THE LEGAL OBLIGATION OF BANK IN IMPLEMENTING PRUDENTIAL PRINCIPLES THROUGH CREDIT ANALYSIS

Putu Eka Trisna Dewi[1]

ABSTRACT

A bank has a function to distribute credit to the public. Such credit may be granted for both production and consumption needs. In lending to the public, banks are faced with credit risks whereby, it is possible that the debtor does not perform the payments as should be done in accordance with the credit contract. This negligence of payments can increase the high number of non-performing loans. This condition can certainly disrupt the financial condition of the bank and the stability of the national economy. This research will discuss on two issues namely default as the beginning of the cause of non-performing loans loans and credit analysis as a policy to avoid default risk. This research is a research in the field of banking law that examines the legal aspects in the obligation of credit analysis based on the principles of banking law. Default is a condition in which either party does not perform the obligations to the other party. Default made by the debtor may be in the form of not making payments, being late in making payments or not making payment properly to the bank. The condition will become the beginning of non-performing loans. To avoid non-performing loans, the bank must implement prudential principles from the beginning. The principle can be done through a credit analysis policy conducted by the bank to determine whether a person or company is eligible or not to be given the credit.

KEYWORDS: bank, prudential principles, credit analysis.

I. Introduction

In general, the main function of a bank is as a financial intermediary, namely to collect funds from the community and channel back to the community for various purposes. Banks, as other financial intermediaries, play a pivotal role in the economy, channelling funds from units in surplus to units in deficit. They reconcile the different needs of borrowers and lenders by transforming small-size, low-risk and highly liquid deposits into loans which are of larger size, higher risk and illiquid (transformation function).[2] More specifically, banks can serve as agents of trust (the institution whose foundation is trust), agents of development (institutions that mobilize funds for economic development), and agents of services (institutions that offer banking services).[3]

The bank as an institution that strengthens the financial system of a country has an obligation to build the economy of the community through lending. Distribution of funds to the community is done in the form of credit, either in the form of working capital loans or investment loans. In addition to the mobilization of funds to the public, credit is also the main activity of commercial banks for two reasons, namely as follows:

1. Credit interest is the main sources of income;
2. In the lending activities, the source of funds from the credit comes primarily from funds mobilized by the bank from the community in the form of savings. Bank credit is an institution whose role is very strategic for economic development and for the development of the business of the bank itself as well as terms with various arrangements (having juridical aspect).[4]

The globalization of the financial economy has created a variety of problems for regulators; they have traditionally been charged with ensuring that financial markets are safe and sound, as reliable and responsible repositories of the money of the nation's citizens.[5] Although lending activities are a very basic banking activity and loan interest is the main source of bank income for banks, however, these lending activities have a huge risk and a significant impact on the viability of the bank if the credit is disbursed is not appropriate. In order to provide credit can be implemented consistently and based on credit principle, each bank is required to make a written credit policy that can be used as a guideline in giving daily credit. Banks are required to implement bank prudential principles in providing credit to prospective borrowers.

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[1] The author is a lecturer at Faculty of Law, Ngurah Rai University and also a PhD Law student at Doctoral Program Udayana University, Denpasar, Bali, Indonesia.

[2] Richard A. Werner, "A lost century in economics: Three theories of banking and the conclusive evidence", *International Review of Financial Analysis* No. 46, 2016, p. 363.

[3] Sigit Traindaru dan Totok Budisantoso, *Bank dan Lembaga Keuangan Lain*, Jakarta: Salemba Empat, 2007, p. 8.

[4] Sutan Remy Syahdaeni, *Perbankan Islam dan Kedudukannya Dalam Tata Hukum Perbankan Indonesia*, Jakarta: Pustaka Utama Grafiti, 2014, p. 2

[5] David Zaring, 2012, "Finding Legal Principle in Global Financial Regulation", Vol. 52, p. 689.

