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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 imperative for financial resources within the community is substantial, encompassing individuals across the socioeconomic spectrum, including those within the lower, middle, and upper classes, all of whom seek financial assistance from banking establishments. The anticipated financial provisions sought by the populace predominantly manifest in the form of credit schemes. The disbursement of credit, a pivotal function within the banking sector, derives from the pool of public funds deposited in financial institutions through various instruments such as deposits (comprising fixed deposits, current accounts, and savings accounts). This process underscores the integral role of the banking sector in fostering economic stability within a nation, thereby contributing significantly to its overall economic framework.[1]

The disbursement of loans to the public represents a critical facet of the banking sector's functions, with individuals from diverse socioeconomic strata seeking financial assistance. The subsequent repayment of these loans occurs through structured installments, coupled with the imposition of interest. Importantly, the prevailing dynamic within the financial landscape manifests in credit interest consistently surpassing deposit interest rates.[2]

This interest rate disjunction between loans and deposits confers a distinct advantage upon banking institutions. As the bank channels an expanded volume of credit into the community, a proportional increase in profits ensues. It is imperative to acknowledge, however, that this strategy is not without its inherent risks. The greater the extent of credit disbursed, the more pronounced the risk exposure assumed by the bank. This intricate interplay between heightened credit allocation, resultant profits, and concomitant risk underscores the nuanced and delicate balance that characterizes the pivotal role of the banking sector in shaping economic stability within a nation.

Furthermore, the provision of loans by banks inherently carries a degree of risk. Mitigating the potential for loss in extending credit requires a robust assurance of the debtor's capability and reliability in adhering to the agreed-upon terms of debt repayment. In accordance with the legal framework delineated in Article 8 of Law Number 7 of 1992, as subsequently amended by Law Number 10 of 1998

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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.

concerning Banking, commercial banks are mandated to place trust in the debtor's aptitude and willingness to settle the debt in accordance with the stipulated agreement.[3]

This legal provision serves as a foundational element in business transactions, offering a framework that instills confidence and legal certainty in the lending process. The normative framework plays a pivotal role in facilitating secure, equitable, and legally certain business transactions. By underscoring the importance of confidence in the debtor's capacity to fulfill financial obligations, these legal norms contribute significantly to the realization of a business environment characterized by stability and fairness.[4]

Banks in providing credit to the public are required to apply the principle of prudence because in principle the funds channelled 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

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

[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.

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 industry is inherently fraught with risks, particularly in the context of extending loans to the public, where challenges such as bad credit prominently emerge. Fundamentally, the funds disbursed by banks to the public as credit are not exclusively bank assets but rather constitute public funds originating from deposits. Despite these deposits being allocated to the community in the form of credit, the bank remains obligated to furnish these funds when required by the community. This distinctive dynamic underscores the dual nature of funds, wherein they are both earmarked for community use and subject to the bank's ongoing responsibility for their provision, reinforcing the complex and risk-laden nature of banking operations.

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

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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.

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.

Within the framework of a credit agreement, a pivotal element known as the banker clause comes into play. This clause serves as a risk mitigation measure, stipulating that in the unfortunate event of the customer's demise, the insurance company assumes responsibility for settling the remaining debt. The overarching objective of the banker clause is to alleviate credit risk.

However, a notable challenge arises in the form of imperfect information provision during the signing of the credit agreement.

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[8] Fadhel Arjuna Adinda, "Penerapan Asas Keseimbangan Dalam Klausula Baku Pada Perjanjian Pembiayaan Dilembaga Pembiayaan Kota Pekanbaru", *Thesis* (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.

Despite the significance of the banker clause, customers often do not receive comprehensive details about its nuances at the time of agreement execution. Consequently, instances have arisen where customers, who have succumbed to specific diseases, find themselves compelled to settle the outstanding credit debt. This predicament arises from the insurance company's refusal to honor claims based on the grounds that the customer's demise resulted from conditions not covered by the policy.[10]

Crucially, information regarding the diseases excluded from coverage is seldom conveyed to the bank's customers, as the bank typically acts as the representative during policy signing. This absence of exhaustive information sharing during the credit agreement's signing has resulted in a number of legal challenges stemming from imperfect awareness of the banker clause. These cases underscore the need for greater transparency and clarity in communicating the intricacies of the banker clause to mitigate potential disputes and ensure a more equitable financial landscape as shown on Table 1.

