

Analysis Of The Application Of The Principle Of Freedom Of Contract In Home Ownership Credit Agreements In Karanganyar

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Abstract.

Home Ownership Credit is an agreement that arises between the bank as the creditor and the customer as the debtor. The creditor provides services in the form of financing for the purchase of a house with the debtor paying in installments according to the chosen tenor. Interest in Home Ownership Credit is very high in the people of Karanganyar Regency, Central Java. The offer of a Home Ownership program that can be paid for by credit is the main reason Home Ownership Credit has such high interest in Karanganyar Regency. Apart from that, government support with several subsidies for Home Ownership Credit is also the reason. Home Ownership Credit will result in a credit agreement between the creditor, namely the bank, and the customer or debtor. Credit agreements are made to ensure legal certainty between the creditor and debtor. The credit agreement made by the bank is in the form of a standard agreement which then needs to be presented to the customer for approval. Clauses made unilaterally by banks result in unequal authority between banks and customers. The economic advantages possessed by banks mean that customers who need financing programs from banks must agree to the standard agreement. The standard agreement in the agreement for granting Home Ownership Credit is the result of the Principle of Freedom of Contract which is intended to ensure that agreements can be balanced. However, in reality, this implementation results in the dominance of one party, namely banking, which has economic advantages. The need factor is the main reason that causes customers to inevitably agree to the standard agreement even though the agreement in it is not balanced.

Keywords: *Banking, Customers, Credit Agreement, Home Ownership Credit, Karanganyar Regency Community, Principle of Freedom of Contract, and Standard Agreement.*

I. INTRODUCTION

Credit can be interpreted as a program for providing money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest. The benefits provided by providing credit make this program crucial in supporting and sustaining economic growth in society.¹ Credit has made it easier for people to meet their sometimes urgent needs but they don't have enough money. Credit can be used as an option to overcome this problem. Credit as a banking product has several forms, such as business credit, motorbike or car credit and also home ownership credit or what is usually called KPR. Home Ownership Credit (KPR) is one of the bank products that is in great demand by the public. Home Ownership Credit is a program aimed at meeting community needs, especially in terms of home ownership. Houses have become one of the primary needs for society.² Home ownership for a family is a very important item. Home Ownership Credit is an agreement that arises between the bank as the creditor and the customer who positions himself as the debtor. The creditor, namely the bank, has an agreement to provide a service, namely financing the house to be purchased by the debtor, and then the payment process to the creditor is agreed periodically and within a time period in accordance with the agreement made. Credit, which is one of the banking products, is the main function of banking, namely the function of distributing funds to parties who need them after receiving funds from depositors.

This function provides large income for banks which is also commensurate with the risk.³ Credit that includes interest in the payment agreement by the debtor has become the main source of income from the banking business line. The large income obtained from credit is also commensurate with the risk that will be

accepted. These risks include the debtor being unable to make payments or defaulting on the agreed credit agreement. Home Ownership Credit has a lot of interest in the Karanganyar Regency area. The demand is relatively high among the public to own a house but is hampered by insufficient funds, making many banking institutions, especially those in Karanganyar Regency, busy issuing Home Ownership Credit products. This also has an impact on the rise of house developers who are starting to build residential type houses which are then marketed using mortgages. Providing Home Ownership Credit (KPR) facilities results in a credit agreement between the creditor, namely the banking sector, and also the customer or debtor. The credit agreement is to ensure legal certainty between the creditor and the debtor.

This legal certainty is intended so that there is no longer any doubt from both parties regarding the provision of credit facilities. Credit agreements made by banks usually take the form of a standard agreement which is shaped like a form which will later be presented to prospective customers for approval. Clauses made unilaterally by banks in the form of standard agreements result in the authority between banks and customers becoming unbalanced.⁴ This is because the bank as the owner of capital has an economic advantage over customers who are in need of disbursement of funds to meet their needs. So, in credit agreements, especially Home Ownership Credit (KPR), customers inevitably agree to the contents of the agreement provided by the banking sector. The standard agreement in the agreement for granting Home Ownership Credit is the result of the Principle of Freedom of Contract which is intended to ensure that agreements can be balanced. However, in reality, this implementation results in the dominance of one party, namely banking, which has economic advantages. Although basically a standard agreement is made to make it easier for credit agreements to reach an agreement quickly because there is no bargaining over the agreement clauses, unbalanced clauses make the agreement detrimental to the customer or debtor.

II. METHODS

This research is descriptive empirical legal research. This research uses a qualitative approach, which is a way of analyzing research results that produces analytical descriptive data. The qualitative approach is a way of analyzing research results that produces analytical descriptive data. The data in question is data expressed by respondents in writing or orally, as well as real behavior that is researched and studied as a whole. The type of data that will be used in this research is primary data, where data is obtained directly from the field regarding behavior or empirical data and secondary data originating from library materials.⁵ Primary data was obtained by interviewing sources and secondary sources from library sources such as books, journals and internet sources.

