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Research Paper

Abuse of State Consumer Protection in Practice Contract in Indonesia

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ABSTRACT:- This study aimed to determine and understand the criteria eksemsi clauses in standard contracts so that the state can be classified as abuse. It is a normative study, conducted approach legislation (statute approach) and approach the case (case approach) or case law. Data collected through the inventory, identification and systematization of primary and secondary legal materials, interpretation and construction using deductive reasoning. Legal material analyzed consisted of juridical argumentation legal discourse, the rhetoric of law and legal logic. The results showed that the standard clause in the contract eksemsi can be classified as abuse of state (because economic advantage), if it meets the following requirements: (1) The parties shall have economic advantages over the other; (2) The other party has no choice, but to agree to the terms and conditions offered; and (3) Risk agreed unbalanced (biased) to the detriment of the (economic) weak.

Keywords:- abuse of state, contracts, consumer protection

I. INTRODUCTION

Humans are creatures of Allah Almighty the most perfect among other created beings, because human beings are endowed with intellect, feeling and will. With a sense, man can judge right and wrong, as a source of truth values. The feeling is a tool to express the beauty as a source of art, and with human feelings can assess the beautiful (aesthetic), and the ugly. Will of assessment tools to express, as a kindness, and with the will, the human judge what is good and bad, as a source of moral values (Abdulkadir Mohammed. 1997: 2) [1]. In addition to perfection, humans also have limitations (weaknesses) because by nature, man can not independently to meet all the needs and interests without the help and interaction with fellow human beings. In the context of perfection and limitations, then manusiasecara outline has two tendencies in episodes of the life of the world, namely the tendency to be good and the potential of being the bad guy (Tafseer Ahmad. 2005: 34) [2] To tend to be a good person, then religion (Islam) requires that "the best amongst you is the man most to benefit others (H.R.Thabrani)

Human actions would be worth (good) if useful for others, as a consequence of human duty are responsible for each other, which is reflected through intention and good way. Regarding the philosophy of life based on the careful control range, Subhi (Sukarno Aburaera et al. 2010: 182) [3] describes as follows: "Man in all his actions will always pursue the good. Human acts are an expression of the promptings of the heart. All the properties that emerge from the heart will be expressed limbs, so that the heart is in control and limb bow to him, no action by members of the body except on the signs of a heart. If the heart is the sacred act of good will ".

One manifestation of the tendency to do good is to do a collaboration with fellow human beings in order to facilitate the achievement of the needs and interests, such as the exchange of goods or various forms of contract which has been complex.

Herodotus described the fabric of the law on the exchange of goods between the parties by way of "Laying and leaving goods in certain places, such as that practiced by the merchant at Carthage (Tunis port) from their merchandise on the beach, then back to the ship their ship and lit a bonfire with smoke as a sign of coming pinnacle. The locals then come see and select items to be taken, they will leave a lump of gold as a medium of exchange in addition to items of interest. When the Carthage in a traders assume gold was proportional to the amount of goods, the nugget will be taken (as a symbol of approval) and, if lacking, they returned to the ship and wait for people to add the amount of gold nugget. This process will be repeated until an

agreement is reached on the exchange rate that is acceptable to both sides "(R. Feenstra en M. Ahsmann In Herlien Budiono. 2006: 5) [4].

The illustration above shows that although it is technically inefficient exchange agreement from the aspect of time and effort of having to repeatedly make adjustments between the goods offered with goods compensated, but the value of honesty (good faith) of the parties so prominent, corresponding implicit meaning of symbols are displayed. Moreover, the freedom of the parties to the bargaining is highly valued, so in terms of formal although a bit stiff and hard, but the substance of dimensions arrangements made a very balanced and fair and legal certainty. In the language of religion (Islam) is a legal relationship exchange meets Mabda principle 'at-tawazun fi al-Mu'awadhah, benefit, trustful and principle of Justice (Ahmadi Miru (1). 2012: 17-18) [5].

