

Yuridis Analysis of Giving Credit With Warranty of Pension B By Pt Bank Yudha Bhakti (Persero) Office of Makassar Branch

¹ Ayu Oktaviani, ². Ma'ruf Hafidz ³. Dachran S. Busthami
¹ Student Master of Law Postgraduate Program of Muslim University of Indonesia
^{2,3}. Lecturers of Law Faculty of Muslim University of Indonesia
Corresponding Author: Ayu Oktaviani

Abstract: The objectives of the research are: To know the way of regulation and procedure of pension SK binding as credit guarantee and to analyze the risks that can occur in the provision of pension credit in PT Bank Yudha Bhakti. Specifically, the research is a normative legal research which is then followed by empirical research, because it is a research done by researching materials that come from library combined with field research / sociology. This study is descriptive, because it wants to describe the legal studies of the guarantee of Pension SK especially for the pensioners. The research approach method is done through normative and sociological jurisdiction, to know the effectiveness of giving credit to the civil servant in practice, especially related to the problem studied.

Keyword: Yuridis Analysis, Giving Credit

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I. INTRODUCTION

Borrowing and borrowing activities have been done for a long time in the lives of people who have known money as a means of payment. In general, it can be said that the borrower of money to parties relating to daily life or to meet the needs of funds to finance its business activities. Thus, borrowing and lending activities are already a part of people's lives today.

Based on BYB's loan portfolio data it is found that credit facilities for the fixed income class have so far contributed considerable revenue to BYB. In addition, rapid market growth in line with increasing public welfare has opened up enormous potential for developing credit facilities for fixed income groups.

The data shows that the more advanced a country's society, the level of consumer credit ratio to population income is greater. This is due to the growing level of the economy of a nation, which is marked by the increasing number of units of goods and services, which means the number of fixed income groups (workers / labors) is increasingly massive as the main target of consumer credit market. The terms of the credit agreement are found in government instructions and various circulars, including:

1. Instruction of the Cabinet Presidium No. 15 / EKA / 10/96, which instructs the bank that in granting any form of credit, the banks use the "credit agreement agreement".
2. Circular Letter of Bank Negara Indonesia Unit I Number: 2/539 / UPK / Pemb / 1996 and,
3. Circular Letter of Bank Negara Indonesia Number: 2/539 / Pemb / 1996 concerning Guideline of Policy in Credit Field.

Loans to Group of Permanent Income, hereinafter referred to is the credit given to prospective borrowers / debtors with repayment source (repayment) comes from fixed income (salary / pension).

Pension loans can be used to finance the purchase of mobile or immovable goods, for the cost of home repairs, tuition / school fees, medical expenses, marriage and others. can also be provided for productive purposes.

Retirement under section 1 of Law no. 11 of 1969 concerning Employees' Pension and Widow / Widower Pension is "Old age insurance and in appreciation for the services of civil servants for many years working in government service". The legal basis of the pension decree as collateral for credit or debt in the bank is Law no. 11 of 1969 concerning Employee Retirement and Pension widow / widower employees. In article 30 of Law no. 11 of 1969 mentioned that the decree on the provision of pensions under this Act can be used as collateral to obtain a loan from one of the banks appointed by the finance minister. From article 30, the recipients of employee pensions and widows and other heirs. The names listed in the pension decree may obtain loan money from the lender bank by using the pension decree it has as collateral, in the sense that as long as the employee entitled to retirement is still alive, only he / she may apply for credit with the guarantee of pension decision.

Bank as a financial institution whose main activity is to collect funds from the public in the form of savings

(demand deposits, savings, deposits) and then channel it back to the community in the form of credit funds or other forms, to improve the standard of living of many people. Given Indonesia's underdeveloped economic condition, where the people's income is still below the average, then in this case the role of banks in the field of lending is very important existence.

