

Legal Review of the Easy of Giving Credit Facilities to Consumer Financing Institutions on the Prudential Principle

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Abstract

The research aims, (1), to determine the regulation of the prudential principle of consumer finance institutions in running their business with the principle of prudence. (2) to find out whether the provision of ease of requirements in obtaining consumer financing credit has taken into account the precautionary principle. The problem approach used in this research is by using a normative juridical research approach by studying library materials including legislation, articles and doctrinal opinions. Based on the results of the study, it shows that: (1) there is no legal umbrella regulating the precautionary principle in consumer finance institutions in running their business. (2) the provision of convenience in obtaining credit facilities to consumers is a form of non-implementation of the precautionary principle of consumer finance institutions in running their business, which in fact there is no law that regulates it, and results in harm to consumers.

Keywords: *Prudential Principles, Consumer Financing, Credit Facilities*

1. INTRODUCTION

Financial institutions, one of which is a consumer finance institution, has a function as a provider of funds for the purchase of consumer goods. The existence of consumer finance institutions has answered the high needs of the community which cannot be matched by the people's purchasing power in cash, on the other hand it is a positive signal for business actors to develop businesses in the field of financing and financial services.

The provision of financing facilities with varied and flexible installment terms has become an attractive option for consumers who come from the lower middle class, the installment payment model, from a financial point of view, is able to provide many benefits for consumers (Triantika, etc., 2020). People no longer need to provide large amounts of cash to be able to have the goods they want, while the time period offered can also be adjusted to the income and abilities of the consumers (Sinilele, 2017).

Based on the Financial Services Authority statistics for 2020, the number of head offices and branches of financial institutions is 7,839, consisting of 159 companies, including Adira Dinamika Multi Finance Tbk., Buana Finance Tbk., BFI Finance Indonesia Tbk., Batavia Prosperindo Finance Tbk.¹ which has been spread throughout

¹ Otoritas Jasa Keuangan, Statistik Lembaga Pembiayaan 2022, (Online), <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/lembaga-pembiayaan/Pages/Direktori-Jaringan-Kantor-Lembaga-Pembiayaan---Januari-2020.aspx>, (diakses pada tanggal 5 Agustus 2020).

the region both centrally and regionally, proves that the existence of consumer finance institutions is highly expected by the community. According to Abdul Kadir Muhammad and Rilda Murniati, there are 4 (four) reasons that encourage consumer financing to develop, namely limited formal funding sources, savings and loan cooperatives are difficult to develop, banks do not serve consumer financing and loan shark financing is stifling.²

The fact is that in the community, financial institutions in carrying out their activities, they are competing to be able to provide credit to the community by providing credit facilities with easy, practical requirements and a fast, uncomplicated process. So that with the various facilities provided by financial institution companies, people prefer this institution to meet their needs. Especially the need in the field of motorcycle and car transportation as a means to facilitate and expedite all needs or affairs, both work demands, daily travel needs and family interests and other activities. And this industrial sector is used as an embrace by business actors. There are many advertisements that promote the ease of obtaining a vehicle with very loose conditions such as 0% interest (zero percent), free admission fee, installments with a down payment or a small down payment and so on. In practice, financial institutions use a guarantee system where if the debtor cannot pay on time, the motorbike or car that is being paid in installments will be taken back.³ It is a fact in society that we often encounter motorbike withdrawals by leasing companies because creditors are unable to make installments that have only been running for a few months.

Based on the description above, the business activities of consumer finance institutions are a business full of risks that can potentially harm the parties. So that in carrying out this activity there needs to be a precautionary principle as one of the important principles to be implemented in the implementation of its activities.

The precautionary principle in the legal system in Indonesia can be found in Article 2 of Law no. 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (hereinafter referred to as the Banking Law) which affirms that "Individual Banking in conducting its business is based on economic democracy by using the precautionary principle". The next precautionary principle is also clearly stated in Article 29 paragraph (2) of the Banking Law which states:

“Banks are required to maintain the soundness of the Bank in accordance with the provisions on capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to the Bank's business, and are required to conduct business activities in accordance with prudential principles”.

Based on the description above, there are two interesting problems in conventional consumer finance institutions to be discussed in research, namely:

1. How is the Prudential Principle Arranged in the Provision of Credit Facilities at Consumer Financing Institutions?

² Abdul Kadir Muhammad dan Rilda Murniati, Segi Hukum Lembaga Keuangan dan Pembiayaan. (Bandung : Citra Aditya Bakti), hlm. 250.

