

CHAPTER II

LITERATURE REVIEW

2.1. Theoretical Review

2.1.1. Definition of Bank

The term bank is derived from Italian, *banca*, which is a table used by sellers in the market. Because in the past, the currency in circulation was varied (almost every region has its own currency), for trade between countries and even between regions, people needed to be able to exchange one currency for another. Abdurrahman explained that a bank is a type of financial institution that carries out various services, such as providing loans, circulating currencies, controlling currencies, acting as a place to store valuable objects, to finance the business of companies and others. Banks can be interpreted simply as a financial institution whose main activity is raising funds from the community and channeling these funds back to the community and providing other bank services. While understanding financial institutions are any company engaged in the financial sector where their activities are either solely raising funds, or only channeling funds or both raising and channeling funds²⁵. According to the large Indonesian dictionary, the Bank is a business entity in the financial

²⁵ Kasmir, Manajemen Perbankan, (Rajawali Press, 2013), p. 11-12

sector that attracts and spends money in the community primarily providing credit and services in the payment and circulation of money.

2.1.2 Function of Bank

In the economic and financial literature, the role of banks is described as an intermediary that connects fund owners and funders in the midst of community activities. The fund as an intermediary institution collects various types of deposits deposited by depositors / depositors with different amounts and periods of time. The funds collected are channeled to the business sectors in need, especially shown to productive business sectors. As a trust institution, banks must maintain that the deposits of fund owners remain intact and can provide results, and banks must also be able to repay the fund owners in accordance with what was originally agreed. Therefore, banks must always keep borrowed funds from being collected again and not become bogged down²⁶. The activity of collecting and distributing funds is the main activity of banking, while the activity of providing other bank services is only a supporter of the two activities above. The meaning of raising funds means to collect or look for funds (money) by buying from the wider community in the form of deposits, savings and

²⁶ Jonker Sihombing, Butir-Butir Hukum Perbankan, (Penerbit Refpublisher, Jakarta 2011), p.2.

deposits. The purchase of funds from the public is done by banks by installing various strategies so that the public wants to invest their funds²⁷.

Thus, the bank functions as ²⁸:

1. Fund traders, a vehicle that can collect and channel public funds effectively and efficiently. The bank becomes a place for depositing and depositing money which in practice is a sign of safekeeping and depositing the money, then the depositors and depositors are given a piece of proof paper. Whereas in its function as a channeling of funds, the bank gives credit or buys it in the form of securities.
2. Institutions conducting trade transactions and payment of money. The bank acts as a liaison between one customer and the other customer if they make a transaction. In this case the two parties did not directly make the payment, but simply ordered the bank to settle it.

2.1.3. History of Banking

The banking business itself only started from the Babylonian era and then continued to the days of Ancient Greece and Rome. But at that time the bank's business was only as a place to exchange money. Along with the development of world trade, the development of the banking industry is also increasingly rapid because the development of the banking world is

²⁷ Ibid, p.12

²⁸ Ibid, p 208

inseparable from the development of trade. The development of trade initially only in mainland Europe eventually spread to West Asia. Banks that were already famous at that time on the European continent and the Bank of Barcelona in 1320. Conversely the development of banking in mainland England only began in the 16th century. However, because Britain was so active in searching for trade areas that were later colonized, the banking development was also brought to its colony²⁹.

2.1.4. Types of Bank

The division of types of banks explains the activities carried out by banks, and is regulated by Bank Indonesia regarding the activities that may and may not be carried out by these banks³⁰.

1. Viewed from the field of business

Bank institutions are divided into two, namely Commercial Banks and Rural Credit Banks. This bank distinction according to type is regulated in Article 5 paragraph (1) of Act Number 10 of 1998 concerning Banking, which is described as follows:

a. Commercial Banks

Is a bank conducting business in conventional and / or based on Sharia principles which in its activities provides services in payment traffic. The nature of the services

²⁹ Kasmir, Bank Dan Lembaga Keuangan Lainnya, (Penerbit Rajawali, Jakarta 2012), p.28

³⁰ Jonker Sihombing op.cit., p 36

provided is general, in the sense of being able to provide all existing banking services. Likewise, the operation area can be carried out throughout the region.

The main activities of commercial banks are as follows³¹:

- 1) Operations
- 2) Marketing
- 3) Loan / Credit
- 4) Treasury
- 5) Human Resources Development
- 6) Audit

b. Rural Bank ³²

Rural Bank is a bank that conducts business activities conventionally or based on Sharia principles which in its activities do not provide

services in payment traffic. Which means, BPR activities are much narrower when compared to commercial banks.

2. Viewed in terms of ownership

In terms of ownership it can be seen from the deed of establishment which is divided into:

³¹ Boy Leon, Sonny Ericson, Manajemen Aktiva Pasiva Bank Nondevisa, (Jakarta: Gramedia, 2007), p.2.

³² Kasmir, Op.cit., 2012 p.33

- a. Government-owned bank
- b. National private-owned bank
- c. Bank owned by cooperatives
- d. Foreign-owned banks, and
- e. Mixed bank.

2.1.5 Definition of Customers

In the banking world, customers are consumers of banking services. The position of customers in relation to banking services, are in two positions that can take turns according to which side they are on³³.

Customers are parties that use bank services. Fund raising and lending are the main banking services of all bank financial institution activities. Based on Article 1 number (16) the Banking Law introduces an expenditure formula containing provisions on banks using services.

