



## Standard Contract on Banking Sector: Regulation and Description in Internal Banking Regulations

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### Abstract

*This study aims to determine the regulations regarding standard contracts in the banking sector after the existence of the authority of the Otoritas Jasa keuangan, to find out the legal consequences of violations of the provisions of standard contracts carried out by banking financial services and to determine efforts to prevent violations of standard contracts by banking financial services. This is normative legal research with with statutory approach and a conceptual approach. The results show that the regulation regarding the standard contract after the existence of the OJK as a financial service consumer protection agency is regulated through the Financial Services Authority Regulation (POJK) No.1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector and in the Financial Services Authority Circular Letter (SEOJK) No. 13 /SEOJK.07 / 2014 regarding the Standard contract. The legal consequences of violating the provisions of the standard contract are not regulated in the POJK and the SEOJK. When it compared with the provisions of article 18 paragraph (3) of the Consumer Protection Law which explicitly states that violations of article 18 paragraphs (1) and (2) result in standard clauses being null and void, POJK and SEOJK only require financial service actors to make action plan, hence it is deemed to have no clear legal consequences. One of the efforts that must be made by banking financial service actors to prevent violations of the provisions of the standard contract is by making standard contract regulations independently and elaborating them in the internal banking regulations.*

## I. Introduction

Indonesia is currently working to boost the country's economic growth. One of the institutions that contributes to the realization of the country's economic growth is banking financial institutions. The Bank as one of the institutions in the financial services sector has the function of intermediation and plays a role in collecting funds and channeling them to the public in the form of credit grants. In carrying out banking business activities such as raising funds, channeling credit and offering other banking services, the bank will never be separated from its customers or commonly referred to as banking customers.

In business community including the world of banking, the parties cannot be excluded from the agreement. According to the Article 1313 of the Indonesia Civil Code (*hereinafter* KUHPerdata) it specifies that “An agreement is an act pursuant to which one or more individuals commit themselves to one another”. An agreement to be binding must comply with the provisions of article 1320 of the KUHPerdata, which stipulated that in order to be valid, an agreement must satisfy several conditions, namely “1) there must be consent between parties; 2) there must be capacity to conclude an agreement; 3) there must be a specific object; and there must be admissible cause.” Hence, the agreements are made in order to manifest the consent between parties. In the modern era nowadays, there are several forms of agreement. At first, the agreement was made orally by the parties, however in order to comply with the principle of legal certainty, most of agreements are made in writtren form and even in digital form.

The Bank as one of the business community, carry out its business activities in the form of raising funds, channeling credit and offering services in the banking sector certainly requires an agreement to create a commitment with their consumer. The need for agreements in every line of banking business transaction that are demanded fast-paced, practical, and require effective and efficient time then causes the bank to use the standard form of agreement in every business transaction. The standard contract was actually born due to the principle of freedom of contract. Based on this principle the parties have the freedom to make any agreement including its context and conditions as long as it complies with the prevailing law, do not violate public order, decency and followed by good faith from the parties. It is considered as a standard contract because this form of agreement does not provide opportunities for the other party to contribute to determining the content of the agreement.<sup>1</sup>

According to Sjahdeini’s idea, the standard contract is defined as agreement, which is almost all clauses have been made by standard and the other parties have no opportunity to enter into negotiations or request change.<sup>2</sup> In the standard contract, generally the agreement made by either party in this case is the business. In the banking sector, the standard contract is prepared by the bank. Since the agreement is prepared by the bank, the consumer can only accept or reject the agreement. The consumer does not have any bargaining position to determine the content of the agreement. Thus, consumers can be considered to be in the sub-ordinated position compared to the banks.

To overcome the imbalance of position between businesses and consumers, the Government of Indonesia has issued Law No. 8 of 1999 on Consumer Protection (*hereinafter* Consumer Protection Law) to ensure a protection for consumers. Consumer Protection Law uses the term standard clause, which according to Ahmadi and Sutarman, it is stated as the standard clause is part of the contents of a standard

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<sup>1</sup> Devi Yustisia Utami and Dewa Gede Pradnya Yustiawan, “Kenaikan Tarif Air Minum Dalam Standar Contract: Tinjauan Perlindungan Konsumen,” *Jurnal Ilmiah Ilmu Sosial* 6, no. 2 (2020): 60-69, <https://doi.org/http://dx.doi.org/10.23887/jis.v6i2.25669>.

