LEGAL POLITICS OF CUSTOMER PROTECTION IN STANDARD AGREEMENTS FOR FAIR DIGITAL BANKING SERVICES

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Abstract
This study analyzes the legal politics of customer protection in standard agreements for digital banking services in Indonesia. The rapid growth of digital banking has created a legal gap and an imbalance in bargaining positions between banks and customers, which is manifested in the often-detrimental use of standard agreements. Through normative legal research methods with legislative, case, and theoretical approaches, this study examines the theoretical foundations of standard agreements and exoneration clauses, evaluates the existing regulatory framework, and analyses the implementation of legal accountability through case studies. The findings show that although the legal framework has been significantly strengthened by Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector and Financial Services Authority Regulation Number 22/POJK.07/2023, substantial challenges in law enforcement remain due to standard clauses limiting bank liability. Therefore, a more proactive and equitable legal political direction is needed, which not only regulates formally but also ensures that the rights of customers are substantively protected.
Keywords: *Legal Politics, Customer Protection, Standard Agreements, Banking, Justice*

1. Introduction

The development of digital banking services in Indonesia has accelerated in recent years. This phenomenon reflects not only the massive adoption of technology but also a fundamental shift in consumer preferences and behavior in the digital era (Alwi et al., 2024). Bank Indonesia noted that the value of digital banking transactions reached Rp 5,570.49 trillion in May 2024, representing a substantial increase of 10.82% y-o-y. This growth trend is consistent and has been going on for several years, with the volume of digital banking transactions soaring by 41.1% in 2020 and even reaching 56% in May 2021 (House of Representatives of the Republic of Indonesia, 2021). This acceleration is supported by the high Internet penetration in Indonesia. Data from the Indonesian Internet Service Providers Association shows that in 2019, internet user penetration reached 73.7% with a total of 196.7 million users. The adoption of digital banking services is driven by several key factors, including the convenience, speed, and security offered, especially for the younger generation, who are at the forefront of the transition to a cashless society (Bank Indonesia, 2024).

This rapid and massive growth, while bringing many economic and financial benefits, has simultaneously created significant pressure on the existing regulatory framework. The legal system, originally designed to accommodate conventional banking and face-to-face transactions, now faces complex new challenges. This gap creates legal uncertainty, puts customers in a vulnerable position, and allows banking businesses to manage their risks through legal instruments that often do not balance the interests of the parties involved. Therefore, an adaptive and proactive legal and political response is required to address the challenges arising from this paradigm shift.

Along with the rapid growth of digital banking, various crucial challenges have emerged, especially those related to legal aspects and customer protection. Some key challenges include the security of information and personal data, limited technological infrastructure, and low digital literacy in most societies (SIP Law Firm, 2022). Data from Commission XI of the House of Representatives show that the most pressing challenge is the lack of an adequate legal umbrella to support the development of banking digitalization, as well as the absence of comprehensive specific regulations related to data protection and security systems. This regulatory gap creates what is referred to as a legal vacuum, a condition in which customers are vulnerable to various risks without clear legal protections. This uncertainty has direct implications for banking practices in the country. In an effort to limit their risk and liability, banks inherently take control of draft service agreements.

This leads to the use of standard agreements that are prepared unilaterally by the bank and often contain clauses detrimental to customers. This situation creates a real imbalance in bargaining positions (information and power asymmetry) between banks, which have technical expertise and legal resources, and customers, who can only accept or reject the predetermined conditions (Zahra et al., 2024). This analysis shows that the politics of law play a role not only in creating new regulations but also in ensuring that they are effective in addressing these fundamental inequalities. The legal relationship between banks and customers in digital banking services is based on agreements, which predominantly use the format of a standard contract or an adhesion contract. A standard agreement is a form of agreement whose terms have been unilaterally determined by business actors, and the other party does not have the opportunity to negotiate or request changes (Azhar, 2023).

In the context of digital banking, this agreement is often presented in digital form, which the customer must agree to as a condition for using the service. This standard agreement is crucial for customer protection because it often contains an exoneration clause. This clause serves to limit or transfer the bank's liability to the customer, even if the customer's losses occur due to a weakness in the system or the negligence of the bank. This practice, as will be further analyzed, is contrary to the principle of substantive justice, although it may be formally considered legitimate under Article 1338 of the Civil Code. Therefore, examining standard agreements from a legal-political perspective is critical to understanding why and how the current legal framework allows such unfair practices and how future policy directions should be shaped to put clients in a more equitable and equal position.

