

# CONCEPT OF SYNDICATED LOAN AGREEMENT BASED ON ECONOMIC DEMOCRACY FOR MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES) IN INDONESIA

*Rudyanti Dorotea Tobing\**

*The banking institutions play an important role in providing development funds through one of their efforts such as syndicate loan. Syndicated loan is given only for large companies, because the loan value which is given from some banks to one debtor, higher than Legal Lending Limit. Economic democracy will give the priority to public welfare not to individual prosperity. Society value in economic life is justice. Article 2 of Law No. 10 of 1998 for banking which gives the clear explanation that Indonesian banking do their business based on economic democracy by using prudential principle. The definition of economic democracy is giving the greatest opportunities to all people to enjoy an increase in prosperity from bank functions, collector and distributor of public funds. As well as in syndicated loans, economic democracy principles should apply to all public, micro, small, medium and large enterprises to enjoy the loan syndication in order to improve all public welfare.*

INTRODUCTION.....	716
I. ECONOMIC DEMOCRACY PRINCIPLES AS A BASIS OF INDONESIAN ECONOMIC SYSTEM.....	720
II. CONCEPT OF SYNDICATED LOAN AGREEMENT BASED ON ECONOMIC DEMOCRACY FOR MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES) IN INDONESIA .....	723
CONCLUSION.....	732

## INTRODUCTION

Economic development of a country, besides requiring a planned and targeted development programs to achieve the goals of development, other factors needed are huge capital/fund. In order to increase the economic development or economic growth needs support and increase in development funding. In general, a country is experiencing limitations in the provision of development funds, it is necessary to mobilize funds from the public. Similarly, in the Indonesian state, which is characterized by

---

\* SH.M.Hum., a lecturer at Sekolah Tinggi Ilmu Hukum Tambun Bungai, Jalan Sisingamangaraja 35 Palangkaraya, Central Kalimantan, Indonesia. Research field: Business Law & Banking Law.

## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 717

government policies issued in the field of monetary, finance and bank. A series of policies aimed to raise development funds, so as to create equal opportunities for business actor economic development of small-scale entrepreneurs, *koperasi*, medium and large employers. Thus occurred the harmonious relationship of cooperation and mutual support between the real economic actors and financial actors in supporting national economic development.

Banking financial institutions have a strategic role in national development, especially in economic activity, because the primary function of banks is to collect and distribute public funds. In everyday conversation, the bank is known as a financial institution whose main activities are taking deposits. Then the bank is also known as a place to borrow money (credit) for people who needed, to exchange and transfer money, or accept all forms of payment.<sup>1</sup>

During its development, bank as a type of financial institutions carries out financial services which are quite diverse, such as deposits, making loans, currencies circulate, conduct surveillance of currency, act as a repository for precious objects, business-finance enterprise.<sup>2</sup>

Article 1 paragraph 2 of Law No.10 of 1998 to formulate the notion of banks as follows:

Banks are business entities that raise funds from the public in the form of deposits and distribute them to public in the form of loans and/or other forms in order to improve the living standard of the people.

Based on the definition above, it is clear that the bank serves as a financial intermediary with a major effort to collect and distribute public funds and provide other services, which is commonly done in the bank payment traffic. These two functions cannot be separated. As a business entity, the bank will always try to benefit as much as possible. Instead of as a financial institution, the bank has obligation to maintain the stability of currency, stimulate economic activity, and expand of employment opportunities. Changes in terms of financial institutions into enterprises intended to be professional actor banks in managing funds from and to society.<sup>3</sup>

The function and purpose of banking can work well if banks pay

---

<sup>1</sup> Kasmir, *Bank dan Lembaga Keuangan Lainnya Edisi Baru* (PT Raja Grafindo Perkasa, Jakarta 2000), at 23.

<sup>2</sup> A. Abdurrahman, *Ensiklopedia Ekonomi Keuangan Perdagangan* (PradnyaParamita, Jakarta 1993), at 80.

<sup>3</sup> Gatot Supramono, *Perbankan dan Masalah Kredit Suatu Tinjauan Yuridis Edisi Revisi* (Penerbit Djambatan, Jakarta 1996), at 2.

attention to a number of principles in running its operation, such as principle of Economic Democracy.<sup>4</sup> Article 2 of Law No. 10 of 1998 regarding Amendment to Law No. 7 of 1992 on banking that Indonesian banks based on economic democracy by using precautionary principle in conducting its business. The definition of economic democracy is to provide great opportunities for all the community to enjoy the increased prosperity by both banks function.

The operations are commonly performed by banks investing their funds in the provision of credit, investment securities, finance international trade transactions, the placement of funds in the other banks.<sup>5</sup> All activities of invest fund is not separated on the not paid back risk in part or wholly.<sup>6</sup>

In most countries in the world, from all the above efforts, the credit is a major part of the operational assets and overall bank assets. The number of bank finance in various countries that are planted in the credits, ranging from about 50% to 75% of all properties they have.<sup>7</sup>

According to Article 1 paragraph 12 of Law No.10 of 1998 concerning Amendment to Law No.7 of 1992, the credit is defined as:

The provision of money or equivalent claims based on a lending and borrowing Agreement or contract between the bank and other parties who require the borrower to repay the debt after a certain period of time with the amount of interest, remuneration or profit sharing.