Maha-Hanaan Balala (2011: 23) [6] states that there are three main principles that need to be promoted in the contract or agreement in Islam ie Contractual Fairness, Social Justice and Permissibility, as described below: "Against the first principle, the principle of Islam equality among every human being (equal bargaining position) without exception, according QS Al Hujuraat verse 11 that the real man's most glorious sight of Allah is the most noble among you. The second principle implies that any deeds committed by every man should bring a utility and benefits and does not contain elements of apostasy for mankind. Being the third principle states that the agreement is a contract that can be allowed to contract or agreement that is not prohibited in the Qur'an and the Sunnah, which is an absolute provision that should not be negotiable, remember these two things are the ultimate source of law in Islam ".

Unlike the model of a more modern business contracts and tend to the patterned formalistic pattern of the written agreement in order to ensure certainty (legal) in the future if there is a dispute between the parties, then the contract will serve as written evidence to argue about the truth of the relationship that has been established along with the rights and obligations of each. This does not mean that the relationship is not possible to contract law made orally, because if there is a conflict of interest as a result of one party defaulting, there are other types of evidence in addition to the written evidence (letter) which may be brought about in order to confirm the truth of the agreement of the parties. However, realizing the complexity of the legal interest (rights and obligations) of the legal relationship in modern business interactions in case contract law, should ideally be put in writing and detail actualized in various clauses in the contract, so as to facilitate the verification process.

By das sollen, the existence of the parties to the contract likened the raw side of the coin of mutual support (functional integral) one another. If one position does not function effectively useless other positions, so both should be mutually supportive and complementary. Likewise in the standard contract, the parties should be aware that both are interdependent and need each other, so that the fabric of the law that is built ideally in a symbiotic mutualism frame not in shades of symbiotic parasitism, that the existence of each survive.

Ironically because das sein, knitted fabric of contractual more "nuanced" (Sutan Remy Sjahdeini. 1993: 72-73) [7] the dominance of the interests of one party than to build strategic alliances in the form of an ongoing partnership, such as, among others, the legal tangle of the contract of carriage of passengers and goods via commercial air transport, the credit contract and subscribe contrac Telkom Flexi telecommunications connections and GSM, which is possible based on the principle of freedom of the parties to the contract (freedom of contract) in accordance with Article 1338 paragraph (1) BW that "all treaties made legally valid as a law for those who make it ".

Article 1338 BW (Hernoko, Agus Yudha. 2011 : 249-250) [8] is a reflection of the character of Book III BW which is open (add to or complement), despite the lack of it can be concluded that the provisions of Book III is entirely BW increase or supplement (*aanvullend recht*), because there are several chapters in Book III BW cargo coercive material, resulting in creating a contractual relationship of the parties can not exclude coercive laws. Therefore, Book III BW governing agreements that contain provisions forcing (*dwingend*) and conditions that are complementary (*aanvullend*).

Business practices such as contract contract of carriage of passengers and goods by air transportation commercial, and others, as has been stated which was born and developed in Indonesia, although it has got the special treatment in the form of legislation and regulations referred to in the rules of reality has aspects legal certainty but from another dimension has not been in concrete provides protection to the weak economy so the loss is always experienced and felt. This occurs because some of the parties are not balanced, both aspects of the position the state as well as the ability, so either party (strong economy) and use the momentum to freely determine the conditions clauses that are not fair and equitable, and of course (Peter Mahmud Marzuki (1): 10) [9] forms of contact as an opportunity for the misbruik van omstandigheiden (unconscionability) or undue influence for the parties to have a strong position. As a result, the monopoly veiled by the stronger party to hide behind the principle of freedom of the parties to the contract that is not likely to harm the interests of the people. It has been widely known by the public, that business contracts were stained with contracts and business practices that contain elements that are less fair to the parties economically or socially weaker the argument of the maintenance of healthy competition. Contracts and business practices like that are not only detrimental to

those who are directly related to the practice, but also harmful to society in general (Peter Mahmud Marzuki (1): 10) [9]. Although the common law and common sense require that the contracts are based on the principle of justice, but not all of the parties to the contract put in a position that makes it truly balanced (Boediono Kusumohamidjojo, 2001 : 103) [10].