III. RESULT AND DISCUSSION

Understanding Agreement

Engagements are regulated in Article 1233 of the Civil Code which states that every engagement is created either by agreement or by law. Article 1313 of the Civil Code, an agreement is an act in which one or more people bind themselves to one or more other people. From the articles above, it can be interpreted that an agreement was born because of an agreement. An agreement is considered valid and has legal consequences if the agreement meets the requirements determined by law,

According to Article 1320 of the Civil Code, the four conditions for a valid agreement are:⁶

- 1) They agreed to bind themselves
- 2) The ability to create an engagement
- 3) A certain thing
- 4) A legitimate cause

The agreement contains several types of legal principles which are general principles that must be heeded by everyone involved in it, including:⁷

- 1) Personality Principles
- 2) Principle of Consensualism
- 3) Principle of Freedom of Contract
- 4) The principle of good faith
- 5) The principle of Pacta Sunt servada
- 6) Proportionality Principle

Agreements made by several parties can also be void when there are several conditions that inspire them such as:⁸

- 1) Subrogation

This is a change in the creditor's position by a third party due to the agreed payment as determined by law

- 2) Payment

In agreement law, payment is all actions to fulfill achievements in an agreement. Doing something or not doing something is the fulfillment of an achievement in an agreement. Doing something or not doing something is the fulfillment of an achievement which is a payment.

- 3) Payment in cash accompanied by storage or custody

In the agreement, it can be written off by offering payment accompanied by deposit where the debtor will pay the debt to the debtor, but the creditor and the debtor will entrust the money that will be paid to the creditor to the court regarding payment to a particular creditor.

- 4) Debt renewal

Debt renewal is an agreement where an existing agreement is abolished and a new agreement is entered into.⁹

- 5) Passing of contracts and debts

In practice, a company owner wants to transfer his company to another party with the intention of promising that the new owner will take over it in its entirety.

- 6) Compensation

Debt settlement or compensation occurs when two people owe one person another party, so that the debts are written off because of the law that requires a calculation of this between them.

- 7) Debt mixing

This mixing of debts usually occurs in cases of inheritance, where the position of the debtor becomes the heir of the creditor in the heir. If the creditor dies, the debtor's debts are immediately paid off by his heirs.

- 8) Debt relief

It is the creditor's will to free the debtor from the obligation. This will is accepted by the debtor in the agreement.

- 9) Destruction of goods owed

An item is the object of an agreement to be abolished by the government which prohibits trading. Article 1553 of the Civil Code states that if during the rental period, the item that is the object of the rental is destroyed due to an accidental event, then the agreement is void by law.

- 10) Cancellation of agreement

If the agreement is objectively flawed, the defect in question is an object that violates the law and public order.

Understanding Home Ownership Credit

The definition of credit according to Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, determines that "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between bank with another party that requires the borrower to pay off the debt after a certain period of time with interest." The purpose of providing credit cannot be separated from the philosophy of life of a country, Indonesia adheres to Pancasila as the basis of the state and the philosophy of life of the nation, so the purpose of credit in Indonesia is not solely to seek profit. The purpose of credit is adjusted to the State's goal, namely achieving a just and prosperous society based on Pancasila. Credit provided by banks has a broad influence in aspects of life, especially in the economic sector. In this regard, the banking credit function is carried out for various purposes, including:¹⁰

- 1) Increase the usability of money.
- 2) Increase money circulation and traffic.
- 3) Increase the usability and circulation of money.
- 4) As a tool for economic stability.
- 5) Increase enthusiasm for business.
- 6) Increasing income equality.
- 7) As a tool to improve international relations.

Home Ownership Credit can be defined as a credit facility provided by banks to individual customers who want to buy or repair a house. The essence of the meaning of Home Ownership Credit (KPR) is as a credit facility from the Bank to meet housing needs.

Home Ownership Credit has an agreement which contains the rights and obligations of each party involved. The rights and obligations of each party bound by the Home Ownership Credit agreement are in accordance with the agreements stated in the agreement. The debtor's rights are an obligation for the creditor to fulfill them, the creditor's rights are the debtor's obligations to fulfill them.

Home Ownership Credit in Karanganyar Regency, Central Java, Indonesia

Home Ownership Credit is a banking product aimed at enabling people to own a house by facilitating financing by banks and then people can pay in installments to pay off the payments. Home Ownership Credit in Karanganyar Regency has high interest from the public. Banks as creditors are busy issuing Home Ownership Credit products to the public. Home Ownership Credit financing facilities are also supported by housing developers in providing houses that can be purchased using the Home Ownership Credit program with financing assistance from banks. The development company (Developer) as the party that has activities to build and market houses to consumers issues purchasing products that can be paid for on credit. The existing credit is divided into two, namely:

1. Phased cash system, namely a home purchase system carried out with an agreement between the developer and the consumer who will make payments in stages over a period of time.
2. Home Ownership Credit System, namely a home purchase system carried out by consumers using credit, which is paid in installments over a long period of time, namely 5 to 15 years.

