

IMPLEMENTATION OF CONSUMER PROTECTION FOR ENFORCEMENT OF STANDARD AGREEMENTS IN LAW PERSPECTIVE ON CONSUMER PROTECTION

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ABSTRACT

Consumers as financing customers by the Banking begin with a financing agreement based on a financing agreement, the was problem with the Standard agreement against consumer financing by the Banking causes customers to pay their debt obligations as regulated in Law Number 8 of 1999 concerning Consumer Protection. There the purpose of the research was to examine the mechanism for enforcing standard agreements in the perspective of the Law on Consumer Protection. This is the research method used by the author is normative juridical research as this research which refers to the legal norms contained in the applicable laws and regulations. The was an researches approaching used is Analytical Approach, Conceptual Approach, Statute Approach and Case Approach. These an results show that three categories apply because of the emergence of standard agreements, namely: shall firstly the application of standard agreements that apply to consumers by banks. Law Number 10 of 1998 concerning banking article 1 paragraph 1. Second, Legal protection will for Consumers who receive financing due to the nature of the implementation of financing by Banks as stipulated in 1 paragraph 11 of Law number 10 of 1999 which led to the emergence of Articles of application of standard agreements by Banks in accordance with what is stipulated in paragraph c of article 5 of Law number 10 of 1999 that the consumer's obligation is to pay according to the agreed exchange rate. And thirdly, all matters relating to financing by Banks to consumers/customers of Banks in Indonesia are under legal protection, which appears an agreement based on the Financing provided by banks in Law No. 10 of 1998 in Article 1 paragraph 12.

Keyword:

Consumer protection, Enforcement, Standard Agreement

INTRODUCTION

The laws has always been a guide that can be used by anyone regardless of social status, (Samsul,2013) meaning that the law applies equally, even since the deregulation in the economic field, and the economic development of many people in Indonesia have become consumers to very rapid digital modernization. The existence of the law is legalized and made in order to support the needs of consumers themselves, therefore every development that occurs in it also creates new disputes between consumers and business actors, the provisions of the Standard Agreement apply Even though the standard agreement contains an open system and as a freedom of contract, on the contrary the actors limit the freedom of contract itself, sometimes reality and no freedom arises after various rules are regulated, but must remain in accordance with the norms, and / or whether there are legal norms derived from orders or prohibitions that contain standard agreements with opposite principles or apply in accordance with the rule of law? applicable. (Prasetyowati 2017)

However, in reality, there are still many disputes between business actors and consumers. According to Pramono (2006) in standard agreements (standard) the opposing party only needs to be presented and asked for approval from the other party. Opponents do not have the freedom to bargain. If he agrees, it means that he accepts the entire contents of the contract and if he does not agree, it means that he does not accept the entire contents of the contract even though in the Consumer Protection Law, business actors are required to have good intentions in carrying out their business activities, while for consumers, they are required to have good intentions in making purchases of goods. and or services. This means that in good faith in the agreement, there will be no unilateral losses for consumers who feel that the responsibility (exoner) has been transferred from business actors. With the emergence of the phenomenon of standard agreements being a threat to secretly erode the conditions controlled by one party mentioned above, the author systematically interprets that there is an imbalance between problematic economic development which is experiencing faster development when compared to legal development itself. So that the ineffectiveness of the law continues to this day. Empirically proven by Pradnyani, Puspawati and Sutarna who show that:

“Consumer rights are harmed due to standard agreements made by business actors. Based on the facts in the field, namely the results of interviews with consumers related to standard agreements made by business actors, standard agreements made by business actors are very detrimental to consumer rights, namely the right to be heard of their opinions and complaints on the goods and/or services used and the right to be treated or served correctly and honestly as well as non-discriminatory as regulated in Article 4 letter (a) and (g) of Law Number 8 of 1999 concerning Consumer Protection”. This means that the use of consumer protection legal norms with banking law has not been sufficiently implemented and still creates legal uncertainty where it is constrained to be applied. Laws between business actors and consumers often harm consumers made by business actors.

As regulated in Article 12a paragraph (1) of Law Number 10 of 1998 concerning Banking which reads: "Commercial Banks may purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction. auction from the owner of the collateral in the event that the debtor customer does not fulfill his obligations to the Bank provided that the purchased collateral must be disbursed as soon as possible”.

