Consumer Protection: Principle of Proportionality in Banking Credit Agreement under the Indonesian law

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Abstract

The implementation of the principle of freedom of contract gives rise to the types of agreements not regulated in the law or The Indonesian Civil Code (ICC). We are familiar with the term Standard contract or standard agreement. Standard agreements are often used in the banking world, one of which is in banking credit agreements, as we all understand that the customer's position is weaker than the bank, so it must be protected by law. In order to protect these interests, the customer is given protection contained in the Banking Act regulations as well as the Consumer Protection Act and its derivative regulations. Specifically, the credit agreement format as the standard agreement set out in Financial Services Authority Circular Number 13 / SEOJK.07 / 2014 Concerning Standard Agreements is that credit agreements that contain rights, obligations, and requirements that are legally binding on customers, are required to use letters, writing, symbols, diagrams, signs, terms, readable phrases, and/or sentences simple ones in Indonesian that are easily understood by customers. This is in an effort to provide protection to customers and the regulatory and supervisory functions of the Financial Services Authority.

A. Introduction

Economic development is one of the efforts to support national development to realize people's welfare based on the Constitution of Indonesia in 1945. Increasing national development through economic development requires significant funds because economic development must be supported by the availability of significant funds and can be obtained through credit mechanisms.

One credit mechanism that is commonly used by the public is banking credit. Credit generally serves to facilitate a business activity, and in particular, for economic activity in Indonesia plays an essential role in its position, both for production businesses and private businesses that are developed because it aims to improve the standard of living of the community.¹

Article 1 number 11 of Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking formulates the notion of credit: "Credit is the provision of money or claims which can be equalized based on an agreement or agreement between the bank and the parties. Others require the borrower to repay the debt after a certain period with the provision of interest ". Based on the provisions in that Article, the banking credit bookkeeping must be based on an agreement or loan agreement, or in other terms, it must be preceded by a Credit Agreement.

According to Article 1313 of the Indonesian Civil Code, an Agreement is an act by which one or more persons commit themselves to one or more other people. The agreement's meaning is an agreement in the broadest sense because it is only a one-sided agreement and does not involve binding the two parties. The agreement made by the party's acts as a law for each of them so that the agreement should state that the two parties are mutually binding, thereby creating a legal relationship. Agreement (*overeenkomst*) is divided into several types, but based on the form is divided into two, namely oral and written agreements. The written agreement is further divided into two parts, namely a deed under the hand and an authentic deed. This written agreement is commonly used in banking credit agreements or known as standard agreements.

Standard agreement or standard contract is a written contract made only by one party in the contract, often even in the contract has been printed (*boilerplate*) in the form of certain forms by one of the parties. In the standard agreement mentioned above, the bank unilaterally makes terms and conditions that must be thoroughly followed by the customer who submitted the application and has binding power. Where frequently in making these agreements, the customer is not in a favourable bargaining position because the agreement forms were not made in front of the two parties but were pre-existing by one of the parties, in this case, the bank. In essence, the customer is only given two choices, namely, to accept or reject it.²

Standard agreements cause consequences for prospective customers that have two options to accept the contents of the agreement or reject the agreement, so that prospective customers do not get the funds needed.

¹ Noviaditya M, "Perlindungan Hukum Bagi Kreditur Dalam Eksekusi Perjanjian Kredit Dengan Jaminan Hak Tanggungan", *Thesis Law Faculty University of Sebelas Maret*, (2016).

² P. A. Korah, "Kedudukan Nasabah dalam Perjanjian Baku yang Dilakukan oleh Bank", *Lex Privatum* 1, No. 1, (2013): 5–11.

