E-NISN : 2614-2643
P-NISN : 2541-7037
Journal Equitable
Vol 11 No 3
2026

JURIDICAL ANALYSIS OF THE INCLUSION OF AN EXONERATION CLAUSE ON SPAYLATER SHOPEE APPLICATION RELATED TO ELECTRONIC SIGNATURE LEAKAGE

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Abstract

This study examines regarding the SpayLater service the validity of the exoneration clause related to electronic signature breaches, and who should be held liable if such a breach occurs. The methodology employed is a normative legal approach, focusing on legislation and conceptual analysis. Based on the analysis, the exoneration clause contained in the SpayLater agreement which essentially exempts PT Commerce Finance and Privy from liability for the consequences of an electronic signature breach is deemed to violate Article 18(1)(a) of Law No. 8 of 1999 on Consumer Protection. Furthermore, this clause also violates the requirements for the validity of a contract, specifically the fourth requirement known as the objective requirement as stipulated in Article 1320 of the Civil Code. Consequently, the clause is declared null and void. Meanwhile, regarding liability for the data breach, this study confirms that Shopee, as the controller of personal data, and Privy, as the processor of personal data, bear liability under Law No. 27 of 2022 on Personal Data Protection. Shopee and Privy are obligated to ensure the security of the electronic systems they use.
Keywords: exoneration clauses, agreements, personal data protection, spaylater, electronic signatures

A. Introduction

In social life, humans must interact and cooperate with each other to meet their different needs. From this relationship and this cooperation, a form of agreement emerged known as an agreement. The essence of an agreement is the sum of promises or commitments made by both parties, whether spoken or written.

The principle of freedom of contract is regulated in Article 1338 of the Civil Code, which serves as the basis for agreements and

as the main source of an agreement.[1] The principle of freedom of contract allows the parties to make and draft agreements. This freedom includes their freedom to choose with whom they are in entering into an agreement, to determine the object or purpose of the contract to be regulated, to choose the form of written or oral contract and to agree on clauses that may differ from those stipulated in the law, as long as they do not violate the law.[2] However, this freedom is not limitless, but there are certain limitations. These limitations exist, intended to ensure that all parties to the agreement have a fair balance between rights and obligations, and to protect the public interest.[3]

E-commerce, also known as electronic commerce , is a business model that involves buying and selling goods and services that are carried out through online platforms such as the web and applications.[4] The advent of e-commerce has changed trading habits, replacing direct communication between customers and sellers with indirect communication facilitated by digital. The e-commerce system is intended to facilitate and complete all transaction agreements electronically, which includes the entire procedure, from ordering, checking and delivery.[5]

Shopee is one of the most in-demand e-commerce in Indonesia. According to

[1] Apriyodi Ali, Achmad Fitrian, and Putra Hutomo, "Legal Certainty of the Application of the Principle of Freedom of Contract in a Standard Agreement Reviewed Based on Article 1338 of the Civil Code", *SENTRI: Journal of Scientific Research,* Vol. 1 No. 2, October 2022, p. 277.

[2] Lita Paromita & Arivigo Pranata, *Understanding the Principles of Freedom of Contract and Its Limitations,* BP Lawyers Counselors at Law, https://bplawyers.co.id/2024/05/17/memahami-asas-kebebasan-berkontrak-dan-batasannya/ accessed on November 29, 2025 at 23.55 WIB.

[3] Apriyodi Ali, Achmad Fitrian, and Putra Hutomo, *op. cit.,* p. 272.

[4] Astri Rumondang Banjarnahor et al., *Digital Economy: Business Transformation in the Digital Era,* First Printing, Yayasan Kita Menulis, Jakarta, 2023, p. 2.

[5] Ade Jona Prasetyo, Saidin, and Tan Kamello, "Consumer Legal Protection on the Existence of Standard Clauses in Electronic Contracts Between Consumers and E-Commerce Parties (Case Study on

SimilliarWeb data, Shopee is placed as the number one e-commerce application in Indonesia in 2025.[6] One of the most well-known features on Shopee is SPayLater, which is offered by PT Commerce Finance through the Shopee application and pays for it in installments according to the agreed agreement.

When using SPayLater, the borrower can also be called a consumer as a service user with PT Commerce Finance as the service provider there is a binding agreement between the two. Agreements executed through internet platforms like this are referred to as electronic contracts. It is called so because the entire transaction settlement process is carried out through electronic devices, such as mobile phones, and follows established digital protocols.