Credit became a source of revenue and profits of the largest banks. Besides it, credit is also the kind activities of the fund, which is often a major cause banks facing big problems. Therefore, it is no exaggeration to say that the stability of the banking business is strongly influenced by the success in managing credit. Banking business will grow if they success in managing credit, while banks who will always face undermined non performing loans will resign.<sup>8</sup>

In the modern business activity, credit is an important source of financing, a business activity rarely on completely on internal sources of financing in the form of equity participation (self-financing). Giving credit the largest position from the various business activities in disbursement of funds, that is 84.32% of the total assets. Productive asset is an investment funding in the form of bank loans, securities, investments and other

---

<sup>4</sup> Rachmadi Usman, *Aspek-Aspek Hukum Perbankan di Indonesia* (Gramedia Pustaka Utama, Jakarta 2001), at 14.

<sup>5</sup> Siswanto Sutojo, *Menangani Kredit Bermasalah* (PT. Pustaka Binaman Pressindo, Jakarta 1997), at 1.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, at 2.

<sup>8</sup> *Ibid.*

## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 719

plantings.<sup>9</sup>

Credit has provided a wide range of possibilities in traffic, especially in the development of economy in both rural and urban, in the development of trade, communications, business development, house and residential construction and in the stock market traffic. Credit is vital in the economic development. Credit is supporting development and is the lifeblood of entrepreneurs. The purpose of the provision of credit in Indonesia is to succeed in the development such as housing and residential construction, improve the activity of the company, make a profit in order to secure the company's survival and expand enterprise.<sup>10</sup>

The role of banks is vital in providing credit, with relation to the target of Indonesia's high economic growth announced by the government. There will be more large-scale development projects that require finance from banks. Banks must be able to provide funding for major projects and will be established cooperation among banks in the form of syndicated loans (hereinafter referred to as Credit Syndication), namely the cooperation of several banks to finance, both among national banks, and national banks with foreign banks.

Syndicated credit institutions appear in practice to anticipate the fulfillment of credit in large numbers. In line with the increasing volume and the type of activities, the Indonesian economy will need financing and the need for financing is also getting varied and increasing. In certain circumstance, the bank will not be able to meet the loan application. It can also be caused by the amount of credit requested which is too large so that the bank is not be able to fulfill because it exceeds the Lending Limit (LLL) or with the intention of spreading the risk, especially the risk of bad debts. In such circumstances, the financing collectively of some banks in the form of syndicated loans is very necessary.

Syndicated loans today are often done by the banks, such as among the private banks or state banks and between foreign banks which are their representative in Indonesia. Today was also mostly done in a joint syndicated lending among private banks and government banks or private banks with foreign banks which have offices in Indonesia or inter-state banks to foreign banks which have representative.

Lending syndicated in practice, the only bank focused on large companies, especially large private companies. Banks are competing to provide syndicated loans to large companies, the reason is the credibility of

---

<sup>9</sup> Heru Supratomo, *Hak Tanggungan Sebagai Pengaman Kredit Perbankan* (FH UNPAD, Bandung 1996), at 2.

<sup>10</sup> Thomas Suyatno et. al, *Kelembagaan Perbankan* (PT. Gramedia, Jakarta 1989), at 15.

the company which is undoubtedly to pay its debts, on one side of the syndicated loan is considered as the best alternative to overcome the LLL and apply the precautionary principle.

#### I. ECONOMIC DEMOCRACY PRINCIPLES AS A BASIS OF INDONESIAN ECONOMIC SYSTEM

Since Indonesian independence, Indonesian people has developed that democracy principle are cognition that the people who hold sovereignty. It is shown that proclamation of independence uses the phrase on behalf of Indonesian people. All the statements in UUD 1945 based on the spirit and soul of democracy. In the preparation of the UUD 1945 democratically involve all groups and interests in the community. That sovereignty is in the hands of the people at the first Article UUD 45 as a statement of the country democratic nature.<sup>11</sup>

Democracy is also considered as a means to bring government closer to the common people. Government should be more concerned and be more at the side of common people, because essentially democracy is the sovereignty belonged to the people, government should be run in accordance with the political statement that Indonesia adopts democracy statement, the sovereignty of the people, also economically, Indonesia is a democratic country. The economic democracy statement is not commonly found because economic democracy is not in line with the principles of free market economy where individuals are not free and have to follow the market mechanism which is a manifestation of the invisible hand.<sup>12</sup>

In line with the understanding of the democracy in politics, sovereignty at the people, so that economic democracy means sovereignty of the people in the field of economic life. In the other word economic democracy is economic activities done of the people, by the people and for the people. Economic democracy gives priority to public welfare, not to the individual welfare. Community values in economic life are justice in economic life. There by talk about economic democracy is talking about economic sovereignty of the people its mean talking about economic justice.<sup>13</sup>

Economic democracy which became the basis of political and national economic system has positive characteristics as follows<sup>14</sup>: (1) The economy

---

<sup>11</sup> Cornelis Rintuh dan Miar, *Kelembagaan dan Ekonomi Rakyat Edisi Pertama* (BPFE Yogyakarta, Yogyakarta 2005), at 76.

