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The Legal Vacuum and Dominance of Standard Contracts in the Banking Industry

Rohadi[1], Hono Sejati[2], Tri Susilowati[3]
[1] Faculty of Law, Universitas Darul Ulum Islamic Center Sudirman, Semarang, Rohadi07@gmail.com
[2] Faculty of Law, Universitas Darul Ulum Islamic Center Sudirman, Semarang, sejatihono@gmail.com
[3] Faculty of Law, Universitas Darul Ulum Islamic Center Sudirman, Semarang, tri.susilowati.undaris@gmail.com

Corresponding Author: Rohadi07@gmail.com [1]

Abstract: The legal vacuum in the regulation of standard contracts in the banking industry in Indonesia has become an increasingly pressing issue, given the rising dependence of the public on financial services. This study aims to explore various aspects related to the legal vacuum and the dominance of standard contracts, which often disadvantage consumers. By analyzing the provisions in the Consumer Protection Law and existing banking practices, this research identifies the negative consequences of regulatory ambiguities that facilitate abuse by banks. The study also discusses the efforts that need to be made by the government and the Financial Services Authority (OJK) to create a stronger and more transparent legal framework. The results indicate that tighter regulations and effective supervision can strengthen consumer bargaining power and reduce the risk of losses due to unfair terms in standard contracts. Thus, this research is expected to contribute to the development of more equitable and sustainable policies in the banking sector.

Keyword: Legal vacuum, standard contracts, banking industry, consumer protection

INTRODUCTION

In order to achieve the noble goals of the government of the Republic of Indonesia to prosper all its people, there is a close relationship with economic aspects. Various types of businesses, whether small, medium, or large scale, have experienced a significant increase. This is due to the development of the times in various fields, including the rapid advancement of technology and communication. To support this business advancement, capital has become a very important need. In daily life, we often witness social and economic disparities, where economically strong parties can dominate weaker parties. The weaker parties urgently need capital assistance to improve their living standards through business development. As is known, banks, as legal entities, both state-owned and privately owned, have aligned goals and roles in supporting the economic development of society. [1]

In the IVth paragraph of the Preamble of the Constitution of the Republic of Indonesia Year 1945, it is emphasized that the Government of the Unitary State of the Republic of Indonesia is tasked with protecting the entire nation and the bloodshed of Indonesia, advancing the general welfare, educating the life of the nation, and participating in creating world order based on independence, eternal peace, and social justice. The implementation of this mandate is carried out through national development aimed at creating a just and prosperous society, with serious attention to the right to life and protection for every citizen within the framework of the Unitary State of the Republic of Indonesia. [2]

The Unitary State of the Republic of Indonesia has the responsibility to protect the entire Indonesian nation and its bloodshed, ensuring protection for life and livelihood, including the protection of rights and obligations arising from various forms of agreements or contracts, especially concerning standard contracts. The principle of freedom of contract (partij autonomi, freedom of contract, contract vrijheid) results in an open legal system for agreements, where its regulations are supplementary (aanvullen, regulatory). Freedom of contract is defined as the right to determine the contents of agreements and choose the contracting parties. [3] This principle of freedom of contract is universal and refers to the free will of every individual to make contracts or choose not to contract. Restrictions on this freedom can only be made for the public interest, and every contract must contain a reasonable balance. It is important to emphasize that the principle of freedom of contract assumes a balanced bargaining position between the parties entering into a contract, both economically and socially.

Banks, as legal entities, whether state-owned or privately owned, have similar goals and roles. As financial institutions with a strategic position in the economic life of a country, banks function as business entities that collect funds from the public in the form of savings, deposits, or investments, particularly from the middle to upper economic classes. Banks also disburse these funds to the public in the form of credit, especially to groups categorized as lower economic classes, aiming to improve the living standards of society. In providing capital or loans, which in banking terminology is known as credit, the bank will draft a loan agreement that outlines the responsibilities of each of the parties involved, namely the bank and the customer. However, in practice, loan agreements are often considered burdensome to customers. This is due to the fact that the contents of the agreement are prepared before the customer approaches the bank to apply for a loan. Banks draft loan agreements in advance for efficiency and uniform application to all customers who have a similar goal of obtaining loan capital. [4] In Civil Law, the concept of an agreement drafted unilaterally by the bank is known as Absolute Agreement Law (Standard Contracts) and is often referred to as Standard Contracts (Standard Contract). According to I Ketut Artadi, a standard contract is one where the clauses have been predetermined or designed beforehand by one party. [5]

