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Standard Contract for Banking Credit Agreements According to Government Policy No. 8 of 1999 in Relation to Government Policy No.10 of 1998

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Abstract

The position of one of the more attractive parties can determine the conditions without providing an ineffective position for the other party. For the sake of consumer protection, the Consumer Protection Act has given certain restrictions on agreements that contain standard clauses. Thus, UUPK makes a legal contribution by limiting contract freedom in standard agreements. One of the objectives of the national banking system is to ensure that banks do not compete financially with their customers but must serve the financial needs of the community, fairly and smoothly. A healthy bank operation based on services that can secure and convince the public, and itself, will actively support the establishment of a healthy banking system. Good experience in Indonesia and in other countries shows that some banks have experienced difficulties and have been forced to close, namely because the community needs protection for their company's funds in the banking system.

Keywords: banking agreements, bank services, banking systems, finance.

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BACKGROUND

In social life that has experienced a further level of development, transactions in bank credit agreements have conditions set in the form of agreements between related parties. The principle that we are bound by promises contained in contracts, not only to be fulfilled morally but also legally because we are in a civilized and developed society. In such a society, there is the freedom to participate in juridical-economic traffic. One principle is that freedom of contract is part of human rights and freedom.1 Hugo Grotius considers that a contract is a voluntary act of someone who promises something to someone else with the intention that the other person will receive it. It is more than a promise because the promise does not give the other party the right to carry out the obligation.2 The pioneer of the principle of contract freedom, Thomas Hobbes, says that contract freedom is part of human freedom. According to Hobbes, freedom is only possible if people can freely act following the law.3 This concept is also supported by John Stuart Mill, who uses the idea of freedom of contract with two principles.

The banking industry has a strategic role in developing national goals and the national economy—the implementation of the vision and mission of domestic banking as a tool to carry out national development. Sustainable development aims to improve the prosperity and security of the community as contained in the Pancasila and the 1945 Constitution. It is very closely related to the certainty and legal protection of banking customers in the national banking system. Banks are institutions that are trusted as intermediaries in the financial sector. Financial intermediaries are those who provide services to those who need, deposit and lend money. Thus, in the banking business, there three related parties, namely banks as intermediary service providers, customers who save money, and borrow money. Also, some people use related banking services, namely sending money or other services, such as clearing and payment.

One of the objectives of the national banking system is to ensure that banks do not compete financially with their

customers but must provide services to the financial needs of the community, fairly and smoothly. A healthy bank based on public trust will actively support the establishment of a healthy banking system.

Good experience in Indonesia and other countries shows that banking is experiencing difficulties and closures caused by the public because they cannot obtain the expected financial services. The facts show that people concern about the protection of their company's finances at the bank.

Implicitly banks may not use their positions that are more favorable to their customers. The analysis phase of credit extension is the more critical preventive stage before signing a credit agreement between the bank and the customer. It is the stage to increase banking confidence that prospective debtors can repay loans.

The facts that exist in banking practices today, the application of prudential banking principles are the mainstay for efforts to increase customer confidence as outlined in the loan agreement. Understanding of the function of the credit agreement as a means to increase the trust of public trust as well as a method of protection against saving the community still to be improved to achieve the expected target. Also, it often happens that banks, which responsible for customer finances, do not indicate the certainty of the safety of customer funds if a banking crisis occurs.

Traditionally, bank analysis of prospective debtors is carried out on aspects known as 5 C Analysis, namely Character, Capacity, Capital, Condition, and Collateral as required by Article 8 of Law No. 10 of 1998. Based on the above principle, if there is a lack of prudence or mistakes at the stage of the credit analysis process that causes a default on loans, then the bank is responsible.

In general, the form of a bank credit agreement is a standard agreement. In a standard agreement, the debtor does not have a bargaining position. Some standard forms of contracts that are very widely used in the banking business are credit agreements, applications, requests for opening current accounts and bank accounts, applications for opening time deposits, money transfer applications, etc.

An important legal basis for dealing with contracts is fundamental freedoms for contracts. The legal basis is stipulated in Article 1338 BW. Fundamental freedom for a contract means the liberty of one party to make a contract, which is better than the existing contract, and free to determine the contents of the agreement. But freedom is not absolute because there are restrictions that may not conflict with public order and politeness.

The legal relationship between the bank and customers, or users of bank services, is a contractual relationship based on the law in the contract agreed upon by both parties. Because there are transactions in contracts that are economical for profit, contracts for use in the banking business are commercial contracts.

