THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Good Governance in Bank Credit Contract Increases Customers' Trust

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Abstract:
Banks' nature of business is a business trading in credits and money. Therefore, keeping and managing people's money is a business of trust defining bank as an institution of trust. This essay is made based on normative research exploring both statute approach and conceptual approach. Credit implementation is presented in the form of credit contract. Provisions in such contract must be fair and based on the principle of good faith which is reflecting good governance, which finally would increase bank's endurance through trust towards government and bank's good faith.

Keywords: *Bank, credit contract, good governance, good faith, trust*

1. Introduction

Bank has a big role in promoting economic development of a country. All sectors of business inter alia sector of industry, trading, agriculture, plantation, service, housing, are in need of bank as a partner in developing their business. Bank is a financial institution whose main function is to collect fund from people, to distribute fund to people, and to give services in the form of banking services.

Bank's function as the distributor of fund to the people requiring the fund is mostly conducted by bank in the form of credit. For the credit granted by bank to debtors, bank obtains a service in the form of interest. Therefore, bank as an institution functioning to bridge the gap between the party in need of fund and the party having a surplus of fund is often demanded to be always cautious in organizing the fund (Tsawan, 2009). The distribution of fund in the form of credit experiences a quite rapid development. In consequence, in its development, this evokes certain problems such as bad debt in which the debtors cannot fulfill their obligation in repaying their loan or the debtors intentionally do not repay both the loan and interest to bank.

Banks' nature of business is a business trading in credits and money. Therefore, keeping and manage people money is a trust business whereas define bank as a trust institution (Siahaan, Rudy Haposan, P. L. Rika Fatimah, 2014). People see trust issues to as expensive matters in banking business, especially related to credit which practice is put into credit contract and containing standard clauses which are generally prepared by banks.

This essay will discuss and present how bank credit contract reflecting good governance will boost bank sustainability through the trust towards government and bank good conduct, so it can minimize possible arising problems between the banks as the loan grantor and the debtors as the party who receives the loan.

This study is made basing on normative research using the statutory approach and conceptual approach. Here, normative research is a research that puts law as norm, with statutory approach, judicial verdict, contract and doctrine, and conceptual approach, bringing about the objects intriguing from the point of practical view and the point of knowledge in the mind and certain attributes.

2. Discussion

Generally, credit contract is standard contract/formal contract because almost all of its clauses have been prepared and formalized by its users. Formal clause and contract, in general, at least meet three conditions in the literature, namely: a) the clauses must be written; b) the clauses must first be arranged and the formal contract containing those formal clauses will be used against the opposite party which is relatively large in number; c) there is detailed organized rule (Budiono, Herlien, 2007).

Some characteristics that can be seen in credit contract, so it constitutes formal contract are the following: a) the content is settled unilaterally by the creditor whose position is relatively stronger than the debtor; b) the debtor does not partake in settling the content of the contract at all; c) being forced by his or her need, the debtor accepts the contract; d) it is in written; e) prepared first, collectively or individually (Badrulzaman, Mariam Darus, 1993).

The implementation of credit contract in the form of standard contract or formal contract must understand the position of freedom of contracting in an integrated connection with other legal contract principles, such as the principle of freedom of contracting, the principle of consensus, the principle of trust, the principle of binding power, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morality, and the principle of obedience, which collectively are the pillars and foundations in the law of contract. One of them is the principle of balance.

One of important principles in credit contract is the principle of balance. According to Mariam Darus Badrulzaman, the principle of balance is an improvement of the principle of equality. The creditor has a power to demand performance of the obligation through the debtor's wealth, yet the creditor bears the burden to perform the contract. Here can be concluded that the strong creditor can be equaled with its obligation to mind good faith, so that the creditor's and debtor's position are in balance. (Badrulzaman, Mariam Darus, 2001).

In creating a contract, parties must see both individual and societal interest comprehensively in order to equal these two interests. Therefore, individual and societal interest must be in balance and applied as the basis for the contractual binding power.

The problem in determining the measurement of interest could arise if there is a disproportion from individual-individual connection and individual-society connection, where in one side there is a freedom of contracting and in another side there is certain party that wants to be protected. If meant to protect the society, the principle of freedom of contracting will be defeated and as for the breach of clauses will result in termination for the sake of law. In the relation of bank-customer, it must be determined which interest wishes to be protected; bank represents public fund against individual customer.