TABLE 1. Several Banker's Clause Case

Case Number	Description
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.

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

Case Number	Description
498/Pdt.G/2021/PA.Jmb	The plaintiff, acting as a debtor with an affiliation to an Islamic bank, secured financing through an *Al Murabahah* financing agreement. This agreement incorporates a banker clause encompassing life insurance and liability coverage, including fire insurance and layoff insurance. Amid the loan term, an unexpected event unfolded when the plaintiff experienced a sudden job termination, prompting the plaintiff to initiate a claim under the layoff insurance. Regrettably, the insurance provider rejected the claim. Compounding the situation, the plaintiff encountered a lack of clarity regarding the conditions that warranted a valid layoff insurance claim. Furthermore, the plaintiff was not provided with any elucidation on the specifics of the layoff insurance policy, nor was the policy document presented for examination. This absence of information has left the plaintiff in a precarious position, unaware of the parameters for valid layoff insurance claims and uninformed about the detailed contents of the insurance policy. The circumstances underscore the necessity for transparent communication and disclosure in financial agreements, particularly concerning insurance provisions, to ensure that debtors are well-informed and protected throughout the course of the financial arrangement.
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.

Case Number	Description
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.
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.

The aforementioned cases underscore a recurring issue stemming from inadequate information about the banker's clause during the signing of credit agreements at banking institutions. A solution to mitigate such issues lies in ensuring the comprehensive and clear provision of information regarding the banker's clause during the agreement's execution. When parties are equipped with perfect and complete information about the banker's clause, it facilitates a nuanced understanding of their respective rights and obligations. This transparency helps preempt dissatisfaction and disputes, potentially averting the need for legal recourse. Therefore, a concerted effort to enhance the clarity of information provided during the credit agreement signing process can contribute significantly to fostering informed and harmonious relationships between the parties involved.

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.

The application of the banker's clause is not confined solely to the realm of personal financing; it extends to collateral, including properties like houses. In the event that a house, pledged as collateral for a loan, undergoes damage such as a fire, the inherent value of the collateral is compromised. To address this, the banker's clause establishes a triangular agreement involving the bank, the customer, and the insurance provider, exclusively within the framework of a specific credit agreement. [11]

In instances where the collateral, such as a house, incurs damage, the insurance company steps in to mitigate the consequences of the event. The collaborative nature of the banker's clause ensures that, within the confines of the designated credit agreement, the interests and responsibilities of all parties—namely the bank, the customer, and the insurance provider—are intricately interwoven to address the unique circumstances surrounding the collateral. This underscores the specificity and limited scope of the banker's clause, serving as a protective mechanism within the defined parameters of a given credit agreement.

In addition, 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

[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.

should also get a policy from the insurance company that contains the 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

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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.

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. 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]

In a prior study, such as the research conducted by Atin Meriati Isnaeni on the "*Premi Payment of the Bankers Clause Insurance in a Credit Agreement*" (examining the Deed of Credit Agreement of PT. Bank Danamon Mataram)[14], it was discovered that, despite the intended advantage for the bank in incorporating a bankers' clause, the responsibility for paying the insurance premium falls upon the debtor who possesses the guaranteed object.

The study further illuminated instances of potential negligence by banks, particularly in failing to communicate the maturity date for the payment of bankers' clause insurance to the debtor. This oversight resulted in the insurance becoming non-claimable for the object serving as collateral for the credit guarantee. In such circumstances, the debtor possesses legal grounds to pursue a lawsuit against the bank, invoking the notion of an unlawful act (*onrechtmatigedaad*). This legal recourse is premised on the bank's failure to fulfill its

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

[14] Atin Merianti Isnaeni, "Pembayaran Premi Asuransi Banker's Clause Dalam Perjanjian Kredit (Kajian Akta Perjanjian Kredit PT. Bank Danamon Mataram) [Premi Payment of The Banker's Clause Insurance in a Credit Agreement (Review of Deed of Credit Agreement PT. Bank Danamon Mataram)]", *Jurnal IUS: Kajian Hukum dan Keadilan* 9, no. 3 (2021): 682-696. http://dx.doi.org/10.29303/ius.v9i3.978

obligations, emphasizing the importance of clear communication and adherence to terms in credit agreements to avoid legal implications.