Banker becomes creditor of the customer who has taken a loan from the banker and continues in that capacity till the loan is repaid. As the loans and advances granted by a banker are usually secured by the tangible assets of the borrower, the banker becomes a secured creditor of his customer.[6] Banks are required to assess personal data and assets of prospective borrowers. In the examination, the bank also has an obligation to safeguard customer information. The bank's duty of confidentiality covers all customers' information about themselves and their accounts obtained by the bank, irrespective of the information source and for as long as the banker-customer relationship exists.[7]

In the process of granting credit, banks are required to check the collateral documents submitted by prospective borrowers. Customers in this case easily provide fictitious data, so it is possible that the credit given is not feasible. Then, if it is wrong in analyzing, the feasible credit can be considered feasible. As a result, it will be difficult for banks to receive payments that should be made by the debtor every month. Debtors who violate credit agreements are called defaulters. Default means not fulfilling something required as defined in the engagement.[8]

In ensuring the credibility of the prospective debtor, the bank is required to apply the prudential principles of the bank. The prudent banking principle is a principle or principle which states that the bank in performing its functions and business activities must be prudent in order to protect the public funds entrusted to it.[9] In implementing this prudential principle, it is important for banks to conduct credit analysis first.

Giving credit without being analyzed in advance will be very dangerous to the bank. Credit analysis is an activity to check all information from a loan application of a debtor candidate in order to obtain certainty that if the credit is given, the debtor is willing and able to repay according to agreement.[10] If many debtors do not perform payment obligations or in this case default, of course it will give a serious impact that is the crisis on the credit sector which is shown by the ratio of non-performaning loan (NPL) to the bank.

Non-performing loans are a fact of life for banks, as people losing their jobs and companies running into financial trouble are common occurrences. To be successful in the long run, a bank needs to keep the level of bad loans at a minimum so that it can still earn a profit from giving out loans. Once the value of non-performing loans exceeds a certain level, the bank's profitability suffers because it earns less money from its credit business. Banks need to put money aside, i.e. make a provision, as a safety net in case they need to write down or write off the loan at some point in time. Both the drop in income and the money set aside for the worst-case scenario result in the bank having less money available to provide new loans, further reducing its profits. A bank with too much bad debt cannot properly provide companies with the credit they need to invest and create jobs. If this happens to many banks on a large scale, it affects the economy as a whole and therefore individual members of society. Reduced investment by companies and a lower number of newly created jobs lead to less growth.[11] Therefore, banks have legal obligations in conducting credit analysis.

II. Researh Question

Based on the background of problems that have been described earlier, then the issues to be discussed in this study are 1) what is the beginning of the problem of default risk and 2) what is credit analysis as a policy to avoid default risk?

III. Research Method

This research is a research in the field of banking law that examines the legal aspects in the obligation of credit analysis based on the principles of banking law. Sources of data derived from primary legal materials namely the rules related to civil law and banking laws and secondary legal materials such as books, journals and electronic articles. Legal material is collected through literature study. The analysis is done qualitatively. The result of the research is the description of the beginning of the cause of default risk and credit analysis as a policy to avoid default risk.

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[6] The Institute of Company Secretaries of India, *Banking Law And Practice*, The Institute of Company Secretaries of India, New Delhi, 2014, p. 61.

[7] **Samahir Abdulah, "The Bank's Duty of Confidentiality, Disclosure Versus Credit Reference Agencies; Further Steps for Consumer Protection: 'Approval Model', *European Journal of Current Legal Issues,* Vol 19, No 4, 2013.**

[8] Non-fulfillment of obligations by the debtor is caused by two possible reasons, that is because:

a. Debtor's mistake, whether intentionally not fulfilled by obligation or due to negligence.
b. Because of circumstances to force (*overmacht*), force majeur, so outside the ability of the debtor. The debtor is innocent.