<sup>12</sup> *Ibid.*, at 77.

<sup>13</sup> *Ibid.*

<sup>14</sup> Suteki, *Rekonstruksi Politik Hukum Hak Atas Air Pro-Rakyat* (Surya Pena Gemilang, Malang 2010), at 34.

## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 721

is structured as a joint venture based on the principle of familiarity; (2) Branches of production that are important to country which affect the livelihood and should be controlled by the state; (3) Earth, water and natural resources contained in them as the main points of prosperity controlled by the state and used as much as possible for the prosperity of the people; (4) The sources of wealth and state finances used to conspiracy the representative body of the people and supervision of wisdom legislative in unity national economy branches; (5) Regional economy developed in a harmonious and balanced inter-regional in a unity national economy to leverage the potential and role of the regions optimally in the realization in sights archipelago and the national security; (6) Citizens have the freedom in selecting the desired job, the right job and a better life for humanity; (7) Private property rights are recognized and their use should not be contrary to the public interest; (8) Potency, initiative, and creativity of every citizen are developed entirely within the boundaries that do not harm the public interest.

While the negative characteristics of economic democracy that should be avoided are<sup>15</sup>: (1) Free fight liberalism system that grows the exploitation of human and in its history in Indonesia, has caused and maintains the structural naturgent and deadly potential and creativity of economic units outside the state sector, economy weaknesses of the Indonesia's position in the world economy; (2) Etatisme system in the sense that the country and its economic apparatus of country is dominant, urgent and turn off the potential and creativity of economic units outside the state sector; (3) Unfair competition as well as the concentration of economic power in one group in various forms of monopoly and monopsony are detrimental to society and contrary to the aspirations justice.

*Pancasila* is the philosophical basis of Indonesia's economic system. When using the principles of *Pancasila* as the basic paradigm or orientation of economic activity, it means that the *Pancasila* economy is oriented economic matters as follows:<sup>16</sup>

(1) Belief in one God, which recognizes ethical and moral religion, not materialism;

(2) Just and civilized humanity, which is not known squeeze and human exploitation. Humans should be seen as "somebody" instead of "something";

(3) Indonesian unity, which reflects family, togetherness, economic nationalism and patriotism;

(4) Democracy, the people's economy and put the welfare of the majority, a

---

<sup>15</sup> *Ibid.*, at 35.

<sup>16</sup> *Ibid.*, at 81.

reflection of economic democracy;

(5) Social justice for all Indonesian people, which priority to the welfare society is not wealth per person.

Constitutional basis of the Indonesian economic system is as Article 33 of the *UUD 1945* paragraph (1) stated that the economy is structured as a joint business based on principle of the family. Structured, planned significant here (thus adopts a planning or economic plan, not a market economy), which is conducted by the people. As a joint business based on family principle, the meaning is production that is conducted by us, for us, not from us to you. *Koperasi* is compatible with this spirit. Article 33 of the *UUD 1945* paragraph (2) *UUD 1945* stated that the branches of production are important to the state and dominate the life of people controlled by the state. This shows the role of government, which is only for the branches of production that are important and affect the livelihood of the people who controlled by the state. While that is not important and does not affect the livelihood of many people may be controlled by a private or *koperasi*. Article 33 of the *UUD 1945* paragraph (3) *UUD 1945* states that the earth, water and natural resources contained therein shall be controlled by the state and used for the greatest benefit of the people. This is a reflection of the use of resources for common welfare which is not for groups or individuals. Article 33 of the *UUD 1945* paragraph (4) contains a provision that the implementation of the national economy based on economic democracy with the principles of togetherness, efficiency of justice, sustainability, environmental friendliness, independence, and balancing progress and national economic unity. Article 33 of the *UUD 1945* paragraph (5) stated that further provisions regarding the implementation of this Article shall be at the law. Article 33 of the *UUD 1945* paragraph (4) and (5) are the fourth amendment of *UUD 1945*.

Economic democracy as the basic national economic also described in great detail contains basic principles. The principles are unity, the efficiency of justice, sustainability, environmental friendliness, independence, balance of progress and national economic unity. These principles generally show the importance of an economy that is based on the family spirit and cooperation, which are managed effectively and efficiently so as to accommodate the interests of all parties fairly. More than that the economic democracy which is developed must be able to maintain the continuity of life, natural resources, increase the national independence, and no less important, the ongoing democratic process should ensure a balance between economic growth on one hand and the unity of the national economy on the other hand.

## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 723

Thus, economic democracy as the ideal of the national economy will not escape from the strengthening of democratic governance which becomes the control and the directional goes into the national economy. Without a strong government, in the sense that is able to distribute the rights and obligations of each economy is fair, then the economy is truly democratic and will be difficult to achieve. Indonesian experience so far has shown that ongoing democratization process has not been entirely positive direction for the strengthening of the government.

