SETTNGS ABOUT CHANGE INTEREST RATE BY BANK

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Abstract

Banking in Indonesia has a strategic goal and not merely economically oriented, but also oriented to noneconomic matters such as issues involving national stability, among others, political and social stability. It is set in the Law No. 10 of 1998 which explains that the purpose of banking in Indonesia is to support the implementation of national development in order to improve equity, economic growth and national stability towards improving the welfare of the people. This research is descriptive analytical. This study is normative legal research. Based on the field of legal normative research, the approach of the problem used was the legislation approach. Data collection technique applied was primary and secondary legal materials. The data processing conducted editing and coding data. Normative legal research, the analysis of data processing substantially means activities to hold systematization of written legal materials. Related to Banking Information Transparency, Bank Indonesia issued Bank Indonesia Regulation Number 7/6/PBI/2005 concerning Transparency in Bank Product Information and Use of Customer Personal Data. From the considerations of Bank Indonesia Regulation Number 7/6/PBI/2005 it is seen that it means to protect the rights of customers as users of banking services, as mandated in Consumer Protection Act. Based on the research result, legal protection of the customer in the event of lending rates changes has been highly protected by the government through regulations that have been set. The government has put the customer in balanced position with the bank. In case things are deemed detrimental to customers of the bank actions to make changes in interest rates without notice, the customers have been given a way by the government to resolve the issue through mediation institutions and the judiciary.

Keywords: Banks, Lending Rate, and Customers
A. Introduction

1. Background

Bank institution is one of the financial institutions that carry out lending activities and has a vital role in the national economy. It also deals with the main function of banks as financial intermediaries, which on the one hand to collect funds from the public and other side channel funds to the community.\(^1\)

Banking in Indonesia has a strategic goal and not merely economically oriented, but also oriented to noneconomic matters such as issues involving national stability, among others, political and social stability. It is set in the Company Law No. 10 of 1998 which explains that the purpose of banking in Indonesia is to support the implementation of national development in order to improve equity, economic growth and national stability towards improving the welfare of the people.\(^2\)

According to the provisions of Article 6 of Law No. 10 of 1998 amendments to the Law No. 7 of 1992 concerning Banking (hereinafter referred to as the Banking Act), the business activities that can be done by commercial banks in raising funds from the public such as in the form of savings in the form of demand deposits, time deposits, certificates of deposit, savings, and / or other equivalent form with it. While channeling funds to communities one of which is the provision of credit.

As an intermediary and supporting the payment system, banks are the core institutions of each country. Through the activities of credit and various services rendered, bank serves the needs of financing and launches the mechanism of payment systems for all sectors of the economy.\(^3\) When channeling funds to the community in the form of credit, the bank has the authority to set the standard interest to clients based on Lending Rate (prime lending rate).

Bank Indonesia as the central bank regulates the amount of mortgage interest that can be given to the community through Circular No. 13/5/DASP concerning Transparency of Information Lending Rate (Circular Letter No. 13/5/DASP). This rule explains that

\(^3\)ibid
the implementation of the transparency of information on Lending Rate (prime lending rate) is also one of the efforts to improve good governance and fostering fair competition in banking industry, among others through the creation of market discipline (market discipline) better.

Lending Rate (prime lending rate) is required as an indicator of the amount of loan interest rate to be charged to customers who apply for credit to banks. Therefore, the Prime Lending Rate should include all segments of the credit offered by banks to customers which are corporate loans, retail loans, micro-credit, and consumer loans (mortgage and non-mortgage).

In addition to regulations issued by Bank Indonesia on Transparency of Information Lending Rate, there are rules of the Financial Services Authority (FSA), which also regulates the transparency of information to customers. Article 4 of Law No. 21 of 2011 on the Financial Services Authority (FSA) explained that the purpose of the establishment of the Financial Services Authority (FSA) is that the overall activity in the financial sector held regularly, fair, transparent and accountable and capable of protecting the interests of consumers and the public.