According to Article 1 paragraph (17) of Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, Depository Customers is customers who place their funds in a bank in the form of deposits based on a bank agreement with the customer concerned.

According to Article 1 paragraph (18) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Debtor Customers are customers who obtain credit or financing facilities

³³ Lukman Santoso AZ, Hak Dan Kewajiban Hukum Nasabah Bank, (Jakarta: Pustaka Yustitia), p.13

based on Sharia Principles or similarly based on bank agreements with customers concerned.

In banking practices, there are 3 (three) types of customers, including³⁴

Based on Article 1 number 16 of the Banking Act referred to as a customer is a party that uses bank services. Bank customers become:

1. Depositing customer is a customer who places funds in a bank in the form of deposits based on a bank agreement with the customer concerned.
2. Debtor customers are customers who obtain credit or financing facilities based on Sharia principles or the equivalent according to the bank's agreement with the customer concerned.

2.1.6 Bank Indonesia

In terms of function, one of the most important and most important types of banking is the Central Bank. There are only one Central Bank in each country and almost branches in each province. The main function of the Central Bank is to manage matters relating to finance in a country at large, both domestically and abroad. In Indonesia, the tasks of the Central Bank are held by Bank Indonesia³⁵. In Act No. 11 of 1953 concerning the Stipulation of the Basic Law of Bank Indonesia, it was explained that Bank Indonesia was established to replace De Javasche Bank N.V as well as

³⁴ Yusuf Shofie, *Perlindungan Konsumen*, (Bandung: Citra Aditya Bakti, 2000), p.32-33.

³⁵ Kasmir Op.cit., 2012 p.158.

acting as the Central Bank of Indonesia. As a state-owned legal entity, Bank Indonesia has the right to perform tasks based on the Central Bank Act.

Based in Jakarta, BI has the following duties: maintaining the stability of the rupiah, organizing the circulation of money in Indonesia, advancing the development of credit affairs, and supervising the credit affairs³⁶.

Indonesia currently has a regime that separates the functions of the central bank from the function of bank escorts. The function of the central bank is carried out by Bank Indonesia, while the function of bank supervision and other financial institutions is carried out by the Financial Services Authority.

2.1.7 Principle of Know Your Customers.

The Know Your Customer Principle is a precautionary principle based on the consideration that not only in eradicating money laundering, but also in applying prudential banking to protect banks from various risks in dealing with customers and counter parties. Banks can be used as a way for the entry of money resulting from crime, so banks must reduce the risk of being used as a means of money laundering by getting to know and knowing the identity of customers, monitoring suspicious financial transactions conducted by parties who use bank services. When this

³⁶ Sejarah Bank Indonesia: Kelembagaan, (Unit Khusus Bank Indonesia), p.2.

happens, it clearly causes losses to banks, ranging from losses in the form of bad reputation, sanctions (legal and fines), to the loss of potential profits³⁷

The principle of know your customer was first regulated in Bank Indonesia Regulation (PBI) No. 3/10 / PBI / 2001 concerning Application of Know Your Customer Principles as last amended by PBI No. 5/21 / PBI / 2003. According to Article 1 PBI, what is referred to as Know Your Customer Principles is "the principle applied by banks to find out the identity of customers, monitor customer transaction activities including reporting suspicious transactions".

According to Article 1 point 5 PBI, what is meant by a suspicious transaction is a financial transaction that deviates from the profile, characteristics, or habits of the transaction patterns of the customer concerned. In addition, financial transactions by customers which are reasonably suspected to have been carried out with the aim of avoiding reporting the relevant transactions which must be carried out by banks in accordance with the provisions in Act Number 15 of 2002 concerning Criminal Acts of Money Laundering as amended by Act Number 25 of the Year 2003. Or, financial transactions carried out or canceled carried out using assets suspected to originate from the proceeds of crime.

Now, the rules regarding know your customer have been refined with PBI No. 11/28 / PBI / 2009 concerning the Implementation of the Anti-

³⁷ Trisadini Prasastinah Usanti, *Kehati-hatian pada Transaksi Perbankan*, (Airlangga University Press, Surabaya), 2013. p.36.

Money Laundering and Prevention of Terrorism Funding Programs for Commercial Banks, which are renewed with PBI No. 14/27 / PBI / 2012. This PBI adopts more comprehensive international recommendations and standards issued by the Financial Action Task Force (FATF) known as FATF Recommendation 40.

Uniquely, in this PBI, the terminology of know your customer is changed with the terminology of customer due diligence (CDD). The CDD definition is referred to as "activities in the form of identification, verification and monitoring carried out by the Bank to ensure that the transaction is in accordance with the profile of the prospective customer, WIC (walk in customer), or customer". There is also the term enhanced due diligence (EDD) to describe CDD's deeper actions taken by banks when dealing with prospective customers, WICs, or customers classified as high risk, including politically exposed persons, to the possibility of money laundering and financing of terrorism.

Therefore, the main purpose of the Know Your Customer Principle is to protect the bank's reputation. Know Your Customer can also facilitate bank compliance with applicable banking regulations as part of the precautionary principle in sound banking practices. In this case when the bank withdraws its customers to use the services of the bank concerned, it is expected that each transaction carried out by the bank's customers is in line with sound banking practices and does not conflict with applicable regulations. Furthermore, Know Your Customer Principle can protect the

Bank from being used by customers to carry out illegal activities or the bank is not subject to crime. In this case, by applying the Know Your Customer principle, it is hoped that the bank can identify the customer early on the customer and any activities or transactions carried out by the customer. Thus, since the beginning of the relationship between the bank and its customers, the bank not only knows what things will be done by its customers but can also prevent transactions through banks that are illegal³⁸.

