

Consumer Protection of Bank Customers in Standard Clause Agreements

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Abstract

A standard agreement is a legally binding agreement consisting of previously formulated clauses that regulate the bank's relationship with its customers. Although regulated by Consumer Protection Act no. 8 of 1999, the inclusion of a clause in a standard agreement unilaterally places a customer in a vulnerable position and requires legal protection of the customer in order to create security and prevent the occurrence of things that are harmful to the customer. This research method uses empirical law research methods by analyzing and studying how law is applied to society with a focus on public behavior through the dissemination of questionnaires to society. Based on the data from the questionnaire, the rights of the customer have been protected by the

level of confidence of the respondent to the banking institution in carrying out the storage of his money as well as the low number of respondents who suffered losses on the clause in the raw agreement with the bank resulting in complaints to the banks, institutions, and authorities.

Keywords

Consumer Protection, Standard Agreement, Banking

Introduction

A standard agreement is “an agreement that contains standard provisions or clauses that are determined unilaterally by the business actor and are binding and must be fulfilled by consumers” as stated in Article 1 Number 10 of Law Number 8 of 1999.¹ A standard agreement must be formed by fulfilling the legal requirements for an agreement in Article 1320 of the Civil Code.² Standard agreements serve as guidelines for parties in implementing agreements and are often used in agreements between banks and bank customers. Banks are business entities that collect funds from the public (customers) in the form of savings and channel these funds with credit or other means to improve the quality of life of the community³. Therefore, customers as one of the main sources of funds have a very important role in the banking industry.⁴

Given the fact that the bank formulated the standard clauses in the standard agreement unilaterally, the customer's only choice is to

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- ¹ Setiawan, K. A., Ardhya, S. N., & Setianti, M. J. (2023). Implementasi Ketentuan Pasal 18 Undang-Undang Nomor 8 Tahun 1999 Terkait Pencantuman Klausula Baku dalam Perjanjian Asuransi di Wilayah Kota Singaraja. *Jurnal Ilmu Hukum Sui Generis*, 3(4), 39. <https://ejournal2.undiksha.ac.id/index.php/JIH/article/view/2769>
 - ² Alfarsi, M., Ternando, A., Irawan, A., Rahman, R., & Syazali, E. A. (2023). Penerapan Kontrak Perjanjian Kerja di Indonesia Dalam Perspektif Kitab Undang-Undang Hukum Perdata (KUHper). *Legalitas: Jurnal Hukum*, 15(1), 91. <https://doi.org/10.33087/legalitas.v15i1.440>
 - ³ Fauzela, D. S., & Budi, A. A. (2023). Peranan Perbankan Dalam Menghadapi Pengaruh Globalisasi. *Ekonomi*, 11(3), 293. <https://jurnal.balitbangda.lampungprov.go.id/index.php/jip/article/view/154/239>
 - ⁴ Wijayanti, I. M. (2019). Peran Nasabah Dalam Perkembangan Perbankan Syariah. *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah*, 3(1), 84. <https://doi.org/10.29313/amwaluna.v3i1.4195>

accept or reject the agreement.⁵ This condition allows banks to include standard clauses that tend to be more profitable for the bank and place customers in a weak position and are vulnerable to being harmed.⁶ Therefore, even though the provisions for the inclusion of standard clauses have been regulated in Article 18 of Law Number 8 of 1999, in reality the position of the bank and bank customers in the standard agreement is not in an equal position so that legal protection is needed for consumers in order to create security and prevent things that harm consumers.⁷

Legal protection based on Satjipto Rahardjo's view is protecting human rights that are harmed by other people, where the aim of this protection is so that people can enjoy all the rights granted by law.⁸ Punishment can be used to build protections that are not only flexible and adaptive, but also predictive and anticipatory. The law is needed to achieve social justice for those who are underprivileged, limited in resources, and do not yet have social, economic, or political power.⁹

Fahdelika Mahendar, Christiana Tri Budhayati said that in the absence of coercion to bind themselves in a standard agreement, the take it or leave it concept fulfills the principle of freedom of contract in the formal aspect.¹⁰

