

## **Consumer Protection towards Standard Clauses on The Transfer of Business Actor's Responsibility in Motor Vehicle Parking Agreement (The Study in the City of Banda Aceh)**

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**Abstract:** Article 1 number 10 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as UUPK) which states the standard clause is any rules or conditions and requirements that have been prepared and stipulated in advance unilaterally by business actors that is stated in a document and/or agreement that is binding and must be fulfilled by consumers. In business practices in the city of Banda Aceh, there are many business actors who apply standard agreement which is contrary to the provisions of Article 18 paragraph (1) of UUPK, one of which is in parking agreements. The implementation of this standard agreement can be found on parking tickets that states "loss or damage towards vehicles, completeness of vehicles and/or goods on the vehicle are the responsibility of the owner". The contents of the parking agreement are contrary to Article 18 paragraph (1) letter a of UUPK that prohibits the provision on inclusion of standard agreement that contains the transfer of responsibility of parking business actors. Business actors of the parking should not relinquish their responsibilities, if the offered services can be detrimental to consumers. Article 7 letter f of UUPK states that "Business actors are obliged to compensate, indemnify and/or substitution for losses arising from the use, the usage, and utilization of traded goods and/or services". Thus, there are issues related to how is the implementation of business actors' responsibilities towards the use of standard clauses on the transfer of responsibility in motor vehicle parking agreement? What form of legal remedies can parking consumers do towards the standard clause on the transfer of services responsibility of business actors in motor vehicle parking agreement in Banda Aceh city? And what is the role of the consumer protection agencies and other related parties in the dispute settlement against the standard clause on transfer of responsibility of business actor in motor vehicle parking agreement in the city of Banda Aceh? This research is conducted using normative and empirical legal research methods by looking and conducting the approach towards legal principles in analyzing existing problems and analyzing the law as a phenomenon of society or patterned behavior and by studying literature (library materials) or secondary data.

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Date of Submission: 13-05-2020

Date of Acceptance: 25-05-2020

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### **I. INTRODUCTION**

The definition of standard clause is regulated in Article 1 number 10 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated to UUPK) which states that the standard clause is any rules or conditions and requirements that have been prepared and stipulated in advance unilaterally by business actors that is stated in a document and/or agreement that is binding and must be fulfilled by consumers. The use of standard agreements is not prohibited in the rule of law, either in the Civil Code (hereinafter abbreviated as KUHPerdata) or in other laws. However, there are restrictions that are prohibited from being used by business actors in the inclusion of standard agreements as expressly regulated in the provision of Article 18 paragraph (1) of UUPK. The contents of the parking agreement are contrary to Article 18 paragraph (1) letter a of UUPK that prohibits the provision on inclusion of standard agreement that contains the transfer of responsibility of parking business actors.

In business practices in the city of Banda Aceh, there are many business actors who apply standard agreement which is contrary to the provisions of Article 18 paragraph (1) of UUPK, one of which is in parking agreements. The implementation of this standard agreement can be found on parking tickets that states "loss or damage towards vehicles, completeness of vehicles and/or goods on the vehicle are the responsibility of the owner". The business actor of parking as a party whose economic position is stronger is free to determine the contents of the agreement unilaterally even though it contains the transfer of responsibility in the contents of the

agreement. The owner of vehicle as a party with a weaker economic position can only accept the contents of the agreement. In fact, the contents of the parking agreement can be detrimental to the owner of vehicle in case the loss or damage occurs to the vehicle that was parked, while the parking business actor relinquishes his responsibility through the contents of the agreement.

The contents of the parking agreement are contrary to Article 18 paragraph (1) letter a of UUPK that prohibits the provision on inclusion of standard agreement that contains the transfer of responsibility of parking business actors. The contents of the parking agreement contain exoneration clause. Exoneration clause is a clause containing the condition that limits, or even completely eliminates the responsibility that should be burdened on the producers/distributors of the product (seller).<sup>1</sup>

Business actors of the parking should not relinquish their responsibilities, if the offered services can be detrimental to consumers. Article 7 letter f of UUPK states that "Business actors are obliged to compensate, indemnify and/or substitution for losses arising from the use, the usage, and utilization of traded goods and/or services". Furthermore, Article 19 paragraph (1) of UUPK states that "Business actors are responsible for providing compensation for damage, taint and/or losses of consumers as a result of consuming the goods and/or services that were produced or traded". The form of loss towards consumers can be done by business actors by substituting the losses or by reimbursing money, substituting the goods and/or services with the same or other equivalent type.

