




## The Validity of the Exoneration Clause in Ship Repair Contracts: Legal Protection for Shipyard Service Users

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### Abstract

*The practice of ship repair contracts in shipyards often contains exoneration clauses that limit or even remove the service provider's liability for certain damages. This condition has the potential to cause an imbalance in the legal position between the shipyard and the service user, especially when the clause is drafted unilaterally. This study aims to analyze the validity of the exoneration clause in the ship repair contract and assess the extent to which the clause provides legal protection for shipyard service users reviewed from the principle of balance and freedom of contract. The research method used is normative legal research with a statutory and conceptual approach, through the study of the provisions of the Civil Code, regulations related to shipping services, and contract law doctrine. The results of the study show that the exoneration clause is allowed in principle as long as it does not conflict with law, decency, and public order. However, clauses that eliminate absolute liability tend to violate the principle of balance and have the potential to harm service users. Therefore, it is necessary to formulate proportional clauses so that ship repair contracts continue to provide fair legal protection for the parties.*

**Keywords:** *Exoneration Clause; Ship Repair Contracts; The Basis of Balance; Freedom of Contract; Legal Protection.*

## INTRODUCTION

Ship repair activities are an integral part of the national maritime industry which has a strategic role in supporting the smooth running of sea transportation, international trade, and inter-regional connectivity in Indonesia. As the largest archipelagic country in the world, Indonesia is highly dependent on the sustainability of its fleet of commercial ships, passenger ships, and other industrial support ships. This condition makes shipyards a business actor that holds an important position in maintaining the operational feasibility of ships through maintenance and repair activities.<sup>1</sup>

The legal relationship between shipyards and ship repair service users is generally manifested in the form of ship repair contracts. This contract is civil in nature and subject to the legal provisions of the agreement as stipulated in the Civil Code. Ship repair contracts in practice, are often drafted unilaterally by shipyards using standard contracts. One of the clauses that is almost always found in the contract is the exoneration clause, which is a clause that limits or even negates the shipyard's liability for losses suffered by service users.<sup>2</sup> The existence of an exoneration clause in a ship repair contract raises significant legal issues,

<sup>1</sup> Galant Nanda Alamsyah, Ismi Fadriah Hamzah, and Wahyudi Umar. "Analisis Hukum Terhadap Keabsahan Klausula Baku dalam Kontrak Financial Technology (Fintech)." *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)* 5, no. 2 (2024): 955-971. <https://doi.org/10.38035/jihhp.v5i2>.

<sup>2</sup> Theresia Gabriella Pohan, Enni Soerjati Priowirjanto, and Tasya Safiranita Ramli. "Analisis Penggunaan Perjanjian Baku Elektronik Berklausula Eksonerasi Pada Marketplace Ditinjau Berdasarkan Hukum Positif Indonesia." *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat* 3, no. 7 (2023): 2913-2923. <https://doi.org/10.59141/comserva.v3i07.1075>.

especially related to the validity of the clause and legal protection for shipyard service users. On the one hand, the principle of freedom of contract gives the parties the authority to determine the content of the agreement. However, on the other hand, this freedom is not absolute and is limited by the principle of good faith, balance of the parties, and the provisions of laws and regulations that aim to protect parties who are in a weaker bargaining position.<sup>3</sup>

In the shipbuilding industry in practice, service users are often at a disadvantage. The urgent need to repair ships, limited shipyard choices, and the dominance of shipyards in contract preparation cause service users to not have adequate negotiation space. This condition encourages the acceptance of the exoneration clause without a complete understanding of its legal implications. As a result, when there is additional damage, delay in settlement, or failure to repair, service users often do not get compensation because they are prevented by the disclaimer clause.

