Legal Brief, Volume 11, No 4, (2022), pp. 2060-2066
ISSN 1979-522X (Print)| 2722-4643 (Online)
Published by IHSA Institute (Institut Hukum Sumberdaya Alam)
DOI: 10.35335/legal

Analysis of Unsecured Loans (KTA) in terms of the Prudential Banking Principle

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ARTICLE INFO

Article history:

Received Aug 25, 2022
Revised Sep 15, 2022
Accepted Okt 03, 2022

Keywords:

Bank Guarantee;
Prudential Principles;
Unsecured Loans

ABSTRACT

The bank is an intermediary institution that accommodates public funds and distributes them in the form of credit. One of the credit loan facilities provided by banks is Unsecured Loans (KTA). The existence of Unsecured Credit (KTA) causes banks to be deemed not to carry out their obligations to apply one of the principles in banking, namely the Prudential Principle as contained in the provisions of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. So that Unsecured Credit (KTA) is a form of bank facility that is considered very risky because it does not meet the credit principles that are guaranteed by banks in providing loans, known as the "5C" principle, namely Character, Capital, Capacity, Collaterals and Conditions of Economy. Thus, the purpose of this study is to analyze the Prudential Principle, especially in the provision of Unsecured Loans (KTA). And the method used in this research is normative legal research with a statutory approach.

ABSTRAK

Bank adalah lembaga intermediasi yang menghimpun dana dari masyarakat dan menyalurkannya dalam bentuk kredit. Salah satu fasilitas pinjaman kredit yang dikeluarkan bank adalah Kredit Tanpa Agunan (KTA). Adanya Kredit Tanpa Agunan (KTA) menyebabkan bank dinilai tidak menjalankan kewajibannya untuk menerapkan salah satu prinsip dalam perbankan yaitu Prinsip Kehati-hatian yang dimuat dalam Pasal 8 Undang-Undang Nomor 10 Tahun 1998 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan. Sehingga Kredit Tanpa Agunan (KTA) dapat dikatakan sebagai bentuk fasilitas bank yang dinilai sangat beresiko karena tidak memenuhi prinsip perkreditan yang menjadi jaminan bank dalam memberikan pinjaman yang dikenal dengan prinsip “5C” yaitu Character, Capital, Capacity, Collateral dan Condition of Economy. Tujuan penelitian ini adalah menganalisis Prinsip Kehati-hatian khususnya dalam pemberian Kredit Tanpa Agunan (KTA). Serta metode yang dipakai pada penelitian adalah penelitian hukum normatif dengan pendekatan perundang-undangan (statue approach).

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I. INTRODUCTION

Financial institutions Banking plays an important role in improving the economy of a country. Based on the provisions of Article 3 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (“Banking Law”), a bank is called an Intermediation Institution, where the bank as a collector and distributor of public funds (financial intermediary) has two The main function as an intermediary is to lend to people who lack funds and collect funds for those who have

excess funds (Usanti & Shomad, 2017). This function was built to assist the implementation of equitable economic growth and national stability as well as to improve people's welfare.

Banks as agent of development, the main thing is the role of banks in lending, where the credit aspect at the national level still greatly determines the amount of overall economic growth (Putera, 2020). Due to the distribution of funds in credit activities and various services provided by banks, banks are able to meet financing needs and accelerate the payment system mechanism of all economic factors, which directly affect the foundations of the economy.

However, the distribution of funds provided by banks in the form of credit or loans is the main function of the bank which is the riskiest. In its implementation, banks are required to analyze carefully and accurately every credit application submitted by prospective debtors to obtain loans from banks (Putera, 2020). So that Prospective debtors have to go through several steps starting from applying for a loan to disbursing a loan. The process of granting a loan from one bank to another is not much different. The only difference, if any, is the size of the requirements and the valuation determined by the bank taking into account the respective competitive factors and trade-offs.

Banking in Indonesia is based on several principles or principles. The banking legal principles include the principle of economic democracy, the principle of trust or the fiduciary principle, the principle of confidentiality or confidentiality, and the principle of prudence or the prudential principle. The principle of prudence is the highest principle or moral value that trumps other principles and norms in banking. The precautionary principle has implications so broad that it can easily be criminalized. Violation of banking law is always referred to as a violation of the prudential principle in the sense that a violation of the prudential principle will accompany any violation of the Banking Law (Khalimi & Alam, 2022).

