IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 24, Issue 9, Series. 3 (September. 2019) 69-73
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

The Nature of the Raw Agreement in Banking Business (Study in Makassar City)

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ABSTRACT: Thepurpose of this study is to analyze the implications of the principle of freedom of contract in the banking business for bank customers. This research is empirical (*field research*) supported by the facts in the field which are translated into standard contracts. The results of the study show that the nature of the standard agreement in bank credit is essentially not in conflict with the laws and regulations. The principle of freedom of contract underlies the standard banking credit agreement as well as in practice and the habits of the bank towards debtors/customers. But in practice the position of the creditor is more dominant than the debtor/customer resulting in an imbalance The contents of the banking credit agreement determine the balance between the creditor/bank and the debtor/customer, but in practice the contents of the agreement do not find any responsibility of the creditor but rather what is found in the obligations of the debtor, including the obligation to provide material security, so that all applicable provisions concerning deposits of public funds are determined unilaterally by the bank as the creditor. The implications for the principle of freedom of contract are; although these contracts have lived and developed in society, regulations in the form of laws do not yet exist. As a result of the lack of legal certainty about the standard agreement, it will cause problems.

Keywords: Nature, Standard Agreement, Banking Business.

Date of Submission: 26-08-2019 Date of Acceptance: 10-09-2019

I. INTRODUCTION

Thereality of economic transaction activities that occur in people's lives today, has shown the use of contracts that are increasingly intense, especially since the industrialization process has increasingly affected the activities of economic transactions, so that under these conditions, community members who are agents of these economic transaction activities, also later very concerned with the presence of the contract, in order to accommodate the rights and obligations including other economic interests, at the level of nature that provides benefits and benefits according to reasonable and fair limits, from members of the community itself, such as the producers, consumers, service providers, or service recipient, when conducting transactions in the process of transferring goods and / or services.

Increased public interest in banking services, in the end, brought some quite positive impacts on the growth of the banking institution itself, among others, the availability of funds allocated for the implementation of development, the public has greater access to banking institutions and the public shows more interest in *banking -minded*. A large amount of public access to banking institutions is indicated by the increasing amount of public savings funds allocated to the banking sector, also coupled with the increasingly intense lending disbursed by several banks to help capitalize on developing business sectors that are developing during society.

When looking at contractual relationships contained in banking services transactions, the most prominent contractual relationships that receive important attention in these banking services transactions are contractual relationships between the bank and customers who use the services of the bank concerned. The contractual relationship between the bank and customers that use bank services is usually outlined in the form of a written contract, the format of which is made by the bank. That is, a written contract made by the bank within the framework of a contractual relationship with its customer, is a standardized written contract, the clauses of which are determined according to the wishes of the bank itself.

If explored carefully, the contract mechanism that occurs between the bank and the customer, in terms of the requirements for its manufacture, also refers to the framework established by Article 1320 of the Civil Code, which is ideally (*das sollen*), it is intended to further give the impression of being equal balance of position between the bank and the customer in terms of a statement of willingness to agree to bind to one another, as explicitly stated in Article 1320 of the Civil Code that the validity of an agreement must meet the requirements of an agreement from their agreement makers to bind themselves. Placement of this provision has

a philosophical meaning that can be systematically linked to the concept of the principle of freedom of contract as reflected in Article 1338 of the Civil Code. That is, the concept of the principle of freedom of contract which should be manifested in every contract making has a meaning that defines a basic perception that all people have essentially the same socioeconomic position and abilities, as stated by the doctrine of *equality before the law.*

Based on these considerations, the ideality (das sollen) of making standard contracts between the bank and its customers should be at the level that places the position of the contracting parties in the same position, so that the form of standard contracts made by the bank should apply clauses that are not may corner even more damaging to its customers, as also required by the Consumer Protection Act No. 8 of 1999, which stipulates that the format of standard contract clauses (standards) made by the producer may not be detrimental to the consumer.

However, reality (*das sein*) shows that the standard contract (standard) made by the bank, tends to contain several clauses whose dictums only benefit the bank itself and without accommodating the interests of its customers. This can be observed in the procedure of making contracts between the bank and its customers, in the standard form that has been prepared in advance by the bank itself. Generally, the customer is obliged to accept the terms and contents of the standard contract form offered without careful examination. Customers have a great interest in the money saved or lent by the bank.

