
BUNDLING PRODUCT AS A COOPERATION AGREEMENT BETWEEN BANKS AND INSURANCE COMPANIES (BANCASURRANCE) IN RELATIONS WITH UNHEALTHY BUSINESS COMPETITION**Rani Sri Agustina**Fakultas Hukum Universitas Sultan Ageng Tirtayasa
rani@untirta.ac.id**Abstract**

Banking institutions and insurance companies are two different finance institutions, both in terms of the type of business and in terms of the principles. The two of them undergo a cooperation (bancassurance) through referential activities, distribution, and product integration. The cooperation activity of marketing integrated products is carried out by banks by offering and selling bundled products. Bundling is a marketing activity which is allowed, yet its implementation is almost the same as tying agreement, which is one of the prohibited agreements as it may lead to unhealthy business competition.

Keywords: Bundling Product, Bancassurance, Unhealthy Business Competition.

A. Introduction

Indonesia is a country in the Southeast Asia area which becomes a choice for international goods and service companies to develop their businesses. In line with the global development, there is a cooperation between banking and insurance companies. The cooperation of banks to market these insurance products is called bancassurance. Banking Institutions and Insurance Companies are regulated in the Constitution No. 7 of 1992 regarding Banks and the Constitution No. 40 of 2014 regarding Insurances. The position of banks in a bancassurance does not legally substitute the position of insurance companies as the guarantor.¹

The cooperation activity of marketing insurance products by the banks are classified into three business models,² which are: Reference, Distribution cooperation, and Product integration.³ Requirements of the insurance products' presence in giving

¹ Surat Edaran Bank Indonesia kepada Semua Bank Umum yang Melakukan Kegiatan Usaha Secara Konvensional di Indonesia Perihal Penerapan Manajemen Risiko pada Bank yang Melakukan Aktivitas Kerjasama Pemasaran dengan Perusahaan Asuransi (Bancassurance) Nomor 12/ 35 /DPNP tanggal 23 Desember 2010.

² Ibid.

³ Pasal 18 ayat (1) Peraturan Otoritas Jasa Keuangan Nomor: 1/POJK.07/2013 Tentang Perlindungan Konsumen Sektor Jasa Keuangan

bank credits have the interest to protect the bank from the risk of the issued product or the service carried out from the bank to the customers.⁴

The cooperation to market insurance products through banks is known as bancassurance. This cooperation also has the benefit of broadening the target market of insurances.⁵

The factors which drive insurance and bank companies to develop bancassurance are as follows:^{6 (1)} For the insurance companies: a. the decreasing interest rates; b. the increase of reserve requirements; c. the increasing remunerations for agents; d. the increasing demands of the customers, to penetrate the middle- to lower-class markets. Meanwhile, (2) for the banks, a. the difficulty to enter the real sector; b. the increasing demands of the customers; c. the increasing competition between banks; d. the need for fee-based income; and e. asset liability mismatch.

Based on the Circular Letter of the Financial Services Authority No. 32 /SEOJK.05/2016 regarding the Marketing Network of Insurance Products through Cooperation with Banks (Bancassurance), there are three business model classifications of the cooperation activity to market insurance products by banks as follows:

1. Reference

Reference is a cooperation activity of marketing insurance products. The banks have the role to give reference or to recommend some insurance products to banks. The bank's role in undergoing marketing is limited to becoming a mediator to give information regarding insurance products from insurance companies which are in partnership with the bank to the customers. They may also provide access to the insurance companies to offer insurance products to customers. This activity may be categorized into: Reference in the Framework of Bank Products and Reference in the Framework of Non-Bank Products

2. Product Integration

Product integration is an activity of insurance product marketing cooperation. Banks have the role to market insurance products to customers

⁴ Surat Edaran Bank Indonesia Nomor 12/ 35 /DPNP tanggal 23 Desember 2010.

⁵ <http://www.wikimu.com/News/DisplayNews.aspx?id=1624>, data di akses pada Tanggal 10 April 2018

⁶ Ketut Sendra. 2007. *Bancassurance = Bank + asuransi, Kemitraan Strategis Perbankan dan Perusahaan Asuransi*. Jakarta: Penerbit PPM. hlm. 10.

by modifying or combining insurance products with bank products. The activity of marketing cooperation is carried out by the banks by offering or selling bundled products to customers face-to-face and/or by using communication devices (telemarketing), including via correspondence, electronic media, or bank websites.

