Juridical Problems of Standard Clauses in Fair Banking Credit Agreements

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ABSTRACT

The purpose of this study is to analyze: 1) How problematic are the standard clauses in fair banking credit agreements? 2) How is the construction of a fair banking credit agreement?. The research method used is empirical juridical with a statutory approach, concept approach, and case studies.

The results showed that the construction of a fair banking credit agreement is an effort to create a fair agreement between the bank as the lender and the customer as the recipient of credit. Some important aspects that need to be considered in building a fair agreement are Information Transparency, Balance of Rights and Obligations, Customer Ability to Pay, Legal Protection, Principles of Trust and Honesty, Fairness in Interest and Fee Determination. By taking these aspects into account, bank credit agreements can be designed in a more equitable manner, reducing potential disputes, and increasing trust between banks and customers. Fairness in banking credit agreements will not only benefit customers, but will also support the stability and reputation of the bank in the long run. In addition, to ensure the sustainability of the principle of fairness, banks must constantly update and adapt their credit policies to regulatory developments as well as changing economic and market conditions. Banks also need to provide effective evaluation and feedback mechanisms to hear and respond to customer feedback, which in turn contributes to the creation of a banking system that is more inclusive and responsive to public needs.

Keywords: Problematic, Juridic, Standard Clauses, Credit Agreement, Banking, Fairness.

INTRODUCTION

Background

Indonesia is a country of law where every citizen living in Indonesia is obliged to obey the applicable law. Similarly, in the field of civil law which includes treaty law, it is regulated in written legal regulations, namely the Civil Code, then written KUHPer. Article 1331 of the Indonesian Civil Code contains the definition of agreement, namely an agreement or contract is an event in which one or one party promises to one or another party or where two or two parties promise each other to carry out something.[1] Therefore, the agreement acts as a law for the parties who bind themselves to each other in the agreement, and results in a relationship between two people or two parties called an engagement. The treaty establishes an engagement between the two persons or two parties who make it. In its form, the covenant is a series of words containing promises or undertakings spoken or written.[2]

The Civil Code in practice side by side with Customary Law is commonly used for simple agreements in legal relations in the community. Currently, along with the development of the economy and the needs of the

community, there is also a rapid development of business practices based on Islamic Economic Law or Muamalah. These are all consequences of the transitional provisions in the 1945 Constitution that all existing state bodies and regulations are still valid as long as they do not conflict with existing regulations. But that does not mean Indonesia does not want to build laws with a national legal system that is based on the foundation of state philosophy, Pancasila, and constitutional foundation, namely the 1945 Constitution.

Related to carrying out business activities, many parties who are legally related to each other use agreements as an important instrument that binds the relationship. The legal relationship is agreed, initiated, affirmed and clarified by direct signing of the agreement, submission to the terms and conditions of the agreement and submission to common practices and regulatory provisions.

To implement an agreement, it must first be firmly and carefully determined what the contents of the agreement are, or in other words, what are the rights and obligations of each party. Usually people enter into an agreement by not regulating or setting out precisely their rights and obligations. In buying and selling, for example, it is only established about which goods are purchased, their type and price. No stipulated place of delivery of goods, delivery fees, place and time of payment.

Business activities that require an agreement are in the banking sector. In the first paragraph of the Explanation of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, it is stated; that in order to realize a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution, the sustainability and improvement of the implementation of national development based on kinship, needs to be maintained properly. In order to achieve this goal, the implementation of economic development must pay attention to the balance of elements of equitable development, economic growth, and national stability.

