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Imperfect Information of Bankers Clause in Credit Agreements in Banking Institutions: Further Legal Impact

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Abstract *The main function of banking institutions is as an intermediary institution. The intermediary function is carried out by collecting funds from the public in the form of deposits (savings, deposits and current accounts) and channeling them to the public in the form of credit. To provide legal certainty in the implementation of credit, a credit agreement is needed. The credit agreement is made with a standard clause pattern, where the contents of the agreement have been made by the bank, the community as customers are forced to sign the agreement because they economically need fresh funds and their political and sociological position is weak before the bank. In the credit agreement there is a banker clause, if something happens to the customer such as death, the insurance company will pay off the remaining debt of the customer. The purpose of the banker clause is to minimize credit risk. At the time of signing the credit agreement, the customer did not get perfect information about the banker clause. Many customers died but still had to pay the remaining credit debt because the insurance company refused to make payments on claims by the bank because the customer died of certain*

diseases. Information on diseases that are not covered by the insurance is never conveyed to the bank customer, because the customer is represented by the bank to sign the policy. This perfect information is rarely conveyed at the time of signing the credit agreement. The customer is only represented by the bank at the time of signing the credit agreement. For this reason, clear rules are needed regarding the provision of banker clause information at the time of signing the credit agreement, the customer, bank and insurance institution must sit at one table when signing a credit agreement containing a banker clause.

Keywords Banker Clause, Credit, Insurance.

1. Introduction

The community's need for funds from the banking world is very large. Starting from the lower, middle and upper class people need funds from banking institutions. The funds expected by the public from banks are in the form of credit schemes. Credit channeled by banking institutions to the public comes from public funds deposited in banks in the form of deposits (deposits, current accounts, savings). Credit distribution is one of the main functions of a bank, the banking sector plays an important role important in the economic stability of a country[1].

Loans disbursed to the public will be paid by the public in installments and accompanied by interest. Credit interest is always higher than deposit interest[2]. The difference between loan interest and deposit interest will be an advantage for the bank, the more credit channeled to the community, the more profit the bank will get but on the other hand there will be more risk held by the bank.

Loans granted by banks contain risk. To reduce the risk of loss in granting credit, it is necessary to guarantee the granting of credit in the sense of confidence in the ability and ability of the debtor to repay the debt in accordance with the agreement. In Article 8 of Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking, it is stipulated that in providing credit, commercial banks must have confidence in the ability and ability of the debtor to repay the debt in accordance with the agreement[3]. Norm provide legal certainty in business

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[1] Maryem Naili and Younès Lahrichi, "Banks' Credit Risk, Systematic Determinants and Specific Factors: Recent Evidence from Emerging Markets," *Heliyon* 8, no. 2 (2022): 1–16, https://doi.org/10.1016/j.heliyon.2022.e08960.

[2] Paulo Júlio and José R. Maria, "The Magnifying Role of the Banking Sector during Depressions," *Journal of Macroeconomics* 79, no. October 2023 (2024), https://doi.org/10.1016/j.jmacro.2023.103569.

[3] Rudyanti Dorotea Tobing, *Hukum Perjanjian Kredit (Konsep Perjanjian Kredit Sindikasi Yang Berasaskan Demokrasi Ekonomi)* (Yogyakarta: Laksbang Grafika, 2014).

transaction. The role of norm is very dominant in realizing business transactions which are safe, fair, and have legal certainty[4].

Banks in providing credit to the public are required to apply the principle of prudence because in principle the funds channeled to the public in the form of credit do not belong to the bank but to the people who are deposited in the bank. The trust of the people who have deposited their money in the bank must be upheld by managing credit properly and prudently. The application of the precautionary principle in granting credit is fundamental because the banking institution stands on public trust. When banking institutions lose the trust of the public, the public will withdraw their deposits (rush) from the bank and will have an impact on economic activity[5].

The role of banks in a country's economy is like blood. If the blood in the body is damaged, it will affect other vital organs such as the heart, kidneys and liver. Likewise, the economic system if the blood is damaged also has the potential to damage other systems. Therefore, bank health must be maintained because if bank health is disrupted it will affect other economic systems[6]. The state intervenes in maintaining the health of the bank because even though the bank is privately owned but when the bank is established, it is public[7].

The banking business is a business full of risks. Loans channeled by banks to the public are full of risks, one of which is bad credit. In principle, the money

[4] Rosyidi Hamzah and Fadhel Arjuna Adinda, "The Existence of A Norm Regarding The Execution of Fiduciary Guarantees After The Issuance of The Constitutional Court Decision Number 18/PUU/XVII/2019," *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022): 81, https://doi.org/10.30641/dejure.2022.v22.81-92.
[5] Cep Jandi Anwar et al., "Investigating the Relationship between Monetary Policy, Macro-Prudential Policy and Credit Risk in Indonesia Banking Industry," *Heliyon* 9, no. 7 (2023): e18229, https://doi.org/10.1016/j.heliyon.2023.e18229.
[6] Asli Togan Egrican, "Overlapping Board Connections with Banker Directors and Corporate Loan Terms: Evidence from Syndicated Loans," *Global Finance Journal* 50 (2021): 2, https://doi.org/https://doi.org/10.1016/j.gfj.2021.100672.
[7] Akhmad Akbar Susamto et al., "Public Ownership and Local Bank Lending at the Time of the Covid-19 Pandemic: Evidence from Indonesia," *Pacific Basin Finance Journal* 80, no. September 2022 (2023): 102072, https://doi.org/10.1016/j.pacfin.2023.102072.

channeled by banks to the public in the form of credit is not bank money but public money in the form of deposits. Although the public deposits are not in the bank because they are channeled to the community in the form of credit, when the community needs these funds the bank still has to provide these funds.

