

## Conference Paper

# Regulation of Standard Banking Credit Agreements by the Indonesian Financial Services Authority: A Consumer Protection

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The standard agreement creates rights and obligations for both parties, namely having two choices to “take it or leave it”. Most standard agreements in practice have the potential to harm the weaker party. The difference in the position of the parties in an agreement can cause the party who has a lower position to have a less profit potential. This research is normative legal research using a descriptive-analytical approach and then analyzed qualitatively to produce conclusions in descriptive form. The results show that the Financial Services Authority as an institution that has the authority to regulate and supervise the banking industry in Indonesia has issued POJK Number: 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector and SEOJK Number: 13/SEOJK.07/2014 concerning Standard Agreement in order to provide protection to consumers.

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## 1. INTRODUCTION

Banks in carrying out their business activities use the principle of trust, in addition, banks are also financial intermediary institutions that play an important role in the national development process. Indonesian banking is expected to be able to improve the economy, because banking institutions play a strategic role in driving the wheels of a country's economy. The main business activity of banks is to withdraw funds from the public in the form of deposits and channel them back to the public in the form of credit, so that they must comply with applicable relevant regulations. The banking industry is one of the highly regulated industries, as it relates to services and fund management as well as the trust of customers who place their funds in banks.[1]

In addition to collecting funds from the public in the form of savings, the banking industry also distributes funds to the public in the form of credit and/or other forms

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in order to improve the standard of living of many people. Credit is a bank's mainstay product, because credit is able to provide benefits for banks, therefore, banks are continuously providing credit, to increase business volume and for the sake of continuity of operations. As the bank's main source of income and avoiding credit risk, every credit approval must always pay attention to sound credit principles.

Activities to channel funds to the public in the form of credit by the Bank must have certain conditions for prospective debtors. These conditions are included in the credit agreement that will be agreed upon by the parties, namely the bank as creditor and prospective customer or debtor. The credit agreement is a standard agreement that is technically made in advance by the creditor.[2]

The third book of the Indonesian Civil Code, specifically Articles 1233 to 1864, regulates engagement. Article 1313 of the Civil Code states: "Agreement is an act by which one or more people bind themselves to one or more other people". Based on the article, it can be seen that the elements of the agreement are the parties who have the skills, mutual agreement, agreed matters, legal considerations, and the rights and obligations attached to the parties.[3] The agreement is an agreement of the parties which will then give rise to a legal engagement based on law. Rights and obligations arise from the existence of the engagement. When there is a party in the agreement that does not carry out the obligations as agreed in the agreement, the party is said to be in default. Default is an act of breaking a promise in an agreement made by one of the parties. A person is declared in default because: Completely does not meet the achievements; the performance is not perfect; late in fulfilling achievements; and do what the agreement is forbidden to do. Observing Article 1338 paragraph (1) of the Civil Code that the agreement is binding on the parties. The binding force applies as a law for the parties who make it or often referred to as "Pacta Sunt Servanda". Even though the legal concept of the agreement is open, it is known that the agreement has the principle of freedom of contract. However, in making an agreement the parties must still pay attention to the legal requirements, the principles in the agreement, the rights and obligations of the parties, the structure of the agreement, legal domicile and dispute resolution.

The form of the agreement is not only written but can also be done orally. However, along with the times, there have been changes and developments in the form of agreement used by the people in Indonesia. Science and technology have an important role in changing and developing the form of agreement. In addition, social, economic and industrial conditions also play a role in changing and developing the form of

agreements in Indonesian society today, which then makes people more flexible in determining positions and determining the forms and clauses in an agreement.

The efficiency factor is one of the reasons for the emergence of a standard form of agreement in society. The maker of the standard agreement is only from the side of one party, while the other party only has the choice to accept the agreement or reject it. The standard form of agreement that is often used in the banking industry is considered more practical but in fact there is no balance in the position of the parties in making the agreement so that it has the potential to benefit only the maker. Business actors, in this case bank companies, are required to be more efficient in terms of time and service to customers. So that the standard form of agreement which is actually made by the bank becomes the only option to implement the effectiveness and efficiency[3].