See: Abdul Kadir Muhammad, 2000, *Hukum Perdata Indonesia*, Citra Aditya Bakti, Bandung, p. 203

[9] Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia,* Jakarta: PT. Gramedia Pustaka Utama, 2001, p.18

[10] Modul Diklat Penaksir Muda, *Dasar-Dasar Analisa Kredit*, Surabaya: Perusahaan Umum Pegadaian Divisi Pendidikan dan Pelatihan, Balai Diklat Surabaya, 2011, p. 5

[11] European Central Bank, "Banking Supervision", https://www.bankingsupervision.europa.eu/about/ssmexplained/html/npl.en.html

IV. Literature Review

Bank is defined as a financial institution whose business activities are collecting funds from the community and channeling the funds back into the community as well as providing other services.[12] Fockema Andrea stated that the bank is "an agency or individual person who runs the company in receiving and giving money from and to third parties. Due to a check that can only be given to bankers, the bank in the broad sense is a person or institution that in its work regularly provides money for third parties.” [13] As an intermediary institution, the bank has a traditional function of channeling funds to the community through lending.

Credit comes from the word "creditus" which means trust, is a past principle form of the word credere which means "to trust".[14] In Latin, credit is called "credere" which means to believe. That is, the lender believes to the recipient of the credit that the credit to be distributed will be refunded in accordance with the agreement whereas for the recipient credit means receiving the trust, so that the recipient of the loan has an obligation to repay the loan in accordance with the period. [15] The main element of the credit is trust. Trust implies that the party giving the credit (creditor) believes that the recipient of credit (debtor) will be able to fulfill everything that has been agreed. [16]

In providing credit to customers, the bank must implement the principles of prudence. The principle of prudence (prudential banking principle) is a principle which states that the bank in carrying out its functions and efforts must be prudent in order to protect the public funds entrusted to him. This principle asserts that banks in carrying out business activities both in collecting especially in channeling to the public must be very careful. The purpose of this prudential banking principle is to ensure that the bank is always in good health to run its business well and to comply with the prevailing legal provisions and norms in the banking world.

V. Result and Discussion

A. Default as Cause of Non-Performing Loan (NPL)

Credit quality determination is done by analyzing the appraisal factors (business prospects, debtor performance, and ability to pay) by considering the other components. The determination of credit quality is done by considering the significance and materiality of each assessment factor and the components and relevance of the appraisal factors and components as well as the relevance of the valuation factors and components to the borrower concerned. Based on the assessment, credit quality is differentiated into smooth, special attention, substandard, doubtful and loss.[17] From these five types of assessment, it can be classified as non-performing loans that are with current and special credit quality, whereas nonperforming loans are poor quality of credit, doubtful and loss.

Non-performing loans are marked by the fulfillment of the obligations of the debtor to the creditor. Such obligation in the law of the treaty shall be construed as the exercise of the matters written in a treaty by the parties which have bind themselves to it, which execution shall be in accordance with the term and condition as mentioned in the agreement concerned.[18] Article 1234 Civil Code of Indonesia determines that what is meant by achievement is someone who surrenders something, does not do something. Achievements of the engagement must be eligible:

a. It should be permitted, meaning that the achievement does not violate the order, morals, and laws.
b. Must be specific or can be determined.
c. It should be possible to do according to human ability.[19]

The debtor's liability to the creditor in the form of installment payment with the payment, the payment time and the credit repayment period as set forth in the credit agreement previously made by the parties.

Speaking of legal obligations, it is necessary to know the rights and obligations of the parties as stipulated in the credit agreement. The creditor generally has an obligation to provide credit facilities and appropriate information to the debtor's customers and has the rights to receive payments consisting of accumulated principal installment, interest or penalty if past the due date. The customer as the debtor shall make the minimum payment (depending on the type chosen) and submit the guarantee to the creditor. Collateral might also play a role in fueling credit cycles. Collateral, as risk premium, can be thought to

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[12] Kasmir, *Dasar-Dasar Perbankan*, Jakarta: PT. Raja Grafindo Persada, 2002, p. 2.

[13] Hermansyah, *Hukum Perbankan Nasional Indonesia, edisi revisi,* Jakarta: Kencana, 2008, p. 8.

[14] Munir Fuady, *Hukum Perkreditan Kontemporer*, Bandung: Citra Aditya Bhakti, 1996, p. 5.

