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The Urgency of Banks in Implementing the Precautionary Principle as Consumer Protection in the Standard Clauses of Credit Agreements

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Abstract
The importance of the bank in applying the precautionary principle contributes to ensuring a sound banking system and protecting the country's economy. In lending, the precautionary principle was manifested in a standard agreement between the bank as the creditor and the customer as the debtor. Credit agreements can lead to disputes, where the debtor sues the bank for violating the principle of consumer protection because it applies standard clauses in the credit agreement. The research method used is legal research with a statute approach and a conceptual approach). The results state that the application of the precautionary principle in making standard agreements manifests itself in the prohibition of financial service business actors including exoneration clauses to the detriment of financial service consumers as stipulated in Article 18 paragraph (1) of the Consumer Protection Act and OJK Regulation No. 6/POJK.07/Tahun 2022 concerning Consumer and Community Protection in the Financial Services Sector.

Introduction

Banks, according to Article 1 number 11 of Law Number 4 of 2023 concerning Development and Empowerment of Financial Sectors (hereinafter referred to as the Banking Law), are business entities that collect funds from the public in the form of deposits and issue them to the public in order to improve the lives of many people. In principle, banks are financial institutions that aim to support the economy, especially in financial transactions.[1] One of the products issued by the bank is the provision of credit to customers. Credit is a facility provided by the bank in the form of money or bills that are equated based on a loan and borrowing agreement with other parties, in this case the

[1] Agus Yudha Hernoko and others, 'Urgensi Pemahaman Perancangan Kontrak Dalam Pengembangan Dan Pengelolaan Obyek Wisata Di Desa Kare, Kabupaten Madiun' (2022) 2 Jurnal Dedikasi Hukum 231.

debt has a certain period of time with the imposition of interest.[2] Article 8 paragraph (1) of the Banking Law stipulates that in providing credit, the bank must have confidence based on an in-depth analysis of the intention and ability.[3] Debtor customers have to pay off their debts as agreed. If the bank does not have confidence in the customer's ability to pay credit, the bank cannot provide credit. In general, credit agreements in banking use the form of standard agreements (*Perjanjian Baku*).

Banks in carrying out their business activities are subject to the principles stipulated in Article 2 of the Banking Law, which is based on economic democracy by using the prudential principle which states that financial institutions in carrying out their functions and business activities are required to apply the principle of prudence by recognizing customers in order to protect public funds entrusted by the public to them, by expecting the level of public trust in financial institutions to remain high, so that people are willing and do not hesitate to deposit their funds in banks.[4] As the most important principle in the banking world, the prudential principle must be applied or implemented by banks in carrying out their business activities, *in casu* is very important to ensure a healthy banking system and protect the country's economy because if there are problems in one of the banks it will have a tremendous impact on the economic system of a country. In granting credit, one of the manifestations of the prudential principle can be found in the standard agreement between the bank as a creditor and the customer as a debtor.

Credit agreements can lead to disputes, where the debtor sues the bank for violating consumer protection principles because it applies standard clauses in the credit agreement. A lawsuit to cancel a credit agreement on the basis of a violation of consumer protection due to the existence of a standard agreement usually occurs because the customer or debtor fails to make payments. As a result of this failure, the bank is authorized to conduct an auction of credit collateral. The application of standard clauses in credit agreements is a form of legal protection for banks, which have an obligation to

[2] Hilda Yunita Sabrie, 'Karakteristik Hubungan Hukum Dalam Asuransi Jasa Raharja Terhadap Klaim Korban Kecelakaan Angkutan Umum' (2015) 30 Yuridika 391.

[3] Bambang Sugeng Ariadi Subagyono, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona, 'Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia' (2022) 37 Yuridika 673.

[4] Permadi Gandapraja, *Dasar Dan Prinsip Pengawasan Bank* (Gramedia Pustaka Utama 2004) 21.

apply the prudential principle while protecting debtors or customers. A lawsuit to cancel a credit agreement on the basis of a violation of consumer protection in the process is used as a basis to prevent or thwart the auction of credit collateral. A lawsuit over a credit agreement containing a standard agreement is a bad faith of the debtor because on the other hand the debtor has enjoyed economic benefits in granting credit. This study will discuss the legal issues of the implementation of the prudential principle of banks in the inclusion of standard clauses in credit agreements.

Research Method

This research uses legal methods in answering legal issues faced through a process of finding legal rules, legal principles, and legal doctrine.[5] Analysis of legal issues through legal research is carried out based on applicable laws and regulations, legal principles and legal doctrines with a statute approach, namely by reviewing all provisions of laws and regulations that apply and are relevant to the research legal issues raised[6] and conceptual approach, namely by studying the views and doctrines of legal scholars to find ideas so that legal notions, legal concepts and legal principles are born based on the issues at hand.[7] This research will use laws and regulations related to banking law and consumer protection law, especially financial services consumers and journal or articles related to the topics as secondary sources.