The legal relations between banks and insurance products is a relation of cooperation. In the application, banks are seen to have the role as marketing agents. In bancassurance, banks are prohibited from taking the risks produced from insurance products. All risks of the insurance products are the responsibility of the insurance company who is in partnership with the bank. In undergoing bancassurance, banks are only allowed to market insurance products mentioned in the cooperation agreement between the banks and the insurance institution which is in partnership with the bank.⁷ The companies which market insurance products through bancassurance must first of all receive a letter of approval on bancassurance from the Finance Service Authority.⁸

In marketing insurance products through bancassurance, the insurance companies are obligated to have mutual operational guidelines related to the selection of risks, the payment of premiums and claims, the proposal of claims, complaint services, and insured complaint. There must be an agreement between the insurance companies and the banks which regulated the rights and responsibilities of each party. Apart from that, the bancassurance cooperation agreement must contain the steps in implementing the responsibilities as the sales representative of insurance companies in identifying and choosing prospecting insurance customers.

Article 1 paragraph (11) of the Constitution No. 10 of 1998 regarding Banks state that credit is the provision of money or other similar bills, based on the lending agreement or contract between banks and other parties, which obligates the borrower to pay off their debt after a certain period of time with interest.

Credit contains the elements of:⁹ Trust, Exchange of Value, Time, and Degree of Risk. Apart from having an important role for the sustainability of the bank's

⁷ Bagian I, Butir 2,3. Surat Edaran Bank Indonesia Nomor 12/ 35 /DPNP tanggal 23 Desember 2010.

⁸ Pasal 48 Peraturan Otoritas Jasa Keuangan Nomor 23 /poj.k.05/2015 Tentang Produk Asuransi dan Pemasaran Produk Asuransi

⁹ Thomas Suyatno, dkk., 1992. *Dasar-Dasar Perkreditan*. Jakarta: PT. Gramedia Pustaka Utama. hlm. 14.

business as an intermediary institution, a mediator between customers with a surplus of fund and those with a lack of fund, it may also influence the economy of a nation as a whole. The occurrence of stagnant credits or problematic credits will not only cause loss to the banks, yet it will also bring loss to the customers. The degree of risk faced by the bank in giving credits to the customers is one of the reasons why there is a cooperation between banks and insurance companies (bancassurance).

Basically, there are two kinds of bancassurance products:¹⁰ The insurance product which becomes a feature or a complement of banking products and Insurance products which are not features of banks. The marketing system with bundles is a development in the marketing sector. This system has been introduced long ago in the marketing field, yet in Indonesia, the bancassurance marketing only started on 2003, with the issuing of the Ministry of Finance's Decree No. 426/KMK.06/2003 regarding License of Insurance and Reinsurance Company's Business and Institution.

The bundling concept is the presence of a complement in the marketing of one product and another. In the packet system, there are two kinds: product bundling and price bundling. Product bundling is a marketing of two or more products, where the products are put in one integrated packet. Meanwhile, the price bundling is the marketing of some products which are not integrated in the lower price level, where the products are marketed separately.¹¹

Based on the concept of bundling as explained by Stremersch and J. Tellis¹², there are basically some differences in the way the marketers carry out the bundling of their products. These differences can be observed from the aspect of the relations between the bundling product and the bundled product, whether they are included in the marketed packet, and whether there is a correlation between one product and the other.

The concept of credit is the exchange or the move of a valuable item, whether it is money, goods, or services with the belief that the buyer is able to pay with the same value/amount in the future.¹³ Meanwhile, insurance is an agreement between two parties, which are the insurance company and the policy holder, which becomes the

¹⁰ Ketut Sendra, *Op-Cit*, hlm. 46

¹¹ Handy Irawan D. 2003. *Winning Strategi: Strategi Merebut dan Mempertahankan Pangsa Pasar*. Jakarta: PT Gramedia Pustaka Utama. hlm. 84.

