

ABSTRAK

Sahat Marulitua Sihombing (01659200053)

PERLINDUNGAN HUKUM BAGI NASABAH DEBITUR DALAM PERJANJIAN KREDIT BANK DI INDONESIA

(xii+ 115 halaman : 1 lampiran)

Pemberian kredit merupakan kegiatan utama dari sebuah bank umum. Antara nasabah debitur dengan bank sebagai kreditur tercipta hubungan hukum di wilayah perdata, yang didasari atas adanya kata sepakat dan dengan itu tercipta suatu perjanjian antara kedua belah pihak. Hubungan hukum antara bank dengan nasabah debitur dimaksud harus didasari adanya asas keseimbangan antara pihak-pihak yang bersepakat. Bank sebagai kreditur menginginkan agar kredit dapat dikembalikan debitur sesuai dengan yang diperjanjikan, untuk itu bank menjadi dominan dalam menentukan syarat-syarat kredit termasuk dalam merancang substansi perjanjian kreditnya. Berbagai prinsip penilaian kredit yang sehat yang mengedepankan prinsip kehati-hatian diterapkan bank dalam menilai suatu permohonan kredit, termasuk penilaian kelayakan kredit berdasarkan prinsip 5 C's.

Artikel ini menganalisis sejauh mana perlindungan hukum bagi debitur bank menurut peraturan perundang-undangan di Indonesia. Penelitian yang dilakukan bersifat yuridis normatif. Adapun bahan hukum yang dipergunakan terdiri dari bahan hukum primer berupa undang-undang dan peraturan turunannya, bahan hukum sekunder berupa buku-buku dan jurnal di bidang hukum, dan bahan hukum tersier berupa kamus dan ensiklopedia hukum. Data yang dipergunakan dalam penelitian ini adalah data sekunder. Pendekatan yang dilakukan dalam penelitian ini adalah gabungan antara pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus.

Hasil penelitian menunjukkan bahwa peraturan perundang-undangan secara normatif telah memuat perlindungan hukum bagi nasabah debitur. Namun dalam kenyataannya karena bank memerlukan keamanan atas pengembalian kreditnya, klausula dalam perjanjian kredit kurang memperhatikan asas keseimbangan dan kurang mengakomodasi hak-hak debitur. Pihak bank lah yang dominan mendisain perjanjian kredit dan sebagai akibatnya, substansinya dibuat lebih banyak memihak bank. Debitur berada pada posisi yang harus menerima isi perjanjian dimaksud karena dia sangat membutuhkan kredit, dan debitur tidak mempunyai pilihan lain. Contoh perjanjian kredit KPR yang dibuat oleh salah satu bank BUMN memperkuat hasil penelitian di atas. Selanjutnya, perlindungan hukum bagi debitur bank tidak tepat dilihat dari sudut pandang UU Perlindungan Konsumen.

Kata Kunci: Bank, Debitur, Perjanjian, Perlindungan Huk

ABSTRACT

Sahat Marulitua Sihombing (01659200053)

LEGAL PROTECTION FOR DEBTORS OF BANK IN THE CREDIT AGREEMENT IN INDONESIA

(xii+115 pages: 1 attachments)

Abstract

Granting loan is the main activity of a commercial bank. Between debtor as customer and bank as creditor has a legal relationship in the area of private law, i.e. based on the agreement which creates an agreement between those two parties. The legal relationship between bank and debtor as customer must be based on the principle of balance in position between the parties. Bank as creditor wants the credit to be returned by the debtor in agreed time and condition, and as a result, bank becomes dominant in determining the terms and conditions of credit, including in designing the substance of credit agreement. Some principles in credit evaluation which stress on prudent banking principles are applied by the bank, including evaluation of credit proposal based on 5 C's principles.

This article analyzes the extent of legal protection for bank debtors according to the laws and regulations in Indonesia. The research is normative juridical method, the legal materials used consist of primary legal materials in the form of laws and their derivative regulations, secondary legal materials in the form of books and journals in the field of law, and tertiary legal materials in the form of dictionaries and encyclopedias of law. The data used in this research is secondary data. Approaches to be used in this research are statute approach, together with conceptual approach and case approach.

The results show that normative statutory regulations contain legal protection for debtor customers. But in reality, because banks need security for their credit repayments, the clause in the credit agreement does not pay attention to the principle of balance and does not accommodate the rights of the debtor. It is the bank that dominates the design of the credit agreement and as a result, the substance is made more in favor of the bank. The debtor is in a position that must accept the contents of the agreement because he really needs credit, and the debtor has no other choice. Example of housing loan agreement made by one of state commercial bank showed the above results of research. Furthermore, legal protection for bank debtors is not suitable to be judged from Consumer's Protection Act.

Keywords: Bank, Debtor, Agreement, Legal Protection