

Legal Effects of Credit Agreement Restructuring on Collateral in an Effort to Rescue Non-Performing Loans

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Abstract

Credit agreements sometimes arise factors that cause installment payments that have been agreed by the parties are not smooth and can make the banking economy less healthy, because it is undeniable that funds at the bank are also funds owned by customers. This can be said to be a non-performing credit at a bank. When the Credit Agreement is problematic, the bank will work to fix the credit issue as the creditor so that the funds that have been issued by the creditor can be received back based on the guidelines of the loan arrangement. This study's method of research is normative juridical with a concept and law strategy. The results of the study stated that the outcomes attained from causing variables non-performing loans could occur from internal (bank), and outside (debtor) elements. By credit restructuring, it is possible to select it since it may provide both parties superior answers, due to the fact that parties negotiate before it so that both sides' interests are represented.

Keywords: agreement; bad credit; banking; creditor debtor

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Introduction

Banks have a very important function in the financial system in every country. According to Law Number 10 of 1998 Concerning Banking, "a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of many people", is a bank. Banks store funds savings from the general public, deposits or current accounts. The funds are managed by banks is provided to the general people as credit. The development of the times has increased business activities in society. To start these operating procedures, the function of a bank will not be separated as a distributor of funds for the community who will start a business.

In providing credit between the consumer and the bank, each of whom is a debtor, an agreement is made in advance. A covenant is a promise made by one person to another or by two individuals to carry out an action. resulting from this occurrence, a connection developed between the two people called an engagement. In its form, a covenant is a series of words containing promises or undertakings spoken or written (Subekti, 2005).

According to Muhammad Djumhana, trust regarding credit distribution is an essential element meaning that the lender (credit) or so-called creditor gives trust to the recipient of the loan (credit) or called the debtor, this party can fulfill and account for all its actions in accordance with the content of the agreement (Simamora, 2019).

In credit there is an element of trust in the debtor as a basis. Lending carried out by banks usually

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requires a guarantee or both moveable and immovable things may be used as collateral. Article 1 Number 23 of Law Number 10 of 1998 Concerning Banking states that a guarantee is a dependence supplied to a creditor by a debtor and a third party to support his obligations under an agreement or engagement (Alam, 2019).

In providing credit by banks, banks usually want an agreement with collateral or collateral. Collateral as both moving and stationary objects and land rights that are used as collateral with the debabani of dependent rights based on Law No. 4 of 1998 relating to Dependent Rights has a very strong function for the smooth running of credit loans and serves as a tool of defense for creditors (in this case banks) in legal certainty of refunds. Collateral is a guarantee provided to creditors by a debtor and/or third party to uphold their end of an agreement or commitment.

Collateral has a very important role in ensuring the smooth running of debtors to carry out their duties, namely to pay installments in compliance with the previously signed credit agreement agreed between creditors and debtors. With the existence of the collateral object, it can protect the rights of the bank as a creditor if the debtor ever fails to fulfil its commitments.

The legal concept of responsibility with regard to real property and other related things, the right of dependent, also known as the right to land as defined by The Basic Regulations of Agrarian Principles, Law No. 5 of 1960, is a security interest placed on the right to land, whether or not additional items that are a part of the land are included, in order to pay off some debts, which priorities particular creditors against other creditors (Pemerintah Republik Indonesia, 1996).

The right of liability gives priority to creditors of the person who has the liability right in the sense that the right of liability grants certain creditors precedence over other creditors. But in practice there are often problems in providing credit, one of which is bad credit is receivables that are due not to be repaid and for banks principal and/or interest arrears exist that exceed 270 days, the debtor's business continuity is doubtful and from a financial point of view it has not fulfilled its obligations.

Land rights are most of the credit guarantees that are guaranteed by the community in the form of rights of dependents to banks. Because the value of the guarantee on the right to the land is considered large and depends on the value of the land to be guaranteed. In addition, credit guarantees with land rights have dependent rights that will be affixed to proof of ownership of land rights guaranteed to the bank. Indirectly, it can also protect creditors' rights if at any time the debtor defaults (Vinola et al., 2022).

There are six different types of internal and external elements that have an impact on a debtor's capacity and willingness to repay debts, namely: their legitimate right to take out a loan, their character, their ability to generate income, the condition of the production facilities they have, the conditions and value of the credit guarantees they provide, as well as the general economic development and business fields in which they operate.

