuse of circumstances in standard contracts should be a solution to fill the void of standard contractual arrangements in Indonesian positive law. In a deeper examination, the *SEOJK* only states that the clause in the standard contract is prohibited to, among other, abuse of circumstances. Furthermore, indications of abuse of circumstances are demonstrated by 2 general conditions, namely: 1) The

*PUJK* takes advantage of the consumer in difficult conditions due to certain conditions or in an emergency; and 2) at the time the *PUJK*, intentionally or unintentionally, fails to explain the benefits, costs and risks of the products and/or services offered. Of the two conditions, the condition of consumers who are urgent or in an emergency has the potential to cause different interpretations among *PUJK* or even between *PUJK* and the consumers. As a provision that contains implementation instructions for *PUJK* in making standard contract clauses, this *SEOJK* refers to *POJK* on Consumer and Public Protection Articles 28 - 34 which regulate standard contracts. These articles do not even mention the prohibition of abuse of circumstances, so it can be concluded that the prohibition of abuse of circumstances is a form of interpretation of Article 30 that regulates the prohibition of the inclusion of standard clauses. Thus, a good interpretation is still required with regards to what can be classified as taking advantage of “urgent consumer conditions due to certain conditions” or “emergencies”. This interpretation is critical because *OJK*’s consideration in regulating the use of standard contracts is precisely to provide optimal consumer protection. Therefore, guidelines are needed that regulate in detail what conditions are included in certain conditions so that they are classified as urgent or emergency situations. At least the difference in interpretation can be minimized. This guideline can definitely be developed following developments and changes.

## 2. The role of *OJK* in Supervising the Use of Standard Contracts

*OJK* carries out regulatory and supervisory duties to realize one of the goals that the financial services sector is able to protect consumers and the public. The supervision of the use of standard contracts by *PUJK* will indirectly encourage them to comply with the provisions. Supervision can be conducted in 2 ways, namely: a) draft a standard contract that becomes a reference for *PUJK* with changes/additions tailored to the needs of each *PUJK*; b) conduct regular inspections of the standard contracts used by *PUJK* so as not to violate the principles and prohibitions regulated in both the *POJK* on Consumer Protection and the *SEOJK* on Standard Agreement.

### III. Conclusion

The standard contracts issued by the *OJK*, especially banking contracts, result from adopting international institutions issued by the Basel Committee. In addition, there are other committees whose function is to provide guidelines on the practices of financial institutions in the financial services sector, such as the Committee on Payment and Market Infrastructure, which guides in providing contract standards so that one country and another are the same. However, in practice in Indonesia, it will be readjusted with generally accepted legal principles so that regulatory disharmony does not occur. The

standard contract in the contract law system is based on the principle of freedom of contract and is accepted as a form of agreement that develops in practice. *OJK* has issued a *POJK* on Consumer and Public Protection that specifically regulates the use of standard contracts in Articles 28- 34 of the said *POJK*, followed by implementation instructions in the *SEOJK* on Standard Agreement. The *SEOJK* regulates the prohibition of abuse of circumstances and the inclusion of clauses that, in principle, diminish or reduce the responsibilities of the *PUJK* or reduce the rights of consumers. Violating these provisions causes the clause in the standard contract to be null and void because it is contrary to the applicable laws and regulations. The two provisions explicitly regulate the principles that must be elaborated in making standard contracts and prohibitions in making standard contract clauses. One of the prohibitions is the abuse of circumstances not regulated in the Indonesian Contract Law system. The prohibition on abuse of circumstances in the *SEOJK* does not explain what conditions can be classified as “urgent consumer conditions due to certain conditions or in an emergency.” Therefore, it is necessary to interpret the abuse of circumstances as urgent, as seen from the purpose and authority of the *OJK* to provide consumer protection. Therefore, it is necessary to have a clear-cut interpretation of the abuse of circumstances. Hence, standard contracts can be used as a means to optimize the objectives of consumer protection in the financial services sector.

The Efforts to strengthen standard contract regulations in *POJK* and *SEOJK* include two aspects. Firstly, *OJK*, under its authority, needs to follow up on standard contract provisions with guidelines that contain standard contract drafts that can be used by all *PUJK* with adjustments according to the characteristics of each *PUJK*. In the guideline, it is necessary to specify the conditions included in the abuse of circumstances as a description of an urgent consumer condition due to certain conditions or in an emergency. This condition is not limited; hence, developments can be made to anticipate changes in using standard contracts. Secondly, *OJK* can, directly and indirectly, supervise the standard contract formats made and implemented by each *PUJK*. This supervision is necessary to ensure the compliance of the *PUJK* to the applicable standard contract provisions. The purpose of this supervision, among others, is to optimize the use of standard contracts as a fair and equitable consumer protection.

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