Banking as a financial intermediary *institution has* an important role in the national development process. This is because the banking industry is the industry that has experienced the most rapid development, both in terms of business volume, mobilization of public funds and lending. This is as a result of deregulation in the banking world carried out by the government, in this case Bank Indonesia greatly affects the pattern and strategy of bank management both on the passive side and on the bank asset side.[3]

The bank's main business activity is to collect funds directly from the public in the form of deposits and distribute them in the form of credit and/or financing effectively and efficiently based on economic democracy in supporting the implementation of national development in order to increase equitable development, economic growth, and national stability towards improving the standard of living of many people.[4]

Basically, the main function of credit is to serve *the society* and to determine and implement effective and efficient monetary policy, a sound, transparent, reliable, and accountable financial system supported by a smooth, fast, precise, and secure payment system is needed, as well as bank regulation and supervision that meets the principle of prudence.[5]

Lending is a real service from banks in the life and development of the economy in Indonesia. Credit is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off its debt after a certain period of time with interest.[6]

This is in accordance with the statement stating that the Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms likened to it in order to improve the standard of living of many people.[7]

Based on the provisions of the law, it can be seen that the main function of banking is to collect funds from the public in the form of deposits and distribute the funds that have been collected back to people who need it in the form of credit.[8]

In the implementation of the credit, of course, the parties need to comply with a credit agreement in the form of standard clauses that have been made by the bank itself. According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons bind themselves to one or more other persons. While standard clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally by business actors as stated in a binding document and / or agreement and must be fulfilled by consumers.[9]

Bank credit agreements in banking activities are standard agreements that have been made by the bank even though they are basically not equivalent for debtors or consumers. Based on the previous description, it is necessary to have a deep understanding of the importance of book clauses in bank credit agreements. Therefore, the problem in the form of standard clauses in bank credit agreements so that the problems of the forms of clauses in bank credit agreements will be described as this study.

Problem Statement

1. What is the problem of standard clauses in fair banking credit agreements?
2. How is the construction of an equitable banking credit agreement?

THEORETICAL FRAMEWORK

1. Theory of Justice

Justice and law are two things that cannot be separated, justice is one of the goals of law, with law justice should be achieved. The purpose of law is not only justice, but also legal certainty and expediency.[10] Justice must be placed higher than legal certainty and expediency. In treaty law the parties can achieve their will, but are limited by the will and interests of the other party.

Justice is the condition of morally ideal truth about something, whether it concerns things or people. According to most theories, justice has a great degree of importance. John Rawls,[11] the American philosopher considered one of the foremost political philosophers of the 20th century, stated that justice is the first virtue of social institutions, as is truth in systems of thought. However, according to most theories, justice has not yet been achieved. Most people believe that injustice must be fought and punished, and many social and political movements around the world are fighting for justice. However, the large number and variety of theories of justice suggest that it is not clear what is required of justice and the reality of injustice, because the definition of what justice itself is is unclear.

John Rawls' theory of justice is based on the theme of the default position, namely the initial status quo which asserts that the fundamental agreement reached is fair.[12] Everyone has the same opportunity with the procedure of choosing principles, everyone can make proposals and present their reasoning.[13]

The question of what is "justice" is a question that we often hear, but the right understanding is complicated and even abstract, especially when related to various interests that are so complex. Justice according to Aristotle, in his work "*Nichomachean ethics*", means to do good, or in other words, justice is the main virtue. According to Aristotle, "*justice consists in treating equals equally and unequals unequally, in proportion to their inequality*". This principle proceeds from the assumption "for the same things to be treated equally, and those that are not the same are treated unequally, proportionately".

Upian describes justice as "*justitia est constans et perpetua voluntas ius suum cuique tribuendi*" (justice is the continual and fixed will giving to each that which is rightfully his) or "*tribuere cuique suum*", *"to give eveiybody his own*", giving to everyone to whom he is entitled. This formulation expressly recognizes the rights of each person to the other and what should be part of it, and vice versa. This understanding was taken over by Justinian in *Corpus Iuris Civilis: Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*, that basic rules and laws are related to living properly, not harming others and giving

to others what is part of it. Cicero said that people are judged "good" by their fair behavior. According to him, there are three moral virtues: justice, self-control, and courtesy.

