

IMPLEMENTATION OF ARTICLE 21 AND ARTICLE 22 OF OJK REGULATION NUMBER 1/POJK.07/2013 IN THE STANDARD AGREEMENT ON BANK MANDIRI SYARIAH

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Abstract: Article 21 and Article 22 of POJK No. 1/POJK.07/2013 concerning Consumer Protection of Financial Services Sector regulating Bank Syariah Mandiri as PUJK in using standard agreement shall fulfill the principle of equilibrium, fairness and fairness in the deed of agreement with the consumer and prepared in accordance with the legislation.

The type of this research is normative law research with departure from the existence of conflict of norm where from the rules related to standard agreement in banking with financing agreement made by Bank Mandiri Syariah is not appropriate in pelaksanaannya, in the provisions contained in Article 21 and Article 22 OJK Regulation Number 1/POJK.07/2013 and OJK Circular Letter Number 13 / SEOJK.07 / 2014 still deviate from the financing agreement in Bank Mandiri Syariah.

The results of this study indicate that the application of standard agreements on financing contracts conducted by Bank Syariah Mandiri not fully comply with the provisions of Article 21 and Article 22 POJK Number 1/POJK.07/2013 on Consumer Protection of Financial Services Sector seen from the existence of several clauses that have not fulfilled the principle of equilibrium and justice and there are still exoneration clauses and / or transfer of responsibilities set forth in the sharia bank financing contract. The legal consequences for Bank Mandiri Syariah for violations of Article 21 and Article 22 of POJK Number 1/POJK.07/2013 in the standard agreement may be subject to sanctions in the form of administrative sanctions such as written warnings, fines namely the obligation to pay a certain amount of money, restrictions on business activities, business activities, including up to the revocation of business activity permits.

Keywords: article 21 and article 22, standard agreement, Bank Syariah Mandiri

I. INTRODUCTION

Facing the rapidly developing, competitive, and integrated national economy along with increasingly complex challenges and an increasingly advanced financial system, policy

adjustments in the economy including banking are required.¹ Banking is a trust institution, as well as a trust institution, as well as a banking intermediary institution (financial intermediary institution) that plays an important role in the process of national development.²

Banking institutions, especially sharia banks as financial intermediary institutions that play an important role in the national development process. The main business activities of banks are collecting funds from the public in the form of savings (savings) and channeling back to the community in the form of financing in accordance with the principles of sharia. Bank as an institution related to service and fund management as well as trust from customers make this institution a requirement with regulation in the field of banking and other related legislation.

One of the sharia banking business that is well known in the community is the provision of loan funds to customers or often called financing. Financing is a mainstay of bank products because financing is able to provide benefits for banks. Provision of financing by banks to increase business profits in the framework of operational sustainability. Financing as the primary source of income for banks and to avoid risks should pay attention to sound funding principles.

Financing in banks, generally in the form of standard agreements, using standard agreements, the bank will obtain efficiency in expenses, personnel and time. A standard agreement is a written agreement set unilaterally by a Business Service Authority (or called PUJK) and contains a standard clause on the content, form, and manner of manufacture, and is used to offer products and / or services to consumers in bulk.³

The provisions on the standard clause have been regulated by Law Number 8 Year 1999 regarding Consumer Protection (hereinafter referred to as UUPK). In Article 1 point (10) mentioned the standard clause is any rules or provisions and conditions that have been prepared and determined first unilaterally by business actors as outlined in a binding document and / or agreement that must be fulfilled by the consumer. Prohibition of inclusion of exoneration clause in standard agreement can be found in Article 18 UUPK. Standard clauses contain standard conditions as well as a rule for the parties concerned in it and have been prepared in advance for use by either party without negotiation with the other party.

An independent institution named the Financial Services Authority established by the government based on Law Number 21 of 2011 on the Financial Services Authority (hereinafter referred to as OJK Law). OJK functions to organize an integrated regulatory and supervisory system for all activities within the financial services sector.

