



Legal protection of KSPPS members in the use of the exoneration clause in Central Java

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Abstrak

Perlindungan hukum terhadap anggota Koperasi Simpan Pinjam dan Pembiayaan Syariah (KSPPS) merupakan hal penting untuk melindungi hak-hak anggota koperasi sesuai dengan Undang-Undang Nomor 8 tahun 1999 tentang Perlindungan Konsumen. Dalam pembiayaan, KSPPS seringkali menggunakan perjanjian baku yang mencantumkan klausula eksonerasi untuk efektifitas waktu dan efisiensi, akan tetapi hal ini lebih menguntungkan pihak KSPPS dan merugikan anggota koperasi sebagai konsumen karena tidak mempunyai kesempatan untuk menegosiasikan isi perjanjian dan dengan terpaksa harus menyepakati perjanjian baku tersebut dengan harapan permohonan pembiayaan yang ia ajukan dikabulkan oleh KSPPS. Penelitian ini merupakan penelitian yuridis empiris dengan pendekatan konseptual dan undang-undang. Analisa yang digunakan analisa kualitatif. Penelitian ini dilakukan pada KSPPS Di Jawa Tengah dengan mengambil sampel pada lima Kabupaten/kota berdasarkan wilayah karesidenan. Hasil penelitian ini menunjukkan bahwa perjanjian baku yang memuat klausula eksonerasi masih sering digunakan oleh KSPPS, karenanya perlu dilakukan sosialisasi kepada pengurus koperasi dan anggota koperasi agar meminimalisir penggunaan perjanjian baku yang memuat klausula eksonerasi sehingga hak-hak para pihak dapat terpenuhi dan terhindar dari unsur cacat kehendak yang bertentangan dengan asas-asas dalam perjanjian.

Kata Kunci: KSPPS, klausula eksonerasi dan perlindungan konsumen

Abstract

Legal protection for members of the Cooperative for Savings and Loans and Sharia Financing (KSPPS) is important to protect the rights of cooperative members in accordance with Law Number 8 of 1999 concerning Consumer Protection. In financing, KSPPS often uses standard agreements that include exoneration clauses for time effectiveness and efficiency, however, this is more beneficial for the KSPPS and disadvantages cooperative members as consumers because they do not have the opportunity to negotiate the contents of the agreement and are forced to agree on the standard agreement with the hope KSPPS granted his request for financing. This research is an empirical juridical study with a conceptual and statutory approach. The analysis used qualitative analysis. This research was conducted at KSPPS in

Central Java by taking samples from five districts/cities based on residency areas. The results of this study indicate that the standard agreement containing the exoneration clause is still often used by KSPPS, therefore it is necessary to disseminate information to cooperative managers and cooperative members in order to minimize the use of standard agreements containing exoneration clauses so that the rights of the parties can be fulfilled and avoid elements of defects of will. which is contrary to the principles in the agreement.

Keywords: KSPPS, exoneration clause and consumer protection

Introduction

The Syari'ah Savings and Loans and Financing Cooperatives (in Indonesian called KSPPS) are experiencing rapid growth. Based on data compiled by the Ministry of Cooperatives (Kementerian Koperasi Usaha Kecil dan Menengah), the number of cooperative business units reaches 150,223 business units, of which 1.5% are sharia financing savings and loan cooperatives (KSPPS). It is recorded that the number of KSPPS is 2,253 units with 1.4 million members with the level of the number of businesses carried out reaching Rp. 5.2 trillion¹. KSPPS is a syari'ah microfinance institution that is legally normative in its existence regulated in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 16 /Per/M.KUKM/IX/2015 concerning the Implementation of Business Activities for Savings and Loans and Syari'ah Financing. Based on data from the Ministry of Cooperatives, the number of KSPPS is 2,253 units with a total membership of 1.4 million people with a business volume of Rp 5.2 trillion.

The growth and increase in the number of customers and the turnover of KSPPS cannot be separated from public trust in KSPPS. Therefore, this growth must be accompanied by guarantees of protection and legal certainty as well as guarantees of syariah for all activities that occur in its operational activities. The guarantee of kesyari'ahan must begin with the fulfillment of the syari'ah concepts in each contract that is made. The contract that is used as the basis for conducting legal relations between the KSPPS and its members must reflect the principle of justice as a basis for sharia economic activities. In practice, the emergence of disputes between KSPPS managers and their members is often due to the unclear agreement of the contract and the incompatibility of the contracts used with syari'ah principles.

An exoneration clause is a rule, condition or condition that has been determined unilaterally by a business actor which is then stated in an agreement or contract document. The use of exoneration clauses occurs in the bank and non-bank financial industry, such as Cooperatives for Savings and Loans and Syari'ah Financing (KSPPS). Given the large number of members, the use of an exonation clause in the financing contract is an easy choice to do. However, in the exoneration clause the position of consumers (members) is weak because they do not have a bargaining position on the contents of the agreement that has been put forward by the business actor (cooperative). Whereas in Article 18 which regulates the

¹ <http://infobanknews.com/koperasi-pembiayaan-syariah-terus-berkembang/>

provisions for the inclusion of standard clauses, where "Business actors in offering goods and / or services destined for trade are prohibited from making or including standard clauses on every document and / or agreement.