Current business transactions, whether they are large, medium or small, have used a standard form of agreement that has a standard clause in it. Consciously or not, the presence of a standard agreement is actually an indirect result of the application of the principle of freedom of contract in contract law. The imbalance in the position of one party with another in a standard agreement causes one party to be at a disadvantage. The position of the bank company as the maker of the standard agreement has an advantage or a more dominant position because the bank is the one who compiles the clauses in the standard agreement. The use of standard words in standard agreements means that the clauses in the agreement are closed for negotiation.

In practice, standard agreements have the potential to harm parties whose bargaining position is weak, namely the customer. However, judging from the legal requirements of the standard agreement, even though it must meet the legal requirements of the agreement as regulated in Article 1320 of the Civil Code[4]. Quoting the opinion of Sutan Remi Sjahdeini, a standard agreement is a form of agreement whose contents have been standardized by the contracting party while the other party is closed to the opportunity for negotiation.[5].

Meanwhile, the institution that has the authority to regulate and supervise the banking industry in Indonesia is the Financial Services Authority. Although as previously mentioned, most of the standard agreements in practice have the potential to harm the weaker party, in practice, in carrying out bank business activities, it cannot be separated from the use of standard agreements, especially in credit agreements with debtors. So, it is necessary to conduct an in-depth study whether the existing regulations provide sufficient protection for consumers in standard agreements on the implementation of bank credit agreements.

## 2. METHODOLOGY

The method used in this study is a normative juridical legal research method, which refers to the legal norms contained in the legislation, using a descriptive analytical approach. All legal materials related to this research are systematically processed and compiled and then analyzed qualitatively to produce descriptive conclusions.

## 3. RESULTS AND DISCUSSIONS

Standard Agreements or in other terms known as standard agreements and also known as Take it or leave it which means that consumers have the right to make choices, namely agreeing to the agreement or refusing. In the standard agreement, the models, formulations and measurements that are used as benchmarks or guidelines have been standardized so that they cannot be replaced or changed again. Everything has been printed in the form of a form which contains the standard requirements. Because the standard agreement is made unilaterally, only the party making the agreement understands the contents of the agreement while the other party who only accepts the agreement may be harmed because it is difficult and does not understand the contents of the agreement in a short time.[6]

Standard agreements have characteristics that must be adapted to the development of community needs and demands. The development of people's needs now wants work efficiency and effectiveness. Efficiency and effectiveness factors in transactions become a necessity, giving rise to a standard form of agreement that has different characteristics from other agreements. The door to negotiation is closed from the other party because the agreement is drawn up and made by only one party which contains a clause that becomes a habit that applies widely and continuously.[7].

Sudaryatmo revealed the characteristics of standard agreements as follows[7]:

1. a clause in the Agreement is made by one of the parties;
2. the customer is closed to negotiations in determining the contents of the agreement;
3. Made in written and collective form;
4. the need factor from the customer that encourages to accept the agreement.

The standard agreement has the potential to contain an exoneration clause. An exoneration[8] clause is a clause in an agreement in which one of the parties' transfers obligations to another party or clauses that contain conditions that limit or even completely eliminate the responsibilities that should be borne by the bank.

The inclusion of an exoneration clause in the standard agreement is intended to reduce or even eliminate certain risks that may arise in the future. The existence of conditions for exemption or limitation of liability indirectly expands the reasons for the state of coercion. Usually these clauses are widely found in buying and selling, sea transportation, vehicle parking, and things that are experienced daily[9].

OJK Circular Letter Number 13/SEOJK.07/2014 provides the definition of "a Standard Agreement, which is a written agreement that is unilaterally determined by Financial Services Businesses and contains standard clauses regarding the content, form and method of manufacture, and is used to offer products and/or services to consumers collectively". In principle, in banking business activities, it is allowed to use standard agreements, but clauses in standard agreements are prohibited from containing exoneration clauses.

