


JLPH:
**Journal of Law, Politic
and Humanities**

<https://dinastires.org/JLPH> dinasti.info@gmail.com +62 811 7404 455

DOI: <https://doi.org/10.38035/jlph.v5i5>
<https://creativecommons.org/licenses/by/4.0/>

E-ISSN: 2962-2816
P-ISSN: 2747-1985

Application of the Prudential Principle in Giving Banking Kredit

Elsa Dianita Puspita Dewi¹.

¹Master of Notarial Universitas Islam Malang, elsadianita27@gmail.com.

Corresponding Author: elsadianita27@gmail.com¹

Abstract: Banking institutions is institution Which collect And channel fund in public. banking very role And have share in effort enhancement level life public Indonesia through development economy public. Bank own program distribution fund For public Which Wrong the only one often called with credit . Credit provided to banks to be distributed to customers contains risks. So that in its implementation, every credit grant to customers must be careful and careful in observing the principle of prudence. Method research used that is juridical normative with use legislative approach and conceptual approach. Type material the law used are primary, secondary And tertiary. From the results study can concluded the first is that in providing banking credit, the bank must always apply the principle of prudence in order to minimize the risk of the bank's operational business with the aim of ensuring that the bank is always in a healthy, liquid and solvent condition. The principles used must be in accordance with existing regulations so that they will not cause defects in the world of credit. Losses resulting from credit can worsen the image of a bank. Besides That Wrong One impact is credit become congested And For do solution credit congested there is a number of strategy with method scheduling return , requirements return And arrangement return . Second , Violation principle caution in credit banking give rise to consequence law . Where to the party doing it violation will given penalty law form sanctions criminal nor regulated fines in Law No. 10 of 1998 concerning Banking . Banking crimes occur or fall into the realm of "state loss", abuse of authority resulting in corruption crimes.

Keyword: Prudential Priciple, Credit, Bank.

INTRODUCTION

In modern times like this , term banking Already No foreign among society in Indonesia. When hear term banking , society Certain will connect with finance . But Still Lots equalizing society term banking with the bank, though have different meaning . Banking is everything that concerns banks, including institutions, business activities, methods and processes in carrying out business activities. Meanwhile banks are one of the financing institutions that collects public funds and distributes them back to the community. In accordance with article 1 point 2 of Law no. 7 of 1992 concerning Banking as amended by Law no. 10 of 1998 (hereinafter called the Banking Law) , states that "Banks are business entities that collect funds from the

public in the form of savings and distribute them to the public in the form of credit and/or other forms in order to improve the standard of living of many people."

In fulfil need base And develop well-being public, as explained in chapter the, bank is institution Which collect And channel fund in public. Based on matter the can said that banking very role And have share in effort enhancement level life public Indonesia through development economy public. Bank own program distribution fund For public Which Wrong the only one often called with credit .

In Indonesia, bank activities, especially in providing credit, are one of the most important and main activities, so that income from credit in the form of interest is the largest income component compared to income from services other than credit interest which is usually called fee-based income . Besides That with do giving credit is Wrong One source fund for development , because it spins wheel world business very depend to credit issued by the bank that will used as capital for try . Credit banking own role important in financing economy national And is the driving motor growth economy . Availability credit possible House ladder For do more consumption Good And possible company For do investment that cannot be made with fund Alone .

System credit on generally made through agreement credit among people in need funds (debtor) with the disbursing bank funds (creditors) as well be equipped with guarantee in the form of certificate land , certificate building and others. Guarantee the submitted by debtor to which creditor ? will used anytime by creditor if debtor No can pay off credit that has been agreed on moment agreement credit . Based on this, we can conclude that a loan credit is a legal event in the civil sector (civil event), where the application process involves administrative files and goes through various stages and procedures in realizing the credit, so that in this case it can also be said that the process is not far from the scope of the administrative field.

Every giving bank credit is a must notice principle caution And principle healthy banking , because before agreement credit the always made by the bank do evaluation from various aspect . Based on Article 8 of the Law Banking , banks are mandatory have confidence will ability debtor For return credit on the time , as it has been agreed . Banking usually do evaluation to debtor with use principle Consistent caution from character , capital, ability , condition economic (condition if economic), and guarantee (collateral). The most important thing that is when the bank is deep channel fund For credit must based exists something guarantee , where guarantee This No only just promise For carry out or fulfil his obligations but existing guarantees can used as guarantee repayment credit that has been taken .

