

## **IMPLEMENTATION OF THE PRINCIPLE OF BALANCE IN INCLUDING STANDARD CLAUSES IN BANK CREDIT AGREEMENTS**

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### **ABSTRACT**

In the context of consumer protection, the role of the principle of balance in a bank credit agreement is crucial. This principle emphasizes the need for equal and balanced positions of the parties involved, particularly the Business Entity (Creditor) and the Consumer (Debtor). However, in practice, cases are often found where there is an imbalance between the Creditor and Debtor. The Credit Agreement is prepared by the Creditor and contains standard clauses and stipulations of standard regulations that will be agreed upon together while still considering the principle of balance in the positions of both the Creditor and Debtor. The research aimed to know, understand, and analyze the legal aspects of consumer protection, with a specific focus on the implementation of the principle of balance in a credit agreement. The research methodology employed was doctrinal legal research, using legislative and conceptual approaches. The research findings revealed that certain provisions in the bank credit agreement did not adhere to the elements of the principle of balance, resulting in the bank appearing to dominate and exert pressure on the other party. Therefore, a credit agreement should not only apply the principle of balance, but also consider the principles of benefit, justice, and legal certainty for all parties involved.

Keywords: Consumer Protection; People's Credit Bank; Credit Agreement; Standard Clauses; Principle of Balance.

### **INTRODUCTION**

In the current era, an increasing number of Indonesian people are engaging in borrowing and lending activities. These borrowing and lending activities are undertaken by the Indonesian community to fulfill their daily needs and support their businesses. According to Law Number 10 of 1998 About the Changes to the Law Number 7 of 1992 concerning Banking, Article 1 number 11 determines that "credit is the provision of money or a bill that can be equated with it, based on approval or a

loan agreement between banks with other parties requiring the borrower to pay off its debt after the term certain with interest giving". If the Debtor is late in repaying the debt or exceeds the due date, the Debtor will be subject to a late payment penalty as stipulated in the credit agreement that has been mutually agreed upon.

Generally, bank credit agreements are based on standard agreements containing standard clauses. These agreements are in written form and include the provisions and terms of the credit agreement initiated by the Bank. Customers can choose to accept or reject the credit application at that particular bank. If the customer agrees to the offered agreement, the customer must comply with the terms of the agreement. In this research, the author discussed the correlation of the implementation of the principle of balance in a credit agreement, specifically focusing on Article 11 between People's Credit Bank (Bank Perkreditan Rakyat) Gema Ampek Koto Sejahtera as the creditor and Mr. Ewizar and Mrs. Silvia Desi as the debtors. The case was based on the Supreme Court Decision Number 18/Pdt.G.S/2021/PN Lbb, which stated that there was a lack of elements of the principle of balance in the credit agreement. In essence, a bank is an institution that relies on public trust to carry out its banking activities. To strengthen public trust in the bank, it was expected that the government also participate in protecting the public as bank customers (Wulandari, Braviaji, Fahmi, Songgirin, & Hananto, 2022).

Indonesia provides legal protection and legal certainty for every citizen, and one of the mandatory legal protections provided by the country is Consumer Protection Law. In Article 1 number 1 of Law Number 8 of 1999 concerning Consumer Protection states that "consumers' protection is all means which guarantee the legal security to protect the consumers". Consumer protection law can occur when there is an agreement in business transactions or credit agreements carried out by Financial Service Business Actors (hereafter referred to as FSBA) and consumers. In this matter, it is known that the use of standard agreements, especially bank credit agreements,

can trigger an imbalance between FSBA and consumers. Therefore, a solid legal foundation is necessary for the government and society to provide maximum legal protection (Satory, 2015).

The legal subject, namely the customer in a bank credit agreement, can be assumed as a consumer. In Article 1 number 2 of Law Number 8 of 1999 concerning Consumer Protection states that "consumer is each individual user goods and/or services available in society, for the benefit of themselves, family members, other people, and other living creatures and which are not for trading". Therefore, based on that provision, it can be inferred that customers in banking can be equated to consumers, as the legal subject, namely the customer, can be interpreted as users of goods and services in the case of credit and not for trading purposes. Providing legal protection for customers becomes a top priority since standardized credit agreements do not allow for negotiations between customers and the bank. Consequently, all customers are compelled to sign the credit agreement to fulfill their needs (Jahri, 2016).

