

# THE PARADOX OF LAW ENFORCEMENT ON EXONERATION CLAUSES IN INDONESIA: A Critical Analysis of Mawardi's *Fiqh Siyasah* and Strict Liability Principle

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Received: 05-09-2025; Revised: 08-10- 2025; Accepted: 18-11-2025; Published regularly: December 2025

**Abstract:** This study aims to examine the paradox of law enforcement regarding exemption clauses in Indonesia, strengthening the analysis from the perspective of *fiqh siyasah* (Islamic political jurisprudence) concerning the role of the state in guaranteeing substantive justice and protecting the rights of the *mustadh'afin* (consumers). The research critiques the inconsistency in judicial interpretation and the tension between the principle of contractual freedom and consumer protection, despite the Consumer Protection Law explicitly prohibiting businesses from exempting themselves from liability. Based on a comparison of pivotal court decisions, such as Decision Number 385/Pdt.G/2019/PN.Sby and Decision Number 334 PK/Pdt/2014, this normative legal research employs legislative, case, and conceptual approaches. The findings reveal that the strict liability principle—designed to strengthen consumers' bargaining position and eliminate the burden of proving fault—is often disregarded by judges who still adhere to classical principles from the Civil Code. From a *fiqh siyasah* perspective, this inconsistency reflects the state's failure (through the judiciary) to fulfill its duty as the protector of the people (*ri'ayah*) and the enforcer of public welfare (*jalb al-mashalih*), especially in addressing structural imbalances between businesses and consumers. Consequently, exemption clauses remain prevalent in sectors such as banking, transportation, insurance, and digital services. The study concludes that harmonizing judicial practices with consumer protection norms must be based on the principles of substantive justice and the state's moral responsibility (*mas'uliyyah daulah*) in preventing systemic injustice, which is the essence of *siyasah syar'iyyah* in regulating contractual relationships.

**Keywords:** exoneration clause; strict liability; freedom of contract; law enforcement; *fiqh siyasah*

**Abstrak:** Penelitian ini bertujuan untuk mengkaji paradoks penegakan hukum terhadap klausula eksonerasi di Indonesia, dengan memperkuat analisis dari perspektif *fiqh siyasah* mengenai peran negara dalam menjamin keadilan substantif dan melindungi hak-hak *mustadh'afin* (konsumen). Studi ini mengkritisi inkonsistensi penafsiran hakim dan ketegangan antara asas kebebasan berkontrak dan perlindungan konsumen, meskipun Undang-Undang Perlindungan Konsumen secara tegas melarang pelaku usaha membebaskan diri dari tanggung jawab. Berdasarkan perbandingan putusan-putusan penting, seperti Putusan Nomor 385/Pdt.G/2019/PN.Sby dan Putusan Nomor 334 PK/Pdt/2014, penelitian normatif dengan pendekatan perundang-undangan, kasus, dan konseptual ini menunjukkan bahwa prinsip strict liability—yang dirancang untuk memperkuat posisi konsumen—sering diabaikan oleh hakim yang masih berpegang pada asas klasik Kitab Undang-Undang Hukum Perdata. Dalam perspektif *fiqh siyasah*, inkonsistensi ini mencerminkan kegagalan negara (melalui kekuasaan kehakiman) dalam menjalankan tugasnya sebagai pelindung rakyat (*ri'ayah*) dan penegak kemaslahatan (*jalb al-mashalih*), terutama dalam mengatasi ketimpangan struktural antara pelaku usaha dan konsumen. Implikasinya, klausula eksonerasi tetap marak di sektor perbankan, transportasi, asuransi, dan layanan digital. Penelitian ini menyimpulkan bahwa harmonisasi antara praktik peradilan dan norma perlindungan konsumen harus didasarkan pada prinsip keadilan substantif serta tanggung jawab moral negara (*mas'uliyyah daulah*) dalam mencegah kedzaliman sistemik, sebagaimana menjadi esensi dari *siyasah syar'iyyah* dalam pengaturan hubungan kontraktual.

