

The Form of Legal Protection to the Bank for the Provision of Loan without Collateral

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Abstract:- Unsecured loans are the application of the people's business credit program, hereinafter referred to as government business credit issued by the government. The purpose of the people's business credit to accelerate the development of economic activities in the real sector in the context of poverty alleviation and expansion as well as expansion of employment opportunities. The targets of this program are Micro Small Medium Enterprises and Cooperatives. The regulation governing this KUR is Law Number 20 Year 2008 regarding Micro Small Medium Enterprises and most recently the Regulation of the Minister of Finance No. 20 / PMK.05 / 2015 on the Procedure of Implementing Interest Subsidy for People's Business Credit. The form of legal protection for the bank for the provision of KTA facility is through Article 55 paragraph 2 UUJN, namely Grosse Deed which has the power of executives and Article 1131 Civil Code, that is the creditor can execute the moving or immovable moving debtor and the existing or the existing. The legal effort that can be done by the bank to the customers non performing loan related to the personal loan facility which is the application of government business credit program issued by the government is to bring a civil suit to a district court or bankruptcy lawsuit to a commercial court after the mediation is not reached.

Keywords:- Protection, Law, Loan, Collateral.

I. INTRODUCTION

One of the most phenomenal banking activities is lending. Etymologically, credit comes from the Latin "*credere*" or "*credo*" which means trust. (Rachmadi Usman, 2001) This indicates that the basis of credit granting by the bank to the customer (the debtor) is trust. (Hermansyah, 2008). Credit itself means the provision of money or equivalent claims, on the basis of an agreement or loan-borrowing agreement between the bank and another party requiring the borrower to repay the debt after a certain period of time with the grant of interest. (Law Number 10 of 1998 on Amendment to Act Number 7 of 1992 concerning Banking).

Financing/financing provided by banks or loaned to the community in the form of credit is certainly not a bank-owned fund itself because in addition to the capital owned by banks is limited, but also the public deposit funds are stored in various forms, such as: savings, or deposits. This is in line with the basic business of banking that is *funding* and *lending* and its relation to the bank's intermediation function. (M. Bahsan, 2007: 73-74).

In order to assist the government to realize the ideals of a country to promote the general welfare as mandated in the preamble of the 1945 Constitution, hereinafter referred to as the 1945 Constitution of the fourth paragraph, the banks, both state and private banks take the initiative to hold the facility "Unsecured Loan", hereinafter referred to KTA.

KTA is one of the banking products that provides a loan facility without charging a prospective customer to prepare an asset to be used as collateral for the loan. (RizkiAbadi, "Unsecured Loans", 2015, <http://www.cermati.com/artikel/5-faat-cta-yang-makingit-many-used-people>, [22/12/2016].

KTA is the application of the People's Business Credit program, hereinafter referred to as KUR issued by the government. The objective of KUR is to accelerate the development of economic activities in the real sector in the context of poverty alleviation and expansion as well as expansion of employment opportunities. Goal dar I KUR program is the Small and Medium Enterprises Mikro and Cooperatives, hereinafter referred to UMKMK. The amount of loan funds in KUR program that can be obtained by UMKMK is loan fund up to Rp 5.000.000, - (five million rupiah) for Micro KUR and loan fund above Rp 5.000.000, - (five million rupiah) up to Rp 500,000 \$ 500 (five hundred million rupiah) for KUR Retail. The regulation governing this KUR is Law Number 20 Year 2008 regarding Micro Small Medium Enterprises and most recently the Regulation of the Minister of Finance No. 20/PMK.05/2015 on the Procedure of Implementing Interest Subsidy for People's Business Credit.

Bad possibilities that may occur from the program is Elain uptrend s credit risk due to the absence of collateral se like financing terms, as well as the tendency of KTA facilities exploited by people who are not responsible for personal gain. If that happens, as explained earlier, the condition of the banking system greatly affects the nation, so the most fatal result is the recurrence of the monetary crisis in this country. As is known, in 1998, the Indonesian nation experienced a monetary crisis, which is one of the causes of bad credit experienced by banks in Indonesia. (SyahrizalSyidik, "This is the Cause of the 1998 Crisis", 2016, <http://syahrizals.weebly.com/blog/ini-dia-penyebab-krisis-1998>, [22/12/2016]. In addition, the provision of unsecured loans violates the prudential principles that banks must apply in conducting their business activities, in which collateral is one element of credit provision. According to the explanation of Article 8 of the Banking Law, credit or financing based on the Sharia Principle provided by the bank has a risk, so in its implementation the bank should pay attention to the principles of crediting or financing based on

sound Sharia Principles. To mitigate such risks, credit or financing guarantees based on Sharia Principles in the sense of confidence in the ability and ability of Debtor Customers to settle their obligations in accordance with the agreement is an important factor to be considered by the bank. To obtain such confidence, before giving credit, the bank must make a careful assessment of the nature, capability, capital, collateral, and business prospects of the Debtor Customer.