There are 4 main elements of a Know Your Customer Principle:

1) Procedure for customer acceptance

Banks must have policies and procedures a clear understanding of customer acceptance, including a clear description of the customer who cannot or is prohibited from opening an account at a bank. In this case, banks are encouraged to consider factors including customer background, country of origin, customer position (public or profile position), and business activities. Banks are also encouraged to carry out deeper due diligence for customers who are considered high risk (high risk customers). For example, if an account is opened by parties or individuals who hold public positions, such as officials representing foreign countries, ministers, judges, or military officials, it needs special attention. This is due to the possibility that the source of funds held in the account of the

³⁸ Antonius Ketut Dwirianto "Penerapan Prinsip Mengenal Nasabah", *Tesis Pascasarjana UPH* Jakarta: Perpustakaan PascaSarjana Jakarta, 2007, p. 4, t.d.

party holding the public office is the result of corruption or misuse of public assets. The decision to approve the opening of an account in the name of an individual who is an individual who holds a public position must be made at least by officials at the senior level of the bank's management concerned.

2) Customer identification

One of the applications of *Know Your Customer Principle* is to identify customers. The process of identifying customers as one of the application principles of Know Your Customer is carried out on two objects, namely to customers personally (individual customers) and to documents relating to customers. In addition, banks are also required to monitor customer accounts which include outgoing and incoming monitoring on every transaction activity carried out by customers³⁹ Customer is defined as a party using bank services. Banks are required to have a procedure for verifying the identity of new customers and it is recommended not to establish business relationships with customers who do not have a clear identity. In the case of unclear identities, banks are prohibited from accepting account openings in fictitious names or even anonymous accounts or obviously fictitious names. Special attention needs to be

³⁹ Asep Rozali, "Prinsip Mengenal Nasabah (Know Your Customer Principle) dalam Praktik Perbankan", Jurnal Wawasan Hukum, Vol. 24, Ejournal.sthb.ac.id, accessed 01 Februari 2011.

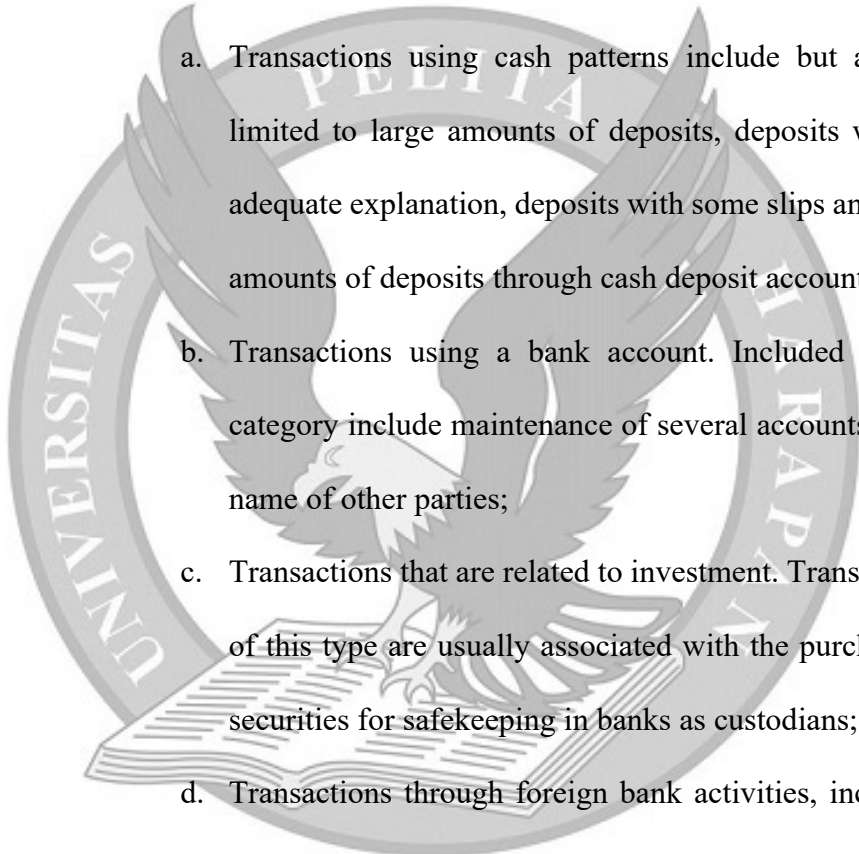
given to non-resident customers by asking for information or reasons from customers why opening accounts in other countries. Customer identification does not only apply to prospective customers or new customers, but also for existing customers, for example in case the customer in question suddenly makes an unusual transaction, or there is a significant change in the customer's account. With regard to customers in the form of a legal entity, in order to fulfill the identification requirements of the customer, the bank needs to verify the deed of incorporation or articles of association of the legal entity including the address, management or other parties authorized to act for and on behalf of the legal entity.

