

Asas keseimbangan dalam perjanjian kredit bank: studi terhadap Putusan Mahkamah Agung RI No. 3956 K/Pdt/2000 jo. putusan Pengadilan Tinggi Surabaya No. 628/Pdt/1999/PT.SBY jo. putusan Pengadilan Negeri Gresik No. 37/PPdt.G/1998/PN.GS = The balance principle in the bank credit agreement: the study on the Decision of the RI Supreme Court No. 3956 K/Pdt/2000 jo/ the decision of the Surabaya High Court no. 628/Pdt/1999/PT. SBY jo. the decision of the Gresik District Court No. 37/PPdt.G/1998/PN.GS.

Amin Imanuel Bureni, author

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## Abstrak

Perjanjian kredit bank merupakan media atau perantara pihak dalam keterkaitan pihak yang mempunyai kelebihan dana surplus of funds dengan pihak-pihak yang kekurangan dan memerlukan dana lack of funds. Perjanjian kredit bank membentuk perikatan diantara para pihak dalam hubungan yang saling membutuhkan dimana masing-masing pihak berkehendak memperoleh manfaat/ keuntungan dari perikatan tersebut. Karena itu dalam perjanjian kredit bank harus ada keseimbangan kepentingan para pihak baik pada tataran pembuatan perjanjian kredit bank maupun pada tataran pemenuhannya yang dimuat sebagai klausula perjanjian. Kenyataannya, seringkali ditemukan tidak terdapatnya keseimbangan pengaturan kepentingan para pihak diantaranya terdapat klausula ?Penetapan dan Perhitungan Bunga Bank dilakukan Oleh Bank yang disinyalir sebagai klausula eksonerasi karena dengan pencantuman klausula tersebut maka pihak bank dapat secara sewenang-wenang mengubah bunga kredit dan juga sebagai benteng bagi pihak bank menghindari pertanggungjawaban hukum. Dalam hal ini masyarakat pencari keadilan mengharapkan hakim dapat memberi keadilan melalui pemulihan keseimbangan kepentingan dalam perjanjian kredit bank tersebut. Pokok permasalahan penelitian ini adalah : apakah pencantuman klausula Penetapan dan Perhitungan Bunga Bank dilakukan Oleh Bank dalam perjanjian kredit bank melanggar asas keseimbangan dan apakah hakim dapat mengintervensi suatu perjanjian kredit yang disepakati para pihak ? Selanjutnya dengan menggunakan metode penelitian deskriptif analisis, peneliti menganalisis pengaruh pencantuman klausula ?Penetapan dan Perhitungan Bunga Bank dilakukan Oleh Bank? terhadap keseimbangan perjanjian kredit bank dan menganalisis kewenangan hakim dalam mengintervensi suatu perjanjian kredit yang disepakati para pihak sekaligus memberikan rekomendasi. Hasil penelitian menunjukkan bahwa pencantuman klausula ?Penetapan dan Perhitungan Bunga Bank dilakukan Oleh Bank? tanpa memuat klausula yang menjamin dilakukannya negosiasi ulang mengenai perubahan bunga kredit bank adalah melanggar asas keseimbangan dan karena itu hakim karena jabatannya (ex officio) maupun karena amanat undang-undang berwenang mengintervensi perjanjian kredit bank tersebut untuk memulihkan keseimbangannya. Atas terdapatnya kelemahan / kekosongan hukum positif mengenai pengaturan pelaksanaan perjanjian kredit dilakukan dengan itikad baik dan juga mengenai pengaturan peranan hakim dalam memulihkan keseimbangan perjanjian kredit bank, maka direkomendasikan agar dilakukan revisi KUHPerdara dan/atau revisi atas regulasi undang-undang terkait.

.....The bank credit agreement is a medium or an intermediary of the parties in the involvement of the parties that have surplus of funds with the parties having lack of funds and needing funds. The bank credit

agreement establishes the bond among the parties in a relationship which mutually needs each other where each party wishes to obtain advantages/benefits from the bond. Therefore, in the bank credit agreement there has to be a balance of interests of the parties both in the phase of the drawing of the bank credit agreement and in the phase of its fulfillment set forth as one of the clauses of the agreement. In reality, the imbalance of the parties interest arrangement is often discovered, which among others there is a clause of Bank Interest Determined and Calculated by the Bank pointed out as an exoneration clause because by putting the clause the bank can arbitrarily change the credit interest and also as the shield for the bank to avoid legal liability. In this case, the society seeking for justice expect the judge can provide it through the restoration of interest balance in the bank credit agreement. The main problems of the research are: does the writing of the clause Bank Interests Determined and Calculated by the Bank? in the bank credit agreement violate the balance principle And can a judge intervene a credit agreement approved by all parties? Furthermore, by using the descriptive analysis research method, the researcher analyzes the influence of the writing of the clause Bank Interests Determined and Calculated by the Bank? to the balance of the bank credit agreement and analyzes the authority of a judge in intervening a credit agreement approved by all parties and in providing recommendations. The research result shows that the writing of the clause ?Bank Interests Determined and Calculated by the Bank? without setting forth the clause which guarantees a renegotiation to be done on the change of the bank credit interests violates the balance principle, and therefore a judge because of his/her position (*ex officio*) and because of the mandate of the laws has the authority to intervene the bank credit agreement to restore its balance. As there are some weaknesses/positive law disparities on the arrangement of the credit agreement implementation done with good faith and also on the arrangement of the judges roles in the restoration of the bank credit agreement balance, it is recommended that the revision of Civil Code and/or the revision on the relevant laws should be done.