In addition, there has been jurisprudence of Supreme Court regarding the inclusion of standard agreements made by business actors of the parking in several cases of loss of motor vehicle, namely Judicial Review Decision of Supreme Court Number 124 PK/PDT/2007 jo. Decision of Cassation of the Supreme Court Number 1264 K/PDT/2003 jo. Decision of High Court of Jakarta Number 115/PDT/2002/PT.DKI.JKT jo. the Decision of Central Jakarta District Court Number 551/Pdt.G/2000/PN.JKT.PST between Anny R.Gultom and Hontas Tambunan against PT Securindo Packatama Indonesia, then in other case which also has the Supreme Court jurisprudence, namely the Supreme Court's Cassation Decision Number 2078 K/Pdt/2009 jo. the Decision of High Court of DKI Jakarta Number 513/Pdt/2008/PT.DKI.JKT jo. Decision of Central Jakarta District Court Number 345/Pdt.G/2007/PN.JKT.PST between PT Securindo Packatama Indonesia against Sumito Y. Viansyah. Both Supreme Court decisions have won the consumer as the aggrieved party in terms of the inclusion of a standard agreement that contains an exoneration clause in the parking agreement and punished the business actor to compensate the loss suffered by the consumer. In that decision, it is stated that the business actors of parking lot still has the responsibility for the vehicles that were parked in the parking lot that is managed by the business actor based on the basic provision that regulate about the custody agreement of the goods and it is also stated that the inclusion of standard agreements containing exoneration clauses is contrary to the provisions of UUPK and the Civil Code (KUH Perdata).

Although there have been many Supreme Court jurisprudences which states that the standard agreement containing the transfer of responsibility of the parking business actor to consumers of the parking business is an agreement that has legal defect and parking business actor is responsible in case of loss or damage occurred to motor vehicles in the parking lot, however in fact, until now in the city of Banda Aceh, there are still many business actors of parking who set standard agreements that clearly contradict the Civil Code and UUPK. Based on the background description mentioned above, the problems in this study are as follows:

1. How is the implementation of the business actor's responsibility towards the use of standard clauses on the transfer of responsibility in motor vehicle parking agreement in the city of Banda Aceh?
2. What form of legal remedies can parking consumers do towards the standard clause on the transfer of services responsibility of business actors in motor vehicle parking agreement in Banda Aceh city?
3. What is the role of consumer protection institutions and other related parties in the dispute settlement against the standard clause on transfer of business actor's responsibility in motor vehicle parking agreement in the city of Banda Aceh?

## **II. METHODS**

The type of research used in this study is normative and empirical legal research. Normative legal research is a research that is done by studying library materials or secondary data.<sup>2</sup> While the empirical legal research in this research is trying to do an approach towards the legal principles in analyzing existing problems and analyzing the law as a phenomenon of society or patterned behavior.

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<sup>1</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Grasindo, Jakarta, 2006, hlm. 147.

<sup>2</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Raja Grafindo Persada, Jakarta, 2004, hlm. 13.

### III. RESULT

#### A. Implementation of Business Actors' Responsibilities in the Motor Vehicle Parking Agreement in Banda Aceh City

Supervision towards the inclusion of standard clauses based on the provisions of Article 52 letter c of UUPK is the duty and authority of the Consumer Dispute Settlement Agencies (BPSK). However in Banda Aceh, Nowadays, supervision independently conducted by a non-governmental consumer protection organization called the Foundation for Consumer Protection Aceh (YaPKA). This Independent supervision is carried out by receiving complaints from the community, advocating towards the community (complainants), conducting socialization and making complaints to related parties.

In regard to supervision of the inclusion of standard clauses on parking tickets, YaPKA cannot directly summon business actors to supervise, to select and to review the standard clauses that will be applied in parking management, especially to take an action against parking managers. YaPKA only works in the domain of handling the complaint, that is, after receiving the complaint, the party of YaPKA immediately examines the truth of the event that was complained by and its suitability with the evidence that was submitted. Furthermore, YaPKA officially write a letter for the parking manager to conduct the mediation in order to find a peaceful settlement.

