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Prudential Principles by Banks in Granting Credit Based on Notarial Cover Notes

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ABSTRACT: Banking institutions the financial institutions that have a function as a financial intermediary. Banks serve financial necessity and introduce deposit system mechanisms for all economic sectors. This research examines the prudence principles by banks for granting credit based on notary cover notes. This research is normative legal research that is intended to examine the quality and norms of the law itself. By conducting normative method research and interviews using a purposive sampling system, the results of this thesis research will be obtained.

KEYWORDS: Banking, Cover Notes, Prudential Principle

I. INTRODUCTION

The goals of the Indonesian Nation are composed in the preamble of the 1945 Constitution contains a reflection of the values and standards that frame the premise of the Indonesian State in the development and management of the State. One of the advancements referred to is development within the economic sector which is one part of national development. Economic development to realize it is not solely the obligation of the government, but also requires the support and role of the private sector.

It cannot be denied that to be able to mobilize the economy and the business world, especially the real sector, requires considerable funding and capital. If illustrated as an organ of the human body, capital is analogized to "blood". Humans will not be able to live without blood organs, so a business will not be able to move without the support of funding or capital. Thus, capital is something absolute in the business world (Darmawan, 2013). Business capital can be obtained from various sources, either from the entrepreneur's funds concerned or through loans from other parties, which in this case are banks as a form of financial institution.

Today the role of banking in improving the economy of a country is massive. All divisions related to various financial exercises continuously require bank administrations. So currently and in the future financial activities for individuals and business fields cannot be separated from the banking world. Banking institutions are the center of the financial framework of every country. Banks are monetary institutions that are utilized by people, private commerce substances, state-owned commerce substances, and indeed government agencies to store their funds (Fauziana & Apriani, 2021)

Banks serve financing needs and dispatch installment framework components for all divisions of the economy. However, the presence of a bank as a business entity is not solely for business or profit, but there are other missions or goals, which as to improve the welfare of society in general. Banking institutions as one of financial institution have worked as monetary middle people as an imperative supporting framework to bolster the victory of the economy, in their work of loanable stores from savers or moneylenders to borrowers on shortage units (Johannes Ibrahim Kosasih, 2024)

Credit is one of the businesses managed by banks with great risks that banks can encounter. The certainty of credit loans by customers will be ensured by guarantees or collateral of a specific character. People who have businesses usually use credit loans to expand their business and banks will facilitate it by providing convenience credit for their customers called debtors. The provision of credit facilities by the Bank is carried out in the form of a credit contract. The credit contract is the real main contract, a form of the main contract, then the guarantee contract is the assessor, the presence and termination of the guarantee contract depends on the main contract (Hermansyah, 2005)

Banks in granting credit to customers will always ask for collateral as a form of guarantee or responsibility to bind themselves to the bank. The bank uses Appraisal Bank or Public Appraisal Services Office in terms of helping assess the amount of collateral owned by the customer. Guarantees in credit agreements must be researched in advance by the bank (Simatupang et al., 2021)

So that after the collateral is researched, the Bank asks for assistance from a Notary regarding the legality of the guarantee. As stated in Article 1, Clause 1, Law No. 2 of 2014 amending Law No. 30 of 2004 on the place of Notaries (hereinafter alluded to as the Law on Positions of Notaries), stipulates:

A notary is a public worker authorized to draft original documents and has other authority provided in this law or based on other laws. In fact, notaries in supporting and providing services to banks may have negligence leading to losses for the bank. The negligence of a notary, for example, can occur when attaching collateral to a credit contract. The notary will not carefully examine the guarantees given by the potential client, causing the bond to be imperfectly bonded, resulting in the failure to issue a mortgage certificate. The notary in this case is a notary who acts as a Land Titles Registration.

In addition to certificates and underhand, the notary is also authorized to produce and issue a Cover note (Kadir et al., 2019). A cover note is a Pronouncement made by a notary and is not an authentic certificate. The function of the Cover note is as an initial rule so that the bank disburses credit to the debtor.

II. LITERATURE REVIEW

Perception of reality that will be the basis for the preparation of a concept is fundamental. These legal concepts will later become a measure to assess and judge the world of reality, especially human actions, so that by itself must have empirical relevance, or can be translated into the empirical world. Thus, the relationship between concepts and reality cannot be separated from one another.

