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LEGAL PROTECTION FOR CREDITORS FOR TORT WHAT WAS DONE BY THE DEBTOR IN THE CREDIT AGREEMENT BANKING (LEGAL PROTECTION FOR CREDITORS FOR DEFAULTS COMMITTED BY DEBTORS IN BANKING CREDIT AGREEMENTS)

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Abstract:

One of the popular institutions in terms of providing credit loans is banking. Banking institutions as financial institutions play an important role in economic activities, in accordance with the principles, functions and objectives of banking as stated in Chapter II Article 4 of Law no. 10 of 1998 concerning Banking which states that Indonesian banking aims to support the implementation of national development in the context of increasing equity, economic growth and national stability towards increasing the welfare of the people at large.

The method used in this study is a normative juridical method, namely research by describing conditions and empirical facts, which are obtained from secondary data (library literature), which are related to the object of research. These legal facts are analyzed with various laws, theories, as well as doctrines or expert opinions that aim to find answers to problems that will be discussed further.

From the results of the study it was found that the existence of banks is very influential in the life of the general public behind the easy access of customers to borrow credit funds. But there are still many debtors who don't responsible.

Keywords: Legal protection for default debtors

INTRODUCTION

Everyone has a relationship with other people to meet all their needs. Just like people who carry out business both in terms of trade and in terms of producing goods, this of course requires capital, when people want to carry out business activities but do not have enough capital, of course that person will apply for loans to other parties, both individuals and legal entities such as banks.

One of the popular institutions in terms of providing credit loans is banking. Banking institutions as financial institutions play an important role in economic activities, in accordance with the principles, functions and objectives of banking as stated in Chapter II Article 4 of Law no. 10 of 1998 concerning Banking which states that banking .

Indonesia aims to support the implementation of national development in
in order to increase equity, economic growth and national stability towards increasing the welfare of the people at large.

According to Article 1 number 2 of Law No. 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law) states that a 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 common people.

So the bank has the main function as a financial intermediary, namely collecting funds (funding) and channeling funds to the public (lending) to carry out its functions, one of the efforts made by banks is to provide credit. Credit distribution is a very risky business from banks, so a good credit analysis is needed. Banks as trusted institutions, will only provide credit, so the bank has the main function as a financial intermediary, namely collecting funds (funding) and channeling funds to the public (lending) to carry out its functions, one of the efforts made by banks is to provide credit. Credit distribution is a very risky business from banks, so a good credit analysis is needed. Banks as trusted institutions, will only provide credit.

Before obtaining a credit facility, the prospective debtor must meet the requirements of the bank, one of which is the existence of a credit guarantee, because the function of providing collateral is to give rights and powers to the bank to obtain repayment with collateral, if the debtor defaults or does not pay his debt at the time specified in the

agreement. Thus, the existence of legal certainty is a condition that is absolutely necessary for banks as money lenders (creditors).

An agreement is an event where a person promises to someone else or where two people promise each other to do something. From this event, a legal relationship arises between two people which is called an agreement. The agreement issues an agreement between the two people who make it. In its form, the agreement is in the form of a series of words containing promises or commitments spoken or written.

Regarding agreements it is regulated in Book III of the Civil Code (KUHPerdata) which explains that an agreement is a

"actions", namely legal actions, which have legal consequences. The agreement can also be said as an act to obtain a set of rights and obligations, namely the legal consequences which are the consequences. Legal actions in agreements are actions to carry out something, namely obtaining rights and obligations which are called achievements.

Default is failure to fulfill or neglect to carry out obligations as specified in the agreement made between creditors with debtors. Defaults or non-fulfillment 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 in fulfilling them or fulfilling them but not as agreed.

Default is contained in article 1243 of the Civil Code, which explains that:

"Reimbursement of costs, losses and interest due to non-fulfillment of an agreement, only then begins to be required, if the debtor, after being declared negligent in fulfilling the agreement, continues to neglect it, or if something that must be given or made can only be given or made, it can only be given or made within the grace period that has been exceeded."

