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by Prawitra Thalib Hilda Yunita Sabrie And Faizal Kurniawan

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ABSTRACT

Commercial Bank is part of a national banking system that has a primary function as the collector and the distributor of funds. The specific task of the commercial banks are as follows: the bank must distribute most of the credit for developing the activities of the cooperatives and entrepreneurs economically weak or small entrepreneurs, the public banking that provides credit in foreign currency required to distribute some the foreign currency credit to finance the activities of non-oil exports and required to perform an assessment of the fulfillment the terms of the feasibility of the debtor's business. In carrying out its functions, the bank must still run banking principles contained in the articles contained in the Banking Act. It is often in distribute the credit, the bank requires the third party, such as the insurance companies. The purpose of insurance companies is to minimize the risks that may be experienced by the bank as debtors failed to pay. The bank is very concerned with their insurance company. There are various types of loans that cannot be separated by the insurance, this study focuses on consumer credit in PT. Bank Jatim. In practice, especially consumer credit lending cannot be separated from the role of the insurance companies. But in operating the business, the insurance companies should also continue to apply the principles of general insurance. The application of the insurance principle is intended that no aggrieved parties. Even so, sometimes there will be a conflict of interest between the application of the principles of insurance carried by the insurance company as an insurer with the business aspect of the field of insurance and banking. This issue is used as research study, whether the principles of the general insurance have actually been applied in helping the consumer loan portfolio to the community.

Keyword: Credit, Consumer Credit, Banks, Insurance Companies, Insurance Principles

1. Introduction

The existence of a bank function at this time cannot be underestimated because the bank is one of the most important aspects in advance of development in Indonesia. Beside being a collector of public funds, banks as well as funds distributor (credit) to the people who are focused on developing the business in the form of working capital or investment. This will stimulate economic growth both from small scale to large scale, where the economic development in Indonesia will create job opportunities more broadly, push the level of poverty, the investors who will invest their capital also increase and indirectly welfare community too.

¹ Faculty of Law, Ailangga University, Jl. Dharmawangsa Dalam Selatan, Surabaya, East Java, Indonesia, 60286

*Corresponding author.

E-mail address: prawitra@fh.unair.ac.id

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Besides distributing the business loans to the public or in this case to the employers, banks also facilitate people with this type of consumer credit. From the name, it is clear that the credit given by the bank is not used for business purposes, but it is used for public consumption (non business). This means that the debtor is free to use the money lent by the bank credit in any form. For examples, for school fees, Umrah, cost of treatment (outpatient / inpatient) in hospitals and so forth. Whatever the type of of the loans, the rights and obligations of the parties are the same. In general, the obligation of t the bank is to do proper analysis before granting credit to debtors, then if it has been deemed worthy, give / bestow funds through the account debtor. While the debtor obligation is to inform the real required by the bank and pay the credit of (principal and interest) on time.

The credit agreements made by the bank due to the collateral that is given by the debtor to the bank. Although some types of loans that do not use the collateral, unsecured loans (KTA), but the interest charged by the banks is also very high. Collateral is the guarantee given by the debtor to the bank, where if the debtor defaults, the bank has the right to acquire ownership of collateral that was pledged to the bank. The Collateral can be either tangible and / or intangible. Wherein each binding and the treatment are differ.

This research will be focused only on the consumer credit, since the credit is a type of loan that is more "soft" related preconditions put forward by the banks. The interest offered by banks is relatively high and the maximum loan is less than Rp.500.000.000,00 (five hundred million). Specifically, there are several conditions for the consumer credit, one of which is the debtor is obliged to insure his life. The bank usually has established a cooperation with the insurance companies for the undertaking of the debtor's take consumer credit. With such cooperation, the debtor makes a loan agreement with the bank then immediately direct the debtor insure their life to the insurance company designated by the bank. Therefore, the debtor could not refuse because it is a condition that must be met. Upon receipt by the debtor of the credit premium that must be paid directly by the debtor, in this case also acts as the insured.

In general insurance provision, the insurer in the above still need to implement the principles of the existing insurance. The insurance principle used is credit insurance (life plus), because in this case, the insurer will cover the remaining credit of the debtor if the debtor dies. The purposes is when the debtor dies then the family of the debtor is not charged on the remaining credits owned by the debtor, the bank would also be more secure in lending this type. Nevertheless, the two sides in the insurance agreement must equal protection before

the law². Based on the description of the background of the problems above, the issues to be studied are:

1. What is the credit insurance (life plus) in conjunction with the provision of consumer loans by banks?
2. What are the principles of insurance in general has been applied in the provision of consumer credit by banks?

2. Materials and Methods

The approach of The Problems

This research is a normative legal research (doctrinal research). The study critically analyzes the application of insurance principles in general when the bank provides consumer loans to debtors. There are two approaches used in this study:

- (1) The conceptual approach;
- (2) The statute approach;

The Source of Legal Material

The sources of legal materials used in this research is the primary legal materials that include the legislation in force, in particular, as well as various other regulations related, while the secondary legal consists of the literatures, the researches result, the scientific journals related to problems studied.

