



LEGAL VALIDITY OF THE INCLUSION OF ADDITIONAL CONDITIONS BEFORE CREDIT DISBURSEMENT

Roulinta Yesvery Sinaga

Pattimura University, Indonesia, roulintasinaga20@gmail.com

Sarah Selfina Kuahaty

Pattimura University, Indonesia, selfikuahaty@gmail.com

Risqi Mumpuni Dyastuti

Pattimura University, Indonesia, mumpuni.risqi@gmail.com

Abstract

Credit agreements are standard agreements, which have a tendency to have an imbalance in the bargaining position between creditors and debtors. The inclusion of additional terms in the credit agreement provides a dilemma for prospective debtors to accept or reject these terms. This position puts potential debtors at risk of being weak due to urgent financial conditions. This study aims to examine the legal validity of the inclusion of additional conditions before credit disbursement in bank credit agreements and analyze the position of the inclusion of additional conditions before credit disbursement as a form of application of the bank's prudential principle or the abuse of circumstances. The research was conducted using a normative juridical approach with literature studies and laws and regulations. The results of the study show that the inclusion of additional conditions before the credit agreement is valid and does not violate the provisions of Articles 1313 and 1320 of the Civil Code. Meanwhile, the inclusion of additional requirements if reviewed from Article 1338 paragraph 3 of the Civil Code, should be done in good faith, so that justice and balance are created and there is no indication of abuse of the situation.

Keywords: Additional clauses, credit, legal validity, disbursement.

A. Introduction

Banking is one of the financial institutions that has an intermediation function in people's economic activities. Based on Article 1 paragraph 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Law Number 10 of 1998), it is

defined that a bank is a business entity that collects funds from the public and redistributes them in the form of credit. Credit is the main instrument in supporting people's economic activities, both for consumptive and productive purposes. The meaning of credit in Article 1 Paragraph 11 of Law Number 10 of 1998 states that the



provision of money or bills which is born due to a loan and borrowing agreement between a bank and a prospective borrower (in this case a debtor). The provision shows that the legal relationship between the bank and the debtor is born from the existence of a credit agreement that binds the parties and gives rise to rights and obligations that must be fulfilled.

Basically, the provision of credit by banks is based on the relationship of trust between the bank and the debtor, besides that it must be based on "belief" in the repayment of debts by the debtor to the bank as is the foundation of the bank as regulated in Article 8 of Law Number 10 of 1998. However, the provision of credit is not necessarily based only on belief because the provision of credit contains risks, therefore banks must pay attention to the *prudential banking principle*, in order to maintain the stability and health of the banking system. The application of the

principle of prudence is strictly regulated in Article 2 of Law Number 7 of 1992 concerning Banking (Law Number 7 of 1992) which states that Indonesian banks in running their business are based on economic democracy using the principle of prudence. In addition, in providing credit, banks must have confidence based on an in-depth analysis of the debtor's intentions and abilities and ability to pay off their debts in accordance with the agreement. Based on these provisions, banks are given the authority to ensure that each credit provided is truly feasible and has a guarantee of legal certainty.



Credit agreements often use a standard format drawn up by banks.¹ A credit agreement consists of a variety of clauses, including specific clauses that govern the rights and obligations of the parties specifically. The inclusion of special clauses has an important role in regulating the legal relationship between banks and customers. These clauses serve to secure the interests of creditors such as regulating payment mechanisms, determining guarantees, and establishing sanctions in the event of default. In general, banks list a number of additional conditions that must be met by the debtor before the loan can be disbursed. These additional requirements can be in the form of completing the bond bond, submitting business legality documents, paying administrative fees, closing insurance, and

fulfilling certain other administrative requirements. These requirements are prevalent requirements and are easy for prospective debtors to accept. Given the inclusion of these additional requirements, at least it is still relevant to the application of the precautionary principle. However, it turns out that there are additional conditions such as the obligation to pay all credit claims of prospective debtors such as *paylater* at other financial institutions, while the bill is still far from the due date. In addition, another additional requirement is in the form of opening one of the products from the bank, which seems forced because it has no relevance to credit disbursement.

