

Legal Protection for Debtors in Standard Contracts Related to the Application of the "Cross Default" Clause in Credit

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Abstract— The background of this research is the issue of the cross-default agreement between bank and customers. The clauses in the Bank Credit Agreement are very varied, one of which is: the "event of default" clause is a clause that gives the bank the right to unilaterally terminate credit for events determined by the bank and at the same time collect the remaining credit principal: the "event of default" elements contained in the cross default clause, such as the debtor receiving credit from several lending institutions separately in order to obtain the full amount of credit needs. This means that there are several bilateral credit agreements between the debtor and each of the crediting institutions. By law, each credit agreement is not related to each other except if in each credit agreement a cross default clause is included. The method used in this study is a normative legal research method/descriptive analytical approach. The legal strength of the cross-default agreement is weak because it is made on the basis of an imbalance of legal subjects and is indicated as having no good intentions. There is indeed no coercion, which means there is good faith, but the delivery of standard contracts with standard clauses and exoneration clauses without detailed explanation of the legal consequences is a form of denial of good faith.

Keywords: Bank credit agreement, customer, clause, financial services authority

I. INTRODUCTION

The position of the bank and its customers is equal in the credit agreement, but in terms of economic and social position the bank is higher than the customer because the bank has facilities that are used by the customer.[1] Along with the progress and development of the banking world, various types of credit agreements have emerged, one of which is the standard contract.

Bank credit agreements, generally in the form of standard contracts, with the use of standard contract, the bank will obtain efficiency in spending costs, labor and time. In connection with the mass and collective nature of the standard contract "vera Bolger" called it as "take it or leave it contract", if the debtor agrees to one of the conditions, then the debtor may only accept or not accept it at all, the possibility of making changes is completely absent.[2] Standardization of credit agreements for entrepreneurs is a way to achieve economic goals efficiently, practically, and quickly, but for consumers it is an unprofitable choice to be only faced with one choice of accepting or rejecting. A standard contract is a

manifestation of the freedom of the individual entrepreneur to declare his will in running the company, each individual is free to struggle to achieve his economic goals even though it might be detrimental to the other party.[3]

Current conditions, that the bank's position is always stronger in the relationship between banks as creditors and customers as debtors. This is because at the time of the contract, the prospective debtor was in dire need of credit assistance from the bank, so in general the prospective debtor was not demanding because they were worried that the credit would be canceled by the bank. This causes the bargaining positions of banks to be very strong. The unequal position of the parties is what is used by the bank to make clauses that burden the debtor. The debtor will be burdened with a number of obligations that constitute the bank's rights that must be fulfilled, by making more agreements in the standard form which includes a cross default clause which can also be categorized as an exoneration clause (*exoneratie clause*, *exemption clause*).

The clauses in the Bank Credit Agreement are very varied, one of which is: the "event of default" clause is a clause that gives the bank the right to unilaterally terminate credit for events determined by the bank and at the same time collect the remaining credit principal: the "event of default" elements contained in the cross default clause, such as the debtor receiving credit from several lending institutions separately in order to obtain the full amount of credit needs. This means that there are several bilateral credit agreements between the debtor and each of the crediting institutions. By law, each credit agreement is not related to each other except if in each credit agreement a cross default clause is included.

The inclusion of the events of default clause is one of the clauses that are very important for protecting the interests of banks. Such is the importance of the clause for the bank that if it is not included in the credit agreement, the implementation of the cancellation of the agreement can only occur based on a court or judge's decision through a long litigation process, then the bank will be very reluctant to be willing to grant that credit.[3]

The application of standard clauses has been regulated by Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as CPL). Article 1 number 10 states:

Standard clauses are every rule or condition and requirement that have been prepared and determined unilaterally by a business actor as outlined in a document and/or agreement that is binding and must be fulfilled by consumers. The prohibition of including the exoneration clause in the standard contract can be found in Article 18 of the CPL. The standard clause contains the standard conditions as well as the rules for the parties bound in it and has been prepared in advance for use by one party without negotiating with the other party.

The purpose of prohibiting the inclusion of standard clauses in accordance with Article 18 of the CPL is to place consumers in a position equal to business actors based on the principle of freedom of contract. In the banking sector, the Financial Services Authority (FSA) issues the FSA Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. FSA prohibits banks from enforcing standard contract that burden customers and banks are required to fulfill balance, justice and fairness in making agreements with consumers. To implement the FSA Regulation, FSA has issued a Circular to all Directors/Management of Financial Services Actors to regulate the provisions regarding implementation guidelines to adjust clauses in the Standard Contract as regulated in Article 21 and Article 22 of FSA Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.

