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# Void by Law, Alive in Practice: Measuring Prohibited Standard Clauses in Twenty Indonesian Digital-Platform Contracts under Article 18

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**ABSTRACT**

Article 18 of Indonesia's Consumer Protection Law (Law No. 8 of 1999) prohibits eight categories of standard-form clause, headed by the exoneration clause, and declares them void by law (*batal demi hukum*). Indonesian scholarship asserts that such clauses pervade digital consumer contracts, yet systematic cross-sector measurement is scarce. This article develops a replicable detection protocol and applies it to the terms of twenty Indonesian digital-platform applications across fifteen sub-sectors. Using a quantitative content-analysis design within empirical legal studies, Article 18 was operationalised into six statutorily anchored clause categories; full public terms were retrieved and read, each category coded present or absent, and every positive code corroborated by verbatim quotation. Every application (20/20; 100 per cent, exact 95 per cent CI 83.2–100.0) contained at least one clause *prima facie* void under Article 18. Liability-exemption and unilateral-amendment clauses appeared in all twenty; indemnity or waiver clauses in 95 per cent; exclusive-forum terms in 90 per cent; discretionary-termination clauses in 85 per cent; refusal-of-refund clauses in 70 per cent. Applications carried on average 5.40 of six prohibited categories (SD 0.99). Grammatical, systematic, teleological and historical interpretation yield one diagnosis: prohibition, automatic nullity, criminal sanction and a standing supervisory mandate under Article 52(c) are all formally present, yet none operates on drafting conduct. The deficit is institutional, not normative. Comparison with the European Union, the United Kingdom, Australia and Taiwan, and with the Government's own Academic Paper for a replacement Bill, supports six reforms centred on *ex ante* supervisory clause auditing.

## 1. Introduction

The digital economy has moved the Indonesian consumer contract from the paper counter to the smartphone screen. When a user installs a ride-hailing, marketplace, lending, payment, investment or insurance application, the legal relationship between user and provider is governed almost entirely by a set of standard terms and conditions accepted, in practice, by tapping a button. These are contracts of adhesion in their purest form: drafted unilaterally by the business actor, offered on a take-it-or-leave-it basis, and read by almost no one. Comparative scholarship now treats the consent such contracts purport to record as substantially fictional, and argues that the erosion is structural rather than incidental [1]. The behavioural premise is well evidenced: large-scale computational analysis of contract corpora shows consumer agreements to be systematically unreadable by their intended audience [2], and empirical work on standard-form contracting in Asian markets reaches the same conclusion outside the Euro-American setting [3]. Disclosure and transparency remedies, on which much regulation still rests, have been shown to be a weak corrective [4,5]. The bargaining asymmetry these findings describe is precisely what consumer-protection law exists to correct.

Indonesian law confronts that asymmetry directly and, on its face, decisively. Article 18(1) of Law No. 8 of 1999 on Consumer Protection enumerates eight categories of standard clause that a business actor is forbidden to make or include in any document or agreement, and Article 18(2) adds a prohibition on clauses whose placement or form is hard to see, illegible or difficult to understand. The first and most consequential category is the exoneration clause (*klausula eksonerasi*) — any clause that transfers or excludes the business actor's responsibility. Crucially, Article 18(3) does not render such clauses voidable at the consumer's option; it declares them void by law (*batal demi hukum*), as though they had never been written, and Article 18(4) obliges the business actor to bring non-conforming contracts into conformity. Indonesian doctrine reads Article 18 as *lex specialis* qualifying the freedom of contract conferred by Article 1338 of the Civil Code and giving specific content to the unlawful-cause prohibition of Article 1337 [6,7]. The full set of primary instruments governing the field is set out in Table 1.

Table 1. Primary legal instruments and materials analysed.

| Instrument | Year | Jurisdiction | Key provision relied upon | Status |
|---|---|---|---|---|
| Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 | 1945 | Indonesia | Art. 28D(1) legal certainty and equality before the law; Art. 33 economic democracy | In force |
| UU No. 8 Tahun 1999 tentang Perlindungan Konsumen | 1999 | Indonesia | Art. 18(1) eight prohibited standard clauses; 18(2) legibility; 18(3) nullity; 18(4) adjustment duty; Art. 46(1) standing; Art. 52(c) BPSK supervision of standard-clause inclusion; Art. 62(1) criminal sanction | In force |
| Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek) | 1847 | Indonesia | Art. 1320 validity; Art. 1337 unlawful cause; Art. 1338 freedom of contract and good faith | In force |
| UU No. 11 Tahun 2008 jo. UU No. 19 Tahun 2016 (ITE) | 2008/2016 | Indonesia | Recognition of electronic contracts and click-wrap assent | In force |
| PP No. 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik | 2019 | Indonesia | Information duties and licensing conditions for e-commerce operators | In force |
| UU No. 27 Tahun 2022 tentang Pelindungan Data Pribadi | 2022 | Indonesia | Constraints on bundled consent architectures | In force |
| UU No. 4 Tahun 2023 (P2SK) | 2023 | Indonesia | Expanded OJK conduct-supervision and sanctioning powers | In force |
| POJK No. 6/POJK.07/2022 | 2022 | Indonesia | Balanced, clear standard agreements in financial services | Superseded in part |
| POJK No. 22 Tahun 2023 | 2023 | Indonesia | Consolidated financial-sector consumer protection; standard-agreement review | In force |
| *Naskah Akademik* RUU tentang Perlindungan Konsumen (BPHN, Kementerian Hukum dan HAM) | 2020 | Indonesia | Proposed eleven prohibited standard-clause categories; separate definitions of *perjanjian baku* and *klausula baku*; mandatory sectoral Model Perjanjian Baku; administrative sanctions | Academic Paper; Bill not yet enacted |
| Directive 93/13/EEC on unfair terms in consumer contracts | 1993 | European Union | Art. 3 unfairness test; Annex indicative list; Art. 6 non-binding effect | In force, as amended |
| Directive (EU) 2019/2161 (Omnibus Directive) | 2019 | European Union | Turnover-based penalties for widespread infringements | In force |
| Consumer Rights Act 2015 (c. 15), Part 2 | 2015 | United Kingdom | ss. 62–65 fairness test and absolute bar on excluding liability for negligence | In force |
| Competition and Consumer Act 2010 (Cth) Sch. 2 (ACL), Pt 2-3 | 2010/2022 | Australia | Unfair contract terms; civil pecuniary penalties from November 2023 | In force |
| Consumer Protection Act (Taiwan) and sectoral mandatory templates | 1994/2015 | Taiwan | Government-prescribed mandatory and prohibited clauses for defined sectors | In force |

*Note: Primary instruments are cited by instrument number in the text and are not included in the numbered reference list, which is reserved for peer-reviewed scholarship. Status is stated as at July 2026. The Draft Consumer Protection Bill remains under deliberation and is cited only for the direction of proposed reform.*

Indonesian scholarship on exoneration clauses is extensive and largely settled. It holds that such clauses are widespread, that they routinely violate Article 18, and that their persistence reflects weak supervision and enforcement rather than any doubt about the substantive prohibition [6,8,9]. Sector studies reach the same conclusion in e-commerce [10-12], in retail and financial services [13], in banking credit agreements [14,15], in peer-to-peer lending [16-18], and in buy-now-pay-later services [19,20]. Work published in international venues situates the Indonesian problem within the wider difficulty of regulating digital platform design and contracting [21]. What is comparatively rare is systematic, cross-sector measurement — an auditable account of which clauses appear, in which applications and sectors, mapped to which statutory sub-provision, and how prevalent the practice actually is. Assertions of ubiquity are common; reproducible measurement is not.

Internationally, the tools for such measurement already exist. Machine-learning classifiers can detect potentially unfair clauses in online terms of service [22], and the technique now transfers across languages, which matters directly for a bilingual corpus such as Indonesia's [23]. Systematic human coding has mapped the terms-of-service landscape across five clause families closely matching the Indonesian statutory categories [24], and a recent study of one hundred online terms of service demonstrates that prevalence of potentially unfair clauses can be measured and modelled across a fixed sample [25]. No equivalent instrument has been constructed for the Indonesian statutory categories, and no cross-sector prevalence estimate exists.

