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Booking off loan loans in regional companies regional owned business bank

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Abstract. Financing analysts at Banks should be more thorough and careful in analyzing the data of prospective customers who want to apply for loans and not only using 5C analysis principle in conducting analysis but added using 5P analysis principle (Personality, Purpose, Prospect, Payment, Party) ,3R (Return, Repayment, Risk Bearing Activity), or with CAMEL principle (Capital, Asset Quality, Management, Earning, Liquidity) so as to minimize problematic financing and fraud committed by potential customers. To deal with debtors who have bad credit, it should be resolved properly, peacefully. This is to maintain the good name of each party, between bank and debtor. Write-off carried out by the Board of Directors must comply with criteria, requirements, limits, authorities, responsibilities and procedures that have been prepared by Board of Directors and approved by Board of Commissioners and with the bank's belief that the credit cannot be returned by debtor customer concerned from debtor's information, it can be seen that debtor's customer has experienced bad credit and improved collectibility due to write-off.

Keywords. loan; business bank

Introduction

The banking business is a promising business, as long as it is managed properly based on the correct banking principles. Bank is a financial intermediary institution whose main activity is collecting funds from the public in form of deposits, and channeling them back to community in form of credit or loans whose repayments are made on credit accompanied by interest. These banking activities are in accordance with the provisions contained in Article 3 ,Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which states that a bank is a business entity that collects funds from public in form of deposits and distributes them to public in form of credit and or other forms in order to improve standard of living of community (many people) (Widyono 2014: 7).

Banking funds collected from public by banks are of course not only left to be stored in customer accounts, but must be redistributed to the public. If the funds are not disbursed, the bank cannot provide interest returns to customer, a while the customer wants interest from the bank. The aim of assisting national development activities and equitable distribution of development results cannot be realized. For this purpose, bank also functions as a channel for funds to people who need financial services. The distribution of funds by banks is carried out

by providing various credit facilities, and by utilizing these facilities, the community is expected to improve their welfare.

The development of the business world will encourage economic growth, reduce unemployment and poverty in a country. On the other hand, if banking sector is underperforming, it will also affect country's economy. Therefore, banking business must be carried out in accordance with concrete and well-planned steps, so that it can be legally accounted for. In addition, the banking business must also rely on method used as basis for decision making by authorities as a basis for consideration in determining the steps to be taken.

Banking business accountability is carried out through banking financial statements, which must be based on accurate financial data, with evidence such as notes and/or other documents. This assessment of bank's financial statements is used as basis for determining whether performance of banking management is good or bad. The assessment of banking business performance is also based on standards of ethical behavior that are used as guidelines for banking business actors, so that in carrying out their activities effectively and preventing and avoiding irregularities in banking business.

The banking business is a business with financial services sector which is subject to various kinds of risks. Bank's business risk is the level of uncertainty regarding profits that are expected to be received via Bank. Dahlan Siamat stated, one of the business risks faced by the Bank is Credit Risk, which is a risk due to inability of debtor customer to repay the loan he received from Bank along with interest in accordance with specified time period (Naja 2005: 329).

The risk that occurs via banking business is generally in the form of failure or congestion in credit repayment (credit risk), which is caused by market movements (market risk), because bank is unable to meet its maturing obligations (liquidity risk), as well as risks due to weaknesses in aspects juridical cases caused by lawsuits, the absence of supporting legislation (legal risk) (Harun 2015: 2).

One of efforts to settle bad loans, in practice, is carried out through write-offs as an effort to optimize performance, both by private banks and state-owned banks (BUMN). This can be seen from the high quantity of bad credit write-offs at state-owned banks. At present it can be said that the provision of various financial services (banking) is a *strictly well regulated* sector. Because banking involves the interests of a large number of people. The situation in Indonesia is something that is sufficient to illustrate that banking is a highly regulated sector (Untung 2000: 5). The research statement is authority to write off bad loans in Regional Business Owned Bank environment.

