Vol 4-Sep2019
ISSN: 2541-3023

Responsibility of the Board of Directors to the Non-Performing Loans in Banking Company Based on Law Number 40 of 2007

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Abstract— **Bank is a company whose business activities raise funds, channel funds, and provide financial services. Of the three bank business activities, fund distribution activities are activities that are sources of bank-wide income. However, large profits are directly proportional to the high level of risk, namely the occurrence of Non-Performing Loans. The problem that will be discussed in this research is how is the responsibility of the Board of Directors for the occurrence of Non-Performing Loans in banking companies based on Law Number 40 of 2007 concerning Limited Liability Companies? The method used in this research is normative legal research using the statutory approach. The results of this research are that one of the causes of the occurrence of Non-Performing Loans in banks is inaccurate credit analysis conducted by bank employees in the credit department and the absence of supervision conducted by the Directors as leaders in banking companies. Pursuant to Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies, it is stated that the Board of Directors is personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties. This means, as the party who gives approval in lending, the Board of Directors must take full responsibility if the disbursed credit becomes a problem in the future and becomes a bad credit that causes losses to the company.**

Keywords— Banking, Non-Performing Loans, Responsibility of the Board of Directors

I. INTRODUCTION

In Indonesia, as mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing a just economic system. To ensure the continuation of economic democracy, all potentials, initiatives, and creations of the people must be fully mobilized and developed within the limits that do not harm the public interest, so that all potential economic forces can be mobilized into tangible economic forces for the benefit of increasing prosperity people [1]. In order to achieve this goal, the implementation of economic development must pay more attention to the harmony, harmony and balance of the elements of equitable development, economic growth and national stability. One institution that has a strategic role in harmonizing, harmonizing, and balancing each element of the development trilogy is banking.

Banking is everything related to banks, including institutions, business activities, as well as ways and processes in carrying out their business activities. Based on Article 1 of Law Number 10 of 1998 concerning Banking, it is explained that banks are business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit and / or other forms in order to improve the lives of many people. In addition, Kasmir explained that banks are defined as financial institutions whose business activities are raising funds from the public and channeling these funds back to the public and providing financial services [2].

From the above understanding, it is known that a bank's business activities are raising funds, channeling funds, and providing services. Banks collect funds from the public in the form of deposits in the form of savings, deposits and demand deposits by providing monetary rewards, known as bank interest, to the public in accordance with the nominal amount of their deposits. People who have excess money certainly feel greatly helped by the existence of a bank because the security of the money is guaranteed if it is deposited in a bank and the bank also provides monetary rewards for these deposits. After raising funds, banks channel funds to the public in the form of loans in the form of credit by asking for compensation in the form of money to the community in accordance with the nominal amount of the loan. People who need money to meet their needs certainly find it helpful to have a bank because they can borrow money in cash, the return of which can be paid in installments over a period of time so that the return becomes lighter. In addition, banks also provide financial services that can provide convenience to the public in conducting various financial transactions, such as money transfer services that can send money from long distances in seconds [3].

Of the various types of banking business above, lending is the most important business activity for a bank. This is because the credit interest paid by customers is the largest bank income, which is then used

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ISSN: 2541-3023

by banks to pay interest on customer deposits, carry out bank operational activities, and become one of the sources of profit for banks. However, large profits are directly proportional to the level of risk.

The risk that generally occurs in lending at banks is known as bad credit. Bad credit is a default carried out by a customer, ie the customer does not fulfill his obligation to pay credit installments to the bank as agreed in the credit agreement [4]. Non-Performing Loans has the potential to be experienced by a bank because the bank lends money to customers in cash while the customer returns it to the bank in installments according to a mutually agreed period of time.

From the background of the problem described above, the problem to be discussed in this research is how the responsibility of the Board of Directors for the occurrence of Non-Performing Loans in banking companies based on Law Number 40 of 2007 concerning Limited Liability Companies?

II. RESEARCH METHODOLOGY

According to Soerjono Soekanto, legal research is a scientific activity that is based on certain methods, systematics, and thinking that aims to study one or several specific legal phenomena by analyzing them [5]. The method used in this research is normative legal research using a statutory approach, namely Law Number 40 of 2007 concerning Limited Liability Companies. Peter Mahmud Marzuki explained that normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to address the legal issues faced [6].

Data sources used in this research are secondary data, namely data obtained from statutory regulations, scientific journals, and legal literature. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis.

III. RESULTS AND DISCUSSIONS

In Latin, credit comes from the word 'credere', which means trust. In line with that, based on Article 1 of Law Number 10 of 1998 concerning Banking, it is explained that credit is the provision of money or bills that can be equaled based on the agreement or loan agreement between the bank and another party, which requires the borrower to repay its debt after a certain period of time with interest.

Of the various types of banking business above, lending is the most important business activity for a bank. This is because the loan interest paid by the customer is the biggest bank income, which is then used by the bank to pay the customer's deposit interest, run the bank's operational activities, as well as being a source of profit for the bank. However, large profits are directly proportional to the level of risk. The risk that generally occurs in lending at banks is known as bad credit. Bad credit is a default carried out by the customer, that is, the customer does not fulfill his obligation to pay credit installments to the bank as agreed in the credit agreement. Bad credit has the potential to be experienced by a bank because the bank lends money to customers in cash while customers return it to the bank in installments according to a mutually agreed period. The occurrence of bad loans is one of the reasons, namely the weak credit analysis conducted by the bank, ranging from bank employees to the Directors as leaders who approve lending.