A standard contract is a forced agreement, because consumers to obtain the goods or services needed only have two choices, namely to accept or reject the standard contract (take it or leave it). Although the CPL has set a ban on the inclusion of standard clauses in each document and/or agreement concerning the transfer of business actors' responsibilities, likewise in the banking sector the FSA Regulation also prohibits, but in reality, still often found the inclusion of a standard clause that contains an exoneration clause in a bank credit agreement.

Based on this, we need a legal protection for parties whose bargaining position are weak, so as not to fall into the compulsion of accepting agreements made by those whose bargaining positions are more dominant. Consumers need to get legal protection that can provide legal certainty to all consumer needs and maintain or defend their rights if harmed by the behavior of business actors. Legal protection relates to how the law provides justice, namely regulating rights to legal subjects, in addition it also relates to how the law provides justice to legal subjects whose rights are violated.

II. METHOD

The method used in this study is a normative legal research method/descriptive analytical approach. Descriptive analytical means describing and depicting something that is the object of research, critically through qualitative analysis. Because what is intended to be studied is within the scope of jurisprudence, the normative approach includes: legal principles,

synchronization of laws and regulations, including efforts to find legal *in concreto*. [4]

In this study, the researcher focused on several cases concerning legal protection of debtors in standard contracts related to the application of the "cross default" clause in credit agreements.

In a normative juridical study, the use of the statute approach is a sure thing. It is said for sure, because logically, normative legal research is based on research conducted on existing legal materials. Although for example the research was conducted because it saw a legal vacuum, but the legal vacuum can be known, because there are legal norms that require further regulation in positive law. [5]

III. RESULTS AND DISCUSSION

The customer is very instrumental in the development of a bank, therefore as a business entity that relies on customers' trust, the bank must protect its customers, because protected customers will become loyal and continue to use banking services for all financial transaction activities. The existence of legal protection for customers in the banking sector is important, because credit agreements are made in a standard form that is not possible to negotiate between the customer and the bank. All customers are forced to sign the credit agreement because of the need for funds sourced from the credit. Based on the argument that the efficiency of the agreement that should have been an agreement was changed to an agreement made by a party that has a strong bargaining position, in this case the bank. Debtor customers have no other choice, except to accept or reject the agreement offered by the bank (take it or leave it). The inclusion of clauses in a credit agreement with a bank should be a partnership effort, because both banks as creditors and customers as debtors both need each other in an effort to develop their respective businesses. [6]

Such a strict clause is based on the bank's attitude to implement the principle of prudence in granting credit. In providing protection for debtor customers, it is necessary to realize the regulation on credit so that it can be used as a guide in granting credit. On the other hand, a court which is a third party in resolving disputes between banks and debtor customers can assess whether the efforts made by both parties are in accordance with the agreement and do not violate the provisions of the law. [6] Badruzaman argues that in the relationship between banks and customers, placing customers in a weak position that needed to be protected through government intervention in the substance of bank credit agreements. [7] Miru stated that the balance between consumers and businesses can be achieved by increasing consumer protection because producers have a stronger position when compared to consumers. [8]

Consumer protection can be done through protection by law. The purpose of consumer protection can be seen from various aspects such as aspects of subjects, objects, and transactions

that occur between consumers and business actors and other parties.[9] Related to the application of the standard contract that contains an exoneration clause in the credit agreement, there are several objections to the standard contract including: (1) The contents and conditions have been prepared by one of the parties, (2) Not knowing the contents and terms of the standard contract and even if they know they do not know the extent of their legal consequences, (3) One party is economically stronger, (4) There is an element of "being forced" to sign the contract. The reason for the creation of a standard contract is for the sake of efficiency.[10]

Business actors who violate the provisions of Article 18 of CPL are threatened with a maximum prison sentence of five years or a maximum fine of IDR 2,000,000,000.00 (two billion Indonesian Rupiahs). This provision is regulated in Article 62 paragraph 1 which states: Business actors who violate the provisions referred to in Article 18 are sentenced to a maximum of 5 (five) years of imprisonment or a maximum fine of IDR 2,000,000,000.00 (two billion Indonesian Rupiahs). On the contrary, of course business actors cannot be blamed or prosecuted if the business actor uses a standard clause in accordance with the provisions of Article 18 of the UUPK. It seems that legislators intend to create equality and balance between business actors and consumers in relation to the inclusion of standard clauses, in accordance with the principle of freedom of contract.

