

**PENERAPAN PRINSIP KEHATI-HATIAN DALAM PEMBERIAN  
FASILITAS KREDIT OLEH BANK  
(Studi Kasus Putusan Mahkamah Agung Nomor 336 PK/Pid.Sus/2022  
Atas Kasus Karyawan Bank Swadesi)  
Rika Feronika\*, Ninik Darmini\*\***

**INTISARI**

Penelitian ini didasarkan pada studi kasus Putusan Mahkamah Agung Nomor 336 PK/Pid.Sus/2022 atas kasus karyawan Bank Swadesi yang bertujuan untuk (1) mengetahui dan menganalisis keberlakuan prinsip kehati-hatian dalam pemberian fasilitas kredit oleh Bank Swadesi sesuai dengan peraturan hukum perbankan di Indonesia dan (2) mengetahui dan menganalisis akibat hukum putusan pengadilan atas kasus karyawan Bank Swadesi terhadap penerapan prinsip kehati-hatian dalam pemberian fasilitas kredit oleh Bank Swadesi dikaitkan dengan asas kepastian hukum.

Penelitian ini menggunakan pendekatan yuridis normatif, bahan penelitian yang digunakan dari data sekunder yang diperoleh melalui studi kepustakaan dan didukung data dari narasumber. Dalam penelitian kepustakaan, studi pustaka dilakukan pada undang-undang, peraturan dan studi kepustakaan lainnya didukung dengan mewawancarai narasumber dari akademisi. Data yang diperoleh dianalisis menggunakan pendekatan deskriptif untuk diperoleh kesimpulan.

Berdasarkan hasil penelitian, prinsip kehati-hatian penting diterapkan pada analisa kredit pemberian fasilitas kredit oleh bank, Bank Swadesi tidak menerapkan prinsip kehati-hatian dalam melakukan analisa kredit kepada PT Ratu Kharisma dengan melanggar SOP internal bank, hal ini melanggar Pasal 2 dan Pasal 20A Undang-Undang Nomor 10 tahun 1998 tentang perubahan Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan sebagaimana perubahan terakhir pada Undang-Undang Nomor 4 Tahun 2023 yang mengatur prinsip kehati-hatian. Akibat hukum dalam Putusan Nomor 336 PK/PID.SUS/2022 bahwa pertimbangan hakim telah sesuai dalam menerapkan peraturan perundang-undangan yang berlaku dengan memberikan putusan bebas pada Ningsih Suciati selaku Direktur Kredit Bank Swadesi pada dakwaan Pasal 49 ayat (2) huruf b Undang-Undang Nomor 10 tahun 1998 tentang perubahan Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan *jo.* Pasal 64 ayat (1) KUHP dan pertimbangan hakim sepenuhnya sudah mencerminkan asas kepastian hukum dikarenakan telah memenuhi unsur-unsur dalam Pasal 49 ayat (2) huruf b Undang-Undang Nomor 10 tahun 1998 tentang perubahan Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan.

**Kata Kunci : Prinsip Kehati-hatian, Risiko Kredit, Perbankan, Kepastian**

\*Mahasiswa Pasca Sarjana pada Magister Ilmu Hukum Kampus Jakarta, Fakultas Hukum, Universitas Gadjah Mada

\*\*Dosen Magister Ilmu Hukum, Fakultas Hukum Universitas Gadjah Mada

**APPLICATION OF THE PRINCIPLE OF PRUDENCE IN PROVIDING  
CREDIT FACILITIES BY BANKS  
(Case Study of Supreme Court Decision Number 336 PK/PID.SUS/2022  
in the case of Bank Swadesi Employees)  
Rika Feronika\*, Ninik Darmini\*\***

**ABSTRACT**

This research is based on case study of supreme court decision number 336 PK/PID.SUS/2022 in the case of Bank Swadesi Employees which aims to (1) identify and analyze implementation of the principle of prudence in providing credit facilities by Bank Swadesi in accordance with banking legal regulations in Indonesia and (2) identify and analyze the legal consequences of the court's decision in the case of Bank Swadesi employees on the application of the principle of prudence in providing credit facilities by Bank Swadesi are linked to the principle of legal certainty.

This research uses a juridical- normative approach, the research material used is secondary data obtained through literature study and supported by data from sources. In library research, literature studies are carried out on laws, regulations, and other literature studies supported by interviewing sources from academics. The data obtained were analyzed using a descriptive approach to obtain conclusions.

Based on the results of the research, the principle of prudence is important to apply to credit analysis of credit facilities provided by banks, Bank Swadesi did not apply the principle of prudence in conducting credit analysis to PT Ratu Kharisma by violating the internal SOP of bank, this violates Article 2 and Article 20A of Law Number 10 of 1998 concerning amendments of Law Number 7 of 1992 concerning banking as per the latest amendment to Law Number 4 of 2023 which regulates the principle of prudence. The legal consequence in decision number 338 PK/PID.SUS/2022 is that the judges consideration was appropriate in applying the applicable laws and regulations by giving an acquittal to Ningsih Suciati as Credit Director of Bank Swadesi on the allegations of Article 49 paragraph (2) letter b of the Law Number 10 of 1998 concerning amendments of Law Number 7 of 1992 concerning banking *jo.* Article 64 paragraph (1) Criminal Code and the judge's consideration fully reflects the principle of legal certainty because it has fulfilled the elements in Article 49 paragraph (2) letter b of Law Number 10 of 1998 concerning amendments of Law Number 7 of 1992 concerning banking.

**Keywords: The Principle of Prudence, Credit Risk, Banking, Certainty**

---

\*Postgraduate student at Master of Law Faculty - Jakarta Branch, Gadjah Mada University

\*\*Lecture at Master of Law Faculty, Gadjah Mada University