Normatively, the exoneration clause raises a debate about its conformity with the basic principles of treaty law. A clause that completely absolves one party from liability has the potential to conflict with the principles of fairness, propriety, and protection of the weaker party. In addition, this kind of clause must also be tested for validity based on the provisions of Article 1320 of the Civil Code regarding the legal conditions of the agreement and Article 1337 of the Civil Code related to *halal* causes.<sup>4</sup>

Furthermore, the development of consumer protection laws and the doctrine of legal protection in modern business contracts requires a balance between the interests of business actors and service users. Although ship repair contracts are generally business to business, it cannot be ignored that in many cases the service user is in a factually weaker position. Therefore, the analysis of exoneration clauses is not only relevant in the context of classical contract law, but also in the framework of preventive and repressive legal protection.<sup>5</sup> Based on this description, this study is important to examine the validity of the exoneration clause in the ship repair contract and the form of legal protection that can be provided to shipyard service users. This study is expected to be able to make a theoretical contribution to the development of treaty law, as well as practical recommendations for the preparation of a more fair and balanced ship repair contract.

## METHODS OF THE RESEARCH

This research uses normative legal research methods with a legislative approach and a conceptual approach. The legislative approach is carried out by examining the provisions of the Civil Code that regulate the legal conditions of agreements, the principles of freedom of contract, and civil responsibility, as well as regulations related to shipping services. The conceptual approach is used to examine the doctrine regarding exoneration clauses, the principle of balance, and legal protection in contracts. The legal materials used consist of primary legal materials in the form of laws and regulations and ship repair contracts, as well

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<sup>3</sup> Jeremy Zefanya Yaka Arvante, "Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 1 (2022): 73-87. <https://doi.org/10.15294/ipmhi.v2i1.53736>.

<sup>4</sup> Wiwin Wintarsih Windiantina, "Klausula Eksonerasi Sebagai Perjanjian Baku Dalam Perjanjian Asuransi." *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan* 11, no. 1 (2020): 71-84.

<sup>5</sup> Cedric Maillot; Ciara Harman; Charles Rivière. "Moderate Relationship Between Function and Satisfaction of Total Hip Arthroplasty Patients: A Cross Sectional Study." *HIP International* 32, no. 1 (2022): 25-31: <https://doi.org/10.1177/1120700020921110>.

as secondary legal materials in the form of relevant legal books and journals. The analysis was carried out qualitatively with systematic juridical interpretation.

## RESULTS AND DISCUSSION

Ship repair contracts are reciprocal agreements that give birth to rights and obligations for shipyards as service providers and ship owners as service users. The main object of this contract is the achievement in the form of repair, maintenance, or replacement services for ship parts so that the ship is seaworthy again. This contract characteristic shows that there is a high dependence of service users on technical expertise, facilities, and operational standards.<sup>6</sup> Shipyard contracts in practice, this is almost always in the form of a standard contract that is drawn up unilaterally by the shipyard as a service provider. One of the main characteristics of the contract is the inclusion of an exoneration clause, which is a clause that limits or even negates the shipyard's legal liability for losses that may arise during the repair process. The results of the study show that exoneration clauses in ship repair contracts generally include limitation of liability for late completion of work, additional damage to the ship, post-repair malfunctions, and *consequential loss*. This clause is often formulated in a general and comprehensive manner, thus placing service users at a disadvantage.

From the perspective of treaty law, the exoneration clause is not explicitly prohibited in the Civil Code. Article 1338 of the Civil Code provides freedom for the parties to determine the content of the agreement as long as it does not conflict with the law, decency, and public order. However, in the context of ship repair contracts, the freedom to contract is often pseudo, considering that service users often do not have the space to negotiate the content of the clauses that have been standardized. Thus, the characteristics of the exoneration clause in ship repair contracts not only reflect the efforts to transfer risks by shipyards, but also show the inequality of bargaining positions between the parties, which has implications for the need for legal protection for service users.

As stated by the researcher, service contracts are generally arranged in the form of standard contracts that have been unilaterally determined by business actors, so that the negotiation space for service users is very limited. This condition creates an unbalanced contractual relationship, because one of the parties has a dominant position in determining the content of the agreement,<sup>7</sup> In the context of ship repair contracts, the dominance of shipyards is reflected in the determination of technical conditions, limitation of liability, and risk limitation clauses that must be accepted by service users. As a result, service users are often in a position of taking *it or leave it*, which has a direct impact on weakening legal protection for those parties.<sup>8</sup> An exoneration clause is a clause that aims to limit, reduce, or negate the liability of either party for certain losses. In ship repair contracts, this clause is commonly used to relieve the shipyard from liability for further damages, delays in completion of work, or indirect losses suffered by the shipowner.<sup>9</sup>