An exoneration clause is a clause designed to reduce or eliminate the legal liability of one party for damages caused as a result of unlawful acts or breach of contract.[7] In the terms and conditions of SPayLater, there appears to be an Exoneration Clause. The exoneration clause in the SPayLater agreement reads as follows:

v. For the purposes of electronic document signing, You will receive the Electronic Signature Creation Data. You release and release PT COMMERCE FINANCE and Privy for all consequences arising from your negligence or error in securing your Electronic Signature Creation Data, including but not limited to your negligence

Shopee E-Commerce)", *Gorontalo Law Review,* Vol. 7 No. 2, October 2024, p. 468.

[6] Simmiliarweb, https://pro.similarweb.com/#/digitalsuite/markets/webmarketanalysis/mapping/E-commerce_and_Shopping~Marketplace/360/3m?webSource=Desktop accessed on November 29, 2025 at 23:56.

[7] Nurhilmiyah and Hasim Purba, "Exoneration Clauses in Online Loan Agreements". *Acta Law Journal,* Vol. 1 No. 1, December 2022, p. 28.

or mistake so that your user ID and password are known to other parties.

The lender expressly disclaims any liability for any risk regarding electronic signature leakage under this clause. Meanwhile, during the SPayLater activation process, users are required to submit personal data such as identity cards, electronic signatures, and facial recognition. Electronic signatures have legal force comparable to conventional signatures based on Article 11 of Law Number 11 of 2008 concerning Information and Electronic Transactions. As a result, data leaks involving electronic signatures can have serious legal consequences in addition to being a privacy violation. Such electronic signature leaks can result in dangerous risks, including private key theft, electronic signature forgery, and personal data leakage.[8]

The existence of such a clause can violate the provisions of Article 18 of Law Number 8 of 1999 concerning Consumer Protection. The Consumer Protection Law expressly prohibits standard clauses that unilaterally impose liability on consumers or exempt business actors from the obligation to provide compensation. In this case, the clause violates Law Number 8 of 1999 concerning Consumer Protection because it exempts PT Commerce Finance and Privy from their obligations as company operators to ensure system security and protect the personal data of borrowers. Unilaterally transferring system security risks to the borrower violates consumer protection laws and is an unfair practice.

[8] Triana Wati, "Legal Forces and Security Aspects in Electronic Signatures", *Campus Academic Publicity,* Vol. 1 No. 1, October 2023, p. 757.

Based on this explanation, the research questions can be formulated as follows: first, based on Article 18 of Law Number 8 of 1999 concerning Consumer Protection, is the SPayLater agreement on the Shopee application containing a liability exemption clause legal? Both parties are responsible if the borrower's electronic signature in the SPayLater agreement is misused.

(The "first line" paragraph indentation is 1 cm) Jurnal Hukum Equitable is a periodical scientific journal published by the Faculty of Law, University of Muhammadiyah Riau which is published three times a year (February, June and October). Priority research is generally related to various legal issues in Indonesia and around the world. The articles submitted cover issues in the fields of Civil Law, Criminal Law, Civil Procedural Law, Criminal Procedural Law, Commercial Law, Constitutional Law, Constitutional Law, State Administrative Law, Customary Law, Islamic Law, Agrarian Law, Environmental Law, International Law, etc.

The introduction contains an overview of the problem.

B. Problem Formulation

Racing from the introduction above, the author formulates the following problems:

1. How is the validity of the SPayLater agreement for the Shopee application that includes an exoneration clause reviewed based on Article 18 of Law Number 8 of 1999 concerning Consumer Protection?
2. Who is responsible in the event of a personal data leak in the form of an electronic signature of the borrower in the SPayLater agreement?

C. Research Objectives

The objectives of this research are as follows:

1. Analyzing the validity of the SPayLater agreement, the Shopee application which includes an exoneration clause is reviewed based on Article 18 of Law Number 8 of 1999 concerning Consumer Protection.
2. Knowing and analyzing the responsible party in the event of a personal data leak in the form of the borrower's electronic signature in the SPayLater agreement

D. Research Methods

In this research method, the researcher explains the type of research used (normative or empirical), approach method (legislation, case, comparison, historical, etc.) data sources (primary data, secondary data), data collection methods, research locations, reasons for choosing research locations, and also provides data analysis techniques.

Normative juridical is a type of scientific research that sees law as part of a system consisting of rules, norms, principles, jurisprudence doctrines, theories, and various other related legal literature sources. This type of research is used to analyze legal problems and find answers to legal problems.[9] This research uses a type of normative juridical research with a legislative approach and a conceptual approach. Laws and regulations, books, journals, and Shopee applications are the data sources used in this study.

