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Legal Protection of Bank Customer Regarding Bank Credit Agreements According to the Consumer Protection Law

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Abstract

The main objective of the research is to find out, describe and analyze whether the standard clauses in Rural Bank credit agreements (BPR) reflect the credit agreement and do not conflict with the principles of freedom of contract and the principle of balance as well as the impact of implementing standard clauses in Rural Bank credit agreements and legal protection against customers who are harmed by the application of the standard clause. The research results reveal that the application of standard clauses in BPR credit agreements has fulfilled the principles of freedom of contract, balance and the principle of consensualism because in their application they still open up room for negotiation with customers so that an agreement is reached. The impact of implementing the standard clauses of Rural Bank credit agreements on customers' rights as consumers is that customers do not have room to defend their rights or to file complaints due to the application of standard clauses which are detrimental or burdensome, especially with the "take it or leave it" analogy to the terms. - conditions determined by the bank, which include the bank's authority to unilaterally at any time without any reason and without prior notice terminate the credit withdrawal permit. In the case of sales of collateral whose credit is bad, the BPR has the authority to unilaterally determine the selling price of the collateral. Legal protection for customers who are harmed by the application of standard clauses in credit agreements is the customer or consumer. The customer can apply to the BPR according to the protection provided by Article 19 of the Consumer Protection Law.

Keywords: legal protection, bank customer, bank credit agreement, consumer protection law

Introduction

The banking sector is the lifeblood of the Indonesian economy because this is where financial transaction traffic occurs to meet the people's rapidly growing economic needs. In running a banking business, parties are needed who are connected to each other, including the community (customers). Customers have an important role in the banking world because they are one of the main sources of funds (Averitt & Lande, 1997). Banks themselves are business

entities that collect funds from the public in the form of savings and channel them back in the form of credit or other forms. From this definition itself, it can be seen that the public or customers are the most important part in the running of the banking business (Eske Yuniel Rahmanto Sonora, 2021).

With the birth of Law no. 7 of 1992 concerning Banking which was amended by Law number 10 of 1998 concerning Amendments to Law number 7 of 1992 concerning Banking, led Indonesia to two banking systems (dual banking system), namely the conventional banking system and the Islamic banking system. Conventional banks have a strong aroma in pursuing material (capitalistic) profits with their interest system, so they do not recognize the loss of other parties (Tavuyanago, 2020). Meanwhile, Islamic banks are not much different from conventional banks as intermediary institutions, namely collecting funds from the public and channeling them back, but emphasizing the nature of ta'awun (help in joy and sorrow/partnership) (Ita et al., 2022).

As an intermediation institution, banks redistribute the funds they collect in the form of depositors to the public in the form of credit. Credit is a debt and receivable agreement between a bank and a customer in which the bank will provide a loan to the debtor with a certain interest which must be returned within the time period agreed in the credit agreement. A credit agreement is an agreement that is also subject to the terms and conditions for the validity of the agreement(Nguyen & Pacheco, 2022).

According to Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. The definition of an agreement is an agreement in the broadest sense because it is only about a one-sided agreement and does not involve binding both parties. The agreement made by the parties applies as law for each of them, so the agreement should state that both parties are binding on each other so that a legal relationship arises. Agreements (overeenkomst) are divided into several types, but based on their form they are divided into two, namely oral and written agreements. Written agreements are further divided into two parts, namely in the form of private deeds and authentic deeds. This written agreement is commonly used in banking credit agreements and is usually in the form of a standard agreement (Maulana et al., 2021)

A standard agreement (standard) in Dutch is known as a "standard contract" while in English it is known as a "standardize contract" (HP. Panggabean, 2012). A standard agreement or standard contract is a written contract made by only one party to the contract, In fact, often the contract has been printed (boiler plate) in certain forms by one of the parties. In the standard agreement mentioned above, the bank unilaterally makes terms and conditions which must be fully followed by the customer who submits the application and which have binding force.

