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Publication details, including author guidelines

URL: <https://jurnal.iicet.org/index.php/jppi/about/submissions#authorGuidelines>

Editor: Frischa Meivilona Yendi

Article History

Received: 03 Aug 2024

Revised: 14 Sep 2025

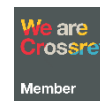
Accepted: 30 Dec 2025

How to cite this article (APA)

Haryadi, R., Roestamy, M. & Sihotang, S. (2025). The principle of fairness in standard agreements in the financial services sector for consumer legal protection. *Jurnal Penelitian Pendidikan Indonesia*, 11(4), 92-97.
<https://doi.org/10.29210/020254562>

The readers can link to article via <https://doi.org/10.29210/020254562>

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JPPI (Jurnal Penelitian Pendidikan Indonesia)

ISSN: 2502-8103 (Print) | ISSN: 2477-8524 (Electronic)



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Article Info

Article history:

Received Aug 03rd, 2024

Revised Sep 14th, 2025

Accepted Dec 30th, 2025

Keyword:

Legal protection,
Standard agreements,
Financial services sector

ABSTRACT

This study aims to examine and analyze the application of the principle of fairness in standard agreements within the financial services sector concerning consumer legal protection, as regulated under Law No. 8 of 1999 on Consumer Protection. The research adopts a normative juridical approach, collecting and analyzing data through literature studies and statutory approaches, supplemented by case studies to assess real-world applications. The findings reveal that standard agreements in financial services, which are predominantly unilaterally drafted by financial service providers (PUJK), often result in unfair conditions for consumers. These agreements lack a bargaining process, effectively leaving consumers in a weak position where they can only choose to either accept or reject the agreement in its entirety (take it or leave it). The novelty of this research lies in its detailed examination of power imbalances in financial agreements, demonstrating that consumer vulnerability stems from their dependency on financial services, which limits their negotiating power. Unlike previous studies, this research not only highlights these imbalances but also proposes regulatory improvements, such as mandatory fairness reviews and enhanced consumer rights protections, to address the injustices arising from unilateral contractual provisions. These findings are expected to contribute to policy recommendations that promote more equitable contractual relationships between financial service providers and consumers.



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Introduction

In banking practices, credit agreements are often presented in the form of standard clauses that have been pre-determined by the bank. These agreements are non-negotiable, meaning that the debtor has only two options: either accept the terms as they are or reject the contract altogether. This lack of negotiation creates an imbalance of bargaining power, placing the debtor in a weaker position compared to the bank, which has full control over the contractual terms. The unequal position between banks and debtors raises concerns about fairness and consumer protection, particularly when

contractual clauses are designed to favor the interests of financial institutions while limiting consumer rights (Ferdyan, 2021).

The importance of this research is underscored by the widespread use of standard agreements in financial transactions. According to data from the Financial Services Authority (OJK), more than 80% of consumer financial agreements in Indonesia are based on standard contracts that are unilaterally drafted by financial service providers. This situation creates a high dependency on pre-drafted contracts, where consumers have little to no bargaining power. Given this prevalence, it is essential to examine how the principle of fairness is applied in these agreements and whether existing consumer protection regulations are sufficient to ensure a balanced contractual relationship between banks and debtors (Widjaja & Ahmad, 2021).

The core issue explored in this study is the lack of fairness in standard agreements within the financial services sector, which ultimately leads to consumer vulnerability. The absence of specific regulatory guidelines on the formulation of standard clauses in credit agreements allows banks to exercise broad discretion in drafting contract terms, often resulting in unfair conditions for debtors. This research, therefore, seeks to address several key questions: How is the principle of fairness applied in standard agreements in the financial services sector? To what extent does the existing regulatory framework under Law No. 8 of 1999 on Consumer Protection (UUPK) ensure legal protection for consumers in standard credit agreements? What are the potential policy recommendations to improve consumer protection in standard agreements within the banking sector?