While Thomas Aquinas, in relation to justice proposed three fundamental structures (basic relationships), namely:

Inter-individual relations (*order partium ad partes*);

Inter-community relations as a whole with individuals (*order totius ad partes*);

The relationship between individuals to society as a whole (*order partium ad totum*).

According to Thomas Aquinas, distributive justice is essentially respect for the human person (*acceptio personarum*) and his nobility (*dignitas*). In the context of distributive justice, justice and *equity* are not achieved solely by the actual determination of value, but also on the basis of similarity between one thing and another (*aequality rei ad rem*). There are two forms of similarity, namely:

1. Proportional similarity (*acqualitas proportionis*).
2. Similarity of quantity or quantity (*acquality quantitas*).

Thomas Aquinas stated that respect for the person can be realized when something is shared / given to someone in proportion to what he should receive (*praeter proportionem dignitas ipsius*). On that basis, recognition of persons must be directed at the recognition of *equity*, then service and appreciation are distributed proportionally on the basis of human dignity and dignity. Paul Tillich, states that the justice contained in attributed, distributive and retributive justice is proportional (both positive and negative). By Tillich this proportional justice is called "attributive justice".

Meanwhile, the division of justice according to modern authors, among others as done by John Boatright and Manuel Velasquez, namely:

Distributive justice has the same meaning as the traditional pattern, where benefits and burdens must be shared fairly.

Retributive justice, relating to the commission of wrongdoing, where the law or fine imposed on the guilty person must be fair.

Compensatory *justice*, also involves wrongs committed, but according to other aspects, where people have a moral obligation to compensate or compensate others who are harmed.

In the implementation of standard agreements there are several juridical problems that often occur:

1. To some extent, the justice factor requires an interpretation of the agreement that is contrary to the content of the standard agreement.
2. The content of the finished standard clause often conflicts with other contents that are the result of negotiation. 3
3. Often the content of standard clauses often does not relate to the agreement as a whole.

2. Theory of Legal Protection

According to Fitzgerald, as quoted by Satjipto Raharjo, the beginning of the emergence of the theory of legal protection came from the theory of natural law or the flow of natural law. It was pioneered by Plato, Aristotle (a disciple of Plato), and Zeno (founder of the Stoics). According to the school of natural law, it is said that the law comes from God who is universal and eternal, and between law and morals should not be

separated. Adherents of this school view that laws and morals are reflections and rules internally and externally of human life manifested through laws and morals.[14]

The term legal protection theory comes from English, namely *legal protection theory*, while in Dutch, it is called *theorie van de wettelijke bescherming*, and in German it is called *theorie der rechtliche schutz.*[15]

Grammatically, protection is:

1. Shelter; or
2. Things (deeds) protect.

To protect is to cause or cause shelter. The meaning of shelter, covering: (1) putting oneself out of sight, (2) hiding, or (3) rescuing or giving help[16].

Satjipto Raharjo revealed that legal protection is an effort to provide protection for human rights (HAM) that are harmed by others and this protection is carried out on the community so that they can enjoy all their rights that the law provides. The law can function to realize protection that is not only flexible and adaptive, but predictive and anticipatory as well. Laws are necessary for the weak and those who are politically, economically, and socially insecure, in order to obtain social justice.

Satjipto Rahardjo revealed that legal protection is all efforts to protect the interests of an individual through the allocation of a human rights power to others to take action in the interests of that individual.[17]

According to Muchsin, legal protection is an activity to provide protection to someone by unifying the relationship of values or rules that manifest in attitudes and actions in order to create order in life between human beings.

