

# CONSUMER'S DATA PROTECTION AND STANDARD CLAUSE IN PRIVACY POLICY IN E-COMMERCE: A COMPARATIVE ANALYSIS ON INDONESIAN AND SINGAPOREAN LAW

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## ABSTRACT

The world's economy is now beginning to shift towards the e-commerce industry. However there are still many issues in the e-commerce industry regarding consumer protection in the aspect of personal data protection and standard clauses in privacy policy. Although ASEAN has tried to harmonize regulations related to e-commerce between ASEAN countries, there are still differences in these regulations between Indonesia and Singapore. Therefore this paper aims to conduct a comparative analysis between Indonesian and Singaporean law regarding consumer's personal data protection and standard clauses regulations by using legal research methods. Singapore is one of the most active countries in updating its regulations related to the e-commerce industry.

**Keywords:** e-commerce, consumer's rights, standard clause, personal data protection.

## INTISARI

Perekonomian dunia saat ini mulai bergeser ke arah industri e-commerce. Namun masih banyak isu di industri e-commerce terkait perlindungan konsumen dalam aspek perlindungan data pribadi dan klausula baku dalam kebijakan privasi. Meskipun ASEAN telah mencoba untuk mengharmonisasikan regulasi terkait e-commerce antar negara ASEAN, masih terdapat perbedaan pada regulasi tersebut antara Indonesia dengan Singapura. Singapura merupakan salah satu negara yang paling aktif memperbarui regulasi terkait industri e-commerce dan perlindungan data pribadi. Oleh karena itu, tulisan ini bertujuan untuk melakukan analisis komparatif antara hukum Indonesia dan Singapura terkait perlindungan data pribadi konsumen dan peraturan klausula baku dengan menggunakan metode penelitian hukum.

**Kata kunci:** e-commerce, hak konsumen, klausula baku, perlindungan data pribadi.

## INTRODUCTION

The devastation of the economy post-World War II has led countries to realize how important the economy was and caused countries to aggressively push economic growth. The economy held an important role in building relations between countries, therefore a country's economy must be kept stable. In order to maintain the stability of the country's economy, a country should cooperate with other countries for trading purposes to fulfil their economic needs. The trading practice between countries is often called a cross-border transaction. It is undeniable that cross-border transactions—mainly exports—have contributed to increasing Indonesia's foreign exchange reserves (IDN Financial, 2020), especially during the pandemic that led to the decline of Indonesia's tourism (Basith, 2020). One of Indonesia's trading partners is Singapore which is ranked as the third largest with a total value of USD \$30.4 billion (Jayani, 2020).

The growth of cross-border transactions has increased significantly in the last decade because of the presence of the internet. The impact of the internet in the economic world has created a new term called "digital economy" which was introduced by Don Tapscott in 1995 (Sugiarto, 2019). When it was first introduced, the term "digital economy" still sounded unfamiliar. But now the digital economy is no longer unfamiliar, even held an important role in people's lives in order to fulfil their needs. One of the significant impacts of the digital economy is the presence of various e-commerce platforms that held a role in facilitating cross-border transactions. In Indonesia, the digital economy is growing rapidly with more than 10 percent of Indonesia's population shopping through e-commerce platforms, this causes Indonesia to be the largest market for the e-commerce industry in Southeast Asia (Medina, 2020). Indonesia's e-commerce growth rate reaches 78% (Sugiarto, 2019), this fact indicates how big Indonesian market for domestic and foreign e-commerce platforms.