OJK issues the Financial Services Authority (or POJK) Regulation Number 1/POJK.07/2013 on Consumer Protection of the Financial Services Sector. In POJK Number 1/POJK.07/2013 on Article 21 it reads "Financial Services Actors must meet the balance, fairness and fairness in making agreements with consumers". And in Article 22 it reads:

- a. In the event that the Financial Services Authority uses the standard agreement, the standard agreement shall be prepared in accordance with the laws and regulations.
- b. The standard agreement as meant in paragraph (1) may be digital or electronic to be offered by the Financial Services Business Actors through electronic media.

¹ Hermansyah, *Hukum Perbankan Nasional Indonesia*, Kencana Prenada Media Group, Jakarta, 2005, p. 40.

² Ahmad Jahri, Jurnal, *Perlindungan Nasabah Debitur Terhadap Perjanjian Baku Yang Mengandung Klausula Eksonerasi Pada Bank Umum Di Bandar Lampung*, Jurnal Fiat Justitia FH Universitas Bandar Lampung, 2016.

³ General Provisions in Circular Letter of the Financial Services Authority Number 13 / SEOJK-07/2014 regarding the Standard Agreement

- c. The standard agreement referred to in paragraph (2) used by the Financial Service Actors is prohibited:
1. Declare the transfer of responsibility or liability of the Financial Service Actors to the consumer;
 2. Stating that the Financial Services Businesses shall be entitled to refuse refunds paid by Consumer on purchased products and / or services,
 3. Declare the granting of power from the Customer to the Financial Services Agent, either directly or indirectly, to undertake any unilateral action on the goods pledged by the Customer, unless such unilateral action is exercised in accordance with the laws and regulations;
 4. Regulates the Consumer's evidentiary obligation, if the Financial Services Business actor declares that the loss of the use of the products and / or services purchased by the Customer is not the responsibility of the Financial Services Business Actor;
 5. Grant the right of the Financial Services Businesses to reduce the usefulness of the products and / or services or to reduce the property of the Consumer as the object of the product and service agreement;
 6. Declare that the Customer is subject to new regulations, additions, continuations and / or changes made unilaterally by the Business Service Actors in the Consumer's period of utilizing the products and / or services purchased; and / or
 7. Declare that the Customer authorizes the Financial Services Businesses for the imposition of mortgages, liens or guaranteed rights to products and / or services purchased by Consumers in installments.

To implement the POJK, in 2014 OJK has issued Circular Letter Number 13 / SEOJK.07 / 2014 regarding the Standard Agreement (hereinafter referred to as SEOJK on the Standard Agreement) to regulate provisions concerning implementation instructions to adjust the clauses in the standard agreement as stipulated in Article 21 and Article 22 POJK Number 1/POJK.07/2013 concerning Consumer Protection of Financial Services Sector.

The standard agreement is a forced agreement, the customer to obtain the required financing only has two options, namely accept or reject the standard agreement (take it or leave it). Although UUPK has arranged a ban on the inclusion of a standard clause on each document and / or agreement containing the transfer of responsibility of the business actor, as well as the POJK reinforced by SEOJK on the Standard Agreement also prohibits, but in reality it is still often found the inclusion of a standard clause that contains the exoneration clause in the sharia bank financing agreement.

In the Standard Agreement clause set forth in SEOJK, states that PUJK shall meet the balance, fairness and fairness in making agreements with consumers. There is also a banned standard agreement clause that is:

- a. The inclusion of an exoneration / eksemsi clause is that it adds the rights and / or reduces the PUJK obligation or reduces the rights and / or ads to the consumer's obligation.
- b. 2. Misuse of circumstances is a condition in the Standard Agreement that has an indication of misuse of the circumstances. Examples of these conditions are for example to take advantage of urgent consumer conditions due to certain conditions or in emergencies and intentionally or unintentionally PUJK does not explain the benefits, costs and risks of the products and / or services offered.

