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# STANDARD AGREEMENTS IN BUSINESS LAW: STUDIES IN CREDIT IN THE BANKING WORLD

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Keywords

Standard Agreement,
Credit,
Banking.

Abstract. The standard agreement is one of the instruments that is often used in business law practices, including in the banking sector, especially in credit. This study aims to analyze the use of Standard Agreements in credit in banking and their effectiveness in resolving disputes in the banking sector. This study uses a normative juridical research method using analytical descriptive. The results of the study show that the use of Standard Agreements in credit in banking is commonly practiced and regulated in laws and regulations adapted to Law Number 8 of 1999 concerning consumer protection. However, the implementation of the Standard Agreement still creates various problems such as injustice for consumers and limitations in resolving disputes, this can be seen from the many unfair clauses that tend to harm consumers. This research also shows that the effectiveness of the Standard Agreement in resolving disputes in the banking sector from the bank is generally carried out in the form of preventive legal protection (preventing problems from occurring and repressive forms of legal protection (resolving problems) while for customers or consumers guided by Article 19 paragraphs 1 and 2 UUPK.

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## 1. INTRODUCTION

The financial infrastructure of every nation is built on its banking industry, and commercial banks in particular. Banks are financial institutions that provide as a place for individuals, businesses, and other organizations (including the government and private businesses) to keep their money safe (Handayani. Bank operations and the provision of a wide range of services allow them to meet customers' needs for financing while also facilitating the establishment of a payment system mechanism for all economic sectors. (Bukit , 2019)

Bank comes from the Italian word "banca" which means a seat, because in medieval times, bankers who made loans did their business by sitting on benches in the market yard (Abdurrahman, 1991). According to Supramono (2009), giving meaning to the bank as an institution that has a big role in the commercial world that has the authority to accept deposits, give loans, issue promissory notes which are often referred to as bank bills or bank notes. However, the function of the original bank was to only accept deposits in the form of coins, plates, gold, and others.

In the process of national development, banking as an international financial intermediary institution (financial intermediary institution) plays a significant role. According to Article 1 paragraph 2 of the Banking Act, the primary commercial activities of banks consist of soliciting funds from members of the general public in the form of savings and redistributing those funds to members of the general public in the form of credit and/or financing. As a result, banks are subject to a large number of regulations, which include laws and regulations pertaining to the banking industry as well as laws relating to other related invitations (Sjahdeni, 1993).

In relation to the provision of capital or in the form of loan funds that we are familiar with in banking terms, namely the provision of credit, therefore the bank will make a deed of capital or credit loans which contain the responsibilities of the parties involved, namely the bank and the borrower (customer). In other words, the bank will make a loan agreement (Naja, 2018) The provision of credit by banks is a genuine service that contributes to everyday living and the growth of the economy in Indonesia. Credit is the provision of money or bills that can be equated with it, based on an agreement

between the bank and another party that requires the borrower to pay off the debt after a certain period of time with interest. This agreement may be in the form of a loan or an agreement between the bank and another party (Marsidah, 2019).

In practice, we often see and hear that this deed of granting credit is very burdensome for the customer, this is because the contents of the deed have been drawn up prior to the arrival of the customer facing the bank to obtain or obtain a loan of capital and funds. The separate reason for the bank that has made the credit loan deed is to save time and apply to all customers who have the same goal, namely capital loans or credit (Ratnasari, 2012).

A concept deed of agreement that has been made unilaterally, in this example by the bank, is known as the Absolute Agreement Law (Standard Agreement), and it is also also referred to as the Standard Contract. This type of agreement falls under the purview of the Civil Law system (Sinaga,

2018). According to I Ketut Artadi (2014), a standard agreement is an agreement whose clauses have been defined or created in advance by one of the parties. In other words, a standard agreement is an agreement that has been standardized. The party that is given the standard agreement does not, in most cases, have the ability to negotiate or ask for a change of side when it comes to the dispute.