Consumer protection is an important aspect in the trade industry because consumers in economic markets often experience unfair practices but the consumer's bargaining power is very low (ASEAN Secretariat, 2018). In the digital economy era, consumer personal data protection should be included as one of the aspects of consumer protection. Although e-commerce has contributed greatly to cross-border and domestic trade, consumer protection in e-commerce is currently classified as very vulnerable. The biggest issue experienced by e-commerce users are personal data protection and standard clauses in contracts that must be agreed by users before using the e-commerce platform. Nowadays, there are many "free" online platforms which obligate consumers to be willing if their personal data is used by the platform provider for targeted marketing purposes (Yip, 2018). A contract on the use of personal data is written in the standard clause of e-commerce privacy policy or terms and conditions ("T&C"). Standard clauses in e-commerce contracts often lead to unfair contracts that causes the imbalance of rights and obligations between the e-commerce company and user. Moreover, most consumers did not read the T&C and privacy policy on the e-commerce platform before accepting the contract (Bakos et. al, 2013). Apart from the standard clauses issues in e-commerce, there are also personal data issues in e-commerce platforms. Recently there was a case of personal data breach of 15 million users of an e-commerce

platform from Indonesia. The e-commerce site was hacked by hackers then the consumer's personal data such as name, email, hash password, date of birth, until the recent login time were distributed on the online site (Pratomo, 2020).

One of the most popular e-commerce platforms in Indonesia is Shopee which is an e-commerce company from Singapore. Shopee started to operate in Indonesia in 2015, even though it has been only 5 years of operation, Shopee already has an estimated monthly traffic of 95.300.000 (ASEAN UP, 2019). One of the causes of Shopee's popularity in Indonesia is due to its free shipping program. Until now, Shopee as an e-commerce platform certainly does its best to protect consumer's rights, Shopee has proven its best effort that until now there has not been a case of Shopee's consumer's personal data breach. However related to the issue of standard clauses, Shopee is still using these clauses in its privacy policy.

Singapore, which is Shopee's country of origin, is one of the most active countries in updating its regulations in order to meet international standards. Singapore and Indonesia are both ASEAN member states, ASEAN itself has an aspiration to create an integrated ASEAN Economic Community by 2025 (ASEAN Secretariat, 2018), in order to achieve this goal ASEAN has tried to harmonize e-commerce regulations and made a framework on personal data protection. Although ASEAN has endeavored to harmonize personal data protection regulations between ASEAN member states, until now there are still contrasting differences between Indonesian and Singaporean personal data protection regulation.

When discussing the protection of personal data, Singapore is one step ahead of Indonesia, Singapore has its own Personal Data Protection Act of 2012 while Indonesia does not have regulations that specifically address the protection of personal data. Currently, personal data of e-commerce users in Indonesia is mainly protected through Indonesian Law of Electronic Transaction Information. Moreover personal data protection is also regulated by Government Regulation Number 71 of 2019, also Minister of Communication and Informatics Regulation Number 20 of 2016 which contains articles regarding personal data processing. The regulation regarding standard clauses in Indonesia is regulated by Indonesia Consumer Protection Law, whereas in Singapore the standard clauses are regulated in another regulation, the Singapore Unfair Contract Terms Act. From the explanation above, it can be seen that there is a contrasting difference where Indonesian rules are more codified which indicates that Indonesia adheres to the civil law system, while in Singapore the rules are not codified which reflects the characteristic of the common law system which is adopted by Singapore. However, both countries do not have specific regulations designed to regulate consumer protection in the e-commerce industry, so there are various regulations that support consumer protection in e-commerce.

The objective of this paper is to analyze which country—between Singapore and Indonesia—provides the better protection for consumers' personal data protection and standard clauses in privacy policy for the e-commerce industry. The aspect of consumer protection in this paper will be focused on personal data protection and standard clauses in privacy policy. Derived from the issue explained in the paragraph above, this paper aims to analyze the differences using

comparative analysis and answer the research question: (1) how the personal data protection regulation differs between two countries (Indonesia and Singapore) and which country provides better protection in the field of e-commerce industry?; (2) to what extent the standard clauses is prohibited and whether the use of standard clauses in e-commerce privacy policy is allowed in both countries?

