Sharia banking standard law

Putra, Adhitya

Fakultas Syariah dan Ekonomi Islam IAIN Syekh Nurjati Cirebon

2 July 2019

Sharia Banking Standard Law

Adhitya Putra
Nim: 17086050010
Pascasarjana IAIN Syekh Nurjati Cirebon
Ekonomi Syariah
adhityap211@gmail.com

Abstract
The adoption of a standard agreement from the beginning of its birth has caused controversy both concerning the existence and validity of standard contracts. The Civil Code does not specifically regulate standard agreements. This writing focuses on two issues, namely the validity of the agreement with the standard clause related to sharia principles and the consequences of the law lacking the principle of freedom of contract. This research is normative research that refers to legislation and jurisprudence using legal materials both primary and secondary. The legal material was collected through library studies and then analyzed qualitatively. This study concludes: first, the agreement with conventional standard clauses is no longer questioned whether the agreement is valid or not, but more importantly, the fairness of the contents of the standard clause and in the standard sharia contract tend to result in injustice. Second, normatively there are no legal consequences due to the absence of freedom of contract in the agreement.

Keywords: Civil Law, Standard Contracts, Sharia Principles

JEL Classification: A11, B41, G21, H50

A. Introduction

Banks as financial institutions have an intermediary function, namely, collecting funds while channeling them to parties who need these funds in the form of bank loans that have a very strategic meaning in encouraging business activities. The use of standard contracts today shows one side of modern economic domination by business entities or companies. Companies create a form of contract as part of stabilizing their external market relations.[1] By reason of uniformity and efficiency the company has formulated all or most of the agreement clauses unilaterally. The consumer does not have the opportunity to negotiate the contents of the agreement. The consumer only has a take it or leave it option.

The use of standard contracts in the business world today raises legal issues that require resolution. Traditionally a the agreement took place based on the principle of freedom of contract between the two parties who has a balanced position. The agreement obtained in the agreement was the result of negotiations between the parties. Such a process is not found in the standard agreement. There is almost no freedom in determining the contents of the agreement in the negotiation process.[2] The contents or terms of the agreement have been determined unilaterally by the employer. The practice

[1] Ridwan Khairandy, *"Keabsahan Perjanjian Standar Pasca Berlakunya Undang-Undang Perlindungan Konsumen"* Makalah, Jogjakarta, 2007, hlm. 1.

[2] Ridwan Khairandy, *"Keabsahan Perjanjian Standar Pasca Berlakunya Undang-Undang Perlindungan Konsumen"* Makalah, Jogjakarta, 2007, hlm. 2-3

on the one hand is very profitable for entrepreneurs, but on the other hand it causes losses to consumers. This shows that there needs to be a strict law regarding the unfair standard clauses that are often used by businesses to pressure the consumers, the principle of freedom of contract and the consequences of binding legal agreements for the parties.[3]

B. Literature Review

In a journal written by Hariyanto, the Publisher Entitled Settlement of Sharia Economic Disputes in Indonesia.[4] sharia and economics majors explained that in the standard agreement it is necessary to establish a Sharia Commercial Court which specifically resolves sharia economic dispute cases so that the judicial process is faster so that it does not interfere with the course of the national economy especially in the economic sector, especially sharia banking. More detailed in the standard agreement by Suyitno, Budi Agus Riswandi [5] Application of the Standard Standard Clause in the Bank Credit Agreement, explains that in practice the ba'nyak bank credit agreement uses a standard contract form. This is meant for. Securing funds channeled to debtors. Because these funds are essentially customer funds as well. However, on the other hand the bank has an obligation to pay attention to the interests of the debtor. So if this has been implemented in a bank credit agreement, the aspect of balance in an agreement can be fulfilled. In the above research, it was discussed how to settle the standard agreement and the standard agreement position for the debtor but not yet in sharia principles can be described in detail for this writing position focusing on the position of sharia principles in the standard agreement.