In an additional study conducted by Rahmawati Kusuma on the "*Inclusion of Bankers Clause in Credit Agreement*," it is emphasized that the economic value of collateral items can potentially diminish due to natural events or specific circumstances (force majeure/*overmacht*). This reduction in economic value necessitates the bank's effort to minimize potential losses by obligating customers (borrowers) to insure collateral objects for the bank's benefit, known as the bankers clause. Consequently, the requirement for debtors to insure collateral objects stands as a juridical and physical measure undertaken by the bank to secure the credit extended to customers.[15]

In terms of legal protection for debtors, who are consumers in the context of credit collateral insurance, entitlements encompass the right to accurate, transparent, and truthful information concerning the conditions and guarantees of goods and/or services. Additionally, debtors possess the right to fair dispute resolution. Therefore, in instances where the bank neglects to inform the debtor about the conclusion of the insurance period for a collateral object, this oversight serves as grounds for the debtor to initiate legal action against the bank. Such legal action serves as a protective measure for debtors, allowing them to safeguard their civil rights against any harm caused by the bank's potential commission of an unlawful act, as stipulated in Article 1365 of the Civil Code.

Moreover, in a study conducted by Hilda Pratiwi, Budiharto, and Paramita Prananingtyas on the "*Responsibility of Insurance Companies in the Implementation of Banking Lending with the Conditions*

[15] Rahmawati Kusuma, "Pencantuman Bankers Clause Dalam Perjanjian Kredit." *Jatiswara* 34, no .3 (2019): 294-308.

of Bankers Clause,"[16] it was determined that the accountability for credit life insurance primarily rests with the insurance company. Credit life insurance, categorized as a form of life insurance, specifically insures the life of the debtor/borrower, with the insurer offering compensation for any outstanding debt should the debtor pass away during the insurance period, in accordance with the repayment schedule.

In cases where customers face challenges in receiving due credit life insurance claims, leading to the non-submission of collateral from the bank, legal recourse is available. The legal protection for customers in such instances can be sought under the Consumer Protection Law and POJK Number 1/POJK.07/2013, specifically addressing consumer protection in the financial services sector. This legal framework serves to safeguard the rights of customers who have encountered difficulties in accessing the benefits entitled to them through credit life insurance claims, ensuring a fair and equitable resolution within the financial services context.

Meanwhile, Ni Putu Purnama Wati, Ni Luh Made Mahendrawati, and Desak Gde Dwi Arini, in their study on the "*Responsibility of Insurance Parties to Bank Credit Agreements in the Event of Debtor's Death*," underscore the legal implications arising from a debtor's demise within the context of a credit agreement. In such circumstances, two distinct possibilities emerge. Firstly, in accordance with Article 833 of the Civil Code (*Burgerlijk Wetboek*), the credit may be transferred to the heirs of the deceased debtor. Alternatively, the bank may execute the guarantee, settling the outstanding debt.[17]

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[16] *See* Hilda Pratiwi, and Paramita Prananingtyas Budiharto. "Tanggung Jawab Perusahaan Asuransi Dalam Pelaksanaan Pemberian Kredit Perbankan dengan Adanya Syarat Banker's Clause." *Diponegoro Law Journal* 5, no. 3 (2016): 1-11.

[17] Ni Putu Purnama Wati, Ni Luh Made Mahendrawati, and Desak Gde Dwi Arini. "Tanggung Jawab Pihak Asuransi Terhadap Perjanjian Kredit Bank Dalam Hal Debitur Meninggal Dunia." *Jurnal Konstruksi Hukum* 2, no. 1 (2021): 196-201.

The second possibility involves the potential extinguishment of the credit through the activation of a life insurance clause or a life insurance agreement featuring a bankers' clause. In this scenario, it is incumbent upon the insurance company to assume responsibility for settling the remaining debts of the deceased debtor, adhering to the stipulated terms and conditions of the policy. Failure to meet these obligations may prompt the concerned party to initiate legal proceedings by filing a summons to sue the insurance company. This underscores the critical role of the insurance company in fulfilling its commitments within the framework of a credit agreement and the associated life insurance provisions.