## **METHODS**

The research method formulates the possible ways to be used in the series of studies (Soekanto, 2012). The research method used in legal research is different and special compared to other scientific research methods. Legal research requires a research method to begin a series of scientific research processes that aim to provide a solution to a legal problem, which in this case is to answer the research question. There are 3 types of research methods in legal research which are normative legal research, empirical legal research, and socio-legal research (Benuf & Azhar, 2020). The normative legal research will examine all aspects of positive law that applies in a country. While the empirical legal research examines the applicable legal provisions and conditions that occur in the society. Socio-legal research method itself connects the aspect of sociology with law by using a social science approach (Benuf & Azhar, 2020).

The research method used in this paper is a normative juridical approach that focuses on the applicable law (Soemitro, 1982), by examining from secondary sources (Soekanto & Mamudji, 2004). This paper will use primary, secondary, and tertiary as the legal sources. The technique to collect data in this paper is literature study from secondary data sources to analyze the applicable regulation (Soekanto & Mamudji, 2004). The analysis of the legal sources will be conducted using a descriptive analysis method that will use a qualitative approach.

## **RESULTS AND DISCUSSIONS**

Despite ASEAN has held a meeting between the Telecommunications and Information Technology Minister (“TELMIN”) of ASEAN countries to discuss the framework on personal data protection in order to strengthen personal data protection and encourage cooperation between ASEAN countries, these efforts have not shown any significant changes in the national laws of ASEAN countries. The difference in personal data protection between Singapore and Indonesia can be assessed from several aspects. In Indonesia, e-commerce platforms have the obligation to guarantee customers right on security during transaction, the intended right includes the right to security of personal data. Although Singapore Consumer Protection Fair Trading Act Chapter 52A (“CPFTA”) does not list this right, it does not necessarily indicate that an e-commerce platform doesn't carry the obligation to safeguard consumer personal data because e-commerce platforms remain a subject under the Personal Data protection Act. Furthermore, the other differences can be seen from the regulation of standard clause aspect, in Indonesia the rule of standard clause regulated by Indonesia Consumer Protection Law but not explicitly regulated in Indonesian Civil Code, whereas in Singapore standard clause is regulated further in Unfair Contract Terms Act.

By considering several aspects of the differences in consumer protection law, this study will be focused on personal data protection and standard clause aspects. The result of this study will be divided into 2 subchapters, which will discuss the topics of ‘Personal Data Protection for E-commerce Consumers’ and ‘Scope and Implication of Standard Clauses in E-commerce Privacy Policy’.

## **1. Personal Data Protection for E-commerce Consumers**

The most crucial issue which is often faced by e-commerce users is the issue related to personal data protection. The problem of personal data breach often occurs in the digital world, but the public seems not aware of the right of personal data protection (Directorate for Personal Data Protection EU Report). Provisions relating personal data protection for e-commerce consumers are generally regulated in the privacy policy by using standard clauses. This discussion will only focus on the aspects of consent and period of notification because this paper focuses on the relationship between consumers and e-commerce platforms, so this paper will emphasize the rights and obligations of both parties. Before starting the discussion on personal data protection, it is necessary to understand the definition of personal data. A data can be categorized as personal data if the data can be used to identify someone.

Until this moment, Indonesia does not have regulation which is addressed specifically for personal data protection only, but Indonesia has laws pertaining to personal data protection. Indonesia’s law on personal data protection is currently in the drafting phase. However there are some regulations governing personal data in Indonesia. The umbrella terms for personal data protection in Indonesia is still diverging because it is spread in various regulations, some of which are Law of Electronic Transaction Information, Minister of Communication and Information Technology Regulation Number 20 of 2016, Government Regulation Number 71 of 2019, beside that there’s also Government Regulation Number 80 of 2019 which stipulates personal data in e-commerce. Unlike Indonesia, Singapore has their own regulation that specifically intended for personal data protection namely the Personal Data Protection Act.