In the Consumer Protection Law, there are provisions for legal protection for customers as consumers to align the offers or needs of consumers towards business actors, such as banks, and other business entities, who are expected to act honestly and responsibly in their roles. Meanwhile, in the Regulation of the Financial Services Authority (Otoritas Jasa Keuangan) Number 6/POJK.07/2022 concerning Consumer and General Public Protection in the Financial Services Sector, in Article 2 states that "the Consumer and General Public Protection in the financial services sector shall apply several principles, including adequate education; openness and transparency of information; fair treatment and responsible business conduct; protection of Consumers' assets, privacy, and data; and effective and efficient handling of complaint handling and dispute settlement".

In Article 18 of Law Number 8 of 1999 concerning Consumer Protection implies that business actors may include standard clauses, where these provisions are

intended to place consumers on an equal footing with business actors based on the principle of freedom of contract. However, in reality, the business actors such as banks, still include standard clauses that place their position in a more dominant position than the consumer as a customer. This situation causes customers to be bound by the clauses of the credit agreement. In this case, it creates an imbalance between the position of Financial Service Business Actors and consumers.

## **RESEARCH METHOD**

This research used a juridical normative research approach. According to Peter Mahmud Marzuki (2010), juridical normative research is a process of seeking legal rules, legal principles, or legal doctrines to find answers related to the legal cases at hand. The problem-solving approach used in this research is the statute approach, which involves examining the entirety of legislative regulations and related laws concerning the investigated legal cases. Additionally, the conceptual approach is used, which studies the legal perspective and the development of legal doctrines within the scope of legal science. In this research, the primary legal materials used were the laws, and these primary legal materials had an authoritative nature, meaning they had legal authority (Ibrahim, 2013). Furthermore, secondary legal materials were used, which were related to the primary legal materials, such as books, articles, journals, and others, that supported the discussion of this case. Additionally, tertiary legal materials were present, which provided information related to the definitions of terms found in the primary and secondary legal materials, such as dictionaries and encyclopedias.

## **RESEARCH OUTCOME AND DISCUSSION**

### **1) Scope of Consumer Protection in Bank Credit Agreements**

According to Black's Law Dictionary, consumer protection is a statute that safeguards consumers in using goods and services. Consumer protection represents the legal protection provided to consumers in their endeavors to fulfill their needs and to avoid matters that may be detrimental to consumers themselves (Zulham, 2016). In essence, legal protection for society is based on the concept of recognition and safeguarding of human dignity and value (Putra, Budiarta, & Ujianti, 2023).

According to Law Number 8 of 1999 concerning Consumer Protection, Article 2 formulates that "consumer protection is based on the principles of benefit, justice, balance, safety, and legal security of the consumers". The principle of benefit aims to ensure that consumer protection provides benefits to both consumers and businesses. The principle of justice is intended to ensure that business actors and consumers obtain their rights and fairly fulfill their obligations. The principle of safety and consumer security is intended to provide consumers with guarantees in using goods and/or services that have been utilized or consumed. The principle of legal certainty is intended to ensure that both businesses and consumers adhere to legal regulations and obtain justice, particularly when entering into an agreement.

Furthermore, the principle of balance is intended for the interests of consumers, businesses, and the government-based application of the principle of balance. The essence of balance is closely related to fairness for all parties, namely consumers, businesses, and the government. The legal relationship between consumers and businesses is always closely tied to the element of balance between the parties. Meanwhile, the government's interest lies in representing public interests by imposing limitations in the form of policies embodied in the law (Miru & Yodo, 2015). Furthermore, with the existence of the Consumer Protection Law, it becomes quite representative once it is understood by the general public, as the law provides guarantees of legal certainty for consumers (Maharani & Dzikra, 2021).

The rights and obligations of consumers, as referred to in Article 4 and Article 5 of Law Number 8 of 1999 concerning Consumer Protection, demonstrate the importance of the rights and obligations that consumers must fulfill to obtain maximum protection and legal certainty for themselves. Based on this, consumers are expected to increase awareness, knowledge, concern, capabilities, and self-reliance to protect themselves (Nawi, 2018). The rights and obligations of businesses, as referred to in Article 6 and Article 7 of Law Number 8 of 1999 concerning Consumer Protection, underscore the paramount importance of the rights and duties that businesses must uphold while conducting their commercial activities guided by the principle of good faith as prescribed in Article 1338 paragraph (3) of the Civil Code (Burgerlijk Wetboek). This principle emphasizes the fundamental essence of agreements, which relies on the presence of good faith.

