

IMPLEMENTATION OF PROVIDING CREDIT WITH COLLATERAL RIGHTS TO DEBTORS PT. BANK RAKYAT INDONESIA PERSERO TBK. KOLAKA BRANCH, SOUTHEAST SULAWESI

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Abstract

In order to maintain the continuity of this development, the actors of which include both the government and the community as individuals and legal entities, large amounts of funds are needed. One of the facilities that has a strategic role in procuring these funds is banking. Various financial institutions, especially conventional banks, have helped fulfill the need for funds for economic activities by providing money loans, among others in the form of bank loans. To answer the writing questions that have been formulated above, the authors will use the normative research method. Lending by PT. Bank Rakyat Indonesia is based on the principle of prudence, namely the bank must act carefully in determining who should be given credit and how much amount of credit given after knowing the guarantee provided by the prospective debtor. The bank must also ensure that the agreement made with the prospective debtor is flawless and fulfills the legal terms of the agreement. The making of the Mortgage Granting Deed aims to register land rights that are burdened with Mortgage Rights so that legal certainty is guaranteed, both covering certainty regarding the subject of the rights and the object of the rights.

Keyword : Law, Bank, Credit

A. Introduction

The national development that has been carried out is a sustainable development effort to realize a just and prosperous society in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia.¹

Development in the economic field is part of national development,² one of the efforts to realize a just and prosperous society based on Pancasila and the 1945 Constitution. In order to maintain the continuity of this development, the actors of which include both the government and the community as individuals and legal entities, a large amount of funds is needed. One of the facilities that has a strategic role in procuring these funds is banking. Various financial institutions, especially conventional banks, have helped fulfill the need for funds for economic activities by providing money loans, among others in the form of bank loans. Banking credit is one of the conventional bank businesses that has been widely used by members of the public who need funds. Law Number 10 of 1998 concerning Banking states that the main function of Indonesian Banking is to collect and distribute public funds aimed at supporting the implementation of national development towards increasing the welfare of the people at large. In carrying out these functions, the bank makes efforts to collect funds from the public in the form of deposits in the form of demand deposits, time deposits, certificates of deposit, savings and or other equivalent forms. In this case the bank also distributes funds originating from the community by providing various types of credit.³

¹ Andri Winjaya Laksana, Ida Musofiana, *Pandangan Kritis Terkait Pertanggungjawaban Korporasi perbankan terhadap Tindak Pidana Pembobolan Rekening Nasabah*, JPM : Jurnal Purnama Media, Vol 1 No 1, Agustus 2022, Page 50-64

² Suriyati Hasan, *Sistem Perencanaan Pembangunan Dalam Penataan Hukum Nasional (Suatu Kajian terhadap Undang – Undang Nomor 25 Tahun 2004 Tentang Sistem Perencanaan Pembangunan Nasional)*, Meraja Journal, Vol. 1, No. 3, November 2018, page 55-66

³ Bachtiar Simatupang, *Peranan Perbankan Dalam Meningkatkan Perekonomian Indonesia*, Jurnal Riset Akuntansi Multiparadigma (JRAM) Vol.6, No.2, Desember 2019, page 136-147

Credit provided by banks certainly contains risks, so that in practice banks must pay attention to the principles of sound credit. To reduce this risk, credit guarantees in the sense of confidence in the ability and ability of the debtor to pay off his obligations in accordance with what was agreed is an important factor that must be considered by the bank. To obtain this assurance, before extending credit, the bank must conduct a thorough assessment of the character, ability, collateral capital and business prospects of the debtor. If the existing elements have been able to convince the creditor of the ability of the debtor, then the guarantee is sufficient only in the form of a basic guarantee and the bank is not required to ask for additional guarantees. The main guarantee referred to in the granting of credit is collateral in the form of something or objects that are directly related to the credit being applied for. Something that is meant here is a project or business prospect that is financed with the credit applied for, meanwhile what is meant here is an object that is financed or purchased with the credit that is applied for. The additional type in question is collateral that is not directly related to the credit being applied for. This guarantee is in the form of material guarantees whose objects are objects belonging to the debtor or individual, namely the ability of a third party to fulfill the debtor's obligations.⁴

We recognize two types of credit guarantee rights in practice in society:

1. Personal credit guarantee rights, namely guarantees from a third party acting to guarantee the fulfillment of the debtor's obligations. Included in this group include "borg", namely a third party that guarantees that other people's debts must be paid;
2. Material credit guarantee rights (*persoonlijke en zakelijke zekerheid*), namely guarantees made by creditors and their debtors, or between creditors and a third party that guarantees the fulfillment of the debtor's obligations. Included in this group if the person concerned takes precedence over other creditors in terms of the distribution of the proceeds from the sale of the debtor's assets, including: privileges, mortgages and mortgages.⁵

Guarantee practices that are often used in Indonesian banking are material guarantees which include:

1. Mortgage, which is a material right over immovable objects, to take reimbursement from it for the settlement of an agreement (article 1162 of the Civil Code);
2. *Credietverband*, namely a guarantee for land based on Koninklijk Besluit (KB) dated 6 July 1908 No. 50 (Stbl 1908 No. 542); The bonding of the debt guarantee object in the form of land is fully carried out through the Mortgage guarantee institution.⁶

Law No. 4 of 1996 concerning Mortgage Rights, hereinafter referred to as UUHT, provides the definition of "Mortgage over land and objects related to land", hereinafter referred to as "Mortgage Rights", as stipulated in Article 1 paragraph (1) UUHT as follows "Hoverty right is a guarantee right that is imposed on land rights as referred to in Law no. 5 of 1960 concerning the Basic Agrarian Regulations, including or not including other objects which are an integral part of the land, for the settlement of certain debts, which gives priority to certain creditors over other creditors. The existence of legal rules regarding the implementation of the encumbrance of Mortgage Rights in a credit agreement aims to provide legal certainty and protection for all parties in utilizing land and objects related to land as credit guarantees.

⁴ Murlyta Nevi Sukmawarti, *Personal Guarante Terhadap Perjanjian Kredit Dengan Jaminan Hak Tanggungan*, *Airlangga Development Journal*, 2019, page 62-79

⁵ Wulandari Rima Ramadhani, *Kreditor Separatis vs. Upah Buruh: Suatu Kajian Dalam Hukum Kepailitan*, *Media Iuris Vol. 4 No. 1, Februari 2021*, page 103-125

⁶ M. Bahsan. *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*. Raja Grafindo Persada. Jakarta. 2007, page 15

For this reason, the practice of binding credit with mortgage guarantees in banking activities should also be carried out in accordance with what has been regulated in the UUHT.

B. Research Methods

To answer the writing questions that have been formulated above, the authors will use the normative research method.⁷ The research specifications used in this study used descriptive analytical.⁸ While the conceptual approach examines matters relating to the notion of corporations, criminal acts, theories of criminal responsibility and others that are used as the author's support in building a legal argument against the issues studied.⁹ The research specifications used in this study used descriptive analytical.¹⁰

C. Results and Discussion

1. Procedures for Granting Credit with Guaranteed Mortgage Rights at PT. Bank Rakyat Indonesia Kolaka Branch.

Credit procedures include terms, conditions or instructions for actions that must be taken from the time the customer's application is submitted until the credit granted by the Bank is paid off. Presentation of the context in the form of a sequence of steps that are common in credit procedures that must be handled by the Bank, namely:¹¹

- a. Credit Application

The definition of an application for a credit facility includes::

1. A new application to obtain a type of credit facility.
2. An additional application for an ongoing credit.
3. Application for extension/renewal of credit validity period that has expired.
4. Other requests for changes to the terms of the facility
5. ongoing credit, including exchange of guarantees, changes/delays in installment schedules and so on.

In a credit application, the customer is required to attach documents consisting of:

1. Customer application letters that are completely and validly signed.
2. Fill-in list provided by the Bank which is actually and completely filled in by the customer.
3. List of other attachments required by type of credit facility.