The Indonesian regulatory framework has meanwhile grown denser without becoming more enforceable. Law No. 11 of 2008 as amended by Law No. 19 of 2016 made electronic and click-wrap contracting binding, extending Article 18 to precisely the documents examined here. Government Regulation No. 80 of 2019 imposed information duties on electronic-commerce operators. In financial services, POJK No. 6/POJK.07/2022 and its successor POJK No. 22 of 2023 require standard agreements to be balanced, legible and non-liability-shifting, and Law No. 4 of 2023 expanded the conduct-supervision and sanctioning powers of the Financial Services Authority (OJK). Yet nothing in this accumulation supplies what Article 18 conspicuously lacks in practice: an operating mechanism by which prohibited clauses are detected and removed before a consumer is harmed. The point is not that Indonesian law failed to assign the task. Article 52(c) of Law No. 8 of 1999 expressly confers on the Consumer Dispute Settlement Body (BPSK) the duty to supervise the inclusion of standard clauses — pengawasan terhadap pencantuman *klausula baku*. The mandate exists; what the findings below indicate is that it is not being discharged. Article 18(4), for its part, imposes an adjustment obligation on the business actor but fixes no timetable and attaches no consequence, so correction depends in practice on ex post invalidation in individual disputes.

This article addresses the measurement gap and the enforcement question together, and makes three contributions. First, it develops a transparent coding protocol translating the abstract categories of Article 18 into concrete, detectable clause patterns, so that any researcher or regulator can apply the same instrument to any application's terms and obtain comparable results. Second, it applies that protocol to the full public terms of twenty Indonesian digital-platform applications, drawn to represent the principal consumer-facing sectors, with every clause finding corroborated by verbatim contractual language. Third, it converts the resulting measurement into a normative argument: interpreting Article 18 by grammatical, systematic, teleological and historical method, and comparing Indonesia's technique with those of the European Union, the United Kingdom, Australia and Taiwan, it identifies enforcement architecture rather than substantive prohibition as the locus of failure, and proposes six specific *de lege ferenda* reforms. The central question is simple to state: a quarter of a century after Article 18 declared exoneration clauses void, do Indonesian digital contracts still contain them, and how far does the practice extend across sectors? The answer developed below — that every application examined contained such clauses, and that liability-exemption and unilateral-amendment clauses are universal across every sector — both quantifies the compliance gap and motivates the detection protocol offered here.

## 2. Methods

### *Research type*

This is empirical legal research, conducted as a quantitative, cross-sector content analysis of contractual documents. It is not doctrinal research that happens to cite examples: the evidentiary core is an original coded dataset, and the doctrinal analysis interprets that dataset rather than substituting for it. Content analysis is the appropriate instrument because the research question concerns the observable textual content of a defined population of documents. The design follows the established practice of coding contract terms against a fixed taxonomy and reporting prevalence across a bounded sample[24,25].

***Legal research approach and interpretive method***

The empirical component is combined with normative legal analysis in two registers. *De lege lata*, Article 18 is interpreted by four established methods applied in sequence — grammatical, systematic, teleological and historical. *De lege ferenda*, the interpretation and the measured prevalence together support the reform proposals in Section 4.5. The comparative component follows the functional-equivalence method: jurisdictions are compared not by the formal similarity of their rules but by the function each legal solution performs in relation to the same social problem. Four comparators were selected for technique diversity and institutional range: the European Union, which applies a general fairness standard with an indicative annex [26,27]; the United Kingdom, which combines that standard with absolute statutory bars and regulator-led enforcement; Australia, which since November 2023 attaches civil pecuniary penalties to unfair contract terms [28,29]; and Taiwan, which prescribes government-made mandatory and prohibited clause templates for defined consumer sectors [30]. Six comparison dimensions were fixed in advance: legal basis, regulatory technique, scope, primary sanction, enforcement actor, and *ex ante* supervision.

***Coding scheme mapped to Article 18***

Article 18's statutory categories were operationalised into six detectable clause types, each tied to the sub-provision it offends and to a set of bilingual textual markers used for detection. The complete instrument is presented in Table 2. Coding was binary — present (1) or absent (0) — at the application level. For every positive code the marker was traced back to the full clause, the clause was read in context to confirm that it performed the risk-shifting function the category describes, and a verbatim quotation was recorded in the data file. This two-stage procedure guards against the principal threat to validity in marker-based coding, namely false positives arising from incidental keyword matches in headings, definitions or explanatory notes.

Table 2. Operational coding scheme: prohibited clause categories, textual markers and statutory basis.

| Code | Clause category (detected) | Illustrative textual markers | Article 18 basis |
|---|---|---|---|
| C1 | Liability exemption / exoneration | “tidak bertanggung jawab”; “sebagaimana adanya” / “as is”; “tanpa jaminan”; “atas risiko Anda”; monetary liability caps | 18(1)(a) |
| C2 | Refusal of refund / return | “tidak dapat dikembalikan”; “non-refundable”; “tidak dapat dibatalkan … alasan apapun” | 18(1)(b), (c) |
| C3 | Unilateral amendment of terms | “dapat diubah sewaktu-waktu”; “tanpa pemberitahuan”; “dari waktu ke waktu” | 18(1)(g) |
| C4 | Discretionary suspension / termination | “atas kebijakan sendiri” / “sole discretion”; “menangguhkan/menutup akun”; “sepihak” | 18(1)(a), (f) |
| C5 | Indemnity / waiver of claims | “ganti rugi”; “membebaskan Kami”; “melepaskan/mengesampingkan hak”; “indemnify” | 18(1)(a), (e) |
| C6 | Exclusive forum and governing law | “pengadilan negeri Jakarta”; “yurisdiksi eksklusif”; “arbitrase / BANI”; “domisili hukum” | Not enumerated — indicator only |

*Note: C6 is not enumerated in Article 18(1), and it is not derived from Article 18(2), which governs placement and legibility rather than forum selection. It is included solely as an unfairness indicator under the balanced-agreement requirements of POJK No. 6/POJK.07/2022 and POJK No. 22 of 2023. All claims regarding clauses void under Article 18 rest on categories C1–C5.*

The taxonomy in Table 2 deliberately parallels the clause families used in the European terms-of-service literature — limitation of liability, unilateral change, unilateral termination, and jurisdiction — which makes the Indonesian results directly comparable with published European prevalence estimates [24,25]. One category nevertheless requires explicit qualification. Category C6, exclusive forum and governing law, is not enumerated in Article 18(1), and it is not derived from Article 18(2), which governs placement and legibility rather than forum selection. It is included solely as an unfairness indicator consistent with the balanced-agreement requirements of POJK No. 6/POJK.07/2022 and POJK No. 22 of 2023. All headline claims about clauses void under Article 18 therefore rest on categories C1 to C5, and this restriction is preserved in every statement of findings.

### *Sample and retrieval*

Twenty applications were selected purposively to represent the principal consumer-facing segments of the Indonesian digital economy, against two criteria: breadth of sector coverage and retrievability of complete public terms. The resulting sample spans fifteen sub-sectors grouped into six domains, as set out in Table 3. All are licensed, nationally operating platforms subject to Indonesian law.

Table 3. Composition of the purposive sample (N = 20 applications, 15 sub-sectors, 6 domains).

| Sector domain | n | Applications | Sub-sectors represented |
|---|---|---|---|
| E-commerce, Travel & Transport | 5 | Blibli, Traveloka, Tiket.com, Gojek, Grab | E-commerce marketplace, Online travel agency, Ride-hailing super-app |
| Payments & E-wallet | 3 | LinkAja, DOKU, Flip | E-wallet, Payment gateway, Transfer / remittance |
| Lending & P2P | 5 | Kredivo, Akulaku, Indodana, Amartha, KoinWorks | Buy-now-pay-later, Consumer lending / BNPL, Peer-to-peer lending |
| Investment & Crypto | 4 | Bibit, Stockbit, Pintu, Tokocrypto | Crypto-asset exchange, Mutual-fund investment, Securities brokerage |
| Digital Banking | 1 | Bank Jago | Digital bank |
| Insurance & Health | 2 | Qoala, Halodoc | Health-fintech / telemedicine, Insurtech |

*Note: Selection was purposive, against criteria of sector breadth and retrievability of complete public terms. Two very large platforms could not be retrieved and were replaced by same-sector comparators, as explained in Section 2.4.*

For each application listed in Table 3 the official, publicly posted terms were retrieved from the provider's own domain and read in full. Where a provider published its terms as a server-rendered page, help-centre article or downloadable document, the complete text was obtained; where the primary page rendered its terms only through client-side scripting, an equivalent server-rendered version was used. Two access constraints bound the sampling frame and are stated for transparency. First, a small number of very large platforms, including the leading general e-commerce marketplaces and one major e-wallet, could not be retrieved because their domains were blocked by the retrieval environment or because they exposed their terms only inside the mobile application; these were replaced by comparable providers in the same sector so that every domain remains represented. Second, the sample is purposive rather than probability-based. This constraint is shared with comparable published work: the European study of one hundred terms of service likewise drew a non-probability sample and confined itself to describing the set analysed[25].