Considering the number of potential customers applying for credit is increasingly made a standard agreement or standard agreement. Most of the standard agreements applied in practice are detrimental to weaker parties, whereas, when seen from the validity of the standard agreement, it can be seen from the subjective and objective conditions of Article 1320 of the Indonesian Civil Code.³ Sutan Remy Sjahdeini argues that the standard agreement is an agreement that the wearer has standardized almost all of the clauses and other parties do not have the opportunity to negotiate or make changes.⁴

The use of standard clauses in standard agreements economically has practical advantages, reducing long-winded negotiations and cost savings, but legally provides an unbalanced position for the parties because one party is usually forced to accept the terms that have been standardized by the other party. An imbalance of the position of the parties in an agreement, not infrequently causes a party that has a lower position will experience a disadvantage. Imbalance in the agreement can be exploited by a dominant party which results in the bank has the potential to abuse the situation, for example in a credit agreement containing an exoneration/exclusion clause in the form of increasing rights and / or reducing bank obligations, or reducing the rights and / or adding obligations of debtor customers.⁵

In contract law, we recognize the existence of proportional principles. The word 'proportionality' or proportional means to correspond to proportions or equal, balanced. Whereas 'balance' means a state of balance (balanced - equal weight, equilibrium, proportion, equal); in physics is defined as a condition that occurs when all the forces and tendencies that exist in every object or system are exactly neutralized or opposed by the same force or tendency but have opposite directions.⁶

Then it can be concluded that the proportional principle is the principle that underlies the exchange of rights and obligations of the parties according to their proportions or parts. To find the proportional principle in the contract, we need to examine how much burden is borne by the parties, the higher the burden he bears, the greater he gets his share, or if the more obligations he carries out based on the agreement, the higher the rights he receives. Thus the proportional principle does not concern balance in terms of the similarity of the results obtained (in the mathematical sense) but rather emphasizes the

³ Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2001), 27.

⁴ S. R. Sjahdeni, *Kebiasaan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak dalam Perjanjian Kredit Bank Indonesia* (Jakarta: Institut Bankir Indonesia, 1993), 186.

⁵ E. Mulyati, *Kredit Perbankan: Aspek Hukum dan Pengembangan Usaha Mikro Kecil dalam Pembangunan Perekonomian Indonesia* (Bandung: Refika Aditama, 2016), 275.

⁶ A. Y. Hernoko, "The Principle of Proportionality As the Basis Exchange Rights and Obligations of the Parties in the Commercial Contract", *Jurnal Hukum dan Peradilan* 5, No. 3, (2016): 447-466.<https://doi.org/10.25216/jhp.5.3.2016.447-466>.

proportion of the distribution of rights and obligations among the parties that take place adequately and appropriately.⁷

Even though the Laws and Regulations specifically regulate banking, no strict regulation is found and can be used as a legal basis for customers as consumers in implementing credit agreements that frequently use standard agreements. So, in this case, the author studies more deeply about the legal protection of customers in bank credit agreements given the standard agreements used by banking companies using the standard agreements as described above. In addition, the author also wants to find the Indonesian Financial Services Authority Oversight Function related to the standard clause in the Banking Credit Agreement in terms of the Principle of Proportionality.

The type of research used in this study is doctrinal legal research or dogmatic or normative juridical method or also referred to as library legal research. Doctrinal law research is a study that uses a legal approach in the meaning of "law in the book" and is done by examining library materials consisting of primary legal material and secondary legal material. Normative legal research examines laws that are conceptualized as norms or rules that apply in society. The applicable legal norms are in the form of positive law, codification, law, and general legal principles. Doctrinal legal research based on its nature in the view of Peter Mahmud Marzuki, includes a type of prescriptive research that studies the purpose of law, values of justice, the validity of legal rules, legal concepts, and legal norms.⁸ This study uses the approach of legislation (Statute Approach) and implementing regulations. The literature study in this study is primary legal material that is using laws and regulations related to banking credit legal aspects, while secondary legal materials use legal books and journals relevant to this research.

B. Analysis And Discussion

1. Customer Protection in Banking Credit Agreements

The engagement that was born the parties to bind them, as stated in the agreement. The engagement was born from the two people or parties who agreed. In the law of agreement known as the principle of freedom of contract, every person has the right to make a contract or agreement or to bind themselves with anyone about anything with the assumption that the parties that bind themselves have a balanced bargaining position both economically and socially.⁹ Contract fish requires voluntary or free agreements so that one

⁷ A. Y. Hernoko, & I. Y. Ratnawati, "Asas Proporsional dalam Perjanjian Waralaba (Franchise)", *Jurnal Hukum Bisnis*, No. 1, (2015): 1–17. <https://doi.org/10.33121/hukumbisnis.v1i1.54>.

