



SUPERVISION OF THE CONSUMER DISPUTE SETTLEMENT AGENCY ON THE INCLUSION OF STANDARD CLAUSE AGREEMENTS THAT HARM CONSUMERS

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Abstract

The inclusion of standard clauses that harm consumers is still rampant in various sectors of trade in goods and services in Indonesia. The Consumer Dispute Settlement Agency (CDSA) has an important mandate to supervise and resolve consumer disputes, including assessing the existence of unfair standard clauses. This study aims to analyze the effectiveness of CDSA's supervision of agreements that include unfair standard clauses, as well as assess the challenges of implementing this role in practice. This research uses a juridical-empirical approach with case studies on several CDSA decisions in Indonesia. The findings show that there are institutional weaknesses and inconsistencies in the decisions that make the role of CDSA not optimal. This article offers strategies to strengthen the regulation and role of CDSA to protect consumer rights more effectively.

Keywords: CDSA, Standard Clauses, Consumer Protection, Supervision, Standard Agreement

1. Introduction

The development of the digital economy and trade globalization has encouraged the widespread use of standard agreements or agreements with standard clauses in transactions between businesses and consumers (Azmeah et al., 2020; A. D. Mitchell & Mishra, 2018; A. Mitchell & Mishra, 2020). This practice, although facilitating the transaction process, often puts consumers in an unequal position due to the absence of negotiation space for the contents of the agreement (Barnes, 2007; Johnston, 2006; Yuthayotin, 2015). The inclusion of standard clauses that harm consumers is a recurring and increasingly complex phenomenon (Hosen & Hidayah, 2020; Schwartz & Silverman, 2005).

According to research data from the Indonesian Consumers Foundation in 2023, around 68% of 200 standard contracts tested in the financial services, e-commerce, and housing sectors contain standard clauses that contradict Article 18 of Law No. 8/1999 on Consumer Protection. These clauses include, among others: limiting the liability of businesses, prohibiting consumers from filing a lawsuit, and setting disproportionate unilateral fines. This phenomenon shows the weakness of the supervision system over the substance of agreements used en masse in business activities.

The urgency of this research lies in the strategic position of the Consumer Dispute Settlement Agency (CDSA) in supervising consumer agreements that contain harmful standard clauses. Although the CDSA is authorized by the Consumer Protection Law to decide disputes and cancel standard clauses that are detrimental to consumers, in practice this role has not run optimally. Many CDSA decisions only focus on resolving compensation disputes, not on the substance of contract clauses. On the other hand, court settlements are considered inefficient for consumers due to high costs and lengthy processes.

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The research gap of this study is the lack of studies that specifically and empirically examine the role of CDSA substantive supervision of standard clauses in consumer agreements, while most previous studies only review CDSA as an alternative dispute resolution (ADR) in general. In fact, the supervisory function of the contract substance is a very crucial consumer protection instrument in preventing exploitative practices from the beginning of the agreement.

Based on this background, this study aims to analyze the effectiveness of CDSA supervision in handling the practice of including standard clauses that are detrimental to consumers, as well as formulate strategies for strengthening institutions and regulations so that supervision can be carried out optimally and effectively. The scientific contribution of this research is to expand the discourse on consumer protection through strengthening the mechanism of substantive supervision of contracts, as well as providing concrete input for policy makers in developing regulatory instruments in this sector.

2. Research Objectives

This research aims to provide a comprehensive understanding of the effectiveness of the role of the Consumer Dispute Settlement Agency (CDSA) in supervising the inclusion of standard clauses that harm consumers. In the context of Indonesia's consumer protection legal system, CDSA has a strategic position not only as a dispute resolution institution, but also as a supervisory instrument against contractual practices that harm economically and legally weaker parties, namely consumers.

This research is specifically directed at exploring the extent to which CDSA has carried out its substantive supervisory function over the content of standard agreements or standard contracts used by business actors, especially in assessing the existence of clauses that are contrary to the principles of fairness and legislation. By examining the CDSA's practices, constraints, and decision patterns in cases relating to standardized clauses, this study aims to reveal the actual dynamics of the implementation of this function in the field.