In other words, default can also be interpreted as an act of breaking a promise committed by one of the parties who does not carry out the contents of the agreement, or carries out but is late or does what he is not allowed to do.

Accounts payable is an agreement between one party and another party and the object of the agreement is generally money.

The position of one party is the party providing the loan while the other party receives the loan. The money borrowed will be returned within a certain period of time

he promised.

The debt agreement is included in the lending and borrowing agreement, because the object is money which is an item that is used up due to the use of this matter as regulated in Chapter Three of the Civil Code. Namely in Article 1754 of the Civil Code which explains, "Lending and borrowing is an agreement in the name of one party giving to another party a certain amount of goods that are used up due to use, on condition that the latter party will return the same amount of the same type and condition."

Then in the loan agreement, the borrower will return the borrowed goods in the same amount and in the same condition. If money is borrowed, then the borrower must return the money with the same value and the money can be spent.

The object of the loan agreement in Article 1754 of the Civil Code is in the form of goods that are used up due to use. Fruits, kerosene, fertilizers, paints, chalk are items that run out due to use. Money can be the object of a debt agreement, because it includes goods that are used up due to usage. Money that functions as a medium of exchange will run out because it is used for shopping. Therefore, it is very clear that debt agreements include loan agreements.

Then juridically article 1756 of the Civil Code regulates debts that occur due to borrowing money which reads:

"Debt that occurs due to borrowing money only consists of the amount of money stated in the agreement. If before the time of settlement, there is an increase or decrease in price or there is a change regarding the validity of the currency. then the return of the amount borrowed must be made in the currency in effect at the time of repayment, calculated according to the price prevailing at that time.

In decision Number 47/Pdt.Gs/2019/PN.Jkt.Utr the parties are between PT. Bank Rakyat Indonesia (Persero) Tbk. Jakarta Kemayoran Branch Office, West Pademangan Unit with Juju Triantono and Mira Yuliana Agustofa the defendants did not fulfill their obligations / defaults / broken promises because they did not carry out the provisions of article 2 paragraph (2) acknowledgment of debt Number: PK1903VIIY / 03/2019 dated 14 March 2019 the defendants did not pay loan installments regularly starting in May 2019, so that currently the credit loans of the defendants are in the category of arrears due to debt loan/credit of the Defendants in the Loss category, the Plaintiff must record the cost of earning assets reserves. to guarantee the loan/credit, the Defendants provided collateral in the form of a residential building with proof of ownership in the form of a Certificate of Right to Build (SHGB) which had been recorded at the request of the person concerned to be recorded in the Notary register book and PPAT Fidiati SH No. 354/Reg/F.Not/2011 and did not authorize the Sale and Purchase of State Land and had been recorded in the Pademangan District registration book for changes / PBB data collection and had been recorded in the Pademangan District registration book located at Jl. Budi Mulia No. 03 RT.003/011 Kelurahan Pademangan Barat, Kecamatan Pademangan Jakarta Utara DKI Jakarta with a building area of 55 M2 registered in the name of JUJU Triantono (Guarantee Owner)

RESEARCH METHOD

The type of research used in this study is the method of normative juridical law, which in this case combines legal research conducted by examining literature or secondary data only. This research is also called library law research.

The research approach used in this study include:

1) The statutory approach (statute approach), namely the approach taken by examining all laws and regulations related to the legal issues discussed.
2) The Conceptual Approach is an approach in legal research that provides an analysis point of view of solving problems in legal research in terms of the legal concepts underlying it, or even can be seen from the values contained in the panorama of a regulation in relation to the concepts used.
3) The analytical approach (Analytic Approach) is an analysis of legal material to find out the meaning contained by the terms used in statutory regulations conceptually, as well as knowing their application in legal practices and decisions.
4) The case approach (Case Approach), where the case approach is an approach in normative legal research in which researchers try to build legal arguments in the perspective of concrete cases that occur in the field.