Another studies, conducted by Chairy Naima Amalia on the "*Application of the Exoneration Clausula in the Customer Opening Account from Agreement in Conventional Banks in Bandar Lampung*," underscored that the agreement conforms to the Financial Services Authority Regulation (POJK) and assumes the character of an exoneration agreement. This is evident in the structure and nature of the agreement for opening a savings account in conventional banks, typically presented in the form of a standardized document that encompasses various particulars to be completed by prospective account holders.[18]

The legal protection afforded to depositors against the exoneration clause, as manifested in the agreement for opening a savings account at a commercial bank, is distinctly governed by regulations such as the Civil Code, the Law on Banking, and the Financial Services Authority Regulation (POJK). These legal frameworks collectively establish the parameters for ensuring the

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[18] Chairy Naima Amalia, "Application of The Exoneration Clausula in The Customer Opening Account form Agreement in Conventional Banks in Bandar Lampung." *Indonesia Private Law Review* 1, no. 1 (2020): 1-10.

rights and protections of depositors within the context of the exoneration clause, contributing to the legal integrity and transparency of banking agreements.

The novelty in this research lies in the emergence of stringent regulations governing the bankers' clause, mandating the presence of three essential parties: the Bank, the Debtor, and the Insurance entity. This requirement aims to ensure the comprehensive and accurate dissemination of information concerning the bankers' clause within credit agreements for all involved parties. This meticulous approach seeks to establish a standard of perfection in conveying information regarding the bankers' clause.

Motivated by the significance of this development, the author is keen to contribute to the academic discourse by crafting a scientific paper titled "*Imperfect Information of Bankers Clause in Credit Agreements in Banking Institutions: Further Legal Impact*." This paper will delve into the potential challenges and consequences associated with incomplete or unclear information pertaining to bankers' clauses within credit agreements, emphasizing the importance of transparency and precise communication in the banking sector.

2. Method

This legal research adopts a doctrinal or normative approach, aiming to unravel intricate legal principles and analyses related to the imperfect information surrounding bankers' clauses within credit agreements in banking institutions.[19] The focus of the study lies in exploring the legal implications stemming from this imperfection,

[19] 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.

delving into the complexities of the bankers' clause at the time of credit agreement execution. [20]

The legal analysis applied to the identified issues will be complemented by primary data, aligning with characteristics found in empirical legal research.[21] However, it is crucial to note that the incorporation of primary data serves as reinforcement for the argumentation rather than altering the fundamental nature of the research. This distinction is maintained as the primary data utilized does not directly or specifically pertain to any one of the objects under study. The overarching goal is to shed light on the legal consequences resulting from imperfect information within bankers' clauses, offering valuable insights into the broader legal landscape of credit agreements in banking institutions.[22]

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[23].

The definition of credit is stipulated in Article 1, number 11 of Law Number 7 of 1992, as amended by Law Number 10 of 1998,

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

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

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

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

concerning Banking. According to this legal provision, credit is the provision of money or equivalent instruments, based on an agreement or loan and borrowing arrangement between a bank and another party. This agreement obliges the borrower to repay the borrowed sum after a specified period, accompanied by an interest charge. Therefore, the essence of credit incorporates key elements, including the involvement of two parties (debtor and creditor), the establishment of trust, a formal agreement, a defined timeframe, inherent risk, and the imposition of 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.[24]

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.[25] The global financial crisis (GFC) has demonstrated the importance of adopting regulatory frameworks aimed at addressing systemic financial risks. While traditional micro-prudential regulations aim at ensuring the safety and soundness of

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

25 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.

individual financial institutions, macroprudential policies are intended to enhance the resilience of the financial system. There is now widespread recognition that, while necessary, the micro-prudential approach to regulation is insufficient to ensure financial stability and prevent costly financial crises.[26]

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 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[27].

The mainstay of bank income to date has been interest income. The contribution of interest income remains dominant in a bank[28]. 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[29].