<sup>2</sup> A A Gde Agung Brahmanta, R Ibrahim, and I Made Sarjana, “Perlindungan Hukum Bagi Konsumen Dalam Perjanjian Baku Jual Beli Perumahan Dengan Pihak Pengembang Di Bali” (Udayana University, 2016), <https://doi.org/https://doi.org/10.24843/AC.2016.v01.i02.p08>.

contract.<sup>3</sup> According to the Article 1 point 10 of the Consumer Protection Law, it is stated that “Standard Clause is any regulations or provisions and conditions unilaterally prepared and predetermined by the entrepreneurs in the form of a document and/or an agreement, which is binding and must be met by the consumers”. The provisions regarding the submission of the more specific standard clauses are set out in chapter V Consumer Protection Law in Article 18. However, the enactment of Consumer Protection Law has not fully provided protection to consumer,<sup>4</sup> as well as the protection against consumers in the banking financial services sector.

In the financial services sector, there are institutions that have the duty to carry out the arrangement, supervision, inspection and investigation in the financial services sector, namely the Financial Services Authority (*hereinafter* OJK). One of the authorities of OJK is to conduct supervision, examination, investigation, consumer protection in the financial services sector including the banking sector. Thus, the protection of consumers specifically in the financial services sector including the banking sector is now under the authority of the OJK. Talking about consumer protection in the banking sector will certainly not be separated from the use of standard contracts. This will certainly be very interesting to be reviewed in relation to the authority of the OJK to provide consumer protection including in the banking sector as well as efforts to avoid violations of the use of standard contracts by financial institutions in the banking sector.

Based on the explanation above, it seems that there are several things to be questioned. *First*, how is the arrangement regarding the standard contract in the banking sector after the authority of the OJK as a financial services consumer protection institution? *Secondly*, what is the legal consequence of violation of the provisions of the standard contract made by the financial services business? and *third* What efforts should be made by the banking financial services actor to prevent violation of the terms of the standard contract? This writing aims to find out the arrangements regarding standard contracts in the banking sector after the issued of OJK authority as a financial services consumer protection institution, as well as the legal consequences of violation of the provisions of the standard contracts made by the financial services business. This research also aims to examine efforts to prevent violations of the provisions of standard contracts by banking financial services business

Previous study was conducted by Prasnowo & Badriyah in 2019 concerning “Implementasi Asas Keseimbangan Bagi Para Pihak dalam Perjanjian Baku”, which concluded that the existence of standard contracts can not be denied because it develops in line with the growth of the business world. This writing focuses on the implementation of the principle of balancing in the standard contract where there are three aspects to achieve balanced position in the agreement including the actions of the

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<sup>3</sup> Ahmadi Miru, “Larangan Penggunaan Klausul Baku Tertentu Dalam Perjanjian Antara Konsumen Dan Pelaku Usaha,” *Jurnal Hukum Ius Quia Iustum* 8, no.17 (2016):107-19.

<sup>4</sup> Murti Ali Lingga, “Ini Penyebab Konsumen Belum Maksimal Dapatkan Haknya” (Kompas, n.d.), <https://money.kompas.com/read/2019/04/21/191000026/ini-penyebab-konsumen-belum-maksimal-dapatkan-haknya>.

parties, the contents of the agreement and the implementation of the agreement.<sup>5</sup> In 2020, Sulistyaningrum also studied about “Klausula Baku Dalam Perspektif Asas Kebebasan Berkontrak Ditinjau Dari Undang-Undang Perlindungan Konsumen”, which mainly discuss about the perspective of freedom of contract as one of the principles underlying the birth of the use of standard clauses.<sup>6</sup> However, this writing will be specifically discussed on the arrangement of standard contracts in the banking sector after the enactment of OJK authority as a financial services consumer protection institution, due to the law of violation of the provisions of the standard contract as well as efforts to prevent violation of the standard contract provisions that must be done by the business of financial services banking.