Research methods

This research is a normative law. (Wijaya et al., 2021)

Discussion

Banking business activities, apart from collecting public funds, also distribute these funds in form of credit. This activity aims to earn profits and provide interest-bearing services to public who have deposited their funds in Bank. Banking business have a risk occurrence of bad loans, namely of risk due to inability by debtor customer to repay loan he received from Bank along with interest according to specified time period. Bank credit, both consumptive credit and productive credit, the main target of banks in gaining income or profit, in addition to *fee-based income*. Thus, excess funds (public) that can make banks have idle funds that will be even more productive because they are thrown in the form of credit.

The provision of credit contained in an agreement cannot be separated from principle of trust, which is often a source of disaster for creditors in connection with bad loans. Various elements such as *safety, soundness, without substantial risk* in legislation/regulations need attention, because in reality they are not satisfactory to solve the problem of bad loans.

The inability of a debtor customer to fulfill a credit agreement agreed upon by both parties is called a *default*, legally called a default.⁵ *Non-performing loans* (NPL). Banking observers have actually warned of dangers of bad loans, especially those from National Bank Restructuring Agency (IBRA). Loans sold by IBRA and purchased via banks, particularly BUMN/D banks, which at that time were under pressure from government as an effort to needs of State Revenue and Expenditure Budget, currently still leave banking risks belonging to BUMN/BUMD. Even, the credit arrears systematically regain control of objects that have been confiscated by IBRA and sold to BUMN/BUMD by granting new credit using the restructuring pattern carried out by buyer's bank.

The policy to cover banking losses is carried out by writing off or known as write-offs and write-offs. Write-off is an administrative act of deleting financing books that have bad quality from the balance sheet in the amount of the customer's liability without erasing or eliminating the creditor's claim rights to customer. Meanwhile, write off by act of erasing customer's obligations that cannot be settled forever (collective rights are written off). This banking policy has actually become safest hiding place so that practices of *aji mumpung* often color bankers and debtors in pattern of writing off books or writing off invoices. The write-off and write-offs are actually a reasonable policy in banking practice, as long as there is no conspiracy between Bank and debtor, and debtor is not aware of write-off or write-off policies.

Philosophically, write-off of accounts receivable is an administrative action carried out by banks on bank receivables that have not/cannot be collected from debtors, with various reasons that cause debtors to be unable to repay their loans or credits. Administrative actions of write-offs or write-offs are intracomtabel and then recorded as extra-comtabelly. Elimination of bad loans is a common practice for national banks as a way to reduce the non-performing loan ratio (NPL ratio) in order to improve soundness of banks.

The write-off of bad debts consists of two stages, namely: write-off (conditional write-off) and write-off (absolute write-off). Write-offs are generally only carried out by bank if bad credit portfolio is already difficult to collect or because the collection fee is very large. However, even though it has been written off, the bad debt portfolio is still possible to be collected, so it is still possible to provide money bank.

In reality, misunderstandings often occur in the field, with rules that on the one hand the write-off of bad loans (problematics) at Banks is divided into two ways, namely through PUPN, and on the other hand elimination of bad loans is carried out by managing accounts receivable or state assets, which are not resolved through PUPN, but carried out internally by Bank and debtor.

Regarding the write-off policy for non-performing loans, it is regulated in Government Regulation Number 33 of 2006 concerning Amendments to Government Regulation Number 14 of 2005 concerning Procedures for Writing Off State/Regional Receivables and Minister of Finance Regulation No.87/PMK07/2006 Management of State/Regional Companies' Receivables. These two regulations have consequence of changing the authority of bad credit settlement institution the Bank. The change is related to authority write-off bad loans is no longer under the authority of PUPN. According to banking observers, this policy has potential to be a legally flawed policy. However, the policy was strengthened. Even with decision of Constitutional Court (MK) No.1/PUU/XVI/2018, which partially granted by application for

judicial review of Article 6 paragraph (1) letter c, Article 33 paragraph (4), and Article 81 paragraph (3) of Law Number 24 of 2004 concerning Deposit Insurance Corporation (LPS). Through decision of Constitutional Court No. 1/PUU/XVI/2018, IDIC may write-off and write-off receivables from bank debtors as long as it is related to monetary crisis conditions.

The right to write-off and write-off by LPS can be granted under normal circumstances as long as it is related to a crisis situation and is implemented as long as it fulfills the provisions of Article 46 paragraph (5) of PPKSK Law. Nevertheless, the issuance of write-off rights and write-offs must still refer to the principles of prudence, transparency and prudence as stated in the provisions of Article 46 paragraph 5 of Financial System Crisis Prevention and Handling Law (PPKSK).