All setting of the amount of mortgage interest is restored to the internal economic arrangements in each bank, but Bank Indonesia provides a basic rate called BI rate on which becomes the fundamental of the interest rate setting policy rules for commercial banks. As consumers, people can choose a bank that can provide good service as well as advantages in terms of lower borrowing and deposits that can be profitable.

Giving credit should also be tailored to the needs and financial condition of the debtor. Some types of loans, such as consumer credit, loans granted maximum set by Bank Indonesia. In principle, banks should apply the precautionary principle and to make sure that the client has its own capital and the source of funds of a bank is an additional source.4

Public demand for bank loans is used by banks to provide a wide range of credit facilities in accordance with the needs of the community. When lending, the bank

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4Ikatan Bankir Indonesia, Memahami Bisnis Bank, PT Gramedia Pustaka Utama, Jakarta, in 2013, Pg 137.
determines the amount of the interest rate adjusted for the interest rate set by Bank Indonesia.

All banking transactions, such as credit, savings, checking, safe deposit box, remittances and so forth based on an agreement between the bank and its customers. The agreement in principle is made by agreement between the two parties, i.e., the bank and the customer competent to act according to the law (eligibility subjectively) to perform a feat that is not contrary to the rule of law, decency, morality and traditions prevailing in society (eligibility objective).

Bank credit agreement generally uses standard agreement forms (standard contract). Standard contract in practice has been made by the bank that contains various provisions on borrowing money and credit requirement. This model agreement is made uniformly to all Branches, but each bank office has a different model of a credit agreement with another bank office.\(^5\)

Noting from the fact that the position of the consumer (customer) in practice is under the perpetrators of the banking business, then in order to increase legal certainty and consumer protection, the drafters of the Law on Consumer Protection need to set the standard clauses in each document or any agreement made by businesses in general and banks in particular.

Setting through Consumer Protection Act which is strongly associated with legal protection for bank customers as consumers is the provision of standard clauses. Of law in banking regulations providing legal protection for bank customers as consumers include the introduction of the Deposit Insurance Agency (LPS) in the Banking Act.

On the technical level, legal protection that protects clients such as the arrangements regarding the settlement of customer complaints and mediation banking in Bank Indonesia Regulation (PBI). Inclusion of clauses in the loan agreement / financing reviewed duly bank is a partnership effort, as well as creditor banks and customers need each other in an effort to expand its business respectively. For that to provide protection to the customer is necessary to encourage education and explanation of the contents of the agreement in question.

\(^5\)HP Panggabean, Praktik Standar Kontrak dalam Perjanjian Baku, PT Alumni, Bandung, 2012, p. 77
Law No. 8 of 1999 on Consumer Protection, can be found at least two (2) bans imposed for businesses (banks) which makes the raw deal. Article 18 verse (1) letter g determines that the submission of consumers to the regulations stated in the form of new rules, addition, continuation and or further change that is made unilateral by the business actor during the time where the consumer uses the provided service.

Constitution Number 8 of 1999 regarding consumer protection does not specifically refer to credit contract, the above-mentioned regulation needs to be used in arranging a credit contract. The forbidden things according to Constitution No 8 1999 about consumer protection is the establishment of standard clause that cannot be changed or modified by other parties, gives huge authority to one party and may potentially disadvantage one party. Society as consumers have to be critical and careful in facing this situation so that they will not be continuously disadvantaged by the party who desire to obtain profit, e.g. Bank. For the protection of the consumers and debtors, government has legally passed Constitution Number 8 1999 about Consumer Protection which in turn will be abbreviated as CCP (Constitution for costumer Protection).