The freedom of contracting which is the foundation of credit contract will halt whenever in concrete situation occurs a conflict between individual interest and a higher interest. The freedom of contracting is restricted not only by the legislations but also morality, public order, propriety, suitability and good faith (The Indonesian Civil Code: Translation of Burgerlijk Wetboek, Article 1338).This means to prevent action inappropriate and against the law. Therefore, the parties cannot decide clauses in a contract at one's pleasure but must be based and conducted with good faith. The legal effect towards the contract based on a bad faith will be able to be annulled. This principle relates to the term regarding the content of the contract that must be conducted by the propriety based on the nature of the contract.

Concerning with the equality in the principle of freedom of contracting, in the Jurisprudence of the Verdict of The Supreme Court of Republic of Indonesia Number 3641 K/Pdt/2001 of 11 September 2001, in its legal rule, it states:

1. In the principle of freedom of contracting, the judge has the authority to examine and declare that status of the parties is unequal, so one of the parties is considereddependent in expressing its will.
2. In an open contract, legal values living in the societysuitable with propriety, justice, and humanitarianismcan be usedas an attempt towards the stipulation agreed in the contract.

Therefore, the contract must be performed with good faith, while the good faith works not only after the contract is entered but also when the parties will enter it. That is why the making of a contract must be based on partnership. The principle of partnership demands an attitude from the parties that those who enter and perform the contract are between two contracting partners and not two non-contracting partners. Besides, in the making of bank credit contract, the principle of partnership is truly needed. The foundation of the principle of partnership in the construction of a credit contract stands not only because the work of the principle of good faith, but also because as for bank the debtor is the real bank's business partner. Not only does the bank's customer need bank, but also the bank needs the customer as the business partner. The customer's business cannot develop without the bank and on the other hand, the bank cannot either without the customer. The bank and the debtor have to be a partner (Sjahdeini, Sutan Remi 1993). In other words, the clauses in credit contract themselves must also be in balance and not trouble one of the parties because such clauses often trouble the debtor. However, in the case where the banks deal with the wealth as the debtors, the clauses of credit contract are often in the weak position.

The principle of proportionality in the contract means that there is an aspect of acknowledgement about the attitude of respecting the parties' rights and duties and simultaneously sustaining each party's existence which is the debtor and the creditor (Gusti, I Agung Wisudawan, 2013). There are two following senses contained in the principle of balance (Budiono, Herlien, 2006):

1. The principle of balance as the principle of etikel which means "a situation of an apportionment of burden, where in both sides are in a balanced state". The sense of balance here means that in one side is bordered by the will (based on the advantageous consideration or situation) and in another side there is a confidence of capability; in the definition where those both sides can be realized.

2. The principle of balance as the principle of yuridikal means that the principle of balance can be understood as a proper or fair principle and then is accepted as a basis of juridical binding in the contract law in Indonesia. In respect of the disturbance of the contractual balance, the way out to do examination of the efficiency of the principle of balance is through action, content and performance of the contract.

Generally, the principle of balance is as the balance of the contracted parties' positions. Therefore, in respect of the imbalance of position undermining the contract, the parties need certain authority (government). Moving from such insight, the understanding towards the efficiency of the principle of balance emphasizing the balance of position of the contracted parties, feel dominant in respect of the credit contract.

If we look at the principles of justice put forward by Rawls, justice is a freedom and equality is formal justice also known as regulative justice (Rawls, John, 1999). The importance of freedom and equality in Rawls' theory of justice is the minimum demands of a right that must be upheld for a kind of protection for the lower class, bank customers, and consumers that include equality of the parties entering into an agreement. Rawls also formulates two principles of justice on people in their original position as being rational, free, and equal. Based on these principles of justice can be driven that: a) every individual has an equal right to basic freedom in its broadest definition; b) social and economic freedom must be regulated in such a way that it could benefit and protect every individual.

Good governance is the practice of politic, economy, and administration in managing a country's problems. The practice of this authority can be regarded good or sound if it is conducted effectively and efficiently, responsively towards people's need, in a democratic ambiance, accountable, and transparent. These principles are not restricted to be conducted only in the circle of government bureaucracy, but also in private sectors and non-governmental organizations.

Related to the good faith in the credit practice inside balanced credit contract, to realize good governance must lean on these following general fundamental aspects:1)Participation; 2) Rule of Law; 3) Transparency; 4) Resposiveness; 5) Consensus Orientation; 6) Equity; 7) Effectiveness and Efficiency; 8) Accountability; 9) Strategic Vision.

The principle of good faith contains the sense that the creditor and the debtor must perform the contractual substance based on firm confidence or trustor goodwill from the parties. The principle of transparency is realized by applying the aspect of openness in obtaining the distinctness on the form and content of the credit contract. Besides that, transparency is an openness of information from both parties (the creditor and debtor) to avoid credit failure and avoid the difference in interpretation towards the matters agreed.