The emergence of a dispute between a customer and KSPPS BMT CSI Syariah Sejahtera in Cirebon with a customer loss of up to Rp. 2.3 Trillion some time ago was an example of the absence of legal protection for cooperative members due to unclear agreements because customers were only promised a 5% profit share per month and its operation was against sharia. Therefore, in sharia economic activities there must be transparency and clarity in the contract so that each party knows their respective rights and obligations. Besides that, the contract that is made also does not conflict with syaria'ah law and the provisions of the prevailing laws and regulations. Based on this, how is the use of the exonation clause in the KSPPS sharia financing contract in Central Java and the legal protection of KSPPS members in the use of the exonation clause in the sharia financing contract?

Research methods

Research methods are methods of work or techniques used by researchers to find, construct, analyze, and test the truth of legal science which is carried out systematically and consistently. This research is normative-empirical legal research or also known as empirical juridical research. The types of data used in this study are primary data and secondary data. The data collection technique was carried out by conducting research directly through field observations at the KSPPS in Central Java by taking samples from five districts/cities representing the southern, northern, western, eastern, and central regions or based on residency areas and viewing or document/literature study (library research). In this study, the data analysis method used is the qualitative analysis method, because the nature of the information is quality. The data obtained from the KSPPS and the data obtained from the document study were then tested for validity in accordance with the problems studied.

Results and discussion

Transactions or alliances are the means used by humans to establish legal relationships in property exchange traffic. In the perspective of the Book of Civil Law (KUHPer) agreement is the most important policy and source that gives birth to an alliance between the parties involved. An alliance originating from an agreement required by two parties deciding to enter into an agreement, while an alliance is born of a legal basis made on the basis of a will relating to human actions consisting of those two parties². In Islamic law the agreement is called *al-akhdu* (promise) while the alliance is called *al-Aqdu* (bond). In terminology, akad (contract) is a relationship or *ijab qabul* between two parties in accordance with the requirements of sharia (Allah SWT and His Messenger) which causes the existence

² Suharnoko, *Hukum Perjanjian Teori Dan Analisa Kasus* (Jakarta: Prenada Media Kencana, 2015) h.117

of legal consequences on the object³. Based on this understanding, then all contracts or contracts made by two or more parties are considered invalid when they are not in line with the provisions and requirements of Islamic law.

A contract that contains the element of usury, cheating others or committing robbery is an invalid contract. Nasrun Harun gives the explanation of the sentence "causing legal consequences to the object" in the sense of the alliance above that the meaning is in the contract there will be a transfer of ownership of goods from one party (the party doing the consent) to the other party (the party expressing consent). The existence of *ijab* and *qabul* is a symbolic proof to show the existence and desire of reciprocity between the parties concerned to the contents of the contract / agreement made. The existence of *ijab* and *qabul* will give rise to rights and obligations for each party who enters into a contract⁴.

In the Civil Code states several principles that form the basis of the legality of conducting transactions or engagements;

1. Basics of Consensualism (consensualism); each contract / alliance must be based on the agreement of both parties. The basis of consensualism is reflected in Article 1320 paragraph (1) of the Civil Code that the legality of the agreement as the beginning of the emergence of the alliance; first, there must be an agreement between the two parties, the agreement is created in the form of a statement of free will without any element of coercion and pressure (*dwang*) error (*dwaling*) and no fraud (*bedrog*). Second, both parties to the agreement must speak, thirdly, the agreement is made in relation to a particular matter and fourth, the agreement must not violate the halal reason that is not violating the law, violating public order and contrary to morals. In Islamic law every Muslim in conducting transactions must be done on the basis of the consent of both parties, as mentioned in Surat an-Nisa '29;

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

"O you who believe, do not consume each other's property in a wrong way, except in the way of business that occurs with mutual love between you"

2. The foundation of good faith; the agreement made must be based on the will or good faith to carry out the contents of the agreement. This principle is contained in Article 1338 paragraph (3) of the Civil Code which reads: "The agreement must be executed in good faith." In Islamic law every Muslim must implement the agreement he has made in accordance with Surat al-Maidah verse 1;

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

3. Personality basis; in Article 1315 of the Civil Code states: "In general a person cannot enter into any alliance or agreement other than for himself." Based on these provisions on the principle that any agreement made must be for his own

³ Syamsul Anwar, *Hukum Perjanjian Syari'ah* (Jakarta: PT. RajaGrafindo Persada, 2007) h. 68

⁴ Nasrun Haroen, *Fiqh Mu'amalah* (Jakarta: Gaya Media Pratama, 2009) h. 97

benefit. However, this provision excludes the provisions of Article 1337 and Article 1338 of the Civil Code.

4. The principle of freedom of contract (freedom of contract); based on Article 1338 paragraph (1) of the Civil Code all agreements made legally apply as law to its makers. Based on these provisions, anyone who speaks to commit a legal act can make or not make an agreement, free to enter into an agreement with anyone, determine the content of the agreement, implementation and terms of the agreement and free to determine the form of agreement both written and unwritten. In the perspective of Islamic law, everyone is given the freedom to make a contract as long as it does not contradict the law contained in the Qur'an and Hadith. In Surat al-Nisa 'verse 29 Allah SWT:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

The verse forbids believers to consume property in vain ways unless it is done with a transaction based on the consent of both parties.