Many efforts to rescue non-performing loans are carried out by banks, one of which is credit agreement restructuring. Therefore, a bank will restructure the credit agreement against the terms contained in the credit agreement to save problematic loans. With the restructuring, it is expected to reduce the number of bad loans at banks and make it easier for debtors to carry out obligations in the provisions contained in the restructured credit agreement.

When borrowers experience financial hardship, the lending institution must determine whether the loan requires security or not earlier investigations by Dardac, Barbu, and Boitan (Kasmuri & Shauki, 2019). Explain employing a cluster analysis technique, researchers investigate how credit restructuring affects the portfolio quality of bank loans and find that there is a danger of debtors defaulting again despite restructuring and repaying loans that do not perform well. It is recognized as a loss allocation process between borrowers and lenders. However, the two previous studies examining policy-based credit restructuring and the behavioral aspect of the decision-making process for restructuring associated parties like credit managers and credit officers was not revealed by its influence on banks (Kasmuri & Shauki, 2019).

Method

Based on the problems studied, the author uses normative juridical law research methods. Legal norms found in laws, rules, or court rulings as well as norms that exist and change in society are the sub-

ject of normative juridical study (Ali, 2014). Legal problems that are normative (law as written in book), a way of looking towards change towards realizing that law, in fact from a social science perspective is more than just legal norms and operating techniques, but also a social phenomenon and related to human behavior in the midst of a unique and attractive social life to be examined not from its prescriptive nature, rather it is descriptive (Mukti Fajar, n.d.). A detailed explanation of the legal consequences of restructuring credit agreements on guarantees in an effort to rescue non-performing loans is then drawn conclusions from general matters to specific problems (Ridwan et al., 2022).

Discussion

Restructuring Settlement of Non-Performing Credit Agreements

The form of problem bank credit settlement through the restructuring process is a form of internal credit settlement, not yet to dispute resolution, both the litigation (court-based conflict resolution) and non-litigation such as through an alternative to litigation. Internal settlements take place only between banks as creditors and debtor customers to discuss various aspects regarding the provision of credit that has been problematic. Settlement based on Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, Alternative Dispute Resolution, the scope of An alternative to litigation is relevant to the loan restructuring process of problem banks (Putra & Haes, 2022). Law Number 30 of 1999 formulates in Article 1 Number 11, according to which "Alternative Dispute Resolution is a process for settling disputes or differences of opinion outside of court by consultation, negotiation, mediation, consolidation, or expert evaluation, as agreed upon by the parties." Based on this formulation, what is relevant to be taken in the bank credit restructuring process includes: consultation, negotiation and mediation.

The settlement of non-performing bank loans through restructuring has not actually reached the level of dispute or conflict. Debtor customers whose credit problems because they have responsibility and good faith in repaying their credit, are debtor customers who should be protected because they have good faith (goede throw), such as maintaining communication with the bank concerned, still trying to find solutions to resolve their problematic loans, and so on. The settlement of non-performing bank loans through restructuring has not actually reached the level of dispute or conflict. Debtor customers whose credit problems because they have responsibility and good faith in repaying their credit, are debtor customers who should be protected because they have good faith (goede throw), such as maintaining communication with the bank concerned, still trying to find solutions to resolve their problematic loans, and so on.

Credit restructuring is a practice used by banks to make credit payments simpler to debtors, in order to avoid bad loans. A credit can harm the bank and the customer itself, so that efforts to handle or resolve it become the center of attention (Apsaridewi et al., 2023) In the bank credit agreement, there is a clause, namely dispute settlement (Alternative Dispute Resolution) which is a clause regarding the method of resolving disputes arising between creditors and debtors as a result of the credit agreement (Gustika et al., 2021).

The efforts made by the bank in resolving credit arrears through restructuring are by coaching delinquent debtors to find out the causes and obstacles faced by debtors, after knowing that the bank provides solutions to restructure credit. If the debtor is on board, they must send a letter of request. for restructuring by filling the difficulties encountered and the capacity to make payments each month and what type of restructuring the debtor wants. After that, the bank will analyze and if the application letter is approved a credit restructuring agreement addendum will be issued. in order for the amendment to be effective the next month, The debtor may make payments as he is able and there are no more credit arrears (Rismayani et al., 2013).

