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Comparative Analysis of Conventional Bank Credit Agreements with Islamic Banks

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Abstract

This study discusses that credit provision is the backbone of banking activities. The term credit is widely used in conventional banking systems that are interest based on the interest market, while in Islamic banking law it is better known as financing which is based on the desired real profit (margin) or profit sharing (profit sharing), This type of legal research is normative research with the nature of analytical descriptive research. An Islamic bank credit agreement or known as a financing contract, is made between the lender, namely the president director as the bank or the first party and the credit recipient as the debtor or second party. The similarity of credit agreements between conventional banks and Islamic banks is the legal basis for the implementation of credit agreements for the parties, namely the provisions of Article 1338 paragraph (1) of the Civil Code which regulates the main principle of an agreement or agreement, namely the principle of freedom of contract, is a standard contract, and does not have a specific form of content/standard clause, because it is not determined by law. In the credit agreement of conventional banks and Islamic banks, there are several problems. As an effort to resolve this, several things need to be considered and done by the debtor in considering the clauses of the credit agreement, namely evaluation and negotiation, affirmation of restrictive clauses, availability of creditors who provide financial support for the debtor, opportunity to terminate the agreement, cross-reference, use of indescribable adjectives, grace period and flexibility.

Keywords: *Sharia; Credit; Conventional*

Introduction

The impact of the current global financial crisis has an impact on various countries, including Indonesia, because the global financial system is interdependent, meaning that the activities carried out by both parties in establishing cooperative relationships with (usually) mutual benefit. Responding to the global financial crisis, the Indonesian government has been, is in the middle of, and will continue to take

various anticipatory steps in overcoming the impact of the global financial crisis, so that the stability of the national financial system is maintained.[1]

Business activities carried out by banks are regulated by Law Number 10 of 1998 concerning Banking. In carrying out its business activities, both conventional and sharia, it is supervised by Bank Indonesia. However, as of December 31, 2013, the functions, duties, and authority for regulating and supervising financial services activities in the banking sector have shifted from Bank Indonesia to the Financial Services Authority. This is in accordance with the provisions of Article 6 of Law Number 21 of 2011 concerning the Financial Services Authority, which states:

"OJK carries out the task of regulation and supervision of:
a. Financial services activities in the banking sector;
b. Financial services activities in the capital market sector; and
c. Financial services activities in the insurance sector, pension funds, financing institutions, and other financial services institutions."

So far, the implementation of the function as *the Lender of the Last Resort (LoLR)* carried out by Bank Indonesia through the provision of credit facilities to banks that are experiencing short-term funding difficulties and are guaranteed with high collateral and easy disbursement, but the regulation of the collateral criteria is not in line with the current economic conditions.[2] To get the cost of development, it is obtained from various sources and one of them is a banking institution which, among other things, has business activities to collect funds from the community and redistribute it to turn the wheels of the economy and development in the form of providing credit. This banking institution can be in the form of a government-owned bank in the form of a State-Owned Enterprise (BUMN) or a privately owned bank.[3]

The most important part of banking management is managing the available funds. Of the available sources of funds, most of them are allocated for credit, because that is where the largest bank income comes from, namely from interest on loans enjoyed by customers. Therefore, credit management is the most important task of operational management. The experience of banks due to the existence of bad loans lately, has spurred the banking sector to be more careful in regulating the allocation of credit funds. Credit plans are prepared more carefully, analysis of credit applications is more directed and credit security is encouraged, in addition to improving the customer development system, because the financing uses funds collected from the community.[4]

Credit is always coveted by the wider community, banks will also always try to increase fund collection in order to provide greater credit. Credit provision is the backbone of banking activities. If you look at the banking balance sheet, it will be seen that the bank's asset side will be dominated by the amount of credit. Likewise, if you observe the bank's revenue side, it will be found that the bank's largest income is from interest income and credit provision. Juridically, Law Number 10 of 1998 uses two different terms, but contains the same meaning for the meaning of credit. The two terms are, *first*, the word 'credit', a term used in conventional banks in carrying out their business activities, and *second*, the word 'financing' based on Sharia Principles, a term used in Islamic banks. The term credit is widely used in the conventional banking system which is interest based (*interest based*), while in Islamic banking law