5. Basic legal certainty (*pacta sunt servanda*); this basis relates to the legal consequences of the existence of an agreement. Based on the principle of *pacta sunt servanda* this agreement that has been made cannot be withdrawn without the consent of the other party as mentioned in Article 1338 paragraph 2 KUHPer in the perspective of Islamic law the principle of legal certainty is mentioned in the hadith;

حديث عمرو بن عوف المزني رضي الله عنه قال: قال النبي : «المسلمون على

شروطهم، إلا شرطا حرم حلالا أو أحل حراما» أخرجه أبو داود والترمذي

A hadith narrated from Amr ibn Auf al Muzanni said, Rasulullah SAW said: "*Muslims are bound by the agreements (clauses) they have made, except the agreements (clauses) that forbid what is halal and allow what is haram*". (HR Abu Daud)

In the law of agreement, there are three differences between standard agreement, standard clause and exoneration clause⁵. The exoneration clause is usually found in a standardized agreement or commonly referred to as a standard contract or standard contract which is also called a take it or leave it contract. Normatively the existence of a standard agreement is stated in Articles 1493-1494) of the Civil Code. Legal experts differ in their understanding of the standard agreement, but at least it can be given the understanding that a standard agreement is an agreement made by one of the parties and does not give the other party the opportunity to negotiate its contents so that the party can only accept or reject the contents of the agreement. Meanwhile, according to Johannes Gunawan, a standard agreement or standard contract is an agreement whose contents have been previously determined in writing and contained in forms which are then printed in an unlimited number⁶. In line with Gunawan, Yusuf Sofhie is of the

⁵ Jefferson Hakim, "Exoneration Clause on Law of Consumer Protection: Effects and Legal Efforts," *Jurnal Hukum Dan Peradilan* 8, no. 2 (2019): 297, <https://doi.org/10.25216/jhp.8.2.2019.297-314>.

⁶ Purwosusilo, *Aspek Hukum Pengadaan Barang Dan Jasa* (Jakarta: Kencana, 2017) h. 219

opinion that a standard agreement or standard contract is an agreement made by the parties regarding something that is made in writing⁷.

Standard agreements have become a habit of society in line with the development of social life in the modern era which requires speed and efficiency in carrying out activities and always planning in every activity. In the development of community life, legal subjects are not only in the form of people as natural legal subjects but legal subjects also include companies, institutions or organizations which are stipulated by statutory regulations as legal entities that can act as legal subjects as humans. In this case, the company or institution often uses standard agreements as a support in carrying out its activities. Clayton mentions there are three advantages to using standard clauses⁸;

1. Can reduce transaction costs;
2. Facilitate control of agency costs on mass transactions in the market;
3. Generate benefits associated with network externalities.

In practice, the standard clauses that develop in society have several characteristics⁹;

1. In writing; standard clauses are outlined in writing using both underhand deeds and authentic deeds;
2. The agreement format is made in standard; systematic, model and formulation of standard clauses have been determined in such a way that it is not easy to make changes. In general, a blank form of agreement text has been printed or a blank form attached with the terms of the agreement text;
3. The conditions are determined unilaterally; the terms of the agreement as the embodiment of a statement of intent are determined unilaterally by the party making it (the business actor) so that its contents are more favorable to the maker than other parties;
4. In the relationship between producers or entrepreneurs and consumers, consumers can only accept or reject; if the consumer accepts then the consumer just needs to sign his / her name and it means that the consumer is willing to accept responsibility which should not be his. If the consumer refuses, he cannot negotiate the contents of the standardized agreement because the agreement document has been standardized in such a way;
5. Always benefits the strong; the contents of the agreement which contain standard clauses are always more favorable to the dominant party or business actor and do not provide the opportunity for consumers to participate in determining the clause.

⁷ Yusuf Sofhie, *Perlindungan Konsumen Dan Instrumen-Instrumen Hukumnya* (Bandung: Citra Aditya Bhakti, 2000) h. 92

⁸ David ML Tobing, *Klausula Baku: Paradog Dalam Penegakan Hukum Perlindungan Konsumen* (Jakarta: Gramedia Pustaka Utama, 2019) h. 35

⁹ Fajar Nugroho Handayani, *Penggunaan Klausula Baku Yang Dilarang Menurut Hukum Perlindungan Konsumen* (Ponorogo: Uwais Inspirasi Indonesia, 2020) h. 33

Related to standard agreement, Mariam Darus Badruzaman classifies three types of standard agreements¹⁰;

1. Unilateral standard agreement; this standard agreement is usually made by a party that has a stronger position, in the relationship between debt and credit, it is usually made by the creditor. Likewise, in the sale and purchase relationship of products or services, usually the manufacture of standard agreements is made by the producer. Consumers do not have the option to reject the contents of the standard agreement that has been made by the producer;
2. Standard agreement established by the government; in providing services to the community to make it faster and easier, the government often makes standard agreements that must be signed by the community requesting services in the form of certain legal actions, such as agreements related to applications for land rights;
3. Standard agreements signed by professionals in the legal field such as notaries and lawyers.

The existence of agreements that are made, defined, reproduced and distributed by one of the makers only and the other party only accepts the things that have been determined, often in standard clauses specifying several requirements that contain¹¹;

1. Eliminating or reducing the responsibility of the contract maker in the event of default;
2. Contractors limit or even eliminate their obligations;
3. Transfer certain obligations to other parties.
4. Besides that, the standard agreement or contract also often includes several things, among others¹²;
 - a) How to terminate an agreement;
 - b) How to extend or increase the validity of the agreement;
 - c) Solution in the event of a dispute; and
 - d) Exoneration clause that harms one of the parties to the agreement.

