

Analysis of Legal Protection for Debtors Regarding The Position of Using Standard Contracts in Relation To The Principle of Freedom of Contract on Bank Credit Agreement

Sidik Miswanto¹⁾ & Siti Ummu Adillah²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, E-mail: miswantosidqi@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung, Semarang, E-mail: ummu@unissula.ac.id

Abstract. *This research is about "Analysis of Legal Protection for Debtors Regarding the Position of Using Standard Contracts in Relation to the Principle of Freedom of Contract" aimsto know and analyze legal protection for debtors against the position of using standard contracts in relation to the principle of freedom of contract in bank credit agreements, obstacles and how to overcome them. This study uses a sociological legal approach. Data collection is carried out through observation, interviews, literature studies and documentation. Data analysis is carried out descriptively qualitatively. The results of the study indicate that legal protection for debtors against the use of standard contracts in relation to the principle of freedom of contract in bank credit agreements includes preventive protection in the form of legal protection from the legal aspects of the agreement as stipulated in Article 1338 paragraph (1) of the Civil Code and Article 1320 of the Civil Code, aspects of consumer protection in Article 18 Paragraph (1) Letter g and letter h of the UUPK, which regulates restrictions on the use of standard clauses in credit agreements, as well as repressive protection in the form of dispute resolution options. Standard agreements have violated the principle of freedom of contract because when there is an imbalance regarding the burden imposed on the parties in the form of transferring obligations to the weaker party, the weaker party no longer has freedom, even though the principle of freedom of contract provides a guarantee of freedom to a person in matters relating to the agreement. However, in fact, if a standard agreement or contract does not violate the principles contained in an agreement or contract, then it is not a problem because in essence a standard agreement or contract is also a normal agreement or contract, the only difference is that a standard agreement or contract is provided by a party in a stronger position and cannot be changed even if the other party in the agreement wants a change or feels disadvantaged. The obstacles faced in the use of standard contracts in bank credit agreements are the prohibition on the use of standard clauses that*

have the potential to harm debtors or customers and the problems in the implementation of the credit agreement, namely problematic credit to bad credit. The way to overcome this is that the creation of a bank credit agreement that uses a standard contract must be carried out in accordance with the provisions of laws and regulations and strict credit analysis.

Keywords: Contract; Freedom; Protection; Standard.

1. Introduction

Agreements become instruments to accommodate or bring together different interests between 2 (two) or more parties. Through agreements, these differences are accommodated and then framed with legal instruments so that they bind the parties. In business contracts, questions regarding the side of certainty and justice will be achieved if the differences between the parties are accommodated through a contractual relationship mechanism that works proportionally.¹

The principle of freedom of contract, which is the soul and breath of a contract or agreement, implicitly provides guidance that in contracting the parties are assumed to have an equal position. Thus, it is expected that a fair and balanced agreement or contract will emerge for the parties. In a business agreement, questions regarding the side of certainty and justice will be achieved if the differences between the parties are accommodated through a contractual relationship mechanism that works proportionally.²

The principle of freedom of contract is a principle in a contract or agreement, implicitly providing guidance that in making a contract or agreement the parties are assumed to have an equal position. Thus it is expected that a fair and balanced contract will emerge for the parties. In a business contract, questions regarding the side of certainty and justice will be achieved if the differences between the parties are accommodated through a contractual relationship mechanism that works proportionally.³

The principle of freedom of contract contained in Article 1338 BW does provide freedom for parties to make any type and content of contracts, but this freedom is not without limitations at all. It is assumed that unlimited freedom of contract will tend to lead to abuse of circumstances and detrimental actions for a party who is in a weak bargaining position. Therefore, the higher bargaining position often dictates its will to the party opposing the promise.⁴

¹Agus Yudha Hernoko, 2013, Contract Law: The Principle of Proportionality in Commercial Contracts, Kencana Prenada Media Group, Jakarta, p. 1.

²Ibid, p. 2

³Ibid,

⁴Ibid

In fact, in practice, there are still many standard agreement or contract models that tend to be considered biased, unbalanced, and unfair. The injustice in question is caused by the existence of a strong party that has a high bargaining position compared to the other party as a weak party who is forced to agree to the agreement because of its position which depends on the strong party.

A standard agreement is an agreement with standard content and structure. Standard agreements are often used by companies with the aim of making agreements quick and practical.⁵In standard agreements, the take it or leave it principle is known, meaning that if the consumer or debtor agrees to the terms or clauses of the agreement made by the producer or creditor, then the agreement is valid, conversely, if the debtor or consumer does not agree, then the agreement does not occur.⁶

The use of standard agreements is limited and there are a number of prohibitions on the inclusion of standard clauses as stated in Article 18 of Law No. 8 of 1999 concerning Consumer Protection. The restrictions on the use of standard agreements are intended to realize the principle of proportionality.⁷

One of the uses of standard agreements in the practice of legal relations in society is a bank credit agreement. The emergence of a legal relationship based on the intended bank credit agreement, without the debtor realizing it, his rights are often ignored by the bank. In general, debtors can only accept what the bank wants. Before the enactment of Law No. 8 of 1999 concerning Consumer Protection, there were often standard clauses in a bank credit agreement by including unilateral conditions where this clause states that the bank is allowed at any time to change (increase/decrease) the interest rate on the loan (credit) received by the debtor, without prior notification or approval from the debtor or in other words there is an agreement that the debtor agrees to all unilateral decisions taken by the bank to change the credit interest rate, which has been received by the debtor during the period/term of the credit agreement.⁸

The agreements made by the stronger party are unbalanced or one-sided, burdening the weaker party. According to legal science, this condition is called *misbruik van omstandigheden* (abuse of opportunity or abuse of circumstances).⁹

Abuse of circumstances concerns circumstances that play a role in the occurrence of a contract, namely enjoying another person's circumstances does not cause the contents or intent of the contract to be impermissible, but causes the will of the

⁵Gatot Supramono, 2013, Debt Agreements, Kencana Prenada Media Group, Jakarta, p. 19.

⁶Zuhro Puspitasari, "Legal Analysis of Legal Protection for Banking Credit Customers from Abuse of Conditions in Standard Agreements (Legal Review of Law Number 8 of 1999 Concerning Consumer Protection)", Scientific Article, Brawijaya University, Malang.

⁷Ibid.

⁸Ibid.

⁹Ibid.

one being abused to be unfree.¹⁰This abuse of circumstances is particularly relevant to consumer transaction disputes. The economic and psychological advantages of producers or creditors are often so dominant that they influence consumers or debtors to decide their will rationally.¹¹

Abuse of circumstances arises because of an imbalance between the parties in an agreement which results in one party, namely the weaker party, not being free to express his will in an agreement, especially a standard agreement.¹²

Efforts to ensure legal protection and legal certainty and avoid conflicts of interest as a result of the use of banking services, especially in the field of banking credit services that carry out economic functions through actions that are suspected of being an abuse of circumstances and can result in losses for consumers can previously be found in Law No. 7 of 1992 concerning Banking and Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, Law No. 23 of 1999 concerning Bank Indonesia in conjunction with Law No. 3 of 2004 concerning Bank Indonesia, the Civil Code, the Commercial Code and other laws relating to banking activities.