In addition, this study aims to identify the structural and normative obstacles faced by CDSA in carrying out supervision of standardized clauses, whether stemming from limited regulations, lack of technical guidelines, or weak human resource capacity within the institution. This research is also directed at formulating institutional strengthening models and legal policy recommendations that can increase the effectiveness of CDSA in providing legal protection for consumers against unfair agreement practices (Amandong, 2021; Hulu et al., 2020; Kusnadi & Marpaung, 2022; Nurhayati et al., 2022).

Through this approach, the research is expected to be able to provide theoretical contributions in the field of consumer protection law as well as practical contributions to the improvement of institutional design and regulations governing the supervisory function by CDSA, especially against the inclusion of harmful standard clauses.



3. Research Methodology

This research was conducted using a juridical-empirical approach, which is an approach that combines a normative study of the applicable laws and regulations with an observation of the reality of legal implementation in practice (Christiani, 2016; Noor, 2023; Taekema, 2018). The choice of this approach is based on the need to not only understand the role of the Consumer Dispute Settlement Agency (CDSA) from a formal juridical point of view as stipulated in Law No. 8/1999 on Consumer Protection, but also to examine how the norms are implemented in the supervision of the inclusion of standard clauses that harm consumers.

In this context, the research is descriptive-analytical in nature. This means that the research not only aims to systematically describe how the CDSA performs its supervisory role over standardized contracts, but also to analyze the effectiveness of the mechanism as well as the various inhibiting factors that arise in its implementation. In other words, this research not only highlights "what happened", but also "why it happened" and "what could have been done" to improve the condition.

The data sources used consisted of primary and secondary data. Primary data was obtained through semi-structured interviews with a number of CDSA members and secretariats in three areas that administratively and practically have a significant volume of cases, namely CDSA South Jakarta, CDSA Bandung City, and CDSA Surabaya City. These locations were purposively selected because they reflect the complex and diverse dynamics of consumers and businesses. In addition, direct observation of the case examination process and analysis of CDSA decision documents related to standard clause disputes are also part of primary data collection.

Meanwhile, secondary data was obtained from a review of relevant laws and regulations, particularly the Consumer Protection Law and Minister of Trade Regulation No. 20/2017 on CDSA. In addition, a number of CDSA decisions from 2020 to 2024 that are available online or through internal documents of the CDSA secretariat were also reviewed. Relevant scientific literature, legal textbooks and academic journals were also used to strengthen the theoretical framework and analysis.

Data analysis was conducted qualitatively through an inductive approach, starting with the data reduction process, namely sorting and simplifying findings based on their relevance to the research focus. The data that has been reduced is then categorized into main themes such as the form of the disputed clause, the CDSA's legal argumentation in deciding cases, and the tendency of the decision pattern. From there, the researcher draws conclusions using the principles of legal logic and refers to relevant consumer protection theories, including Satjipto Rahardjo's thoughts on substantive legal protection ("Legal Protection of Investors in the Capital Market," 2022; Taklima et al., 2023; Widiarty et al., 2024).

To strengthen the analysis and enrich the perspective, this research also integrates a limited comparative approach, by reviewing the practice of standard clause supervision in countries with similar alternative dispute resolution (ADR) systems, such as Malaysia and the Philippines. Although not the main focus, this approach provides an overview of alternative institutional and regulatory models that can be used as references in strengthening the CDSA supervisory function in Indonesia.



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With this method, it is hoped that the research results can provide an in-depth and factual picture of how CDSA carries out supervision of standard clauses, the obstacles faced, and opportunities for institutional and regulatory reforms that are fairer for consumers in the future.