## **2. Research Method**

This is normative legal research with statutory approach and conceptual approach. The source of legal materials in this study is consist of primary legal materials in the form of studies on several scientific articles as well as reviewing legislation related to consumer protection and standard contracts such as Law No. 8 of 1999 on Consumer Protection and related regulations. Source of secondary legal materials in the form of literature literature related to consumer protection. Collection of legal materials is carried out by document study techniques and performed qualitative descriptive analysis.

## **3. Result and Discussion**

### **3.1. Regulation of Standard contract in Banking Sector After the Enactment of OJK Authority as Financial Services Consumer Protection Institution.**

The use of agreements or contracts is the most important thing as a means to create a legal relationship between businesses and consumers. People’s need for a fast, practical and efficient work system in the business world causes the use of standard contracts<sup>7</sup> has been inevitable again. In the standard contract, business actors are the parties who prepare the contents of the agreement unilaterally, and the consumer is only in a position to accept or to decline the contents of the standard contract and does not have the opportunity to negotiate the contents of the agreement. According to Mariam Badruzaman, standard contract is an agreement that has been standardized and has the following several characteristics, inter alia:<sup>8</sup>

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<sup>5</sup> Aryo Dwi Prasnowo and Siti Malikhatus Badriyah, “Implementasi Asas Keseimbangan Bagi Para Pihak Dalam Perjanjian Baku,” *Jurnal Magister Hukum Udayana* 8, no. 1 (2019): 61–75, <https://doi.org/https://doi.org/10.24843/JMHU2019.v08.i01.p05>.

<sup>6</sup> Helena Primadianti Sulistyaningrum and Dian Afrilia, “Klausula Baku Dalam Perspektif Asas Kebebasan Berkontrak Ditinjau Dari Undang-Undang Perlindungan Konsumen,” *Simbur Cahaya* 27, no. 1 (2020): 119–33, <https://doi.org/http://dx.doi.org/10.28946/sc.v27i1.807>.

<sup>7</sup> Putu Lingga Prabhawati and I Nengah Suantra, “Pemberlakuan Perjanjian Baku (Standard Contract) Dalam Praktik Usaha Transportasi Online Terkait Tanggung Jawab Pelaku Usaha,” *Kertha Semaya: Journal Ilmu Hukum*, 2018, 1–5.

<sup>8</sup> Miru, “Larangan Penggunaan Klausul Baku Tertentu Dalam Perjanjian Antara Konsumen Dan Pelaku Usaha.”

- a. The provisions and conditions of the agreement has been unilaterally prepared and predetermined by the parties who are in a stronger position;
- b. Consumers do not participate in making and determining the provisions and conditions of the agreement;
- c. Consumers are forced to accept the provisions and conditions of the agreement because it is driven by urgent needs;
- d. The agreement is made in a written form;
- e. The agreement is prepared collectively.

The banking sector is one of the sectors that is very important for the economy of a country. Judging from its business activities, the bank conducts activities to raise funds from the community, provide credit and offer other services. In carrying out these business activities, of course, the bank must have a legal relationship with the customer as its consumer. The legal relationship between the bank and its customers is a contractual relationship which means it is born from a written agreement between the bank and its customers.<sup>9</sup> To facilitate the legal relationship between banks and customers and the reason for practicality, the bank always uses standard contracts even though in the midst of the community the application of standard contracts often reaps the pros and cons because it is considered to weaken the position of one of the parties, namely consumers.<sup>10</sup> Sutan Remy Sjahdeini stated that the validity of the standard contract should no longer be debated because the existence of the standard contract has been recognized and born from the business world and the needs of the community itself.<sup>11</sup>

Discussing about standard contracts in the banking sector will certainly not be excluded from consumer protection, this is given that the standard contract impressed to provide an unbalanced position between the bank and its customers. The weaker position of the customer from the position of the bank causes the need for protection against consumers. The government provides consumer protection by issuing the Consumer Law in 1999. Consumer Protection Law regulates every aspect of consumer protection in terms of business activities including the rights and obligations of consumers, rights and obligations of the business as well as provisions regarding the standard clauses as stipulated in article 1 point 10 Consumer Protection Law. Generally, the standard clause is known as "the terms unilaterally prepared and predetermined by the entrepreneurs in the form of a document and/or an agreement which later becomes a standard contract".