In legal regulation in Indonesia this matter has been accommodated in the Draft of Law of Banking Credit, which is currently one of the national legislation programs (Prolegnas) in the House of Representatives of Republic of Indonesia. The principle of this Law is stated in the following, "Banking Credit is conducted by adopting the principle of market mechanism based on trust, justice, honesty, transparency, propriety, morality, and according to legal certainty."

The purpose of the arrangement of the Law of Banking Credit is the following:

a. To give balance over the rights and duties to the creditor and debtor;
b. To give legal protection and legal certainty to the creditor and debtor;
c. To regulate Banking Credit transparently for the debtor and creditor; and
d. To regulate Banking Credit based on the principle of prudence.

Then, to guarantee legal certainty, the Law of Banking Credit contains the following:

a. The contract is consensual and real, dissimilar with the loan agreement as regulated in Civil Law which is only real;
b. The credit contract is created in standard form by keeping paying close attention to the balance of rights and duties between the creditor and debtor; and
c. The application of criminal sanction in the sector of credit.

Concerning with the standard contract, this law regulates that the credit contract is in written in the standard form according to the Bank of Indonesia and the convention in banking world. Every credit contract entered requires at least: a) the true, complete, and clear identity of the creditor and debtor; b) the purpose of credit usage; c) the amount of money and type of certain currency; d) the contract's duration; e) the amount and procedure of interest estimation; f) credit collateral; g) the rights and duties of the creditor and debtor; h) the requirements of drawdown; i) the matters causing material obligation to the debtor; and j) the debtor's statement that the debtor has understood and agreed with the content of the contract.

Here, the principle of prudence in granting the credit is by applying the principle of healthy credit inter alia credit grant based on the trust over the debtor's capability and capacity o repay its obligation according to the agreement; this makes the aspect of credit collateral as an important factor that needs to be considered by the creditor.

In respect to the criminal sanction in the sector of credit, the problem that always occurs in the world of credit is ultimately about the credit that cannot be repaid by the debtor. This occurs because of not only the matters related to the imbalance of rights and duties between the debtor and creditor in a credit contract, but also the credit misuse by the debtor. Until today, credit misuse in banking practice has not been able to be reached by the application of criminal sanction while such action will emerge not only the non-performing loans, but also, in its shift, a complication that will highly affect the development of national economy. Therefore, it will be precise if this law regulates the imposition of criminal sanction towards the parties misusing the credit.

From the matter above, we can see that the government through the mechanism of the Law of Banking Credit has reflected good governance in the practice of credit grant that must be put into clauses in a fair agreement and based on the good faith, transparency, and the legal regulation mentioned, that finally will promote bank sustainability through trust towards good governance. This Law is required to actualize legal means that can give the balance of responsibility, rights and duties between the creditor and debtor, equal treatment and transparency. In addition, this will promote the trust not only towards the government but also especially the bank.

People's trust will also go to bank. Bank is a business of trading in credits and money. So, a bank's main business is trust. Thus, it can be said that a bank is an institution of trust (Veithzal.H. and Andria Permata Veithzal, 2007). In other words, the function of credit is in the fulfillment of merit to serve the society in the attempt to support the commerce, push and accelerate production, services and even consumptions where all of those will point to enhance the living standard of the people.

Bank's strategic role as the institution of fund provider for financing and investment is expected to be more enthusiastic in expanding the business. By maintaining the trust as the basis of good conduct of government and bank, this will affect more future investment for the bank. As a result, this will build a more sustained populist economic power as a stronger national economy under the good governance.

To realize the concept of the good governance, this can be done by attaining the synergy between the government, private sector and civil society in the management of society. Therefore, the government's public policies must be transparent, effective, efficient, and able to answer basic term of justice, so the legal certainty is produced for the parties both the debtor and creditor in activities of credit reflecting the balance of rights and duties.

3. Conclusion

The application of the principle of good faith in the clauses of bank credit contract must be based on the principle of balance and transparency over the rights and duties between the debtor and creditor. This is a reflection of good governance which can be conducted by the government through policies of banking credit by formulating the law together with the House of Representatives. The reflection of good governance creates the trust not only to government but also especially bank. By maintaining the trust as a basis of government's and bank's good conduct, this will affect more future investment for the bank. As a result, this will build a more

sustained populist economic power as a stronger national economy under the good governance. To realize the concept of the good governance, this can be done by attaining the synergy between the government, private sector and civil society in the management of society.

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