[1]Indonesia, *Law on the Stipulation of Government Regulations in Lieu of Law No. 2 of 2008 concerning the Second Amendment to Law No. 23 of 1999 concerning Bank Indonesia into Law*, Law No. 6 of 2009, Explanation of the General Section of Law of the Republic of Indonesia No. 6 of 2009.
[2]*Ibid*.
[3]Meifriani Amalia R, "Settlement of Receivables in Credit Agreements with Auction of Collateral According to Law Number 4 of 1996 concerning Dependent Rights on Land and Land-Related Objects", *Thesis*, (Bogor: Pakuan University, 2002), p. 27
[4]Thamrin Abdullah, *Banks and Financial Institutions,* (Jakarta: Raja Grafindo Persada, 2014), p. 161.

it is better known as financing which is based on the desired real profit (*margin*) or profit sharing (*profit sharing).*[5]

In terms of credit agreements in conventional banks and Islamic banks, there are differences, including: in conventional banks, the credit agreement system is enforced based on Article 1320 of the Civil Code and binds both parties between the creditor and the debtor as long as it does not conflict with the law, public order and decency, then the agreement is considered valid. Meanwhile, the credit agreement system in Islamic banks is an agreement system that adheres to the positive legal system and the Islamic legal system, where the parties who bind themselves to an agreement then make a contract so that an agreement is considered valid.

Discussion

1. Analysis of Similarities and Differences in Credit Agreements Between Conventional Banks and Sharia Banks

The purpose or reason for the creation of a credit agreement is as the basis for providing credit/financing which functions as a principal agreement, as a limitation of rights and obligations between the bank and the customer, and as a tool to carry out *monitoring* credit/financing. The credit agreement is binding like a law for both parties during the implementation of credit/financing.

It can be seen that the main function of banks which was later affirmed in Article 3 of the Banking Law of 1998, the main function of banks is as a collector and distributor of public funds. Like the function of banking in general, in addition to collecting funds (receiving deposits), banks also distribute these funds in the form of money loans or credit/financing. A bank is a banking institution that provides credit/financing products for people in need.[6]

The provision of credit/financing by banks is preceded by the application of credit/financing from the community. A person or business entity who intends to obtain credit/financing from a bank, then the person or business entity must submit an application to the bank by filling out an application form or making a proposal for a credit/financing application.

After the application for credit/financing by the community, the application is followed up by the bank by conducting an in-depth analysis in accordance with the provisions of Article 8 paragraph (1) of the Banking Law of 1998 which includes legal aspects, marketing aspects, financial aspects, social aspects, guarantee aspects and other aspects. If the bank considers that all are eligible, a credit/financing release will be carried out based on an agreement.

The reason for the implementation of credit/financing agreements is an important factor and the basis for providing credit/financing to customers. Everything related to the provision of credit/financing such as the amount of funds, the conditions for disbursement of funds and the security factor of the credit/financing to be provided by the bank, can be included in the agreement. The thoroughness and accuracy of the inclusion of conditions in the credit/financing agreement will affect the health of the bank.[7]

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[5]Adi Didik Irawan, "Banking Credit and Banking Law Issues", available at *http://keriditperbankan.blogspot.co.id*., accessed August 3, 2024.

[6] Haditya Saputra, *Loc. Cit*.

[7]*Ibid.*

From this explanation, basically the form of implementation or implementation of credit agreements in conventional banks and Islamic banks as an initial procedure or condition that must be met by a customer when he applies for credit/financing at the bank, is made based on standard regulations including the content and clauses of the agreement that have been set by the bank.