At some point, every agreement contract credit must be equipped with requirements that have been set by banking . The letters considered important must become material consideration banking If letters That false And until result credit That experience congested so can categorized as as law civil . If as collateral or a substitute for collateral and it turns out to be fake or falsified, or can no longer be used, then handing over the documents to the bank can be declared an act of deceit so that it can be charged with the crime of fraud.

In the giving process credit to the first debtor will analyzed moreover formerly by analyst credit later will disconnected by breaker credit . Decision taken by a breaker credit in give credit to debtor is very thing important Because matter the will affect the credit process applied for by customers as well as for the bank itself so that it becomes a bank that can be trusted by the public to be able to provide clean credit. Therefore, credit decision makers must pay attention to the bank's principle of prudence in deciding to grant credit to debtor customers so as not to happen credit congested . Likewise, credit analysts must provide an in-depth assessment and analysis of a debtor customer based on the principle of prudence. However, there are Also a case that illustrates that the actions of a credit breaker who was not careful in deciding whether to grant credit to a debtor customer actually resulted in losses.

If there is policy taken by breaker credit violate rule will impact Also with quality credit given to creditor . In matter This result the defect A the loan will impact to satisfaction moderate society need fund.

METHOD

The type of research used is normative juridical using a statutory approach and a conceptual approach. The sources of legal materials used are primary legal materials, secondary legal materials and tertiary legal materials which will be described below:

a. Primary legal materials

Primary legal materials are legal materials that have binding legal force in the form of statutory regulations relating to research. In this case the main legal material is Law Number 10 of 1998 concerning Banking

b. Secondary legal materials

Secondary legal materials are legal materials that provide explanations of primary legal materials that can help analyze and understand primary legal materials. Secondary legal materials in this research are books, articles, journals, research results, papers and so on that are relevant to the problems to be discussed.

c. Tertiary legal materials

Tertiary legal materials are supporting legal materials that provide instructions and explanations for primary legal materials and secondary legal materials such as dictionaries and encyclopedias.

T.

RESULTS AND DISCUSSION

T.

Bank Considerations in Implementing Prudential Principles in Providing Bank Credit.

Banks are public servants and public financial intermediaries. According to Law no. 10 of 1998 concerning Banking, what is meant by Bank is "a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people." The main function of banking is as an institution that collects funds from the public in the form of savings and channels them back to the community in the form of credit or financing (financial intermediary institution).

Several banking regulations outline the guidelines for implementing the prudential principle in the banking world, which all banks must comply with . The prudential principle is the bank's prudence in minimizing the risks of the bank's operational business by adhering to central bank regulations and internal bank regulations. The goal is for the bank to always be healthy, liquid and solvent. In providing financing facilities, each bank must pay more attention to personality aspects which can be identified by applying the 5 C principles (the five CS of credit analysis) .

Application of the Precautionary Principle

The precautionary principle is a principle or principle which states that banks in carrying out their functions and business activities are obliged to be careful in order to protect public funds entrusted to them. With this precautionary principle in place, banks in carrying out business activities collecting funds from the public and distributing them to the public are required to act carefully, carefully, precisely and wisely or not carelessly by minimizing the possibility of risks that will occur as a result of business activities. collect funds from the community, and distribute it to the community, all of which in turn is in order to provide protection for public funds entrusted to banking institutions.

Principles in granting credit

Credit is a financial facility that allows a person or business entity to borrow money to buy products and pay it back within a specified period of time with interest charged. The credit guarantee given by the debtor to the bank is only an addition, especially to protect credit that is bad due to a disaster, however, if a credit is given, in-depth research has been carried out, so that the debtor is said to be worthy of obtaining credit, the function of the credit guarantee is only as a precaution. keep. Therefore, in providing credit, banks must pay attention to the correct principles of providing credit . In banking practice, there are several principles used in providing credit to debtors. These principles include:

1. The principle of trust, meaning that credit is the creditor's trust in the debtor, as well as the belief that the debtor will return the debt.
2. The principle of prudence is one of the concretions of the principle of trust in providing credit.
3. 5C principles, including:
 - a. Character, namely the personality, morals and honesty of the credit applicant.
 - b. Namely capital from credit applicants, who need bank assistance to develop their business.
 - c. Ability (capacity), namely the ability to control, lead, master the field of business, seriousness and see a future perspective, so that the applicant's business runs well and provides profits (rendable).
 - d. Economic conditions, namely the economic situation at a certain time and period, where credit is given by the bank to the applicant.
 - e. Collateral is wealth that can be tied up as collateral, to ensure repayment at a later date, if the credit recipient does not pay off the debt.
4. 5P principles, including:
 - a. For the parties, prospective debtors are classified into several groups based on character; capacity, and capital.
 - b. Purpose, meaning an analysis of the purpose of using credit that has been submitted by the prospective debtor.
 - c. Payment means the source of payment from the prospective debtor.
 - d. Earning profits (profitability), namely an assessment of the potential debtor's ability to gain profits in his business.
 - e. Protection is an analysis of the means of protecting creditors.
5. The 3 R principles include:
 - a. Return is an assessment of the results that will be achieved by the borrowing company after obtaining credit.
 - b. Repayment takes into account the debtor's ability, schedule and credit repayment period, but the company continues to run.
 - c. Risk bearing ability is the extent of the debtor company's ability to avoid risks and whether the debtor company's risks are large or small.
- a. Implementation of Bank Prudential Principles through Banking Laws

If you look at the implementation of the bank's prudential principles regulated by the Banking Law, its existence has actually been explicitly stated in Law no. 7 of 1992 concerning Banking and its amendments, namely Law no. 10 of 1998 concerning Banking . In the implementation of credit provision, there are bound to be bottlenecks. The risk of miscarriage from channeling funds in the form of credit must really get the attention of banks, because it could backfire and not only fail to expect interest income, but will also hit the existence of the bank itself.

There are many factors that cause bad credit and no less dominant is due to collusion, both bilateral collusion between bank officials and customers, as well as tripartite collusion, namely between customers, bank officials and government elements via referrals or telephone calls . The term credit itself is trust, which means that when someone gets credit, it means they

have earned the trust of the bank . Based on the provisions in the Banking Law mentioned above, the legal provisions regarding credit matters include aspects of the definition of credit limits, guarantees for granting credit (requirement for 5 C analysis), maximum limits for granting credit, credit restrictions for certain matters, and settlement of bad credit .

Application of the Prudential Principle and its Benefits to Banking

The main benefits that can be obtained from implementing the precautionary principle in bank operational activities include benefits for implementing banks, benefits for bank customers, benefits for the government. These benefits can be explained as follows:

1. Benefits for Implementing Banks

Banking has a strategic role in implementing national development. This strategic role is mainly due to the bank's main function as a vehicle that can collect and channel public funds effectively and efficiently. Banks are a symbol of public trust in monetary conditions in Indonesia. Banks as a service industry that serves consumers in the broadest sense, both intermediate consumers and final consumers must be managed based on the prudential principle.

The application of the precautionary principle in bank operational activities is in order to provide protection for the community, in this case customers. This is because public funds in the bank are the bank's main capital in carrying out its business, therefore, in order for a bank to be able to obtain its capital from the community, the bank must be trusted (the principle of trust) by the community, and to be trustworthy of course the bank must can prove that it is healthy (the principle of bank health), and to be healthy means that the bank must work carefully (applying the principle of prudence) in using public funds.

2. Benefits to Bank Customers

Customers are the first parties who have a big interest in banks, both in terms of taking advantage of their money deposits with the bank for deposit customers , as well as taking advantage of borrowing money from the bank for debtor customers. The application of the precautionary principle is basically within the framework of bridging both sides of the interests, both the interests of the bank and the interests of customers who both hope for benefits from their involvement as actors in banking activities.

Thus, the application of the precautionary principle has meaning for. customers , namely as a guide for them to maintain a relationship of trust with the bank. In addition, for customers the application of the precautionary principle is meaningful, as a basis for filing claims for losses suffered in establishing relationships with banks. For the wider community, the banking principle of prudence has its own meaning, namely being the basis for consideration in determining whether to become a customer of a bank or not, in other words this principle has the meaning of trust.

3. Benefits for the Government

In the historical development of banking in Indonesia, the reality shows that the banking industry in Indonesia has received primary attention from the government, and is the industry most regulated by the government. The benefits for the government in regulating banking include :

1. The goal of monetary stability is considering the dominance of banking as a source of investment financing.
2. The supervisory function is to maintain the security and soundness of banks and the financial system as a whole, to create healthy banking practices and competition between banks.
3. The goal of achieving development programs, in particular, is to help overcome economic problems such as high rates of unemployment, poverty or scarcity of sources of investment funds .