A. The precautionary principle

Commonly, the precautionary rule can be deciphered as the premise of truth that becomes the premise for considering and acting carefully (Simamora et al., 2022). The precautionary rule, moreover known as the prudence rule, is taken from the English word “Prudent” which suggests “Wise”. Black's Law Word reference characterizes “prudence” as takes after:

"Carefulness, precaution, attentiveness and good judgment, as applied to action or of care reconduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. This term, in the language of the law, is commonly associated with care and diligence as contrasted with negligence."

The term prudent is often associated with the supervisory function of banks and bank management. In the banking world, the term is utilized to refer to "the guideline of caution". Hence, in Indonesia, the term "bank supervision based on the rule of prudence" has emerged, after the principle of prudence is widely used in different contexts (Gandapradja, 2004).

The prudential principal application is stated in the Banking Law article 2 number 10 of 1998 about Indonesian Banking in conducting its commerce based on economic democracy system with prudential guideline. The application of the prudential rule is specified within the Banking Law in Article 2 of Law Number 10 of 1998 concerning Banking that Indonesian Banking establish its commerce is based on the financial majority rule government by utilizing the prudential rule. The prudential principle in these provisions is the foremost critical rule that must be connected or executed by banks in performing their business exercises, within the sense that they must continuously be consistent in actualizing the laws and controls within the banking segment based on professionalism and great faith.

The principle of prudence is stipulated 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 conducting its business is based on economic democracy by using the principle of prudence”

Article 29 paragraph (2) of Law No. 10 of 1998 reads:

“Banks must maintain a healthy level of banking following the provisions of capital adequacy, asset quality, management quality, liquidity, rentability, Solvability, and other aspects related to the bank's business, and must conduct business activities in accordance with the principle of prudence”

Article 8 of Law Number 10 of 1998 concerning Banking contains the principle of prudence which states that in giving credit or financing based on sharia standards, Commercial Banks are obligatory to have certainty based on an in-depth investigation of the will, capability, and capacity of the debtor to repay. To obtain such trust, before allowing credit, the bank must arrange a thorough evaluation of the debtor's character, capacity, capital, collateral, and commerce prospects.

The importance of applying the prudential rule as a means to anticipate all forms of risks that will emerge in granting credit or financing is necessary to understand the meaning of the bank's prudential principle. Bank prudential principles must be interpreted as the Bank's compliance with all laws and regulations applicable to banks, both those governing institutions, processes, and products, including Standard Operating Procedures and Bank Credit or Financing Policies made by banks. One of the implementations of the prudence rule in giving credit or funding is the bank's obligation to conduct an in-depth analysis before granting credit or financing as an effort to obtain trust that the debtor has the intention and capability to pay in accordance with the agreement as outlined in the agreement (Abubakar, 2018).

B. Bank credit

The term credit comes from the Greek word "credere", which is a word commonly used in everyday conversation. In the context of banking, credit means people who get trust from banks. The basis of credit is trust. From an economic point of view, credit is defined as a delay in payment because the return on the receipt of funds or goods is not made at the same time as receiving, but rather the return is made at a certain time in the future.

Based on Article 1 number 11 of Law Number 10 of 1998 concerning Banking states that:

> "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan and borrowing agreement between a bank and another party that requires the borrower to pay off his debt after a certain period with interest"

This definition shows that the result that the debtor must achieve for the credit granted to him is not only the repayment of the debt but also the interest rate according to the contract that the two parties previously agreed upon. The development of bank credit today tends to ignore the principle of prudence (prudential banking) to achieve high credit volumes for profit. The goal is to gain as much market share as possible by eliminating healthy competition. On the other hand, the general policy in the field of credit is still an aspired law *(ius constiduendum*) in the Draft Law on Banking Credit.

Credit agreements are essentially borrowing and lending agreements as regulated in the Civil Code. Subekti argues that in any form the giving of credit is carried out, in all of them what essentially occurs is a borrowing and lending agreement as directed within the Civil Code Articles 1754 to 1769 (Usman, 2001).

The credit facility received by the indebted person does not escape the various requirements of the bank and is further outlined in a credit agreement or contract. Where currently the bank credit agreement has not been specifically regulated so its implementation is left to the will of the parties who bind themselves. In binding themselves, debtors are more directed by the bank to adjust to the credit facilities that can be provided by the bank. Credit facilities should be able to provide full benefits if they are under the needs of the debtor.