**Kata kunci:** klausul eksonerasi; strict liability; kebebasan berkontrak; penegakan hukum; *fiqh siyasah*

## Introduction

The relationship between consumers and business actors bound by contractual agreements should ideally be balanced because both parties possess corresponding rights and obligations. In practice, however, consumers frequently occupy a weaker bargaining position due to the high level of dependence on the products or services offered, creating a “take it or leave it” scenario. As emphasized by Rizka Syarifa et al., this imbalance is compounded by the public’s limited understanding of the legal implications of exoneration clauses commonly embedded in standard form contracts.<sup>1</sup>

Business actors, as the stronger party, often include provisions that exempt or limit their liability within contractual arrangements. These provisions—known as exoneration clauses—appear in various transactional settings, such as motorcycle parking services that refuse responsibility for loss or damage. Parking tickets regularly contain exoneration statements such as “all damage or loss of items inside the vehicle is not the responsibility of the parking operator.” This practice contradicts Article 18 paragraph (1) of the Consumer Protection Act (Law No. 8 of 1999), which expressly prohibits shifting legal liability from business actors to consumers. Similar prohibitions are stipulated in Article 46 paragraph (2)(a) of the Financial Services Authority Regulation No. 22 of 2023 on Consumer and Public Protection in the Financial Services Sector. Despite these explicit prohibitions, such practices remain widespread, including within office and commercial parking facilities, and are reinforced in Article 36 paragraph (2) of Jakarta Regional Regulation No. 5 of 1999 on Parking.

From a juridical perspective, liability for damage to consumer vehicles legally rests with parking operators once the vehicle has been entrusted to them, as the act of parking establishes a custodial relationship. Nevertheless, exoneration

clauses continue to be embedded within various contractual relations as a means for business actors to avoid responsibilities such as compensation for losses. In accordance with Article 18 paragraph (3) of the Consumer Protection Act, any standard clause transferring liability from business actors to consumers is deemed null and void by operation of law.

In practical application, legal challenges against exoneration clauses frequently encounter procedural barriers where courts declare claims *Niet Ontvankelijke Verklaard* (NO) or inadmissible. Such outcomes arise when lawsuits are perceived as containing *obscur libel*—claims that are unclear or insufficiently articulated—often overshadowed by the principle of freedom of contract. Consequently, cases are dismissed without substantive examination, and plaintiffs may be required to bear litigation costs. This recurrent pattern underscores the necessity of reevaluating exoneration clauses through the analytical framework of the strict liability principle.

The issue of exoneration clauses has been explored in prior studies, including research by Atika Sandra Dewi et al. titled *Consumer Protection in Standard Housing Contracts: A Review of Strict Liability and Exoneration Clauses*.<sup>2</sup> Their findings indicate that developers often occupy a dominant position that enables the unilateral imposition of contractual terms through exoneration clauses without equitable negotiation. This condition aligns with the doctrine of *unconscionability*, as articulated by Muhammad Syahid Hidayat, which refers to substantial inequality in bargaining power that results in oppressive contractual outcomes.<sup>3</sup>

According to Dewi et al., existing regulatory frameworks emphasize administrative supervision and licensing within the housing sector but do not sufficiently address the substantive legal issues inherent in contractual relations between

<sup>1</sup> Rizka Syarifa and others, “Menyelidik Isu Perlindungan Konsumen Pada Klausula Eksonerasi Di Sektor Jasa Keuangan Dan Retail,” *Jurnal Ilmu Keluarga Dan Konsumen* 15, no. 2 (2022): 178, <https://doi.org/10.24156/jikk.2022.15.2.178>.

<sup>2</sup> Atika Sandra Dewi and others, “Perlindungan Konsumen Dalam Perjanjian Baku Perumahan: Tinjauan Strict Liability Dan Klausula Eksonerasi,” *Jurnal Hukum* 8, no. 2 (n.d.): 12–22.

<sup>3</sup> Muhammad Syahid Hidayat, “Penyalahgunaan Klausula Eksonerasi Yang Merugikan Konsumen,” *Jurnal Juristic* 1, no. 1 (2020): 113.

consumers and developers. This gap illustrates a research novelty, namely the need to examine how exoneration clauses are enforced within judicial processes. Junaidi's work, *Exoneration Clauses: Legal Consequences of Standard Agreements in Housing Sale and Purchase Binding Contracts (PPJB)*, similarly demonstrates that PPJB agreements often contain hidden exoneration clauses. The study affirms that Article 45 of the Consumer Protection Act allows parties to pursue legal action, reinforcing the rationale for investigating the enforcement dimensions of exoneration clauses.<sup>4</sup>

Similarly, the study by Dewa Kadek Kevin Patria and Abdul Rokhim titled *Exoneration Clauses in E-Commerce: Between Freedom of Contract and Abuse of Circumstances* expands the discussion into the domain of digital transactions. Their findings reveal that exoneration clauses have increasingly permeated e-commerce agreements. These practices not only contravene the Consumer Protection Act but also conflict with the doctrine of *misbruik van omstandigheden* (abuse of circumstances) under the Civil Code, thereby strengthening the imperative to scrutinize law enforcement concerning exoneration clauses across both conventional and digital transactional contexts.<sup>5</sup>

The prevalence of exoneration clauses creates a legal paradox when examined alongside the strict liability principle. Strict liability establishes accountability for damages irrespective of fault or negligence, prioritizing the protection of injured parties. This principle inherently conflicts with clauses that seek to exempt or reduce responsibility, thereby raising fundamental concerns regarding compatibility between contractual design and regulatory objectives.