Bad Credit Settlement

Rescuing bad credit is a step towards resolving problematic credit through renegotiation between creditors and debtors by providing relief on credit repayment terms. So by providing relief on credit terms, it is hoped that the debtor will have the ability to complete the credit. So in this credit rescue stage, legal institutions have not yet been utilized because the debtor is still cooperative and the business prospects are still feasible. In an effort to overcome the emergence of problem loans, banks can take several rescue actions as follows:

a. Rescheduling

Rescheduling is the bank's first effort to save the credit it provides to debtors. This method is used if it turns out that the debtor (based on research and calculations carried out by the bank's account officer) is unable to fulfill its obligations in terms of repayment of principal installments and credit interest.

b. Reconditioning

Reconditioning is an attempt by the bank to save the credit it provides by changing some or all of the conditions (requirements) that were originally agreed upon with the debtor and stated in the credit agreement. Changes in credit conditions are made by taking into account the problems faced by the debtor in implementing the project or business .

c. Restructuring

Restructuring is an effort to save credit that banks are forced to carry out by changing the composition of the financing that underlies credit provision. Financing for a project or business does not come entirely from its own capital (funds), but is mostly financed with credit obtained from banks. For example, a project is financed with a financing structure, namely a bank loan (debt) of 60% and customer capital (equity) of 40% so that the debt to equity ratio is 60:40.

d. Execution If all rescue efforts as described above have been tried, but the customer is still unable to fulfill his obligations to the bank, then the last resort is for the bank to carry out execution through various methods, including:

1. Submit obligations to BUPN (State Receivables Affairs Agency).
2. Submitting the case to the district court (civil case).
3. Legal consequences if banks do not apply the Prudential Principle

The principle of prudence in banks is the main principle in providing credit in banking. Violation of the precautionary principle is not only dangerous for the bank itself, it is also likely to cause major risks by reducing public confidence in the bank itself and will later have an impact on the national economy. Therefore, it is understandable why the Banking Law includes violations of the prudential principle as violations that are subject to criminal sanctions or what is usually called a banking crime.

In order to increase the smoothness of providing credit at banks, there are principles that must be applied by banks before providing credit to debtors, namely the principle of trust and the principle of prudence. The assessment carried out by the bank is in accordance with the precautionary principle in order to reduce risks that will arise in the future. The embodiment of the implementation of the precautionary principle in the context of providing credit is reflected in the criteria called "The Five C's Principle of Credit Analysis". Applying the precautionary principle by applying the 5C principle analysis in providing credit to debtors really helps the bank to see whether prospective debtors are worthy of receiving credit or not.

Article 1 number 11 of Law Number 10 of 1998 states that credit is given based on an agreement or loan agreement between the bank and another party. The inclusion of the words agreement or loan-borrowing agreement in this definition has the intention of emphasizing that a bank credit relationship is a contractual relationship between a bank and a debtor in the form of lending and borrowing, therefore, for bank credit relationships, Book Three (concerning engagements) applies in in general and Chapter Thirteen (concerning lending and borrowing) of the Civil Code (KUH Perdata) in particular.

In accordance with Law no. 7 of 1992 which has been amended by Law no. 10 of 1998 concerning Banking, when providing credit, banks are required to pay attention to sound credit principles. In Article 8 of Law no. 7 of 1992 which has been amended by Law no. 10 of 1998 concerning Banking stipulates that:

1. In providing credit or financing based on Sharia Principles, Commercial Banks are required to have confidence based on in-depth analysis or good faith and the ability and capability of the debtor to pay off the debt or return the financing in accordance with what was agreed;
2. Commercial Banks are required to have and implement credit guidelines and financing based on Sharia Principles, in accordance with the provisions stipulated by Bank Indonesia.

The principle of prudence in banks is the main principle in providing credit in banking. Violation of the precautionary principle is not only dangerous for the bank itself, it is also likely to cause major risks by reducing public confidence in the bank itself and will later have an impact on the national economy. Therefore, it is understandable why the Banking Law includes violations of the prudential principle as violations that are subject to criminal sanctions or what is usually called a banking crime.

In order to increase the smoothness of granting credit at banks, there are principles that must be applied by banks before providing credit to other debtors, including the following:

1. Principle of trust;

The principle of trust is a principle that underlies the relationship between banks and bank debtors. Banks operate from public funds that are saved based on trust, so every 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 states: "For the benefit of debtors, banks are obliged to provide information regarding the possible risk of loss in connection with debtor transactions carried out through the bank."

2. Precautionary Principle;

The precautionary principle is a principle that emphasizes that banks in carrying out business activities, both in collecting and especially in distributing funds to the public, must be very careful. The aim of implementing this precautionary principle is so that banks are always in a healthy condition, carrying out their business well and complying with the provisions and legal norms that apply in the banking world. The precautionary principle is contained in Article 2 and Article 29 paragraph (2) of Law no. 10 of 1998, as follows :

- a. Article 2 Law no. 10 of 1998 reads: "Indonesian banking in conducting its business is based on economic democracy by using the principle of prudence"
- b. Article 29 paragraph (2) Law no. 10 of 1998 reads: "Banks are obliged to maintain the bank's soundness level in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency and other aspects related to bank business, and are obliged to carry out business activities in accordance with the principle of prudence" .