[15] Kasmir, *op.cit.*, p. 101

[16] Muhamad Djumhana, *Hukum Perbankan di Indonesia*, Bandung: Citra Aditya Bhakti, 2000, p. 217

[17] Badriyah Harun, *Penyelesaian Sengketa Kredit Bermasalah*, Jakarta: PT. Suka Buku, 2010, p. 114.

[18] Munir Fuady, *Hukum Kontrak dari Sudut Pandang Hukum Bisnis,* Bandung: PT.Citra Aditya Bakti, 2001, p. 87.

[19] Handri Raharjo, *Hukum Perjanjian di Indonesia*, Yogyakarta: Pustaka Yustisia, 2009, p. 79.

be a signal of the degree of tightening of individual bank loan policies.[20] Instead, the customer has the rights to obtain appropriate credit facilities and information about the credit facility it receives, such as payment method, billing sheet and others.

Non-performing loans occur if the parties do not perform their obligations consisting of substandard, doubtful and loss of credit quality. Bad credit can be regarded as problem loans that require a specific settlement. Bad credit can be caused by internal or external factors. Internal factors causing bad credit are expansionary credit policy, irregularities in the implementation of credit procedures, bad faith of owners, managers and employees of the bank, and the weakness of credit information information system. External factors causing non-performing loans are debtor business failures, unfavorable business climate competition by banks, and declining economic activity and high lending rates.[21] Budi Untung argues that although banks are strictly well regulated sectors, but non-performing loans can still occur:[22]

a. Appraisal error
b. Financing projects from owner / affiliated
c. Funding a project recommended by a particular force
d. The impact of macroeconomic / unforecasted variables
e. Customer fraud

According to Krisna Wijaya, from the experience in case of bad credit in a bank, the causes are only two, error ommission and error commission. Error omission is the incidence of bad credit caused by the element of human intent to violate the policies and procedures established, while the error commission is the incidence of bad debts because it utilizes the weakness of rules or provisions that do not exist or already exist, but not clear.[23] Thus, the bad debts can be caused due to the debtor's economic condition is decreased or because of intentions of the debtor to not perform his achievement.

Implementation of the legal obligations by the debtor to the creditor in the form of payment of liabilities on credit given by the creditor (bank) will cause the payment of the credit runs smoothly and in special attention. On the other hand, in case of default, it causes the problem loans, especially bad credit. Default (non-fulfillment or so-called breach of contract) is the non-performing of the obligations as may be imposed by the contract on certain parties as mentioned in the contract concerned.[24] This default action can occur because of:

1. Deliberate.
2. Negligence.
3. Without error (without deliberate or negligent).

In the execution of the agreement, there may be a default that does not fulfill the obligations set out in the agreement. Default is a condition that shows the debtor does not perform (not performing his duty) and he can be blamed.[25] Default is one of the reasons that the contract runs to a halt. In normal situations between achievement and obligation will be exchanged, but under certain conditions the exchange of achievement does not work properly so that emerged events called default. Therefore, what is meant by default is one or more parties do not carry out their achievement in accordance with the agreed agreement.[26]

In general, types of default can be in the form of not achieving, late performing or performing but not as it should be. The category of non peforming loans in the bank, one of which is due to default from the debtor. The existence of default is an indicator of non-performing loans. A credit is said to be problematic if there is a late payment from an agreed installment schedule, or a lack of funds to make payments (especially if payments are made on the autodebet system) and not pay at all. Legal consequences due to default can be prosecuted if it can be determined whether the debtor is defaulted and since when the default has done.

In the practice of law in society, determining since when a debtor becomes default sometimes is not always easy. In general, default occurs after there is a negligent statement from the injured party. In the early stages, the bank usually sends a warning or a reprimand letter to the debtor to re-meet the achievements that have been promised. In the letter of reprimand, the bank sets a

[20] Gabriel Jim´enez and Jes´us Saurina, "Credit Cycles, Credit Risk, and Prudential Regulation*", International Journal of Central Banking* Vol. 2 No. 2 June 2006, h. 68.