RESULTS

In this study using theory, Soeroso explained, that legal consequences are a result that occurs from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events which the law itself has determined or considered as legal consequences. Legal consequences arise from a legal event that precedes it. Or in other words, legal consequences are the consequences caused by legal events. Furthermore, in theory Soeroso also explained that the form of legal consequences could be in the form of:

1. Birth, change or disappearance of a legal condition,
2. The emergence, change or disappearance of a legal relationship, between the two or more legal subjects, where the rights and obligations of one party deal with the rights and obligations of another party
3. The birth of sanctions when actions that violate the law are carried out.
   It is even clearer that legal consequences are all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by the law concerned that have been determined or considered as legal consequences.

Legal Consequences of Default With a default committed by the debtor, it results in a loss that the creditor really does not expect from the debtor's negligence. Matters of negligence or default on the part of the debtor must be stated officially, namely by warning the debtor that the creditor wants payment immediately or in a short period of time.

As a legal consequence of the occurrence of default. then debtors who have been negligent or alpha in carrying out their obligations, may be subject to several sanctions or penalties. The Civil Code explains the legal consequences of default by the debtor

Among others :

1. In an agreement to give something, the risk is transferred to the debtor since a default occurs (Article 1237 of the Civil Code);
2. The debtor is required to pay compensation for losses suffered by the creditor (Article 1243 of the Civil Code);
3. If the agreement agreed upon is a reciprocal agreement, the creditor can demand a calculation or cancellation of the agreement through a judge (Article 1266 of the Civil Code);
4. The debtor is required to fulfill the agreement if it can still be done or cancellation accompanied by payment of compensation (Article 1267 of the Civil Code). Meanwhile, according to Abdulkadir Muhammad stated that the legal consequences for debtors who default, can be classified into five, that is :

a. The debtor is required to pay compensation that has been given by the creditor;
b. In a reciprocal/bilateral agreement, one party defaults, giving the other party the right to cancel or terminate the agreement through a judge;
c. The risk of switching to the debtor from the time the default occurs, this provision only applies to agreements to give something;
d. Paying the case if the case is brought before a judge, the debtor who has been proven to have committed a default will certainly be defeated in the case;
e. Fulfilling the agreement is accompanied by payment of compensation.

As for the relation to the theory of legal consequences in this study, as previously explained that what is to be discussed is related to legal consequences for debtors defaulting on the risk of default in banking credit agreements by court decisions. Which is where the author discusses based on a study of court decisions Number: 47/Pdt.GS/2019/PN.Jkt.Utr the occurrence of default by the defendant by not fulfilling his obligations, in the distribution of the loan/credit the Defendants have signed a Debt Acknowledgment Letter Number

PK1903VIIY/787/03/2019 dated March 14 2019 for not carrying out the provisions of article 2 paragraph (2) acknowledgment of debt the defendants did not pay installments
regular loans/credits starting in May 2019, so currently loans/loans are bad.

As a result of the loans/credits of the defendants being in the non-performing category, the plaintiff suffered losses from accounting for costs, more than that the plaintiff should have been able to use the money. To be channeled back to the public who need financing from the plaintiff as a banking institution.
Regarding the loans/bad credit of the defendants, the plaintiff has made routine bills, either by coming directly to the place of domicile of the defendants as per the customer visit report (LKN) or by giving a warning letter to the defendants.

Based on the facts mentioned above, it is evident that the defendants have failed to fulfill their obligations/default/break their promise. Thus, in order to guarantee the payment of the remaining loan/credit, the plaintiffs are given the right to sell the building object, either through a public auction with the intermediary of the State Asset Service Office and auction or under the hand including the land and buildings standing on it and taking the proceeds from the sale to settle the debts of the defendants.

