INTI

eISSN 2830-795X

Responsibility of Banks in Preventing Name Abuse in Credit Applications

Ruddy Firmanto, Rommy Hardyansah, Didit Darmawan

Universitas Sunan Giri Surabaya

Email: dr.rommyhardyansah@gmail.com

ABSTRACT – The phenomenon of name lending agreements in banking credit in Indonesia is increasingly common, where an individual uses the name of a third party to obtain a credit facility without the consent of the party whose name is lended. This practice poses significant legal and financial risks, especially for the party whose name is used, who may be trapped in credit repayment obligations they did not make. Statute 1873 of the Civil Code of Indonesia provides that such agreements are deemed null and void in the absence of the consent of the named lender. Nonetheless, the implementation of legal protection for the injured party often faces obstacles, such as the lack of formal evidence and legal awareness of the party whose name is used. This study aims to analyze the application of Statute 1873 of the Civil Code of Indonesia in protecting the rights of the party whose name is used in a name lending agreement as well as explore the role of banks in preventing the practice. The results are expected to contribute to policy development and better legal protection for customers.

Keywords: Name Lending Agreement, Banking Credit, Statute 1873 Civil Code of Indonesia, Legal Protection, Banks, Misuse of Identity, Banking Policy.

A. INTRODUCTION

In the banking world, granting credit involves various processes and requirements that must be met by the applicant. One practice that is often encountered is the name lending agreement, which occurs when a person uses the name of a third party to obtain a credit facility from a bank, without the consent or knowledge of the party whose name is used. This phenomenon often arises as a solution to avoid the strict requirements imposed by banks, such as the inability to meet the required financial criteria or collateral.

However, while name lending may appear to offer convenience for those seeking credit facilities, the practice has detrimental effects particularly for individuals whose names are used. Not only do they face reputational risks, but they may also become entangled in legal and financial issues resulting from non-payment. Although, nominally, the person whose name is used is not directly responsible for repayment, they remain legally bound and may suffer long-term consequences, such as being blacklisted by banks and subsequently denied access to future banking services (Oktaviani et al., 2024).

This phenomenon of name lending agreements can have serious legal consequences for the party whose name is lending, which in turn can face bad credit and difficulties in accessing banking services in the future. Putri and Najicha (2021) revealed that bad debts arising from name lending agreements can cause significant long-term losses for the party whose name is used. As a form of invalid agreement without consent, this name lending agreement contradicts the provisions of Statute 1873 of the Civil Code of Indonesia, which stipulates that agreements must be based on the mutual consent of both parties.

In this case, the use of a name without the consent of the party concerned may cause the agreement to be considered void or invalid under the law (Halim, 2017). However, despite the legal provisions governing this matter, the practice of lending names continues to occur. This is triggered by several factors, including limited access to credit for small and medium enterprises that have difficulty meeting the strict requirements of banks, as well as the drive to obtain credit facilities in an easier way.

This phenomenon is becoming increasingly complex as it not only harms the party whose name is lended, but also adds to the burden on financial institutions and the banking system as a whole. Often, banks are unable to directly identify the potential risks posed by name lending, given the ignorance or disagreement of the party whose name is being used. Therefore, although existing laws provide legal protection, problems in their application still require

special attention in order to prevent further losses for the aggrieved party and maintain the stability of the financial system (Fikri et al., 2023; Hardyansah & Jahroni, 2023).

Research on name lending agreements in the context of bank credit is important as it involves protecting the rights of the party whose name is lended as well as identifying the legal liability of banks in such cases. Existing laws lack adequate protection for name lenders who are often unaware of the risks inherent in the practice. Banks as financial institutions should have stricter policies in identifying customers to reduce the risk of bad debts due to name lending agreements.

The purpose of this study is to analyze the application of Statute 1873 of the Civil Code of Indonesia in protecting the rights of parties whose names are used in name lending agreements in the context of bank credit. The research also aims to identify the legal consequences faced by name lending parties in banking credit cases, as well as explore the important role of banks in preventing name lending practices to reduce the risk of bad debts. This research focuses on developing recommendations for banks to strengthen customer identification mechanisms to ensure better protection and prevent abuses in credit transactions.

