

Legal Protection for Credit Card Issuers: Viewed from the Prudential Principle

Putulka Septiantari Danayanti, Dewi Astutty Mochtar, Mohammad Ghufro AZ

*Master of Law Study Program
Postgraduate Program at Merdeka University, Malang, Indonesia
Terusan Dieng Number 62-64 Malang 65146*

Abstract: Banks as a business full of risks should apply the principle of prudence in order to increase customer confidence in the bank and prevent bank losses. The principle of prudence is a principle which states that in carrying out its functions and business activities, it is obligatory for banks to apply the precautionary principle in order to protect public funds entrusted to them. The formulation of the problem in writing this thesis is how the legal protection for credit card issuers in terms of the principle of prudence and how legal remedies can be taken by credit card issuers to credit card holders when there is default. The results of this study are an example of the application of the precautionary principle is that a bank must conduct an analysis of prospective borrowers or debtor customers based on the two principles, namely 5C and 7P, apart from the implementation of these two principles, the Indonesian bank in its Circular also regulates the requirements for credit card recipients. In order to reduce the risk of bad credit. When there is default, the credit card issuing creditor can do two ways, namely litigation and non-litigation.

Keywords: Law Protection, Default, Credit Card, prudential Principle.

Background

The banking industry plays a very strategic and important role in driving the rotation of the national economy (Sriwati, 2021; Aziz & Utoyo, 2019; Soeikromo et al., 2019; and Muigai & Gitau, 2018). The driving force of the national economy is supported by the export import, consumption and investment sectors. The banking industry has a big role in these three activities. The bank as an intermediary institution will play a role in mobilizing public funds to be channeled into productive sectors.

Credit is an important part of the bank. In macroeconomic terms, credit is a source of funding for companies to support their capital. Bank credit will be able to increase the company's working capital as well as investment credit. So that credit will be able to encourage the growth of the business world, so that it will have an impact on increasing the economy of a country. On the micro bank, credit is the dominant source of bank income through credit interest. The bigger the bank is able to distribute credit, the more potential it will be to get bigger income. However, in channeling credit, banks must adhere to the principle of prudence, so that bad credit does not occur.

Loans extended by banks have continued to increase, both in Indonesia and in other countries. This shows the contribution of banks as a source of financing for the business world. Credit growth in Indonesia in 2019 was 6.08%, this is a decrease compared to 2018 which grew by 12.48%. In 2020 credit growth will experience a decline due to the pandemic which has an impact on decreasing economic activity in all sectors.

The competition in the banking industry is currently very tight, requiring banks to continue to innovate. Technological developments have encouraged the banking industry to carry out various product innovations, both for funding and lending (Muigai & Gitau, 2018); (Harris & Wonglimpiunjuk, 2019); (Parameswar et al., 2017); (Granja & Moreira, 2019). Banks as service institutions, where customer trust and satisfaction are very important factors (Giebel & Kraft, 2020).

Fintech or digital technology has played a crucial role in financial services, including credit. The development of digital technology has encouraged financial innovation. Even though financial innovation is actually not something new, the presence of financial innovation digital technology has experienced very rapid development. The development of the internet, cellular telephones, computing and information gathering and processing has supported the latest innovations in the financial sector. Financial service innovations with digital technology have made customers more comfortable (Fan et al., 2010; Boussemart et al., 2019; and Navaretti et al., 2017).

Banks in Indonesia are required to be able to innovate credit products in line with the development of Fintech. Innovation is needed not only to survive, but also to be able to compete (Archer et al., 2020; and Xin et al., 2017). Competition in the credit market is getting tighter. The increase in high credit competition makes banks have to respond, in an effort to seize the credit market share (SerdarDinç, 2000; and (Gissler et al., 2020).

