

"Do You Know" Series



Limitation of Liability Clauses in Indonesia

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Produced under the project of the Asian Business Law Institute to harmonise contractual clauses in Asia

The Asian Business Law Institute ("ABLI") returns with its popular series on contracting in Asia. All past write-ups in this series are available on ABLI's [LinkedIn](#), with full compilations available [here](#).

The short write-up below discusses exclusion of liability clauses under Indonesian law. A full compilation on issues concerning exclusion of liability under contracts is available under the title of *Contract Laws of Asia – Limitations of Liability* [here](#).

Exclusion of liability

Indonesian law does not contain any specific rules on exclusion or limitation of liability clauses. Such clauses are subject to the general enforceability requirements under Indonesian law, as governed by the Indonesia Civil Code (**ICC**). Parties are generally free to include exclusion or limitation of liability clauses on a contractual basis, in accordance with the freedom of contract principle under Article 1338 of the ICC. However, drafters of such clauses must give regard to restrictions under the ICC, i.e., restrictions that clauses which are prohibited by Indonesian law or which violate morality or public order are invalid.

Restrictions

Under Indonesian law, all agreements must be executed in good faith.

For example, an exclusion or limitation of liability clause may be deemed, by an Indonesian court, to be unenforceable if the party that had the benefit of the clause did not negotiate or implement the contract in good faith. Similarly, if an exclusion of liability clause leaves the other party without any remedies for breach (or a limitation of liability clause severely limits those remedies), an Indonesian court may also rule that the exclusion or limitation of liability clause is unenforceable for not being in good faith.

Depending on the nature of the agreement, principles of fairness (*keadilan*) and custom (*kebiasaan*) may also render an exclusion or limitation of liability clause unenforceable.

Interpretation

The general rules of interpretation under Indonesian law apply to exclusion and limitation of liability clauses.

Relevantly, if there is ambiguity in the interpretation of an exclusion or limitation of liability clause, the clause shall be interpreted against the party whose liability is excluded or limited.

For fuller discussions on the operation of exclusion or limitation of liability clauses in Indonesia, readers can refer to the jurisdictional chapter for Indonesia in *Contract Laws of Asia – Limitations of Liability* [here](#).

Acknowledgment

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The experts are contributors to ABLI's latest project that aims at harmonising contractual clauses in Asia, covering 12 key contracting jurisdictions that include Australia, China, England, India, Indonesia, Japan, Malaysia, New York State, the Philippines, Singapore, Thailand and Vietnam.

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