### *Analysis*

Analysis is descriptive. Four quantities are reported: category prevalence, being the share of applications containing each clause type; the count of categories present per application, summarised by mean, standard deviation and range; a category-by-application matrix; and prevalence by sector domain. Every prevalence estimate is accompanied by an exact 95 per cent Clopper–Pearson binomial confidence interval, which is the appropriate interval for small samples and for proportions at or near the boundary, where normal-approximation intervals are unreliable or degenerate. A clause-density index is computed for each application as the proportion of the six categories present, and pairwise association between categories is tested by a checkerboard-swap permutation procedure conditioning on both row and column marginals. Standard deviations use the sample $(n - 1)$ estimator throughout. All computation was performed in Python; the coded matrix, the analysis script and the derived figures accompany this article as supplementary files.

Two statements about the status of these intervals are necessary. First, the sample is purposive, whereas binomial confidence intervals presuppose random sampling from a defined population. The intervals reported here should be read as descriptions of the precision with which the coded proportion is estimated under a binomial model, and expressly not as inferences to a national population of Indonesian digital contracts. Second, the clause-density index aggregates 120 cells clustered within twenty applications, which are therefore not independent. The intraclass correlation is 0.161, giving a design effect of 1.80 and an effective sample of approximately 66 rather than 120 cells; a cluster bootstrap resampling applications rather than cells yields a 95 per cent interval of 82.5 to 96.7 per cent, wider than the naive cell-level interval of 83.2 to 94.7 per cent. The cluster-robust interval is the one reported in the text. Given a purposive sample of twenty, no inferential significance test is reported for between-sector comparison, and none would be meaningful at cell sizes of one to five applications.

A restricted analysis is also reported. Confining attention to C1 through C5 — the categories unambiguously within the statutory enumeration — yields 90 positive codes of 100 cells, a restricted clause-density index of 0.900, and a restricted mean of 4.50 of five categories per application. Every claim in this article about clauses void under Article 18 derives from this restricted set.

### *Reliability*

Three reliability limitations are stated plainly rather than deferred. First, coding was performed by a single coder, so no inter-coder agreement statistic can be reported. This is mitigated, though not cured, by the requirement that every positive code be corroborated by a verbatim quotation retained in the data file, which makes each coding decision independently auditable; a scaled replication should employ at least two independent coders with a reported agreement statistic, and could draw on cross-lingual automated classification to pre-screen candidate clauses[23]. Second, marker-based detection confirmed by full reading records the presence of clause language, not its ultimate judicial validity. Whether a particular clause is void is a question for a court applying Article 18(3); this study measures textual presence, and no finding should be read as an adjudication of any provider's legal position.

Third, and most consequentially, absence codes are not symmetric with presence codes. A clause coded present was read and quoted, whereas a clause coded absent may be genuinely absent or may sit in a document outside the retrieved terms. Two of the five lending platforms place refund and dispute provisions in separate loan agreements, and those two applications account for six of the twelve negative cells in the entire matrix. Measurement error is therefore concentrated, directional and non-random, and it inflates apparent compliance. Bounding the effect for the most affected category, refusal of refund, the true prevalence lies between the observed 70 per cent and 100 per cent, and no point in that range can be preferred on the present evidence. A leave-two-out sensitivity check confirms the point: excluding the two contract-family applications moves exclusive-forum prevalence from 90 to 100 per cent and discretionary termination from 85 to 94.4 per cent. The corollary for replication design is that the unit of analysis must be the contract family — the complete set of documents binding the consumer — rather than the general terms alone. Estimating a prevalence near 0.90 to a half-width of five percentage points would require approximately 138 units under simple random sampling, and approximately 250 once the design effect estimated is applied.

### *Ethics*

The study analyses publicly available contractual documents and involved no human subjects.

## 3. Results and Discussion

### *Overall prevalence*

Every application in the sample contained at least one clause *prima facie* void under Article 18: the overall non-compliance rate was 20 of 20, or 100 per cent. This headline figure is deterministically identical to the prevalence of category C1 and adds no information beyond it; it is reported because it answers the question the literature has posed, not because it constitutes an independent finding. Applications carried on average 5.40 of the six prohibited-clause categories (SD 0.99; range 3 to 6), and thirteen of twenty, or 65 per cent, carried all six. Two categories were universal: liability-exemption clauses (C1) and unilateral-amendment clauses (C3) appeared in every application without exception. Indemnity or waiver clauses (C5) appeared in 95 per cent of applications, exclusive-forum or governing-law terms (C6) in 90 per cent, discretionary-termination clauses (C4) in 85 per cent, and refusal-of-refund clauses (C2) in 70 per cent. The complete prevalence figures with their exact confidence intervals are reported in Table 4.

Table 4. Prevalence of each prohibited-clause category with exact 95% confidence intervals (N = 20).

| Code | Clause category | Applications | Prevalence | 95% CI (%) |
|---|---|---|---|---|
| C1 | Liability exemption / exoneration | 20 / 20 | 100% | [83.2, 100.0] |
| C3 | Unilateral amendment of terms | 20 / 20 | 100% | [83.2, 100.0] |
| C5 | Indemnity / waiver of claims | 19 / 20 | 95% | [75.1, 99.9] |
| C6 | Exclusive forum & governing law | 18 / 20 | 90% | [68.3, 98.8] |
| C4 | Discretionary suspension / termination | 17 / 20 | 85% | [62.1, 96.8] |
| C2 | Refusal of refund / return | 14 / 20 | 70% | [45.7, 88.1] |

*Note: Intervals are exact Clopper–Pearson binomial limits. Mean categories present per application = 5.40 of 6 (SD 0.99, sample estimator; range 3–6). Applications carrying all six categories = 13/20 (65%). Applications carrying at least one prohibited clause = 20/20 (100%). Clause-density index = 0.900 (cluster-robust 95% CI 82.5–96.7%). Restricted to the enumerated categories C1–C5: 90 of 100 cells positive, restricted mean 4.50 of 5.*

The distribution underlying Table 4 is displayed application by application in Figure 1, which shows the full category-by-application matrix with sector domains separated by horizontal rules. Figure 1 makes visible what the aggregate percentages cannot: that the twelve negative cells in the entire matrix are concentrated in a small number of applications rather than scattered evenly, and that the C1 and C3 columns are solid throughout. The same prevalence figures are shown with their confidence intervals in Figure 2, ordered from most to least prevalent.

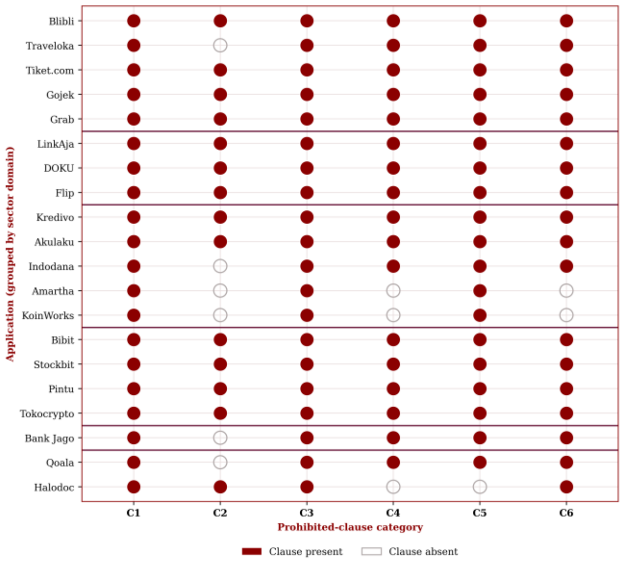


*Figure 1. Category-by-application matrix of prohibited standard clauses (filled circle = clause present; open circle = clause absent). Horizontal rules separate the six sector domains listed in Table 3.*

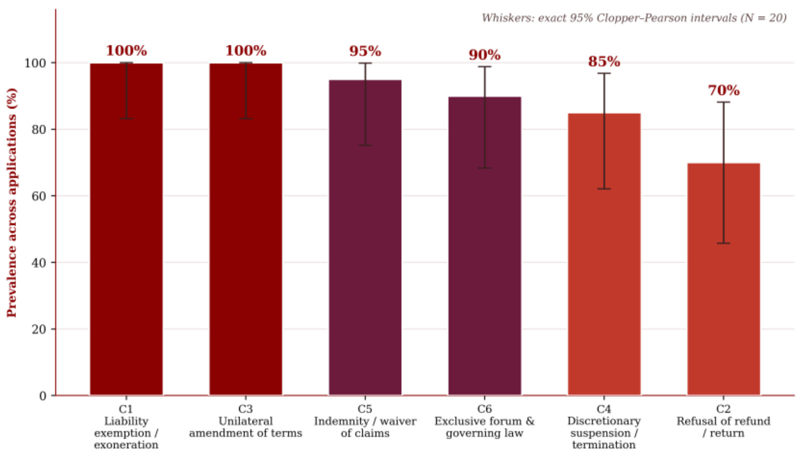


*Figure 2. Prevalence of each prohibited-clause category across the twenty applications, with exact 95% Clopper–Pearson confidence intervals. Values correspond to Table 4.*