Bank Mandiri Syariah is one of the syariah banks that perform the contract by using standard agreement. The standard agreement in the financing of Bank Mandiri Syariah between the Bank and the Customer under its standard agreement includes an exoneration clause and a misuse of the customer's circumstances, such as in the contractual agreement of Al Mudharabah financing, contained in article 11 regarding the Promise Injury, in this article it says " Article 3 of this Agreement, the Bank shall be entitled to claim or collect financing from the Customer or any person who obtains rights thereof for any or all of the Customer's total debt to the Bank under this Agreement, to be paid instantly and simultaneously without the need for notices, warning letters or other letters ". This article indicates that the bank does not provide an opportunity for customers to defend themselves and also the absence of a clause on the waivers the customer deserves to be obtained if he or she is injured by an unintended appointment.

The application of standard contract agreement made by Bank Syariah Mandiri above indicates that the Bank Mandiri Syariah has not complied with Article 21 and Article 22 POJK Number 1/POJK.07/2013 because there are still clause of eksenorasi and the transfer of responsibility or obligation PUJK to customers and also in the financing contract of sharia independent bank has not fulfilled the balance, justice and fairness in making the agreement with the customer.

Based on the above description, this research is important to do, because of the conflict of norms which regulate the standard agreement in the financing agreement in Mandiri Syariah Bank with Article 21 and Article 22 POJK Number 1/POJK.07/2013 and SEOJK on Standard Agreement so that in this thesis will examine how the implementation of Article 21 and Article 22 of POJK Number 1/POJK.07/2013 in the Standard Agreement on Bank Mandiri Syariah and the applicable legal consequences for Bank Mandiri Syariah for violation of Article 21 and Article 22 of the Standard Agreement.

II. RESULT AND DISCUSSION

2.1 Implementation of Article 21 and Article 22 of POJK Number 1/POJK.07/2013 in the standard agreement on Bank Mandiri Syariah

The terms of the standard agreement is a translation of the standard contract; the standard means a benchmark and reference. Salim HS reveals that the standard Agreement derived from the English translation, namely the standard contract, the predetermined agreement and has been poured in the form of a form that has been determined unilaterally by one party, especially the strong economy against the weak economy.⁴

Sutan Remi Sjahdeni explained the standard agreement is an agreement that almost all of its clauses have been standardized by the user and the other party basically has no chance to negotiate or request change. What have not been standardized is only a few things, such as concerning the type, price, quantity, color, place, time and some other specific things of the object being contracted.⁵

⁴ Salim HS, *Perkembangan Hukum Kontrak Diluar KUH Perdata*, Buku Satu, Rajawali Pers, 2006, p. 145.

⁵ Sutan Remi Sjahdeni, *Kebebasan Bebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Indonesia*, PT. Pustaka Utama Grafiti, Jakarta, 2009, p. 74.

Munir Fuady also explained what is meant by a standard contract is a written contract made only by one party in the contract. Often, the contract has been printed in the form of certain forms by one of the parties, in which case when the contract is signed generally the parties' only fill in certain informative data with little or no change in the clauses. The other party in the contract has no opportunity or little chance to negotiate or amend the clauses already made by either party, so usually the standard contract is very biased.⁶

According to Mariam Darus Badruzaman standard agreement can be divided into five characteristics, namely:⁷

1. The contents are set unilaterally by parties whose position (economy) is strong.
2. The community (the debtor) does not come together to determine the contents of the agreement.
3. Prompted by its needs the debtor is forced to accept the contents of the agreement.
4. Specific form (written)
5. Prepared in bulk and collective.

Bank Mandiri Syariah is one of the syariah banks that perform the contract by using standard agreement. Form of standard agreement on financing in Bank Mandiri Syariah between the Bank and the Customer is contained in every contract made by Bank Syariah Mandiri with the Customer.

The financing contract that is made by default indirectly contains the element of coercion (Ikrah) because the condition created is the debtor's customers are forced to accept every clause of the loan default agreement they are proposing because the debtor's customer position is in a weak position so that the borrower will inevitably accept and agree to any terms mentioned in the agreement clause.

Referring to Article 21 of POJK Number: 1/POJK.07/2013 concerning Consumer Protection of Financial Services Sector which reads: "Business Service Actors shall fulfill equilibrium, fairness and fairness in making agreements with Consumers". This can be seen from several agreements applied by Bank Syariah Mandiri in the Financing Agreement.