The majority of standard clauses are included in agreements between producers and consumers; therefore, the meaning can be found in Article 1 Number (10) of Law no. 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK), which states that "Every rule or provision and conditions that have been prepared and determined in advance unilaterally by the business actor are set forth in a document and/or agreement binding and must be fulfilled by consumers." Since the majority of standard clauses are included in agreements, the meaning can be found in Law no (KR, 2022).

When a bank decides to give credit to a customer, they will typically draft a template for the credit agreement in the form of a deed or a form/blank agreement. The creditor, who holds the stronger position in the credit agreement, has made the decision to define the provisions of the agreement on their own, without consulting the debtor. As a result, the nature of the standard agreement, also known as the standard standard, is advantageous for the creditor more so than it is for the debtor, whose position is weaker and more susceptible (Naulia, 2012).

Even though Standard Agreements are frequently used in the banking industry, the topic of their application continues to be the subject of controversy among both practitioners and academics. On the one hand, there are those who believe that the Standard Agreement is beneficial to consumers because it ensures legal certainty and streamlines the process of conducting business, while on the other hand, there are those who believe that the Standard Agreement is unjust because it causes harm to customers. Previous research on the subject of standard clauses in credit agreements was brought up by Etty Mulyati (2016), who was investigating the application of the principle of balance as well as the existence of good faith in credit agreements between parties. Etty Mulyati's study focused on the existence of standard clauses in credit agreements. In the meantime, when it comes to applying the principles of equity and equity to the credit agreement, it is forbidden for the creditor to make extra articles or clauses that are made unilaterally.

Meanwhile, the research conducted by M. Roji Iskandar (2017) explains the concept of a standard clause coupled with a sharia law perspective which is analyzed in accordance with sharia law principles and aligned with the Consumer Protection Act which prohibits "every rule or provision and conditions being prepared and stipulated in advance . first unilaterally by the business actor which is then set forth in a document and agreement that is binding and must be fulfilled by consumers", the inclusion of a standard clause is not partisanship of the interests of consumers and detrimental to the interests of business actors. Research conducted by Mohamad Nur Muliatno Abbas (2020) focuses more on studying regarding the abuse of circumstances in the standard credit agreement contract. This study explains that there is a standard clause in the bank credit agreement where there is an abuse of circumstances. This can be seen from the many credit agreement clauses that are burdensome to debtors. There is an imbalance in the position between debtors and banks as creditors who have economic advantages

Based on the various descriptions above, this study aims to analyze the use of Standard Agreements in credit in the banking sector and their effectiveness in resolving disputes in the banking

sector. This research will also explore the forms of standard agreements in bank credit, the clauses contained in these standard agreements and the forms of legal protection for both banks and customers in standard agreements. It is hoped that the results of this research can provide better insight into the use of Standard Agreements in the context of business law, particularly in banking credit, and provide useful information and recommendations for practitioners and academics in the fields of business and banking law.

## 2. METHOD

The type of research method used in research writing scientific journals is to use normative legal types of research. Normative research is examining if there are problems that are studied based on the source material contained in books or literature from the opinions of legal experts. As for the parts of this type of research that are used normatively, namely the statutory approach (the statue approach), meaning that a problem will be studied from legislation. As well as using an analytical conceptual approach (Soekanto, 2007).

## 3. RESULTS AND DISCUSSION

### A. Forms of Standard Agreements in Bank Credit Agreements

From a formal juridical point of view, there are 2 (two) forms of credit agreements or credit agreements used by banks in extending their credit, namely: first, private credit agreements or agreements or private deed and second, notarized credit agreements or agreements:

#### a) Underhand credit agreement form

An underhand credit agreement is a deed whose form is free from making it enough to be signed by the maker. In fact, usually in signing the credit agreement deed without witnesses participating in affixing the signature. In fact, it is known that witnesses are one of the means of proof in civil cases (Rahmadhani, 2020).