2. Positive and Negative Factors of Credit Agreements between Conventional Banks and Sharia Banks

Credit agreements in both conventional banks and Islamic banks in their implementation have applied considerations into the content of the agreement by using the form of a standard agreement carried out by one party (bank) by preparing a standard condition on the agreement form that has been prepared in advance or has been printed and then submitted to the other party (customer) for approval. If the other party agrees with the standard terms, and finally both parties can agree, then the agreement is implemented which binds both parties like a law.

From the perspective of the Civil Code, an agreement can be made freely, in the sense that it is free to enter into an agreement with anyone, free to determine the form and conditions, and free to determine the form of the agreement, namely written or unwritten. Article 1338 paragraph (1) of the Civil Code states that, all legally made consents are valid as law for those who make them. Article 1338 of the Civil Code contains the principle of freedom of contract, which means that everyone is free to enter into an agreement in the form of anything, both in its form, content and to whom the agreement is addressed. From this principle, it can be concluded that the public is allowed to make an agreement in the form and contains anything (about anything, including credit agreements) and the agreement is binding on those who make it like a law, including when making a credit agreement with the bank. This credit/financing agreement is important to make in order to protect the interests of both parties executing the credit.[8]

The implementation of credit agreements between both conventional banks and Islamic banks is not specifically regulated, only regulated in substance in the Civil Code and the Banking Law. However, based on the study of the fulfillment of the conditions for the validity of the agreement in Article 1320 of the Civil Code which has been described in the discussion of the first problem formulation, this is not a problem because all provisions related to the fulfillment of the conditions for the validity of the agreement in Article 1320 of the Civil Code can be fulfilled and can be fully applied by banks and customers. If examined from the implementation or implementation of the credit agreement that has been discussed previously, there are implications or consequences of the application of the credit agreement to commercial banks, both conventional and sharia and also to customers, namely because credit agreements are an important factor in the provision of credit, it is mandatory for banks to enforce credit agreements first before the release of credit/financing. and the customer is obliged to follow and obey the agreement because if not, the release of credit/financing cannot be carried out. In addition, there is a binding of legal relations regarding the rights and obligations between the bank as a lender/financing provider and the customer as the recipient of credit/financing as stipulated in the clauses of each agreement.

Credit agreements that use the form of standard agreements have consequences, namely there is a weakness in the use of credit/financing agreements for customers because the agreements made in the standard form are made and determined unilaterally by the bank, without paying attention to the other party, and are made with the presence of one party who is in a weak position, as well as the customer's lack of understanding of the content and clauses that have been determined by the bank. For the bank as the party that makes the agreement, it has a beneficial effect because it can bind the customer's interests to the bank, so that whatever the condition is, the customer remains bound and complies with the content of the credit agreement.

[8] *Ibid*.

Based on the description above, the positive and negative factors of conventional bank credit agreements and Islamic banks can be stated, namely as follows:

1. Positive factors

   a. Credit agreements, both in conventional banks and Islamic banks, have important functions, both for banks and for customers, namely:

      1) Serves as a principal agreement;

      2) Serves as evidence regarding the limitation of rights between the bank and the customer;

      3) Works as a tool *monitoring* credit/financing.

   b. Both conventional and Islamic banks have deep consideration of the good faith and ability, as well as the customer's ability to pay off their debts or return financing in accordance with the agreements that have been made;

   c. There is a principle of freedom of contract, where everyone is free to enter into an agreement in any form, both in its form, content and to whom the agreement is addressed.

2. Negative factors:

   a. Credit agreements, both conventional banks and Islamic banks are not specifically regulated, so there are no standard provisions in making these agreements, which ultimately leads to diversity in the clauses of credit/financing agreements;

   b. Credit/financing agreement clauses, both conventional banks and Islamic banks have been prepared by the bank, where customers are obliged to follow and comply with them. Thus, the customer has a weak position in the credit/financing agreement.