II. LITERATURE REVIEW

In this study, used his theory of legal protection proposed by Philipus M. Hadjon, because according to him, one form of legal protection is through the protection of preventive law derived from legislation. So to obtain a form of legal protection to the bank against KTA facility, the authors use the applicable legislation. The theory of legal protection that developed or often used is the legal protection theory of Philipus M. Hadjon, where the principle of legal protection in Indonesia is the principle of recognition and protection of human dignity derived from Pancasila. Legal protection is the protection of prestige and dignity, as well as the recognition of human rights held by legal subjects under the legal provisions of arbitrariness or as a set of rules or rules that would protect one thing from another. In relation to the consumer, the law provides protection for the rights of the customer from something that results in the non-fulfillment of such rights. (Philipus M. Hadjon, 2007:25).

According to Soerjono Soekanto the function of law is to regulate the relationship between the state or society with its citizens, and the relationship between fellow citizens of society, so that life in society run in orderly and smooth. This resulted in the legal duty to achieve legal certainty (for the sake of order) and justice in society. Legal certainty requires the creation of general rules or general rules that are generally accepted. In order to create a safe and peaceful atmosphere in the community, the rules should be enforced and implemented firmly. (Soerjono Soekanto, 1999:15).

Law is essentially an abstract thing, but in its manifestations can be concrete. A new legal provision can be judged well if the consequences resulting from its application are the good, the great happiness and the suffering diminished. (Lili Rasjidi, 2003:79).

According to conventional theory, the purpose of law is *rechtsgerichtigheid*, *rechtsutiliteit* and *rechtszekerheid*. (Achmad Ali, 2002:85).

According to Satjipto Raharjo, the law protects the interests of a person by allocating a power to him to act within his or her interests. The allocation of power is done measurably, in a sense, determined by its breadth and depth. Such power is called right. But not every power in society can be called a right, but only a certain power which is the reason for attachment of that right to a person. (Satjipto Rahardjo, 2012:53).

According to Setiono, the protection of the law is an act or attempt to protect the public from arbitrary acts by a ruler who is inconsistent with the rule of law, to realize order and tranquility so as to enable humans to enjoy their dignity as human beings. (Setiono, 2004:3).

According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that incarnate in the attitude and action in creating the existence of order in the interrelations of life among human beings. (Muchsin, 2003:14).

In normative or sociological or empirical legal research, it is possible to construct a conceptual framework based on or derived from certain laws and regulations. Usually the conceptual framework, as well as formulate definitions that can be used as operational guidance in the process of collecting, processing, analysis, and construction data. (Soerjono Soekanto, 2014:137).

According to Muchsin, the protection of the law is an activity to protect individuals by harmonizing relationships values or rules that incarnate in the attitude and action in creating the existence of order in the association of life among fellow human beings.

According to Lumban Tobing, a Notary is a public official who is solely authorized to make an authentic deed of all acts, treaties and determinations required by a general rule or by interested parties desirable to be declared in an authentic deed, guaranteeing the certainty of the date, preserving his act and giving grosses, copies and quotations, all during the making of the deed by a general rule not also assigned or excluded to any other person or person. (Lumban Tobing, 2013:131).

According to Malayu, the bank is a business entity whose wealth mainly in the form of financial assets (*financial assets*) as well as motivated profit and also social, so not just looking for profit only. The bank is also the creator of money in the sense that the bank creates demand deposit and circulate currency. (Malayu Hasibuan, 2002:2).

Under the Banking Act, Credit is the provision of money or equivalent claims, based on a loan agreement or agreement between the bank and another party requiring the borrowing party to repay the debt after a certain period of time with interest. (Law Number 10 Year 1998 on Amendment to Act Number 7 of 1992 concerning Banking).

III. RESEARCH METHODS

Method is a scientific activity related to a work (systematic) to understand a subject or object of research, in an effort to find answers that can be scientifically accountable and including its validity. (Rosady Ruslan, 2008:77) Research is a means which can be used by humans to strengthen, nurture, and develop science. Science that is a systematically organized knowledge using the power of thought, which knowledge can always be examined and examined critically, this science will evolve on the basis of

studies conducted by caregivers. This is mainly due, because the use of science aims to make people more aware and more deeply. A method of research is a scientific way to get data with a specific purpose and usefulness.