The agreement is a source of engagement other than the law. Legal relationships that often occur are based on agreements, so the agreement has a very important role in the engagement. Some legal experts consider the definition of an agreement given by the Civil Code to be too broad, so that the concept of an agreement in a narrow sense is an agreement in which two or more parties bind themselves to each other to carry out a material matter in the field of assets[9].

This is different from the Banking Law, which does not explicitly state what the legal basis of the credit agreement is. It's just that from the definition of credit as described in Article 1 number 13 of the Banking Act, it can be concluded that the legal basis for granting credit is an agreement. Mariam Darus Badruzaman stated that bank credit agreements in Indonesia are named agreements. The agreement is based on the consensual aspect of the agreement subject to the Banking Law and also the general provisions in Book III of the Civil Code[10].

Rights and obligations are key concepts in similar jurisprudence and ethics where rights contain demands on good conditions and obligations are expected to contribute to good[11]. The existence of a right on a person means that he has a privilege; the existence of an obligation to someone means that an attitude or action is required from him that is in accordance with the privileges that exist in the other person[12]. In an agreement the balance between rights and obligations must be balanced. This means that the parties must not continue to demand rights without fulfilling their obligations

and the parties must also do what is their obligation. An agreement is a reciprocal legal act, namely every action whose legal consequences are caused by the will of two legal subjects, two or more parties based on Article 1313 of the Indonesian Civil Code.

The legal relationship in the agreement contains rights and obligations that arise for the parties. Obligations in an agreement are a form of achievement that must be given. Achievement in the concept of the law of engagement is to give something; do something; or not do something. If one of the parties violates the contents of the agreement that has been agreed upon or does not perform an achievement so that it causes harm to the other party, it must get a sanction, namely paying compensation. Violation of the contents of an agreement which is binding in nature like a law so that when one party violates the contents of the agreement, the other party who receives the loss can sue to court.

Based on the concept of contract law, the parties are bound to comply with the agreement that has been made and the rights and obligations arising from the occurrence of the agreement. The rights of the parties are protected by law, so that their fulfillment is an obligation that must be carried out by the other party, and vice versa. In each right there are four elements, namely legal subjects, legal objects, legal relationships that bind other parties with obligations and legal protection. On the other hand, the obligation creates a contractual burden. These rights and obligations arise when there is a legal relationship between two parties based on a contract or agreement. So, as long as the legal relationship that arises from the agreement has not ended, then on one of the parties there is a contractual burden, there is an obligation or obligation to fulfill it. On the other hand, what is called responsibility is a moral burden. Basically, since the birth of obligations, responsibilities have also been born.

In order to realize a balanced situation in the context of implementing the principle of balance in the agreement, it means that there must be an equal bargaining position between the parties. The non-fulfillment of balance in an agreement in the context of applying the principle of balance can affect the legal force of the agreement. The imbalance is a result of the behavior of the parties, the contents of the agreement and the implementation of the agreement. The application of the principle of balance in the credit agreement is described in the formulation of the rights and obligations of the parties, as a determining indicator of the translation seen in the balanced position between the rights and obligations of each party in the credit agreement. The balance of the parties will only be realized if the parties are in an equally strong position, but the Bank as the dominant party while the customers of small business actors as the weaker party is difficult to achieve.

The imbalance of reciprocal agreements in an agreement creates an unequal position of one party with another party in the agreement. If one of the stronger parties affects the performance relationship of that party to the other party and then causes a loss, then it can be a reason to be able to file a lawsuit for the invalidity of the agreement. As long as the promised performance reciprocity presupposes equality, then in the event of an imbalance, attention will be paid to equality in relation to the way in which the agreement is formed, and not to the final outcome of the performance offered on a reciprocal basis.

The balance of the agreement of the parties in the agreement can be disturbed by factors including: how the agreement is realized which involves parties who have different positions to realize the mutual agreement of the parties. Based on the principle of contract law and the principle of balance, the basic principle that determines is not the agreed equality of achievements but the equality of the positions of the parties.