¹² Stefan Stremersch & Gerard J Tellis. 2002. *Strategic Bundling of product Price: A New Synthesis for Marketing*, Journal of Marketing, hlm. 60.

¹³ Tucker dalam Hadiwidjaja dan Rivai Wirasasmita. 2000. *Analisis Kredit*. Bandung: Pionir Jaya. hlm. 6.

basis for premium collection by the insurance company as a reward for giving: (a) giving an exchange to the insured or the policy holder caused by loss, damage, loss of profit, or legal responsibilities to a third party in which the insured or the policy holder may experience due to an uncertain phenomenon; or (b) giving payment which is based on the death of the insured or payment based on the life of the insured, with the specified amount of benefit based on the fund management.¹⁴ Then, in its practice, the credit agreement or the insurance agreement are stated in two different agreements. The credit agreement is an agreement between banks and customers, whereas the insurance agreement is done between the insured/the insurance customer with the insurance company.

From the definition of the credit agreement and the insurance implementation, it is clear that each are different. Credit products provide loans, whereas insurance products provide insurance. Based on the concept above, thus bancassurance is a price bundling, as the products marketed are credit and insurance, which are non-integrated products. They may be sold separately without reducing the benefit nor the function of each.

Bundling is a permitted marketing strategy.¹⁵ It is different from the prohibition of tying agreement. Tying agreement is defined as an agreement created between business owners which state the requirement that the party which receives the particular product or service must buy other goods or services from the supplying business owner.¹⁶ The tying agreement can simply be defined as the selling of a product with the requirement that the buyer must also buy another product, which the buyer can actually buy from other suppliers. Through the practice of tying agreement, the business owner may undergo an expansion of monopoly power caused by tying product (the goods or services which are firstly sold) to the tied product (the goods or services which must also be sold by the consumer).

Based on the provision of Article 15 paragraph (2) of the Constitution No. 5 of 1999 regarding the Prohibition of the Practice of Monopoly and Unhealthy Business

¹⁴ Pasal 1 ayat (1) Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian

¹⁵ Surat Edaran Bank Indonesia Nomor 12/ 35 /DPNP tanggal 23 Desember 2010 Jo Pasal 18 ayat (1) Peraturan Otoritas Jasa Keuangan Nomor: 1/POJK.07/2013 Tentang Perlindungan Konsumen Sektor Jasa Keuangan

¹⁶ Rilda Murniati, *Hukum Persaingan Usaha*, Bandar Lampung,, Penerbit BP Justice Publisher, 2014, hlm. 109.

Competition, the elements which must be fulfilled so that the business owners can be said as carrying out the practice of tying agreement are:

- a. There is an agreement between one business owner and another.
- b. The agreement contains an agreement of both parties to carry out a transaction of goods or services in one packet.
- c. The consumer who is willing to buy an item or a service from business owner A must also buy goods and services from business owner B.

If the elements of the above articles have been fulfilled, thus it can be said that the business actor who underwent those practices has practiced a tying agreement.

Bundling in a bancassurance, especially in the integration of products, there are visible similarities between those two concepts if compared to the concept of tying agreement. In the aspect of concept, both contain two or more different products which are tied, then sold in one packet. The difference is that in bundling, there is no element of coercion. It is not an obligation to buy the product/service offered (Credit and insurance). This is different from the tying agreement, where the consumer must buy all goods and services offered by the business owners. This happens because there is an agreement between one business owner and another regarding the method of selling goods and services offered to the consumer. Thus, tying agreement is prohibited based on the regulation of the Constitution No. 5 of 1999.

The implementation of credit agreement between banks and customer is a form of standard contract. The form of agreement has been provided by the banks as a creditor. Meanwhile, the debtor only studies and understands it with the bank. If the debtor accepts all requirements and provisions determined by the bank, thus he/she has the obligation to sign that credit agreement. In the credit agreement done between banks as the creditor and customers as the debtor, usually the bank requires the debtor to register in an insurance. An example is the BJB Kredit Guna Bakti agreement. In Article 7 paragraph (1) it is said that the debtor must register in a life insurance. The premium and the collectives which are required become the responsibility of the debtor.