Legal protection in banking activities, in addition to several laws and regulations mentioned above, the issue of consumer protection in general and the resolution of disputes that occur between consumers and business actors, the Government of the Republic of Indonesia has manifested in Law No. 8 of 1999 concerning Consumer Protection and several laws and regulations whose material protects consumers, such as Law No. 21 of 2011 concerning the Financial Services Authority (OJK).

Based on Law No. 8 of 1999 concerning Consumer Protection (UUPK), it has been regulated that a ban on the inclusion of standard clauses in every document and/or agreement if it contains the transfer of business actor responsibility (Article 18), but in reality it is still often found. With the reason of paying attention to the prevailing customs in the banking environment and the need for banking in the community, but the public's lack of knowledge regarding the existence of standard clauses contained in every banking transaction, the community simply accepts the standard contract presented to them.

Bank credit agreements between the bank as creditor and the customer as debtor always use standard agreements. This means that the contents of the bank credit agreement have been determined by the bank which must be approved by the debtor if the bank credit agreement is to be executed. If the debtor does not agree to the standard agreement that has been determined by the bank, the bank credit agreement cannot be executed. This is because the bank will not be willing to make

¹⁰Muhammad Arifin, "Misuse as a Factor Limiting Freedom of Contract", Journal of Legal Studies, Vol 14, No. 2 September 2011, p 276.

¹¹Cit, p. 5.

¹²Ibid.

changes to the bank credit agreement as desired by the debtor. This shows that the debtor's position is weak in front of the bank's position.¹³

The emergence of a legal relationship based on a credit agreement between the bank as a creditor and the customer as a debtor, causes the bank to ignore the rights of the debtor. In general, the debtor can only accept the wishes of the bank. For example, a standard clause in a productive credit agreement that is considered burdensome is the bank's authority to unilaterally stop the credit at any time, then the provisions of the credit interest rates can be reviewed and re-determined unilaterally and without prior notification.¹⁴

When viewed from the provisions of the clause above, it is clearly very burdensome for the debtor. Clauses like this are often viewed by judges as clauses that burden the debtor and have the potential not to reflect the norms of propriety, this is stated in the Supreme Court decision Number: 3956 K/Pdt/2000.¹⁵ Clauses on the determination of interest at a later date are considered to be burdensome to the debtor. Clauses that burden the debtor and will harm the debtor in the future can indicate the existence of abuse of circumstances due to economic superiority.¹⁶

Abuse of circumstances concerns circumstances that play a role in the occurrence of a contract, namely, taking advantage of another person's circumstances does not cause the contents or intent of the contract to be impermissible, but causes the will that is abused to be unfree. The economic superiority of the creditor is often so dominant that it influences the debtor to decide the will rationally. Based on the conditions in question, there needs to be legal protection for debtors in bank credit agreements that usually use standard agreements that position the debtor in a weak position.¹⁷

Based on the description above, it appears that there is a gap in the implementation of the principle of freedom of contract in bank credit agreements. The gap in question arises due to abuse of circumstances in making the agreement. Ideally, according to the theory of the principle of freedom of contract, the parties to a bank credit agreement, namely the bank as creditor and the customer as debtor, are free to enter into a bank credit agreement. This means that the parties are free to determine the contents of the bank credit agreement. However, in practice the principle of freedom of contract is not implemented in bank credit agreements, namely the application of standard agreements in bank credit agreements. This shows that the standard agreement is a deviation from

¹³ Muhammad Arifin, Op., cit.

¹⁴Ibid.

¹⁵Amin Imanuel Bureni, 2013, The Principle of Balance in Bank Credit Agreements (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 3956 K/Pdt/2000, Thesis, Faculty of Law, University of Indonesia, Jakarta, p. 15

¹⁶Ibid.

¹⁷Ibid.

the principle of freedom of contract in bank credit agreements.¹⁸

This shows a gap or disparity in the application of laws and regulations related to agreements, especially those related to the principle of freedom of contract. Such gaps can arise for several reasons, for example, reasons of practicality from the creditor who wants to make an agreement that is not long-winded and takes a long time. In addition, reasons for the security of funds to be credited by the debtor make the bank apply requirements to guarantee the return of credit funds or avoid bad debts by the debtor. These reasons are considered by the bank to prepare an agreement with standard clauses.¹⁹

The legal implications when an agreement contains a standard clause, namely that it results in the agreement being void, are the same as the law in the case of a standard agreement violating the provisions. Article 18 of Law No. 8 of 1999 concerning Consumer Protection (UUPK) is regarding standard clauses that are prohibited from being included in a deed or agreement. One example of a case of the application of standard clauses in a bank credit agreement is the application of standard clauses in a Bank credit agreement.²⁰

The existence of a standard agreement in a bank credit agreement causes the debtor to be in a weak position. The weak position of the debtor is due to his/her condition which requires a certain amount of funds through a credit agreement that will be provided by the bank. If the debtor does not agree to the standard agreement provided by the bank, the bank credit agreement cannot be implemented, which means that the debtor will not receive the funds needed. Such a situation causes the debtor to be forced to agree to the standard agreement provided by the bank. For this reason, legal protection is needed for debtors in bank credit agreements. This research discusses: Analysis of Legal Protection for Debtors Regarding the Position of Using Standard Contracts in Relation to the Principle of Freedom of Contract in Bank Credit Agreements with legal protection for debtors regarding the position of using standard contracts in relation to the principle of freedom of contract in bank credit agreements, obstacles and how to overcome them.

2. Research Methods

This study uses a sociological legal approach. The sociological approach method looks at how law works in society or how law interacts with society. Data collection is done through observation, interviews, literature studies and documentation. Data analysis is done descriptively qualitatively because the data obtained is not a number or will be calculated systematically. According to Soerjono Soekanto, qualitative data analysis is a method of analysis that produces descriptive analysis

¹⁸Ibid.

¹⁹Ibid.

²⁰Ibid.

data, namely what is stated by respondents in writing or verbally and also real behavior, which is researched and studied as something whole.²¹

3. Results and Discussion

3.1. Legal Protection for Debtors Regarding the Position of Using Standard Contracts in Relation to the Principle of Freedom of Contract in Bank Credit Agreements

The use of standard contracts in credit agreements has become a common practice, namely a ready-made contract containing clauses or articles relating to the provisions in the implementation of the credit agreement in question.²²The implementation of a standard contract in a bank credit agreement for the bank as a business actor as an effort to realize economic goals, efficiency, practicality, and speed. These economic goals are related to aspects of security and return of credit funds in addition to the profits obtained from bank interest of course. The reasons for efficiency, practicality and speed contain the intention that the use of a standard contract in a bank credit agreement will be able to save time and be practical because it does not require the determination of the contents of the credit agreement together with the customer or debtor.²³

This is understandable because determining the contents of the agreement according to the agreement of the parties is not easy. There will be things that do not agree on the provisions of the credit implementation. Moreover, if the contents of the agreement are considered detrimental to one of the parties, there will certainly be a long discussion until the contents of the agreement are agreed upon that are beneficial to the parties or at least the contents of the agreement are balanced for each party.