In Legal Research Methods, there are 2 (two) types of approaches, namely: Normative juridical approach, namely Research law made by examining the library materials or secondary data as the base material to be tested by conducting a search for rules and literature relating to the cases studied. The empirical juridical approach, which is the procedure used to solve the research problem by researching the secondary data first then continued by conducting research on primary data in the field. (SoerjonoSoekanto,2005:52).

Sources of data in the study is the subject from which data can be obtained. (Suharsimi Arikunto, 2006:139). And the data by way of obtaining it using data secondary is data that has been collected for purposes other than solving the problem at hand. This data can be found quickly. In this study the secondary data source is the literature, articles, journals and sites on the internet that bears with the research conducted. (Sugiyono, 2009:137).

In this study, the authors emphasize the use of secondary data as a source of data which, according to the strength of binding is divided again into. (Jhonny Ibrahim, 2006:48). Is a legal material that is helpful or support the primary legal materials in research that will strengthen the explanation in it. (HadariNawawi, 1996:100).

In this research method, (M. Nazir, 2003:27) to collect data, namely: *library research, observation, interview*. Data analysis method is a method used to process the results of research in order to obtain an instrument and conclusions. (Kartini Kartono, 2000:81) Basically data analysis is also a process of describing data in a simpler form and makes it easier to read and interpret. (Supriyanto, 2009: 80).

IV. RESEARCH RESULT AND DISCUSSION

Forms of legal protection to the banks for providing the facility with p arouses KTA is an Grosse Deed by Notary as contained in Article 55 paragraph 2 UUJN, which said that Grosse deed of acknowledgment of debt Notary Deed is a copy of which has the power executorial. (Law Number 2 Year 2014 on Amendment to Law Number 30 Year 2004 regarding Notary Position).

In Article 1 point 11 UUJN it is explained that Grosse Deed is one of the certified copies of the Deed of Acknowledgment with the Head of Deed "FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD," which has an executorial power. From the article it is seen if in the deed there is a revelation that read "FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD". It is this campaign that gives the *title of executorial*, the title which aligns the power of the deed with the court's decision. Accordingly, the deed remains executed (without the need for a court decision). (MunirFuady , 2013:143). However it

is further explained in Article 224 HIR, the original veins of the mortgage letters and debts reinforced before a notary in Indonesia and whose heads use the words "On behalf of the Law" equal to the judge's verdict, if such a letter is not to be observed in a peaceful manner, then the matter of carrying it out is carried out with the command and chairman of the head of the district court in whose jurisdiction the debtor is silent or resident or chooses his place of residence in the manner stated in the foregoing chapters in this section but with the understanding, that the coercion of the body can only be done, if it is permitted by a judge's decision. If the matter of carrying out the decree shall be executed entirely or partly outside the jurisdiction of the district court, to which the chairman commands it, the rules of article 195 of the second and subsequent verses shall be followed.

➤ Explanation

A. Article 224 explains that letters which are deemed to have definite powers to be executed such as a judge's decree are.

- *Debt using mortgages.*
- Notes made before a notary (notarial deed) whose head uses the words first "On behalf of the King", then successively changed to "On behalf of the Republic of Indonesia", "On behalf of the Law" and now under Article 4 of the Act The Principle of Justice Number 14/1970 becomes "By Justice by the One Godhead".

B. If the above mentioned letters are not kept in a peaceful manner, they will be executed like the ordinary judge's decision, which is carried out by order and chairman of the court of justice in whose jurisdiction the debtor remains silent or resides or chooses his place of residence, but on body coercion (*sanders=gijzeling*) can only be done if it is permitted by the decision of the district court.

Due to this research, the agreement of credit is the agreement of KTA, then the executable goods shall mean goods intended in Article 1131 Civil Code, namely all movable and immovable property of the debtor, whether existing or existing.

As for the immovable objects and movable objects contained in the articles contained in the Civil Code below, namely.

➤ *The object does not move*

A. *Article 506:*

The immovable object is:

- The yard of the yard and what was built upon it.
- Milling, except those discussed in Article 510.
- Trees and crops rooted in the soil, unpicked fruit trees, as well as minerals such as coal, coal and so on, as long as they are not separated and dug from the ground.
- Wood from forest forests and timber from tall trees, as long as they are not yet logged.
- Pipes and channels used to drain water from the house or yard; and in general everything that is stuck in the yard or glued to the building.