Several opinions of legal experts such as Sutan Remy Sjahdeini, Mariam Darus Badruzaman, Sri Gambir Melati and Ahmadi Miru generally give meaning to the principle of balance as the balance of the positions of the parties in the agreement. If there is an imbalance in position that causes disturbance to the contents of the contract, the intervention of certain authorities is required. Therefore, the understanding of the working power of the principle of balance which emphasizes the balance of the positions of the contracting parties depends on the type of agreement<sup>[13]</sup>. The bargaining position of one party with another party is not balanced, then it is often judged that the position of the debtor in the credit agreement is below the position of the creditor in the process of making the agreement. So that intervention is needed to provide legal certainty for the parties. It is important that there are sufficient regulations to provide legal protection for debtors in order to balance the bargaining position of the parties.

Legal protection according to the theory given by Philipus M. Hadjon there are two forms, namely Preventive Legal Protection and Repressive Legal Protection. Preventive legal protection is an effort to prevent disputes from occurring. In this case, what is regulated in the Consumer Protection Law, POJK NUMBER: 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector and Circular Letter of the Financial Services Authority (SEOJK) Number 13/SEOJK.07/2014 concerning Standard Agreements are regulations issued to protect consumers in this case including debtors in credit agreements. However, the existence of regulations without implementation is meaningless considering that there are still many exoneration clauses found in standard agreements.

Preventive and repressive legal protection has been accommodated through the duties and functions of the Consumer Education and Protection Sub-Section in this case is to carry out the process of resolving consumer complaints and inputting consumer complaints and information into the Customer Relationship Management (CRM) system. Previously, Bank Indonesia had socialized the Standard Agreement. However, with the issuance of SEOJK No.13/SEOJK.07/2014 concerning Standard Agreement, it is necessary to disseminate information regarding the SEOJK considering the implementation of the Standard Agreement in accordance with the provisions of SEOJK No.13/SEOJK.07/2014 regarding the Standard Agreement has not been fully implemented. The author sees that legal protection for debtors is very important to implement, not only legal protection is one of human rights but also to reduce disputes that can occur in the future, especially in terms of bank credit agreements.

The Financial Services Authority (OJK) was born based on Law Number 21 of 2011. The law stipulates that OJK is an independent institution and there is no intervention from any party. OJK has the function, duty and authority to regulate, supervise, examine, and investigate institutions in the fields of banking, capital market, insurance, pension funds, financing institutions and other financial institutions.[14] OJK was formed and based on the principles of good governance, which include independence, accountability, responsibility, transparency and fairness. Institutionally, the OJK is outside the government, which means that the OJK is not part of the government's power.

Banking institutions require special or integrated supervision (supervision unions) where the development of banking institutions, both in terms of technological developments or problems that arise in the financial industry sub-sector[15]. The increasingly complex problems that arise in the implementation of banking activities receive special attention from the government.

## 4. CONCLUSION

Bank credit agreements in Indonesia are named agreements. The agreement is based on the consensual aspect of the agreement subject to the Banking Law and also the general provisions in Book III of the Civil Code. In general, in the practice of banking credit agreements are stated in written form and standard agreements. Although many opinions say that standard agreements have an unequal position between the parties, with the implementation of the principle of freedom of contract, the use of standard



agreements in the banking industry cannot be stopped. As long as the standard agreement complies with the applicable rules and does not include an exoneration clause in it.

The agreement is valid when it is in accordance with the principle of agreement of the parties and binding as “pacta sunt servanda” principle. A standard agreement becomes inappropriate if the position of the parties is not in balance. The legal conditions of the agreement, one of which is the agreement of the parties, is indeed a subjective condition which if not fulfilled, it can be canceled. Even so, the standard agreement may not contain an exoneration clause which is prohibited by laws and regulations. Preventive and repressive legal protection has been accommodated for consumers in bank credit agreements regulated in POJK NUMBER: 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector and Circular Letter of the Financial Services Authority (SEOJK) Number 13/SEOJK.07/2014 concerning Agreements raw.

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