Based on an interview with Mr. Aditya Panjalu, the use of standard contracts in bank credit agreements between the bank as a creditor or credit provider and the debtor as a customer is a policy of the head office. Branch offices or units only implement policies determined by the head office.²⁴ This means that determining the contents of the agreement is the policy of the head office which is then implemented by the implementing offices, namely unit offices or branch offices.

In practice, the implementation of a bank credit agreement is by including the articles of the credit agreement with a concept that has been prepared by the bank. Furthermore, the bank will provide the credit agreement to the debtor to be approved or not. The debtor or customer is not given the opportunity to participate in determining the contents of the articles in the bank credit

²¹Soerjono Soekanto, 1984, Introduction to Legal Research, University of Indonesia, Jakarta, p. 154

²²Ahmad Jahri, "Protection of Debtor Customers Against Standard Agreements Containing Exoneration Clauses in General Banks in Bandar Lampung", Fiat Justisia Journal of Law Volume 10 Issue 2, April-June 2016. Pg. 128

²³Ibid.

²⁴Interview with Mr. Aditya Panjalu, Marketing of BRI Bank Lampung Unit, July 11, 2024.

agreement in question. In such a position, the debtor or customer is in an unfavorable choice, namely only faced with one choice, accepting or rejecting the contents of the articles in the credit agreement that has been determined. The standard agreement in the credit agreement is a form of freedom of the business actor in this case the bank by stating the will in carrying out its business activities, each individual is free to fight to realize the economic goals that are carried out even though there is a possibility that it will cause losses to other parties.²⁵

In bank credit applications, the debtor's position in the weak credit agreement is caused by the debtor's need for a certain amount of funds from the bank as a creditor or credit provider. Often the debtor has no other choice but to accept the contents of the standard agreement that has been determined by the bank if he wants his credit application to be approved.²⁶The weak position of the debtor is increasingly apparent when the debtor needs urgent funds or in an emergency for a need such as medical expenses or school fees that cannot be postponed. This leaves no other choice for the debtor to agree to the contents of the credit agreement if he wants to get the desired amount of funds.

This is as conveyed by Budiman, a customer or debtor in a BRI Limpung bank credit who stated that in submitting a credit application, one of the processes that must be carried out is signing a credit agreement. The credit agreement in question is a bank credit agreement in the form of a standard agreement. This means that the contents of the agreement have been determined by the bank. The debtor only has two choices, namely agreeing to the contents of the credit agreement in question or rejecting it. If they refuse, the credit agreement cannot be implemented. Budiman has no other choice but to agree to the contents of the credit agreement determined by the bank. This is because Budiman feels he needs a loan from the bank for a purpose, namely his child's college fees.²⁷

According to Budiman, he agreed to the clause in the credit agreement in addition to the need for credit funds that had no other choice, he also believed in the bank that this was indeed the procedure that must be followed by debtors if they wanted to get a certain amount of funds through bank credit. Such procedures are common and generally applied by financial institutions, both banks and non-banks, in providing credit to debtors. So this is a custom in society that must be followed. Based on such considerations, Budiman also did not read in detail the contents of the signed credit agreement.²⁸

Bank credit agreements using standard contracts cause debtors to be in a weak position. Such conditions cause customers to be in a disadvantaged position, this is because in general customers do not have the opportunity to study and do not have the opportunity to discuss or express choices regarding the articles in the

²⁵Ahmad Jahri, Op. cit.

²⁶Interview with Mr. Aditya Panjalu, Marketing of BRI Bank Limpung Unit, July 11, 2024.

²⁷Interview with Budiman, Debtor of Limpung Unit Bank, July 14, 2024.

²⁸Interview with Budiman, Debtor of Limpung Unit Bank, July 14, 2024.

credit agreement that have been determined in the balance agreement by the party making the standard contract in this case the bank. In such a position, the debtor or customer seems to have a choice whether or not to agree to the credit agreement submitted by the bank, when in a position to get an agreement.²⁹

Standard agreements that have been determined by the bank in the credit agreement often only provide benefits to one party, especially providing benefits to the party that has provided the standard contract, namely the bank, whereas ideally an agreement or contract should be open and all parties who enter into the contract in question know the detailed contents of the agreement agreed to by all parties. It is not only the control held by one party that causes the party providing the standard contract in question to provide benefits.³⁰ Such conditions are certainly not in line with the principle of freedom of contract in agreements where the parties, according to the principle of freedom of contract, are free to make agreements. Freedom to make an agreement means being free to determine the contents of the agreement or what the agreement is about. The parties are free to determine the contents of the agreement. This means that each party can express their opinion on the contents of the agreement to be agreed.

Based on such conditions, legal protection is needed, especially for debtors in bank credit agreements that use standard contracts. Legal protection for the implementation of bank credit agreements that use standard contracts has actually been provided by existing laws and regulations. The legal protection in question can be described as follows:³¹

a. Preventive legal protection

Preventive legal protection is provided to anticipate disputes in bank credit agreements that use standard contracts. This is because bank credit agreements are prone to disputes, especially in the event of bad credit where the debtor has difficulty in fulfilling his obligations to pay off the credit that has been received.³²

There are several legal instruments in the form of laws and regulations that provide preventive legal protection in bank credit agreements using standard contracts. The legal protection in question includes the following:

1) Legal protection from the legal aspects of agreements.

Protection under contract law is given to any party who makes an agreement by placing an agreement as a law for anyone who makes it. This is as stated in Article 1338 paragraph (1) of the Civil Code which states that: "all agreements made legally apply as laws for those who make them". The meaning of the provision in question is that an agreement made legally has consequences to be obeyed by

²⁹Interview with Budiman, Debtor of Limpung Unit Bank, July 14, 2024.

³⁰Ibid

³¹From Various Sources. Processed Secondary Data

³²Ibid.

the parties who make it. This is because the contents of the agreement have legal force like a law for the parties who make and agree to it.

Based on the provisions referred to, the bank credit agreement that is made is valid as law for the parties who make it. The bank credit agreement contains clauses that regulate various provisions regarding credit that apply to both parties, namely the debtor and the bank as the creditor. This means that all parties must carry out the agreements that have been made so that no party can act arbitrarily against other parties other than what is specified in the credit agreement.

If the debtor has agreed to the contents of the credit agreement, it means that the debtor is considered to agree and understand all the contents of the agreement. Although in practice, debtors often do not study and or read carefully and thoroughly the contents of the credit agreement. This means that the debtor must be prepared for all possibilities that occur related to the contents of the credit agreement in question. Such a situation cannot make the creditor act arbitrarily towards the debtor.