According to Mariam Darus, in the case of standard agreements containing exoneration clauses related to the relationship of debtors and creditors have several characteristics¹³;

1. The position of the creditor is stronger than the debtor so that the creditor has the discretion to determine the contents of the agreement;
2. The debtor does not determine the contents of the agreement;
3. The agreement is a written agreement;

¹⁰ M Syamsudin and Fera Aditias Ramadani, "PERLINDUNGAN HUKUM KONSUMEN ATAS PENERAPAN KLAUSULA BAKU (Kajian Putusan Nomor 26/P.BPSK/12/2014, Nomor 15/PDT.G/2015/PN.SBY, Dan Nomor 184 K/PDT.SUS-BPSK/2016)," *Jurnal Yudisial* 11, no. 1 (2018): 96.

¹¹ Sukarmi, *Cyber Law Kontrak Elektronik Dalam Bayang-Bayang Pelaku Usaha* (Bandung: Pustaka Sutra, 2008) h. 128

¹² Edy Santoso, *Pengaruh Globalisasi Terhadap Hukum Bisnis Di Indonesia* (Jakarta: Prenada Media Group, 2018) h. 39

¹³ Mariam Darus Badruzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 1994) h. 47

4. The debtor agrees to the contents of the agreement because it is driven by the need so that he has no other choice;
5. The agreement is made in large quantities or in bulk.

In the standard agreement, it often contains an *exemption clause* or also known as an *exonerative clause* or an *exoneration clause*. In the exoneration clause, one of the parties cannot claim his right because of restrictions on not carrying out the responsibilities he should have done. Referring to the Civil Code (KUHper), it does not specifically regulate the existence of an exoneration clause. The existence of an exoneration clause is based on the provisions of Article 1320 and Article 1338 which govern the principles of consensual and freedom of contract. Based on this principle, the parties involved in the agreement can agree on things that are considered to provide benefits to the agreement they make. In general, the exoneration clause is an additional clause on the essential measures in an agreement. In Law No. 8 of 1999 concerning Consumer Protection, not all standard agreements are prohibited from being contained in the agreement which is the basis of the legal relationship between producers and consumers¹⁴. Article 18 paragraph 2 states that business actors may not include standard agreements with unclear forms and put them in places that make it difficult for consumers or disclose standard agreements that are difficult for consumers to understand. This is intended so that business actors or producers have an equal position in making agreements based on the principle of contracting freedom. Inclusion of standard clauses that contradict the provisions of Article 18 of the Law. Consumer protection can cause the agreement to be null and void.

Explicitly in Article 18 of the Law Consumer Protection states that business actors are prohibited from including standard clauses in the agreements or documents they make if the inclusion of standard clauses contains statements of transfer of responsibility of business actors (*exoneration clauses*) either in full or in part and statements that business actors may refuse to return goods that have been returned purchased by consumers.

In a country that adheres to the concept of a rule of law, the discourse on legal protection is one of the things that is often done in order to provide recognition and protection of human rights. Law functions as a means of maintaining public order which is caused by the fact that some members of the community disturb the orderliness in the social life of the community. In this connection, Roscoe Pound, through his theory of law is a tool of social engineering, argues that law is a means to protect human interests because human interests are a demand that is protected and fulfilled by law¹⁵. Philosophically, the concept of legal protection originates from the theory of natural law which states that law comes from God who is universal and eternal. Legal protection becomes the estuary of one of the objectives of law, namely to create certainty.

¹⁴ Retias Dewi Jayanti et al., "Akibat Hukum Terhadap Penerapan Klausula Eksonerasi Dalam Perjanjian Baku" *Jurnal Humani(Hukum dan Masyarakat)* Volume 10, No. 1 (2020): h. 105

¹⁵ Salim HS, *Perkembangan Toeri Dalam Ilmu Hukum* (Jakarta: Rajawali Press, 2010) h. 41

In economic activity, legal protection has a very important position in order to ensure the fulfillment of the rights of the perpetrators. Without legal protection, consumers' rights can be harmed as a result of the existence of a legal relationship that arises because of an agreement between producers and consumers or vice versa. Legal protection for the parties in the agreement is very important to maintain the balance of the legal relationship between the parties so that they know their respective rights and obligations.

Based on conventional theory, the purpose of law is an effort to realize justice (*rechtsgerechtigheid*), the existence of benefits (*rechtsutiliteit*) and guarantee legal certainty (*rechtszekerheid*)¹⁶. According to Satjipto Raharjo, "The law was made to protect a person's interests by allocating full power to him to act in his interests. The allocation of this power is carried out in a measured manner, in the sense that its breadth and depth are determined which do not interfere with the interests of other parties. Such power is called right. But not every power in society can be called a right, but only certain powers which become the reason for the attachment of that right to a person"¹⁷. The state must be able to use the power it has to provide protection to its citizens.