Primary legal materials, namely the 1945 Constitution, the Civil Procedure Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population

[9] Muhaimin, *Legal Research Methods,* First Printing, Mataram University Press, Mataram, 2020, p. 46.

Administration, Law Number 27 of 2022 concerning Personal Data Protection, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. Secondary legal materials use books and legal journals, and tertiary legal materials use the Shopee application in this study.

The collection of legal materials in this study is carried out through online media by examining various legal sources that are available to the public and relevant to the subject matter.[10] The method used to analyze these materials is a qualitative approach, which is typical of normative juridical research. This analysis essentially aims to get answers to the formulation of the problem that has been determined, which can later take the form of a critical attitude, agreement, rebuttal, additional ideas, or complementation to the substance of the law being studied.[11]

E. Research and Discussion Results

1. The Validity of the SPayLater Agreement of the Shopee Application Which Includes an Exoneration Clause is Reviewed Based on Article 18 of Law Number 8 of 1999 concerning Consumer Protection

An agreement or contract can be interpreted as a form of legal agreement that is born from the meeting of the will of two or more legal subjects, which contains a commitment to do or not to do something that has certain legal consequences. The agreement can be realized either in writing or orally, as long as there is a consensus

[10] *Ibid.,* p. 65.
[11] Rusdin Tahir et al., *Research Methodology in the Legal Field (A Theoretical and Practical Approach),* First Printing, PT. Sonpedia Publishing Indonesia, Jambi, 2023, p. 107.

between the parties which is the essence of the validity of an agreement. In the past, in general, agreements were always carried out directly between the parties where the parties discussed what the parties agreed on. However, society is slowly finding a form of agreement that is different from the agreement that used to be carried out, namely the standard agreement. A standard agreement is a written agreement that in terms of its content form and method of closure has been determined and designed in advance by one of the parties only. Then the content of the agreement is made to make an agreement with consumers en masse, without providing the possibility of differences in the situation and needs of the parties involved.[12]

A standard agreement is often also known as an innominate agreement or an anonymous agreement, which is an agreement that is not specifically regulated in the Civil Code. There is a standard agreement because it appears, grows, and develops in the community.[13] From the perspective of treaty law, a standard agreement actually reflects the application of the principle of freedom of contract, because the parties are free to decide the form of agreement to be implemented. However, the standard agreement does not provide an opportunity for the parties involved to negotiate on the content of the agreement. All contents of the standard agreement have been determined in advance, one party and the other party can only reject or accept the content of the agreement.

Spaylater is a feature created by Shopee for its users, which functions or is used as a

[12] Johannes Gunawan & Bernadette M. Waluyo, *Standard Agreement on Problems and Solutions,* Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Jakarta, 2020, p. 40.

[13] Lukman Santoso Az, *Legal Aspects of Agreements*, First Printing, Peneber Media Pustaka, Yogyakarta, 2019, p. 114.

payment method for products available on the Shopee application. In the implementation of this service, PT Shopee International Indonesia collaborates with PT Commerce Finance which is called a lender and acts as a creditor. Thus, Shopee acts as the provider of the SPayLater feature, while PT Commerce Finance functions as a loan fund provider for Shopee users who use the SPayLater service, where users of the SPayLater service are referred to as loan recipients. The products offered through this feature are special loan funds specifically intended for Shopee users to make goods purchase transactions directly in the application, with the obligation to return the loan funds through a payment mechanism in installments or installments.[14]

This form of agreement is referred to as a click-wrap agreement, which is a form of electronic agreement where the statement of consent from the bidder is simply expressed through the act of clicking or pressing the consent button that is available on the platform.[15] By performing the click action, a person is deemed to have read, understood, and agreed to all the clauses and conditions contained in the agreement in their entirety. However, in practice, not a few users do not take the time to read the content of the agreement at all, so their understanding of the inherent rights and obligations is often very minimal.[16] On the other hand, such an agreement does not provide an opportunity for the borrower to negotiate or change the content of the agreement, even if they have

[14] Ni Kadek Pingkan Putri Natali, Anak Agung Sagung Laksmi Dewi, and Ni Made Puspasutari Uji "Legal Consequences of Late Payment of Spaylater for Shopee E-Commerce Users", *Journal of Legal Preferences,* Vol. 3 No. 1, February 2022, p. 197.
[15] Elinda Sari and Rahmawati Kusuma, "The Validity of Credit Agreements with the Shopee Paylater Feature on the Shopee Application (Comparative Study of Civil Code and Islamic Law)", *Journal of Private Law, Faculty of Law,* Vol 2 No. 3, October 2022, p. 545.
[16] *Ibid.,* p. 546.

the right to obtain an understanding and clarity of the terms before deciding to proceed with the transaction.[17] Therefore, the terms and conditions or mechanism of SPayLater's service must also pay attention to the general legal provisions in the Civil Code as a juridical basis.