The intervals plotted in Figure 2 discipline the interpretation. For the two universal categories the lower bound is 83.2 per cent, which is the strongest claim a sample of twenty can sustain: even on the most conservative reading consistent with these data, liability-exemption and unilateral-amendment clauses appear in at least four of every five applications examined. The refusal-of-refund estimate is far less precise, its interval running from 45.7 to 88.1 per cent, and no confident statement about its true prevalence is warranted. Aggregated across the whole matrix, 108 of 120 possible clause-category cells were positive, giving a clause-density index of 0.900 (cluster-robust 95 per cent CI 82.5 to 96.7 per cent). No application scored below 0.50. Restricting attention to the five categories unambiguously enumerated in Article 18(1), yields 90 positive codes of 100 cells and a restricted mean of 4.50 of five.

***Variation across sectors***

Prohibited clauses were dense in every sector domain. As Table 5 shows, investment-and-crypto and payment applications were the most clause-dense, carrying on average all six categories, followed closely by e-commerce, travel and transport at 5.8. Lending and insurance applications carried somewhat fewer, at 4.6 and 4.5 respectively. These differences reflect where terms are located and how long the public documents are, rather than any genuine absence of risk-shifting, several lenders place refund and dispute terms in separate loan agreements, and the insurtech platform's public terms are comparatively short.

Table 5. Mean prohibited-clause categories by sector domain.

| Sector domain | Apps (n) | Mean of 6 | Range | Clause-density index |
|---|---|---|---|---|
| Payments & E-wallet | 3 | 6.0 | 6–6 | 1.000 |
| Investment & Crypto | 4 | 6.0 | 6–6 | 1.000 |
| E-commerce, Travel & Transport | 5 | 5.8 | 5–6 | 0.967 |
| Digital Banking | 1 | 5.0 | 5–5 | 0.833 |
| Lending & P2P | 5 | 4.6 | 3–6 | 0.767 |
| Insurance & Health | 2 | 4.5 | 4–5 | 0.750 |

*Note: Sector means are descriptive only; a purposive sample of twenty does not support inferential comparison between domains, and no significance test is reported. Overall mean = 5.40 of 6; overall clause-density index = 0.900.*

Figure 3 plots the sector means from Table 5 with the individual application values overlaid, which makes the dispersion within each domain visible. The overlay shows that the lower lending mean is driven by two applications at three categories each rather than by a uniform sectoral reduction, and that the two universal categories were present in every application of every sector. Liability exemption and unilateral amendment are therefore structural features of Indonesian digital consumer contracting rather than sector idiosyncrasies. Consistent with the purposive design, no inferential comparison between domains is offered.

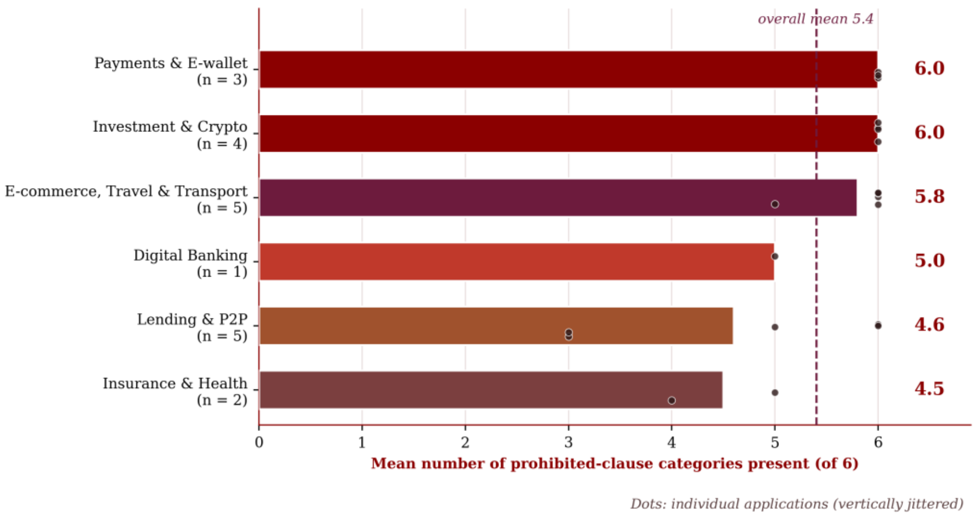


*Figure 3. Mean number of prohibited-clause categories present, by sector domain, with individual application values overlaid. Means correspond to Table 5.*

### ***Clause association and the limits of what it shows***

A natural question is whether the six clause types appear independently or travel together as a drafting bundle. Pairwise co-occurrence was therefore tabulated, and the results are reported in Table 6. Categories C1 and C3 co-occur in all twenty applications, and C1, C3 and C5 co-occur in nineteen of twenty. It would be easy, and wrong, to present this as evidence of a stable three-part risk-shifting architecture. Because C1 and C3 are each present in all twenty applications, as Table 4 records, their joint presence in all twenty is an arithmetic identity forced by the marginal totals; it carries no information about association whatsoever. The same applies, in weaker form, to every pair involving a near-universal category.

Table 6. Pairwise co-occurrence of prohibited-clause categories with Fisher exact tests (N = 20).

| Category pair | Observed joint presence | Expected under independence | Two-sided p |
|---|---|---|---|
| C1 × C2 | 14 | 14.0 | 1.000 † |
| C1 × C3 | 20 | 20.0 | 1.000 † |
| C1 × C4 | 17 | 17.0 | 1.000 † |
| C1 × C5 | 19 | 19.0 | 1.000 † |
| C1 × C6 | 18 | 18.0 | 1.000 † |
| C2 × C3 | 14 | 14.0 | 1.000 † |
| C2 × C4 | 13 | 11.9 | 0.202 |
| C2 × C5 | 13 | 13.3 | 1.000 |
| C2 × C6 | 14 | 12.6 | 0.079 |
| C3 × C4 | 17 | 17.0 | 1.000 † |
| C3 × C5 | 19 | 19.0 | 1.000 † |
| C3 × C6 | 18 | 18.0 | 1.000 † |
| C4 × C5 | 17 | 16.1 | 0.150 |
| C4 × C6 | 17 | 15.3 | 0.016 |
| C5 × C6 | 17 | 17.1 | 1.000 |

*Note: † Pair wholly determined by the marginal totals, because at least one category is present in all twenty applications; observed and expected counts are necessarily equal and no test is informative. Fifteen comparisons were performed; a Bonferroni-corrected threshold would be 0.0033, which no pair meets.*

Testing association properly requires conditioning on the observed marginals. Because both column totals are fixed by the data, the exact null distribution of the joint count for any pair is hypergeometric, so Fisher's exact test is the appropriate statistic; the resulting two-sided p-values appear in the final column of Table 6. Nine of the fifteen pairs are wholly determined by the marginals and return p = 1.000 by construction — every pair involving C1 or C3 — so for these the observed and expected joint counts are necessarily identical and no test is informative. Among the six pairs with genuine freedom to vary, five show no association beyond what the marginals imply (p ranging from 0.079 to 1.000). One pair, discretionary termination with exclusive forum (C4 × C6), reaches nominal significance at p = 0.016: all seventeen applications carrying a discretionary-termination clause also carried an exclusive-forum clause. This single result should not be over-read. Fifteen pairwise comparisons were performed, and a Bonferroni-corrected threshold would be 0.0033, which p = 0.016 does not meet; the finding is best treated as a hypothesis for a larger study rather than an established association.

The honest conclusion is therefore narrower than the bundling hypothesis, and more useful. The data establish that liability exemption and unilateral amendment are universal, but they do not establish that prohibited clauses cluster into a distinctive bundle over and above their individual frequencies. Any claim of a shared drafting template must rest on other evidence — most obviously the near-verbatim recurrence of specific formulations documented in Table 7 — rather than on co-occurrence statistics, which a matrix this saturated cannot support.