The inclusion of a standard clause in the parking ticket should be done by Regency/City People's Representative Council (DPRK) of Banda Aceh, but the authors argue that DPRK of Banda Aceh does not maximally carry out its supervisory function towards the implementation of the regulation that was stipulated by the Mayor of Banda Aceh. Additionally, DPRK of Banda Aceh should carry out its supervisory function by using the right of interpellation to request information from the Mayor of Banda Aceh regarding the reasons for the inclusion of a standard clause in the parking ticket in the provision of Article 13 paragraph (1) of Mayor's Regulation of Banda Aceh Number 6 of 2013 concerning the Implementation of Parking that is clearly contrary to the higher laws and regulations. The implementation of *a quo* regulation has broadly impacted the communities towards the potential loss of the right to have compensation if the vehicle or equipment of vehicle or the goods on their vehicle were lost in the parking lot that is managed by City Government of Banda Aceh through Transportation Department of Banda Aceh.

#### B. Protection of legal Remedies Forms that Consumer Can Do towards the Standard Clause on Transfer of Responsibilities in Parking Agreement for Motor Vehicle in Banda Aceh city

##### 1. Legal Construction in Parking Agreements

Before answering about the form of legal remedies that can be carried out by parking service users if the vehicle is lost in a parking lot, first, we must discuss whether the agreement in the parking business is a lease agreement or can be classified as a custody agreement of goods. If the parking agreement is qualified as lease agreement of parking lot, then the object of the lease is a certain area of the parking lot that has line in such a way as a marker of the parking lot boundary (parking plot) that is intended as a parking space. The parking lots used by parking service users to park their vehicles should be included in the parking ticket. However, in its practice, the parking lot used is not included in the parking ticket. Parking service users are free to park their vehicles in any parking area because after taking a parking ticket, parking service users still have to find which parking space is empty to be used to park their vehicles. If the parking agreement is qualified as a lease agreement, then it is not in line with the provision of Article 1548 *juncto* (in conjunction with) Article 1554 *juncto* Article 1552 of the Civil Code (KUHPperdata).

The parking agreement is more precisely constructed as a custody agreement of goods. This relates to the purpose of Article 1697 of the Civil Code (KUHPperdata) which confirms that custody agreement has not been implemented before the related goods are actually handed or considered to be handed. The parking agreement is more precisely qualified as a custody agreement of goods because the object of agreement is actually a parked vehicle. This can be seen from the parking ticket that includes the vehicle police number behind the barcode. The aim is that the entering vehicle must be the same as the vehicle that exits. This is in line with the definition of the custody agreement of goods as referred in the provision of Article 1694 of the Civil Code which requires that the items that were entrusted returned as before. In its practice, each parking service user who will bring his vehicle out must show a parking ticket to be inspected and matched by the parking attendant between the vehicle information on the barcode and the vehicle itself. In case the parking service user cannot show the parking ticket, then the parking attendant will ask the parking service user to show the original vehicle registration certificate (STNK) to be inspected and matched to the vehicle to ensure that the entrusted vehicle is returned to the person who entrust the vehicle, not someone else. This is in line with the provision of Article 1719 of the Civil Code (KUHPperdata) which confirms that the recipient of the goods for safekeeping is not allowed to return the goods for safekeeping except to the person who entrust the goods for safekeeping.

Furthermore, based on the provisions of Article 1706 of the Civil Code, the recipients of the entrusted goods are obliged to maintain the goods as proper as they maintain their own goods. In parking management, there are parking attendants who help parking service users to park their vehicles and supervise so that the

vehicle does not hit/graze other vehicles or other objects that can cause scratches and/or damage. Then the parking attendant will also maintain the security of the parked vehicle. In addition, based on the provisions of Article 1712 of the Civil Code, the recipient of the entrusted goods must not use the entrusted goods without permission expressly given by the person who entrust the goods. In parking management, it turns out that this prohibition is strictly obeyed. Further analysis is based on the provision of Article 1720 of the Civil Code, the recipient of the entrusted goods cannot demand the person who entrust the goods to prove himself as the real owner of the goods. In parking management practices, each parking service user who will park his vehicle in the parking areas never required to prove that he is the legal owner of the vehicle that will be parked.