Write off is an administrative write-off of unproductive credit assets, namely non-performing loans. In contrast to *write-offs*, *write-offs* don't eliminate the bank's right to collect debts from debtors to pay off their obligations. The formal legality *write off* policy stated in Bank Indonesia Regulation (PBI) No.14/15/PBI/2012 concerning Asset Quality Assessment of Commercial Banks. Regarding write off procedure, according to Bank Indonesia Regulation No.7/2/PBI/2005 concerning Asset Quality Assessment for Commercial Banks, banks are required to have written policies and procedures regarding write-offs and write-offs. The regulation also requires that *write off* policy must be approved by Commissioner and procedure must be approved at least by Board of Directors.

In practice, it is still a problem that *write offs* are considered as policies/decisions of directors that are contrary to laws and regulations and are considered detrimental to state finances, so they are often criminalized. Based on results of analysis, it can be concluded that BUMD in the perspective of Banking Law and Limited Liability Company Law, the authority to *write off* bad loans in positive law in Indonesia and decisions of Constitutional Court, to Business Judgment Rule cases, which have occurred in Indonesia can still be conducted.

The results of discussion in this study, also concluded that BUMD is an agency formed and responsible to local governments, is a derivative and creation of local governments in order to improve welfare of local communities. In perspective of Banking Law, BUMD in principle has same and equal position and is subject to banking principles and laws, as banking in general. Because in form of a company, it is certain that BUMD banks are subject to and comply with all provisions contained in Limited Liability Company Law, as well as regarding Business Judgment Rule.

As already explained, the Business Judgment Rule is a business decision. Business decisions to improve company's performance ratio. The pattern is almost same as *Frais Emmerson* principle in state administrative law, the Business Judgment Rule are freedom of board of directors in making decisions that must receive legal protection as long as it is for benefit of company and based on good faith. Problems then occurred in this case, there were differences in application and understanding of *Business Judgment Rule* and also *good faith*, which in the end made many directors criminalized on charges of committing a criminal act of corruption.

Perspective of justice, every strategic policymaker needs flexibility and freedom in making decisions. In approach of justice and Business Judgment Rule, the main point is the procedure of policy making, not results. Write-off which is a business policy/decision must emphasize the procedural aspect, as long as the procedure is correct and based on good faith, then the results in any form cannot be used as a basis for making sanctions/punishments to the board of directors. The Board of Directors has legal protection in making any decisions, so that imposition of sanctions (especially criminal sanctions) something that is not justified. If this is

used as a basis, it is certain that in the future write-offs from perspective of Business Judgment Rule will become a golden parachute that can generate many benefits for company's performance.

Conclusion

Financing analysts at Banks should be more thorough and careful in analyzing the data of prospective customers who want to apply for loans and not only using 5C analysis principle in conducting analysis but added using 5P analysis principle (Personality, Purpose, Prospect, Payment, Party) ,3R (Return, Repayment, Risk Bearing Activity), or with CAMEL principle (Capital, Asset Quality, Management, Earning, Liquidity) so as to minimize problematic financing and fraud committed by potential customers. To deal with debtors who have bad credit, it should be resolved properly, peacefully. This is to maintain the good name of each party, between bank and debtor.

Write-off carried out by the Board of Directors must comply with criteria, requirements, limits, authorities, responsibilities and procedures that have been prepared by Board of Directors and approved by Board of Commissioners and with the bank's belief that the credit cannot be returned by debtor customer concerned from debtor's information, it can be seen that debtor's customer has experienced bad credit and improved collectibility due to write-off.

The essence write-off action, for directors of BUMD Bank, is discretion like *freies ermessen* which is guaranteed in laws and regulations. BUMD is a legal entity formed and responsible to local governments, is a derivative and creation of local governments in order to improve the welfare of local communities. The *Business Judgment Rule* is a business decision to improve company's performance ratio. Normatively, the Board of Directors of BUMD Bank has authority to write off books, but the act of writing off books often results in accusations that Directors are considered to have committed a criminal act of corruption and must be legally responsible.

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