C. Notary cover note

Cover note is one of the legitimate items issued by a notary which is a certificate within the administration of a certificate or document clarifying that the certificate being made by the notary is in process and can be finished within the period indicated within the substance of the cover note. Guarantees are frequently utilized within the process of applying for credit at banking establishments.

In the banking world, bills of exchange have become a practice that is considered legally binding on the parties. A cover note is utilized as a requirement within the credit application process but as a transitory guarantee during the process of completing an original deed made by a notary. In this case, the authentication tool in question is the process of renaming land use rights, the roya process, splitting the land certificate or other courses of action. But generally, the accompanying notes are drafted and issued by notaries as a declaration to guarantee lawful certainty with respect to the issuance of the deed or document in advance.

Cover notes generally contain the following things: (Bire, 2023)

1. The letter of credit agreement or debt letter is still in the process of being finalized at the notary public
2. The process of registering land rights or transferring the name of the land rights certificate and binding the credit guarantee is still in the process of being completed at the Land Office
3. A credit agreement or letter of credit and binding credit guarantee when completed will be given to the bank

III. RESEARCH METHOD

This research is normative legal research which points to look at the quality and standards of the law itself. This research is qualitative. Researchers examine the prudential principles of banks in granting notarized cover note credit. Cover notes become a practice that is considered to have official legitimate force for numerous parties. Warranties are often used as a requirement

in the credit application process but as a temporary guarantee during the execution of a deed of authenticity approved by a notary. Researchers will explore relevant questions using interviews and purposive sampling.

A. Problem Approach

1. Law approach

To examine whether laws and regulations have shortcomings or even encourage violations at the technical level or during actual implementation. This approach is taken by analyzing all existing laws and regulations relevant to the problem (legal issue). This approach is carried out by studying the consistency/compatibility between the basic law and the law or between the law and other laws.

2. Conceptual approach

An approach that deviates from the perspectives and theories evolved in legal science. By considering the doctrines of lawful science, researchers will discover thoughts that grant birth to legitimate ideas, legitimate concepts, and lawful principles related to the problem being solved. (Marzuki, 2016).

3. Purposive sampling

Researchers took a purposive sampling approach related to the provision of credit based on cover notes at the BPD Bali Mangupura branch office and BPR ASIH Mengwi and also at the Ni Made Asri Notary office in Tabanan Regency.

B. Legal materials

1. Primary Legal Materials

Legal materials related to the problem under study consist of legal principles and rules in the form of regulations in a broad sense. In this research, the legal materials used are as follows:

a. State Law of the Republic of Indonesia 1945
b. Civil Code
c. Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles
d. Law Number 7 of 1992 on Banking
e. Law Number 10 of 1998 Concerning the Amendment to Law Number 7 of 1992 Concerning Banking 5.
f. Law of the Republic of Indonesia Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to the Land
g. Bank Indonesia Regulation Number: 5/8/PBI/2003 on the Implementation of Risk Management for Commercial Banks

2. Secondary Legal Materials

Legal materials that provide explanations of primary legal materials, such as:

a. Results of scientific works of scholars and research results
b. Books related to proposal writing
c. Research results, journals, and papers.
d. Materials from the internet, both print media and electronic media, and supporting lecture materials.
e. Tertiary Legal Materials

Legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as:

a. Big Indonesian Dictionary
b. Legal Dictionary
c. Foreign Language Dictionary
d. Legal Encyclopedia

C. Analysis

Solving the problem stated in the formulation of the problem using qualitative descriptive data analysis, which involves describing a situation or phenomenon in words or phrases, then breaking it down by category to obtain conclusions (Arikunto, 2006). The problem in banking credit that researchers do is the use of cover note as the basis for granting credit by banks that ignore the principle of prudence. A cover note is not a guarantee but an endorsement in the administration of a certificate or document explaining that the action being taken with the notary is in progress and can be completed within a period of time. However, cover notes are usually used to apply for credit to banks. The bank should not be able to provide credit to credit applicants because it is not following the principles of lending owned by banks, one of which is the principle of prudence. As a result of these legal issues, researchers conducted research related to the prudential principle in granting credit based on cover notes at BPD Bali Mangupura Branch Office and BPR ASHI Mengwi and Ni Made Asri Asti Notary Office in Tabanan Regency. Researchers took a purposive sampling approach related to the provision of credit based on cover notes at the BPD Bali Mangupura branch office and BPR ASIH Mengwi and also at the Ni Made Asri Notary office in Tabanan Regency.