Based on the regulation in origin 12a paragraph (1) of Law Number 10 of 1998 concerning Banking that if the consumer does not fulfill his obligations to the Bank, the Bank can make a purchase by auction or voluntary delivery (Siregar 2010). This contains exonerations to consumers which are interpreted to incriminate consumers on the standard agreement, when compared with the nominal loan with the actual selling value of the collateral material which is guaranteed and controlled according to the standard agreement of the business actor. However, if it is examined against the rules as stipulated in Law Number 8 of 1999 concerning Consumer Protection, namely: Article 18 paragraph (1) letter (a) Consumers state "Business actors in offering goods and/or services intended for trading are prohibited from making or include standard clauses on each consumer and/or agreement if there is a transfer of responsibility for business actors”.

Paragraph (1) letter (g), namely that "Banks declare that consumers are subject to regulations in the form of new, additional, continued and/or advanced changes made unilaterally by business actors while consumers are using the services they have purchased”.

The fact is that the need for law along with economic developments always raises new business disputes. So the formation of legal rules is not always balanced to regulate the hustle and bustle of problems faced by business actors and consumers, therefore, if an event has occurred, then according to the sound of the rules there must be consequences. This means that every event, there must be the emergence of findings of the rule of law, and the imposition of sanctions based on applicable law.

Thesis by Dede Agus (2018) with the title Consumer Protection for the Use of Standard Agreements in Law Number 8 of 1999 concerning Consumer Protection with the aim of discussing consumer protection on the use of standard contracts in Law No. 8 of 1999 on Consumer Protection, with the results of his research showing that the position of the standard contract is recognized and regulated in the Consumer Protection Law, that is, the standard contract is legally valid in the sense that it has binding on both parties if the inclusion and use of standard clauses are not contradictory or prohibited by Article 18. Law no. 8 of 1999.

Based on the several studies mentioned above, it is still not sufficient to explain the research problems that the authors examine (Mertokusumo. 1999). Therefore, the focus of the study is to examine the mechanism for enforcing standard agreements in the perspective of the Law on Consumer Protection. So that the problems studied will be devoted to consumer protection for the application of standard agreements that generally occur without unilateral approval of a standard contract in a loan agreement so that it is increasingly interesting for the author to be studied, thus the author formulates a research question How are legal protection efforts for bank service users against the application of the agreement standard in the perspective of the Law on Consumer Protection?.

METHOD

The research method used by the author is normative juridical research as this research which refers to the legal norms contained in the applicable laws and regulations. (Ibrahim 2007). The research approach used is the Analytical Approach, Conceptual Approach, statute approach and Case Approach, the analytical approach as the meaning of the term legal material used by the author, provides a point of view in analyzing events, reviewing legal regulations, building legal arguments that are strengthened by grammatical legal interpretations and systematic interpretation as the order of language that is the reference for the author to identify the principal and legal basis that is connected in the unity of this legal rule.

DISCUSSION

According to Harjono (2008) that: "Legal protection is protection by using legal means or protection provided by law to then be directed to the protection of certain interests, namely by making the interests that need to be protected into a legal right".

In line with Hadjon's opinion, he said that: "Legal protection is the protection of the dignity and worth as well as the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. "

Based on the expert opinion above, that in terms of legal protection, it provides protection for the rights of a person against something that results in the non-fulfillment of these rights. Like a debtor customer or someone who receives a credit facility by a bank who is unable to fulfill the agreement, this is closely related to a person's right to be under legal protection and the right to a sense of security.

The term "agreement" contains the meaning of the legal relationship of wealth or property law which gives the right to one party to obtain an achievement and at the same time obliges the other party to fulfill the achievement.

According to the KBBI the word "agreement" is a "written agreement" made by two parties, each of which promises to comply with what is stated in the agreement. In Article 1320 of the Civil Code, the terms of agreement and the terms of competence are referred to as subjective conditions, while the conditions for a certain matter and the conditions for a lawful cause are called objective conditions. Furthermore, Article 1233 of the Civil Code states that every engagement is born either by agreement or by law. Therefore, it can be interpreted that an agreement is a legal relationship between two or more people (parties) in the field/field of assets that gives birth to obligations on one of the parties in the legal relationship.