Every credit that has been approved by the bank and the customer must be stated in the credit agreement. The credit agreement is the womb of all rights and obligations of the parties in the implementation of credit. The approved credit agreement must be respected by the parties and every clause must be obeyed. The credit agreement serves as evidence of the obligations of creditors and debtors so that credit has binding legal force for the parties. The credit agreement contains all information regarding the credit so that the credit agreement can be a tool for monitoring.

In its implementation, the credit agreement is made with a standard agreement scheme. In the standard agreement scheme, the clauses of the agreement have been determined by the bank. As a result, the customer cannot change the clauses of the credit agreement. If the customer agrees with the credit agreement, it is immediately signed and if he does not agree, then please leave it (take it or leave it)[8]. The credit agreement has been prepared by the bank unilaterally, so automatically the contents of the credit agreement are detrimental to the customer. In principle, the customer is forced to sign the credit agreement because of necessity. Although in the credit agreement the position of the customer and the bank is balanced, economically and politically the bank's position is higher than the customer[9]. This situation forces customers to accept the clauses of the credit agreement in the hope of immediately getting the credit funds.

[8] Fadhel Arjuna Adinda, "Penerapan Asas Keseimbangan Dalam Klausula Baku Pada Perjanjian Pembiayaan Dilembaga Pembiayaan Kota Pekanbaru" (Universitas Islam Riau, 2020), https://repository.uir.ac.id/15060/1/161010581.pdf.

[9] Faizal Kurniawan et al., "The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia," *Lex Scientia Law Review* 6, no. 1 (2022): 121–56, https://doi.org/10.15294/lesrev.v6i1.55468.

In the credit agreement there is a banker clause, if something happens to the customer such as death, the insurance company will pay off the remaining debt of the customer. The purpose of the banker clause is to minimize credit risk. At the time of signing the credit agreement, the customer did not get perfect information about the banker clause. Many customers died but still had to pay the remaining credit debt because the insurance company refused to make payments on claims by the bank because the customer died of certain diseases. Information on diseases that are not covered by the insurance is never conveyed to the bank customer, because the customer is represented by the bank to sign the policy. This perfect information is rarely conveyed at the time of signing the credit agreement[10]. The customer is only represented by the bank at the time of signing the loan agreement.

Several bankers clause cases that led to court challenges were caused by imperfect bankers clause information:

TABLE 1. Several Banker's Clause Case

Case Number	Description
1. 251/Pdt.G/2017/PN Pbr	The lawsuit was filed by a wife who became the heir of her husband who borrowed money from the bank. Because the wife read in the credit agreement there was a bankers clause, the wife as the heir argued that her deceased husband's debt was borne by a third party, namely insurance. But in reality the wife still has to pay the remaining debt of her deceased husband by taking the credit guarantee by the bank.
2. 498/Pdt.G/2021/PA.Jmb	The plaintiff as a debtor at an Islamic bank. Debtors get financing from Islamic banks. In the Al murabahah financing agreement / contract there is a banker clause in the form of life insurance and

[10] Anwar et al., "Investigating the Relationship between Monetary Policy, Macro-Prudential Policy and Credit Risk in Indonesia Banking Industry."

	liability insurance in the form of fire insurance and layoff insurance. In the ongoing loan process suddenly the Plaintiff was laid off from work so that the Plaintiff made a claim but was rejected by the insurance. The Plaintiffs never received an explanation of what kind of layoffs could be claimed and even the Plaintiffs never saw and were shown the form of the insurance policy.
3. 660/Pdt.G/PA.Ska	The plaintiff in this case is a wife whose husband has died. While the defendants are Islamic banks and insurance institutions. The plaintiff's deceased husband was a debtor who received a financing facility from an Islamic bank. In the financing agreement there is a banker clause in the form of life insurance. During the installment payment period, the plaintiff's husband died, and the insurance company refused to pay the claim because the plaintiff's husband died due to Covid 19.
4. 40/PDT.G/2013/PN.MTR	The plaintiff in this case was a debtor who obtained a credit loan from a bank. And the Defendant in this case is the Bank. In the credit agreement there is a banker clause. The credit guarantee was insured. One day the credit guarantee caught fire, and the Plaintiff filed an insurance claim, but was rejected by the insurance company. Even though the Plaintiff had made premium payments.
5. 458/PDT/2019/PT MDN	This lawsuit was filed by a wife whose husband had died. The wife as the plaintiff sued a bank. The deceased husband borrowed money from the bank. In the credit agreement there was a banker

	clause. However, the credit agreement and policy were never received by the plaintiff. When the husband died (debtor) at a bank, the heirs must still be responsible for the debt.