The Method of Legal Materials Collection

The collection of legal materials in this research is performed through the process of inventory and identification of primary and secondary legal materials comprehensively. Further, the legal materials obtained logically and systematically classified in accordance with the problems to be studied and the research purposes.

The Method of Processing and Analyzing the Legal Materials

This research was conducted through several stages that include:

1. The first stage is to list the topics related to the formulation of the problem.

²Zahry Vandawati, *Perlindungan Hukum Tertanggung dan Tanggung Jawab Penanggung dalam Perjanjian Asuransi*, PT RevkaPetra Media, Surabaya, 2015, h.26.

2. The second stage is to invent the primary and secondary legal materials relating to the issues to be studied.
3. The third step is to analyze the legal materials that have been inventoried in order to obtain the solution to the issued and conduct an interview with PT. Bank Jatim.
4. To processed the legal materials obtained qualitatively and analyzed prescriptive - analytically through the study of literature and documents to answer the problem of the studied and provide recommendations on the application of insurance principles associated with the provision of consumer credit by the bank.

3. Results and Discussion

3.1. The Understanding of Life Insurance Credit (Plus)

The banking industries have undergone major changes in recent years. It have become more competitive because of the deregulation increasingly well established. Currently, the bank has the flexibility associated with the services they offer, the location in which they operate, as well as the rates they pay for their depositors³. Bank is a financial intermediary institutions are generally established with the authority to accept deposits, lend money, and issue promissory notes or what is known as a banknote. according to the Law of the Republic of Indonesia Number 10 of 1998 concerning amendments to the Law No. 7 of 1992 on Banking, hereinafter the Banking Law, Bank is an entity that collects funds from the public in the form of savings and distribute them to the public in the form of credit or other forms in order to improve the standard of living of the people.

According to the Banking Law, it can be concluded that the banking business includes three activities, namely collecting funds, distribute funds, and provides other banking services. The main activities of the bank are to collect and distribute the fund, while the other bank service is only support activities. The activity to collect funds, in the form of gathering funds from the public in the form of demand deposits, savings and time deposits. The activity to distribute the funds, in the form of credit or financing to the public. The credit distribution is governed by Article 1 point 11 of the Banking Act that credit is the provision of money or bills can be equated with it, based on agreements borrowing and lending between banks and other parties who require the borrower to repay the debt after a certain period of time with interest. This is in line with commercial bank regulated in Article 6 of the Banking Act.

³ anakbungsu-kuniadi.blogspot.com/2011/02/makalah... Blog Aji Kuniadi, Makalah Devinisi Bank dan Peran Bank Indonesia, 27 Februari 2011 /diakses pada tanggal 8 Agustus 2016, pukul 21.15/

The other banking services are organized to support the operation of main activity. In its activities, there are several parties involved in addition to banks. Among other parties who have funds excess and those who need funds. The parties that excess funds or often called a third party can keep their funds in the form of demand deposits, time deposits, savings, or other forms equivalent to them. Fund deposits of excess or surplus fund called the Third Party Fund (DPK). While those who need the funds, the bank will provide loans to the third party to such parties. In brief, the bank receives funds from short-term deposits to be loan with a longer term.⁴

The bank services is very important in the economic development of a country, it can be seen from the functions of banks, as set out in the Banking Act. The function of the bank would be able to realize certain goals or benefits if it is performed maximally. Here are some benefits of banking in our life:⁵

1. As an investment model, which means that derivative transactions may be used as one model of investing. While generally a type of short-term investments (yield enhancement).
2. As a way of hedging, which is means that derivative transactions can serve as one way to eliminate the risk by hedging (hedging), or also known as risk management.
3. The price information, which is means that derivative transactions could serve as a means of seeking or providing information about certain commodity prices in the future (price discovery).
4. Speculative functions, which is means that derivative transactions could provide an opportunity speculation (speculative) to changes in the market value of such derivatives transactions.
5. The management function of production runs smoothly and efficiently, which means that derivative transactions could give an idea to the management of the production of a manufacturer in assessing a demand and future market needs.

Apart from the main function of the bank or its derivatives, then to be considered for the banking world, is philosophically purpose of the existence of a bank in Indonesia. This is very clearly reflected in Article 4 of the Banking Act which regulates the "Bank Indonesia aims to support the implementation of national development in order to improve equity,

⁴ Hadi Eko Hartono., *Pengaruh Suku Bunga Pasar Terhadap Jatuh Tempo Dana yang Dihimpun dan Dana yang Disalurkan Oleh Perbankan*, Universitas Indonesia, Jakarta, 2010, h. 2