This is understandable because of the background of modern business contracts (in this case raw contract) based on differences in economic conditions and the level of knowledge among the parties, in addition to urgency of the need, so that those who are in a position/stronger economic position and has knowledge better, will take advantage of the situation in order to protect its legal interests through standard clause. Contrario, the parties are in a position less favorable because of the lack of capital, limited knowledge, especially because of urgency, will be targeted precisely to be used. Take it (agree), the party happens to be in a weak position in terms of economy, knowledge is limited and forced by a need to be willing to accept the standard clause even though the dimensions are very subverted justice.

The factors that cause the predominance standard contracts to be biased and puts creditors "always" be in a stronger position, generally (Mariam Darus Badrulzaman (1). 1994: 47) [11] scholars in various references argues, that "(1) lack of, or even lack of opportunity for one party (the weak economy) for bargaining/negotiations, so that the proffered contract does not have many opportunities to be able to understand in depth the material of the contract; (2) Preparation of a contract made unilaterally, the powerful consequences usually have enough time to think about the clauses in the contract in question, even believed that the contract offered is a product of an expert in the preparation of the contract, while the weak position do not have many opportunities to learn and were not even familiar with the clauses in question; and (3) The weak economy occupies a position that is very desperate and depressed, so it can only be a "take it or leave it".

Clauses based practices as outlined in the standard contract is a chain of unbalanced bargaining position and a reflection of the principle of freedom of contract and the aberrations concencual principle, in practice it where it is today deploying contracts, legal acts referred to can be categorized as state abuse. Abuse of state institutions in the system of civil law (agreements) in Indonesia ironically was not known, so that the dispute resolution abuse charged in the state of a business contract still has no legal certainty, because it is not regulated in the national legislation (positive law). In addition, there are difficulties in formulating characteristic about the abuse situation.

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Further Agus Yudha Hernoko stated that understanding the meaning of the principle of balance, the emphasis is on the balance of the position of the contracting parties and was dominant in relation to consumer contracts, namely (Moch. Isnaeni in Hernoko, Agus Yudha,2011: 47) [8] "In the perspective of protection consumers are power imbalances between the parties. Consumer-producer relationship assumed a subordinate relationship, so that the consumer is in a weak position in the process of formation of the will of his contractual. Subordinate relationship, a weak bargaining position, the dominance of the manufacturer as well as several other conditions assumed there is an imbalance in the relationship of the parties ".

In contrast to the opinion of scholars, Herlien Budiono presents three aspects of the principle of balance related and intertwined as testers factors in order to establish the consequences which arise when there is an imbalance in the contract, namely: "(1) The act of the parties, statements related to the will and authority to act; (2) the contents of the contract are determined by the parties and is not contrary to the rules of law are

categorized as coercive; and (3) execution of the contract to be fulfilled by both parties in good faith, fit and proper ".

In the context of understanding the meaning of the principle of balance, the researcher agrees that the truth of the statement is the recognition of peers expertise, in the sense that tends to express the opinion that the principle of balance associated with the position, situation state, the position of which is not equal, resulting in a low bargaining power for one of the parties is ideal for a dissertation on the abuse of state issues because it involves the process of birth of the deal.

In the conception of the rule of law, then the law should be interpreted and constructed as a system. Ade Maman Suherman (2004) [12] asserts that "the first element of the legal system is the structure of the legal, institutional arrangements, and the performance of the institution. Then the substance, which is not only limited to the issue of the written law (law books), but also including the living law or applicable laws and live in the community. Being the third element is the culture of law, that the attitudes and values associated with the behavior associated with the law and its institutions, either positively or negatively ". That element of the legal system work together on an ongoing basis, it is necessary to control and supervision of the integral and comprehensive. In this regard, Hendry Fayol (Bustamin Nongtji. 2012: 63) [13] states that the supervision consists of testing, if everything went according to the plan that had been determined with the instruction that has been given and in accordance with the principles outlined, with the aim to show the weaknesses with a view to improve and prevent recurrence.

Problem Formulation

Based on the above, the author defines some formulation of the problem such as: how criteria eksemsi clause in the contract so that it can be classified raw state abuse?