When the bank provides credit facilities, the bank must have confidence that the loan provided will actually be repaid as promised. Therefore, bank credit is obtained from several beliefs from several credit assessments, accurately analyzes debtors to avoid non-performing loans, and generally refers to credit analysis, namely The 5C's of Credit Analysis, including: character, collateral, capital, ability (capacity) and economic conditions (Mutiara et al., 2022).

Existence Collateral is one of the most important things in a loan between the bank (creditor) and the customer (debtor) to convince the creditor that the debtor as the debtor will settle the payment obligations based on the credit agreement (Lidya, 2020).However, in carrying out its business, the bank offers Unsecured Loans (hereinafter referred to as KTA) where this program is more risky and tends to deviate from the practice of prudential principles. From a technical point of view, unsecured loans are riskier than secured loans. This risk will occur during the period between granting and repaying the credit.

Thus, based on this background, the author wants to know whether collateral is something that must be present in lending and whether the application of Unsecured Credit (KTA) violates the provisions of the precautionary principle as stipulated in Article 8 of Law Number 10 of 1998 concerning Amendments Based on Law Number 7 of 1992 concerning Banking. For this reason, the authors chose the title Analysis of Unsecured Loans (KTA) in terms of Prudential Banking Principles.

II. RESEARCH METHODS

This research method uses normative legal research with a statute approach by examining the provisions of the law relating to the legal issues being faced. Where in the method of approach to legislation is very closely related to the understanding of the hierarchy, and the principles in the legislation (Marzuki, 2021). The legal materials used in this research are primary legal materials which include: Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Decree of the Board of Directors of Bank Indonesia No. 23/69/KEP/DIR dated February

28, 1991 concerning Credit Guarantee, Cabinet Presidium Instruction Number 15/EKA/10/1966 and Circular Letter of Bank Indonesia Unit 1 Number: 2/539/UPK/Pemb. 1966 concerning Policy Guidelines in the field of credit. Then secondary legal materials are legal materials that explain primary legal materials where the most important or basic materials are textbooks containing basic principles or guidelines from legal science, scientific works, journals and opinions from legal experts who have high competence.

III. RESULTS AND DISCUSSION

The Stages in Providing Banking Loans

Talking about credit, credit is the main business activity carried out by the bank. The term credit itself comes from the Roman word credere which means to believe, or *credo* or *creditum* which means I believe. Thus, the person who gets the credit is the person who gets the trust of the bank which is called the creditor. Based on the general provisions of Article 1 number 11 of Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking, provides an explanation regarding the definition of credit as follows:

"Credit is the provision of money or an equivalent claim, based on a loan agreement or agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest" (Mulyati & Dwiputri, 2018)

Then regarding the definition of a credit agreement, the provisions are not regulated in The Banking Law and the Civil Code regulate various types of agreements. However, the Cabinet Presidium Instruction Number 15/EKA/10/1966 in conjunction with the Circular Letter of Bank Indonesia Unit 1 Number: 2/539/UPK/Pemb. 1966 concerning Policy Guidelines in the field of credit contains the definition of a credit agreement which states that "to provide credit in any form, banks are required to use a credit agreement." (Ps, 2014)

In general, if it is detailed regarding the stages carried out by banks in the process of granting credit, in essence they can be classified into 5 (five) steps, which are explained as follows:

1) The first step is to apply for credit. This step is the first step in the relationship between the bank and its customers, which is very much needed by prospective customers in order to get credit as needed. The application is made in writing and then submitted to the bank, where later the application will state the credit needs and the type of financing expected by the prospective customer.
2) Credit analysis. This step is the process of receiving basic information which is then managed into complete information, which consists of several factors such as opportunities and risks that affect the smoothness of credit payments. Then it is further explained in Article 8 Paragraph (1) of the Banking Law explaining beliefs based on in-depth analysis of the good faith and ability and ability of the debtor to pay off his debts in accordance with the agreement.
3) Credit Approval. This step must be based on all types of credit facilities offered by the bank either simultaneously or gradually where this is carried out a thorough assessment, especially in terms of credit analysis, credit management and documentation, credit monitoring or monitoring, credit evaluation or collectability, and credit development.
4) Credit agreement. In this step, an agreement is executed or made between the bank as a creditor and an interested party as a debtor (Posumah, 2017), where the contents of the agreement are determine the rights and obligations between the two parties related to the granting or lending of credit. Thus, at this step the credit agreement becomes one of the most important aspects, because there is no granting of credit without a credit agreement that is not signed by the bank and the borrower (Usman, 2017).Therefore the loan agreement will be valid because it is signed by the lender and the debtor.