[21] Iswi Hariyani, *Restrukturisasi dan Penghapusan Kredit Macet; Kenapa Perbankan Memanjakan Debitur Besar sedangkan Usaha/ Debitur Kecil Dipaksa,* Jakarta: Gramedia, 2010, p. 38.

[22] H. Budi Untung, *Kredit Perbankan di Indonesia,* Yogyakarta: Andi Offset, 2000, p. 121.

[23] Krisna Wijaya, *Analisis Kebijakan Perbankan Nasional,* Jakarta: Kompas Gramedia, 2010, p. 206.

[24] *Ibid*

[25] *Ibid.*

[26] Munir Fuady, *Hukum Kontrak dari Sudut Pandang Hukum Bisnis*, Bandung: PT.Citra Aditya Bakti, 2001, _p .87.

time limit to the debtor to fulfill the promise of achievement. If the time limit is passed, the debtor can already be categorized as default. Determining the debtor as a party that has defaulted may result in further legal consequences.[27]

The law has actually provided a solution in determining the occurrence of broken promises / default, i.e. with the institution of "ingesting" (ingebrekesstelling). Failure to neglect is a creditor's message to the debtor, with which the creditor notifies at the time when at the latest he or she wishes to fulfill the achievement.[28] Since then, the debtor must bear the adverse consequences caused by the unfulfilled achievement. So negligent determination is a requirement to determine the occurrence of broken promises.[29] Thus the determination of this negligence to be a guide in determining the determination of the occurrence of default.

Default debtor brings legal consequences in the form of a creditor's rights as an aggrieved party to sue the debtor who performs a default to provide compensation payments. The consequences of the law are regulated in Article 1243-Article 1252 of the Civil Code. Article 1236 of the Civil Code states that "The debtor is obliged to compensate, interest, to the debtor, if he has brought himself in a state of incapacity to surrender his material, or has not taken full care to save it. In Article 1239 the Civil Code determines that when one party makes a default, the other party may claim to provide compensation in the form of cost, loss and interest. The legal basis of the consequences of default can be seen from Article 1243 of the Civil Code which states that:

> Reimbursement of expenses, losses and interest due to non-compliance of an engagement shall then be obligated, if the debtor, having been declared inattentive to his or her engagement, shall remain neglectful, or if something that has to be provided or created may only be given or made within the timeframe he has incurred.

In the event of default, then, the injured party in this case is the bank as a creditor can uphold its rights as regulated in Article 1267 Civil Code. Article 1267 of the Civil Code states that "the Party to which the engagement is not met, may elect, force the other party to fulfill the Agreement, if it can still be done or demand the cancellation of the consent, with reimbursement of costs, damages and interest." The default will be result in sanctions in the form of indemnification, contract cancellation, transfer of risk, or paying a court fee.[30]

In the credit agreement is always set about the conditions of default done by the debtor. The legal consequences of a debtor's default are the imposition of a fine to the auction of the collateral. If the debtor does not make a payment, the main action taken by the bank is to provide a warning to the debtor to perform its obligations and conduct a search on the debtor regarding the reason for not making payment. Negotiations are the first thing to do before bringing the matter to justice.

Default is any unlawful act that brings harm to another person. Therefore, as provided for in Article 1365, the Civil Code obligates the person who due to the wrong to issue the loss, to compensate for such loss. Default from debtors in carrying out payments will cause loan problems and these problems will have an impact for many parties. Large volumes of bad loans can have unfavorable impacts on lenders, the banking world in general, and also on the economic and monetary life of a country.[31] The impact is then detailed by Badriyah Harun as follows:

> For the lender banks will make decreases in bank profits that can affect the health and feasibility of banks to operate. It also affects the turnover of bank funds in the community. Fresh funds that should spin in the community will be stalled as people do not get the funds available. The direct impact is that the public can not get fresh fund; therefore, all business activities of people who need banking funds will be stopped. Thus, business paralysis causes the unemployment and poverty rates to increase.[32]

Default creates losses for the opponent. Therefore, the defaulting party shall bear the losses resulting from the demands of the counterparty which may be a claim of contract cancellation (accompanied or not accompanied by indemnification) and contract fulfillment (accompanied or not accompanied by indemnification).[33] The occurrence of default is not solely due to bad faith from customers. The customers are often stuck with standard agreements from creditors who make debtors who basically need funds to receive it. The debtor is not even given the opportunity to read the credit agreement and asked to sign an agreement immediately.

