

## PROTECTION OF CREDITORS FOR THE RIGHT TO PAY IN UNSECURED CREDIT AGREEMENTS DURING THE COVID-19 PANDEMIC

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### ABSTRACT

*Development is a process towards progress and improvement towards the desired goal. The increase in national development is focused on the field of economy, which is a potential need foreconomists to become a real force. During the Covid-19 pandemic, economic development became inevitability, in addition to public health and safety. One alternative funding that can be used in development is through banking. The role banking in financing is to raise funds from the community, then channel back to the community in the form of lending, in order to go in a more productive direction. The provision of safe credit for creditors is the provision of credit that uses collateral orcollateral. Unsecured credit or unsecured credit is one of the products banking in the form of lending facilities without an asset that is used as collateral for the loan. The issues raised in this study are how the implementation of credit with unsecured credit agreements, knowlegal considerations in providing unsecured credit and how legal protection for creditors on the right to pay if the debtor defaults. The method used in this study is normative juridical by using primary data as supporting data. The analysis used qualitative normative. The result of the study that in the provision of unsecured credit must apply the principle of prudence, legal considerations based on existing regulations and legal protection for creditors, both preventive and repressive to defaults imposed by the debtor. Both creditors and debtors must be in good faith, at the time of making an unsecured credit agreement. To provide policy stimulus for KUR recipients affected by the Covid-19 pandemic is regulated by ministerial regulations with certain criteria in accordance with Regulation of the Minister of Economy No. 6 of 2020 concerning Special Treatment for KUR Recipients Affected by the Covid-19 Pandemic.*

Keywords: unsecured credit, pandemic covid-19, law protection creditors

### INTRODUCTION

Development is a process towards progress and improvement towards the goals that want to be achieved. Development must be done in a whole and thoroughly reaching all levels of society so as to create a fair and prosperous society based on Pancasila and the 1945 Constitution. The increase in national development is focused on the economic field, which manages the potential strength of the economy into a real force by utilizing considerable capital facilities. During the Coronavirus Disease 2019 (Covid-19) pandemic, economic development became inevitability, in addition to public health and safety.

One alternative funding that can be used in development is through banking. The role banking in financing is to raise funds from the community, then channel back to the community in the form of lending, in order to go in a more productive direction. The function of collecting and disbursing funds is closely related to the public interest, so that banking must maintain well the funds deposited by the community. Banking should be able to channel the funds to productive areas, for the achievement of development goals.<sup>1</sup>

One of the products provided by the bank in helping the smooth business of its debtors, is by lending, which is one of the functions of the bank that strongly supports economic growth. Credit in Banking activities is the most important business activity, because the largest income from the Bank's business comes from the income of credit business activities in the form of interest and provision. Financial institutions in the world of finance act as institutions that provide financial services to their customers, where in general these institutions are regulated by financial regulations from the government.

Credit granting is one of the government's efforts in supporting the pace of development, namely that the development results should include programs to provide more opportunities to the community to be able to develop businesses to meet their needs through the wisdom of lending. Disbursement of funds can be done through the provision of credit with predetermined conditions, one of which is a guarantee to guarantee the certainty of repayment of debts from the debtor to the creditor in the future the debtor is injured or defaulted.

Indeed, the provision of safe credit for creditors is the provision of credit that uses guarantees or guarantees. The most commonly used as collateral in the facility of granting credit in the form of land, because the land in general is easy to sell and economically the price continues to increase compared to non-land collateral objects, and the land can be burdened with dependent rights. However, banking also provide unsecured credit (KTJ).

Unsecured credit or unsecured credit is one of the products banking in the form of lending facilities without an asset that is used as collateral for the loan. Because of the absence of guarantees that guarantee the loan, the decision to give credit solely is based on the credit history of the credit applicant personally, or in the sense that the ability to carry out loan repayment obligations is a substitute for collateral.