Standard agreement is an option for KSPPS in Central Java in pouring out the agreements made by KSPPS with its members in financing activities. This was chosen by KSPPS because the standard agreement makes it easier for KSPPS to determine matters or clauses desired by KSPPS, which in general are more favorable to the interests of KSPPS. In several KSPPS that were studied almost all of them used a standard agreement that contained an exoneration clause. In the KSPPS "D" which is based in the city of Semarang, as an example of several KSPPS in the Semarang area residency, the financing contract is carried out using a standard agreement. There are several forms of financing services available at the KSPPS "D", including:

1. Business Capital Financing. This financing is carried out using the mudharabah principle, the KSPPS as the fund provider (*shohibul maal*) and the applicant member as the fund manager (*mudhorib*). This financing is carried out by providing pre-requisites, the main requirements are for members who have a profitable business and profit prospects, the provisions of the profit sharing system according to the agreed portion;
2. The financing of the sale and purchase of goods is carried out on the basis of the Murabahah principle, KSPPS providers of goods needed and members of the buyers of goods. This financing is aimed at members who wish to develop their business, such as agriculture or businesses that require production, consumption or trade tools;
3. Multilingual. Financing services aimed at obtaining benefits for certain services; such as meeting the cost of education, health services for the sick, receptions for circumcision or marriage events, etc;

¹⁶ Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)* (Jakarta: Gunung Agung, 2012) h. 85

¹⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bhakti, 2012) h. 53

4. Rahn. Rahn is a member of pawning goods to KSPPS BMT related to debts received by members;
5. Qordh. Qordh is a loan-borrowing agreement in a short period of time for urgent needs that is paid or requested for only the principal of the loan without any compensation agreement.

In providing these financing services, KSPPS "D" determines the flowchart of the financing application process from its members. The flow of the process of submitting financing at the KSPPS "D" is shown in the following chart;



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Based on the flowchart, the process of providing financing begins with submitting member financing to the Director of KSPPS "D" through an appointed officer by submitting an application letter completed with:

1. The type of financing chosen;
2. Photocopy of identity (electronic KTP);
3. Family card;
4. Passbook as proof of membership;
5. Collateral plan, if any; and
6. Consent from partners.

Based on the letter, the director formed a team to conduct field analysis and surveys. The results of the field analysis and survey will be held in a meeting to determine whether the applicant's application for financing is accepted or rejected. If accepted, the applicant member will be invited to the KSPPS "D" office to make a contract. In the preparation of this contract, members of the financing applicant will be given a draft contract to be agreed or changed according to the agreement.

Therefore, justice, transparency and openness will occur between KSPPS "D" and its members.

The legal relationship between KSPPS "D" and cooperative members in financing is stated in the agreement that has been determined by the KSPPS in the form of a standard agreement containing an exoneration clause. Based on the financing flow in the chart above, it appears that the KSPPS dominates in determining the contents of the financing agreement.

For KSPPS located in the Karisidenan Pati area, the use of standard agreements containing exoneration clauses can be seen in the construction of the existing financing agreement at KSPPS "B" which was established in 1996 and has more than 100 branch offices. In this KSPPS the use of standard agreements containing exoneration clauses is applied in several forms of financing products, namely;

1. Merchant Financing/Credit Products. The target of financing products with a credit or installment payment system is carried out on a daily, weekly basis with a specified day (shortfall, Thursday, etc.) and monthly (on a certain date) with a determined payment period according to the agreement of both parties;
2. Agricultural Financing/Credit Products. The target of agricultural financing is focused on planting and fertilizing capital, the amount of capital required is adjusted to the area of arable land, this financing uses a seasonal system, or a maturity that has been agreed by both parties;
3. Fishermen Financing/Credit Products. This type of financing is intended for fishermen members, this product is very flexible and tailored to the needs of fishermen members in the form of fishermen capital fertilization and the provision of fishing facilities, with an installment system that has been determined by KSPPS "B" and Mudhorib;
4. Industrial Financing/Credit Products and Services. This product is specifically for entrepreneurs who are engaged in service development, and industry or civil servants through an installment or maturity system that has been agreed by both parties.

In the KSPPS "B" contract in the agreement both in the financing agreement and in the savings agreement, KSPPS "B" prioritizes the agreement between the two parties (KSPPS-Member). Technically, the mechanism that is carried out is through visits conducted by field marketing who are tasked with explaining to members or prospective members what can be done individually or in groups such as the Family Welfare Program (PKK) group, recitation congregations or certain professional groups. During the visit, the field marketing provides an explanation to the members or prospective members through a prepared message so that the explanation can be given clearly and in detail so that members and prospective members are able to fully understand the services provided by KSPPS. In the forum, questions and answers and consultation can also be conducted related to services / financing provided by the KSPPS.

After members or prospective members receive an explanation regarding KSPPS services, if the member or prospective member wishes to apply for financing, the legal relationship between KSPPS "B" and the member or

prospective member is carried out using a standard agreement that has been made and prepared by KSPPS "B". When a member or prospective member has determined the type of service that he wants, the member or prospective member of the KSPPS is given the opportunity to study the draft contract / agreement to be studied first by bringing home the draft contract / agreement.