Ade Pratiwi Susanty, said that based on the perspective of consumer protection law, banks are prohibited from including standard clauses in credit agreements because standard clauses are made and

⁵ Mahendar, F., & Budhayati, C. T. (2019). Konsep Take It Or Leave It Dalam Perjanjian Baku Sesuai Dengan Asas Kebebasan Berkontrak. *Jurnal Ilmu Hukum: ALETHEA*, 2(2), 99. <https://doi.org/10.24246/alethea.vol2.no2.p97-114>

⁶ Widyaningsih, W. (2020). Kebebasan Berkontrak Terhadap Perjanjian Standar Baku Dalam Mencapai Keadilan. *Presumption of Law*, 2(1), 75–76. <https://doi.org/10.31949/jpl.v2i1.340>

⁷ Asyifa Octavia Apandy, P., Melawati, M., & Adam, P. (2021). Pentingnya Hukum Perlindungan Konsumen Dalam Jual Beli. *Jurnal Manajemen Dan Bisnis*, 3(1), 16. <https://doi.org/https://doi.org/10.53825/jmbjayakarta.v3i1.85>

⁸ Sakti, S. T. I., & Budhisulistiyawati, A. (2020). Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C Di Bawah Tangan. *Jurnal Privat Law*, 8(1), 144. <https://doi.org/10.20961/privat.v8i1.40388>

⁹ Tirtakoesomah, A. J., & Arafat, M. R. (2019). Penerapan Teori Perlindungan Hukum Terhadap Hak Cipta Atas Penyiaran. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 18(1), 4. <https://doi.org/10.31941/pj.v18i1.1084>

¹⁰ Mahendar, F., & Budhayati, C. T. (2019). Konsep Take It Or Leave It Dalam Perjanjian Baku Sesuai Dengan Asas Kebebasan Berkontrak. *Jurnal Ilmu Hukum: ALETHEA*, 2(2), 99. <https://doi.org/10.24246/alethea.vol2.no2.p97-114>

printed in small writing so that they are difficult for debtor customers to read and violate the principle of freedom of contract.¹¹

Andika Persada Putera, said that the principle of trust is the main foundation of banking in carrying out its daily business activities, especially in collecting public funds as capital for channeling bank credit in order to develop and maintain the existence of the bank¹².

Fauziah Sari Ferdyan Putri, Nynda Fatmawati Octarina said that banks are obliged to make credit agreements in accordance with the provisions that have been regulated and considering that standard clauses have been regulated by the creditor in the contents of the agreement, it does not fulfill the freedom of contract of one of the parties and can be resolved by renegotiation.

Ni Kadek Dwi Anggianti, I Wayan Suardana said that by implementing the precautionary principle, banks are able to maintain the trust given by customers so that customers will use the bank's services continuously. Preventive efforts to maintain customer loyalty are to improve service quality and maintain the bank's good image.¹³

This research is different from the previous studies described above, it is shown in the consumer protection of bank customers in terms of standard clause agreements which is reflected in the results of the questionnaire that has been distributed by researchers using a quantitative approach, while the previous studies that have been described above uses a juridical-normative research method with a qualitative approach.

Therefore, researchers are interested in conducting research on "Consumer Protection of Bank Customers in Standard Clause

¹¹ Susanty, A. P. (2022). Pencantuman Klausula Baku Dalam Perjanjian Kredit Di Perbankan Menurut Perspektif Hukum Perlindungan Konsumen. *Andrew Law Journal*, 1(1), 4. <https://doi.org/10.61876/alj.v1i1.2>

¹² Putera, A. P. (2020). Prinsip Kepercayaan Sebagai Fondasi Utama Kegiatan Perbankan. *Jurnal Hukum Bisnis Bonum Commune*, 3(1), 138. <https://doi.org/10.30996/jhbhc.v3i1.2984> Putri, F. S. F., & Fatmawati Octarina, N. (2023). Aspek Keadilan Dalam Klausula Baku. *Jurnal Ilmiah "Advokasi"*, 11(1), 104. <https://repository.unej.ac.id/handle/123456789/107497>

¹³ Kadek Dwi Anggianti, N., & Wayan Suardana, I. (2019). Pengaturan Prinsip Kepercayaan Dalam Melakukan Transaksi Keuangan Pada Bank. *Kertha Semaya : Journal Ilmu Hukum*, 7(2), 12. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/52980>

Agreements" with the problem formulation, how is consumer protection for bank customers in standard clause agreements?