The Financial Services Authority (OJK) provides the definition of Unsecured Credit (KTJ) is a credit given by a bank in the form of cash, which can be obtained without providing collateral. KTJ is generally provided by banking for various purposes, including education costs, home renovations, working capital, and for other needs.<sup>2</sup>In providing unsecured credit by the bank to the debtor actually contains a lot of risk for the bank itself. The risks that will be accepted by the bank are for example the customer who defaulted, the customer who disappeared, the customer who abused his credit, and the customer who died. For the risks received by the bank, the bank cannot carry out executions or confiscation of the customer's collateral, this is due to the

<sup>1</sup> Mariam Darus Badruzaman, *Various Business Law*, Alumni, Bandung, 1994, pp. 105-106A

<sup>2</sup> sikapiuangmu.ojk.go.id/FontEnd/CMS/Category/45, accessed on 5 January 2021

absence of guarantees in the provision of unsecured credit so that the return of credit becomes hampered and the bank as creditors cannot do anything.

In anticipation of undesirable risks, The Financial Services Authority Regulation number 42/POJK.03/2017 in Article 3 states that the credit or financing policy as referred to in Article 2 contains at least and regulates the main matters as stipulated in the Guidelines for the Preparation of Credit policy or Bank Financing as follows: 1) the principle of prudence in credit or financing; 2) organization and management of credit or financing; 3) Credit or Financing approval policy; 4) documentation and administration of Credit or Financing; 5) supervision of Credit or Financing; and 6) settlement of Non-performing Loans or Financing.

In the last five years, bad credit is still within safe limits. The ratio of *non-performing loans* (NPLs) banking volatile but tends to increase. The increase in NPL as a health benchmark banking still under control. Stability and risk profile of individual financial services also posted a positive performance. The focus of unsecured lending that puts forward the principle of prudence<sup>3</sup> expected in addition to avoid credit (*non-performing loan/ NPL*) dan *fraud* (embezzlement of funds). To achieve the target of 30 percent to credit distribution in 2024, during the Covid-19 pandemic, President Joko Widodo's directive that unsecured KUR in accordance with The Coordinating Ministerial Regulation for Economic Affairs No. 6 of 2020 concerning Special Treatment for Recipients of Business Credit of People Affected by the Covid-19 Pandemic, from Rp. 50 million was increased to Rp. 100 million. This ceiling increase requires certain criteria to ensure legal protection for creditors on pay rights.

## RESEARCH METHOD

The method of approach used in this elitian is *yuridis normatif*, meaning that the problems raised, discussed and outlined in this study are focused on applying rules or norms in positive law. The approach is done by reviewing various formal rule of law such as law, literatur-literature that is theoretical concepts that are then connected with the problem. The legal science approach is used to conduct studies of articles in legislation and literature related to the protection of creditors and the right to pay in the provision of unsecured credit.

This research is descriptive-analytical research. Descriptive means that researchers will describe as complete as possible the issues surrounding the legal agreement related to legal protection for creditors on the right to pay due to debtors defaulting. The complete picture will then be analyzed, with a Statutory Approach (*Statute Approach*) and Conceptual Approach (*Conceptual Approach*) to obtain identification, causal factors, and alternative ways out. The method of data analysis used is qualitative, i.e. conducted analysis in the form of elaboration or clearly elaborated, on the basis of legal principles or principles related to the legal issues studied.

## FINDINGS AND DISCUSSION

Etymologically, the word credit has the meaning of trust. Someone who earns credit means gaining trust. Thus the basis of credit is trust. The creditor believes that the debtor will be able to fulfill everything that has been promised both regarding the period of time, as well as the achievements and counter achievements.<sup>4</sup>

Savelberg in Mariam Darus Badruzaman states that kredit has<sup>5</sup> two meanings, namely as basis of each alliance (*verbintenis*) and as collateral. According to Thomas Suyatno, et al in his book *Basic Credit*, the elements contained in credit are: <sup>6</sup>trust, time, degree of *risk*, achievement. The function of credit banking in economic life and trade can in fact increase the usefulness of money, circulation and traffic of money through current accounts, increase the usefulness and circulation of goods, increase the excitement of trying, income equality and as one of the tools of economic stability.

The most important part of management banking how to manage the available funds, most of which are allocated to credit. Because that's where the biggest bank income is from interest on the credits enjoyed by customers. Therefore, credit management is the most important task of operational management. The experience of banking-banking because there is bad credit lately, has spurred the per-bank community to be more careful in regulating the allocation of credit funds. Credit plans are prepared more maturely, analysis of credit applications is more targeted and credit security is encouraged, in addition to improving the customer development system.

