



## POSITION OF THE PARTIES IN THE STANDARD AGREEMENT BANKING REVIEWED TO CONSUMER PROTECTION

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### ABSTRACT

**Background.** Along with the increasing world of banking today, especially in the field of credit such as credit buying a car banking business actors increase their development to protect consumers from standard agreements made by business actors. The research aimed to find out the position of the parties in the agreement then leads to problem identification and resolution problem.

**Research Method.** The type of research is doctrinal research, namely, research that analyzes based on laws written in books, journals, and Legal Book Civil And Law Number 8 of 1999 concerning consumer protection.

**Findings.** Article 18 of Law Number 8 of 1999 concerning Consumer Protection, regarding prohibitions inclusion of standard clauses that are detrimental to consumers. The position of the parties within the agreement is reviewed by the Civil Code and laws, and the role of laws in providing protection debtor law as a consumer.

**Conclusion.** Law Number 8 of 1999 addresses debtor risk in credit banking, ensuring standard agreements and private legislators provide legal protection to the debtor as a consumer.

**Keywords:** Banking Institutions, Legal Protection of Debtors, Standard Agreements.

### BACKGROUND

The number of cases in progress debtor complaints by banks as regulated in PBI Number 7/7/PBI/2005 which is not always available to satisfy the debtor, if there are no strict and accommodating rules problems faced by society, reducing public trust in institutions banking and will certainly harm rights debtor. As well as rapid economic development has been able to produce a variety of types and varieties of goods and services, with progress in technology and information then banks as financial intermediation institutions have a very important role in the process of sustainable national development[1].

To be able to overcome this problem above, intervention by the parties is required authorized in the consumer protection sector or debtors as users of financial services. The existence of the Financial Services Authority as a supervisory agency in the financial services sector is expected to be able to protect consumers from Financial Services Business Actors (hereinafter abbreviated as PUJK). There are institutions tasked with improving their understanding of the public and consumers as well regarding Financial Services Institutions (hereinafter abbreviated as LJK) as well as products and services offered in the financial industry, so thereby the level of knowledge of the financial industry will increase and ultimately also the level of utility and public and consumer trust towards institutions and financial service products in Indonesia. This institution has the authority to do loss prevention measures to protect consumers and society which includes: education, services, and legal defense[2].

Nowadays contract law is increasingly developing, and the difficulty of something is limiting between two well-known legal systems, common law, and civil law. Relations between countries are also involved in it regarding the involvement of business actors who have had a major influence on the legal impact of contracts in Indonesia because it has adopted principles universal regarding contractual arrangements this matter is contained in Article 1313 BW, which provides a formulation of a contract or agreement[3].

Contract agreement results in the occurrence of Default. Regarding reciprocal engagements of course it has two sides, namely: active and passive, first regarding the active side gives rise to the right for creditors to demand fulfillment achievement, secondly regarding the passive side of will creates a burden of necessity or obligation for debtors so that they can carry out their achievements in normal conditions of the relationship between achievements[4]. Achievements will be exchanged but deeply certain situations and conditions of exchange of achievements do not work as it should then arise an event called Default. This research aimed to explain debtor risks arising from standard banking agreements in terms of the KUH Civil and UUPK and the role of Law Number 8 1999 Concerning Protection Consumers in giving debtors legal protection on bank credit agreements.

## RESEARCH METHOD

The author uses a statutory approach, namely: The approach is carried out by reviewing all laws, and a conceptual approach. This approach starts from views and doctrines that developed in legal science, a view that would clarify ideas by providing legal meaning, and legal concepts. Primary legal materials, namely the Civil Code, Law Number 10 of 1998 concerning Banking, and Law Number 8 of 1999 concerning Consumer Protection. Legal materials are secondary, namely material that provides explanations and understanding of primary legal materials as is the opinion of legal experts [5].

Data collection used in this research was done through library research (library research) to get concepts, theories and doctrine, opinions or conceptual thought, and related preliminary research with a review of statutory regulations. In this research the author collected data that can be used as material research data obtained from the results literature which is then processed qualitatively, this research aims to understand or understand current legal symptoms researched. As well as analyzing the data on the data that has been obtained through primary data and data secondary.

## FINDINGS

Article 1313 of the Civil Code provides a formulation regarding "agreement" as follows: "An agreement is an act with which one or more people commit themselves to one or more people." The term "agreement" or "contract" in the national legal system has a meaning the same, An agreement or contract has elements, namely competent parties, agreed points, legal considerations, reciprocal agreements, as well as rights and obligations reciprocal. The conditions to fulfill the validity of an agreement according to Article 1320 of The Civil Code can be explained as follows: those who bind themselves agree, the ability to create an engagement, a certain thing, and a halal cause.

In principle, everyone is an adult, and being of sound mind is competent according to the law. The adult age setting is Article 1330 of the KUH Civil, Marriage Law Number 1 1974, articles 49 and 50 as well. Deep benchmark This discussion is Article 1330 of the Civil Code which reads: "Not competent to make it the agreements are: immature people, those who are under pardon, female people, in things that established by law and on generally all persons to whom the law has prohibited the making of certain agreements." The word "cause" is equivalent from Dutch "*oorzaak*" and Latin "*causa*". The validity of the "*causa*" of an agreement determined when the agreement is made. Agreement without a halal "*causa*" is null and void, unless otherwise provided by law. In Article 1335 of the Civil Code states that "an agreement without cause, or which has been made for some false reason or forbidden, has no power."

