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Legal law and principles in the credit in banking

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Abstract

In lending from banks to the public for financing purposes, each bank is required to implement the principle of prudence. The formulation of the problem in the research is how to apply the law and the principle of prudence in anticipating the occurrence of bad credit. This study aims to find conformity in the law and the practice of applying the precautionary principle. This research is normative research, using the statutory approach. In this study using legal materials to conduct analysis in the form of primary legal materials, tertiary legal materials or non-legal legal materials and analyzed using descriptive methods. The results of the study indicate that the application of the prudential banking principle in granting credit can be interpreted as the principle applied by the bank in carrying out its business, so that it is always in accordance with applicable banking provisions, in order to avoid irregularities in unhealthy banking practices and to minimize losses incurred on banks such as bad credit.

Keywords: *prudential principle; bad credit; banking.*

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1. Introduction

In the context of lending to banks and the public for financing purposes, each bank is required to implement the Prudential Banking Principles in channeling its loans. This is based on the very high risk of lending as the bank's main business. In addition, failure in the field of credit can result in the influence of health and business continuity of the bank itself. The application of the Prudential Banking Principles in all banking activities is one way to create sound banking, which in turn will have a positive impact on the economy at large. In addition, the implementation of prudential banking principles must be implemented as a whole, so that it does not only concern the issue of lending, but begins when the bank is established, management determines that the fit and proper test is not ceremonial.

Banking business is a risky business. On the one hand, this business promises big profits if managed properly and carefully. On the other hand, it is full of risks (full risk business) because most of its activities rely on community deposits, both in the form of savings, current accounts and deposits. Aware of the vital role of the banking sector, the government has devoted considerable attention to improving legal regulations in the banking sector. Even regulations related to prudential regulation have been very adequate. However, the completeness of regulations, especially regarding the principle of prudence, is not enough to be used as a benchmark for national banking to be free from all problems. In practice there are still many banks that are constrained by problems. One of the factors that made the national banking system porous was due to the behavior of managers and bank owners who tended to exploit and or ignore the prudential banking principle in trying.

2. Methodology

This type of research is normative. Normative legal research is carried out to produce arguments, theories or concepts (Peter Mahmud Marzuki, 2017: 35). The approach method used is the method of legislation approach.

This study uses primary legal materials, secondary legal materials, and non-legal legal materials or tertiary legal materials, this study is doctrinal, namely only studying legal materials and then analyzed using descriptive methods. Descriptive methods are intended to study problems in banking attitudes and views.

3. *Application of the Precautionary Principle in Anticipating the occurrence of Bad Credit*

The principle of prudence is a principle or principle that states that in carrying out its functions and business activities, banks must be prudent in protecting public funds entrusted to them (Rachmadi Usman, 2001: 18). The bank's confidence factor as a manifestation of the precautionary principle in granting credit is obtained from the bank's assessment of prospective debtors. This can be done by applying the criteria that have become standard in the banking world, as is known as self regulatory banking. There are 5 (five) criteria or factors that can be used as guidelines for the implementation of the precautionary principle that has been widely known by the public, namely: (Marwan Effendi, 2012: 44).

a. Character; which means the bank must be able to assess the prospective debtor has the character and good character to carry out the obligation to pay credit.

b. Capability, which means the bank must be able to assess the prospective debtor has the economic ability now and in the future to pay credit.

c. Capital; which means the bank must be able to assess prospective borrowers having economic assets that can be used as a means for prospective debtors to carry out obligations.

d. Collateral; which means that the bank must be able to assess the assets of the prospective debtor who has an economic value that is proportional to the amount of credit given.

e. Economic conditions; which means the bank must be able to assess the stability of the economic and financial conditions of the prospective debtor when borrowing and returning.

In accordance with Law No. 7 of 1992 which was amended by Law No. 10 of 1998 concerning Banking, in providing credit, banks are required to pay attention to sound credit principles. In Article 8 of Law No. 7 of 1992 which was amended by Law No. 10 of 1998 concerning Banking determined that:

a. In providing credit or financing based on Sharia Principles, Commercial Banks must have confidence based on in-depth analysis or good faith and the ability and ability of the Debtor Customer to repay the debt or return the intended financing in accordance with what was agreed upon;

b. Commercial Banks must have and implement credit and financing guidelines based on Sharia Principles, in accordance with the provisions stipulated by Bank Indonesia.

