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Countermeasures criminal action of corruption in banking in the lending of credits

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Abstract: This article discusses the prevention of corruption in the banking sector in credit extension that occurs in Indonesia. In the discussion of this article, it is known that although almost every bank has implemented the principle of prudence and trust in providing credit, if it is not followed by building Good Corporate governance, the deviation will continue and that this principle does not guarantee that there are no irregularities in the implementation of credit distribution because of the large number of factors, and the dominant factor is the problem of the welfare of the bank officials and employees. Moreover, almost all banks use the services of outsourcing workers, and in the case of the criminal act of corruption in resolving bad/problematic credit at state-owned banks, it is appropriate to see the reasons for the bad credit.

Keywords: Corruption Crime; Banking; Lending of Credit.

BACKGROUND OF THE PROBLEM.

The role of the banking sector as a "Finance Intermediary Institution" in the economic sector is getting bigger, in December 2005, the collection of third-party funds reached Rp. 1,127, .90 trillion, disbursement of funds in the form of credit reached Rp. 730.20 trillion, the capital reached Rp. 115.90 trillion, L / R is reaching Rp. 1130 trillion while bank assets reached Rp. 1,469.80 trillion, and in 2019 the distribution of credit funds from banks to the public amounted to Rp.139.5 trillion. This figure reached 99.65% of the 2019 target of IDR140 trillion (Warta Ekonomi 2020: Total Realization of 2019 KUR Reaches IDR139.5 Trillion), and the distribution of bank credit funds to the public in 2020 reaches IDR 971 Trillion (Business Finance: 2020 End of 2020, Banking Credit Restructuring Translucent IDR 971 Trillion).

Bank Indonesia as the banking authority, through a supervisory and guidance mechanism, can resolve illegal acts of an administrative nature and is only authorized to impose administrative sanctions on a bank that is proven to have carried out business activities that deviate from the applicable regulations, while deviations that have indications of a criminal act, the sanction imposition process is submitted to law enforcers in accordance with applicable laws and regulations.

In order to enforce the law in the banking environment and secure public funds, as well as state assets in banks, Bank Indonesia considered it necessary to coordinate with law enforcement officials in handling banking crimes, so that on December 24 2004, the Governor of Bank Indonesia, The Attorney General of the Republic of Indonesia, the Chief of Police signed a joint decree on cooperation in handling banking crimes and instructions for its implementation as a renewal of a similar SKB that was signed in 1997. (Sundari Arie).

Given the banking function and its strategic position as a support for the smooth operation of the payment system, implementing monetary policy, and achieving financial system stability, as support for lending to the public, it is necessary to have Good Corporate Governance, a banking institution that is healthy, transparent and upholds the principles of professionalism and compliance to the applicable provisions and regulations which may further minimize the committing of Banking Crime.

The rise of banking crimes that have occurred in Indonesia, such as the case of Bank Global, Bank Mandiri, and the latter in the case of Century Bank, which is clear that these cases directly impact the country's economy and have not yet been able to raise public trust in financial institutions such as banks, and can reduce the level of foreign investment in Indonesia.

Substantially, the provision of loans by the Bank is intended to increase and build economic growth in the domestic business sector. The goods for providing loans or credit, the bank must adhere to the principles of trust and prudence as well as the development of Good Corporate Government in order to minimize the occurrence of a credit-giving process that deviates from the general policies of credit that are contained in the respective systems exist in banks in general. However, there is a possibility that the provision of credit may violate the provisions of the general policy for granting credit in the presence of elements of fraud that can be imposed with related criminal legislation.

Concerning criminal acts in the banking sector, Law No.7 of 1992, as amended by Law No.10 of 1998 concerning banking, provides clear coverage of criminal acts in the banking sector. In addition, the provisions

related to banking crime are regulated in the provisions of laws and regulations, including the following, namely Law No.31 of 1999 concerning the eradication of criminal acts of corruption as amended by Law No. 20 of 2001 regarding the Eradication of Corruption Crime.

This paper will specifically examine the application of Law No.31 of 1999 as amended by Law No. 20 of 2001 concerning the eradication of corruption in cases of banking crimes, especially in irregularities in providing credit by banks more specifically.

Based on the explanation above, the matters that will be discussed in this scientific paper include the first, what policies have the potential for criminal acts of corruption to occur in the process of extending credit by banks? Second, how is the application of the law on corruption in banking cases, especially in the provision of credit?

DISCUSSION

What Policies Can Potential Corruption Crime In The Process Of Lending By Banks.