The assessment carried out by the bank is in accordance with the precautionary principle in order to reduce risks that will arise in the future. The embodiment of the implementation of the precautionary principle in the context of providing credit is reflected in the criteria called "The Five C's Principle of Credit Analysis".

The application of the precautionary principle is very necessary for banks in providing credit to debtors because the bank needs to have an analysis used to provide credit to debtors as a benchmark for whether the debtor is worthy of receiving credit or not. Applying the precautionary principle by applying the 5C principle analysis in providing credit to debtors really helps the bank to see whether prospective debtors are worthy of receiving credit or not.

The stages of providing healthy credit must include planning, namely determining the Target Market (PS) and acceptable risk criteria (KRD) as well as the Annual Marketing Plan (RPT) and risk management through limiting credit expansion. This preparation is carried out towards the end of the year and used at the beginning of the following year. The explanation of

the process for granting credit or financing decisions in relation to the application of the precautionary principle can be clarified based on Law Number 10 of 1998 concerning Banking. In general, the process of providing sound credit/financing decisions is initiative and credit application. Credit analysis and evaluation. Credit disbursement and credit documentation and monitoring. The entire process of granting credit decisions must be guided by the terms and conditions determined by commercial banks and financial institutions that function as intermediary institutions.

Violations of the precautionary principle in granting credit by banks can be seen in cases of violations of the Maximum Lending Limit (BMPK) that occurred in Indonesia during the New Order. Violations of the precautionary principle in granting credit by banks give rise to legal consequences, where the party committing the violation can be given legal sanctions in the form of a criminal sanction of up to IDR 100,000,000,000. As regulated in Article 49 paragraph 2 letter b of Law Number 10 of 1998 concerning Banking. The legal consequences if a bank does not apply the principle of prudence in banking credit, namely: banking crimes or fall into the realm of "state loss", abuse of authority resulting in criminal corruption.

CONCLUSION

Considerations made by banks in providing banking credit, banks must always apply the principle of prudence in order to be able to more be careful And can know customers with 5C method, namely character, collateral, capacity, capital and conditions of economics because to minimize the risk of bank operational business which aims to ensure that the bank is always in a healthy, liquid and solvent condition. The principles used must be in accordance with existing regulations so that they will not cause defects in the world of credit. Losses resulting from credit can worsen the image of a bank. Besides That Wrong One impact is credit become congested And For do solution credit congested there is a number of strategy For rescue credit problematic or credit congested with method scheduling return, requirements return And arrangement return.

Consequence Law if party banking No apply the Prudential Principle in violation principle caution in credit banking Where to the party doing it violation will given penalty law form sanctions criminal nor regulated fines in Law No. 10 of 1998 concerning Banking. Banking crimes occur or fall into the realm of "state loss", abuse of authority resulting in corruption crimes.

REFERENCE

- H. Malayu S.P Hasibuan, *Dasar-Dasar Perbankan*, PT. Bumi Aksara, Jakarta, 2011
- Kasmir, "Banks & Lembaga Keuangan Lainnya", PT. Raja Grafindo Persada, Jakarta, 2002
- Liabrintika Oktaviani Gunawan, *Akibat Hukum Pelanggaran Prinsip Kehati-Hatian Dalam Pemberian Kredit Oleh Bank*, Artikel Hukum Bisnis Fakultas Hukum Universitas Udayana, 2013
- Moch. Anwar, *Tindak Pidana di Bidang Perbankan*, Penerbit Alumni, Bandung, 1986
- Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2001)
- Mulyati E. & Dwiputri F.A. 2018. Prinsip kejati-hatian dalam menganalisis jaminan kebendaan sebagai pengaman perjanjian kredit perbankan. *Jurnal Hukum Kenotariatan dan Ke-PPAT-an*. Vol.2. No.2.
- Sentosa Sembiring, "Arti Penting Jaminan dalam Pemberian Kredit dalam Transaksi Bisnis Perbankan", *Gloria Juris*, Volume 7, nomor 1, Januari-April 2007
- Sentosa Sembiring, *Hukum Perbankan*, edisi revisi, Bandung: Mandar Maju, halaman, 2012
- Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2005.