Within the framework of Al-Mawardi's *fiqh*

<sup>4</sup> Junaidi Junaidi, "Klausula Eksonerasi: Akibat Hukum Perjanjian Baku Dalam Perjanjian Pengikatan Jual Beli Perumahan," *Wajah Hukum* 9, no. 1 (2025): 189, <https://doi.org/10.33087/wjh.vgi1.1616>.

<sup>5</sup> Dewa Kadek Kevin Patria and Abdul Rokhim, "Klausula Eksonerasi Dalam E-Commerce: Antara Kebebasan Berkontrak Dan Penyalahgunaan Keadaan," *Jurnal USM Law Review* 8, no. 3 (2025): 1743, <https://doi.org/10.26623/julr.v8i3.12776>.

*siyasah*, law enforcement is mandated to uphold public interest (*maslahah al-'ammah*) and ensure justice. Al-Mawardi asserts that governing authorities bear responsibility for safeguarding society from harm, securing rights, and preventing practices that undermine public welfare. Exoneration clauses that absolve parties from liability may contradict these principles when they produce detrimental social consequences, disrupt the equilibrium of justice, or neglect moral and juridical responsibility.

This paradox leads to a critical inquiry: how can legal systems reconcile individual contractual autonomy with strict liability requirements and the public interest principles articulated in *fiqh siyasah*? While modern contract law values freedom of contract, the combined perspectives of strict liability and *fiqh siyasah* support the imposition of legal boundaries to prevent the erosion of societal welfare and ensure equitable outcomes.

The complexity of modern business transactions in an era of globalization intensifies the significance of this paradox, as contractual practices increasingly involve substantial risks with widespread societal implications. Accordingly, examining the paradox of law enforcement surrounding exoneration clauses through a combined lens of statutory law and Al-Mawardi's *fiqh siyasah* constitutes the core novelty of this research. The study aims to analyze the inconsistency of judicial enforcement, assess its alignment with strict liability principles, and propose a harmonization framework that strengthens legal certainty, contractual fairness, and public protection.

## Method

This research employs a normative legal research method, as its analytical focus concerns the ambiguity of law enforcement in the application of exoneration clauses across various sectors.<sup>6</sup> To build a comprehensive methodological framework,

<sup>6</sup> Muhammad Yahdi and Syakilah Fadliyah, "Ethics, Law, and Educational Democratization: Shaping Islamic Cultural Behavior of Students in Sultan Hasanuddin Islamic Boarding School, Gowa, South Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 3 (2025): 1465–90. <https://doi.org/10.22373/fqsfdo65>

the study utilizes three approaches: empirical, conceptual, and analytical.<sup>7</sup> The empirical approach is used to observe real legal practices, particularly judicial trends that reject lawsuits challenging exoneration clauses by invoking freedom of contract.<sup>8</sup> The conceptual approach examines core legal doctrines, including freedom of contract, the validity of agreements, strict liability, and the legal position of exoneration clauses within positive law, while also situating Al-Mawardi's *fiqh siyasah* as an auxiliary paradigm for understanding justice and public welfare.<sup>9</sup> Meanwhile, the analytical approach evaluates the consistency between judicial reasoning, statutory provisions, and principles of *siyasah syar'iyyah*.<sup>10</sup> Data were collected using document study techniques, covering legislation, jurisprudence, academic literature, standard-form contracts, and relevant supporting documents.<sup>11</sup> All collected data were then analyzed qualitatively by categorizing, interpreting, and comparing the findings from positive law and *fiqh siyasah* frameworks to identify their convergences and divergences in determining contractual responsibility.<sup>12</sup>

<sup>7</sup> Kurniati Abidin et al., "Determinants of Domestic Violence in Indonesia from a Gender and Sociology of Law Perspective," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 2 (2025): 701–23. <https://doi.org/10.22373/ot3bc059>