3) Customer monitoring

In changing economic conditions, banks need to develop an appropriate system of supervision and control. In addition, the system should be planned in such a way that it is not only for the purpose of monitoring (following and observing) but also obtaining reporting feedback on matters that deviate from the policy line and decisions in the form of corrective steps⁴⁰. Customer monitoring includes monitoring continuously to every account and transaction carried out by customers, especially accounts and transactions that are considered high risk. Supervision by the bank will be effective

⁴⁰ Julius R. Latumaerissa , Bank dan Lembaga Keuangan Lain Teori dan Kebijakan, (Jakarta: Mitra Wacana Media, 2017), p.309.

if the bank really understands every normal activity of the customer's account. Without this understanding, it will be difficult for banks to report quickly to the authorities if there are suspicious transactions related to their customer accounts. In connection with suspicious transactions, Bank Indonesia makes six (6) categories as usual in the practice of money laundering as follows:

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- a. Transactions using cash patterns include but are not limited to large amounts of deposits, deposits without adequate explanation, deposits with some slips and large amounts of deposits through cash deposit accounts;
 - b. Transactions using a bank account. Included in this category include maintenance of several accounts in the name of other parties;
 - c. Transactions that are related to investment. Transactions of this type are usually associated with the purchase of securities for safekeeping in banks as custodians;
 - d. Transactions through foreign bank activities, including collection of swaqldo in large quantities that are not in accordance with the characteristics of business turnover, as well as electronic transfers without adequate explanation;
 - e. Transactions involving bank employees or agents in anna increase bank employee wealth. Except that, the

transaction relationship through an agent that is not equipped with adequate information;

- f. Lending and borrowing transactions where loan repayments occur unexpectedly, as well as requests for financing where the portion of the customer's funds is unclear.

In connection with this suspicious transaction, banks need to conduct periodic reviews of customers in order to understand the characteristics and potential risks of each account. In relation to customer monitoring, banks are required to manage / save documents or every record of customer transactions both domestic and international transactions at least five years after the closure of the customer's account.

4) Reporting

In the event that the bank suspects that the funds in the customer's account are sourced from a criminal activity, the bank is required to immediately report it to that have the authority. For the purposes of this report, in one of the FATF recommendations mentioned the existence of legal protection for the bank in the event that the bank reports a suspicious transaction. The legal protection is in the form of protection from criminal or civil liability or violation of bank secrecy provisions, even though the bank does not know for certain whether the alleged suspicion is really happening

or not. In the Anti Money Laundering Regime the reporting party is a front liner that has a strategic role to detect suspicious financial transactions or report certain transactions in accordance with the provisions of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Under the law on Prevention and Eradication of Money Laundering, besides obligations, there are also special protections for the reporting party. The obligation to identify financial transactions and reporting by the reporter is also part of the application of the precautionary principle and part of risk management, to prevent as a means or target of money laundering by customers / service users⁴¹.

5) Risk Management

Banking business is a business that has a business risk it faces. Because banking is a business that has a high risk both from the aspect of withdrawing funds and channeling funds. Management risk is needed to prevent the possibility of cooperation between customers and bank employees to break into banks through fictitious forms of transactions⁴². The bank must have a commitment to implement the Know Your Customer Principle effectively. For this, banks need to do appointing a senior official responsible for KYC policies and procedures in force in the bank in accordance with

⁴¹<http://www.ppatk.go.id/pelaporan/read/50/pedoman-pelaporan.html> , accessed 22 November 2019 , 01.48 AM

⁴² Ibid.,p.213

applicable banking regulations. Banks need to have a written and clear KYC procedure, communicate it to all bank employees, and staff are required to report any suspicious transactions to officials to do: Conduct a training program on Know Your Customer Principles (KYCP) for employees and bank officials, and establish an internal audit function that is tasked with evaluating the effectiveness of KYCP policies and procedures used by banks.

By applying the principle of getting to know customers, it means that the bank can also minimize the possibility of potential risks, namely operational risk, legal risk, concentration risk and reputational risk. One of the prerequisites and conditions that must be met to improve the effectiveness of the application of the Know Your Customer Principle is the existence of common perceptions and understandings by banks, community users of Bank services, related agencies and law enforcement apparatuses regarding the importance of applying these principles. Intensive, thorough communication and outreach with the community is an effective way to apply this principle. In the banking world itself, policies and implementation must be sustainable.

2.1.8 Credit and Non-Performing Loans Reviews

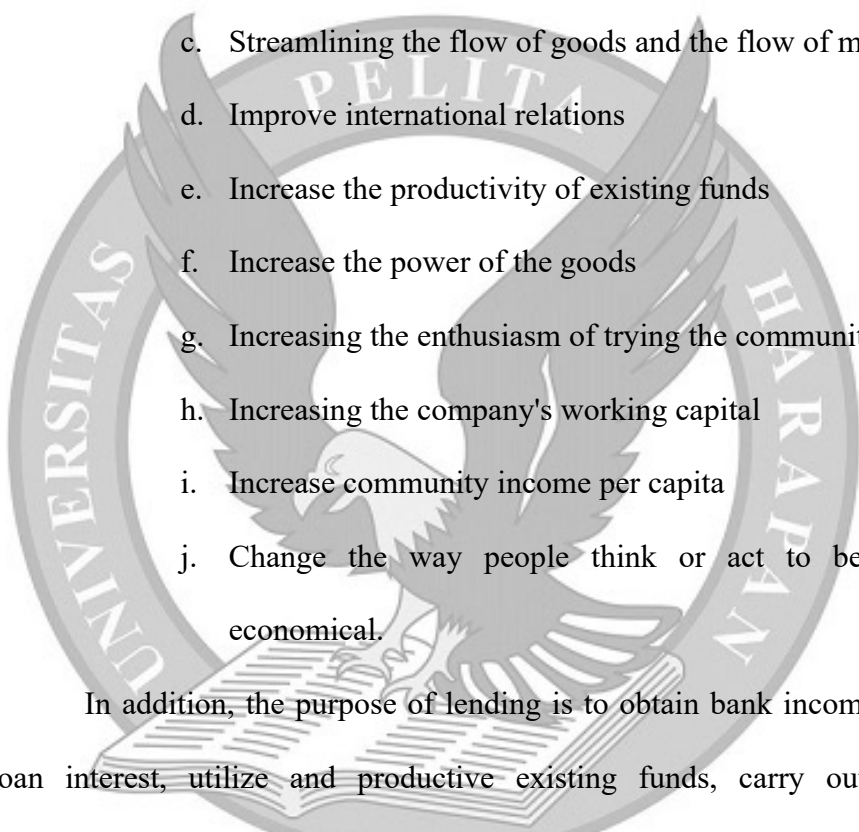
The term credit comes from the Latin "credere" (creed and reditum), which means trust ⁴³. As one of the functions of banking is the channeling of public funds by providing credit, giving birth to a legal relationship between creditors and customers as debtors. In the broader banking sector, the elements of credit also cover credit organization and management, credit documents and administration, credit agreements, collateral, settlement of bad debts and other elements. In credit, it is found that there are many regulations governing and limiting them, this is because it is in the field banking is the most regulated and limited business activity legislation. While the notion of credit according to statutory regulations is:

Article 1 number 11 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992; "Credit is the provision or equivalent bill, based on a loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest"

Article 1 number 5 PBI no 14/15 / PBI / 2012 concerning Evaluation of Commercial Bank Asset Quality: "Credit is the provision or equivalent bill, based on a loan agreement between the Bank and another party that requires the borrower to repay the debt after a period of time with interest."

⁴³ Rachmandi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia*, (Jakarta: Gramedia 2001), p.246.

With such conditions, the legislation is one of the main elements of credit activities⁴⁴. The function of credit for the community is to ⁴⁵:

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- a. Become a motivator and dynamist in increasing trade and economic activities
 - b. Expanding employment opportunities for the community
 - c. Streamlining the flow of goods and the flow of money
 - d. Improve international relations
 - e. Increase the productivity of existing funds
 - f. Increase the power of the goods
 - g. Increasing the enthusiasm of trying the community
 - h. Increasing the company's working capital
 - i. Increase community income per capita
 - j. Change the way people think or act to be more economical.

In addition, the purpose of lending is to obtain bank income from loan interest, utilize and productive existing funds, carry out bank operational activities, meet credit demand from the public, facilitate payment traffic, increase company working capital, increase income and welfare of the community⁴⁶.

Non- Performing Loan means there is the risk of loss related to the opportunity for counterparties to fail to meet their obligations when due. In

⁴⁴ Muhamad Djumhana, Hukum Perbankan di Indonesia, (Cetakan Ketiga Bandung: Penerbit PT Citra Aditya Bakti, 2000), p.371.

⁴⁵ Malayu S.P Hasibuan, Dasar-Dasar Perbankan, (PT Bumi Aksara, Jakarta, 2004), p.88.

⁴⁶ Muhamad Djumhana, Op. cit. p. 89

other words, credit risk is a risk because the borrower does not pay the debts. Non-performing loans is a condition of financing where there is a deviation of the terms of lending agreed in the repayment of the financing so that there is a delay, a juridical action is needed, or a potential loss is suspected. In the financing portfolio, problematic financing is still the principal management, because the risk and loss factor to the risk asset will affect the traffic ⁴⁷. Credit risks arise from the following possibilities⁴⁸:

- a. Debtor cannot repay the debt;
- b. Bonds purchased by banks, do not pay coupons and / or principal debt;
- c. The occurrence of non-performance of all obligations between the bank and other parties. For example, failure to pay a derivative contract.

To avoid this, the Bank before deciding whether an application can be accepted or rejected, the first step that must be done is to analyze the application recommended by the debtor. The important thing to do this analysis is to avoid the risk of possible bad credit. As is understandable, credit payments always occur in the future, so the lender must assess whether the debtor's expectations of his ability to repay are reasonable.

⁴⁷ Veithzal Rivai, dkk, Islamic Financial Management, (Jakarta: Ghalia Indonesia, 2010), p.146.

⁴⁸ Sulad Sri Hardanto, Manajemen Risiko bagi Bank Umum, (Jakarta: Elex Media Komputindo, 2006), p.106.

To analyze a loan application in general, criteria 5 c or The Five C are used, believe⁴⁹:

1) Character

In this case, credit analysts in general try to see from the loan applicant data that has been provided by the bank. If it is felt necessary to hold an interview, to find out in more detail, how the real character of the prospective debtor. Therefore, in an effort to "investigate" about this character the bank must collect data and information from parties that can be trusted⁵⁰. Armed with experience in the field, one's personality can be known through the style of speech, temperamen, daily habits, lifestyle, association and track record with its suppliers or business partners⁵¹. Whereas for existing customers who will repeat their credit, it can be seen from their credit performance or performance in the past, whether the repayment is sufficiently smooth or has experienced obstacles and congestion. If all information has been collected, it can be concluded whether in terms of character, prospective borrowers meet the requirements or not. If not, the credit application must be rejected immediately, but if it meets the requirements, then it must also meet

⁴⁹ Sunarto Zulkifli, *Panduan Praktif Transaksi Perbankan Syari'ah*, (Jakarta: Ziknil Hakim, 2003), p.144.