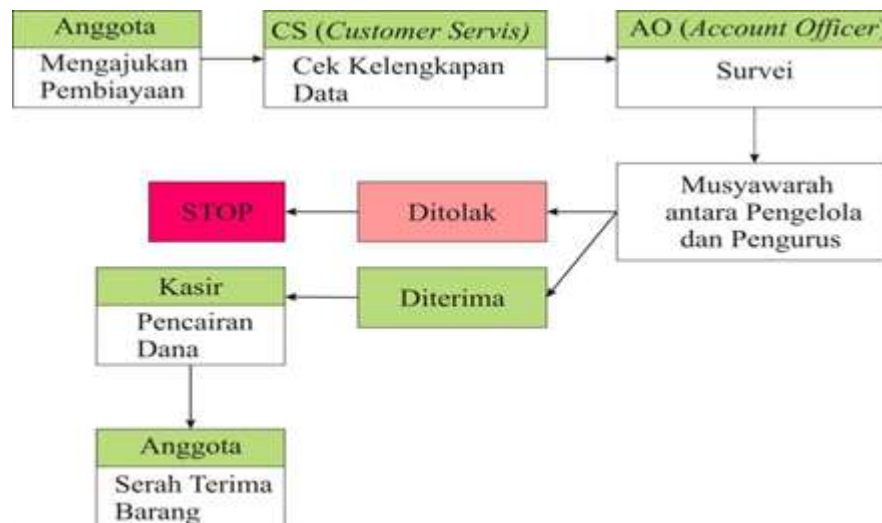
Based on data mining that has been carried out by researchers, the policy to provide opportunities for members or prospective members to study the contents of the agreement is carried out in order to realize the principles of equality, transparency and justice. However, in general, members or prospective members of KSPPS do not fully understand or want to read the content / substance of the standard agreement prepared by the KSPPS, so that when things happen that are not desired, members or prospective members often remain in a weak position because not aware of their rights to participate in determining the terms of the agreement that function as law in the legal relationship between KSPPS and members of the KSPPS.

Data exploration on the use of standard agreements containing exoneration clauses in the KSPPS Karisidenan Kedu was carried out in Wonosobo and Purworejo Districts. The research in these two districts took sampling on the KSPPS "M" and the KSPPS "BM". These two KSPPS are KSPPS which started operating several decades ago to be precise in 1995. Both KSPPS have obtained legal entity status as syari'ah cooperatives from the Ministry of Small and Medium Enterprises Cooperatives.

KSPPS "M" as a non-bank financial institution is an institution that functions as a means of intermediation between the owners of funds and micro-entrepreneurs. In carrying out its functions the KSPPS "M" collects funds from the public who are members and prospective members in the form of various kinds of savings services according to the provisions of Islamic sharia. These deposits are in the form of savings or time deposits as a form of time investment that provides profit sharing for the depositors.

In collecting funds from members and prospective members of the KSPPS "M" always use a standard agreement as a basis or basis for a legal relationship between KSPPS "M" and its members. Likewise, in providing financing, KSPPS "M" also uses standard agreements or standard agreements as a means to bind members in conducting financing transactions. In the KSPPS "M" financing contract, his position is as the fund provider (*shohibul maal*) and the member / applicant is the fund manager. Financing is intended for members with the main condition of having a real business and prospects for profitable business results every month. To obtain financing, members or prospective members of the KSPPS must have been running their business activities for at least 1 year as a measure that the business has been able to run or has experienced obstacles in its business activities. Each member or prospective member who wishes to obtain financing must submit an application to the KSPPS "M" manager for an assessment of the validity of the predetermined requirements. Every application that meets the requirements set by KSPPS "M" will then be stated in the standard agreement determined by KSPPS "M".

Standard agreements containing exoneration clauses are also used by KSPPS "BM" in providing financing services to members or prospective members of KSPPS "BM" who apply for financing. KSPPS operational manager "BM" makes Standard Operating Procedures (SOP) related to the financing process, namely: the financing process at KSPPS "BM" must meet the absolute requirements, namely to become a member of KSPPS then make a loan application letter, then the officer will conduct a survey and analyze, conduct The financing committee meeting is continued by making a notification letter of approval or refusal of financing and finally a financing decision letter and making a disbursement schedule. The flow or process of submitting a financing application is shown in the following chart;



In an effort to provide knowledge and understanding to members or prospective members of the contents of a predetermined standard agreement, members or prospective members are given the opportunity to read and agree to each agreement clause that has been stated in the standard agreement. According to the KSPPS "BM" manager, this is done in order to create equality between members or prospective members and KSPPS "BM". According to the manager, to clarify the mechanism and type of financing that has been chosen by the members as stated in the standard agreement, each party is asked to pay attention to the clauses listed so that it is clear and that no one feels disadvantaged in the financing agreement that is carried out.

Standard agreements containing exoneration clauses are also used by KSPPS located in the Karisidenan Surakarta area as happened to the KSPPS "S" in Boyolali Regency. KSPPS has been operating since 2006 and was approved by the State Ministry for Small and Medium Enterprises Cooperatives in 2007. There are two main activities carried out by KSPPS "S", namely seeking, collecting and collecting and distributing funds to the community in the form of financing to members which requires venture capital.

The basis for the legal relationship between the members and the KSPPS "S" in financing is stated in the form of a standard agreement both in the form of financing in the form of business capital and in the form of financing. One of the

breakthroughs made by the KSPPS "S" in financing is to facilitate the provision of capital for purchasing patchwork goods for UMKM craftsmen who process patchwork into mats, dolls and so on. The capital from the KSPPS is used to buy cloth from the factory. After the cloth is processed and paid up to the distributor, the members will return the capital and profit sharing to the KSPPS Syariah Sejahtera. The flow of application for goods financing appears in the following chart;



Standart operasional procedur.kopsyar.sejahtera

There are several things that are taken into consideration by KSPPS "S" in providing financing proposed by its members, namely;

1. Implementing Standard Operating Procedures (SOP) by applying the 5C principle (character/assessment of the personality of members, capital owned to develop the business, capacity/ability by looking at prospects and business developments so far, the condition of economy/economic conditions from internal and external, collateral) appropriately;
2. Always uphold the principle of prudence in agreement;
3. Monitor member accounts at KSPPS "S" Boyolali;
4. Calculating and assessing the exact business prospects of the members;
5. Provide freedom of contract according to the wishes of members.