Every credit application letter received must be recorded in a special register provided. A credit application is declared complete when it meets the requirements specified for submitting an application according to the type of credit. As long as the credit application is in process, the application files must be maintained in the application file. To make it easier

⁷ Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, *The Legal Protection Against Children Through A Restorative Justice Approach*, *Law Development Journal*, Volume 3 Issue 2, June 2021, Page 223-231

⁸ Julizar Bimo Perdana Suka, Bambang Tri Bawono, and Andri Winjaya Laksana, *The Implementation of Code of Conduct for Members of Police as Accurators of Murder*, *Law Development Journal*, Vol 4 No 2, June 2022, Page 197-204

⁹ Peter Mahmud Marzuki, *Legal Research Revised Edition*, Jakarta : Praenada Media, 2017, page.173.

¹⁰ Julizar Bimo Perdana Suka, Bambang Tri Bawono, and Andri Winjaya Laksana, *The Implementation of Code of Conduct for Members of Police as Accurators of Murder*, *Law Development Journal*, Vol 4 No 2, June 2022, Page 197-204

¹¹ Thomas Suyatno. *Dasar-Dasar Hukum Perkreditan Edisi Ketiga*. Gramedia Pustaka Utama, Jakarta. 1993, page 15

for the Bank to obtain the necessary data, the Bank uses a Credit Application Form that must be filled out by the Customer, balance sheet forms, loss/profit list.¹²

b. Credit Investigation And Analysis

1. Credit investigations include: Interviews with credit applicants or debtors.
2. Collection of data related to credit applications submitted by customers, both internal bank data and external data. This includes inter-bank information and checks on black lists and lists of bad credit from the BI system.
3. checking.
4. Checking/investigating the truth and obligations regarding matters raised by customers and other information obtained.
5. Preparation of reports as necessary regarding the results of investigations that have been carried out.

While credit analysis includes:

1. Prepare work on decomposition of all aspects, both financial and non-financial to find out the possibility that a credit application can / cannot be considered.
2. Compile the necessary analysis reports, which contain descriptions and conclusions as well as presentation of alternatives as material for consideration for decision-making by the leadership of customer credit applications.

The process of investigation and analysis in general is carried out using an assessment method called the 5 C's analysis principle which consists of the Bank examining the fairness and consistency of the data and information received from the Customer which includes: Complete information about the customer, including the behavior/character of the customer, ability and business experience and other matters that reflect the personality and abilities of customers/prospective customers as a measure of some of the resources and credit repayment capacity.

1. Information about the customer in full, including the customer's behavior/character, ability and business experience and other matters that reflect the personality and ability of the customer/prospective customer as a measure of some of the sources and ability to repay credit.
2. Customer business activities, assessment of business activities and business prospects, from customers
3. Collateral, assessment of collateral and ownership status
4. Financial statements, where necessary and financial reports from customers as one of the absolute basic data for the analysis section.
5. Cash Flow Projection, for types of credit that are aflopend in nature such as credit
6. construction industry, seasonal loans, investment loans, and other loans that are transactional in nature or in installments with a certain period of time must be accompanied by a Cash Flow Projection, so that a timetable for repayment can be prepared. Where here it functions as an auxiliary tool in determining the customer's maximum needs for working capital.

¹² Saekarini Yuliachtri, *Analisis Prosedur Pemberian Kredit Untuk Mengurangi Tingkat Non Performing Loan (Npl) Pada Bank Sumsel Babel Cabang Pembantu Pendopo Lintang, Accountia Journal (Accounting Trusted, Inspiring, Authentic Journal) Vol. 04, No.2, October 2020, page. 142– 153*

7. Account Activity, prospective customers/customers who have accounts, must also describe account activities, including the highest, lowest and average balances each month as well as indications of account activity in the form of the amount/frequency of debit and credit mutations.
8. Decisions on Credit Applications What is meant by decisions are any actions of officials based on their authority entitled to make decisions in the form of rejecting, approving and/or proposing applications for credit facilities to higher officials. Every decision on a credit application must pay attention to the assessment of the general conditions which are basically listed in the credit analysis fund inspection report. The decision on the credit application consists of:
 - a. Rejection of Credit Applications Rejections are made for credit applications which in fact are considered by the Bank to be technically non-compliant.
 - b. Approval of a Credit Application is a Bank decision to grant part or all of a credit application from a prospective debtor.