DISCUSSION

A. Overview of the Agreement and its Legal Basis

1. Definition of Agreement

According to Subekti, it is an event where a person promises another person to do something or when two people promise each other to do something. From this event, a relationship arises between the two people, which is called an engagement. Meanwhile according to RM. Sudikno Mertokusumo, the notion of an agreement is a legal relationship between two or more parties based on an agreement to cause legal consequences.

An agreement is a double or plural legal action, in which case an agreement is required from the parties. Agreements always have something that is promised, something that is agreed upon is known as achievement. Achievements can be:

a. Give something
b. Do something or
c. Don't do anything

In an agreement, a legal relationship between one party and another cannot arise by itself. The relationship was created because of a "legal action" rechtshandeling. It is the legal actions/actions carried out by the parties that give rise to the legal relationship of the agreement, so that one party is given the right by the other party to obtain achievements. Meanwhile, other parties also provide themselves burdened with "obligations" to fulfill achievements. The definition of an agreement is an act by which one person or more binds himself to one or more other people, this is contained in article 1313 of the Civil Code. The definition of an agreement that is too broad gives weaknesses to this understanding, namely:

a. It's just a unilateral agreement
b. The word action also includes without consensus/agreement
c. Too broad
d. Without specifying the purpose

In the third book of the Civil Code, agreements are specifically regulated in Articles 1313 to 1351. In Article 1313 of the Civil Code it is stated that the definition of an agreement is an act by which one person or more binds himself to one or more other people. The arrangement is preceded by the Sub-Title Chapter II concerning Engagements born from contracts or agreements.

Thus it is clear that in principle contract law is a smaller part in scope than contract law.
The agreement is a basis for the emergence of a relationship between the parties who agree to bind themselves in a contract, in which the consequences of this relationship arise rights and obligations for the parties. In the emergence of the engagement, there are various types of engagement that exist. Which is known every time you make an agreement must submit to the Civil Code.

2. Requirements for the validity of the agreement

For a valid agreement, four conditions must be met
Article 1320 of the Civil Code as follows:

a. Agree those who bind themselves Both parties to an agreement must have free will to bind themselves and this will must be stated. Statements can be made emphatically or tacitly.
b. The ability to make an engagement
   Both parties must be legally capable to act independently. As we know, those who are not competent include underage people, people under supervision (curatale) and married women."
c. A certain thing
   What is promised in an agreement, must be a thing or an item that is quite clear or certain. According to Article 1335 of the Civil Code, an agreement that does not use a cause or is made with a false or prohibited cause has no power.
d. A lawful reason

An agreement that does not use a lawful cause, or is made for a false or prohibited reason, has no legal force (null and void).

Those who are incapable of making an agreement comply
Article 1330 of the Civil Code is.

1) People who are immature
   Regarding immature people, it has been determined in Article 1330 of the Civil Code, minors are those who have not even reached the age of twenty-one years and have not been married before. If the marriage is dissolved before they are even twenty-one years old, they will not return to a minor position.
2) Those who are under guardianship
   A woman in matters stipulated by law (a woman who is still married: Article 108 KUH

   civil servants) and all persons to whom the law has prohibited making certain agreements. Regarding this third point, since the issuance of the Supreme Court Circular Letter (SEMA) Number 3 of 1963 it is no longer valid, since then a woman may take legal action and is allowed to appear before the court without the permission of her husband.

3. Principles in the Agreement
   In legal theory it is recognized that sources of law include not only statutes, customs and court decisions, but also legal principles. The function of legal principles is to maintain and materialize standards of value (waardenmaatstaven) or benchmarks hidden in or underlying norms, both those contained in positive law and legal practice as far as possible. The legal principle may become the basis of several legal provisions, a set of regulations, even a stelsel or legal system. With positive law, legal principles are related in the sense that legal rules must be understood from the background of legal principles that are in line with or related to positive law.