Regarding the private credit agreement deed, there are a number of things that are deemed necessary to know, namely the weaknesses. There are several weaknesses in this private credit agreement deed, namely, among other things, that if one day a default occurs by the debtor, which in the end will be taken legal action through the court process, then if the debtor in question denies or denies his signature, it will result in a raw the legal force of the credit agreement that has been made (Suparman & Putrawan, 2016).

Based on Article 1877 of the Civil Code it is stated that: "If someone denies his writing or signature, the judge must order that the truth of the writing or signature be examined before the court." The next weakness is that because this agreement is made only by the parties. This is where the form has been provided by the bank (from standard), so it is not impossible that there is a lack of data that should be completed for the purpose of binding credit. In fact, it is not impossible, on the basis of service, the signing of the agreement is carried out even though the agreement form is still in blank or blank form.

#### b) Notarized (Authentic) credit agreement form

A notarized (authentic) credit agreement deed is an agreement for granting credit by a bank to its customers which is only made by or before a notary (Kamelia, 2017). As for the definition of an authentic deed, it can be seen in Article 1868 of the Civil Code which states that: "A deed of law, made by or before public officials who have power for that is where the deed is made."

Based on the provisions or definition of an authentic deed that will be given by article 1868 of the Civil Code, several things can be found: first, the person authorized to make an authentic deed is a notary, unless this authority is handed over to another official or another person. Other officials who can make an authentic deed are for example a clerk in court proceedings, a bailiff in making an exploit, a prosecutor or police in making a preliminary examiner.

A civil registry employee who makes a birth or marriage certificate, or a government official who contains regulations, while another person known as an onbezoldigde - hulpmagistraten article 39

paragraph (6) HIR can also make a verbal process for an authentic deed. Second, authentic deeds are distinguished in two forms, namely those made by and those made before public officials. With the difference between made by and made before a notary, science distinguishes the authentic deed between the verbal process made by the party and the deed made before a notary.

Third, the contents of an authentic deed are: all actions that are required by law to be made in an authentic deed and all agreements and control desired by those concerned. An authentic deed may contain a legal action required by law. Fourth, an authentic deed provides certainty regarding/about the calendar. A notary provides certainty about the date of his deed, which means that he is obliged to state in the relevant deed the year, month and date when the deed was drawn up. Violation of these obligations results in the deed losing its authentic nature and thus only having the force of the deed under the hand of Law No. 30 of 2004 As amended by Law no. 2 of 2014 concerning the Position of Notary.

**B. Forms of Standard Clauses in Bank Credit Agreements**

A credit agreement is a standard agreement whose contents or terms have been standardized and set forth in a form (blank), but are not bound to a specific form. The validity of the credit agreement is contingent on the acceptance of public and commercial traffic to facilitate the flow of trade and commercial traffic. Generally, standard contracts have unequal clauses between the person writing the agreement and other parties (Hamin, 2017).

A credit agreement is required for every credit extension. Bank Indonesia submits the form and format to each bank for specification, but the following points must be taken into account:

a. Respect the legitimacy and legal regulations that can safeguard the bank's interests;
b. Includes the amount, duration, and process for repayment of the credit, as indicated in the aforementioned credit approval decision.
c. At a minimum, bank credit agreements must stipulate the maximum credit amount, credit period, credit purposes, credit forms, and withdrawal limit authorizations.
d. Interest rates and expenditures associated with giving credit, such as stamp duty, provision/commitment fees, and overdraft fees.
e. The authority of the bank to charge the credit recipient's current account and/or credit account for interest rates on overdraft fines and interest in arrears, as well as all charges paid and borne by the credit recipient for the implementation of specified topics.
f. Representations and warranties, including credit recipient statements for loading and all credit recipient assets as collateral for credit payback.
g. In order for credit receivers to withdraw credit for the first time, they must first satisfy stringent requirements.
h. Credit collateral and insurance on collateral goods.
i. Positive and negative covenants, essentially the obligations and cancellation of the credit recipient's acts as long as the credit agreement remains in effect.
j. In the framework of credit supervision and rescue, bank actions.
k. Events of default/default/default/trigger clause/openbaar clause, i.e. the bank's actions at any time, can result in the termination of the credit agreement and the prompt collection of all outstanding principal, interest, and fees.
l. The selection of domicile/forum/law in the event of a credit dispute between the bank and the consumer receiving credit.
m. Provisions for the credit agreement's coming into effect and the credit agreement's execution.