In an effort to reduce credit risk, banks must adhere to the principle of prudence when disbursing credit. Credit is an agreement between the bank as creditor or credit provider and the debtor. The provision of credit by the bank is in accordance with the agreement agreed by both parties. The agreement in the Civil Code is an event where A and B promise to carry out a matter, the relationship between A and B will create an agreement. The agreement is said to be valid when both parties have agreed to mutually bind themselves. If the meaning of the agreement is linked to the provisions stipulated in Article 1320 of the Civil Code, it is clear that the agreement must be based on the agreement of the parties, which in this case must be carried out by at least two or more persons to bind themselves to each other. One of the activities that the bank provides to customers is the provision of credit.

Juridical credit is the provision of money or an equivalent claim, based on a loan and loan agreement between the bank and another party which requires the borrower to pay off its debt after a certain period of time with interest. Credit is a belief, an element that must be held as a common thread across the philosophy of credit in its true meaning, how it forms, types and types, and wherever it comes from and to whomever it is given (Sembiring, 2008).

In order to meet the needs of its customers, the bank has issued various types of cards such as debit cards and credit cards. A credit card is a credit card that can be used as a means of payment, where the payment of the bill can be done in stages or in installments, with a limited amount of credit (Rahmadiana, 2013). Practicality has become part of the modern lifestyle, people want ease and speed of transactions. A practical lifestyle has encouraged banks to issue credit cards, which makes it easier for customers of a bank to transact (Pratiwi et al., 2020); (Wardani, 2016); (Mathur, 2010); (Bernthal et al., 2005); and (Beng-huat, 2002). The behavior of credit card users will be related to socio-demographics, age, payment methods and also the income of credit card holders (Lin et al., 2019); (Wang et al., 2017); (Khare et al., 2012), and (Warwick & Mansfield, 2000).

In issuing a credit card, it will involve the bank as the credit card issuer and also the credit card holder. So that the agreement in credit card issuance will involve the bank as the credit card issuer with the credit card holder. The legal relationship between the credit provider, in this case the Bank (creditors) and the credit recipient, in this case the customer (debtor), is based on an agreement which in banking practice is known as the Bank's credit agreement.

Banks in issuing credit cards must still adhere to the application of the prudential banking principle. This is done in order to minimize the risks faced by the bank. Various problems can occur in credit cards, such as fraud and credit card burglary (Prasetyo et al., 2020; John A. Spagnole, 2019; Kho&Vea, 2017; Surbhi Gupta, (Chaudhary et al., 2012); (Segal et al., 2012) al., 2011); Delamaire et al., 2009; and (Arthur Williams, 2007) Legal protection for issuer banks and merchants or credit card holders is an important part, if there are problems in the future. issuing bank or cardholder.

The application of the precautionary principle in the banking sector is an obligation or obligation for banks to pay attention to, heed and implement it. The objective of implementing the precautionary principle is so that banks are always in a healthy, liquid and solvent condition. With the application of the precautionary principle, it is hoped that the level of public trust in banking will remain high, so that people are willing and not hesitant to save their funds in the bank (Usman, 2001).

This study aims to 1) Analyze legal protection for credit card issuers in terms of bank prudential principles, 2) To analyze legal remedies that credit card issuers can take to credit card holders when a default occurs.

Method

This research is a normative study that discusses the legal protection of credit card issuers in terms of prudential principles. The research approach used to analyze research problems is a legal / juridical approach. This approach is used to review and analyze relevant laws and regulations. The data source is in the form of secondary data, in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection was carried out by means of documentation. The analysis technique used is descriptive qualitative.

Discussion

Legal Protection for Credit Card Issuer Creditors in terms of the prudential principles of the bank.