B. Credit Analysis as A Policy to Avoid Default Risk

The banking institution is a financial institution that bridges between the party with excessive funds and parties who need funds, or an institution that acts as a financial intermediary society (financial intermediary). The nature of banking institutions in

[27] Iswi Hariyani, *op.cit.*, p. 29.

[28] Munir Faudy, o*p cit*, p. 88-89.

[29] Setiawan, *Pokok-Pokok Perikatan*, Bandung:Binacipta, 2009, p. 19.

[30] Abdul R.Saliman, *Hukum Bisnis Untuk Perusahaan: Teori dan Contoh Kasus,* Jakarta: Kencana Prenada Media Group, 2010, p. 50

[31] Siswanto Sutojo, *Menangani Kredit Bermasalah,* Jakarta: Damar Mulia Pustaka, 2008, p. 25.

[32] Badriyah Harun, *op.cit.,* p. 117.

[33] Ahmadi Miru, *Hukum Kontrak & Perancangan Kontrak*, Jakarta: RajaGrafindo Persada, 2007, p. 75.

Indonesia generally has the same characteristics with the nature of banking institutions that exist around the world, namely that banking institutions have properties as conveyed by banking legal experts, as follows:[34]

a. Banking institutions are the institutions that drive the wheels of the modern economy and become a determinant of the level of economic stability of a State because if the banking institutions are not going well, the economy becomes inefficient, and the expected economic growth will not be achieved. Conditions such as it would seem that monetary policy to achieve and maintain monetary stability or macroeconomic managers for economic growth and the provision of employment opportunities may not proceed sustainably in the absence of sound banking.
b. Banking institutions are institutions that rely on public trust so it is known about the bank secrecy. Consequently, if the community no longer trusts a bank, the bank will be vulnerable to a mass raid that attracts large amount of funds (bank runs) to the detriment of bank depositors and creditors. Furthermore, the impact is not only that the bank will collapse, but also it even will spread to other banks quickly.

The above two traits are a common characteristic of a banking institution and the peculiarities of the nature of banking institutions in Indonesia that are stipulated in the regulation, which must act as agents of development.

In relation to the provision of credit, in addition to being one of the objectives of the banking sector, the provision of credit is one of the classic banking services. It is therefore not surprising that some argue that the bank is a place to borrow money. In addition, crediting is a very basic and very conventional activity of banking. Credit shall be the delivery of goods, services or debt from one party (creditor or lender) on a trust basis to another party (the debtor or borrower or debtor) with the promise to pay from the debtor to the creditor on the date agreed by both parties. Credit is the provision of money or claims that may be equalized, on the basis of a loan agreement or agreement between the bank / creditor and another party requiring the borrower to repay the debt after the period in exchange for a share or profit sharing.[35]

Determination of credit quality is very important in order to manage credit risk. The decision to channel credit to various business sectors does not always happen as expected, as there are various forms of risk that will be experienced there both long-term risks and short-term risks. The understanding of both is as follows:

a) Short term risk is the risk caused by the inability of a company that meets and settles its short term obligations, especially liquidity obligations.
b) Long term risk is the inability of a company to settle its long-term obligations, such as failure to settle long-term corporate debt and also the ability to complete the project thoroughly.[36]

Credit analysis is the main door in determining lending by creditors to debtors. According to Sutan Remy Syahdaeni, bank lending is conducted through four stages. These stages include the credit analysis phase of the granting of the grant, the stage of credit agreement, the credit monitoring stage and the rescue and credit collection / collection stage.[37] This step by step should be done in accordance with banking procedures. In general, the stages and doors that customers have to go through in private banks are easier than government banks.