Standard contracts are a type of agreement in which the clauses have been previously established before signing. The use of these agreements is generally driven by low costs and better time efficiency. Borrowers often can only accept the terms set forth, given their weaker bargaining position. However, over time, the use of standard contracts has shown potential risks for the public. This is due to a lack of understanding of legal aspects, especially concerning the consequences arising from the execution of these standard contracts. Based on this brief overview, this study will discuss the legal vacuum and the dominance of standard contracts in the banking industry, as well as the consequences of the legal vacuum regarding standard contracts in the banking industry and the efforts to address this legal vacuum.

METHOD

The normative legal research method is a method used in legal studies that focuses on the study of documents and legal norms. This method aims to analyze the applicable legal rules and how those rules are applied or interpreted in a specific context. In normative legal research, the primary sources used are laws and regulations as well as other legal literature. This approach is highly relevant for researching legal issues that are theoretical and conceptual in nature, such as legal gaps and the dominance of standard contracts in the banking industry. It will also discuss the consequences of legal gaps in standard contracts within the banking industry and the efforts to address these legal gaps regarding standard contracts in the banking sector. One of the approaches used in this method is the statutory approach and conceptual approach. The statutory approach involves examining and analyzing various rules that govern specific issues, such as the Civil Code and regulations related to standard agreements. Through this approach, researchers can analyze and identify legal gaps and the dominance of standard contracts in the banking industry, as well as discuss the consequences of legal gaps in standard contracts in the banking sector and efforts to address these legal gaps regarding standard contracts in the banking industry.

RESULT AND DISCUSSION

Legal Gaps in Standard Contracts in the Banking Industry

An agreement is defined as an act in which one or more parties bind themselves to one or more other parties (Article 1313 of the Civil Code). However, this definition has several weaknesses; among them, the term "act" encompasses both lawful and unlawful actions; it would be better if this term were replaced with "approval" or "consent." The term "person" only refers to humans as legal subjects, whereas legal subjects also include "legal entities" that have the capacity to enter into agreements. Thus, the legal subjects in an agreement can be individuals or legal entities referred to as parties. The word "bind" only indicates a unilateral intention, so it would be more accurate to replace it with "mutually bind themselves" to indicate consensus among the parties. The definition also does not mention the purpose of creating the agreement. It should clarify that the purpose of the agreement is to create obligations between the parties. These obligations establish a legal relationship that grants rights and duties to each party. If a breach occurs regarding these obligations, the breaching party may face legal sanctions.

The position of standard clauses in contract law in Indonesia can be traced through the legal basis regulating those clauses and their application in civil relations between the parties involved. Regarding the status of standard clauses, this can be seen from the legal provisions that govern them and several examples of agreements that adopt these clauses. In Indonesia, provisions regarding standard clauses have been regulated under Law Number 8 of 1999 on Consumer Protection, specifically in Article 18. This article explicitly outlines the rules related to the existence of standard clauses, which include:

a. the transfer of responsibility from the business actor;
b. the right of the business actor to refuse the return of goods purchased by the consumer;
c. the right of the business actor to refuse the refund of money that has been paid for goods and/or services;
d. the granting of authority from the consumer to the business actor, both directly and indirectly, to take unilateral action regarding goods purchased on credit;
e. provisions regarding the burden of proof on the loss of benefits from the purchased goods or services;
f. the right of the business actor to reduce the benefits of services or diminish the wealth of the consumer that is the subject of the transaction;
g. provisions stating that consumers are subject to new, additional, or changes to regulations unilaterally established by the business actor while the consumer utilizes the services;
h. granting authority by the consumer to the business actor to impose collateral rights, pledges, or guarantees on goods purchased on credit.

