

Appraisal Legal Responsibilities in Lending by Commercial Banks



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ABSTRACT: To meet all the needs needed by humans, it is sometimes necessary to have additional capital that we can obtain through banks in the form of credit. To guarantee the passage of credit, banks need collateral to be analyzed by the bank's internal appraiser. However, in its development a new service sub-business emerged, namely an Appraiser who can help banks assess the collateral, in evaluating an appraiser must carry out their duties in accordance with the standards and code of ethics and in carrying out the assessment an appraiser is in a place called the Public Appraisal Service Office. In the assessment process it is undeniable that there is no conformity with the principles and code of ethics of the assessor, causing losses. For this action it is not possible to have administrative sanctions that can be applied to the Appraiser or Office of Public Appraisal Services. The research method used is a normative juridical legal research method, the approach used in legal research is the statute approach (→). Results and Discussion In evaluating bank customer collateral, the legal relationship between the bank and the Appraiser as well as the Office of Public Appraisal Services is the existence of a cooperation agreement regarding the assessment of bank collateral. In carrying out the assessment activities it is undeniable that sometimes the appraiser does not work in accordance with the standards and ethical code of the existing assessors, causing losses so that it does not rule out the possibility of administrative sanctions in the form of warnings, restrictions on certain object valuation services, restrictions on the provision of certain services, freezing permits, revocation of permits. However, it does not rule out the possibility of imposing civil and criminal sanctions in accordance with what has been promised in the cooperation agreement.

KEYWORDS: Bank, Credit, Public Appraiser

I. INTRODUCTION

In everyday life, the word credit is not a foreign word for our society. The word credit is not only known by the people of big cities, but even in the villages the word credit is already very popular. The term credit comes from the Greek (credere) which means trust (truth or faith). Therefore, the basis of credit is trust. A person or entity that provides credit (creditor) believes that the recipient of the credit (debtor) in the future will be able to fulfill everything that has been promised. What has been promised can be in the form of goods, money or services (Thomas Suyatno and H.A. Calik, et al, 1997).

In the current era of globalization, credit is needed by humans, because as we know humans are homo economicus who always try to fulfill their diverse needs according to their dignity, while the ability to achieve something they want is limited. This causes humans to need assistance in the form of additional capital to be able to fulfill their desires and ideals. The bank is one of the financial institutions that can help humans to fulfill their desires and ideals, this is because the bank has a main function, namely to collect and distribute public funds (Rahman, Hasanuddin, 1998) and credit is a form of bank product that can help humans to provide additional capital. Credit according to Law Number 10 of 1998 Article 1 number 11, namely;

"Credit is the provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest."

Meanwhile, according to some experts, such as O.P Simorangkir, credit is the provision of achievements (money or goods) with rewards for achievements (counter achievements) that will occur in the future (Rahman, Hasanuddin, 1998). According to Zainal Asikin in his book, bank credit is all realization of lending in the form of rupiah and foreign currency to non-bank third parties including bank employees themselves as well as the purchase of securities accompanied by a note purchase agreement/acquisition of bills in the context of factoring and overdrafts (Zainal Asikin, 2015). In practice, credit is one form of bank business that is in great demand by the public this is because credit has various types of forms, such as; Credit is seen from the point of view of its purpose (Consumptive Credit, Productive Credit, Trade Credit: Domestic trade credit: Foreign trade credit). Credit is seen from the point of view of the time period; Short term loans (short term loans); Medium term loans (medium term loans); Long

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term loan (long term loan). Credit is seen from the point of view of the guarantee; (Credit without collateral, Credit with collateral). Credit is seen from the point of view of its use; (Exploitation Credit; Investment Credit).

Walaupun kredit diminati masyarakat namun kredit bank juga memiliki risiko dimana tidak the return of disbursed funds or credit, so there is an adage that reads: "the banking business is a risk business" and with this risk consideration, banks must always conduct an in-depth analysis of every credit application they receive by having to review each credit grant. (H.R. Daeng Naja, 2006). For this reason, banks must be careful in distributing credit to the public.