³ Anita Theresia Tjoeinata, Perlindungan Hukum Bagi Debitur Terhadap Eksekusi Objek Jaminan Fidusia Tanpa Sertifikat Jaminan Fidusia Oleh Perusahaan Leasing, Calypra : Jurnal Ilmiah Mahasiswa Universitas Surabaya Vol.3 No. 1 (2014), hlm. 3

2. Has the Prudential Principles been taken into account in providing credit facilities to consumers?

2. RESEARCH METHOD

The research method used in this research is normative research, namely by basing it on a literature study, namely on primary, secondary and tertiary legal materials, using a statutory approach and a conceptual approach. The nature of the research is a description, which is a study that aims to provide a concrete description of the object of the problem being studied and draw conclusions prescriptively, so that with this research it is expected to obtain a comprehensive, complete and systematic picture of the object under study (Soerjono Soekanto, 2009).

3. RESULTS AND DISCUSSION

I. Regulation of Prudential Principles in Providing Credit Facilities to Consumer Financing Institutions.

A financing institution is a special business entity that carries out financing activities in the form of providing funds and capital goods.⁴ A finance company is a business entity that carries out the business activities of a Financing Institution. In financing companies, there are activities through consumer financing, consumer finance is financing activities for the procurement of goods based on consumer needs with payments in installments.⁵

According to C.D. Marpaung Ak., A finance company or so-called Leasing is a company that provides services in the form of leasing capital goods or production equipment in the medium or long term where the lessee must pay a certain amount of money on a regular basis which consists of the depreciation value of a leased object plus with flowers.⁶

Financing according to Law no. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, has the understanding that financing is the provision of money or an equivalent claim, based on an agreement or agreement between the creditor and the debtor which requires the party being financed to return the money or claim. after a certain period of time in exchange for profit sharing.⁷ From this understanding, it can be explained that financing can be in the form of money or bills whose value is measured in money, for example a dealer finances credit for the purchase of a motorcycle, then an agreement between the creditor and the debtor with the agreement he has made.

Financial institutions or leasing institutions in practice are called "leases" which in Indonesian means "lease". Regulation of financial institutions in Indonesia is regulated in Presidential Regulation of the Republic of Indonesia Number 9 of 2009. In Article 1 paragraph (5) and in 2009, known as Leasing or leasing, it means that leasing is a financing activity in the form of providing capital goods either on a lease basis. business lease with an option (finance lease) or lease without an option (operating lease) to be used by the lessee (lessee) for a certain period of time based on installment payments.

⁴ Peraturan Presiden Nomor 9 Tahun 2009 Tentang Lembaga Pembiayaan Pasal 1 butir 1

⁵ Peraturan Presiden Nomor 9 Tahun 2009 Tentang Lembaga Pembiayaan Pasal 1 butir 7

⁶ Mampaung C.D., Pemahaman Mendasar Atas Usaha Leasing, (Jakarta : Integrita Press, 1985),p.1

⁷ Kasmire, Manajemen Perbankan, (Jakarta : PT. Raja Grafindo Persada, 2003), p. 73.

The financing agreement includes the rights and obligations of each party. Including the time period and interest set together. Likewise with the issue of sanctions if the debtor breaks his promise to the agreement that has been made. Consumers who buy motorbikes on credit then the purchase uses the services of a finance company. The consumer financing agreement is a form of special agreement that is subject to the provisions of Book III of the Civil Code, namely 1). Lease-Use Agreement and 2). Conditional Sale and Purchase Agreement. Consumer Financing Agreements that occur between consumer finance companies and consumers are classified in the "borrowing and use agreement" as regulated in Articles 1754-1773 of the Civil Code. Article 1754 of the Civil Code states that:

"Lending and Consumables is an agreement, whereby the lender delivers a number of consumables to the borrower on the condition that the borrower will return the goods to the lender in the same amount and condition".

The definition of consumables includes the amount of money lent by the lender. The lender is a consumer finance company that is a creditor, while the borrower is a consumer who is a debtor. Because the consumables borrowed are a sum of money, according to the provisions of Article 1765 of the Civil Code, parties (consumer and consumer finance companies) may promise to return the principal plus interest.