⁵ Op.cit

economic growth and national stability towards improving the welfare of the people". Look a little deeper on the business activities of the bank, then the bank (banks) Indonesia in the conduct of its business should be based on the principles of economic democracy which uses the precautionary principle. The foregoing clearly delineated as philosophically bank has a micro and macro functions to the process of nation building. At macro-economic level is a tool bank in setting monetary policy while at the micro-economic level the bank is a major source of financing for entrepreneurs and individuals.⁶ The allocation of substantial funds for lending banks require significant financing, because otherwise, it would disturb the bank's liquidity. Each credit expansion plan should be supported by additional capital, because if not then the credit expansion will impact on decreasing the bank's CAR. So, it is important for bank management to determine the capital structure policy in support of operational activities of banks, especially in lending. But of course in the activities of credit facilities to debtors, banks bear the risk is not small. The most obvious risk is of bad loans that might arise, both in terms of business and on the side of the debtors.⁷ This will impact on the liquidity of the bank, either directly or indirectly. The credit function in the life of economy and finance in outline is as follows:⁸

1. To increase the utility of money. The credit may increase the usefulness of money. It means that if the money just kept alone will not produce anything useful. By given the credit, the money will be useful to produce goods / services by the creditor.
2. To improve the usability the credit given by the bank will be used by debtor to process useless items to be usefull.
3. The credits can improve traffic circulation and money. In this case the money given or distributed will spread from one area to another so that a defisit area may have additional money from other areas by the credit.
4. Improve the circulation of goods credit can also add or facilitate the flow of goods from one area to another, so that the amount of goods circulate from one area to another is rise or the credit may also increase the amount of goods circulating.
5. As a means of economic stability by providing credit, because of the presence of loans will increase the amount of goods needed by society. Then the credit also to be able in exporting goods to other countries so increase the foreign exchange.

⁶ Konch, Timothy W, Mac Donald, S. Scot, Bank Management, Fourth Edition, Orlando, The Dryden Press, Harcourt Brace College Publishers, p. 2000

⁷ Rennywati Siringoringo, Karakteristik dan Fungsi Perbankan di Indonesia, Buletin Ekonomi Moneter Perbankan, Juli 2012, hal. 68

⁸ Kashmir, Bank dan Lembaga Keuangan Lainnya, Jakarta, 2001, h. 97

In banking practice, the credits granted to customers can be seen from various aspects, as follows:⁹

a. According to the time period

In terms of time period, there are three kinds of loans are short term loans, medium-term and long-term. The so-called short-term loans are loans with a maturity of a maximum of one year. A medium-term loan with a maturity of one year till three years, while long-term loans more than three years time.

b. According to the utility,

From the use, the credit can also be classified into three categories namely:

c. investment credit,

The loans to customers for the purpose of investment is the expansion, modernization and rehabilitation of the company.

d. Working capital credit,

Loans are intended for the benefit of customers the smooth working capital, so the goal of this credit to finance customers' business operations.

e. Profession credit,

Loans granted to customers solely for the benefit of the profession. For example loans granted to a doctor to buy some medical equipments. Though the name is professional credit, but the credit is actually no different from investment credit, which differ only in the position (status) of the customers.

6. According to its use

a. Consumer loan. Consumer loans are loans given to customers to meet the needs of everyday life.

b. Productive loan. In this productive loan, the bank financing intended for the customer's business in order to increase productivity. The productivity can be any form of credit investment credit and working capital loans, credit is given for both the customer to increase the productivity of their business.

7. By sector financed,

Besides an assortment of credit referred to above, there are several kinds of customer loans financed viewed from sector banks, as follows: trade credit, agricultural credit, the credit industry, etc. The various types of business activities resulted in the need for different types of credit needs. In practice, the existing credit in the community

⁹ Pustakabakul.blogspot.com/2013/7-jenis-jenis-kredit-atau-pproduk-kredit/di-akses-tanggal-8-Agustus-2016,-pukul-22.00-wib

consists of several types, as well as the provision of credit facilities by banks to the public. The division of committed credit facilities by banks is to achieve specific goals and objectives given, any kind of business has a miscellaneous characteristic.

In general, the types of loans extended by banks and in many aspects are:¹⁰

1. Aspects of usability.

The meaning of aspects of usability is to look at the use of the money whether to be used in the main activity or just an extra activity. And in terms of usability, there are two types of loans:

- a. investment credit. Loans are typically used for business expansion or building projects / new plants and usually uses this credit is for the main activities of a company.
- b. Working capital credit. The loans are used for the purposes of increasing production in operation.

2. Aspects of purposes

This type of credit views of the purpose of using a credit, whether aiming to return cultivated or used for personal purposes.

- a. Productive credit. The credit used to increase the business or production or investment. This means that this credit is used for cultivated to produce a form of goods and services.
- b. Consumptive credit. The credit is used for consumption or used individually. In this credit is no accretion of goods and services produced.
- c. Trading credit. is a credit that is used for trading activities and usually to buy things which payment is expected from the sale of the merchandise.

3. Aspects of time period

In terms of time period, it means that the length of the first crediting start once given to this kind of credit repayment period is:

- a. Short-term credit. This credit is a loan with a term of less than one year, or at least 1 year and normally used for working capital purposes.
- b. Medium-term credit. The term of credit ranging from 1 year to 3 years, this type of credit can be given for working capital. Some banks classify loans into long-term credit medium.