Banking Credit Agreements

Etymologically, the origin of the word credit is taken from Greek "*credere*" which is trust or in Latin "*creditum*" which is belief in truth; so that credit is the ability to carry out a purchase or procurement of a loan with a promise to defer it by paying according to the agreed period.[8] Adinugroho argues that credit is capital that is expected to be received from outside in the future, so when submitting a credit request, in essence, it

[5] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group 2011) 35.
[6] Ibid 93.
[7] Ibid 135-136.
[8] Setyawan, *Pokok-Pokok Hukum Perikatan* (Binacipta 1999) 69.

must be based on a plan.[9]

In line with the concept of the definition of credit according to Article 1 paragraph (11) of the Banking Law, it can be understood that credit is a legal relationship arising from the borrowing of a sum of money or bills that can be equated with it based on an agreement or agreement between the bank and the borrower that has a certain period of time and the provision of interest to repay it. Departing from this concept, there are elements in credit which will be explained in Table 1:[10]

Table 1. Elements of credit

Trust	The lender is confident that the credit will be repaid within the agreed period.
Time	There are two situations, namely the provision of credit and repayment at different times, so between the two there is a grace period.
Risk	A consequence that will arise due to the period of time that separates the granting of credit from repayment.
Performance	Things that must be fulfilled in credit include money/goods/services which can also be referred to as credit objects.

Source: legislation and definitive by the author

Furthermore, it can be concluded that credit is basically borrowing money/ goods/services based on an **agreement** (emphasis by the author), where the borrower will repay it in the future along with its obligations, as agreed. The credit agreement will contain clauses emphasizing the legal relationship between the creditor and the debtor, which in general has been prepared unilaterally by the creditor.[11] Although the term credit agreement is not explicitly mentioned in the Banking Law, the definition of credit in Article 1 paragraph (11) of the Banking Law has mentioned the word 'agreement' or 'lending and borrowing agreement,' so in my opinion it can be found that the credit relationship is a **contractual relationship based on an agreement** in the form of lending and borrowing. Borrowing and lending agreements are regulated in Article 1754 BW: "Lending and borrowing is an agreement by which one party gives to the other party a certain amount of goods that are consumed due to use, with the condition that the latter party will return the same amount of the same kind and condition".

[9] R Tjiptoadinugroho and Perbankan Masalah Perkreditan, *Penghayatan, Analisis dan Penuntun* (Jakarta: Pradnya Paramita 1990) 64.

[10] Panduan Bantuan Hukum di Indonesia, *Pedoman Anda Memahami dan Menyelesaikan Masalah Hukum* (YLBHI 2007) 131.

[11] H Tan Kamelo, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan* (Alumni 2006) 33.

Referring to Article 1754 BW above, the essence of a credit agreement is a) **borrowing and lending** where the bank as the owner of the money, b) agrees to **hand over a certain amount of money**, and c) with a **period of use with a certain period of time** where the borrower has the obligation to return the money with the same amount of the same kind and condition. However, there is a slight difference where credit agreements in practice set interest charges to debtor customers. Credit agreement as a lending and borrowing agreement has also been emphasized in Article 1 point 11 of the Banking Law. The definition of a loan and borrowing agreement in Article 1754 BW, if compared, will also apply to credit agreements. However, a credit agreement is something more than a loan agreement. The specificity in question is:[12]

a. Credit agreements exist in money lending agreements;
b. Credit agreements occur in society;
c. Credit agreements recognize loans with a certain period of time and also charge money.

Lending and borrowing in BW relates to goods but credit agreements relate to money from banks to debtor customers with certain interest so that there are differences regarding the return of goods with money. Thus, based on the lending and borrowing agreement stipulated in Article 1754 BW, the credit agreement is included in the type of named agreement rooted in the lending and borrowing agreement. Because credit agreements are included in the types of agreements regulated in BW, the terms of validity of credit agreements also refer to the terms of validity of agreements regulated in Article 1320 BW (applicable to all types of agreements known in civil law). A credit agreement is declared valid and binding on the parties when the credit agreement has fulfilled the four elements in Article 1320 BW, namely agreement, capacity, a certain matter and a permissible cause. The difference between credit agreements and other agreements is only in the process of making agreements where banks before making credit agreements with debtor customers must implement the prudential principle to protect the interests of banks.

[12] Mariam Darus Badrulzaman, *Perjanjian Kredit Bank* (Citra Bakt 1991) 20.