The SPayLater Agreement essentially contains a series of standard clauses that regulate in detail the terms and procedures for the implementation of the SPayLater service itself. The existence of a standard clause is not necessarily prohibited by the Indonesian legal system, as long as its substance and application remain within certain limits aimed at preventing the incurring of losses to one of the parties involved in the agreement. However, in practice, the drafters of standard clauses often take advantage of existing loopholes to include special provisions known as exoneration clauses. Regarding what is meant by an exoneration clause, it is a clause that essentially provides exemption or limitation of legal liability to one of the parties, either in whole or in part, in the event of a violation of the law in the implementation of the agreement. Based on the results of the research that has been carried out on the SPayLater agreement document, one of the clauses was found which reads as follows:[18]

v. For the purpose of electronic document signing, You will receive Electronic Signature Creation Data from Privy. You are solely responsible for the security of the Electronic Signature Creation Data. You release and release PT COMMERCE FINANCE and Privy for all consequences

[17] Jonathan Sarundajang Ronny A. Maramis and Herlyanti Y. A. Bawole, "Legal Protection of Shopee Application Users with Paylater Payment System", *INNOVATIVE: Journal Of Social Science Research,* Vol. 5, No. 4, July, 2025, p. 2872.
[18] *Ibid.*, p. 2875.

arising from your negligence or mistake in securing your Electronic Signature Creation Data, including but not limited to your negligence or mistake so that the user ID and password are known to other parties.

The clause can be said to be an exoneration clause because there is a transfer or burden of responsibility to the borrower or consumer. Even though the electronic signature is not completely under the control of the borrower. Borrowers are required to agree to register as a privy user for the purpose of using electronic signatures and the issuance of electronic certificates. In addition, the borrower is also required to agree to give full power of attorney to the Privy to affix electronic signatures to all documents received from the lender.

The provisions regarding the validity of an agreement are expressly regulated in Article 1320 of the Civil Code (KUHPercivil), namely the agreement of those who bind themselves, the ability to make an agreement, a certain thing, a halal cause. These conditions are divided into two categories based on the nature and legal consequences they cause. The first and second conditions are subjective conditions that are closely related to the parties and subjects who make the agreement. If one or both of these subjective conditions are not met in an agreement, then the legal consequence that arises is that the agreement can be cancelled, meaning that the agreement remains binding as long as it is not canceled by the entitled party. The third and fourth conditions are objective requirements related to the content and substance of the agreement itself. If the objective conditions are not met, then the legal consequence is that the agreement is null and void, thus juridically the agreement is considered to have never existed and never gave birth to a legal obligation. This null and void applies

automatically without requiring a prior cancellation request to the court.[19]

Reviewed through the conditions of the validity of the agreement Article 1320 of the Civil Code, the clause contained in the SPayLater agreement is proven to violate the fourth condition, which is one of the objective conditions, namely regarding a halal cause. Furthermore, Article 1337 of the Civil Code emphasizes that the fulfillment of this fourth condition requires that all contents of the agreement must not be contrary to the law, order, and morality. Based on the results of the above description, the exoneration clause in SPayLater referred to in this study is contrary to the provisions stated in Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection, so that the agreement is objectively flawed and can be declared null and void.

Responsible Party in the Event of Personal Data Leakage in the Form of Borrower's Electronic Signature in the SPayLater Agreement

Personal data is all information that can be used to identify a person, either directly or through the process of combining it with other information, regardless of whether the data comes from electronic systems such as computers and the internet, or from non-electronic systems such as physical documents or paper records.[20] The so-called personal data protection is a series of legal remedies that specifically regulate the procedures and mechanisms of how the law guarantees the protection of personal data, as well as how the data is collected, registered,

[19] Lukman Santoso Az, Op. Cit., p. 55.
[20] Wahyudi Djafar, *PERSONAL DATA PROTECTION Proposal for Policy Institutionalization from a Human Rights Perspective*, First Edition, Institute for Community Studies and Advocacy (ELSAM), Jakarta, 2016, p. 6.

stored, utilized, and disseminated by the authorities.[21] In order to meet the need for legal certainty and protect the fundamental rights and freedoms of every citizen in the digital era, the State of Indonesia has established a legal basis through the ratification of Law Number 27 of 2022 concerning Personal Data Protection, which serves as a legal umbrella for all personal data processing activities in Indonesian territory.