The researcher explained that theoretically the exoneration clause is not necessarily prohibited in the law of the treaty, as long as the clause is freely agreed upon and does not contradict the law, morality, and public order. This clause essentially serves as an instrument

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<sup>6</sup> Galant Nanda Alamsyah. *Op. Cit.*

<sup>7</sup> Theresia Gabriella Pohan, *Op.Cit.*

<sup>8</sup> Jeremy Zefanya Yaka Arvante, *Op.Cit.*

<sup>9</sup> Joupy Gustaf Z Mambu. "Business Cooperation Agreements in the Perspective of Civil Law: Legal Risks and Protection." *Jurnal Hukum dan Keadilan* 2, no. 4 (2025): 10-19. <https://doi.org/10.61942/jhk.v2i4.378>.

of transfer and limitation of risk in business relationships. However, the researcher also emphasized that the exoneration clause should not be used to eliminate the main obligations of business actors or relieve liability for gross negligence. If the clause abolishes absolute liability, then its existence is questionable from the point of view of justice and contractual balance.<sup>10</sup>

The validity of the exoneration clause in the ship repair contract must be tested based on the general provisions of the agreement law as stipulated in Article 1320 of the Civil Code. The researcher suggests that clauses born from an imbalance of bargaining positions can obscure the element of a free agreement, especially when service users do not have a real opportunity to negotiate the content of the agreement.<sup>11</sup> However, materially, the exoneration clause should be further tested, especially in relation to the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code. A clause that unilaterally exempts the shipyard from all forms of liability, including as a result of negligence or default, can be considered contrary to the principles of good faith and contractual fairness. In addition, in modern treaty law doctrine, restrictions on freedom of contract are known through the concept of protection of the weak. Shipyard service users are in many cases in a weaker position economically, technically, and informationally. Therefore, an exoneration clause that significantly harms service users can be considered as unfair *contract terms*. So even though normatively the exoneration clause is not automatically null and void, its validity can be questioned if it is proven to violate the principles of justice, propriety, and good faith. This kind of clause has the potential to be declared to have no binding force, either through the interpretation of the judge or through the consumer protection mechanism. In addition, the exoneration clause must also meet the elements of halal cause as stipulated in Article 1337 of the Civil Code. Clauses that aim to exempt shipyards from any form of liability, including those resulting from negligence or fundamental wrong, have the potential to be contrary to propriety and a sense of justice.

The researcher emphasized the importance of the principle of good faith as stated in Article 1338 paragraph (3) of the Civil Code as a benchmark for the validity of contract clauses. Therefore, the exoneration clause used as a tool to avoid liability unreasonably is not in line with the legal principles of the Indonesian treaty. Preventive legal protection for shipyard service users aims to prevent disputes through fair and transparent contract arrangements. The researcher emphasized that preventive protection is realized from the pre-contractual stage through the design of balanced clauses and the provision of clear information to service users. Ship repair contracts, exoneration clauses should be formulated proportionately while maintaining the shipyard's responsibility for its principal obligations. Clarity regarding the scope of work, quality standards, and accountability mechanisms are important instruments to protect service users from the beginning. In addition, the application of the principles of good faith and balance in ship repair contracts serves as an effective form of preventive protection, as it is able to minimize the potential for abuse of the exoneration clause by parties in a dominant position.<sup>12</sup> Repressive legal protection functions as a means of restoring the rights of service users when there is a breach of contract or loss

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<sup>10</sup> Anak Agung Bagus Tri Arta Udayana, and Made Aditya Pramana Putra. "The Role of Contract Law in Improving Legal Certainty for Business Actors." *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 1861-1867. <https://doi.org/10.38035/jlph.v5i3.1217>.

<sup>11</sup> Ertanto Kurniawan, M. Syahrul Borman, and Nur Handayati. "Penegakan Hukum Terhadap Anak Buah Kapal Yang Terlibat Dalam Kejahatan Perompakan Kapal Di Wilayah Laut Indonesia." *Court Review: Jurnal Penelitian Hukum* 5, no. 5 (2025): 125-132. <https://doi.org/10.69957/cr.v5i06.2038>.