B. Article 507:

Which includes immovable objects because the objectives are.

- In the factory: factory material (*trafijk*), milling, forging iron and such immovable objects, iron clamps, boilers, fire containers, vats, barrels and other tools including parts of the factory, even if they are not fixed or fixed;
- On housing: mirrors, paintings and other jewelry when attached to boards or stone pairs that are part of a wall, fence or plaster of a room, even if it is not fixed;
- In land: lungkang or heap of fertilizer used to soil the soil; Swarms of doves; Commonly eaten birds, as long as they have not been collected; Fish in the pond.
- Collapse of overhauled building materials, if used for rebuilding.

And in general all objects whose owners are connected with immovable objects to be used forever.

The Owner is deemed to have connected the objects with immovable objects for permanent use, when they are attached to them by excavation, woodwork or cement installation, or when they can not be removed without disassembling or destroying them or the body of an immovable object in which they are attached.

C. Article 508:

Also non-moving objects are the following rights:

- The right to use results and the right to use immovable objects.
- Land rights.
- Coral reef rights.
- Cultivation Rights.
- Ground flower, whether in money or in the form of things.
- Tithe right.
- A bazaar or market recognized by the government and the privileges associated with it.
- A lawsuit to demand the return or transfer of immovable property.

➤ *Things move***A. Article 509:**

The object moves because it is a self-moving or moving object.

B. Article 510:

Boats, boats, mine canoes, millwheels and timber stocks installed in boats or loosened and such objects are moving objects.

C. Article 511:

What is considered to be a moving object because the law is determined is.

- Right to use result and use rights of moving objects.
- The right to promised flowers, both ongoing flowers, as well as the flowers of the living beasts.
- Engagements and demands concerning the amount of money that can be billed or about moving objects.
- Proof of shares or shares in a money trading alliance, trade alliance or company alliance, even if the moving

objects concerned and the company belong to the fellowship. This stock or stock evidence is seen as a moving object, but only to each participant only, as long as the alliance is in operation.

- Shares in Indonesian sovereign debt, whether registered in the ledgers, or certificates, letters of credit, bonds or other securities, together with the coupons or letters of interest in connection therewith.
- Sero-sero or coupon bonds from other loans, including loans by foreign countries. In addition, there should be further notice of the Grosse Act itself, as can be seen in the articles contained in the UUJN below.

➤ *Article 54:*

A. Notary may only grant, display, or notify the contents of the Deed, Grosse Deed, Copy of Deed or Deed of Deed, to persons directly concerned with Deed, heir, or person obtaining rights, unless otherwise provided by legislation.

B. Notary who violates the provisions as in the meaning of paragraph (1) may be subject to sanctions in the form of:

- Written warning;
- Suspension;
- P stop with ta;or
- P em stop disrespectful.

➤ *Article 55:*

A. Notary issuing Grosse Deed made a note on the deed Minutes of the recipient of the Grosse Deed and the date of expenditure and the records are signed by Notary.

B. Grosse Deed of debt recognition made before a Notary is a copy of a Deed that has an executorial power.

C. Grosse Deed as on the meaning of paragraph (2) in the head of the deed contains the phrase "FORCE OF JUSTICE UNDER THE ONE ALMIGHTY GOD", and at the end or cover of the deed contains the phrase "given as the first grosse", by naming the person who requested it and for whom the grosse issued the date of expenditure.

D. Grosse The second and subsequent deed can only be given to the person as in the intent in Article 54 is based on the court's determination.

➤ *Article 56:*

A. *Deedinoriginali*, Grosse Deed, copy of the deed, or a citation issued by the Notary Deed shall d ibubuhi impression seal/stamp.

B. The stamp impression as in the meaning of paragraph (1) shall also be attached to a copy of the letter attached to the Minuta Deed.

C. Letters under authorized or legalized handwritten, registered under-registered mail and photocopying by Notary shall be given stamped and sealed stamp and signature of Notary.

Article 57:

Grosse Deed, Copy of Deed, Quotation of Notary Deed, or endorsement of a letter under the hand attached to the deed deposited in the Notary Protocol, may only be

issued by the Notary making it, Notary Substitute, or the legitimate Notary of Notary Protocol.

Institutions to supervise the health of the bank as a result of the KTA facility is known as OJK. According to Article 1 Sub-Article 1 of Law Number 21 Year 2011 concerning the Financial Services Authority, the Financial Services Authority, hereinafter abbreviated as OJK, is an independent institution free from the interference of other parties, which has the functions, duties and authority of regulation, examination and investigation as intended in this Law.