In the application of prudential banking principles in Act Number 10 of 1998 concerning Amendment to Act Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) there are several things that must be considered, including: a) Banks must observe the principles of prudence as a banking, business, and process financial institution as well as how to carry out business activities. The precautionary principle must also be applied in the processes and procedures used in the application as well as in the operational standards of the bank. b) Application of the prudential principle of the credit extension process with the aim of minimizing

credit risk. The application of this principle also emphasizes that the objective of the bank is to achieve the required bank soundness level. The application of the precautionary principle in the credit granting process is related to the application of the 5 Cs (Character, Capacity, Capital, Condition, and Collateral) before extending credit. The application of the precautionary principle is carried out carefully in determining prospective borrowers or customers. c) The principle of prudence is carried out in an effort to minimize risk for the bank and also to protect the interests of bank customers. Therefore, the bank is obliged to ensure that all legal actions taken by the bank must comply with all applicable laws and regulations (Raharjo, 2013).

The application of the precautionary principle has been regulated in Article 8 paragraph (1) of the Banking Law. The application of the precautionary principle in the credit process must be carried out by banks (Sihotang, 2021); (Viphindrartin et al., 2019); (Rahayu et al., 2019); (Gusrial et al., 2020); (Mansour & Zouari, 2018); (Jiménez & Saurina, 2006). In granting credit, banks must conduct credit analysis of prospective debtors based on the five C's of credit (Character, Capacity, Capital, Condition, and Collateral) and the seven P's of Credit (Personality, Party, Purpose, Prospect, Payment, Profitability, and Protection). If the analysis of the creditor, namely the bank, shows that there is feasibility in providing credit, it can be stated in a credit clause (credit agreement) that is agreed between the bank as a creditor and the borrowing customer as a debtor.

The 5C principles include the credit process (Atikah, 2021); (Rizyamesa & Rahadi, 2020); (Manurung, E.T., Manurung E.M., 2019); (Yoshino & Taghizadeh-Hesary, 2019); (Damanik & Prananingtyas, 2019); (Lailiyah, 2014): 1) Character, which means that the nature, habits and character of the customer have a big impact on the provision of loans or credit. This principle is related to the customer's personality, background, lifestyle, and lifestyle. Character is to find out or assess whether a customer can be trusted (potential) in cooperating with banks through a credit agreement. 2) Capacity, to assess the ability of customers to repay loans. To measure it, lenders or banks can check the customer's ability in management, finance, marketing and other fields when it is related to the business. 3) Capital, related to ownership of customer assets, especially customers who have a business. Capital is determined by the financial statements of the business managed by the customer, so that with an assessment, the bank determines whether the customer deserves credit or not, if it is feasible, with this principle the bank will determine how much credit assistance is given. 4) Collateral, this principle is related to the collateral used in applying for credit. Collateral is a preventive measure if the customer is unable to repay the loan or credit. The collateral value is higher than the loan amount. The bank must be able to assess what the prospective customer has to be used as collateral. In accordance with existing regulations, the bank may confiscate the asset that was previously promised as collateral. 5) Condition of Economy, related to the financial conditions around the residence of the prospective credit customer, it must be considered to take into account the financial conditions that may occur in the future. Economic conditions that need to be considered include people's purchasing power, market size, competition, technology development, raw materials, capital markets and so on. In addition, to facilitate cooperation from both parties, it is important to facilitate communication between credit customers and banks.

Analysis of the application of the 7P principles includes: 1) Personality, the first criterion in this 7P principle is the personality of the prospective customer. The 7P criterion looks at the customer's overall personality and behavior as well as day-to-day behavior which also includes the customer's attitudes, emotions, behavior and actions in dealing with problems; 2) Party, the second principle in 7P is party, where prospective borrowing customers are categorized into several groups related to their financial status. Banking classifies customers based on ownership capital, personality, loyalty and so on. With different classifications and classes, there are differences in the provision of credit facilities; 3) Purpose, the third criterion is the purpose or purpose, namely the purpose of the prospective borrower in applying for a loan to a financial institution. Banks need to know what funds will be used, for example business capital, investment, education costs or consumption activities. It is also in line with banks or financial institutions, such as the bank's focus on portfolio management, which is most suitable for clients applying for business loans; 4) Prospect, is the aspect of determining whether the client's business is feasible or not. The most important thing related to credit facilities is that if banks fund customers without a future (prospect), then it is not only the banks that will be harmed but also the customers as consumers, for that banks can predict how the customers' ability to pay will be estimated; 5) Payment, this fifth criterion, which is still relevant to the previous criteria, aims to measure the payment capacity of prospective borrowers or credit customers. The principle of payment can be judged from the source of the customer's income, the smooth running of the business and the future of the business. In this way, banks can determine whether customers can really pay their credit or not; 6) Profitability, the sixth criterion related to profitability, in which banks check the ability of their customers to generate profits. Like some of the previous criteria, this criterion is more specific to customers who borrow for their business needs. The higher the profitability of the prospective borrower, the higher the likelihood that the proposed loan will be approved by the bank; 7) Protection, not much different from the guarantee standard in the 5C Principle, this standard protection also benefits from the guarantee offered by the prospective borrower. In addition to collateral in the form of property