A conditional sale and purchase agreement is an agreement between the consumer and the buyer, and the dealer as the seller, on the condition that the one who makes cash payments to the dealer is a consumer finance company. This sale and purchase agreement is classified as a purchase agreement which is regulated in Article 1457-1518 of the Civil Code, but the implementation of the payment depends on the terms agreed in the consumer financing agreement. According to article 1513 of the Civil Code that the buyer is obliged to pay the purchase price at the time and place determined according to the agreement. the terms of time and place of payment are stipulated in the principal agreement, namely payment in cash by a consumer finance company when the seller submits a purchase receipt signed by the buyer. Sunaryo said that in the sale and purchase agreement, the seller or dealer agrees to sell the goods in cash to the buyer. The dealer agrees that the price will be paid by the consumer finance company when the purchase receipt signed by the buyer is submitted to the company concerned. The terms of the agreement bind the seller and the buyer as binding as the sale and purchase agreement between the two parties. Consumer companies are also bound because when there is a consumer financing agreement, they will pay the purchase price of goods purchased by consumers from any seller or dealer.⁸ Thus, it can be concluded that in this incident there were 2 (two) legal actions, namely the legal act of buying and selling vehicles, and the legal act of a motorcycle loan agreement with a financing institution.

On the consumer and financial institutions side, to arrive at a lease-to-use agreement, it is passed through the following mechanism: fulfillment of requirements in this case the consumer (lessee) has the freedom to choose and determine the equipment needed, set an estimated price and appoint suppliers of the required financing object. After completing the application form, the prospective tenant will send it to the owner accompanied by complete files. The agent surveys credit matters and determines, submits the completeness of the terms and conditions agreed by both parties. After

⁸ Sunaryo, Hukum Lembaga Pembiayaan, (Jakarta : Sinar Grafika, 2008), p.100.

approval from the leasing service provider company, the leasing agreement contract can be signed.

In the loan agreement, the lender or lessor has the obligation to provide financing to the consumer (lessee) by providing funds to purchase goods in accordance with the agreement. The lessor's obligation to conduct surveys is a form of implementation of the prudential principle of financing institutions in carrying out their activities, the aim of which is to determine the ability of consumers to fulfill their obligations later, or to avoid the failure of the consumer in fulfilling the installments later. Thus, it will avoid the risk of bad credit which is detrimental to consumer finance institutions.

Surveys by consumer institutions to determine the extent to which the ability of potential consumers to be given credit facilities is very important, it actually aims for the good of the parties from losses, on the other hand considering there are very interesting things in the legal relationship between consumers and financial institutions, which where the close relationship between the object that is used as the object of financing and the financing institution as the owner, it is in the position of the consumer. That reason is one of the important things in the business activities of financial institutions applying the precautionary principle, although subsequently the object of financing is used as an object of guarantee with a fiduciary charge.

The implementation of the precautionary principle in consumer finance institutions that are part of non-bank financial institutions seems to refer to the regulation of the prudential principle which is actually not clear, and the note on the precautionary principle in non-bank financial institutions refers to the Regulation of the Minister of Finance No. 74/PMK.012/2006 concerning Application of Customer Principles for Non-Bank Financial Institutions. Article 1 number 5 regulates the principle of knowing the customer, which is the principle applied by Non-Bank Financial Institutions to determine the identity and background of customers and to monitor customer transaction activities.

The regulation of the precautionary principle for non-bank financial institutions regulated in the Minister of Finance Regulation and there is no legal norm that regulates it clearly shows the lack of clarity in its regulation, as in the *stufenbau* theory proposed by Hans Kelsen which states that the legal system is a rung system with a tiered rule in which the lowest legal norm must adhere to a higher legal norm, and the highest law must adhere to the most basic legal norm (*grundnorm*). Based on this theory, a new regulation can be legally recognized, if it does not conflict with the regulations that apply at a higher level.

Juridically, in the elucidation of Article 7 paragraph (2) of Law Number 12 of 2011 it is stated that what is meant by hierarchy is the hierarchy of each type of legislation based on the principle that lower laws and regulations must not conflict with regulations. higher legislation. Thus, in every formation of laws and regulations, so as to create harmony between the laws and regulations that were formed with various higher and equivalent laws and regulations. In this case, the precautionary principle for non-bank financial institutions regulated at the ministry level and there is no statutory regulation above shows the lack of clarity in the regulation.

