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Position of Credit Agreement in the Provision of Credit Facilities at a Banking Institution

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Abstract. *This study aims to determine the position of the credit agreement in the implementation of the provision of credit facilities at a banking institution, in addition to determining the legal consequences that will occur if the requirements of the credit agreement are not met. The method used in this study uses the normative legal approach method, namely an approach based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach method. The results of this study indicate that, first: the position of the credit agreement in the credit granting process is very important. Second: in order to provide legal protection for the parties, both creditors and debtors, the credit agreement must be implemented in accordance with applicable requirements.*

Keywords*: Agreement; Credit; Protection.*

1. Introduction

Every credit that has been approved and agreed upon between the lender and the borrower must be stated in the form of a credit agreement. Article 1313 of the Civil Code states that an agreement is an act by which one or more people bind themselves to one or more other people. One party has the right to demand something from the other party, while the other party has an obligation to fulfill that obligation and vice versa. In terms of carrying out legal acts in modern life, the parties are usually actualized in the form of a written agreement, this is considered to make it easier for the parties to be able to know the rights and obligations of each party. This written agreement is evidence if there is a default by one of the parties.[1]

An executed agreement will create a legal relationship between the two parties making it, which is called an agreement. Legal relationships give rise to legal consequences where there are rights and obligations inherent in the parties to the

[1]Kartini Muljadi and Gunawan Widjaja, 2003, General Agreements, Raja Grafindo Persada, Jakarta, p. 13

agreement. Legal relationships are relationships that give rise to legal consequences guaranteed by law or statute. The legal consequences of an agreement that arises from an agreement are indeed desired by the parties making the agreement, namely conforming to the wishes of the parties making the agreement. The legal consequences of an agreement that arises from the law may not be desired by the parties, but the legal relationship and its legal consequences are determined by the law.

Based on the description above, the definition of credit is that it occurs because of an agreement between two or more parties which has resulted in one party providing a loan and the other party being obliged to repay what was borrowed.

As a result of the agreement, the law determines it as a law. Therefore, all agreements made legally apply as laws for those who make them. This is in accordance with the principle of personality that agreements are only binding on the parties who make them. Except for the exit of the agreement for the benefit of a third party (barden beding) which is regulated in article 1318 of the Civil Code.

Agreements cannot be withdrawn except by mutual agreement of both parties or for reasons stated by law as sufficient for that purpose. This means that agreements must be carried out in good faith (tegoeder trouwlin good faith).[2]

2. Research Methods

In line with the problems of this research, the legal research approach method used is normative legal research. Data collection techniques are carried out through literature studies, namely by studying laws and regulations, books, and other documents related to this research.

3. Results and Discussion

3.1. Definition of Credit Agreement

An agreement is an important thing because it concerns the interests of the parties who make it. Article 1233 of the Civil Code states that every obligation is born either because of an agreement or because of a law, which can be interpreted that an obligation is born because of an agreement or a law. In other words, a law or agreement is the source of an obligation.[3]

According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons bind themselves to one or more other persons. From the formulation of the article, it can be concluded that what is meant by an agreement in the article is an agreement that gives rise to a bond or an obligatory agreement. A credit agreement is a consensual agreement between a debtor and a creditor (in

[2]Elsi Kartikasari and Advendi Simanunsong, 2008, Law in Economics, Second Edition, Grasindo, Jakarta, p. 32.
[3]J. Satrio, 2001, Contract Law, Contracts Arising from Agreements, Second Edition, PT. Citra Aditya Bakti, Bandung, p. 3

this case a bank) that creates a debt-credit relationship, where the debtor is obliged to repay the loan given by the creditor, based on the terms and conditions agreed upon by the parties. Experts also provide an understanding of a credit agreement. Sutarno defines a credit agreement as:[4] principal agreement or master agreement that regulates the rights and obligations between creditors and debtors.