Methods

The method used is an empirical legal research method by analyzing and examining how the law is applied to society with a focus on people's behavior.¹⁴ The type of data used in this research comes from primary data obtained from respondents' answers to questions on the questionnaire distributed by researchers, and secondary data obtained from legal documents such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law) and other laws and regulations as well as literature such as relevant journals.

Result, Discussion and Analysis

Consumer protection is a regulation that guarantees the rights of every person to consume and use goods and/or services. Legal protection for consumers, including bank customers, needs to be given more serious attention considering that consumers are in a weak and vulnerable position. Often, customers do not realize that they have been harmed by business actors due to a lack of awareness of the rights and protection of customers as consumers themselves.

Customers are very valuable assets for banking institutions, where customers are the lifeblood of banking activities. Therefore, the success of a banking business highly dependent on customer satisfaction and trust.¹⁵ The relationship between bank customers and the bank is bound by a standard agreement, which is an agreement containing standard clauses that have been determined unilaterally by the business actor and must be fulfilled by the consumer.¹⁶

¹⁴ Muhaimin, M. (2020). *Metodologi Penelitian Hukum* (1st ed.). Mataram University Press.

<http://eprints.unram.ac.id/20305/1/Metode%20Penelitian%20Hukum.pdf>

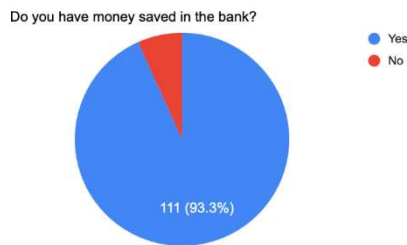
¹⁵ Amanda, S., Hairunnisa. Hairunnisa, & Ratna, R. (2023). Pengaruh Kepercayaan Dan Kualitas Layanan Mobile Banking Terhadap Kepuasan Nasabah Dalam Bertransaksi Di Bank Syariah (Studi Kasus BSI KCP Indralaya). *Jurnal La Riba Jurnal Perbankan Syari'ah*, 4(2), 39. <https://ejournal.iaiqi.ac.id/index.php/lariba/article/view/276/177>

¹⁶ Marsidah, M. (2019). Bentuk Klausula-Klausula Baku Dalam Perjanjian Kredit Bank. *Solusi*, 17(3). <https://doi.org/10.36546/solusi.v17i3.212>

Based on the explanation of Article 18 Paragraph (1) of Law Number 8 of 1999, “the prohibition on the inclusion of standard clauses is intended to place consumers on an equal footing with business actors based on the principle of freedom of contract”.¹⁷ Even so, the provisions for including standard clauses do not reflect the existence of a balanced position in a standard agreement between the bank and the bank's customers because the bank has a higher position so that there is a need for regulatory legal protection in order to achieve justice for all parties.

In terms of conducting further research regarding the protection of bank customers as consumers with the bank due to the imbalance in the position of the parties regarding standard agreements, researchers have distributed questionnaires to the public from various groups with a total of 119 respondents so as to obtain the following data:

Figure 1. Question number 1

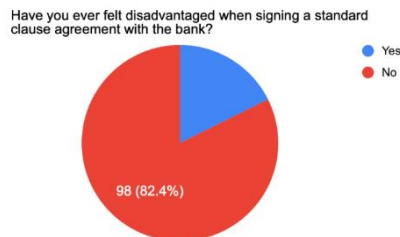


Based on the diagram above, the questions begin with a questionnaire question regarding whether or not the respondent has ever saved money at the bank. There were 93.3% or 111 respondents who trusted banking institutions to store their money, while 6.7% or 8 other respondents preferred not to store their money in banking