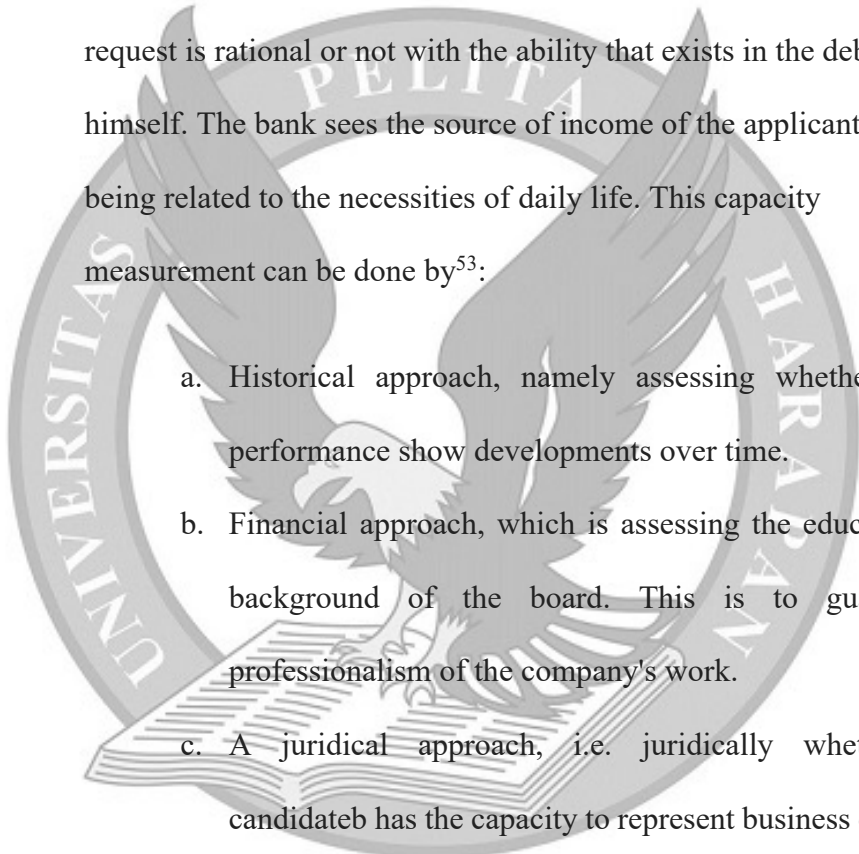
⁵⁰ Rachmat F dan Maya A, *Manajemen Perkreditan Bank Umum: Teori, Masalah Kebijakan dan Aplikasinya*, (Bandung: Alfabeta, 2008), p.84.

⁵¹ Suharno, *Analisa Kredit: Dilengkapi Contoh Kasus*, (Jakarta: Djembatan, 2003), p.13

the next conditions⁵². Therefore, the purpose of character research is to find out the extent of the client's ability and ability to fulfill their obligations in accordance with the agreed agreement.

2) Capacity

The bank tries to analyze whether the proposed fund request is rational or not with the ability that exists in the debtor himself. The bank sees the source of income of the applicant as being related to the necessities of daily life. This capacity measurement can be done by⁵³:

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- a. Historical approach, namely assessing whether past performance show developments over time.
 - b. Financial approach, which is assessing the educational background of the board. This is to guarantee professionalism of the company's work.
 - c. A juridical approach, i.e. juridically whether a candidateb has the capacity to represent business entities to enter into financing agreements with banks or not.
 - d. Manjerial approach, which is assessing the extent to which the ability and skills ofcustomers carry out management functions in leading the company.

⁵² Rachmat F & Maya A, op.cit. 2008. p.84.

⁵³ Ismail, Perbankan Syariah, (Jakarta: Kencana, 2011), p.121.

- e. Technical Approach, which is to assess the extent of the ability of mudhorib candidates to manage the factors of production, such as labor, sources of raw materials, equipment / machinery, financial administration, industrial relations, until the ability to seize the market.

3) Capital

This is quite important for banks, especially for large loans with existing capital, perhaps credit returns given. For this reason, it is necessary to review the potential of existing capital.

Capital capability is generally manifested in the form of self-financial provision, which should be greater than the requested financing. The form of self-finance does not have to be cash, but it can also be in the form of land, buildings, and machinery. The size of the capital can be seen from the company's balance sheet, which is the owner equity component, retained earnings, etc. For individuals, it can be seen from the list of assets concerned after deducting the debts⁵⁴.

4) Collateral

⁵⁴ Binti Nur Asiyah, *Manajemen Pembiayaan Bank Syari'ah*, (Jogjakarta: Teras, 2014), p.81-82.

The credit analyst analyzes the collateral given by the debtor in proportion to the requested creditor. This is important so that if the debtor is unable to repay his credit, the collateral can be sold.

5) Condition of economy

Conditions in which political, social, cultural and economic conditions affect the wheels of economy in a certain period that directly affect business activities. In practice problematic financing is caused by factors as follows:

a. Internal factors (banking)

From internal factors, problematic financing occurs because error in financing analysis. Financing analysis is done less thoroughly or is wrong in doing calculations.

Problematic financing can also occur due to collusion from the financing analyst with the customer, so the analysis is done subjectively and subterfuge. Many banks in Indonesia do not have a strong and specialized analysis according to certain industrial fields or businesses.