<sup>8</sup> Abdul Halim and Erian Putri Pratiwi, "Online Ta'aruf as a Medium for Islamic Matchmaking: A Socio-Religious Construction of Muslim Young People in the Digital Era," *QJIS (Qudus International Journal of Islamic Studies)* 13, no. 1 (2025): 117–58. <http://dx.doi.org/10.21043/qjis.v13i1.14333>

<sup>9</sup> Puji Kurniawan, Ahmatnijar Ahmatnijar, and Muhammad Ridwan, "The Transformation of Islamic Family Law in the Digital Era: A Sociological Legal Analysis of Marriage and Divorce Regulations in Indonesia," *Madania: Jurnal Kajian Keislaman* 28, no. 2 (2024): 179–90. <http://dx.doi.org/10.29300/madania.v28i2.5146>

<sup>10</sup> Ahmad Husairi, Kholil Syu'aib, and Mashair Idris Kheiralla, "Analysis of Pampeh Law in Sarolangun Customary Documents from the Perspective of Maqashid Sharia," *Madania: Jurnal Kajian Keislaman* 28, no. 2 (2024): 339–52. <http://dx.doi.org/10.29300/madania.v28i2.5325>

<sup>11</sup> A Kumedi Ja'far, Erik Rahman Gumiri, and Edi Susilo, "Problems of Mediation by Religious Court Judges in Lampung Province," *Madania: Jurnal Kajian Keislaman* 28, no. 2 (2024): 255–64. <http://dx.doi.org/10.29300/madania.v28i2.6591>

<sup>12</sup> Maman Abdur Rahman et al., "Law Enforcement Model for the Execution of Court Decisions on Civil Servant Fathers' Child Support Obligations After Divorce in the Bengkulu High Religious Court Area," *Madania: Jurnal Kajian Keislaman* 28, no.

## Result and Discussions

### The Paradox of Law Enforcement of the Exoneration Clause in Indonesia

Law enforcement related to exoneration clauses generally takes the form of judicial annulment of such clauses, as they constitute unlawful acts. Article 18 paragraph (3) of the Consumer Protection Act (Law No. 8 of 1999) clearly stipulates that exoneration clauses are null and void by operation of law. Nevertheless, business actors, including developers, often maintain that these clauses remain contractually binding.<sup>13</sup> This tension prompts injured parties to seek judicial review and annulment before the courts pursuant to Article 1266 of the Civil Code, which states that contract cancellation requires a court decision.

In 2019, the panel of judges in Decision No. 385/Pdt.G/2019/PN.Sby rejected the plaintiff's request for annulment of an exoneration clause, reasoning that the contractual addenda had been mutually agreed upon and signed by the parties. In contrast, Supreme Court Decision No. 334 PK/Pdt/2014 annulled an exoneration clause despite the plaintiff's prior consent to the contract containing it. This ruling relied on Article 1494 of the Civil Code, which provides that sellers remain liable for the consequences of their actions notwithstanding contractual attempts to exclude liability. These conflicting judicial outcomes exemplify the paradigm of legal pluralism in Indonesia's contract law: judges may prioritize either civil code formalism or consumer protection norms depending on their interpretive emphasis.

As indicated by Fiona Wiananda Adhyaksanti and Kadek Wiwik Indrayanti, standard-form contracts containing exoneration clauses generate diverse judicial interpretations. For instance, Decision No. 94/Pdt.G/2017/PN Mlg dismissed the plaintiff's lawsuit entirely and upheld the validity of a standard

<sup>13</sup> 2 (2024): 319–28. <http://dx.doi.org/10.29300/madania.v28i2.6471>

<sup>14</sup> Dewi Fransiska Mamonto et al., "Islamic Civil Law in Indonesia: Developments, Challenges, and Future Prospects," *NUSANTARA: Journal Of Law Studies* 3, no. 02 (December 25, 2024): 50–58, <https://juna.nusantarajournal.com/index.php/juna/article/view/103>.

contract, finding no exoneration clause therein. The divergence in *ratio decidendi* illustrates how, within a pluralistic legal environment, judicial discretion plays a decisive role in determining whether a clause constitutes an unlawful exoneration.<sup>14</sup>

The judicial reasoning in these cases indicates that judges often analyze disputes not solely through the lens of consumer protection but also through broader civil law doctrines, such as breach of contract or procedural deficiencies. This contributes to variability in outcomes, demonstrating that law enforcement becomes contingent upon each judge's methodological orientation. Indonesia's legal system, which does not require judges to follow precedents, further amplifies this pluralistic pattern, as reflected in the contrasting decisions of 2019 and 2014.<sup>15</sup>