The Consumer Protection Law regulates the provisions to include standard clause under the Article 18. According to the Article 18 paragraph (1), it is stipulated that "In offering the goods and/or services for trading, the entrepreneurs are prohibited from

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<sup>9</sup> Afrianto R Dauhan, "Mediasi Sebagai Salah Satu Alternatif Penyelesaian Sengketa Perbankan Terhadap Perlindungan Nasabah," *Lex Et Societatis* 2, no. 4 (2014), <https://doi.org/https://doi.org/10.35796/les.v2i4.4674>.

<sup>10</sup> Agus Saiful Abib, Doddy Kridasaksana, and A Heru Nuswanto, "Penerapan Klausula Baku Dalam Melindungi Konsumen Pada Perjanjian Jual Beli Melalui E-Commerce," *Jurnal Dinamika Sosial Budaya* 17, no. 1 (2015): 122-36, <https://doi.org/http://dx.doi.org/10.26623/jdsb.v17i1.508>.

<sup>11</sup> Dauri Dauri and Nadya Waliyyatunnisa, "Akibat Hukum Terhadap Penerapan Klausula Eksonerasi Dalam Perjanjian Baku," *Humani (Hukum Dan Masyarakat Madani)* 10, no. 1 (2020): 97-111, <https://doi.org/http://dx.doi.org/10.26623/humani.v10i1.1852>.

making or including a standard clause on each document and/or agreement if: it states the transfer of the entrepreneurs responsibility; it states that the entrepreneurs reserve the rights to refuse to receive back the goods already purchased by the consumer; it states that it gives the authority to the entrepreneurs from the consumers to carry out directly or indirectly all unilateral actions with regard to the goods purchased on installer the consumer, etc.”<sup>12</sup>

In the provision of Article 18 paragraph (2) of the Consumer Protection Law, it is stipulated that “Entrepreneurs are prohibited from including a standard clause at the place in the form, which is difficult to see or cannot be read clearly, or under the statement, which is difficult to understand.” Hence, if the entrepreneurs apply the standard clause, then the clause becomes null and void. This legal consequence has been clearly specified in the provisions of Article 18 paragraph (3) of Consumer Protection Law, which states that “Each standard clause stipulated unilaterally by the entrepreneur in the document or contract, which falls under the provisions as intended by Section 1 and Section 2 above shall be declared invalid by operation of law”.

Article 18 paragraphs (1), (2) and (3) of the Consumer Protection Law have expressly tried to provide protection to consumers to businesses that use standard contracts in offering their products to consumers. Consumer Protection Law itself already has a body in charge of resolving consumer disputes and a body that develops consumer protection. Consumer Dispute Resolution Agency is a body tasked to handle and resolve disputes between consumers and businesses, while the National Consumer Protection Agency is a body formed to develop consumer protection. According to the provisions in the Consumer Protection Law, it is shown that the scope of the Consumer Protection Law is very wide. Consumer Protection Law covers all business activities in Indonesia, both individual business entities, incorporated and non-incorporated enterprises that conduct business activities in various economic fields. However, the enactment of Consumer Protection Law does not fully protect consumers from providers of goods and services, hence the protection for consumer is still considered as weak.<sup>13</sup> The breadth of consumer protection coverage is one of the weaknesses of consumer protection aspects based on the Consumer Protection Law including consumer protection in the financial services sector that is not considered to be running optimally. This is also accompanied by rapid technological advances and due to globalization then create a financial services sector including banking businesses experiencing rapid development so that there is an increase in aspects of consumer protection, especially related to standard contracts.