The existence of an agreement between the parties regarding the contents of the agreement means that the parties must comply with the agreement they have made as if they were complying with the law, meaning that if one of the parties violates the agreement in question, then that party is considered to have violated the law which will of course be subject to legal sanctions. Therefore, the result of this is that the agreement cannot be withdrawn without the consent of the other party involved in the agreement. This is stated in Article 1338 paragraph (2) of the Civil Code, as follows: "an agreement cannot be withdrawn except by agreement of both parties, or for reasons which are stated by law to be sufficient for that."

Bank credit agreements in order to provide legal protection for the parties, the agreement in question must be agreed to by both parties and the agreement in question must meet the requirements for the validity of the agreement as referred to in Article 1320 of the Civil Code. Based on the provisions of Article 1338 of the Civil Code and Article 1320 of the Civil Code, that basically the agreement has been born since the time an agreement was reached between the parties who entered into the agreement. In other words, the agreement is born when an agreement has been reached by the parties regarding the main matters that are the object of the agreement and there is no need for certain formalities other than those stipulated by law.³³In a bank credit agreement, an agreement regarding the contents of the agreement occurs when the parties sign the bank credit agreement in question. The signing of the bank credit agreement creates an agreement for the parties to carry out the contents of the agreement. Furthermore, for the validity of the agreement as stipulated in Article 1320 of the

³³Ibid.

Civil Code, an agreement must meet the following requirements:³⁴Those who bind themselves are competent to make an agreement, a certain thing and a lawful cause

2) Legal protection from the legal aspect of consumer protection

In a bank credit agreement, it is basically a legal relationship between the bank as a business actor and the customer or debtor as a consumer. The bank as a business actor in this case carries out efforts to collect public funds through savings and efforts to distribute public funds through loans or credit. While the customer or debtor as a consumer is a user of goods and/or services provided by the bank as a business actor. In a credit agreement, the bank is the party providing credit or creditor while the customer is the party receiving the credit or debtor as well as the consumer.

Consumer protection can be done through legal protection. The purpose of consumer protection can be viewed from various aspects such as the subject, object, and transaction aspects that occur between consumers and business actors and other parties.³⁵Regarding the application of standard agreements containing exoneration clauses in credit agreements, there are several objections to standard agreements, including: (1) The contents and conditions have been prepared by one of the parties, (2) Not knowing the contents and conditions of the standard agreement and even if they do know, they do not know the scope of the legal consequences, (3) One of the parties is economically stronger, (4) There is an element of "force" in signing the agreement. The reason for creating a standard agreement is for efficiency.³⁶So basically, standard agreements in transactional relationships between business actors and consumers tend to burden and even harm consumers. This is related to the position of consumers as the weak party in consumer transactions, especially with the existence of standard agreements.

Legal protection for debtors (customers) in the implementation of banking credit agreements as reviewed from the Consumer Protection Law lies in the obligation for banks to comply with the procedures for making standard clauses, both in form and substance, in making credit/financing agreements to protect the interests of debtors (customers).³⁷This means that the Consumer Protection Law provides protection for consumers in standard agreements in the form of an obligation for business actors to obey and comply with the provisions for making

³⁴ Intan Pelangi, Principle of Good Faith in Standard Clauses of Bank Credit Agreements, CV. Laduny Alifatama (Laduny Publisher), Lampung, p. 16.

³⁵ Wahyu Sasongko, 2007, Basic Provisions of Consumer Protection Law. University of Lampung, Bandar Lampung, p. 29.

³⁶ Budi Untung, 2005. Banking Credit in Indonesia. Andi, Yogyakarta, p. 38

³⁷ Ibid.

standard agreements as determined by the Consumer Protection Law in making standard agreements.

According to Article 1338 of the Civil Code, in an agreement the parties must have equal standing, this is because in every agreement that is legally made and applies to those who wish it, they have previously agreed to fulfill their respective rights and obligations as regulated by Law No. 8 of 1999 concerning Consumer Protection.³⁸ So in the field of consumer law, the position of business actors and consumers is balanced. This also applies in the case of an agreement between a business actor and a consumer. For that reason, every agreement between a business actor and a consumer must be in accordance with the provisions of Law No. 8 of 1999 concerning Consumer Protection.

Credit agreements made unilaterally by the bank in the form of standard agreements tend to reflect less the principle of balance. The principle of balance or the principle of proportionality is the principle that requires both parties to fulfill and implement the agreement in question. This principle of proportionality is a continuation of the principle of equality. This means that the principle of proportionality requires a balanced position in making credit agreements between the business actors in this case the bank and the consumer as the customer. No party should feel superior to the other party because the agreement requires a balanced position.

The creditor has the power to demand performance and if necessary can demand payment of performance through the debtor's assets, but the creditor also bears the burden of implementing the agreement in good faith. It can be seen here that the strong position of the creditor is balanced by its obligation to pay attention to good faith, so that the position of the creditor and debtor is balanced. Considering this, good faith has an important position in the implementation of the credit agreement. Although in the standard agreement the debtor is in a weak position, but with good faith from the creditor it will be able to provide balance in the implementation of the standard agreement in the bank credit in question.

Legal protection for bank credit customers from abuse of conditions in standard agreements in preventive form in Law No. 8 of 1999 concerning Consumer Protection is contained in Article 18 Paragraph (1) Letters g and h, which regulates restrictions on the use of standard clauses in credit agreements.³⁹ In essence, standard agreements in bank credit for customers are permitted but are limited as determined in the provisions referred to in the Consumer Protection Act.

The regulation is intended to prevent the emergence of problems related to credit agreements. Legal protection for debtors or bank credit customers from abuse of conditions in standard agreements in the form of repressive in Law No. 8 of 1999 concerning Consumer Protection is contained in Article 18 Paragraphs (3 and 4),

³⁸Ibid

³⁹Ibid.

and Article 62 Paragraph (1). Settlement of disputes that arise in this case can be resolved through consumer dispute resolution through litigation which is a dispute resolution through the courts and consumer dispute resolution through non-litigation which is a settlement. This shows that the Consumer Protection Law provides a means of repressive protection in the form of dispute resolution in consumer disputes through dispute resolution in litigation institutions or outside litigation or dispute resolution amicably.

The existence of Law No. 8 of 1999 concerning Consumer Protection has provided legal certainty to provide protection for the rights of debtors or customers who are consumers, through Law No. 8 of 1999 concerning Consumer Protection has provided hope that banks as business actors will not take arbitrary actions that always harm the rights of their customers.⁴⁰This is certainly part of the government's attention in providing protection to consumers in the relationship between consumers and business actors. Including legal protection for debtors in credit agreements that use standard contract banks.

Law No. 8 of 1999 concerning Consumer Protection along with other legal instruments, consumers have equal rights and positions, and customers or banks can take legal action in the form of lawsuits or prosecute if it turns out that their rights have been harmed or violated by business actors. Legal action by filing a civil lawsuit is provided by law for anyone who suffers a loss due to the actions of one of the parties in a consumer transaction.