For smoothing credit process, there are principles that must be applied by banks as follows:

Principle of Trust

The principle of trust is a principle that underlies the relationship between banks and bank customers. The business banks from public funds are kept based on trust, so each bank needs to maintain the health of its bank while maintaining and maintaining public trust. The principle of trust is regulated in Article 29 paragraph (4) of Law No. 10 of 1998 which reads: For the benefit of customers, banks are required to provide information about the possibility of the risk of loss associated with customer transactions conducted through banks.

Precautionary Principle

The principle of prudence is one principle that emphasizes that banks in carrying out business activities both in the collection especially in the distribution of funds to the public must be very careful. The purpose of this precautionary principle is that the bank is always in a healthy state to run its business properly and comply with the provisions and legal norms that apply in the world of banking. The precautionary principle is contained in Article 2 and Article 29 paragraph (2) of Law No. 10 of 1998, as follows. Article 2 of Law No. 10 of 1998 reads: "Indonesian Banking in carrying out its business based on economic democracy by using the principle of prudence '9 Article 29 paragraph (2) of Law No. 10 of 1998 reads: "Banks are required to maintain the soundness of banks in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvability and other aspects related to bank business, and are obliged to conduct business activities in accordance with the principle of prudence" (Sentosa Sembiring, 2012: 323).

Before the bank gives credit, the bank must make a careful assessment and implement the five principles that become part of the principle of prudence, known as the principle 5 Cs, as follows: (Djoni S Gazali and Rachamdi Usman, 2012: 273-274).

a. Character evaluation The character or personality of a prospective debtor is intended to find out the honesty and good faith of the prospective debtor to repay or repay the loan so that it will not complicate the bank in the future. This can be obtained mainly based on the relationship that has been established between the bank and (prospective) debtor or information obtained from other parties who know the moral, personality and behavior of prospective debtors in their daily lives.

b. Capacity assessment The Bank must examine the expertise of prospective debtors in their fields of business and managerial abilities, so that the bank believes that the business it will finance is managed by the right people, so that the prospective debtor can repay or repay the loan in a certain period of time. If the ability of the business is small, it certainly is not feasible to be given credit on a large scale. Likewise, if the business trend or business performance declines, credit should not be given. Unless the decline is due to a lack of costs, it can be anticipated that with additional costs through the launch of credit, the trend or performance of the business will certainly improve.

c. Capital valuation The bank must conduct an analysis of the financial position as a whole regarding the past and future, so that it is known the capital capability of the prospective debtor in supporting project financing or the business of the prospective debtor concerned. In practice so far, banks rarely give credit to finance all the funds needed by customers. The customer must provide his own capital, while the shortfall can be financed by bank credit. The function of the bank is only to provide additional capital, and is usually less than the principal.

d. Assessment of collateral (Collateral) To cover the payment of bad loans due to default debtors, the prospective debtor generally provides collateral in the form of high-quality and easily liquidated collateral with a minimum value of the amount of credit or financing given to him. For this reason, banks should be required to request additional collateral with the intention that if the prospective debtor cannot repay the loan, then the additional collateral can be disbursed to cover the repayment or development of the remaining credit or financing.

e. Assessment of the business prospects of the debtor (Condition of economy) bank must analyze the market conditions at home and abroad, both past and future, so that the future of marketing from the results of the project or the business of the prospective debtor can also be known.

The principle of bank secrecy is regulated in Article 40 to Article 44 A Law No. 10 of 1998. Article 40 requires banks to keep confidential information about deposit customers and their deposits. But in the provision the obligation to keep it confidential is not without exception. The confidentiality obligation is excluded in matters of tax interest, bank debt settlement that has been submitted to the Receivables and Auction Agency / Committee for State Debt Affairs (UPLN / PUPN), for the benefit of criminal court cases, in civil cases between banks and customers, and in order to exchange information between banks.

The principle of getting to know customers as an entry for the entry of proceeds from crime, banks or other financial services companies must reduce the risk of being used as a means of money laundering by knowing and knowing the identity of customers, monitoring transactions, and maintaining customer profiles, and reporting transactions suspicious actions made by parties using the services of banks or other financial services companies. (Adrian Sutedi, 2014: 72-73). The application of the know your customer principle (KYC principle) is based on the consideration that the principle of knowing customers is not only important in eradicating money laundering crimes, but also in the context of implementing prudential banking to protect banks or financial service companies other than various risks in dealing with customers and counterparties. Especially for customers, banks, or other financial service companies, they must recognize customers so that banks or other financial service companies are not entangled in money laundering crimes (Adrian Sutedi, 2014: 72-73). This principle of knowing customers is a FATF recommendation, which is the 15th principle of the 25 Core Principles for Effective Banking Supervision and Basel Committee (Andrian Sutedi, 2008: 147). Recognition of customers must start from the customer's identity, customer acceptance procedures, continuously monitor the customer, and then report to the authorities. The birth of the principle of knowing customers in Indonesia around June 18, 2002 where Bank Indonesia issued Bank Indonesia Regulation Number 3/10 / PBI / 2002 concerning Know Your Customer Principles (know your customer principle). (Andrian Sutedi, 2008: 148). According to the Bank Indonesia Regulation, the principle of knowing customers is a principle applied by banks to identify their identities, monitor customer transaction activities, including reporting suspicious transactions. The meaning of customers here are parties that use bank services and include individuals, companies (including foundations and other similar entities), government institutions, international institutions, and representatives of foreign countries and banks.