When making a credit agreement in standard form, the customer is usually not in a profitable bargaining position because the agreement forms are not made by both parties but already exist or have been previously prepared by one of the parties, in this case the bank. In essence, customers are only given two choices, namely to accept or reject it (*take it or leave it)*.

Regarding this matter, even though the Laws and Regulations have specifically regulated banking, there is no explicit regulation that can be used as a legal basis for customers as consumers in implementing credit agreements which usually use standard agreements (Rahman et al., 2022).

Along with developments in the trade and finance sector, various types of credit agreements have emerged, one of which is the standard contract. According to historical records, standard agreements have been known since ancient Greece (423-347 BC). Then the Industrial Revolution that occurred in the early 19th century in England led to the emergence of a standard agreement or contract. The emergence of mass production from factories and companies initially did not result in any changes in the business contract. But then the standardization of production brought a strong push for the standardization of treaties (Thomas, 2022).

In the practice of extending credit in the banking environment, for example, there are clauses requiring customers to comply with all bank instructions and regulations, either those that already exist or will be regulated later, or clauses that free banks from customer losses as a result of bank actions (Thomas, 2018)v. In a house sale and purchase agreement, for example, there is a clause that contains an obligation to pay in full and immediately if the rental buyer is in arrears for two consecutive payments. In a sale and purchase agreement, for example, there is a clause that the goods that have been purchased cannot be returned. The clauses mentioned above are generally extension clauses whose contents seem to be more burdensome to one party (Febiani et al., 2023).

Literature Review

Initially, an agreement occurs based on the principle of freedom of contract between parties who have an equal position and try to reach the agreement necessary for the agreement to occur through a negotiation process between the parties. However, nowadays many agreements in society occur not through a balanced negotiation process between the parties, but the agreement occurs by one party having prepared standard terms on an agreement form that has been printed beforehand and then handed it over to the other party to agreed with almost no freedom at all for the other party to negotiate the proposed terms. Such an agreement is called a standard agreement or standard agreement or adhesion agreement (Rahman et al., 2022).

A standard agreement is a written contract made by only one party to the contract, often in the contract it has been printed (boilerplate) in the form of certain forms by one of the parties, in this case when the contract is signed generally the parties, who are in This is when the contract is signed, generally the parties only fill in certain informative data with little or no change in the clauses, where the other party in the contract has no opportunity or very little opportunity to negotiate or change the clauses that have been made by one of these parties(Rade et al., 2023).

A standard agreement will contain standard clauses which according to the Consumer Protection Law, standard clauses are every rule or provision and conditions that have been prepared and determined in advance unilaterally by the business actor which are set out in a document and/or agreement that is binding and must be fulfilled (Zapata Quimbayo & Mejía Vega, 2023). by consumers. Standard Clauses are defined as "every rule or provision and conditions that have been prepared and determined in advance unilaterally by the business actor as outlined in a document and/or agreement that is binding and must be fulfilled by consumers".

In the provisions of Article 1 paragraph (12) of Law number 7 of 1992 concerning Banking, "credit is the provision of money or bills that can be equivalent to it, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with the amount of interest, compensation or profit sharing profit." This definition was later amended by the provisions of Article 1 paragraph (11) of Law number 10 of 1998 concerning Amendments to Law number 7 of 1992 concerning Banking which states, "credit is the provision of money or bills that can be equivalent to it, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest." The difference between the two meanings lies in the counter-performance received, where in the first meaning, the counter-performance is in the form of interest, or rewards or profits. Meanwhile, in terms of the changes, the counter-achievement is only in the form of interest.

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If the credit agreement is a special agreement, then there is no named agreement in the Civil Code that is called a credit agreement. Therefore, what applies are the general provisions of contract law, of course plus the clauses that have been mutually agreed upon in the contract in question.

Furthermore, the classification of credit agreements as agreements named in their appearance as loan-to-use agreements means that in addition to them the general provisions regarding agreements apply, the provisions of the Civil Code regarding loan-to-use agreements also apply. This is different from an ordinary loan-to-use agreement, where what the debtor must return is the physical object borrowed. Meanwhile, in a loan-to-use agreement, what is returned is the value of the object borrowed for use (Ni Made Yunika Andrini, I Nyoman Putu Budiartha, 2023) .