Compared to previous research, such as A. Dwi Rachmanto's study on consumer disputes in standard agreements, which primarily focused on the legal hierarchy of regulations following the enactment of Law No. 21 of 2011 on the Financial Services Authority (OJK Law), this research takes a different approach. Unlike prior studies, this paper examines the application of fairness principles in the formulatio Related Apartment (Sudrajat et al., 2023).

Additionally, this research aims to provide a comprehensive analysis of the regulatory gaps in credit agreements and explore how contractual fairness can be enforced more effectively through policy improvements (Nurwati & Budiman, 2021).

Given the power imbalance in standard agreements, this study hypothesizes that the absence of clear regulatory guidelines on standard contract clauses contributes to consumer disadvantage in credit agreements. It further proposes that stronger regulatory oversight and standardized fairness principles in banking contracts would enhance consumer protection and promote a more balanced contractual relationship between banks and debtors (Sihombing, 2024).

By addressing these issues, this study seeks to contribute practical policy recommendations to reform the regulatory framework governing standard agreements in the financial services sector. The findings of this research are expected to assist policymakers, legal practitioners, and consumer protection advocates in developing fairer contract regulations that align with evolving legal and economic realities. Through these contributions, this study aims to create a more equitable financial system that protects consumers from unfair contractual practices while ensuring that banks operate within a framework of legal fairness and accountability.

Method

This study employs a normative juridical approach, which views law as a set of norms, rules, and legal principles that govern contractual relationships. The selection of this method is justified by the legal nature of the research topic, which focuses on the fairness of standard agreements in the financial services sector. A normative approach is necessary to analyze legal provisions, doctrines, and principles related to consumer protection in standard credit agreements. Additionally, this study integrates an empirical juridical approach to gain insights into the sociological aspects of consumer experiences in dealing with standard contracts.

Data Collection Methods

This research relies on both primary and secondary data sources to ensure the accuracy and comprehensiveness of the findings. The primary legal materials used include statutory regulations, such as Law No. 8 of 1999 on Consumer Protection (UUPK) and Law No. 21 of 2011 on the Financial Services Authority (OJK Law). These sources are authoritative and directly relevant to the legal framework governing standard agreements.

The secondary legal materials consist of academic publications, including legal journals, textbooks, legal dictionaries, and expert opinions on contract law and consumer protection. These materials provide interpretative perspectives on how standard agreements have been evaluated in previous legal studies. The selection of literature follows several criteria, such as relevance to consumer protection law, credibility of the source, and publication in peer-reviewed journals or reputable legal databases ([Building Societies Association, 2018](#)).

Additionally, tertiary legal materials are included, such as encyclopedias, legal glossaries, and online sources that provide supplementary explanations for both primary and secondary legal materials. These materials help contextualize the discussion and bridge conceptual gaps in the legal framework.

To complement the doctrinal analysis, the study also gathers empirical data through interviews and document analysis. Structured interviews are conducted with legal practitioners, consumer protection advocates, and financial industry representatives to gain insights into real-world applications of standard agreements. The sampling criteria for interview participants include experience in contract law, familiarity with banking regulations, and involvement in consumer dispute resolution.

Data Analysis Techniques

The collected data is analyzed using qualitative content analysis, where legal texts, academic literature, and empirical findings are examined to identify patterns, contradictions, and gaps in consumer protection regulations. The interpretation of primary legal materials follows a systematic legal analysis method, which includes: 1) Normative Interpretation – Examining legal texts based on statutory language and legislative intent; 2) Comparative Legal Analysis – Comparing the legal framework of consumer protection in Indonesia with international best practices; 3) Case Study Approach – Analyzing landmark cases or legal precedents involving consumer disputes over standard agreements to identify legal trends and enforcement challenges.

Furthermore, interview data is processed through thematic analysis, where responses are categorized based on key legal themes, such as fairness in contract formation, consumer rights, and regulatory enforcement. This categorization ensures a structured approach to interpreting qualitative data.

Reliability and Validity of Data

To ensure the validity and reliability of data, this study employs triangulation techniques, which involve: 1) Cross-verification of legal sources to ensure that interpretations align with legal doctrine; 2) Comparison of interview findings with statutory provisions to identify regulatory gaps; 3) Validation of secondary legal sources by ensuring they come from reputable journals, legal institutions, and authoritative reports. Additionally, peer review and expert consultation are conducted to refine the legal analysis and confirm the accuracy of the conclusions drawn.