The inclusion of additional requirements is indeed a form of implementation of the prudential principle in

¹ Sutan Remy Sjahdeini, *Freedom of contract and balanced protection for the parties to bank credit agreements in Indonesia*. (Jakarta: Graffiti, 2009).



order to minimize the risk of non-performing loans. This principle requires banks to manage risks carefully, including in the provision of credit. The principle of prudence includes careful assessment of potential debtors, analysis of collateral, and supervision of the execution of credit agreements. The application of the prudential principle involves a comprehensive assessment of potential debtors, including character, ability, capital, collateral, and economic conditions². This principle aims to prevent bad loans and maintain financial system stability³.

Credit disbursement is a moment that has taken a high technical and procedural course, if viewed in general, prospective debtors are not only limited to submitting their complaints to banks to request funding,

prospective debtors will be *screened* by the bank system, starting from *BI checking*, which has changed to the Financial Information Service (SLIK) system of the financial services authority, credit analysis, *appraisal* decisions to the decision of the leadership. Before being at the credit disbursement stage, the debtor has gone through a fairly long period. Credit disbursement is carried out after the prospective debtor is read a credit agreement. At the time of reading the credit agreement, the prospective debtor is described as an additional condition above, which puts the debtor in a dilemma to reject the terms or accept the terms to be disbursed immediately. If the conditions are not met, then the disbursement is never carried out. If the conditions are delayed, the disbursement will

² Detisa Monica Podung, "Bad Credit and the Application of the Prudential Principle in Banking," *Lex Crimen* 5, no. 3 (2016): 3435.

³ Lastuti Abubakar, "Implementation of the Prudential Principle through the Obligation to Prepare and Implement Bank Credit or Financing Policies," *Right-of-way idea* 13, no. 1 (2018): 62–81.



also be delayed until the prospective debtor fulfills these conditions.

Credit agreements are generally in the form of standard contracts, which are agreements whose clauses have been prepared in advance by the bank. The debtor is only given the option to accept or reject (*take it or leave it*). The content of the agreement is standard, without having a balanced negotiation space. This condition causes the position of the debtor to be weaker than the bank. Therefore, the inclusion of additional conditions before disbursement of credit has the potential to create a dilemma for prospective debtors. Prospective debtors are asked to make a decision as soon as possible or if they do not follow additional rules, the disbursement will be rejected, postponed or reviewed, while prospective debtors have waited too long and as soon as possible need credit to support their business and needs.

The inclusion of additional conditions before credit disbursement often raises questions. It is not uncommon for banks to add certain conditions that were previously not explained transparently to the debtor. This is also related to reading additional requirements at the moment of signing a credit agreement. In fact, previously banks had explained general clauses such as interest, provisions, and administration in credit agreements. Because this general clause has been agreed upon by the parties, the bank will carry out administrative procedures until finally the disbursement of credit. The bank should also explain all the requirements for the support from the beginning. The debtor is in a difficult position due to the insistence on disbursement of credit, with the status of being postponed or canceled due to the reason that the additional conditions have not been met. Such conditions create legal



uncertainty for debtors and open up the possibility of abuse of dominant positions by banks. In addition, banks use certain additional terms as a basis for unilaterally delaying or even canceling credit disbursement. In such a condition, the question arises about whether the bank's actions are a form of applying the principle of prudence or can actually be categorized as an abuse of circumstances.

Research on bank credit agreements has actually been conducted. Research by Rikardo Manpaung, et al.⁴ with the title Abuse of circumstances (*misbruik van omstandigheden*) in Working Capital Credit Agreements in Banking. This study analyzes banking practices that take advantage of customers' weaker economic positions

through the use of non-negotiable standard agreements.

This study specifically examines the legal validity of the inclusion of additional conditions before credit disbursement in bank credit agreements based on the Civil Code (KUHPercivil) and Indonesian banking law. This study also analyzes the limits of banks' authority in applying the principle of prudence through the inclusion of additional conditions before disbursing loans.