Given that credit is a risky distribution of funds, the position of collateral is considered quite important in credit. This transfer is of course based on a relationship of trust between the customer and the bank with the aim of securing credit from risks that may occur, giving rights and power to the creditor, in this case the bank. The goal is that they get repayment with the collateral if the customer or creditor defaults (Edy The Aman Putra, 1989).

According to Law Number 10 of 1998 concerning banking in Article 1 number 23, "collateral is an additional guarantee submitted by a debtor customer to a bank in the context of providing credit or financing facilities based on Sharia Principles".

The types of collateral that customers can provide to banks are in the form of (Budi Untung, 2011) Guarantees of tangible objects; Movable objects (cars, buses, office equipment, household equipment, jewelry and so on), immovable objects (land, houses, buildings, warehouses, shop houses and so on); Guarantees of intangible objects (intellectual property rights), Individual guarantees, in the form of debt guarantee agreements (borgtocht) such as personal guarantees (personal guarantees) and corporate guarantees (corporate guarantees).

Before the credit is distributed to the public, this credit application will later be analyzed by an internal appraiser at the bank or commonly called an account officer. This is done to find out whether the prospective customer to be given credit by the bank is feasible or not. The results of this feasibility are needed to avoid defaults from customers which will cause bad loans and harm the bank in the future. In analyzing credit, must pay attention to several principles, namely:

5^c Principle

a) Character

Character is the character/nature of the debtor, both in his personal life and in the business environment. Its purpose is to find out to what extent the level of honesty, integrity and intention of the debtor to fulfill obligations according to the agreement that has been set.

b) Capacity

Is the ability of customers to run their business in order to obtain the expected profit? Its purpose is to measure the extent to which customers are able to pay off their debts in a timely manner from their business activities

c) Capital

Judging from the ability to provide own capital / self-financing up to a certain amount

d) Collateral

Are goods that are submitted by customers as collateral for the credit they receive? Form of Guarantee: Material Guarantee: Main Guarantee and Additional Guarantee, Guarantee from Third Party.

e) Condition of social, economy and environment

Is a political, social, economic and cultural situation and condition that affects the state of the economy at a time which is likely to affect the smooth running of the customer's business.

f) Constraint

Namely, restrictions or barriers that do not allow someone to do business in one place.

- 1) Principle 7 Ps: Personality; personality, behavior, Party; classification/class, Purpose; purpose of taking credit, Prospect; assessing future business, Payment; how to return, Profitability; for-profit ability, Protection; guard with protection.
- 2) 3R Principles; Return (return); capital and profits can be returned to the entrepreneur. Repayment (payment); ability, ability, willingness to return, Risk (risk); anticipate the risk of failure.

In matters relating to collateral or collateral, the account officer has the duty to obtain a reasonable estimated value for the collateral. However, in its development, a new service sub-business emerged, namely the appraiser service business, which is an independent external institution that can assist banks in analyzing the customer's collateral. Appraisal service business is a professional service business to provide an objective and independent assessment of assets or properties. Appraisal Service Business is a business that is predicated as a trust institution that is needed for the benefit of the parties conducting trade transactions.

An appraiser or appraiser is someone who has competence in conducting assessment activities who have at least passed the initial assessment education. Meanwhile, a Public Appraiser is an appraiser who already has permission from the Minister of Finance to be able to carry out his appraisal work based on his job classification in the form of an appraisal in the field of Property Appraisal, Simple Property Appraisal, Business Appraisal and Personal Property Appraisal.

The appraisal activity is an activity to determine the economic value of a collateral, while according to the Regulation of the Minister of Finance of the Republic of Indonesia Number 56/PMK.01/2017 concerning Public Appraisal Services Article 1 point 1, what is meant by appraisal is "The work process to provide a written opinion on the economic value of an object of assessment in

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accordance with SPI (Indonesian Appraisal Standards).” In carrying out his assessment activities, an Appraiser is in a container called the Public Appraisal Service Office which is led by a public appraiser who based on his expertise has obtained permission from the Public Appraiser. The Ministry of Finance as an agency that houses public appraisers.