Before discussing policies that have the potential for criminal acts of corruption in the process of providing credit by banks. First, it is important to determine the meaning of credit itself based on Law No.10 of 1998 Article 1 Paragraph 11, stating that credit is:

"Provision of money or an equivalent claim, based on a loan agreement or agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest. " (Jonker Sihombing. 2009.46)

In the banking law, it has been regulated explicitly that the legal subject is a bank on the one hand with a customer with another party, and the agreement was born from a lending and borrowing agreement. The juridical momentum behind the legal relationship between a bank and a customer is the principle of consensual, which is reflected in article 1320 of the Indonesian Criminal Code, namely that the agreement is one of the personal requirements for the birth of an agreement, while money or the equivalent is the object of the agreement which must not be contrary to law, decency, or public order as confirmed in Article 1320 point 4 in conjunction with Article 1337 of the Civil Code. (Tan Kamelo.2006.14-15)

Providing credit to banks is the main activity because an enormous income from banks comes from the sector either in the form of interest, fees, or other income. The amount of credit extended will determine the profit and business continuity of a bank. Therefore, the provision of credit must be made as well as possible, starting from planning the size of the credit, determining interest rates, procedures for granting credit, analyzing credit disbursements, to controlling bad loans. The importance of credit-giving activities can be seen from the opinion of Zulkarnain Sitompul, who states the following:

"Lending is a strategic function owned by banks, and this function is often the cause of bank bankruptcy." (Zulkarnain Sitompul. 2005,186)

On the other hand, Muhamad Djumahana mentioned banking credit as follows:

"The scope of credit as a banking activity is not solely in the form of lending to customers but is very complex because it involves a large number of elements including sources of credit funds, allocation of funds, credit organization and management, credit policy, documentation and credit administration, credit supervision and problem credit settlement.

Considering the broad scope and elements surrounding this lending activity, it is no exaggeration that the handling must also be carried out carefully with the support of professionalism and moral integrity which must be attached to human resources and credit officials ".(Muhamad Djumahana. 2000.20)

Providing credit is indeed a high-risk activity. Bankers must be able to analyze the feasibility of a credit application to minimize the risk contained in lending, and all efforts must be made to be able to assess creditworthiness using the 5 C's of credit approach to assessing the feasibility of a prospective debtor. The 5 C's of credit approach in providing credit is still being used by banks to date. This indicates that the principles contained therein are still relevant to the current condition of the 5 C's of credit which is so popular and are used by bankers to assess the character, capacity, capital, conditions, and collateral of the debtor. (Zulkarnain Sitompul. 2005,187)

In the provision of credit that occurs between a bank and a debtor, it must go through a process of steps in accordance with the procedural steps specified in the General Lending Policy in each bank. And in general, these procedures are as follows:

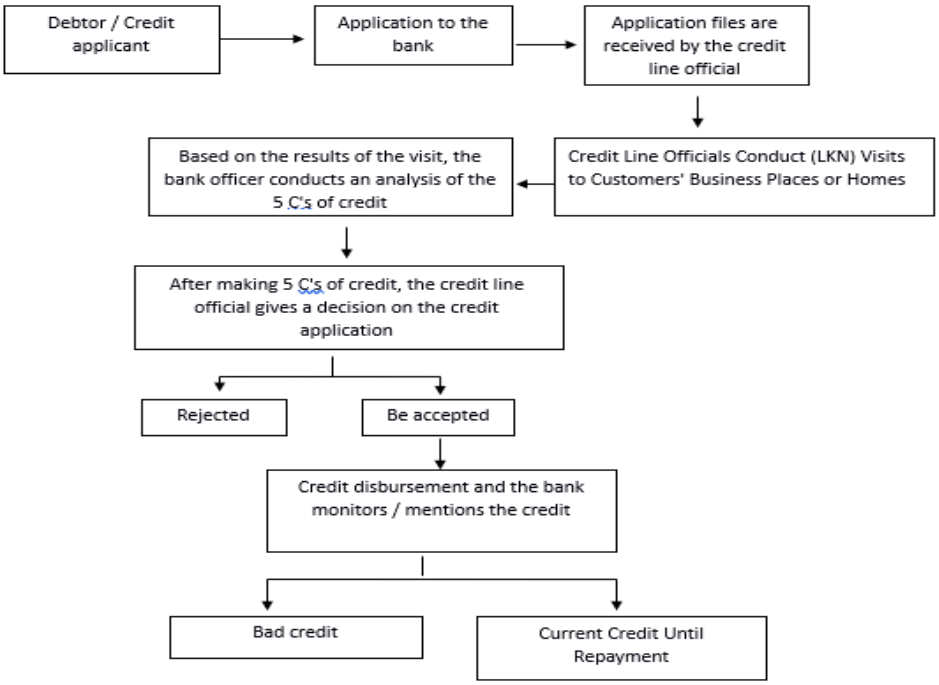

Fig.1

In the procedural provision of credit that is above, there are several that have the potential for irregularities in the provision of credit that can be carried out by bank line officials with various modus operandi, namely as follows:

1. During (LKN) a visit to a prospective debtor either at the place of business or at home in order to lobby and bribe bank officers.
2. Inflated the collateral value, both the total market selling value and the collateral value, according to bank liquidity. Which aims to get a large amount of credit disbursement
3. They were doing and making a double identity card, which aims to trick the system so that credit history information is not found at other banks. Usually, this stage is called IDI (Information Debtor Identification), in which the purpose of IDI is to find out whether the prospective debtor has a lousy record at other banks in credit. This system is confidential, and the data is taken in a systematic manner from Bank Indonesia.
4. Bank officials who have received bribes from prospective debtors make financial reports, the debtor's business prospects seem in a condition worthy of being extended credit by the bank
5. The debtor uses credit funds not in accordance with what was promised in the Offering letter.

In fact, these forms of deviation can be prevented through the formation and development of Good Corporate Governance in the banking world in credit-giving activities, which include:

1. Transparency for banking includes several aspects, which include:
   a. Obligation to disclose information in a timely, precise, accurate, and comparable manner.
   b. Matters that must be disclosed at a minimum, including but not limited to the vision, mission, and financial condition.
   c. Obligation to have a written policy that can be communicated with stakeholders.
   d. Transparency does not reduce the statutory obligation to keep confidentiality.
2. Accountability can be translated to a bank in the form of:
   a. There are clearly defined responsibilities for each organ in the bank.
   b. The need for competence from all levels of bank employees.
   c. Check and balance system in banking organizations, especially between the board of directors and the board of commissioners.
   d. There is a clear measure for performance for all employee units.
3. Responsibilities that are reflected in:
   a. Obey and carry out Prudential banking practice
   b. Making the bank a good corporate citizen.
4. Independence for Indonesian banking was highlighted as a principle because it was considered necessary in the framework of banking restructuring. This independence can be described in two important ways, namely:

a. Avoiding unnatural domination by any stakeholder and not being influenced by unilateral interests.
b. Decisions are taken objectively and free from any pressure from any party.

5. Fairness is carried out through 2 essential aspects, namely:
   a. The principle of equality and fairness applies to all stakeholders (equal treatment).
   b. Opportunity for equal access to information for all stakeholders, according to their respective functions. (Jonker Sihombing. 2009.39-40)

However, the implementation of Good Corporate Governance is still being implemented without consequence due to various factors. The most prominent factor is the interests of the individual bank employees. Moreover, the number of banks that use outsourcing personnel used by the bank is hazardous, and it is difficult to fully implement these principles.

These acts of irregularities can cause problems in the banking world and also have an impact on the country's economy, either directly or indirectly, especially if the bank is a state-owned bank. Of course, it will undoubtedly cause losses to state finances, and this can be categorized as a criminal act.

In preventing the occurrence of these deviations, apart from forming a condition of good corporate governance, alternative steps can be taken by banks, namely as follows:

1. In the stage of conducting the assessment stage, the preparation of financial reports is carried out using an independent agency that is independent of the banking institution (external).
2. Conducting an audit in terms of analysis, regular or sudden administration of the credit provider sector and this audit agency is truly independent, not from the internal dank concerned but formed by the government.
3. Improve the welfare of the bank employees and do not use outsourcing services.

Such is the administrative policy that has the potential to cause irregularities in the credit-giving process and preventive steps that can be taken by banks.

Application of Corruption Laws Against Banking Cases, Especially in Lending.

Before discussing the application of the Law on eradicating corruption against banking crimes, especially those concerning the process of granting credit, it is also advisable to first look at the classification of banking crimes in terms of banking law, especially in Article 49 paragraph (2) of the banking law, namely as follows:

a. They are requesting or accepting, permitting, agreeing to receive a commission, additional money, services, money, or valuables for the benefit of his personality or for the benefit of his family, in order to obtain or try to obtain for others in obtaining down payments, bank or credit facilities from the bank, or in the context of purchasing or discounting by banks on drafts, promises, checks, and trading papers or other evidence of obligations, or in the context of providing approval for other people to carry out withdrawals of funds that exceed their credit limit at the bank.

b. Failure to take the necessary steps to ensure bank compliance with the provisions of this law and other statutory provisions applicable to banks is punishable by imprisonment of at least three years and a maximum of eight years, and a fine of at least 5 billion. Rupiah and a maximum of 100 billion rupiahs.