Banking practices, from a legal perspective, there are 2 types of standard contracts that are commonly used by banks in providing credit, namely 1. Credit agreement with a private deed, namely a credit agreement whose clauses have been made by the bank itself, then submitted to the debtor. The signing of the agreement in question is carried out by the parties themselves, without a notary. 2. Credit agreement with an authentic deed, namely a credit agreement by the bank to the debtor which is made with a notarial deed. However, the clauses included in the notarial deed are still guided by the clauses of the credit agreement made by the bank.⁴¹

Legal protection for customers as debtors in the banking sector is very important because credit agreements are made using standard agreements with no possibility of negotiation between the debtor and the bank as the creditor. Debtors in a state of duress must sign a credit agreement due to the need for funds sourced from the credit in question. However, banks often take advantage of such conditions to put pressure on debtors by making standard agreements

⁴⁰Ibid.

⁴¹Cit.

that contain clauses that burden the debtor, which are usually called exoneration clauses, which are clearly prohibited by law.

In relation to the use of the exoneration clause when such a matter causes a loss to the debtor in the credit agreement, the bank is charged with a responsibility in the form of providing compensation, regarding such a matter based on the provisions of Article 19 of Law No. 8 of 1999 concerning Consumer Protection which provides regulations regarding the responsibilities of business actors. The provisions in question essentially provide regulations regarding the provision of compensation to consumers who are harmed by the business activities of business actors when consumers use goods and/or services from business actors.

Compensation and/or replacement in the event that the goods and/or services received do not comply with the agreement or are not as they should be. Such rights are in line with the responsibilities of business actors as stated in Article 19 paragraph (1) where business actors have the responsibility to provide compensation for damage, pollution and/or consumer losses due to consuming goods and/or services produced or traded.

Furthermore, Law No. 8 of 1999 concerning Consumer Protection also provides consumer protection through regulations on consumer rights. These rights are very useful for customers/consumers to always be careful in carrying out bank credit agreements. Through such efforts, at least consumers can get protection against various possible problems that they will experience.⁴²This means that consumer rights protected by law are at least a legal umbrella for consumers to take various actions when consumers encounter a problem.

Basically, the Law on Consumer Protection does not prohibit business actors from making standard agreements containing standard clauses for each document and/or agreement for business transactions in the trade of goods and/or services, as long as the standard agreement and/or standard clauses in question do not include provisions as prohibited in Article 18 paragraph (1), and do not "take the form" as prohibited in Article 18 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection. As previously mentioned regarding exoneration clauses, namely clauses that contain conditions that limit or even completely eliminate the appropriate responsibilities.⁴³

Business actors who violate the provisions of Article 18 of the Consumer Protection Law are threatened with a maximum prison sentence of five years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). This provision is regulated in Article 62 paragraph 1 which states: Business actors who violate the provisions as referred to in Article 18 are subject to imprisonment for a maximum

⁴²Article 4 of Law Number 8 of 1999 concerning Consumer Protection

⁴³Putra Ilham Mohammad, Berlian Manoppo, Anastasia Emmy Gerungan, "Consumer Protection of Bank Customers or Debtors in Bank Credit Agreements Containing Standard Clauses", *Lex Crimen* Vol. X/No. 8/Jul/2021, p. 60.

of 5 (five) years or a fine of a maximum of Rp. 2,000,000,000.00 (two billion rupiah). On the other hand, of course business actors cannot be blamed or prosecuted if business actors use standard clauses that are in accordance with the provisions of Article 18 of the Consumer Protection Law. It seems that the legislators intended 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 the Consumer Protection Law, but more specifically in banking regulations, including: First: POJK Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector. In Article 21 and Article 22. Regulation of the use of terms in making standard agreements is one of the government's efforts to protect consumers against business actors in the financial services sector. A state of law, not only maintains order but also achieves people's welfare as a form of justice (welfarestate).

b. Repressive legal protection.

Repressive legal protection in credit agreements using standard contracts in the form of credit dispute resolution options between debtors and creditors. The parties are given a choice in resolving credit agreement disputes. The dispute resolution options are stated in the agreement clause which is usually located at the end. The dispute resolution clause states the choice of dispute resolution either through deliberation or litigation. In litigation dispute resolution, it is also stated which court is desired by the parties. The court in question is usually determined according to the place where the credit agreement was made.

Bank credit agreements through the use of standard contracts when viewed from the perspective of the principle of freedom of contract will raise a problem as to whether the bank credit agreement using the standard contract in question is contrary to the principle of freedom of contract or not. Regarding this matter, there are two understandings as to whether the standard agreement in question is a violation of the principle of freedom of contract or not. The first understanding absolutely provides an understanding that a standard agreement is not an agreement, because the position of the entrepreneur in the agreement is as if he were a private law maker. The conditions determined by the entrepreneur in such an agreement are as laws, not agreements. The second understanding tends to express the opinion that a standard agreement can be accepted as an agreement, based on the fiction of the existence of a will and trust that gives rise to the belief that the parties are bound by the agreement. With the assumption that if the

debtor accepts the document of an agreement, it means that he voluntarily agrees to the contents of the agreement.⁴⁴

Based on such characteristics, it is proven that there is no justice for consumers, and their rights will not be protected because there is a coercion in which the standard agreement or contract is made unilaterally by those who have a stronger position than the consumer. Based on the unequal position of the parties, the party with a weak position (consumer) does not really have the freedom to determine what is desired in an agreement, based on this, the party with a stronger position usually takes advantage of it to make clauses that provide benefits to their party and cause the position of the other party in the agreement or contract to be weak.

Based on this, an agreement or contract that is determined by the parties should not be implemented because it is only the party who has a stronger position who makes and determines the terms of the agreement or contract. This is very unfair from the point of view of making an agreement or contract, all parties should be involved in determining the clauses agreed upon by all parties, no one is more dominant or has a stronger position so that the clauses of the agreement or contract are fair for all parties. Fairness in making agreements is in line with the principle of freedom of contract where the parties are in an equal position and are free to determine every content of the agreement,

The application of standard clauses that provide benefits to the party making the agreement or contract or the stronger party is often also called the use of circumstances. The use of justice in question is very inconsistent with the principle of justice as a requirement that must be present in an agreement or contract. A contract must contain justice for all parties so that the responsibilities and rights of the parties are clear and there are no parties who feel they have suffered losses in the agreement or contract in question, instead the contract maker or those who have a stronger position are free to determine the contents of the contract which often eliminates their obligations as parties.

A standard contract which contains standard clauses is a form of agreement which theoretically is still a matter of debate, especially when examined based on the principle of freedom of contract and the terms of the agreement. In a standard agreement or standard contract, freedom and giving of agreement to enter into an agreement or contract are not implemented as freely as if the agreement was made directly, involving the parties to negotiate the agreement clauses. Based on this, various opinions arise regarding the position of standard clauses in contract

⁴⁴Abraham Amda Adam, Karmani, Harmawan Hatta Adam, "Legal Protection of Financial Service Users with Standard Contracts", Bonum Commune Business Law Journal Volume 2 Number 1 February 2019, p. 104.

law.⁴⁵This is very natural because agreements are generally made directly where the parties have the freedom to determine the contents of the agreement.