Under Indonesian law, specifically article 59 paragraph 2 of GR 80/2019 regulates that online marketplace or e-commerce that collect personal data are required to meet standard which includes personal data are obtained legally, the data must be accurate and constitute the latest data, allows data owner to replace the information, the data is used as described on the terms and conditions, the party whose store the personal data must use a security system to prevent illegal use of the data, the data may not used beyond the period of usage, and the data is prohibited from being transferred to another country unless the country has the same personal data standard as Indonesia. If the e-commerce intended to use consumer personal data, they must comply with the provision in article 26 paragraph 1 of Law of Electronic Transaction Information which obligates consent from the data owner before using the data. Under Singaporean law, precisely in section 24 of the Personal Data Protection Act, e-commerce also has the obligation to protect consumer’s personal data under their possession or control. The concept of consent also known by Singaporean law as reflected in section 13 dari Personal Data Protection Act. However Singapore further regulates

about the consent meant by section 13, based on section 14 paragraph 1 of Personal Data Protection Act, the data owner considered has given their consent if they have obtained the information regarding the purpose of data collection and the consent given in accordance with Personal Data Protection Act purpose. But there is an exception in the absence of consent from the data owner, because in certain circumstances it would be impractical to obtain consent, therefore the notification of purpose is known in section 20 paragraph 1 of Personal Data Protection Act (Yip, 2018). The emergence of notification of purpose concept under Singaporean law causes e-commerce may use consumer's personal data without the consent from data owner, nevertheless still requires notification regarding the purpose of data collection before or during collecting the personal data. Although the consumer as the data owner has the right to refuse, it would be hard to exercise the right since based on the section 20 paragraph 1 of Personal Data Protection Act, the notification can be done before or while collecting the data, so in some circumstances it could not prevent personal data usage. Surely this concept is detrimental for consumers as the data owner but on the other hand this concept gave benefit for e-commerce as the data collector. Therefore in the case of personal data usage, Indonesian law protects the consumer's side because all types of usage shall be based on consent from the data owner.

Based on Indonesian law, as written in article 28c of Minister of Communication and Information Technology Regulation No.20/2016 if e-commerce fails in maintaining consumer's personal data security, then the responsibility of e-commerce as data collector is to notify the data breach to data owner the latest 14 days after the breach is identified including the reason of failure. Based on that provision, the duration of notification under Indonesian law is considered too long because consumers as the data owner could not prevent or prepare for the loss/harm caused by the personal data breach. As an example, if the e-commerce has known that the hash password has been leaked but the notification was made 14 days after the leak was discovered, isn't there a potential that the hash password data has spread widely but consumers have not changed the password. As for the other right, Consumer as the owner of personal data has the right to file a claim for losses arising from personal data breach based on article 26 paragraph 2 of Indonesia Law of Electronic Transaction Information. In addition, personal data breach can also result in e-commerce being imposed with administrative sanctions in the form of temporary suspension of the operation of the electronic system as written in article 100 of Government Regulation Number 71 of 2019.

Whilst in Singapore itself there is no obligation for a personal data collector (e-commerce) to notify the personal data breach to Singapore Personal Data Protection Commission ("PDPC") nor the data owner (consumers), but the personal data collector is encouraged to inform personal data breach to Singapore Personal Data Protection Commission (Personal Data Protection Commission Singapore, 2020). In May 2020, there is a submission of the Personal Data Protection Act amendment draft. In the amendment draft there is a provision regarding mandatory data breach notification. The provision requires e-commerce to make a notification to PDPC maximum 72 hours after the contravention of the Personal Data Protection Act, however the provision allows a maximum 30 days to assess suspected breach. While notification to consumers is necessary but the time period is not regulated. However the notification provision only applies if the data breach

ought to result in significant harm for the consumers or the data breach will affect 500 or more individuals (Aw, 2020). As for now, the rules regarding notification obligation in Singapore still do not protect consumers as well as Indonesia. The draft of Singapore Personal Data Protection Act which obligates e-commerce to notify the maximum 72 hours after the personal data breach only requires notification to be made to the PDPC, so Indonesian provision which states a maximum 14 days after the personal data breach is discovered provides better protection for consumers. Unfortunately, the period of notification to the data owner regarding personal data breach based on Indonesian provision is considered too long. The appropriate period of notification is within 72 hours such as the maximum period of notification in Singapore to PDPC, so that it will provide an opportunity for consumers to prevent against the harms caused by personal data breach.