The attachment of POJK Number 42/POJK.3/2017 stated that the Credit or Financing approval process, submitted in writing, contains complete information and meets the requirements in accordance with the provisions set by the bank, including credit or financing history at other banking. The Bank must ensure the correctness of the data and information submitted in the Application for Credit or Financing. Credit or Financing Analysis of any eligible credit or financing application must be conducted credit or financing analysis in writing, with the form, format, and depth of Credit analysis, must describe the concept of the total relationship of credit applicants or other financing to the Bank, made in a complete, accurate, and objective, describing all information related to the business and data of the applicant, including the feasibility of the number of credit applications with the aim of avoiding the possibility of mark-up practices that may harm the bank.

Credit or Financing analysis must include at least an assessment of the *character* (character), ability (*capacity*), capital (*capital*), collateral (*collateral*), and the prospect of the debtor's business (condition of economy) or better known as 5 C's and assessment of the source of repayment of Credit or Financing focused on the results of the business conducted by the applicant, presenting an evaluation of the juridical aspects of credit or financing with the aim of protecting the Bank against risks that may arise. The classification of non-performing loans according to the criteria provided by Bank Indonesia is in accordance with Article 4 of the Decree of the Director of Bank Indonesia Number 30/ 267/ KEP/ DIR, dated February 27, 1998, namely current

<sup>3</sup> Databoks.katadata.co.id/data publishing/2020/04105/lima-tahun-terakhir-kredit-macet-in-safe limit, 20 dec 2020

<sup>4</sup> Mgs.Edy Putra The'Aman, *Credit Perbankan Juridical Review*, Yogyakarta, Liberty, 1989. Point 1

<sup>5</sup> Mariam Darus Badruzaman, *Bank Credit Agreement*, Citra Aditya Bakti, Bandung, 1991, pp. 24-25.

<sup>6</sup> Muhammad Djumhana, *Banking Law in Indonesia*, PT Citra Aditya Bakti, Bandung, 2000, pp. 370-371

credit, credit in special mention, substandard credit, doubtful, and bad credit.

R. Soebekti and Marian Darus Badruzaman argued that however the credit agreement was essentially article 1754 to 1769 of the Civil Code as borrowing money.<sup>7</sup> Pay attention to the form and content of the agreement, the nature of the agreement, both preliminary and concentric-obligatory agreements, as well as the subject matter of the credit agreement.

In the explanation of the attachment of POJK Number 42/POJK.03/2017 it is explained that any credits or financing that has been approved and agreed by the applicant must be set forth in the agreement credit or financing (credit agreement or financing) in writing. The form and format are defined by each bank, must at least meet the validity and legal requirements that can protect the interests of the bank; and contain the amount, period, procedure of repayment, and other requirements as stipulated in the consent decree. Credit Disbursement or Financing only approves disbursement in case all conditions stipulated in the approval and disbursement have been fulfilled by the applicant of Credit or Financing. Prior to disbursement, the Bank shall ensure that all relevant juridical aspects have been resolved and have provided adequate protection for the Bank.

Considering that credit documentation is one of the important aspects that can guarantee the return of credit, bank must carry out good and orderly documentation. Must stipulates the type of documents required in accordance with the type of credit provided including a photocopy of the applicant's NPWP card and a photocopy of the PPh Annual Tax Return or a photocopy of the financial statement that is an attachment to the applicant's Annual Tax Return bagi the applicant required by the bank to attach a financial statement, in accordance with the provisions of the legislation.

Default is not fulfilling or failing to perform obligations as specified in the agreement made between the creditor and the debtor. Default or unfulfillment of promises can occur either intentionally or unintentionally. A debtor is said to be negligent, if he does not fulfill his obligations or is late to fulfill them but not as promised. Default is contained in article 1243 of the Civil<sup>89</sup>Code.

According to Ahmadi Miru default it can be in the form of deeds:<sup>10</sup> same once did not meet the achievements, achievement done imperfectly. ter slow down to meet the achievements do what is in the agreement prohibited to be done. While according to A. Qirom Syamsudin Meliala the default can be in the form of:<sup>11</sup> not meet the achievement at all, meet achievement but not appropriate, meet achievement but not appropriate or wrong. Abdul kadir Muhammad, stated that the default occurred due to 2 (two) possibilities, namely: condition force (*overmach / force majeure*), either absolute or not absolute or because of the fault of the debtor, either because of deliberate or negligent.