Research Method

The type of research is normative legal research, namely legal research that uses secondary data sources. This research is analytical descriptive in nature, namely describing the problems with the application of the standard clauses of Rural Bank credit agreements. So it is discussed and analyzed according to science and theories or the researcher's own opinion and finally concludes. The data collection tool used is document or library study to obtain secondary data. After the data is collected, the data is processed and analyzed using qualitative data processing techniques, namely by selecting data whose quality can answer the problems

posed and the presentation is carried out by systematically compiling so that a conclusion is obtained in the form of a series of sentences.

Result and Discussion

Reflection of the Principle of Freedom of Contract, Balance and Embodiment of the Principle of Consensualism in the Application of Standard Clauses in Rural Bank Credit Agreements

When making a credit agreement in standard form, the customer is usually not in a profitable bargaining position because the agreement forms are not made by both parties but already exist or have been previously prepared by one of the parties, in this case the bank (Pomar & Perarnau, 2023). In essence, customers are only given two choices, namely accept or reject it (take it or leave it).

According to the doctrine of agreement between the parties, because there is no or limited opportunity for one of the parties to negotiate the clauses in the standard contract, even if the party finally signs the contract, it is still doubtful whether the contents of the contract are really as desired or whether they are true or not there is an agreement there. As is known, that the word agreement is one of the conditions for the validity of the contract. However, by referring to the principle of agreement of the will of the parties in determining the existence of a standard contract, by signing it, it can be assumed that both parties have agreed to the contents of the contract, so that it can be concluded that an agreement has occurred. So by signing the deed, by law the standard agreement is binding as law for them. Therefore, freedom of contract is fulfilled (Eske Yuniel Rahmanto Sonora, 2021).

1. The standard agreement also meets the requirements of consensus and agreement as in the opinion of Dr. Johannes Ibrahim, SH, MH said that a bank credit agreement cannot be considered a standard agreement, considering that in practice, before a debtor customer signs a credit agreement, the bank first submits an offer letter (offering letter) for a loan or credit facility which he agreed to. The offer letter is intended as an introduction to the basis of negotiations which briefly states the type of facilities to be provided, interest, collateral required, provisions and other conditions deemed important in connection with the loan agreement.
2. The offer letter referred to in point (1) can be accepted, rejected, or made changes according to the wishes of the prospective debtor. Here it is still possible to carry out negotiations between the bank and the prospective debtor.
3. By considering the offer letter and the conditions contained therein, if the debtor has no further objections, it means that he has stated that he accepts the use of the agreement format offered by the bank.
4. The subject and object of the bank credit agreement are always different from one another according to the needs of the prospective debtor. So that bank credit agreements may not have the same pattern even though there are similarities to one another.

With the interpretation above, in general the principle of balance gives meaning to the standard agreement as a balance of the positions of the contracting parties. This is because in

the standard agreement there is an unequal position between the bank and the customer. However, with the principle of freedom of contract, legally speaking, agreements provide the widest possible freedom for the community to enter into agreements containing anything as long as it does not violate public order and decency. This means that the parties entering into the agreement are allowed to make their own provisions that deviate from the legal articles of the agreement and they are allowed to regulate their own interests in the agreement they are entering into (Ita et al., 2022).

The BPR Prima Nusatama credit agreement has also reflected these principles because in its implementation it still provides room for negotiation so that an agreement can be obtained in its application and as a manifestation of the principle of consensualism, the parties can negotiate because the credit application is preceded by an offer process from the customer as the application of Johannes' opinion Abraham above.

Impact of Implementation of Standard Credit Agreement Clauses of Rural Banks on Customer's Rights as Consumers.