⁸ P. Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2008), 34.

⁹ L. Jamilah, "Asas Kebebasan Berkontrak dalam Perjanjian Standar Baku", *Jurnal Ilmu Hukum Syiar Hukum* 13, No.8, (2012): 227–243.

party is obliged not to take advantage of the emotional state that might encourage the other party to act irrationally and contradict his interests. For the same reason, one party is obliged not to take advantage of ignorance or other factors that reduce or eliminate the other party's ability to make choices freely.¹⁰

Indonesia has an open system in the field of treaty law, which can be seen from the recognition of the principle of freedom of contract. Article 1338 paragraph (1) of the Indonesian Civil Code states that all treaties made legally apply to the law for those who make them, it can be concluded that the law not only recognizes the types of agreements that are regulated and named in the law but also recognizes and gives the legal consequences of the agreement made by the parties although this type of agreement is not regulated in the law.

In its implementation, the application of the principle of freedom of contract raises the types of agreements that are not regulated in the law or the Indonesian Civil Code. We are familiar with the term Standard contract or standard agreement, which in Dutch; we are familiar with the term *standard voorwaarden*. The distinctive feature of the agreement is the content of the agreement, which is only determined by one party, while the other party only agrees or not. The determinants of the contents of the agreement are those who have a higher or stronger bargaining position. The choice of parties who have a lower bargaining position is not broad in formulating the contents of the agreement or negotiating the contents of the agreement, but the choices are only 2 (two), agree or reject. Such matters then made the bargaining position of the parties in the agreement questionable.

However, standard agreements are widely used today with economic reasons or considerations, namely reducing costs in making agreements or contacts and also more practical reasons. Standard agreements are often used in the banking world and other financial industries in various transactions. The dominant position of one party in a standard agreement has reduced the realization of the principle of freedom of contact from the perspective of equal protection of the Parties.

Basically, customers are consumers of business people who provide services in the banking business sector. The function of banking institutions as intermediaries between parties who have excess funds with those who need funds has consequences for intensive interaction between banks as business actors and customers as consumers of banking service users.

The government, as regulator and supervisor of the business sector, implements policy and puts a forced force on the policy. This policy regulates the pattern of interactions that occur between customers and banks. When this interaction is created, where both parties determine themselves to submit to

¹⁰ D. M. Tobing, *Klausula Baku: Paradoks dalam Penegakan Hukum Perlindungan Konsumen* (Jakarta: Gramedia Pustaka Utama, 2019), 46.

and obey the rules in the relationship between the two parties and automatically submit to the government policy product as a regulator, then the relationship created is a legal relationship between the parties namely the bank and the customer itself.

The nature of the bank's legal relationship with customers in Indonesia applies civil law regulated in the Indonesian Civil Code, especially the Third Book on Loans. As for Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 concerning Banking, and all decisions issued by Bank Indonesia and the Financial Services Authority. From this provision, people always refer to him to find answers to banking problems, especially in the primary relationship between the bank and its customers.¹¹

I sifted through in the Banking Law, and no provisions are expressly governing the legal relationship between the bank and its customers. However, from several provisions, it can be concluded that the relationship between the bank and its customers is governed by an agreement (the Indonesian Civil Code). This can be concluded from Article 1, number 5 of the banking law. Deposits are funds entrusted by the public to banks based on safekeeping agreements and in the form of demand deposits, deposits, savings, and or other similar forms.

Given the customer's weak position, it must be protected by law. One of the characteristics and objectives of the law is to protect the community. Universally, based on various research findings and opinions of experts, it turns out consumers, in general, are in a weaker position in relation to employers, both economically, education level, as well as ability or competitiveness or bargaining power. The position of these consumers, both those who join an organization, let alone individuals, is not balanced compared to the position of the entrepreneur. Therefore, to balance this position requires the protection of consumers in general.

In the Netherlands, standard agreements are included in the new Civil Code. There it is stated that regulations must determine business sectors that may apply standard agreements, and the agreement can only be determined, amended, or revoked after receiving the Minister of Justice's approval. Then the stipulation, amendment, or revocation will only obtain legal force after obtaining the King / Queen's approval, as stated in the state news. Other provisions state that this standard agreement (standard) can also be cancelled if the producer/distributor of the product (seller) or the creditor knows or should know that the consumer will not accept the agreement if he knows the contents.