Further explanation of OJK's task is contained in Article 6 of OJK Law, which is.

OJK carries out regulatory and supervisory duties on.

- Activities services to uangan in Banking sector;
- Activities financial services sector Capital Markets; and
- Activities in the financial services sector of the Insurance, Pension Funds, Financing Institutions and Other Financial Services Institutions.

Furthermore, further explanation regarding OJK authority is contained in Article 7 of OJK Law which contains.

To carry out regulatory and supervisory tasks in the Banking sector as at the meaning of Article 6 letter a, OJK has the authority.

A. Pettings and supervision of the bank institutions which include:

- Permissions for the establishment of banks, opening bank offices, the basic budget, work plan, ownership, management and human resources, mergers, consolidation and acquisitions of banks, as well as butane Penca bank operating license; and
- Activities bank business, among other sources of funds, provision of funds, hybridization product, da n activity in the services sector;

B. Pettings and monitoring of the health of banks include.

- L of liquidity, profitability, solvency, asset quality. minimum capital adequacy ratio, maximum crediting limit, loan to deposit ratio, and bank reserve.
- L bank reports related to health and bank performance;
- Debtor information system.
- Testing credit (*credit testing*); and.
- Standard of bank accounting.

C. Pettings and Supervisor regarding prudential aspects of the bank, including.

- Risk management.
- Bank governance.
- Principle know your customer da n anti-money laundering; and.
- P Flood protection terorisme financing and banking crimes.

D. Examination bank.

The procedures for the preparation and implementation of credit policy or bank financing can be seen in the articles contained in the Regulation of the Financial Services Authority Number 42/Pojk.03/2017 on the Obligation of Banking and Credit Policy Implementation Or Banking For Commercial Banks below.

1. Article 2:

- Banks are required to have a credit policy or bank advisory in writing.
- Bank's credit or financing policy as the meaning of paragraph (1) shall at least contain all aspects stipulated in the Banking Credit Policy or Financing Preparation Guidelines as contained in the Annex which constitute an inseparable part of this Rule of Financial Services Authority.
- Bank's credit or financing policy as the intent in paragraph (2) shall be approved by the board of commissioners of the Bank.

2. Article 3:

Bank's credit or financing policy as the intent of Article 2 shall at least contain and regulate the principal matters set forth in the Guidelines for the Preparation of Credit Policy or Bank Financing as follows.

- Principle caution in credit or financing;
- O perkreditanorganisasi and management or financing;
- OLICY Approval Credit or financing;
- D okumentasi and administration credit or financing;
- Supervisor credit or financing; and
- Settlement credit or financing problems.

3. Article 4:

Banks are required to comply with the Bank's credit or financing policies that have been prepared as at the purpose of Article 2 in the implementation of the provision of Credit or Financing and management of credit or financing in a consistent and consistent manner.

4. Article 5:

The new Bank obtains a business license after the enactment of this Regulation of the Financial Services Authority, shall own and implement and implement the credit policy or financing of the Bank from the date of commencement of business activities.

5. Article 6:

Banks in preparing credit policies or bank financing shall pay attention to the application of risk management as stipulated in the provisions of the Financial Services Authority governing the implementation of risk management for commercial banks and the provisions of the Financial Services Authority governing the implementation of risk management for sharia commercial banks and sharia business units.

V. CONCLUSION

Based on the above discussion then the authors take the following conclusions.

- A. The form of legal protection to the bank for the provision of KTA facilities is through Article 55 paragraph 2 UUN, namely Grosse Deed which has the power of executor and Article 1131 Civil Code, that is the creditor can execute the moving or immovable moving debtor and the existing or the existing .
- B. The legal punishable by a bank against customer's bad debts related to KTA facility which is the implementation of the KUR program issued by the government is through the mediation path first in the form of credit repayment reorganization, then if the mediation process does not also get the way out, the bank will file a lawsuit to civil court or bankruptcy lawsuit to commercial court.

VI. SUGGESTION

Based on the above discussion, the authors suggest that.

- A. KTA should be made Grosse Deed , where Grosse Deed has executive power, so it can save time and cost for the bank if the customer did default against KTA agreement.
- B. Sometimes the cause of clients defaulting on the KTA agreement due to financial problems, before the bank decided to sue through litigation and execute property owned by customers, it would be nice if the bank first investigate the problem of causing clients defaulting against the KTA agreement.

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