Legality of Banking Credit Agreements

An agreement creates a legal relationship between one person and another who binds themselves to do something based on an agreement to fulfill each other's achievements (vide Article 1313 BW). Agreements can be made between two or more people according to the wishes of the parties making the agreement. Black's Law Dictionary states: "Contract: An agreement between two or more persons which creates an obligation to do or not to do a peculiar thing".[13]

The essence of the agreement is to create an obligation for the parties to the agreement to do or not do something. This is in line with the definition of an agreement put forward by Subekti, namely a legal event in which one person promises another person to carry out a matter.[14] The agreement of the parties is evidence of two or more people binding themselves to fulfill the rights of others and the other person fulfills the rights of others reciprocally. Agreement is an act that is in accordance with legal regulations but can also be adjusted to the will of two or more people who give birth to legal consequences from the interests of one party at the expense of the other party or for the benefit of each party reciprocally.[15] Strictly speaking, the agreement gives birth to rights and obligations for the parties who have agreed on these reciprocal rights and obligations.

The agreement is essentially carried out by two or more people and is a reciprocal relationship in which the parties have the right to demand the fulfillment of obligations. The obligations of the parties in this agreement are known as achievements. There are three types of achievement in an agreement based on Article 1234 BW, namely giving something, doing something, or not doing something. In the provisions in Article 1234 BW when associated with a credit agreement, the achievement in a credit agreement is an achievement to give something. The bank as the creditor in the credit agreement has the obligation to hand over a sum of money as specified in the credit agreement and has the right to obtain collateral and payment in accordance with the agreement. There

[13] Adrian Sutedi, *Aspek Hukum Pengadaan Barang dan Jasa Dan Berbagai Permasalahannya* (2nd edn, Sinar Grafika 2012) 49.

[14] Raden Subekti, *Hukum Perjanjian* (Intermasa 1987) 1.

[15] Purwahid Patrik, *Hukum Perdata II, Perikatan Yang Lahir Dari Perjanjian dan Undang-Undang* (Fakultas Hukum Universitas Diponegoro 1988) 35.

are some important legal principles in the agreement. In making an agreement there are several principles that need to be considered as stated by Isnaeni, namely several principles of the pillar of an agreement. [16] [17]

Table 2. Legal principles in agreements

The Principle of Freedom of Contract
• It is a universal principle recognized by all countries that regulate agreements or contracts. • The principle of freedom of contract is regulated in Article 1338 paragraph (1) BW which basically determines that all agreements made legally are binding like laws for the parties who make them. • The way to summarize the principle of freedom of contract in Article 1338 paragraph (1) BW is by emphasizing the phrases "all" and "agreement".[18] The meaning of 'freedom' in contracting is that everyone is free to make or not to make an agreement, with whom he enters into an agreement, what they agree on. However, it should be remembered that the parties must both have the same ideal position as equals; no one should be superior so that they are more favored because of their strong influence[19] (departing from several cases of unilateral contract termination that have also been highlighted and studied). • Violation of the limitation of the principle of freedom of contract results in an objectively defective agreement that is null and void.
The Principle of *Pacta Sunt Servanda*
• It is the basis of the binding contract for the parties who make it. • The parties must carry out what is agreed so that the agreement of the parties will be binding as law for the parties who make it.[20] The principle of pacta sunt servanda is regulated in Article 1338 paragraph (1) BW which determines that all agreements made legally are binding like laws for the parties who make them.
The Principle of Equality
• This principle is regulated in the provisions of Article 1338 paragraph (2) BW which basically states that an agreement may not be terminated unilaterally. • This prohibition actually rests on the preposition that the parties are in an equal position, without any assumption that one is superior to the other so that it can arbitrarily terminate the contract without the need to seek the consent of its partner.[21]
The Principle of Privity of Contract
• This principle is regulated in the provisions of Article 1340 BW which regulates that agreements can be enforced for those who make them. The agreement cannot regulate the obligations of third parties and if the agreement regulates so, the obligation is not binding on third parties because the agreement is closed without involving third parties. • However, an exception to the principle of privity of contract can be found in Article 1317 BW which regulates that agreements can be made for the benefit of third parties. The exception in Article 1317 BW only relates to interests not obligations. Article 1317 BW constructs a person can enter into an agreement for the benefit of a third party, with a condition specified in the agreement.[22]

[16] Moch Isnaeni, 'Hukum Perikatan Dalam Era Perdagangan Bebas' (2006) 6-7.

[17] Hernoko and others (n 1).

[18] Subekti, *Aneka Perjanjian* (PT Citra Aditya Bakti 2014) 4-6.

[19] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dala*m *Kontrak Komersil* (Kencana 2010) 108.