The appraisal activity of an appraiser must comply with the standard rules set out in the Indonesian Appraisal Standards (SPI) and the Indonesian Appraisal Code of Ethics (KEPI). Based on KEPI and SPI, an appraiser must fulfill the following principles: Integrity, Objectivity, Competence, Confidentiality, and Professional Behavior. However, it is undeniable that in practice there are several Appraisers who cannot work consistently and professionally based on the principles set out in the SPI and KEPI which can then cause harm to the service user, himself, the Public Appraisal Service Office and the community. For this reason, it is necessary to have a sanction that can provide a deterrent effect for the Appraiser/Public Appraiser and for the Public Appraisal Service Office itself. Based on the description of the background above, it can be concluded that the formulation of the problem is what is the legal relationship between the Public Appraisal Service Office and the Bank? And what is the legal responsibility of the Appraiser and the Public Appraisal Service Office if they are proven to have made an error in the assessment?

II. RESEARCH METHOD

The research method used is a normative juridical legal research method, the approach used in legal research is the statute approach. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto, Soerjono, and Sri Mamudji, 2012). Data collection techniques use the literature study method. The method used in this study is a qualitative descriptive method. This method provides a specific description of the data collected systematically. In normative legal research that examines this secondary data, the presentation of the data is carried out simultaneously by analyzing it.

III. RESULTS AND DISCUSSION

Legal relationship between Appraisal and Bank

Article 1 number 2 of Law Number 10 of 1998 concerning Banking states that; "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 the people at large." It is not surprising that the bank is one of the financial institutions that is trusted to provide an injection of funds to the community in terms of meeting their needs through credit.

The many types of credit offered by banks make people like it, this is because they can choose the type of credit that suits what they need. Not only liked by the public, credit itself is also one of the products that banks still rely on in channeling funds to the public (Imaniyati, Neni Sri, 2010).

The diversity of types of credit offered by banks also allows for various types of collateral that can be accepted by banks, for this reason it is necessary to have an appraiser business because the field of appraisal services is very diverse which of course is strengthened by a special certification held by an Appraiser. In fact, in the current era of globalization, the use of Appraiser services is highly recommended to obtain more accurate and accountable economic value, because it is possible in the banking world to find mark-up actions carried out by internal bank appraisers. The economic value of the collateral in order to facilitate the distribution of bank credit.

To protect the bank from losses caused by the bank's internal parties, the bank can cooperate with the Public Appraisal Service Office to assist the bank in assessing the collateral. This form of cooperation is realized in the form of a collateral appraisal cooperation agreement. This cooperation agreement contains clauses regarding the explanation of the parties, an explanation of the work of the appraiser, agreements that regulate the rights and obligations of each party, the expiration of the agreement period, amendments to the agreement (addendum), and dispute resolution and also provides legal certainty for the bank and for the bank. Appraiser or public appraiser service office itself, including the issue of sanctions.

The agreement itself is regulated in Book III of the Civil Code in Article 1313, which reads: "An agreement is an act by which one or more people bind themselves to one or more other people." An agreement is declared valid if it fulfills the elements stipulated in Article 1320 of the Civil Code, namely (Agus Yudha Hernoko, 2014); Agree on those who bind themselves, the ability to make an engagement, a certain thing, and a lawful cause.