B. Problem Formulation

1. What is the legal validity of the inclusion of additional conditions before credit disbursement in a bank credit agreement?
2. Is the inclusion of additional conditions before credit disbursement a form of

⁴ Rikardo Marpaung, Suhendro Suhendro, and Yetti Yetti, "Abuse of Circumstances (Misbruik van Omstandigheden) in Working Capital Credit

Agreements in Banking," *INNOVATIVE: Journal Of Social Science Research* 4, no. 4 (2024): 14175–85.



applying the bank's prudential principle or is it an abuse of the situation?

C. Research Objectives

1. Examine the legal validity of the inclusion of additional conditions before credit disbursement in the bank credit agreement
2. Analyzing the inclusion of additional conditions before disbursement of credit is a form of applying the bank's prudential principle or even an abuse of circumstances.

D. Research Methods

This study uses a normative juridical research method, which is carried out by examining literature materials or secondary data⁵. This approach is intended to examine the legal norms that correlate with the validity of additional terms in bank credit

agreements reviewed from civil law and banking law. The research is focused on analyzing the terms of the agreement as stipulated in Article 1320 of the Civil Code, and refers to the principle of freedom of contract in Article 1338 of the Civil Code and the Banking Law.

The legal materials used consist of primary legal materials and secondary legal materials. The primary legal material refers to the Civil Code and the Banking Law. Secondary legal materials are obtained from legal literature including books, scientific journals⁶. This study uses qualitative descriptive analysis, which is an analysis method that is carried out by systematically decliplining data to obtain a clear picture of the object being studied⁷. The research examines the position of the principle of

⁵ Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: Rajawali Pers, 2015).

⁶ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017).

⁷ Lexy J. Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2018).



prudence, the principle of good faith and the abuse of circumstances in the signing of credit agreements.

E. Research Results and Discussion

1. Legal Validity of the Inclusion of Additional Conditions Before Credit Disbursement in Bank Credit Agreement

Bank credit agreements are a form of agreement that has special characteristics because in addition to being subject to the provisions of general civil law, it is also subject to the provisions of banking law as a special provision (*lex specialis*). The substance of credit agreements is very diverse, the form of credit agreements can also be oral and written. Credit agreements that are commonly used in banking are usually in writing, either made under hand or in the form of a notarial deed. The two forms of agreements actually have a similar anatomy of agreements.

When viewed from the system of credit agreements, it generally consists of the head of the deed, the contents of the deed and the closing part. The head part of the deed consists of the title, number, day and date of signing, comparison or statement of identity of the parties and premises. The content of the deed contains all the articles that have been agreed upon by the parties such as general provisions, the amount of debt, payment terms, guarantees, statements of guarantees, legal domicile and additional provisions expected by the parties. The closing part of the deed consists of a description of the making of the deed, witnesses, making duplicate deeds and signatures.

Ordinary additional terms are also known by other terms such as credit agreement signing terms, general terms and conditions, special terms or required things. The inclusion of these additional conditions



is also varied, some are placed in the premise section, some are listed in the content of the deed (contained in the articles), there are even special conditions that are made separate from the credit agreement but become a unit of the credit agreement. If traced from the various credit agreements, additional requirements that according to custom are in the form of things that do intersect with komparan (prospective debtor), or at least as the basis for the legality of komparan such as identity data, articles of association, letters of approval and statements, guarantee documents, insurance. Additional requirements are also required after the disbursement of credit, such as the obligation to submit financial statements per quarter, using *bank payroll*, and so on.

Banks generally list additional conditions before disbursing credit, such as the obligation to complete certain documents, binding guarantees, payment of insurance

premiums, opening an account with the lending bank or fulfilling other administrative requirements. The inclusion of these conditions is basically intended to provide legal protection for banks and ensure that credit distribution is carried out in accordance with *prudential banking principles*. This principle is regulated in Article 2 of Law Number 10 of 1998, which affirms "Indonesian banks in conducting their business based on economic democracy using the principle of prudence".

The application of the prudential principle aims to prevent bad loans that can interfere with the health of banks. Jimmy Tjiu and Gunawan Nachrawi stated that the principle of prudence is the bank's obligation to be prudent in order to protect public funds



entrusted to banks⁸. Thus, additional conditions before credit disbursement can basically be understood as a form of legal protection and financial protection for banks.