These matters become the basis for the funding proposed by the members of the KSPPS which is then stated in the form of an agreement that has been made by the KSPPS "S" in the form of a standard agreement and the member or prospective member signs the agreement. The agreement is binding for both parties even though the members are not fully aware of the contents of the signed agreement.

Based on the aforementioned facts, almost all KSPPS in Central Java use standard agreements which contain an exoneration clause as the basis for the legal relationship between KSPPS members and KSPPS. Theoretically, legal experts differ in determining the validity of the standard agreement, Asser Ruten argues that a person who has signed a standard agreement or contract is bound and responsible for the contents of the signed agreement. Signing shows that the person already knows the contents and therefore fosters the trust that the signatory knows and wants the contents of the agreement. The validity of the standard agreement is based on the generality of the statement in Article 1338 of the Criminal Code which states that all agreements made in accordance with the law are valid as law for the parties making them.

However, there are also law scholars who refuse the validity of standard agreements, they refuse the inclusion of standard clauses. Pitlo is of the opinion that the standard agreement is a forced agreement (*dwang* contract). Meanwhile, coercion in an agreement can be the cause for the cancellation of the agreement. Meanwhile, Sluijter argues that the standard agreement is not or is not included in the agreement category because the position of the standard contract maker is similar to or similar to that of private legislators. In the state system, no party may be allowed to make laws other than the government who has the power to make laws and other regulations.

Besides based on the opinion of legal experts above and the provisions of Article 18 of the Law. Consumer protection, non-validity of standard agreements can also be traced in the provisions of Article 1254 of the Criminal Code. Based on this article, any standard agreement or clause that is contrary to public order, good faith, reasonableness or propriety, unbalanced position or influence that can cause defects in the will of one of the parties to agree on the agreement can be the cause of the nullification of the standard agreement.

Protection of KSPPS Members in Using the Exoneration Clause in the Sharia Financing Agreement

The use of standard clauses in financing contracts in several KPPS in Central Java has the potential to not fulfill the rights of members or prospective members of KSPPS as consumers. One of the consumer rights as stipulated in Law Number 8 of 1999 concerning Consumer Protection is to obtain correct and clear information regarding the services received. The inclusion of a small clause made unilaterally by the KSPPS which has been stated in the financing application form makes members or prospective members not pay attention in detail to the contents of the standard agreement. In addition, the inclusion of standard clauses containing exoneration clauses has the potential to violate the principles of the agreement where one of the principles of the agreement is the existence of freedom of contract. The inclusion of standard clauses contained in the agreement made by KSPPS in the financing agreement has limited the desire or will of members or prospective members in participating in the contents of the financing agreement. In the standard agreement, the position of members or prospective members tends

to be weak because they have an interest in being granted the application so that they must approve the agreement made by KSPPS.

In general, the process of submitting a financing application to the KSPPS until the signing of a standard agreement by the parties goes through stages or processes that have been determined in such a way by the KSPPS management. The steps that must be taken by members in applying for financing are as follows:

1. The applicant for financing comes personally to the KSPPS, cannot be represented. Convey intent and determine the type of financing. KSPPS management will explain the various types of financing provided. After obtaining an explanation from the KSPPS management, the applicant chooses the type of financing according to his / her desire;
2. The applicant is given a financing application form to study and fill out. This form includes personal data, a license from the husband/wife/ guardian, the type of business he owns, the financing required, guarantees and references;
3. The form that has been filled in by the applicant is checked according to the data and field analysis by visiting the applicant's house, examining the place of business as material for analysis to assess the feasibility of financing in accordance with the principles of character (character/personality), capacity (business ability), capital owned, condition (business condition and prospects) and collateral (guarantee);
4. The results of the field survey that have been carried out are reported to the KSPPS committee board to be discussed and given an assessment of the feasibility of the financing application. If not approved, the applicant will be informed of the reasons for refusing the application. If the request for member financing or prospective members is approved, the applicant will be summoned for a financing contract;
5. KSPPS and the applicant make a contract agreement. In the agreement, several agreements are written which include:
 - a. The type of financing approved;
 - b. Completeness of documents and submission of guarantees if any;
 - c. KSPPS as party I (provision of funds) and the applicant as party II (fund manager);
 - d. The amount of payment installments and the agreed time;
 - e. For the results (ratio) selected;
 - f. Due date and starting installments;
 - g. Funds will be realized if the customer has fulfilled all the conditions stipulated by the KSPPS;
 - h. Place of installment payment (taken by the officer or delivered to the office);
 - i. The settlement procedure in case of problems is carried out by deliberation to reach a consensus;
 - j. Decision of party I (KSPPS) is a binding final decision.

