JILPR Vol. 7, No. 3 June 2026
Journal of Indonesia Law & Policy Review 2715-498X

STANDARD AGREEMENTS IN PROVIDING CREDIT BY BANKS TO CUSTOMERS AS SEEN FROM A CIVIL LAW PERSPECTIVE

Endang Hadrian[1*], Dwi Atmoko[2], Jantarda Mauli Hutagalung[3]
[1,2,3]Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia
endang.hadrian@dsn.ubharajaya.ac.id[*1], dwi.atmoko@dsn.ubharajaya.ac.id[2], jm.hutagalung@dsn.ubharajaya.ac.id[3]

Abstract

The banking sector in Indonesia plays a highly strategic role in the economy. Economic activity is a series of diverse legal acts. One of the most prominent forms of economic activity occurring in banking is the agreement between the customer as a consumer and the bank. Credit is currently in high demand among people with varying motives and consumption needs. Driven by increasingly pressing economic pressures, credit is an alternative way to obtain capital or funds needed for various community needs. Credit agreements granted by banks to customers are not without risk, as any risk may occur. The most common risk is the risk of failure or default in bank loan repayment. A new loan can only be issued after a written agreement has been reached between the debtor and the creditor, with the creditor acting as the lender and the debtor as the recipient of the loan. This written agreement is contained in a standard credit agreement. The credit agreement outlines the terms and procedures for applying for a loan with collateral and the obstacles in implementing the loan agreement. This research is an applied normative research with a descriptive approach. The problem-solving approach used is a normative juridical approach. The data used are primary and secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In summary, a standard bank agreement is valid as long as it does not violate the law and maintains a balance between the rights and obligations of customers. The basis for this standard agreement is Article 1320 of the Civil Code.

Keywords: Standard Agreement, Bank, Civil Code

INTRODUCTION

The rapid development of the times has forced people to constantly strive to meet their basic needs. However, their ability to meet these needs is hampered by limited economic resources or capital. This leads to a need for funds to meet both primary and secondary needs. Given the substandard economic conditions of the Indonesian people, where incomes are still below average, the role of banks in providing credit is crucial.

Articles 3 and 4 of Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking state that the primary function of banks is to collect funds from the public in the form of deposits (checking accounts, savings deposits) and then distribute them back to the public in the form of credit and/or other forms, to improve the standard of living of the people. Based on this function, banks are utilized by the public to obtain funds in the form of credit. One of the primary functions of banks in Indonesia is to collect and distribute funds to the public. Banks stand between those who have funds and those who need them. Therefore, they play a crucial role in a country's economy. Banks also act as a transmission channel, assisting the government in national development through various facilities. One such facility is a loan facility, namely credit.

According to Article 1, number 11 of Law Number 10 of 1998, credit is defined as the provision of money or equivalent debt, based on a loan agreement between the bank and another party, requiring the borrower to repay the debt after a specified period with interest. According to bank regulations, opening a loan must be based on a loan agreement, or in other words, a credit agreement. Credit granted by a bank to a debtor is conditional on the debtor providing collateral, often referred to as a credit agreement.

Credit is currently in high demand among people with diverse motives and consumption needs. Driven by increasingly pressing economic pressures, credit is an alternative way to obtain capital or funds needed for various community needs. Credit agreements granted by banks to customers are not without risk, as any risk may occur. The most common risk is the risk of default or default in bank loan repayment.

A new loan can be issued after a written agreement has been reached between the debtor and the lender, with the lender acting as the lender and the debtor as the borrower. This written agreement is contained in a standard credit agreement. A standard agreement is an agreement drawn up by the lender. In this agreement, almost all of the provisions are determined by the lender, and the debtor can only agree to the terms of the agreement. The need for credit is often felt by people with ongoing business activities and those seeking capital to carry out their business activities.