The enactment of Law No. 21 of 2011 on Financial Services Authority (*hereinafter* OJK Law) in 2011 then marked the birth of the agency in charge and authorized to carry out the arrangement, supervision, inspection and investigation in the financial services sector, inter alia: Financial Services Authority (*hereinafter* OJK). OJK was born under the order of Article 34 of Law No. 23 of 1999 The Law No. 3 of 2004 concerning Bank Indonesia. The authority of the OJK is listed in the provisions of Article 9, which is “to conduct supervision, inspection, investigation, consumer protection, and other actions

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<sup>12</sup> See : Article 18 CONSUMER PROTECTION LAW

<sup>13</sup> Denico Doly, “Upaya Penguatan Perlindungan Konsumen Di Indonesia Terkait Dengan Klausula Baku (Strengthening Consumer Protection Efforts In Indonesia With Relevant Clause Of Standard),” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 3, no. 1 (2016): 41-58, <https://doi.org/https://doi.org/10.22212/jnh.v3i1.223>.

against Financial Services Institutions, perpetrators, and/or financial services activities". Regarding the provisions of consumer protection specifically regulated in Chapter VI of Article 28 to Article 31 of the OJK Law. Under article 31 of the OJK Law, the regulation of the OJK stipulates that the protection of consumers and the public in the financial services sector is regulated by OJK regulations.

On the order of Article 31 of the OJK Law, OJK then issued a regulation in the field of consumer protection through the Regulation of the Financial Services Authority No.1/POJK.07/2013 on Consumer Protection of the Financial Services Sector (*hereinafter* POJK Consumer Protection). The issuance of POJK Consumer Protection is based on the desire to realize the purpose of the establishment of OJK, one of which is so that all activities in the financial services sector are able to provide protection to the interests of consumers in the community, as well as to create a reliable consumer protection system including the increased awareness of financial services businesses including banks on the importance of providing protection to consumers. This is expected to increase consumer confidence in the financial services sector. POJK consumer protection expects businesses to be able to implement market conduct in a balanced manner. Market Conduct here is defined as "the behavior of financial service businesses in drafting, designing, offering products and or services including in making agreements".<sup>14</sup> In accordance with the expectation of the behavior of financial services business to implement market conduct in making agreements, the OJK also manages the protection of consumers over standard contracts in the financial services sector that applies also to the banking sector. This research then focuses the study on consumer protection over the use of standard contracts in the banking sector.

Therefore, the use of standard contracts in the banking sector is very common for some reasons, such as efficiency and practicality, furthermore, OJK issued a regulation that specifically regulates standard contracts through the Circular Letter of the Financial Services Authority No. 13/SEOJK.07/2014 on Standard contracts (*hereinafter* SEOJK Standard contract). SEOJK Standard contract is a guide to the implementation of POJK Consumer Protection specifically regarding clauses in the standard contract. Based on the general provisions of the SEOJK Standard contract, in number 1 specifies that "the standard contract is an agreement made in writing and determined unilaterally by financial service businesses in which it contains a standardized clause regarding the content, form and manner of manufacture used by financial service businesses to offer services or products in bulk to consumers". SEOJK Standard contract applies to financial service actors including the banking sector. SEOJK Standard contract contains various technical arrangements regarding the default agreement which is divided into 5 (five) sections. The first section governs the general provisions, the second section on the clauses in the standard contract, the third part on the format of the standard contract, the fourth part on the miscellaneous provisions, and the fifth part on the closing provisions.

This writing tries to examine the standard contract arrangements after the authority of the OJK as an authorized institution to protect consumers of the financial services sector including the banking sector. First, SEOJK Standard contract issued by OJK in part II regulates the clauses prohibited in the standard contract, namely agreements