such as ownership of a house or company assets, this protection can also consist of financing insurance guarantees owned by customers.

Credit card issuance is a form of credit provided by banks to customers, so the application of the precautionary principle is also carried out accordingly. In credit card issuance agreements, as a form of banking service in its implementation, it often uses standard agreements, even agreements made are not made in writing but are limited to oral agreements recorded in a database of conversations between the credit card issuer and the credit card holder. .

The mechanism used is the credit card issuer through conversation requesting approval from the prospective credit card holder for willingness to accept all general provisions predetermined by the credit card holder, which are not limited to what is expressed by the credit card issuer to the prospective credit card holder via conversation. via telephone. This kind of agreement is not a problem insofar as what has been submitted to the parties in the context of credit card issuance, namely the credit card issuer and prospective credit card holder have fulfilled the provisions of Article 1313 of the Civil Law.

An agreement according to the provisions of Article 1313 of the Civil Code is "an act whereby one or more people bind himself to one or more other people". According to Subekti, "an agreement is an event where a person promises to another person to carry out a certain thing" (Fuady, 2006).

By applying the 5C and 7P principles, banks as card issuing creditors will receive legal protection.

However, apart from the application of these two principles, Bank Indonesia as the central bank also provides provisions in Circular Letter No. 14/17 / DASP regarding Amendments to Circular No. 11/10 / DASP regarding the Implementation of Card-Based Payment Instrument Activities (APMK) as for several stipulated provisions, namely: 1) The main credit card holder must be 21 years old or married. Additional credit card holders must be at least 17 years old. 2) Minimum monthly income from credit card holders is IDR 3,000,000 (three million rupiah). 3) Setting the number of credit cards and credit limits for cardholders with an income of between Rp. 3,000,000 to Rp. 10,000,000, among others: a) The maximum number of credit card issuers allowed to provide credit card facilities to 1 card holder is 2 (two) card issuers. b) The total credit limit given by all credit card issuers to 1 credit card holder is 3 (three) times the monthly income (as evidenced by salary slips, tax invoices, and other evidence). 4) There are no special arrangements for cardholders with an income of more than IDR 10 million per month. This arrangement is returned to the card issuer to match the respective risk appetite.

To respond to this new rule, the Indonesian Credit Card Association (AKKI) is asked to work with credit card issuing banks to collect data on credit card users for the purposes of taking the next necessary steps. Things that must be done by AKKI include: 1) Request and compile all data from the credit card issuer. 2) Identify and sort card holders based on the criteria of the minimum age limit, the minimum income per month, the maximum number of credit card issuers and the maximum credit limit. 3) Delivering the results of identification and sorting in writing to the card issuer.

Based on data from AKKI, the card issuer is obliged to do the following: 1) Close or end the use of credit cards from credit card users who do not meet the minimum age criteria (21 years or married for the primary card holder and 17 years old for additional card holders). 2) Close credit cards from credit card holders with monthly income of less than IDR 3,000,000. 3) Closing credit cards from credit card holders from more than 2 card issuers, among which are bad quality, doubtful and substandard. 4) Adjusting the total credit limit for credit card holders who have a total credit limit of more than 3 times their monthly income. 5) Notifying credit card holders of more than 2 credit card issuers to choose which cards to continue to use and which will be closed. This process can be done in coordination with AKKI. 6) If the cardholder does not convey his choice, the settlement must be through discussion between the card issuers. If this process does not meet any results then BI provides an opportunity to consult with the coordination of AKKI.

