

The Role of Bank Indonesia in Protecting Debtors Credits of House Ownership After the Establishment of Financial Services Authority Institution

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Abstract

House is a basic need that plays a strategic role in the formation of character and personality of the nation. Therefore, in order to accommodate the needs of society to own a house, the banks offer housing ownership credit (KPR). The inclusion of a standard clause granting the bank the right to set interest unilaterally without notice to the customer indicates an imbalance of the parties' position in the KPR agreement. Meanwhile, regarding the interest rate, Bank Indonesia is devolved fully to the policy of each bank. This is the basis for the banks to determine the amount of interest expenses unilaterally. Yet theoretically, when interest rates fall, the interest rates on deposits and credit book rates should also decrease. This study aims to determine and analyze the role of Bank Indonesia in protecting customer debtors of KPR.

Keywords: protection, debtor, credit of house ownership.

I. Introduction

Credit in banking activities is the most important business activity because the largest revenue from the bank business comes from the income of the credit business activities in the form of interest and provision. The scope of credit is not only in the form of lending activities to debtor customers, but also related to the elements which include credit fund resources, fund allocation, organization and credit management, credit policy, documentation and credit administration, credit monitoring and troubled credit settlement.¹

Banking activities that provide services to the economic sector certainly cannot be separated from the risks that possibly harm the parties, either the bank itself and depositors and debtors. Therefore, the bank in performing its duties related to the customer must be based on three principles, namely the fiduciary relation principle, prudence principle and secrecy principle.²

Regarding the interest rate, Bank Indonesia (BI) is devolved fully to the policy of each bank. This is the basis for the banks to determine the amount of interest expenses unilaterally.³ Yet theoretically, when interest rates fall, the interest rates on deposits and credit book rates should also decrease.⁴ But in reality, although the BI rate from March 2012 to March 2017 has experienced several downturns, the bank has not been involved in lowering lending rates, including house ownership credits.⁵ The basis of consideration by the banks is the time lag of time deposits whose interest rates can not be changed at any time. As a result, credit interest rates can not be lowered in the event of a decrease in BI rate.⁶

Related to consumer protection of the financial services sector, particularly in the KPR Agreement, the bank's position is always assumed to be stronger than the position of the debtor in determining the terms and clauses in the Agreement. In line with this matter, Agus Yudha Hernoko expressed his view that in this context,

¹ Muhamad Djumhana, *Hukum Perbankan di Indonesia*, Bandung: Citra Aditya Bakti, 2011, p.365

² Neni Sri Imaniyati, *Pengantar Hukum Perbankan Indonesia*, Bandung: Refika Aditama, 2010, p.16

³ Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-instrumen Hukumnya*, Bandung: Citra Aditya Bakti, 2009, p.57

⁴ Krisna Wijaya, *Analisis Kebijakan Perbankan Nasional*, Jakarta: Elex Media Komputindo, 2010, p.90

⁵ BI Rate Data according to Board of Governor meeting, accessed on www.bi.go.id, 7th January 2017

⁶ Research by the author at PT. Bank Mandiri (Persero) Tbk. Makassar Branch, August 23, 2016

the principle of equilibrium "equal-equilibrium" will work to provide balance when the bargaining power of the parties in determining the will becomes unbalanced. The purpose of the principle of balance is the final result that places the equal parties position in determining their rights and obligations, so that in the event of an imbalance of positions that cause disruption to the contents of the contract it is necessary to intervene certain authority (government).¹ This study aims to determine the role of Bank Indonesia in protecting KPR debtors after the establishment of the Financial Services Authority in Indonesia. This study uses the type of empirical legal research to analyze Bank Indonesia's role in protecting debtor customers after the establishment of the Financial Services Authority in Indonesia.

II. Research Methods

This study uses the type of empirical legal research to determine the role of Bank Indonesia in protecting customers of mortgage debtors after the establishment of the Financial Services Authority in Indonesia. The technique used in sampling research is purposive sampling, that is how to draw samples from the population based on research objectives by setting certain criteria. Data obtained from the primary and secondary data in this study were analyzed qualitatively and then presented descriptively, that is by reviewing the existing problems then summed up synchronously, systematically and scientifically shown through the exposure of factual data.

III. Result and Discussion

Ordering the institution through legislation aims to make the institution is able to exercise authority in accordance with their respective positions. Under the provisions of Article 4 subsection (2) of the Law of BI, contains that BI is an independent state institution in carrying out its duties and authorities and free from interference by the government and / or other parties.