The word “obligated to” shows that the customer (debtor) doesn’t have any other choices but to follow what is mentioned in the credit agreement. The customer does not have any power to choose the insurance he/she will have to follow. Based on Article 18 paragraph (2) of the Finance Service Authority Decree No. 1/POJK.07/2013 regarding

Consumer Protection in the Finance Service Sector, it is said that in the case of Finance Service Business selling products and/or services as mentioned in paragraph (1), thus: the Finance Service Business is prohibited from coercing customers to buy other products and/or services in the packet of that product and/or service; and the customers can choose the other service and/or product provider in that packet of product and/or service.

In relations with unhealthy business competition, the word “obligated to” register in an insurance in the credit agreement is an element of coercion, which is a characteristic of a tying agreement. Herbert Hovenkamp¹⁷ explains that a tying agreement is deemed to be illegal only if the business actor forces customers to buy tied products which are actually not desired to as a requirement to get the tying product.

Based on Article 15 paragraph (2) of the Constitution No. 5 of 1999, in the implication of the tying agreement case, it is done using a *per se illegal* approach. This approach¹⁸ in the implication of Article 15 paragraph (2) is regulated in the Implementation Guide Article 15 which was issued by KPPU. In that guide, KPPU explained that if a certain agreement fulfills the particular criteria, without further need for evidence, that closed agreement must be stated as fulfilling the criteria of Article 15 violation. Yet, with the issuing of the KPPU’s Decree No. 5 of 2011, KPPU stated that in analyzing the tying agreement, the approach used is the rule of reason¹⁹ by considering the impact of that tied agreement. Tying agreement is identified as a tied selling with force, where the selling of that product results to unhealthy business competition. Thus, not all tied agreements are automatically prohibited, as it may cause positive effects²⁰. Thus, not all actions of tying agreement are considered as anti-competition.

¹⁷ Herbert Hovenkamp. 1993. *Antitrust Second Edition*. St. Paul Minn: West Publishing Co. page. 153

¹⁸ Pendekatan *Per se illegal* adalah suatu pendekatan yang menyatakan setiap perjanjian usaha atau kegiatan usaha tertentu sebagai ilegal, tanpa perlu pembuktian lebih lanjut atas dampak yang ditimbulkan dari perjanjian atau kegiatan usaha tersebut.

¹⁹ Pendekatan *rule of reason* adalah suatu pendekatan yang digunakan oleh lembaga otoritas persaingan usaha untuk membuat evaluasi mengenai akibat perjanjian atau kegiatan usaha tertentu, guna menentukan apakah suatu perjanjian atau kegiatan tersebut bersifat menghambat atau mendukung persaingan.

²⁰ Komisi Pengawas Persaingan Usaha (a), Peraturan Komisi Pengawas Persaingan Usaha Tentang Pedoman Pasal 15 (Perjanjian Tertutup) UU No. 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat, Peraturan KPPU No. 5 Tahun 2011, hlm. 19

B. Conclusion

Bundling is a method of marketing which is allowed by the constitutional regulations. In the case of bancassurance, the bundling is a marketing activity through product integration. In bundling, the Finance Service Business is not allowed to force the customers to buy other product and/or services in the packet of the product and/or services. The customers must be able to choose other providers of product and/or services in that packet of the product and/or services. In its practice, the banks usually only use the insurance companies which has worked together with the bank beforehand in a partnership agreement. Thus, usually, the credit customers do not have other choices or alternatives of insurance products. Then, they will accept the insurance company offered by the bank.

The implication of bundling done by the banks must be supervised, so that it does not turn into a tying agreement which is prohibited in the constitution of unhealthy business competition. The supervision is so far carried out by KPPU (The Commission of Business Supervision and Competition) because in Indonesia, there has not yet any specific regulations on bundling and tying agreement in banking products. Thus, the case of tying agreement in banking products are still under the regulation of the Constitution No. 5 of 1999.

As an institution, banks have a strategic position in the national economy. This must be maintained to create a healthy competition and an efficient economy for the customers, the business actors, and it may give good contributions to achieve the nation's economic development.

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