

Key Factors and Legal Obstacles in Banking Loan Approval

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Abstract. Indonesian banking industry consist of credit loans, funding and services where credit loan itself is a dominant factor for its survivability. More than 70 % of the bank's revenue originated from interests of credit loans or funding which are given to debtors or funding recipients. As a result, the performance of a bank will be in line with the credit loan it possesses which quality is determined by the process of how they are approved. Throughout the entire process, the supervision until the final repayment, the law aspect plays a great role. From the agreement, the on-going credit loan process up to the final repayment are bound by law.

Keywords: banking; credit; key factors; obstacles; credit loan process; agreement

1 Introduction

Nowadays, credit has become a common society option when it comes to making daily transactions. In some cases, the payment in which we purchase something can be turned into several installments spread throughout a certain period of time. A credit is actually a debt or loan since it must be paid in full after a certain period of time.[1] Credit loan services are usually provided by commercial banks or the people's credit bank (BPR) which has potential risk of causing loss to either the bank, the bank customer or the debtor. Therefore, a bank must implement the mandatory principles regarding banking practices such as the trust principle (Fiduciary Principle), the cautious principle (Prudential Principle) and the secrecy principle (Confidential Principle).

Approving credit loans are considered high risk, in the constitution no.7 of 1992 regarding banking which has been changed with the constitution no. 10 of 1998 has yet to specifically regulate the relationship between banks and customers, both saving funds customers and debtors, in its rights and obligations in accordance with bank credit.[2] The credit agreement is drafted by the bank with certain clauses without negotiating them to the debtor which aimed to provide security for the bank since it is required to secure the funds saved by all of its customers.[3] Chapter 1313 of the civil law states that an agreement is an act in which a person or several people bind his or themselves with one or more people. Chapter 1338 of the civil law states that an agreement is an implementation of the free will of contract and must be carried out with good intentions. Chapter 1320 of the civil law states that an agreement is valid when each party agrees on the major items in the contract, the parties agreeing must be the

ones legally authorized and of sound mind, the object of the contract must be clear and the contract agreement must be created with a reason in accordance with the law and not against any legal clauses.[3]

Presently, the number of credit loan applicants supersede the number of available credit provided by the bank. Therefore, it is imperative to provide bank employees and customers with the necessary law knowledge, specifically of civil and commerce law which are closely related with the services provided by the bank.[4] The relationship between bank clients, depositors, checking clients, checking payments, money orders, credit loans are considered an act of law between bank and account holders. With sufficient knowledge in law, the obstacles that occurs in processing credit can be anticipated and the loss from transaction may be avoided.[4] Issues to learn the key factors and obstacles regarding law aspects in banking credit approvals

2 Research Method

The research method used is a juridical-normative law research with approach in regulations which studies the related regulations. In addition, an empiric juridical research will also be used to look into the principles of law.[5] This study will also observe and go over written regulations. Based on the type of study, the law resources used are secondary law materials which will be gathered by means of library research. The approach used will be the regulation as well as comparison approach.

3 Result and Study

According to the constitution no. 10 of 1998 in banking, a credit is the provision of money or claim which can be considered as such, based on approval and agreement of loans between a bank and other party which obligates the loaner to repay the loan in full after a certain period of time with interest.[2] The process of loan approval is based on the principle of cautions to avoid violations, negligence and intentional. Violation mentioned is the act prohibited by regulations though has no direct effect towards other people, negligence meaning the error, lack of caution or miss, which is called culpa, in legal knowledge technically means the fault is less than intent where there has been a lack of caution resulting in an unintentional effect and can be sanctioned criminally and administratively according to chapter 48 of the banking regulations, intentional as in wanting and knowing (*willen en wetens*) of the action and/or the consequences which can be sanctioned criminally and administratively according to chapter 47 verse (2), Chapter 47A, Chapter 48 and Chapter 49 of the banking regulations.[6] The corruption regulations also mention the provision of criminal and administrative sanctions of the actions against the law to enrich oneself or others or a corporation which caused a loss for the government or government economy. In credit approval, it is important to understand the credit loan aspects such as trust, period of time, payback capability and other agreements as follows :[6]

- a. Trust, which is the assurance that the loan that will be given will be returned within a certain period of time in the future. The relationship between the bank and the debtor is not only contractual but also trust mandatory (*fiduary obligations*)

- b. The length of time for the credit loan and the period of time for its payback where the monetary value when the loan was given (agio value) is higher than the value when it is returned in the future.
- c. The capability to pay in the form of money or bills and if in the form of product purchase then it is the result of that purchase.
- d. The deal, placed in an agreement where each party signed their rights and obligations.