Based on several cases described above, these cases were born from the lack of clear information about the banker's clause when signing a credit agreement at a banking institution. If information about the banker's clause is provided perfectly and completely, the parties will understand their rights and obligations, so that the parties' dissatisfaction will not end up in court.

The perfection of information provided by banking institutions and insurance institutions when signing credit agreements that use banker's clauses can minimize cases that end up in court so that financial institutions can focus on developing their business to drive the community's economy, because civil litigation in court is quite time consuming and costly, and this is very contradictory to the concept of economic efficiency.

Bankers clause can also be applied to collateral such as a house. If the house as collateral for the loan catches fire, the value of the house collateral will be lost, to replace it, the insurance company will replace the consequences of the event[11]. Bankers clause is a triangular agreement between the bank, customer and insurance but only stands in one credit agreement.

When the customer receives credit funds from the bank, the funds are not fully received by the customer because the bank has deducted administrative costs, taxes, deductions and even insurance premium payments. When the customer's money is deducted by the bank for paying insurance premiums, the customer should also get a policy from the insurance company that contains the

[11] Erick Fernando and Pandapotan Siagian, "Proposal to Use the Analytic Hierarchy Process Method Evaluate Bank Credit Submissions," *Procedia Computer Science* 179 (2021): 232–41, https://doi.org/10.1016/j.procs.2021.01.002.

rights and obligations of the insurance company and the customer[12]. Such as what risks are guaranteed, the amount of money insured, the amount of insurance premiums, the period of coverage, risks that are not guaranteed, procedures for filing claims and lien clause provisions.

The legal basis of the above provisions is born from the mandate of the Law and the obligations in an engagement regulated in Book III of the Civil Code and the Commercial Code concerning Agreement. The laws related to this are regulated by the Law No. 14 of 2014 on Insurance, Law No. 10 of 1998 on the Amendment to Law No. 7 of 1992 on Banking, Law No. 21 of 2011 on the Financial Services Authority, Law No. 8 of 1999 on Consumer Protection.

Arrangements regarding what is covered by insurance, how long is the insurance period, how is the insurance policy claim procedure, what risks are covered and risks that are not covered are the provisions contained in the insurance policy which are born as an agreement between the two parties, and apply as laws to be implemented properly.

As a result of the lack of perfect information provided from the start, there are always problems when an event occurs related to this banker clause. When the customer dies or suffers permanent disability, the heirs and family of the customer assume that the debt is paid off because the credit funds received have been deducted to pay life insurance premiums. Even though the insurance company does not want to pay insurance claims because there are several events that are not covered and these events were never explained perfectly at the beginning. So that many similar incidents lead to the green table.

Imperfections in making agreements have an impact on the validity of business agreements and relationships between banks and other parties.

[12] Rosyidi Hamzah, "Penerapan Azas Kekeluargaan Dan Keadilan Pada Penyelesaian Kredit Bermasalah Pada Pembiayaan Perumahan Di Indonesia," *COSTING: Journal of Economic, Business and Accounting* 3, no. 2 (2020): 406, https://doi.org/https://doi.org/10.31539/costing.v3i2.1141.

Imperfections in making this agreement can be used as a legal argument to delay the fulfillment of obligations or even if the lawsuit is won by the court, it can have a detrimental financial impact on the bank[13].

TABLE 2. Some previous research and the novelty of the author's research

Number	Description
1. Atin Meriati Isnaeni: Premi Payment of the Bankers Clause Insurance In a Credit Agreement (Review of Deed of Credit Agreement PT. Bank Danamon Mataram. DOI:http://dx.doi.org/10.29303/ius.v9i3.978	Whereas even though the inclusion of a bankers clause is intented for the benefit of the bank, the obligation to pay the insurance premium is the obligation of the debtor who owns the object of the guarantee. Whereas the banks negligence in submitting the maturity date of the bankers clause insurance payment to the debtor which result in the non-claimable of insurance for the object of credit guarantee, the debtor can sue the bank on the basis of having committed an unlawful act (onrechtmatigedaad)
2. Rahmawati Kusuma: Inclusion of Bankers Clause in Credit Agreement. https://jatiswara.unram.ac.id/index.php/js/article/view/215/195	That with the possibility of shrinking and reducing the economic value of an item either due to natural actors or due to certain circumstances (force majeure / overmacht) which can cause shrinking / reducing the economic value of a collateral object, then to minimize the losses suffered by the bank, the bank requires the

[13] Sunu Widi Purwoko, *Aspek Hukum Bisnis Bank* (Jakarta: Nine Season Communication, 2015).