In addition, Tangguh Prima Ndaru explained that the application of the prudential principle in lending must be carried out in accordance with banking provisions and Bank Indonesia regulations to minimize the risk of bank losses⁹. Therefore, additional requirements such as the obligation to bind dependents, fiduciaries, or the submission of business legality documents before the disbursement of credit can be legally justified as long as it aims to maintain credit security and is carried out in accordance with applicable legal procedures.

The implementation of the prudential principle is also carried out through credit analysis. This analysis is strictly regulated in Article 8 Paragraph (1) of Law Number 10 of 1998 which determines "in providing credit or financing based on Sharia Principles, Commercial Banks must have confidence based on an in-depth analysis of the intention and ability and ability of the Debtor Customer to pay off its debt or return the financing in accordance with the agreement". This provision shows that banks are obliged to conduct an in-depth analysis before the credit is disbursed. Therefore, banks are authorized to set certain additional conditions to ensure that all legal, administrative, and collateral aspects have been met.

⁸ Jimmy Tjiu and Gunawan Nachrawi, "The Principle of Prudence by Creditors in Dealing with Bad Loans," 2023.

⁹ Tangguh Prima Ndaru, "The Application of the Principle of Prudence in Bank Credit Agreements

(Case Study of Supreme Court Decision Number 2694 K/Pdt/2012)," *Binamulia Hukum* 6, no. 2 (2017): 161–74.



Banks are required to conduct an in-depth assessment of the debtor's ability and good faith before the loan is disbursed. Therefore, banks have the authority to set certain conditions to ensure that the credit provided truly meets the principles of security and creditworthiness. Agus Iskandar¹⁰ explained that the application of the prudential principle is carried out through the analysis of the 5Cs, namely *Character, Capacity, Capital, Collateral, and Condition of Economy*, which are important bases in bank credit assessment.

The character or disposition of the debtor is related to the *personality* of the debtor himself. The prospective debtor must be a good person, do not commit reprehensible acts and be able to return the credit as promised. *Capacity* means the

ability of the prospective debtor to manage and control himself in managing his business, the ability to produce and control his financial situation so that he is able to repay the loan. *Collateral* or collateral is a material right that has a value intended as a guarantee of security and certainty of repayment of debtors' debts. This guarantee also applies to the guarantee of individual rights. *Capital* or known as capital is related to the financial ability, business, cash flow, ratio and solvency of the debtor. *The Condition of Economy* or economic conditions is related to the economic stability of the debtor and its correlation with future social, political and economic conditions.

In addition to the 5C analysis, the 7C principle is also known¹¹ as part of the KYC (*Know Your Customer*) Principles, including:

¹⁰ Agus Iskandar, "The Application of the 5 C's Principle in Banking Credit Agreements as the Basis of the Prudential Principle," *Legal Institutions* 3, no. 2 (2008).

¹¹ Etty Mulyati and Fajrina Aprilianti Dwiputri, "The Principle of Prudence in Analyzing Material Guarantees as a Security for Banking Credit



personality related to the debtor's emotional attitudes, behaviors and actions in facing problems. *The party* or parties are concerned with the classification of debtors based on their capital, loyalty, and character. *Purpose* is the purpose of taking credit such as for consumptive capital, working capital, investment, and long-term. *Prospect* is the assessment of the debtor's business in the future, profitable or not. *Payment* is related to the source of funds for the customer's alternative in restoring credit. *Profitability* means an assessment of the ability of prospective debtors to obtain integrity in their business. *Protection* is related to the analysis of the means of protection for debtors in the form of guarantees of goods or insurance.

Furthermore, I Wayan Yasa¹² pointed out that the lack of careful application of the

prudential principle in credit agreements can lead to bad loans and legal disputes. This shows that the principle of prudence is indeed important to be applied by banks, but its application must still be carried out proportionately and in accordance with the legal principles of the agreement.