## **2. Scope and Implication of Standard Clauses in E-commerce Privacy Policy**

Today, the world has entered a new era called “digital era”, the impact of digitalization also felt by sellers and consumers in terms of contracts. The process of drafting the contract is no longer conventional because there is an advent of standard clause or standard terms and conditions. The definition of standard clause itself is the set of rules or terms and conditions which have been determined unilaterally by the e-commerce platform as outlined in a contract that must be agreed by the customer (Sholihin & Yulianingsih, 2016). The presence of standard clauses facilitates more efficient and effective process during drafting a contract. Nevertheless, the use of standard clauses implies an unfairness and imbalance position between consumer and e-commerce platforms. E-commerce often uses standard clauses in their privacy policy, which the provisions are detrimental for consumers and shows e-commerce platforms are in a strong bargaining power (Habel, 2019). As an example, there are several e-commerce platforms that state in their privacy policy that e-commerce cannot be prosecuted for their negligence that causes harm to consumers (Indriyani et. al., 2017). This fact shows, although freedom of contract is a fundamental principle in a contract, there must be several restrictions regarding standard clauses in a contract. Therefore control of the substance of the contract is required to balance the freedom of contract with fairness (Booyesen, 2016).

The use of standard clauses is not completely prohibited in Indonesia, but there are limitations regarding the content of the standard clause. In article 53 paragraph 2 of Government Regulation Number 80 of 2019 concerning Trade through Electronic System (“GR 80/2019”), it is stated that electronic contracts are prohibited from using standard clauses which are detrimental to customers under Indonesia Consumer Protection Law. The provision regarding standard clauses in Indonesia is regulated further under article 18 paragraph 1 of Indonesia Consumer Protection Law which states that business owners are forbidden to include standard clauses in each agreement if the clause states transfer of business owner’s responsibility; states that business owners have the right to refuse the return of goods purchased by consumer; states that business owner has the right to refuse refund for goods that have been purchased by customer; gives authority to business owner to act unilaterally with regarding the goods purchased by customer; regulates concerning

authentication to forfeit the use of goods purchased by the customer; gives rights to business owner to reduce the benefit of goods or properties as the trading object; states that consumers are subject to new or addition or changes of regulation which is made unilaterally by the e-commerce platform; or grant the power to impose mortgage, pledge or guarantee against the goods purchased by the customer.

Singapore also allows the use of standard clauses in contracts as long as these clauses comply with laws and regulations. Based on Unfair Contract Terms Act section 3 paragraph 1 and 2 supplier of goods or service—e-commerce platform—is banned from using standard clauses to exclude or restrict their liability in the case of default; claim that e-commerce platform is entitled to render a performance which is not in accordance with what was agreed upon; or claim that e-commerce platform is entitled to render no performance at all in respect of the whole or any part of the contractual obligation. Standard clauses also can be categorized into unfair practice under Singaporean law if the supplier utilizes consumer which the supplier knows or ought to know that the consumer is not in the position of protecting their own interest; or do not understand the character, nature, language or impact or any matter related to the transaction as described in section 4c of Consumer Protection Fair Trading Act. Moreover, section 13 paragraph 1 explained some clauses that were prevented which are clauses that restricts/burdens its liability/enforcement; exclude/restricts rights or remedy related to liability; or excluding/restricting rules of evidence/procedure. Nevertheless, Unfair Contract Terms Act section 11 paragraph 1 excludes the prohibition of using standard clauses if the use of the clauses is considered as reasonable and fair in regards to the certain circumstances which have been known by the parties during the contemplation of contract.