Article 18 paragraph (2) of Law Number 8 of 1999 also emphasizes that business actors are prohibited from including standard clauses that are difficult to see, unclear in readability, or whose disclosures are hard to understand. This provision aims to protect consumers from unfair practices in contract drafting, where imbalances in information and power can cause harm to weaker parties. Therefore, it is essential to ensure that all clauses in standard agreements are accessible and easily understood by consumers before they agree to these terms. This not only supports transparency in transactions but also contributes to fostering a fairer relationship between business actors and consumers.

Standard agreements, in English terms such as contracts of adhesion, leonine contracts, take-it-or-leave-it contracts, or boilerplate contracts, are a form of agreements where the terms are unilaterally created by a specific party. This party uses it to transact with many other parties that have the same interests regarding the substance of the offered agreement, while the "other party has little or no ability to negotiate more favorable terms, thereby finding themselves in a 'take it or leave it' position." It cannot be denied that the drafters of standard agreements usually have stronger bargaining power compared to the party being offered the agreement.

The parties offered standard contracts are commonly referred to as "consumers." They are typically members of the general public who transact with entities such as banks or insurance companies, but they can also include suppliers in industries or farmers and ranchers supplying their products to factories. Standard agreements often contain standard clauses that, according to Article 1 paragraph (1) of Law Number 8 of 1999 on Consumer Protection (UUPK), are defined as: "A standard clause is any rule or provision and terms that have been prepared and established in advance unilaterally by the business actor, contained in a document and/or agreement that binds and must be fulfilled by the consumer." This indicates that the UUPK recognizes standard contracts as a "take it or leave it" offer from business actors to consumers. Business actors, as the drafters of the standard agreements, generally know what they want to offer and the expected returns from consumers. However, consumers typically do not share the same understanding, so they have to make greater efforts to understand the mutual rights and obligations outlined in these standard agreements.

In social reality, consumers, who are generally ordinary members of society, face a number of sociological, professional, and technical obstacles when dealing with business actors. They need goods and/or services from business actors that have much greater socio-economic power. Business actors often exhibit an attitude of "If you don’t want it, there are plenty who will." Consumers frequently require goods or services that can only be provided by large business actors who hold dominant economic and social power. This dependence places consumers at a disadvantage in the transaction process. When consumers need these products or services, they are forced to accept the terms set by business actors since they have few other options. Large business actors, who generally possess strong resources and market positions, can set contract terms without providing consumers room for negotiation or adjustments to potentially burdensome terms.

This situation often results in a "take it or leave it" stance from business actors. With the high demand from consumers, business actors feel no need to accommodate the individual needs or desires of consumers. Instead, they focus more on efficiency and consistency of service by applying standard terms and conditions to all consumers. This attitude, which can seem like "if you don’t want it, there are plenty who will," indicates that business actors hold significant bargaining power and view consumers as replaceable entities. In this position, business actors tend to maintain maximal profits by setting terms that may be more favorable to them, even if it burdens the consumers. Drafters of standard agreements are usually professionals who use language that is difficult for ordinary consumers to comprehend. Due to their needs, consumers often tend to "give in" rather than "extend matters" with parties using a "language that feels foreign." Standard contracts often include clauses that state they are subject to various laws and other applicable regulations, which can leave critical consumers feeling "desperate" since they are generally unfamiliar with the numerous regulations that need to be complied with. Drafters of provisions in standard agreements can formulate the contents of the provisions in such a way that their implementation tends to be more beneficial to business actors and harmful to consumers, which is often challenging for consumers—most of whom are not well-versed in contracts—to understand.

The imbalance in bargaining power between consumers and large business actors is a fundamental issue in standard contracts. Consumers, who typically face the terms of the agreements individually, find themselves in a weak position as they lack equivalent bargaining power. This condition is exacerbated by the fact that large business actors have full control over the terms and conditions of the agreements that consumers must accept without room for negotiation. As a result, consumers are positioned as passive recipients who cannot influence the terms of the contracts, which often contain unilateral conditions that are more advantageous to the business actors. In standard contracts, consumers who individually face large business actors often feel trapped in terms that bind them without any alternative options. Business actors, with substantial resources and a strong economic position, can dictate the terms of the agreements designed to maximize their profits, even though this may be detrimental to consumers. Therefore, without external protection, consumers are vulnerable to detrimental contractual practices, including one-sided provisions regarding risks, responsibilities, and penalty clauses.