This credit is needed many people or parties in organizing a better economic life. The need for credit is not only required by people who have unpredictable income, but also people with fixed income such as Civil Servants (PNS) and employees who work in companies, especially pensioners who are not used anymore services will require credit to support his life . besides in running its business, entrepreneurs also do a lot of credit loans to the bank.

Criteria of employees who can be served by PT. BANK YUDHA BHAKTI to be granted consumptive credit facilities are:

1. Central and Regional Civil Servants (PNS) of Central and Regional who have a maximum of 3 years
2. Members of the TNI, POLRI whose working period is maximum 3 years
3. Retired covering:
 - Pensioners managed by PT. Taspen
 - Pensioners managed by PT. Asabri

Law no. 11 of 1969 concerning Employees' Pension (Civil Servant) and Widow / Widower Pension provide the old age pension for Civil Servants (PNS) and death benefit for their families. Retired civil servants and military personnel are entitled to monthly pension benefits and old-age benefits paid at once upon retirement age. Monthly retirement allowance amounts to 2.5% of the last monthly salary multiplied by the number of years of service, up to a maximum of 80%, while the aggregate amount of old age is based on multiplication of the number of years of service, final wages, and 0.6 (multiplier determined by the Minister of Finance).

In order to provide better services to the public, especially to pensioners, and to increase BYB's income, the pension credit system is issued, which is free of appropriation according to the needs of the debtor, as long as it is not contrary to the rules, regulations and norms applicable to community. The purposes are to buy immovable property, moving goods, or other necessities such as school fees, medical expenses, marriage and so forth.

The principle of agreement in entering into a covenant is a foundation that guarantees the freedom of the person in entering into an agreement. This is also not separated from the nature of Book III of the Civil Code, which is only a regulating law so that the parties can set aside, except for certain articles that are coercive. One of the functions of the bank as an intermediary is to manage money, therefore the role of the bank is very important in a country's economy. The Bank also as a transmission helps the government in national development with its various facilities. One of the facilities provided is credit, it is much in demand by people with different motives and consumption. Encouraged by the increasingly pressing pressures of the economy, credit is one of the alternatives to get capital or funds needed for venture capital, tuition / school fees, medical expenses, marriage, and so on.

Banking Services are generally divided into two objectives, namely:

1. As an efficient provider of payment mechanisms and tools for customers, for this bank provides cash, savings, and credit cards. This is the most important bank role in economic life without the provision of this efficient means of payment, goods can only be traded in a time-consuming barter.
2. By accepting savings from customers and lending them to those in need of funds, the bank increases the flow of funds for more productive investment and utilization. When this role goes well, the economy of a country will increase. Without this flow of funds, money just dwells in someone's pockets, people can not get loans and businesses can not be built because they have no loan funds.

"Lending is one of the conventional bank business activities in order to manage funds that are productive and provide benefits. In conventional bank operational activities in general found the existence of debt guarantees or commonly called credit collateral (collateral) ".

In the conduct of the legal guarantees of the debt assessment, the lender should undertake in accordance with the legal provisions relating to the object of debt guarantees and the law on the guarantee of debt referred to as the security law. The law of guarantee constitutes a set of provisions governing or relating to a guarantor in the context of accounts payable (debt debt) contained in the current sharing of laws and regulations.

Generally, collateral is used as collateral to meet the crediting requirements. Each grant of a credit facility shall deliver collateral in the form of goods or securities with a value equal to the size of the loan. Credit collateral serves to protect the bank from all the possibilities that can occur. The bank must be careful and thorough in conducting research on collateral provided by the debtor, so that in the future collateral does not cause problems. "Distribution of types of loans disbursed by banks is seen from the type of utility, purpose of credit, duration and guarantee, the guarantee given is one important thing in the assessment of credit by the bank."

Collateral in the form of goods which are legally classified as immovable goods such as land and buildings, the right to use is given in the form of objects which are legally classified as moving goods such as motor vehicles equipped with a letter of vehicle number motor and proof of ownership (BPKB), collateral in the form of securities that have collect rights, collateral in the form of civil servant decree and collateral in the form of retired civil servant decree.