Home Ownership Credit products have high interest from the public because there are several Home Ownership Credit programs that receive subsidies from the government. This is intended so that housing needs, which are a primary need for the community, can be fulfilled, especially for the people of Karanganyar Regency.

Purchasing a house using the Home Ownership Credit system can be done in the following ways:

1. A prior agreement is made between the developer or developers and consumers who will later become banking customers. In this agreement, the down payment, location, type of house to be purchased, land and building prices and also the time period for building the house and handing over the house will be agreed upon.

2. After an agreement has been made between the consumer and the developer, the developer will then submit an application for Home Ownership Credit on behalf of the consumer to the Bank which has been agreed upon in accordance with the contents of the agreement. Then the application is accompanied by a payment period, usually between 5 and 15 years depending on the consumer's ability to pay the installments.

The process of applying for a Home Ownership Loan submitted to the bank can begin with filling out a form by the prospective debtor. This form usually contains agreements that the debtor inevitably has to agree to in order to obtain financing from the bank. After filling in the form, the bank will carry out an analysis of prospective customer data which will determine whether credit will be granted to prospective customers.

The Principle of Freedom of Contract in Home Ownership Credit Agreements in Karanganyar Regency.

Credit agreements between creditors and debtors should contain several principles that serve as a basis, including the principle of consensualism, the principle of freedom of contract, the principle of balance, the principle of prudence, the principle of trust, the principle of the strength of binding agreements and the principle of good faith. All these principles must be taken into account by all parties so that the objectives of the agreement can be realized as desired by all parties involved in the agreement.¹¹The standard agreement made by banks to facilitate the implementation of credit agreements, especially Home Ownership Loans, is an implementation of the principle of freedom of contract. Standard agreements are a way for banks to provide credit to prospective customers quickly without taking up a lot of time. However, standard agreements have shortcomings, namely that customers who are economically weak receive unequal rights and obligations compared to banks which are the makers of the agreement. The need factor is the main reason for customers to inevitably agree to the contents of the standard agreement offered by the banking sector in order to immediately obtain financing facilities from the banking sector.

¹²The principle of freedom of contract in Indonesia is regulated in article 1338, in this article it is emphasized that everyone is free to make agreements. This freedom does not mean that as much freedom as possible is limited by norms of decency and the public interest.¹³PrincipleFreedom of contract is based on when all parties agree to bind themselves to the agreement.The principle of freedom of contract should not only contain the freedom to make an agreement with anyone but also include equality in terms of bargaining over the contents of the agreement between all promising parties. The absence of bargaining over the contents of the agreement between debtors and creditors in the Home Ownership Credit Agreement in Karanganyar Regency creates a conflict regarding the validity of standard agreements made by banks. However, in practice, this agreement exists because someone wants it and must be accepted as a reality so that credit can be provided quickly and customers can immediately meet their needs.

Standard agreements as implementation of the principle of freedom of contract can also be seen from the perspective of legal protection. Standard agreements are made by banks as a form of legal certainty and also legal protection for both parties. Standard agreements are a form of legal protection for banks as creditors so that when providing credit financing to customers they have legal guarantees. This legal guarantee, if later the customer is unable to fulfill his obligations or defaults, the bank can still get the rights that the customer should have paid. However, as explained above, if a standard agreement is a form of banking dominance, not all of the customer's rights can be included in the agreement. This results in the legal protection resulting from standard agreements for customers being said to be still weak.¹⁴As a result, legal protection for debtors in standard agreements needs to be reviewed. If viewed from the Consumer Protection Law, there is an obligation for banks to pay attention to the procedures for making standard agreement

clauses, both in form and content, which will protect the legal interests of customers.¹⁵Therefore, there is a need for a review regarding the implementation of standard agreements, especially in providing Home Ownership Credit in Karanganyar Regency.

IV. CONCLUSION

The implementation of the standard agreement in the Home Ownership Credit (KPR) agreement should be reviewed in its implementation. This is based on the absence of balance between parties which includes rights and obligations, especially for customers or debtors who have weaknesses from an economic perspective. A standard agreement aimed at ensuring legal certainty and legal protection for both parties should in its contents be able to accommodate the rights and obligations of both parties in a balanced manner. The principle of freedom of contract should be applied in the implementation of standard agreements between banks and customers. This is based on the fact that every agreement must be aimed at harmony and mutual benefit in which there is a balance of rights and obligations between the parties who agree to promise. Banks that have advantages from an economic perspective must be able to accommodate the rights and obligations of customers so that the agreement results in balance.

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