Unlike the Indonesian banking sector, although in order to maintain the level of customer confidence in the bank, there is no single regulation that

¹¹ P. A. Korah. "Kedudukan Nasabah dalam Perjanjian Baku yang Dilakukan oleh Bank", *Lex Privatum* 1, No.1, (2013): 5–11.

specifically regulates customer protection. However, because in general, customers are also called consumers of banking services, the rights and obligations of consumers are regulated in Law Number 8 of 1999 concerning Consumer Protection (UUPK), which functions as an umbrella act. This means the UUPK is an umbrella that integrates and strengthens law enforcement in the field of protection.

Arrangements regarding standard clauses in the UUPK, namely Business actors offering goods and/or services intended for trading, are prohibited from making or including standard clauses on each document and/or agreement:¹²

- a. States the transfer of responsibility of business actors;
- b. Stating that the business actor has the right to refuse to return the goods purchased by consumers;
- c. Stating that the business actor has the right to refuse the return of money paid for goods and/or services purchased by consumers;
- d. States power of attorney from the consumer to the business actor, directly or indirectly, to carry out all unilateral actions relating to the goods purchased by consumers in instalments;
- e. Regulates proof of loss of use of goods or use of services purchased by consumers;
- f. Giving the right to businesses to reduce the benefits of services or reduce the assets of consumers to be the object of buying and selling services;
- g. Stating the subscriber's submission to regulations in the form of new, additional, advanced and / or continued changes made unilaterally by the business actor in the period the consumer utilizes the services he bought;
- h. They are stating that consumers give power to business actors for the imposition of mortgage rights, liens, or collateral rights.

In addition, business actors are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosures are difficult to understand, Each standard clause stipulated by a business actor in a document or agreement that meets the provisions referred to in paragraphs (1) and paragraph (2) it is declared null and void by law, and Business actors must adjust standard clauses that are in conflict with this law.

The role of the Consumer Protection Act in the provisions contained in article 18 referred to is very closely related and often occurs in credit/financing agreements provided by banks is the provisions in paragraph (1) letter (g), namely that the bank declares consumers subject to regulations in the form of new, additional, advanced and/or continued amendments made unilaterally by the business actor in the time the consumer utilizes the services he bought. The scope of consumer protection can be divided into 2 (two) aspects, namely:

- a. Protection against the possibility of goods delivered to consumers does not match what has been agreed upon.

¹² Article 18 Section (1) Law Number 8 of 1999 concerning Consumer Protection.

b. Protection against the imposition of conditions is unfair to consumers.

The desire to be used in consumer protection is to create a sense of security for consumers in meeting the needs of life; it is evident that all consumer protection norms in the consumer protection law have criminal sanctions.¹³

With the regulation of consumer protection, especially on regulations relating to standard clauses, it is more or less conscious to the public that they, as parties to the agreement, have rights that (should be) equal to other parties in the standard agreement. If scrutinized, the Indonesian Civil Code clearly limits the use of standard agreements, which explicitly in Article 1320 *juncto* 1338 The Indonesian Civil Code wants the creditor and debtor to be in a balanced position by the application of the principle of freedom of contract. This principle makes the customer more straightforward, but in fact, because of this standard agreement arises because of the conditions that require, and then often this is ignored by the customer (the debtor).

It is vital that the parties who sign the contract can draw up their written draft of the agreement in whatever language they feel best expresses their mutual intention at the time of the contract and that, if a dispute occurs, the court will enforce the parties' prose according to the joint intention. "This contract freedom allows the private sector to manage their transactions in almost any way they wish".¹⁴

Every agreement, especially the credit agreement between the bank and the customer, must apply the principles in the agreement. In relation to The Indonesian Financial Services Authority or called *Otoritas Jasa Keuangan* (OJK) Circular Letter, banks are required to apply the principle of balance in the credit agreement. The principle of balance is a principle that requires both parties to fulfil and carry out the agreed agreement. The creditor has the power to demand achievements and, if necessary, can demand the repayment of the achievements through the debtor's wealth. Still, the creditor also has the burden to carry out the agreement in good faith.