One contributing factor to differing judicial interpretations is the difficulty in distinguishing between standard-form clauses and exoneration clauses, as their structure is often similar. According to Mariam Darus Badrulzaman, standard-form contracts are drafted unilaterally and presented for acceptance without negotiation, appearing across daily transactions including internet services, insurance, airline tickets, and banking. This blurred distinction frequently affects judicial assessments within Indonesia's pluralist legal context.<sup>16</sup>

As noted by Ahmad Jahri, certain banking credit agreements still contain provisions that effectively function as exoneration clauses, such as unilateral restrictions on interest rate adjustments, collateral requirements, or credit terms. These contractual dynamics reinforce structural imbalances between creditors and debtors, which, when left unexamined,

may undermine proportionality and fairness in agreements.<sup>17</sup>

Dauri et al. emphasize that in opening bank accounts, institutions should provide adequate explanations regarding clauses that may be interpreted as exoneration provisions. From a jurisprudential standpoint, ensuring informed consent aligns with both positive law and the *fiqh siyasah* principle of transparency in contractual relations. Without such explanation, legal consequences arising from ambiguous clauses may disproportionately burden consumers.<sup>18</sup>

Standard-form contracts are not inherently prohibited; they serve important functions in reducing transaction costs and enhancing efficiency. However, their validity depends on compliance with the Civil Code's conditions for a lawful agreement and the prohibitions under the Consumer Protection Act. Any clause transferring liability to consumers categorically falls within the definition of an exoneration clause and is thus prohibited.

According to I Gede Agus Kurniawan, exoneration clauses represent unilateral attempts by contracting parties to shift risks in a manner that violates Article 18 of the Consumer Protection Act and the principle of proportionality. Such clauses disrupt the balance of rights and obligations and may constitute defective consent (*cacat kehendak*), especially when consumers are placed under economic pressure to accept predetermined terms.<sup>19</sup>

Nurhilmiyah and Hasim Purba argue that exoneration clauses also contradict the principle of economic equivalence (*asas kesepadan*), which requires proportionality between costs incurred and

<sup>14</sup> Fiona Wiananda Adhyaksanti and Kadek Wiwik Indrayanti, "Ratio Decidendi Penafsiran Klausula Eksonerasi Dalam Perjanjian Baku Di Indonesia," *KRTHA BHAYANGKARA* 17, no. 1 (2023): 175, <https://doi.org/10.31599/krtha.v17i1.828>.

<sup>15</sup> Sukindar Dkk, "Legal Innovation in Religious Courts: The Potential Utilization of Artificial Intelligence (AI) in Resolving Contemporary Cases," *MILRev: Metro Islamic Law Review* 03, no. 2 (2024): 388–410, <https://doi.org/10.3176/chem.geol.1975.2.10>.

<sup>16</sup> Wiwin Wintarsih Windiantina, "Klausula Eksonerasi Sebagai Perjanjian Baku Dalam Perjanjian Asuransi," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 11, no. 01 (2020): 11, <https://doi.org/10.32493/jdmhkdmhk.v1i1.5647>.

<sup>17</sup> Ahmad Jahri, "Perlindungan Nasabah Debitur Terhadap Perjanjian Baku Yang Mengandung Klausula Eksonerasi Pada Bank Umum Di Bandarlampung," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 1 (2017): 146, <https://doi.org/10.25041/ariatjustisia.v10n01.651>.

<sup>18</sup> Dauri Dauri, "Akibat Hukum Terhadap Penerapan Klausula Eksonerasi Dalam Perjanjian Baku," *Hukum Dan Masyarakat Madani* 10, no. 1 (2020): 110, <https://doi.org/10.26623/human.v10i1.1852>.

<sup>19</sup> I Gede Agus Kurniawan, "Digitalization of Business Law: Urgency and Orientation of the Industrial Revolution 4.0 and Society 5.0," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 2 (December 20, 2022): 253–65, <https://doi.org/10.24090/volksgeist.v5i2.6847>.

benefits received. Any clause that disturbs this equilibrium becomes incompatible with fair economic practice and should therefore be categorized as an exoneration clause prohibited by law.<sup>20</sup>

A similar imbalance is observed in the rapidly growing logistics sector. According to Dara Qurratu Aini Yusuf, shipping companies often limit liability under Standard Shipping Terms (SST) to only loss or damage, excluding compensation for delays, even when delay undermines consumer rights—for instance, concerning perishable goods. This reinforces the need for judicial scrutiny grounded not only in positive law but also in *fiqh siyasah Al-Mawardi*'s emphasis on justice, protection of rights, and prevention of harm (*daf' al-mafsaadah*).<sup>21</sup>