In situations like this, the state has a crucial role to play in intervening to protect the rights of consumers who are weaker in terms of bargaining power. The state, through consumer protection policies enshrined in legislation, plays a role in regulating fairer standards in standard agreements. The government can impose limits on contract clauses that are excessively one-sided and establish oversight mechanisms and penalties to protect consumers from injustices. These measures are essential to ensure a balance between the rights and obligations of both parties so that consumers do not become victims of the arbitrary actions of large business actors.

In banking, the standard contracts established often contain clauses that favor the banks and burden the customers. These clauses are generally drafted to minimize the risks borne by the banks, but as a result, these risks are shifted to the customers without the opportunity for negotiation. Risk transfer clauses are a common example that often places a heavier burden of responsibility on customers, particularly in cases of payment failure or changes in financial conditions. If customers experience problems in meeting their obligations, standard contracts tend to include provisions that allow banks to take unilateral actions, such as automatically withdrawing funds from accounts or selling collateral assets, without a fair procedure for the customers. Besides risk transfer, standard contracts in banking often limit customers' rights to file objections or appeals. Many banking contracts include clauses that state that the bank's decisions are final and binding, thus severely restricting the customer’s ability to voice complaints or contest those decisions. For instance, if there is a dispute regarding the amount of interest or administrative fees charged, the clauses in the standard contract may not provide customers with opportunities to object or appeal against those terms. This creates an imbalanced bargaining position where banks have full power to determine policies, while customers are forced to accept the terms as they are. Another frequently favorable clause for banks is the exclusive jurisdiction clause, which stipulates that disputes can only be resolved at a location or court chosen by the bank. This provision can burden customers, especially if the designated court or location is far from the customers' domicile, thus hindering their access to seek justice due to geographical constraints and additional costs. The consequences of these clauses are that customers find it difficult to advocate for their rights, becoming more passive, where their rights are limited, making them more vulnerable to the one-sided provisions enacted by the banks.

Standard contracts commonly used in the banking industry often create an imbalance of rights and obligations between the banks and customers. Generally, these contracts are drafted in such a way that strengthens the banks' position in various aspects, including disputes, collections, and recovery of non-performing loans. The provisions within these standard contracts often complicate matters for customers as they are provided little room to negotiate or even fully understand the content and consequences of those terms. Often, banks apply terms and conditions that bind customers without providing options for discussion or change, making customers parties who can only accept the terms that have been prepared by the banks. One aspect that reflects this imbalance is the clause regarding dispute resolution. Many banking standard contracts include clauses that state that in the event of a dispute, the decisions made by the bank are final and non-negotiable. This reinforces the banks' position when facing potential claims from customers and limits customers' rights to file objections or appeals. Even in cases where banks are deemed to have made errors, the position granted to banks by the standard contracts allows them to retain full control over dispute resolution, so customers may be forced to accept the bank's decisions even if perceived as unfair.

Provisions in standard contracts often contain clauses regarding the bank's right to take collection actions or legal measures without any obligation to provide prior notice to the customer. For instance, in cases where the customer fails to make installment payments, the bank can immediately collect or seize assets pledged as collateral without granting the customer time to negotiate or seek solutions. The bank's right to act unilaterally becomes very strong, while customers have little opportunity to object or seek alternative resolutions. This imbalance in rights and obligations places customers in a weak position, especially as they do not possess the same bargaining power as banks. With very limited negotiation space, customers are often forced to comply with the terms unilaterally drawn up by banks without the right to adjust or reject clauses deemed detrimental. As a result, standard contracts in banking often create situations that favor banks and do not protect customers' interests equitably. This highlights the need for stronger regulations or protective mechanisms to ensure a balance of rights and obligations for both parties.