Based on the principles of inner freedom contract, then the position of the debtor in a the agreement has a different position balanced. In the Civil Code in general There are several principles that must be taken into account make an agreement namely:

1. Principle of freedom of contract;

2. The principle of good faith;
3. The principle of pacta sunt servanda; And
4. Principle of consensuality.

Where is the principle that occupies central position in contract law, article 1338 Civil Code paragraph (1) is stated as if make a statement that we allowed to make any agreement and that will bind us as it binds him Constitution. But regarding the credit agreement is a standard agreement, where the contents or the clauses of the credit agreement have standardized and poured in a form. Prospective debtors just have to sign if accept, there is no chance for the candidate debtor to discuss further the contents or agreement submitted by the bank as a creditor.

## DISCUSSIONS

Definition of debtor in article 1 paragraph (17) context of Law Number 10 of 1998 Regarding banking, it is divided into two types namely saving debtors and acquiring debtor facility. A deposit debtor is a debtor who place the funds in the bank in the form of deposits based on bank agreements with debtor. Meanwhile, paragraph (18) is a debtor who obtain credit or financing facilities based on sharia principles or equated with it based on the agreement bank with the debtor concerned[6].

Banking activities depend on a lot to public funds so it is necessary to ensure security, besides that channeling bank funds is one business activity that is at risk in the absence good system[7]. The debtor is the source income that must be maintained, in practice Debtor banking is divided into three, namely: First; depositor debtor, namely a debtor who saves the funds in a bank, for example in the form of current accounts, savings, and deposits. Second; debtors who utilize credit facilities or banking financing, for example, credit home ownership, financing, and the like. Third; debtors who carry out transactions with other parties through banks, for example, transactions between importers as buyers with outside exporter country by using the facilities provided by the bank. Very legal protection is important because banking is an institution of state finances.

In the explanation of the Law concerning, this consumer protection refers to the philosophy of National development includes development laws that protect debtor to develop humans completely based on the state philosophy Republic of Indonesia, namely the basis of the Pancasila state and the state constitution of the 1945 Constitution So UUPK is not the only law regulates consumer protection in Indonesia. Before the UUPK was passed on Basically there were several laws whose material protects the interests of consumers among others: In the Civil Code there are provisions that tend to protect consumers. There is legal protection for debtors as consumers in the banking sector become very important because it is a "factual" position the two are often out of balance, therefore it concerns the position between the parties often unbalanced. Then, with a reason efficiency is converted into an existing agreement made by parties who have a bargaining position namely banks. The debtor has no other choice, except to accept or reject the agreement submitted by the bank[8].

Standard Clause According to Article 18 of Law Number 8 of 1999 concerning Consumer protection such[9]: 1) Business actors offering goods and/or services intended for trading are prohibited from making or including standard clauses for each document and/or agreement: a. Declare a transfer of responsibility businessmen; b. States that business actors have the right to refuse to hand back the goods purchased by consumers; c. States that business actors have the right to refuse to hand over the money back paid for goods and/or services purchased by consumers; d. Declare the granting of power of attorney from the consumer to business actors either directly, or indirectly to do so all related unilateral actions with goods purchased by consumers in installments; e. Regulates the matter of proving the disappearance of the use of goods or utilization of services purchased by consumers; f. Gives business actors the right to reduce the benefits of services or reduce consumer wealth to become the object of buying and selling services; g. Declare consumer

submission to regulations in the form of new, additional, continuation, and/or subsequent changes made unilaterally by business actors over time consumers utilize the services they purchase; h. States that the consumer gives power of attorney to business actors for encumbrance of rights encumbrances, liens, or security rights on goods purchased by consumers in installments. 2) Business actors are prohibited from including clauses standard whose location or shape is difficult to see or cannot be read clearly, or that the expression is difficult to understand. 3) Every standard clause that has been determined by business actors in documents or agreements which meets the requirements as follows referred to in paragraph 1 and paragraph (2) is stated null and void. 4) Business actors are required to adapt standard clauses which are contrary to this Law. The Role of Protection Laws Consumers in the provisions contained in Article 18 in question is very closely related and often occur in credit/financing agreements provided by the bank are the provisions in paragraph (1) letter (g), namely that the bank states consumer compliance with regulations in the form of new, additional, advanced and/or rules further changes made unilaterally by business actors in the consumer period utilize the services purchased.

Consumer protection coverage is available differentiated in two aspects, namely: 1) Protection against possible goods delivered to consumers is not appropriate with what has been agreed. 2) Protection against the imposition of unfair conditions on consumers. Desire to be used in consumer protection is creating a taste safe for consumers to fulfill their needs life, it is proven that all protection norms consumer protection laws consumers have criminal sanctions[10].

Consumer Protection Act sets goals rather than protecting consumers, namely: aims to uphold dignity and respect for consumers' lives itself, with various intentions kinds of things that bring negative consequences from the use of goods and/or services must be avoided from the trading activities of business actors. To avoid these negative consequences for the user of the goods/or services then the law consumer protection (UUPK) determines several restrictions regarding standard clauses in Article 18 Law Number 8 of 1999 Regarding Consumer Protection[11].

The contribution of this research requires supervision or intervention from the government to reduce risks and guarantee the bank as a creditor with the debtor. The bank is to comply with everything obligations that have been stipulated in Law Number 8 of 1999 concerning Consumer Protection, for debtors. It's best to study the content first agreement and consult with the relevant parties[12].

## **CONCLUSION**

Debtor risk arising in credit banking, standard agreement is the same as private legislators. Law Number 8 of 1999 concerning Consumer Protection, concerning the inclusion of clauses in giving legal protection to the debtor as a consumer.

## **Conflict of Interest**

The author declares there is no conflict of interest with the publication of this paper.

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