4. Result

4.1. Effectiveness of CDSA Supervision of Standard Clauses that Harm Consumers

Normatively, CDSA has the authority to cancel or declare invalid a standard clause that contradicts the principles of justice and the provisions of positive law, as stipulated in Article 18 of Law No. 8/1999 on Consumer Protection (Syamsudin, 2021). However, the effectiveness of this authority in practice is still far from expectations. From the 15 CDSA decisions reviewed in the period 2021 to 2024, only five decisions explicitly mentioned standard clauses and stated that the clauses were contrary to the law. The majority of CDSA decisions focus more on compensation for losses or compensation due to damage to goods or services received by consumers, without digging deeper into the legality aspects of the contents of the agreements used by business actors (Hakim et al., 2024; Subagyo et al., 2022; Syamsudin, 2021).

This condition shows that monitoring the substance of the contract has not been the main focus in CDSA practice, even though the existence of harmful standard clauses is often the root cause of consumer disputes. For example, in one case in CDSA Bandung, a consumer demanded a refund of the down payment for a house that was not built according to the agreement (Pasaribu, 2019). However, the contract contained a clause stating that the down payment was non-refundable under any circumstances. This clause clearly contradicted consumer protection principles, but CDSA did not give legal consideration to the clause and only focused on compensation mediation, which ultimately failed.

Interviews with CDSA members revealed that many of them do not have an adequate understanding of how to legally assess standardized clauses, especially those that are digital or in complex legal language. Some members come from the community or consumer organizations, who have advocacy experience but are not trained in the juridical analysis of contracts. As a result, the assessment of standard clauses is subjective and inconsistent, making it difficult to establish precedents and uniform case handling standards between regions.

The effectiveness of supervision is also constrained by the unavailability of national technical guidelines on the assessment of standardized clauses. To date, there is no official reference that explains what parameters should be used by the CDSA to assess a clause as "harmful to consumers". As a result, the interpretation of Article 18 of Consumer Protection Law is highly dependent on the individual perceptions of the CDSA panel members, which has the potential to create legal uncertainty. This is contrary to the basic principles of legal protection which should provide certainty, justice, and benefit in a balanced manner.



4.2. Challenges and Strategies for Strengthening CDSA's Role in Contract Substance Monitoring

The findings also show that the CDSA's substantive supervisory role on standard clauses is faced with various structural, juridical and institutional challenges (Syamsudin et al., 2017). One of the main challenges is the reactive nature of the CDSA's role. Under the current provisions, CDSA can only inspect standardized clauses in the context of dispute resolution (Marotta-Wurgler & Taylor, 2013). This means that there is no legal mechanism that allows CDSA to conduct preventive supervision of the format of standard contracts or agreements before they are used by businesses en masse. This has led to many exploitative clauses that have harmed consumers being widespread in the community before being disputed.

From an institutional point of view, CDSAs in various regions still face limitations in terms of budget, facilities, and human resources. Many CDSA secretariats do not have supporting staff with expertise in contract law and digital technology, even though many standard agreements are currently presented in digital form which requires digital-based legal literacy competencies. In addition, the absence of easy access to the CDSA's national decision database has led to a lack of consistency in the assessment of standard clauses between regions, resulting in disparities in decisions.

The strategy to strengthen the role of CDSA in the supervision of standard clauses needs to be carried out thoroughly. First, it is necessary to revise Regulation of the Minister of Trade No. 20/2017 to expand CDSA's authority in conducting preventive supervision of standard contracts, including providing recommendations and warnings to business actors who use unlawful clauses. Second, national technical guidelines on the parameters of prohibited standard clauses should be developed, involving academics, business actors, consumer associations, and regulators.

Third, strengthening the capacity of human resources within the CDSA is essential. Continuous thematic training on agreement law, standard clause analysis, as well as the development of digital transactions need to be part of the CDSA members' competency development program. Fourth, it is necessary to build a national information system containing CDSA decisions so that it can be used as a reference to create consistency and strengthen legal certainty.

In the context of legal protection theory, the approach developed by Satjipto Rahardjo on the law in favor of the weak is very relevant to be the framework of the CDSA. As a quasi-judicial institution oriented towards quick, cheap, and fair dispute resolution, CDSA must be able to carry out substantive protection functions, not just procedural ones. Standardized clauses that harm consumers are essentially a form of structural inequality in legal relations, which requires state intervention through institutions such as the CDSA.