In the *Mudharabah* financing agreement, contains the contents of the standard agreement that has been determined by the Bank Syariah Mandiri, a clause of financing and the use of which has been determined by the bank whose amount is adjusted to customer demand. Timeframe clause, where the bank has determined the period of time which is then adjusted to the customer's ability to make repayment. Clauses of profit sharing agreements, cost clauses, deductions and taxes, customer liability clauses, customer recognition clause clauses, appointment injuries, breaches and insurance.

According to the authors that this Agreement, when viewed from Article 21 POJK No. 1/POJK.07/2013, has not met the balance, fairness and fairness in some clauses such as fees, deductions and taxes stating that: "The Customer promises and hereby binds to cover all necessary costs in respect of the implementation of this Agreement, including the services of Notary and other services, insofar as it is notified by the Bank to the Customer prior to the signing of this Agreement, and the Client expresses its consent ". This clause indicates that the burden of any costs incurred in connection with the implementation of the contract is borne by

⁶ Salim HS, *Loc. Cit*

⁷ *Ibid.* p. 146.

the Customer indicating that there is no balance and fairness in bear the burden of the costs incurred. This burden should be a joint responsibility between the customer and the bank.

The subsequent clause which, according to the authors, has not reflected the balance and fairness is the determination of the profit sharing set by Bank Syariah Mandiri in the profit sharing clause stating that: "The Customer and the Bank agree and bind themselves to one another, that the Ratio of income / the benefit to each party shall be as set forth in Annex A attached to it and thereby become an integral entity of this contract. This shows that the profit sharing paid by the Customer to Bank Syariah Mandiri has been determined first. Although dibahasakan have agreed.

Clauses which also contain things that are contradictory to Article 21 are at Risk Clauses on Financing Channels of Fund Investment Funds Distribution based on Mudharabah Principle Muqayyadah On Balance Sheet which states:

- a. If, for any reason that is not an error of BANK, a loss arises on the business activities of the Project, the risk of loss of such investment shall be fully borne by the CUSTOMER'S CUSTOMER; and with this CUSTOMER INVESTORS indemnifies BANK from the loss / risk of such investment.
- b. INVESTOR CUSTOMER shall accept and acknowledge the risks of investment loss as referred to in Article 7 Paragraph (1), if the INVESTOR CUSTOMER has received, reassessed and approved all calculations and explanations made and submitted by BANK to INVESTOR CUSTOMERS and CUSTOMERS INVESTOR has submitted its assessment result in writing to BANK.

The Mudharabah Principle Muqayyadah On Balance is a transaction based on Sharia Principles in which the investor (the owner of the capital) agrees to invest his capital through the bank for a particular business run by a Financing Customer already known; the income earned by the bank from the proceeds of the Financing Customer shall be divided between the investor and the bank in accordance with the agreed profit sharing ratio.

The risk clause also illustrates that all responsibilities should be borne by investors' clients as a second party. Meanwhile, the bank as the first party is not willing to accept any risk. These clauses are deliberately listed by the bank as a creditor which, in the bank's view, is an act of protection for the bank if the debtor performs an act of default that could harm the bank. Customer as investor of investor or debtor's client sometimes does not pay attention to the contents of the clause that is not good or even harmful and only in favor of bank's interest. The parties are forced to accept every clause of agreement that has been made by default by the bank.

In addition, the author may refer to the Clause of Promises Injury to Al Mudharabah Financing Agreement is contradictory to Article 22 and SEOJK of the Standard Agreement, namely the clause of exoneration and abuse of the customer's circumstances, contained in Article 11, in this article is said "Notwithstanding the provisions of Article 3 of this Agreement, The Bank shall be entitled to claim or collect financing from the Customer or any person who obtains his or her right to partly or wholly the amount of the Customer's debt to the Bank under this Agreement, to be paid instantly and simultaneously without the need for notices, warning letters or other letters ". This article indicates that the bank does not provide an opportunity for customers to defend themselves and also the absence of a clause on the waivers the customer deserves to be obtained if he or she is injured by an unintended appointment.