	obligation to insure the collateral object for the benefit of the bank (bankers clause) on the part of the bank customer (borrower). Thus, the obligation to insure collateral objects for the benefit of creditors by debtors is part of the Bank's efforts to secure credit that has been channeled to customers (debtors) juridically and physically. The form of legal protection for debtors as consumers in credit collateral insurance is the right to correct, clear, and honest information regarding the conditions and guarantees of goods and / or services; to the right to obtain a fair settlement of disputes encountered. Thus, in relation to the negligence of the Bank to inform the debtor of the end date of the insurance period of a collateral object, it can be a reason for the debtor to file a lawsuit against the bank as a form of legal protection for the debtor to defend his civil rights that are harmed by the creditor that the bank has committed an unlawful act (Article 1365 of the Civil Code).
3. Hilda Pratiwi, Budiharto, Paramita Prananingtyas: Responsibility of Insurance Companies in the Implementation of Banking Lending	The responsibility for the occurrence of credit life insurance is entirely in the hands of the insurance company. Credit life insurance is a type of life

with the Conditions of Bankers Clause. https://doi.org/10.14710/dlj.2016.12033	insurance, where what is insured is the life of the debtor/borrower of the insured party, and the insurer provides compensation for the remaining debt that has not been repaid according to the repayment schedule, if the debtor dies during the insurance period. The form of legal protection of customers who have not paid credit life insurance claims which then result in the collateral not being submitted from the bank can refer to the Consumer Protection Law and POJK Number 1 /POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.
4. Ni Putu Purnama Wati, Ni Luh Made Mahendrawati, Desak Gde Dwi Arini: Responsibility of Insurance Parties to Bank Credit Agreements in the Event of Debtor's Death. https://doi.org/10.22225/jkh.2.1.2996.196-201	The legal consequence of the credit agreement in the event the dobtor dies, these are two possibilities, namely that the credit goes to the heirs as regulated in article 833 of the civil Code (burgerlijk wetboek) or the guarantee is executed by the bank, and the second possibility is that the credit is written off due to a life insurance clause or a life insurance agreement with a bankers clause, which means that the insurance company must be responsible for paying off the remaining debts of the debtor who

	died according to the terms and conditions of the policy, otherwise the interested party can file a summons to sue the insurance company.
5. Chairy Naima Amalia: Application of the exoneration clausula in the customer opening account from agreement in conventional banks in bandar lampung. DOI: 10.2504/iplr.vlil.2043	Research shows that the agreement for opening a customer account is based on a sample of 3 conventional banks in Lampung Province that the agreement fulfills the elements of an agreement in accordance with the Financial Services Authority Regulation (POJK) and this agreement is a form of an exoneration agreement. This can be seen from the form or model of an agreement for opening a savings account at a bank that has generally been made in the form of a standard form containing various things that must be filled out by prospective creditors. The fact is that the form of legal protection for depositors' creditors against the exoneration clause in the form of opening a savings account at a commercial bank is regulated in the Civil Code, the UUPK and POJK.

As for the novelty in this research is the birth of strict rules regarding the bankers clause which regulates that in the making of the bankers clause the three

parties must be present, namely the Bank, Debtor and Insurance so that there is perfection of information for the three parties regarding the bankers clause in the credit agreement. Based on the above, the author is interested in writing a scientific paper with the title Imperfection of Bankers Clause Information on Credit Agreements in Banking Institutions.

2. Method

This legal research is a type of doctrinal or normative legal research that aims to find certain legal statements or legal analysis with more complex logic and depth related to the imperfection of the bankers clause at the time of the credit agreement[14]. Where, the legal analysis carried out on the problems studied will later be supported also with primary data which is a characteristic in empirical legal research (Non-Dotrinal), but the use of primary data is only limited as a reinforcement of the argument, not changing the type of research in this study because the primary data used does not refer directly or specifically to one of the objects studied[15].

As one of the types of legal research, the stages in this research are universally applicable to other research in the field of law with stages starting from explaining the arguments for choosing the type of research, the data sought, the approach in the research, how to collect data to analyze legal materials to draw conclusions. In addition, as a normative research, of course, the data sought in this research is secondary data[16]. This secondary data will consist of legal materials that include

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[14] Salim Ibrahim Ali et al., "Legal Research of Doctrinal and Non-Doctrinal," *International Journal of Trend in Research and Development* 4, no. 1 (2017): 2394–9333, www.ijtrd.com.

[15] Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, VIII (Yogyakarta: Cahaya Atma Pustaka, 2014).

[16] Maria SW. Suwardjono, *Bahan Kuliah: Metode Penelitian Ilmu Hukum* (Yogyakarta: Universitas Gadjah Mada, 2014).

"primary legal materials,"[17] "secondary legal materials,"[18] and "tertiary legal materials."[19] Accompanied by several approaches including statutory approach, conceptual approach, case approach, and historical approach[20]. As for the primary data used in this research, the author obtained it through research conducted directly by the author on several occasions when the author became an expert in court in cases caused by the imperfection of the bankers clause at the time of the credit agreement.

3. Result & Discussion

A. Position of Banker Clause in Credit Agreement

The word credit comes from the Roman language, Credere, which means trust. If this is related to the duties of the bank, it means that the creditor believes in lending some money to the customer because the customer can be trusted in his ability to repay the loan after a specified period[21].

The definition of credit is regulated in Article 1 number 11 of Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking as follows: Credit is the provision of money or bills that can be equated with it, based on an agreement or loan and borrowing agreement between a bank and another party that requires the borrower to repay his debt after a certain period of time with

[17] Primary legal materials, namely binding legal materials, and consist of: a. Norms (basic) or basic rules, namely the preamble of the 1945 Constitution, b. Basic Regulations, c. Legislation, d. Uncodified legal materials, such as customary law, e. Jurisprudence, f. Jurisprudence, f. Jurisprudence. Uncodified legal materials, such as customary law, e. Jurisprudence, f. Treaties, g. Legal materials from the colonial era that are still valid such as the Criminal Code. Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015).