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<sup>14</sup> Elucidation of The Regulation of the Financial Services Authority No.1/POJK.07/2013 on Consumer Protection of the Financial Services Sector

containing exoneration clauses and containing the existence of abuse of circumstances. If part II of the Standard contract is compared to the Consumer Protection Law that the Consumer Protection Law does not strictly regulate the definition of the exoneration clause while the SEOJK Standard contract has determined unequivocally what is meant by the exoneration clause. In the provisions of SEOJK Standard contract part II number 3 letter (a), the exoneration clause / exemsi is defined as a clause that is to increase the rights and / or reduce the obligations of financial service businesses or clauses that are reducing rights and / or providing additional obligations for consumers, then in part II number 3 letter (b), SEOJK Standard contract also provides restrictions on what is meant by the abuse of circumstances described in an example such as utilizing the condition of consumers who are pressed or are in an emergency then financial service actors do not explain the services offered in detail. In part II number 4 is also regulated on matters prohibited to be contained in the standard contract in the banking services sector that is not much different from the provisions of the Consumer Protection Law, among others, the statement of transfer of responsibility or obligation of entrepreneurs to consumers, the statement of entrepreneurs's right to refuse refunds that have been paid by the Consumer, the statement of power of attorney from the Consumer to entrepreneurs to take unilateral action of collateral submitted by consumers, etc.<sup>15</sup>

Second, SEOJK Standard contract in part III governs the format of the standard contract that has not been set in the Consumer Protection Law, among which it is determined that the standard contract in the financial services sector including banking is obligatory to use letters, writings, or symbols that are written in Bahasa Indonesia with the purpose to be easily understood by consumers, then there is an obligation for financial services business to provide explanations that have not been understood by consumers, as well as the provision that in addition to printed raw agreements can be made in the form of electronic digital (*e-contract*). One of the fundamentals required in a standard contract as stipulated in part III of the SEOJK 4 Raw Agreement is that a standard contract in the financial services sector including the banking sector shall contain the statement "This Agreement Has Complied With The Provisions of Legislation Including Provisions of Financial Services Authority Regulations". The inclusion of this clause is mandatory, meaning that all financial services institutions including the banking sector shall include the clauses required in part III of the 4-digit SEOJK Standard contract in each standard contract document offered to consumers.

The issuance of the OJK Law followed by the Consumer Protection Law and the SEOJK Standard contract led to the existence of a regulation of *lex specialis* on consumer protection and special raw agreements in the financial services sector including the banking sector. In relation to the use of standard contracts by banking institutions, SEOJK Standard contracts which are the provisions of the implementation of standard contracts in the financial services sector have provided more firm arrangements related to the technical manufacture of standard contracts that must be complied with by the banking sector.

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<sup>15</sup> See: section II number 4 The Circular Letter of the Financial Services Authority No. 13/SEOJK.07/2014 on Standard contracts

### **3.2. Legal Consequences for Violation of The Provisions of The Standard contracts Made by The Banking Financial Services Business**

The banking sector in offering products both in terms of funding and lending always use standard contracts to generate legal relationships with consumers. The use of standard contracts in both forms and other written agreements is inevitable for reasons of efficiency and practicality.<sup>16</sup> Regarding the standard contract in the financial services sector is under the supervision of the OJK and has been strictly regulated on the Consumer Protection POJK and also in the SEOJK Standard contract. However, it is undeniable that there are often violations in the making of standard contracts both in terms of funding and lending conducted by the Banking

According to the provision of Article 18 of the Consumer Protection Law, it has been stipulated the provision to include standard clause. There is a prohibition for businesses in offering goods/services to consumers to include the standard clauses as specified in the provisions of article 18 paragraph (1) and paragraph (2) Consumer Protection Law, then in paragraph (3) has clearly determined that any standard clause that meets the provisions of article 18 paragraph (1) and (2) shall be declared invalid. Hence, if there was a violation of the provisions of Article 18 paragraphs (1) and (2), then the clause being declared null and void. This means that from the beginning the clause was deemed to have never existed and was not binding on the parties.<sup>17</sup> However, with the issuance of the OJK Law that gives authority to OJK to conduct consumer protection in the financial services sector, there is a transfer of special consumer protection supervision authority in the financial services sector. Consumer protection including in the financial services sector that was originally based on Consumer Protection Law and is under the supervision of the National Consumer Protection Agency (BPKN), the Non-Governmental Consumer Protection Agency (LPKSM) and the Indonesian Consumer Institute Foundation (YLKI) is now turned into the authority of OJK under the OJK Law