These additional requirements are basically a form of risk mitigation aimed at maintaining credit quality and preventing the occurrence of non-performing loans. The inclusion of additional conditions can be done as long as the conditions are part of the legal protection for credit because they have disbursed funds for the deitur. The additional requirements are actually only in the form of vigilance, a form of administrative completeness, a form to check legal proficiency and legal authority over the

Agreements," *ACTA DIURNAL Journal of Notary Law* 1, no. 2 (2018): 134–48.

¹² I Wayan Yasa, "The Application of the Prudential Principle in the Making of Bank Credit

Agreements with Mutual Property Guarantees," *JEBLR* 2 (2022): 48–62.



personal of prospective debtors. The actual additional requirements cannot exceed what should be from the requirements, nor in the form of 'aji mumpung'. The inclusion of additional conditions in the form of payment of all debts in other financial institutions, which is clearly very small in value, and the maturity period is still long. For example, A has arrears in *paylater* of four million rupiah with installments of five hundred thousand per month and a payment period of eight months. And other additional conditions for A (prospective debtor) to open one of the bank's products, such as future savings (term, gradual), seem to be additional conditions that are forced. The opening of bank products by prospective debtors has a tendency to be like cross selling, while the closure of all arrears is a place to cut disbursement funds for debtors. This situation greatly affects the portion of fund receipts for debtors, costs that should be expected to be maximized, it turns

out that they must be deducted for administrative costs, provision costs, deposit fund costs, arrears payment costs, insurance costs, the cost of opening new bank products and other costs. The debtor finally receives a deduction of up to 10-15% of the funds that should be expected. And this is a phenomenon that is highly normalized on the grounds that it has become a habit of disbursing credit.

If reviewed from Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. Furthermore, the validity of the inclusion of additional conditions must be analyzed based on the validity of an agreement as stipulated in Article 1320 of the Civil Code. The validity of the agreement clearly states that "In order for a valid agreement to occur, it is necessary to meet four conditions, namely the agreement of those who bind themselves; the ability to



make an alliance; a particular subject matter and a cause that is not forbidden". When juxtaposed with the form of a standard credit agreement, these four elements are met. Because the offer of *take it or leave it* goes hand in hand with urgent economic needs, making the position difficult for prospective debtors. This provision is actually the basis for assessing the validity of the inclusion of additional conditions before disbursing credit. Based on this legal basis, the inclusion of additional conditions does not violate the legal terms of the agreement and has legally binding force

2. The inclusion of additional conditions before the disbursement of credit is a form of application of the bank's prudential principle or even an abuse of the situation

The applicability of the additional clause can be explored from the perspective

of the principle of freedom of contract as stipulated in Article 1338 of the Civil Code which states: "All agreements made in accordance with the law shall be valid as laws for those who make them. Such consent may not be withdrawn except by the agreement of both parties, or for reasons prescribed by law."

This provision gives the parties the freedom to determine the content and form of the agreement, including in including additional conditions before the disbursement of credit. Therefore, as long as the additional terms are agreed upon and do not conflict with the law, the clause is binding on the parties as per the law.

However, the principle of freedom of contract is not absolute because Article 1338 paragraph (3) of the Civil Code requires that every agreement be implemented in good faith. Therefore, the bank as a party that has a dominant position in the preparation of



credit agreements cannot arbitrarily include clauses that cause an imbalance of rights and obligations of the parties.

The practice of credit agreements in the form of standard *contracts* is in the spotlight. The credit agreement seems to be deliberately arranged unilaterally by the bank. This condition often puts the debtor in a weaker position because the debtor is only given the choice of accepting or rejecting the contents of the agreement. Ery Agus Riyanto¹³ explained that in modern business practices, many agreements are made not through a balanced negotiation process, but using standard clauses that have been prepared by parties with dominant positions. This opinion is relevant to the practice of bank credit agreements which generally use standard clauses. Therefore, freedom of contract cannot be applied absolutely. Credit

agreements in the form of standard agreements often make the position of the debtor weaker. Therefore, the inclusion of additional conditions must still pay attention to the principles of balance and good faith. The principle of good faith is regulated in Article 1338 paragraph (3) of the Civil Code which states: "Agreements must be implemented in good faith".