With economic development, there are the fore new legal requirements in other contracts, especially those relating to banking transactions to improve banking functions. The condition has given rise to fierce bank competition, with ineffective ways on some of the bank's products and services to potential customers. In transactions between banks and customers, banks make several types of standard contracts, which are not sufficient for potential customers as consumers. Even with the promise of attractive prizes. Finally, bank customers are in a susceptible position because the law cannot provide proper protection for bank customers as consumers.

The facts above show that industrialization has a direct impact on new standard contracts. An increase always follows the industrialization process in standard contracts in several commercial transactions. In this context, the role of the legal contract is undergoing industrialization to accommodate some of the economic interests of community members based on excellent and cultured contractual relations.

Several laws in the banking sector, including Act Number 10 of 1998, concerning Banking, Act Number 23 of 1999, concerning Bank Indonesia, Act Number 23 of 1999, concerning Consumer Protection, and several other laws and regulations, only implicitly regulate customer protection. From the provisions, it can be explained that the basis for customer protection cannot be separated from efforts to protect the continuity of banks as institutions in particular, and the security of the banking system in general, in national legislation. The procedures and requirements implicitly explained for healthy banking business. Banks as entities that work based on trust (Fiduciary Relations) can do well if the public users of banking services feel safe that the funds deposited in the bank can be paid at any time if withdrawn. Determination of legislation regarding the legal protection of bank customers in the national bank system can lead to public confidence in the institution of the bank. The uncertainty of the legal security of customers regarding depositing funds in banks makes it difficult for the banks to conduct banking business.

The Consumer Protection Act specifies a standard agreement form. It prohibited attempts to include standard clauses that are difficult to understand. Thus, there are restrictions in the standard agreement. Any prohibited above clause (paragraphs 1 and 2), if included in the agreement, is the violation of the law. The settlement of consumer disputes that have surfaced in connection with efforts that are not following Law Number 8 of 1999, concerning Consumer Protection, can be resolved through Article 45. The disputes can be solved in the form of clarification that the settlement will be carried out through the court or outside the court, based on voluntary parties' choice to resolve disputes and not eliminate penalties (Article 47). Thus, the parties can ask the relevant institutions tasked with resolving consumer disputes.

METHODOLOGY

The type of research is descriptive with an empirical normative approach. The main source of data is secondary data that the author obtained from the literature in the form of laws and regulations related to the problem in this study. After all the data has been collected, a quantitative descriptive analysis is carried out, so that the issues, in the research, can be answered.

RESULT AND DISCUSSION

The Meaning of the Agreement

According to Article 1313 of the Civil Code, an agreement is deed in the name of one or more persons who are bound to one another. Meanwhile, according to Mariam Daruz Badrulzaman (1994), an agreement is a deed that occurs between one or more people who commit themselves to one or more people. Of the two definitions above, the author considers incomplete and too broad. It is incomplete because it only formulates a unilateral

agreement. Too broad because it involves other things such as marriage vows, namely family law agreements that appear on the surface. In general, contracts that are not related to a particular form can be made verbally. If the deal is made in writing, then the agreement is proof of disputes.

According to Mr. Yahya Harahap (Subect, 1984), an agreement or verbentenis means a family or property relationship between two or more people who give the power of the right to one party to get the promise, which at the same time requires the other party to fulfill its promise.

According to Prof. R. Subekti, SH. (Felix, 2009), engagement is a legal relationship about property between two people to give rights to one request for an item from another, while another person needs to fulfill his request. The agreement between the parties involved in the credit must be agreed upon for who carried out the agreement.

The Basis of the Law of Agreement

Dasar hukum perjanjian sebagai berikut:

1. Dasar setiap orang untuk mengetahui hukum;
2. Dasar kebebasan kontrak;
3. Dasar konsensus;
4. Dasar dari itikad baik;
5. Dasar Keadilan;
6. Dasar kesamaan dalam hukum;
7. Dasar salah satu harus bertanggung jawab atas pihak lain yang menderita kerugian karena tindakan atau kelalaian;
8. Dasar Waktu Adalah Atau Esensi;
9. Dasarnya Dimana Dimana;
10. Dasar Kerahasiaan;

The Meaning of Credit Agreement

According to Prof. Mariam Darus Badrulzaman, based on the formulation of banking legislation concerning credit agreements, the basis of the credit agreement is the loan agreement in the Civil Code in Article 1754. The Bank credit agreement is preliminary (voorovereenkomst) of the transfer of money. The initial agreement is the result of a contract between the lender and recipient of the loan, regarding the legal relations between the two.

