

## **ANALISIS PEMBATAAN KEBEBASAN BERKONTRAK AKIBAT**

### **KLAUSUL *NEGATIVE COVENANT* DALAM PERJANJIAN**

#### **PENYEDIAAN FASILITAS PEMBIAYAAN**

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#### **INTISARI**

Klausul *negative covenant* memuat serangkaian larangan untuk melakukan perbuatan tertentu yang lazim diterapkan pada perjanjian kredit atau perjanjian fasilitas pembiayaan. Penulisan ini bertujuan untuk menganalisis keabsahan klausul *negative covenant* yang membatasi asas kebebasan berkontrak berdasarkan keadilan, kepastian, dan kebermanfaatannya. Lebih lanjut, Penulisan ini akan menganalisis penerapan klausul *negative covenant* agar tidak hanya membatasi asas kebebasan berkontrak Nasabah, tetapi juga dapat melindungi kepentingan masing-masing Pihak.

Penelitian ini merupakan penelitian normatif empiris yang menganalisis kesesuaian antara peristiwa di lapangan dengan norma hukum yang ada. Data primer mengenai peristiwa di lapangan diperoleh melalui wawancara mendalam (*indepth interview*) kepada responden. Sementara itu, data sekunder berupa peraturan perundang-undangan, buku, jurnal, serta dokumen lainnya diperoleh melalui studi pustaka, khususnya mengenai perjanjian dan klausul *negative covenant*. Seluruh data yang diperoleh akan dianalisis secara kualitatif kemudian diuraikan secara deskriptif.

Hasil penelitian ini menunjukkan bahwa pembatasan kebebasan berkontrak pada klausul *negative covenant* dalam Perjanjian Penyediaan Fasilitas Pembiayaan sah dan mengikat berdasarkan keadilan, kepastian, dan kebermanfaatannya membatasi kebebasan berkontrak Nasabah. Jika tidak klausul *negative covenant* dalam Perjanjian Penyediaan Fasilitas Pembiayaan tidak terpenuhi, Nasabah dapat dikenai pasal wanprestasi (*event of default*). Penerapan klausul *negative covenant* dalam Perjanjian Penyediaan Fasilitas Pembiayaan sudah menjadi perlindungan kepentingan bank dan nasabah.

**Kata Kunci:** Asas Kebebasan Berkontrak, Perjanjian, Klausul *Negative Covenant*.

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***ANALYSIS OF RESTRICTIONS ON FREEDOM OF CONTRACT DUE TO  
NEGATIVE COVENANT CLAUSES IN AGREEMENTS TO PROVIDE  
FINANCING FACILITIES***

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***ABSTRACT***

*The negative covenant clause contains a series of prohibitions to perform certain acts that are commonly applied to credit agreements or financing facility agreements. This paper aims to analyze the validity of negative covenant clause that limits the principle of freedom of contract based on justice, certainty, and usefulness. Furthermore, this paper will analyze the application of the negative covenant clause so that it does not only limit the principle of freedom of contract of the Customer, but also can protect the interests of each Party.*

*This research is an empirical normative research that analyzes the conformity between events in the field and existing legal norms. Primary data regarding events in the field are obtained through in-depth interviews with respondents. Meanwhile, secondary data in the form of laws and regulations, books, journals, and other documents are obtained through literature study, especially regarding agreements and negative covenant clauses. All data obtained will be analyzed qualitatively and then described descriptively.*

*The results of this study show that the limitation of freedom of contract in the negative covenant clause in the Financing Facility Provision Agreement is valid and binding based on justice, certainty, and the usefulness of limiting the customer's freedom of contract. If the negative covenant clause in the Financing Facility Provision Agreement is not fulfilled, the Customer may be subject to the article of default (event of default). The application of the negative covenant clause in the Financing Facility Provision Agreement has protected the interests of banks and customers.*

***Keywords:*** *Principles of Freedom of Contract, Agreement, Negative Covenant Clause.*

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