5) Credit disbursement. Credit disbursement is any transaction using credit approved by the bank. In practice, this credit disbursement is in the form of payments and/or book transfers at the expense of the loan account or other facilities. Credit disbursement is carried out as agreed in the credit agreement that has been made. When the credit is disbursed depends on the agreement made by the parties (Posumah, 2017).

Due to loan given by a bank contains risks, then the bank must adhere to sound credit principles in providing loans, including: (Djumahana, 2003)

1) Banks cannot provide credit without written approval.
2) Banks cannot provide credit to companies that are considered unhealthy and detrimental from the start.
3) Banks are not allowed to provide credit for the purchase of shares and working capital when buying or selling shares.
4) Giving credit beyond the maximum credit limit.

Each stage of the process has rules that must be adhered to. Bank Indonesia enforces the principle of providing sound credit through: Article 2 paragraph (1) in the Decree of the Board of Directors of Bank Indonesia No. 23/69/KEP/DIR dated February 28, 1991 concerning Credit Guarantee which explains that the guarantee for granting credit means a bank's belief in the debtor's ability to repay the credit in accordance with the agreement (B. Indonesia, 1991).

The explanation of the Bank Indonesia Decree is an implementation of the intent of Article 8 of the Banking Law which explains the difference between guarantee and collateral. Where the principal guarantee is a belief, while the additional guarantee is something that can strengthen the bank's confidence, namely collateral. As has been expressly stated in the provisions of Article 1 number 23 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking regarding collateral as additional collateral, which reads: Collateral is an additional guarantee submitted by debtor customers to banks in the context of providing credit or financing facilities based on sharia principles (Khalimi & Alam, 2022).

In accordance with the provisions of Article 8 and the explanation contained in the Banking Law, Banks are required to pay attention to the conditions in providing credit, in addition to having confidence that the debtor has good intentions and has the ability to pay, banks are required to pay attention to the credit principle requirements called "The 5 C's Analysis Of Credit", one of which is collateral. Decree of the Board of Directors of Bank Indonesia Number: 23/69/Kep/dir dated February 28, 1991 concerning guarantees states that credit guarantees are bank confidence in the debtor's ability to repay loans in accordance with the agreement.

So, when viewed from the provisions in the banking credit agreement, the collateral required or required is only the basic guarantee, i.e. the object of the guarantee is the object financed with the credit, while additional guarantees are not required (Mulyati & Dwiputri, 2018). Thus, collateral does not have to be in the provision of credit even though the collateral is included in the credit principle of “The 5 C's Analysis of Credit” because collateral is an additional guarantee.

Application of the Prudential Principle in the Procedures for Lending in Banking

In granting credit, banks must always be careful in the implementation process. This is expected to avoid the risk of bad credit carried out by customers. So that in its implementation it must be in accordance with its principles. One of the principles in banking law is the prudential banking principle. The precautionary principle is a principle or principle that shows that banks must act prudently in carrying out their functions and operations to protect public funds that have been entrusted to them.

About the core Important from the precautionary principle, there is one article in the Banking Law that clearly contains this, namely what is stated in the provisions of Article 29 paragraphs (2), (3) and (4) of Law no. 10 of 1998, which reads:

“(2) Banks are required to maintain a sound bank in accordance with the provisions on capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the bank's business, and are required to conduct business activities in accordance with prudential principles.

(3) In providing credit or financing based on sharia principles and conducting other business activities, banks are required to take methods that do not harm the bank and the interests of customers who entrust their funds to the bank.

(4) For the benefit of customers, banks are required to provide information regarding the possible risk of loss in connection with customer transactions conducted through the bank.” (R. Indonesia, 1998)

Furthermore, provisions related to the obligation to apply the precautionary principle, especially in the provision of credit, are contained in the provisions of Article 8 paragraph (1) of the Banking Law which states as follows: *"In providing credit or financing based on Sharia Principles, Commercial Banks are required to have confidence based on in-depth analysis or the intention and ability and ability of the debtor customer to pay off their debts or return the financing in accordance with the agreement".*

The explanation in the article contains the meaning that: “Credit or financing based on Sharia Principles provided by banks contains risks, so that in its implementation, banks must pay attention to the principles of credit or financing based on sound Sharia Principles. To reduce this risk, guarantees for providing credit or financing based on Sharia Principles in the sense of confidence in the ability and the Debtor Customer ability to pay off their obligations in accordance with the agreement are important factors that must be considered by the bank. To obtain this assurance, before granting credit, the bank must conduct a careful assessment of the character, ability, capital, collateral, and business prospects of the Debtor Customer. Given that collateral is an element of lending, then, if based on other elements, it can be obtained confidence in the ability of the Debtor to repay the debt, the collateral can only be in the form of goods, projects, or claim rights financed with the credit concerned. Land whose ownership is based on law, and others of the same type can be used as collateral. Banks are not required to ask for collateral in the form of goods that are not directly related to the object being financed, which is commonly known as additional collateral.