Constitution Number 8 1999 about Consumer Protection Chapter 8 Article 18 verse 3 regulating about the prohibition of the insertion or inclusion of standard clause in every document and/or contract with specific terms. If this constitution is breached, according to article 18 verse (3) that contract is annulled by the law. Constitution about consumer protection has explicitly forbidden banks to establish contracts that make debtors must comply with new agreements, additional agreements, continued agreements, and/or change continuation that are made unilaterally by the bank during the credit contract. In fact, in the banking credit contract, there is a standard clause to set interest rate at any time without being informed by the Bank to the customer. It means that there has been an infringement to the Constitution No. 8 1999 about

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Customer Protection regarding to the good faith of the business player. This has led to an injustice and an uncertainty for the customers, as they are supposed to be given all information regarding the contracts or any changes committed by the Bank.

The change in the credit interest rate in every Bank is various, this lead to pros and contras to the customers especially credit customers caused by the interest rate that tend to frequently increases rather than decrease. Not much can the customers do and they forcefully have to bear all of the impacts of that uncertain changes.

The regulation about credit interest rate in every bank is various, some explicitly states in credit contract while some mention it through social medias, website, any electronic medias based on the regulations of Indonesia Central Bank and Financial Service Authority about the transparency of base credit interest rate.

Facts found during the research conducted previously informed that Bank Tabungan Negara (BTN) is one among banks that mentions in their contract that the payments can at any moment change based on the interest rate. On the contrary, some other banks do not explicitly state this point.

Bank Bengkulu Bengkulu Bank does not explicitly write a clause about the interest rate changes but customers testify that when the credit contract was being conducted, they were being explained about that unpredictable interest rate change.

Different facts were found when the research interviewed a Bank Mandiri customer, the customer said that when the interest rate change was happening, the Bank did not gave any direct information verbally during the contract assignment or in written form when the change occurred. The customers would know the change happened when they were about to make credit payment.

Based on the explanation above regarding the transparency of information from the Bank to the customer about the credit interest rate change, there would be further investigation about the regulation of credit interest rate change and law protection toward the costumers. This has grounded the researcher to write this scientific writing entitled: A Juridical Analysis towards the Banks' Actions which Set Credit
Interest Rate Change without Informing The Customers.

2. Problem Identification

How is the regulation about Credit Interest Rate Change conducted by the Banks?

B. Research Method

This research is analytical descriptive. The category of this law research is normative law. Law normative research (legal research)\(^7\) is the research that investigates coherence truth, whether there is any legal rule that are in line with law norm and any norm manifested as orders and restrictions in line with law principles, whether individual acts has obeyed the law norm (not limited to the law rules) or law principles.

According to normative law research field, the approach that could be used was statute approach. The statute approach here is the approach to other constitutional regulations that is related to this research which is about the interest rate change in Bank credit contract.

The data collection technique used here was primary and secondary law sources. The primary law sources is authoritative which means possessing authority. The primary law sources consist of Constitutions, official notes or summary of legislation and judges' decisions\(^8\).

Either primary or secondary sources obtained by using snow-ball method would be inventoried and identified which would be used in analyzing the problems that were related to this research, in inventorizing and identifying used card system that was managed critically, logically and systematically. The primary resources conducted in this research included important letters that were not categorized as legislation which was circular letters.

Secondary sources were all publications about law which were unofficial documents. Law publications included text books, law dictionaries, law journals, and comments about court decisions\(^9\).

Secondary law sources were mainly text books because they contained basic principles of law study and classical views of scholars who had classification\(^10\). In essence, in the data collection technique of

\(^7\)Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2014, pg 47

\(^8\)Ibid

\(^9\)Ibid

\(^10\)Peter Mahmud Marzuki, *Loc cit*
secondary law sources are library, document study, and legal notes study.

Data processing was conducted by data editing and coding. Analysis can be formulated as a systematic and consistent breaking towards specific indications. Normative law research, data processing analysis inherently means attempts to conduct systematization toward written law resources.

C. Research Result and Discussion

Contract or an agreement term sometimes are ambiguously understood. Bugerlijk wetboek (further written as BW) uses overeenkomst and contract for the same definition. It can be clearly found from the Book III second title about “Federations resulted from Contract”\(^{11}\).