Rachmadi Usman, SH believes that the Bank credit agreement is a standard contract where the contents or clauses of the credit agreement have been standardized and outlined in the form of a blank form, but not bound in a particular style (vorm vrij). The debtor only needs to sign his signature if he is willing to accept the contents of the agreement. Thus, it can be stated that the Bank does not provide an opportunity for prospective borrowers to discuss in advance the contents of clauses submitted by the Bank. At the stage, there is an unbalanced position between the debtor and the Bank; the position of the prospective debtor is fragile, so just accept the conditions offered by the Bank because if not so the potential debtor will not get credit.

The Standard of Clause in the Practice of Banking

Consumers almost always use agreements or contracts in the standard form. Therefore, in law, an agreement or contract is called a standard agreement or contract. According to a report in the 1971 Harvard Law Review, 99% of transactions made in the United States were standard agreements (Sidharta, 2000).

Standard contracts are contracts in written form where the contents have been standardized unilaterally in business and are offered for approval without considering differences in consumer conditions (Johanes, 1994).

The emergence of standard contracts is based on the need for effective and efficient services for transaction activities. Therefore, the main character of a standard contract is the fast and efficient service of high-frequency transaction activities but still can provide strength and legal certainty effectively. So that standard contracts can provide fast service, the contents or conditions of the contract agreement must be determined in writing in advance then offered to consumers without regard to the customer's conditions. Standard contracts are agreements for high-frequency or fast transaction activities that are useful for speeding up the transaction process. However, consumers who engage in legal relations sometimes do not have time to study the terms of the agreement in the contract (Sentosa, 1999).

Certain phenomena do not always have negative connotations. Making a standard contract provides convenience or comfort for the parties concerned. Departing from the thought, Mariam Darus Bz defines a standard contract as a standard agreement with the contents of the standard set forth in advance. Sutan Remy Sjahdeini defines a standard contract as a contract where almost all clauses are made standard by one party, and the other party has no chance to negotiate the changes requested. Non-standard classifications are only in several matters relating to the type, cost, amount, place, time, and some specific issues of the object of the agreement.

If we look deeper, almost every activity in the banking business is a standard agreement or contract. On the side of the standard agreement form is an arrangement where the concept has been prepared in advance by one party. In banking transactions, the agreement is made in advance by the banks, other parties, or customers just "take it or leave it." In addition to containing rules that always listed in the agreement, the standard contract also contains provisions relating to the implementation of the agreement, certain matters, and the end of the deal in the event of default.

Banking Standard Clauses Connected to Consumer Legal Protection

Consumer Legal Protection shows what is meant by standard agreement, not the definition because it only formulates standard clauses. Article 1 number 10 shows that "Standard clauses are any arrangements and regulations that have been prepared and stipulated in advance unilaterally by a business, as outlined in a binding agreement and must be fulfilled by consumers."

Almost all banking transactions, such as credit guarantees, clearing, deposit boxes, sending money, and others, are basically made on agreements between banks and customers. Principal contracts are based on agreements reached between the two parties, namely banks and customers who can take action following the law and do not conflict with applicable legal rules, politeness, morality, and community habits.

Daily facts show that in transactions between parties and consumers, for example, between banks and customers, the bank is more dominant and decisive. With a more dominant position, banks usually make and provide standard agreements, which are predetermined by the bank and are not negotiable by customers. "Take it or

leave it" is the condition of the customer's contract.

By seeing that in reality the consumers' bargaining position in practice is sought by other parties, Consumer Protection Agency feels it is necessary to set a standard clause in every document or every agreement made by the bank to improve legal certainty and legal protection of banking customers.

In the Consumer Protection Law, at least there can be found a prohibition to gain unilateral benefits to make a standard agreement. Article 18, paragraph 1, states that "Businesses that offer goods and or that intend to trade should make clauses on each standard contract. Furthermore, Article 18, paragraph 2, states that businesses must enter the location or form of goods clearly or can be read clearly and not disclosed in a problematic way.

As a juridical consequence of violating the above provisions in article 18, paragraph 1 and paragraph 2, article 18 paragraph 3, concerning the standard clause, states that the agreement is null and void. In addition to the LPC stated in article 62, paragraph 1, concerning the sentence, it is a maximum of 5 years imprisonment or a maximum fine of Rp. 2,000,000,000.

The cancellation that becomes a standard clause in the agreement is a reaffirmation of the absence of full freedom in a contract, as indicated by article 1320 of the Civil Code. Thus, an arrangement that contains a standard clause, which is prohibited in article 18 paragraph 2 of the Law on Consumer Protection, is considered to have never existed. There is the power of punishment for parties who do not meet the law for the clause, as mentioned in article 18, paragraph 3 Consumer Protection Law.