3. Problems Arising in Credit Agreements between Conventional Banks and Sharia Banks and Efforts to Solve Them

In practice, there are two forms of credit agreements, namely:

a. A credit agreement made under the hand, or called a deed under the hand, means that the agreement to provide credit by the bank to its customers is only made between them (creditors and debtors) without a notary. But in practice, in a bank credit agreement, this subordinate deed is prepared and made by the bank itself and then offered to the debtor for agreement. To facilitate and accelerate the bank's work, banks usually have prepared an agreement form in standard form, whose contents, terms and conditions are prepared in advance in complete which are then offered to each prospective debtor to be known and understood in the context of signing the credit agreement. So the prospective debtor is willing or unwilling, forced or voluntary, to accept all the requirements listed in the credit form even if he disagrees with certain articles. This is because prospective debtors are in dire need of credit or are in a weak position;[9]

b. A credit agreement made by and before a notary, which is called an authentic deed or notary deed. The party who prepares and makes this agreement is a notary, but in practice all the terms and conditions of the credit agreement are prepared by the creditor, then given to the notary to be

[9] Syifa Rakhmasari, *Loc. Cit*.

formulated in a notary deed. Indeed, a notary in making an agreement only formulates what the parties want in the form of a notary deed or an authentic deed.

In the credit application process, usually the party providing credit has provided standards and *form-form* which is already standard, cannot be negotiated or negotiated. In practice, debtors face less risk than creditors in credit agreements, but debtors need to prepare themselves to know all aspects and credit problems in order to know the actual legal position that is useful in dealing with and dealing with the lender. For this reason, understanding, thoroughness, and caution are needed in the credit application process. The problems that arise in the credit agreements of conventional banks and Islamic banks are as follows:

1. The authority of the bank at any time without any reason and without prior notice to unilaterally terminate the credit withdrawal permission

This clause relates to the authority of the bank to unilaterally refuse a credit withdrawal with or without being followed by the act of terminating the credit agreement before the expiration of the term, without prior notice to the debtor customer. Such a clause shows that the bank as a creditor is in a strong position, but in its implementation it can be sued by the debtor's customer.[10]

2. The bank is authorized to unilaterally determine the selling price of collateral in the process of selling collateral due to bad debtor customer credit

It should be in accordance with the principles of propriety and good faith, banks do not determine the selling price of collateral goods themselves unless the price interpretation is carried out by a *appraisal company* (valuation service company) that is independent and has a good reputation. In addition, the law has determined how to sell collateral goods based on the form of binding of the guarantee. Against this, debtor customers can sue the creditor.[11]

3. The obligation of the debtor customer to comply with all existing and still existing bank instructions and regulations that will be determined later by the bank

This clause is contrary to the basic rules that must be considered to bind the terms of an agreement. By including this clause in the credit agreement, the clause is invalid and therefore not binding for the debtor's customer. Bank instructions and regulations are binding on debtor customers if they have been submitted in advance for the debtor to know and understand. Without first knowing and understanding even though the debtor customer affixes his signature, the agreement is not binding.[12]

4. The debtor's power of attorney cannot be revoked to the bank to be able to take all actions deemed necessary by the bank

The making of the power of attorney must firmly and specifically mention what actions and authorities may be carried out by the creditor. The creditor must exercise the power in good faith and not do things that can harm the debtor as long as the creditor's discretion does not reduce the debtor's ability to pay off the debt. For example, the granting of general power of attorney to carry out all actions in connection with legal acts of selling collateral such as selling a house from a power of attorney (debtor). Although the power of attorney also contains the power to set the

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

price by the authorized recipient (creditor), the authorized recipient is not entitled to set such a low price to the detriment of the authorized author.[13]

5. Inclusion of exclusion clauses that exempt banks from claims for compensation by debtor customers for losses suffered by them as a result of bank actions

This clause cannot necessarily bind the debtor even if the debtor has signed a credit agreement. The principle of propriety in the Civil Code requires that judges continue to consider the problem on a case-by-case basis.[14]

6. The inclusion of an exclusion clause regarding the absence of the debtor's right to be able to express an objection to the bank's charge on his account