The principle of good faith requires that the parties act honestly, reasonably, and not harm the other party in the implementation of the agreement. In the legal relationship between the bank and the debtor, the bank is obliged to provide public information about all the terms of credit disbursement from the initial stage of negotiations.

This transparency is the foundation for debtors to understand their rights and obligations clearly before signing a credit

¹³ Ery Agus Riyanto, "The Application of Good Faith and Conscionability Principles within Franchise

Agreements," *Law and Civil Society* 6, no. 3 (2016): 73–90.



agreement. Luh Nila Winarni explained that the principle of good faith functions as a barrier to the use of the principle of freedom of contract so that parties who have a dominant position do not abuse their authority in determining the clauses of the agreement.¹⁴ Thus, banks should not use additional terms as a tool to delay credit disbursement without an objective reason or impose obligations that were never previously agreed upon on the debtor.

The principle of good faith is also related to the principles of transparency and propriety. Banks are obliged to explain all the terms of credit disbursement in detail from the beginning so as not to cause losses to debtors in the future. Yudi Setiawan, Budi Sutrisno, and Ari Rahmad Hakim

emphasized that the application of the principle of good faith aims to maintain a balance of rights and obligations of the parties in contractual relationships¹⁵. Therefore, even though banks have the authority to apply the principle of prudence, their implementation must still pay attention to justice and protection for debtors. The Bank in setting additional conditions before disbursement of credit must not act arbitrarily or include clauses that disproportionately harm the debtor. Additional requirements must have a direct relationship with credit implementation and aim to ensure the security of credit fund disbursement.

For example, the condition in the form of a perfect guarantee binding before credit disbursement can be considered valid

¹⁴ Luh Nila Winarni, "The Principle of Good Faith as an Effort to Protect Consumers in Financing Agreements," *DiH: Journal of Law*, 2015.

¹⁵ Ari Rahmad Hakim Yudi Setiawan, Budi Sutrisno, "Application of the Principle of Freedom of

Contract and Good Faith Based on Article 1338 Paragraph (1) and (3) of the Civil Code," *Legal Perspective* 1, no. 1 (2020).



because it relates to legal protection of the bank's rights as a creditor. Similarly, the conditions regarding the closure of insurance on the collateral object aim to reduce the risk of loss in the future. Insurance has a risk function if the debtor is unable to pay off his debt because he dies before the credit is paid off. This transfer of functions only applies if there is a *banker's clause* or insurance clause in the credit agreement. The insurance company is responsible for paying the remaining credit debt to the bank when the debtor dies so that the heirs are free from the debt obligations¹⁶. Payment obligations must be submitted based on claims from the bank and in accordance with the rules in OJK Regulation No.38/POJK.05/2020 of 2020 concerning Amendments to Financial Services Authority Regulation Number

69/POJK.05/2016 concerning Business Implementation of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

In addition, the validity of the inclusion of additional requirements must also be linked to provisions regarding halal causes. Article 1337 of the Civil Code states: "A cause is prohibited if it is prohibited by law, or if it is contrary to good decency or public order". Thus, additional conditions before disbursing credit must not conflict with laws and regulations, morality, or public order. If the condition contains elements of coercion, abuse of circumstances, or unfairly harms the debtor, then the validity of the clause can be questioned.

¹⁶ Ni Made Mirah Dwi Lestari, I Nyoman Putu Budiarta, and Ni Gusti Ketut Sri, "Legal Protection Efforts for Creditors for Defaulting Debtors in Credit

Agreements During the Covid-19 Pandemic," *Journal of Legal Interpretation* 3, no. 1 (2022): 176–81.



Abuse of circumstances can be equated and understood as a defect of will (*wilsgebrek*), as it is also known in Article 1321 of the Civil Code. Article 1321 of the Civil Code states "No consent has force if it is given by mistake or obtained by coercion or fraud".

Abuse of circumstances occurs when the more dominant party takes advantage of the weak party's condition to make an unbalanced agreement. Abuse of circumstances is divided into two¹⁷, namely the abuse of economic advantage and the abuse of psychological advantage. The abuse of economic advantage means that the stronger party pressures the economically weak party. As for those that are indicators of economic abuse, such as unreasonable, unfair or inhumane conditions, there is pressure on the debtor, the debtor has no other alternative

and there is a large inequality between mutual rights and obligations. Abuse of psychological advantage means that the strong take advantage of dependence/psychological state either because of lack of experience, urgency and mental condition.