¹⁷ Lumentut, L., & Palullungan, L. (2023). Implementation Of The Standard Agreement Based On Law Number 8 Of 1999 Concerning Consumer Protection. *Russian Law Journal*, 11(4), 144. <https://cyberleninka.ru/article/n/implementation-of-the-standard-agreement-based-on-law-number-8-of-1999-concerning-consumer-protection>

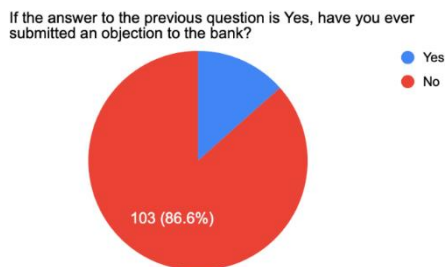
institutions. Data analysis shows that the majority of respondents prefer to entrust their money to banking institutions.

Figure 2. Question number 2



Furthermore, the second question from researchers regarding the signing of a standard clause agreement revealed that of the total 119 respondents, 17.6% or 21 respondents had felt disadvantaged in signing a standard clause agreement. Meanwhile, 82.4% or 98 respondents did not feel they had ever been disadvantaged by signing a standard clause agreement. This indicates that the majority of respondents have never felt disadvantaged in signing a standard clause agreement with a bank. So, with 17.6% of the total 119 respondents indicating that signing a standard clause agreement with a bank does not take too many victims.

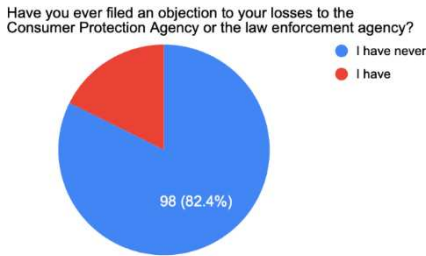
Figure 3. Question number 3



Then the third question in the questionnaire aims to find out the respondent's experience with submitting objections to the bank. Of the total 119 respondents who answered, 86.6% or 103 respondents stated that they had never submitted an objection to the bank, while 13.4% or 16 respondents stated that they had ever submitted an objection to the bank, which shows that the respondents had experienced losses as a

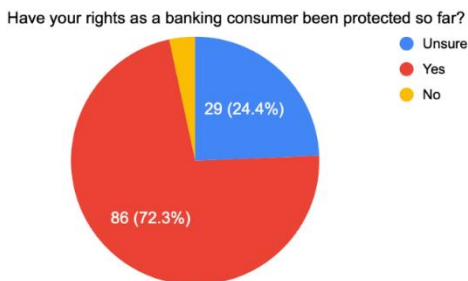
result of the standard clause agreement they signed by respondents with the bank.

Figure 4. Question number 4



Based on the research data, 82.4% or 98 respondents stated that they had never filed an objection regarding losses to authorized institutions or officials, while 17.6% or 21 other respondents stated that they had never filed an objection regarding losses to authorized institutions or officials. This shows that the majority of respondents have never filed an objections about the losses they have suffered to authorized institutions or officials, which is an interesting result because it indicates that the majority of respondents choose to remain silent about the losses they have suffered, which means that if the respondent experiences objections about the losses they have suffered, respondents considered that their application process would take a long time and a significant amount of effort.

Figure 5. Question number 5



In terms of whether respondents' rights are protected or not protected as banking consumer customers, based on research data, 72.3% of respondents feel that their rights have been protected as bank

customers. This indicates that the majority of respondents are quite satisfied with the bank's performance in protecting customers. Although, a small proportion of respondents as many as 24.4% of respondents, still feel unsure in terms of feeling protected or not protected by their rights as bank customers. This phenomenon provides insight, although the percentage who feel protected is quite large, there are still bank customers who feel that their rights as consumers have not been protected. Therefore, with the results of this questionnaire, bank customers have regained confidence in banking companies so that they maintain each other's security.