Even though the bank's books are strong evidence to determine the disputed amounts, but considering that the bank's books are not authentic evidence, if the debtor's customer objects to the amounts from the book, the debtor's customer should still have the opportunity to prove the opposite truth. The right of debtor customers to be able to prove the opposite truth from bank bookkeeping records is because there have been many errors in bank bookkeeping and it has also often been known about the occurrence of frauds committed by bank officers that harm debtor customers.[15]

7. Unilateral proof by the bank regarding the negligence of the debtor customer

The inclusion of a clause in a credit/financing agreement that unilaterally gives authority to the bank in proving the debtor's negligence is a compelling provision and contrary to the legal principle of proof, so that the clause is null and void. The legal principle of proof according to the Civil Code and the Civil Procedure Law requires the party who postulates something to prove his postulation. Based on the legal principle of proof, the bank must prove the debtor's negligence if the bank feels that the debtor has been negligent in carrying out its obligations.[16]

In addition to the clauses in the credit/financing agreement that can burden the debtor's customer, it is also necessary to pay attention to other documents that are references and references to the credit agreement, but it often happens that the document is not easily accessible to the debtor. Examples of documents related to credit agreements are the "General Terms of Credit Provision by the Bank" or "General Terms of Account Opening". In practice, usually these documents are kept by banks and can be viewed at any time by debtor customers. Debtors need to pay close attention to these documents to avoid and anticipate the existence of burdensome clauses for debtors. Therefore, the debtor should ask the bank for copies of these documents to be studied and consulted.

Conclusion

Based on the description in the previous chapters, several conclusions can be given as follows:

1. The procedures or procedures for credit agreements between conventional banks and Islamic banks are as follows:

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[13] *Ibid.*
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*

a. Conventional banks

Credit agreements in conventional banks are always written in the form of written agreements, where the bank has provided an agreement form, the contents of which have been prepared in advance unilaterally by the bank. To prospective customers, the bank only asks them to read the content of the agreement to see what they think. If the prospective customer agrees to the content of the agreement that has been made unilaterally, then the credit agreement is held. The other things that have not been filled in the blank of the agreement form are things that are impossible to fill in in advance into the blank form. These other things include the amount of the loan, interest, the purpose of using the credit and the credit repayment period.

b. Islamic banks

An Islamic bank credit agreement or known as a financing contract, is made between the lender, namely the president director as the bank or the first party and the credit recipient as the debtor or second party. The financing agreement contains several provisions, namely definition, financing, financing objectives, time period, financing realization, financing installment payments, fines and compensation, management of financing accounts, bank power of attorney over customer accounts, collateral, insurance, burden of costs, the bank's right to end the financing term, the event of breach of promise (default), the bank's authority in the context of rescue and settlement of financing, correspondence, dispute resolution, legal domicile, *addendum*, supplements, and covers.

2. The similarities and differences in credit agreements between conventional banks and Islamic banks are as follows:

a. Equation:

1) The legal basis for the implementation of credit agreements for the parties, namely the provisions of Article 1338 paragraph (1) of the Civil Code which regulates the main principle of an agreement or agreement, namely the principle of freedom of contract;

2) Bank credit agreements, including Islamic bank financing agreements, are standard agreements (*standard contract*), where the content or clauses of the bank credit agreement have been standardized and poured in the form of a form (blank), but are not bound to a specific form;

3) Bank credit agreements or in Islamic banks called financing contracts do not have a specific form of content/standard clause, because they are not determined by law.

b. Difference:

1) Use of the term subject of the agreement;

2) Legal sources of credit agreements;

3) Structure of the credit agreement.

4) There is supervision from the Sharia Supervisory Board (DPS), especially Islamic banks.