Agreements made legally contain several principles, as regulated in book III of the Civil Code, there are five types of legal principles, namely (Salim HS, Abdullah, and Wiwiek Wahyuningsih, 2007); the principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, the principle of good faith, and the principle of personality. The existence of this collateral appraisal cooperation agreement shows that there is a legal relationship between the Bank and the Appraiser or Public Appraisal Service Office, because with an agreement that is approved with evidence of a signature in the agreement, it automatically creates rights and obligations for the parties involved. As a result of this legal relationship, it is evidenced by the results of an assessment or written opinion in the form of an appraisal report which is one of the obligations of the appraisers for the tasks assigned by the bank to them and also the rights of the bank as the assignor. In addition, the form of payment for services that have been provided by the appraiser is also a manifestation of the bank's obligations and the rights of the appraiser.

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Appraisal Legal Liability

Every job, of course, must be carried out professionally and responsibly in accordance with the standards or code of ethics for the work. The code of ethics is a collection of ethics created to uphold the profession for the sake of responsibility for the profession, society and God Almighty. However, it is undeniable that in practice we often encounter many professions that violate the code of ethics or provisions that have been agreed in an agreement so that it can cause a loss for its service users. In this case, the Appraisal profession is no exception, which cannot rule out the possibility of actions that can harm service users, including in this case banks such as mark-up actions, data discrepancies and so on that can harm service users, appraiser, as well as the public appraiser service office where he works.

For this reason, it is necessary to have strict sanctions that can provide a deterrent effect for appraisers, according to the Regulation of the Minister of Finance of the Republic of Indonesia Number 56/PMK.01/2017 concerning Public Appraisal Services in Article 68, a Public Appraiser or the Office of Public Appraisal Services may be subject to administrative sanctions that in the form of; Warning, imposed for minor offences. (Violations that technically have no effect on the results of the Assessment presented in the Assessment Report). Service restrictions on certain object valuations are imposed for serious violations. (Violations of professional ethics and/or technically affect the results of the Assessment presented in the Assessment Report). Restrictions on the provision of certain services are imposed for serious violations. (Violations of professional ethics and/or technically affect the results of the Assessment presented in the Assessment Report). Suspension of permits, imposed for serious violations. (Violations of professional ethics and/or technically affect the results of the Assessment presented in the Assessment Report). License revocation is imposed for very serious violations. (Violations of professional ethics and/or which are technically very influential on the results of the Assessment presented in the Assessment Report). In addition to the administrative sanctions above, it turns out that an Appraiser/Public Appraiser or Public Appraisal Service Office can also be subject to other sanctions such as civil sanctions and criminal sanctions in accordance with the clauses of the agreed cooperation agreement or according to the severity of the error or malpractice that the appraiser commits. It is also possible that the appraiser may be subject to two sanctions, namely administrative and criminal as well as civil.

IV. CONCLUSION

The legal relationship between the Bank and the Appraiser as well as the Public Appraisal Service Office is bound in an agreement, which is called a credit collateral appraisal cooperation agreement. This agreement is made in writing and signed by representatives of both parties. The signing of this cooperation agreement shows that the agreement is valid because of an agreement and has legal consequences in the form of rights and obligations for each party involved in the agreement. This cooperation agreement can also be used as evidence, because the agreement made in writing has strong legal force. Regarding the responsibilities of an appraiser, according to the Indonesian Appraiser Code of Ethics, an appraiser has a responsibility to the personal integrity of the appraiser, to the assignor, to fellow appraisers and the appraiser's service business and responsibility to the community. Meanwhile, the legal responsibilities of an Appraiser or Public Appraisal Service Office are in the form of administrative sanctions regulated in the Minister of Finance Regulation Number 56/PMK.01/2017 concerning Public Appraisers, namely; Warnings, Service restrictions on certain object assessments, restrictions on granting certain service fields, suspension of permits, and revocation of permits. The administrative sanctions above can be given to the Appraisal Company Service Office or to the Appraiser according to the light or severity of the violation committed. The application of sanctions that can be accepted by the appraiser and the public appraiser service office can also be in the form of civil or criminal sanctions, in accordance with what has been agreed in a collateral appraisal cooperation agreement and does not rule out the possibility that when the appraiser receives administrative sanctions, criminal/civil sanctions may also be imposed.

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