A standard contract can be invalid or null and void by law if it violates the requirements that have been determined normatively by laws and regulations. Not only by law but also contrary to legal norms in the basis of the formation of contract law. In the context of producer-consumer relations, a standard contract becomes invalid when it violates the applicable provisions as formulated in Law No. 8 of 1999 concerning Consumer Protection Article 18 which is commonly referred to as the Exoneration / Exemption clause.⁴⁶

As a result of the standard contract agreement that is contrary to the law in question, it can be said that the standard agreement or contract has violated the principle of freedom of contract because when there is a bias regarding the burden imposed by the parties in the form of transferring obligations to the weak party, the weak party no longer has freedom, even though the principle of freedom of contract guarantees freedom to a person in matters relating to the agreement. whereas when faced with the principle of good faith, that the formation of a contract must be in good faith as in Article 1338 paragraph 3 every agreement that is made legally is carried out in good faith. By carrying out the act of transferring the main points of responsibility unilaterally to the party that has a weak bargaining position in the agreement, it has reflected an attitude that is contrary to good faith. These explanations prove that the standard agreement or contract from one side has violated the norms and legal rules in the law of agreements, therefore the validity of the agreement or standard contract in such circumstances is questionable and may be null and void by law.⁴⁷

Mariam Darus, an Indonesian legal expert, expressed her opinion regarding standard contracts that standard agreements are contrary to the principle of responsible freedom of contract. In standard agreements, the position of business actors appears to be higher than that of consumers. This can be the cause of opportunities for business actors to abuse their authority. Business actors only regulate their rights and not a few even delegate their obligations to the shoulders of consumers. Based on this, it is necessary to carry out order. Therefore, according to Mariam Darus, this standard agreement does not meet the requirements set out in Article 1320 in conjunction with 1338 of the Civil Code.⁴⁸

Meanwhile, Sutan Remy Sjahdeni has the opinion that in fact the Civil Code itself provides limitations on the principle of freedom of contract. For example, the provision that states that an agreement cannot be withdrawn except by

⁴⁵Ibid, p. 105.

⁴⁶Rayno Dwi Adityo, "Effectiveness of Standard Contracts in Business Mobility (Progressive Law Perspective)", Court, Vol. 1, No. 1, June 2016, p. 119.

⁴⁷Ibid.

⁴⁸Mariam Darus Badruzaman, 1980, Standard Agreement, Its Development in Indonesia. Alumni, Bandung, p. 56.

agreement of both parties or for other reasons stated by law. The Civil Code also states three reasons that can cause the cancellation of an agreement, namely coercion, error, and fraud. These three reasons are intended as limitations on the principle of freedom of contract. Sutan Remy Sjahdeni stated that in order to prevent abuse of the principle of freedom of contract, intervention is needed through law and the courts, because as stated, this standard agreement is take it or leave it so that there is no bargaining in determining the contents of the agreement.⁴⁹So even though the law, in this case the Civil Code, provides the principle of freedom of contract, namely that legal subjects can freely enter into an agreement, the freedom to enter into an agreement is not without limits. Freedom in making agreements is limited by the prohibition on making agreements in which there is coercion, error and fraud.

In everyday life, when making standard contracts, there is very little application of the principle of freedom of contract. In fact, the principle of freedom of contract means that people have the freedom to make agreements according to their respective interests. This freedom includes: 1. freedom of the parties to decide whether to make an agreement or not 2. freedom to choose with whom to make an agreement 3. freedom to determine the form of the agreement 4. freedom to determine the content of the agreement.⁵⁰So these freedoms in making agreements clearly cannot be implemented when making standard agreements. This actually means that a standard agreement with standard clauses is not in line with the principle of freedom of contract.

This freedom is not obtained by the parties if they are faced with a standard agreement or contract that has been provided by one of the parties, one of the parties making the contract will prioritize their own interests without paying attention to the interests of the other party. For those who are not in a strong position regarding a standard agreement or contract, they will only accept or reject the standard agreement or contract. Not allowed to provide input for changes to the contract. This is very clear, which is contrary to the principle of freedom of contract, where standard contracts will not be changed by those in powerful positions just because of input from other parties in the standard agreement or contract. The use of standard agreements or contracts causes the principle of freedom of contract to be lacking or not even realized, for example: 1. freedom of the parties to determine the form of the agreement, because the agreement is always in written form 2. freedom of the parties to determine the content of the agreement, because in a standard agreement it is one-sided, reciprocal, or patterned, the contents of the agreement have been determined in advance by one of the parties, organizations or experts. 3. The freedom of the

⁴⁹Sutan Remy Sjahdeni, 1993, Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia, Indonesian Banker Institute, Jakarta, p. 86.

⁵⁰Retna Gumanti, "The Principle of Freedom of Contract in the Implementation of Standard Contracts Reviewed from the Inclusive Theory in the Development of Just Indonesian Law", Al-Himayah Journal Volume 1 Number 2 October 2017, pp. 222-223

parties to determine the form of the agreement, because the method of making it has been determined by the parties, organizations or experts.⁵¹

In every agreement or contract, the principle of freedom of contract has a very important position because the contract in question can show that the position of the parties is the same, namely that there is no stronger party or higher party and no weaker party or lower party. another. This aims to generalize or equalize human position before the law. However, if freedom of contract is violated by the parties who make a standard agreement or contract, then this cannot be justified because the position of humans is no longer equal before the law. Such conditions will have an impact on parties who have a strong position so they will be arbitrary in making agreements, bearing in mind that the agreement will become law for the parties who make it so it can also be said that those with a strong position will make laws that are beneficial for themselves and will oppress those who weaker position before the law.

Based on this, the essence of equality before the law is the meaning contained in the principle of freedom of contract. That all humans have the same position before the law and therefore have the same position in an agreement. This is something that is important to pay attention to when making an agreement. Moreover, the agreement in question is a standard agreement which is not in line with the principle of freedom of contract.

However, in reality, if a standard agreement or contract does not violate the principles contained in an agreement or contract, then it does not become a problem because in principle a standard agreement or contract is also an agreement or contract as usual, the only difference is that a standard agreement or contract is provided by a party that has a stronger position and cannot be changed even if the other party in the agreement wants a change or feels disadvantaged. So in essence a standard agreement can be implemented as long as it does not cause problems for both parties in it or as long as it is in line with the principles of contract law. Compliance with the principles of the agreement in making this standard contract is what is expected that the standard agreement in question does not cause problems for both parties.