[20] Ridwan Khaiarandy, 'Iktikad Baik Dalam Pelaksanaan Kontrak: Super Eminent Principle yang Memerlukan Pengertian dan Tolok Ukur Objektif' (2007) 14 Jurnal Hukum Ius Quia Iustum 27.

[21] Moch Isnaeni, Seberkas Diorama Hukum Kon*trak* (Revka Petra Media 2018) 214.

[22] HS Salim, *Hukum Kontrak: Teor*i Dan Teknik Penyusunan Kont*rak* (Sinar Grafika 2021) 12.

The Principle of Consensualism
• The principle of consensualism stipulated in Article 1320 BW implies the will (*kemauan*) of the parties to participate in each other and to bind themselves to each other.[23] • The existence of an agreement between the two parties is sufficient to determine that the agreement has been made because there has been a conformity of will between the parties making the agreement. The agreement in making an agreement must be based on the will or desire of the parties because if the agreement contains a defect of will in making an agreement, the agreement can be canceled.
The Principle of Good Faith
• The principle of good faith has a very important function in the agreement because it relates to the fulfillment of achievements to other parties in the agreement as realized in Article 1338 paragraph (3) BW. • If the agreement is not carried out in good faith, the implementation of the agreement is certain to occur disputes due to defects in the fulfillment of performance.

Source: literature is listed in the footnotes

In line with the principles mentioned above, the parties making an agreement must pay attention to the essence of the validity of the agreement as regulated in Article 1320 BW:

1. Agreement

The meaning of the agreement itself will be easier to understand by describing the situation, where the parties express their desire to agree or disagree with the other party's statement.[24] An agreement is reached when there is a meeting of the interests of the parties who will make an agreement so that it can be realized in actions to fulfill achievements and accept counter-achievements.[25] Agreements are essentially made to obtain achievements and at the same time provide achievements as a counter achievement to the fulfillment of achievements by other parties.

The agreement in the agreement made by the parties is basically a meeting point of the wishes of the parties in making the agreement. A statement of will does not always have to be stated explicitly but can be done through behavior or other things that express the parties' stated will.[26] According to BW, voluntary agreements in an agreement can be fulfilled if:

1) There is no coercion (*dwang*) that is contrary to the law, for example by scaring someone into agreeing to an agreement.

[23] Badrulzaman (n 12) 86.

[24] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Prenadamedia Group 2010) 186.

[25] HS Salim, *Perkembangan Hukum Kontrak Innominaat Di Indonesia* (Sinar Grafika 2019) 23.

[26] Ibid 162.

2) There are no mistakes or mistakes (*dwaling*) relating to the object/achievement being agreed upon or regarding the subject.
3) There was no element of deliberate fraud (*bedrog*), namely a series of lies with deception that gave rise to a false impression.

The agreement that will be reached by the parties must reflect free will without any coercion from any party, which means that the agreement was born from the parties themselves or of their own volition without any coercion from other parties; if there is fraud/mistake it will have an impact on the agreement and does not meet the subjective requirements so that the agreement can be canceled (vide Article 1320 BW). If in practice the agreement contains elements of coercion, fraud or error, then the agreement contains a defect of will.

2. Capability

Capability in the context of this contract is the legal action of each party which independently binds itself without being contested.[27] The capability of the parties to the contract is important in signing the contract because it relates to the obligation to implement the contract and the ability to take responsibility for every legal act carried out. In general, a person's ability to carry out legal actions or, in this case, make an agreement, is measured by the age of maturity. After the enactment of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), the measurement of a person's abilities based on age is subject to the provisions of the Marriage Law. Article 47 jo. 50 of the Marriage Law basically determines that the age of majority for children is 18 years so that, when signing an agreement, a person is deemed competent to carry out legal actions when he or she is 18 years old. This was confirmed by the Supreme Court of the Republic of Indonesia through MA Instruction No. MA/Pemb/0807/75 and Supreme Court Decision No. 477K/Sip/1976, dated 13-1-1976.[28] Thus, the existence of differences in views regarding the age of majority in law enforcement practices in Indonesia clearly refers to Article 47 jo. 50 of the Marriage Law basically determines the age of adulthood for children as 18 years.

[27] Ibid 183.
[28] Ibid 188.