The laws of both countries allow the usage of standard clauses as long as it does not violate the law. Under Singaporean law, the prohibition of the usage of standard clauses scope only covers actions that harm consumer rights. While under Indonesian law, the usage of standard clauses also includes a prohibition on clauses stating that consumers are subject to the changes to privacy policy in the future. However in section 10 of Singaporean Unfair Contract Terms Act, it is stated that a person cannot be bound by a contract that is detrimental or restricts their rights, as far as the rights extend to enforcement of other party's obligation. Standard clause in privacy policy stating that 'consumers are subject to changes without prior notice' is restricting consumer right and detrimental to e-commerce consumers. In the case of *Koh Lin Yee v Terrestrial Pte Ltd* and another appeal (2015), a clause that excludes right—in this case right of set-off—is subject to the reasonableness test under Singapore Unfair Contract Terms Act. From the *Koh Lin Yee v Terrestrial Pte Ltd* and another appeal (2015) case and section 10 of Singaporean Unfair Contract Terms Act, the clauses which states that 'consumers are subject to any changes or addition of contract' potentially can be categorized as a subject of reasonableness test. So the scope of the prohibited standard clauses in Indonesia and Singapore both are the same and provide the same protection for consumers that have weaker positions.

The main purpose of using standard clauses in a contract is to simplify the process of formulating



a contract, so it reached agreement between the parties. According to Indonesian law regulated in Government Regulation Number 71 of 2019 article 49 paragraph 3, consumers are deemed to have given approval to the transfer of personal data if the consumers have shown the act which states agreement or an act of accepting/using the object. Whereas in Singaporean law under section 11 paragraph 1 of Electronic Transaction Act it is regulated that the main element of contract is offer and acceptance, the act of approval can be demonstrated through electronic communications. However Singaporean law does not regulate further what is meant by agreement which is demonstrated through electronic communications. Based on the explanation above, it can be seen that under Indonesian law, the use of object can be categorized into agreement, but in most of e-commerce contract cases consumers do not have any bargaining power so there is only 2 choices available whether to accept all the privacy policy or not to use the e-commerce platform at all. Moreover, not all purchases through e-commerce are made by the consumer who already signed an account, it is possible for consumers to conduct transactions without registering an account in the e-commerce platform so that they have not agreed to the privacy policy. Unlike Singaporean law which does not directly mention the usage of e-commerce indicates that the consumers has given their consent. Regarding the approval of privacy policy in e-commerce, Singaporean law provides better protection for consumers compared to Indonesia because an act of approval is required and it does not directly state that the usage of e-commerce platforms is considered as a consent.

Based on Indonesian Consumer Protection Law article 18 paragraph 3 it is stated that the contract containing prohibited standard clauses as regulated in article 18 paragraph 1 and 2 shall be null and void. This consequence is in accordance with article 1337 of Indonesian Civil Code which states the prohibition of contract based on causes that are against the law or against public order. Provision under article 1337 Indonesian Civil Code is related to article 1320 which regulates 4 elements of contract which are consent between parties, capacity of the parties, a certain subject matter, and a legal cause. The element of legal cause is an objective requirement which if not fulfilled will result in a null and void agreement (Habel, 2019). A null and void agreement shall result in the contract deemed as if never existed. So under Indonesian law, the contract which uses prohibited standard clauses does not have the capacity to enforce and binding both parties.

Although Singaporean contract law is largely based on English contract law which emphasized the element of offer and acceptance in the contract. There are other elements that must be considered in a contract which are consideration and intention to create legal relation. Therefore, although Singapore adheres to the common law system, the terms relating elements of a contract to be enforceable is similar to Indonesian contract law. The presence of standard clauses which violates law in a contract will result in an illegal and void contract also the contract shall be treated as if it has never been formed. However the differences lies under Singaporean law is the use of standard clauses can be categorized as an unfair practice, so consumers have the right to file small claims tribunals as regulated section 7 paragraph 1 of Consumer Protection Fair Trading Act.