Research Objectives

To know and understand the criteria eksemsi clauses in standard contracts so that the state can be classified as abuse.

Benefits of Research

This research is expected to provide several benefits:

1. To contribute academic (theoretical) in the science of law, in particular the development of knowledge in the field of contract law.
2. References for further development activities and related research.

II. RESEARCH METHODS

In order normative research methods, the approach carried legislation (statute approach) because there is a provision relating to and can be applied in contract law. Approach cases (case approach) or case law that is intended to have a court ruling breakthrough value and load ratio decide and constance followed, carried out in the framework of law in action and living law. In the use case approach (Anwar Borahima. 2012) [14] which needs to be understood is the reason the law that is used to judge the decision, which is not sourced from the dictum, but the ratio decide (reasoning decision) that can be found on material facts (about people, place, time and everything that accompanies it).

III. RESULTS AND DISCUSSION

Urgency of consumer protection through government intervention is based on the fact that the position of the parties in consumer transactions are not balanced, as stated Ahmadi Miru as follows "The balance between consumers manufacturers can dicapat to improve consumer protection for manufacturers stronger position than the consumer" (Ahmadi Miru (3), 2011: 129) [5].

This form of intervention in an attempt to balance the position of the parties can be traced in the explanation of (general) and Article 18 of the Consumer Protection Act. Therefore, consumers need to be empowered and balanced bargaining position, as thinking being addressed Agus Yudha Hernoko (2010: 80) [20] under this "principle of balance which means" equal - equilibrium "will work provide balance when the bargaining position of the parties in determining the will become unbalanced. The purpose of the principle of balance is the end result that puts the position of the parties to a balanced (equal) in determining the rights and obligations. Thus, in order to balance the positions of the parties, the intervention of the state authorities (government) is very strong ".

In the context of the legal position of equality of the parties to a contract, according to Roberto M. Unger Ideally, the "In contract law (contract law), the principle that the bargaining agreement done by

considering the specific intent is an example embodiment of the formal justice; the demand that there is equality of strength in bargaining (bargaining power) between the parties execute an agreement is an example of procedural fairness; and prohibition to exchange the two values are not equal outcomes, regardless of the value that can be estimated, indicating substantive justice "(Roberto M. Unger, 1976: 256-257) [15].

Consumer Protection Contract in the Contract berklausula Eksemsi Raw categorized Abuse Circumstances

Legal relationship between businesses and consumers is a relationship that is sustainable, in the sense that both parties have a degree of dependence to one another, so it can not be separated. Business agents requires the presence and support of consumers in order to ensuring business continuity, otherwise without the presence of entrepreneurs undoubtedly consumer needs will not be met. Under these conditions, ideally the parties (businesses and consumers) mutual understanding each other's existence and nurtured in order to create legal relations of mutual benefit without harming either party.

Legal relationship between businesses and consumers, the reality is not always tinged legal relationship mutually provide legal protection for both parties, but it is often found that the legal relationship otherwise, that particular party protecting the legal interests through raw contract with the intention of freeing eksemsi clause and/or limit its responsibility in case of loss to consumers who becomes a legal obligation.

Clause eksemsi is an important feature in modern contract, which is currently the focus of attention of the government and the various stakeholders (academic, judicial, and "legislative") because it was made to avoid responsibility if the chance of something happening, which covered the possibility of change, so it is colored the kontraktan imbalances, such as Jill pointed pole that standard contract form can be used to limit the liability because the contract clause is not negotiable, so it is very dangerous for the consumer contract. This can occur because of power imbalances and the consumer has no other choice. "Thus Spake, standard form contracts may be used to impose an exclusion or limitation of liability of the which has not been negotiated, and for the which the person Whose normal contractual rights are diminished alternative has received no benefit. The imposition of Standard and may be particularly subject to exemption clauses in consumer contracts harmful, where the disequilibrium between the bargaining positions of the parties may be substantial, and where the consumer may have no alternative but to accept the terms if Reviews such exemptions are commonplace throughout the particular industry , as is Often the case "(Jill Pole, 2011: 185) [16].