3. A certain thing

Referring to Article 1320 BW, the third condition, a certain thing or certain object (*een bepaald onderwerp*), is an achievement which is the subject of the contract in question.[29] The type of object contained in the agreement can at least be determined. Several requirements are specified in the BW for the object of the agreement, especially if the object is in the form of goods that:

a. can be traded (vide Article 1332 BW);
b. the type can be determined (vide Article 1333 paragraph (1) BW);
c. the amount can be determined and calculated (vide Article 1333 paragraph (2) BW);
d. will only come at a later date (vide Article 1334 paragraph (1) BW);
e. but contracts cannot be made for goods that are still in the inheritance that have not been opened (vide Article 1334 paragraph (2) BW).[30]

4. A permissible cause

Subekti stated that the cause is the content of the agreement itself, thus the cause is the achievements and counter-achievements exchanged by the parties.[31] BW does not regulate the definition of permitted causes, but along with its development, through the Decision of the Supreme Court of the Republic of Indonesia No. 268K/Sip/1971[32] regarding the permitted reasons or causes (*een geoorloofde oorzaak*) based on Article 1320 BW, which in this case is a common goal (*gezamenlijke doel*) of both parties on the basis of which an agreement is then entered into and is not a matter regarding the consequences at the time of implementing the agreement. A false cause is a cause that is created to cover up or hide the real cause. In other words, the aims and objectives of the parties in making an agreement are not as stated in the agreement. This was confirmed by the Supreme Court of the Republic of Indonesia in considering decision no. 1947 K/Pdt/1992 which states that an agreement must be made in accordance with the aims and objectives desired by the parties, so that the title of the agreement determined to be other than what the parties wish cannot be

[29] Ibid 191.
[30] Munir Fuady, *Hukum Kontrak Buku Kesatu* (1st edn, PT Citra Aditya Bakti 2015) 57.
[31] Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Prenada Media 2010) 197.
[32] Rachmat Setiawan, *Pokok-Pokok Hukum Perikatan* (Putra A Bardin 1999) 147.

justified according to law. Based on this decision, the permitted cause is the objective of the agreement that the parties wish to achieve.

The conditions for the validity of an agreement as regulated in Article 1320 BW above are divided into two parts, namely subjective conditions (consisting of agreeing and being competent) and objective conditions (a certain thing and a permitted cause). If the subjective conditions in an agreement are not fulfilled, then the agreement can be requested for cancellation, whereas if the objective conditions in an agreement are not fulfilled, the consequence is that the agreement is null and void, which means that from the start the agreement is considered to have never existed and an agreement has never been born between the parties. Based on the type, agreements are divided intotwo, namely named agreements (*nominaat*) which are legal provisions that review various contracts or agreements known in BW.[33] Meanwhile, an unnamed agreement (*innominaat*) is an agreement that is not specifically regulated in the BW but is based on the principle of freedom of contract which is known in the agreement. These two types of agreements are subject to the provisions of Article 1320 BW which regulates the legal conditions for an agreement so that it has implications for assessing the validity of the agreement. Apart from that, credit agreements are also based on special provisions regulated in the Banking Law. In terms of securing credit provision, credit agreements are practically set out in written form and in a standard agreement (standards contract), which can be made privately or notarially.

Prudential Principles in Standard Agreements

Standard agreements are a form of application of the principle of prudence in banking as stated in Article 2 of the Banking Law. In carrying out its business, Indonesian banking adheres to the principles of economic democracy by using the prudential principle, but the Banking Law does not yet accommodate the definition of what the 'prudential principle' is. The principle of prudence will be realized when banks carry out their functions and business activities with a careful attitude in order to protect public

[33] HS (n 24) 4.

funds that have been entrusted to them.[34] The prudential principle is one of the principles which emphasizes that banks as financial service business actors who are trusted by the public must collect and distribute funds to the public carefully. Prudence in the banking world is a must because it concerns the national economy.

In casu, banks are obliged to apply the principle of prudence by recognizing/ understanding the character of the customer as a concrete way to protect public funds entrusted to them by the public, with the hope of increasing public trust in the financial institution, so that there is no doubt or suspicion among the public.[35]

In terms of providing credit to the public/customers, the application of standard clauses is also a form of legal protection for creditors and debtors. In principle, the application of standard clauses in credit agreements does not conflict with consumer protection provided that the standard clauses do not conflict with the prohibitions set out in **Article 18 (1) of the Consumer Protection Law or Article 30 paragraph (5) of OJK Regulation 6/POJK.07/2022**. In principle, the Consumer Protection Law does not prohibit business actors from making standard agreements containing standard clauses for every good and/or service, as long as the standard agreement and/or standard clauses do not include provisions as prohibited in Article 18 paragraph (1) and are not formed as intended and prohibited in Article 18 paragraph (2) of the Consumer Protection Law. If the standard agreement does not conflict with the provisions of Article 18 paragraph (1) of the Consumer Protection Law, the consumer will not experience any loss so that consumer rights can be accommodated. Several prohibitions on the standard clauses in Article 18 paragraph (1) of the Consumer Protection Law that are relevant to credit agreements are: the transfer of responsibility of business actors, business actors have the right to refuse to hand over goods purchased by consumers (goods in this case are interpreted as refunds); granting power of attorney from consumers to business actors, either directly or indirectly, to carry out any unilateral action relating to goods purchased by consumers in installments (in relation to collateral provided by the debtor)l reducing the benefits of services or reducing the consumer's assets which are the object of buying