Limitations of the Research Methodology

While the study provides a comprehensive legal analysis, it has several limitations: 1) Limited empirical data – Due to the normative juridical approach, the study does not conduct large-scale consumer surveys but relies on targeted interviews; 2) Regulatory scope – The focus is on Indonesian consumer protection law, and while comparative legal insights are included, the applicability of findings may vary across jurisdictions; 3) Interpretation of fairness – The concept of fairness in contract law is subjective and may be interpreted differently by different legal scholars and regulators.

Despite these limitations, the study aims to contribute meaningful legal recommendations by combining statutory analysis, empirical insights, and comparative perspectives.

Conceptual Framework and Process Flow

To visualize the analytical process, the research follows this structured framework: 1) Legal Doctrine Analysis → Reviewing primary and secondary legal sources; 2) Empirical Data Collection → Conducting interviews and case studies; 3) Qualitative Content Analysis → Identifying patterns, gaps, and contradictions in contract regulations; 4) Comparative Legal Review → Examining international best practices; 5) Policy Recommendations → Proposing improvements to the consumer protection framework.

By applying this methodological approach, this study seeks to provide a comprehensive understanding of fairness in standard agreements and contribute to the enhancement of consumer protection policies in Indonesia's financial sector (Selvi Harvia Santri, 2017).

Results and Discussions

In the Indonesian legal system, legal certainty and fair protection are guaranteed in several articles of the 1945 Constitution, including Article 1 paragraph (3), Article 28D paragraph (1), Article 28G paragraph (1), Article 28H paragraph (1), and Article 28I paragraph (4). Justice in the context of law is a concept that continues to develop, with John Rawls' theory emphasizing *justice as fairness* as the basic principle of social institution regulation. In the context of standard agreements, this principle of fairness is debated because of the existence of an exoneration clause that often benefits the more economically dominant party (Prodjodikoro, 2021) (Abdullah, 2016).

In practice, standard agreements or *contracts of adhesion* are often found in modern business transactions, both in Indonesia and in other countries such as the United Kingdom and the United States. Previous studies have shown that countries with strict regulations on consumer protection have better levels of contractual fairness than countries with *laissez-faire* approaches. For example, research in the European Union shows that regulations that prohibit excessive clauses in standard agreements improve consumer protections and reduce legal disputes. However, in Indonesia, the implementation of regulations related to standard agreements is still weak due to the lack of public legal supervision and awareness (Authority, 2015).

An analysis of standard treaty practices in Indonesia shows that although Article 1338 paragraph (3) of the Civil Code stipulates that agreements must be made in good faith, in business reality there is often an imbalance between parties with greater bargaining power and consumers. Some studies have found that many consumers do not understand the content of the agreements they sign, especially in the financial and property sectors. In this regard, a study conducted in the Netherlands shows that the application of the principles of *transparency and fairness* in the preparation of standard agreements significantly improves consumer protection and reduces inequality between business actors and consumers (Suparni, 2021).

The main weakness in the implementation of standard agreement regulations in Indonesia is the absence of an effective supervision mechanism and the lack of law enforcement efforts. Many agreements still contain excessive clauses despite regulations that should limit the practice. In addition, consumer awareness of their rights is still low, which further exacerbates inequality in standard agreements (Kosasih et al., 2022).

Based on these findings, there are several policy recommendations that can be proposed. First, the government needs to tighten regulations regarding the exoneration clause by referring to the best practices of the European Union or the United States. Second, a stricter supervision mechanism is needed to ensure that business actors do not abuse their dominant position in standard agreements. Third, legal literacy for consumers must be improved through public education, especially in sectors that often use standard agreements such as banking and property. Fourth, the application of administrative sanctions for business actors who violate regulations must be firmer in order to create a deterrent effect (Djumhana, 2023).