Book III of the Civil Code does not contain any provisions that specifically regulate credit agreements. However, based on the principle of freedom of contract, the parties are free to determine the contents of the credit agreement as long as it does not conflict with the law, public order, morality and compliance. By agreeing and signing the credit agreement by the parties, from that moment on the agreement was born and binding on the parties who made it into law.[5] Sutan Remy Sjahdaeni provides a specific understanding of a credit agreement, namely: an agreement between a bank as a creditor and a customer as a debtor regarding the provision of money or bills that can be equated with it which requires the debtor to pay off his debt after a certain period of time with an amount of interest, compensation, or profit sharing.[6]

Credit agreement is a real principal agreement. As a principal agreement, the guarantee agreement is the assessor. The existence and termination of the guarantee agreement depends on the principal agreement. The real meaning is that the occurrence of a credit agreement is determined by the transfer of money by the bank to its debtor customer.[7]

Regarding the understanding of the agreement above, in essence, in the implementation of credit provided by the bank, it is certainly strengthened by the existence of an agreement. This agreement has a function to provide limitations for the bank on the use and circulation of money that will be used by the debtor, this is so that it is directed and can guarantee its position in its use. Making a credit agreement is an initial process between creditors and debtors that is applied in the banking system in its efforts to develop the funds that have been collected and also to make the best use of the funds. And the credit agreement can be in the form of a private agreement or a notary.[8]In addition to that, it is important to note that in the perspective of consumer protection law, banks are prohibited from

[4]Sutarno, 2003, Legal Aspects of Credit in Banks, Alfabeta, Bandung, p. 6.
[5]Mariam Darus Badrulzaman, 1991, Bank Credit Agreement, PT. Citra Aditya Bakti, Bandung, p. 110.
[6]Sutan Remy Sjahdeini, 1993, Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements. Indonesian Bankers Institute, Jakarta, p. 14.
[7]Hermansyah, 2005, Indonesian National Banking Law, Kencana Prenada Media Group, Jakarta, p. 21.
[8]Miftah Idris, 2015, Conventional Banking Credit Agreement and Islamic Banking Financing Credit Agreement: A Descriptive Review in Indonesian Law, Journal of Legal Communication, Vol. 1 No. 1,https://ejournal.undiksha.ac.id/index.php/jkh/article/view/5007/3775accessed on August 10, 2023 at 21.45 WIB.

including standard clauses in credit agreements. Moreover, standard clauses are made unilaterally by the bank and printed in small writing so that they are difficult to read by customers or debtors.

3.2. Conditions for Validity of Credit Agreement

In relation to credit agreements, in addition to the matters mentioned above as contained in Article 1320 of the Civil Code, several conditions for the validity of a credit agreement are stated, namely:

a. Agree those who bind themselves

An agreement must have an agreement between the parties, namely the conformity of the statement of will between the two parties, no coercion, and others. Agreement is needed in making, this means that both parties must have freedom of will, meaning that each party does not receive any pressure that results in a defect in carrying out the will.[9]

The definition of agreement is described as a statement of will agreed upon between the parties. The statement of the party offering is called an offer (offerte), while the party receiving the offer is called acceptance (accestatie).[10]The parties do not always meet face to face to convey their agreement.[11]

An agreement is not valid if the agreement is given due to error, coercion or fraud. Where the agreement itself is something that is difficult to formulate when the agreement occurs, therefore according to Article 1320 paragraph (1) of the Civil Code, the agreement of the statement of will is in the form of:

1) Complete and written language

2) Perfect language orally

3) Imperfect language is fine as long as it can be clearly understood by the other party.

4) Sign language as long as it is acceptable to the opposing party.

5) silent or mute, but as long as it is understood by the other party.

Agreement in Article 1321 of the Civil Code paragraph 1 is defined as a free agreement between the parties making the agreement. A free agreement is deemed to occur at the time it is made by the parties, unless it can be proven that the agreement occurred due to error, coercion or fraud.[12]

[9]I Ketut Oka Setiawan, 2016, Contract Law, Sinar Grafika, Jakarta, p. 61.
[10]Mariam Darus Badrulzaman, Sutan Remy Syahdeini, Heru Supraptomo, Faturrahman Djamil, and Taryana Soenandar, 2001, Compilation of Contract Law, PT. Citra Aditya Bakti, Jakarta, p. 73.