Protection for customers as consumers is not only through CPL, but more specifically in banking regulations, including: *First*: FSA Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. Article 21 and Article 22. The regulation on the use of conditions in making standard contracts is one of the government's efforts to protect consumers against business actors in the field of financial services. The country of law not only maintains order but also achieves the welfare of the people as a form of justice.

In an effort to create a welfare state, especially consumers from positions that were previously subordinate to become balanced, the government through FSA Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector is able to place the position of consumers of financial services to be balanced with financial service actors, but in its implementation the bank still applies this clause. FSA's active supervision on banks that are still implementing this needs to be continued and the imposition of sanctions as stipulated in the FSA Regulation must be enforced, namely as contained in Article 53 paragraph (1) which reads: "Financial Services Business Actors and/or parties violating the provisions in this Financial Services Authority Regulation is subject to administrative sanctions, including but not limited to:

- a. Written warning;
- b. Fines, namely the obligation to pay a certain amount of money;

- c. Limitation of business activities;
- d. Suspension of business; and
- e. Revocation of business license."

To impose sanctions on Financial Services Providers (FSP) related to the implementation of standard contracts that contain exoneration clauses, FSA should make a standard contract format that can be applied by banks, so that in the imposition of sanctions there is also no debate. Related to making the standard contract format it can be made by the FSA as the authority, if the standard contract format has been made by the FSA, the Bank will make its credit agreement according to the standard format so that the bank only fills in non-standardized articles, such as the parties, credit ceiling, the period of time, types of collateral and others that cannot be standardized, while the contents of the standardized agreements have referred to the standard contract made by the FSA, if this is applied the author believes that this regulation will be more effective, and if the bank does not apply this, it may be subject to sanctions as stated above.

The FSA also regulates the banks' obligation to conduct education as referred to in Article 14 which reads:

1. Financial Services Providers must carry out education in order to increase financial literacy to consumers and/or the public.
2. The education implementation plan as referred to in paragraph (1) must be prepared in an annual program and reported to the Financial Services Authority.
3. Further provisions regarding the education implementation plan report as referred to in paragraph (2) are regulated in the FSA Circular Letter

Second: FSA Regulation Number: 1/POJK.07/2014 concerning Alternative Institution for Dispute Resolution in the Financial Services sector. This FSA Regulation regulates alternative institution for dispute resolution of consumers in the financial services sector. Alternative institution for dispute resolution is an institution that conducts dispute resolution outside the court. Article 11 paragraph (1) states that: "if an alternative institution for dispute resolution has not yet been established, the consumer can submit a request for dispute resolution facilitation to the FSA". Facilitation procedures are referred to in Article 40 as follows:

1. Consumers can submit complaints that indicate disputes between Financial Services Business Actors with consumers to the Financial Services Authority.
2. Consumers and/or the public can submit complaints that indicate violations of the provisions of the legislation in the financial services sector to the Financial Services Authority.
3. Complaints as referred to in paragraph (1) and paragraph (2) shall be submitted to the Financial Services Authority, in this case the member of the Board of Commissioners who is in charge of consumer education and protection.

Based on the statutory provisions above, banks must be more careful and must immediately adjust the contents of their credit agreements so as not to conflict with the CPL and FSA Regulation regarding Consumer Protection in the Financial Services Sector. The matters that must be considered by the bank to eliminate or at least minimize the occurrence of losses for customers because they have to apply credit agreements in the form of standard contracts, including:

1. Give sufficient warning to debtor customers about the existence and entry into force of important clauses in the contract.
2. Notifications are made before or at the time of signing the credit agreement.
3. Formulated in clear words and sentences.
4. Provide sufficient opportunities for debtor customers to understand the contents of the contract.

Good cooperation between banks and customers, especially in the case of standard credit agreements, is expected to further optimize legal protection for customers, so as to minimize prolonged dispute in the future.

IV. CONCLUSIONS

The legal strength of the cross-default agreement is weak because it is made on the basis of an imbalance of legal subjects and is indicated as having no good intentions. From a technical point of view the procedure of contract drafting there is indeed no coercion, which means there is good faith, but the delivery of standard contracts with standard clauses and exoneration clauses without detailed explanation of the legal consequences is a form of denial of good faith. In

addition, in terms of substantive matters, some content material that prioritizes the rights of the company by ignoring the rights of business partners and consumers born without giving the opportunity to make changes to the contract is also a matter of lack of good faith. Fair contract shows that the agreement is conducted impartially, does not side with the interpretation of one party, only side with the truth, fulfills propriety, and there is no arbitrariness. Thus, fair contract is a contract that treats parties according to the proportion of rights and obligations. The treatment is not carried out in a one-sided manner, but everyone is treated equally according to their rights and obligations.

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