Principles in good faith are abstract ideas and difficult to formulate, so they are increasingly defined through court proceedings. It is because legal principles are basic norms that are general, so they should not be considered as concrete legal norms but must be seen as a general basis or instructions for applicable law. It means that the formation of law must be oriented to legal principles.¹⁵

¹³ P. Effendi, "Kedudukan Para Pihak dalam Perjanjian Satandar Perbankan Ditinjau dari Kitab Undang-Undang Hukum Tentang Perlindungan Konsumen", *Jurnal Pro Hukum* 4, No. 2, (2015): 87–92.

¹⁴ A. A. Schwartz, "A 'standard clause analysis' of the frustration doctrine and the material adverse change clause", *UCLA Law Review* 57, No. 3, (2010): 789–839.

¹⁵ E. N. Butarbutar, "Implementation The Principle Of In Good Faith In The Standart Contract: *Proceeding - Kuala Lumpur International Business, Economics, and Law Conference* 7, No. 4, (2015): 128–136. <https://doi.org/10.1017/CBO9781107415324.004>.

Here it can be seen that the position of an influential creditor is balanced with the obligation to pay attention to good faith so that the position of the creditor and debtor becomes balanced. The dominant bank position is compared to the position of the customers of small business actors, so good faith is very much needed in implementing credit agreements by banks. It aims to avoid things that can lead to injustice. Good faith, as Article 1338 paragraph 3 of the Indonesian Civil Code, an agreement must be based on good faith, which means that the implementation of an agreement must be based on the norms of decency or something that is felt in accordance with what is appropriate in society.

The debate about whether or not an agreement arises from a standardized contract to bind or act as the law of the contracting parties has become a long-standing problem of the problems that have arisen in countries that have first encountered the problem of using contract patterns these standards, as a reaction or attempt by the legal community to seek a measure of justice, especially for users of goods and services (consumers) who are more likely to be placed in a weak position.¹⁶ This shows that there is a need for strict laws regarding the prohibition of unfair standard clauses that are often used by business actors to suppress these consumers, the principle of freedom of contract, and the consequences of binding legal agreements for the parties (*pacta sunt servanda*).

The different positions between the bank and the debtor customer that is where the bank has a stronger bargaining position when compared to the debtor customer, cause an imbalance in the making of a bank credit agreement. It is due to the bank credit agreement made in standard form (standard) by the bank so that the contents of the standard credit agreement are more beneficial to the bank while the customer can only accept it. The bank can enter clauses that benefit it but disadvantage the debtor customer, such as an exoneration clause that frees the bank as a creditor and its obligations. The existence of banking mediation institutions is a form of protection for consumers.¹⁷

2. The Indonesian Financial Services Authority Oversight Function Related to Standard Clauses in the Banking Credit Agreement in Terms of the Principle of Proportionality

Quoted from Gatot Supramono quoted by Ahmad Jahri, the position of the bank and its customers is equal in the credit agreement, but given the economic and social standpoint of the bank is higher than the customer

¹⁶ R. M. Panggabean, "Keabsahan Perjanjian Dengan Klausul Baku", *Jurnal Hukum Ius Quia Iustum* 17, No. 4, (2016): 651–667. <https://doi.org/10.20885/iustum.vol17.iss4.art8>.

¹⁷ Mohammad Wisno Hamin, "Perlindungan Hukum bagi Nasabah (Debitur) Bank sebagai Konsumen Pengguna Jasa Bank Terhadap Risiko dalam Perjanjian Kredit Bank", *Lex Crimen*, 4, No.1, (2017): 115–122.

because the bank has facilities that are used by the customer.¹⁸ The application of the principle of balance in a credit agreement is spelt out in the formulation of the rights and obligations of the parties, as a decisive indicator of the translation appears in the balanced position between the rights and obligations of each party in the credit agreement. The balance of the parties will only be realized if the parties are in the same strong position, but the bank as the dominant party, while the customers of small businesses as a weak party the balance is difficult to materialize.