United Nations General Assembly April 16th, 1985 passed Resolution No. A / RES / 39/248 of the Consumer Protection Guidelines (Guidelines for Consumer Protection), in clause 19th resolution (Shofie, Yusuf., 2008: 41) [17] set that consumers should be protected from adverse various consumer contracts, such as one-sided standard contracts, exclusion of essential things in the contract and misuse of state, as follows: “Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable condition of credit by sellers”.

Regarding exemption clauses stipulated in Article 7.1.6 UPICCs, ie a clause which restricts or frees the responsibility of either party, so the inclusion of such a clause cause injustice to the weaker party, namely: “A clause which limits or excludes one party’s liability for non performance or which permits one party to tender performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract”.

The use of standard contract (standard form contract), both in Article 18 of Consumer Protection Act and Article 1493 and Article 1494 BW Indonesia in principle not prohibited, as long as the ban (verbod) and messenger/necessity (gebod) set forth therein are not violated. Consumer Protection Act only restricts the use of standard contract that negative impact to the other party (the consumer) (Shofie, Yusuf., 2008: 41) [17].

The debate on the existence of standard contract be annihilated when traced the provisions of Book 6 the General Part of the Law of Obligation Title 5 Section (1), which essentially gives legitimacy to the standard contract provisions standarsetelah adopted, modified and canceled by a commission that is given the authority to was based on the law, and the decision regarding the adoption, modification and cancellation of legal force after approval by the commission and published in the piece along with the approval of the Dutch government commission, as below: “The Civil Code of the Netherland’s, Article 214 (1) A contract entered into by a party in the conduct of its business or profession is not only subject to the provisions of the law, but also to standard terms if such standard terms exist for the trade of which the business forms part, or for the profession in respect of the contract in question. The particular kinds of contracts for which standard terms may be made and the trade or profession to which each set of these standard terms is intended to apply, are designated by Regulation. (2) Standard terms are adopted, modified and repealed by a commission to be appointed by the Minister of Justice. The composition and functioning of commissions are regulated by statute. (3) The adoption, modification or repeal of standard terms shall not enter into force until approved by Us and published in the Nederlandse Staatscourant together with Our assent. (4) Standard terms may derogate from provisions of the law to the extent that such derogation, whether or not in accordance with a certain form, is contractually

permissible. The preceding sentence applies, unless a provision of the law otherwise requires. (5) Parties may derogate from standard term by contract. Standard terms, however, may prescribe a certain form for such derogation" (Warendorf, Hans et all, 2009:697)[18].

Conditions that many consumers harmed by raw contract clause eksemsi and classified as a state need to be inventoried and abuse assessments conducted from the perspective of legislation, regulations, and court decisions for strengthening and/or offer a solution in order to ground the BFL thinking as an umbrella consumer protection laws and business. In this regard, Ahmadi gave Miru hints that: "In providing protection to the consumer, the manufacturer shall not actually turn off effort, because the existence of a producer is essential for the country's economy. Therefore, the provisions of which provide protection to consumers must also be balanced with the provision that provides protection to producers, so that consumer protection is not just reverse the position of consumers from a weak position becomes stronger, and vice versa manufacturers are becoming weaker. In addition, to protect themselves from losses due to the demands of consumers, producers can also insure accountability responsibility to the consumer "(Ahmadi Miru (3), 2011: 4) [5].

In an inventory and qualify consumer contracts, important to know the general characteristics of the consumer contracts so as to create unity of understanding. As a grip, some legal scholars have expressed their opinions regarding consumer contracts and by examining and comparing ideas Agus Yudha Hernoko confirms that consumer contract is any contract that is characterized by the elements, among others: "a) it is the consumer with the producer (businesses); b) relations on the bottom (subs) in terms of the bargaining position or bargaining position; c) standard form (standard contracts, standard contracts); d) on many models of standard form consumer contract or standard there is no negotiation of the parties; e) an adhesion contract (made by one party, usually the manufacturer or businesses) take it or leave it; f) standard contract or standard products are generally manufactured in large quantities (mass); g) exoneration clause or clauses contained eksemsi; h) to consumer contracts, the intervention (intervention) specific authority aims to provide legal protection for consumers, by imposing coercive rules (mandatory rule) "(Hernoko, Agus Yudha. 2011 : 34-35) [8].