In the operational activities of providing credit, a credit guarantee is required. The lender must do so according to the legal provisions relating to the object of the credit guarantee and the law on credit guarantees, which is referred to as the guarantee law. In general, guarantees are used as one of the requirements for providing credit. Every provision of a credit facility must submit collateral in the form of goods or valuable documents whose value corresponds to the amount of the credit loan. Credit guarantees function to protect the bank from all possible occurrences. The bank must be careful and thorough in conducting research on all forms of guarantees provided by the debtor, so that in the future the guarantee does not cause problems, the type of credit distributed to customers.

RESEARCH METHODS

In writing this research, the author used normative-empirical research (applied law research), which is legal research concerning the enactment or implementation of normative legal provisions (codifications, statutes, or contracts) in action in each specific legal event that occurs in society in order to achieve predetermined goals.This research can be conducted (primarily) on primary and secondary legal materials, as long as they contain the legal principles addressed in this research.

RESULT AND DISCUSSION

A. General Overview of Credit Guarantees

The term "guarantee" is a translation of the Dutch word "Zakerheid," while the term "Zakerheidsrecht" is used for guarantee law or security rights. However, the term "guarantee law" has a broader and more general meaning and is more regulatory than security rights, just as property law has a broader scope and is more quantifiable than property rights.

The term "credit" comes from the Greek word "Credere," which, when translated into Indonesian, becomes "Kredit," meaning trust. A person or legal entity extending credit believes that the recipient will be able to fulfill all the promised obligations in the future. Therefore, it can be concluded that the basis of credit is trust. A deferred payment refers to the return of money or goods received not at the time of receipt but at a predetermined time. Several definitions of guarantee and credit exist in legal literature, including:

1. A guarantee is a security provided by a debtor or third party to a creditor to cover their obligations under a contract. (Mariam Darus Badrulzaman, 2005)
2. Sri Soedewi Masjhoen Sofwan argues that guarantee law is the totality of legal principles governing the legal relationship between the buyer and the recipient of the guarantee in relation to the imposition of a guarantee to obtain credit facilities. (Indrawati Soewarso, 2002)
3. According to Article 1 Number 11 of Law Number 10 of 1998 concerning Banking, credit is the provision of money or equivalent claims based on a loan agreement or contract between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest.

Based on this definition, it can be concluded that a credit guarantee is a form of collateral in which a guarantor (an individual) undertakes to fulfill a debtor's debt in the amount stated in the principal amount. In banking practice, a credit guarantee is referred to as an individual guarantee. A personal guarantee is an agreement between a creditor and a guarantor, whereby an individual binds themselves as guarantor to fulfill the debtor's debt, either because they are appointed by the creditor (without the debtor's knowledge or consent) or submitted by the debtor at the creditor's direction.

Regarding credit granting activities, regarding debt guarantees, commonly referred to as credit guarantees or collateral. Several applicable banking regulations indicate that credit guarantees are almost always required for every credit transaction. This is because in every credit grant, the risks arising from the credit agreement can be mitigated by the existence of a credit guarantee. In addition to mitigating the risks arising from the credit agreement, credit guarantees also have other functions, namely:

1. Credit Collateral as a Security for Loan Repayment

   Credit collateral is a preventative measure taken by banks. This is because if the debtor later defaults or fails to repay their debt according to the terms of the credit agreement, the collateral will be disbursed.
2. Credit Collateral as a Motivator for Debtor

   When the bank pledges the debtor's assets as collateral, the debtor fears losing them. This encourages the debtor to strive to repay the loan to prevent the bank from disposing of the collateral.
3. Functions Related to the Implementation of Banking Provisions

   The relationship between credit guarantees and banking provisions can be seen in the provisions governing the assessment of collateral as a deduction in tax calculations, collateral requirements for credit restructuring through the provision of additional credit facilities, and so on. (M Bahsan, 2002). Credit guarantees can be classified into several categories based on certain perspectives, such as the method of origination, nature, the object of the guarantee, and so on.