Law Number 8 of 1999 concerning Consumer Protection contains more new innovative issues in the legal sector. However, there are differences from experts, including that from The Foundation of Consumers Indonesia (FCI). One observed was the standard problem clause. In practice, the substance of this standard clause is more detrimental to consumers but benefits producers. The standard clause in the Consumer Protection Law is constitutionally more "pro-consumer."

The principles of contract freedom are one of the bases of the legal basis of the agreement to be regulated in four rules, namely:

(1) Agree.
(2) Good.
(3) Certain matters.
(4) Halal

For the agreement to be valid, the parties must agree on everything contained in the agreement and give their approval if they want what was agreed upon. In the preamble of the agreement before entering into the articles, usually write as follows "For what is stated above, the Parties agree and agree as follows:"

The current Civil Code is adopted from Burgelijk Wetboek (BW) in the Netherlands. In Indonesia, based on necessary concordances (Articles S.1925 No.577, 415 and 416 juncto S. 1855 No. 2). BW itself was adopted from "Code Civil" by Caesar Napoleon Bonaparte in 1804 in France. The OV Code is heavily influenced by the codification of the Roman Civil Law 565 CE.

When BW was made in Europe at that time, there were at least two camps of ideas which were quite influential, namely:

1. Liberalist faction (one expert is Adam Smith, 1723-1790)

The core of liberalism is that sociality is an area of life in which each individual has the right and freedom from birth. The state does not influence individual activities. Governmental authorization also has no right to intervene in society unless it is against danger. The work of every free individual will avoid too much economic concentration.

2. The stronghold of Utilitarianism (one of the experts is Jeremy Bentham, 1748-1832)

The central idea of utilitarianism is that a society can regulate itself well if primary institutions are formed in such a way as to produce the satisfaction possible for all people included in that society.

According to the theory of Utilitarianism, humans as individuals are not given much attention because what is distributed in this theory is satisfaction, not trust. Pursuing personal satisfaction can be done but also asking people to sacrifice for the benefit of the group. Greater comfort for one group is sufficient compensation for the lack of satisfaction for other groups.

The emergence of freedom in making contracts in Article 13 paragraph 6 of the Civil Code is one form of victory for the Liberalism camp. The parties are free to make agreements without regard to their equal position, where there will be exploitation from the strong to the weak.

There are at least four important points in the standard clause in the Consumer Protection Law to protect consumers, namely:

(1) Business entities in offering goods and/or services intended for trading are prohibited from making or including standard clauses on each document and/or agreement if:

a. declare the transfer of responsibilities of Business entities.
b. declare that Business entities have the right to refuse to return the goods purchased by consumers;
c. state that Business entities have the right to refuse to return the money paid for products and/or services purchased by consumers;
d. declare a power of attorney from the consumer to Business entities, both directly and indirectly, to carry out all unilateral actions relating to the goods purchased by consumers in installments;
e. regulate proof of loss of use of products or use of services purchased by consumers;
f. granting Business entities entity the right to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
g. declare that consumers are subject to regulations in the form of new, additional, advanced and/or continued changes made unilaterally by Business entities the period consumers consume the services they have purchased;
h. states that consumers authorize Business entities to charge mortgages, liens, or guarantee rights to goods purchased by consumers in installments.

(2) Business entities are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosures are difficult to understand.

(3) Every standard clause that has been determined by business entities in a document or agreement that meets the provisions as referred to in paragraph (1) and paragraph (2) is declared null and void.

(4) Business entities must adjust standard clauses that are in conflict with this Law.

CONCLUSION

In a standard agreement, the position of the parties is not balanced because the position of one party is better and able to set rules without giving a bargaining position for the other party, or there is a bargaining position but very little.

To protect the position of consumers, the Consumer Protection Law has provided certainty in the prohibition of the agreement to contain a standard clause. The Consumer Protection Law makes a legal contribution by limiting contract freedom in standard agreements. The bank's position is more dominant. It is stronger than other parties who cannot bid because its position is weaker. For better, the next agreement should be the two parties must have an equal position.

SUGGESTIONS

The Consumer Protection Law only limits the loading of standard clauses. Still, more important is not to include provisions in standard agreements whose meanings and scope are solely based on interpretation based on the freedom to enter into contracts to the extent permitted. With an unbalanced position in the standard agreement, and to prevent losses to the parties, it is time to form general provisions regarding the new content rules of the standard contract.

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