2. Literature Review

2.1 Theory and Concept of Consumer Protection

Consumer protection is defined as any effort that ensures legal certainty to protect consumers. Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) explicitly regulates these protection objectives, among others, to increase consumer awareness, ability, and independence, raise the dignity of consumers, and create an honest and responsible business climate. In legal studies, consumer protection can be divided into two types: preventive and repressive. Preventive protection is an effort to prevent customer losses before they occur. A clear example of preventive protection is the regulation issued by the Financial Services Authority, such as the Financial Services Authority Regulation, which requires banks to implement adequate risk management in their digital banking operations. Repressive protection is a legal action taken after a loss occurs, which aims to restore the rights of customers (Tarigan & Paulus, 2019). This includes banking legal liability in the form of compensation or administrative and criminal sanctions for business actors who are proven to be in violation of the law. The effectiveness of these two forms of protection is essential in the context of digital banking, where risks and losses can occur very quickly.

2.2 Standard Treaty Theory and Exoneration Clauses

A standard contract is a form of agreement whose content is prepared and determined unilaterally by business actors, stated in the form of a binding form, and must be complied with by consumers. Legal experts have critically viewed this practice. Mariam Darus Badrulzaman argues that the standard agreement, in its unilateral form, is contrary to the principle of freedom of contract, as regulated in the national civil law (Kediri State Islamic Religious Institute, 2012). This view is based on the fact that there is no real free will (de fictie van will) on the part of the client to negotiate the content of the agreement. Thus, a standard agreement creates tension between formal legal certainty based on Article 1338 of the Civil Code, which states that the agreement applies as law to the parties, and substantive justice, which demands a balance of bargaining positions.

The exoneration clause is a central issue in standard agreements. This clause is a provision in the contract that limits or even releases the liability of one party in the event of a default for damages, even though, by law, such liability should be the burden of that party. Article 18 of the Consumer Protection

Law expressly prohibits the inclusion of standard clauses that transfer the responsibility of business actors to consumers. However, in practice, banks often use similar clauses that indirectly limit their liability. The conflict between field practice and the prohibitions of this law creates legal uncertainty and is the main focus of this analysis.

2.3 The Philosophical Foundations of Justice in Law

Justice in the context of legal philosophy is not only understood as the application of rigid rules but also as "the spirit that gives life to the law" and "the soul that shapes civilization" (Khuluq, 2025). According to contemporary legal philosophy, true justice must be felt and embodied in reality, not just formally established. The philosopher Plato saw justice as a harmony that must be achieved in both social and individual contexts (Suyanto, 2022). Therefore, the goal of the law is to achieve social happiness by ensuring that the basic needs of individuals are met without sacrificing their rights. In this study, the concept of justice serves as the main benchmark for analyzing the legal politics of customer protection. The fundamental question that will be answered is whether the current regulations and legal practices, especially those related to standard agreements, serve substantive justice for customers or only meet formal legal certainty. This analysis will evaluate whether the legal framework has succeeded in balancing the rights and obligations between banks and customers so that customers, as weak parties, receive fair and adequate protection.

3. Methodology

This study uses normative legal research. Normative legal research, also known as doctrinal research, focuses on the norms, principles, and legal rules applicable to a positive legal system. This approach is relevant because the problems analyzed are about the conformity of the practice of digital banking service standard agreements with the applicable legal framework, as well as examining how the legal framework should be formed to achieve equitable goals. This study integrates three approaches, namely the statute, case, and theoretical approaches, related to the legal policy of customer protection in the standard agreement for digital banking services that is fair and will be analyzed in a qualitative prescriptive manner.