Thus, this research aims to contribute to the development of legal literature related to name lending and its application in the legal system of banking credit in Indonesia. On the practical side, this research is expected to provide useful recommendations for banks in improving customer identification and verification policies, as well as strengthening procedures to prevent bad debts caused by name lending practices.

B. METHOD

This research uses a normative juridical method with a descriptive-analytical approach to analyze the legal consequences of name lending agreements in the context of bank credit. This approach focuses on the study of applicable laws, doctrines, and jurisprudence, particularly regarding the application of Statute 1873 of the Civil Code of Indonesia. This normative juridical method is well suited to examine the legal consequences of name lending agreements, as it allows the research to provide an in-depth legal perspective regarding the application of the relevant rules.

The primary data in this research is obtained from the Civil Code of Indonesia and banking regulations related to credit agreements. Secondary data sources came from legal literature, which included journal articles, academic research, as well as legal doctrines related to the consequences of name lending agreements and the application of Statute 1873 of the Civil Code of Indonesia in the context of bank credit. Rusniati and Absi (2022) emphasized the relevance of the normative approach in analyzing the principles of agreement, such as good faith and the principle of propriety contained in the Civil Code of Indonesia.

To collect data, this research uses a literature study technique that includes academic sources and regulations relating to credit and lend agreements. This technique aims to analyze the standard provisions in banking credit agreements in Indonesia, by conducting an in-depth study of the clauses that bind both parties to the agreement. The data collected is then analyzed using a descriptive-analytical approach to identify and evaluate the application of Statute 1873 of the Civil Code of Indonesia in the case of name lending agreements on bank credit. This method allows for a comprehensive evaluation of standardized agreement procedures in bank loans, including legal interpretations related to the responsibilities of the parties to the agreement.

The research procedure began by identifying relevant regulations and legal documents, such as Statute 1873 Civil Code of Indonesia, banking regulations, and other supporting literature. Next, the data was classified based on the legal provisions and principles in the Civil Code of Indonesia relevant to the consequences of name lending agreements. Finally, the results of the analysis are synthesized to understand how Statute 1873 of the Civil Code of Indonesia is applied in the legal context of name lending agreements.

C. RESULTS AND DISCUSSION

Impact of Name Lending Agreement in Banking Credit

Statute 1873 of the Civil Code of Indonesia stipulates that agreements must be based on the mutual consent of both parties involved. In the context of name lending agreements, where a person uses another party's name to obtain a credit facility without the consent of the party whose name is lended, Statute 1873 provides a clear legal basis that such agreements are

invalid. The implementation of this Statute aims to protect the rights of the party whose name is used without authorization, by declaring that the agreement is null and void due to the absence of valid consent from the party whose name is lent.

Name lending agreements in the context of bank loans often result in the risk of bad debts. When the name lender has no direct control or supervision over the use of the credit, there is a high risk that the credit will default, especially if the primary lender does not fulfill its obligations. This situation results in the debtor whose name is used in the name loan being blacklisted by the bank, preventing him from obtaining credit facilities in the future (Putri & Najicha, 2021).

Statute 1873 of the Civil Code of Indonesia stipulates that in name lending agreements without the consent or formal agreement of the party whose name is lent, the agreement may be deemed invalid. However, in practice, this law is still difficult to apply effectively to protect name lenders. The lack of legal protection for name lenders worsens their situation, as they are often unaware of the use of their name in credit applications.

However, in practice, the implementation of Statute 1873 faces a number of challenges, especially in terms of proof. The party whose name is lent must be able to show sufficient evidence that they did not consent or authorize the use of their name in the agreement. In the absence of clear and strong evidence, such as written proof or witnesses supporting the claim, courts often struggle to rule that the agreement is null and void.