### **Exoneration Clauses and the Principle of Strict Liability: A Critical Review of Law Enforcement in Indonesia**

Decision Number 385/Pdt.G/2019/PN.Sby rejected the plaintiff's claim for the annulment of an exoneration clause on the ground that the contractual addenda had been mutually agreed upon by the parties, as evidenced by signatures affixed on stamped documents. This judicial reasoning reflects the application of the principle of freedom of contract as stipulated in Article 1338 of the Indonesian Civil Code, which affirms that legally valid agreements bind the parties as law.

The mutual consent of the parties concerning the contents of an agreement constitutes the core manifestation of the principles of consensualism and binding force in contract law. This position is consistent with Article 1320 of the Civil Code, which identifies consent as one of the essential requirements for the validity of an agreement. Normatively, therefore, such contracts fulfill the formal legal requirements under Indonesian private law.

<sup>20</sup> Nurhilmiyah Nurhilmiyah, "Klausula Eksonerasi Pada Perjanjian Pinjaman Online," *Acta Law Journal* 1, no. 1 (2022): 30, <https://doi.org/10.32734/alj.v1i1.10014>.

<sup>21</sup> Dara Qurratu Aini Yusuf, "Perlindungan Konsumen Terhadap Klausula Eksonerasi Dalam Perjanjian Baku Perusahaan Jasa Pengiriman Barang," *Iuris Studia: Jurnal Kajian Hukum* 3, no. 2 (2022): 203, <https://doi.org/10.55357/is.v3i2.249>.

Article 1322 of the Civil Code further provides that mistake does not invalidate an agreement unless it concerns the essential nature of the subject matter. Anggitariani Rayi Larasati Siswanta argues that this provision is closely related to the doctrine of *pacta sunt servanda*, which obliges parties to perform agreements that have been lawfully concluded. This doctrine functions as a foundational principle for legal certainty and contractual stability.<sup>22</sup>

Nevertheless, a deeper examination reveals that Decision Number 385/Pdt.G/2019/PN.Sby tends to conflict with the concept of strict liability. Within the framework of consumer protection law, business actors or developers are positioned as parties bearing responsibility for losses arising from the goods or services they provide, irrespective of prior contractual consent. This limitation on contractual freedom is explicitly recognized under Law Number 8 of 1999 on Consumer Protection, which prohibits exoneration clauses that undermine consumer rights.<sup>23</sup>

Conceptually, the principle of strict liability strengthens the bargaining position of consumers within inherently unequal contractual relationships. It obliges business actors to compensate consumer losses even in the absence of fault or negligence. In transactions involving goods or services—such as breaches of contract, defective products, or inconsistencies with promotional representations—consumers are only required to demonstrate the occurrence of loss, without proving the fault of the business actor.<sup>24</sup>

The application of strict liability serves a preventive function by encouraging business actors to exercise heightened diligence in their commercial activities. Si Ngurah Ardhya illustrates that the

<sup>22</sup> Anggitariani Rayi Larasati Siswanta, "Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian Standar Yang Mengandung Klausula Eksonerasi," *Jurnal de Jure* 15, no. 1 (2023): 46.

<sup>23</sup> Yoga Prasetya and Muhamad Hasan Sebyar, "Legal Aspects of the Rights of Children from Siri Marriages," *Jurnal Hukum Keluarga* 1, no. 01 SE-Articles (June 17, 2024): 9–17, <https://doi.org/10.63731/jhk.v1i01.1>.

<sup>24</sup> Muhammad Fadlan Is, "Busthanul Arifin's Thoughts and Role in the Law on Religious Courts and the Compilation of Islamic Law in Indonesia," *Jurnal Hukum Keluarga* 01, no. 02 (2025): 28–38, <https://journal-rabiza.com/index.php/JHK/article/view/15/9>.

provision of product warranties constitutes a tangible form of accountability, reflecting the assumption of risk inherent in commercial distribution regardless of intent or fault.<sup>25</sup>

Furthermore, the strict liability principle relieves consumers from the burden of establishing a detailed causal relationship between the conduct of the business actor and the loss suffered. This principle is closely connected to Article 1365 of the Civil Code on unlawful acts and Article 1504, which obliges sellers to bear responsibility for hidden defects. Solideo Willy Ticoh et al. emphasize that exoneration clauses not only transfer liability but also impose unilateral limitations on responsibility that disadvantage consumers.<sup>26</sup>

The reinforcement of strict liability is also evident in Article 38 of Supreme Court Regulation Number 1 of 2023 on Guidelines for Adjudicating Environmental Cases, which establishes absolute liability unless business actors can prove that losses resulted from external factors such as natural disasters or third-party actions. However, in practice, strict liability is confined to civil liability and is not applied in criminal proceedings, where fault remains a central element of responsibility.