Seeing the characteristics of the Standard Agreement can be likened to an adhesion contract which has the definition of a standard agreement form that has been prepared by one of the parties only in the agreement to be signed by another party who is in a weaker position, in this case, is the consumer who does not have many choices to determine fill in the agreement. An adhesion contract is also called take it or leave it.¹⁹

Adhesion contracts tend to eliminate the balance of positions between the parties. That is because one of the parties has a weakness in bargaining position, ignorance, and a low level of concern so that the party in a weak position is willing to follow what is stipulated in the standard agreement and is controlled by standard agreement documents that apply as law after being signed by the parties.²⁰ Some experts argue that the unbalanced bargaining position violates the principle of proportionality.

In a bank credit agreement, the application of the principle of proportionality in the interests of the debtor and creditor is the recognition of the parties in the banking credit agreement providing equal opportunities in the balance of rights and interests of the parties. Therefore, the application of the principle of proportionality must provide an equal position with debtors and creditors in bank credit agreements using the principle of freedom of contract. There are no equal opportunities in the balance of rights and party venues, ultimately uneven placement.²¹

One of The OJK roles in sector finance is the regulation and supervision of business activities in the banking sector. The authority of OJK in Article 7 of Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law) is to make arrangements and supervise banks. Article 7 of the OJK Law also determines the authority of the OJK in terms of making arrangements and

¹⁸ A. Jahri, "Perlindungan Nasabah Debitur Terhadap Perjanjian Baku Yang Mengandung Klausula Eksonerasi Pada Bank Umum Di Bandar Lampung", *Fiat Justisia* 10, No.1, (2017):125–148.<https://doi.org/10.25041/fiatjustisia.v10no1.651>.

¹⁹ Black Henry Campbell, *Black's Law Dictionary Centennial Sixth Edition* (St. Paul, Minn: West Publishing co, 1990).

²⁰ Ramadhan Chesa, Saksonoadimas R, "Proportionality Principle on Online Lending Contract in Indonesia", *Notaire2*, No. 1, (2019): 19-31. doi: 0.20473/ntr.v2i1.12986.

²¹ Galang Prayogo, Faisal Arif, "Application of Proportionality Principles on Creditor and Debtor Interests in Banking Credit Agreement", *European Research Studies Journal* 20, No. 3, (2018): 123-131. <https://doi.org/10.35808/ersj/1048>.

conducting supervision regarding bank health. Strong regulation and supervision of bank prudential aspects, including risk management; bank governance; the principle of getting to know customers and anti-money laundering; and prevention of financing terrorism and banking crime; and conducting bank checks.²² Therefore OJK as a banking regulator and supervisor should intervene in making credit agreements, where credit agreements made by banks must be known and approved by OJK and determine specific clauses that must be contained or prohibited in a credit agreement.

One agreement that uses standard agreements in the banking world is a credit agreement. In preparing credit agreements with customers, banks must fulfil the principles of balance, fairness, and fairness in making agreements with consumers, as stipulated in the 2014 OJK Circular Letter (SEOJK) on Standard Agreements. In the OJK Circular, no specific explanation regarding the application of the principles can be found.²³

The OJK Circular only prohibits the loading of exoneration clauses in the Standard Agreement by Financial Services Business Actors. The clauses in the standard agreement are prohibited from containing exoneration/exclusion clauses, which are contents that increase the rights and/or reduce the obligations of Financial Service Business Actors, or reduce the rights and/or increase the obligations of the consumer. And Misuse of the condition, which is a condition in the Standard Agreement which has an indication of abuse of the situation. Examples of this condition are, for example, utilizing an urgent Consumer condition due to certain conditions or in an emergency and intentionally or unintentionally for Financial Service Business Actors not to explain the benefits, costs, and risks of the products and/or services offered.²⁴

When designing, formulating, stipulating, credit agreements in the standard form, the bank is obliged to base on the provisions concerning the prohibition of containing a clause stating the transfer of responsibility; granting power of attorney from the customer to the bank, either directly or indirectly, to carry out all unilateral actions on goods pledged by the customer, unless such unilateral actions are based on statutory regulations; declare that the customer is subject to new, additional, advanced and/or amendments made unilaterally by the bank in the period the customer utilizes bank credit; states that the customer gives a power of attorney to the bank for the imposition of

²² M I. Putra, B.Nasution, & R. Siregar, "Peranan Otoritas Jasa Keuangan dalam Melakukan Pengaturan dan Pengawasan Terhadap Bank", *Transparency, Jurnal Hukum Ekonomi* 2, No. 1, (2013):1–9.