Later clauses in consumer contracts kualifisir eksemsi and categorized the circumstances as described further abuse, then the abuse of state criteria for economic advantage or factors that may provide an indication of the abuse of economic power state as follows" 1) The existence of the agreement terms, which is not unreasonable or inappropriate or contrary to humanity (onredelyke voorwaarden contracts or unfair contract terms); 2) Visible or turned out to be in a distressed debtors (dwang positie); 3) If there are circumstances where the debtor no options but to enter into agreements quo in terms of the burden; 4) The value of the result of the agreement is unbalanced when compared to the achievements of the reciprocal of the parties (Panggabean, Henry P., 2010 : 102) [19].

Panggabean, Henry P suggests two (2) formula that can be used in examining the abuse of the state, namely: "the formula disadvantages: on the one hand the agreement made on the basis of abuse of the state to cause damage to either party. Formula advantages: the treaty otherwise advantageous position other party excessively. Both of these formulas are complementary. Generally accepted opinion that is not found a common measure that can be applied to all cases of abuse of the state (Panggabean, Henry P., 2010: 99-100) [19].

Contract of Carriage of Passengers and Goods by Scheduled Commercial Air Transport (PT. "S" and "L" Air)

The fact that the Commercial Air Transport (here in after abbreviated TUN) experienced rapid development is characterized by the proliferation of different types of airlines to serve the needs of the community will be the mode of transportation that is fast, safe and affordable. The other hand, that the presence of Commercial Air Transport demand by the public when compared to other modes of transport (sea or land) because of the time efficiency, power, and comfort in addition to safety reasons.

Commercial Air Transportation for people who have high mobility and immediate interests of various social strata is a subjective choice and the objective, let alone offer an affordable ticket price of airline makes people more interested to avail this transport mode as an option "mandatory", although sometimes cheap ticket prices is not accompanied by good quality care but by the carrier responsible for the avoidance of bad service with clause eksemsi refuge in the contract of carriage of passengers and goods.

In a contract of carriage of passengers and goods by the scheduled Commercial Air Transport, a private airline company include the following clause: "The carrier is not responsible for any damages issued / generated by the cancellation and / or delay of transportation, including any delays coming passengers, baggage delivery delays and / or damaged or lost baggage "(Ahmad Zazili. 2008) [20].

Eksemsi clause as stated in the contract of carriage of passengers and goods by Commercial Air Transportation scheduled a contract made between businesses (carrier) to consumers (passengers) to transport passengers by air in one trip or more than one airport to another airport or multiple airports in return for a fee or in exchange for other services (Vide Article 1 (29) in conjunction with Article 1, paragraph (13) of the Act-Flight in 2009) .

Based eksemsi in sub clause (1), does not mean the carrier itself can release and / or limit liability for losses suffered by consumers as a result of implementation of the obligations that are not in accordance with the agreement or consumer losses due to carrier error, because it is a general principle of responsibility are principles in law, namely "(1) The responsibility based on fault (liability based on fault or fault liability) under Section 1365 to 1367 BW; (2) the presumption is always responsible for (the presumption of liability) (3) presumption is not always responsible for (the presumption of non-liability) (4) strict liability (strict liability) (5) limitation of liability (limitation of liability) "(Shidarta, 2000: 59) [21].

Compensation For Cancellation And / Or Delay Of Transport

According to the provisions of paragraph 1 shall transport, in particular Article 140 paragraph (2) of the Aviation Act of 2009 stated that the commercial airline business entities are required to provide adequate services to any users of air transport services in accordance with the agreed transport agreement. In the event of cancellation and / or delay of transport by a carrier, the carrier is responsible for the losses suffered due to cancellation and / or delay in air transport, unless the carrier can prove that the cancellation and/or delay is caused by weather factors and technical operations and responsibility includes not collect passenger carrier in accordance with a predetermined schedule (Vide Article 146 in conjunction with Article 147 (a) Aviation Law of 2009).