IV. RESULT & DISCUSSION

A. Prudential Principles in Lending Practices

Banks that always pay attention to prudential regulation will care about the consequences and long-term actions, both for the benefit of the banks they manage and the banking system as a whole. The prudential principle has been accommodated in the normative arrangement, as stated in Law No. 7 of 1992 on Banking Article 2. The prudential rule is the foremost critical rule that must be connected or executed by banks in carrying out their commerce exercises. This implies that it must continuously be reliable in implementing the laws and regulations within the banking segment based on professionalism and great faith.

The analysis and assessment used before granting credit is one of the principles owned by banks. The banks must analyse the character, ability, capability, collateral, and commerce prospects of the debtor. With this, the researcher can conclude that in giving credit or financing, the principle of prudence is necessary so that the debtor can return the financing or funds borrowed from the bank as agreed.

prudent banking principle is a rule that characterizes banks in performing their capacities and commerce exercises must apply the principle of prudent in one way, that is, knowing the client to ensure public funds depended to them, by anticipating the level of public believe in financial institutions to remain high, so that individuals are still willing to keep their funds within the bank.

Therefore, the researcher can conclude that the prudential principle based on the provisions contained above is a principle that must be carried out in banking practices, one of which is in granting credit to protect and maintain the existence of banking because it will foster public trust in the banking industry itself.

Deviations of the prudential principle carried out by the bank in the distribution of financing, as well as those related to the imposition of collateral or financing guarantees channeled by the bank to the debtor, often have an impact on causing losses to the bank itself, even further it is very possible to harm third parties outside the financing agreement, especially third parties who have an interest in the object of the financing/financing guarantee.

The results of the researcher's interview with one of the Notaries / PPAT in Tabanan Regency named Ni Made Asri Asti, S.H., MKn. who also had direct knowledge of the problems regarding this cover note explained that the reason the Notary issued the Cover note was because the Notary had not completed his work related to his duties and authority to order the authentic deed. The cover note also only explains if it is true that the authentic deed is still in process. The cover note does not explain that the cover note can be used as a condition for credit disbursement.

Judging from the form of the letter, the Cover note is just an ordinary certificate from the Notary that the documents to be used as collateral are being processed by the Notary. Generally, there are no standard rules overseeing the form and strategy for composing a Notary Cover note, but cover note writing is usually done on Notary letterhead, marked and stamped Notary, whereas others are balanced according to what processes are being processed at the legal official office.

B. Bank Risk in Granting Credit

One perspective of the application of the prudential rule in allowing credit is related to the evaluation of collateral that will be given by imminent debtor clients. Banks must survey a few criteria for great collateral, counting those related to juridical, financial, and social perspectives. The evaluation of the juridical perspective is carried out by conducting research related to the legitimacy and rightness of archives demonstrating the proprietorship of goods that will be utilized as credit collateral.

Generally, in granting mortgage rights, the collateral provided by prospective debtor customers is land that has been certified. This is necessary because at the time of enrollment of contract rights the Land Office must include a certificate of land rights. This is based on Article 13 paragraph (3) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land which states that:

"Registration of Mortgage Rights is carried out by the Land Office by making a book-land of Mortgage Rights and recording it in the book-land of land rights on land that is the object of Mortgage Rights and copying the record on the certificate of land rights concerned."

The bank's business activities will always follow with risk because of its function as a financial intermediary. The risk such as in providing credit has a crucial impact on the bank's commerce continuity. The fast improvement of the outside and inside banking sphere has too driven to the expanding complexity of the dangers of banking trade exercises. In this manner, to be able to manage to the banking trade environment, the Bank is required to actualize Risk Management.

The bank is supposed to be able to better monitor and supervise its business risk through the implementation of Risk Management. Moreover, the execution of Risk Management can assist the efficiency of the risk based on bank supervision groundwork managed by the Financial Services Authority. The struggle to implement Risk management is not only intended for

the bank's significance but also for customer significance. One prominent action in protecting customer significance in the context of risk control is clarity of the information related to the Bank's business activities.

Islamic banking commerce exercises are indivisible from risks that can disturb the progression of the bank, and to oversee these dangers, one must actualize risk management independently and on a solidified premise taking after Islamic banking commerce exercises. The execution of Risk Management in Islamic banking is balanced to the targets, commerce policies, measure, and complexity of the commerce and the capacity of the Bank. Based on the Financial Services Authority Regulation Number 65 /POJK.03/2016 concerning the Execution of Risk Management for Islamic Commercial Banks and Islamic Commerce Units, counting Credit Risk, Market Risk, Liquidity Risk, Operational Risk, Legitimate Risk, Reputational Risk, Strategic Risk, Compliance Risk, Rate of Return Risk, and Equity Investment Risk.