C. Methodology

Because this research is normative research, then the data source is in the form of secondary data. This secondary data is in the form of legal materials, to obtain this data collection is done by means of library research. The processing of legal material is only aimed at analyzing legal material in a qualitative descriptive manner, namely describing legal material in accordance with the subject matter in this study, then analyzed based on the theory relating to the problem to arrive at a conclusion.

D. Result

Understanding the agreement in Article 1313 of the Civil Code is said to be an action that occurs between one person or more binding himself to others. However, this definition is considered unilateral and too broad by legal experts.[6] So for this reason J.

---

[3] Ricardo Simanjuntak, *"Akibat dan Tindakan-Tindakan Hukum Terhadap Pencantuman Klausula Baku Dalam Polis Asuransi Yang bertentangan dengan Pasal 18 Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen,"* Jurnal Hukum Bisnis, Volume 22 Nomor 2 Tahun 2003, hlm. 53.

[4] Erie Hariyanto *Penyelesaian Sengketa Ekonomi Syariah Di Indonesia* Penerbit Tishdia V o l . 1 N o. 1 Juni 2 0 1 4

[5] Budi Agus Riswandi *Penerapan Klausul Standar Baku dalam Perjanjian Kredit Bank,* JURNAL HUKUM. NO. 15 VOL 7. DESEMBER 2000

[6] Bunyi selengkapnya dari Pasal 1313 KUHPerdata menyatakan suatu perjanjian adalah suatu perbuatan dengan mana satu orang atau lebih mengikatkan dirinya terhadap satu orang lain atau lebih. Lihat J. Satrio. 1995. Hukum Perikatan yang Lahir dari Perjanjian Bukul. Bandung: PT.Citra Aditya

Satrio proposed that the sound of the article be changed to; or where both parties tie themselves together.[7]

To determine or assess the validity of a BTS sale and purchase contract as outlined in a standard agreement, it must be reviewed how the contract law regulates the conditions of the validity of the contract. Article 1320 of the Civil Code determines the existence of 4 (four) legal requirements for an agreement, namely: (1). There is an agreement for those who bind themselves; (2) the ability of the parties to make an agreement; (3) there must be a certain thing; and (4) there must be a cause (causa) halal.[8]

The agreement in agreement is basically a meeting or conformity of the will between the parties in the agreement. A person is said to give his consent or agreement (toestemming) if he really wants what is agreed upon. Mariam Darus Badrulzaman[9] describes the notion of agreeing as an agreed requirement of will *(overeenstemende wilsverklaring)* between parties. The statement of the party offering is called an offer *(offerte).* The statement of the party receiving the offer is called acceptance *(acccceptatie*). Given the absence of the definition of the offer, Rutten[10] define the offer as a proposal to close the agreement addressed to the opposing party, the proposal has been formulated in such a way that the acceptance of the proposal immediately leads to an agreement.

The Banking Law does not confirm or regulate the form of agreements that must be made by the bank and its customers. This is the freedom of both parties to determine the form of the desired credit agreement. Credit agreements made by banks are carried out in two forms or ways; First, a credit agreement in the form of a deed under the hand; Second, credit agreements in the form of notary deeds. The existence of the terms of agreement between the parties that entered into the agreement, resulted in both parties must have the freedom to declare their will, in this case the parties must not get any pressure which resulted in a defect in the realization of that will. As a way of sharia economic principles that uphold the values of Tawhid, justice, freedom, and honesty in a contractual bond.

The provisions of contract law in Indonesia indeed emphasize that the agreement reached by the parties as one of the fundamental foundations for establishing a valid agreement or contract must not be based on coercion or fraud (misrepresentation) or oversight of the other party, where the agreement is later proven to be achieved by the effort referred to in Article 1321 of the Civil Code it will give the injured party the right to request cancellation of the contract that has been formally agreed upon or signed by the parties.[11] Not only in Indonesia, the standard agreements contained in credit in Islamic banking in European countries are still valid. In a British court in the handling

---

Bakti. Him. 27. Lihat juga Mariam Darus Badrulzaman. 1994. Aneka Hukum Bisnls. Bandung: Alumni. Him. 18.

