

The Insurance Agreement in the Urgency of Microcredit on Banking

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Abstract: In the conduct of its activities, the bank will always apply the principle of prudence, particularly in granting loans to prospective debtor. Banks are responsible for funnelling the deposits funds to the society. For each credit given, granting by the bank must be implemented carefully even though the maximum credit given is not so large or otherwise falls into the category of micro-credit. The application of the precautionary principle by the bank is implemented via additional agreement in the form of an insurance agreement. So the existence of this insurance agreement is contingent with the agreement anyway, namely micro-credit agreement. This is often in practice not be noticed by the bank, because the nominal plafond given relative small, candidate of the debtor was not asked to surrender collateral as security if later on it turned out that the debtor does not run obligations in accordance with agreed credit agreement. In granting credit should the bank gives equal treatment i.e. asking for collateral in accordance with the percentage of plafond liquidated damages or make arrangements for insurance well against the collateral or credit insurance in private. This research is a normative research using research methods statute approach (based on laws and regulations), the conceptual approach and case approach.

1 INTRODUCTION

Banking as a community trust financial institutions play an important role in the economy. The existence of the banking system in economic development has a fundamental function and determine a country's economic resilience. In order to face the dynamics of development of the regional and global economy, the banking industry needs to increase national resilience through improved application of the principle of reciprocal. The application of the principle can be observed from the arrangement of the structure of stock ownership of banks and the inclusion of a minimum core capital of the bank.

Banking as one of the financial institutions are intended as a mediator between the parties who have excess funds with the parties in need of funds. Under article 3 of law No. 10 Year 1998 about the changes to the Act No. 7 of the year 1992 about banking (hereafter referred to as the banking law), that the main function of collector is as Indonesia's banking and retailer Community Fund. This functionality is referred to as bank intermediation, i.e. the bank as

Collector and Contracting Community Fund (financial intermediary). Banking role in the development of a nation is very important, this is because the function of a banking institution is as intermediaries. Understanding the institution of intermediaries is bank "intermediaries" that function as instruments of community funds in the form of deposits (the surplus) to another community in the form of credit (the deficit) to be used as in agreement between banks with the debtor (Algoud, 2004). Thus, there are two major tasks to be assumed by the bank in carrying out its functions: first guarantee fund deposits from the public in order to stay secure (liquid). The second is to run the mandate of law No. 7 Year 1992 jo law No. 10 Year 1998 About Banking to consolidated the national economy. This is because the development of the national economy is always moving fast with an increasingly complex challenge.

The existence of the bank to be very important, but on the other hand because of the large number of banks in Indonesia, it will become more competitive. To survive in the business world of banking, the

bank will make a variety of banking product offerings, one of which in the form of savings and credit. Current banking products that are much sought after by the public is the credit without collateral, which in this case fall into the category of microcredit. Micro-credit is the credit given by the banks to potential debtor with maximum plafond IDR 50,000,000.00 (fifty million Rupiah).

In practice, the granting of micro-credit (credit without collateral) made more simple if compared with granting credit small, medium and corporate. This is because it funneled the credit form. One form of the application of the principle of prudence in the channeling of credit is making the insurance agreement as additional agreement. This insurance agreement that will be used to provide a number of punitive damages while tort, so that the debtor bank in this regard can minimize those risks. Granting credit committed by the bank should still be done on the basis of the principle of prudence which has been regulated in the legislation. But in fact specifically for micro-credit, the bank does not implement the principle by not applying any warranty on the credit given. The issue is that being a legal issue in this study i.e. whether the granting of microcredit can be categorized has violated the principle of prudence and whether insurance is required in channeling microcredit.

2 RESULT AND DISCUSSION

The principle of bank prudence is something urgent to implement since the onset of the financial crisis in 1998. The ASIAN crisis was the point that G7 were pressed to restructure the international financial architecture. It was led to awareness to provide an integral role of bankruptcy systems in national and global area, which then raises international institutions to consider insolvency law to be a particular hard case for harmonization. The awareness was raised because of the unsuccessful process in separately in every single jurisdiction. Moreover, the recent financial crisis 2007-2009, has renewed the urgent attention to the importance of resolution systems for financial institutions, which is safeguard financial stability and moral hazard. And this resolution would only be effective if there is a development made in a framework that applies on a

cross border basis. As a response to this matter, the G-20 leaders, International monetary fund, the financial stability board, World Bank and The Basel committee of Banking Supervision (BCBS) cross border bank resolution group held a meeting at the London Summit 2009. The principle of prudence in banking is the principle which States that the bank in carrying out the functions and operational activities is mandatory be careful. The prudence is meant to be applied in all bank products i.e. savings and channeling of credit. The provisions governing the principle of prudence is regulated in article 29 of law No. 7 Year 1992 jo law No. 10 Year 1998 On banking (Banking ACT):

- (1) The Bank is obliged to keep the level of health in accordance with the provisions of the bank capital adequacy, asset quality, management quality, liquidity, solvency, earning ratios of other funds related business of the bank and must do business activities in accordance with the principle of prudence,
- (2) In giving credit or financing based on sharia principles and conduct other business activities, the bank is obligated to tackle the ways that do not harm the interests of the bank and the customer who entrusted their funds to the bank,
- (3) For the benefit of the customer, the bank is obligated to provide information on the likely incidence of risk of loss with respect to any transaction conducted through banks. According to Munir Fuady that business bank has conservative tendency as business becomes known as prudent banking. It is caused by:
 - a. The role of the bank is quite decisive in the development of the monetary and macro-economic;
 - b. Dealing with people's money (deposit, current, savings, and others) is at stake in a bank; and
 - c. Due to the characteristics of the business bank should always do match between funds received and funds disbursed, so repressed speculative elements may be minimal.