[34] Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia* (Gramedia Pustaka Utama 2001) 18.
[35] Gandapraja (n 4) 21.

and selling services (relating to services or products or customer assets; consumers are subject to new, additional, continuation and/or subsequent changes made unilaterally by business actors during the period when consumers utilize the services they purchase (in relation to services or products) ; and consumers authorize efforts to impose mortgage rights, lien rights, or security rights on goods purchased by consumers in installments.

Based on the formulation of **Article 30 paragraph (5) of OJK Regulation 6/ POJK.07/2022**, it can be concluded that the standard clauses used by POJK must not conflict and must be made/arranged based on the statutory regulations governing standard agreements such as those in the Law. in regard to consumer protection, there are standard clauses in an agreement that violate the provisions of Article 18 of the Consumer Protection Law. **Article 30 paragraph (5) OJK Regulation 6/POJK.07/2022**, gives rise to legal consequences that standard agreements or standard clauses are null and void. Article 28 POJK Financial Services Consumer Protection stipulates that, in preparing product and/or service agreements, there is a prohibition against abusing the conditions of potential consumers. Abuse of the condition of prospective consumers in the context of preparing an agreement includes: if the prospective consumer has very urgent needs and therefore requires credit from a Commercial Bank. Commercial Banks took advantage of this situation by adding agreement terms that were not in accordance with the capabilities of prospective consumers and asking them to immediately sign the agreement.

Furthermore, Article 29 (1) PUJK is required to confirm prospective consumers' understanding of the agreement clauses before the agreement is signed by the prospective consumer. This confirmation is carried out by asking questions regarding the extent to which potential consumers understand the agreement clauses including details of costs, benefits, risks as well as rights and obligations. Often appearing in clauses, the meaning of "rights and obligations" is: a complaint service mechanism, the consumer's right to be able to terminate the agreement without being subject to penalties or costs in the form of sanctions if it is during the cooling-off period, early repayment penalties, and getting a position report savings or loans or consumer funds. Based on these provisions, in essence the use of standard agreements in carrying out business is permitted.

Furthermore, the definition of a standard agreement is expressly stated in Article 30 paragraph (1), namely a contract between PUJK and consumers whose contents are designed, formulated, stipulated, duplicated and offered unilaterally by PUJK to be agreed upon with consumers. It becomes incorrect, even prohibited, namely when one of the parties includes an exoneration clause which increases the rights and/or reduces the PUJK's obligations, or reduces the rights and/or increases the obligations of the consumer. The prohibition on the inclusion of exoneration clauses is an effort to apply the principle of prudence and the principle of good faith for Financial Services Business Actors in carrying out their business activities and in order to realize the protection of financial services consumers.

Protection of Financial Services Consumers in the Inclusion of Standard Clauses

The Consumer Protection Law has provided a definition of standard clauses, namely every rule or provision and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers (vide Article 1 number 10). It is known that standard clauses are generally unilateral products issued by producers or creditors in making agreements and their general application to consumers or debtor customers. This makes it common for standard clauses to be used in almost all credit agreements as standard agreements for all debtor customers. The use of standard clauses in credit agreements or other agreements in principle aims to make it easier for producers or creditors to regulate the rights and obligations of the parties.

Standard clauses usually contain benefits or provide special privileges to one of the parties to the credit agreement, namely the bank to which they are attached as creditor or lender. It is called a standard agreement because the contents of this agreement are usually all the same, the only difference being the amount of the loan, interest and term of the loan or credit.[36] A standard agreement is a legal practice that is often used by producers and banks because it makes it easier to protect the interests of producers and

[36] Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen* (Raja Grafindo Persada 2008) 115.

banks. Apart from that, a standard agreement can also be considered as a guarantee of equal treatment for consumers or customer debtors. Standard agreements do minimize the practice of preferential treatment for certain people. Even in standard agreement practice, the agreement is often printed in a certain form (model, formula and size) by one of the parties.[37] The implementation of a standard agreement usually only changes or fills in the identities of the parties and adjusts the object of the agreement and the term of the agreement, even in certain circumstances the standard agreement is signed without making any changes.