3. The positive and negative factors of conventional bank and Islamic bank credit agreements are as follows:

a. Positive factors

1) Credit agreements, both in conventional banks and Islamic banks, have an important function, both for banks and for customers;

2) Both conventional and Islamic banks have deep consideration of the good faith and ability, as well as the customer's ability to pay off their debts or return financing in accordance with the agreements that have been made;

3) There is a principle of freedom of contract, where everyone is free to enter into an agreement in any form, both in its form, content and to whom the agreement is addressed.

b. Negative factors:

1) Credit agreements, both conventional banks and Islamic banks are not specifically regulated, so there are no standard provisions in making these agreements, which ultimately leads to diversity in the clauses of credit/financing agreements;

2) Credit/financing agreement clauses, both conventional banks and Islamic banks have been prepared by banks, where customers are obliged to follow and obey them. Thus, the customer has a weak position in the credit/financing agreement.

4. The problems that arise in the credit agreements of conventional banks and Islamic banks and their solutions, are as follows:

a. The authority of the bank at any time without any reason and without prior notice to unilaterally terminate the credit withdrawal permission

This clause relates to the authority of the bank to unilaterally refuse a credit withdrawal with or without being followed by an action to terminate the credit agreement before the expiration of the term, without prior notice to the debtor's customer;

b. The bank is authorized to unilaterally determine the selling price of collateral in the process of selling collateral due to bad debtor customer credit

It should be in accordance with the principles of propriety and good faith, banks do not determine the selling price of collateral goods themselves unless the price interpretation is carried out by a *appraisal company* (valuation service company) that is independent and has a good reputation. In addition, the law has defined the way to sell collateral goods based on the form of its bond binding;

c. The obligation of the debtor customer to comply with all existing and still existing bank instructions and regulations that will be determined later by the bank

This clause is contrary to the basic rules that must be considered to bind the terms of an agreement. By including this clause in the credit agreement, the clause is invalid and therefore not binding for the debtor's customer. The bank's instructions and regulations are binding on the debtor's customer if they have been submitted in advance for the debtor to know and understand;

d. The debtor's power of attorney cannot be revoked to the bank to be able to take all actions deemed necessary by the bank

The making of the power of attorney must firmly and specifically mention what actions and authorities may be carried out by the creditor. The creditor must exercise the power in good faith and not do things that may harm the debtor as long as the creditor's discretion does not reduce the debtor's ability to pay off the debt;

e. Inclusion of exclusion clauses that exempt banks from claims for compensation by debtor customers for losses suffered by them as a result of bank actions

This clause cannot necessarily bind the debtor even if the debtor has signed a credit agreement. The principle of propriety in the Civil Code requires that judges continue to consider the problem on a case-by-case basis;

f. The inclusion of an exclusion clause regarding the absence of the debtor's right to be able to express an objection to the bank's charge on his account

Even though the bank's books are strong evidence to determine the disputed amounts, but considering that the bank's books are not authentic evidence, if the debtor's customer objects to the amounts from the book, the debtor's customer should still have the opportunity to prove the opposite truth. The right of the debtor customer to be able to prove the opposite truth from the bank's bookkeeping records is because there have been many errors in the bank's bookkeeping and it has also been often known about the occurrence of frauds committed by bank officers that are detrimental to the debtor's customer;

g. Unilateral proof by the bank regarding the negligence of the debtor customer

The inclusion of a clause in a credit/financing agreement that unilaterally gives authority to the bank in proving the debtor's negligence is a compelling provision and contrary to the legal principle of proof, so that the clause is null and void. The legal principle of proof according to the Civil Code and the Civil Procedure Law requires the party who postulates something to prove his postulation. Based on the legal principle of proof, the bank must prove the debtor's negligence if the bank feels that the debtor has been negligent in carrying out its obligations;

As an effort to solve it, several things need to be considered and done by the debtor in considering the clauses of the credit agreement, which are as follows:

a. Evaluation and negotiation;

b. Affirmation of restrictive clauses;

c. The availability of creditors who provide financial support for debtors;

d. Opportunity to terminate the agreement;

e. Cross-reference;

f. Use of undescribed adjectives;

g. Grace period;

h. Flexibility.

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