Moreover, both in the Civil Code, the Commercial Code, and Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking, no strict regulation was found regarding the use of standard contracts that accommodate legal protection for bank customers, so that the impact can arise from the use of freedom of contract, can be maximally utilized by the bank to determine the terms and contents of the standard contract by ignoring the interests of the customer and other bank service users.

Reality, standard (standard) contracts with substance clauses, more accommodating the interests of the bank and most of them do not embody the interests and protection for customers according to the limits of *the equality before the law*, it is seen from the phenomenon revealed from various customer complaints about bank services, like this situation from time to time customer complaints occur against the bank regarding various types of services and bank service behavior.

Based on the phenomena revealed, the issue raised in this study, namely the indication that the formulation of several clauses stipulated by the bank in the standard contract it made, does not accommodate the protection of interests for the customers themselves. Therefore, researchers deem it necessary to conduct a study of the nature of standard agreements in banking.

II. RESEARCH METHODS

This research is empirical (*field research*) supported by the facts in the field which are translated into standard contracts, which are used by banks with branch offices in Makassar City. In this regard, the researcher analyzes the substance of the contract clauses contained in it (*legal content analysis*) so that from the scientific observations, analytical accountability can be obtained academically regarding the nature of standard agreements in the banking business.

III. DISCUSSION

The agreement made by the parties applies as a law for those who make it. As such, agreements made by the parties are equated with the law. Therefore, to make agreements requires carefulness and accuracy of the parties, both from the creditor and the debtor.

If the parties agree then the credit agreement will occur. This the debtor has the freedom to do or not do the contract. If the debtor chooses to enter into a contract or not with the Bank, the debtor exercises his freedom to determine who will agree. But bank credit agreements limit the freedom to contract the debtor in terms of freedom in determining the form of agreement where the standard agreement is in written form, freedom in determining how the agreement is made because the way of making it has been determined by the bank, freedom in determining the contents of the agreement because it has been determined by the bank. Also, freedom in bank credit agreements involves the freedom to determine and choose the form of contract.

Legal regulations that protect customers as consumers not only through the UUPK, but also more specifically in the legislation in the banking sector. Because banks are financial institutions that conduct business activities by withdrawing funds directly from the public, in carrying out their activities banks must implement the principles of bank management, namely the principle of trust *(fiduciary principle*), the principle of *prudential principle*, the principle of confidentiality (*confidentiality principle*), and the principle of getting to know customers (*know your customer principle*).

Trust is the core of banking so a bank must be able to maintain the trust of its customers. Law as a social engineering *tool can* be actualized here. At the level of the law and PBI there are arrangements to maintain public confidence in banks and at the same time be able to provide legal protection for customers.

First, to provide legal protection especially for depositors as mentioned above, Act Number 10 of 1998 mandates the establishment of a Deposit Insurance Corporation (LPS) and requires each bank to guarantee public funds deposited in the bank concerned.The mandate of Law Number 10 the Year 1998 has been realized with the enactment of Law Number 24 the Year 2004 concerning the Deposit Insurance Corporation. The function of this institution is to guarantee deposits of depositors and to be active in maintaining the stability of the banking system by their authority.

Second, legal protection for customers as consumers in the banking sector, especially in the event of a dispute between the customer and the bank. This has been regulated through PBI No. 7/7 / PBI / 2005 concerning Settlement of Customer Complaints and PBI No. 8/5 / PBI / 2006 concerning Banking Mediation.In Article 1 number 4 PBI No. 7/7 / PBI / 2005 concerning Settlement of Customer Complaints, Complaints are defined as expressions of Customer's dissatisfaction caused by potential financial losses to the Customer that are allegedly due to errors or negligence of the Bank. By Article 2 PBI No. 7/7 / PBI / 2005, banks are required to establish policies and have written procedures regarding the receipt of complaints, the handling and resolution of complaints, as well as monitoring the handling and resolution of complaints.