4. Results and Discussion

4.1 The Legal Politics of Customer Protection: The Evolution and Direction of Policy

At the beginning of digital banking development, the existing legal framework was still based on conventional banking regulations. This creates a legal vacuum because existing regulations do not specifically accommodate the unique characteristics and new risks of digital technology-based banking services (Ismail et al., 2023). Commission XI of the House of Representatives also identified the lack of an adequate legal umbrella and clear regulations regarding data protection. This condition places customers in a vulnerable position. In response to these challenges, the Financial Services Authority, as a regulator, began taking gradual steps. Financial Services Authority Regulation Number 12/POJK.03/2018 and Financial Services Authority Regulation Number 12/POJK.03/2021 are initial efforts to regulate the implementation of digital banking services (Financial Services Authority 2023). However, this regulation does not specifically regulate the establishment of digital banks or provide comprehensive protections. This indicates a responsive but gradual political direction of law, where regulators initially simply "patch" loopholes in old regulations without fundamentally changing the paradigm.

An important milestone in the legal politics of customer protection was achieved with the passage of Law Number 4 of 2023, concerning the Development and Strengthening of the Financial Sector. This law strengthens the authority of the Financial Services Authority to regulate and supervise consumer protection in the financial services sector. As a follow-up to the Law on the Development and Strengthening of the Financial Sector, Financial Services Authority Regulation Number 22/POJK.07/2023 concerning Consumer and Community Protection in the Financial Services Sector was issued, which officially replaces Financial Services Authority Regulation Number 6/POJK.07/2022. The Financial Services Authority Regulation 22/2023 represents the culmination of political and legal responses to the challenges of digitalization (Saly & Nainggolan, 2023). This

regulation explicitly integrates seven consumer protection principles that must be applied by all financial services actors.
These principles include the following:

a. Adequate education: Provides a clear understanding of products and services.
b. Openness and transparency: Providing accurate and non-misleading information.
c. Fair treatment: Preventing discriminatory business practices.
d. Protection of assets, privacy, and consumer data: Ensures the security of customer data.
e. Effective and efficient complaint handling and dispute resolution: Ensure an easily accessible complaint channel.
f. Enforcement of compliance: Enforcement of sanctions for violations.
g. Healthy competition**:** Fostering a fair business climate.

The issuance of Financial Services Authority Regulation 22/2023, which explicitly requires banks to review and adjust their standard agreements until December 31, 2024, is tangible proof that the government has recognized the standard agreement as a critical point in consumer protection. This shows that there is a political awareness of the law that regulations cannot only be general but must touch the root of the problem of injustice arising from unilateral contract practices.

4.2 Standard Agreements and Inequality of Bargaining Positions in Services

The legal relationship between banks and digital customers is based on written agreements. Formally, this agreement is considered valid and binding on the parties as a law for those who make it, in accordance with Article 1338 (1) of the Civil Code. However, in the context of digital banking, these agreements are almost entirely standard agreements, which are made unilaterally by banks. Theoretical analysis shows that although formally valid, standard agreements substantively violate the principle of freedom of contract. Mariam Darus Badrulzaman argues that the standard agreement is contrary to this principle because the client, who is in a weak bargaining position, basically has no choice but to agree or reject all the existing conditions.

The bank, as a "private lawmaker" (legio particuliere wetgevers), effectively dictates the content of the agreement, creating a fictional freedom of will (de fictie van will) in which the customer's consent is not the result of equal negotiation. This is at the heart of the injustice in standard agreements, where the legal certainty guaranteed by formal legislation is not in line with the reality of fair treatment on the ground level. The main problem with the standard agreement for digital banking services is the inclusion of an exoneration clause. This clause aims to limit or transfer the bank's liability to the customer, especially in the case of losses caused by cybercrimes or system negligence. This practice is diametrically opposed to Article 18 of the Consumer Protection Law, which expressly prohibits business actors from including standard clauses that transfer their responsibilities to consumers.

Exoneration clauses often deny the legal liability that banks have under civil law. Based on Article 1365 of the Civil Code, banks can be held accountable for losses arising from unlawful acts, including negligence in maintaining security systems. Article 19 of the Consumer Protection Law also strengthens the obligation of business actors to provide compensation for losses resulting from the use of services that are not in accordance with the agreement between the parties. However, with the exception clause, banks often argue that losses occur due to customer negligence, not the negligence of the banking system. This conflict between regulatory prohibitions and practices in the field creates legal uncertainty and complicates the process for customers to obtain their rights.