One of the main obstacles is that many parties whose names have been used are unaware of their rights or how to sue for invalidation of the agreement. They may not be aware that they are entitled to sue for rescission of the agreement under Statute 1873 of the Civil Code of Indonesia, mainly due to a lack of legal understanding on the subject. Therefore, although Statute 1873 provides clear legal protection, its implementation depends on the legal awareness of the aggrieved party to file a lawsuit.

On the other hand, the application of Statute 1873 in the case of name lending agreements is also hampered by the fact that these agreements are often associated with fraudulent practices or misuse of information. In order to prove that they are a victim, the party whose name was lent needs to show an act of fraud or manipulation committed by the other party to obtain a credit facility. Without sufficient evidence of fraud, the court may struggle to assess whether the agreement should be voided (Halim, 2017).

Aggrieved parties in name lending agreements are often in a weak position as they are not directly involved in the credit agreement, even though their names are used. Statute 1873 provides the right to cancel such agreements, but the complicated legal procedures and limited evidence make its implementation difficult. Therefore, while Statute 1873 provides legal protection for parties whose names are borrowed, the exercise of such rights in legal practice requires better support in terms of evidence and a broader understanding of the law.

Overall, while Statute 1873 of the Civil Code of Indonesia provides a strong legal basis to protect parties whose names are used in name lending agreements, the main challenges lie in proving disagreement and legal awareness of the aggrieved party. This suggests that while there are clear legal provisions, their implementation in the case of name lending agreements requires greater efforts in terms of legal education and more consistent enforcement.

An Analysis of Statute 1873 of the Civil Code of Indonesia

Statute 1873 of the Civil Code of Indonesia states that a party whose name is used in an agreement without explicit consent can request the cancellation of the agreement. However, in reality, the implementation of this Statute still faces major challenges, especially in terms of proving that the name lender was not involved or aware of the use of their name. The aspect of good faith becomes difficult to prove in the case of name lending agreements, given the existence of informal agreements or unwritten communications between the parties (Rusniati & Absi, 2022).

Furthermore, the interpretation of Statute 1873, which often prioritizes the principles of propriety and fairness, is sometimes unable to protect name lenders. In some cases, banks as third parties extending credit do not always conduct thorough verification of the lender, leaving the name lender vulnerable to adverse actions.

In the case of bank loans involving name lending agreements, the party whose name is lent can face a number of serious legal consequences, even though they are not directly involved in the transaction (Jastrawan & Suyatna, 2019). One of the main consequences is the blacklisting of their names or negative records at financial institutions. This happens if credit obtained

using their name fails to be paid or bad debts occur. Even though the party whose name is lent is not involved in managing the loan, they are still recorded in the banking system as the party responsible for the loan (Oktaviani et al., 2024).

Another legal consequence is the potential legal action that can be taken by banks or financial institutions related to default. In a credit agreement, both the party applying for the loan and the party whose name is lent can be seen as parties who are bound by payment obligations. Even if they did not know or agree to the agreement, they can still be held liable for the debt in accordance with the terms of the agreement and applicable law. This adds to the legal and financial burden for the aggrieved party as they can be held responsible for obligations they never made (Rahardjo, 2000).

The lender is also at risk of being involved in legal proceedings, such as a lawsuit from the bank demanding payment of unpaid debts. In this case, the lender may be forced to follow complicated legal procedures, which can be detrimental to them, even though they were not actively involved in the transaction or misuse of the credit. These legal proceedings can also cause psychological stress and reputational damage to the named party, impacting their social and professional lives.

Another consequence faced is limited access to credit facilities in the future. If their name is blacklisted by a bank or financial institution, the lender may find it difficult to obtain loans or other credit facilities in the future. This may prevent them from accessing important financial services, such as home loans, vehicles, or business capital, which may impact their financial stability (Maharani, 2018).

The lender may also face financial losses. If the creditor attempts to collect the debt associated with the credit, the named lender may incur additional fees or interest that they must pay. Even if they never benefited from the credit extended, they are still legally bound to settle the obligations that arise from the actions of others who misused their name.