¹⁰ Kasmir, Op.Cit., h. 100

- c. Long-term credit. is the longest repayment period is above 3 years or 5 years. Usually these loans are used for long-term investments such as rubber plantations and also to consumer loans such as housing loans.

4. Aspect of collateral

In terms of collateral means is any provision of a credit facility to be covered by a goods or securities minimal worth of loans. These loans consist of:

- a. Loans with collateral. Loans granted to a specific collateral. Collateral can be in the form of goods tangible or intangible. This means that any credits issued will cover worth of guarantees given debtors.
- b. Loans without collateral. Loans granted without collateral goods or a particular person. This type of credit is given to the prospect of business, character and loyalty debtors for dealing with the bank concerned.

5. Aspects of business sectors.

Each sector has different characteristics, therefore the provision of credit facilities was different. Types of credit when seen from the following business sectors:

- a. Industrial credit, namely credit for the finance industry both for industrial processing of small, medium or large.
- b. Credit is given to the profession among professionals such as teachers, doctors or lawyers.

6. Other business sectors

In line with the topics discussed by the author, the type of credit that will be described further is consumer loan. The provision of consumer losn can be found in most of the state banks or private banks, national / foreign. One of the banks that have or skim types of consumer credit is PT Bank Jatim, Ltd (hereinafter referred to as the Bank Jatim). The scheme of Multiguna loan, is intended for civil servants and members of parliament of East Java province and Surabaya. In general lending, bank would still have to run the precautionary principle, which uses the principle of 5 C, Risk Management, and the Maximum Lending Limit (BMPK).

The most common thing we have seen in the precautionary principle is the 5 C principles are character, capacity, capital, collateral and economic condition of which the explanation is as follows:

1. Character relates to personal debtors such as habits, honesty, way of life, accuracy and perspective and so forth.
 2. Capacity (ability), directly related to the ability of prospective debtor // skills involved in running the business.
 3. Capital, the debtors are required to have the initial capital to the bank in this case only falsifies effort.
 4. Collateral), the banks as creditors ask for collateral in the form of collateral property of debtors such as land, houses and motor vehicles. As security when debtors fail to pay.
 5. Condition of economic (economic conditions), predictions of economic circumstances in the future or economic circumstances beyond the ability of debtors.
- The application of the principle set forth in Article 8 of the Banking Act as follows:
- a. In providing credit or financing based on Sharia Principles, commercial banks are required to have confidence based on deep analysis or goodwill and the capabilities and capacities of the Customer Borrower to repay the debt or restore the financing referred to in accordance with the agreement.
 - b. Banks are required to have and implement guidelines for lending and financing based on Sharia principles, in accordance with the provisions stipulated by Bank of Indonesia.

However, without prejudice to the above, specifically for consumer credit, the application of the precautionary principle is not optimal as compared with working capital loan or investment loan. It is influenced by several factors such as consumer credit is a micro-credit and small, debtors do not provide collateral as contained in the working capital loan or investment loan such as home and land or other motor vehicles.¹¹ Then the consequences are of interest offered by banks for consumer loans is certainly greater than other types of credit schemes. Then, due to the absence of collateral, the bank did not conduct a survey of the collateral. The next factor analysis conducted by the bank was very simple, just depends on the salary of debtors who deposited entirely in the bank account in question and each month will be deducted through a personal account (auto debit) for each loan installment during the time period specified. The last factor is that any consumer credit, it will cover credit life

¹¹ See, Pasal 1 angka 23 UU Perbankan tentang agunan (agunan adalah jaminan tambahan yang diserahkan Nasabah Debitur kepada bank dalam rangka pemberian fasilitas kredit atau pembiayaan berdasarkan Prinsip Syariah

insurance (plus), as risk aversion by banks to insurance companies if the debtor fails to pay. Here is a chart related to the procedure or procedures for granting consumer loans (Multiguna Loan) at PT Bank Jatim to prospective debtor: ¹²

The prospective debtor fill the application form of consumptive loan prepared by the bank, including ID card, family card, payslips, etc



If all complete, the bank analyze and verificate data of age, terms of loan, obtained salary in comparison with the propose loan



Reject with certain reasons



Proposal process, by signing the loan agreement, and pay the provision, administration and insurance.



Debtor give the state member card as the collateral and have the right to get the loan agreement copy



Bank agree the proposal of the debtor

¹² Interview with Credit Officer PT Bank Jatim Branch Malang, tanggal 9 September 2016

In the chart above can be explained that the prospective borrower fill out credit application form and completing other administrative requirements (KTP, KK, payslips, letters of recommendation from the treasury and agency heads, cards PNS). Then after a complete debtors give form and requirements to bank officer then directly in the process. If the results of the verification does not qualify then the credit application of the debtors will be rejected by a bank officer. If disqualify the debtors can immediately sign a credit agreement multipurpose. But before signed, the clerk read out the contents of a credit agreement such as the number of installments per month, period, date auto debit, costs that must be paid is the cost of administration, facility fees and insurance premiums.