The Consequences of Legal Gaps in Standard Contracts in the Banking Industry and Efforts to Address Legal Gaps Regarding Standard Contracts in the Banking Industry

Legal gaps in the regulation of standard contracts in the banking industry result in several negative impacts for customers and create an imbalance in the relationship between banks and customers. When there are no clear and detailed regulations regarding the terms that can or cannot be imposed in standard contracts, banks tend to exploit their positions to include clauses that are more beneficial to themselves, such as biased risk transfers or restrictions on customers' rights. The financial losses experienced by customers due to unilateral clauses in standard contracts can arise from provisions that grant banks the authority to impose disproportionate fines or additional interest. For instance, in bank loan agreements, the clauses regarding late fees often contain penalties that are quite high or additional interest that continues to increase, even if the customer has only experienced a brief delay or a minor oversight. When these terms are not accompanied by strict regulations or oversight, banks can exploit their dominant positions to enforce these provisions unilaterally, which can cumulatively result in a significant financial burden for customers.

Furthermore, the additional burden created by these standard contracts can directly disrupt the financial stability of customers. Customers who initially apply for loans or banking services to meet specific financial needs or goals may not have considered the costs of fines or additional interest that could arise from unforeseen difficulties. In many cases, payment delays may occur due to emergencies or unavoidable economic hardships. However, heavy penalty clauses and inadequate legal protections can force customers to pay substantial fines, exacerbating their financial conditions. Such disproportionate contractual provisions also limit customers' ability to seek remedies or negotiate. Since standard contracts typically do not allow customers to amend the established provisions, customers have very few options to find a way out of the financial burdens imposed by these fines or additional interest. On the other hand, banks maintain full power to determine these terms without intervention or approval from customers, which creates an unfair situation that benefits the banks unilaterally.

The limitations on customers' rights within banking standard contracts often become a serious issue impacting fairness in the relationship between banks and customers. In many cases, standard contracts include clauses that explicitly limit customers' rights to object or file lawsuits when they feel aggrieved. Such clauses, which are often not accompanied by adequate explanations, can lead to profound dissatisfaction among customers, as they feel they lack a voice or the right to advocate for their interests in disputes. A concrete example of this limitation on customers' rights is the presence of provisions requiring all disputes to be resolved through mediation or arbitration routes, without the option to file lawsuits in court. Although alternative dispute resolution methods can be beneficial in some contexts, customers often do not have the same capabilities or resources as banks to navigate these processes. This creates a significant imbalance, where customers may feel compelled to accept unfavorable mediation or arbitration outcomes without the option to defend their rights in court. Restrictions on the right to appeal can also negatively affect customers' trust in the banking system as a whole. When customers feel they do not have fair access to object to burdensome terms, they are likely to feel alienated from the financial institutions that are supposed to serve their needs. This dissatisfaction can trigger distrust, which can ultimately undermine long-term relationships between banks and customers.

Information asymmetry is a condition in which one party in a transaction has better or more complete information than the other party. In the context of banking, banks, as financial institutions, often have deeper access to information regarding the risks, costs, and benefits of an agreement compared to customers. This is due to the expertise and resources that banks possess, enabling them to understand the implications of various clauses in contracts. On the contrary, customers, especially those from ordinary backgrounds, may not have the same knowledge or understanding of the terms and consequences contained in standard contracts. This information imbalance can lead to customers not fully understanding their rights and obligations in agreements. For example, customers might not be aware that they are responsible for certain costs or penalties that are not clearly explained in the contract. As a result, customers could fall into unfavorable terms, as they lack the capacity to adequately assess what they are signing. This lack of clarity is often caused by the use of complex and technical legal language in the contracts drafted by banks, which is not easily comprehensible to customers.

The government plays a crucial role in creating a legal framework that protects consumers, including customers in the banking sector. One step that can be taken is to establish regulations that are more specific regarding the content and form of standard contracts. These regulations should be designed to govern the clauses in contracts related to customers' rights and obligations. With clear regulations in place, banks are expected to draft contracts that are fairer and more transparent for customers. One aspect that needs to be considered in drafting these regulations is the identification of clauses that often burden customers. For example, clauses that grant banks unilateral rights to change terms and conditions without customer consent, or provisions that impose disproportionate late fees. The implemented regulations may limit or even prohibit the use of such clauses, thereby creating a balance between the rights and obligations of banks and customers. In this way, consumers will have stronger protection against potential abuses and exploitation by banks.