We have seen ahead that the issue of guarantee rights is closely related to the issue of execution. And with respect to such a connection it would be logical, that collateral goods should be transferable objects, because an execution is essentially the transfer of the collateral from the owner to the buyer.

"Although the Pension Decision is not a transferable item (which has a value of transfers), but in the development of the credit world, because of the need of the letter can be accepted by certain banks as collateral for credit". The trick is to submit the Pension Decree, as well as provide a power of attorney to the bank to edit the salary of the recipient of the credit. The power of attorney is used to transfer the pension salary to the bank where the applicant credit. Although the power of attorney received the salary is made as an absolute power, but such a guarantee the position is very weak, because the salary is very private, so the death in question will be the end of the salary.

The embodiment of the values contained in Pancasila (especially the fifth precept), is at least incarnated in the preamble (the 1945 Constitution) which states unequivocally the basic foundations of economic and social development, namely the existence of the phrase "just and prosperous, general, and by realizing a social justice for all the people of Indonesia".

Article 27 paragraph (2) of the 1945 Constitution states that every citizen shall have the right to work and a decent living for humanity. The success of every Indonesian citizen in obtaining employment and decent living for humanity is a picture of the realization of a just and prosperous society.

Article 33 Paragraph (1) of the 1945 Constitution states that the economy is structured as a joint effort based on the principle of kinship of the people's prosperity should take precedence, not the prosperity of the individual. The community must play an active role in economic activities, and the government is obliged to provide guidance on economic growth and create a healthy climate for the development of the business world. The benefits of credit disbursement by banks are as follows:

1. Credit benefits for the community

a) Consumer Credit

Benefits that consumer borrowers can feel are distributed to employees and retirees in need are: First, in general they become able to take advantage of income, which will be received in the future to buy their goods and services needs.

Second, to be able to meet the needs and needs that are urgent (force majeure).

b) Commercial Loans

Business activities are highly dependent on the availability of venture capital (funds). In general, entrepreneurs have difficulty funding in an attempt to expand the market share of the business (market expansion), thus requiring funds in the form of bank credit. Credit facilities provided by banks to their customers for the purpose of financing receivables and inventories, are called working capital loans (KMK). While credit facilities that will be used to expand the network or production capacity of the company, given in the form of investment credit (KI).

change of money supply can be done with supervision of loan interest rate. In the state of recession, state expenditure requirement increase, therefore money supply needed more. This policy can be done by lowering bank interest rate so that credit channeled to society will increase, finally economy countries are being helped. Conversely, if the economy develops high enough, the lending rate is increased so that higher inflationary impacts can be controlled and the country's expenditure can be suppressed. In a state of recession, the need for state expenditures increases, therefore money supply needs more stout. This policy can be done by lowering the bank interest rate so that the loan disbursed to the public will increase, finally the state's economy becomes helpful. Conversely, if the economy develops high enough, the lending rate is increased so that higher inflationary impacts can be controlled and the country's expenditure can be suppressed. In the daily operational activities of credit, starting from credit application to credit repayment, for example in making credit agreement, guarantee bonding, basically it contains legal aspects. In banking practice, credit risk is typically grouped into two types: 1) Business risks Risk is solely due to the existence of purely business factors, whether derived from credit recipients, economic impacts, natural disasters or other factors of a nature force majeure. The debtor can not fulfill the obligation in accordance with the terms of the agreement, caused by unwanted things, such as economic crisis, so that the expected profit is not unpartiable which in turn can not pay and repay the credit facility received from the bank / creditor. 2) Non-business risks The risks that arise are not caused by business factors, but more due to the negative factors of loan credit bank lending officials. The bank credit officer performs engineering of the condition / condition of the debtor's business so as to be feasible or flexible to be granted credit, in order to obtain reward from the debtor. Credit facilities are usually used by debtors are not in

accordance with the intended allocation, so in turn the credit will become problematic. From the types of loan groupings that exist, in terms of the number of borrowers (borrowers), credit consumptive ranks first, which is for employees fixed income individually. To ensure that the consumer loan disbursed will be settled in accordance with the agreed terms, in addition to the assessment of aspects of character / character, based on the continuity of payment, income level and employment status of the debtor concerned. Consumer credit must be guaranteed with a certainty that it can be paid directly from the income.