Based on the research data above, there are several things that are generally known regarding consumer protection for bank customers in standard clause agreements based on positive law related to this topic of discussion. In the data, it can be seen that the majority of respondents choose to save their money in the bank. The definition of savings or deposits itself is based on Article 1 Number 5 of the Banking Law are "funds entrusted by the public to banks based on fund deposit agreements in the form of demand deposits, deposits, certificates of deposit, savings and/or other equivalent forms."¹⁸

Considering that in conducting its business, banking institutions must apply the principle of trust which are not explicitly stated in Article 29 of the Banking Law and the principle of confidentiality in Article 47 Paragraph (2) of the Banking Law.¹⁹ The indicator that the majority of respondents entrust their money to the bank indicates that these principles have been implemented by the bank, including in terms of standard clause agreements, so that the public in this case has high confidence in storing their money in the bank.

In order to maintain the trust of customers trust regarding depositing their money in banks, the government has issued regulations requiring every bank to guarantee public funds by establishing an Indonesia Deposit Insurance Institution (IDIC) as stated in Article 37B

¹⁸ Muhamad, R. (2020). Kegiatan Usaha Bank Perkreditan Rakyat Ditinjau Dari Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan. *Lex Privatum*, 8(1), 71. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/28522>

¹⁹ Fauzela, D. S., & Budi, A. A. (2023). *Peranan Perbankan Dalam Menghadapi Pengaruh Globalisasi*. *Ekonomi*. 11(3), 293. <https://jurnal.balitbangda.lampungprov.go.id/index.php/jip/article/view/154/239>

of the Banking Law. Furthermore, as a preventive measure in the event of a dispute occurs between the customer and the bank, the government has regulated this matter in Article 1234 of the Civil Code jo. Article 1365 of the Civil Code relates to compensation for losses, guarantees for consumer rights in Article 204 and Article 205 of the Criminal Code. Customer protection in the event of a dispute with the bank is also further regulated in Bank Indonesia Regulation Number 7/7/PBI/2005 concerning Settlement of Customer Complaints and Bank Indonesia Regulation Number 8/5/PBI/2006 concerning Banking Mediation.²⁰

The relationship between bank customers and the bank is bound by a standard agreement, so based on empirical research data held by researchers regarding the emergence of a sense of loss by bank customers, it can be seen that the impact of losses that arise in quantity has a small portion. Thus, the inclusion of clauses outlined and/or required in standard agreements for bank customers is based on the provisions of Article 18 of Law Number 8 of 1999.

In this provision, it is explained in paragraph (1) regarding the substances of clauses that are prohibited from being included in standard agreements and the provisions for writing the clauses as stated in paragraph (2), which are reaffirmed in paragraph (3). As mentioned in paragraph (4), business actors—in this case, the bank—must adjust standard clauses that violate Law Number 8 of 1999. Based on these provisions and the research data parameters held by the researcher, considering that the clauses in the standard agreement have been determined unilaterally by the bank, the majority of respondents, 87.4% of respondents, have never felt disadvantaged in signing or agreeing to a standard clause agreement with the bank.

Along the way, the relationship between the customer and the bank encountered a deadlock arising from the clauses in the existing agreement. Based on this research, the researcher found that this is not a common occurrence which can be seen based on existing data that only a small number of respondents who feel disadvantaged due to the inclusion of standard clauses. Based on the research data, there were a number of respondents who stated that they had experienced losses in

²⁰ Nurjannah, S. (2020). Regulasi Perlindungan Hukum Simpanan Nasabah Jasa Perbankan Syariah. *Jurnal Widya Pranata Hukum*, 2(1), 82–83. <https://doi.org/10.37631/widyapranata.v3i1.87>

terms of standard clause agreements with banks, although most respondents had never experienced losses due to the standard clause agreement.