The legal consequences faced by parties whose names are lent in bank credit cases are significant. Parties who are not directly involved in the transaction remain legally liable, which can cause financial, social and reputational damage. This points to the importance of stronger legal protection for aggrieved parties in name lending agreements, as well as increased supervision in lending to prevent such abuses.

Bank Liability and Legal Implications

Banks have a major role to play in mitigating the risk of bad debts arising from name lending. However, in Indonesia, verification practices by banks on borrowers are still limited and tend to rely on formal documents without further investigation. Banks have an obligation to conduct thorough due diligence on lenders to ensure the validity of their identity and financial capacity (Ridha et al., 2024).

The legal responsibility of banks in this regard also involves supervising the credit process and ensuring that loans are made with adequate verification processes (Muhammad, 1993). Thus, in the event of bad debts due to name lending agreements, banks have a responsibility to improve lending mechanisms and provide better protection to their customers (Arifin et al., 2020).

The role of banks in preventing the practice of name lending is very important to avoid the risk of bad credit that can harm the bank and the customers involved. Banks as financial institutions have a big responsibility in strictly verifying customer identity. One important step that banks can take is to tighten Know Your Customer (KYC) procedures, which require banks to carefully check and confirm the identity of customers before providing credit facilities. With stricter KYC implementation, banks can reduce the risk of using other parties' names without their knowledge in credit agreements.

Banks should also ensure that the credit application process involves comprehensive due diligence procedures. These procedures involve a more in-depth examination of the customer's credit history and financial capability, which can prevent name lending practices that occur due to the customer's inability to fulfill credit requirements. In this regard, banks should have an effective system in place to identify potential fraud or misuse of names before credit is approved. Banks also need to evaluate the validity of documents submitted by credit applicants to ensure that the identity provided is not misused.

Furthermore, banks should strengthen their monitoring of suspicious transactions that may signal name abuse in credit applications. Advanced technologies, such as data analysis software and anomaly detection systems, can be used to monitor transactions in real-time and identify suspicious patterns. Banks can use these technologies to track unusual transactions, such

as credit applications involving third-party identities, so as to immediately detect potential name abuse. With the use of this technology, banks can minimize the risks posed by harmful name lending practices (Darmawan, 2022).

Education and socialization to customers is also part of the bank's role in preventing name lending. Banks should make customers aware of the risks involved if their name is lent by another party to obtain credit. Information on the legal and financial consequences of name borrowing can reduce the likelihood of customers engaging in misuse of their names. In this regard, banks can provide an education platform that is easily accessible to customers to educate them on the importance of maintaining the confidentiality of their identity and their legal obligations in relation to the credit they apply for.

Banks should also implement strict sanctions for those who engage in name borrowing. These sanctions could be in the form of an adverse entry in the customer's credit report or revocation of access to future credit facilities. With clear and firm sanctions in place, banks can provide a deterrent effect for those who try to misuse other people's identities in the credit application process. This will also encourage customers to be more cautious in providing their personal data to other parties.

Overall, banks have a huge role to play in preventing the practice of name lending to avoid the risk of bad debts. By implementing strict verification procedures, utilizing advanced technology, and educating customers, banks can reduce the potential for misuse of names in credit agreements. In addition, the imposition of strict sanctions against this illegal practice will have a positive impact in maintaining the integrity of the banking system as well as the protection of the customers involved.

D. CONCLUSIONS

This research shows that name lending agreements in the context of bank credit in Indonesia have significant legal consequences for parties whose names are used without full consent. Statute 1873 of the Civil Code of Indonesia regulates the agreement and the lawful involvement of the parties involved, but the legal protection afforded to name lenders is limited. Difficulties in applying this Statute arise due to the lack of formal evidence showing the ignorance or non-consent of the party whose name is lent. This makes the application of the law less effective.

However, while the law has provided a sufficient legal basis, banks have a great responsibility in ensuring that every credit agreement is executed with a rigorous verification process. This responsibility can reduce the occurrence of bad debts caused by name borrowing. This research also reveals that stricter banking policies on customer identity verification can help prevent name borrowing agreements and provide better protection for vulnerable parties.