9. Disbursement of Credit Facilities

Disbursement of a credit facility is any transaction using credit that has been approved by the Bank and the Credit Agreement as the main agreement and binding collateral in the form of movable property with fiduciary or immovable property (by Power of Attorney for Imposing Mortgage Rights or by Deed of Granting Mortgage Rights). Then the debtor can withdraw these funds according to the amount of credit given. Methods for disbursing credit facilities include withdrawing checks or giro bills, with receipts, with other documents that the Bank can accept as payment orders, or by transferring books at the expense of the customer's loan account.

10. Credit Granting Procedures

Before the debtor obtains credit, he must first go through an assessment stage starting from submitting a credit proposal and the required documents, checking document authenticity, credit analysis until credit is disbursed. We know the stages in granting credit by the name of the credit granting procedure. The purpose of the credit granting procedure is to ensure the eligibility of a credit, accepted or rejected. In determining the feasibility of a credit, an in-depth assessment is always carried out at each stage. If in the assessment there may be a deficiency, the bank can ask the customer to return or even be rejected immediately.

The procedure for granting credit to PT. Bank Rakyat Indonesia Kolaka Branch are as follows:

1. Submission of Proposals

To obtain a credit facility from a bank, the first step is for the credit applicant to submit a written credit application in a proposal. Credit proposals must be accompanied by other required documents. What needs to be considered in every submission of a credit proposal should contain information about:

For Legal Entity Debtors, the proposal contains:

1. Company history such as company curriculum vitae, type of line of business, names

of management and their educational background, company developments and product marketing areas.

2. The purpose of taking credit, in this case the purpose of taking credit must be clear. Is it to increase sales turnover or increase production capacity or to establish a new factory (expansion) and other purposes. Then also what needs attention is the use of credit whether for working capital or investment
3. The amount of credit and time period
4. The way the applicant repays the credit means that it is necessary to explain in detail the ways in which the customer returns his credit, whether from the proceeds of sales or in other ways.
5. Credit guarantees, which are given in the form of letters or certificates. Assessment of credit guarantees must be careful not to cause false disputes and so on, usually each guarantee is bound by certain insurance. Furthermore, this proposal is attached with the required documents such as:
 - a. Deed of Establishment of the Company and Deeds of Amendment thereto.
 - b. Proof of resident's identity card.
 - c. Certificate of Company Registration.
 - d. Tax ID number.
 - e. Balance Sheet and Income Statement for the last 3 years.

Photocopy of the certificate used as collateral (if the collateral is in the form of land), Photocopy of Proof of Ownership of Motorized Vehicles (if the collateral is in the form of a motorized vehicle), Invoice/receipt for purchase of machinery (if the collateral is in the form of machinery or heavy equipment).

For individual debtors, the proposal contains:

6. Curriculum vitae of the prospective Debtor.
7. Purpose of taking credit, in this case the purpose of taking credit must be clear.
8. The amount of credit and term.
9. The way the applicant repays the credit means that it is necessary to explain in detail the ways in which the customer repays the credit whether from his income or in other ways.
10. Credit guarantees, which are given in the form of letters or credit guarantee assessment certificates, must be careful not to cause false disputes and so on, usually each guarantee is bound by certain insurance.

Furthermore, this proposal is attached with the required documents such as:

1. Identity Card, Marriage Certificate and Family Card of the Prospective Debtor, Identity Card of the husband/wife of the prospective debtor,
2. Taxpayer Identification Number.
3. Information on the income of the prospective debtor.
4. Photocopy of the certificate used as collateral (if the collateral is in the form of land), Photocopy of Proof of Motor Vehicle Ownership (if the collateral is in the form of a motorized vehicle), Invoice/receipt for purchase of machinery (if the collateral is

in the form of machinery or heavy equipment).

5. Investigation of Loan Files

After submitting the proposal and files, the next stage is the investigation of the documents submitted by the credit applicant. The goal is to find out whether the files submitted are complete according to the requirements set. If according to the bank it is incomplete or insufficient, the customer is asked to immediately complete it and if to a certain extent the customer is unable to complete the deficiency, then the credit application should just be canceled. In investigating files, things that need to be considered are proving the truth and authenticity of existing files, such as the truth and authenticity of Notary Deeds, Company Registration Certificates, Resident Identity Cards and Collateral documents such as Land Certificates, Proof of Motor Vehicle Ownership to agency authorized to issue it. Then, if it is genuine and correct, then the bank tries to calculate whether the amount of credit requested is indeed relevant to the customer's ability to pay. All of this by using calculations against financial reported figures with various existing financial risks.

