THE PRINCIPLE OF PUBLICITY IN THE BINDING OF GUARANTEES FOR CREDIT IN THE DISTRIBUTION OF CREDIT IN BANKING INSTITUTIONS LINKED TO THE PRUDENTIAL BANKING PRINCIPLE

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ABSTRACT

Objective: This research aims to determine the principle of publicity in binding collateral for mortgage rights in lending to banking institutions about the tenets of Prudential Banking.

Method: The type of research used is normative legal research to test applicable norms or provisions. It can also be researched by examining library materials or secondary data. Doctrinal legal research. The approach method used is the conceptual approach method.

Result: Economic actors complete their financial needs by borrowing funds or capital, which is called credit, through public or private banks, users of banking products or services because there are still practices that are considered not in line with existing regulations, thus resulting in or having an impact on the debtors and creditors themselves. It can harm both parties, both materially and immaterially.

Conclusion: The application of the principle of prudence in credit distribution is critical to ensure that the bank is always in a healthy condition, always in a liquid, solvent and profitable condition, especially in the distribution of funds with collateral for land rights; the application of the publicity principle is also very influential in determining the position of the bank, especially in taking back credit repayments. Therefore, the focus of prudence and the direction of publicity support the achievement of legal certainty for parties entering into agreements in credit agreements, especially in providing mortgage credit.

Keywords: publicity, mortgage guarantee, banking institution credit.

Received: 09/10/2023
Accepted: 08/01/2024
DOI: https://doi.org/10.55908/sdgs.v12i1.2703

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O PRINCÍPIO DA PUBLICIDADE NA VINCULAÇÃO DAS GARANTIAS DE CRÉDITO NA DISTRIBUIÇÃO DE CRÉDITO NAS INSTITUIÇÕES BANCÁRIAS, ASSOCIADO AO PRINCÍPIO DA BANCA PRUDENCIAL

RESUMO

Objetivo: Este estudo visa determinar o princípio da publicidade em garantias vinculativas para direitos hipotecários em empréstimos a instituições bancárias sobre os princípios da banca prudencial.

Método: O tipo de pesquisa utilizado é a pesquisa legal normativa para testar as normas ou disposições aplicáveis. Também pode ser pesquisado examinando materiais da biblioteca ou dados secundários. Pesquisa legal doutrinária. O método de abordagem utilizado é o método de abordagem conceitual.

Resultado: Os agentes económicos completam as suas necessidades financeiras através da contratação de empréstimos de fundos ou de capital, que é designado crédito, através de bancos públicos ou privados, utilizadores de produtos ou serviços bancários, porque ainda existem práticas consideradas não conformes com a regulamentação em vigor, resultando assim em ou tendo impacto sobre os próprios devedores e credores. Pode prejudicar ambas as partes, tanto material como imaterialmente.

Conclusão: A aplicação do princípio da prudência na distribuição do crédito é fundamental para garantir que o banco esteja sempre em boas condições, sempre em condições líquidas, solventes e rentáveis, especialmente na distribuição de fundos com garantia de direitos fundiários; a aplicação do princípio da publicidade também é muito influente para determinar a posição do banco, especialmente na recuperação de reembolsos de crédito. Por conseguinte, o foco da prudência e a direção da publicidade apoiam a obtenção de segurança jurídica para as partes que celebram contratos de crédito, especialmente na concessão de crédito hipotecário.

Palavras-chave: publicidade, garantia hipotecária, crédito bancário.

1 INTRODUCTION

The Indonesian economy is a reflection of the welfare of society, and sustainable economic development is very important to ensure the welfare of society. As national development increases, economic activity impacts business and human needs. Economic actors fulfil their financial needs by borrowing funds or capital called credit through public or private banks. Indonesian banking, as regulated in Law Number 7 of 1992 and Law Number 10 of 1998, concerning banking functions as an intermediary institution that collects and distributes public funds. Sharia banking, as regulated in Article 4 Paragraph (1) of the Sharia Banking Law, also requires banks to collect and distribute public funds.⁵

The Indonesian banking sector aims to support equitable economic growth and national stability, improving community welfare. The bank’s strategic position shows its

role as a development agent, especially in credit distribution activities. Credit plays a vital role in the development process because it determines the size of national economic growth as regulated in Article 4 of the Banking Law and Article 3 of the Sharia Banking Law.\(^6\)

The Banking Law, as intended in Article 1 number 11 of Law Number 10 of 1998 and amendments to Law Number 7 of 1992, defines credit as the provision of money or bills based on an agreement or loan agreement between a bank and another party. Article 8 of the Banking Law requires banks to have confidence in the debtor's ability to pay off their debts and to achieve this; the bank must assess the character, abilities, capital, collateral and business prospects of the prospective debtor. This guarantees legal protection for creditors in channelling credit to debtors. As explained in Article 8, the Prudential Banking Principles are bank management guidelines that must be adhered to by statutory provisions to create healthy, strong, and efficient banking. Meanwhile, the precautionary principle controls risk by consistently applying applicable laws and regulations.\(^7\)

Banks in Indonesia must adhere to the principle of prudence based on Economic Democracy in business activities. These principles, including risk management, are essential in lending. Even though they provide collateral, banks must recognize the principle of prudence because this has created many problematic loans due to ownership of collateral. This principle is enforced through the consistent application of all statutory and regulatory requirements related to the provision of credit by banks.

One of the legal principles in the material guarantee legal system is the principle of publicity. What is meant by publicity (openbaarheid) is an "announcement" to the public regarding ownership status.\(^8\) In pawnshops (pand), this principle of publicity is reflected in inbezitstelling, namely that the object used as collateral must be released from the power of the pledgor and handed over to the pawnee. The object of the pawn agreement is movable therefore the announcement (publication) occurs through control (bezit).

The obligation to fulfil the principle of publicity is contained in the provisions of Article 13 Paragraph (1) of the Mortgage Rights Law, namely that the grant of mortgage

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rights must be registered at the land office. Apart from that, the principle of publicity is also regulated in Article 11 Paragraph (1), Article 13 Paragraph (1) and Article 18 of Law Number 42 of 1999 concerning Fiduciary Guarantees (State Gazette of the Republic of Indonesia of 1991 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) from now on referred to as the Fiduciary Law. Based on Article 11 Paragraph (1), objects encumbered with fiduciary guarantees must be registered. The purpose of registration followed by recording in the Fiduciary Register Book is so that third parties or the public can know that an object has been used as fiduciary collateral so that the principle of publicity (Openbaarheid) is fulfilled.

Banks require collateral in credit agreements to provide confidence for creditors in giving credit to prospective debtors. Property rights such as land rights can be used as collateral and must be registered according to statutory regulations. This guarantees certainty of objects, rights and subjects. Mortgage rights are for registered collateral, while unregistered collateral is not. This is in line with the publicity principle, which requires all rights, mortgages, and fiduciary rights to be registered. However, many mortgage guarantees need to be registered, making it impossible to provide credit to banking institutions.

The credit agreement must be considered by the bank as the creditor and by the customer as the debtor because the credit agreement is the main agreement and has a very important function. A credit agreement is the main agreement but can be followed by additional agreements such as a guarantee agreement. A guarantee agreement is an accessory (additional) agreement linked to the main agreement to guarantee the creditor's rights if the debtor cannot fulfil its achievements. One of the collateral institutions that is often used in the practice of providing credit is the mortgage guarantee institution.\(^9\) Article 1313 BW regulates that An agreement is an act by which one or more people bind themselves to one or more people as long as this explains in simple terms the meaning of an agreement, which describes the existence of two parties binding themselves to each other. This understanding is not complete, but with this understanding, it is clear that in the agreement, one party binds itself to another.\(^{10}\)

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\(^{10}\) Ahmadi Miru & Sakka Pati, *Contract Law, Explanation of the Meaning of Articles 1233 to Article 1456 BW*. Jakarta: Rajawali Press, 2008, p. 63
Principles in collateral law weaken the bank's position in paying off receivables if the debtor defaults. The banking party does not have the right of precedence or precedence in repayment, even though the main agreement contains a guarantee. The position as a preferred creditor gives the creditor priority in taking payments for the proceeds from implementing certain collateral objects, which are tied to the guarantee of the creditor's claims. This position has a role in execution, even though the debtor's assets are insufficient to fulfil all his debts.\footnote{J. Satrio, Guarantee Law, Property Security Rights, (Bandung: PT. Citra Aditya Bakti, 2002), p. 281.}

Another problem in providing collateral to banks is the provision of home ownership loans and construction loans with land rights as collateral, which should be burdened with mortgage rights; however, to facilitate the process and minimize costs, the mortgage rights need to be registered. (data from PT. Sea Bank Indonesia Makassar Branch and PT. Bank Negara Indonesia Makassar Branch)

Home Ownership Credit (KPR) policies often make it easy for debtors to obtain credit facilities, but this can cause problems when the basis for rights or proof of ownership is unclear. Some certificates or guarantees are attached to a mortgage at one bank and used as collateral at another bank with a different credit facility. This can weaken the bank's position and cause losses for debtors who continue to pay monthly instalments. Proof of ownership of the object is used as collateral for the debt, still in the developer's name and tied to a mortgage at another bank. The debtor as guarantor does not control the lack of legal certainty for debtors who buy houses with credit facilities through banks.

In addition, failure to fulfil the principle of publicity in binding guarantees will have an impact on the banking economy itself because the position of the bank is only as a concurrent creditor, which is equal to other receivable holders, especially if the collateral object is already problematic, it will be even more difficult for the bank, to take back the repayment of its receivables.

Based on the above, there is a tendency for users of banking products or services to be disappointed because there are still practices that are deemed not to be in line with existing regulations, resulting in or having an impact on debtors and creditors themselves, which can harm both parties, both materially and immaterially.

As referred to in Article 1 number 11 of Law Number 10 of 1998 and amendments to Law Number 7 of 1992, credit is the provision of money or bills based
on an agreement or loan agreement between the bank and another party. Article 8 of the Banking Law requires banks to have confidence in the debtor's ability to pay off their debts, and to achieve this the bank must assess the character, abilities, capital, collateral and business prospects of the prospective debtor. This guarantees legal protection for creditors in channelling credit to debtors. As explained in Article 8, the Prudential Banking Principles are bank management guidelines that must be adhered to by statutory provisions to create healthy, strong, and efficient banking. Meanwhile, the precautionary principle controls risk by consistently applying applicable laws and regulations.\textsuperscript{12}

Banking in Indonesia must adhere to the principle of prudence based on Economic Democracy by Article 2 of the Banking Law. This principle, together with risk management, is very important for banks in carrying out their main business activities in lending. Even though they provide credit with collateral, banks must recognize the principle of prudence, as evidenced by the large number of problem loans due to ownership of collateral. This principle is enforced through consistent application of all statutory and regulatory requirements related to the provision of credit by banks.

In addition to implementing the precautionary principle mentioned above, banks in disbursing credit also require collateral to guarantee repayment of debts from debtors. Banks currently tend not to prioritize prudential banking principles in providing credit; this is because banks are more focused on achieving credit targets, apart from the principle of prudence, banks must also pay attention to and prioritize the legal principles of collateral in binding credit, this is to strengthen the bank's position in terms of returning credit from debtors.

One of the legal principles in the material guarantee legal system is the principle of publicity. What is meant by publicity (openbaarheid) is an "announcement" to the public regarding ownership status.\textsuperscript{13}In pawnshops (pand), this principle of publicity is reflected in terms of inbezitstelling, namely that the object used as collateral must be released from the power of the pledgor and handed over to the pawnee. The object of the pawn agreement is movable, therefore the announcement (publication) occurs through control (bezit).

The principle of publicity in Indonesia is regulated in Article 13 Paragraph (1) of the Mortgage Law and Article 11 Paragraph (1), Article 13 Paragraph (1), and Article

\textsuperscript{12}\textsuperscript{12}Trisadini Prasastina Usanti and Abd. Shomad, Banking Law, (Depok: Kencana, 2017), p.127.
18 of Law Number 42 of 1999 concerning Fiduciary Guarantees. This guarantee is important for banks to provide confidence in credit to prospective debtors. Registration guarantees certainty of objects, rights and subjects, and registered collateral is the object of mortgage rights. A collateral that is not registered is not an object of mortgage rights, in line with the publicity principle. This guarantees that the registered collateral is the object of mortgage rights.

The position as preferred creditor means that the creditor concerned has priority in taking payment for the proceeds from the execution of certain collateral objects, which about mortgage rights are specifically tied to guarantee the creditor's claims. Thus, the position as a new preferred creditor has a role in execution. That is, even if the debtor's assets are not enough to meet all his debts.14

Another problem in providing collateral to banks is the provision of home ownership loans and construction loans with land rights as collateral, which should be burdened with mortgage rights; however, to facilitate the process and minimize costs, the mortgage rights are not registered. (data from PT. Sea Bank Indonesia Makassar Branch and PT. Bank Negara Indonesia Makassar Branch)

Home Ownership Credit (KPR) policies often make it easy for debtors to obtain credit facilities, but this can cause problems when proof of ownership is not clear. Some certificates or collateral are attached to a mortgage at one bank and used as collateral at another bank, creating problems for debtors and creditors. This lack of publicity weakens the bank's position and causes losses for debtors who continue to pay monthly instalments. Proof of ownership of the goods used as collateral is not controlled by the debtor as guarantor. Failure to fulfil the publicity principle in binding guarantees can impact the banking economy because the bank's position as a concurrent creditor is equal to other receivable holders. This makes it difficult for banks to recover their receivables.

Based on the above, there is a tendency for users of banking products or services to be disappointed because there are still practices that are deemed not to be in line with existing regulations, resulting in or having an impact on debtors and creditors themselves, which can harm both parties, both materially and immaterially.

2 THEORETICAL FRAMEWORK

Based on the research results, the main assessment for banks in distributing credit is policies to increase bank prudence in providing credit, as well as policies to strengthen the financial sector's resilience through determining the amount of loan to value or financing to value while still prioritizing the 5C Principles. To measure creditworthiness, the 5C principles explained by Bank BTN to researchers are as follows:\textsuperscript{15}

2.1 "CHARACTER" (CHARACTER)

Character analysis is an important aspect of financial risk assessment, focusing on the nature or disposition of potential debtors. Banks analyze potential debtors based on reputation, business relationships and bank relationships. Factors such as environmental and business information, trade checks, and bank checks are used to assess these indicators. Character analysis is a qualitative aspect that requires long-term knowledge of potential funding recipients. This is the highest-ranking cause of financial problems, so investors and account managers need to be vigilant in assessing potential recipients. Lenders also verify the identity of potential financial recipients by interviewing neighbors, co-workers, and suppliers. This helps prevent financial risks from arising after financing is provided. Customers should be aware of several factors when considering financing, including their financial situation and potential financial difficulties, that is:

a) Customers who have experienced a history of traffic jams

If the prospective borrower has a history of bad payments, such as bills past due or delinquent previous loans, financial institutions may be reluctant to provide mortgage financing. That's why potential borrowers with bad credit need to improve their payment habits by paying bills on time and paying off existing debts. This can help improve the character of mortgage financing over time.

b) Has no financing/credit history

If a prospective borrower has no previous credit history, it will be difficult for their financial institutions to assess their character and financial ability to fulfill their financial obligations. So, one way is to use credit cards wisely, make payments on time and manage debt wisely. Good. By building a good credit history, financial institutions have more information to evaluate the principles of the character of mortgage financing.

\textsuperscript{15}Prabhu, Legal Bank BTN Makassar Region V Office, based on the results of an interview on September 12 2023.
c) employment history

If the prospective borrower frequently changes jobs or has an unstable work history, it may raise concerns about their ability to make mortgage payments consistently. So, as a potential debtor, the job must be stable because of the work history. A good one can give confidence to the financial institution that the candidate, the borrower, can make regular mortgage payments.

2.2 CAPACITY (CAPACITY/CAPABILITY)

Character analysis is an important part of financial risk assessment, focusing on the nature of the potential debtor. Banks use reputation, business relationships, environmental and business information, trade and bank checks to assess these indicators. This qualitative aspect requires long-term knowledge of potential recipients of funds, which is the highest-ranking cause of financial problems. Lenders verify the identity of potential recipients by interviewing neighbours, co-workers, and suppliers. This helps prevent financial risks once financing is provided. Customers should know their financial situation and potential difficulties when considering financing.

2.3 CAPITAL (SOURCE OF WEALTH)

Bank capital analysis involves visiting a customer's business for at least two years to analyze the economy's financial indicators and make forecasts. Private or government employees require a pay slip and a maximum subsidy of 40% of the monthly salary. The bank determines the debtor's savings, deposits or investment assets in terms of instalment payments. Capital analysis examines the net worth of prospective debtors through the total assets and liabilities in the financial statements. Risks include business capital not meeting the bank's tolerance limit, the debtor's inability to strengthen capital, and moral hazard, where one party does not sign a contract in good faith or provides incorrect information regarding assets, liabilities or credit capacity.
2.4 COLLATERAL (GUARANTEE)

Collateral is an important component in the 5C principle, which provides physical and non-physical guarantees to potential debtors. It must exceed the credit amount and be verified by the bank before use. This guarantee protects against financial risks and serves as a backup in the event of default. Factors to consider include marketability, strategic location, condition, and value. The collateral must be assessed based on financial and legal aspects, with the economic side assessing the value of the object insured and the legal side ensuring it meets legal requirements. Documenting collateral is critical to preventing fraud and ensuring the collateral is truly owned by the borrower. Banks must also diligently collect evidence of failure to provide funds.

2.5 CONDITION (CONDITION)

The aspect of economic conditions is a crucial aspect for banks to assess when offering financing to prospective debtors. This involves evaluating the financial situation, including the condition and equipment of the home and property. Banks must also consider regional, national or international economic conditions that may affect the financial condition of prospective debtors, such as changes in legal regulations or inflation.

3 METHODOLOGY

This legal research is normative (doctrinal) legal research, which focuses on viewing law as a complete system including a set of legal principles, legal norms, and legal rules (written and unwritten). It can also be said to be research carried out by examining library materials or secondary data. Doctrinal legal research. The approach method used is the conceptual approach method.

4 RESULT AND DISCUSSION

Banks in the past were keen to respect the principle of non-interference (non-intervention) in the affairs of their customers, and confined to the principle of banking secrecy, the focus was limited to managing and preserving the money of banks customers. However, because of the development of this role, and the stability of modern banking

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habits, the bank's role has become more and more positive in the relationship with customers, including providing financial credit information.

Financial Services Authority Regulation Number 42/POJK.03/2017 concerning the Preparation and Implementation of Credit or Bank Financing Policies for Commercial Banks, hereinafter referred to as PPKPB, regulates the Procedures for Preparing and Implementing Bank Credit Policies, which include bank credit policies that contain and regulate at least The main points as stipulated in the Guidelines for Preparing Bank Credit Policies are as follows:

1. The principle of prudence in credit;
2. Credit organization and management;
3. Credit approval policy;
4. Credit documentation and administration;
5. Credit Monitoring; And
6. Problematic Credit Settlement.

To reduce the risk of debtors defaulting, credit guarantees as confidence or ability and ability of debtors to pay off obligations as previously agreed are important things that banks must consider. So to obtain this confidence, before providing credit, the bank must carry out a credit assessment or analysis of (potential) debtors, which in this regulation is carried out using the analysis method of the character, abilities, capital, collateral and business prospects of the debtor or what we usually know as the analysis method 5C. Therefore, banks must have and implement credit guidelines by the provisions set by the Financial Services Authority (OJK), with the main principles of credit regulation, which include, among others:

1. Credit provision is made in the form of a written agreement;
2. The bank must have confidence in the ability and capability of the debtor, which is obtained from a careful assessment of the debtor's character, abilities, capital, collateral and business prospects;

18 Financial Services Authority, Financial Services Authority Regulation concerning the Preparation and Implementation of Credit or Bank Financing Policies for Commercial Banks, POJK Number 42/POJK.03/2017, LN No. 148 of 2017, TLN No. 6091, Article 3.
19 Ibid., Attachment to Financial Services Authority Regulation Number 42 /POJK.03/2017 concerning Obligations for Preparing and Implementing Credit or Bank Financing Policies for Commercial Banks, page 10.
3. The bank's obligation to develop and implement credit granting procedures;
4. The bank's obligation to provide clear information regarding credit procedures and requirements;
5. Prohibition of banks from providing credit with different terms to debtors and/or affiliated parties; And
6. Dispute resolution.

The function or role of a bank credit policy is as a guide in implementing all activities related to healthy and profitable credit for the bank. The bank credit policy aims to optimize income and control bank risk by implementing sound credit principles. In addition, by implementing the KPB consistently, it is hoped that banks can avoid the possibility of abuse of authority by irresponsible parties in providing credit. In POJK Attachment No. 42/POJK.03/2017 explains the obligation to have and use bank credit policies, which states that bank credit policies can differ from one bank to another depending on various influencing factors.\(^{20}\)

In addition to regulations regarding the principle of prudence in credit, the POJK regarding PPKPB also requires commercial banks to regulate the following matters, which must be included in credit policies at commercial banks in Indonesia; in this case, conventional banks, in general terms, must also arrange things as follows:

1. the principle of prudence in credit or financing;
2. credit or financing organization and management;
3. financing approval policies;
4. credit or financing documentation and administration;
5. credit or financing supervision;
6. settlement of problematic credit or financing.

In essence, guarantees are all legal rules that regulate the legal relationship between the giver and recipient of guarantees in relation to the imposition of collateral to obtain credit facilities.\(^{21}\) Based on the research results, when prospective debtor customers (consumers) are interested in the house offered by the developer, the prospective debtor makes a payment in the form of a "ready-to-order" house order. The

\(^{20}\) ibid
developer and the prospective debtor enter into an agreement in the form of a Sale and Purchase Binding Agreement, which is made by hand.

The 5C principles promoted by the bank aim to predict future business prospects and information on financial capabilities, as well as the potential risk of debtor default. The bank may refuse the loan application if financial conditions are less stable. Factors influencing the ability to pay instalments include the economy, age, loan amount, and other bank regulations.

The 5C principles align with Article 2 of the Banking Law, which emphasizes the principles of economic democracy and prudence. Public trust is very important for a bank's development and business activities. Good faith is very necessary in prospective debtors applying for credit and creditors distributing credit because good faith can prevent claims from arising due to unlawful acts. Good faith is reflected in concrete actions in implementing an agreement, providing an objective measure of whether there is good faith. If both parties have good intentions, the agreement will proceed according to expectations, and the goals can be achieved.

Good faith in contract execution is an important principle, but it is controversial. Ridwan Khairandy identified three issues related to good faith: the universal definition, the legal test used by judges to assess it, and the understanding and attitude of the courts in Indonesia. Good faith does not only include the good faith of the parties but also societal values, because good faith is a universal social force that regulates social relations. Every citizen must act in good faith towards all citizens, ensuring that others act similarly.

Roscue Pound's postulate states, "men must assume that those with whom they deal in general intercourse of society will act in good faith and will carry out their undertakings according to the expectations of the community." Basically, contracts originate from differences or unequal interests between the parties. The formulation of contractual relationships generally always begins with a negotiation process between the parties. Through negotiation, the parties try to create forms of agreement to bring together what they want (interests) through a bargaining process. In general, business contracts start from differences in interests that are tried to be reconciled through contact. Through the contract, these differences are accommodated.

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23 Ibid. p. 128-129.
24 Ibid.
or further framed by legal instruments so that they are binding on the parties. In contracts, questions regarding the content of certainty and fairness will be answered if the differences between the parties are accommodated through contractual relationship mechanisms that work proportionally.\textsuperscript{25}

A bank guarantee is not a guarantee of debt repayment but rather a guideline for creditors in the event of default or inability to pay credit instalments. Trust is very important in providing loans, and banks and creditors must maintain security, prudence and ease of service for customers and debtors. Prudential Banking principles must be applied in channelling credit to banks by paying attention to the quality of the credit provided. This ensures smooth operations without obstacles.\textsuperscript{26} To avoid problems with the disbursed credit, when releasing credit, banks need to pay attention to two important elements, namely:\textsuperscript{27}

1. Profit Acquisition Rate (Return)

This means the profit that will be obtained from lending in one period. The amount of profit must meet the applicable regulations if the health is to be assessed as good. Banking must implement targets to be achieved. To meet profit levels, banks must pay attention to factors such as:

a) \textit{Rate of Return on Assets} (ROA);

b) \textit{Return on Equity} (ROE);

c) \textit{Timing of Return} (time of profit); And

d) \textit{Future Prospect} (prospects) By paying attention to the factors above, the bank's health can be measured according to these provisions.

2. Risk Level (Risk)

This means the level of risk that will be faced regarding the possibility of a loss in the bank's profit from the credit disbursed. Credit risk needs to be considered, considering that various conditions that can influence it, whether economic, legal, political or otherwise, are uncertain.\textsuperscript{28} This risk is a condition and situation that will be faced in the


\textsuperscript{28}Ibid, p. 126.
future and greatly influences the bank's profit. In general, the types of risks that will be faced include:²⁹

a) Environmental Risk  
b) Management Risk  
c) Surrender Risk  
d) Financial Risk

Prudential Banking principles are very important for banks because providing credit is a main activity with risks and can affect business continuity. Banks must implement written credit policies to ensure consistent and sound credit principles. Sound credit principles, guided by the 5C principles (Character, Capacity, Capital, Collateral and Condition), guarantee clarity, accuracy and consistency of credit management policies, procedures and guidelines, thereby determining the quality of credit provided.³⁰

In addition to implementing the 5 C's of Credit principle, the bank also applies the 5P principle, namely:

1. Party (Parties).  
2. Purpose (Purpose).  
3. Payment (Payment).  
4. Profitability (Profit Earning).  
5. Protection (Protection).³¹

Regarding bank guidance and supervision, Article 29 paragraph (2) of the Banking Law requires banks to apply prudence in their business activities. Furthermore, Article 29, paragraph (3) of the Banking Law, requires banks to take methods that do not harm the bank and the interests of customers who entrust their funds to the bank in providing credit. This is closely related to the bank's function as a financial intermediary, as explained above. Funds in banks, which are then distributed in the form of credit, do not belong to the bank but rather to the people who deposit their funds with the bank. Therefore, banks need to maintain the trust of depositors by applying the principle of prudence in their management (prudential banking). Bank business must be conducted safely, appropriately and without substantial risk.³²

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²⁹ Ibid., pp. 127-128.  
³¹ Ibid., p. 248-249.  
providing a KPR by a bank to a prospective debtor customer contains the following terms and conditions:\footnote{\textsuperscript{33}}

\begin{itemize}
  \item[a.] Approved credit amount (ceiling);
  \item[b.] Type of credit/character of credit;
  \item[c.] Collateral (include type of collateral);
  \item[d.] Term;
  \item[e.] Interest rates;
  \item[f.] Fines/ Penalties;
  \item[g.] Fees that must be paid;
  \item[h.] Terms and conditions before the credit agreement;
  \item[i.] Times and conditions during the credit agreement;
  \item[j.] Terms and conditions after the credit agreement;
  \item[k.] The bank's right to cancel the credit application at any time, as long as the credit has not been disbursed;
  \item[l.] Procedures and deadlines for returning SPPK.
\end{itemize}

The prospective debtor customer must return the offer letter for granting a KPR in the manner and time specified in the SPPK. As a sign of approval for the credit granting plan the creditor will provide, the prospective debtor must sign a sign of support in the SPPK. In this regard, the researcher considers it necessary to quote Subekti’s opinion that in whatever form credit is given, in essence, what is happening is a loan and borrowing agreement as regulated by BW Articles 1754 to Article 1769.\footnote{\textsuperscript{34}}

Such an explanation is undoubtedly aimed at the debtor, considering that the terms of the credit agreement signed by the parties were made unilaterally and in writing by the debtor. It should be noted that since 2000, special provisions regarding credit agreements have been proposed in the Draft Law on Banking Credit, which in subsequent discussions will be abbreviated to the Banking Credit Bill. However, this provision has yet to be ratified to date. Based on Article 21, paragraph (1) of the Banking Credit Bill, it is regulated that credit agreements are made in writing in a standard form made by Indonesian banks and by customs in the banking world. Furthermore, the bank must

\footnote{\textsuperscript{33}}\textit{Teguh Ikrawansyah, Consumer Loan Head PT. State Savings Bank (Persero) Tbk., Makassar, based on interview results on September 8 2023.}

\footnote{\textsuperscript{34}}\textit{Subekti in Johannes Ibrahim, 2004, \textit{Banks as Intermediary Institutions in Positive Law”}, Utomo, Bandung, Pg. 108.}
explain all the contents of the credit agreement and its legal impact to the credit applicant before signing it.\textsuperscript{35}

In a KPR agreement, the obligation to protect the rights and obligations of the parties is not only the government's responsibility but also of parties with stronger economic capabilities. This shows good faith in drafting the agreement. Parties with weaker economies also have an obligation to protect the security of capital from stronger economies. Inequality of position or bargaining position in a credit agreement is contrary to the aim of legal justice because it is a forum for a fair exchange of interests.\textsuperscript{36} The meaning of the principle of publicity in mortgage law is to give rise to material rights. In each Guarantee Institution, material rights are created in different ways. At the Mortgage Rights Guarantee Institution, the birth date of the mortgage rights book is the seventh day after complete receipt of the documents required for registration.\textsuperscript{37}

Bank Artha Graha requires all types of collateral to guarantee a safe bank position. Banks assess prospective debtors based on ability, type of credit, character, collateral and assets, as well as their ability to pay monthly instalments. The bank prioritizes credit repayment and ensures that collateral is safe and perfectly bound. The process of registering mortgage rights includes a sale and purchase deed, credit agreement, and SKMHT/APHT by a Notary/PPAT partner. Before accepting a credit application, the bank assesses the debtor's ability, employment, income and collateral eligibility to determine his ability to pay monthly instalments.\textsuperscript{38}

The mortgage registration process is carried out through a binding process through a statutory partner of BRI and/or HT Elektronik in accordance with applicable legal provisions. The basis for assessing credit at Bank BRI is based on principles 5C (character, capacity, capital, collateral, condition of economy). Meanwhile, looking at the debtor's interests, the bank will assess the customer's capabilities and collateral, whether it is a business or a job because customers need credit to buy a house or business.\textsuperscript{39}

The same thing was also conveyed by customers who received credit with mortgage guarantees. For customers who aim to obtain a Home Ownership Credit

\textsuperscript{35} Article 26 Banking Credit Bill
\textsuperscript{38} Interview Results with Edward, Legal Officer at Bank Artha Graha
\textsuperscript{39} Results of interviews with Mrs. Riri, Legal Officer at Bank BRI Cab. Panakkukang
Guarantee ("KPR") facility, the collateral in the credit application is the house to be purchased. Where the bank conducts interviews with potential credit recipient customers, next, the bank will provide an explanation regarding the binding of the mortgage guarantee regarding the imposition of mortgage rights on the house certificate purchased, regarding interest, payment method and payment date. Meanwhile, to register mortgage rights, the bank will direct you to a Notary who is a partner of the bank.  

Banks apply Article 8 of the Banking Law to provide credit if they have confidence in the debtor's ability to repay the credit on time. Provisions regarding guarantees focus more on guarantees, which do not just promise to fulfil obligations but can be used as collateral for repayment. Five C analysis is used to assess debtors, the most important of which is the existence of collateral. Obtaining perfect economic and juridical values is indeed difficult, but having high economic values but not meeting formal juridical requirements is riskier. The bank has the juridical power to carry out execution actions if the debtor's credit goes bad, and the collateral can be sold or cashed in to pay off the debtor's obligations.  

The results of bank research in providing credit facilities have shown that prudential banking includes initial capital requirements and the ratio of capital to the possible risks it faces, LLL (Maximum Lending Limit), loan-to-deposit ratio (LDR) and overseas position (NOP), ratio minimum reserves, reserves for writing off productive assets (bad credit), bookkeeping transparency based on accounting standards and auditing. Even though this provision seems excessive, it shows that banks truly have a responsibility towards their customers. This is important for banks to maintain good and sustainable relationships with their customers. Because if a customer is harmed once, the customer will never trust the bank concerned. This is also relevant to the relationship between a bank and its customers, which is not just a debtor-creditor relationship, but, more than that, a relationship of trust (fiduciary relationship).  

The meaning of the principle of publicity in mortgage law is to give rise to material rights. In each Guarantee Institution, material rights are created in different ways. At the

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40 Results of interviews with several customers who received KPR facilities
Mortgage Rights Guarantee Institution, the birth date of the mortgage rights book is the seventh day after the complete receipt of the documents required for registration.\(^{44}\)

After the Land Office receives the APHT and other certificates, the registration process involves creating a land book for the Mortgage Rights, which is registered and records the existence of the Mortgage Rights in the land book and certificate of title to the land in question. Based on Article 13 paragraph (4) and paragraph (5) UUHT, the Mortgage Right is born on the date the land book is made; this means that from that day, the creditor officially becomes the holder of the Mortgage Right, with a special position (*Droit de preference*) in other words creditor who has the right to the object of the Mortgage Rights which is used as collateral which can be proven by the existence of a land certificate in question as the holder of the Mortgage Rights. To provide the same executorial power as a judge's decision which has permanent legal force, the Mortgage Rights certificate is given irah-irah by affixing on the cover the sentence:

"FOR JUSTICE BASED ON THE ALMIGHTY GOD."

By including these graphs, execution para te institutions can be used as regulated in articles 224 HIR and 258 RIB.\(^{45}\)

The collateral provider registers mortgage rights to provide legal protection and certainty for creditors. Land guaranteed by the collateral holder has binding force for the parties and third parties, and is proof that the land has encumbered rights. Dependents have a higher position compared to those born later, so the bank feels safe because it is guaranteed by law. The Universal Universal Housing Regulations (UUHT) regulate material guarantees, including land guarantees, and contain the legal principles of guarantees.

The principle of publicity aims to inform the public that the object of material collateral has been encumbered with mortgage rights. This can prevent transactions involving the transfer of debt collateral. The application of this principle is very urgent, as shown by Bank BRI and Bank Artha Graha.

Public awareness of encumbering certain goods or objects with material collateral can reduce the risk of obtaining these goods or items. The principle of publicity in registering material collateral also guarantees legal protection for the public, especially those carrying out legal transactions with objects used as collateral.


In this regard, preventive legal protection is important because preventing disputes is better than resolving disputes. Therefore, once again, it can be stated that the principle of publicity is part of the government's efforts and is, at the same time, by the theory of legal protection, which aims to protect the public from the possibility of disputes occurring in the future as a result of transactions with objects that are the object of a credit guarantee agreement.

Publicizing the objects used as material collateral will provide early information regarding the objects used as material collateral objects. Based on the explanation of the principle of publicity above, it can be emphasized that publicity of collateral objects, regardless of the form of collateral, is mandatory. If this is not done, it can cause losses to the community, because people who do not know can get lost in carrying out legal transactions with objects that are the object of collateral for the material.

6 CONCLUSION

The application of the principle of prudence in credit distribution is very important to ensure that the bank is always in a healthy condition, always in a liquid, solvent and profitable condition, especially in the distribution of funds with collateral for land rights. The application of the publicity principle is also very influential in determining the position of the bank, especially in taking back credit repayments. Therefore, the principles of prudence and publicity support the achievement of legal certainty for parties entering into credit agreements, especially in providing mortgage credit.

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