According to Sudikno Mertokusumo (1988), a contract is a legal arrangement based on the mutual consent of both parties, resulting in legal consequences. According to Law Number 10 of 1998 concerning Banking, Article 1 number 11 states that "credit is the provision of money or a bill that can be equated with it, based on approval or a loan agreement between banks with other parties requiring the borrower to pay off its debt after the term certain with interest giving". From the description above, it is evident that the concept of credit encompasses a series of provisions in the core agreement that includes obligations, such as the availability of money for borrowing by the debtor and the debtor's obligation to repay the debt within a specified period.

According to Law Number 8 of 1999, Article 1 number 10 states that "standard clauses is any regulations or provisions and conditions unilaterally prepared and predetermined by the entrepreneurs in the form of a document and/or an agreement which is binding and must be met by the consumers". Thus, a standard agreement is a set of rules that serve as parameters for the rights and obligations of the parties in

conducting transactions, which involve goods and/or services and whose written contents have been predetermined and agreed upon by both parties (Panggabean, 2012). The requirements and limitations regarding the inclusion of standard clauses represent a manifestation of the principle of balance in the relationship between consumers and business actors based on the principle of freedom to contract (Yasa & Asikin, 2023).

The position of bank credit agreements is crucial to keep up with the direction of economic development. From an economic aspect, the pursuit of profit is feasible, but economic activities that tend to emphasize profit-oriented breakthroughs may result in shortcomings in the practice of contractual law (Panggabean, 2012). The bank is obligated to confirm the understanding of prospective customers regarding the clauses of the agreement before they sign it, as stated in Article 29 paragraph (1) of the Regulation of the Financial Services Authority (Otoritas Jasa Keuangan) Number 6/POJK.07/2022. The elements included in a credit agreement, among others, are the terms or definitions used in the agreement, the agreed-upon amount and time frame by the debtor, the repayment by the debtor, the rights and obligations of the debtor, the amount of penalties received by the debtor in case of default, and finally, various clauses such as the governing law of the agreement (Diab, 2017).

According to Article 21 of the Regulation of the Financial Services Authority Number 1/POJK.07/2013 regarding Consumer Protection in the Financial Services Sector states that "the Financial Services Business Actors have to meet the balance, fairness, and reasonableness in making agreements with the Consumers". If the Financial Services Business Actors (FSBA or PUJK) fail to meet any of the criteria mentioned above, it would be considered violating the Regulation of the Financial Services Authority. Furthermore, in the event of a customer's breach of written orders, the customer may be subject to sanctions, which fall under the jurisdiction of law enforcement authorities as stated in Article 54 of Law Number 21 of 2011 concerning

the Financial Services Authority. Therefore, it is expected that consumer protection will foster a harmonious relationship between both parties, and the vulnerable position of consumers will be safeguarded by law based on Law Number 8 of 1999 concerning Consumer Protection (Doly, 2012).

In the activities of bank credit agreements, they are also consistently monitored by the Financial Services Authority. Consumer Protection in the Financial Services sector aims to create a reliable Consumer protection system, enhance consumer empowerment, and raise awareness among Business Service Providers regarding the importance of consumer protection to increase public confidence in the financial services sector (Astutik, 2019). This understanding can be interpreted as striving to create a secured consumer protection system, optimizing consumer empowerment, and fostering a deep understanding among business actors regarding the criticality of consumer protection to build trust within the community.

## **2) Standard Clauses in the Agreement of People's Credit Bank (Bank Perkreditan Rakyat) Gema Ampek Koto Sejahtera Contradict the Principle of Balance**

The Supreme Court Decision Number 18/Pdt.G.S/2021/PN Lbb, presented a case involving PT. Rural Credit Bank Gema Ampek Koto Sejahtera as the Plaintiff and Mr. Ewizar and Mrs. Silvia Desi as the Defendants who had committed default or breach of promise in the Loan Agreement on October 31, 2016, amounting to Rp20,000,000 (twenty million Indonesian Rupiahs), based on Credit Agreement No. 140.0.02987.0. The principal loan along with its interest was required to be repaid by the Defendants within a period of 24 months. Subsequently, the Defendants provided collateral in the form of one Honda brand two-wheeled vehicle. This agreement was interconnected with the Addendum to the credit agreement dated December 11, 2017, No. 668/KRD/BPR-GAS/XII-17. On February 26, 2020, they underwent credit restructuring amounting to Rp12,500,000 (twelve million five hundred thousand Indonesian Rupiahs) for a period of 48 months, and this additional agreement was interconnected



with the Addendum to the credit agreement dated February 26, 2020, No. 10/KRD-ADD/BPR-GAS/II-2020.