Based on the description of the analysis above, it can be concluded that the proper legal construction in the parking agreement is the custody agreement of the goods. This can be seen from the object of the agreement in the form of the entrusted vehicle, the existence of the obligation to return the vehicle to the person who entrust the goods, the existence of the obligation to return the entrusted vehicle in its original condition, the existence of obligation of recipients of the entrusted vehicle to guard the entrusted vehicle like their own vehicle and the existence of prohibition of using vehicles that is entrusted without permission from the owner.

## 2. Legal Remedy Efforts For Parking Service Users

Related to the form of remedy for parking service users whose vehicles are lost in the parking lot, because the legal construction that is proper for the parking agreement is a custody agreement of goods, then the effort that can be made by the parking service user is to file a lawsuit against the unlawful act (*Perbuatan Melawan Hukum*) to the District Court where the parking lot is located. The legal relationship created between the parking manager and the parking service user is custody agreement of vehicle, thus an obligation arises for the person who entrust the vehicle to pay for safekeeping services and the recipient of the entrusted vehicle is obliged to guard the entrusted vehicle and is also obliged to return the vehicle in its original condition. If the vehicle is lost, damaged or destroyed as a result of negligence of the recipient of entrusted vehicle, then the person who entrusts the vehicle has the right to sue the recipient of the entrusted vehicle to be responsible on this case. The legal arguments for a lawsuit can be based on the provision of Article 1365 *juncto* 1366 *juncto* 1367 of the Civil Code (KUHPerdata) *juncto* Article 4 letter a and d *juncto* Article 7 letter f of UUPK.

To determine the existence of an unlawful act in the case of loss of vehicle in a parking area, based on the provisions of Article 1365 of the Civil Code (KUHPerdata), it must meet 4 (four) elements cumulatively, namely:

### 1) The existence of the elements of unlawful act

If the parking service user's vehicle is lost in the parking area, then this condition meets the criteria "contrary to the legal obligations of the offender" because the parking managers as the recipient of the entrusted vehicle was an obligation to return the vehicle to the person who entrusts it, the obligation to return the entrusted vehicle in its original condition, and the obligation to guard the entrusted vehicles like their own vehicles and meets the criteria of "contrary to the subjective rights of the others" because parking service users are entitled to the convenience, security, and safety in consuming parking services. Thus, in the case of loss of the vehicle that was parked in the parking area, the existence of the elements of unlawful act has been fulfilled.

### 2) The existence of an error

If the vehicle of parking service users is lost in a parking area, it is reasonable to assume that the parking attendant has neglected to carry out his obligations to guard the entrusted vehicle and return the vehicle only to the person who initially entrusts the vehicle. Parking attendant should thoroughly examine every vehicle that comes out by checking the suitability of the vehicle information on the parking ticket with the vehicle that will be taken out. Moreover, parking management at crowded centers such as Suzuya Mall Banda Aceh, Plaza Aceh, and Zainal Abidin General Hospital have implemented special doors for vehicles to exit, complete with cameras and parking attendants, so that the less possibility of the vehicles to be lost. If there is still the loss of vehicle occurred in the parking area, it can be said that the parking attendant has been negligent or negligent in carrying out his obligations. Therefore, in the case of the occurrence of loss of the vehicle parked in the parking area, the existence of an error has been fulfilled.

### 3) The existence of the loss

In terms of the occurrence of loss of vehicle that was parked in the parking area, the parking service user clearly suffers from the loss in the form of loss of the goods which has economic value in the form of a vehicle that can be valued in money. In other words, parking service users have actually lost some of their assets. Moreover, parking service users also suffer the loss of benefits that should be received by parking service users, namely the benefits of the existence of the mentioned vehicle. Therefore, in terms of the occurrence of loss of vehicle that was parked in parking area, the existence of the loss has been fulfilled.

4) The existence of causal relationship between error and loss

The error of the parking attendant and/or parking manager if the vehicle of the parking service user is lost in the parking area is the negligence in carrying out his obligation to guard the entrusted vehicle and return it only to the person who entrusts the vehicle. The error then results in losses suffered by parking service users, namely the loss of the goods which has economic value in the form of a vehicle and the loss of benefits that should be received by the parking service user, namely the benefit of the existence of the vehicle. Thus, in the case of the occurrence of loss of the vehicle parked in the parking area, the existence of causal relationship between error and the loss incurred has been fulfilled.