Theoretically, the form of a financing contract must meet the elements and conditions of the validity of an agreement, namely;

1. Agree to commit oneself;
2. Have skills;

3. Make the agreement in certain things;
4. in the event that is allowed.

These conditions must be included in the financing contract which forms the basis for the KSPPS legal relationship with its members. In an agreement, besides having to fulfill these conditions, an agreement must not be contrary to the principles that apply to the agreement. One of the principles of the agreement is the principle of freedom of contract. In every agreement there is always an agreement, the emergence of an agreement between KSPPS and members which is then stated or stated in a jointly signed contract must be based on free will, without coercion, with full awareness, there is no fraud and abuse of certain conditions, or defects of will. However, in general, in terms of making a contract on the KSPPS financing in Central Java, there is always an element of psychological burden from members who are on the party who is in dire need of financing from the KSPPS so they feel they have to sign an agreement that has been determined by KSPPS in the form of a standard agreement that contains an exoneration clause. Such as the structure of the *murabahah* financing contract in the KSPPS "BM" which includes a clause that;

1. Additional rules clause made unilaterally by KSPPS; "If there is a deposit payment that is not on time, the second party (the buyer) is willing to be fined by calculating the length of time and the delay. This will be further agreed upon in a statement made by the second party (the buyer) which is inseparable from this contract".
2. Clause regarding the transfer of responsibility from KSPPS to members. "Party I have the right to take / transfer / sell collateral even though the financing is not yet due."
3. Clause concerning confiscation of assets outside the collateral if the value of the collateral is considered to have decreased or lost. Article 14 "If the proceeds from the auction / sale are not sufficient for the coverage of the installments, the remaining installments that have not been paid by party II (buyer), party I (seller) have the right to carry out legal proceedings as stated in article 1131 of the Civil Code with the agreement of both parties".

The inclusion of these clauses does not really protect the interests of the KSPPS members because their contents are substantially more profitable for KSPPS in their position as providers of financing. The standard clause which benefits KSPPS is contrary to Article 18 of the Law Consumer Protection which prohibits business actors from including standard clauses in the agreement they make because it is detrimental to KSPPS members as consumers. The inclusion of my clause by KSPPS may be subject to legal risk of canceling the contract that has been done. Normatively based on law. Consumer protection of business actors is allowed to include standard clauses but it must be stated in a clear form and if deemed necessary, it is necessary to include it in a separate sheet and constitutes an integral part to the members regarding the clause, not only presented in a large number of sheets in small writing making it difficult to read and considered valid because it has been signed by the member.

In the context of realizing legal protection for consumers, Article 18 of Law No. 8 of 1999 concerning Consumer Protection prohibits business actors from offering goods and / or services that have the purpose to be traded and prohibited from making or including standard clauses in documents and / or agreements. which is made, if there is a clause stating the transfer of responsibility of the business actor, stating that the business actor has the right to refuse the return of his goods purchased by the consumer, states that the goods / services business actor has the right to refuse the return of money paid or services purchased by the consumer, or states that the power of attorney from consumers to business actors, either directly or indirectly, is to take all unilateral actions related to goods purchased by consumers in installments and to regulate evidence of the loss of use of goods or use of services purchased by consumers. In this case, the consumer protection contained in Law number 8 of 1999 is very important as the embodiment of the rule of law concept stipulated by the 1945 Constitution.

Legal experts differ in their understanding of the term legal protection. Satjipto Rahardjo argues that legal protection is the protection of human rights as legal subjects for the actions of others that harm him so that he can enjoy the rights given to him by law. There are two kinds of legal protection;

1. Preventive legal protection; given by the government as state administrator to citizens before an action falls into the category of a violation. In general, preventive legal protection is stipulated in statutory regulations as a guide in carrying out obligations so as not to raise disputes;
2. Repressive legal protection; protection provided to citizens by applying criminal sanctions for violators which are based on the recognition of human rights. This model protection is provided by the government in order to resolve disputes.

In an effort to provide protection to members of the KSPPS in the form of preventive protection in addition to ensuring that the standard agreement made by KSPPS does not include an exoneration clause, preventive protection can also be provided by maximizing the role of the Sharia Supervisory Board (SSB). From a management perspective, SSB is tasked with overseeing the operational existence of Islamic financial institutions so that they are always consistent with sharia principles. Its main task is to carry out direct and periodic supervisory tasks, provide suggestions for the development of Islamic financial institutions, provide reports on the development of products produced and operations of Islamic financial institutions and formulate several problems experienced in the field. So that it can be understood that the main thing that must be paid attention to by DPS in seeing every contract implementation is the fulfillment of the harmonious and legal conditions of the contract and ensuring that no party is harmed by the contract.

Conclusion

Based on the research findings above, it can be concluded that the standard agreement is still used as the basis for the legal relationship between KSPPS in Central Java and its members and prospective members in providing financing for

practical reasons, being effective and more efficient in making contracts. In the standard agreement, an exoneration clause is often stated which is detrimental to members or prospective members of the KSPPS. In the perspective of agreement law, an agreement containing an exoneration clause becomes a defect of the will so that it does not fulfill the terms of the agreement between the parties involved in the making of the financing contract. The inclusion of an exoneration clause in the standard agreement used by the KSPPS in Central Java is against the provisions of Article 18 of the Law Consumer Protection.

To provide protection to members or prospective members, KSPPS must provide opportunities to every member or prospective member of the KSPPS who apply for financing to study the contents of the standard agreement and provide opportunities for members or prospective members of KSPPS to negotiate exoneration clauses that have the potential to harm members or prospective members as a consumer. This needs to be done so that the inclusion of an exoneration clause in the standard agreement does not contradict the principle of freedom of contract and the principle of no coercion in making the agreement. Based on this principle, the inclusion of an exoneration clause that is detrimental to consumers can result in legal nullification.

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