This situation makes it easy for banks to be lied to by customers to engineer their business feasibility. The disclosure of the case of our conglomerate who is in debt is indisputable evidence of the weakness of the customer's business feasibility analysis and the

possibility of collusion between the bank and prospective customers.⁵⁵

b. External factors (the customer)

The company's financial difficulties do not only occur due to managerial factors. Although the company's leadership has worked well and the business development is running smoothly, the company's financial difficulties can occur due to external factors. External factors are conditions outside the company that are dynamic and cannot be controlled. Important conditions that must be considered are the formal juridical and bureaucratic systems, the political climate, the economic situation, the value system in society, technological developments and the situation of business competition. The company's financial difficulties caused by external factors can be grouped as follows:

- i. Natural disasters
- ii. War
- iii. Changes in the economy and trade
- iv. Technological development⁵⁶.

⁵⁵ Kasmir, Dasar-dasar Perbankan, (Edisi Revisi Jakarta: PT RajaGrafindo Persada, 2014), p.148.

⁵⁶ Muchdarsyah Sinungan, Manajemen Dana Bank, (Jakarta: PT. Bumi Aksara, 1993), p.281.

2.1.9 Review of Money Laundering

The term money laundering comes from English, namely money laundering. Money means money and laundering means laundering. So that literally, money laundering means money laundering or bleaching of proceeds of crime. In general, the term money laundering does not have a universal definition because both developed countries and developing countries each have definitions itself based on different perspectives and priorities. However, for Indonesian legal experts the term money laundering was agreed upon with the term money laundering. Money laundering is a process or action that aims to hide or disguise the origin of money or assets obtained from the result of a criminal act which is then converted into assets that seem to come from legitimate activities.⁵⁷ According to Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning Money Laundering, the definition of money laundering in Article 1 number 1 reads as follows:

"Money laundering is the act of placing, transferring, paying, spending, granting, donating, depositing, bringing abroad, exchanging, or other acts of assets that are known to or suspected of being the result of a criminal offense with the intention to conceal, or disguise the origin of the assets wealth so that it seems to be a legitimate asset." Al Capone, the greatest criminal in America in the past, laundered black money from his crime attempt by using the genius Meyer Lansky, a Polish man. Lansky, an

⁵⁷ Adrian Sutedi, Tindak pidana pencucian uang, (Bandung: PT. Citra aditya bakti, 2008), p.12.

accountant, laundered Al Capone's crime money through a laundry business. Thus the origin of the name "Money Laundering" appears ⁵⁸.

The term money laundering has been known since 1930 in the United States, namely when the mafia bought a legitimate and official company as one of its strategies. The biggest investment is a laundry company or called laundromats, which were famous in the United States. The clothes washing business is progressing and various criminal proceeds such as from other business branches are invested in this clothes washing company, such as money from illegal liquor, gambling results and prostitution business results.⁵⁹

In the 1980s the proceeds of crime grew even more as the development of illicit businesses, such as narcotics and drug trafficking, reached billions of rupiah. Therefore, the term "narco dollar" then emerged, which came from illicit money from the narcotics trade⁶⁰.

In line with technological developments and globalization in the banking sector, today many banks have become the main target for money laundering activities because this sector offers a lot of instrument services in financial traffic that can be used to hide or disguise the origin of a fund. With the globalization of banking, funds resulting from crime flow or move beyond the boundaries of state jurisdiction by utilizing bank secrecy factors

⁵⁸ Yunus Husein dan Roberts, *Tipologi dan Perkembangan Tindak Pencucian Uang*, (Depok: Rajawali Press, 2018, p. 2

⁵⁹ Adrian Sutedi, *Tindak Pidana Pencucian Uang*, p. 2

⁶⁰ A.S Mamoedin, *Analisis Kejahatan Perbankan*, (Cetakan Pertama, Jakarta: Rafflesia, 1997), p. 291-292.

that are generally held in high esteem by banks. Through this mechanism, funds from proceeds of crime move from one country to another country that does not yet have a sufficient legal system to deal with money laundering or even to move to countries that apply strict bank secrecy provisions.⁶¹.

Money Laundering in Indonesia is a new thing, because it was widely known in 2002 since the enactment of Law No. 15 of 2002 concerning Money Laundering. Then amended by Law No. 25 of 2003⁶².

According to Munir Fuady said that Universal Money Laundering is currently classified as a Criminal Act classified as White Collar Crime. In the case of Money Laundering, money laundering is clearly carried out illegally. Money Laundering can be reviewed in terms of the law and can also be reviewed in terms of its jurisdiction, namely by using the Criminal Code and Law No. 8 of 2010, concerning the Eradication of Money Laundering Crimes ⁶³.

To carry out the crime of money laundering, the perpetrators have their own methods of committing the crime. This money laundering process has three stages namely ⁶⁴: Steps and Process of Money Laundering

1. Placement

⁶¹ Adrian Sutedi Op.Cit p. 2

⁶² Tubagus Irman, Money Laundering Hukum Pembuktian Tindak Pidana Pencucian Uang dalam Penetapan Tersangka, p. 1

⁶³ Munir Fuady , Hukum Perbankan Modern, Citra Aditya Bakti, Bandung, 2001 p. 167

⁶⁴ Binsar M. Gultom, Pandangan Kritis Seorang Hakim dalam Penegakan Hukum di Indonesia, p.139

The money generated from the initial crime is placed in financial institutions (banks). Or, money from proceeds of crime is used to buy assets (land, house, or car).

2. Layering

At this stage, the perpetrator tries to obscure the origin of the money by transferring funds to another bank or to the account of the person closest to him. Or, the assets were used as bank collateral to support a legitimate business.