It should be noted that there is a difference between legal regulations and legal principles. Often a legal principle is outside the law. However, it is not uncommon for legal principles to be concretized (manifested) as a legal rule. An illustration of this is the regulation of the general principle which obliges a person to comply with decency and decency (Article 1339 of the Civil Code). Laws too
manifested in the provisions

Article 1338 paragraph (1) of the Civil Code: "All agreements made legally apply as laws for those who make them."

From a brief description of the legal principles, in a nutshell it can be said that the functions of the agreement principle are:

1. Provide interweaving of legal regulations
2. Solve new problems and open up new areas of law
3. Sustify ethical principles which are the substance of the rule of law, and
4. Review existing legal teachings so that new solutions can emerge.

But the agreement made does not deviate from the rules stipulated in Book III of the Civil Code, Article 1319 of the Civil Code regulates "all agreements, both those with special names and those that are not known by a certain name, are subject to the general regulations contained in this chapter and the previous chapter. The parties are required to adhere to the legal principles or principles that apply in the Civil Code.

a. The Principle of Freedom of Contract (*CONTRACTS VRIJHEID*)

   The principle of freedom of contract illustrates that agreements have the same binding power as the applicable law. The parties bound in the agreement must obey or fulfill the contents of the agreement as citizens obey the law.

   The principle of consensualism described earlier has a correlation with the principle of freedom of contract regulated in article 1338 paragraph (1) of the Civil Code which states that: "all
   agreements made lawfully apply as law to those who make them".

   Freedom of contract is one of the most important principles, because it is the embodiment of free will, the emanation of human rights. ang states that everyone is free to get what he wants, in the law of the contract this philosophy is embodied in "freedom to contract" and this, according to the laissez fair theory, is considered the invisible hand, therefore the government cannot intervene (Badrulzaman, 1995: 110), the notion of individualism provides wide opportunities for the weak. In other words, the strong side determines the position of the weak.

   Even though previously all agreements made legally apply as laws for those who make them, this provision cannot be enforced absolutely.

   Having the freedom to agree on anything and with anyone is very important. Because of that, the principle of freedom of contract is included as part of the rights of human freedom. Freedom of contract is so important, both for individuals in the context of the possibility of self-development in personal life and in the traffic of social life, as well as to control or own property. From the point of view of the public interest, freedom of contract is a totality. So much so that some writers see it as a separate human right.

b. The Principle of Binding Strength (*VERBINDENDE KRACHT DER*

OVEREEN KOMNST)

The parties must fulfill what they have agreed on in the agreement they have made. In other words, this principle underlies the statement that an agreement will result in a legal obligation and therefore the related parties to carry out the contractual agreement. That an agreement must be fulfilled is considered given and never questioned again.

Social life is only possible to run well if one can trust the words of others. Science is unlikely to be able to provide more explanation than that, unless the contract is indeed binding because it is a promise similar to a law because the law is seen as an order from the legislature. If the certainty of fulfilling contractual agreements is eliminated, the entire system of exchanging goods and services in society will be destroyed. Therefore, loyalty to the promise given is part of the requirements that natural reason will demand. Promises of spoken words are binding. The agreement is made by the parties themselves and they will also determine the scope and method of implementing the agreement. An agreement made legally creates legal consequences and applies to the parties as if it were a law (Article 1338 paragraph (1) of the Civil Code). The linkage of an agreement is contained in the promise that will be carried out by the parties themselves.

c. The Principle of Balance (EVENWICHTSBEGINSE)

The principle of balance is a principle intended to harmonize legal institutions and the main principles of contract law known in the Civil Code which bases individualism on the one hand and the Indonesian people's way of thinking on the other. We need to add the principle of balance as a principle in Indonesian contract law in light of the fact that the Civil Code was drafted on the basis of values (waarden en normen) and western legal philosophy. In fact, we have different values and legal philosophies. Legal principles, especially contract law, should be based on a living awareness of Indonesian law, both based on customary law (the spirit of mutual cooperation, kinship, harmony, proper, proper and appropriate) as well as modern legal principles (consensus principle, freedom of contract principle and binding force principle). For the latter, the so-called principles also develop according to developments in contract law and can be found in legislation, legal practice and jurisprudence. Both, the principles of customary law and modern law ultimately boil down to one principle, namely the principle of balance.