As a recommendation, it is necessary to strengthen regulations that protect name borrowers by revising the relevant Statute in the Civil Code of Indonesia. Stricter verification policies by banks and education on the risks of name lending are also important. This education will help customers be more cautious in giving permission to other parties to use their names in credit applications. The implementation of strict sanctions for name lending offenders is also necessary to prevent identity misuse in banking loans and reduce the risk of bad debts. This research contributes to identifying existing legal gaps and provides guidance for more comprehensive policy development in the future.

REFERENCES

Arifin, M., L. S. Wicaksono, & D. Triyanti. 2020. Perlindungan Hukum Terhadap Perjanjian Pinjam Nama (Nominee Agreement) Pada Penyerahan Hak Milik Atas Saham Perseroan Terbatas. *Jurnal Ius Constituendum*, 5(2), 177-196.

Darmawan, D. 2022. Literature Review on Antecedents of Customer Switching Behavior. *Bulletin of Science, Technology and Society*, 1(3), 1-5.

Fikri, A.Z., S. F. Yulianis, D. Darmawan, S. Sudjai, & M. C. Rizky. 2023. Criminalization in Money Laundering Cases in Indonesia. *Journal of Science, Technology and Society*, 4(2), 21-30.

Halim, A. 2017. *Hukum Perbankan di Indonesia*. Rajawali Pers, Jakarta.

Hardyansah, R. & Jahroni. 2023. The Establishment of Customer Loyalty in View of Service Quality and Bank Reputation. *Bulletin of Science, Technology and Society*, 2(1), 16-20.

Jastrawan, I. D. A. D. & I. N. Suyatna. 2019. Keabsahan Perjanjian Pinjam Nama (Nominee) oleh Warga Negara Asing dalam Penguasaan Hak Milik Atas Tanah di Indonesia. *Kertha Semaya: Journal Ilmu Hukum*, 7(7), 1-13.

Kurniawan, I. D., I. Septiningsih, Z. Adihiyati, & K. Y. S. Asafita. 2021. Perlindungan Hukum Terhadap Pengguna Pinjaman Uang Elektronik Shopee Pay Later. *Jurnal Global Citizen: Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan*, 10(2), 24-30.

Maharani, R. 2018. *Perjanjian Pinjam Nama dalam Hukum Perdata*. Sinar Grafika, Jakarta.

Muhammad, A. 1993. Hukum Perdata Indonesia. Citra Aditya Bakti, Bandung.

Negara, D. S. & D. Darmawan. 2023. Digital Empowerment: Ensuring Legal Protections for Online Arisan Engagements. *Bulletin of Science, Technology and Society*, 2(2), 13-19.

Oktaviani, D. M., A. Pasaribu, & D. B. Wicaksono. 2024. Upaya Penyelesaian Kredit Macet Pada Kredit Usaha Rakyat Dalam Perjanjian Pinjam Nama Ditinjau Dari Statute 1873 Kitab Undang-Undang Hukum Perdata & Undang-Undang No. 10 Tahun 1998 Tentang Perbankan. *Jurnal Amar*, 2(3), 20-31.

Putri, O. I. P. I. & F. U. Najicha. 2021. Keabsahan Perjanjian Pinjam Nama antara Warga Negara Asing Terhadap Warga Negara Indonesia. *UNES Law Review*, 4(2), 190-197.

Rahardjo, S. (2000). *Ilmu Hukum (Edisi Ke-5)*. Citra Aditya Bakti, Bandung.

Ridha, I., I. Hanif, L. Vivian, M. Triana, M. Irsal, R. Ramadhan, Y. Marlina, & N. Nadila. 2024. Pertanggungjawaban Hukum dalam Perjanjian Kredit Perbankan terhadap Debitur Wanprestasi. *Hukum dan Demokrasi (HD)*, 24(2), 61–71.

Rusniati, & W. Z. Absi. 2022. Penerapan Asas Itikad Baik dan Asas Kepatutan dalam Perjanjian Kredit Perbankan. *Jurnal Hukum dan Tata Perbankan*, 8(1), 45-56.