[18] Secondary legal materials, which provide explanations of primary legal materials, such as draft laws, research results, works from legal circles, and so on. Soekanto.

[19] Tertiary legal materials, namely legal materials that provide instructions and explanations for primary and secondary legal materials; examples are dictionaries, encyclopedias, cumulative indexes, and so on. Soekanto.

[20] Peter Mahmud Marzuki, *Penelitian Hukum* (Surabaya: Kencana : Prenada Media Group, 2021).

[21] Gatot Supramono, *Perbankan Dan Masalah Kredit Suatu Tinjauan Di Bidang Yuridis* (Jakarta: Rineka Cipta, 2009).

interest. From this understanding, credit has elements such as the existence of two parties (debtor and creditor), trust, agreement, time, risk and interest.

The credit agreement is one of the most important aspects in granting credit, without a credit agreement signed by the bank and the debtor, there will be no credit granting. The credit agreement is a bond between the bank and the debtor whose contents determine and regulate the rights and obligations of both parties in connection with the granting of credit or loans[22].

One form of the prudential principle of banks distribute credit in the community is to make a banker clause in the credit agreement. With this banker clause, the bank feels calm because if the customer dies, the remaining credit debt will be paid by insurance. The bank will avoid the risk of bad credit which will affect the bank's health. In the banker clause it is stated that the bank is the recipient of compensation for events that occur to customers such as death. The compensation will be paid by the insurance based on the policy born from the banker clause[23]. The global financial crisis (GFC) has demonstrated the importance of adopting regulatory frameworks aimed at addressing systemic financial risks. While traditional microprudential regulations aim at ensuring the safety and soundness of individual financial institutions, macroprudential policies are intended to enhance the resilience of the financial system. There is now widespread recognition that, while necessary, the microprudential approach to regulation is insufficient to ensure financial stability and prevent costly financial crises[24].

The prudential principle is a principle that states that banks in carrying out their functions and business activities must apply the prudential principle in order

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[22] Sutarno, *Aspek-Aspek Hukum Perkreditan Pada Bank* (Bandung: Alfabeta, 2009).

[23] Antonio Camara, Travis Davidson, and Andrew Fodor, "Bank Asset Structure and Deposit Insurance Pricing," *Journal of Banking and Finance* 114 (2020): 105805, https://doi.org/10.1016/j.jbankfin.2020.105805.

[24] Mohamed Belkhir, "Macroprudential Policy and Bank Systemic Risk: Does Inflation Targeting Matter?," *IMF Working Papers* 2023, no. 119 (2023): 1, https://doi.org/10.5089/9798400245008.001.

to protect public funds entrusted to them. The purpose of the prudential principle is none other than to ensure that the bank is always in a healthy condition, in other words, that it is always liquid and solvent[25].

The mainstay of bank income to date has been interest income. The contribution of interest income remains dominant in a bank[26]. Of all interest income, interest on loans disbursed to the public is the most dominant. Thus, in order for interest income to run smoothly, the loans disbursed must also be smooth loans. If many of the loans that the bank disburses are non-performing (bad), the bank will suffer greatly such as decreased interest income, decreased profits, disrupted bank liquidity and damaged bank reputation[27].

The Banker Clause scheme in a credit agreement aims to have an institution that can take over and accept risks in credit where the institution is formed and designed for that. Currently, the institution that can take over and accept the risk is insurance[28]. As Article 1 paragraph 6 of Law Number 40 of 2014 concerning Insurance which states that one of the objectives of insurance is to protect customers from financial losses due to unexpected calamities and provide guarantees to customers in the future.

The desire of the legislators to provide protection to customers in terms of avoiding financial losses is because credit agreements between debtors and creditors are usually carried out over a long period of time, so it is feared that in the implementation of the agreement there is one party who is hit by a disaster such as the death of the debtor which will cause the credit to no longer run

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[25] Rani Sri Agustina, *Rahasia Bank* (Bandung: Keni Media, 2017).

[26] Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia," *Jurnal Ilmiah Peuradeun* 11, no. 2 (2023): 667–86, https://doi.org/10.26811/peuradeun.v11i2.923.

[27] Jopie Jusuf, *Analisis Kredit Untuk Credit (Account)* (Jakarta: Gramedia Pustaka Utama, 2014).

[28] Paramita Prananingtyas Hilda Pratiwi, Budiharto, "Tanggung Jawab Perusahaan Asuransi Dalam Pelaksanaan Pemberian Kredit Perbankan Dengan Adanya Syarat Banker's Clause," *Diponegoro Law Review* 5, no. 3 (2016): 3, https://doi.org/https://doi.org/10.14710/dlj.2016.12033.

smoothly and will harm both parties. For this reason, one of the means to provide protection to the parties is the inclusion of the Banker's Clause in the credit agreement.

Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking states that in providing credit or financing based on sharia principles, commercial banks must have confidence based on in-depth analysis or the intention and ability and ability of debtor customers to pay off their debts or return the financing in accordance with the agreement. The law mandates banking institutions to apply the precautionary principle in providing credit to the public because in principle what is managed by the bank is not bank money but public money. This banking institution stands on public trust. When the public needs funds deposited in the bank, the bank must be able to deliver them to the public at any time.