[12]Kartini Muljadi and Gunawan Widjaja, 2008, The Bond Born From an Agreement, Rajawali Press, Jakarta, p. 165.

b. Competence of the parties

Competence is the ability to carry out legal actions. A person is deemed incompetent by law to enter into a contract if the person is not yet 21 years old, unless he or she has married before the age of 21 years. On the other hand, every person who is 21 years of age or older is considered competent by law, unless for some reason he is placed under protection, such as being blind, stupid, having a memory problem, or being a spendthrift. Article 1330 of the Civil Code determines the following criteria for a person not being able to enter into an agreement:

1) People who are not yet adults,

Article 1330 of the Civil Code in principle stipulates that a person can be said to be an adult if he/she has reached the age of 21 years, or is married even though he/she is not yet 21 years old.

2) People under guardianship,

Namely, adults who can be placed under guardianship if they meet the criteria of Article 433 of the Civil Code, namely being stupid, mentally ill, blind and wasteful.

3) Married Woman

The definition of a married woman not being competent to enter into an agreement has been removed by Article 31 of Law Number 1 of 1974 concerning marriage. Which determines that the life of a husband or wife is legally competent.

c. The existence of a certain thing

1) tradable

2) specified type (clear type)

3) the number of items can be counted or determined

4) the item will be available later

5) not an unopened legacy.

If the service is the object of the agreement, then it must be clearly and firmly determined what form of service is performed by one of the parties. If the object of the agreement is not doing something, then it must be explained in the agreement what things are not done by the parties.

d. A lawful cause

A lawful cause means that the contents of the agreement to be reached by the parties do not conflict with the law, do not conflict with public order, and do not conflict with morality.

3.3. Legal Consequences of Credit Agreements

Contract law provides freedom to the subject of the agreement to enter into an agreement with certain restrictions, as stated in Article 1338 of the Civil Code, including:

a. all agreements made legally apply as law to those who make them.

b. An agreement cannot be withdrawn except by agreement of both parties, or for reasons which the law states are sufficient for that purpose.

c. an agreement must be carried out in good faith.

d. The legal system of agreements contained in Book III of the Civil Code has the character or nature of a complementary law (aanvullenrechts or optional). With such a character, people may or may not use the provisions contained in Book III of the Civil Code. In the agreement, the parties may regulate themselves which deviate from the provisions of Book III of the Civil Code,[13]as long as it does not conflict with the conditions for a valid agreement as regulated in Article 1320 of the Civil Code.

In relation to credit agreements, in addition to the matters mentioned above as contained in Article 1320 of the Civil Code, several conditions for the validity of a credit agreement are stated, namely:

a. Agreement of the parties

b. Skills

c. A certain thing

d. For lawful reasons

The agreement of the parties and the capacity are called subjective conditions, because they concern the parties who enter into an agreement. While a certain thing and a lawful cause are objective conditions because they concern the object of the agreement.

If an agreement does not meet the subjective requirements, then the agreement can be canceled. Cancelable means that one party can request the cancellation. The agreement itself remains binding on both parties, as long as it is not canceled (by a judge) at the request of the entitled party who requested the cancellation. Meanwhile, if an agreement does not meet the objective requirements, then the agreement can be canceled by law, meaning that from the beginning it is considered that there was never an agreement and there was never a bond.

4. Conclusion

[13]Ridwan Khairandy, 2012, Indonesian Contract Law in Comparative Perspective (Part I), Fh UII Press, Yogyakarta p. 5.

A credit agreement is a consensual agreement between a debtor and a creditor (in this case a bank) that creates a debt-credit relationship, where the debtor is obliged to repay the loan given by the creditor, based on the terms and conditions agreed upon by the parties. A credit agreement is also referred to as a principal agreement or parent agreement that regulates the rights and obligations between the creditor and the debtor. In relation to credit agreements, in addition to the matters mentioned above as contained in Article 1320 of the Civil Code. If an agreement does not meet the subjective requirements, then the agreement can be canceled.

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