### ***Illustrative clause language***

Because every positive code was confirmed by full reading, each corresponds to substantive risk-shifting language rather than an incidental textual match. Table 7 reproduces representative clauses drawn from across the sectors, with at least one exemplar for each of the six categories. Their uniformity is notable: the same formulations — provision of service on an 'as is' basis, monetary caps on aggregate liability, exclusion of refunds 'for any reason', and amendment effective 'without needing further consent' — recur almost verbatim in documents drafted by unrelated legal teams for unrelated businesses.

Table 7. Representative prohibited clauses, with at least one exemplar per category (abbreviated quotations).

| Application | Sector domain | Code | Clause (abbreviated) |
|---|---|---|---|
| Kredivo | Lending & P2P | C1 | Service provided “on an as-is basis”; total liability capped at the equivalent of SGD 30. |
| Flip | Payments & E-wallet | C1 | “Flip Application … provided … on an ‘AS IS’ and ‘AS AVAILABLE’ basis”; liability capped at IDR 10,000,000. |
| Grab | E-commerce, Travel & Transport | C1 | “GRAB TIDAK BERTANGGUNG JAWAB ATAS TINDAKAN DAN/ATAU KELALAIAN DARI MITRA MANAPUN.” |
| Bank Jago | Digital Banking | C1 | “Bank tidak bertanggung jawab atas segala kerugian atau kerusakan yang timbul.” |
| Stockbit | Investment & Crypto | C1 | “THE SERVICE AND THE CONTENT ARE PROVIDED ‘AS-IS’ AND THE COMPANY … DISCLAIM ANY AND ALL … WARRANTIES.” |
| Akulaku | Lending & P2P | C2 | “There is no refund process … for any reason”; certain purchases “cannot be cancelled … for any reason.” |
| Kredivo | Lending & P2P | C3 | “These Terms of Use may be changed at any time … and any amended terms apply … without needing further consent.” |
| Tokocrypto | Investment & Crypto | C4 | Accounts may be suspended or closed “atas kebijakan sendiri” (at the provider's sole discretion), without prior notice. |
| Bibit | Investment & Crypto | C5 | “Nasabah … membebaskan Bibit dari segala kerugian, tanggung jawab, klaim dan biaya.” |
| Gojek | E-commerce, Travel & Transport | C6 | Disputes “subject to the exclusive jurisdiction of the South Jakarta District Court.” |

*Note: Quotations abbreviated; full text preserved in the study data file. Clause validity is ultimately for judicial determination; the coding records textual presence, not adjudicated invalidity.*

***Discussion***

The study yields one dominant finding: across twenty applications and fifteen sub-sectors, every set of terms and conditions contained clauses that Article 18 renders void by law. Liability-exemption clauses — the paradigmatic *klausula eksonerasi* expressly prohibited by Article 18(1)(a) — and unilateral-amendment clauses — prohibited by Article 18(1)(g) — were present without exception, as Table 4 and Figure 1 both record. The gap between the statute's categorical nullity rule and observed market practice is therefore not marginal but, within this cross-sector sample, effectively complete; and it is measurable with a simple, auditable instrument.

***Interpreting Article 18: four methods, one diagnosis***

Grammatical interpretation is the natural starting point and is unusually decisive here. Article 18(1) opens with the words 'Pelaku usaha dalam menawarkan barang dan/atau jasa … dilarang membuat atau mencantumkan *klausula baku*' — the business actor is forbidden to make or to include the standard clause. The prohibited act is the drafting or inclusion of the clause, not its enforcement, invocation, or successful reliance upon it. On the plain words, the statutory wrong is complete at the moment the clause is written into the document. Every application in this sample stands in breach on the face of its own terms, irrespective of whether any clause has ever been deployed against a consumer, and irrespective of whether any consumer has suffered loss. This conclusion is stronger than the literature ordinarily draws, and it follows directly from the statutory language.

Systematic interpretation locates the defect, and does so in a way that inverts the explanation usually offered. Read alongside Article 1337 of the Civil Code, which voids agreements with an unlawful cause, and Article 1338(3), which requires performance in good faith, Article 18 operates as *lex specialis* converting an open-textured good-faith standard into a closed enumeration of forbidden clause types [6,7]. It is tempting to infer from the ubiquity of prohibited clauses that the statute lacks teeth. It does not. Article 62(1) of Law No. 8 of 1999 enumerates Article 18 among the provisions whose violation is punishable by imprisonment of up to five years or a fine of up to two billion rupiah. Indonesian law therefore already attaches to the insertion of an exoneration clause both the strongest available civil consequence and a serious criminal penalty, and the practice is nonetheless universal across every sector examined. Recent Indonesian scholarship has named this the paradox of enforcement: the norm is unambiguous, and compliance is nil [9].

The systematic reading therefore relocates the defect from the statute book to the enforcement chain, and the relocation is sharper than it first appears. A criminal sanction reaches drafting conduct only if some institution investigates and prosecutes it; no reported application of Article 62 to a standard-clause violation has been identified. Nullity, for its part, operates only when a consumer litigates. Critically, however, Indonesian law does not lack a designated inspector. Article 52(c) of Law No. 8 of 1999 places on BPSK precisely the duty this study performs — supervision of the inclusion of standard clauses. The prohibition is thus backed by two sanctions and one standing supervisory mandate, and the clauses are nonetheless universal. The failure is therefore not normative but institutional, which is a materially different diagnosis and points to a different remedy. This explains why adding further substantive obligations — as POJK No. 6/POJK.07/2022 and POJK No. 22 of 2023 did for financial services — has not changed drafting behaviour: the new obligations inherited the same detection vacuum. The wider comparative literature reaches the same structural conclusion, that the effectiveness of unfair-terms control turns on the balance between public and private enforcement rather than on the content of the prohibition [31].

Teleological interpretation confirms that this outcome defeats the statute's own stated purpose. Article 3 of Law No. 8 of 1999 declares the aims of the statute to include raising consumer awareness, elevating consumer dignity and empowering consumers to assert their rights. Article 18 serves those ends only if prohibited clauses cease to appear in consumer documents. A prohibition that leaves offending text in 100 per cent of sampled contracts is not achieving the purpose the legislature assigned to it. European scholarship analysing thirty years of case law under Directive 93/13/EEC reaches an equivalent conclusion about that regime's objectives: the non-binding effect of an unfair term is a means to deterrence at the drafting stage, not an end in itself [26,32]. Constitutionally, the same conclusion follows from Article 28D(1) of the 1945 Constitution: a guarantee of legal certainty is hollow where a categorical statutory prohibition is observably ignored, since consumers face a body of contractual text whose legal status they cannot determine without litigating.

Historical interpretation supplies a final and somewhat surprising observation. Law No. 8 of 1999 was enacted in the immediate post-Reformasi period, against a background of paper-based consumer transactions, before electronic contracting, platform intermediation or algorithmic term-updating existed in any recognisable form. One might expect its categories to have aged poorly. In substance they have not. Article 18(1)(g), which prohibits clauses subjecting the consumer to new, additional or continuing rules made unilaterally by the business actor while the consumer continues to use the service, was drafted with instalment and continuing-service agreements in mind; yet it maps with striking precision onto the modern unilateral-amendment clause found in all twenty applications, and corresponds directly to the 'unilateral change' family independently identified in the European terms-of-service taxonomy [24]. The substantive prohibition has aged well. What has aged badly is the institutional apparatus around it — which implies that the reform task is not to rewrite Article 18(1) but to build the enforcement architecture that Article 18(3) and (4) were never given.

***The nullity paradox and the in terrorem* effect**

Two features sharpen the normative significance of the findings. The first is that the nullity attached by Article 18(3) is automatic and does not depend on the consumer challenging the clause: the offending terms are void whether or not any consumer ever litigates. Their pervasive presence therefore indicates not a set of contestable bargains but a standing stock of legally inoperative text. The second is that this inoperative text is not inert. Consumers do not read standard terms, and the contracts are in any event written well above the reading level of their intended audience [2]; but consumers are nonetheless influenced by them at the moment of complaint, when a provider's customer-service function invokes the very clause that is void to explain why no remedy is available. A clause that could never be enforced in court thus succeeds in deterring the claim that would have tested it. The paradox is that automatic nullity, precisely because it operates without the need for consumer action, generates no event that would bring the clause to anyone's attention.

The clauses observed are, moreover, not buried ambiguities susceptible to charitable construction. As Table 7 documents, they are explicit risk allocations: service provided 'as is', aggregate liability capped at the equivalent of thirty Singapore dollars or ten million rupiah, refunds excluded 'for any reason', and amendments effective 'without needing further consent'. These are among the strongest forms of exoneration a drafter can deploy. That they recur almost verbatim across otherwise unrelated providers suggests a shared drafting culture — most plausibly the circulation of common precedent documents and internationally sourced template terms — that has not internalised the Article 18 prohibitions. The European finding that contracts drafted outside the relevant consumer-law jurisdiction are significantly more likely to contain unfair terms points the same way [25]. This diagnosis matters for reform: a practice sustained by template circulation is far more susceptible to correction by a published blacklist and a filing requirement than one sustained by deliberate individual calculation. The same reasoning underpins current European proposals to update prohibition lists so that they capture digital interface practices rather than only classical contractual terms [33].