d. Principle of Consensualism (CONSENSUALISM)

This principle of civil law is mentioned in article 1320 of the Civil Code which means "the will or will" of the parties to participate in binding themselves (Badrulzaman, 1995: 109).

According to Grotius, the basis for the consensus in natural law is pacta sunt servanda (the promise is binding), it is further said as promissorsoruth implendorum obligation (we must fulfill our promises). This philosophy can be described in the Malay rhymes "The human being is held by the promise." "The buffalo is held. Apart from that, the principle of consensualism emphasizes that a promise is born at the moment of consensus (agreement or agreement between the two parties) regarding the main points of what is the object of the agreement. If the agreement is made in written form, the proof of reaching a consensus is when the agreement is signed by the parties concerned. However, not all engagements comply with this principle, because there are exceptions to it, namely formal agreements (grant, peace, etc.) and real agreements (borrowing, borrowing, etc.).

B. Overview of Banking Credit Agreements

1. Definition of Credit Agreement

According to Prof. R. The subject of the word credit means trust. A person who gets bank credit is indeed someone who has the trust of the bank. The trust given in this case is the case of extending bank credit in the form of money which is regulated according to an agreement that has been agreed between the Bank as the lender in this case called the creditor and the bank customer or in this case as the debtor.

In providing bank credit, of course the Bank has
learn and pay attention to all the prescribed procedures so that
Banks will not withdraw funds (money) that have been lent to customers. Research on the ability of customers to return borrowed funds needs attention to prevent bad credit from occurring in the future. Creditors have to replace various possibilities to get their credit back through the establishment of credit guarantees.

Credit agreements are usually determined by the amount of bank interest by the creditor. This is as stipulated in article 1765 that it is permissible to promise interest on borrowing money or other goods that run out due to use. The interest agreed on the loan of rice or wheat, usually also in the form of rice or wheat, although it is not prohibited to set the interest in the form of money. Article 1754 of the Civil Code explains that:

Borrowing is what is agreed with the giving party to another party within a specified time changing the way of using that party later with the return of the same amount. Although the credit agreement is rooted in the loan-borrow agreement, the credit agreement is different from the loan agreement in the Civil Code. According to Sutan Remi SiahdeinilS himself, he classifies credit agreements as (special) named agreements, but they are not included in the lending and borrowing agreements as regulated by the Civil Code. He put forward 3 reasons why a bank credit agreement is not a loan agreement regulated by the Civil Code. First, the lending and borrowing agreement (Article 1754 of the Civil Code) includes a real agreement because money has already been transferred. On the other hand, a bank credit agreement is a consensual agreement because the agreement is only a preliminary agreement and money has not yet been transferred. Second, in the credit agreement, the debtor is not free to use the money he has lent because he must comply with it

purpose set out in the credit agreement.

CONCLUSION

Legal Consequences of Default Risk by Creditors in Banking Credit Agreements. Legal Consequences of Default With a default committed by the debtor, it results in a loss that the creditor really does not expect from the debtor's negligence. Matters of negligence or default on the part of the debtor must be stated officially, namely by warning the debtor that the creditor wants payment immediately or in a short period of time. As a legal consequence of the occurrence of default. then debtors who have been negligent or alpha in carrying out their obligations, may be subject to several sanctions or penalties.

Legal protection is protection born from a legal provision made by the government. The law itself does not only pay attention to the interests of creditors. Legal protection is also given to debtors and mortgagee. Methods of settlement of debts of creditors and debtors, in the event of default.

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