As a financial intermediary institutions of society (financial intermediary), the bank became an intermediary media parties who have excess funds (surplus of funds). In line with this, the banking positions as financial institutions that each akitivasnya implies economic growth of a country require the existence of a special surveillance. The bank must be in a healthy state in order not to cause

big losses, so the necessary existence of the principle of prudence in any banking activities. According to Thomad Hellman, Kevin Murdock and Joseph Stiglitz:

“ Prudential regulation is meant to protect the banking system from these problems. Traditionally, it consisted of a mixture of monitoring individual transactions (ensuring, for instance, that adequate collateral was put up), regulations concerning self-cleaning, capital requirements and entry restrictions. In some countries, restrictions were placed on lending in particular areas-many East Asian countries, for example, used to have restrictions on real estate lending. Finally, many countries imposed interest rate transactions, concern about bank runs also led many countries to provide deposit insurance and to establish central banks to serve as lenders of last resort”.

The purpose of the enforceability of the principle of prudence is in order for the banks is always in good health, so that among other things is always in a state of liquid, solvent and profitable so that the expected levels of public confidence towards banking is always high and do not hesitate to keep their funds in the bank.

2.1 The Prudential principle in Channelling Bank Funds

As a contracting agency funds, the bank is funneling funds to the community through the granting of credit. The event will certainly always be faced with the risk of a commonly known as credit risk. This is due to every possible activity occurring in the channelling of funds can lead to losses if a bank is not ready to face the things that can happen.

In order to avoid those risks, the bank must do ability against analysis of doing a credit payment for dierikan. This is in line with article 8 of the Banking Act which states that the bank is obliged to have the conviction based on a profound analysis over faith and the ability and willingness of the customer to pay off debts or restore financing referred to as exchanged. Analysis conducted by the bank subject to the instrument can be 5C and 7P. As for the instrument of 5C in analysis granting credit includes:

a. *Character*

The bank will analyze the character of the customer which can be seen from the client's background, whether that is private or work. Judgment on the character aims to find out the honesty and good faith of prospective borrowers and become material for knowing his little big the credit risk.

b. *Capital*

Prospective borrowers who will ask a credit bank must have sufficient capital. The greater the capital owned, then the greater the customer's ability to perform its obligations. In addition, to see the use of the capital he replied: effective or not, can be seen through the financial statements are presented with such a measurement in terms of liquidity, solvency, and other sizes. This analysis should also refer to the source where the present capital, including presentations of capital used.

c. *Capacity*

Banks should analyze the customer's ability to repay. This analysis is usually linked with the educational background and pengalamanya so far in managing credit is channelled. Capacity is often also referred to as capability.

d. *Collateral*

A guarantee can be given for the customer either physical or non-physical. Based on the explanation of article 8 of the Banking Act, can be summed up the two kinds of collateral that is:

1. Collateral is a staple item, project, or a dibiaai charged with the corresponding credit;
2. Additional collateral is the object that is not directly related to the object financed credit.

Guarantees provided should exceed the amount of credit given and has already examined the validity and kesempurnaanya. So the guarantee that is used can be used as soon as possible in case of bad credit.

e. *Condition*

The analysis of the client's condition is aimed at knowing the prospects in the future. For example, the assessment of business conditions that are financed should really have a good prospect until the possibility of bad debt is relatively small.

Furthermore, the instruments include 7P:

a. *Personality*

i.e. rate borrowers of the personality and the vagaries of everyday Act. This assessment also

- includes attitudes, emotions, and actions of the customer in facing a problem and solve it.
- b. *Party*
Classify clients into a certain classification based on capital, loyalty, as well as characters. Clients are classified into a particular class would get a different facility from bank.
 - c. *Purpose*
Knowing the purpose of clients in taking credit, including the type of the desired credit customer.
 - d. *Prospect*
I.e. assessing the customer's business prospects in the future. This is important considering if a credit facility financed without having the prospect, then there is a risk of losses banks will appear.
 - e. *Payment*
is a measure of how the customer in the process of repayment that superbly rendered. The more the income the customer seumber, it will suppress the possibility of bad credit.
 - f. *Profitability*
To analyze how the capabilities of clients in search of profit. This instrument is measured periodically.
 - g. *Protection*
The goal is how to keep the credit given assurance of protection, so that the credit given is completely safe. Protection meant here can be a guarantee of.