[7] J. Satrio. Hukum Perkreditan Kotemporer.(Bandung: PT.Citra Aditya Bakti. 1996). Hal 27

[8] Pasal 1339 KUHPerdata menentukan bahwa perjanjian yang dibuat tidak boleh bertentangan dengan undang-undang, kesusilaan, dan ketertiban umum. Artinya perjanjian tidak dapat dibuat sebebas-bebasnya tetapi ada batasannya.

[9] Mariam Darus Badrulzaman, *Aneka Hukum Bisnis,* (Alumni, Bandung, 1994), hlm. 24.

[10] J. Satrio, Hukum Perikatan, Perikatan Yang Timbul dari Perjanjian, Buku 1,Citra Adiyta Bakti, Bandung, 1995, hlm.166

[11] Simanjuntak, Ricardo, "Akibat dan Tindakan-Tindakan Hukum Terhadap Pencantuman Klausula Baku Dalam Polis Asuransi Yang bertentangan dengan Pasal 18 Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen," Jurnal Hukum Bisnis, Volume 22 Nomor 2 Tahun 2003. Hal 56

of Shamil Bank vs. Beximco Pharmacy for the practice of a forum specializing in the field of Islamic finance dispute resolution. The note then discusses other difficulties that are felt in the application of Islamic Law in the common law and civil courts. Islamic financial practices alternative dispute resolution forums (ADR) show a consistent dependence on the use of national law, from these cases in dispute resolution at the international level in handling sharia problems still experiencing difficulties, understanding of the principles of sharia law is needed.

E. Conclusion

An agreement is not only for matters that are clearly stated in it, but also for everything that according to the nature of the agreement is required by propriety, custom or law. Freedom in contact agreements is the right for anyone involved in an agreement. In order to avoid arbitrariness by parties whose positions are weaker.

F. References

Ridwan Khairandy, *"Keabsahan Perjanjian Standar Pasca Berlakunya Undang-Undang Perlindungan Konsumen"* Makalah. Jogjakarta. 2007

Simanjuntak, Ricardo, "Akibat dan Tindakan-Tindakan Hukum Terhadap Pencantuman Klausula Baku Dalam Polis Asuransi Yang bertentangan dengan Pasal 18 Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen," Jurnal Hukum Bisnis, Volume 22 Nomor 2 Tahun 2003.

Pasal 1339 KUHPerdata menentukan bahwa perjanjian yang dibuat tidak boleh bertentangan dengan undang-undang, kesusilaan, dan ketertiban umum. Artinya perjanjian tidak dapat dibuat sebebas-bebasnya tetapi ada batasannya.

Mariam Darus Badrulzaman, *Aneka Hukum Bisnis,* (Alumni, Bandung, 1994), hlm. 24.

J. Satrio, Hukum Perikatan, Perikatan Yang Timbul dari Perjanjian, Buku 1,Citra Adiyta Bakti. Bandung. 1995

Ridwan Khairandy, *"Keabsahan Perjanjian Standar Pasca Berlakunya Undang-Undang Perlindungan Konsumen"* Makalah. Jogjakarta. 2007

Ricardo Simanjuntak, *"Akibat dan Tindakan-Tindakan Hukum Terhadap Pencantuman Klausula Baku Dalam Polis Asuransi Yang bertentangan dengan Pasal 18 Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen,"* Jurnal Hukum Bisnis, Volume 22 Nomor 2 Tahun 2003

Erie Hariyanto *Penyelesaian Sengketa Ekonomi Syariah Di Indonesia* Penerbit Tishdia V o l . 1 N o. 1 Juni 2 0 1 4

Budi Agus Riswandi *Penerapan Klausul Standar Baku dalam Perjanjian Kredit Bank,* JURNAL HUKUM. NO. 15 VOL 7. DESEMBER 2000