Therefore, banking institutions before providing credit to the public must have a calculation that the debtor customer is able to pay the agreed credit installments[29]. In addition, if at any time there is bad credit, the bank has a way to collect the remaining debt from the debtor, one of which is to liquidate the credit guarantee. Another form of credit guarantee is by making a bankers clause. Bankers clause in a credit agreement involves a third party, namely an insurance institution. Insurance institutions are also part of non-bank financial institutions which are also subject to the provisions made by the Financial Services Authority, one of which is POJK Number 6 / POJK.07 / 2022 concerning Consumer Protection in the Financial Services Sector.

The position of the bankers clause in the credit agreement is very important. The banker clause can provide protection to the bank when the customer experiences events that can cause failure in credit payments such as death.

[29] Asad Rauf, "Bank Stability and the Price of Loan Commitments," *Journal of Financial Intermediation* 54, no. February (2023): 101027, https://doi.org/10.1016/j.jfi.2023.101027.

Likewise, if the credit guarantee is destroyed such as burning, there will be an insurance party that will cover it. The bankers clause binds the triangle between the bank, the customer and the insurance institution.

There are no specific rules governing the banker clause. The bankers clause is born from the agreement between the bank, customer and insurance. Banks are subject to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, insurance is regulated in Law Number 40 of 2014 concerning Insurance. Meanwhile, the banker clause agreement remains subject to the general provisions in Book III of the Civil Code.

The banker clause stands on the principle of freedom of contract. The parties are free to make agreements even though the agreement does not have its name in Book III of the Civil Code. Although free to make agreements with banker clauses, they must still be subject to the general provisions of Book III of the Civil Code and the principles of engagement such as the principle of balance. The principle of balance is very necessary because the banker clause is attached to a standard agreement that has been provided by the bank.

Based on Article 1338 of the Civil Code states that the agreement must be carried out in good faith. Good faith in the agreement has a very broad meaning. Agreements that are carried out in good faith provide benefits for the parties in their implementation because they keep things fraudulent. Because the banker clause was born from a credit agreement involving banks and insurance, it is also subject to Article 5 POJK Number 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector which mandates that PUJK must act in good faith in carrying out its business activities.

B. Perfection of Banker Clause Information at the Closing of Credit Agreement

Credit agreements used between debtors and creditors currently use standard clauses or agreements that have been prepared by one party, namely the creditor. The use of standard agreements in credit agreements refers to Law Number 8 of 1999 concerning Consumer Protection. Article 1 point 10 states that standard clauses are any rules or provisions and conditions that have been prepared and determined in advance unilaterally by business actors as stated in a document and/or agreement that is binding and must be fulfilled by consumers[30].

The use of standard clauses in credit agreements is an effort to optimize and efficiency in the preparation of a credit agreement. Various interests and needs of the debtor can be accommodated by the use of these standard clauses, so that the creditor no longer has to accommodate the interests and needs of the debtor one by one and remake the agreement according to the wishes of the debtor, of course this is unacceptable because it is not efficient in terms of time, energy, thoughts and costs that must be incurred[31].

The use of standard clauses in credit agreements, there are at least two theories of agreements that are the basis, *First*, the Will Theory, this is one of the classic agreement theories which implies that the agreement arises due to a meeting of the wills of the parties who want it. Of course, this will theory emphasizes the importance of the aspect of responsibility for the implementation of rights and obligations when the agreement is implemented. *Second*, Trust Theory, which is a continuation theory of the will theory that focuses on the assumption of expectations for implementation in accordance with what is promised as a

[30] Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, "Perlindungan Konsumen" (1999), https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.

[31] Adinda, "Penerapan Asas Keseimbangan Dalam Klausula Baku Pada Perjanjian Pembiayaan Dilembaga Pembiayaan Kota Pekanbaru."

consequence of the agreement which is a law for the parties[32], in accordance with the principle of *pacta sunt servanda*.

The nature of the standard clause made unilaterally by the creditor, in the interests of consumers to provide legal protection against the use of the standard clause, the Financial Services Authority (OJK) issued a regulation, namely POJK Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector. The POJK regulation applies the principle of transparency, which means that debtors or consumers have the right to obtain information that is accurate, clear, honest and not misleading.

The Financial Services Authority as an institution that is tasked with ensuring the fulfillment of consumer rights to obtain comfort, security and certainty of information on the implementation of financing. In addition, from a business perspective, the formation of the OJK occurred because of the existence of business conglomeration in the financial sector which is fundamentally the livelihood of many people[33]. Therefore, OJK as a consumer protection institution in the financial services sector is obliged to provide information and education on financial services and products to minimize losses to consumers.

Article 9 POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector states that Financial Services Business Actors are obliged to provide understanding to consumers regarding consumer rights and obligations. Grammatically verbis understanding is a person's ability to be able to capture the meaning and meaning of a particular object that contains the main

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[32] Program Studi et al., "(Theories of the Nature of A Contract in Electronic Consumer Transaction)" 12, no. 45 (2023): 185–210, https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v12i2.1230.
[33] Inosentius Samsul, "Perlindungan Konsumen Jasa Keuangan Pasca Pembentukan Otoritas Jasa Keuangan (OJK)," *Negara Hukum* 4, no. 2 (2013): 156, https://doi.org/10.22212/jnh.v4i2.201.

thoughts presented in a certain form and for certain purposes, so as to provide a full understanding of the law[34].