According to Sutan Remy Sjahdeini (1993) there are several clauses in the credit agreement which are unfair and very burdensome to the debtor, including:

a. The authority of the bank to unilaterally terminate the credit withdrawal permit at any time without any reason and without prior notification.
b. The authority of the bank to unilaterally determine the selling price of collateral items in the event that the sale of collateral items is carried out because the debtor's credit is bad.

c. The authority of the bank unilaterally to comply with all instructions and bank regulations that already exist and which will still be stipulated later by the bank.

The preparation of such clauses is the bank's attempt to apply the precautionary principle in extending credit. Banks do not want to experience losses caused by debtors who are unable to pay off their debts. Even though at the time of signing the bank credit agreement, the bank was in a strong position, but on the contrary when implementing the bank credit agreement, the bank became a weak party , because there was a possibility that the return or repayment of credit would experience a bottleneck (Ginting, 2014).

The provisions of Law No. 8 of 1999 ban the inclusion of clauses in all business-related documents and contracts. In accordance with Article 1 point 10 of the UUPK, the standard clause is defined as "Every rule or provision and conditions that have been prepared and determined unilaterally in advance by business actors and set forth in a legally binding document and/or agreement that consumers must comply with."

Article 18 of the UUPK regulates in essence two types of restrictions applicable to business actors who form standard agreements and/or incorporate standard terms in their agreements. Article 18 Paragraph 1 of the Law No. 1999 forbade the introduction of standard clauses in papers or agreements that meet specific criteria. Article 18 paragraph (2) of Law No. 1999 governs the form or format and prohibits the inclusion of standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosure is difficult to comprehend.

The majority of the terms or covenants in bank credit agreements are designed to safeguard creditors in the granting of credit. Clauses are a collection of financial and legal conditions that are developed in an effort to give credit. The inclusion of conditions in a bank credit agreement should be a collaborative endeavor, as banks as creditors and debtor clients rely on one another for the development of their respective businesses. Such stringent clauses represent the bank's approach to implementing the precautionary principle in credit extension.

## C. Legal Protection for the Parties to the Standard Agreement

In Latin, credit means "credere" which means to believe. According to one legal expert, namely Melayu Hasibuan (2011) the notion of credit is defined as the existence of a creditor's attitude that gives a trust to the debtor on the agreement of both parties to return the loan that has been given along with the interest. In banking practice, both government banks and private banks, in terms of providing loans to the public, it is not easy. This is because the funds used are funds from customers that are stored both in the form of savings, time deposits, and demand deposits.

Every bank will always aim for the bank to gain the trust of the public, because banks that do not have trust capital will sooner or later go bankrupt or their activities will be closed by the government. Therefore, the distribution of funds to the public, banks are very careful. The identity of the people who apply for loans is very much considered, because in practice it often happens between customers who apply for credit loans, in the future there will be differences in both personal identity and signatures and objects used as collateral Al Arif (2012).

This will become a big problem for the bank, because the funds that are channeled or loaned are given to the wrong person. Therefore the bank must really know the customer who wants to apply for credit, the bank must be careful, thorough, know the customer by seeing the place where he lives, ask his neighbors or people around, and regarding the object that is used as collateral must also be clear by involving the Land Agency . The things mentioned above will create a healthy bank (Abubakar & Handayani, 2017).