Law Number 10 of 1998 concerning Banking stipulates that banks are required to apply the precautionary principle in all their business activities, including lending activities. Therefore, in extending credit to the public, banks must implement measures that do not harm their business and also do not harm the rights of customers who entrust their money deposited in the bank. This is because the money disbursed by the bank in the form of credit is public money deposited in the bank on the basis of trust, so the bank must continue to maintain the level of health and public trust in it [7].

Indonesian people have lost confidence in banks during the economic crisis in 1998. The economic crisis has been a devastation for the national banking system because many banks do not apply the precautionary principle in managing their business activities. The real evidence that resulted from this was the freezing of 38 private bank businesses, including Ciputra Bank, Ganesha Bank, Pesona Bank, Alfa Bank, Aspac Bank, and so on. Furthermore, there were 7 private banks that were taken over by the government, namely RSI Bank, Putera Sukapura Bank, POS Bank, Artha Pratama Bank, Nusa National Bank, Jaya Bank, and IFI Bank. In addition, there are also 4 state-owned banks, namely Dagang Bank, Exim Bank, Bumi Daya Bank, and Bapindo which collapse and are merged into Mandiri Bank.

Regarding what is meant by the precautionary principle, there is no official explanation in the legislation. Hermansyah explained that the bank and the people involved in it, especially in making policies and carrying out their business activities, were required to carry out their duties and obligations carefully, thoroughly, and professionally so as to gain public trust. In addition, banks in making policies and conducting business activities must always comply with all applicable laws and regulations in a manner that is based on good faith [8]. The trust of the community is the main key for developing or not a bank's business activities.

In general, the principle of prudence in the process of lending is implemented by banks using the 5C principle when conducting credit analysis. The 5C principles are as follows [9]:

1. Character

Character is the bank's assessment of the prospective customer's personality character.

2. Capacity

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Capacity is the bank's assessment of the ability of prospective customers to manage finances and run their business.

3. Capital

Capital is the bank's assessment of the initial capital owned by the customer.

4. Condition

Condition is a bank's assessment of the current economic, social and political development and its relation to businesses that are or will be run by prospective customers.

5. Collateral

Collateral is a bank's assessment of collateral that will be used as collateral for credit applications submitted by prospective customers.

In lending, banks must have confidence based on an accurate analysis of the intention and ability and ability of customers to repay their debts in accordance with what was agreed in the credit agreement. To obtain this confidence, before lending, banks must make an accurate assessment of the character, abilities, capital, collateral, and business prospects of prospective customers.

Accurate credit analysis largely determines credit quality and credit refund targets. If the analysis of the credit requirements of prospective customers is carried out correctly by bank employees in the credit department and properly monitored by the bank's directors, then the loan repayment target will run smoothly from the beginning to the full.

Bank Indonesia groups credit quality at banks with the following levels [10]:

1. Current Loans

If the customer fulfills his obligations in accordance with the agreement in the agreement, the quality of the credit includes Current Loans.

2. Loans in Special Attention

If the customer does not fulfill its obligations in accordance with the agreement in the agreement with a maximum limit of outstanding credit installments of up to 90 days, the quality of the credit includes Loans in Special Attention

3. Substandard Loans

If the customer does not fulfill its obligations in accordance with the agreement in the agreement with outstanding credit installments through 90 days to 180 days, the quality of the credit includes Substandard Loans.

4. Doubtful Loans

If the customer does not fulfill its obligations in accordance with the agreement in the agreement with outstanding credit installments through 180 days up to 270 days, the quality of the credit includes Doubtful Loans.

5. Non-Performing Loans

If the customer does not fulfill its obligations in accordance with the agreement in the agreement with outstanding credit installments that have exceeded 270 days, the quality of the credit includes Non-Performing Loans.

Over time, various factors, both internal and external factors, can affect the quality of loans extended by banks to their customers. Bank internal factors that affect credit quality from Current Credit to Non-Performing Loans are usually caused by inaccurate credit analysis conducted by bank employees in the credit department and not supervised by the Directors due to corruption, collusion, and nepotism.

Pursuant to Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies, it is explained that the Board of Directors is the organ of the company that is authorized and has full responsibility for the management of the company for the interests of the company in accordance with the aims and objectives of the company and represents the company, both inside and outside the court, in accordance with the provisions of the articles of association.

In 2013, President Director of PT Bank Riau Kepri, Zulkifli Thalib, was convicted by the court for being involved in a corruption case in the form of a fictitious credit worth 35.2 billion rupiah. Zulkifli Thalib approved the credit application of PT Saras Perkasa at PT Bank Riau Kepri Branch of Batam. Zulkifli Thalib as a Director of PT Bank Riau Kepri who approved the credit application was considered responsible for the losses suffered by the company, although Zulkifli Thalib insisted there was no money received in the case.

The occurrence of bad loans experienced by banks has the potential to cause harm to the company. In a banking company incorporated as a Limited Liability Company (PT), the authority and full responsibility for the management of the company is the Board of Directors.

Pursuant to Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies, it is stated that the directors are personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties. That is, as the party giving approval in lending, the bank's directors must take full responsibility if the disbursed credit becomes a problem in the future and becomes Non-Performing Loans which causes losses to the company.

IV. CONCLUSION

One of the causes of Non-Performing Loans in banks is inaccurate credit analysis conducted by bank employees in the credit department and the absence of supervision conducted by bank directors as leaders in banking companies. Pursuant to Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies, it is stated that the directors are personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties. That is, as the party giving approval in lending, the bank's directors must take full responsibility if the disbursed credit becomes a problem in the future and becomes Non-Performing Loans which causes losses to the company.

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