Even within civil litigation, the implementation of strict liability remains suboptimal due to its tension with evidentiary rules in civil procedural law. Article 1865 of the Civil Code in conjunction with Article 163 HIR/283 RBg assigns the burden of proof to the party asserting a right. Consequently, plaintiffs are often required to prove the defendant's fault, thereby weakening the practical effectiveness of strict liability in judicial proceedings.

Riris Nisantika et al. demonstrate that issues of liability also arise in digital financial services, particularly Peer-to-Peer (P2P) Lending. In this scheme, platform operators are not held responsible for default risks,

<sup>25</sup> Si Ngurah Ardhy, "Product Liability Dan Relevansi Klausula Baku Yang Mengandung Eksonerasi Dalam Transaksi Gitar Elektrik," *Ganesha Law Review* 1, no. 2 (2019): 90, <https://doi.org/10.23887/glr.v1i2.57>.

<sup>26</sup> Ticoh Solideo Willy, "Penerapan Eksonerasi Dalam Suatu Perjanjian Kontrak Proyek Pembuatan Jalan Pemerintah," *Jurnal Fakultas Hukum UNSRAT* 13, no. 3 (2024): 11.

in contrast to conventional banking institutions that retain responsibility through enforcement and recovery mechanisms. This regulatory gap highlights disparities in consumer legal protection within Indonesia's digital financial ecosystem.<sup>27</sup> The proliferation of exoneration clauses has also extended into notarial practice, particularly in deeds drafted by the parties and subsequently legalized by notaries. Agung Prianto et al. explain that notaries are not responsible for verifying the material truth of parties' statements. However, as emphasized by Claudia Manibuy, notaries do not enjoy absolute legal immunity.<sup>28</sup> When violations resulting in losses are proven, notaries remain subject to liability proportional to the misconduct committed, reflecting principles of justice and accountability aligned with *fiqh siyasah*.<sup>29</sup>

### **The Paradox of Law Enforcement on Exoneration Clauses from the Perspective of Al-Mawardi's *Fiqh Siyasah***

In Islamic legal and governance studies, the concept of *fiqh siyasah* plays a crucial role in providing a normative framework for regulating the relationship between rulers, society, and the legal system. One of the most influential scholars in this field is Al-Mawardi, whose ideas remain relevant in assessing public policy, law enforcement, and the protection of societal interests. Al-Mawardi, or Abu al-Hasan Ali ibn Muhammad al-Mawardi (972–1058 CE), was a prominent Islamic jurist who contributed extensively to jurisprudence, political governance, and public administration. His intellectual legacy

<sup>27</sup> Riris Nisantika, Si Ngurah Ardhy, and Muhamad Jodi Setianto, "TINJAUAN YURIDIS TENTANG PENCANTUMAN KLAUSULA EKSONERASI DALAM PERJANJIAN PINJAM MEMINJAM PADA FINANCIAL TECHNOLOGY BERBASIS PEER TO PEER LENDING," *Jurnal Komunitas Yustisia* 5, no. 3 (September 1, 2022): 162–77, <https://doi.org/10.23887/jatayu.v5i3.51896>.

<sup>28</sup> Agung Prianto, Anriz Nazaruddin Halim, and Yudha Cahya Kumala, "KEPASTIAN HUKUM KEKUATAN AKTA OTENTIK TERHADAP PARA PENGHADAP YANG MENGANDUNG KLAUSULA EKSONERASI DIKAITKAN DENGAN TANGGUNG JAWAB NOTARIS," *SENTRI: Jurnal Riset Ilmiah* 3, no. 3 (March 3, 2024): 1191–99, <https://doi.org/10.55681/sentri.v3i3.2404>.

<sup>29</sup> Claudia Manibuy, "Analisa Hukum Klausul Eksonerasi (Pembebasan Tanggung Jawab) Dalam Akta Notaris," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 21, no. 1 (2023): 249–59, <https://doi.org/https://doi.org/10.53515/qodiri>.

continues to inform contemporary discussions on justice, authority, and social order.