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

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26 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.

27 Rani Sri Agustina, *Rahasia Bank* (Bandung: Keni Media, 2017).

28 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.

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

that can take over and accept the risk is insurance[30]. 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 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

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30 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.

the agreed credit installments.[31] Moreover, in instances of bad credit, banks possess recourse options to recover outstanding debts from debtors, including the option to liquidate credit guarantees. Another mechanism for credit guarantee involves the establishment of a bankers' clause. This clause introduces a third party into the credit agreement, specifically an insurance institution. It is noteworthy that insurance institutions, although distinct from banks, fall under the purview of non-bank financial institutions and are subject to regulations set forth by the Financial Services Authority. An example of such regulation is POJK Number 6/POJK.07/2022, which addresses 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. 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

[31] 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.

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[32].

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

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[33].

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 consequence of the agreement which is a law for the parties[34], in accordance with the principle of *pacta sunt servanda*.[35]

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

[34] Shidarta Shidarta. "Teori Timbulnya Perjanjian dalam Transaksi Konsumen Elektronik." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 12, no. 45 (2023): 185–210. http://dx.doi.org/10.33331/rechtsvinding.v12i2.1230.

[35] The principle of "pacta sunt servanda" is a fundamental legal principle in contract law. It is a Latin phrase that translates to "agreements must be kept" in English. This principle underscores the fundamental concept that parties who enter into a legally binding agreement must honor and fulfill the terms and obligations specified in that agreement. In essence, "pacta sunt servanda" reflects the idea that agreements are the cornerstone of contractual relationships, and once parties willingly and knowingly enter into a contract, they are obligated to

The unilateral creation of standard clauses by creditors prompts concerns about protecting the rights of consumers. In response to this, the Financial Services Authority (OJK) has enacted a regulation, namely POJK Number 1/POJK.07/2013, specifically addressing

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adhere to the terms they have agreed upon. This principle contributes to the stability and predictability of contractual arrangements, fostering a legal environment where parties can rely on the enforceability of their agreements. In the context of Banker Clause Information, the principle of "pacta sunt servanda" becomes highly relevant. When parties, such as banks and customers, enter into credit agreements that involve banker clauses, they are bound by the principle that the terms and conditions outlined in the agreement must be adhered to. This includes any stipulations related to the banker clause, which may involve insurance provisions or other risk mitigation measures. The application of "pacta sunt servanda" emphasizes the importance of clear and transparent communication regarding banker clauses within credit agreements. Parties, especially customers, have the right to accurate, clear, and honest information regarding the conditions, guarantees, and implications of the banker clause. As such, the principle underscores the need for financial institutions to provide comprehensive details about banker clauses during the agreement's execution, ensuring that all involved parties fully understand their rights, obligations, and the potential legal consequences. For further discussion concerning the implication of this, *see also* Mosgan Situmorang, "The Power of Pacta Sunt Servanda Principle in Arbitration Agreement." *Jurnal Penelitian Hukum De Jure* 21 (2020): 447-457; Jason Webb Yackee, "Pacta Sunt Servanda and State Promises to Foreign Investors Before Bilateral Investment Treaties: Myth and Reality." *Fordham International Law Journal* 32, no. 5 (2008): 1550; Mayuri Miranda Pillay, "The Impact of Pacta Sunt Servanda in the Law of Contract". *Dissertation*. (Johannesburg: University of Pretoria, 2015); Anggitariani Rayi Larasati Siswanta, "Penerapan Asas Pacta Sunt Servanda dalam Perjanjian Standar yang Mengandung Klausula Eksonerasi Tanpa Menerapkan Asas Itikad Baik." *Jurnal de Jure* 15, no. 1 (2023); Aulia Maharani, and Ahmad Khoiril Anwar. "Settlement of Debtors in Default in Credit Agreements with Movable Property Guarantees." *Jurnal Scientia Indonesia* 7, no. 1 (2021): 15-26; Rama Halim Nur Azmi, and Muhammad Irfan Hilmy. "Actualization of the Force Majeure Clausula in the Law of Agreement in the Middle of Pandemic COVID-19." *Lex Scientia Law Review* 4, no. 2 (2020): 1-12; David Tan, "Controversial Issues on the Making of Notarial Deed Containing Chained Promise (Beding Berantai) on the Freedom of Contract Principle." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 315-338.