II. FORMULATION OF THE PROBLEM

Based on the background of the problem as mentioned above, the main issues in this research are what are the arrangements and procedures for the binding of the Pension SK as a credit guarantee?, and what are the risks that can occur in the provision of pension loans in PT BANK YUDHA BHAKTI?

III. THEORETICAL BASIS

The continuity of the development of legal science, in addition to relying on methodology, research activity and social imagination is largely determined by the theory ". The theory is a principle of one main doctrine adopted to take an action or solve a problem. The general dictionary of Indonesian language states that one of the theoretical meanings is: "opinions, ways and rules of doing things." "The function of theory in the research of this thesis is to provide direction / guidance and to predict and explain the observed phenomena. "In a scientific study, theory is used as the basis for thinking and measuring things based on available variables.

"The theory is used as the basis or reason for a particular free variable included in the study, because based on the theory concerned variables can indeed affect the variable is not free or is one cause." "According to WLNeuman, who argued that quoted by Otje Salman and Anton F Susanto, states that: "The theory is a system composed by various abstractions interconnecting with each other or ideas that compact and organize knowledge of the world. This is a concise way of thinking about the world and how the world works. "" The theory is a generalization achieved after testing and the results concern a broad scope and facts. "Whereas" theoretical framework on the study of Sociological or Empirical Law is the theoretical framework that based on the legal framework of reference, without any legal reference then the research is only useful for sociologists and less relevant to jurisprudence. "

IV. DISCUSSION

Retirement under section 1 of Law no. 11 of 1969 concerning Employees' Pension and Widow / Widower Pension is "Old age insurance and in appreciation for the services of civil servants for many years working in government service". The legal basis of the pension decree as collateral for credit or debt in the bank is Law no. 11 of 1969 concerning Employee Retirement and Pension widow / widower employees. In article 30 of Law no. 11 of 1969 mentioned that the decree on the provision of pensions under this Act can be used as collateral to obtain a loan from one of the banks appointed by the finance minister. From article 30, the recipients of employee pensions and widows and other heirs. The names listed in the pension decree may obtain loan money from the lender bank by using the pension decree it has as collateral, in the sense that as long as the employee entitled to retirement is still alive, only he / she may apply for credit with the guarantee of pension decision.

1. Credit Agreement And Guarantees Interconnected In Credit In A Bank.

The term credit basically comes from the Greek word "credere", which can be interpreted with belief. That is, the lender believes to the recipient of the credit, that the credit will be returned in accordance with the agreement. For the recipient the credit means accepting the trust, so it has obligation to repay the loan in accordance with the time period. Thus the term credit has a special meaning of lending money. "Another definition may be called" postpone payment, "meaning that if someone says to buy goods with credit, it means that the person does not have to pay it on the spot, but will be paid within a certain time in accordance with the agreement with the seller."

"According to the Indonesian General Dictionary, one of the notions of credit is a loan of money with repayment payments on installments or loans to a certain amount allowed by banks or other entities." "Whereas according to English Dictionary, it is said that credit is: agreemeit to buy something and pay later means approval to buy something and pay later. "

"Marhainis Abdul Hay provides the limitation that credit is an agreement born of consent." "Meanwhile, according to R. Subekti, the word credit means trust from the bank". Mariam Darus Badrulzaman provides a credit definition by requiring a loan agreement or loan agreement (loan agreement), which usually consists of elements.

Parties, The banking law provides that the party allowed to distribute or provide credit is only certain entities, namely Commercial Bank and Rural Bank (BPR). Each party to collect funds from public activities and will distribute it, must obtain a license as a commercial bank or RB of Ministers after hearing the consideration

of Bank Indonesia, except governed by laws of its own.