Disclaimer air freight carrier for any delays due to weather and operational technical factors mentioned in Article 13 paragraph (2) and (3) the Minister of Transportation Regulation Number 77 of 2011 that: "(2) weather factors, among others, heavy rain, lightning, storms, fog, smoke, visibility below the minimum standard or wind speeds that exceed the maximum standards that interfere with flight safety. (3) operational techniques, among others: (a) the airport for departure and destination can not be used for aircraft operational; (b) Environment towards the airport or runway disturbed function, eg cracks, flood or fire; (c) The occurrence of a queue of aircraft taking off, landing or the allocation of time of departure (departure time slots) at an airport; and (d) delay in refueling (refuellyng) ".

The second reason for the release of liability for delay does not mean the carrier 100% free of the obligation to provide compensation for the delayed, but still provide compensation of Rp. 300.000.- (three hundred thousand) /passenger if the flight delay of more than four (4) hours (Satar) or if the passenger agrees to another destination that is closest to the final passenger flight destination (re-routing), the carrier obliged to provide compensation of 50% plus a connecting flight ticket or provide other transportation to the destination, if there is no mode of transport other than air trasnportasi or when transferred to the next flight or flights belonging to other scheduled commercial enterprises, passengers are exempt from additional costs, including an increase in the class of service (up grading class) or if there is a decrease in the class or subclass of service, the passengers must be given to the rest of the excess money from the tickets purchased. As to not collect passenger aircraft with a capacity reasons (denied boarding passenger), the carrier shall provide compensation in the form of transferring to another flight without paying additional costs and/or provide consumption, accommodation and transportation costs if there is no other cost to the destination (vide Article 10 in conjunction with Article 11 of the Regulation of the Minister of Transportation No. 77 of 2011).

Compensation Due To Lost, Destroyed And Damaged Goods Passenger

Obligation to provide compensation due to lost, destroyed and damage to the passenger luggage (baggage) is an application of the principle of presumption to always be responsible (presumption of liability) and the principle of responsibility to the restriction (limitation of liability), except for items lost or damaged baggage, then apply the presumption is always irresponsible (presumption of nonliability) as laid down in Article 4 paragraph (1) and (2) the Minister of Transportation Regulation Number 77 of 2011 in conjunction with Article 143 the act flight of 2009, provides that: "The carrier is not responsible for any damages due to loss or destruction of baggage, unless the passenger can prove that the loss caused by the act of the carrier or the person that they employ; If the evidence referred to in paragraph (1) may be accepted by the carrier or by a court decision that has a legally enforceable (in cracht) found guilty, then the compensation is set to a maximum of the real loss of passengers".

Regarding the assertion of the principle of always be responsible and liable to the restrictions based on the provisions of Article 5, paragraph (1), (2) and (3) the Minister of Transportation Regulation Number 77 of 2011 in conjunction with Article 144 Aviation Law of 2009, which provides: "(1) The amount of compensation to passengers who are lost, destroyed or damaged baggage as referred to in Article 2 (c) is applied as follows: (a) loss of baggage or contents of baggage or checked baggage destroyed awarded compensation of Rp.200,000/kg and a maximum of Rp.4,000,000/ passenger. (b) Damage to baggage awarded compensation in accordance with the type, shape, size and brand of baggage. (2). Baggage is considered lost as referred to in paragraph (1) if not found within 14 (fourteen) calendar days from the date and time of arrival of passengers at the airport of destination. (3) the carrier is obliged to give money to the passengers waiting on baggage that has

not been discovered and yet to be declared missing as referred to in paragraph (2) of Rp. 200,000/day for a maximum of three calendar days ".

Once the vulnerability of potential losses suffered by passengers as a result of doing a legal relationship with the carrier and in anticipation of the carrier's inability to fulfill the obligation for damages, then under Article 179 and 180 Aviation Law of 2009 in conjunction with Article 16 paragraph (1) - (7) Minister of Transportation Regulation number 77 of 2011 requires the carrier to insure responsibility to the passengers and cargo are carried off to the insurance company in the form of a consortium, in which the amount of insurance coverage must be equal to the amount of compensation determined by the applicable regulations.