3. Theory of Legal Protection

The presence of law in public life is useful to help and coordinate interests that usually conflict with each other, therefore, the law must be able to integrate it so that conflicts of interest can be suppressed to a minimum. Meanwhile, Hulman Panjaitan said the purpose of legal protection is to provide a sense of security, certainty and justice for the community.[18]

The word "protection" itself means providing protection to the weak so that legal protection can also be interpreted as protection given by the government to someone to provide a sense of security, justice and certainty of their rights in public life and national life, both in the form of services, laws and regulations or other policies, including in the practice of law enforcement itself.[19]

According to Satjipto Rahardjo, legal protection is an effort to protect one's interests by allocating a human right power to him to act in the framework of his interests.[20]

According to Philipus M. Hadjon, legal protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. With regard to consumers, it means that the law provides protection for customer rights from something that results in the non-fulfillment of these rights.[21] Various definitions have been put forward and written by jurists, which basically provide an almost simultaneous limitation, namely that the law contains the regulation of human behavior.[22]

As described above, regarding legal protection, it is important to want legal regulatory efforts in legislation made by authorized parties so that as a result business actors and consumers can comply with these legal values.

RESEARCH METHODOLOGY

The research in this study belongs to the type of empirical juridical research. Empirical juridical research is research conducted by examining primary data, namely data obtained directly from the community. The empirical juridical approach examines how normative provisions manifest in society.[23]

This research approach is included in the type of non-doctrinal research, where the discussion of problems related to credit agreements made between banks and debtor customers in banking practice is a standard or standard agreement. In standard agreements, clauses have been formulated in advance by the bank unilaterally. The clauses contained in credit agreements tend to be a protective measure for creditors to overcome credit risk in credit related relationships. This prioritizes primary data with secondary support derived from the results of literature studies and documentation studies of laws and regulations.[24]

Research techniques are descriptive analytical, where analysis is carried out critically using various theories of research problems. Researchers use prescriptive research methods of analysis, namely studying the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms.

RESEARCH RESULTS

Problems of Standard Clauses in Fair Banking Credit Agreements

A credit agreement is a standard agreement where the contents or clauses of the agreement have been standardized and stated in the form of a form (blank), but are not bound in a certain form. The validity of credit agreements lies in the acceptance of public and business traffic to smooth the flow of trade and business traffic. Standard agreements generally contain unequal clauses between the preparing party and the other party.

Every credit provision must be stated in the credit agreement in writing. The form and format are submitted by Bank Indonesia to each bank to determine it, but at least must pay attention to the following:

1. Meet the validity and legal requirements that can protect the interests of the bank;
2. Contains the amount, term, procedure for repayment of credit and other credit requirements as stipulated in the credit approval decision.[25]
3. The bank credit agreement must at least contain clauses related to the provisions regarding the credit facility provided, including the maximum amount of credit, credit period, credit destination, form of credit and withdrawal permit limit.
4. Interest rates and costs incurred in connection with the provision of credit, including stamp duty, provision / commitment fee and excess withdrawal penalties.
5. The bank's power to charge the current account and/or credit account of the credit recipient for interest rates, penalties, excess withdrawals and interest on arrears as well as all kinds of costs incurred due to and for the implementation of the specified matters that are the burden of the credit recipient.
6. Representation and warranties, namely statements from the credit recipient on charges and all assets of the credit recipient become collateral for credit repayment.
7. Condition precedent, namely tough conditions that must first be used by the credit recipient in order to withdraw credit for the first time.
8. Credit collateral and insurance of collateral items.
9. Affirmative and negative covenants, namely obligations and cancellation of credit recipient actions during the validity of the credit agreement.
10. Bank actions in the context of credit supervision and rescue.
11. Events of default / default / default / trigger clause / openbaar clause, namely bank actions at any time can terminate the credit agreement and will immediately collect all money along with interest and other costs incurred.

12. Choice of domicile/forum/law in case of a dispute in credit settlement between the bank and the creditee customer.
13. Terms of entry into force of the credit agreement and signing of the credit agreement.

The preparation of such clauses is an attempt by banks to apply the precautionary principle in lending. Banks do not want to experience losses caused by debtors who are unable to pay off their debts. Although at the time of signing the bank credit agreement, the bank was in a strong position, but on the contrary at the time of the implementation of the bank credit agreement, the bank became a weak party, because there was a possibility of a cause for the return or repayment of the credit to experience congestion.