Drawing on international studies and examining the practical impact of standard agreement regulation, this study identifies that policy strengthening and increasing legal literacy are crucial steps to ensure fairer standard agreements in Indonesia. To increase the effectiveness of legal protection for

consumers, a synergy between strict regulations, effective law enforcement, and increased public awareness of their rights in business transactions is needed.

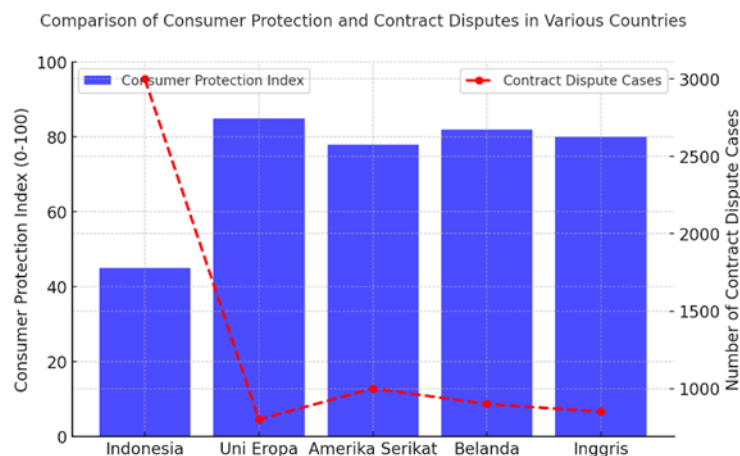


Figure 1. Comparison of Consumer Protection and Contract in Various Countries

Conclusions

The findings of this study reveal that the principle of fairness is not effectively applied in standard agreements within the financial services sector. The Financial Services Business Actors (PUJK) unilaterally determine contractual terms without allowing consumers any bargaining power, placing them in a take-it-or-leave-it situation. This creates an inherent imbalance, where consumers, driven by necessity, are left with no real alternative but to accept contractual terms that may be unfavorable or even exploitative.

From a theoretical perspective, the fairness applied in these agreements diverges from John Rawls' theory of justice, which emphasizes that individual rights should not be sacrificed for the economic benefit of the majority. The current practice of credit agreements, where debtors are not granted equal standing in negotiations, contradicts the principle of equal freedom that Rawls advocates. Instead, the legal framework governing consumer financing agreements prioritizes the interests of financial institutions, limiting consumer rights and undermining contractual balance.

To address this imbalance and enhance fairness in standard agreements, several policy measures should be implemented. First, regulatory reform is necessary to establish stricter guidelines on the formulation and implementation of standard agreements in the financial sector. The Financial Services Authority (OJK) should introduce a mandatory fairness review mechanism to prevent the inclusion of clauses that unfairly favor financial institutions. Additionally, transparency and disclosure requirements must be strengthened, ensuring that consumers fully understand their rights and obligations before signing an agreement. A cooling-off period should also be introduced, allowing consumers to review and reconsider agreements before they become legally binding.

Furthermore, consumer rights protections need to be reinforced by updating Law No. 8 of 1999 on Consumer Protection (UUPK) to explicitly prohibit contract clauses that create an imbalance of power between financial institutions and consumers. The law should also include stronger legal remedies and sanctions for financial institutions that violate fairness principles. In addition, the establishment of Alternative Dispute Resolution (ADR) mechanisms, such as consumer arbitration bodies or financial ombudsman services, would provide a more accessible and cost-effective means for consumers to challenge unfair contractual terms.

Lastly, a nationwide financial literacy initiative should be promoted to educate consumers on their rights in financial agreements and equip them with the knowledge to identify unfair clauses. Increased consumer awareness would help mitigate the information asymmetry that often benefits financial institutions.

By implementing these measures, standard agreements in the financial services sector can become more equitable, ensuring a fairer contractual relationship between financial institutions and consumers. This study highlights the urgent need for legal reforms and provides recommendations that can contribute to the improvement of consumer protection laws in Indonesia. Strengthening regulatory oversight, enhancing consumer rights, and improving public awareness are essential steps toward preventing the exploitation of weaker parties in financial agreements and fostering a more just financial system.

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