If other elements have been able to convince the bank of the ability of the debtor as stated in the provisions of Article 8 paragraph (1) along with the explanation, then the guarantee is only sufficient in the form of a basic guarantee while the bank is not required to ask for additional guarantees. In conclusion, that collateral is not an absolute requirement, because the provisions of Article 8 allow banks to provide unsecured credit to prospective customers.

Collateral in the sense of collateral here is only one of the conditions that must be met in addition to other conditions. It has been stated previously in the explanation of the provisions of Article 8 of the 1998 Banking Law that there is no obligation for banks to ask for additional guarantees in providing credit. Therefore, it is almost said that there is no material juridical function of a guarantee as a preventive measure. So that opportunities arise for debtors who have bad intentions to take advantage of these loopholes. Although according to the provisions of Article 8 of the Banking Law, guarantees are not an absolute requirement and are only one of the conditions that must be met, in reality the bank always requires collateral in the form of debtor's property (Ps, 2014).

Banks in channeling funds for credit must be based on the existence of a guarantee. Actually, the most important thing related to collateral is that the guarantee is not just a promise to carry out or fulfill its obligations, but the guarantee is something that can be used as a guarantee for the repayment of debts or credits that have been borrowed by customers to the bank. In the case of

granting credit facilities, the existence of collateral is prioritized rather than just a guarantee in the form of confidence in the debtor's ability to pay off his debt, this is very based on the belief that the debtor will repay the loan is something abstract and has no material value, so the assessment is very subjective. In contrast to clear collateral. Likewise, objectively if the debtor defaults, the bank as the creditor can convert it to a more liquid amount of money. Banks must pay attention to and apply prudential principles and sound banking principles in every bank activity in providing credit, therefore before making a credit agreement, the bank must conduct an assessment of various aspects to support it (Mulyati & Dwiputri, 2018).

The provisions on this guarantee are materially more towards economic guarantees. Banking practice usually assesses five aspects of debtors according to the "5C" credit principle, namely: character, capital, capacity, economic condition and collateral. So based on this it can be said that collateral is one element of the guarantee, so that if the bank provides Unsecured Credit (KTA) it can only be given if the bank is sure that the credit to be given will be returned.

This bank facility in the form of Unsecured Credit (KTA), is related to the implementation of the decision to grant credit, which is based on the applicant's personal credit history, or in other words the ability to carry out loan repayment obligations is a substitute for collateral. So that in this case the bank will not be careless in offering a business facility to the public even though it has a higher risk. Banks will remain cautious, and continue to carry out their prudential principles by calculating all risks of the consequences in the process of granting credit before the funds are disbursed/credit is given to prospective debtors, then being more selective in choosing prospective debtors, and the prospective debtor already has a good record so that the bank will not easily believe it so that it provides credit loans to the prospective debtor. Banks will not be careless in carrying out their functions and business activities because the money distributed in the form of credit is public money entrusted to the bank which must be protected.

IV. CONCLUSION

Based on the description above, some conclusions can be drawn as follows: There are several stages in making credit, namely the first stage of a credit application stating the credit needs and the type of financing expected by the prospective customer, the second stage of credit analysis carried out by the bank, the third stage is credit approval, the fourth is a credit agreement made between the bank as a creditor with an interested party as a debtor where the content of the agreement is to determine the rights and obligations between the two parties. The fifth stage is Disbursement in the form of payment and/or book transfer at the expense of the loan account or other facilities.

Based on the provisions of Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, banks are required to pay attention to the conditions in granting credit, including having the belief that debtors have good intentions and have the ability to pay and banks are required to observe the principle of credit “The 5 C's Analysis of Credit”. However, the guarantees required or required are only the basic guarantees, while additional guarantees are not required. Thus, collateral does not have to be in the provision of credit even though the collateral is included in the "5C" credit principle because collateral is an additional guarantee. So that the provision of Unsecured Credit does not violate the principle of prudence in credit payments, if with other elements of collateral, the bank is sure that the credit to be given will be returned.

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