Judging from the legal relationship between lender and debtor (borrower), there are three ways for a debtor to obtain credit for business purposes from a lending institution. The first way, the debtor obtains credit from only one lending institution for all of his credit needs. The second way, the debtor receives credit from several lending institutions separately in order to obtain all the amount of credit needs and third with syndicated credit.[38]

Credit analysis is an implementation of prudential principles in the banking business. The principle of caution must be implemented from the beginning of credit application to avoid default risk. Default risk represents the risk of default against a number of credit loans that have been borrowed in a timely manner. The problem of default risk is often experienced by the debtor when the debtor is unable to repay the loan in a timely manner caused by several things, such as:

a. Unstable macroeconomic conditions. For example the monetary crisis of 1997/1998, morgage subrime crisis in the United States, the conditions of war in a country that affect the country in the region and others.
b. The occurrence of massive corruption caused by the decline in corporate value in the public eye.
c. Coups that occurred in the country concerned.
d. The uproar that occurs in the company both at the level of directors and managers as well as employees who widespread on the cessation of products and the effect on the decline in company sales.[39]

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[34] Muhamad Djumhana, *Asas-Asas Hukum Perbankan Indonesia*, Bandung: Citra Aditya Bhakti, 2008, p. 15

[35] Bendi Linggau dan Hamidah, *Bisnis Kredit Mikro; Panduan Praktis Bankir Mikro dan Mahasiswa,* Jakarta: Papas Sinar Sinanti, 2010, p. 19.

[36] Irham Fahmi dan Yovi Lavianti Hadi, *Pengantar Manajemen Perkreditan,* Bandung: Alfabeta, 2010, p. 80.

[37] Neni Sri Imaniyati, *Pengantar Hukum Perbankan Indonesia*, Bandung: Refika Aditama, 2010, p. 148.

[38] Sutan Remy Sjahdeini, *Kredit Sindikasi, Proses, Teknik Pemberian dan Aspek Hukumnya,* Jakarta: Pustaka Utama Grafiti, 2008, p. 1-2.

[39] Irham Fahmi dan Yovi Lavianti Hadi, *op.cit.,* p. 83.

The condition of the occurrence of default risk has led to the emergence of problems both in the debtor and creditors. So to avoid the emergence of this default risk, there are several actions that must be done, those are:

1. Raise the guarantee amount to a truly safe level (for creditor).
2. Avoid guarantees that have a level of risk, so by accepting the object as a guarantee will actually cause the company will have trouble in the future.
3. Avoid collateral items that have fluctuation value in the market.[40]

In the a part where creditors make policy by increasing the number of guarantees, it has been a lot of research conducted by many parties who provide proof of this. As Utoro and Perry Warjiyo have pointed out, the consequences of fluctuations in asset values, credit with large collateral value will result in a low default risk, and vice versa for unsupported loans with collateral will face a higher default risk. Bank as a creditor trying to avoid the emergence of bad debts (bad debt), because the smaller the bad debt the more smoothly cash flow comes from credit into the banking. Vice versa for the borrower as the borrower, the better and the right time he returns the loan the better the reputation in the eyes of the banking.[41] Some standardisation in appraisal practices across this collateral class can also help cut the costs of resolving these loans. In this way, collateral not only fulfils its traditional function of reducing loan losses, but it can also help to support a market for NPLs once loan resolution becomes necessary.[42]

In the provision of credit to the public, the bank has a risk of non-performing loans, especially bad loans. In facing this risk, Bank Indonesia shall issue a policy on restructuring. Restructuring can be done with or without rescheduling and / or reconditioning. Loan restructuring is in principle the granting of lighter or lighter terms compared to the terms of payment prior to the existence of special concessions granted by the creditor to the debtor as the implementation of a technical policy regulation.

In order to minimize potential losses due to troubled debtors, the bank may restructure its loans to debtors experiencing difficulties in principal and / or interest payments as long as the borrower still has a good business prospect and is considered capable of fulfilling its obligations after the credit is restructured. Such credit restructuring is carried out in accordance with prudential principles and applicable Financial Accounting Standards.