Basically, a standard contract agreement is an agreement that is valid and binding for the parties. However, it must be implemented in good faith. This means that if it is later found that there is a transfer of responsibility or a clause that is burdensome for consumers, then the cancellation of the agreement can be submitted to the court. Although often standard agreements or contracts begin with bad faith from one of the parties because there is an attempt to transfer their responsibility. If it has been proven that there is a transfer of responsibility, then

⁵¹Abraham Amda Adam, Karmani, Harmawan Hatta Adam, Op Cit, p. 107

the intended thing has been fulfilled that the standard agreement or contract in question is not in good faith so that it can be canceled.⁵²

Standard agreements or contracts do not actually only have negative effects, but in fact standard contracts can provide savings in contract making time, so that transactions or something agreed upon by the parties can be carried out quickly. You don't have to wait long to make the agreement desired by the parties, let alone if the parties have difficulty reaching an agreement, so that making the agreement will take even longer. In addition, the stages that will be passed will also be more, starting from the stage of adjusting the wishes of the parties, then at the stage of preparing an agreement or contract that is in accordance with the wishes of the parties, until the agreement is proven by the signing stage. This will still experience the next stage which can be disruptive if one of the parties changes his mind or wants an addendum (renewal) to the agreement or contract, then the process will be even longer and more processes will be passed by the parties concerned. This is because agreements or contracts are often made for business interests, so it takes a fast time to make the contract in question.

Indeed, if viewed from the perspective of time efficiency, standard contracts are very helpful in saving time and making a job or any matter with an agreement or contract very helpful, but for whatever reason it should not throw away the hope of justice in every contract, every contract must be fair to the parties, must have the appropriate proportionality for the parties, these principles cannot be marginalized for any reason.⁵³

The standard agreement is theoretically legally contradictory to the principle of freedom of contract by not fulfilling the provisions of the governing law. However, on the other hand, it is inevitable that there will be developments regarding this matter, where in reality, the needs of society tend to run in the opposite direction to the wishes of the law and have even become a habit that applies in the community and trade traffic, taking into account efficiency factors in terms of cost, energy and time, and others. However, the use of this standard agreement should not be allowed to grow wildly and therefore needs to be regulated, with the main consideration being the aspect of protection for debtors/consumers. In addition to violating the principle of freedom of contract, standard agreements or contracts also do not provide proportionality and justice for the parties, where it is proven that those who have a higher position will freely make contracts that are detrimental to other parties whose position is not stronger. In addition, the

⁵²Ibid, p. 108.

⁵³Ibid, p. 108.

maker of the standard agreement or contract will also reduce or eliminate his responsibility for the contract.⁵⁴

However, according to the author, a standard contract can have legal aspects due to several things, including, as long as the agreement or standard contract does not contain an exoneration clause or does not include an exoneration clause, then if it is associated with Article 18 of Law No. 8 of 1999 concerning Consumer Protection, a standard agreement or standard contract can be executed because it does not violate the provisions outlined by the law in question.⁵⁵

3.2. Obstacles Faced in Using Standard Contracts in Bank Credit Agreements and How to Overcome Them

Obstacles faced in the use of standard contracts in bank credit agreements include legal and non-legal obstacles. Legal obstacles are obstacles in the provisions of laws and regulations related to the use of standard contracts in bank credit agreements. Legal obstacles in the use of standard contracts in bank credit agreements are the prohibition on the use of standard clauses that have the potential to harm debtors or customers. The use of standard contracts in agreements must follow procedures and methods as well as regulations on matters prohibited in the use of standard clauses. The regulations are intended as limits on the use of standard contract agreements as stipulated in Article 18 of Law No. 8 of 1999 concerning Consumer Protection.

Based on the explanation, every agreement between a business actor and a consumer, which includes standard clauses in it, must pay attention to the provisions of Article 18 of Law No. 8 of 1999 concerning Consumer Protection. If a violation occurs, then the consequence of the violation of the article is null and void, unless a separability of provisions or severability clause is included, namely a requirement in the agreement stating that each article of the agreement is an independent article so that if the court cancels one of the terms of the agreement, then the other terms will still be considered valid.

This clause generally states that if one or more provisions are declared void, then the clause that is declared void is considered to have never existed. As long as it is not related to the substance of the void clause and is still possible to be implemented, then the remaining contract is still valid. According to this

⁵⁴Ibid, p. 109

⁵⁵Rayno Dwi Adityo, Op Cit, p. 123.

explanation, in this case, only the clause that is void by law is considered to be in conflict with Article 18 of Law No. 8 of 1999 concerning Consumer Protection.⁵⁶

The inclusion of standard clauses as regulated in Chapter V Article 18 of Law No. 8 of 1999 concerning Consumer Protection is intended to place consumers on an equal footing with business actors based on the principle of freedom of contract.⁵⁷The article in question does not fundamentally create obstacles for business actors when carrying out their economic activities, it only provides limitations in using standard contract agreements that have the potential to cause losses for consumers.⁵⁸

The Civil Code also provides limitations on the use of standard contract agreements, although not explicitly stated. Article 1493 of the Civil Code states that both parties are allowed by special agreement to expand or reduce the obligations stipulated by this Law; they are even allowed to enter into an agreement that the seller will not be required to bear anything.

Article 1494 of the Civil Code also states that even though it has been agreed that the seller will not be responsible for anything, he is still responsible for the consequences of an act carried out by him; any agreement contrary to this is void.⁵⁹

Based on these articles, it can be said that standard contract agreements are permitted by the Civil Code to be used in business activities to obtain goods or services in accordance with the principle of freedom of contract, but in terms of use it is not without limits. Many things must be considered as limitations in the use of standard contract agreements, especially those related to the principle of good faith and the principle of balance. The presence of these articles means that there are restrictions and supervision on the use of the standard contract so as not to harm other parties, especially parties who have a weak position or in this case consumers.⁶⁰

Furthermore, non-legal obstacles are obstacles outside the law or provisions of laws and regulations relating to the practice of implementing credit agreements using standard contracts. Non-legal obstacles in the use of standard contracts in

⁵⁶Harahap, RH "Comparison of Dutch Law with Indonesian Law Related to Contract Law", <http://riswanhanafiah.blogspot.com/2016/perbandinganhukum-belanda-dengan-hukum-indonesia-terkait-denganhukum-perikatan>, accessed 10 July 2024.

⁵⁷Shofie, Y. 2008. Selected Chapters on Consumer Protection Law in Indonesia. PT Citra Aditya Bakti, Bandung, p. 43.

⁵⁸Ibid.

⁵⁹ Article 1494 of the Civil Code

⁶⁰Rayno Dwi Adityo, Op Cit, p. 123.

credit agreements are problems in implementing the credit agreement. These problems are mainly problematic credit to bad credit.

To overcome the obstacles faced in the use of standard contracts in bank credit agreements, the following can be outlined:⁶¹The use of standard contracts in bank credit agreements is basically permitted as long as it does not conflict with applicable laws and regulations. Based on this, in order to overcome legal obstacles in the use of standard contracts in standard credit agreements, the creation of bank credit agreements that use standard contracts must be carried out in accordance with the provisions of laws and regulations.

In addition to making an agreement that meets the requirements for the validity of an agreement as referred to in Article 1320 of the Civil Code. Then regarding the prohibition on the use of standard contracts, standard contracts must include a separability of provisions clause or severability clause, namely a requirement in the agreement that states that each article of the agreement is an independent article so that if the court cancels one of the terms of the agreement, the other terms will still be considered valid.