5. Discussion

This research presents a novelty in the study of consumer protection law, specifically related to the substantive supervisory function carried out by the Consumer Dispute Settlement Agency (CDSA) against the inclusion of harmful standard clauses. So far, academic studies on CDSA tend to focus on its role as an alternative dispute resolution institution, either through mediation or arbitration. The function of supervising



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the content of agreements, especially in terms of canceling or testing unfair standard clauses, is still rarely touched in depth as the main object of legal studies.

The scientific novelty of this research lies in the perspective that places the CDSA not only as a dispute resolution institution, but also as a key factor in preventive legal protection, especially in supervising the practice of using standardized contracts by business actors. This research shows that monitoring the substance of contracts is an integral part of substantive consumer protection, and not just a complement to the dispute resolution process. By directly reviewing CDSA decisions and analyzing field practices through interviews and observations, this research is able to portray the actual condition of supervision of standard clauses factually and objectively.

In addition, this research contributes ideas on the importance of formulating national technical guidelines on the parameters of prohibited standard clauses, as an effort to reduce the imbalance of interpretation between regions and build national standards in consumer protection. The research also shows that without institutional intervention and capacity building of CDSA human resources, the supervision of standard clauses will only be a declarative and non-implemented legal norm.

The contribution of this research is not only theoretical, but also practical. Theoretically, this research expands the discourse on consumer protection law by highlighting aspects of substantive supervision of agreements that have so far gone unnoticed. This research also strengthens the progressive legal framework as developed by Satjipto Rahardjo, that legal protection must favor groups that are socially and economically in a weaker position, in this case consumers.

Practically, the results of this study can be used as a consideration for the government, especially the Ministry of Trade, in formulating CDSA institutional reform policies. Recommendations on revising regulations, strengthening supervisory authority, preparing technical guidelines, and thematic training for CDSA members are part of the real contributions offered by this research in the effort to create a more effective and equitable consumer protection system in Indonesia.

6. Conclusion

Based on the results of the research conducted, it can be concluded that the supervision of the Consumer Dispute Settlement Agency (CDSA) on the inclusion of standard clauses that are detrimental to consumers is still limited and does not reflect the implementation of maximum consumer protection. Although normatively the CDSA has the authority to assess and cancel clauses that contradict the provisions of Law Number 8 Year 1999 on Consumer Protection, in practice the supervision has not been carried out consistently or systematically.

A review of CDSA decisions shows that the majority of dispute settlements still focus on aspects of compensation or material losses, while the standard clauses that form the basis of agreements often escape legal assessment. This condition is exacerbated by the absence of standardized technical guidelines for assessing clauses, limited capacity of human resources within the CDSA, and inconsistency between regions in applying norms.



This imbalance creates legal uncertainty and opens opportunities for business actors to continue using standardized agreements that harm consumers massively.

The findings of this study confirm that substantive supervision of standardized clauses should be a priority in efforts to strengthen the consumer protection system in Indonesia. CDSA as a quasi-judicial institution has a strategic position to progressively intervene in law to prevent exploitative contractual practices. Therefore, institutional and regulatory reforms are needed so that the function of monitoring the content of contracts can run effectively, measurably, and consistently throughout Indonesia.

Based on these conclusions, several suggestions can be made as follows. First, the Ministry of Trade needs to develop national technical guidelines regarding the assessment of prohibited standard clauses in consumer contracts, so that CDSA has a uniform operational reference in carrying out its supervisory function. Second, it is necessary to revise Regulation of the Minister of Trade No. 20/2017 to expand the role of CDSA not only as a dispute resolver, but also as a preventive supervisory institution for the substance of agreements. Third, increasing the capacity of CDSA members through training in agreement law, consumer protection law, and digital literacy is essential so that supervision of standard clauses can be carried out professionally and reasonably. Fourth, it is necessary to build a national database system of CDSA decisions so that there is consistency and transparency in case handling, as well as a legal reference for the public and business actors.

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