Basically, the government has realized that the application of the precautionary principle is urgent for the implementation of activities in Non-Bank Financial Institutions, therefore it should be regulated in a law-level regulation which will later serve as an umbrella act, but until now it has not received attention from the government, and This is very unfortunate considering that the financial structure sector

between banking institutions and non-bank institutions is interconnected. Quoting Martin Brownbridge's opinion in his writing entitled "Policy Lessons for Prudential Regulation in Developing Countries" explains the importance of setting the precautionary principle, as follows:

“The objective of prudential regulation is to safeguard the stability of the financial system and to protect deposits. Hence its main focus is on the safety and soundness of the banking system and non bank financial institutions (NBFIs) which take deposits.”

Considering that consumer finance institutions are the part that has an influence on the security and health of the banking system, it is automatically important to apply the precautionary principle to be regulated in non-bank financial institutions.

II. Ease of Providing Credit Facilities to Consumer Financing Institutions in Considering Prudential Principles

The existence of consumer finance institutions is expected to provide opportunities for the community, especially the lower middle class, who previously had difficulty buying goods in cash, such as the purchase of motorized vehicles or electronic goods for their personal needs and their families who had difficulties, so that they can be resolved easily and quickly. . The credit system using financing institutions is in great demand by the wider community, this is possible because the amount of fees given by consumers is relatively small, although this does not mean that consumer financing business activities do not contain risks. Therefore, to minimize the risk that can be detrimental to the parties, the application of the precautionary principle is urgent to be applied in carrying out financing activities.

In English it is known as "prudent", which in Indonesian is defined as "careful" or "wise". Meanwhile, according to expert opinion, namely Rahmadi Usman. He defines the prudential principle as having the meaning as a principle or principle which states that a Bank in carrying out its functions and business activities is obliged to act prudently in order to protect public funds entrusted to it. According to this opinion, it is illustrated that the principle of prudence still has a broad meaning, but in principle it is something that must be carried out in running a bank.

In contrast to Ross Cranston's opinion, which tends to define the precautionary principle based on its function, so that the precautionary principle is defined as preventive regulation and as protective regulation:⁹

“preventive regulation involves those techniques, which are designed to forestall crises by reducing the risks facing banks. These include vetting the controllers and monitoring the management of banks, capital, solvency, and liquidity standards, and large exposure limits. Protective techniques, on the other hand, provide support to banks once a crisis threatens. Lender of last resort facilities are of immediate benefit, but ultimately rescue operations many be necessary, as well as payments under deposit insurance shemes.”

⁹ Ross Cranston, *Principles of Banking Law*, Oxford University Press, New York, 1997, hlm. 84 dalam Lazaros E. Panaourgis, *Banking Regulation and World Trade Law : GATS, EU and “Prudential” Institution Building*. (Hart Publishing, 2006), p 11

The precautionary principle is defined by Ross Craston, as preventive regulation, which means that it refers to the precautionary principle which functions to reduce and avoid risks that may arise in banking activities, while the purpose of the prudential principle as protective regulation will be seen in times of crisis. . Which Ross Cranston exemplified by taking the policy of “last lending”.

In the system of laws and regulations in force in Indonesia, the precautionary principle can be found in the Banking Law, namely in Article 2, Article 8 and Article 29 paragraphs (2), (3), (4). And in the Sharia Banking Law Article 2, Article 23, Article 35, Article 36 and Article 39. The following is tabled as follows:

Table 1
Laws governing the precautionary principle

No	Banking Law	Sharia Banking Law
1.	Section 2: Indonesian banks in carrying out their business are based on economic democracy by using the principle of prudence	Section 2 : Islamic banking in conducting its business activities is based on sharia principles, economic democracy, and the principle of prudence.
2.	Article 8 : Banks are required to fulfill beliefs based on the 5 C's analysis of credit before providing credit or financing	Article 23 : Banks must have confidence in the willingness and ability of prospective customers to pay off all their obligations based on the 5 C's analysis of the recipient of the facility
3.	Article 29 paragraph (2): Tires are required to maintain the soundness of the bank in accordance with the provisions on capital adequacy, quality of sets, quality of management, liquidity, profitability, solvency, and other aspects related to the bank's business, and must conduct business activities in accordance with the principle of prudence.	Article 35 Islamic banks/Islamic business units are required to apply the precautionary principle
4.	Article 29 paragraph (3): In providing credit or financing based on sharia principles and carrying out other business activities, banks are required to take methods that do not harm the bank and the interests of customers who entrust their funds to customers.	Article 36 Sharia Banks/UUS are required to take methods that do not harm the Sharia Bank/UUS and the interests of the Customers who entrust their funds.