The purpose of providing credit is to meet the needs that vary according to their uzharkat, which is always increasing. While human ability has a certain limitation, forcing a person to try to obtain capital assistance for the fulfillment of his desires and aspirations for business improvement and increased usability of goods / services.

Mariam Darus Badrulzaman said that the credit agreement is a preliminary agreement that is consensual while the money handover is real. In consensual and real aspects, credit agreements have their own identities with the following general characteristics:[26]

1. It is a preliminary agreement (voorovereenkomst) of the money delivery agreement;
2. Credit agreements are consensual;
3. The money delivery agreement is real;
4. Credit agreements belong to the standard types of agreements;
5. Credit agreements are heavily interfered by the government;
6. Credit agreements are usually made in bank statements;
7. The credit agreement must contain a guarantee agreement;
8. Credit agreements in real aspects are unilateral agreements;
9. A credit agreement in the consensual aspect is a reciprocal agreement.

Remy Sjahdeini stated that credit agreements are not identical to money loan agreements in the Civil Code. There are special features of credit agreements that distinguish them from ordinary money lending agreements. This special feature is that there are several banks that contain in their credit agreements a clause called condition precedent, which is an event or event that must be fulfilled or occurs first after the agreement is signed by the parties before the credit recipient can use the credit. Agreements that contain condition precedents are consensual agreements and not real agreements, while credit agreements that do not contain condition precedents are said to be real agreements.[27]

From this formulation, it can be seen that credit is a loan and loan agreement between the bank as a creditor and the customer as a debtor. The bank as a lender believes that its customers within the agreed period will be returned (paid) in full. The grace period between giving and receiving back this achievement according to Mgs. Edy Putra The Aman[28], is an abstract thing, which is difficult to feel, because the period between giving and receiving the achievement can run several months, but can also run several years.

This can indeed happen, because in practice many customers do not keep the agreed time in repaying their loans for various reasons. Therefore, in the formulation of the definition of credit, it is affirmed about the customer's obligation to pay off his debt in accordance with his term and accompanied by other obligations, which can be in the form of interest, rewards or profit sharing.

As is known that the essential element of bank credit is the trust of the bank as a creditor towards the borrower's customer as a debtor. This trust arises because of the fulfillment of all conditions and requirements for obtaining bank credit by debtors, including: clear purpose of credit designation, the existence of collateral objects, and others.

The meaning of this trust is the belief of the bank as a creditor that the credit given will really be received back within a certain period of time according to the agreement.

However, the credit agreement is not always fulfilled in accordance with predetermined requirements, so it causes bad credit. Bad loans can be caused by several factors, namely factors originating from customers, factors originating from banks and other factors. As a creditor, it is inseparable from the weaknesses they have. This factor does not stand alone, but is always related to the customer.

1. Factors Derived from Customers

a. Customers Misuse Credit

Every credit obtained by the customer has been agreed in the credit agreement about the purpose of using the credit. With such an agreement, the customer after receiving credit must use it in accordance with its purpose. The use of credit that deviates from its use will result in customers who do not return credit as it should. For example, customers are given credit for transportation purposes because of their business in the field of out-of-town bus transportation, but customers use credit for agricultural purposes by buying onion seeds. When the harvest fails, the customer cannot pay the credit repayment.

b. Customers Less Able to Manage Their Business

Customers who have received credit facilities, apparently in practice do not manage businesses financed by bank credit. Customers are not professional in doing work because they lack technical mastery of the business being run. As a result, the work results are less optimal and less quality, thus affecting people's interest in consuming the products they produce. This situation affects customer income, so it also affects the smooth repayment of credit.

c. Customer in Bad Faith

There are some customers who may not be many who deliberately with all their power try to get credit from the bank, but after the credit is obtained it is used just like that without being accountable. This kind of customer from the beginning has not had good intentions, because the evil purpose is to break into the bank. Usually before the credit is due, the customer has run away.