Legal Remedies for Credit Card Issuers When Default Occurs.

In implementing credit card issuance agreements, it is often found that parties do not fulfill their promises as agreed in the agreement which is called default. Default is failure to fulfill promises, while the factors that cause someone to default are (Marzuki, 2003): 1) The customer is in a bankruptcy. The term bankruptcy, when viewed in terms of terms, can be seen in the treasury of Dutch, French, Latin and English with different terms. In French the term *faillite* means a strike or congestion in making payments so that a person who strikes or becomes stuck or stops paying is called *le failli*. In Dutch for the same meaning as French, the term *faillite* is also used, while in English it is known as to fail and in Latin it is used the term *failure*. Which has a dual meaning, namely as a noun and as an adjective. In French, the term "*faillite*" means a breakdown or stagnation in making payments. Meanwhile in English it is known as "to fail" and in Latin the term "*fallire*" is used. Bankruptcy is a mass execution determined by a judge's decision, which applies immediately by carrying out general confiscation of all assets declared bankrupt, both those that existed at the time of the bankruptcy

statement and those obtained during the bankruptcy for the benefit of creditors and under the supervision of the authorities (Azikin, 2000). 2) Customers are still working on their business. This applies not only to customers who have just started a business but also to customers who have been in business for a very long time. Improvement of a business is needed. With the creation of innovations in the business sector, it will encourage consumer interest in buying a product. The increasingly modern era of globalization requires entrepreneurs to develop their creative knowledge to attract consumer attention. The fluctuation of the rate of consumer interest will greatly affect the finances of the company owners themselves, especially for business owners who have a credit card. 3) The customer's financial condition is not smooth. The customer's financial condition that is not smooth is something that often happens. Mrs. Ernawati as a customer of Bank Negara Indonesia stated that "One of the causes of default is due to the increasingly rapid expenditure while unequal financial income. 4) The general state of the economy is not yet healthy. The unhealthy condition of the economy, especially in Indonesia, will also have a very influential impact on the finances owned by customers. The deteriorating economic condition in Indonesia will make life worse off.

A common default in the use of a credit card is that the credit card holder does not pay bills from the bank until maturity. Default in the use of a credit card by the holder cannot be directly sanctioned by the bank, this is in accordance with Article 1243 of the Civil Law which states that: the debtor, even though it has been declared negligent, remains negligent to fulfill the agreement, or if something that must be given or done can only be given or done within a time that has exceeded the stipulated time". The point is that compensation for default can only be made after the party that defaults must be proven by the credit card holder's negligence and given a warning for not keeping his promise and he is still not willing to do his duty (Dewi&Sukranath, 2014).

Settlement of misuse of credit cards can be done in two ways, namely the first way is by litigation which is regulated in Article 1 number (1) and Article 10 numbers (1) and (2) of Law Number 48 of 2009 concerning Judicial Power which contains judicial power. The power of an independent state administers the judiciary to uphold law and justice and the court may not refuse to examine, try and decide a case that is submitted. Apart from litigation the second way is non-litigation or arbitration according to Article 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The definition of arbitration is a way of resolving a civil dispute outside the court based on an arbitration agreement made in writing by the disputing parties. If the settlement is carried out through court channels, the card holder will be accused of default as stated in Article 1235 of the Civil Law which states that in each engagement to give something is the obligation of the debtor to surrender the object concerned and treat it as an individual. head of the good house until the time of delivery. The resolution of the problem in question is the default by the card holder in the event that the funds available at the bank are insufficient for payment of transactions made so that the issuer can ask the cardholder to fulfill the achievement.

