

LEGAL PROTECTION FOR CUSTOMERS AGAINST RISKS IN BANK AGREEMENTS IN INDONESIA

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Abstract: This research was conducted with the aim of finding out how legal protection measures for customers (debtors) as consumers of bank service users and how the accountability of the bank in the event of risks related to bank credit agreements. By using the normative juridical research method, the credit agreement is a standard contract, where the contents or clauses of the credit agreement have been standardized and set forth in a form (blank), but are not bound in a particular form. Prospective debtor customers only need to sign if they are willing to accept the contents of the agreement, not giving the prospective debtor the opportunity to further discuss the contents or clauses submitted by the bank. Standard agreements are needed to meet practical and collective needs. At this stage the position of the prospective debtor is very weak, so that he just accepts the terms offered by the bank, because otherwise the prospective debtor will not get the credit in question. The function of the Bank is as a financial mediator that bridges the owner of funds with the people who need funds, both as depositors of funds and borrowers of funds. In the relationship between banks and customers, bank actions often occur that are detrimental to their customers, but so far, legal protection is often not maximal, because in the relationship between banks and customers, it is seen that the bank dominates in banking transactions so that sometimes it is detrimental to customers.

Keywords: Bank customers, agreement

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Introduction

Banking as a financial intermediary institution plays an important role in the national development process. The main business activity of the bank is to withdraw funds directly from the public in the form of deposits and channel them back to the public in the form of credit or financing, making it full of regulation, both through laws and regulations in the banking sector itself and other related legislation¹. Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) is also very related, especially in terms of legal protection for bank customers as consumers.

¹ Perlindungan Hukum Bagi Nasabah (Debitur) Bank Sebagai Konsumen Pengguna Jasa Bank Terhadap Risiko Dalam Perjanjian Kredit Bank Oleh: Mohammad Wisno Hamin2 Hlm 46

Among other things, there is a credit agreement or bank financing which is a standard agreement.

Law No. 8 of 1998 concerning Consumer Protection Chapter V in Article 18 stipulates standard clauses that prohibit the manufacture or inclusion of standard clauses in every document and/or agreement under certain circumstances. Customers in the context of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking are divided into two types, namely depositing customers and debtor customers. Depositing customers are customers who place their funds in a bank in the form of deposits based on the bank's agreement with the customer concerned. Meanwhile, debtor customers are customers who obtain credit or financing facilities based on sharia principles or equivalent based on the bank agreed with the customer concerned. In banking practice, customers are divided into three, namely: First, depositors are customers who deposit their funds in a bank, for example in the form of demand deposits, savings, and time deposits.

Second, customers who take advantage of credit facilities or bank financing, such as homeownership loans. Murabaha financing, and so on.

Third, customers who make transactions with other parties through banks (walk-in customers), for example, transactions between importers as buyers and exporters abroad using letter of credit (L/C) facilities.²

To ensure that banks can run their business properly, the role of supervisory institutions is very important to control or supervise the activities of the bank concerned, so that the safety of customer money stored in a bank is guaranteed. Initially, the task of bank supervision was carried out by Bank Indonesia, before the establishment of a special institution as mandated in Act Number 23 concerning Bank Indonesia, as amended by Act Number 3 of 2004 concerning Amendments to Act Number 23 of 1999 concerning Banks Indonesia (abbreviated UUBI). According to Article 34 paragraph (1) UUBI, the task of supervising banks will be carried out by a supervisory agency for the financial services sector. How is the legal protection provided by banks to customers based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, and what is the form of Customer Deposit Agreements with Banks?

Discussion

Legal protection provided by banks to customers based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking requires each bank concerned to establish a deposit guarantee institution. Through the provisions of Law Number 24 of 2004 concerning the Deposit Insurance Corporation (LPS) in Article 8, it is obligatory for all banks conducting business in the territory of the Republic of Indonesia to become members of the Deposit Insurance Corporation (LPS). Law No. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking, and so on. The birth of the UUPK is expected to be a legal umbrella (umbrella act) in the

² *Ibid, hlm 47*

consumer sector by not closing the possibility of the formation of other laws and regulations whose material protects consumers. The existence of legal protection for customers as consumers in the banking sector is urgent because the position between the parties is often not balanced.³

1. The interests of consumers, including in this case customers, are detailed in the United Nations Resolution Number 39/248 of 1985. In the 106th General Assembly of the United Nations which was held on April 9, 1985, it was outlined that the rights of consumers in question were:
 2. 1. Protection of consumers from dangers to their health and safety.
 3. 2. Promotion and protection of the socio-economic interests of consumers.
 4. 3. Availability of adequate information for consumers to give them the ability to make the right choices according to their wishes and needs.
 5. 4. Consumer education.
 6. 5. Availability of effective compensation measures.
 7. 6. Freedom to form consumer organizations and allow them to express opinions from the time of the decision-making process related to consumer interests.⁴
1. It is an unfair thing for consumers if the interests of consumers are not balanced and are not appreciated as much as respect for entrepreneurs. In that context, customers have specific rights, namely as follows:
 2. 1. The customer has the right to know in detail about the banking products offered. This right is the main right of the customer because, without a detailed explanation from the bank through its customer service, it is very difficult for the customer to choose what banking product according to his will. What rights will be received by the customer if the customer wants to hand over his funds to the bank to be managed?
 3. 2. The customer has the right to get interested in savings products and time deposits that have been agreed in advance.⁵