2. Factors Derived from Banks

Banks can also be one of the causes of bad loans. In providing credit to customers, banks always make considerations or analyses that have been stipulated by the Banking Law. Inaccurate bank considerations will make the credit provided by its customers will run not as expected.

a. Quality of Bank Officials

Every officer or official of any bank is required to carry out his work professionally so as to create adequate services to the community. However, not all bank officials are of the expected quality. Bank officials who are less professional are certainly difficult to expect to get maximum work results. Especially officials in the credit department, the quality can influence improper credit distribution decisions.

b. Interbank Competition

The increasing number of banks is natural with an increasing population affecting the number of needs for banks to increase as well. With the increase in the number of banks, it will affect the increasingly fierce bank competition.

In conducting business competition, each bank in addition to striving to provide the best service to the community, including ease in providing credit facilities. With the best service that aims to get as many customers as possible and existing customers are still encouraged not to move to other banks.

With intense business competition, it will influence banks to act speculatively by providing easy facilities to customers, but on the other hand the steps taken by banks have ignored sound banking principles.

c. Bank Internal Relations

Bad loans can also occur because banks pay too much attention to relationships within the bank, uneven credit distribution and are more likely to be given to administrators and supervisors as well as bank employees. As J.B. Sumarlin said when he was Minister of Finance, that in 1992 bad loans occurred in state banks because bank owners enjoyed credit facilities that exceeded the specified limit (maximum limit for lending).

In addition, banks prioritize relationships with companies that are still in their group (parent companies, subsidiaries) in lending. Like a group of companies that are a family, banks feel tied to their relatives. Juridically each company in a group stands alone, but in economic terms they are a single entity. As a result, if the credit is problematic, it affects banks that do not dare to act decisively.

d. Bank Supervision

Starting from the process of providing credit, the occurrence of credit agreements to the implementation of credit agreements always receive supervision. The work of banks is supervised by internal bank supervisors and external bank supervisors, namely BI and BPKP specifically for state-owned banks. The existence of unhealthy banks or even banks that are exposed to liquidity cannot be separated from bad loans as the cause. One of the factors for the occurrence of bad loans is due to weak supervision of banks.[29]

3. Other Factors

a. Debtor Dies

In this case, if the debtor dies, all loans will be covered 100% by the guarantor and considered paid off or will continue to be collected continuously to the heirs until the credit is paid off, depending on the type of credit given to the debtor. b.

b. Force Majeure

The presence of force majeure or unforeseen events that pose a risk of congestion. This situation occurs due to natural disasters, fires, robberies and others.

c. State Economic Conditions that Do Not Support the Development of the Business Climate, such as the monetary crisis.[30]

Regarding the circumstances that befall the debtor or customer it can be caused by circumstances beyond its ability, so that all of these factors result in the debtor's delay in returning the credit provided by the bank.

Construction of Fair Banking Credit Agreements

Every legal rule formulated by lawmakers is derived from legal principles as its background, so that the ideal purpose of forming the rule of law can be explained referring to the legal principle behind it.

One of the legal principles adopted in treaty law is the "principle of freedom of contract", which means that everyone is free to enter into an agreement that contains the terms of any kind of agreement, as long as the

agreement is made legally and in good faith, and does not violate public order and decency. This freedom is the embodiment of free will, the radiance of rights and human rights.[31]

Freedom of contract is one of the important principles in treaty law. In the nineteenth century, freedom of contract was highly glorified and dominated. The existence of the principle of freedom of contract cannot be separated from the influence of the school of liberal economic philosophy. Where in the field of economics developed the Laissez Faire stream, pioneered by Adam Smith who emphasized the principle of non-government intervention in economic activities and the working of the market[32]. In the field of treaty law, the influence of the Laissez Faire school is manifested in the form of limiting government interference with private contracts that regulate relations between legal subjects, both individuals and legal entities. As long as these private contracts do not contradict the law, public order, decency and decency.