The Plaintiff wanted the Defendants to immediately settle the losses suffered by the Plaintiff with a total amount that had to be paid, including the outstanding debit balance, overdue interest, late payment penalties, and the pre-maturity repayment penalty as stipulated in credit agreement Article 10 for 3 months, and the overall total that had to be paid by the Defendants was Rp14,329,581 (fourteen million three hundred twenty-nine thousand five hundred eighty-one Indonesian Rupiahs). The Defendants had promised to settle the outstanding amount as soon as possible and even planned to repay the entire remaining debt within 1 year, but they still did not understand why the penalty claimed by the Plaintiff was very large and were unaware of its basis.

The crucial clause was in Article 11, which stated that the bank had the right to terminate this credit agreement at any time without considering the credit or loan period mentioned above, based on the bank's own considerations, and therefore could recall the credit if the borrower was obligated to repay it immediately and in full, including the principal loan, interest, and other costs without being required to give prior notice, and/or if, among other reasons, the borrower failed to pay the principal and/or interest insurance for two consecutive months or interrupted the payment with outstanding amounts reaching two months of installments.

The legal considerations of the judge in adjudicating this case were to grant the Plaintiff's claim in part, declaring that the Defendants had committed default under Credit Agreement No. 140.0.02897.0 Jo. Credit Agreement Addendum dated December 11, 2017, Jo. Credit Agreement Addendum dated February 26, 2020, and ordering the Defendants to pay in cash the outstanding loan installment amounting to Rp2,024,200 to the Plaintiff no later than August 26, 2021.

In the passage above, the attention was drawn to Article 11 in the credit agreement, even though the agreement was based on the principle of *Pacta Sunt Servanda*, which stated that agreements made by the creditor were binding on each party. Moreover, there was the principle of freedom of contract to ensure that the freedom to make agreements remained within the bounds guided by laws and regulations. The principle of freedom means that all parties are free to enter into contractual relationships with whomever they wish, including the freedom to include terms, implement them, and form agreements based on Article 1338 of the Civil Code (Poernomo, 2018).

Besides that, the contents of the agreement should not be allowed to contradict the Law or violate the values of decency, customs, morality, and public order. Furthermore, it should also consider the principle of balance in harmonizing the existing legal order with the principles of contract law. The principle of balance arises in the context of agreements because the agreements serve as a framework for the parties involved to obtain legal protection (Ardiansyah, 2021). Balance is also interpreted as an effort to achieve a state or condition that is equitable and fair. The principle of justice means that the participation of the entire society is encouraged in making agreements by providing opportunities for consumers and business actors to obtain their rights and fulfill their obligations fairly.

The principle of balance is closely related to Business Actors and Consumers. In this case, the application of the principle resulted in an imbalanced agreement due to the predetermined format and content of the standard clauses, which made one party more dominant than the other (Syamsudin & Ramadani, 2018). Specifically, the Financial Service Business Actors (FSBA), as stipulated in Article 21 of the Regulation of the Financial Services Authority No. 1/POJK.07/2013, states that "The FSBA have to meet the balance, fairness, and reasonableness in making the agreement with the Consumers". Article 11 of the Credit Agreement of People's Credit Bank (Bank

Perkreditan Rakyat) Gema Ampek Koto Sejahtera contradicts Article 21 of the POJK (the Regulation of the Financial Services Authority), as it shows an imbalance in the credit agreement that favors the bank by imposing various types of penalties that must be paid by the customer without a clear basis.

In essence, an agreement that has been mutually agreed upon by both parties should be based on good faith and responsibility, meaning that all actions should be carried out with mutual trust and respect for each other, and not prioritizing one's own interests but rather seeking a middle ground or solution in resolving disputes if they arise (Eleanora & Dewi, 2022). In this case, especially with regards to Article 11, it is highly contradictory to the principle of balance, as this clause creates an imbalanced and unequal position between the Plaintiff and the Defendants in the agreement, with more emphasis on the Plaintiff's interests rather than the Defendants'.

## CONCLUSION

The credit agreement made by PT. Rural Credit Bank Gema Ampek Koto Sejahtera with Mr. Ewizar and Mrs. Silvia Desi as customers was proven to lack the implementation of the principle of balance in Article 11, resulting in the judge's decision that the customers were not required to pay the remaining debt balance, overdue interest, late payment penalties, and early payment penalties. They were only obligated to pay the overdue loan installment amounting to Rp2,042,000. Ideally, the bank should have created standard credit agreement clauses that did not dominate and must comply with the regulations in consumer protection law, particularly the principle of balance. Meanwhile, customers were expected to make timely payments of the agreed installments as their obligation. To prevent any misuse of the situation in bank credit agreements, the government was expected to participate in overseeing the content of such agreements.

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