4.3 Implementation of Banking Law Accountability in Practice

A bank's legal liability for customer losses can be divided into civil and criminal liability. Civil liability, which focuses on the recovery of customer losses, is based on the principle of compensation (Eleanora and Dewi, 2022). Article 19 of the Consumer Protection Law requires business actors to be responsible for providing compensation for consumer losses due to the use of goods and/or services that are not in accordance with the agreement. In addition, Article 1365 of the Civil Code is the basis for demanding compensation for unlawful acts. Meanwhile, criminal and administrative sanctions are imposed on criminals and/or banks that violate the provisions of the law. For example, in the case of violation of procedures or acts that are detrimental to customers, banks may be subject to administrative and/or criminal sanctions. However, the main focus of customer protection is civil compensation, which aims to restore the value of the losses experienced by customers (Lekahena et al., 2023).

Factual case studies show how consumer protection theories and regulations are applied in the field. The case of a Jenius Bank customer who lost IDR 110 million and IDR 241.85 million due to phishing is a real example. In this case, the bank refused to provide compensation on the grounds that the loss was caused by the negligence of the customer, who voluntarily provided his data to an irresponsible party. This approach reflects the exoneration clause mentality, which effectively shifts the entire risk burden to the client. Although customers have the right to file a civil lawsuit under Article 1365 of the Civil Code or Article 19 of the Consumer Protection Act, the biggest challenge they face is proving their case.

The customer must prove that the loss is not entirely due to his negligence but due to a systematic weakness in the bank services used by the perpetrator. This is very difficult to do, given the huge information and technical asymmetry between customers and banks. The skimming case also highlights the importance of bank accountability. This crime that harms many customers demands the bank to be liable, not only for its own negligence but also for the actions of third parties that are within the scope of its supervision, in accordance with Article 1367 of the Civil Code. Both cases show that although the legal basis for claiming damages already exists, its implementation still faces serious challenges, highlighting the political urgency of a bolder and more just law.

Table 1. Analysis of the Gap in the Implementation of Bank Legal Accountability in Digital Banking Cases

Case Type	Bank Claims	Legal Basis of Liability	Challenges Faced by Customers
Loss of funds due to phishing (for example Jenius case)	Losses due to customers' negligence in providing personal data.	Article 1365 of the Civil Code (Unlawful Act); Article 19 of the Consumer Protection Law (Obligation to Compensate Business Actors).	Difficulty in proving the existence of systematic negligence of the bank; heavy burden of proof; information and technical asymmetry.
Loss of funds due to Skimming	Losses due to third-party criminal acts are beyond the bank's control.	Article 1367 of the Civil Code (Responsibility for the Acts of Other Parties) and Article 19 of the Consumer Protection Law.	The bank may argue that the loss is not the result of its negligence but rather the actions of a third party.

Source: Data processed by researchers, 2025

Although the passage of the Financial Sector Development and Strengthening Law and Financial Services Authority Regulation 22/2023 is a significant step forward, legal loopholes remain. The analysis shows that there is still a gap in special regulations (lex specialis) for banking. This has led to dispute resolution often having to refer to general rules that are not fully relevant or do not specifically address new risks that are unique to digital services. The need for a lex specialis reflects the fact that digital banking is not just an evolution of conventional banking but rather an entity that is fundamentally different and requires a tailored legal framework.

5. Conclusion

The rapid development of digital banking in Indonesia has raised legal challenges, especially related to the imbalance in bargaining positions between banks and customers, which is manifested in the use of standard agreements. The study concludes that the legal politics of customer protection have evolved in a more pro-consumer direction, marked by the passage of the Financial Sector Development and Strengthening Law and the Financial Services Authority Regulation 22/2023. These new regulations, which require banks to adjust their standard agreements and adhere to consumer protection principles, demonstrate the regulator's recognition of the urgency of this issue.

However, despite the strengthening of the formal legal framework, substantive injustices persist in practice. The use of exoneration clauses in standard agreements effectively shifts the bank's responsibilities to the customer, as seen in factual cases. Although the legal basis for accountability already exists in the Consumer Protection Law and Civil Code, its implementation in the field still faces major challenges due to the heavy burden of proof for customers. Therefore, a bolder and more equitable legal political direction is needed, which not only formally regulates but also substantially balances the bargaining position between banks and customers to ensure that justice is truly felt by all users of digital banking services.

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