In the restructuring policy of non-performing loans as mandated by Bank Indonesia, the result of such default creates a right for the creditor (bank) to file a loan fulfillment request against the debtor who can not afford to pay by giving the debtor a decrease of the credit interest rate, extension of the credit term, loan interest arrears, deductions, arrears arising from loans, additional credit facilities; and / or credit conversion into temporary equity. Normative restructuring policies are only granted to debtors who have difficulty fulfilling their obligations not to debtors who intentionally do not pay due to bad faith. Article 1244 of the Civil Code is regulated as follows:

> "If there is a reason for it, the debtor should be punished with the cost, the loss and the interest, if he can not prove that it is not executed or not at the exact time of the implementation of the agreement, it can not be accounted for him, all of which if bad faith does not exist his side."

Restructuring is a step that should be done jointly by the creditor and debtor in case of non-performing loan. But not all problem loans can be restructured. The bank may only perform the debt restructuring of debtors who meet the following criteria:

a. the debtor has difficulty in payment of principal and / or interest on credit; and
b. the debtor still has a good business prospect and is considered capable of fulfilling the obligations after the credit is restructured.

Credit restructuring can be done on productive loans and consumer loans. Basically, a restructuring can be made against any non-performing loans regardless of whether the debtor is a large entrepreneur or a small entrepreneur. Restructuring can be done as long as it can be proven that the debtor does indeed experience a decrease in the ability to pay and still be able to pay, not because of bad faith. The bank may restructure its loans to debtors who still have business prospects and ability to pay with due regard to prudential principles and applicable financial accounting standards to minimize potential losses from provision of funds.

Credit restructuring policy is useful to guarantee sound bank. Banks are required to apply accounting treatment credit restructuring in accordance with applicable financial accounting standards. The accounting treatment for credit restructuring, among others, is applied to the recognition of losses incurred and the recognition of interest income and other receipts. In order to apply prudential principles, the fulfillment of principal and / or interest installment obligations affects gradually improving credit quality on restructured loans.

Higher nonperforming loans should be anticipated by reserving credit risk. The credit risk has been the most important management issue to banks. The quality of credit risk management, good or bad, matters a lot to banks which absorb the financial risks in exchange of benefits as their essence of business. The credit risk is like as follows: the borrower or the business

[40] *Ibid.*, p. 83-84.

[41] Irham Fahmi dan Yovi Lavianti Hadi, *op.cit.*, p. 83-84.

[42] Patrizia Baudino and Hyuncheol Yun, *Resolution of non- performing loans – policy options*, Bank for International Settlements, 2017, p. 7.

counterparties are unable to fulfill the duty of their contracts out of the deterioration and other factors from the entrepreneurs (such as entanglement between firms); therefore this causes the risk of agreement violation and the loss of money.[43]

According to A.P. Faure in his book entitled Banking: An Introduction states that "credit risk is the risk that the borrower from a bank will default on the loan and/or the interest payable."[44] Credit risk for derivative transactions is the market value of all agreements / contracts that promise unrealized gain but potentially could be a loss to the Bank if the counterpart is defaulted. Credit risk determination is an effort to anticipate the bank for losses caused by non-performing loans, even in current credit, the credit risk still exists.

III. Conclussion

Theoretically, banking activities in the provision of credit should be done with the principle of prudential bankig to prevent default risk in the future. Non-performing loans occur when the debtor makes a default that is not fulfilling obligations in making payments, late making payments or making payments but not as it should. This payment failure becomes the beginning of non-performing loans. Default may occur because the debtor is unable or unwilling to make payments. The high number of non-performing loans will affect the financial condition of banks, and can affect the economic condition of a country. To prevent this, banks are required to implement prudential banking principles through credit analysis. Credit analysis includes an analysis of the financial ability of prospective borrowers to make payments, behaviors and characters of prospective borrowers, and assessment of assets used as debt guarantee.

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Putu Eka Trisna Dewi
Faculty of Law, Ngurah Rai University,
Jalan Kampus Universitas Ngurah Rai Denpasar, Bali, Indonesia.
escampur.melon@gmail.com