Banks as financial institutions that are under the supervision of the Financial Services Authority cannot automatically make requirements that can be detrimental to both parties, the requirements made are those that are in accordance with the standards so that if customers want to apply for a credit card, they must pay close attention to the requirements. described by the bank as a creditor.

Legal action taken by the bank if the credit card holder defaults is to make efforts or settlement in two ways, namely (Dewi&Sukranath, 2014): 1) Settlement amicably / out of court (non litigation). Rescue is a credit settlement step, namely through re-negotiation between creditors and debtors with due observance of predetermined conditions. If a debtor is bad because his business is losing money because his customers are in arrears, the settlement will be made according to the debtor's ability, starting with: a) the Bank internally calls or visits the debtor to settle his obligations; b) Restructuring, extending the loan period, giving discounts, interest or capital; c) If the cause of non-performing is due to the earthquake and the business still has good prospects, of course the bank can provide management assistance and / or increase capital so that the debtor's business continues. If the settlement of the above efforts results not as expected, then the next settlement method is the bank and the debtor to sell collateral (fiduciary exercise / mortgage) jointly either under hand or through a public auction to get the best price. If the above part of the effort is not achieved, the next settlement can be made by announcing in the newspaper so that the debtor will pay off his debt. If the above part is not achieved, then the next way the bank can sell its receivables by means of cessie or subrogation. If all the methods above are unsuccessful / cannot be done, the bank can write off and write off the claim and then take over the guarantee from the creditor. 2) Settlement through Courts (Litigation). If the settlement by amicable / out-of-court (non-litigation) methods is not achieved, the next method is by: a) Through the District Court Guarantee execution through the District Court on the basis of the law: Article 1131 of the Civil Code, which in essence is all the assets of the debtor, both existing and future. there is a guarantee of debt from the borrower and execution of mortgage rights (Article 6 of Law Number 4 of 1996 concerning Mortgage Rights and / or Fiduciary (Law Number 42 of 1999 Article 29) which is continued to sell by auction. b) Through the Commercial Court. For the settlement of the commercial court, this is done by filing for bankruptcy or PKPU on

a legal basis (Article 2 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations in conjunction with Article 1131 of the Civil Law). c) If the bank finds that the debtor has committed fictitious data to apply for a loan, the bank can suppress the debtor by reporting the debtor to the police.

In general, in the event of arrears in paying credit installments, legally the bank as the creditor has the right to provide a warning letter or subpoena to debtors who are negligent in fulfilling their obligations to pay credit installments. This is in accordance with the jurisprudence of the Supreme Court Number 852 / K / Sip / 1972, which essentially has the following legal principles: "Whereas to declare someone has defaulted, an official billing must be made by the bailiff (subpoena). Because the summons in this case have not been filed, the court has not been able to convict the defendants / appellants of default.

Conclusion

In granting credit, through credit cards, banks must adhere to the prudential banking principle. Thus an understanding of the prudential banking principles must also be interpreted appropriately in accordance with legal objectives and compliance with laws and regulations. The application of prudential principles by banks includes analysis of prospective borrowers or debtor customers based on the two principles, namely 5C (Character, Capacity, Capital, Condition, and Collateral) and 7P (Personality, Party, Purpose, Prospect, Payment, Profitability, and Protection). The credit analysis is carried out in accordance with a Bank Indonesia Circular regarding the requirements for credit card recipients. The implementation of this principle is to reduce the risk of traffic jams.

The default on credit card holders is often caused by several things, including the customer is in a bankruptcy, the customer is still in the process of fixing his business, the customer's financial condition is not smooth, and the general economic condition is still not healthy. As for the efforts that can be taken by banks as creditors and credit card issuers, there are two kinds of options, namely by means of litigation, namely by resolving through execution through district courts and through commercial courts by filing for bankruptcy or PKPU (Postponement of debt payment obligations) and non litigation, namely settlement peacefully or outside the court.

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