Educated within the Shafi'i legal tradition, Al-Mawardi produced seminal works such as *Al-Ahkam al-Sultaniyyah*, *Al-Imamah wa al-Siyasah*, and *Kitab al-Daulah*, which elaborate on principles of governance, the authority and responsibility of rulers, and the protection of society. Central to his thought is the concept of *maslahah al-'ammah* (public interest), which obliges the state to uphold justice, prevent harm, and ensure social balance. These principles demonstrate that governance and law enforcement must not merely adhere to formal legality but must also reflect moral responsibility and public welfare.

An exoneration clause is a contractual provision that limits or excludes the liability of one party for losses arising from contractual performance. In Indonesia, such clauses are commonly found in business, service, and construction contracts. Although formally justified under the principle of freedom of contract, their application generates a legal paradox when confronted with the principle of strict liability and broader public interests. Strict liability emphasizes responsibility for harm regardless of fault, thereby prioritizing protection for injured parties over contractual formalism.

Within Indonesian private law, particularly Article 1338 of the Civil Code, contractual freedom is recognized as a foundational principle. Exoneration clauses are considered valid if voluntarily agreed upon and not contrary to public order or statutory provisions. However, judicial practice frequently restricts such clauses when they undermine justice or disproportionately disadvantage one party. This judicial limitation reflects ongoing tension between legal certainty in contracts and the pursuit of substantive justice.

From the perspective of Al-Mawardi's *fiqh siyasah*, law enforcement must prioritize *maslahah al-'ammah*. Al-Mawardi emphasizes that rulers bear responsibility for safeguarding society from harm, ensuring justice, and preventing practices detrimental to the public. Exoneration clauses that entirely eliminate contractual liability may therefore conflict with these principles, as they risk neglecting

social justice and the protection of weaker parties within contractual relationships.

In *fiqh siyasah*, law is inseparable from morality and social objectives. Al-Mawardi advocates a balance between individual autonomy and collective welfare. Consequently, even if exoneration clauses are legally permissible within contract law, they require limitation when their application results in public harm or structural injustice. This normative stance aligns with Indonesian consumer protection law, particularly Law Number 8 of 1999, which imposes responsibility on business actors for losses arising from goods or services and restricts clauses that absolve liability.

The paradox of law enforcement concerning exoneration clauses thus lies in reconciling contractual autonomy with public interest protection. From Al-Mawardi's viewpoint, the legal system must ensure that contractual arrangements do not sacrifice societal rights or undermine justice. In Indonesia, judicial efforts to restrict exoneration clauses demonstrate attempts to uphold substantive justice, yet they also contribute to legal uncertainty for contracting parties. Al-Mawardi's *fiqh siyasah* offers a normative guide for harmonizing these competing interests by emphasizing justice, moral responsibility, and public welfare.

Accordingly, the paradigm of Al-Mawardi's *fiqh siyasah* affirms that law enforcement against exoneration clauses should extend beyond contractual validity and incorporate considerations of social justice and moral accountability. While such clauses may be formally valid under contract law, the principle of *maslahah al-'ammah* necessitates substantive limitations to ensure the protection of public interests and weaker parties. This approach seeks to achieve a balance between legal certainty and social justice within modern contractual relations.

## Conclusion

Exoneration clauses are contractual provisions that limit or exclude the liability of one party for losses arising from contractual performance and are widely employed in business, service, construction, and digital transactions in Indonesia. Although formally justified

under the principle of freedom of contract, this study demonstrates that their application generates a legal paradox when confronted with the principle of strict liability as embodied in Articles 1365 and 1504 of the Indonesian Civil Code and reinforced by consumer protection law. Judicial practice reveals that claims seeking the annulment of contracts containing exoneration clauses are frequently rejected on procedural grounds, such as obscurity of claims, thereby weakening substantive consumer protection, particularly in standard-form and electronic contracts where hidden clauses are prevalent. From the perspective of Al-Mawardi's *fiqh siyasah*, law enforcement must prioritize *maslahah al-ammah* (public interest) and social justice, requiring the state and judiciary to prevent contractual practices that disproportionately harm weaker parties. Accordingly, this research concludes that the application of strict liability serves as a normative and practical mechanism to reconcile contractual freedom with public accountability by ensuring that business actors remain responsible for losses arising from their activities, regardless of fault. By integrating positive law with the ethical and governance-oriented framework of *fiqh siyasah* Al-Mawardi, this study affirms that limiting exoneration clauses is essential to achieving legal certainty, consumer protection, and social justice within contemporary contractual relations, particularly in the era of digital transactions.

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