Form of Customer Deposit Agreement with the Bank

The definition of an agreement is formally regulated in the provisions of Article 1313 of the Civil Code which states that an agreement is an act by which one or more people bind themselves to one or more other people. Another definition of an agreement is an event where one person promises to another person or where two people promise each other to carry out something.⁶

Parties who mutually agree with their awareness to bind themselves to one another;

³ Ibid, hlm 48

⁴ Ibid, hlm 48

⁵ Ibid, hlm 49

⁶ Hubungan Hukum Antara Nasabah Penyimpan Dana Dengan Bank Dalam Prespektif Hukum Perjanjian Di Indonesia Oleh: L. Elly A.M. Pandiangan Hendri Jayadi, Hlm 94

1. Consensus or mutual agreement of each party;
2. The object in the agreement is in the form of an object or doing something;
3. Certain forms of agreements, both orally and in writing, notarial or underhand;
4. There are certain conditions which are the rights and obligations of the parties that are reciprocal.

General banking principles, so that any banking activity based on banking functions and activities, whether it is to collect funds from the public or channel funds to the public in the form of loans as outlined in the form of an 'agreement' or 'contract' must use four the following principles: the principle of trust; the precautionary principle; the principle of secrecy; and the principle of knowing customers. These four principles are applied in the implementation of banking activities.

The principle of trust is a principle which states that the bank's business is based on a relationship of trust between the bank and its customers. Banks mainly work with funds from the public which are deposited with them based on trust, so that each bank must and needs to continue to maintain its health by maintaining and maintaining trust. society to him⁷. The public's willingness to save some of their money in the bank is solely based on the belief that the money will be recovered at the time they want or following the agreement and accompanied by rewards.

If the trust of depositors of funds in a bank has decreased, there may be a rush to the funds they have deposited. The principle of prudence is a principle which states that banks in carrying out their functions and business activities are required to apply the precautionary principle to protect public funds entrusted to them.

The purpose of applying the precautionary principle is none other than to ensure that banks are always in good health. With the implementation of the precautionary principle, it is hoped that public trust in banking will remain high so that the public is willing and does not hesitate to deposit their funds in the bank. In the precautionary principle, there are 5C principles in which banks must carry out careful assessments as follows:

1. Assessment of character/personality (Character). The assessment of the character or personality of the prospective debtor is intended to determine the honesty and good faith of the prospective debtor to repay or repay the loan so that it will not make it difficult for the bank in the future.⁸
2. Capacity assessment Banks must examine the expertise of prospective debtors in their field of business and managerial capabilities so that the bank believes that the business to be financed is managed by the right people so that the prospective debtor within a certain period of time is able to pay off or repay the loan.

⁷ Ibid,Hlm 94

⁸ Ibid,hlm 94

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3. Assessment of capital (Capital) Banks must conduct an analysis of the financial position as a whole regarding the past and the future so that it can be seen the ability of the prospective debtor's capital in supporting the project or business financing of the prospective debtor concerned.
 4. Assessment of collateral (Collateral) To cover the payment of bad debts due to default, the prospective debtor generally provides collateral in the form of high-quality and easy-to-cash collateral with a minimum value of the amount of credit or financing granted to him.
 5. Assessment of the business prospects of debtor customers (Condition of the economy) Banks must analyze the market conditions at home and abroad, both past and future, so that the future marketing of the project results or the business of the prospective debtor being financed can also be known. These five principles must indeed be implemented as well as possible and their application cannot be negotiated, by bank business activities in order to prevent bad loans from happening.

The agreement between the customer and the bank is binding. The customer as a depositor of funds saves their funds in the bank and gives the bank the freedom to manage the money or funds that are deposited. The bank's obligation under the agreement is to return the deposit by paying interest on the customer's deposit. The relationship between the bank and the customer will have various provisions that lead to the enactment of other provisions, sometimes the provisions specified in the application are completely unknown to the customer. The relationship between the customer and the bank is the relationship between legal subjects as carriers of rights and obligations. The definition of a legal subject is a person and an entity, while the notion of a body is a legal entity and not a legal entity. Such a distinction will relate to customer identification (customer identification file).

The main basis in the agreement is the fulfillment of the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely an agreement to agree, an agreement on a certain matter and a lawful cause. Both parties as legal subjects must fulfill the legal aspects of legal subjects.

Conclusion

Customers in the context of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking are divided into two types, namely depositing customers and debtor customers. Depositing customers are customers who place their funds in a bank in the form of deposits based on the bank's agreement with the customer concerned. Meanwhile, debtor customers are customers who obtain credit or financing facilities based on sharia principles or equivalent based on the bank agreement with the customer concerned. In banking practice, customers are divided

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