6. Assessment of Creditworthiness.

In assessing whether or not a credit is appropriate, it is necessary to carry out a credit assessment. Assessment of the feasibility of a credit can be done using the 5 C's analysis, but for larger credits, an assessment method with a feasibility study needs to be carried out. In this feasibility study each aspect is assessed whether it meets the requirements or not.

The criteria for collateral that must be submitted by the prospective debtor are:

- a. Has a value that is greater than the total value of the credit facility.
- b. Has an economic value that is longer than the term of the credit facility provided.
- c. Physically not easily damaged.
- d. Can be traded freely and relatively easily at a relatively small cost.
- e. Insurable.

Regarding the criteria for collateral items from a legal/juridical perspective, they are as follows:

- a. Really belongs to the prospective debtor or person/third party who is willing to guarantee to PT. Bank Rakyat Indonesia Kolaka Branch
- b. Not in a condition guaranteed to other parties, not in dispute, or confiscated in a case in court.
- c. Have proof of ownership that is legal and still valid and has legal force.
- d. A real binding can be carried out by using a guarantee institution in accordance with the applicable regulations.
- e. No taxes owed.
- f. First Interview

In this stage it is carried out to prospective debtors by dealing directly with prospective debtors. The aim is to gain confidence whether the files are appropriate and com-

plete as the Bank requires. This interview is also intended to find out the actual wants and needs of customers. In this interview, it was conducted as relaxed as possible so as to obtain interview results that are in accordance with the objectives expected by the Bank. The questions asked were carried out by means of structured, unstructured interviews.

g. Visit to the Location (On the Spot)

After obtaining confidence in the validity of the documents from the results of investigations and interviews, the next step is to conduct a review of the location that is the object of credit. Then the results of field visits were matched with the results of the first interview. At the time of conducting the site inspection, prior notification was not made to the prospective debtor so that what was seen in the field was in accordance with the actual conditions. The purpose of the field review is to ensure that the object being financed really exists and is in accordance with what is written in the proposal.

h. Second Interview

The results of the field visit were matched with the existing documents as well as the results of the first interview in the second interview. This second interview is a file improvement activity, if there may be deficiencies during a site inspection in the field. The notes on the application and at the time of the first interview were matched at the time of the site inspection whether there was conformity and contained some truth.

i. Credit Decision

After going through various assessments starting from the completeness of the document's validity and authenticity as well as an assessment covering all aspects of the credit feasibility study, the next step is a credit decision. The credit decision is to determine whether credit is eligible to be granted or rejected, if appropriate, the administration is prepared, usually the credit decision will cover:

- 1) Akad kredit yang akan ditandatangani
- 2) Jumlah uang yang diterima
- 3) Jangka waktu kredit, dan
- 4) Biaya-biaya yang harus dibayar Keputusan kredit biasanya untuk jumlah tertentu merupakan keputusan tim. Begitupula bagi kredit yang ditolak makahendaknya dikirim surat penolakan sesuaidengan alasannya masing-masing.

b. Signing of Credit Agreements/other agreements

This activity is a continuation of the credit decision. Before the credit is disbursed, the prospective debtor first signs a credit agreement/credit agreement, then binds the credit guarantee with a Mortgage or Fiduciary right depending on the type of collateral guaranteed. Or sign other agreements deemed necessary. The signing of the credit agreement is carried out between the Bank and the debtor directly or through a Notary.

c. Credit Realization

After signing the credit agreement, the next step is to realize the credit. Realization of credit is given after signing the necessary documents by opening a current or savings account at PT. Bank Rakyat Indonesia Kolaka Branch. Thus the withdrawal of credit funds can be done through an account that has been opened. Disbursement or withdrawal of money from the account as the realization of the provision of credit can be taken in accordance with the purpose of the credit. Disbursement of credit funds depends on the Bank's agreement with the prospective Debtor, usually carried out all at once or in stages.