5. Article 29 paragraph (4):	Article 39 :
For the benefit of the customer, the bank is required to provide information regarding the possible risk of loss in connection with customer transactions conducted through the bank.	Sharia banks and UUS are required to explain to customers regarding the possibility of risk of loss in connection with customer transactions conducted through sharia banks/or UUS

Source: Banking Law & Sharia Banking Law

In addition to being regulated in the Banking Law and Sharia Banking Law, regulations related to prudential principles are also regulated in the form of Bank Indonesia Regulations (PBI) and Bank Indonesia Circular Letters (SEBI).

Whereas the financial system, according to Insukindro's explanation, is generally a unified system formed from all existing financial institutions, and whose main activities in the financial sector include withdrawing funds from and distributing them to the public. Furthermore, according to Insukindro, the financial system in Indonesia is grouped into 2 (two) namely: first, the Monetary System which consists of the monetary authority and the Commercial Bank System (commercial banks or banking institutions), and secondly other financial institutions (non-bank financial institutions). Based on the description that has been explained as in the previous sub-chapter, it can be seen that the banking system in the end cannot be separated from non-bank financial institutions.

In providing credit, if you look at the provisions of Article 8 and the Elucidation of Article 8 of the Banking Law, the implementation of the prudential principle is translated as bank confidence based on in-depth analysis in good faith and ability, as well as the ability of the debtor customer to pay off his debts or return the financing according to the agreement. credit. In Islamic banking, the same is regulated in the provisions of Article 23 of the Sharia Banking Law.

Good faith, ability, and the ability of customers are important and are the main factors that must be considered by banks. Furthermore, to obtain these things, the bank before providing credit or financing, it must conduct a careful assessment of the consumer on the character (character), ability (capacity), capital (capital), collateral (collateral), and business prospects (conditions). of economics) commonly known as the 5 C's analysis of credit.

Providing convenience for consumers by promising easy requirements such as 0% interest (zero percent), free admission fees, installments with a down payment (down payment) or a small down payment and so on, are requirements that are far from implementing the precautionary principle which is actually very detrimental to consumers. . Moreover, after the agreement between the consumer and the consumer financing institution, there is an obligation for the object of financing to be burdened with a fiduciary guarantee. Fiduciary guarantees according to Article 1 point 2 of Law Number 42 of 1999 concerning Fiduciary Guarantees are:

Fiduciary guarantee is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights that remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.”

It is clear that with the provision of fiduciary, the object of consumer financing will provide a sense of security for consumer financing institutions from the risk of default by consumers. Furthermore, what about consumers who are carried away with the ease of receiving credit without being based on the consumer's financial capacity, it will actually lose money that has been used to pay installments to consumer financing institutions.

The principle of prudence must be carried out by Consumer Financing Institutions, not only for the interests of consumer financing business actors, but also in relation to consumer financing institutions as part of financial institutions that have links with banking which are closely related to the banking monetary system, which concerns the interests of all members of society.

4. CONCLUSION

The regulation of the precautionary principle in the provision of credit facilities to consumer finance institutions in the Indonesian regulatory system has not yet been regulated, and in practice it is still based on existing regulations in banking institutions. Providing credit facilities to consumers with easy terms is an act of consumer financing institutions in carrying out their business activities that does not consider the principle of prudence, and is actually detrimental to consumers.

To the government, considering that consumer finance institutions are very much needed in the community in meeting their needs in cash, and the fact that the existence of consumer finance institutions has a contribution to the national economy, and is part of financial institutions other than banks, which in carrying out their business is always related to banks, then regulate Non-bank financial institutions are required to carry out the precautionary principle, which is very urgent going forward.

To consumer finance institutions, although there is no clear legal umbrella regarding the obligation to carry out business activities with the principle of prudence, the precautionary principle should take precedence over pursuing large numbers of consumers who are increasingly falling into the inability to pay off their credit installments.

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