Consumer Protection in the Financial Services Sector. This regulation is designed to safeguard consumers by emphasizing the principle of transparency. According to the POJK regulation, debtors or consumers have the entitlement to receive information that is accurate, clear, honest, and free from any misleading elements. This legal framework aims to ensure that consumers are well-informed and protected in financial transactions, mitigating the potential misuse of standard clauses by creditors.

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[36]. 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 of POJK Number 1/POJK.07/2013, addressing Consumer Protection in the Financial Services Sector, mandates that Financial Services Business Actors are obligated to impart comprehension to consumers regarding their rights and obligations. Grammatically, the term "understanding" refers to an individual's capacity to comprehend the meaning and significance of a specific entity, encompassing the central ideas presented in a defined format

[36] 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.

and for particular purposes. This, in turn, ensures a comprehensive grasp of the law.[37]

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

[37] 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.

the customer is an obligation[38]. 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.

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[38] 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.

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.

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[39]. 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 practical scenarios, when a customer passes away, complications may arise. While the insurance policy explicitly

[39] 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.

specifies that death resulting from specific illnesses or events, such as motor vehicle accidents during automotive racing championships, is not covered, such details are seldom communicated to customers. Paradoxically, the customer typically pays the full premium at the loan disbursement, and this premium amount is usually deducted directly from the customer's loan. Consequently, the customer may find themselves in a situation where, despite full premium payment, certain exclusions or limitations in coverage become apparent only after an unfortunate event, contributing to potential dissatisfaction or disputes.

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 posited that law should be viewed as a social institution designed to address human needs. Pound's primary focus centered on the notions of social engineering and interest balancing.[40]

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[40] *See* Roscoe Pound, *Social Control Through Law*. (London: Routledge, 2017).

Consequently, he emphasized that the paramount objective of law is the implementation of legal principles within society, fostering progress and development in a more advanced direction. Roscoe Pound posited that law should be viewed as a social institution designed to address human needs. Pound's primary focus centered on the notions of social engineering and interest balancing. Consequently, he emphasized that the paramount objective of law is the implementation of legal principles within society, fostering progress and development in a more advanced direction.[41]

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 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[42].

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.

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

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

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.

In Indonesia, the government plays a pivotal role in intervening to ensure protection and maintain a balanced position during the signing of credit agreements between customers and banks. One manifestation of this intervention is evident in the issuance of POJK Number 6/POJK.07/2022, focusing on Consumer Protection in the Financial Services Sector. Despite its intent to create a sustainable, stable financial system that safeguards consumer and public interests, the implementation of this regulation has not reached its full potential. The aim of POJK Number 6/POJK.07/2022 is to establish a robust financial system that ensures consumer protection, enhances empowerment, and cultivates awareness among financial services 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

In conclusion, the bankers' clause occupies a crucial position within credit agreements, serving as a protective mechanism for banks in the face of unforeseen events impacting credit payments, such as the death of a customer. Additionally, in cases where the credit guarantee is compromised, such as through destruction by fire, the bankers' clause involves an insurance party that assumes responsibility for coverage. This triangular relationship binds the bank, the customer, and the insurance institution.

Despite its significance, the bankers' clause operates in a regulatory grey area, with no specific rules governing its implementation. Born from the contractual bond between the bank, customer, and insurance, banks are subject to banking laws, insurance falls under the purview of insurance legislation, while the bankers clause agreement remains under the umbrella of general provisions in Book III of the Civil Code. Practically, in the realm of banking, customers, acting as debtors, typically authorize the bank to sign insurance policies on their behalf during the credit agreement. However, the lack of detailed information and understanding about the policy, coupled with the absence of communication on the rights and obligations of customers, often leads to complications. Consequently, when customers face events specified in the policy, insurance companies may reject claims, resulting in numerous legal disputes in the banking sector. This underscores the need for enhanced transparency and communication in the implementation of bankers' clauses within credit agreements.

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At his best, man is the noblest of all animals; separated from law and justice he is the worst.

Aristotle

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