The concept of law is very much needed when studied in the science of law, the concept of law is basically the raw material of knowledge about a certain term, according to Wijayanti (2004) that: Each term has its meaning and definition defined as sharp and clear as possible which is formulated in a definition and used consistently, in terms of Juridical concept is defined as a constructive and systematic concept that is used to understand a rule or system of legal rules.

To sharpen the explanation of eating, it is necessary and put forward the concepts of legal protection for users of bank services used in this study.

a. Standard agreement / standard clause

In Law Number 10 of 1998 concerning Banking, everything related to banks, including institutions, business activities as well as methods and processes in carrying out their business activities, or business entities that collect funds from the public in the form of savings and distribute them to the public in the form of credit. and or other forms in order to improve the standard of living of the people at large.

In Law No. 10 of 1998 concerning banking article 1 paragraph 1 that credit as "everything related to banks, including institutions, business activities, and the way in the process in carrying out its business activities. Meanwhile, the provision of money or equivalent claims is based on an agreement or loan agreement between the bank and another party which requires the borrower to repay the debt after a certain period of time with interest.

As regulated in Book III of the Civil Code (article 1320), the emergence of formal agreements (formale contracten) and real agreements (reile contracten), the emergence of standard agreements (standard), as well as the intervention (interference) of the authorities in the agreement. It is considered a fair application and can be carried out by Bank business actors.

Besides that, the rules for consumer protection are also to protect the interests of business actors because it should be realized that the presence of standard agreements which contain standard clauses is already a demand of the business world, especially in carrying out the work efficiency of business actors.

b. Consumer protection

In Law No. 8 of 1999 concerning consumer protection, contains several definitions including article 1 paragraph 2 concerning the definition of a consumer is every person who uses goods or services available in the community, both for the benefit of himself, his family, other people, and other living beings and not for trading.

Consumers are customers who are the party financed by the bank, the customer (debtor consumer) as the party using the bank's services, financing by the bank has completed the agreement with conditions and is in the nature of financing achievement by the bank. Article 1 paragraph 11 of Law 10/1999 explains the existence of a consumer dispute settlement agency, namely a body tasked with handling and resolving disputes between business actors and consumers. Meanwhile, according to paragraph c Article 5 of Law 10/1999 that the obligation of consumers is to pay according to the agreed exchange rate. In line with paragraph 4 of Article 29 of Law 10/1998 that for the benefit of customers,

banks are required to provide information regarding the possibility of risk of loss in connection with customer transactions conducted through the bank. Therefore, financing by banks to borrowers even though based on sharia principles contains risks, meaning that the risk of bank financing will cause losses to the bank, thus banks must pay attention to credit principles based on sound sharia principles in the sense that to reduce risk it is necessary to look at the agreement factor and convince on the ability and ability of the debtor customer to pay off his obligations in accordance with the agreement.

c. Banks Financing

In Law Number 10 of 1998 concerning Banking, the definition of banking is everything related to banks, including institutions, business activities and methods and processes in carrying out their business activities, while the definition of a bank is a business entity that collects funds from the public in the form of savings and loans. distribute it to the community in the form of contracts and or other forms in order to improve the standard of living of the people at large.

Financing provided by banks in Law No. 10 of 1998 in Article 1 paragraph 12 states that financing based on sharia principles is the provision of money or equivalent claims based on an agreement or agreement between the bank and other parties that require the party being financed to return the money or claim. after a certain period of time with compensation or profit sharing. This means that the provision of financing to parties financed by the bank after fulfilling the approval and agreement with the borrower's agreement to return the money with a billing system to the borrower being financed.

CONCLUSION

1. Standard agreements that apply to consumers by banks As regulated in Book III of the Civil Code (article 1320), consumers are limited in standard agreements by banks based on their obligation to pay off their debts, giving rise to legal certainty as regulated in Law Number 10 of 1998 concerning banking, article 1 verse 1
2. Legal protection for Consumers who receive financing due to following the nature of the achievement of financing by the Bank as regulated in Article 1 paragraph 11 of Law number 10 of 1999 which causes the emergence of standard agreements by Banks in accordance with what is stipulated in paragraph c of Article 5 of the Law 10 of 1999 that the consumer's obligation is to pay according to the agreed exchange rate.
3. All matters relating to financing by Banks to consumers/customers of Banks in Indonesia under legal protection that appear in agreements based on Financing provided by banks in Law no. 10 of 1998 in article 1 paragraph 12

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