Forms of credit agreements are standard agreements, even in the banking law to say that the credit agreement granted on the basis of an agreement between the bank lending to debtors. Credit agreements made by the banks and the debtors can take the form of a treaty under hand or can also form notarized agreement, which is generally made in the form of a standard agreement or standard agreement. In this case the bank has set up the form loan agreement that contains the clauses by the bank in a printed form.¹³ Once signed debtors, bank officers provide a copy of the credit agreement multipurpose copy and debtors are required to provide civil servants card as collateral until the loan is paid off if all the requirements have been fulfilled then the officer will do the disbursement of the next day. In the chart can also be seen that the debtor is required to pay insurance premiums with a nominal adjusted by the amount of credit and term loans granted by the bank. The purpose of insurance is to ease the burden on the insured party who suffered loss if an incident is uncertain to obtain compensation from the person in such a way that:¹⁴

1. Insured avoid large losses or go bankrupt, so that later they can continue their life before the occurrence of uncertain events / such losses;
2. Returns insured to its original position or before the occurrence of uncertain events / losses.

In the context of the provision of skim types of consumer credit by banks to debtors, bank loans insured with credit life insurance (plus). If the debtor during the term of the credit decision-experience events that would not have died, the heirs through a bank able to claim

¹³ Sutan Remy Syahdeni, *Aspek Hukum Hubungan Bank dan Nasabah Kebebasan berkontrak dan perlindungan yang Seimbang Bagi Para Pihak Studi Mengenai Perjanjian KreditBank di Jakarta*, Disertasi, Universitas Indonesia, 1992, hal. 211

¹⁴ Radiks Purba, *Mengenal Asuransi Angkutan Darat dan Udara*, Djambatan, Jakarta, 1997, hal. 3

his remaining credits to insurance companies. This means that as long as the terms are determined by the insurance company has a complete fulfilled by the heirs of the insurance company shall pay the remaining credit of the debtor as a whole. Especially for legislators East Java province / city of Surabaya this insurance applies not only to the soul alone but included if the member is undergoing a process of Time Shift (PAW), length of less than 5 years and position shall be replaced by the other party. Here's the procedure for filing an insurance claim when the debtor dies and still have any credits in the bank: ¹⁵

1. The heirs reported ¹⁹ that the debtor dies to the bank;
2. The bank clerk gives the requirements for submission of claims to the heirs such as KTP, KK, a letter of introduction from the family, a death certificate from the village, a statement from the hospital (if the debtor has died in hospital), a certificate from the police (when debtor dies due to accident), marriage certificate (if the debtor is married).
3. The heirs completing administrative requirements demanded then handed the bank officer;
4. The bank clerk check the remaining credit debtors then attach the policy on behalf of the debtor and all the administrative requirements for filing a claim and send it directly to the insurer (insurance company).
5. The insurer perform verification, if declared complete, the insurer sends funds of credit remaining debtors to the bank.
6. If the verification result is not yet complete, the insurer will send the information to the bank and the bank will contact the heirs to complete the requirements.

Based on the procedure for filing an insurance claim, ³⁰ it can be concluded that there are three parties involved in the credit life insurance agreement (plus), namely:

1. The insurers is the insurance company
2. The insured is debtor
3. The Bank is a third party interested

The third parties cannot be separated from one another as interrelated with a series of loan applications up to the claim if the debtor dies during the credit period taken. That is also true bank debtor as the insured, where credit is taken by the bank have been insured by an insurance company (insurer). This is done by the bank to secure its position as the bank has

¹⁵ Interview with credit officer PT bank Jatim Branch Malang tanggal 9 September 2016

disbursed funds to the debtor, where the debtor is not required to provide collateral as security. So that the function of credit life insurance (plus) here as the party receiving the division of risk from the bank.

3.2. Principles of Insurance in the Consumer Lending by Banks

There are some cases that often occur in the insurance agreement problem in Indonesia. Such as non-payment of the claim that the proposed insured to the insurer for certain reason. Where sometimes it is not always the fault insurer alone, but can also because there is a fault of the insured. So, most people still see the eyes of the insurance program. But since the government program of the National Health Insurance program is applied through the Social Security Agency (BPJS), at present most of Indonesian people already have health insurance and / or employment insurance. Although this type of insurance is a compulsory social insurance that participation is "forced" because of the mandated legislation. Increasing popularity insurance program along with public awareness related to the presence of disease, natural disasters and other risks that allow each individual to experience it. This was followed by the insurance company (insurer) who offer insurance products more attractive and innovative so it is expected many people to insure the insurance object owned.

Of course, in implementing the insurance agreement until its implementation should still follow principles of general insurance. There are four principles in general insurance should be applied in relation to the insurance agreement. The first principle is the principle of insurable interest or often called the principle of interest. In the KUHD, this principle set out in Article 250 KUHD, describing the "interested party" as follows: If a person who has held the insurance for himself, or if one, which for him has held an insured, at the time of holding the insured has no interest in the insured's goods, the insurer is not required to provide compensation.