### II. CONCEPT OF SYNDICATED LOAN AGREEMENT BASED ON ECONOMIC DEMOCRACY FOR MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES) IN INDONESIA

The Act No. 20 of 2008 on Micro, Small and Medium Enterprises (further written as UU UMKM) in the basic weigh reflects the philosophical foundation which confirms that a just and wealthy society based on *Pancasila* and UUD 1945 must be realized through the development of the national economy based on economic democracy that in accordance with the mandate of *Majelis Permusyawaratan Rakyat Republik Indonesia* decision *Nomor XVI/MPR-RI/1998* of Political Economy in the framework of Economic Democracy, Micro, Small and Medium Enterprises need to be empowered as an integral part of people's economic have accrued, roles, and strategic potential for realize economic structure are more balanced, develops, and justice.

Concentration of credit to big business raises inequality and socio-economic gap among Micro, Small and Medium Enterprises (MSMEs). It also creates injustice for MSMEs who need a loan in a not great amount. MSMEs cannot access the syndicated loan. Actually the large amount is not the main characteristic of the syndicated loan. Syndicated loan market in 1990 is also utilized by small institutions increasing the volume of business.<sup>17</sup> The provision of syndicated loans is based on the business prospects undertaken by micro, small and medium enterprises (MSMEs). This shows that syndicated loans are not only a monopoly of large companies but also small and medium enterprises. All companies in a variety of scales (size) have access to utilize syndicated loan for all efforts undertaken by the company which have very good prospects. This is a

---

<sup>17</sup> Joseph J. Northon, *International Syndicated Lending and Economic Development in Latin America: The Legal Context* (The Institute of International Banking, Finance & Development Law, London), No. 9, in cooperation with The International Financial Law Unit, Centre for Commercial Law Studies Queen Mary & Westfield College, University of London, 1997, at 7 in Andrey Uzzia Sitanggang, Arman Nefi, Adiwarman, *Metode Pengalihan Kredit Sindikasi* (Ghalia Indonesia, Jakarta 2009), at 6.



positive development for the development of business and syndicated loan itself.

MSMEs as the most disadvantaged have the same rights with large enterprises in gaining the syndicated loan, so that profits divided equally between MSMEs and Large Enterprises. If there is a situation of inequality, then the law should provide benefits to the group's most disadvantaged communities to realize the socio-economic balance in society.

One of the causes failure to achieve prosperity is due to the countrysiding. In the syndicated loan, Bank Indonesia as the party who is in power authority in finance provides flexibility to banks to provide syndicated loans to large businesses only. Welfare will be achieved when MSMEs have an equal opportunity to obtain syndicated loans, as mentioned in the preamble to weigh, Article c UU UMKM that empowerment of micro, small, and medium enterprises as mentioned in letter b need to be held overall, optimal and sustainable through the development of climate favorable, providing business opportunities, support, protection, and wide business development so as to increase position, role, and potential business for Micro, Small and Medium Enterprises achieve economic growth equity and increase people's income, job creation and poverty alleviation.

Syndicated loans policies in Indonesia begin with the issue of Circular Letter from Bank Indonesia (SEBI) No. 6/33/UPK at October 3rd, 1973 concern to the cooperation in the government banks in investment loans and credit exploitation. The background of the SEBI issue is Indonesia as a country which just entered a new era at that time so she should develop in all fields. Development for large projects which is required the large funds, is unable to be fulfilled by the state. One of the main sources of the development financing is through credit. The great value of credit is unable to be borne by one bank, therefore Bank Indonesia policy that government's banks are financing together (consortium). In the development of joint financing projects, particularly financing cooperation between the government bank and non-bank financial institutions (this is not governed by Bank Indonesia), cooperation tendency appears in syndications.<sup>18</sup> Lack of rules on syndicated loans resulted in a syndicated loan granted based on freedom of contract, which in turn cause various problems.

Article 2 b UU UMKM set that Micro, Small and Medium Enterprise is based on family, democracy, solidarity, efficiency of justice, sustainability, environmental friendliness, independence, the progress balance and national

---

<sup>18</sup> Achmad Anwari, *Kerjasama Pembiayaan Proyek Antar Lembaga Sumber Dana (Konsorsium)* (Balai Aksara, Jakarta 1985), at 35.

## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 725

economic unity. Mentioned in the description that the principle of the family is meant by underlying principle of Micro, Small and Medium Enterprise as a part of the national economy, organized and based on economic democracy solidarity, efficiency of justice, sustainability, environmental friendliness, independence, the progress balance and national economic unity for the welfare of the Indonesian people. The definition of Micro, Small and Medium Enterprise is organized as a union of national economic development for the prosperity of the people. While that is a principle of justice efficiency is the underlying principle of the empowerment Micro, Small and Medium Enterprises promote the efficiency of justice in an attempt to realize a fair business climate, conducive, and competitive.

To apply these principles, improving the opportunity, ability, and protection MSMEs has established various policies on provisioning effort, funding, and development as defined in the Article 7 UU UMKM. Further, Article 8 a UU UMKM regulates the financing aspect is to expand funding sources and facilitate MSMEs (UMKM) access to bank credit and non-bank financial institutions.