In the Civil Code and in other laws and regulations, there is not a single article that expressly states the application of the principle of freedom of contract. Regarding the existence of the principle of freedom of contract can be concluded from several articles of the Civil Code, namely Article 1329 of the Civil Code which specifies that "everyone is capable of making agreements, unless he is determined to be incompetent by law." From the provisions of Article 1332 of the Civil Code it can be concluded that "as long as it concerns goods of economic value, everyone is free to promise them." From Article 1320 paragraph (4) Jo. Article 1337 of the Civil Code it can be concluded that "provided that it is not about causa prohibited by law or contrary to good decency or public order, then everyone is free to pledge it".[33] Article 1338 Paragraph (1) of the Civil Code which states that "All agreements made validly apply as law to those who make them." It can be interpreted that anyone can make an agreement with any content, there is freedom of every legal subject to make an agreement with whomever he wants, with the content and form he wants.

With the principle of freedom of contract, people can create new types of contracts that were previously unknown in the named agreement (nominate) and the contents deviate from the named contract (nominate) regulated by law, namely Book III of the Civil Code. These contracts are known as unnamed contracts (Innominate).[34] The opportunity for the emergence of new contracts is also inseparable in relation to the open system adopted in Book III of the Civil Code as a complementary law that may be set aside by the contracting parties.

In practice, the principle of freedom of contract is generally used as a basis for the use of standard contracts that regulate consumer transactions with business actors. For reasons of practicality and able to save costs and time, this standard contract is widely used in almost all business activities including insurance contracts, contracts in banking, lease contracts, house/apartment sale and purchase contracts from companies (real estate), office building lease contracts, credit card manufacturing contracts, goods delivery contracts (land, sea and air, and so on.[35]

Standard agreements are the concept of written promises. It is drafted without talking about its contents and is usually poured into an infinite number of agreements of a certain nature. A standard agreement is also an agreement whose contents are standardized and stated in the form of a form in practice, the customer is not included in making the agreement in determining the articles contained so that there is no balanced negotiation between the debtor and creditor.

As explained by Prof. Fauzie Hasibuan in an open session "If the balance of the negotiation process cannot be realized, then the contract does not provide justice."

In accordance with Article 1 paragraph (10) of Law Number 8 of 1999 concerning Standard Clauses, the standard agreements that are widely available in the community can be divided into 3, namely unilateral standard agreements whose sides are determined by the party whose position is strong in the agreement. The standard agreement set by the government is determined by the government for certain legal acts, as well as standard agreements in the notary and advocate environment whose concepts have been provided.

The application of standard clauses is also regulated in consumer protection law number 8 of 1999, in article 18 with provisions giving business actors the right to reduce the benefits of services or reduce consumer assets that are the object of buying and selling services (article 18 letter f) and business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand (article 18 paragraph 2).

Article 18 of Law Number 8 of 1999 concerning Consumer Protection uses the term "standard clause is "any rules or provisions and conditions that have been prepared and determined in advance unilaterally by business actors as stated in a binding document and/or agreement and must be fulfilled by consumers".

To be clearer about the legal consequences if the conditions of validity of the contract are not met. This varies depending on what conditions are not fulfilled in the contract, which include: *First*, the contract is null and void, if the contract does not meet the objective conditions of a contract. The objective requirements of a contract are certain matters and legal powers as stated in Article 1320 of the Civil Code. *Second*, the contract is voidable if it does not meet the subjective conditions of a contract. The subjective conditions of a contract are regarding the agreement of will and ability to act as stated in Article 1320 of the Civil Code. The contract is unenforceable, which is a contract that has no legal force before being converted into a valid contract. An example of such an unenforceable contract is a contract that is supposed to be in writing, but by the parties turns out to be made orally. To overcome these problems, the parties to the contract are then made in writing.