Every credit submitted by a customer to a bank, in a document or credit agreement it is always stated that there is a guarantee or not in accordance with the amount of the credit value provided by the bank. Customers who provide guarantees in lending credit if the bank experiences congestion will not lose money or will benefit the bank, while customers who do not provide guarantees, the bank will experience problems (Sjofjan, 2015)

Various types of guarantees are provided by the debtor (customer) to the creditor (bank), including: tangible guarantees (dwelling/houses, cars, motorcycles, land), intangible guarantees

(securities, land certificates, share certificates) , people's guarantees (if the credit is bad then the person will bear it). Meanwhile, unsecured loans are given to companies that are truly bona fide and professional.

As a result of bad credit, the debtor will experience a loss because the goods used as collateral will be confiscated or auctioned by the creditor, this is because the bank has carried out notification procedures to the customer (debtor) to pay off the credit loan cannot be carried out in accordance with the agreement that has been signed in the credit agreement deed. The debtor or customer needs to receive appropriate legal protection in UUPK.

In practice, the creditor or bank will resolve the problem of bad credit through a legal litigation process by seizing collateral for the object of goods used as collateral by the debtor. As we know there are 2 types of legal protection, namely:

a. The form of preventive legal protection (preventing problems from occurring) is a form of legal protection given to consumers or customers to enable them to understand the contents of the standard agreement prior to signing or agreeing to it. Considering that the contents of the standard agreement have been predetermined by the bank, it is extremely difficult for the consumer or customer to comprehend the concept of the contents of the standard agreement (credit agreement). The sort of preventative legal protection described above is an endeavor to prevent future harm to the customer or consumer if bad credit happens against the object used as bank collateral.
b. The form of repressive legal protection (solving difficulties) is an attempt to handle a problem or disagreement in the event of a negative credit event by having the parties agree on the procedures to resolve the case or problem by extending credit or seizing the collateral object.

The form of legal protection given to the executor (customer or consumer) of a standard agreement according to UUPK No. 8 of 1999, namely:

a. If there is damage, loss, the proceeds from the sale of goods that are used as collateral by customers or consumers, the business actor is obliged to be responsible for this incident (In accordance with Article 19 paragraph 1 UUPK No.8 of 1999): "Business actors are responsible for providing compensation for pollution damage and/or consumer losses as a result of consuming goods and/or services produced or traded."
b. For collateral items that are auctioned due to bad credit by business actors or banks, the results must be accounted for. (In accordance with Article 19 paragraph 2 UUPK No.8 of 1999): "Compensation as referred to in paragraph (1) can be in the form of a refund or replacement of goods and/or services of the same or equivalent value or health care and/or compensation according to in accordance with applicable laws and regulations."

## 4. CONCLUSION

The form of a standard agreement in a bank credit agreement must be in accordance with the legal basis or the articles contained in the Consumer Protection Act (UUPK), which does not harm the executor of the standard agreement (customer or consumer), while the exoneration clause is permissible as long as there is an agreement. the parties. There are two forms of bank credit agreements as standard agreements, namely 1) the form of a private deed which is a deed in a free form from which it is sufficient to be signed by the maker without witnesses. Then 2) the form of an authentic or notarial deed is an agreement for granting credit by a bank to its customers which is only made by or before a notary or made before a public official. The standard forms of clauses in bank credit agreements include credit facilities, interest rates, bank powers, bank repayment guarantees, credit precedent, credit collateral, affirmative and negative covenants, bank actions in credit rescue, events of default/default, choices law, the entry into force of the credit agreement. The bank is expected to make standard clauses so as not to burden the customer, so that the principle of balance in an agreement can be achieved. Finally, the legal protection given to the party executing the standard agreement must also be in accordance with the UUPK, because if an auction occurs for a collateral object due to bad credit by the bank, it may not be detrimental to the consumer or customer and in accordance with the contents of the standard agreement previously made.

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