The subjects need to be taken into consideration during the process of credit loan approval are: Agreement or mutual approval, the parties involved, the provision of money/claim, loan, repayment and interest as well as time period. The process typically begins with application, analyzation, decision, legal documents, loan disbursement, supervision up to recovery or remedial. Those process must be in accordance with prudential banking and compliance culture principle such as:[7]

- 1. Application, every applicant must be made in writing and supported with preliminary data and subject to early verification.
- 2. Analyzation, is a follow-up verification (5C) with regards to data originality and accuracy. It is also compulsory to pay close attention to the source of the data, legality, debtor character, management skills, object, location, type of business and other things.
- 3. Decision, by considering the risk mitigation and applicability (terms of disposition, affirmative and negative covenant, second way out) the decision is made with assurance of the entire aspects.
- 4. Documents credit, resulted in a credit agreement with binding of collateral and insurance.
- 5. Loan disbursement, conducted by assuring that the disposition is in accordance with the terms of disposition.
- 6. Monitoring, is done to ensure the use of credit has been done according to the intent and purpose of the credit and that all party has conducted the rights and responsibilities mentioned in the credit agreement.
- 7. Remedial/Recovery, by means of credit quality observation, minimalizing possible difficulty for debtors to repay the credit as well as recovery optimization.

In the process of credit loan approval surely there are obstacles from the law aspects that need to be knows, such as:

- 1. Application and credit analyzation
 - a. The debtor claims to never has applied for a loan and no document regarding loan application has been found.
 - b. Verification on the debtor has not been successfully conducted
 - c. Verification and financial capability analyzation has not been done
 - d. There has been a fabrication of documents used to fulfill the credit application.
 - e. The repayment capacity of the debtor has not been done carefully.
 - f. The amount of loan given exceeded the need of the debtor.
 - g. The debtor felt never have signed a credit agreement.
 - h. The credit agreement fails to include a few items in the terms and conditions list.
- 2. The signing of the agreement and the collateral binding process[8]
 - a. The collateral verification has not been done according to the regulations
 - b. The collateral is not marketable
 - c. The collateral binding is not done by the owner of the collateral
 - d. The collateral received is under dispute of ownership
 - e. The collateral is in the form of deposit sourced from another credit loan, not from self-financing of the debtor
- 3. The process of credit disbursement

- a. Documents of the disbursement cannot be found
 - b. Requirements for the disbursement has not been fulfilled but the loan has been disbursed.
 - c. The disbursement is not done according to the correct stages.
 - d. The disbursement is not given the rightful party
4. The monitoring of the credit[9]
- a. The bank has not been notified of a change in the article of association in the company
 - b. The business permit of the debtor has overdue.
 - c. A monitoring has never been conducted.
 - d. Fail in noticing the due date for the land certificate used as collateral.

4 Conclusion

Based on the study, approach and analysis above, can be concluded that:

1. The few key process in credit approvals are analyzing and verifying credit on the debtor by following the internal and external regulations, carefully observe every document, check and recheck. Comply to every requirement regarding credit disposition from the credit approval officer, monitor the making of legal documents used in the collateral binding.
2. The law aspects obstacles in the credit approval are:
 - a. Debtor entity factor: (1)The company is represented by a party who has no authority to act on behalf of the company; (2) Debtor never applied for a loan to the bank (fictive debtor); (3) The credit disbursed is a personal obligation and not a company obligation (there is a dispute in the company); (4) The agreement has not been done legally by a notary
 - b. Collateral factor: (1) The auction has not been done properly (the announcing and determination value is not as regulated, the value is less than normal market value); (2) The collateral is provided by an unauthorized party (a member of the company with no legal standing or acting without consent); (3) The collateral is part of a disputed inheritance; (4) The transfer of right over the collateral from the previous owner to debtor has not been legalized
 - c. Other factors[10]: (1) Bad credit due to force majeure (monetary crisis or changes in government regulations); (2) Outstanding credit value from the bank differ from the expected value of debtor; (3) Bad credit due to unapproved insurance claims applied by the debtor; (4) No restructuration was done prior to the collateral auction.

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