The second principle is the principle of Indemnity which according to this principle declares that the purpose of insurance agreement is to provide compensation for the loss suffered by the insured caused by hazards as specified in the policy. The insurer was willing to pay compensation amounting to the value of the real losses suffered by the insured, not more. This can be attributed to the function of insurance is to divert or reduce the likelihood of risk faced by the insured suffered or because an event occurred that was not certain. Therefore, the amount of compensation received by the insured must be balanced by the losses suffered.

The principle of indemnity is set one of them under Article 252 KUHD that "except in cases mentioned in the legal provisions, it is not so-so held a second insured, for a period that is already insured for the price is full, and so was the threat of cancellation of the second insured. "this chapter explains that the insured is not allowed to benefit from the insurer for damages unless otherwise stipulated by law. So as to achieve a balance between the loss of the remedies provided by the insurer, it must be known how much the value of the object or property is insured.¹⁶

In addition to the principles described above, the third principle is the principle of subrogation under Article 284 KUHD namely:

A person who has paid damages something the insured property, replacing the insured person in obtaining any rights against the third person in connection with the issuance of such losses; and the insured person is responsible for any action that could harm the rights of the insurer against that third person. Subrogation in insurance can generally be explained that the loss suffered by the insured will be covered by the insurer for the loss caused by the hazard (risk) is borne by the policyholder. If the insured has obtained indemnity from the insurer, then legally, the insured no longer entitled to claim damages from the other party, the party responsible for the cause of the losses.¹⁷ Unless the losses suffered by the insured is not yet fully covered by the insurer, the insured is entitled to ask the shortcomings losses to a third party.

The final principle is the principle of good faith. Each agreement includes life insurance agreement, to be implemented in good faith (Principle of Utmost Good Faith). This provision is stipulated in Article 251 KUHD which states that:

Each description is erroneous and untrue, or any not reveal things that are known by the insured, however good faith available to him, such a nature that, if the insurer has to know the real situation, the agreement will not be closed or will be closed with the same terms, resulting in cancellation of the coverage.

Mutual trust is the basis of good faith that there is on both sides (the insurer and the insured). The principle of good faith is also a manifestation of the condition of the validity of agreements stipulated in Article 1320 (1) BW is their agreement, meaning that good faith must already exist at the time of the pre-made insurance agreements. The principle of good

¹⁶ M.Suparman Sastrawidjaja, *Aspek-Aspek Hukum Asuransi dan Surat Berharga*, Alumni, Bandung, 1997, h.70-71

¹⁷ Djoko Prakoso, *opcit*, h. 189

faith is not simply to be present on the insured, but also must be owned by a person in accordance with that set in Article 31 (2) of the Insurance Business Act. So it is clear that good faith must be shared by all the parties in the insurance agreement.

For relation to the type of credit life insurance (plus), this insurance is a variant of the insurance sum of money (soul) with insurance. So the implication is in practice not all insurance principle should be applied. The credit life insurance (plus) focuses on a person's soul or life or death of a person. So that if someone (insured) have died so long he still have remaining in bank consumer credit, the insurer will pay the remaining during the heirs were able to complete the requirements demanded of the guarantor.

The next question is often insured in this case is a perspective state employee / PNS, he resigns or quit from his job or even fired, what about the rest of consumer credit in the bank? To answer the above, as the insured or the banks concerned would have to pay close attention to the content of the policy that has been signed. In the policy set on when a civil servant / civil servants resign it must be shown by first reason is resign. If the reason resign because the insured is unable to work because of prolonged illness / disability, which in other words "TERMINATION OF WORKING WITH RESPECT" then the insurer would be willing to replace the whole rest of the Insured consumer credit at the bank. However, if a civil servant / civil servant who in this case the insured perform actions prohibited by law, such as absence from work for 3 months in order and no license, commit other crimes, taking drugs or having immoral and such then the insurer will verify the data first before giving a decision on whether to approve the filing of the claim made by the insured bank.¹⁸ To decide that the insurer may consider reviewing the principles related insurance.

As discussed earlier, that credit life insurance (plus) is more focused to the soul of a person as an objects insurance linked to loans received by the insured. Hence, according to the researchers, the insurance principle can be applied in relation to credit life insurance variant (plus) this is the principle of indemnity, interest principle and the principle of good faith. The second reason is the presence of a third party is not possible, as the notion that there is in principle of subrogation for credit life insurance agreement (plus) the parties are clear that it has insured (debtor), insurer (insurance company) and the bank (creditor).