As a follow-up of Article 8 a UU UMKM so that at December 2012, Bank Indonesia make policy through PBI No. 14/22/PBI/2012 about credit or financing by bank and technical assistance in order to Development of Micro, Small and Medium Enterprise. The essence of Bank Indonesia's regulation is liabilities banks to channel funds in the form of credit/financing to MSMEs (UMKM) with share of at least 20% in stages, followed by the application of incentives/disincentives.

Bank Indonesia target the policy will issue quickly, with transition time during 2013-2014. At the beginning of 2015, bank should expose bank liabilities. Later MSMEs credit allocation by 20% should be run in 2018. For those banks that do not have expertise in the MSMEs (UMKM) segment, *Bank Indonesia* allows banks to joint financing.

The presence of PBI No. 14/22/PBI/2012 MSMEs (UMKM) can obtain financing through syndicated loans. Financing through syndicated loans to MSMEs (UMKM) will benefit, such as follows: (1) Financing the funding gets covered by more than one bank, in order to provide the required amount of funds; (2) Loan procedure simple. It is a simple procedure or way of working to be followed by the borrower to get the syndicated loan. Borrowers simply contact the bank who acts as lead manager and make a loan proposal, submitted to the lead manager. Further the lead manager distributes the proposal to the syndication participants. Thus, this activity does not take too much time and does not require a big expense. (3) Recognition of credibility. Approval of the proposed loan borrowers by

banks syndicate participants means that banks recognize the credibility and ability of borrowers to repay their loans on time. This means that the borrower has a good image among a syndicate of banks. (4) Low interest rate. Some countries may have excess supply of funds. The presence of these advantages, the relative level of interest rates will be lower. Some borrowers take advantage of this opportunity to get cheap financing. (5) Tool to access the capital markets both domestically and internationally. Some banks generally have access not only to the local bank, but also to the off shore bank. If the bank already has a name in the international market, it will be easier to look for financing on other occasions.

For the bank as lender, loan syndication profits provide MSMEs (UMKM) as follows: (1) Risk sharing. With syndication system, the risk is shared in accordance with the portion of funding by each member of bank syndicate; (2) There are limitations; (3) Experience of banking syndicate. Not all banks have experience in syndicated lending; (4) Fee income. With syndication participating as attendees will get a fee from the borrower. This fee is revenue for the bank; (5) Cross selling. For banks which are involved in the syndicate of banks, entered into a form of cooperation, is not limited to one particular project; (6) Image. Banks which often participate in the syndicated bank; will increase the credibility and image in society. This course will bring benefits to the bank because of the opportunity to seize more market.

Some MSMEs (UMKM) can join together to propose financing in the syndicated loan agreement. Based on the parties' freedom of contract can single or multy participate too. So it is possible to the debtor more than one person if the essential elements of its bank debts are fulfilled, there is the object of financing, achievement and achievement counter, and time period.

Classical problem in lending to UMKM is the collateral. There are many MSMEs (UMKM) that are unable to access bank credit due to lack of collateral. In a syndicated loan collateral does not always have each but can be one or several loans for all borrowers. Collateral in syndicated loan in general is quite a project financed plus personal guarantees (borgtocht). Therefore, in the syndicated loan agreement to MSMEs can be no assurance that projects funded debt plus guarantees underwriting (borgtoch).

Personal guarantees (borgtoch) in the syndicated loan agreement for MSMEs can adopt assurance system in the People's Business Credit (Kredit Usaha Rakyat). Kredit Usaha Rakyat (KUR written later) is a program that is included in Group-Based Poverty Reduction Programme Economic Empowerment of Micro and Small Enterprises (cluster 3). This cluster aims

## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 727

to improve access to capital and other resources for small and micro businesses.<sup>19</sup>

The purpose of the program is to accelerate the development of *KUR* economic activity in the real sector in the context of prevention and alleviation of poverty and the expansion of employment opportunities. In more detail, the *KUR* program objectives are as follows: (a) To accelerate the development and empowerment of the Real Sector Micro, Small, Medium Enterprises and Cooperatives (MSME), (b) To Improve access to finance and develop SMEs and Cooperatives to Financial Institutions, and (c) As the reduction/alleviation of poverty and expansion of employment opportunities.<sup>20</sup>

*KUR* is a scheme of credit/financing and working capital or investments specific to the Micro, Small and Medium Enterprises and cooperatives (MSME) in the field of productive enterprise whose business is viable (feasible) but have limitations in meeting the requirements set forth Banking (bankable). *KUR* is a program of lending/financing pattern by the Government guarantee to the amount of the guarantee coverage up to 70% of the credit limit. Guarantor institution is P.T. Jamkrindo and P.T. Askrindo.<sup>21</sup>

PT. Jamkrindo and PT Askrindo can be a guarantor in syndicated lending to MSMEs. As *KUR*, the provision of syndicated loan to MSMEs with guarantor PT. Jamkrindo and PT. Askrindo not government grants to MSMEs, so that MSMEs are obliged to return the loan to the lending bank syndication.