4. Guarantees Based on Law and Agreement

   Guarantees based on law are guarantees created or created by, such as general guarantees, privileges, and retention rights. Meanwhile, guarantees based on agreements are guarantees created or created by prior agreements between the parties, such as pledges, mortgages, security rights, and fiduciary obligation

5. General and Special Guarantees

   In a general guarantee, all creditors have equal standing with respect to other creditors; no creditor is given priority or privilege over others. Debt repayment is divided equally based on the size of each creditor's claims compared to the debtor's total debt. This is emphasized in Article 1131 of the Civil Code, which states that the object becomes collateral for all creditors; the proceeds from the sale of the object are divided equally, that is, according to the size of each creditor's claims, unless there are legitimate reasons for prioritization among the receivables. A special guarantee arises from a special agreement between the creditor and the debtor. Because general collateral is less advantageous for creditors, it is necessary to specifically pledge certain assets as collateral for the debtor's debt repayment. This gives the creditor a preferred or privileged position over other creditors in the repayment of their debt.

6. Material Collateral and Personal Collateral

   Material collateral is collateral in the form of an absolute right to an object, which has characteristics and is directly related to the debtor's specific object, can be defended against anyone, always accompanies the object, and can be transferred. Material collateral can take the form of movable or immovable property. Movable property is property that, due to its nature, can be moved or transferred, or is considered movable by law. Movable property is distinguished between tangible or bodily movable property and intangible or bodily movable property. Movable property is secured by pledges and fiduciaries, while immaterial property is secured by pledges, cessions, and accounts receivable. A personal guarantee is a guarantee that creates a direct relationship to a particular individual, and can only be maintained against a particular debtor, against the debtor's assets.

7. Principal Collateral, Main Collateral, and Additional Collateral

   As the name suggests, credit is granted to a debtor based on the creditor's "trust" in the debtor's ability to repay the debt. This is because the law applies the principle that this "trust" is viewed as the principal guarantee for future debt repayment. Meanwhile, other contractual collateral, such as land mortgages, liens, mortgages, fiduciaries, and others, are only considered additional collateral, namely, additional collateral, which is the main collateral in the form of collateral for the goods financed by the credit.

8. Collateral on Movable and Immovable Assets

   The encumbrance of credit collateral is based on the object of the collateral. If the collateral is land, the encumbrance is based on the land mortgage. If the collateral is a ship or aircraft, the encumbrance is based on the mortgage. Meanwhile, if the collateral is movable property, the encumbrance is based on the mortgage, fiduciary, cession, and accounts receivable.

9. Regulatory and Non-Regulatory Guarantees

   Regulatory guarantees are credit guarantees whose institutions are explicitly regulated and recognized in applicable laws and regulations. Non-regulatory guarantees, on the other hand, are forms of guarantees that are not regulated or specifically stipulated in various laws and regulations, but are recognized and implemented I n practice. 10. Conventional and Non-Conventional Guarantees

10. Conventional collateral is collateral whose legal structure has long been recognized in our legal system, whether regulated by statute, customary law, or non-statutory regulations that do not originate from customary law but have long been implemented in practice, such as mortgages, mortgages, pledges of movable property, land pledges, fiduciaries, guarantees, and debt acknowledgment deeds. Meanwhile, non-conventional collateral is a form of collateral whose existence in the legal system of collateral is still relatively new and widespread, so its institutions have not yet been thoroughly regulated. These include, among others, the transfer of debtor collection rights, the transfer of claim collection rights, the power of attorney to sell, and guarantees to cover shortfalls.
11. Shares as Additional Collateral

    The purpose of providing collateral in a loan is to provide repayment for the business of the customer being financed. If the business of the customer financed by the bank fails, the hope is that the shares used as additional collateral will be converted into cash to repay the loan in the event of a default\

B. Position and Implementation of Collateral in Standard Credit Agreements

In relation to the granting of credit, as stipulated in banking regulations, collateral is almost always required for every loan application. Therefore, it can be concluded that collateral is a form of guarantee in which a guarantor (an individual) undertakes to fulfill the debtor's debt as stated in the principal debt agreed upon in the credit agreement.