The application of the principle of indemnity agreements credit life insurance (plus) is when the insured had failed to pay because of these things or risks experienced in the policy as passed, the change over time (for members of Parliament city / province) or termination of

¹⁸ Polis Asuransi Jiwa Kredit (Plus) PT Sarana Lindung Upaya (SARLINA)

employment for any reasons. Replacement of compensation is in line with the rest of the insured loan, evidenced by the letter of credit on behalf of the rest of the insured made by the bank. The insurer is not allowed to pay more or less than the rest of the credits listed in the letter. This is the meaning of the principle of indemnity has been performed or it has been fulfilled the credit life insurance agreement (plus).

The second application of the principle is the principle of interest. In accordance with the understanding that had been discussed earlier then this principle explains that the insurance agreement is made for the interest of the insured and the bank. Theoretically, the benefit does not have to exist at the time the insurance agreement is made or closed, but must exist at the time of the events is not inevitable. For the event would not have been in general in relation to credit life insurance (plus) is the death of the insured or the debtor so that he cannot pay the loan in accordance with the timetable that has been set means that in this case which has interests in insurance contract is insured and the bank. Interest of the insured is the payment of the remaining credit that's not putting the heirs of the deceased. While the interest of the bank is when the rest of the credit is paid by the insurer, the bank did not have bad credit / bank collectibility well preserved. At the beginning of credit agreement, debtor (insured) in required to pay a nominal amount of certain insurance premiums. Payment of the premium is large or small depending on the amount of credit limit in the capture and long credit period taken. The greater the credit ceiling and the longer the period of time taken in loan repayment and so the higher the value of the premium to be paid by the insured person.

The emergence of interest in the credit agreement and the contract of insurance in relation to consumer credit have been exist at the beginning of the second such agreement is made. So that needs to be ascertained in this case is the parties who filed an insurance claim if the insured are at risk or uncertain event that has been described above. When the insured had failed to pay because of the risks mentioned above, the bank on the basis of interests may act to "charge" to the management of the rest of the credit belongs to those insured by completing the requirements specified. So when filing the claim is approved and paid by the insurer, the interest of the insured person / heirs of the insured and the bank have been met. But it would be a problem if the person cannot pay the claim of the insured / heirs / bank for some reason. In this case the bank will undertake repressive measures ²² in order to minimize losses, in accordance with the provisions of the Banking Act or the rules related thereto ²⁵

The next application of the principle is that the principle of good faith. The principle of good faith is a principle that must be exist before and after the agreement was made and

even a time when there is a dispute between two parties. This principle cannot be seen directly, but can be understood by a series of actions taken by the parties. This principle is a fundamental principle governing the insurance relationship between the insured and the insurer.¹⁹ In the principle, it is expected that the insured can provide related information The real truth of things required for the benefit of the insurance agreement.

If it is associated with credit life insurance (plus), it was the one cannot be seen in practice. This means that if you notice the ordinance or the application procedure with the disbursement of credit to consumer credit, none of which reflects the principle of good faith in terms of the insurance agreement. Here, it is impressed even slightly neglected the interests of the insurance company, both in terms of getting data related insured up to an "intervention" made by the bank in terms of disbursement of claims that have been filed. Forms of these interventions can be a period of disbursement must be quickly carried out by the insurer, the terms incomplete by the insured but the bank cannot meet optimally so as not infrequently claims remain thawed but the requirements are incomplete or promised will be fulfilled after the disbursement of the claim and still much more. So it seemed here is precisely the principle of good faith that is not balanced because of the circuit looks insurer provide more good faith in the insurance agreement.

The credit life insurance agreement (plus), the initial goal is to satisfy the interests of the parties, whether the insured, the insurer and the bank. But in practice that happened seemed to be the bank that was the main focus. Bank which in this case becomes more mainstream interests of the other party in comparison. It cannot be fully justified, however, because the bank must be able to meet or accommodate the interests of the insured and the insurer. Do not let what the bank is simply not want to lose or for profit only. The role of banks, other than as a creditor also be an intermediary between the insured and the insurer. For the reason, the bank must be informative regarding the rights and obligations of the parties (insured and insurer), such as providing information on the initial signatories to the loan agreement on filing an insurance claim in the event of an uncertain event. In addition to the party, given complete information on the insured or debtor concerning personal identity, family, health and work, it is because the person is not able to meet directly with the insured. But in practice, it was not done.

The next thing that the spotlight is, on the practice, of debtors in this case as well as the insured does not know anything related to the name of the insurance company what to

¹⁹ Safri Ayat, Pengantar Asuransi Prinsip-Prinsip dan Prakter Asuransi, Sekolah Tinggi Manajemen Asuransi Trisakti, Jakarta, 2012, hal. 85.

cover loans taken. Insured only in the compulsory pay one-time premium costs during the loan period. This is because the Standard Operational of the Company in Bank Jatim (in this case as the research object of researchers) the determination of the debtor as the insured from an insurance company will be determined after the disbursement of credit as well as the approval of the leadership. The next mechanism when leaders approved the debtor will enter into one insurance company partner bank is giving the debtor's identity such as name, address, birth date, credit limit and credit term. After the data is sent to the insurance company then Article 257 KUHD into force governing the following:

1. The insurance agreement issued immediately after the closing; the rights and reciprocal obligations of the insurer and the insured entered into force since then, even before the policy was signed.
2. The closing of an agreement publish an obligation for the insurer to signing the policy within the specified time and handed it to the insured.