The other party in the contract has no opportunity or only a few opportunities to negotiate or change the clauses that have been made by one of the parties, so standard contracts are usually very one-sided.[38] A standard agreement will legally eliminate the negotiation process in signing an agreement because one party must sign a standard agreement that has been determined as the minimum standard for one of the parties. Basically, a standard agreement is an agreement in which the clauses in the agreement have been standardized and used for all agreements in the same form. For example, in a credit agreement, the clauses in the credit agreement at one bank are all the same except regarding identity, loan amount, and loan term and interest which are adjusted to the bank's policy. The basic characteristics of a standard agreement are:[39]

1. It appears that the creditor's position is relatively stronger (dominant) than the debtor as a result of the contents of the agreement determined unilaterally by the creditor. The more dominant position of creditors has eliminated the negotiation mechanism in signing agreements. When signing a standard agreement, the take it or leave it principle applies, which means that if the consumer or debtor wants to, they must sign the standard credit agreement, and vice versa, if they don't want to, the granting of credit or the consumer's needs is cancelled.
2. The debtor does not participate in determining the contents of the agreement.
3. The debtor is forced to accept the agreement based on necessity. In principle, a standard agreement is an agreement that exploits the needs of the debtor or consumer so that the debtor or consumer is subject to the rules of the game that have been standardized by the producer or debtor. Exploitation of the needs of debtors or consumers is legally

[37] Abdulkadir Muhammad, *Perjanjian Baku Dalam Praktek Perusahaan Perdagangan* (Citra Aditya Bakti 1992) 6.

[38] Munir Fuady, *Aliran Hukum Kritis (Paradigma Ketidakberdayaan Hukum)* (Citra Aditya Bakti 2003) 76.

[39] Mariam Darus Badrulzaman, *Perjanjian Baku (Standar) Perkembangannya di Indonesia* (Alumni 1980) [105].

justified but must pay attention to the limitations set out in legislation.
4. Prepared in advance in bulk or individually. In its development, a standard agreement has been established as a form and applied to all debtor customers or consumers.

In essence, a standard agreement is a waiver of the principles of proportion and balance in signing an agreement. The standard agreement places the consumer or debtor customer under or subordinate to the producer or creditor so that the standard agreement definitely does not fulfill the principles of proportionality and balance. Standard agreements are not fully issued by producers and creditors because, during the development of the legal system in Indonesia, the government has also issued regulations regarding minimum or standard clauses in several agreements. In practice, in Indonesia there are four types of standard agreements, including unilateral standard agreements (by creditors), standard agreements determined by the government, standard agreements determined by notaries or advocates, reciprocal standard agreements (by both parties).

Based on these four types of standard agreements, what most often occurs in practice is unilateral standard agreements, for example, in the banking world, especially in credit agreements or credit agreements which generally contain standard clauses. Standard agreements are one of the issues that most often receive attention from the aspect of consumer protection. Standard agreements are often seen as legalizing exploitation of consumers and debtor customers because standard agreements violate their rights. The definition of consumer in a general sense is the user and/or utilization of goods and/or services for certain purposes.[40] In Article 1 number 3 of OJK Regulation 6/POJK.07/2022, consumers are defined as parties who place their funds and/or utilize the services available at Financial Services Institutions, including customers in banking, investors in the capital market, policyholders in insurance, and participants in the Pension Fund, based on laws and regulations in the financial services sector. Consumers in the world of banking have a wider scope because people who deposit funds in banks are also considered consumers because they use banking products in the form of customer services for storing or saving money.

[40] Zulham, *Hukum Perlindungan Konsumen* (Prenada Media 2017) 5.

In essence, consumers are people who use products issued by producers through means such as purchasing, giving, gifts or invitations.[41] Based on the definitions regarding consumers that have been explained previously, consumers can be divided into three boundaries, namely:[42]

a. Commercial Consumers

   Every person who obtains goods and/or services that are used to produce other goods and/or services for the purpose of profit.

b. Intermediate Consumers

   Everyone who obtains goods and/or services that are used then trades them again to make a profit.

c. Final Consumers

   People who obtain and utilize goods and/services to fulfill the needs of personal life, family, other people and other living creatures and not for re-trading and/or to seek profit again.

Consumers legally receive protection for products that are irresponsible or detrimental to consumers. The Consumer Protection Law regulates the rights and obligations of consumers and business actors as producers or creditors (see Article 4 of the Consumer Protection Law). The regulation of consumer rights is in order to ensure that business actors in marketing products continue to prioritize the principle of consumer protection. Through these regulations, it can be made easier to identify when business actors carry out actions or their products cause harm to consumers.