In line with Article 18 paragraph (1) letter g of Law Number 8 of 1999 concerning Consumer Protection (UUPK) states that business actors are prohibited from including standard clauses that "state the consumer's submission to regulations in the form of new, additional, continued and/or further changes made unilaterally by business actors at the time consumers use the services they purchase". This provision has a relationship with the practice of including additional terms, especially since these conditions are part of a standard agreement that seems to be

¹⁷ Mohamad Nur Muliarno Abbas, "Abuse of Circumstances in the Standard Contract of Bank

Credit Agreement," *Gorontalo Law Review*, 2020, 188–204.



forced so that there is a tendency for the bank to act unilaterally. Such an action may be considered a violation of the principle of consumer protection and contrary to the principle of balance in the contract.

Balance is indispensable to give birth to justice so that the position of the parties is equal in the credit agreement. As for the criteria for balance, according to Tiar Ramon¹⁸, among others, first, there is no dominating party, the strong party must not abuse coercive tactics to pressure the weaker party. Second, the rights and obligations of both parties must be aligned with the burden of achievement so that there is no unjust *enrichment*, Third, the agreement must be in accordance with the principle of substantive justice, namely not harming others and providing their respective rights.

In addition, in Article 2 letter c of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector, it is stated that consumer protection is carried out based on the principles of fair treatment and responsible business behavior. Based on this description, banks are required to provide a transparent explanation of all additional requirements before disbursing credit. The debtor must clearly know the legal consequences of these conditions so that there is no abuse of dominant position by the bank.

Actually, when viewed from the existing rules, the position of offering the opening of banking products is not against the law, but if it is associated with the

¹⁸ Tiar Ramon, "Balance Criteria in Bank Credit Agreements to Realize Commutative Justice," *Ius Quia Iustum Legal Journal* 26, no. 2 (2019): 372–90.



emergency financial condition of the prospective debtor, it makes an opportunity for powerful parties to have privileges, so that the debtor is forced to accept unfair credit terms due to the lack of alternatives.

Normatively, the inclusion of additional conditions before the disbursement of credit can be declared valid if it is done transparently, agreed upon by the parties, has a rational purpose, and is directly related to the implementation of credit. On the other hand, if the condition is made unilaterally, disproportionately, or contrary to the provisions of laws and regulations, then the clause can be requested to be canceled or declared to have no binding legal force.

The inclusion of additional conditions before disbursement of credit is a form of implementation of the bank's prudential principle recognized in Indonesian law. However, its application must still pay

attention to the principles of contractual justice, good faith, and not an arena for abuse of circumstances. Thus, it can be understood that the inclusion of additional conditions before credit disbursement is basically part of the application of the bank's prudential principle which has a legal basis in banking regulations. However, its implementation should not be done arbitrarily. These additional conditions must be clearly stated in the agreement, agreed upon by the debtor, carried out transparently. If the additional conditions are applied unilaterally and to the detriment of the debtor, then the action has the potential to cause injustice and has a tendency to abuse the situation. Therefore, there is no balanced legal relationship between the bank and the debtor customer.

F. Conclusion

The inclusion of additional terms in a bank credit agreement is essentially legally valid because it is part of the application of



the prudential principle to protect credit security and prevent bad loans. Based on Article 1320 of the Civil Code, additional conditions remain binding as long as they are carried out proportionately, in good faith, and do not exceed the purpose of legal protection in providing credit.

The inclusion of additional conditions before the disbursement of credit is in principle valid as a form of application of the principle of freedom of contract and the principle of bank prudence, as long as it is carried out transparently, agreed upon by the parties, and related to credit implementation. However, its application is still limited by the principles of good faith, balance, and consumer protection so that banks may not include clauses unilaterally or to the detriment of the debtor. Therefore, additional terms that are disproportionate or contain abuse of circumstances can be questioned

because they are contrary to the principle of contractual fairness.

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