2. Interest, In the credit agreement can be determined / required the existence of interest on the loan. However, the banking law does not regulate the interest rate stipulation that embraces the floating interest system in accordance with the will of the market.

3. Maximum crediting limit, The banking law prescribes that Bank Indonesia imposes a maximum credit extension (LLL), grant of guarantee, amination, securities investment placement or any other similar matter. which the bank may make to the borrower or a group of related borrowers, including to companies in the same group as the bank concerned.

4. Warranty, Loans given by the bank contain risks, so in the implementation of the bank should pay attention to the principle of healthy credit. To mitigate such risks, credit guarantee in the sense of confidence in the ability and ability of debtors to settle their debts as agreed is an important factor to be considered by the bank.

5. Duration, In the credit agreement, it is necessary to specify the period of time, because the credit is a loan which at a certain time must be returned to the credit provider.

6. Form a credit agreement, The credit agreement can be categorized as raw agreement, ie the agreement that the material predetermined unilaterally by the creditor / bank on terms that are standardized and offered to the public for use in bulk or individually.

When traced in the civil law literature there are several stands on the meaning of credit, namely:

1. Savelberg states "Credit" means:

(a) As the basis of every engagement (*verbintenis*) so that a person is entitled to demand something from others.

(b) As a guarantee, in which a person gives something to another person for the purpose of recovering what is submitted.

2. Levy defines the legal meaning of credit as follows, Voluntary saving of money to be used freely by credit recipients. The credit recipient is entitled to use the loan for its benefit by the obligation to return the loan amount back to the day.

3. M.Jaklie, argued that "credit is a measure of the ability of a person to get something of economic value in return for his promise to repay his debt on a certain date.

In general, credit can be interpreted as "the ability to borrow by giving an opinion to the borrower that he or she will be able to pay for it." It is known that the legal rules governing the agreement in entering into an agreement for the granting of credit to the Pensionee under the pension scheme, is the legal value contained in the concrete rules of the terms of the agreement, whether contained in the Indonesian Civil Code, as well as in other legal regulations. Agreement in entering into this agreement is an individual right, in which the agreement between the parties is a binding law between the parties. Agreement in entering into this agreement is based on Article 1338 paragraph 1 of the Civil Code, which states that: "All the Agreements made legally, apply as laws to those who make them." In addition to the principle of agreement used in any contract, the principles used of the legal system of objects are as follows:

a. The principle of material rights, Absolute, that can be maintained on everyone. The right holder has the right to prosecute any person who interferes with his or her rights, *Droit de suite*, the right material that always follows the object in the hands of anyone. In this principle is the old right intention to take precedence over the young right (*droit de preference*), The right of property gives a strong authority to its owner, so that it can be enjoyed, transferred, pledged and leased.

b). Assessor principle, This security right can not stand alone, but its existence depends on the underlying agreement, such as a credit agreement. The philosophical foundation (*Pancasila*) and the Constitution (the 1945 Constitution of the Republic of Indonesia of 1945) above illustrate the existence of a logical and realistic "demand" as well as "obligation" for the state / government, society as well as individual to carry out the tasks in the socio-economic field. In its operational implementation, to achieve these social and economic objectives, can not be separated and separated from the participation / involvement of the banking sector.

One of the principles found in Law Number 10 Year 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking is the effort to collect funds from the public in the form of savings (demand deposits, savings deposits, deposits) and redistribution to the needy in the form of credit funds or other forms, to improve the standard of living of many people.

The collateral goods received by the bank must be legally juridical with a credit agreement, either made under the hand or by an authentic (notary) certificate. Use of the warranty is as follows:

1. To grant the right and power to the bank in order to obtain repayment with the guarantee goods, if the debtor does not keep the promise, ie repay the debts at the time specified in the agreement.

2. To ensure that the borrower / participant participates in the transaction not to abandon its business by harming itself or his or her company.