The cross-sector spread is itself informative. That investment, crypto, payment, marketplace, travel, super-app, banking, lending, insurance and health applications all carry the same core exoneration and amendment clauses — visible as solid columns in Figure 1 — shows the practice to be a general feature of Indonesian digital contracting rather than a pathology of any single high-risk sector. It also indicates that sector-specific supervision has not produced sector-specific compliance: financial-sector applications, subject to the balanced-agreement requirements of POJK No. 6/POJK.07/2022 and POJK No. 22 of 2023 in addition to Article 18, were among the most clause-dense in the sample, as Table 5 shows. This is a significant negative finding, and it is consistent with sector-level Indonesian studies reporting persistent exoneration clauses in peer-to-peer lending [16,17] and buy-now-pay-later services [19,20] notwithstanding OJK conduct regulation. Adding a further layer of substantive obligation, without a corresponding detection mechanism, does not change drafting behaviour.

***Comparative perspective: technique, sanction and enforcement architecture***

Comparison on the functional-equivalence method isolates the variable that matters. All five systems examined prohibit substantially the same terms; they diverge sharply in what follows from prohibition, as set out in Table 8. The European Union applies a general fairness standard under Article 3 of Directive 93/13/EEC, supported by an indicative annex in which exclusion or limitation of the seller's liability appears as a paradigm case [26,27], and pairs non-binding effect with public enforcement, reinforced since Directive (EU) 2019/2161 by turnover-based penalties. The United Kingdom combines that standard with absolute statutory bars, notably the prohibition in section 65 of the Consumer Rights Act 2015 on excluding liability for death or personal injury arising from negligence, and vests enforcement in a regulator empowered to seek injunctions. Australia has moved furthest on sanction: since November 2023 the unfair contract terms regime in Part 2-3 of the Australian Consumer Law no longer merely voids offending terms but exposes the party that proposes, applies or relies on them to substantial civil pecuniary penalties [28], with a territorial reach that extends in principle to foreign online suppliers [29]. Taiwan takes a fifth path, prescribing government-made mandatory and prohibited clause templates sector by sector, so that the content of the standard contract is settled before it reaches the market [30].

Indonesia alone among the five relies on nullity as its operative sanction, as the fourth row of Table 8 and the shaded band in Figure 4 both show. This is not a defect in what Indonesian law prohibits — the closed enumeration in Article 18(1) is in some respects more determinate, and therefore easier to apply and to audit, than the open fairness standards of the European and British models; the comparative literature on policing consumer terms treats the choice between enumerated blacklists and open unconscionability standards as the central design question [34]. Recent European scholarship has in fact moved towards the Indonesian technique, asking whether blacklists of specific prohibited terms should be reinstated for digital markets precisely because open standards are difficult to enforce at platform scale [35].

Table 8. Functional comparison of unfair standard-term control across five jurisdictions.

| Dimension | Indonesia | European Union | United Kingdom | Australia | Taiwan |
|---|---|---|---|---|---|
| Legal basis | UU No. 8/1999 Art. 18; POJK 22/2023 | Directive 93/13/EEC; Directive (EU) 2019/2161 | Consumer Rights Act 2015, Pt 2 | Competition and Consumer Act 2010 Sch. 2, Pt 2-3 | Consumer Protection Act and sectoral templates |
| Regulatory technique | Closed enumeration of eight prohibited clause types | General fairness standard plus indicative annex | Fairness standard plus absolute bars (s. 65) | General unfairness test with statutory factors | Government-made mandatory and prohibited clause templates |
| Scope | Any document or agreement offered by a business actor | Non-individually-negotiated consumer terms | Consumer contracts and consumer notices | Standard-form consumer and small-business contracts | Defined consumer sectors by ministerial designation |
| Primary sanction | Nullity; criminal sanction formally available but dormant | Non-binding effect; turnover-based penalties | Non-binding effect plus regulator injunctions | Civil pecuniary penalties plus voidness | Non-conforming clause void; mandatory clause implied in |
| Enforcement actor | Consumer, BPSK or court, on complaint | National authorities and consumer bodies, *ex officio* | CMA and designated sectoral regulators | ACCC and State regulators, via court proceedings | Competent authority by sector, *ex ante* |
| Ex ante supervision | None; no filing or clearance requirement | Sector-specific and expanding | Regulator-led review and undertakings | Regulator-led review with penalty exposure | Yes — clause content prescribed before market entry |

*Note: Comparison conducted on the functional-equivalence method; the six dimensions were fixed in advance of analysis. Rows correspond to the columns of Figure 4.*

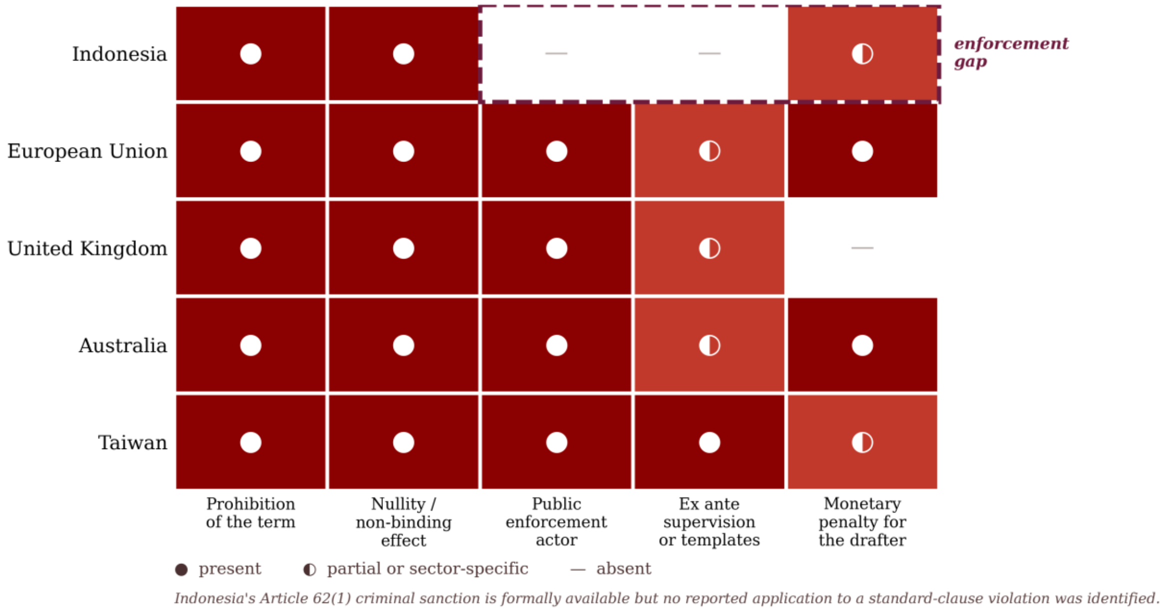


*Figure 4. Enforcement architecture for standard-term control across five jurisdictions. Columns correspond to the rows of Table 8; the dashed outline marks the Indonesian enforcement gap.*

The Indonesian defect lies rather in what the law does when the prohibition is ignored. Comparative assessment reaches the same conclusion from the opposite direction: effectiveness turns on public enforcement and on sanctions that are effective, proportionate and dissuasive [31,36], and European practice increasingly treats platform terms as objects of direct public regulation rather than private bargains policed after the fact [37,38]. Where an open standard has been transplanted without a corresponding enforcement apparatus, as in Cyprus, the results have been similarly disappointing [39].

Transplantability requires care, and the comparison supports a differentiated conclusion. Three of the dimensions on which Indonesia diverges are transplantable at low institutional cost. Ex ante supervisory review is directly transplantable, because OJK already possesses the power to review standard agreements under POJK No. 22 of 2023 and Law No. 4 of 2023; the reform requires activation of existing authority rather than conferral of new authority. Administrative sanctions for repeated insertion are transplantable within the financial sector through OJK's existing sanctioning ladder and within the trading sector through licensing conditions under Government Regulation No. 80 of 2019, without amending Law No. 8 of 1999 at all.