3. Integration

At this stage, the proceeds of crime can be combined with other assets through the existing financial system. This means that the money and assets can eventually be used in legal economic or business activities.

In other words, after going through the placement process, layering the funds as if obtained from a halal source (legitimate source)

2.2. Conceptual Framework

2.2.1 Banking Principle

Bank and Customer Relations are the key to the smooth functioning of a healthy payment system traffic that will have an optimal impact as an economic intermediary institution. To safeguard this, bank regulation and supervision of customers is needed. Today, many things can hamper the

banking industry, including bad loans and money laundering. Over time, Indonesia continues to grow and update the regulations regarding Know Your Customer Principle, in order to avoid this.

In banking law, there are several banking principles, namely the principle of trust (fiduciary relation principle), the prudential principle, the secrecy principle, and the principle of knowing customers (know your costumer principle)⁶⁵.

2.2.2 Know Your Customer Principle

In order to function properly and healthily, commercial banks must apply the principle of getting to know customers. In applying these principles, banks are required ⁶⁶:

- 1) Establish a customer acceptance policy
- 2) Establish policies and procedures in identifying customers
- 3) Establish policies and procedures for monitoring customer accounts and transactions
- 4) Establish risk management policies and procedures related to the application of the principle of analyzing customers.

Related to monitoring customer accounts and transactions, banks are required to:

⁶⁵ Neni Sri Imaniyati dan Panji Adam Agus Putra, Pengantar Hukum Perbankan Indonesia, (Bandung: Refika Aditama, 2016), p.18.

⁶⁶ Julius R. Latumaerissa, Bank dan Lembaga Keuangan Lain, Teori dan Kebijakan, (Bandung: Citra Aditya Baktii 2008), p.232.

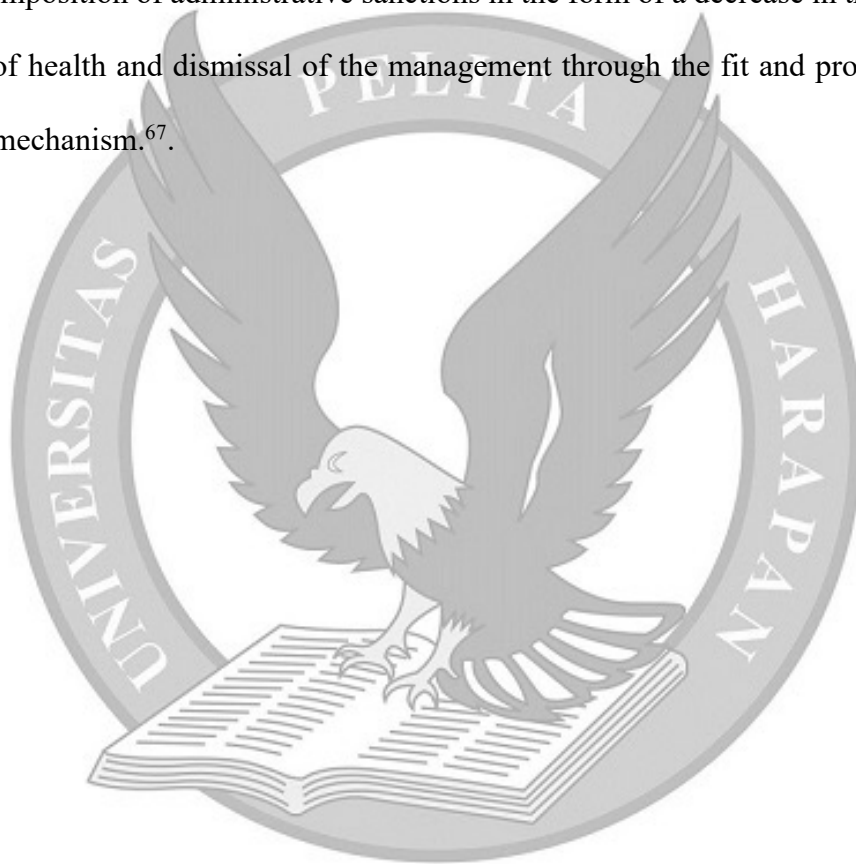
- 1) Having an information system or recording system that can identify, analyze, monitor and provide reports effectively on the characteristics of transactions carried out by customers
- 2) Monitoring the transactions made by customers, including identifying the occurrence of suspicious financial transactions.

Banks are required to submit suspicious financial transaction reports to the Financial Transaction Reports and Analyst Center (PPATK) no later than 3 working days after it is discovered that there are elements of suspicious financial transactions. Bank Indonesia assesses and imposes sanctions on the application of the principle of knowing customers and other obligations relating to the law on money laundering for commercial banks. The assessment is intended to obtain a comprehensive picture of the effectiveness of the application of the Know Your Customer Principle and the Law on Money Laundering at Commercial Banks so that the level of compliance of Commercial Banks can be known as well as to identify corrective measures needed. The assessment is conducted based on the results of Bank Indonesia examinations covering 5 risk management factors, namely:

1. Active supervision by the management
2. Policies and procedures
3. Internal court and internal audit function
4. Management information systems and
5. Human resources and training

The results of the application of Know Your Customer Principle and the Money Laundering Act are taken into account in evaluating the soundness of commercial banks through management factors.

If the result of the assessment is 5, in addition to being taken into account in the assessment of health level, it is also associated with the imposition of administrative sanctions in the form of a decrease in the level of health and dismissal of the management through the fit and proper test mechanism.⁶⁷.



⁶⁷ Ibid 233.