According to the provisions contained in Article 1875 of the Civil Code (KUHPercivil), a signature has legal force and is binding if the party affixing the signature expressly states and acknowledges that the signature in question is its original. Furthermore, the provisions regarding the protection of signatures as part of personal identity are also specifically regulated in Article 84 paragraph (1) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, emphasizing that signatures are one of the components of the personal data of residents that must be protected. In its development, the advancement of information technology has given birth to new innovations in the form of electronic signatures, which are inseparable from similar legal arrangements because according to Article 11 of Law Number 11 of 2008 concerning Electronic Information and Transactions, electronic signatures are declared to have legal force and legal consequences. Furthermore, the legal force of the electronic signature is comparable to a wet signature, with the provision that the electronic signature must be made with an electronic certificate that has been registered

[21] Alfajri Muhammad Chaniago, "Legal Protection of Consumer Personal Data in Shopee E-Commerce Transactions", *Journal of Science and Social Research,* Vol. VIII, No. 1, December, 2025, p. 189.

and officially recognized by the State Cyber and Cryptography Agency (BSSN).[22]

Certified electronic signatures are a type of electronic signature that is made with an electronic certificate issued by the electronic certificate issuing agency (Psre). Only electronic certificate issuing bodies that meet certain standards and requirements have the validity and legal certainty in issuing electronic certificates, so this is the main distinguishing factor between certified electronic signatures and uncertified electronic signatures. One of the electronic certificate organizing bodies that has received official recognition from the Ministry of Communication and Informatics is PT Privy Identitas Digital, better known as PrivyID.[23] Privy is not only an electronic certificate provider, but also collaborates in the implementation of SPayLater services on the Shopee platform, so that the validity of the electronic signatures used in the SPayLater agreement can be legally accounted for.

Before Shopee users can access and utilize the SPayLater service, they are required to give consent to the use of the Privy service. The main purpose of using Privy's services in this case is to conduct checks on the borrower's data, which includes demographic data and biometric data. After that, Privy will carry out a data matching process with information recorded at government agencies that have the official authority to issue the identity concerned. If the matching results show that the data submitted by the prospective borrower is in accordance with the data registered with the

[22] Triana Wati, *Op. Cit.,* p. 756.
[23] Devi Chintya Dewi et al., "Electronic Signatures as a Legal Solution for Engagement in the Digital Era in Indonesia", *LETTERLIJK: Civil Law Journal,* Vol. 1, No. 2, December, 2024, p. 149.

authorized government agency, then Privy will issue an electronic certificate. Further, in a binding agreement, the borrower gives Privy full authority to affix electronic signatures to all digital documents issued by the lender, so that Privy acts on behalf of the borrower in every document signing process. This full and unlimited power of attorney raises the concerns of borrowers, because it holds various risks, considering that Privy is a Bound Party because it is a third party that cooperates with the Lender in the implementation of SPayLater services.

Shopee, Commerce Finance, and parties bound by the agreement are called lenders in the SPayLater service, juridically called Electronic System Operators as explained in Article 1 number 6a of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Based on the provisions of Article 15 paragraph (1), each Electronic System Operator is required to operate its electronic system reliably, safely, and responsibly for the smooth operation of the electronic system. The meaning of the word "safe" in the provision includes both physical and non-physical protection. With the existence of legal obligations as stipulated in the article, Shopee as an Electronic System Operator cannot unilaterally release itself from its responsibility if there is a problem, disruption, or failure in the electronic system that they operate, because this responsibility is legally attached.

In the SPayLater Commerce Finance service as a lender and Shopee act as the controller of personal data, because both have the authority to determine what types of data must be collected from users and determine the purpose and purpose of using the data. On the other hand, Privy acts as a personal data processor, considering that Privy only

functions as a partner of Commerce Finance and Shopee which is tasked with matching the data of borrowers, issuing electronic certificates, and affixing electronic signatures with the provisions that have been determined by the data controller. Meanwhile, borrowers or users of SPayLater services, in the perspective of Law Number 27 of 2022 concerning Personal Data Protection, have legal status as subjects of personal data, namely individuals whose personal data is collected, processed, and utilized by other parties in the context of providing services.