Article 1320 of the Civil Code has regulated the legitimate requirements of an agreement which reads "in order for a valid agreement to be made, it is necessary to fulfill four conditions:

- a. Their binding agreements;
- b. The ability to make an engagement;
- c. A certain subject matter (object);
- d. An unlawful cause (for the lawful) "

According to Herlian Budiono, said that:

"As one of the conditions of validity of the agreement, the agreement plays an important role in the process of formation of a consensus, we can easily recognize the agreement if there is conformity of supply and acceptance, but there will be a problem if there is no match between the bid and acceptance, write down the order amount ".⁸

However, it should always be understood that the standard agreement is a bank protection effort, making the financing agreement in sharia banking to be spared from the existence of a balance between rights and obligations for the parties. The Bank does not wish to obtain any loss in the financing agreement it makes with the customer so that by all means the bank includes a favorable and favorable clause to it. The Customer as a party in need of funds, in the standard agreement is only given the opportunity to read and sign or not sign the agreement. This is what then makes the standard agreement known as take it or leave it contract.⁹

From the above description of the application of standard contract agreement made by Bank Syariah Mandiri is still contradictory or not fully comply with the provisions of Article 21 and Article 22 POJK Number 1/POJK.07/2013 on Consumer Protection of Financial Services Sector seen from the existence of several clauses that have not met the principle balance, fairness and fairness, and there are still extenuating clauses and abuse of customer / customer circumstances.

2.2 *The legal consequences for Bank Mandiri Syariah for violation of Article 21 and Article 22 POJK Number 1/POJK.07/2013 in the standard agreement*

Standard agreements include agreements containing coercive elements. The intention of coercion in that opinion is that the customer does not have the opportunity to refuse or revise the agreement clause and as the party requiring the funds, the customer can only accept all clauses by forced means. However, it is very difficult to require this, because legally the agreement is made legally which is evidenced by the signature of the customer and the bank.

The standard agreement is included in a valid agreement, but the standard agreement does not contain principles, namely the principle of balance, fairness and fairness.

There are several factors that often cause the contract to be very one-sided contract is as follows:¹⁰

⁸ Herlian Budiono, *Ajaran Umum Hukum Perjanjian dan Penerapannya dibidang Kenotariatan*, Citra Aditya, Bandung, 2010. p. 76.

⁹ Dwi Firdhayantii, *Jurnal, Perjanjian Baku Menurut Prinsip Syariah (Tinjauan Yuridis Praktik Pembiayaan di Perbankan Syariah)*

¹⁰ Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, Second print. PT. Citra Aditya Bakti, Bandung, 2003, p. 78

- a. The lack of or even no opportunity for either party to bargain, so the party to which the contract is offered is not much opportunity to know the contents of the contract, especially there is a contract written in very small letters.
- b. Due to the unilateral contracting, the document provider usually has enough time to think about the clauses in the document, perhaps even in consultation with the experts or the document has been made by experts. While the party to whom the document presented is not much opportunity and often unfamiliar with the clauses.
- c. The party to whom the standard contract is placed occupies a very depressed position, so it can only be "take it or leave it".

Legally, the standard contract itself is not so much a problem, considering that the standard contract is a daily habit. The problem is if the standard contract contains unfair (one-sided) elements for either party. Therefore, the standard agreement must comply with the provisions of Article 21 POJK Number 1/POJK.07/2013 on Consumer Protection of Financial Services Sector, where Bank Syariah Mandiri is required to meet the balance, fairness and fairness in making agreements with Consumers. While Article 22, states that:

- (1) In the event that a Business Service Provider uses a standard agreement, the said standard agreement shall be prepared in accordance with the laws and regulations.
- (2) The standard agreement referred to in paragraph (1) may be digital or electronic to be offered by the Financial Services Business Actors through electronic media.
- (3) The standard agreement as referred to in paragraph (2) used by the Financial Services Business Act is prohibited:
 - a. Declare the transfer of responsibility or obligations of Business Service Provider to Consumer;
 - b. Declare that the Financial Services Businesses shall be entitled to refuse refunds paid by Consumer on purchased products and / or services;
 - c. Declare the granting of power from the Customer to the Financial Services Agent, either directly or indirectly, to undertake any unilateral action on the goods pledged by the Customer, unless such unilateral action is exercised in accordance with the laws and regulations;
 - d. Regulates the Consumer's evidentiary obligation, if the Financial Services Business actor declares that the loss of the use of the products and / or services purchased by the Customer is not the responsibility of the Financial Services Business Actor;
 - e. Grant the right of the Financial Services Businesses to reduce the usefulness of the products and / or services or to reduce the property of the Consumer as the object of the product and service agreement;
 - f. Declare that the Customer is subject to new regulations, additions, continuations and / or changes made unilaterally by the Business Service Actors in the Consumer's period of utilizing the products and / or services purchased; and / or
 - g. Declare that the Customer authorizes the Financial Services Businesses for the imposition of mortgages, liens or guaranteed rights to products and / or services purchased by Consumers in installments.

If Bank Syariah Mandiri violates the prohibition as regulated in Article 21 and 22 POJK Number: 1/POJK.07/2013 on Consumer Protection of Financial Services Sector, then the legal

effect to be applied to Bank Syariah Mandiri as Business Service Business actor shall be given a sanction as set forth in Article 53 of POJK Number: 1/POJK.07/2013 on Consumer Protection of the Financial Services Sector, which reads:

- (1) The business actor of Financial Services and / or parties violating the provisions of this Financial Services Authority Regulation shall be liable to administrative sanctions in the form of:
 - a. Written warning;
 - b. The penalty is the obligation to pay a certain amount of money;
 - c. Restrictions on business activities;
 - d. Suspension of business; and
 - e. Revocation of business activity permit.
- (2) The sanction as referred to in paragraph (1) letter b, letter c, letter d, or letter e may be imposed with or without preceding the imposition of a written warning sanction as referred to in paragraph (1) letter a.
- (3) The penalty as referred to in paragraph (1) letter b may be imposed separately or jointly with the imposition of sanctions as referred to in paragraph (1) letter c, letter d, or letter e.
- (4) The amount of fines sanction as referred to in paragraph (1) letter b shall be stipulated by the Financial Services Authority based on the provisions concerning administrative sanctions in the form of fines applicable to any financial services sector.
- (5) The Financial Services Authority may announce the imposition of administrative sanctions as referred to in paragraph (1) to the public.

The regulation is already written in such a complete and clear, but in the implementation both from the bank and the customer is still less understanding of the importance of making agreements in accordance with existing regulations namely Article 21 and Article 22 POJK Number 1/POJK.07/2013 reinforced again with SEOJK on the Standard Agreement .. While in terms of legal culture, bank employees and customers never read carefully the clause of the agreement that affects the validity of the agreement so that it can apply binding, and also the client is less responsive to things like this by just assuming the standard agreement after being signed is considered valid, but when a default or act against the law of the bank, then in the lawsuit touched on the validity of the standard agreement itself.

Thus, it is expected that standard agreements made by sharia banks pay close attention to the rules relating to the agreements set forth in each financing contract both in terms of sharia principles and also supporting law. The objective is that the agreement will not cause any harm to both parties, so as to achieve a balance, fairness and fairness.

III. CONCLUSION

The application of standard contract agreement made by Bank Syariah Mandiri has not fully complied with the provisions of Article 21 and Article 22 of POJK Number 1/POJK.07/2013 concerning Consumer Protection of Financial Services Sector as seen from the existence of several clauses that have not fulfilled the principle of balance, justice and fairness, and in the financing agreement in Bank Mandiri Syariah there is still clause eksenorasi and abuse of state of customer / consumer.

The legal consequences for Bank Mandiri Syariah for violations of Article 21 and Article 22 of POJK Number 1/POJK.07/2013 in the standard agreement may be subject to sanctions in the form of administrative sanctions such as written warnings, fines namely the obligation to pay

a certain amount of money, restrictions on business activities, business activities, including up to the revocation of business activity permits.

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