In further developments, under the provisions of Article 34 of Law Number 3 of 2004 concerning Amendment on Law Number 23 of 1999 concerning Bank Indonesia, mandates that the task of supervising banks shall be conducted by independent financial services sector supervisory bodies and established by law. Therefore, as of December 31, 2013, the functions, duties and authority of regulating and supervising the activities of financial services in the Banking sector have shifted from Bank Indonesia (BI) to the Financial Services Authority.

Although the task and authority of regulating and supervising financial services activities in the Banking sector has shifted from BI to OJK since 2013, but according to the researcher, BI with its macroprudential authority currently plays a role in protecting consumers of the financial services sector, especially debtors of KPR. This role can be seen by the adjustment of macroprudential policy by BI, in the form of the establishment of Credit to Value Ratio for conventional banking, which in this discussion will be abbreviated as LTV and Financing to Value (FTV) for sharia banking.

Regarding the overlapping authority between BI and OJK due to the separation of the microprudential aspect which is the authority of OJK and the macroprudential aspect under authority of Bank Indonesia, the Constitutional Court has provided its view that the legislators need to make clear and decisive arrangements on the macroprudential scope by BI through amendment in Law of BI due to avoid problems in implementing Law of OJK. In addition, to avoid the overlapping authority of the supervision of the Banking sector between OJK and BI, an integrated information exchange facility should be established by the three institutions in the Banking sector (OJK, BI and LPS) as mandated by Article 43 of the Law of OJK, therefore it may possible to exchange information and access the information required at any times while maintaining and considering the confidentiality of information in accordance with the provisions of applicable legislation.²

Based on the research results³, the policy on Loan to Value Ratio (LTV) is conducted as effort to encourage banking intermediation and also directed to help lower middle income people in fulfilling the *riil needs* (first house) for residence. LTV is the ratio between the credit values that can be given by the banking party with the value of collateral in the form of property. The scope of the property intended is house footprint, flats, shop houses and office houses.

Furthermore, from 2012 to mid September 2016, BI has 5 times changed the policy regarding LTV. Any changes to the LTV policy, can be seen in table 1 below:

¹ Agus Yudha Hernoko, *Hukum Perjanjian, Asas Proporsionalitas dalam Kontrak Komersial*, Jakarta: Kencana Prenada Media, 2011, p.79

² Patrialis Akbar dalam Risalah Sidang Putusan Mahkamah Konstitusi Republik Indonesia, Nomor 25.116.PUU-XII/2014

³ Berdasarkan hasil penelitian pada Divisi Pengembangan Ekonomi Bank Indonesia Kantor Perwakilan Makassar, 12 September 2016

Table 1
 BI Policy Changes Concerning LTV Ratio

Publication Year	Number of Bank Indonesia Regulation (PBI) and Circular Letter of Bank Indonesia (SEBI)	Financing and Property Type	LTV Ratio Maximum		
			FK/FP 1	FK/FP 2	FK/FP 3 etc
2012	SEBI No. 14/10/DPNP	KPR includes flats and apartments >70 m ²	Max. 70% except housing program by Indonesian government		
2013	SEBI No. 15/40/DKMP	KPR Type >70	70%	60%	50%
		KPRS Type >70	70%	60%	50%
		KPR Type 22-70	-	70%	60%
		KPRS Type 22-70	80%	70%	60%
		KPRS Type sd 21	-	70%	60%
		KP Shop House/Office House	-	70%	60%
2015	PBI No. 17/10/PBI/2015 and SEBI No. 17/25/DKMP	Tread House			
		Type >70	80%	70%	60%
		Type 22-70	-	80%	70%
		Type till 21	-	-	-
		Flats			
		Type >70	80%	70%	60%
		Type 22-70	90%	80%	70%
		Type till 21	-	80%	70%
		Shop House/Office House	-	80%	70%
2016	PBI No. 18/16/PBI/2016 and SEBI No. 18/19/DKMP	Tread House			
		Type >70	85%	80%	75%
		Type 22-70	-	85%	80%
		Type till 21	-	-	-
		Flats			
		Type >70	85%	80%	75%
		Type 22-70	90%	85%	80%
		Type till 21	-	85%	80%
		Shop House/Office House	-	85%	80%

Data source: BI Documents, 2016

FK = Credit Facilities, FP= Financing Facilities

Furthermore, in table 1 below, it can be seen that on March 15, 2012, BI issued Circular Letter of Bank Indonesia (SEBI) Number: 14/10/DPNP Concerning the Implementation of Risk Management on banks conducting House Ownership Credits and Motor Vehicle Credits, which sets the same Maximum LTV Ratio in the first, second and third credit facilities, which is 70% for KPR including Flats or Apartment with larger type than 70 m². However, the SEBI has not set regarding the ratio of LTV KPR and KPRS with property type smaller than 70 m². However, in 2013 to 2016, BI began to establish a different Maximum LTV Ratio policy for the first, second, and third credit facilities based on the type of property.

Thus, the data in Table 1 shows that from 2012 to mid September 2016, BI has changed the five policies of LTV. Therefore, people may acquire an overview that the higher the LTV ratio assigned to a credit, the lower the amount of Down Payment (DP) that should be prepared by the prospective customer of the costumer debtor of KPR. In addition, based on data in the table, it can be seen that from 2012 to 2016, the ratio of LTV for financing by property type, always increased by 5% to 10%. Based on this matter, it can be seen that BI issued a policy on LTV Ratio to increase the amount of KPR growth by providing convenience in the form of DP relief for prospective customers of costumer debtors of KPR.

The purpose of the issuance of the LTV policy is to look at Indonesia's economic conditions as well as credit growth due to leniency on LTV policy is expected to push back credit growth on the basis of prudential principles. Provisions on the LTV Ratio are also applicable to non-person buyers, such as companies, institutions and other legal entities. The determination of the credit facility is calculated by taking into account all credit facilities/financing of property ownership that is still outstanding (residual debts) and on the basis of time of granting of facilities (not based on owned house). To know the credit facility/financing of property ownership

received by the debtor from another bank, the bank may obtain the information through debtor's statement letter and Debtor Information System (SID).¹

In terms of determining the LTV Ratio, BI uses the size of the house as a reference due to the use of certain nominal prices is considered less precise given the disparity of prices in each region. The classification of houses by size has been used as a standard in bank reporting to Bank Indonesia, thus facilitating the implementation of monitoring and enforcement of policies. In addition, the policy requires a current price to be a benchmark from time to time. This causes the monitoring process and policy enforcement efforts to be inefficient.²

Based on the provisions of Article 3 subsection (1) of Bank Indonesia Regulation No. 18/16/PBI/2016 on Credit To Value for Property Credits, Financing To Value Ratios for Financing Property, and Advances for Credit or Motor Financing Vehicle, contains a rule that Commercial Banks are required to calculate Credit and collateral value in LTV Ratio For Property Credits with the following conditions:

- a. Credit is determined based on the credit ceiling received by the debtor as stated in the Credit Agreement; and
- b. The value of collateral shall be determined based on the estimated value made by an internal appraiser of a Commercial Bank or an independent appraiser of the collateral property.

The procedure for the assessment of collateral as referred to in Article 3 subsection (1) letter b, is as follows:

- a. For Property Credit or Financing Property with a ceiling up to Rp. 5.000.000.000,- (five billion rupiah), the value of collateral shall be based on estimates made by an internal bank appraiser or an independent appraiser; and
- b. For KP or PP provided with a ceiling above Rp. 5.000.000.000,- (five billion rupiah), the value of collateral is based on estimates made by independent appraisers.

Furthermore, the independent appraiser as stipulated under the provisions of Article 4 of Bank Indonesia regulation concerning the LTV Ratio 2016 shall be the office of the public appraisal service which at least meets the following criteria:

- a. Have business license from authorized institution;
- b. is not a party to the bank;
- c. Is not an affiliated party to the debtor or customer and developer expressed in a letter of statement from the public appraiser office (KJPP); and
- d. Registered as a member of an independent appraisal association or public appraisal association.

Regarding the credit/financing regulation by taking over credit/financing from another bank (take over), based on the provisions of Article 12 of Bank Indonesia regulation on the LTV Ratio 2016 stipulated that if the credit/financing is only to pay off credit/financing in other banks then the credit/financing is not treated as a new credit. However, if the credit/financing takeover is accompanied by a top up, the credit/financing is treated as a new credit. Further, in the provisions of Article 17 of the Bank Indonesia regulation, it is stipulated that credit or financing in the context of the implementation of the central government housing program and/or local government as referred to in the prevailing law and regulation, as long as supported by a document stating that such credit or financing is a central government housing program and/or local governments are exempt from this provision while maintaining prudential principle and applicable laws and regulations.

In the event that the Bank provides credit or financing for the ownership of the property which is not yet fully available, the Bank is obliged to meet the following requirements:³

- a. Credit or Financing shall be Property Credit or Financing Property up to the second order of facilities;
- b. There is a cooperation agreement between the bank and the developer which at least contains the ability of the developer to complete the property as agreed with the debtor or customer;
- c. There is a guarantee provided by the developer to the bank either originating from the developer itself or other party that may be used to settle the developer's obligations if the property cannot be completed and/or cannot be handed over in accordance to agreement

If observing at these provisions, according to the researcher, there are important things that are closely related to the protection of customer debtors of KPR, especially regarding the regulation of credit/financing the purchase of property indent for the first house. On the other hand, this can certainly provide easiness for society to acquire a house with cheaper price compared to the price of ready-to-live house, thus increasing the property growth rate as the developer gets additional capital to build housing. However, on the other hand, this policy also has the potential to harm the debtor costumers of KPR because they have been obliged to pay KPR installments based on agreements that have been agreed with the bank providers of KJR facilities even though the house as the object of the agreement has not been completed by the developer. In addition, the debtor customers are also

¹ *Ibid*

² *Ibid*

³ Circular Letter of Bank Indonesia Number 18/19/DKMP Concerning *Loan to Value* Ratio for Property Credit, *Financing to Value* Ratio to Financing Property, and Down Payment for credit or Financing Motor Vehicle, on 6th September 2016

often harmed because the developer did breach in the case of the handover of the house which is the object of the KPR Agreement. From the record of the Financial Services Authority (OJK), 664 complaints were received related to property issues over the past four years. Some problems that are often complained, namely the developer to do wanprestasi in terms of certificate delivery and quality of the building.¹

Related to that matter, based on interview result with Mustamin,² it is found that respondents feel very aggrieved due to the delay of the developer in executing the handover of the house that became the object of KPR, where the respondent has signed the KPR Agreement indent for the first house and paying the house installment since 2012, but the developer just handover the house in 2016. Whereas in the previously agreed deed, the developer promised the handover deadline was no later than December 2013.

The impact of increasing complaints from debtors' customers due to the case of delays in the handover by the developer for KPR indent, Bank Indonesia has stipulated the provisions on the stages of disbursement of property credits for property ownership which are not yet fully available in Article 15 of the Bank Indonesia regulation on the LTV Ratio dated September 6, 2016, in which the credit to the property ownership that is not yet fully available is allowed up to the second credit facility, with gradual credit disbursement as follows:

Table 2

Stages of Credit Disbursement Property Ownership that is yet not fully available

No	Percentage of disbursement	Stages
Tread House, Shop House atau Office House		
1.	40% dari ceiling	After the completion of foundation
2.	80% dari ceiling	After the completion of the roof cover
3.	90% dari ceiling	After the signing of handover (BAST)
4.	100% dari ceiling	After the signing of handover (BAST) which has been completed with sale and purchase deed (AJB) and burden of mortgage deed (APHT) or Power of Attorney Letter Imposing Mortgage Rights (SKMHT)
Flats		
1.	40% dari ceiling	After the completion of foundation
2.	70% dari ceiling	After the completion of the roof cover
3.	90% dari ceiling	After the signing of handover (BAST)
4.	100% dari ceiling	After the signing of handover (BAST) which has been completed with sale and purchase deed (AJB) and burden of mortgage deed (APHT) or Power of Attorney Letter Imposing Mortgage Rights (SKMHT)
Information: For the stages of loan disbursement of Property Credit of Apartment, Bank may conduct additional disbursement between the completion of the foundation and before the completion of the roof cover based on the assessment of development progress.		

Data source: BI Document 2016

Provisions on the gradual disbursement of property ownership credits that are not yet fully available, it shall be carried out on the progress report of property developments originating from developers with verification from the bank's internal appraiser or independent appraiser. Therefore, banks are required to have internal guidance regarding the technical specifications for the completion of foundations and roof cover for house treads, shop houses, office houses and flats with due observance of prudential principles.³ The principle of prudence is an affirmation that banks in carrying out business activities both in collecting and channeling funds to the public must be very careful and comply with the provisions and legal norms prevailing in the banking world. The principle of prudence is regulated in Article 2 and Article 29 paragraph (2) of the Banking Law.