According to Sri Soedewi Masyehoen Sofwan, the debtor is declared a default when fulfilling 3 (three) elements, namely:<sup>12</sup> action done by the debtor and regrettable, consequently can be expected in advance both in the objective sense and subjective, where as an expert can suspect such circumstances will arise. If a person in certain circumstances thinks that the debtor's actions will be detrimental, then he can ask for the cancellation of the alliance. In the opinion of the most widely embraced, it is not the negligence of the debtor that causes the cancellation, but the decision of the judge who canceled the agreement, so that the verdict is "<sup>13</sup>constitutief" and not "*declaratoir*". In fact, the judge has a power "*discretionair*" means he is authorized to assess the default of the debtor. If the negligence is deemed too small the judge is authorized to refuse the cancellation of the agreement, although the requested damages must be approved.<sup>14</sup>

The definition of legal protection is a protection given to the law subject in the form of legal devices both preventive and repressive, both written and unwritten. In other words, the protection of the law as an illustration of the function of the law, namely the concept where the law can provide a justice, order, certainty, benefit and peace.<sup>15</sup>

According to Philipus M. Hadjon, that legal protection means there are two kinds, namely:<sup>16</sup> preventive legal protection, with the aim of preventing disputes and repressive legal protection aimed at resolving disputes. Legal protection is closely related to the aspect of justice. According to Sudirman Kartohadiprojo, the purpose of the law is to achieve justice.<sup>17</sup>

According to Economics banking there is a principle that must be considered by the bank before giving credit to its customers, namely known as The *Five C's of Credit*, meaning that the credit should pay attention to 5 (five) factors, namely: <sup>18</sup> *Character* (character), *Capacity* (ability), *Capital* (capital), *Condition of Economic* (atmosphere of economic development), *Collateral* (guarantee).

Unsecured credit is allocated to 5 (five) clusters, namely social protection, health, MSMEs and corporations, priority programs and business incentives. The advantage of unsecured credit that the credit ceiling is adjusted to the needs and capabilities, installments are paid in a relatively flexible amount, in accordance with financial capabilities. The characteristics of unsecured credit do not require collateral as collateral, the credit process is generally faster and easier, provision and administration costs will be debited directly from the account, can be used for various needs, total credit can be taken in cash, interest calculation is done based on the applicable provisions in each bank, can be submitted by employees, self-employed or professional.

<sup>7</sup> Gunarto Suhardi, *Business Perbankan InLegal Perspective*, kanisius, Yogyakarta, 2007, p. 82

<sup>8</sup> Salim HS, *Introduction to Written Civil Law (BW)*, Jakarta, 2008, p. 180

<sup>9</sup> Ahmaadi Miru, *Contract Law and Contract Design*, Rajawali Press, Jakarta, 2007, p. 74

<sup>10</sup> Ahmad Miru, *Op.Cit*, p. 74

<sup>11</sup> *Ibid*

<sup>12</sup> Sri Soedewi Masyehoen Sofwan, *Indonesian Civil Procedure Law in Theory and Practice*, (Yogyakarta: Liberty, 1981), p.15

<sup>13</sup> C.s.T. Kansil, *Introduction to Law*, Balai Pustaka, Jakarta, 1986, pp. 246-247

<sup>14</sup> Subekti, *Principles of Civil Law*, PT Internusa, Jakarta, 1982. P148

<sup>15</sup> Rahayu, *People Transport*, etd.eprints.ums.ac.id. Government Regulation of the Republic of Indonesia, No. 2 of 2002 concerning Procedures for Protection of Victims and Witnesses in Gross Violations of Human Rights Law, No. 23 of 2004 concerning the Elimination of Domestic Violence.

<sup>16</sup> Satjipto raharjo, *Other Sides of The Law in Indonesia*, Kompas, Jakarta, 2003, p. 121

<sup>17</sup> Soediman Kartohadiprojo, *Introduction to The Indonesian Legal System*, Jakarta: Pembangunan, 1986, p. 45.

<sup>18</sup> Purwahid Patrik and Kushadi, *Law of Guarantees*, Revised Edition with UUHT, FH Undip, 2003, p. 92

In providing Credit or Financing, the bank must have confidence based on an in-depth analysis of the debtor's faith and ability and ability to pay off the credit or financing as promised. Credit or Financing provided by the Bank contains risks so that in its implementation the Bank must pay attention to the principles of credit or sound financing. To reduce these risks, the guarantee of providing Credit or Financing in the sense of confidence in the ability and ability of the debtor to pay off obligations in accordance with the agreement is an important factor that must be considered by the Bank. To obtain such confidence, before providing Credit or Financing, the Bank must conduct a careful assessment of the character, capability, capital, collateral, and business prospects of the debtor.