After performing the above analysis, the bank can assess whether the proposed credit is safe enough with a sense that the credit will be paid off in accordance with the agreement. In line with this, the bank still needs to do monitoring whether the use of credit has been in accordance with the purpose of early post-war proposed credit disbursement of credit to borrowers. By doing this there are at least two things you can do. First, help what has disampikan in the application for credit. Second, when found deviations from credit funds credit application submitted in advance, then the bank can be discussed with the customer that such action can be difficult for the customer to make a payment by credit.

In the framework of good credit management, Widjanarto Sembiring was quoted by as saying that the bank should at least orderly do things as follows:

- a. monitoring compliance by the customer with a good over all requirements between the debtor properly;
- b. monitor compliance with either by the customer or debtor especially interest payments and installments with an orderly and timely manner in accordance with the exchanged;
- c. monitor the development of the business and financial clients including the ability of liquidity and fulfillment of obligations to the other party other than the debtor bank.

Furthermore, in terms of the distribution of credit, the bank is obligated to have confidence over the ability of the debtor to be able to capable and pay off all obligations, namely in the form of debt principal and interest as provided for in article 8 of the banking ACT 10 jo. On article 11 of the banking ACT also stated that Bank Indonesia sets out provisions on the maximum limit of granting of credit or financing based on sharia principles i.e. 30% of the capital stock of the bank, the granting of guarantees, investment securities, placement or other similar things, which can be done by the bank to the borrower or a group of related borrowers. Included in these matters to companies in the same group with the bank in question.

So many rules which represents the principle of prudence in the banking ACT shows that this principle is one of the very fundamental principles to run any operational activities of the bank. If connected with the distribution of micro-credit (credit without collateral), in practice are very different. Discrimination occurs in the process of channeling microcredit credit compared to small, medium and corporate. In channeling microcredit, seem more simple in its credit worthiness assessment, short time period (1-3 years) and are not required to submit collateral by scheme products because it is becoming more attractive to many people. However, the bank has also provided "protection" in channeling microcredit, applying high interest to the debtor. In addition to high interest, banks also provide related terms of payment of the fine if the debtor fails to pay the installments or having bad credit. The bank will send the collector to the address in question and if this effort does not bring results then the bank will file a lawsuit to court.

A lawsuit to the court made by the bank, if the debtor fails to pay credit to the rarely performed small, medium and corporate. This is because to

skim the credit, the bank typically serves as a creditor preference, where the bank holds collateral property of the debtor used as collateral material. The collateral can be a moving objects and/or objects do not move whose value is an average of 110%-130% of the disbursed credit to the debtor. So when the debtor defaulted or tort, a last resort that the bank can do is to sell the collateral that has been bound by fiduciary rights or rights of dependents in accordance with the legislation in force. This is what makes the position more secure bank to channel credit to the debtor.

In addition to asking for collateral to secure bank loans, disbursed when the bank also insure the object of collateral or credit to insurance companies. In this case the insurance company as an insurer and the insured is the debtor. While the bank is as a third party with an interest in the insurance agreement. The obligation of the debtor is to pay a premium which has been determined at the time of the beginning of the credit agreement, in accordance with the object of collateral or channeled credit. While the liability insurer (insurance companies) are paying compensation in the event of an uncertain event in this one is because the debtor defaulted. So the existence of this insurance agreement will become more perfect and strengthen banks as instruments of credit. This is done in a bank as a form of liability of the bank to the customer the depository of funds as well as the form of the application of the prudential principle.

For channeling microcredit, guarantee and collateral agreement insurance is not made a requirement by the bank because this type of credit allocated by the celebrated medium circles down. Target micro-credit is usually for the purpose of consumption, not for business. Nevertheless, in channeling microcredit must still implement the principle of prudence. It means not just funneling credit alone but should remain cautious and keep applying the principle 5 C (*character, capacity, capital, collateral and condition of economic*).

Even so, if applying the principle 5 C, which often happens is a prospective debtor does not have the "collateral" that lends itself to warranted. So it should be possible when the bank is working with insurance companies to share the risk of default by the debtor. The existence of the insurance agreement, in case of default by the debtor the insurer will assume some or all of the losses suffered by the

bank. This way will be more effective and efficient than the bank filed a lawsuit to court. The lawsuit to trial surely cost money and time briefly when compared to what is required by the bank.

3 CONCLUSION

On the granting of microcredit by the bank, it is not required the existence of a collateral warranty agreements and the awarding of insurance upon the object of collateral and credit. The form of the application of the principle of prudence exercised by giving high interest credit at the top of the channel by the bank. It is considered ineffective because it is still a level of "security" over the bank of the disbursed microcredit is significantly lower. This means that the application of the principle of the prudence is not so vulnerable and this is detrimental to the bank.

To minimize the risk of micro-credit bank transmitted then the bank needs to give these terms to the debtor to insure credit. It is also as conducted by bank credit to small, medium and corporate. So there is no discrimination between the credit granting process of micro, small, medium and corporate. Credit insurance agreement will be more beneficial both for the bank and the debtor because its function is to protect the credit given. Although the later costs that will be borne by the debtor will become larger because they have to pay a premium.

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