### 3. Administrative Technical Procedures for Registration of the Lawsuit

Before filing a lawsuit, the parking service user must calculate in advance how much the value of the loss that he suffered as a result of unlawful acts. If the value of a material claim is a maximum amount of Rp.500,000,000.00 (five hundred million rupiah), then the lawsuit can be submitted in the form of a small claim court (simple lawsuit). The completeness of the documents to file a lawsuit to the court is as follows:

- 1) Lawsuit, is affixed with enough duty stamp (*materai*) and signed by the Plaintiff or his attorney as well as is made in 5 (five) copies.
- 2) Special Power of Attorney, Advocate Identity Card and Minutes of Advocate's Oath (if authorized to the Advocate/ if using the advocate).
- 3) Photocopy of the Plaintiff's Identity Card (KTP)
- 4) Supporting documents as proof of letters, in the form of proof of motor vehicle ownership (BPKB), vehicle registration certificate (STNK), Parking Ticket, Lost item report Receipt (*Surat Tanda Penerimaan Laporan Kehilangan*) and other relevant documents. All of these documents were copied in 1 (one) copy, each document affixed with enough duty stamp (*materai*). Then, it will be approved by Postal Officer (*Nazegelen*).

After the claim file is complete, the Plaintiff will then register the claim by online using *e-Court* service system which can be accessed via the page <https://ecourt.mahkamahagung.go.id>. or through the officer of One-Stop Integrated Service (PTSP) at the court where the lawsuit will be registered.

### C. The Role of Consumer Protection Institutions and Related Parties against the Standard Clause on Transfer of Business Actors' Responsibilities in Disputes Settlement of Motor Vehicle Parking Agreement in Banda Aceh City

Implementation of parking management in Banda Aceh are generally divided into two (2), namely the management undertaken by private parties and the management implemented by the Government of Banda Aceh. Parking management by private parties is carried out independently by third parties with a yearly rental system, profit sharing as well as a cost and fee contract system. Parking management at Suzuya Mall Banda Aceh was handed over to PT. CK. Parking with profit sharing system. Each party gets the right 50 (fifty) percent of the total income per month.<sup>3</sup> Parking management at Plaza Aceh was handed over to CV. Megah Mandiri with a cost and fee contract system.<sup>4</sup> Parking management at the Zainal Abidin General Hospital was handed over to CV. Rahmad Citra Karya with a parking lot rental system, amounting to Rp250,000,000.00 (two hundred and fifty million rupiah) per year.<sup>5</sup> While the management of parking by Banda Aceh City Government is carried out directly by the City Government of Banda Aceh through Transportation Department of the city of Banda Aceh without the cooperation of a third party.<sup>6</sup>

Based on the results of research and interviews, it is found that there is the neglect of the protection of parking service consumers in Banda Aceh City. There are still a number of parking service users who suffer losses due to the transfer of the responsibility of business actors, both as stated in the parking agreement document and also as written separately in banners in the parking area. For example the loss of helmets, personal belongings, rearview mirror to the loss of vehicles that occur in the parking lot. Exoneration clauses in parking tickets are used as a basis by business actors to refuse the responsibility for any loss or damage suffered by parking service users. In fact, the business actor is legally responsible for the services provided by him.

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<sup>3</sup>Fahrurrazi, Ketua Bidang Sumber Daya Manusia Suzuya Mall Banda Aceh, *Wawancara*, 18 Februari 2020

<sup>4</sup>Dani, Direktur CV. Megah Mandiri, *Wawancara*, 18 Februari 2020

<sup>5</sup>Zahrul Fuadi, S.K.M., M.Kes., Kepala Subbagian Penata dan Perlengkapan RT Rumah Sakit Umum Zainal Abidin Banda Aceh, *Wawancara*, 20 Februari 2020

<sup>6</sup>Sadli Etika, S.Sos., Kepala Bidang Perparkiran Dinas Perhubungan Kota Banda Aceh, *Wawancara*, 21 Februari 2020