Therefore, bank must have and apply credit or financing guidelines in accordance with the provisions stipulated by the Financial Services Authority, with the principals of credit or financing arrangements containing, among others: a. the granting of Credit or Financing is made in the form of a written agreement; b. The Bank must have confidence in the ability and ability of the debtor obtained from a careful assessment of the character, capability, capital, collateral, and business prospects of the debtor; c. the obligation of the Bank to arrange and implement the procedure of granting Credit or Financing; d. the obligation of the Bank to provide clear information on the procedures and requirements of Credit or Financing; e. the Prohibition of the Bank to provide Credit or Financing with different requirements to the debtor and/or affiliated parties; and f. settlement of disputes.

In the KPB shall be determined the principal of the regulation on the procedure of providing Credit or Financing that is healthy, the principal arrangement of lending or financing to parties related to banking and certain large debtors, Credit or Financing containing high risk, as well as Credit or Financing that needs to be avoided, at least covering the principal of the regulation concerning.

In principle, the Bank does not expect the occurrence of non-performing loans, so the determination of KPB consequently and consistently is expected to prevent the onset of non-performing loans. In dealing with non-performing loans, using several approaches, namely not allowing or covering up the existence of non-performing loans, detecting early the existence of non-performing loans or potentially becoming non-performing loans, not making settlements by adding credit ceilings or interest arrears and capitalizing the interest arrears or commonly known as credit ceilingdering practices.

In the case of credit or facilities provided with a guarantee, then banking should be able to request payment from the debtor and if necessary, will sell all assets owned by the debtor with restrictions and conditions governed by existing regulations in order to obtain payment. Another thing to know from the facilities of unsecured credit is that it is given with a higher interest rate than other guaranteed loans. This is because the risk that will be borne by the bank will be greater because there is no guarantee specifically and specifically given by the debtor so that banking can not immediately execute the guarantee to get payment.

In providing unsecured credit by the bank to the debtor actually contains a lot of risk for the bank itself. The risks that will be accepted by the bank are for example the customer who defaulted, the customer who disappeared, the customer who abused his credit, and the customer who died. For the risks received by the bank, the bank cannot carry out executions or confiscation of the customer's collateral, this is due to the absence of guarantees in the provision of unsecured credit so that the return of credit becomes hampered and the bank as creditors cannot do anything.

Regulation of the Minister of Economic Affairs No. 6 of 2020 concerning Special Treatment for Businesses affected by the Covid-19 Pandemic provides policy stimulus for KUR recipients affected by the Covid-19 pandemic. Providing stimulus with certain criteria in accordance with articles 3 to 7, among others, the business location of KUR recipients are in locations affected by the Covid-19 pandemic, there is a significant decrease in revenue / turnover, experiencing significant production process disruptions. The restructuring went smoothly according to the restructuring agreement, had no interest arrears or principal installments and was cooperative or had a good nature.

## CONCLUSION

A principle that must be considered by the bank as a form of prudence before giving credit to the customer using The Five *C's of Credit*, meaning it must pay attention to five factors, namely character, ability, capital, atmosphere of economic development and existing guarantees. In providing unsecured credit contains many risks for the bank itself, such as the customer defaults, disappears, misuses his credit, dies. For the risks received by the bank, the bank cannot carry out executions or confiscation of customer collateral objects, due to the absence of guarantees, so the bank as creditors must get a greater guarantee in line with the increase in the unsecured credit ceiling, either through Askrindo or Jamkrindo.

In anticipation of default from customers, banking as creditors are obliged to prepare legal fences strong enough to be given to their customers with strict selection of prospective customers. Thus, it can be minimized the risk of bad credit from the provision of individual loans without collateral. The issuance of a credit agreement has consequences for creditors regarding legal certainty for creditors if the debtor fails to fulfill his obligations to the creditor. Legal protection of creditors for the right to pay as a result of defaulting debtors, in the form of preventif and repressive protection. This preventive legal protection, where the subject of the law is given the opportunity to file an objection or opinion before a government decision gets a definitive form. The goal is to prevent disputes from happening.

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