Peter Mahmud gives critical argumentation about the using of contract term or agreement by making a comparison toward contract definition or agreement by comparing the definition of contract or agreement in Anglo-American System which is English word translation contract\(^{12}\).

Discourse contract, is more specific because it is referred to a paper agreement. An agreement is a situation where an individual agrees to another individual or that two individuals agree to commit a thing. From this phenomenon, a relation between two individuals which is called federation occurs. That contract establishes a federation between the two individuals who make it\(^{13}\).

Agreement is the source of bonding, despitefully other sources. An agreement can only be approved in the both parties agree on to do something. Agreement is the most important source of a bonding. Agreement is the most important source of a bonding and it is a concrete thing upon an affair.\(^{14}\).

Bank is a financial institution that runs its business based on the principle of trust, and it has been bank responsibility to provide the transparent information related to its product. Costumers have their right to get transparent information of bank products as it is regulated in Article 29 point (4) of Law No. 10 of

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\(^{12}\) *Ibid*

\(^{13}\) Subekti, “Hukum Perjanjian, PT Intermasa, Jakarta, 1979, pg. 1

\(^{14}\) *Ibid*, p. 3
1998 concerning on Banking. it is stated that for the sake of customers, Bank is obligated to provide the information on risk possibility of loss related to customer transaction in that bank. The information is related to the bank condition, capital status, and asset quality.

Related to Bank Transparency, Bank Indonesia has released the Bank Indonesia Regulation No. 7/6/PBI/2005 concerning on Transparency in Bank Product Information and Use of Customer Personal Data. Based on the consideration stated in the Bank Indonesia Regulation No. 7/6/PBI/2005, the purpose of the regulation is to protect the rights of bank costumer in accordance to Consumer Protection Law.

In order to increase the costumer protection and empowerment, Bank Indonesia has release several law regulations on banking which are proposed to keep the credibility on national bank as well as to protect the costumer rights as the consumer of banking services. Those regulations are the implementation of upgrading program of bank costumer protection that are regulated in:

1. Bank Indonesia Regulation No. 7/6/PBI/2005 concerning on Transparency In Bank Product Information And Use Of Customer Personal Data
2. Bank Indonesia Regulation No. 10/10/PBI/2008 concerning on Settlement of Costumer Complaints

Following up the prior regulation regarding Transparency in Bank Product Information and Use of Customer Personal Data, Bank Indonesia released another regulation concerning on the change of Lending Rate that is based on *Suku Bunga Dasar Kredit* (Prime Lending Rate) or SBDK. SBDK as it is stated in SE No. 15/1/DPNP dated January 15th, 2013 concerning on Prime Lending Rate (SBDK).

Banking in Indonesia is divided into several divisions based on the total capital and holding assets. The terms in banking system are known as Book 1, Book 2, Book 3 and Book

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15Rachmadi Usman, Op cit, p. 166
4. The classification determines the state of the bank and the rate of standard lending rate in every public bank.

1. Banks in Book 1, those with core capital of Rp. 1 trillion and asset of Rp. 5 trillion.
2. Banks in Book 2, those with core capital of Rp. 1 up to 5 trillion and asset of Rp. 10 up to 25 trillion or more.
3. Banks in Book 3, those with core capital of Rp. 5 up to 30 trillion and asset of Rp. 50 up to 100 trillion.
4. Banks in Book 4, those with core capital of more than Rp. 30 and asset of more than 100 Rp. 10 trillion.

There are two reasons of releasing Extern Circular Letter concerning on Prime Lending Rate (SBDK) namely:

1. To increase the transparency of banking services characteristics including benefit, cost, and risk in order to provide the clarity to the costumers.
2. To increase good governance and encourage the fair competitive in banking through a better market discipline.