Under the laws of both countries, standard clauses in privacy policy that restrict or waive e-

commerce obligation regarding personal data breach is prohibited because it violates consumer protection law. The presence of that type of standard clause in privacy policy is considered as null and void, even if the consumer has given consent to the privacy policy. Regarding the standard clause which states that consumers are subject to the changes of privacy policy in e-commerce platforms not necessarily prohibited under Singaporean Unfair Contract Terms Act, because it is determined through a reasonableness test under Singaporean Unfair Contract Terms Act. Whereas in Indonesia, that clause is forbidden based on Indonesia Consumer Protection Law, so that it resulted in a null and void contract automatically without the need for judicial proceedings. Through this explanation, it appears that the scope of the standard clause in Singapore is wider and provides more protection for consumers. However, related to the privacy policy related to the consumer approval for the transfer of personal data, the consumer position under Indonesian law is more vulnerable because the use of the e-commerce platform is automatically considered as a consent from consumers.

## **CONCLUSION**

There are no significant differences regarding the regulation of e-commerce obligation to safeguard consumers' personal data and the concept of consent for the use of personal data in both countries. However the difference is under Singaporean law the use of consumer's personal data does not have to always be based on the consent of the data owner which is called notification of purpose. This concept itself cannot avoid e-commerce from using consumer's personal data without consumer's consent, even though consumer has the right to refuse. This is due to the concept of notification of purpose in Singapore, the notification can be made before or during the personal data usage. In addition, currently e-commerce in Singapore does not have the obligation to notify consumers as the data owner regarding personal data breach. Broadly speaking, Indonesian law provides better protection for consumers related to personal data if analyzed based on these two aspects, but there is a deficiency regarding the time limit to notify personal data breach to data owners under Indonesian law.

At first glance, the scope of forbidden standard clauses in Indonesian Consumer Protection Law is broader than Singapore. This is because Singapore's consumer protection law only regulates the prohibition of standard clauses if the clause states e-commerce restriction of liability. But if we analyze through section 10 of Unfair Contract Terms Act, a clause which states "consumers are deemed to have approved the changes in privacy policy" can be considered as a clause which restricts someone's right, so a person cannot be bound to a contract which include that clause according to Singaporean law. In addition, section 13 Unfair Contract Terms Act also includes clauses that should be prevented in a contract and subject to reasonableness test. Indonesian law also regulates the prohibition of standard clauses which states the consumers are deemed to have approved the changes in privacy policy. So the use of standard clauses in privacy policy are not fully prohibited, but there are some restrictions regarding the use of standard clauses which are detrimental for consumers and/or violate the laws.

The period of notification to the data owner regarding personal data breach based on the current

Indonesian provision is not efficient. In the draft of Indonesian Law on Personal Data Protection it is recommended that the notification period is within 72 hours such as the maximum period of notification in Singapore to the PDPC. The purpose is so that it will provide an opportunity for consumers to prevent against the harms caused by personal data breach. Regarding the prohibition of standard clauses, the scope of prohibited standard clauses in Singapore is broader because there are several clauses that are subject to reasonableness tests. Although Indonesian law is more efficient—because the use of prohibited standard clauses will result in a null and void agreement—the coverage of prohibited standard clauses is not sufficient to include all standard clauses which potentially could harm consumers. So regarding the regulation of standard clauses, my recommendation for Indonesia is to provide the possibility for standard clauses—other than those already prohibited—to be considered in relation to their feasibility in Tribunal.

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### Personal Communication

Answer from Personal Data Protection Commission Singapore Virtual Assistant to Author through pdpc.gov.sg, 25 June 2020.