This has relevance to Article 18 of Law Number 8 of 1999 which states that banks are prohibited from including standard clauses which state things such as transfer of responsibility, giving the bank the right to reduce service benefits or reduce the assets of customers who are the object of the standard agreement, a statement of the customer's submission to new, additional, continued regulations and/or further changes made unilaterally by the party during the customer's use of banking services.

In terms of whether or not respondents had ever submitted objections to the bank by respondents who had experienced losses due to standard clause agreements with the bank, the majority of respondents had never submitted any objections to the bank and a small number of respondents had submitted objections to the bank regarding the relevant standard clause agreements. Upon submitting an objection to the bank, the customer can submit an objection in accordance with the procedures stipulated in the relevant bank regulations.

Apart from submitting objections to the bank, customers can also submit objections regarding losses suffered to consumer protection institutions or authorized officials. In terms of the questionnaire, the data shows that the majority of respondents have never filed an objection about losses suffered to authorized institutions or officials, while a small portion of the total sample stated that they have ever filed an objection about losses suffered to authorized institutions or officials.

In terms of submitting objections regarding losses suffered by customers to authorized institutions, it has been regulated in Article 4 of the Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, institutions have at least 3 dispute resolution services namely mediation, adjudication, and arbitration. Dispute resolution through mediation is divided into 2 services, namely pre-bono services which are provided free of charge, and commercial services. Apart from that, there are adjudication services which are dispute resolution outside of arbitration and public courts which are carried out by adjudicators to produce a decision that

can be accepted by applicants who are unsuccessful in reaching an agreement through mediation, as well as dispute resolution through arbitration which are carried out outside of public court which in accordance with regulations and the institution's arbitration procedures are based on an arbitration agreement made in writing by the parties to the dispute.²¹

Based on the research data, which shows that the majority of respondents have never submitted objections regarding losses suffered to institutions or authorized officials, it indicates that the regulations regarding procedures for submitting objections for customer losses have been regulated quite clearly in the relevant regulations. Meanwhile, a small number of respondents who stated that they had submitted objections regarding the losses they suffered indicated that they were not sufficiently satisfied with the arrangements regarding procedures for submitting objections regarding customer losses, so they submitted their objections to the authorized institutions or authorities.

Regulations regarding standard clause agreements between customers and the bank are closely related to protecting the customer's rights as consumers. Based on research data sourced from questionnaires that have been distributed by researchers to a number of people, the majority of respondents stated that their rights as bank customers have been protected, which shows that the regulations made by the government and the protection by the bank for bank customers are appropriate.

However, as many as 26.1% of the total 119 respondents still feel unsure about whether their rights as bank customers are protected or not. This is interesting because it indicates that there are still a handful of people who do not fully understand the rights they have as banking consumers, so there is a need for awareness among respondents to dig deeper into this matter.²² Not only that, there are a small number of respondents who feel that their rights as customers are not protected so

²¹ Pradipta, Y. G., & Kharisma, D. B. (2019). Proses Penyelesaian Sengketa Di Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI). *Jurnal Pasca Sarjana Hukum UNS*, 7(2), 294–298. <https://doi.org/10.20961/hpe.v7i2.43020>

²² Tobing, D. M. L. (2019). *Klausula Bakul: Paradoks Dalam Penegakan Hukum Perlindungan Konsumen* (L. Raspati & R. Triana, Eds.; 1st ed.). PT Gramedia Pustaka Utama

that in overcoming this problem, respondents may file an objection to the authorized institutions or officials against any of the clauses contained in the standard agreement.

Conclusion

Based on the results of the analysis that has been carried out, the researcher can draw a conclusion that the majority of respondents choose to save their money in the bank and do not feel disadvantaged in signing a standard clause agreement with the bank. Apart from that, most respondents never submitted an objection regarding the losses suffered to banks, institutions, or authorized officials. Not only that, the majority of respondents feel that their rights as bank customers have been protected. It can be concluded that the legal protection of bank customers in terms of standard clause agreements has protected the rights of bank customers as consumers.

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