

Nonrecourse Loan for Female Group in National Program of Community Empowerment in Rural Area

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Abstract

Loan and saving activity for Female Group in PNPM Mandiri for rural community (PNPM-MPd) is an activity granting capital for female group possessing loan and saving business. In general, this activity is aiming at developing loan and saving business in rural area, providing financing access for micro level business, fulfilling the need of basic social capital and strengthening female activity and encouraging the reduction of poor family and creating job vacancy. Usually, credit is always complemented by additional guarantee. PNPM MPd has different scheme because credit granted is non recourse loan. It is due to that the load need no additional guarantee or recourse in the form of movable and immovable asset, property right or personal guarantee. Therefore, there is no recourse referral from debtor to creditor. Several experts note that this is an unsecured loan. In fact the term used is not appropriate. Unsecured load is basically different from non recourse loan because nonrecourse loan still requires guarantee. It belongs to feasibility credit because other experts also note that it is nonrecourse feasible credit. Feasibility measurement for this kind of credit is based on the ability to return the for basic debt, to pay for interest and other costs during predetermined period of time. Usually, this type of credit is granted to bonafide company and also to businessman whose business has good prospect. Despite other consideration, in PNPM MPd, credit might be granted to small scale business such as for micro credit and middle scale macro credit with good record of restitution.

Keywords: female group, loan and saving, nonrecourse loan, feasibility measurement

INTRODUCTION

National Program of Community Empowerment (PNPM) Mandiri for Rural Area is Indonesian government program started in 2007 which gives priority to local wisdom and stresses on social norms creating community agreement and it aims at improving people's welfare and creating job vacancy for poor people in rural area by encouraging them to be independent in making decision and managing community development. However, it ended at the end of December 2014 due to the discontinuity of Direct Financial Support from Government. Despite the discontinuity of the program, the result of the program are still present and accepted by the people in the form of infrastructure asset of rural community, immaterial asset which is participatory development process and institutional management and management of revolving fund.

There is a special pattern for revolving fund management with its special feature and it is different from general loan and saving management. Its special feature is nonrecourse loan for female group and it will be the topic of this journal.

The loan and saving program for Female Group in PNPM Mandiri for Rural Community is a program in which financial capital is given to female group having loan and saving activity. In general, it aims at developing loan and saving activity for rural community, facilitating financial access for micro scale business, fulfilling basic social needs, reducing the number of poor households and creating job vacancy (PNPM, Coordinating Team, 2007).

In addition, its special purpose is to accelerate the fulfillment of financial needs for business or basic social needs, to give opportunity for female to improve their economic condition through providing capital for business, and to strengthen loan and saving institution by female group. There are several basic regulation for the program. Those are (PNPM, Coordinating Team, 2007).

- a. *Convenience*, meaning that it is easy for poor people to obtain financial service without collateral.
- b. *Institutionalized*, meaning that fund of loan and saving activity for female group is distributed to groups with fixed procedure and management in managing loan and saving.
- c. *Empowerment*, meaning that management process is based on professional decision making female group by taking maintenance and development of revolving fund into account to improve their welfare.
- d. *Development*, meaning that every financing decision should be oriented to improving income which is in turn able to improve economic activity of people in rural area.
- e. *Accountability*, meaning that management revolving fund should be accountable to the people.

Agreement

In terms of Indonesian law, validity of an agreement is regulated under chapter 1320 of Indonesian Civil Code, stating that the validity of an agreement should fulfill the following four requirements:

a. Agreement to engage themselves.

An agreement defines that the two parties having an engagement agree upon basic aspects of an agreement. Provision regulating this agreement is stated on chapter 1321 upto 1328 of Indonesian Civil Code.

Chapter 1321 of Indonesian Civil Code states that

“no agreement is legal provided that it is achieved due to mistake or given under force, or deception or force”.

b. Competence to make an obligation

Concerning the competence, the law states that competence plays crucial roles due to two purposes. First, based on the fairness aspects, people making agreement should have awareness and bear the responsibility of that conduct. Second, based on law enforcement aspects, people having agreements are willing to risk their belongings. It means that those people possess full control on their belongings.

Provision regulating the competence is stated on chapter 1329 of Indonesian Civil Code: “everyone is competence to make obligations unless laws states otherwise”.

c. Certain objects

It means that the scope of agreement should be definite. This is important to define the responsibility of borrower in case conflict or dispute come up. Provision regulating certain object is chapter 1332 Indonesian Civil Code stating that:

“only tradable objects that can be the object of an agreement”

d. Legal cause.

It concerns the content of agreement itself. Provision regulating a legal cause is chapter 1335 up to 1337 of Indonesian Civil Code stating that:

“a cause is forbidden if the law says so or if it violates ethics or general order.

If the validity requirements stated in chapter 1320 has been fulfilled, chapter 1338 Indonesian Civil Code states that an agreement is legally binding and has equal power as certain rule of law. Provision of chapter 1338 (1) of Indonesian Civil Code declares that “all legal agreement functions as the law for those making agreement”.

Principle stating that people binding themselves in an agreement assumes certain freedom in society to take part in juridical aspects applies and it implies that there is also freedom of contract. In case there is an agreement between related parties, then it is admitted that there is also freedom of will between them. Freedom of contract is very essential for either individual to develop themselves in their own life or in their role as part of community as well as to take certain interest relating to welfare for general society; thus several authors consider them as basic rights.

The use of prudence principle in an agreement is inevitable for UPK representing PNPM Mandiri to give credit agreement without guarantee Loan and Saving Female Group.

The writer believes that loan and saving agreement should refer to the existing agreement which is based on chapter 1754 of Indonesian Civil Code stating that loan and saving agreement is an agreement in which one party gives certain amount of expendable item to other party and the latter party is required to return the borrowed item with the same amount and condition as the borrowed one.

Related to principle of prudence in nonrecourse loan, PNPM as creditor has its own forms to which related parties has to fill them with their personal data. Then, the agreement will be printed in the form of certain forms and the related parties needs only to provide their additional data without changing the articles and then put their signatures.

REVIEW ON NONRECOURSE LOAN

Based on general definition which is already familiar for the society, *credit* comes from Greek word “*credere*” which means belief for the truth. Thus, the basis of credit is the belief that someone will fulfill all aspects of agreement in the future.

Then, credit might also mean that the first party gives performance in the form of goods, money or service to other party and contra performance will be obtained few days later or at predetermined period of time.

Related to the above discussion, Raymond P. Kent, cited by Thomas Suyanto states that:

Credit is a right to receive payment or obligation to pay on the predetermined time due to the present acceptance of goods (Suyanto, Thomas, 2003;13).

Then, Achmad Anwari also defines credit as (Rahmad, Abd, 1998; 18)

Credit is granting performance from one party to other and it will be returned on predetermined time in the future supplemented with contra performance (it might mean certain kind of cost)

Based on the definition of credit above, we are able to formulate several components of credit (Tanglisan, Hessel, 2005; 33). Those are

- a) *Trust*, which is belief on the part of debtor that the performance given to creditor or loan fund borrower will be returned in line with what is stated on the agreement at predetermined time in the future.
- b) *Time*, which is certain period of time between granting and returning credit; it must be approved at the first place by related parties.
- c) *Performance*, which is performance or contra performance given upon the agreement or contract in the form of credit between creditor and debtor or fund borrower and interest.
- d) *Risk*, which is possibility that might happen during taking and returning credit. It aims at securing the credit and eliminating possibility of breach of contract from debtor or fund borrower. Therefore viewed from law perspective, guarantee or collateral should be given to represent trust.

It might also mean:

- (1) Before credit release, there should be an agreement (law of contract) between creditor and debtor. It doesn't mean that creditor doesn't trust his customer (debtor); the agreement functions as evidence (rule of proof) for related parties in case dispute comes up in the future.
- (2) Credit agreement made by debtor and creditor is a medium to put all kinds of contracts and requirements, including terms of payment for customers (debtors) upon conducting their obligation (Naja, Daeng, 2005: 22).

Concerning credit agreement, several experts states that it is similar to loan agreement such regulated under Indonesian Civil Code. Subekti noted that:

“for any type of credit given, essentially there is a loan agreement regulated under chapter 1754 up to 1754 of Indonesian Civil Code”.

Mariam Daruz Badruzaman proposed similar argument that:

Based on the provision stated in law of banking concerning credit agreement, we can conclude that the basis of credit agreement is borrowing conduct stated in chapter 1754 of Indonesian Civil Code. The loan agreement has broad implication the expendable object if verbruklening includes expendable object such as money.

Based on loan agreement, loan receiver turns to be the owner of borrowed object and it has been returned to the giver lending the object.

However, Muhammad Djumhana has different opinion. He states that in modern banking practice, law relation in credit is not totally identical with form and implementation of loan agreement stated in Indonesian Civil Code. There are some fundamental differences between both of them.

Though loan agreement and credit agreement are different, credit agreement is based on loan agreement regulated under Indonesian Civil Code. Supposed that the related parties do not specify certain aspects in credit agreement, then those parties bind themselves with Indonesian Civil Code.

Indonesian Civil Code functions as general regulation specifying the validity of an agreement. Therefore, credit agreement should fulfill requirement of agreement validity regulated under chapter 1320 of Indonesian Civil Code.

As stated in Indonesian Civil Code, the requirements of agreement validity are:

1. Agreement to bind themselves.
2. Competence to make instruction.
3. Certain object.
4. Legal cause.

In credit transaction, there are two kinds of obligation in terms of returning money borrowed. Those are recourse and nonrecourse loan.

Chapter 1 articles 23 of Law of no 10, 1998 on Banking, nonrecourse loan is defined as the following:

“collateral is additional guarantee given by debtor to a bank for obtaining credit facilities or finance based on Islamic rules (syariah).

From the above definition, collateral is additional guarantee or collateral bond is object without any direct relation with financed object. Thus, we can conclude that credit should be accompanied by additional guarantee and it must be given to creditor.

It is different from nonrecourse loan. For nonrecourse loan, credit given doesn't require additional guarantee or collateral bonds in the form of movable or immovable object, property right or personal guarantee. Thus, thus debtor doesn't give any guarantee to the creditor. Some experts states that this type of credit is unsecured credit.

Unsecured credit term is not appropriate. Unsecured credit is different from nonrecourse loan, because the latter still requires some types of guarantee. Nonrecourse loan belongs to feasibility credit category; therefore some experts define it as nonrecourse feasible credit (Widyatmoko, Agung, 2003: 23).

Feasibility standard of credit can be based on the ability to pay for basic debt, interest and other costs

during pre determined period of time. Usually, this type of credit is granted to company with good prospect of business; however, other considerations might also be taken into account. This credit might also be given to small scale businessmen such as for micro scale credit and middle scale credit.

It applies also to credit given in PNPM Mandiri aiming at realizing community empowerment program. The main target is poor people in rural area especially those joining in loan and saving female group. Government provides soft credit without collateral to develop their business.

ANALYSIS IN GIVING NON RECOURSE CREDIT FOR LOAN AND SAVING FEMALE GROUP

In analyzing proposed credit, PNPM should take several factors of debtor or borrower into account as stated in Standart Operating Procedure of PNPM which includes “5 C” assessment. Those are character, capacity, collateral and condition of economics and they are main basis for credit agreement. The five criteria will be the standards to assess the ability to pay for credit. The 5 C’s are

a. Character

Character of borrower is crucial. It is because credit is trust given to the borrower. Therefore borrower must be trustable and have good willingness to pay for the debt. Though borrower has good business, without good character, it will not be able to convince PNPM that the borrower is willing to pay for the debt.

The writer also states that character analysis of the borrower is intended to find out his responsibility, honesty, seriousness in conducting his business and his willingness to fulfill his obligation.

Concerning the history of borrower, aspects that should be taken into consideration is background business that is used for the basis to predict the success of borrower in conducting his business and achieving his plan.

Basically, assessment on character aims at knowing willingness of borrower to pay and return the credit as stated on agreement.

b. Capital

It is fund possessed by borrower to maintain his business. The purpose of capital assessment is to know the number of capital Loan and Saving Female Group.

c. Capacity

the purpose of character assessment is to find out willingness and seriousness of borrower to fulfill their obligation. In addition, capacity assessment is to assess ability to pay of the borrower. In PNPM, things to be considered are the experience of Loan and Saving Group and administration and management aspect of the group. The writer believes that, the purpose of capacity analysis is to measure borrowers’ capacity to make and realizing plans as well as to run his business to reach target profit. Assessment to the borrower is to find out profit obtained.

d. Collateral

As discussed above, credit agreement in PNPM doesn’t require collateral. It is based on the use of guarantee as regulated in chapter 1131 of Indonesian Civil Code in the form of movable or immovable object that has been or will be guarantee for the debt. It means that it will be the guarantee for the debt of borrower though debtor doesn’t require collateral from creditor.

e. Condition of economics

It is factors beyond business capacity of borrower and beyond their capacity to handle. However those factors are crucial and influence their business.

In brief, we are able to take conclusion that each group in our society has and holds specific cultural and social value prevailing in their community. A certain Activity Management Unit (UPK) from MAD forum in PNPM should know whether product or services from borrower is in line with social and cultural condition of society.

By knowing that condition of business of the borrower, we are able to find out whether the business is in line with social and cultural condition of local community and it should be accepted by local community. Based on the afore-mentioned discussion, the writer concludes that assessment on business condition is intended to find out current condition of borrower’s business to ensure that it develops well.

PROBLEMS FACED IN IMPLEMENTING AGREEMENT OF NON RECOURSE CREDIT IN LOAN AND SAVING FEMALE GROUP

Concerning financial institution/banking, nonperforming loan is based on collectability level as regulated by Bank of Indonesia. It includes problems, returns, capital, collateral coverage and others.

It is hard to implement assessment of collectability level on community empowerment program which is related to loan and saving female group in which the customer for loan program is group (with various type, business, function and level of development). There also several factors hindering the application of the assessment such as difficulty to assess capital, no collateral and no “negative list” is available for such type of

business.

The cause of loan problems can be classified as the following:

- 1) Problems on group institution is caused by lack of function of institutions of the program. The problems can be specified as follows:
 - (a) Problem on borrower group level is caused by group dismissal, no group activity and inactive committee and others.
 - (b) Problems on verification team. It doesn't function properly and it creates fictitious group without any activities.
 - (c) Committee of group has negative willingness shown by their inability to return.
 - (d) The user of loan and saving group is willing not to return.
- 2) Micro-finance problem is related to financial condition of group. It is because problem on business condition or problem on the part of customer/user.
In turns, it creates problems on the level of return that makes:
 - (a) Bad financial condition of business groups makes them unable to pay for the debt.
 - (b) Bad financial condition of customers or users make them unable to return the debt.
 - (c) Problems on due date to return the debt which is not suitable with cycle business of groups or user.
- 3) Corruption problem
It is caused by several problems. Those are corruption or illegal cut on allocated fund, corruption on payment of debt by group committee, fictitious group and other problems.
- 4) Force majeure problem
It is caused by natural disaster, social riot, war and the death of users or other causes that could not be anticipated in advance. Other example is business risk such as crop failure, robbery, fire on business place and others.

WAYS TO TACKLE PROBLEMS IN IMPLEMENTING NON RECOURSE LOAN AGREEMENT FOR LOAN AND SAVING FEMALE GROUP

Solutions for the above mentioned problem are usually conducted through certain process involving several institutions on rural government level, sub district government level and district government level, if necessary. There are two ways to tackle the problems as follows

1. Preventive way
It is intended to anticipate the problems in the future, before the credits are granted. It usually includes
 - a. Developing of existing institution.
Institution development on sub district level having crucial role is Activity Management Unit (UPK). Related institution on sub district level functioning to support and strengthen UPK's function is Monitoring Body of UPK (BPUPK), inter country cooperation authority and Loan Recovery team.
 - b. Determining aspects and scoring for assessment
Determining aspects and scoring for assessment is an agreement on certain aspects that will be assessed by Loan Recovery Team and it will be basis to assign nonperforming loan group accountably and transparently. In turns, it makes those aspects can be assessed objectively.
Assessment aspects of group capacity is intended to measure group condition based on indicators influencing the business result and financial condition. In general, those indicators can be divided into two categories. Those are internal factors and external factors.
2. Repressive Way
It is intended to tackle long terms problems and takes a long time. Usually, this type of problems is caused by ineffective use of preventive way. It is usually conducted using the following step
 - a. Management of nonperforming loan by UPK
UPK has procedure of handling nonperforming loan which is based on local agreement which opens for public. The procedure is in line with existing problems and fair for related persons.
 - b. Formation of Loan Recovery Team
There are several aspects that should be taken into account upon the formation of Loan Recovery Team. They are number of nonperforming loan, number of group and their ability to tackle operating cost. Loan recovery team might involve stakeholders which are considered to be able to handle or recover nonperforming loan. The task and responsibility of Loan recovery team should refer to principles and purposes of program.
 - c. People awareness approach
Improving people awareness to make them realize that money of nonperforming loan belongs to all people in a certain sub district. Therefore, nonperforming loan is the responsibility

- of everyone. It concerns the following
- 1) Right and Responsibility of people
Revolving fund belongs to all people. Thus, people have right to make use the fund based on prevailing regulation and they are responsible to maintain that revolving fund.
 - 2) Transparency
Nonperforming loan should be tackled transparently by involving all stakeholders.
 - 3) Suitability
Procedure to handle nonperforming loan problems should be in line with existing problem and people as well as user capacity.
 - 4) Agreement
Procedure to tackle nonperforming loan problems should be based on agreement between related group with Loan Recovery Problem or UPK. It should consist of several transparent steps
 - 5) Law awareness.
Improving law awareness should take people right and law enforcement as well as Alternative Dispute Resolution into account.
- d. To make use of outreach facilitator through socialization and problem handing activities. Facilitator should be the resource of method and design for problem solution to anticipate problems. It can be in the form of formulation of community sanction (local sanction) and supervising implementation of sanction on sub district level by UPK, BPUPK, Verification team, BKAD and inter coordination of stakeholder on district level.
- e. Through sanction
Sanction is the use of certain condition due to violation of rule and procedure formulated in PNPM Mandiri for rural community. It is intended to arouse responsibility from those involved in activities of PNPM Mandiri for rural community.

CONCLUSION

To make sure that nonrecourse loan will be returned as stated in the agreement made female loan and saving group in Kediri, there are several steps applied by National Program of Community Empowerment (PNPM) Mandiri for rural community to show their prudence. It takes preliminary step of credit proposal into account. It is analyzed through "5c's". they are *Character* in the form of requirement in Loan and Saving Female Group (SPP group), *Capital* which is financial capital of SPP group, *Capacity* which involve the experience of SPP group, their administration and management, *collateral* which is in the form of guarantee as stated in chapter 1131 of Indonesian Civil code, and *condition of economics* which take condition and quality of Loan and category of development of Loan and Saving Female Group into account.

Problems hindering implementation of nonrecourse loan agreement for female group joining National Program of Community Empowerment (PNPM) Mandiri for rural community is caused by institutional problems of groups, that is problems caused by ineffective function of related institution; by micro finance problem such as lack of group fund due to low financial ability of group caused by business problem on the part of costumer or user, problems of corruption, force majeure problem such as natural disaster, social riots, war and the death of customers and other problems that is impossible to anticipate and it is not caused by lack of anticipation of business risk.

Several ways have been formulated to tackle the problems. They are preventive way including development of institution on sub district level and determination of aspects and scoring for assessment indicators. The second way is repressive way including nonrecourse loan management by UPK, formation of Loan Recovery Team, people awareness arousal, making use of facilitator through socialization and problem handling by Coordinating Team of PNPM Mandiri for rural community and the use of sanction to arose sense of responsibility of those involved in management of PNPM Mandiri for rural community.

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