3. To provide encouragement and motivation to the debtor in order to fulfill the agreed credit agreement.

The binding provisions for the parties to the treaty, whether to the treaty material mentioned in the treaty, or to anything that by the nature of the agreement is required by decisions, customs and laws, is further reinforced in

Article 1339 of the Civil Code which states that :

Everyone who makes the agreement, he is bound to fulfill the contents of the agreement. Because the contents of a treaty containing such promises bind the parties as binding on the law whose contents must be obeyed and must be implemented. The principle of agreement in entering into this agreement, some are based on Article 1320 of the Civil Code, which regulates the terms of validity of a treaty.

The principle of agreement in entering into a covenant is a foundation that guarantees the freedom of the person in entering into an agreement. This is also inseparable from the nature of Book III of the Civil Code, which is only a regulating law so that the parties can set aside, except for certain articles that are coercive. To complete the definition of agreement contained in Article 1313 of the Civil Code, Setiawan, expressed his opinion that:

a. The act should be interpreted as a legal act, which is an act aimed at causing legal consequences.

b. Need to be added with the words "or mutually binding themselves" in Article 1313 of the Civil Code.

H.F. Vollmar, in his book "Including tot de studie van het Nederlands Burgerlijk Recht" says that: "Judging from his side it turns out that the engagement exists as long as the person (the debtor) has to make an achievement that may be forced upon the lender if necessary with the help of the judge. "Meanwhile, according to Vander Burght Gr: "Engagement is a legal relationship and wealth between two or more persons who, according to the provisions of a person or more entitled to something while another or more are obliged to it."

General provisions on engagement are set out in Article 1233 and Article 1234 of the Civil Code, which reads as follows: Article 1233 of the Civil Code states that: every engagement is born, both because of consent, and good by law. Article 1234 of the Civil Code states that: each engagement is to give something, to do something or to do nothing.

According to Banking Law Number 10 of 1998 Concerning credit banking is the provision of money or claims that can be equalized, based on a loan agreement or agreement between the bank and another party requiring the borrower to repay the debt after a certain period of time with the giving of interest. From the definition of credit above can be explained that the credit is granting loans (credit) within a certain period set by the company

Credit Terms of Credit

The terms of the credit must meet the requirements of the good lender of the required documents / letters. In the banking world the commonly used considerations for evaluating a potential customer are often referred to as the 5C principle or "the five C's principles". The 5C Principles are:

Character is data about the personality of the prospect such as personal traits, habits, way of life, circumstances and family background and hobby. This characteristic is to know whether this prospective customer will honestly strive to fulfill his obligation in other words this is willingness to pay.

Capacity is the capability of a prospective customer in managing his business that can be seen from his education, his business record experience, the history of the company he once managed (never had a hard time what not, how to overcome adversity). Capacity is a measure of ability to play or ability to pay.

Capital is a state of wealth owned by the company it manages. This can be seen from the balance sheet, income statement, capital structure, profit-gain ratios such as return on equity, return on investment. From the above conditions can be assessed whether worthy prospective customers are given financing, and some large financing ceilings worthy given.

Collateral is a guarantee that may be seized if the prospective customer really can not fulfill its obligations. This collateral is taken into account at the very end, meaning that if there is any doubt in other considerations, then it can judge any property that may be used as collateral.

Condition, the financing provided also needs to consider the economic conditions associated with prospective business prospects. There is a business that is highly dependent on economic conditions, therefore it is necessary to relate the economic condition to the business of the prospect.

V. CONCLUSION

1. Arrangement arrangement Letter Pension stipulation as collateral of credit granting by Syrat Decision guaranteed in the bank and the debtor gets credit as needed, the risk that may arise in the case of the provision of pension credit is a default from the debtor.

2. In the lending of risks arising in the event that the debtor fails to fulfill the obligation to pay principal or interest as agreed in the credit agreement; in addition to interest rate risk, credit risk is one of the main risks in the implementation of bank lending and this will also affect the collectibility of credit.

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