The parking manager at the Banda Aceh Suzuya Mall includes the phrase “All Forms of the loss are out of the Responsibility of CK Parking” and it is printed on banners that are installed in every parking area of Suzuya Mall Banda Aceh. In addition, his party also includes a warning to lock the vehicle, helmet and personal belongings properly. This is done because the parking service manager firmly stated that he would not be responsible if a helmet and personal belongings were lost in the parking lot. However, if there is a loss of a vehicle or a parked vehicle that is damaged due to negligence of the parking attendant (for example the officer is not careful in directing the parking vehicle), the parking manager is willing to be responsible for a maximum of 70 (seventy) percent of the total loss.<sup>7</sup> The same thing is done to parking ticket at the Plaza Aceh which includes the sentence “the loss is out of the Responsibility of the Management”. CV. MegahMandiri as Plaza Aceh parking manager is not willing to be responsible for the loss of helmets and personal belongings in the parking lot because according to him the objects in the parking agreement are motor vehicle, not helmets and personal belongings.<sup>8</sup> Furthermore, the parking manager of the Zainal Abidin Regional Hospital is willing to compensate for the loss but it is not the same as the value of the lost vehicle.

The compensation is temporary because the parking manager provides the requirement that the original documents of ownership of the lost vehicle (BPKB and STNK) are submitted to the manager, if the lost vehicle has been found then the vehicle and its original documents are returned to the owner while the compensation money previously given by the manager must be returned to the manager.<sup>9</sup> On the other hand, Transportation Department of Banda Aceh city expressly refused to provide compensation in case there is a loss or damage to the vehicles, the completeness of vehicles or goods on vehicles parked on the edge of public roads because it has been included in the parking ticket. The loss or damage is the responsibility of the vehicle owner in accordance with provision in Article 13 paragraph (1) of the Regulation of Mayor of Banda Aceh Number 6 of 2013 concerning the implementation of Parking.<sup>10</sup>

#### IV. CONCLUSION

The responsibility of business actors in the motor vehicle parking agreement in the city of Banda Aceh has not been done maximally. Business actors still give limited responsibility, incomplete and unfinished. In the case of loss of the vehicle, some forms of liability are in the form of maximum compensation of only 70 (seventy) percent of the total losses, some business actors are willing to give modest compensation for the loss but temporary in characteristic, and some even refuse to be responsible for providing compensation. The appropriate legal construction in a parking agreement is a custody agreement of goods based on analysis using the provisions of Article 1694, 1697, 1706, 1712, 1719, and 1720 Civil Code (KUHPerdata). Therefore, the form of legal remedies that can be carried out by parking consumers related to the use of a standard clause on the transfer of responsibility of parking business actors towards motor vehicles that were lost in a parking lots in the city of Banda Aceh is by submitting a lawsuit against unlawful acts (*Perbuatan Melawan Hukum/PMH*) to the District Court where the related parking lot is located. The legal arguments for the lawsuit can be based on the provisions of Article 1320 juncto 1365 juncto 1366 juncto 1367 Civil Code juncto Article 4 letters a and d juncto Article 7 letter f of UUPK.

Furthermore, the role of supervision of consumer protection institutions and other related parties towards the standard clause on the transfer of responsibility of motor vehicle parking business actors in the city of Banda Aceh is not running as it should. As a non-governmental consumer protection organization, YaPKA cannot directly summon business actors to supervise, to select and to review the standard clauses that will be applied in parking management, especially to take an action against parking managers. YaPKA only works in the domain of handling the complaint, that is, after receiving the complaint, the party of YaPKA immediately examines the truth of the event that was complained by and its suitability with the evidence that was submitted. Furthermore, YaPKA officially write a letter for the parking manager to conduct the mediation in order to find a peaceful settlement. In addition, DPRK of Banda Aceh does not maximally carry out its supervisory function to guarantee the rights of parking service users in the city of Banda Aceh from the validity of the standard clause on the transfer of responsibilities regulated in the provisions of Article 13 paragraph (1) of the Regulation of Mayor of Banda Aceh Number 6 of 2013 concerning the implementation of Parking.

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<sup>7</sup>Fahrurrazi, Ketua Bidang Sumber Daya Manusia Suzuya Mall Banda Aceh, *Wawancara*, 18 Februari 2020

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Baihaqi, et. al. "Consumer Protection towards Standard Clauses on The Transfer of Business Actor's Responsibility in Motor Vehicle Parking Agreement (The Study in the City of Banda Aceh)." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(5), 2020, pp. 23-29.