When referring to the article, an insurance agreement entered into force shortly after the deal. Then the reciprocal relationship existed since the occurrence of a series of events that agreement, the signing of the insurance agreement until the payment of the first premium. So, if the policy has not been published or have not been submitted to the insured then if in the meantime uncertain event occurs, the insurer is obliged to bear the damages as set out in the policy.²⁰

There is a real case that when a prospective debtors applying for consumer credit at a bank, after verification of administrative requirements have been met. Then right at the time of signing the insurance agreement the debtor turns unhealthy conditions, this can be seen from the family that bolster the debtors to come to the bank and doing autographs. After the credits proposed liquid, debtors died due to the declining condition of the body due to illness.²¹ Through the story, on the basis of Article 257 KUHD then even if the policy had not yet risen, the insurer is obligated to pay damages suffered by the insured, namely by providing compensation for the remainder of the existing credit. It was as if the position of insurance companies is very weak, because there is no filter made by banks in the provision of consumer credit at the same time giving credit life insurance (plus). Banks are only

²⁰ Pasal 255KHD : suatu pertanggung harus dibuat secara tertulis dalam suatu akta yang dinamakan polis

²¹ Interview with legal officer PT Bank Jatim main branch, Surabaya

working to meet the funding and landing targets specified by the company so as to be ignoring the interests of the other party (the insurer).

Moreover next spotlight is the duty of the insurer to provide the policy to the insured as proof of participation in the insurance agreement. This is not done by those responsible for practically the insurer provides along with copies of his original policy only to the bank alone. So it is clear that the debtor or the insured did not see the contents of the existing provisions in the policy because the policy is stored by the bank. As a result of the insured do not know exactly related to any matters or circumstances that will or can file a claim to the insurer. In fact, the insured has the right to accept the policy.

The foregoing, according to the author, has violated the principle of good faith, which has been known that there are four forms of violations of good faith principle is as follows:²²

3.3. Non Disclosure

This means that the parties in this case does not submit or disclose all material information in correct and complete (unintentionally). In this case according to the authors of the parties is the insurer and the insured, because the principle of good faith is an obligation shared by all parties where appropriate KUHD in Article 251 and Article 31 (2) of the Insurance Business Act.

3.4. Concealment

That is hiding, this can occur when the insured person filling letter which prospective insured insurance coverage that conceal or do not convey any information related to the object of insurance. In the case of concealment, the prospective insured intentionally fails to submit such information (intentionally) without any malicious intent.

3.5. Innocent Misrepresentation

This means that there has been a mistake in terms of information delivery. The mistaken occurred because the wrong way of delivering or even related information material given is wrong.

3.6. Fraudulen Misrepresentation

That is fraud or cheating, that the fraud committed was intended to cheat or deceive others. In this form there are elements of fraud. In practice, it is extremely difficult to prove the existence of this insurance fraud, insurance fraud so that when this is done by the insured, the insurer was forced finally had to pay claims filed by the insured. It is clear that the main principle of good faith is to be owned by the parties concerned,

²² Safri Ayat, *opcit*, hal. 92

namely, the insurer, the insured and the tub as interested third parties. Then the principle of good faith is mainly related to the provision of material information that is correct and complete either of the insurer, the insured and the bank. So with the principle of good faith undertaken by the parties expected that all interests are carried by each of the parties can be accommodated as a whole, there is nothing to be left behind or one has a better position than the other party.

4. Conclusions

Consumer credit offered by banks to debtors usually uses insurance to minimize the risk of default. This type of insurance, we choose the credit life insurance (plus). This type of insurance is the result of the development of this type of insurance sum of money (soul) with insurance. This is because the main object of insurance is the soul of the debtor (depending on the life or death of the debtor) and covered are the remaining credit debtors. Then, there is the word "plus" specifically reserved for members of the Regional Representatives Council (DPRD) who experienced a Time Shift (PAW). This means that legislators were due to the political circumstances or specific reasons must step down before his term runs out (5 years). On the basis of these reasons also the insurance companies are willing to pay the remaining credit of legislators in the bank concerned.

The principles of general insurance which can be attributed in terms of bank provides consumer loans to potential borrowers is the principle of good faith, the principles of interest and the principle of indemnity. Not all of these principles applied in the process of lending by banks to debtors. This sometimes makes the interests of insurance companies are neglected or even simply focus on bank interest only. To the principles of insurance is also important in lending procedures applied in consumer credit in particular that the interests of banks and insurance companies can be accommodated well. One is before the debtors entered into a credit, of course there are applications such as the form of the insurance companies to fill the identity, family, work and health data in general that will be given to the insurer, explaining the rights and obligations of the debtor as the insured clearly, as well as debtors must receive a copy of the policy of the banks and insurance companies.

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