In *KUR*, there are three important pillars in the implementation of this program. The first is the government, Bank Indonesia (BI) and the Technical Department (Ministry of Finance, Ministry of Agriculture, Forestry Department, Ministry of Marine Affairs and Fisheries, Ministry of Industry, and the Ministry of Cooperatives and SMEs). Government works to help and support the implementation of the following provision of credit guarantee. Second, the underwriting agency that serves as a guarantor on loans and financing is provided by banks. Third, as the insured banks to lend to MSMEs functioning and *Koperasi*.<sup>22</sup> Three pillars are described as follows:

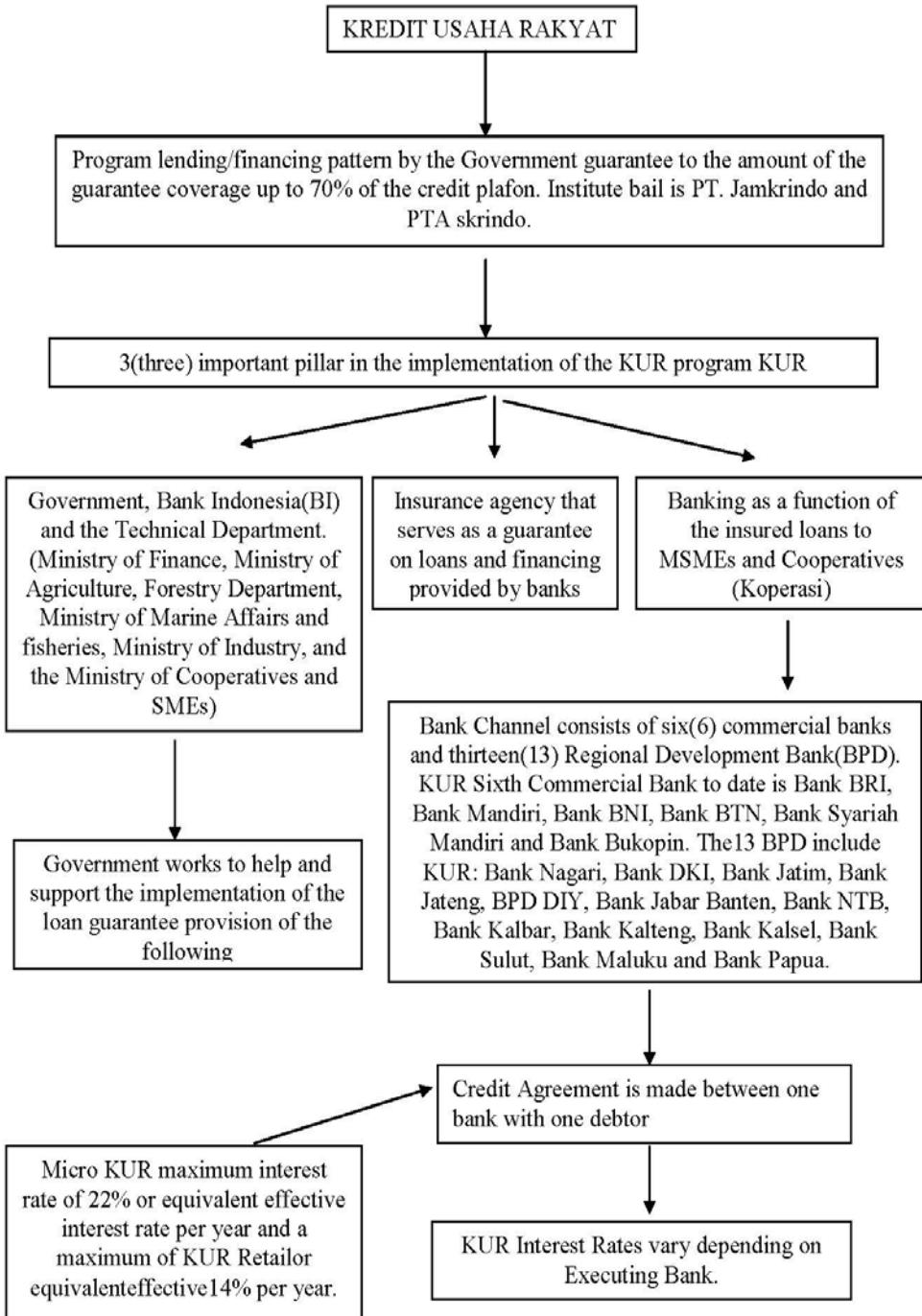
---

<sup>19</sup> Kredit Usaha Rakyat, [www.tnp2k.go.id/tanya-jawab/klaster-iii/program-kredit-usaha-rakyat-kur/](http://www.tnp2k.go.id/tanya-jawab/klaster-iii/program-kredit-usaha-rakyat-kur/) (last visited June 20, 2013).

