

SUMMARY

ROCKY MARCIANO AMBAR, Master in Law, University of Brawijaya, Malang, November 2017, Juridical Study on Ruling Out Article 1266 and article 1267 of Civil Code as Rescission Condition in Bank Credit Contract, Dr. Budi Santoso, S.H., LL.M. Dr. Hanif Nur Widhiyanti, S.H., M.Hum.

In credit contract, banks are likely to apply fixed credit contract or commonly known as standard contract is applied due to two reasons: (1) imbalanced bargaining position between a bank and a debtor; banks hold dominant position compared to debtors, (2) there is understanding that contract is absolute and it knows no boundary so that it implies that banks have absolute in determining the content and form of the agreement. Therefore, it is commonly understood that the freedom in determining the content and form involves the clause of rescission condition of breach of contract, which seems to rule out the stipulation in Civil Code Article 1266 and Article 1267 in the agreement. However, the stipulation in Article 1266 of Civil Code implies that the case of breach of contract must be performed in the court before the judge so that the compensation for loss can be determined for each party involved. This case serves as a background from which some research problems are presented: (1) Has the clause of stipulation that rules out Article 1266 and Article 1267 of Civil Code in credit contract provided by a bank met justice principles? (2) How is the juridical implication caused by the inclusion of clause that rules out the Article 1266 and Article 1267 of Civil Code in credit contract between a bank and a debtor in the process of settling the dispute of breach of contract as required in the rescission condition of the agreement.

The research method employed was juridical-normative with statute, historical, and conceptual approach. Based on research results, it was found out that ruling out Article 1266 and Article 1267 of Civil Code that regulates the rescission of breach of contract in an agreement and the compensation is considered against the principles of balance and justice. These two principles are commonly known as fairness which brings another meaning of equity of position and rights, not equity of gain obtained by every individual. In other words, justice is meant to give security in terms of equity of position and rights between banks and debtors in credit agreement.

In the juridical implication, there is a clause that rules out Article 1266 and Article 1267 of Civil Code in credit agreement related to debtor's rights in the process of settling the dispute of breach of contract as rescission condition in the contract could abolish debtor's rights of justice and right to file a lawsuit for compensation

in the court for the loss suffered by the debtor due to the dominant position of the bank. Principally, Article 1266 of Civil Code is intended to regulate mutual agreement (das Sein). However, when breach of contract occurs, the agreement must comply with the stipulation of Article 1266 of Civil Code (das Sollen). Whether or not there is a clause related to the rescission of the agreement due to breach of contract, Article 1266 of Civil Code is put in effect.