Humans have many ways to meet their needs, one of which is barter, which means exchanging goods. In ancient times, this bartering method was often used to obtain desired goods. However, over time, humans discovered money as a medium of exchange for goods, leading to a process called buying and selling. This buying and selling process requires two or more parties bound to the transaction. There is a party called the buyer, who will purchase the goods and has the money to exchange them for the desired goods. There is also a party called the seller, who will sell the goods. This transaction process gives rise to the rights and obligations of each party.

The buyer is obliged to pay and has the right to receive the goods that have been purchased while the seller is obliged to provide the goods that have been purchased and has the right to receive money to exchange the goods. Their rights and obligations will be destroyed when these rights and obligations have been fulfilled so that there is no agreement that binds each of the two parties. Currently, the provisions of the law of agreements that are widely used in Indonesia are provisions that originate from Book III of the Civil Code concerning Agreements in Dutch called verbintenis. In Article 1233 B.W. it is stated that an agreement arises from an agreement and a law so that the agreement and the law are the sources of the agreement. (J. Satrio, 1992)

The primary principle underlying Contract Law is freedom of contract. Article 1338 in conjunction with Article 1320 of the Civil Code (KUHPerdata) demonstrates that the principle of freedom of contract states that all legally entered into agreements are valid as law for those who make them and are binding on both parties. This article not only provides the freedom to enter into agreements, but also stipulates that the content of the agreement can be determined by mutual agreement. However, this agreement must not violate public order or morality.

This principle embodies free will, which reflects human rights. Everyone may enter into any agreement, and in general, they are also permitted to override the provisions contained in the Civil Code. (Arus Akbar Silondae and Wirawan B. Ilyas, 2011). This is part of a system known as an open system. With this principle in place, the parties who make and enter into an agreement are allowed to draw up and enter into an agreement or agreement that gives rise to any obligations, as long as the performance that must be carried out is not something that is prohibited and contrary to the law. (Kartini Muljadi and Gunawan Widjaja, 2011)

Regarding the principle of freedom of contract, this principle is a continuation of the principle of equality of the parties as the basis of civil relations, and is differentiated from public relations which are superior and subordinate (M Faiz Mufidi, 2004). If it is related to the position of the parties in entering into an agreement, it is not only the principle of freedom of contract that needs to be taken into account even though this principle is considered important in civil law, other principles are the principle of balance, the principle of morals and propriety. (Mariam Darus Badrulzaman, 2019) However, in reality, it is rare to find parties entering into an agreement applying the principle of balance in the sense of Imbalance clearly occurs when one party holds a monopoly. If someone wants to obtain goods or services provided by the monopolist, they cannot negotiate terms that suit their own wishes. They must either accept the terms offered by the monopolist, or simply accept them without further negotiation. For example, a passenger cannot bargain over the price of a train ticket or the terms of transportation by train. They must either accept those terms or choose to travel by another means.

A similar situation occurs when there are only a few companies. There may be other circumstances in which genuine bargaining is difficult. For example, a borrower without money is in a weaker position than the lender. Even in a sale and purchase agreement, negotiation may be difficult if the goods themselves are unable to determine the quality or capacity of the goods they purchase. A more powerful party sometimes uses its position to impose heavy obligations on the other party, while simultaneously trying to limit or exclude all responsibilities. (Abdulkadir Muhammad, 1980)

An agreement that clearly demonstrates the dominance of one party is an agreement called a standard voorwarden in Dutch, or a standard contract in English law, and in Indonesia a standard agreement. (Mariam Darus Badrulzaman, 1994) In this standard agreement, the provisions are largely determined and drafted by the more dominant party, possessing a stronger bargaining position than the other party. Meanwhile, the party with the weaker bargaining position is less likely to make changes to the provisions contained in the draft agreement.