A published blacklist of prohibited clause formulations is transplantable and requires only a ministerial or OJK regulation; the Taiwanese template model demonstrates that prescribing clause content *ex ante* is administratively workable in an Asian jurisdiction of comparable institutional scale [30]. The Australian civil-penalty model, by contrast, is not directly transplantable in the near term. It presupposes a well-resourced national regulator with standing to bring representative proceedings, a capacity the Indonesian consumer-protection institutions do not currently possess. Adopting the penalty norm without first building the institutional substrate would reproduce the present enforcement gap in a more expensive and more conspicuous form. Legal transplantation must follow institutional capacity, not precede it.

***Limitations***

Four limitations qualify these findings and should govern how they are used. First, the sample is purposive rather than probability-based; its prevalence figures describe the accessible, sector-representative set analysed here and must not be read as national parameters, and the confidence intervals in Table 4 express sampling variability under a binomial model rather than representativeness. Second, a small number of very large platforms were inaccessible and were replaced by same-sector comparators; because the excluded platforms are among the largest by user base, and platform size plausibly correlates with legal-department sophistication in both directions, the direction of any resulting bias cannot be determined a priori. Third, coding was performed by a single coder and records the presence of clause language rather than ultimate enforceability, and it operationalises six categories rather than every sub-provision of Article 18(1) or the placement-and-legibility requirement of Article 18(2). Fourth, the study measures text, not effect: it establishes that void clauses are present, but not how often providers invoke them, nor how many consumer claims are deterred as a result. Establishing that *in terrorem* effect empirically would require complaint-level data from providers, BPSK and OJK, and remains an important open question.

***De lege ferenda*: *six reform proposals***

*De lege lata*, the position is clear: Article 18(1) prohibits these clauses; Article 18(3) voids them automatically; Article 18(4) obliges adjustment; Article 62(1) criminalises violation; and Article 52(c) assigns supervision of standard-clause inclusion to BPSK. Every element of an enforcement system is formally present, and the findings show that the configuration nonetheless produces no compliance. The reform task is accordingly not to create powers but to make existing powers operable, and to relocate them where institutional capacity actually exists. Six reforms follow, summarised with the instrument required, the responsible body and the implementation horizon in Table 9.

First, convert Article 18(4) into an enforceable supervisory duty. The provision presently obliges the business actor to adjust non-conforming clauses but designates no supervisor, no timetable and no consequence. An amendment to Law No. 8 of 1999 should impose on the relevant sectoral supervisor a duty to review the standard terms of licensed digital providers on a defined cycle, with power to direct removal of a non-conforming clause within a specified period, and — decisively — should relocate the Article 52(c) supervisory function from BPSK to a body with the capacity to discharge it. The reform is timely, because the Government's own Academic Paper for a replacement Consumer Protection Bill already proposes much of what is required.

Second, publish a binding blacklist of prohibited clause formulations. The coding scheme in Table 2 demonstrates that Article 18's abstract categories reduce to concrete, recognisable textual patterns. A Ministry of Trade regulation for the trading sector, and an OJK regulation for financial services, should publish an indicative list of formulations presumed to violate Article 18 — including 'as is' service disclaimers, aggregate liability caps, blanket non-refundability, and amendment without notice or consent. Given the evidence that the practice is sustained by template circulation, a published blacklist directed at drafters should be disproportionately effective relative to its cost, and the argument for reinstating specific blacklists in digital markets has been made independently in the

European literature [35]. Taiwan's mandatory-template model shows the stronger version of the same instrument in operation [30].

Third, introduce mandatory pre-market filing of standard terms. Licensed digital providers should file their consumer terms, and any subsequent amendment, with the relevant supervisor before the terms take effect, in a machine-readable format. This does not require substantive pre-approval, which would be administratively unsustainable; it requires only deposit, which converts an unobservable practice into an observable one and makes continuous automated screening possible [22,23].

Fourth, attach graduated administrative sanctions to repeated insertion. Nullity imposes no cost on the drafter, and criminal liability under Article 62(1), though formally available, has not been activated. Within financial services, OJK's existing sanctioning ladder under Law No. 4 of 2023 can be applied to repeated insertion of blacklisted clauses without amending Law No. 8 of 1999; in the trading sector, licensing conditions under Government Regulation No. 80 of 2019 provide an equivalent lever. Escalation should be graduated — warning, published notice of non-compliance, then administrative fine — and triggered by failure to remove a clause after direction rather than by its initial presence. The design criteria for such penalties, and the requirement that they be effective, proportionate and dissuasive, are well developed comparatively [36].

Fifth, establish a public clause register and compliance dashboard. Filed terms and screening results should be published in an accessible register showing which providers carry which prohibited clause categories. This serves three functions at once: it gives consumers and consumer organisations a basis on which to identify void terms without litigating; it creates reputational incentives that operate faster than administrative process; and it supplies the longitudinal data needed to measure whether the other reforms are working. The instrument applied in this article is, in effect, a prototype of the screening function such a register would perform, and automation of exactly this kind is being developed for collective redress elsewhere [40].

Sixth, and least costly of all, make *ex officio* judicial and BPSK review explicit. A Supreme Court circular or regulation directing courts and BPSK panels to examine, of their own motion, whether a standard clause before them falls within Article 18(1), and to disregard it if it does, would require no legislation and no new institution. It follows directly from the automatic character of Article 18(3) nullity: a court that enforces a contract containing a clause void by law is applying an invalid term if it does not notice. This is the mechanism the Court of Justice of the European Union developed under Directive 93/13/EEC, where national courts must assess unfairness on their own initiative without waiting for the consumer to raise it [41]. It is the one reform in this list implementable within a year.

Table 9. *De lege ferenda*: six reform proposals with instrument, addressee and implementation horizon.

| # | Reform | Instrument required | Responsible body | Horizon |
|---|---|---|---|---|
| 1 | Convert Art. 18(4) into an enforceable supervisory clause-audit duty | Amendment to UU No. 8/1999 | DPR, on the initiative of the Ministry of Trade | Long (statutory) |
| 2 | Publish a binding blacklist of prohibited clause formulations | Ministerial regulation; OJK regulation | Ministry of Trade; OJK | Short (regulatory) |
| 3 | Require pre-market filing of standard terms in machine-readable form | OJK regulation; licensing condition under PP 80/2019 | OJK; Ministry of Trade | Medium |
| 4 | Attach graduated administrative sanctions to repeated insertion | Existing sanctioning ladder under UU No. 4/2023; licensing conditions | OJK; Ministry of Trade | Medium |
| 5 | Establish a public clause register and compliance dashboard | Joint regulation and administrative implementation | BPKN with sectoral supervisors | Short |
| 6 | Make *ex officio* judicial and BPSK review of standard clauses explicit | Surat Edaran or Peraturan Mahkamah Agung | Mahkamah Agung | Immediate (< 1 year) |

*Note. Horizon indicates the instrument's legislative demandingness, not its priority. Proposals 6, 2 and 5 should be sequenced first because they generate the observability on which the remainder depend.*

These proposals should be read alongside a procedural avenue the Indonesian literature under-uses. Article 46(1) of Law No. 8 of 1999 confers standing to bring consumer claims not only on individual consumers but also on groups of consumers with similar interests, on registered non-governmental consumer-protection organisations, and on the government. A representative action against a provider whose terms carry blacklisted clauses would test Article 18(3) at scale without requiring any individual consumer to have suffered loss, and would generate the reported jurisprudence whose absence this article has repeatedly noted. The economic case for collective redress where per-consumer harm is too small to litigate is well established [42]. Standing is not the obstacle; the obstacle is that no institution currently holds the evidentiary basis on which to select defendants — and an instrument of the kind applied here supplies precisely that basis.

Sequencing matters, and Table 9 orders the proposals accordingly. The sixth, second and fifth are achievable within the existing statutory framework and should be implemented first, since they generate the observability on which the others depend. The third and fourth follow, using existing OJK and Ministry of Trade powers. The first, requiring statutory amendment, is the most demanding but also the most durable, and the evidence assembled here — universal non-compliance across every sector examined, a quarter of a century after enactment — is precisely the kind of evidence that justifies opening Law No. 8 of 1999 for amendment. Taken together, the six proposals would shift Indonesian standard-clause control from ex post, complaint-driven, consumer-initiated invalidation toward *ex ante*, supervisory, instrument-based auditing, without abandoning the enumerative technique that makes Article 18 unusually well suited to automated screening in the first place.

***The Draft Consumer Protection Bill: convergence and one unresolved incoherence***

The reform argument advanced here does not run against the grain of Indonesian legal policy; it substantially converges with it. The Academic Paper (*Naskah Akademik*) prepared by the National Law Development Agency (BPHN) of the Ministry of Law and Human Rights for a replacement Consumer Protection Bill diagnoses the same structural problems and proposes several of the same remedies. Four points of convergence, and one serious incoherence, deserve attention, and each bears directly on the findings reported in Results section.