²³ E. Mulyati, "Asas Keseimbangan Pada Perjanjian Kredit Perbankan Dengan Nasabah Pelaku Usaha Kecil", *Jurnal Bina Mulia Hukum* 1, No. 1, (2017): 36–42.<https://doi.org/10.23920/jbmh.v1n1.4>.

²⁴ Financial Services Authority Circular Letter No.13 / SEOJK.07 / 2014 concerning Standard Agreement.

mortgage, liens, or collateral rights for the loan agreement utilized by the customer in instalments.

The format of the credit agreement as a standard agreement stipulated in the OJK Circular Letter concerning the standard agreement is that the credit agreement containing rights, obligations, and requirements that are legally binding on customers, must use letters, letters, symbols, diagrams, signs, terms, readable phrases, and/or simple sentences in Indonesian that are easily understood by customers. Banks are required to provide explanations that have not been understood by customers, both in writing in the credit agreement or verbally before signing the credit agreement, if the customer finds unclear.²⁵

The credit agreement must contain the following statement: "This agreement has been adjusted to the provisions of the legislation including the provisions of the Financial Services Authority", meaning that every credit agreement made by the bank has been repaired and renewed and adjusted to the provisions in issue the OJK by applying the principles of balance, fairness, and fairness. Banks that violate the provisions of the OJK Regulation are subject to administrative sanctions, including but not limited to: Written warning; Fines are obligations to pay a certain amount of money; Limitation of business activities; Suspension of business; and Revocation of license for business activities.

C. Conclusion

Weak customer position in a standard agreement with the bank, making the customer is not in a bargaining position or a good bargaining position. Customers, who do not know the contents of the previous agreement made unilaterally by the bank because they are in a state of force or urgency, only have two unfavourable choices namely, take it or leave it. Article 1320 *juncto* Article 1338 The Indonesian Civil Code is the basis that can be used by customers in the practice of standard agreements implemented by banks. The pattern of interactions that occur between customers and banks raises the rights and obligations of the parties. The customer can also refer to Law Number 8 of 1999 concerning Consumer Protection as the Umbrella act so that there is no transfer of liability by a stronger party.

To create a balance of rights and obligations of the parties, in this case, banks and customers of small business actors as debtors, credit agreements need to contain the principles of balance, fairness, and fairness, which are guidelines and become guidelines in regulating and forming credit agreements. It will be made so that eventually, it will become a valid agreement for the parties, the implementation, or fulfilment of which can be imposed. Bank in designing, formulating, and stipulating credit agreements,

²⁵ E.Mulyati, *Loc.Cit.*

especially with small business actors, must base them on the provisions stipulated in OJK Circular Number 13 / SEOJK.07 / 2014 concerning the Standard Agreement. Credit agreements are prohibited from containing exoneration/exemption clauses that state the transfer of bank responsibilities or obligations to debtor customers, as well as expressing power of attorney from debtor customers to the bank, either directly or indirectly and are prohibited from containing clauses that indicate abuse of circumstances. Fill in the credit agreement between the bank and the small business actor using Indonesian language and simple sentences and adjust it to the type of credit given, given the characteristics of the small business actor. The application of the principle of balance of the parties in the agreement fulfils and implements the credit agreement that has been agreed in good faith, whereas in applying the principle of fairness and fairness, the credit agreement is forbidden to contain a clause which states that the debtor customers are subject to new, additional, advanced and/or changes made unilaterally by the bank.

To realize the balance of the credit agreement made by the bank, it is suggested that it must be known and approved by the OJK. Banks should provide sufficient time for customers to read and understand credit agreements before signing. The contents of the credit agreement between the bank and the customer need not be complicated, using Indonesian and straight forward sentences and adjusting the type of credit provided.

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