It can be said that the party receiving the offer is not in a position to choose from a wide range of options but only to accept or reject the offer. 9 Therefore, it can be seen that the large number of standard agreements used in transactions, where the agreement is dominant by one party, there is a possibility that the standard agreement has diminished the realization of the principle of freedom of contract from a legal perspective.

Balanced protection for all parties, with the consumer being the most disadvantaged. Currently, in vehicle sales agreements, both cars and motorcycles, the seller uses a standard agreement that must be approved by the buyer. Many companies and businesses offer easy access to these goods through credit. Nowadays, people increasingly make payments through credit, driven by unlimited desires and needs, but limited resources.

CONCLUSIONS

A standard agreement is valid if it meets the requirements of Article 1320 of the Civil Code, which outlines the requirements for a valid agreement. In addition to collecting public funds, banks also function to distribute these funds in the form of credit. The new banking law does not establish a legal relationship between the creditor and the borrower. However, we can understand that credit is based on a loan agreement between the bank as the creditor and the borrower as the debtor within a mutually agreed period, with the intention of repaying the debt with interest, a fee, or a share of the profits. The principle of freedom of contract does not arise from a standard agreement and appears to be one sided and reflects a balanced position.

REFERENCES

Badrulzaman, M. D. (1980). Standard agreements: Their development in Indonesia. Alumni.
Badrulzaman, M. D. (1994). Miscellaneous business laws. Alumni.
Badrulzaman, M. D. (2001). Compilation of contract laws. Citra Aditya Bhakti.
Badrulzaman, M. D. (2005). Miscellaneous business laws (2nd ed.). PT. Alumni.
Basyir, H. A. A. (2012). Principles of mualamalat law (Islamic civil law) (2nd ed.). UII Press.
Erawati, E., & Budiono, H. (2001). Legal explanation of the voidability of agreements. Alumni.
Fuady, M. (2002). Financing law in theory and practice. PT Citra Aditya Bakti.
Ghazaly, A. R., et al. (2010). Fiqh muamalat. Kencana.
Harahap, M. Y. (1986). Legal aspects of contracts. Alumni.
HS, S. (2006). The development of contract law outside the Civil Code. PT Raja Grafindo Persada.
Kansil, A. S. T. (1989). Introduction to Indonesian law and legal system. Balai Pustaka.
Khairandy, R. (2009). Limited liability companies: Doctrine, legislation, and jurisprudence. Kreasi Total Media.
Mertokusumo, S. (1989). Understanding law: An introduction. Liberty.
Mufidi, M. F. (2008). Technology transfer agreements in franchising business as a means of developing economic law. PT. Citra Aditya Bakti.
Muljadi, K., & Widjaja, G. (2003). Contracts born from agreements. PT Raja Grafindo Persada.
Panggabean, H. P. (2012). Standard contract practices in bank credit agreements. Alumni.
Rahman, H. (2003). Business contract drafting skills series, contract drafting. PT. Citra Aditya Bakti.
Satrio, J. (1992). The law of contracts. PT Citra Aditya Bakti.
Setiawan, R. (1997). Principles of contract law. Bina Cipta.
Sjahdeni, S. R. (1993). Freedom of contract and balanced protection for parties in bank credit agreements in Indonesia. Indonesian Bankers Institute.
Soepratignja, P. J. (2007). Contract deed drafting techniques. Atma Jaya University.
Subekti, R. (1987). Contract law (4th ed.). Citra Aditya Bakti.
Subekti, R. (2001). Principles of civil law. Intermassa.
Subekti, R. (2002). Agreement law. Intermasa.
Sulistiyono, A., & Rustamaji, M. (2009). Economic law as commander. Mas Media Buana Pustaka.
Umam, K. (2010). The law of financing institutions. Pustaka Yustisia.