Provisions regarding the written policies and procedures are regulated in Bank Indonesia Circular Letter (SEBI) No. 7/24 / DPNP dated July 18, 2005, among others, as follows:

a) Bank's obligation to settle Complaints includes obligations to settle Complaints submitted verbally and or in writing by the Customer and/or Customer Representative, including those submitted by an institution, legal entity, and/or another bank that becomes the Bank's Customer.

b) Every Customer, including *walk-in customers*, has the right to submit complaints.

c) Filing a complaint can be made by a Customer Representative acting for and on behalf of the Customer based on a special power of attorney from the Customer.

In Article 10 PBI No. 7/7 / PBI / 2005 states that banks are required to settle Complaints no later than 20 (twenty) working days after the date of receipt of the written Complaints unless certain conditions cause the bank to extend the period. namely:

a) The Bank Office which receives Complaints is not the same as the Bank Office where the problem was reported and there are communication constraints between the two Bank Offices;

b) Financial Transactions complained of by the Customer and/or Customer Representative require special research on Bank documents;

c) Other things are beyond the bank's control, such as the involvement of a third party outside the Bank in the Financial Transaction conducted by the Customer.

Considering the settlement of customer complaints by banks regulated in PBI Number 7/7 / PBI / 2005 dated January 20, 2005, concerning Settlement of Customer Complaints is not always able to satisfy customers and if not immediately addressed can affect the bank's reputation, reduce public trust in banking institutions and harm the rights customers' rights, it is necessary to establish a Mediation institution that specifically handles banking disputes.

Mediation (Banking) is a dispute resolution process involving a mediator to help the parties to a dispute to settle in the form of a voluntary agreement to some or all of the disputed issues.

As for the organizer of Banking Mediation as referred to in the provisions of Article 3 PBI No. 8/5 / PBI / 2006, namely:

a) An independent banking mediation institution formed by the banking association

b) This institution is currently not established, (to be formed no later than 31 December 2007), so that the Banking Mediation function is temporarily carried out by Bank Indonesia.

The proceedings in Banking Mediation are technically regulated in PBI No. 8/5 / PBI / 2006 and Bank Indonesia Circular No. 8/14 / DPNP dated June 1, 2006, as follows:

a) Submission of Settlement of Disputes in the context of banking Mediation to Bank Indonesia is carried out by the Customer or the Customer Representative.

b) If the Customer or Customer Representative submits a Dispute settlement to Bank Indonesia, the Bank is required to fulfill Bank Indonesia summons.

Conditions for Filing Dispute Resolution through Banking Mediation (Article 8 PBI No. 8/5 / PBI / 2006)

a) Submitted in writing with adequate supporting documents;

b) A settlement attempt has been proposed by the Customer to the Bank;

c) The dispute submitted is not in process or has never been decided by arbitration or judicial institution, or there has not been an Agreement facilitated by another Mediation institution;

d) Disputes submitted are civil disputes;

e) Disputes submitted have never been processed in banking Mediation facilitated by Bank Indonesia; and

f) Submission of Settlement of Disputes not more than 60 (sixty) working days from the date of the letter of the settlement of Complaints submitted by the Bank to the Customer.

The Mediation Process has carried out after the Customer or the Customer Representative and the Bank sign a Mediation *Agreement (agreement to mediat*e) which contains:

a) An Agreement to choose Mediation as an alternative to dispute resolution; and

b) Approval to comply and comply with the Mediation rules set by Bank Indonesia.

If the mediation process has been completed, the bank must follow and comply with the Mediation agreement that has been signed by the Customer or the Customer Representative and the Bank. The above explanation is part of the legislation that can be used as a means of protection for customers as consumers in the banking sector. For the sake of optimal regulation, the cooperation between *stakeholders* relevant, namely banks, customers, government and dispute resolution institutions, is needed by their respective capacities and authorities.

IV. CONCLUSION

The Nature of a standard agreement in bank credit, in essence, does not conflict with statutory regulations. The principle of freedom of contract underlies the standard banking credit agreement as well as in practice and the habits of the bank towards debtors/customers. But in practice the position of creditors is more dominant in the clauses of the agreement than the debtor / customer so that there is an imbalance in the preparation of credit agreements, where the creditor or the bank first determine the form and contents of the credit agreement so that in the end the debtor/customer accepts and approves agreement.

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