Administrative sanctions are imposed on the parties or one of the parties bound by a contract, for example when a contract requires permission or reporting to certain institutions, such as reporting permission to Bank Indonesia for an offshore loan contract. If one or both parties do not perform their obligations, then the agreement may be canceled. Cancellation can be made by the parties in the event that there is an agreement in the agreement. However, if it is not agreed and one of the parties does not agree, the cancellation can be done through a court decision.

A court ruling is necessary to declare annulment. The interested party must apply to the court to have the agreement revoked. If the court grants the application, the cancelled consent becomes void from the beginning. Such agreements have legal consequences, but we must take into account that those consequences may at some point be cancelled.[36]

The legal consequences of clauses that are considered to harm the interests or rights of weak contracting partners who are consciously forced by entrepreneurs who have a stronger position to be paired as engagement points or standard clauses in a contract, are generally not expressly regulated in the provisions of the Indonesian contractual relationship.

Article 1338 paragraph (3) of the Civil Code only advises that an agreement must be executed in good faith, where this provision does not have a significant effect on being able to cancel an agreement that has been signed by the parties which by Article 1338 paragraph (1) of the Civil Code is expressly recognized as having force as a law (even applies as lex specialis) that applies and binds the parties who sign the contract. The possibility is more able to guard against arbitrariness by those in weaker positions.

A covenant is not only for things clearly stated in it, but also for everything which by the nature of the covenant is required by propriety, custom or law". This article has not expressly protected the interests of standard clauses which are often more in the form of exeplaion clauses, exclusion clauses. Because the strength of the consequences of signing a contract that provides the understanding under Indonesian contract law that both parties have performed a duty of care or "duty to real" obligation makes it difficult for courts to accept measures to protect the rights of the weak party on the basis of losses arising from the enactment of the exclusion clause or limitation clause.[37]

Especially in a printed contract text submitted to the consumer for signature, where actually before the step of signing the contract, the law still sees that the consumer has the right and obligation to read (duty to read)

and understand and make changes to the printed draft contract (duty to care) even though it is recognized that the situation of the consumer's position that tends to be in the required position is difficult to do just that.

A very firm possibility that makes consumers or weak parties can avoid a loss as a result of the presence of the standard clause is if the imposed standard clause is contrary to public interest, decency or contrary to applicable law, which makes the agreement null and void or the basis for violation of the necessity of the halal clause of an agreement as contemplated by Article 1337 Civil Code. That is, there must be a strictness of the law to prohibit the potential use of standard agreements (especially those that do not use the consent or signature of the consumer at the time of their enforcement) that are often imposed forcibly by the situation, or standard clauses intended to protect the interests of entrepreneurs, sellers, insurance companies or banks, either through deliberately reduced lettering with opaque and difficult colors to read, or put the clause in a hidden part of the contract or put the clause in a separate part but still intently intended in an entity with the contract.

Without the presence of a law that specifically prohibits the use of standard agreements or standard clauses that are unbalanced and unfair and do not provide protection or even harm the interests of consumers, still the court is still reluctant to make the basis for the inclusion of these standard clauses as a basis for canceling a contract or at least canceling the validity of the adverse standard clauses.

CONCLUSION

The construction of a fair banking credit agreement is an effort to create a fair agreement between the bank as the lender and the customer as the recipient of credit. Some important aspects that need to be considered in building a fair agreement are Information Transparency, Balance of Rights and Obligations, Customer Ability to Pay, Legal Protection, Principles of Trust and Honesty, Fairness in Interest and Fee Determination.

By taking these aspects into account, bank credit agreements can be designed in a more equitable manner, reducing potential disputes, and increasing trust between banks and customers. Fairness in banking credit agreements will not only benefit customers, but will also support the stability and reputation of the bank in the long run.

In addition, to ensure the sustainability of the principle of fairness, banks must constantly update and adapt their credit policies to regulatory developments as well as changing economic and market conditions. Banks also need to provide effective evaluation and feedback mechanisms to hear and respond to customer feedback, which in turn contributes to the creation of a banking system that is more inclusive and responsive to public needs.

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FOOTNOTES

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