In line with the description above, a standard agreement is a waiver of the principles of proportion and balance in signing an agreement. The standard agreement places the consumer or debtor customer under or subordinate to the producer or creditor so that the standard agreement definitely does not fulfill the principles of proportionality and balance. In principle, standard agreements are not in line with **the principles of proportionality and balance** in signing agreements; however, the Consumer Protection

[41] Inosentius Samsul, *Perlindungan Konsumen: Kemungkinan Penerapan Tanggung Jawab Mutlak* (Universitas Indonesia, Fakultas Hukum, Pascasarjana 2004) 34.

[42] Mariam Darus Badrulzaman, *Pembentukan Hukum Nasional Dan Permasalahannya* (Alumni 1981) 48.

Law which regulates consumer rights and consumer protection mechanisms allows the inclusion of standard clauses in agreements but must pay attention to provisions regarding the prohibition of standard clauses. Apart from that, standard clause provisions must be placed in a place and form that is easy to understand so that consumers know the legal consequences if they enter into a relationship with a business actor that applies standard clauses. The Consumer Protection Law is a legal override of the principles of proportionality and balance in signing agreements.

In relation to standard agreements, the Consumer Protection Law and POJK 6/POJK.07/2022 **have limitedly regulated the limitations** that must be met by financial service business actors in making standard agreements in banking credit agreements, so that they do not contain clauses that are detrimental to service consumers. This limitation is intended to provide protection for consumers against the risk of implementing standard agreements by financial services businesses. In the event that the standard agreement made contains an exoneration clause that is burdensome and detrimental to consumers, the law has regulated the consumer's right to sue financial services business actors to obtain compensation and/or reimbursement as appropriate.

Furthermore, at the very basic, such conditions faced by customers in financial services fall into the well-known doctrine that arises to mitigate the extent of the freedom of contract principle, namely undue influence or *misbruik van omstandigheden* doctrine. Fockema Andrae argues that undue influence is a state to misuse of an ongoing emergency, omission, lack of experience, or the absence of well-being condition which would lead them to harmness.[43] This particular doctrine may be found at Book III, Section 3 paragraph 1 of The Netherland Civil Code which regulates "*Een rechtshandeling is vernietigbaar, wanneer zij door bedreiging, door bedrog of door* ***misbruik van omstandigheden*** *(*thickening by the author*) is tot stand gekomen*".

Pangabean presents four peculiar patterns of the undue influence doctrine:[44]

1. The presence of special circumstances (*bijzondere omstandigheden*), such as emergency

[43] Fockema Andrea, *Kamus Istilah Hukum* (Binacipta 1983) 302.

[44] Henry P Pangabean, *Peranan Mahkamah Agung Melalui Putusan-Putusan Hukum Perikatan* (Alumni 2008) 76.

conditions, negligence, mental incapacity, and etc.;
2. The existence of recognizable situation (*kenbaarheid*), a party which is entitled to a strong position is aware of or should be reasonably aware that a weaker party agrees to enter the contract due to the *bijzondere omstanddigheden* above;
3. The occurrence of abuse (*misbruik*), meaning there is knowledge or it is reasonably known that a contract should not have been entered, yet it was still carried out; and
4. A causal relation (*causal verband*), that is a consensus to enter a contract constitutes a result of the abuse of such circumstances.

The moment that such conditions happen to be known by the party and yet are still carried out, means that any disputes possible would happen after the parties do their cross-performance. Legal remedies the law has provided are opened for those who seek, *in casu a quo* is the customers. This proposition is rendered under a logic-systemic reasoning that customers are the weak side of the dice so they are entitled for specific legal remedies.

First and foremost, is alternative dispute settlements. This goes beyond a doubt since Indonesian Law's spirit encourages party in conflict to resolve them by any possible and admissible alternative dispute settlements. Bostwick explains that an alternative dispute settlement is a form of legal practice and technique to resolve the conflict outside the court for the sake of the parties as well as reducing fee arises during the conflict.[45] Besides, customers may file a lawsuit before the court to resolve such conflict.

Conclusion

A banking credit agreement is binding for the parties if the agreement has fulfilled the conditions specified in Article 1320 BW, namely: there is an agreement, a legal capacity to enter the credit agreement, the object is clear and permitted by the laws, customs and propriety that apply in the country. Banking credit agreements must also be made in written form; currently they are made in the form of a standard contract or standard agreement either by notarial deed or privately. The application of the precautionary principle in making standard agreements is realized by prohibiting financial services businesses from including exoneration clauses that could harm financial services

[45] Hadimulyo, *Mempertimbangkan ADR: Kajian Alternatif Penyelesaian Sengketa di Luar Peradilan* (Elsam 1997) 1.

consumers as regulated in Article 18 paragraph (1) of the Consumer Protection Law and OJK Regulation 6/POJK.07/2022 as an effort to provide protection for consumers of financial services.

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