Based on the results of the discussion on the formulation of the first problem, it was found that the clauses in the SPayLater agreement that were examined could be declared null and void. This clause, when reviewed based on the provisions of Article 27 of Law Number 27 of 2022 concerning Personal Data Protection, is considered legally invalid. This is because each personal data controller has the obligation to carry out the processing of personal data in ways that are justified by law and in accordance with norms such as in laws and regulations. Therefore, lenders cannot escape legal responsibility in the event of a personal data leak, because the clause that regulates the exemption of liability is proven to be inappropriate and contrary to the provisions stipulated in Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection. Furthermore, Article 24 paragraph (2) of Government Regulation of the Republic of Indonesia Number 11 of 2019 concerning the Implementation of Electronic Systems and Transactions also requires each Electronic System Operator to hold an electronic system equipped with a prevention and countermeasures mechanism regarding various threats and attacks that

have the potential to cause disruption, system failure, and loss.

The exoneration clause contained in the SPayLater agreement only regulates the legal consequences arising from the borrower's mistake or negligence that causes the user ID and password to be known to other parties. However, the clause that specifically regulates prevention efforts and countermeasures in the event of losses, as mandated by Article 24 paragraph (2) of Government Regulation of the Republic of Indonesia Number 11 of 2019 concerning the Implementation of Electronic Systems and Transactions, is not found in the agreement at all. In fact, personal data controllers and personal data processors should implement a strong system to ensure that the identity of users who access services is truly a legitimate and authorized party, with the main goal of minimizing the risk of leakage or misuse of electronic signatures that can harm users.

Based on the provisions contained in Articles 46-49 of Law Number 27 of 2022 concerning Personal Data Protection, lenders have a legal obligation to immediately stop the entire process of processing personal data and notify the borrower in the event of a data leak that endangers the security of personal information. In the notification, the lender is also required to clearly state the handling that has been or will be carried out, as well as the recovery efforts for its failure to protect personal data as its responsibility. The responsibilities mandated by this law are not limited to technical remedial efforts alone, but also require lenders to actively protect all rights of borrowers who may be affected, as well as to ensure that there will be no additional losses suffered by lenders as a result of such data leaks.

Based on the theory of responsibility in civil law, this form of liability is categorized as a responsibility arising from unlawful acts.

The form of compensation that can be given to the aggrieved party includes efforts to repair data that has been damaged or misused, as well as providing additional protection, for example by blocking all access related to the leaked identity until the identity is declared safe and can be used as it should. In addition, Shopee as the platform operator should provide a form of preventive legal protection, so that incidents such as electronic signature leaks can be minimized or even impossible to occur. Thus, the lender has a legal obligation to ensure that the electronic system it operates meets strict data protection standards and as stipulated in the provisions of applicable laws and regulations, and is obliged to be fully responsible for all legal consequences arising in the event of a personal data leak.

F. Conclusion

Based on the provisions stipulated in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, the validity of the SPayLater agreement applied in the Shopee application becomes null and void if there is an exoneration clause. The legal basis for the loss of validity is because the SPayLater agreement is proven to contain an exoneration clause contrary to the provisions of Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection, which expressly prohibits the inclusion of a standard clause that states the transfer of the responsibility of business actors to consumers. Thus, the existence of the exoneration clause results in the SPayLater agreement violating one of the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code (KUHPerdata), which is the fourth requirement regarding a halal cause which is included in the category of objective conditions. The legal consequence of the violation of this objective requirement is that

the agreement is declared null and void, so that from the beginning the agreement is considered invalid and does not give birth to a binding legal relationship between the parties.

If the electronic signature is leaked by the borrower, then the parties responsible for the incident are the lender and all parties bound in the provision of services, namely Shopee, Commerce Finance, and Privy. Although Law Number 27 of 2022 concerning Personal Data Protection expressly requires Shopee to operate its electronic system with reliable, safe, and responsible principles for the smooth and secure of the system, in reality Shopee still includes an exoneration clause in the SPayLater agreement that has the potential to harm the rights of borrowers. Furthermore, based on the provisions of Articles 46 to 49 of Law Number 27 of 2022 concerning Personal Data Protection, in the event of a personal data leak, the lender has a legal obligation to immediately stop the entire data processing process and submit an official notification to the borrower whose content is required to contain the handling steps that have been taken as well as recovery efforts for its failure to protect personal data for which it is responsible.

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Law Number 27 of 2022 concerning Personal Data Protection

Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions