

## THE PRUDENTIAL PRINCIPLE AS THE BASIS IN IMPLEMENTING BANKING TRANSACTION

**Andika Persada Putera\***

### **Abstract**

Bank as financial institutions functioned as intermediary institutions in implementing transactions, and business activities are required to adhere to the prudential principle because bank business is full of risks, so it needs to be mitigated by implementing the prudential principle. This research is a normative juridical study using a statutory and conceptual approach with primary and secondary legal material sources which are analyzed by using deductive thinking methods. The conclusion is that there are various types of activities in banking, which are categorized into three, it is funding, lending and banking services, which are implemented in the form of transactions between bank and customers as the realization of contract execution. Bank is required to apply the prudential principle in carrying out all banking transactions and activities to protect the bank from business risks and protect public funds deposited in the bank.

### **Keywords**

Intermediation institutions, prudential principle, bank transactions.

---

\* Faculty of Law, Hang Tuah University

**Correspondence:** Andika Persada Putera, Faculty of Law, Hang Tuah University, Surabaya, Indonesia. E-mail: andika.putera@hangtuah.ac.id

## Introduction

Bank, as one of the financial institutions in Indonesia, has an essential role in national economic life to support national development in the context of creating a just and prosperous society. Bank performs their function as a positive catalyst in collecting public funds and allocate it to parties in need as a lending fund so that they are called as intermediary institutions. It is financial intermediaries from parties with excess funds (surplus units) with need-funds parties (deficit unit). According to Shelagh Heffernan, there are two answers to the question why a bank is an intermediary institution: "First, the presence of information costs undermines the ability of a potential lender to find the most appropriate borrower, in the absence of intermediation. Second, borrowers and lenders have different liquidity preferences" (Heffernan, 1996: 18).

In the provisions of article 3, Act of Banking, it is stated that the primary function of Indonesian bank is to collect and channel public funds, which is explained in article 1, point 2, Act of Banking, bank implements its business by collecting funds from the public as deposits and channelling them to the public in the form of credit. These two functions are the main business of a bank (core business bank) which is like two sides of a coin that cannot be separated from one another.

According to Ruddy Tri Santoso, the benefits of a banking institution as a financial intermediary are: first as a working balance, which is to support business transactions by facilitating the process of receiving and paying transactions. Second, as an investment fund, which is a place to invest from idle funds to obtain investment interest returns. Third, as a saving purpose, it aims to maintain the security of storing money physically and morally (inflation, devaluation and depreciation) (Ruddy, 1996: 5). The explanation from Kasmir is that bank as companies in the financial sector, so that banking activities are always related to the financial sector that collects public funds (funding) in the form of deposits, then these funds are returned to the public in the form of loans or credit (Kasmir, 2002: 23).

According to the provisions of Article 1, point 2 Act of Banking, a bank is referred to as a business entity that performs an intermediary function, of course, is business-oriented in order to gain profit. In order to support the intermediation function, bank carry out service activities so that they are also referred to as agents of services. So, the existence of bank is needed by individuals and business entities to support their needs, including improving their standard of living.

Bank as intermediary institutions and agents of services must act prudently in conducting banking activities so that there are no adverse risks, both to the bank itself and its customers. In banking, the obligation to be prudentially outlined in the prudential banking principle as the basis for banking in implementing its activities,

especially about the implementation of daily transactions that are full of financial risks such as lending, fund transfers, payments instalments.

Once the importance of the principle of prudence in banking is to support the existence of the principle of trust, an analysis of transactions in banking activities will be carried out and the prudential principle as the basis of these banking transaction implementations.

### Research Methods

The research method in this article is juridical normative, which analyzes norms and legal concepts related to problems by researching library materials as secondary data that is primary and secondary legal materials. Primary legal materials are Acts of Banking and other related acts and regulations, while secondary legal materials are in the form of books, journals, and others. The author used all of these legal materials to analyze the prudential principle as the basis of these banking transaction implementations.

### Discussion

#### 1. Transactions in Banking Activities

Article 6 Act of Banking states that the business of commercial bank includes: collecting funds from the public in the form of deposits, demand deposits, time deposits, certificates of deposit, savings, and/or other equivalent forms; give credit; issue a debt acknowledgement; buy, sell or guarantee at their own risk or for the benefit of and at the behest of their customers, namely notes, including drafts accepted by the bank whose validity period no longer than the custom in trading those documents, debt instruments and other trading papers which are the validity period is no longer than the custom in trading such securities, treasury bills and government guarantees, Bank Indonesia Certificates (SBI), bonds, commercial papers with a maturity of up to 1 (one) year, other securities instruments with a maturity up to 1 (one) year.

Besides, other commercial banks businesses also include transferring money both for their interests and for the benefit of customers, placing funds in, borrowing funds from, or lending funds to other banks, either by letter, telecommunication facilities or by display draft, check or other means. Others, receive payments from invoices for securities and perform calculations with or between third parties, provide a place to store securities, implement custodian activities for the benefit of other parties based on a contract, place funds from customers to other customers in the form of securities which are not listed on the stock exchange, implement factoring, credit card business and trustee activities, provide financing and/or perform other activities based on Sharia principles, following the provisions stipulated by Bank Indonesia and carry out other activities commonly carried out by bank as long as there is no contrary to this acts and the prevailing acts and regulations.

Globally, the implementation of banking business activities is categorized into three business activities as a bank product; those are funding (funding based), financing/lending based, and banking services (fee-based/services). The three bank products are implemented in the form of savings products, credit distribution and bank services needed by the public to support their personal lives and by business entities to increase their business. The three bank products will be meaningless if they are not in demand by the public; it means that people are not willing to make transactions with bank. Therefore, bank products must be made and created to meet the needs of the community so that people are interested in and make transactions with bank, such as applying for credit, saving funds such savings or deposits or making other transactions related to bank services.

The public who deals with or makes transactions with bank are called customers, as stated in Article 1, point 16 that customers are parties who use bank services. In particular, Article 1, number 17, and number 18 Act of Banking divides customers into two terms: it is depositing customers and debtor customers. Deposit customers place their funds in the bank in the form of deposits, while debtor customers obtain credit facilities. Besides, there is a term of customer that is not regulated in the Act of Banking but regulated in Bank Indonesia Regulation Number 14/27 / PBI / 2012, which is called walk-in customer (WIC). It is parties who use bank services but do not have an account at the bank, does not include parties who receive orders or assignments from customers to conduct transactions on behalf of customers. So, these customers are the ones who carry out daily transactions with the bank.

In order to get a clearer understanding of what is meant by a transaction, the following definitions are:

- a. Act Number 8 the Year 2010, on the Prevention and Eradication of Money Laundering (Act of *TPPU*), in Article 1 Number 3 defines transactions as all activities that give rise to rights and/or obligations or cause a legal relationship between two or more parties.
- b. Black's Law Dictionary: Transaction is the act or an instance of conducting business or other dealings; especially the formation, performance, or discharge of a contract; Something performed or carried out; a business agreement or exchange; Any activity involving two or more persons.
- c. R. Subekti and R. Tjitrosudibio in the Legal Dictionary states that transactie is an agreement in the trade sector (Subekti, 2002: 106)

Transaction in banking is routine daily activities performed by bank and customers to have a legal relationship between the two. The meaning of activity is a routine banking activity related to bank products that the bank and customers performed jointly according to their rights and obligations. Implementation of transactions indirectly is a manifestation of the execution of contracts between the parties. Moreover, as the main requirement for conducting transactions in banking, each transaction must be made in

writing as transaction evidence if a dispute happens in the future. The implementation of these transactions requires supervision as a form of the implementation of good corporate governance as well as fulfilling the prudential banking principle (Andika, 2020: 133). Therefore, transactions in banking include bank related activities where bank as a business entity that offers bank products to customers as users of the bank's products and between the parties with a contract that creates a legal relationship as rights and obligations between the parties.

## **2. The Prudential Principle in Implementing Banking Transactions**

Bank business is a risky business; in this case, bank must apply the principle of prudence in business transactions and carry out their business activities as an inherent obligation since the bank firstly founded. As it is said that "Based on the central functions of the banking system, it can be understood that bank as financial institutions have a variety of risks that will be caused. Therefore because of such bank functions, the implementation of prudential principle in banking must be implemented." (Shahid, 2019: 337). The prudential principle as the main principle in banking activities is closely related to public trust; it means the public trust will grow and develop if banking transactions and activities always apply the prudential principle. Thus, it is said that the prudential principle confirms to the bank to have responsibility for its customers. It is important for bank in order to maintain good and sustainable relationships with customers. Bank in trust relationships carry out the provision of information. If the customer is harmed once, then forever, the customer does not trust the bank concerned. The concept of the relationship between the bank and the customer is not a debtor-creditor relationship, but as a trust relationship" (Bisdan, 2019:317).

According to Rudhi Prasetyo, the prudential principle comes from the word prudent, which is defined as wise inaction or judgment, which is wise in carrying out actions or judgments (Trisadini, 2010: 20). Furthermore, in the Black Law Dictionary, the term prudent is defined as circumspect or judicious in one's dealings; cautious. However, the definition of the formal definition of prudential principle is not found in the Act of Banking or other relevant acts and regulations.

The use of the term prudential principle is contained in Article 2 and Article 29 paragraph (2) Act of Banking, where the formulation of Article 2 states that "Indonesian banking in conducting its business based on economic democracy using the prudential principle". Furthermore, in the formulation of Article 29, paragraph 2, "Bank is required to maintain the soundness level of the bank following the provisions of capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other aspects related to bank business. It is also required to conduct business activities according to the prudential principle. "In its explanation, the prudential principle must have adhered firmly, and bank is required to implement an internal supervision system to ensure the implementation of decision-making processes in bank management following the prudential principle. It is because the

bank mainly works with public funds deposited in bank based on the trust. Every bank needs to continue to maintain its health and maintain public trust in it.

Although the prudential principle in the act of Banking is not formally defined and there is no comprehensive definition since it is comprehensive in scope, the prudential principle explicitly emphasizes that bank is always vigilant and always maintain the level of bank soundness, capital adequacy and liquidity, asset quality and management, profitability and other aspects related to bank business. So, the application of the prudential principle is related to all aspects of banking to protect public funds and create a healthy bank condition (Andika, 2019: 34).

In this context, Paripurna P. Sugarda explained that prudence is a concern for risk or wise in dealing. At the same time, as a measure, if someone is entrusted a mandate to manage money, she or he must run it properly, which is measured by giving attention, knowledge, capacity, to apply her/his knowledge and policies at a certain level required to protect the interests of bank and the public. The point is not to implement the mandate carelessly (Paripurna, 2008: 196). Sutan Remy Sjahdeini explained that bank must carry out the principle of prudence not only in order not to harm customers but because of the particular position of the bank in society as part of the monetary system related to the interests of the community (Sutan, 1995: 7). According to Asikin, the application of the prudential principle by bank in implementing their business activities will not only protect the interests of the people who deposit fund, but also support general economic activities, and expected to be able to create national stability (Asikin, 1995: 7).

So, the prudential principle is a principle which states that in performing its functions and business activities, a bank needs to be prudent in order to protect public funds entrusted to it. Therefore, there is no reason for a bank not to apply the prudential principle, so that all of its policies must always be based on statutory regulations. In line with Trisadini Prasastinah Usanti's opinion, the prudential principle as a risk control in banking through the consistent application of applicable laws and regulations (Trisadini, 2010: 19). Thus, "The prudential principle requires the bank always to be careful, consistent in implementing the laws and regulations of banking, professionalism and good faith. The regulation of banking prudential principle involves banking services as well as in the collection and distribution of funds in the form of a credit to the public" (Bisdan, 2019: 317).

Considering the importance of implementing prudential principle as a means of anticipating all forms of risk in banking, understanding the meaning of the prudential principle is necessary which must be interpreted as a form of bank compliance with all relevant acts and regulations, including compliance with operational systems and procedures, and other bank policies. In this case, Neni Sri Imaniyati explained, prudential principle a principle that emphasizes bank in implementing their business activities, both in raising funds, especially in channelling funds to the public, must be very careful and comply with the provisions and legal norms in banking. (Neni, 2010:



17). The benefits if a bank implements prudential principle include: the bank can protect depositors of funds, provide safe services, well maintained-health level of the bank, increase public confidence, and create monetary stability.

The application of the most important prudential principle is the application of lending activities because it is the core of the bank's business as a support for the bank to gain profit. Based on Andi Soemantri's opinion, bank in providing funds to the public, including credit or loans, is one of the sources of bank income because the business much depends on credit as business capital (Andi, 2016: 37). Besides, because lending funds originate from public savings funds, bank must be extra careful and obliged to implement in-depth analysis before the credit granted to gain confidence that the debtor has good faith and the ability to pay according to the agreement.

In Article 8, Act of Banking and its elucidation, it is stipulated that analysis or assessment of debtors known as the 5 C's analysis of credit includes an assessment of character, capital, capacity, collateral and business prospects (economic condition). According to Mariam Darus Badruzaman, the prudential principle in banking practice is interpreted in two senses, it is, first, related to debtor performance, so that before lending, bank is required to check and investigate the quality of prospective debtors. Second, related to credit collateral if the debtor is default (Mariam, 1983: 72). Suppose a bank does not have confidence that the debtor has good faith and the ability to pay, in this case, of course, the bank will not provide credit. Based on this case, the prudential principle has played a role since the beginning of the credit process, whether credit will be granted or not. So that the aim of implementing the prudential principle, according to Rachmadi Usman, is that bank is always in a healthy, liquid and solvent condition, and it is expected that the level of public trust in banking remains high, people are willing and not hesitate to deposit their funds in the bank (Rachmadi, 2001: 19).

Thus, the importance of implementing prudential principle in banking transaction activities, particularly in lending, is related to the banking function as an intermediary institution. If it does not work well, it will have an impact on the macroeconomy, which can result in financial system stability. Funds managed by the bank for lending are public funds so that the bank is obliged to return it to the community who owns the funds at the specific time according to the agreement. The bank is required to ensure that the lending does not cause losses to the bank due to bad credit. It is necessary to understand that uncontrolled lousy credit of a bank not only reduces bank revenue but can further cause the bank to collapse (collapse). Thus, it is said "The prudential principle is used as indirect protection by bank against the interests of depositors and against the interests of the bank itself for the risk of potential losses arising from the bank business activities. The application of the prudential principle is an internal prevention effort and action by the bank concerned" (Bisdan, 2019: 317).

## Conclusion

There are various types of activities in banking that can be categorized globally into three; it is funding, lending and banking services. These activities are implemented in

the form of transactions between bank and customers. Bank as financial institutions and it is a risky business, so the bank is required to apply the prudential principle in implementing all banking transactions and activities, especially in lending to protect the bank from business risks and protect public funds deposited in the bank.

## References

- Andika Persada Putera, *Hukum Perbankan, Analisis Mengenai Prinsip, Produk, Risiko Dan Manajemen Risiko Dalam Perbankan*, Scopindo Media Pustaka, Surabaya, 2019.
- Andi Soemantri, *Bank & Lembaga Keuangan Syariah*, Kencana, Jakarta, 2016.
- Asikin, *Pokok-Pokok Hukum Perbankan*, Raja Grafindo Persada, Jakarta. 1995.
- Bisdan Sigalingging, et.all, *Prudential Principle of Through Bail-In Scheme on Problem Systemic Bank Handling*, Advances in Social Science, Education and Humanities Research (ASSEHR), Volume 208, 2019.
- Garner, Bryan A. Garner, *Black's Law Dictionary*, Eighth Edition, West Publishing Co, U.S., 2004.
- Kasmir, *Bank dan Lembaga Keuangan Lainnya*, Edisi Keenam, Raja Grafindo Persada, Jakarta, 2002.
- Mariam Darus Badruzaman, *Perjanjian Kredit Bank*, Alumni, Bandung, 1983.
- Neni Sri Imaniyati, *Pengantar Hukum Perbankan Indonesia*, Refika Aditama, Bandung, 2010.
- Paripurna P. Sugarda, *Kontrak Standar: Antara Prinsip Kehati-hatian Bank dan Perlindungan Nasabah Debitur*, Mimbar Hukum, Volume 20, Nomor 2, Juni 2008.
- Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2001.
- Ruddy Tri Santoso, *Kredit Usaha Perbankan*, Penerbit Andi, Yogyakarta, 1996.
- R. Subekti dan R. Tjitrosudibio, *Kamus Hukum*, Pradnya Paramita, Jakarta, 2002.
- Shelagh Heffernan, *Modern Banking in Theory and Practice*, John Wiley & Sons, England, 1996.
- Sutan Remy Sjahdeini, *Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia*, Institut Bankir Indonesia, Jakarta, 1993.



Trisadini Prasastinah Usanti, *Karakteristik Prinsip Kehati-hatian Pada Kegiatan Usaha Perbankan Syariah*, Disertasi, Pascasarjana Universitas Airlangga, Surabaya, 2010.

Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan. Lembaran Negara Tahun 1992 Nomor 31. Tambahan Lembaran Negara Nomor 3472.

Undang-Undang Nomor 10 Tahun 1998 tentang Perubahan Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan. Lembaran Negara Tahun 1998 Nomor 182. Tambahan Lembaran Negara Nomor 3790.

Undang-Undang Nomor 8 Tahun 2010, Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. Lembaran Negara Tahun 2010 Nomor 122. Tambahan Lembaran Negara Nomor 5164.

Peraturan Bank Indonesia Nomor 14/27/PBI/2012, tentang Penerapan Program Anti Pencucian Uang Dan Pencegahan Pendanaan Terorisme Bagi Bank Umum.

Journal

Putri, M. (2020). Legal Efforts of Banks and Buyers on Discharging the Collateral Object for Auction that is Still Occupied. *Hang Tuah Law Journal*, 4(1), 71-81. doi: <http://dx.doi.org/10.30649/htlj.v4i1.154>

Andika Persada Putera, Prinsip Kepercayaan Sebagai Fondasi Utama Kegiatan Perbankan, *Jurnal Hukum Bisnis Bonum Commune*, Volume 3 Nomor 1 Februari 2020.

Syahid Suhandi Aziz, Bambang Utoyo, Analysis of the Implementation of Prudential Banking Principle in Overcoming Problematic Financing Management in Muamalat Indonesia Banks in 2013-2017, *International Journal of Innovative Science and Research Technology*, Volume 4, Issue 4, April-2019.