IV. CONCLUSION

Eksemsi clauses in standard contracts can be classified as an abuse of state (because economic advantage), if it meets the following requirements: (1) The parties shall have economic advantages over the other; (2) The other party has no choice, but to agree to the terms and conditions offered; and (3) Risk agreed unbalanced (based) to the detriment of the (economic) weak.

SUGESTION

Increased efforts by repressive institutions / relevant agency became urgent in Law inforcement efforts or in the form of preventive through assessment and feasibility assessment draft standard contractual clauses agreed by the kontraktan eksemsi before and or transfer of the opportunity of determining the economic terms of the strong to the weak economy.

REFERENCES

[1]. Abdulkadir Muhammad. 1997. Etika Profesi Hukum, Citra Aditya Bakti : Bandung.
[2]. Ahmad Tafsir. 2005. Ilmu Pendidikan Dalam Perspektif Islam. Remaja Rosdakarya: Bandung.
[3]. Sukarno Aburaera (1). Dkk. 2010. Filsafat Hukum. Pustaka Refleksi : Makassar.
[4]. Herlien Budiono. 2006. Asas Keseimbangan bagi Hukum Perjanjian Indonesia. Citra Aditya Bakti : Bandung.
[5]. Ahmadi Miru (1). 2012. Hukum Kontrak Bernuansa Islam. RajaGrafindo Persada : Jakarta.
[6]. Maha-Hanaan Balala. 2011. Islamic Finance and Law Theory and Practice in a Globalized World. First Published, I.B. Tauris Co. Ltd. New York.
[7]. Sutan Remy Sjahdeini. 1993. Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia. Institut Bankir Indonesia : Jakarta.
[8]. Hernoko, Agus Yudha. 2011 Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial. Jakarta: Kencana,.
[9]. Peter Mahmud Marzuki (1). tanpa tahun. Pembaharuan Hukum Ekonomi Indonesia. Universitas Airlangga : Surabaya.
[10]. Budiono Kusumohamidjojo. 2001. Panduan Untuk Merancang Kontrak. Grasindo : Jakarta.
[11]. Mariam Darus Badrulzaman (1). 1994. Aneka Hukum Bisnis. Alumni : Bandung.
[12]. Ade Maman Suherman. 2004. Pengantar Perbandingan Sistem Hukum. RajaGrafiondo Persada: Jakarta.
[13]. Bustamin Nongtji. 2012. Perlindungan Hukum Bagi Usaha Kecil di Indonesia. Disertasi. Universitas Muslim Indonesia : Makassar.
[14]. Anwar Borahima. 2012. Bahan Kuliah Metode Penelitian Hukum "Pendekatan dalam Ilmu Hukum". PPs S3 Ilmu Hukum. Universitas Hasanuddin : Makassar.
[15]. Roberto Mangabeira Unger, 1976. Law In Modern Society: Toward a Criticism of Social Theory, (New York: The Free Press.
[16]. Jill Pole, 2011 (six edition), Textbook on Contract Law, Blackstone Press, London.
[17]. Shofie. Yusuf,2008. Kapita Selekta Hukum Perlindungan Konsumen di Indonesia. Bandung: PT Citra Aditya Bakti,.
[18]. Warendrof, Hans, et al., 2009. The Civil Code of the Netherland, (New york : Kluwer Law International)
[19]. Panggabean, Henry P., 2010, Penyalahgunaan Keadaan (Misbruik van Omstandigheden) sebagai Alasan (Baru) untuk Pembatalan Perjanjian Berbagai Perkembangan Hukum di Belanda dan di Indonesia), Liberty,Yogyakarta..
[20]. Ahmad Zazili. 2008. Perlindungan Hukum Terhadap Penumpang Pada Transportasi Udara Niaga Berjadwal Nasional. PPS Universitas Diponegoro – Semarang.
[21]. Shidarta. 2000. Hukum Perlindungan Konsumen Indonesia. Grasindo. Jakarta