To overcome non-legal obstacles in the form of problematic credit or bad credit, a strict credit analysis is carried out. This is done as one of the preventive efforts to avoid problematic credit. A strict credit analysis is carried out to ensure the eligibility / ability of customers to pay off their debts. The eligibility or ability of customers to pay off their credit can be seen from various aspects such as the customer's personality aspect, the customer's business activities aspect and the collateral aspect.

Viewed from the aspect of the customer's personality related to the customer's commitment to paying off his debt. Don't let the customer be negligent or intentionally not pay off the credit in the future. Viewed from the aspect of business activities, of course, it is related to the income that will be used to pay off the customer's credit from the business or from the income earned by the customer as a worker or employee.

Facing customers who are negligent in making payments is a common occurrence, for that a bank officer has his own way to deal with it, namely by persuasive two-party talks that are family-like. If the customer's circumstances do not allow for payments, then the business financing can be extended for its repayment due date.

Viewed from the collateral aspect, credit analysis of collateral or credit security is carried out on the value of the collateral compared to the amount of credit applied for. In addition, analysis of credit collateral is carried out on the position of the credit collateral, namely the collateral or credit security is owned by the customer or debtor himself. Credit collateral must also be in a state of not being

⁶¹Interview with Mr. Aditya Panjalu, Marketing of BRI Bank Limpung Unit, July 11, 2024.

in a legal dispute. Credit collateral analysis is very important to ensure that credit collateral can be used to pay off credit when there is a problematic credit or bad credit.

4. Conclusion

Legal protection for debtors regarding the position of using standard contracts in relation to the principle of freedom of contract in bank credit agreements includes preventive protection and repressive protection. Preventive protection is in the form of legal protection from the aspects of contract law and consumer protection law. While repressive legal protection is in the form of a choice of credit dispute resolution between debtors and creditors. Legal protection from the aspect of contract law is given to any party who makes an agreement by placing an agreement as a law for anyone who makes it as in Article 1338 paragraph (1) of the Civil Code. While legal protection from the aspect of consumer protection lies in the existence of an obligation for the bank to comply with the procedures for making standard clauses, both in form and substance, in terms of making credit/financing agreements to protect the interests of debtors (customers). Standard agreements have violated the principle of freedom of contract because when there is an imbalance regarding the burden imposed on the parties in the form of transferring obligations to the weaker party, the weaker party no longer has freedom, even though the principle of freedom of contract provides a guarantee of freedom to a person in matters relating to the agreement. However, in fact, if a standard agreement or contract does not violate the principles contained in an agreement or contract, then it is not a problem because in essence a standard agreement or contract is also an agreement or contract as usual, the only difference is that a standard agreement or contract is provided by a party in a stronger position and cannot be changed even if the other party in the agreement wants a change or feels disadvantaged. Obstacles faced in the use of standard contracts in bank credit agreements are legal obstacles in the form of a prohibition on the use of standard clauses that have the potential to harm debtors or customers. Non-legal obstacles are problems in the implementation of the credit agreement. These problems are mainly problematic credit to bad credit. The way to overcome legal obstacles is that the creation of a bank credit agreement that uses a standard contract must be carried out in accordance with the provisions of laws and regulations. While non-legal obstacles are overcome through strict credit analysis.

5. References

Books:

Agus Yudha Hernoko, 2013, *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*, Kencana Prenada Media Group, Jakarta.

Budi Untung, 2005. *Kredit Perbankan Di Indonesia*. Andi, Yogyakarta

Gatot Supramono, 2013, *Perjanjian Utang-Piutang*, Kencana Prenada Media Group, Jakarta.

Intan Pelangi, *Asas Itikad Baik Pada Klausula Baku Perjanjian Kredit Bank*, CV. Laduny Alifatama (Penerbit Laduny), Lampung

Mariam Darus Badruzaman, 1980, *Perjanjian Baku (Standard), Perkembangannya di Indonesia*. Alumni, Bandung

Shofie, Y. 2008. *Kapita Selekta Hukum Pelindungan Konsumen Di Indonesia*. P.T. Citra Aditya Bakti, Bandung

Soerjono Soekanto, 1984, *Pengantar Penelitian Hukum*, Universitas Indonesia, Jakarta.

Sutan Remy Sjahdeini, 1993, *Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia*, Ctk I, Institut Bankir Indonesia, Jakarta

Wahyu Sasongko, 2007, *Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen*. Universitas Lampung, Bandar Lampung

Legislation:

1945 Constitution

Civil Code

Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking.

Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary.

Law No. 21 of 2011 concerning the Financial Services Authority (OJK)

Journals:

Ahmad Jahri, "Perlindungan Nasabah Debitur Terhadap Perjanjian Baku Yang Mengandung Klausula Eksonerasi Pada Bank Umum Di Bandarlampung", *Fiat Justisia Journal of Law* Volume 10 Issue 2, April-June 2016.

Amin Imanuel Bureni, 2013, *Asas Keseimbangan dalam perjanjian kredit bank (Studi Putusan Mahkamah Agung RI Nomor:3956 K/Pdt/2000*, Tesis Fakultas Hukum Universitas Indonesia, Jakarta.

Muhammad Arifin, "Penyalahgunaan Sebagai Faktor Pembatas Kebebasan Berkontrak", *Jurnal Ilmu Hukum*, Vol 14, No. 2 September 2011.

Putra Ilham Mohammad, Berlian Manoppo, Anastasia Emmy Gerungan, "Perlindungan Konsumen Nasabah Bank Atau Debitur Dalam Perjanjian Kredit Bank Yang Memuat Klausula Baku", *Lex Crimen* Vol. X/No. 8/July/2021,

Rayno Dwi Adityo, "Efektivitas Kontrak Baku Dalam Mobilitas Bisnis (Perspektif Hukum Progresif)", *Mahkamah*, Vol. 1, No. 1, June 2016

Retna Gumanti, "Asas Kebebasan Berkontrak dalam Pelaksanaan Perjanjian Baku (Standart Contract) Ditinjau Dari Teori Inklusif dalam Pembangunan Hukum Indonesia Yang Berkeadilan", *Jurnal Al-Himayah* Volume 1 Nomor 2 October 2017

Zuhro Puspitasari, "Analisis Yuridis Perlindungan Hukum Bagi Nasabah Kredit Perbankan Dari Penyalahgunaan Keadaan Dalam Perjanjian Baku (Tinjauan Yuridis Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen)", *Artikel Ilmiah*, Universitas Brawijaya, Malang.

Website:

Harahap, R. H. "Perbandingan Hukum Belanda dengan Hukum Indonesia Terkait dengan Hukum Perikatan", <http://riswanhanafiah.blogspot.com/2016/perbandinganhukum-belanda-dengan-hukum-indonesia-terkait-denganhukum-perikatan>, accessed on 10 July 2024.