Specific regulations can also include provisions regarding information transparency. Banks would be required to provide clear and easily understandable explanations of the terms contained in standard contracts. This aims to reduce information asymmetry, where banks possess greater knowledge regarding the content of contracts than customers. Regulations may also include provisions regarding customers' rights to object or sue if they feel aggrieved, thus empowering customers in their contractual relationships with banks. With more specific and comprehensive regulations in place, it is hoped that a healthier and more sustainable banking industry will emerge. Customers will feel safer and better protected, increasing their trust in financial institutions. In turn, this high level of trust can strengthen the relationship between banks and customers, encourage customer loyalty, and create a better investment climate in the overall economy. The government, as a supervisor and guarantor of public interests, must continuously evaluate and update existing regulations to address the dynamics and needs of society in the ever-evolving banking world.

The Financial Services Authority (OJK) plays an important role in maintaining stability and integrity within the financial sector in Indonesia, including in the banking industry. One of OJK's main tasks is to oversee the practices applied by financial institutions, including the use of standard contracts. OJK can tighten oversight of the standard contracts used by banks to ensure that the provisions within them do not harm customers and comply with principles of fairness and transparency. One concrete step OJK can take is to require banks to submit reports regarding the standard contracts they utilize. These reports can include information about the clauses contained in the contracts, including provisions concerning customers' rights and obligations, as well as how those clauses are implemented in practice. With these reports, OJK can conduct analyses to identify clauses that may harm customers and take necessary actions to protect consumer interests. OJK can also conduct periodic audits of the standard contracts applied by banks. This auditing process will help OJK ensure that the contracts used meet the established standards and comply with applicable regulations. During the audit process, OJK can assess whether banks have adhered to principles of transparency and fairness, as well as identify potential risks that may arise from the use of unfair standard contracts. If violations are found, OJK has the authority to impose sanctions or recommend corrections to the banks.

Through stringent supervision, OJK can serve as an active guardian in protecting consumers in the banking sector. By ensuring that the standard contracts used by banks adhere to principles of fairness and transparency, OJK not only protects customers from potential financial losses but also contributes to building public trust in financial institutions. This trust is crucial for overall stability in the financial sector, which, in turn, will encourage sustainable economic growth. OJK must continuously enhance its supervisory capacity and adapt to industry developments to ensure that consumer protection remains a priority in the policies implemented.

CONCLUSION

Regarding standard contracts in the banking industry, there is a significant imbalance between the rights and obligations of banks and customers, where the clauses unilaterally drafted by banks often burden customers and benefit the banks. Consumers' dependence on the products and services offered by banks, which have far greater socio-economic power, creates a situation where consumers do not have enough room for negotiation, trapping them in "take it or leave it" agreements. Provisions in standard contracts, such as risk transfers, restrictions on customers' rights to raise objections, and dispute resolution clauses that favor banks, place customers in a passive position vulnerable to unfair practices. Therefore, stricter regulations and effective oversight by the Financial Services Authority (OJK), as well as state intervention in the form of consumer protection policies, are needed to ensure that the standard contracts used in banking meet standards of fairness and transparency, protect customers' rights, and create a better balance in the legal relationship between banks and customers. This balance is crucial not only to protect consumers but also to maintain public trust in the banking system as a whole, thereby supporting stability and sustainable economic growth.

The legal gaps in the regulation of standard contracts in the banking industry create several significant negative impacts for customers, including an imbalance in the contractual relationship between banks and customers. Without clear regulations, banks often exploit their dominant positions to include clauses that are detrimental, such as disproportionate late fees and restrictions on customers' rights to file complaints. This is exacerbated by information asymmetry, where customers do not have adequate understanding of the risks and consequences inherent in standard contracts. To address these issues, it is important for the government and the Financial Services Authority (OJK) to establish more specific and transparent regulations regarding standard contracts, which not only protect customers' rights but also encourage fair and responsible banking practices. With strict oversight and the implementation of comprehensive regulations, it is hoped that a more balanced relationship between banks and customers will be created, enhancing public trust in financial institutions and supporting stability and sustainable economic growth.

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