The application of standard clauses where the clauses have been determined by the bank, of course the debtor is at a disadvantage. As consumers, debtors who are bank customers have the rights to obtain equal standing in an agreement. By implementing more standard clauses to protect banks, their implementation will certainly have an impact on debtors. In the standard agreement, there are many clauses that are very burdensome for the customer receiving the credit. Clauses that are burdensome for customers receiving credit include the following (Ita et al., 2022).

1. The authority of the bank to unilaterally at any time without any reason and without prior notification terminate the credit withdrawal permit.
2. In the case of sales of collateral whose credit has been defaulted, the authority unilaterally determines the selling price of said collateral.
3. Debtor customers are required to comply with all instructions and bank regulations that already exist and which will still be stipulated later by the bank.
4. The debtor customer is required to comply with the general terms and conditions regarding the current account relationship of the bank concerned, withou(Aliyeva, 2021)t being given the opportunity to study these terms and conditions.
5. The debtor customer must give irrevocable power of attorney to the bank to take all actions deemed necessary by the bank.
6. The debtor customer must give irrevocable power of attorney to the bank to represent and exercise the rights of the debtor customer at every general meeting of shareholders.
7. Inclusion of exception clauses that free banks from claims for compensation by customers for losses suffered by debtor customers as a result of bank actions.
8. Inclusion of an exclusion clause regarding the absence of the debtor customer's right to be able to express objections to bank charges against his account.
9. Negligence of the debtor customer is proven unilaterally by the bank solely.
10. Bank interest is determined and calculated to the detriment of debtor customers.
11. Late fees which are hidden interest.
12. The calculation of double interest according to banking practice is contrary to Article 1251 UHPerdata.

13. Waiver of Article 1266 and Article 1267 of the Civil Code if an event of default occurs.
14. The obligation to pay off interest in advance, which, although in accordance with Article 1397 of the Civil Code, is very burdensome to customers.

With such a clause, the impact felt by the debtor is that the customer has no space to defend his rights or to file a complaint due to the application of the standard clause which is detrimental or burdensome especially with the "take it or leave it" analogy to the conditions determined by the bank.

Legal Protection for Customers Who Are Harmed Due to the Application of Standard Clauses

Regarding protection for the application of standard clauses in credit agreements, in the laws and regulations that specifically regulate banking, there are no regulations that can be expressly used as a legal basis for providing guaranteed guarantees of protection (Kosytsia et al., 2019).

However, with the regulation of standard clauses referred to in Law No. 8 of 1999 concerning consumer protection, in principle it does not prohibit business actors from including standard clauses in every standard document/agreement/standard contract. As long as it meets the requirements specified in the law (Maulana et al., 2021).

In this case the law provides protection to consumers regarding the application of standard clauses. Consumers in this case can demand compensation from business actors. By implementing compensation in standard clauses, business actors have full responsibility as stipulated in Article 19 of the Consumer Protection Law, which includes:

1. Business actors are responsible for providing compensation for damage, pollution and/or consumer losses resulting from consuming goods and/or services produced or traded.
2. Compensation as intended 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 provision of compensation in accordance with the provisions of the applicable laws and regulations.
3. Providing compensation is carried out within a period of 7 (seven) days after the date of the transaction. Providing compensation as intended in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error.
4. The provisions as intended in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is the consumer's fault.

Conclusion

Based on the analysis above, it can be concluded that the application of the credit agreement meets the principles of freedom of contract, balance and the principle of consensualism because in practice it still opens room for negotiation with the customer so that an agreement is reached. The embodiment of the principle of consensualism in the standard credit agreement of BPR Prima Nusatama is that the parties can negotiate because the credit

application is preceded by an offer process from the customer. The impact of applying the standard clauses of the Prima Nusatama credit agreement on the rights of customers as consumers is that customers do not have room to defend their rights or to file complaints due to the application of standard clauses that are detrimental or burdensome, especially with the "take it or leave it" analogy against the conditions determined by the bank. Legal protection for customers who are harmed by the application of standard clauses in credit agreements is that customers or consumers can apply for compensation to business actors as the protection provided by Article 19 of the Consumer Protection Law.

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