POJK Consumer Protection as a regulation that specifically governs the protection of consumers on financial services also governs the standard contract in Article 22. According to Article 22 paragraph (3) concerning the prohibited standard contracts whose substance is almost identical to Consumer Protection Law. However, this Consumer Protection Act does not provide legal consequences if there are entrepreneurs including banking business who commit violations of the drafting of the standard contract and do not comply with the provisions of Article 22 paragraph (3) of the Consumer Protection POJK. The same applies to the SEOJK Standard contract, which is a guide to the implementation of the use of standard contracts in the financial services sector. In part II, this SEOJK governs the prohibited clauses of the standard contract and in part III governs the format of the standard contract, however there is no arrangement as to the legal consequences if the banking and other financial services

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<sup>16</sup> Yunita Yunita and Toto Tohir, "Perlindungan Konsumen Terhadap Pencantuman Klausula Eksonerasi Dalam Perjanjian Jual Beli Online (E-Commerce) Lazada Dihubungkan Dengan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," 2019, <http://hdl.handle.net/123456789/20566>.

<sup>17</sup> Made Aprilia Widia Kristianti, R A Retno Mumi, and A A Gede Agung Dharma Kusuma, "Perlindungan Hukum Terhadap Konsumen Terkait Adanya Klausula Eksonerasi Dalam Perjanjian Baku Jual-Beli Perumahan Griya Mesari Lovina-Singaraja," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 5 (n.d.): 1-15.

parties commit violations of the terms of the standard contract as stipulated by the Standard contract. SEOJK Standard contract only requires to make adjustments to the clauses in the standard contract, but does not govern the legal consequences obtained by financial services business if it violates the provisions of the standard contract as stipulated in article 18 paragraph (3) Consumer Protection Law.

POJK Consumer Protection and SEOJK Standard contract, which is currently used as a legal basis for financial service businesses apparently has weaknesses because it does not regulate the consequences of strict laws if a financial service actor including banks violate the provisions of the standard contract required by POJK Consumer Protection and SEOJK Standard contract itself. SEOJK Standard contract only requires financial service actors to create an action plan related to the fulfillment of the standard contract requirements in accordance with the SEOJK. Action plan certainly does not have a deterrent effect for banking businesses who violate the terms of the standard contract. This of course causes the consumer's position to become weaker if the banking financial services business still uses the standard contract whose provisions and conditions violate the provisions of the OJK itself because of the absence of strict legal consequences for the violation.

According to the Stufenbau Theory initiated by Hans Kelsen that this doctrine is closely related to the "hierarchical" form of legal norms in essence states that legislation that is in the lower hierarchy will have no power to apply if it is contrary to the legislation that is in the higher hierarchy.<sup>18</sup> Hence, POJK Consumer Protection and SEOJK Standard contract should be in accordance with Consumer Protection Law and be able to provide firmness and legal certainty in case of violation of standard contracts by banks.

The "hierarchial" form of legal norms in Indonesia is regulated under the Law Number 12 of 2011 concerning the Making Rules (*hereinafter* Making Rules Law). The hierarchy is regulated under the provision of Article 7 paragraph 1 concerning "Types and hierarchy of Rules", which consists of:

- a. "Constitution of the Republic of Indonesia of 1945;
- b. People's Consultative Council Decree;
- c. Law/Government Regulation In Lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Province Regulation; and
- g. Regency/Municipality Regulation".

According to the provision of Article 8 of Making Rules Law, it is stipulated that "other Rules than as intended in Article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representative, Regional Representative Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, Agency, Institution, or same level commission established by Law or Government on the instruction of Law, Provincial Regional House of Representative, Governor, Regency/Municipality

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<sup>18</sup> Ni Luh Gede Astariyani and I Gusti Ngurah Wairocana, "Delegation of Governor Regulation in Ensuring Utility and Justice," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 3 (2019): 302-16, <https://doi.org/https://doi.org/10.24843/JMHU.2019.v08.i03.p02>.