From the description of banking crimes mentioned above, it does not seem to be related to actions or decisions taken by bankers who in turn cause customer credit facilities to become non-performing. This shows that lawmakers are not in a position to claim that bad credit is a crime. Whether the granting of credit that eventually defaults is contained in the elements of a criminal act involving the banker who provides the credit facility fully up to the court, and only the panel of judges is authorized to determine this.

As is the case with several other statutory regulations, the banking law includes criminal provisions listed in Chapter VIII of the law. According to **Romili Atmasasmita** stated that technically legislation, the imposition of administrative and criminal sanctions in law as in the banking law has resulted in the status of the law being at a crossroads, whether the act is a purely administrative violation or is it a criminal act. This question is further complicated if the banking case has also resulted in state losses and is not merely detrimental to the interests of the parties involved in the banking services in question. (Romli Atmasasmita, Introduction to Business crime, 63: 2003)

In the provision of credit which deviates from the provisions of the general policy, the provision of credit is a criminal act if it is done and causes a loss to state finances because a bank is a financial institution or institution that collects funds from the public and the funds from the public are channeled back to the public, whether in the form of providing credit or otherwise, it can be said that these funds are able to reflect the national economy.

In the law on eradicating corruption, the formulation of formal offenses is that actions that are seen as corruption do not require consequences. Thus, the element of state loss is no longer an absolute element to prove the existence of an act of corruption. In addition, the nature of violating material law in its positive function, meaning that acts against the law do not only mean acts against the law which are explicitly regulated in law which can be criminalized but also acts that are contrary to the principle of decency in society and the sense of justice in society can be. be the basis for determining the nature of being against the law. (Wahyuni Bahar et al., 2007.186)

Through the definition of state finances and the state economy in Article 2 Paragraph (1) according to Law No.31 of 1999 in conjunction with the following Law:
"Whereas state finances are all state assets in any form, separated or not separated, including all parts of state assets and all rights and obligations arising from being under the control, management and accountability of state institution officials, both at the central and regional levels, are under the control, management and responsibility of State-Owned Enterprises / Region-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third-party capital based on agreements with the state."
While the country's economy is
"Economic life which is structured as a joint venture based on the principle of kinship or business based on government policies, both at the central and regional levels in accordance with the laws and regulations which aim to provide benefits, prosperity, and welfare to the entire life of the community."
The definition of economy is indeed inclusive, and it appears that there is an impression that the definition is so broad that it makes it easier for lawmakers to qualify an action (in this case, corruption) into an action that meets specific qualifications (in this case an act of detrimental to state finances). The breadth of this definition is what makes all deviant credit-giving actions, both private banks and state-owned companies/government, be brought under the Corruption Law. For example, in the case of ECW Banker Neloe Cs, who did not apply the principle of prudence in providing credit so that the criminal act of corruption could be used.
In administrative irregularities, the provision of credit may be subject to the criminal act of corruption, both with accusations of gratification as regulated in the corruption law. Moreover, Indonesia has ratified the UN anti-corruption convention, namely Law No.7 / 2006, in which the classification of corruption is expanded again. So, that all actions both in the form of administrative violations, both in the provision of credit and in specific policies concerning funds, are of course carried out in strange ways shall be subject to a criminal act of corruption.

CONCLUSION

1. In the provision of credit carried out by financial institutions, namely banks, there are potential procedural irregularities that occur primarily at the administrative and further processing of credit disbursement. Even though almost every bank has implemented the principle of prudence and trust in providing credit, if it is not followed by building Good Corporate governance, the deviation will continue, and that this principle does not guarantee that there are no irregularities in the implementation of credit disbursement because of the many factors and factors that dominant is the problem of the welfare of bank officials and employees, moreover, almost all banks use the services of outsourcing workers, which is even riskier.
2. The use of the law on corruption in resolving bad / problem loans at state-owned banks is appropriate by looking at the reasons for the bad credit. When a party is proven to have committed deviant actions in the procedure for granting credit and the original purpose for which the credit was granted and the fulfillment of elements against the law, enriching itself / other people/corporations, and detrimental to state finances / the state economy, criminal acts law should be applied with corruption Law No.31 of 1999 in conjunction with Law No. 20 of 2001. The broad definition of the state economy makes all banking crimes, both private and government-owned, be led by the law on corruption, in this case specifically for private banks, the element of corruption which can be directed to the detrimental aspects of the country's economy. This is related to the position of the bank that collects funds from the public. However, because it is cumulative, it must meet other elements, namely against the law and enriching oneself, other people, the corporation.

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