2. Making a Power of Attorney for Granting Mortgage Rights

In granting the Mortgage Right, the Mortgage giver must be present before the PPAT. If for some reason he cannot attend in person, he is obliged to appoint another party as his proxy, with a Power of Attorney for Imposing Mortgage Rights, abbreviated as SKMHT (Power of Attorney for Imposing Mortgage Rights), which is in the form of an authentic deed. Making SKMHT (Power of Attorney for Imposing Mortgage Rights) in addition to Notaries, is also assigned to PPAT (Land Deed Making Officials) whose existence reaches the sub-district area, in order to facilitate the provision of services to parties who need them. At the time of making SKMHT (Power of Attorney for Imposing Mortgage Rights) and Deeds for Granting Mortgage Rights, there must be confidence in the Notary or PPAT (Land Deed Making Official) concerned, that the Mortgage giver has the authority to take legal action against the Mortgage object imposed, although certainty regarding the possession of said authority is only required at the time the granting of the Mortgage is registered and in accordance with Law No. 4 of 1996 Concerning Mortgage Article 15 paragraph (1), (2), (3), (4), (5), (6) regarding the making of a power of attorney imposing Mortgage.

According to the applicable law, the PPAT/public official who is authorized to make deed of granting Mortgage and other deeds in the context of encumbering land rights, in this case the granting of Mortgage rights, must be present before the PPAT. In this case the debtor (authorizer) authorizes the creditor (recipient) in terms of handing over or selling goods belonging to the attorney as collateral for credit, where the sale of these goods is carried out by the bank or other party appointed at an agreed price. either privately or auctioned through the State Service and Auction Office (KP2LN) in Jakarta.

Then in this power of attorney it is also described for the land that is guaranteed both in terms of area, location and certificate number registered in the name of the power of attorney. Then it is also accompanied by the signature of the power of attorney and the date when this power of attorney was made. (attached).

3. The process of registration of Mortgage is carried out with the following stages:

In accordance with the Mortgage Act No.4 of 1996 Article 13 Paragraph 1-5

Article 13

- (1) The granting of Mortgage Rights must be registered at the Land Office.
- (2) Not later than 7 (seven) working days after the signing of the Mortgage Deed as referred to in Article 10 paragraph (2), the PPAT is obliged to send the relevant Mortgage Deed and other documents required to the Land Office.
- (3) The registration of the Mortgage as referred to in paragraph (1) is carried out by the

Land Office by making a Mortgage land book and recording it in the land title book which is the object of the Mortgage Right and copying the record on the related land title certificate.

- (4) The date of the mortgage book-land as referred to in paragraph (3) is the date of the seventh day after complete receipt of the documents required for registration and if the seventh day falls on a holiday, the land book in question is given a working day date next.
- (5) The Mortgage Right is born on the date of the Mortgage Land Book as referred to in paragraph (4). After the provisions above, the mortgage is carried out:

- a. Bookkeeping in the mortgage land book by the land office head. . Applications for mortgage rights can be registered at the registration counter that has been determined by the land office of the city of Jakarta

- b. After the land book is made, the mortgage right is recorded by the head of the land office in the land book and a copy of it on the certificate of land rights that is used as collateral. Thus the completion of the registration of the relevant mortgage rights. The certificate of land title that has been affixed with a copy of the note that the mortgage right is handed over to the right holder, unless there is a written agreement to be submitted to the creditor holding the mortgage right.

Mortgage certificate As a proof of the existence of mortgage rights, the Jakarta City Land Office issued a certificate of proof of rights which was named a Mortgage Certificate. In the regulation of the Minister of Agrarian Affairs/Head of the National Land Agency number 3 of 1996 it is stipulated that the mortgage certificate consists of a copy of the mortgage land book and a copy of the related Mortgage Granting Deed (APHT) made by the land office, bound together in the cover of the document. form determined by these regulations.

D. Conclusion

Lending by PT. Bank Rakyat Indonesia is based on the principle of prudence, namely the bank must act carefully in determining who should be given credit and how much amount of credit given after knowing the guarantee provided by the prospective debtor. The bank must also ensure that the agreement made with the prospective debtor is flawless and fulfills the legal terms of the agreement. The making of the Mortgage Granting Deed aims to register land rights that are burdened with Mortgage Rights so that legal certainty is guaranteed, both covering certainty regarding the subject of the rights and the object of the rights..

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