Regional House of Representatives, Regent/Municipal Government, the Village Head or the equivalent”

### **3.3. Prevention of Violation of Standard contracts by Banking Financial Services Actors**

The implementation of standard contracts by banking institutions in offering their products to consumers is inevitable for practical reasons and services of a collective nature. Although consumer protection for the use of raw agreements has been regulated in various national legislations, however, it does not close the possibility that there is still an opportunity for banks to transgress provisions regarding raw agreements.<sup>19</sup>

Actually, the obligation to provide consumer protection is not only the duty of the government through the issuance of various laws and regulations and through supervision, but also should be the responsibility of all relevant parties including businesses as mandated in the Consumer Protection Law. The banking sector as a financial services business should also put forward the principle of protection for consumers in addition to the need to obtain maximum profit. Banks should also have the awareness to provide consumer protection by avoiding the use of clauses prohibited by legislation. However, due to the large number of parties that play a role in serving consumers in banking institutions, it is not possible that there are still standard contracts that do not meet the provisions of the legislation and contain exoneration clauses. This is due to the limitation of legal knowledge and the reason for ignorance of the provisions of the legislation on the parties who participated in the preparation of the standard contract which causes still a violation of the use of clauses prohibited in the standard contract

One of the efforts that can be taken to prevent the violation of the standard contract by the banking authorities and increase protection against consumers on the use of standard contracts, then it is necessary for the awareness of the banking authorities to make regulation of the standard contract independently and to set it out in the internal banking regulations. The regulation of the standard contracts that are defined in the internal banking regulations is one of the real forms of consistency of banking institutions to also realize the protection to consumers. The internal regulation of banking can be made in the form of banking leadership policy in the form of Circular Letter of the Board of Director or Standard Operating Procedure (SOP), which specifically governs on standard contracts and shall be subject to the provisions of higher legislation. The existence of internal banking regulation that governs the standard contract will of course be more easily understood and known by the relevant banking staff which can then be used as reference by all banking parties including the staffs who are authorised to make standard contracts in accordance with the provisions and do not violate the applicable laws and regulations.

## **4. Conclusion**

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<sup>19</sup> Ni Luh Putu Sri Suryaningsih, “Perlindungan Hukum Bagi Pemohon Kredit Dengan Mengacu Pada Asas Keseimbangan Antara Pelaku Usaha (Bank) Dan Konsumennya (Pemohon Kredit),” *Jurnal Magister Hukum Udayana* 1, no. 1 (2012): 44087, <https://doi.org/https://doi.org/10.24843/JMHU.2012.v01.i01.p04>.

The arrangement regarding the standard contract was originally regulated in article 18 Consumer Protection Law, then after the enactment of the authority of OJK as a financial services consumer protection institution then the arrangement regarding consumer protection of financial services including banking sector is regulated through Financial Services Authority Regulation No.1/POJK.07/2013 on Consumer Protection of Financial Services Sector, specifically regarding the standard contracts issued in The Circular Letter of Financial Hasa Authority No. 13/SEOJK.07/2014 on Standard contract. As a result of the law for violation of the provisions of the standard contract done by the banking authorities are not regulated in the Consumer Protection POJK and SEOJK Standard contract as *lex specialis* financial services consumer protection arrangement. Contrary to article 18 paragraph (3) Consumer Protection Law, which clearly states invalid of the law against the standard clauses that violate articles 18 paragraph (1) and (2), in POJK and SEOJK, it only obliges financial service actors to make action plans so that it is considered to have no legal consequences against violation of the provisions of the standard contract. One of the efforts that must be made by the banking financial services actor to prevent any violation of the provisions of the standard contract is to make regulation of the default agreement independently and to set it out in the internal regulation of banking.

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## **Law and Regulations**

The Indonesia Civil Code

Law No. 8 of 1999 on Consumer Protection

Law No. 21 of 2011 on Financial Services Authority

The Regulation of the Financial Services Authority No.1/POJK.07/2013 on Consumer Protection of the Financial Services Sector

The Circular Letter of the Financial Services Authority No. 13/SEOJK.07/2014 on Standard contracts