First, the Academic Paper proposes to expand the prohibited-clause list from the eight categories of Article 18(1) to eleven, and the three additions are precisely the clause types this study encountered but could not code as enumerated violations. Table 10 maps the current and proposed lists against the six coding categories. The most consequential addition for present purposes is proposed sub-provision (k), which would prohibit designating a dispute-resolution forum other than the forum of the consumer's domicile. Category C6 was treated throughout this article as an unfairness indicator rather than a statutory violation, precisely because forum-selection terms are not enumerated in Article 18(1). Were the Bill enacted in the proposed form, C6 would become an enumerated prohibition, and the 90 per cent prevalence reported in Table 4 would represent direct statutory non-compliance rather than an indicator. Proposed sub-provision (j), covering non-liability for losses caused by legal subjects under the business actor's responsibility, would likewise capture the platform-intermediary disclaimers observed in the ride-hailing and marketplace terms quoted in Table 7.

Second, the Academic Paper proposes to separate the definitions of *perjanjian baku* (standard agreement) and *klausula baku* (standard clause), which Article 1(10) of the current statute conflates, and to extend nullity from the offending clause to the standard agreement containing it. Third, it proposes administrative sanctions-administrative fines, temporary suspension of business activity, and licence revocation, imposable alternatively or cumulatively-which is substantially the graduated ladder proposed as reform four above. Fourth, and most strikingly, it proposes that the Central Government establish a Model Standard Agreement (*Model Perjanjian Baku*) for each sector, developed in coordination with business and consumer associations, whose use would be mandatory.

Table 10. Prohibited standard clauses: Article 18(1) of Law No. 8 of 1999 compared with the eleven categories proposed in the BPHN Academic Paper.

| Proposed | Substance of the prohibition | In Art. 18(1) 1999? | Coding category | Prevalence observed |
|---|---|---|---|---|
| a | Transfer of the business actor's responsibility to the consumer | Yes — 18(1)(a) | C1 | 100% |
| b | Right to refuse return of goods purchased | Yes — 18(1)(b) | C2 | 70% |
| c | Right to refuse return of money paid | Yes — 18(1)(c) | C2 | 70% |
| d | Power of attorney for unilateral action over goods bought on instalment | Yes — 18(1)(d) | Not coded | — |
| e | Regulation of proof of loss of usefulness of goods or services | Yes — 18(1)(e) | C5 (partly) | 95% |
| f | Right to reduce the utility of goods or services or the consumer's assets | Yes — 18(1)(f) | C4 (partly) | 85% |
| g | Subjecting the consumer to new, additional or amended rules made unilaterally | Yes — 18(1)(g) | C3 | 100% |
| h | Power of attorney to encumber goods bought on instalment | Yes — 18(1)(h) | Not coded | — |
| i | Provision that the business actor is bound only by the clauses in the standard agreement | NEW | Not coded | — |
| j | Non-liability for consumer losses caused by legal subjects under the business actor's responsibility | NEW | C1 (intermediary disclaimers) | 100% |
| k | Designation of a dispute forum other than the forum of the consumer's domicile | NEW | C6 | 90% |

*Note. The proposed list is drawn from the Academic Paper for the Draft Consumer Protection Bill, BPHN, Ministry of Law and Human Rights, 2020. Prevalence figures are from Table 4 of this study. Sub-provisions (d) and (h) concern instalment-purchase security interests and were outside the scope of the coding scheme; (i) was not separately coded. Proposed (k) would convert category C6 from an unfairness indicator into an enumerated statutory prohibition.*

That is functionally the Taiwanese mandatory-template technique [30], arrived at independently, and it is a stronger instrument than the published blacklist proposed as reform two. The convergence is therefore substantial, and it strengthens rather than weakens the case for the instrument developed here: a mandatory sectoral model agreement and an administrative-sanction ladder both require exactly the clause-level detection capability this article demonstrates, since neither can be enforced against a provider whose terms nobody has read. What the reform programme still lacks is the screening layer that would make its own sanctions operable.

One element of the proposal, however, is doctrinally incoherent and should be reconsidered. The Academic Paper retains the language of nullity by operation of law — the offending standard agreement is dinyatakan *batal demi hukum* — while simultaneously providing that annulment must be applied for by the consumer before a court or a consumer dispute settlement body. These two propositions cannot both hold. A term void by operation of law is void without any act of any party, which is the whole doctrinal point of *batal demi hukum* as against *vernietigbaar*; a term that requires a consumer application to a tribunal before it ceases to bind is voidable, not void. Adopting this formulation would convert the strongest feature of the current Article 18(3) — that nullity operates whether or not the consumer ever acts — into a weaker remedy contingent on the very consumer initiative that the evidence in Section 3 shows is not forthcoming. It would, in other words, reproduce at the level of the reform the precise enforcement dependency that the reform is meant to cure.

This is not a drafting quibble but the pivot of the whole enforcement question, and it reinforces the case for reform six. Explicit *ex officio* review costs nothing and resolves the incoherence directly: if courts and BPSK panels are required to identify prohibited clauses on their own initiative, nullity operates as the statute says it does, without waiting for a consumer application. The comparative authority is well developed, since the Court of Justice of the European Union has built precisely this duty on the equivalent non-binding-effect provision of Directive 93/13/EEC [41].

A final institutional observation follows from the Academic Paper's own candour, and it explains why Article 52(c) has produced no observable supervision. The Paper records that BPSK's standard-clause supervisory power is difficult to exercise in practice, partly because not all BPSK members appreciate that the standard clause is an inseparable part of the standard agreement; that BPSK members receive monthly honoraria in the range of IDR 750,000 to IDR 1,400,000, against disputes in banking and insurance whose value can exceed IDR 500 billion and IDR 750 billion respectively; and that Supreme Court jurisprudence has held BPSK to lack competence over contractual claims, with the power to annul an agreement residing in the general courts. A supervisory mandate held by a body that is under-resourced by three orders of magnitude relative to the disputes before it, uncertain in its understanding of the doctrine it is to supervise, and judicially confined in the remedies it may grant, is a mandate in name only. This is the strongest available argument that the reform required is institutional rather than normative, and it comes from the Government's own analysis rather than from external criticism.

## 4. Conclusion

This article converted a familiar doctrinal assertion — that illegal exoneration clauses pervade Indonesian digital consumer contracts — into cross-sector measurement. Applying a coding protocol mapped clause by clause to Article 18 across twenty applications in fifteen sub-sectors, it found that every application carried at least one clause void by law, that liability-exemption and unilateral-amendment clauses were universal, and that applications averaged 5.40 of six prohibited categories. Interpretation of Article 18 by grammatical, systematic, teleological and historical method locates the failure not in the substantive prohibition, which has aged well, but in an enforcement architecture in which neither automatic nullity nor the criminal sanction of Article 62(1) is triggered by the drafting conduct the statute forbids. Comparison with the European Union, the United Kingdom, Australia and Taiwan confirms that diagnosis, as does the Government's own Academic Paper for a replacement Consumer Protection Bill, which proposes an expanded eleven-category prohibition list, mandatory sectoral model agreements and an administrative-sanction ladder, but couples nullity by operation of law with a requirement that the consumer apply for annulment — a combination that cannot hold and that would reintroduce the dependency the reform seeks to remove. The reform proposed is a shift from ex post invalidation to *ex ante* supervisory clause auditing, sequenced in Table 9: explicit *ex officio* review, a published blacklist, a public register, mandatory filing, graduated administrative sanctions, and an amended Article 18(4) creating a genuine supervisory duty. A representative replication should draw a probability sample from the register of licensed providers, treat the contract family rather than the general terms as the unit of analysis, employ at least two independent coders with a reported agreement statistic, and extend the scheme to every sub-provision of Article 18. Operated continuously, such an instrument would give the nullity rule the empirical enforcement it has so far lacked.

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***Author contributions***

Conceptualisation, D.R. and A.B.; methodology, D.R.; coding instrument design, D.R. and A.B.; data curation and coding, D.R.; formal analysis, D.R. and E.W.; comparative legal analysis, E.W. and A.B.; writing — original draft preparation, D.R.; writing — review and editing, A.B. and E.W.; supervision, A.B. All authors have read and agreed to the published version of the manuscript.

***Conflicts of interest***

The authors declare no conflict of interest.

***Data availability***

The coded dataset, the analysis script and the derived figures accompany this article as supplementary files. All terms and conditions analysed are publicly available on the respective providers' websites; the retrieved URLs are recorded in the data file.

***Ethics***

The study analyses publicly available contractual documents and involved no human subjects.

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