To ensure the bank complies with the rules, Bank Indonesia is authorized to conduct an audit of the Bank. The inspection may be conducted directly by Bank Indonesia or by appointing another party (for example, a public accountant) for and on behalf of Bank Indonesia to conduct an audit to the bank. In addition, in conducting the audit, Bank Indonesia may coordinate and cooperate with other authorities.⁴

The procedure concerning the imposition of sanctions, based on the provisions of Article 23 of Bank Indonesia regulation concerning the LTV Ratio 2016 stipulated that the Bank shall be liable to sanctions for any violation of the provisions provided in this regulation. The form of sanction imposed may be administrative sanctions in the form of written warning or financial penalty. In addition to administrative sanctions in the form

¹ Data accessed at www.hetanews.com, on June 19, 2016

² Mustamin, customer debtor of KPR Indent PT. Bank Mandiri (Persero) Tbk., in interview on 21st January 2017

³ *Ibid*

⁴ *Ibid*

of a written warning, the bank will be liable to a financial penalty in the event of a violation of the LTV/FTV ratio and a 1% indent provision of the difference between the credit/financing ceilings granted and the credit/financing ceiling. If the bank commits a violation of the prohibition of providing credit/financing for the down payment on the purchase of property or motor vehicle, it will be subject to a financial penalty of 1% of the credit ceiling/down payment financing or credit ceiling/financing property.

In the matter the bank is required to submit an action plan for the violation committed, if the bank does not submit and/or does not implement the action plan, it shall be liable to 1% monthly sanction of the credit ceiling/financing for each credit/financing that violating the terms. Such sanctions are imposed at the end of each month for a maximum period of 12 months.¹ In addition to impose administrative sanctions, Bank Indonesia may recommend to the competent authorities to take action in accordance with their authority.² Under a financial penalty, BI is authorized to debit deposit account Rupiah Bank of the bank on Bank Indonesia, and send a copy of the letter of imposition of the sanction to the Financial Services Authority.

As described above, under the provisions of Article 4 paragraph (2) Law No. 3 Year 2004 on Bank Indonesia BI is an independent state institution in carrying out its duties and authorities, free from interference by the government and/or other parties. Therefore, BI is also entitled to issue a legal product, namely Bank Indonesia Regulation and Board of Governors Regulation,³ (in the organizational structure, bank Indonesia is led by the governor).

Regarding the legal position of Bank Indonesia Regulation in the legislative regulation, pursuant to Article 8 paragraph (1) and (2) of Law Number 12 Year 2011 concerning the Establishment of Legislation, that:

"The types of legislation, other than those referred to in Article 7 paragraph (1), cover the rules established by the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank Indonesia, A Minister, body, institution, or commission of the same level established by law or Government on the order of the Law, Provincial People's Legislative Assembly, Governor, Regency/Municipal House of Representatives, Regent/Mayor, Village Head or equivalent".

"Legislation as referred to in paragraph (1) is recognized its presence and has binding legal force as long as it is commanded by a higher legislation or constituted by authority".

In this regard, Jimly Asshiddiqie⁴ expresses that bodies or institutions such as BI may issue a separate regulation, as long as that such regulatory authority is granted by law. The name of the regulative product produced by the body should be referred to as a regulation.

Therefore, according to the researcher, the theory of regulation in the banking industry is truly needed to provide protection to debtor customers from the availability of unbalanced information between debtor and bank party in a KPR agreement.

III. CLOSING

After the establishment of the Financial Services Authority, Bank Indonesia is no longer authorized to regulate and oversee financial services activities in the banking sector. However, Bank Indonesia still has a role related to the consumer protection of the financial services sector, especially the mortgage debtor customers. The role can be seen with the adjustment of macroprudential policy in the form of Loan to Value Ratio, that is the arrangement of the credit disbursement stage of property for property ownership that is not yet fully available. With the determination of the Loan to Value Ratio, the bank providing the facility of home ownership custody shall comply with the provisions concerning the credit disbursement stages based on the development progress report from the developer and verification of the independent appraiser, so that the debtors of the indent mortgage debtors may be protected from the risk of loss due to the wanprestasi By the developer, namely the late handover of the house and the difference in the quality of the building that became the object of the credit agreement.

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¹ Article 24 Bank Indonesia Regulation on LTV Ratio 2016

² Article 25 Bank Indonesia Regulation on LTV Ratio 2016

³ Zulkarnaen dan Beni Ahmad Saebani, *Hukum Konstitusi*, Bandung: Pustaka Setia, 2012, p. 275

⁴ Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006, p. 355

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