For the application of the principle of knowing these customers, banks are required to establish several things, namely: (N.H.T Siahaan, 2002: 80).

a. customer acceptance policy;

b. policies and procedures for identifying customers;
c. monitoring policies and procedures for customer accounts and transactions;
d. risk management policies and procedures related to the application of the principle of knowing customers.

This Bank Indonesia Regulation stipulates that before conducting a transaction with a customer, the bank is required to request information regarding, among other things, the identity of the prospective customer, the purpose and purpose of the transaction and requesting other information and other more complete identities (Article 4). The identity of the prospective customer must be proven by the existence of supporting documents and the bank is required to examine the validity of the supporting documents. Even if necessary, banks can conduct interviews with prospective customers to believe the validity and correctness of the documents (N.H.T Siahaan, 2002: 80).

In granting credit to prospective debtors, in addition to the principles mentioned above, the bank must also know the purpose of using credit and its credit development plan and the urgency of the credit requested by the prospective debtor. Therefore, there are still other principles that must be applied by banks other than principle 5 of the above, namely the principle of 5 P, as follows: (Djoni S Gazali and Rachmadi Usman, 2012: 275-276).

a. The Parties The parties are the central points that are considered in each credit. For this reason, the credit provider must obtain a 'trust' for the parties, in this case the debtor, for example how the character, abilities and so on.
b. The purpose of granting credit is also very important for creditors. It must be seen whether credit will be used for positive things that really can increase the company's income and must also be monitored so that the credit is really intended for the purpose as promised in a credit agreement.
c. Payments; It must also be considered whether the source of credit payment from the prospective debtor is sufficiently available and quite safe, so that it is expected that the loan to be launched can be repaid by the debtor concerned. In this case it must be seen and analyzed whether after the granting of the loan later, the debtor has a source of income, and whether the income is sufficient to repay the credit.
d. Profitability; the element of profit obtained by the debtor is no less important in a loan. For this reason, creditors must anticipate whether the profits to be earned by the company are greater than the loan interest and whether the company's income can cover the repayment of credit, cash flow, and so on.
e. Protection; Required protection against credit by the debtor company. For this reason, protection from a group of companies, or a guarantee from a holding, or a personal guarantee of a company owner is important to pay attention to. Especially just in case things happen outside the scenario or outside the original predictions (Munir Fuady, 1996: 24-26).

In addition to the principle 5 Cs and principle 5 P as mentioned above, banks in providing credit also use the 3 R principle, as follows: (Djoni S Gazali and Rachmadi Usman, 2012: 276).

a. Returns (Results Obtained) Returns, namely the results obtained by the debtor, in this case when credit has been utilized and can be anticipated by prospective creditors. This means that the acquisition is sufficient to repay credit along with interest, fees, in addition to paying for other company needs such as cash flow, other loans if any, and so on.

b. Repayment; The ability to pay from the debtor must of course also be considered, namely whether the ability to pay is matched with a schedule of repayment of the credit to be given by the bank. This is also something that should not be ignored.

c. Risk Bearing Ability Another thing that needs to be taken into account is also the extent to which the ability of the debtor to bear the risk. For example, in the event of things happening outside the anticipation of both parties. Especially if it can cause bad credit. For this reason, it must be calculated whether, for example, collateral and / or goods or credit insurance, it is safe to cover the risk (Munir Fuady, 1996: 25-27).

5. Conclusion

Banks in giving credit to debtors are required and must be guided and pay attention to sound credit principles and to the principle of prudence as set out in Article 8 of Law No. 10 of 1998 concerning Banking. The application of the prudential banking principle in granting credit can be interpreted as the principle applied by the bank in carrying out its business, so that it is always in accordance with applicable banking provisions, in order to avoid irregularities in unhealthy banking practices and to minimize losses incurred at the bank like bad credit.

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