Based on the Circular Letter\textsuperscript{18}, the definition of Corporate Credit, Retail Credit, and Consumer Credit is the term used in internal of the bank. In this matter, Consumer Credit Non Housing Credit is not included in Credit Card and Non Collateral Credit (KTA). Classifying Micro Credit is based on the definition of micro business as it is stated in Article 6 point (1), (2), and (3) of Law No. 20 of 2008 on Micro, Small and Medium Scale Business (UMKM)\textsuperscript{19}. The published data of

\begin{itemize}
\item \textsuperscript{18}Circular letter of Bank Indonesia, No. 15/1/DPNP/2013 on Tranparancy of Prime Lending Rate
\item \textsuperscript{19}1. The criteria of Micro Enterprises shall be as follows: a. having maximum net assets of Rp.50,000,000.00 (fifty million Rupiah), exclusive of land and building of their place of business; or b. having maximum annual sales proceeds of Rp.300,000,000.00 (three hundred million Rupiah).
\item 2. The criteria of Small Enterprises shall be as follows: a. having net assets of more than Rp.50,000,000.00 (fifty million Rupiah) up to a maximum amount of Rp.500,000,000.00 (fivelhundred million Rupiah), exclusive of land and building of their place of business; or having annual sales proceeds of more than Rp.300,000,000.00 (three hundred million Rupiah) up to a maximum amount of Rp.2,500,000,000.00 (two billion and five hundred million Rupiah).
\item 3. The criteria of Medium Enterprises shall be as follows: a. having net assets of more than Rp.500,000,000.00 (five hundred million Rupiah) up to a maximum amount of Rp.10,000,000,000.00 (ten billion Rupiah), exclusive of land and building of their place of
\end{itemize}
SBDK is from the conventional public bank.

The published information of SBDK is based on the report received by Bank Indonesia for every monthly report. That information can be just different from the one published in information board in every bank, bank website and/or newspaper due to the different data. Confirmation on validity and/or recent data is addressed directly to the bank concerned. That information regarding SBDK is not an analysis result neither reflects the view of Bank Indonesia.

Prime Lending Rate (SBDK) is used by the bank as the guidance to determine the Lending Rate given to the customer. SBDK does not calculate the estimated risk premium that is based on bank judgment on risk for each creditor or group of creditors.

The use and/or treatment based on the information regarding to SBDK in the table above become entirely users’ responsibility. Bank Indonesia is not responsible for any loss due to the use of the information. SBDK has not calculated risk premium component that is depend on the bank personal judgment on risk for each creditor or group of creditors. Thus, the lending rate given to creditors can be different from SBDK.

Component calculation of Prime Lending Rate that has to be reported is credit in Rupiah such as corporate credit, retail credit and consumer credit (Housing Credit and Non Housing Credit). In calculation of Consumer Credit Non Housing, Credit Cards and Not Collateral Credit are not included. Prime Lending Rate consists of 3 components, Cost of Credit Fund (HPDK), overhead and Profit Margin.

D. Closing

1. Conclusion

Regulation on the change of Prime Lending Rate in banking has been regulated in several regulation released by Bank Indonesia namely: (a) Regulation of Bank Indonesia No. 16/1/PBI/2014 concerning on Consumer Protection on Payment System Service, (b) Regulation of

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business; or b. having maximum annual sales proceeds of more than Rp.2,500,000,000,000.00 (two billion and five hundred million Rupiah) up to a maximum amount of Rp.50,000,000,000,000.00 (fifty billion Rupiah).

Ibid

21 Bank Tabungan Negara, Suku Bunga Dasar Kredit, retrieved from http://www.btn.co.id/content/BTN-Info/Info/SBDK on August 5th, 2017 at 11.00 pm
Bank Indonesia No. 14/14/PBI/2012 concerning on Transparency In Bank Product Information And Use Of Customer Personal Data, (c) Circular Letter of Bank Indonesia No. 15/1/DNDP concerning on Transparency of Information on Lending Rate. In those regulations, banks are also responsible to provide transparent information regarding to Prime Lending Rate (SBDK) to customers.

2. Suggestion

Bank needs to update the recent information both in printed and electronic mass media inorder to ease customers to access banking information. It is also suggested to customer to be active to dig information on banking product and news in order to obtain the clear and accurate information.

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