<sup>12</sup> Jeremy Zefanya Yaka Arvante, *Op.Cit.*

due to the negligence of the shipyard. The researcher emphasized that the existence of an exoneration clause does not necessarily remove the right of service users to demand accountability through legal mechanisms. In the event of a default, the service user can still file a claim for compensation if it can be proven that the loss arose due to negligence or shipyard error. The exoneration clause cannot be used as a basis for justification to avoid liability for fundamental violations. The dispute resolution mechanism, both through the courts and alternative dispute resolution, is a form of repressive protection that emphasizes that contract clauses must not negate the right of service users to justice.

The results of the discussion show that the contractual balance is the main key to the validity of the exoneration clause. Clauses that are unilaterally designed and place all risks on service users have the potential to undermine legal certainty. Therefore, ship repair contracts must be positioned as a fair and rational risk management instrument.<sup>13</sup> So the validity of the exoneration clause in the ship repair contract is highly dependent on the way the clause is formulated and applied. Preventive and repressive legal protection must run synergistically to ensure justice and legal certainty for shipyard service users.

Based on the results and discussions that have been described, it can be concluded that the exoneration clause in the ship repair contract is a clause commonly used by shipyards as a form of limitation of legal liability. The existence of this clause cannot be separated from the character of ship repair contracts which are generally in the form of standard contracts, thus providing a dominant position for the shipyard as the contractor. This condition has implications for limited negotiation space for shipyard service users in determining the content and substance of the agreement.

Juridically, the exoneration clause in the ship repair contract cannot necessarily be declared null and void, as long as it meets the conditions for the validity of the agreement as stipulated in the Civil Code. However, the validity of the clause must be tested not only formally, but also materially, in particular by taking into account the principles of good faith, propriety and contractual fairness. Clauses that excessively exempt shipyards from liability for negligence or default have the potential to run counter to the basic principles of treaty law. From the perspective of legal protection, shipyard service users are in a relatively weak position compared to shipyards, both in terms of economy, technical, and information mastery. Therefore, the inclusion of a disproportionate exoneration clause can result in reduced legal protection for service users, as well as open up opportunities for abuse of freedom of contract, in this context, the law is required to be present as an instrument that is able to balance the interests of the parties. Legal protection for shipyard service users can be realized through preventive and repressive mechanisms. Preventively, the restriction on the use of exoneration clauses in ship repair contracts needs to be emphasized, both through sectoral regulations and the application of consumer protection principles. Meanwhile, repressively, the role of judges and dispute resolution institutions is very important in assessing the fairness of the exoneration clause and providing decisions oriented towards substantive justice.

The legal implications of the unbalanced practice of including exclusion clauses are the increased potential for disputes between service users and shipyards, as well as a decrease in the level of legal certainty in contractual relationships in the maritime sector. If this

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<sup>13</sup> Cédric Maillot, *Op.Cit.*

practice continues to be left unattended without adequate supervision and regulation, it will be difficult to achieve the goal of legal protection and justice in ship repair contracts optimally. Therefore, this study recommends the need for strict restrictions on exoneration clauses in ship repair contracts, particularly with regard to the exemption of liability for negligence and gross negligence. In addition, the active role of the government, shipping industry associations, and maritime law practitioners is needed in drafting fair ship repair contract standards, in order to provide balanced legal protection for shipyard service users and encourage the creation of legal certainty in the shipping sector.

## CONCLUSION

Klausul eksonerasi dalam kontrak reparasi kapal pada dasarnya diperbolehkan dalam hukum perjanjian sepanjang memenuhi syarat sah perjanjian dan tidak bertentangan dengan hukum, kesusilaan, serta ketertiban umum. Namun, klausul yang membebaskan tanggung jawab galangan secara mutlak cenderung melanggar asas keseimbangan dan melemahkan perlindungan hukum bagi pengguna jasa. Oleh karena itu, keabsahan klausul eksonerasi harus dinilai secara substantif dengan mempertimbangkan asas kebebasan berkontrak, itikad baik, dan keadilan kontraktual, agar kontrak reparasi kapal dapat memberikan perlindungan hukum yang proporsional dan berimbang bagi kedua belah pihak.

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