Risk categories related to the distribution of funds through credit include Credit Risk is the possibility for defaulter or debtor customers to fail about the ability to fulfill their obligations by the concession in the credit agreement. This is often caused by the debtor's failure to perform the contents of the credit contract, failure in selecting prospective debtors within the prepare of allowing bank HR credits tricked by the appearance of prospective indebted individuals, in this case, the significance of applying the 5C principle (character, capacity, capital, conditions, dan collateral). For most banks, loaning is the greatest source of credit risk.

Another risk associated with the distribution of funds through credit is Legal Risk, due to claims, the nonappearance of supporting legislation, changes in laws, and outside directions that harm operational capabilities shortcoming of engagement such as not satisfying the legitimate prerequisites of an understanding or blemished collateral authoritative. Risk related to the circulation of funds through credit Operational Risk, which is the risk emerging from the insufficiency or malfunction of internal processes, human error or fraud, or system failure in recording, accounting, and reporting transactions completely, correctly, and on time, failure in fulfilling the internal regulations and applicable regulations, issue such as regulatory changes or occasions that can influence the Bank's operations. Besides, Reputation Risk emerge because of media coverage, publications, and gossip related to business activities.

Considering the situation in which bank loans are conveyed to the open in huge amounts, it turns out that numerous indebted individuals don't reimburse their obligations on time after the agreement. The credit contracts carried out by banks include principal and interest loans leading to the classification of credit as non-performing loans (NPL). The bad debts existence exposes banks to face the risk of ethnic bank business credit risk. Credit risk is the risk that indebted customers are unable to repay loans received from banks along with interest within a period of time.

Dispute resolution through alternative dispute resolution (ADR) or called non-litigation means out-of-court dispute resolution based on the agreement of the parties by overriding dispute resolution through litigation in court.

The accomplishment of non-performing credits by non-litigation channels is a win-win solution. In achieving the accomplishment of non-performing loans in a regularly advantageous way can be accomplished through several steps, there are consultation, arrangement, intervention, conciliation, or expert judgment.

The settlement by banks for non-performing loans through non-litigation channels is done by 3Rs, rescheduling, reconditioning, or restructuring. The credits that are resolved through non-litigation channels were originally classified as substandard, farfetched, or bad debts which are then attempted to be repaired so that they have expedited collectability. When the non-litigation process has been carried out but does not get a good response from the debtor, then the litigation action through the court by filing a civil lawsuit will be done.

Another way is Somasi or warning from the bank to the client so that the debtor fulfills the terms of the credit contracts, especially the payment of debts, either principal or interest because the payment time is due.

Even though the debtor has been warned if the debtor still does not pay off its obligation, then the court will send a security confiscation at the auction. The auction process will continue, led by the auctioneer and facilitated by the regulatory agency, the National Asset Management and Auction Services Agency. Pursuant to the arrangement of Article 14, Law No. 4 of 1996 on Mortgage Rights, the authority to release the auctioned objects. Conducting an auction in court is the proper way to realize legitimate certainty within the contract sell off handle between the bank and client.

V. CONCLUSIONS

Cover notes are usually used as one of the conditions for credit disbursement in the action of permitting credit by banks because the guarantee is still in the registration process. A cover note is a declaration by the notary as an officer signing the deed that there has been a bond of credit or guarantee and that it is valid only for a certain period. For the cover note to be used as collateral, the debtor must sign a Power of Attorney to Assign a Hypothecation after the credit agreement, so the letter can be installed. The legal force of the cover note in the event of bad credit does not have executorial legal force, this is because the

cover note is not a notary legal product managed in the relevant laws and regulations. With this, the researcher can conclude that in providing credit or financing, it is necessary to have the principle of prudence so that the debtor can return the financing or funds borrowed from the bank as agreed. The prudential principal implementation is significant for the continued operation of the bank. The prudential principle based on the provisions contained is a principle that must be carried out in banking practices, one of which is in granting credit to protect and control the continuity of banking to maintain public trust. The prudential principle must be implemented not only because of the mission of banks which is to maintain the trust of customers who entrust their savings to the community but also as part of a monetary system that concerns all public interests outside of customers who deposit funds.

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