The understanding referred to in Article 9 POJK a quo is an understanding of the agreed object. The agreed object is in the form of information regarding costs, product terms and conditions, services, risk benefits and dispute resolution procedures in the event of problems with the object agreed between the debtor and creditor.

In the practice of credit agreements, it is very rare to find that the debtor is given an understanding of the object being agreed upon. Although the agreement uses standard clauses for the sake of efficiency in time, energy, cost and thought, it does not mean that this time efficiency does not heed the debtor's rights to obtain information and understanding of the agreement made. Often the debtor is only asked to be able to sign the agreement and only explained to the rights and obligations of the parties, especially in the amount of fees and interest that must be borne by the debtor if the agreement is realized.

Providing perfect information at the time of signing the credit agreement is mandated by POJK Number 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector. Article 29 states that PUJK must confirm the prospective consumer's understanding of the agreement clause before the prospective consumer signs the agreement. Confirmation of understanding of the agreement clause must be stated in a document or other media that can be used as evidence.

From the above provisions, it can be concluded that consumer understanding of the credit agreement clause made by the bank with the customer is an

[34] Tommy Hendra Purwaka, "Penafsiran, Penalaran, Dan Argumentasi Hukum Yang Rasional," *Masalah-Masalah Hukum* 40, no. 2 (2011): 122, https://doi.org/10.14710/mmh.40.2.2011.117-122.

obligation[35]. Understanding of the contents of the agreement, the consequences of the agreement and the interpretation of the agreement must be conveyed at the time of signing the credit agreement. Providing information about everything about the credit agreement has been done since the beginning, not just one way but must be in the form of two directions, namely the customer must understand the information. This is one form of maintaining the sanctity of the agreement made by the parties because the agreement made by the parties is binding like a law.

The rules made contained in Article 29 POJK Number 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector do not only apply to agreements made by banking institutions, but also apply to every agreement made by non-bank financial institutions such as capital markets, insurance, pension funds, financing institutions and other financial service institutions.

In the credit agreement between the bank and the customer that includes the bankers clause, there are actually other financial institutions, namely insurance. This insurance institution functions to provide guarantees to banking institutions if the customer experiences an event that results in failure to pay credit installments such as death, the banking institution will receive payment for the death claim. Payment of the death claim becomes repayment of the remaining debt. On the one hand, customers who pay premiums every month but on the other hand banking institutions as creditors who receive claim payments from the insurance.

In practice so far in the banking world, when signing a credit agreement containing a bankers clause, the customer as the debtor only authorizes the bank to sign the insurance policy. So that the customer does not know in detail about

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[35] Tom Rauber and Paul Ritschel, "Banking Competition and Capital Dependence of the Production Sector: Growth and Welfare Implications," *International Review of Economics and Finance* 89, no. PB (2024): 676–98, https://doi.org/10.1016/j.iref.2023.10.011.

what the rights and obligations of the customer are at the time of signing the policy. Let alone getting information about the policy, understanding the policy itself has never been done. Therefore, when the customer experiences certain events as agreed in the policy, the insurance company refuses to pay claims, so many such cases go to court.

At the time of signing the policy, banking institutions, customers and insurance institutions should sit at one table. Banking institutions must provide explanations until the customer understands all the clauses in the credit agreement and proof of understanding is set forth in a medium that can be used as evidence. Likewise, insurance institutions must also provide in-depth information about the contents of the policy until the customer understands and proof of understanding must be poured in the form of media that can be used as evidence.

With complete information disclosure and complete customer understanding of the agreements made by banking institutions and insurance institutions, it can avoid disputes that end up in court in the future because the parties already understand and understand their respective positions[36]. Policies made by insurance institutions are not simple documents, they contain very complex rights and obligations when an event is borne by the insurance company and what are the conditions for making a claim against the event.

In practice when the customer dies, while the policy states that the death of the customer due to certain diseases is not included in the coverage or dies due to certain events not included in the coverage is not included in the coverage such as motor vehicle accidents due to participating in automotive racing championships. Information like this is rarely conveyed to customers. While on the one hand the

[36] Jochen Bigus and Marina Weicker, "Relationship Banking and Firms' Earnings Quality – Does It Matter Whether Banks Are Creditors or Owners?," *Journal of Banking & Finance*, 2023, 107050, https://doi.org/10.1016/j.jbankfin.2023.107050.

customer has paid the premium in full at the time of disbursement of the loan from the bank. Usually this premium money is taken from the customer's loan.

Legal theory as the basis of legal rules, is in the abstract because legal theory is not written law such as laws but legal theory is the soul of the rules themselves. The position of legal theory can be seen from the will of the legislator, where one of the legal theories that is often referred to is the theory coined by Roscoe Pound, namely law as a tool of social engineering and law as a tool of social control. The concept of law as a tool of social engineering is that law is made to change society. The law that is formed must reflect the values that exist in society so that the law that is formed can be accepted and recognized. In the context of a credit agreement containing a banker clause in a standard clause, if it is related to the concept of law as a tool of social engineering, it is currently accepted and recognized by society, this is evidenced by the fact that Law Number 8 of 1999 concerning Consumer Protection has never been amended, one of the material contents of which is the use of standard clauses.