<sup>20</sup> *Ibid.*

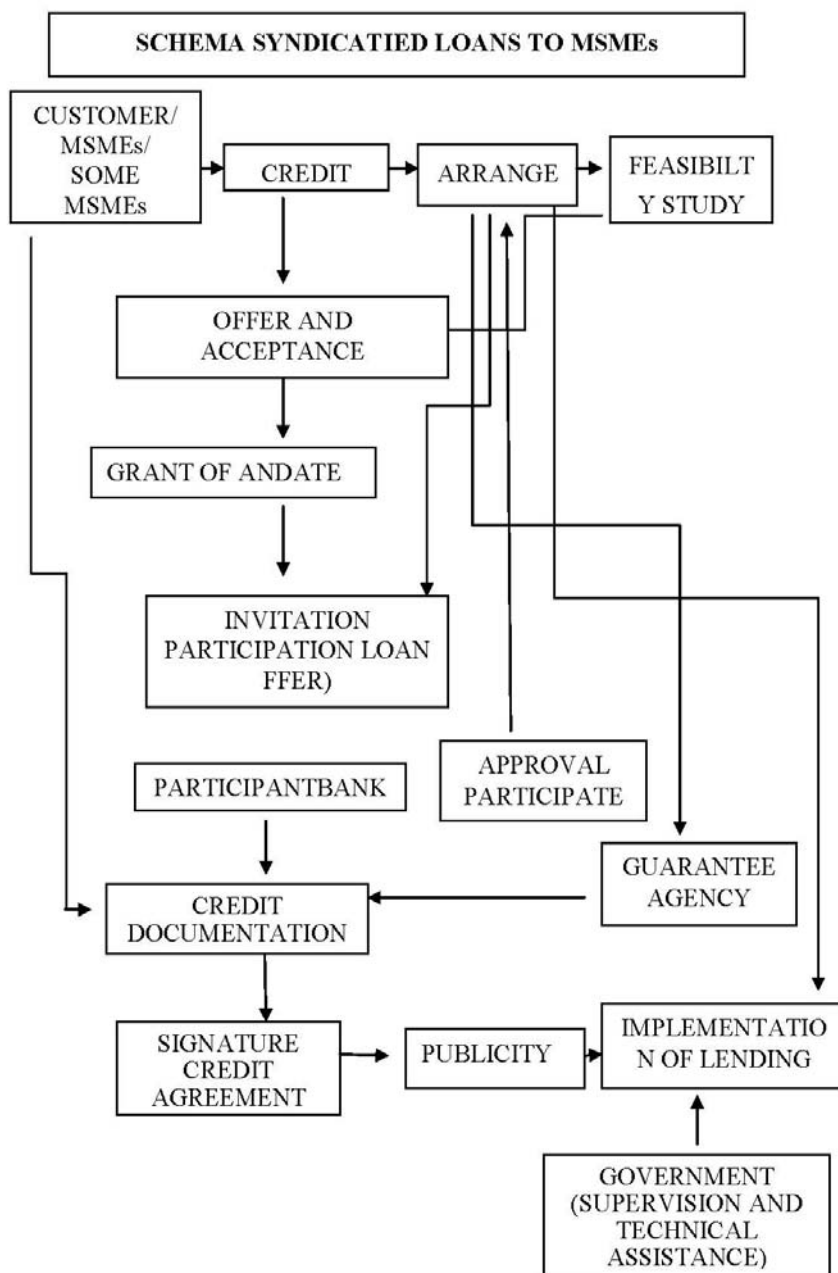
<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*



## 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 729

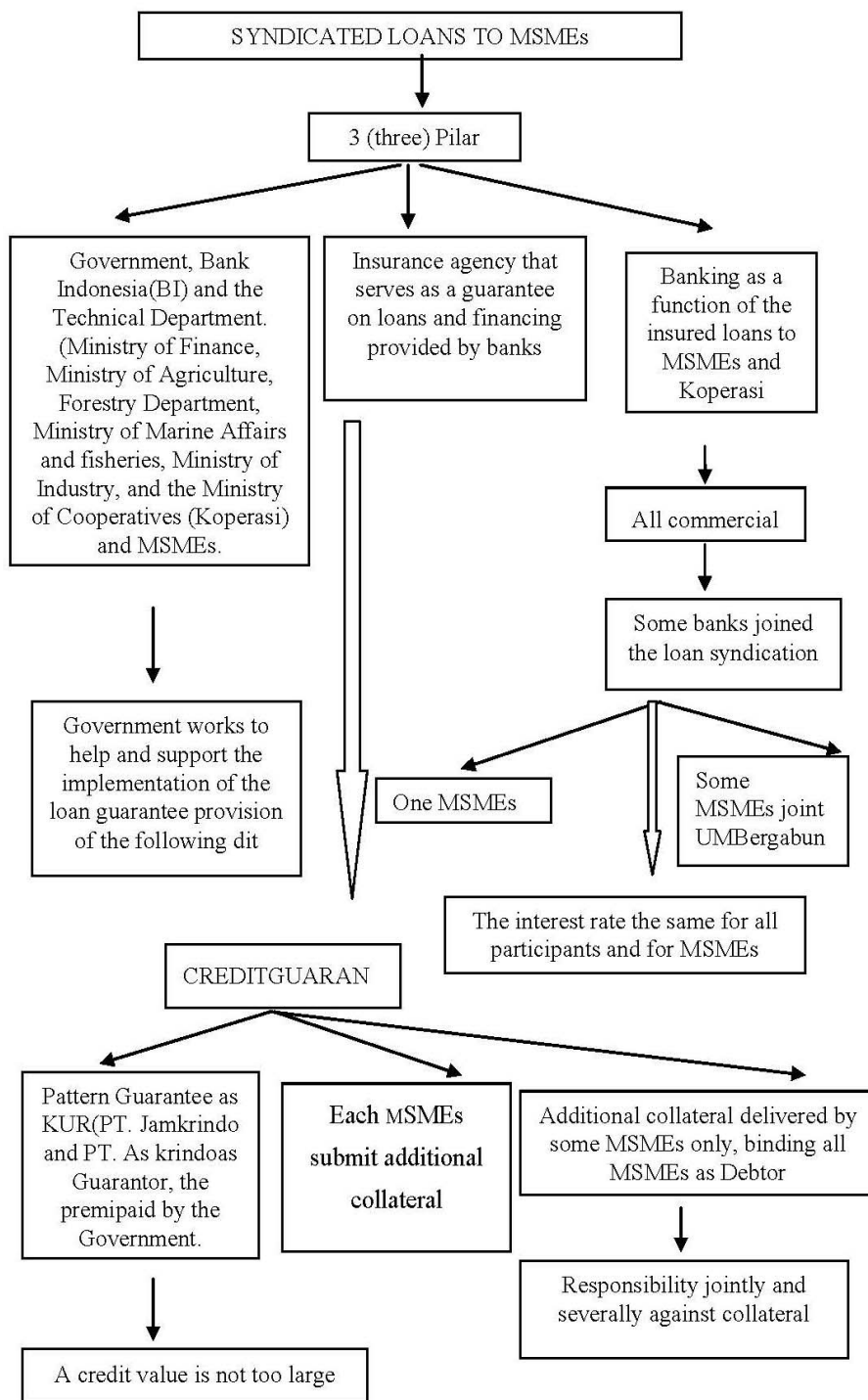
By adopting KUR, the syndicated loan agreement process for MSMEs can be described by the following scheme:



After the debtor gives acceptance, then the bank as arranger will move to form a syndicate, first arranger must have a mandate from the prospective borrower. The mandate is the authority granted by the debtor to establish an arranger for a syndicated loan consists of banks that will provide the financing needed by prospective borrowers. After receiving the mandate, the bank as an arranger made an offer to the banks to participate in syndicated loans. After the banks expressed their consent to participate in syndicated loans, then the banks as arrangers will apply for bail to the credit guarantee agencies, upon approval from the insurance corporation bank as arranger prepare loan documents in the form of a syndicated loan agreement is an agreement between participants syndication between debtors and creditors participants syndication itself. Once signed Syndicated Credit Agreement, the provision of funds will take place through a process where the bank / the syndicated lenders will transfer the amount of funds that have been approved to be given as a credit to the debtor into a special account administered by a bank that served as syndication agent. Agent bank as the power of the tub-syndicated bank participants, will then transfer to the debtor the overall amount of funds that have been requested by the debtor under the Credit Agreement Syndication. The role of the agent bank will continue to take place during the loan period. The government's role is to supervise and provide technical assistance to SMEs that get syndicated loans.

This paper offers a concept in terms of collateral for MSMEs to obtain syndicated loans. In a syndicated loan agreement for MSMEs, collateral may be provided by each debtor (MSMEs) to participate banks syndication. This means that each debtor is responsible for the collateral, respectively. Another concept is to offer collateral granted to participating banks syndication is a combination of several MSMEs. In this case, there is joint responsibility of all MSMEs are bound in a syndicated loan agreement. If one of the borrowers are in default of the collateral may be executed by the lender. This will certainly lead to a sense of greater responsibility for MSMEs that are part of a syndicated credit agreement. The concept can be described as follows:

# 2014 CONCEPT OF SYNDICATED LOAN AGREEMENT 731





## CONCLUSION

In line with the implementation of UU No. 20, 2008 about micro, small, medium enterprise (UMKM) and have revocation PBI No.3/2/PBI/2001 about Small Business Lending (KUK), so it would require the existence of provisions which may encourage increased lending or financing by commercial banks to MSMEs (UMKM) that is able to encourage MSMEs (UMKM) access to financial institutions by strengthening its capabilities. As one of the concrete support, Bank Indonesia accelerate the development of inclusive financial alignments to the MSMEs (UMKM) sector as one of the most important economic pillar in supporting the national economy as well as support the government programs oriented to pro growth, pro poor and pro job. UU UMKM reflect the basic weigh of philosophical foundation which asserts that a just and prosperous society based on *Pancasila* and *UUD 1945* must be realized through the development of the national economy based on democratic economy. Syndicated loans concepts that economic democracy based for MSMEs (UMKM) was a bank that can do a syndicated loan agreement with MSMEs (UMKM). Syndicated loans should not be a large amount. Syndicated loans also do not have pay for one debtor. Some MSMEs (UMKM) can join together to propose financing in the syndicated loan agreement. Based on the parties' freedom, the contract can be single or multy participant also. So it is possible the debtor more than one person if the essential elements of its bank debts are met such as finance object, performance and achievements counter, and term. Classic problem in lending for MSMEs (UMKM) is the collateral. In a syndicated loan, collateral does not always have each but can be one or several loans for all borrowers.