Roscoe Pound argued that law must be seen as a social institution that functions to meet human needs. (Muhamad Erwin, Filsafat Hukum: Refleksi Kritis Terhadap Hukum, 2011, Rajawali Press, hlm. 196). Pound's main concern was with the conceptsocial engineeringisinterest balancing, Therefore, the most important thing is the ultimate goal of law, namely implementing the law on society and developing in a more advanced direction[37].

The concept of law as a tool of social control as the second concept in the legal theory of development proposed by Roscoe Pound, emphasizes the aspect that when a rule of law exists, the existence of the law must be used for the general

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[37] Eddy O.S Hiariej Zainal Arifin Mochtar, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Jakarta: Red & White Publishing, 2021).

public as a rule that can be accepted and recognized so that these rules can direct life towards security, comfort and order to society in general[38].

The term bankers clause is not derived from the Indonesian language. For this reason, it is necessary to simplify the meaning of the term banker clause by providing a perfect understanding to customers. In addition, many of these customers come from people who are unfamiliar with the law and have minimal literacy in the banking sector. Article 16 paragraph (2) POJK Number 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector states that PUJK must use simple terms, phrases, and / or sentences in Indonesian and easily understood by consumers in every product and / or service document.

In practice, when the credit agreement is presented to the customer, it is immediately signed by the customer. Customers must be given sufficient time to understand the clauses of the credit agreement. For some countries when the customer signs a credit agreement, the state intervenes in the form of providing a lawyer to analyze and provide understanding to the customer about the contents of the agreement.

Meanwhile, in Indonesia the government also intervened in providing protection and putting a balanced position at the time of signing the credit agreement between the customer and the bank. One form of government intervention is to give birth to POJK Number 6 / POJK.07 / 2022 concerning Consumer Protection in the Financial Services Sector. However, in its implementation it does not run optimally. The issuance of POJK Number 6 / POJK.07 / 2022 concerning Consumer Protection in the Financial Services Sector is to realize a financial system that grows sustainably, is stable and is able to protect the interests of consumers and the public which can provide reliable consumer

[38] Markus Y. Hage Bernard L. Tanya, Yoan N. Simanjuntak, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi*, Cetakan Ke (Yogyakarta: Genta Publishing, 2010).

protection in the financial services sector, increase consumer and community empowerment and foster awareness of financial services business actors.

The birth of POJK Number 6/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector provides new norms in the field of credit agreements that must be followed by financial institutions, especially banking institutions. Credit agreements made by customers with banks are still subject to the general provisions in Book III of the Civil Code which regulates agreements. One of the requirements for the validity of an agreement as regulated by Article 1320 of the Civil Code is a lawful cause. The contents of the agreement must not conflict with the norms of law, decency and propriety. If these provisions are violated, the agreement is null and void and has no binding force for the parties.

Article 1337 of the Civil Code states that a cause is prohibited, if prohibited by law, or if it is contrary to good morals or public order. If a credit agreement containing a bankers clause is agreed by the parties but is not in accordance with what is mandated by POJK Number 6 / POJK.07 / 2022 concerning Consumer Protection in the Financial Services Sector, such as there is no proof of understanding between the customer and the insurance institution and bank institution, then juridically the agreement is null and void and not binding for both parties.

The birth of POJK Number 6 / POJK.07 / 2022 concerning Consumer Protection in the Financial Services Sector must get serious attention from financial institutions, both banks and non-banks, because if it is not carried out perfectly by these financial institutions, it has a fatal legal impact on the agreement. Article 1338 of the Civil Code clearly states that agreements that are binding like laws are only legal agreements. A valid agreement is an agreement that is carried out according to Article 1320 of the Civil Code, namely the existence of an agreement, capacity, certain things and halal causes.

Financial institutions such as banks are needed to develop the community's economy and the community must also be protected when making agreements with banking institutions. By applying the principle of transparency in depth and providing a perfect understanding to customers, it means protecting the banking institution on the one hand and protecting the community on the other.

4. Conclusion

The position of the bankers clause in the credit agreement is very important. The banker clause can provide protection to the bank when the customer experiences events that can cause failure in credit payments such as death. Likewise, if the credit guarantee is destroyed such as burning, there will be an insurance party that will cover it. The bankers clause binds the triangle between the bank, the customer and the insurance institution. There are no specific rules governing the bankers clause. Bankers clause is born from the binding between the bank, customer and insurance. Banks are subject to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, insurance is regulated in Law Number 40 of 2014 concerning Insurance. Meanwhile, the banker clause agreement remains subject to the general provisions in Book III of the Civil Code.

In practice so far in the banking world, when signing a credit agreement containing a bankers clause, the customer as the debtor only authorizes the bank to sign the insurance policy. So that the customer does not know in detail about what the rights and obligations of the customer are at the time of signing the policy. Let alone getting information about the policy, understanding the policy itself has never been done. Therefore, when the customer experiences certain events as agreed in the policy, the insurance company refuses to pay claims, so many such cases go to court.

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