Credit restructuring is only available to debtors who meet specified requirements and have non-performing debts. The conditions include, for instance, that the debtor is having trouble making payments (principal and/or credit interest) as a result of his deteriorating financial situation as a result of a specific issue, for example, unexpected disasters such as the current pandemic, after loan is restructured, debtors are anticipated to be able to fulfil commitments since they have strong business prospects, demonstrate sincerity and willingness to fulfil credit commitments during restructuring, is not meant to prevent a decline in credit quality. The creation of PPAP (Allowance for Elimination of Productive As-

sets) and discontinuation of actual interest income recognition (Adnan et al., 2023).

If the debtor has a strong belief in and is prepared to carry out credit restructuring, it may be implemented. The bank can only analyze and evaluate the causes of non-performing loans to debtors, then if they are considered to still have good prospects, then before non-performing loans become bad loans, the bank will offer credit restructuring as an attempt to rescue defaulted loans before the settlement of auctioning debtors' guarantees.

From the credit restructuring activities to be carried out, there are several authorities in the implementation of credit restructuring, namely:

Those authorized to carry out credit restructuring are based on internal memos provided by company managers to the directors.

The Board of directors has the authority to make decisions on the terms, interest rate, and other aspects of the credit restructuring, including the amount of credit that the debtor will be required to pay.

The business manager is required to periodically update the board of directors and/or board of commissioners on the status of the restructured credit management.

The written modification (addendum) to the credit agreement should set forth the rights and duties of the debtor and other requirements with respect to the restructuring.

The impact of restructuring is that the implementation of credit is performed in phases and in conformity with banking legislation and internal regulations of the bank in force. This can be done by the bank if the debtor has good faith to complete its obligations. This step of credit restructuring is carried out in the goal of rescuing non-performing loans to lower the amount of non-performing loans, or NPLs, so they do not rise.

Credit restructuring is a practice used by banks to provide borrowers easy credit payments, in order to avoid bad loans. A credit can harm the bank and the customer itself, so that efforts to handle or resolve it become the center of attention. In the bank credit agreement, there is a clause, namely dispute settlement (Alternative Dispute Resolution) which is a clause regarding the method of resolving disputes arising between creditors and debtors as a result of the credit agreement (Fuady, 2000). The clause on dispute resolution only occurs when between the debtor client and the bank acting as the creditor is faced with certain problems, including bad loans.

Resolution of problematic disputes through credit restructuring is a form of internal settlement that has not yet been resolved through the courts (litigation), but the form or way of settlement through consultation and negotiation is the right and correct practice. Mediation settlement because it involves external parties and customers, namely as mediators, is not suitable to be applied because the credit restructuring process is only limited to being taken by the bank with the customer concerned (Achmad Gifary & Baftim, 2021).

Bank credit restructuring is mass, for example, in many countries, especially in Indonesia with the outbreak of the corona virus pandemic. Government Regulation in Lieu of Law Number 1 of 2020, which was passed and proclaimed on March 31, 2020, served as the foundation for the legal strategy the Government of the Republic of Indonesia established to combat it.

Some considerations (considerations) among other things, of Government Regulation in Lieu of Law (PERPPU) Number 1 of 2020, the following:

That Indonesia has been affected by the global spread of the 2019 Corona Virus Disease (COVID 19), which the World Health Organization has classified as a pandemic. Given that it has resulted in an increase in fatalities and material losses over time, this has consequences for social, economic, and public welfare elements,

that among other things, the Corona Virus Disease 2019 (COVID 19) pandemic's repercussions have included a slower pace of national economic development, reduced state income, and

Various government initiatives are required to protect the national economy and health, centered on health expenditures, social safety nets, and economic recovery, with the business community and disadvantaged communities included.

In addition to the PERPPU, steps and policies issued are Regulation No. 11/POJK.03/2020 of the Financial Services Authority, which was stipulated on March 13, 2020 and promulgated on March 16,

2020. The POJK specifically regulates Chapter III concerning Credit or Financing Restructuring.

Credit Rescue Efforts Due to Credit Agreement Restructuring

Efforts made by the bank in resolving credit arrears through restructuring are by coaching delinquent debtors to find out the causes and obstacles faced by debtors, after knowing that the bank provides solutions to restructure credit. If the debtor consents, they must submit a written request for restructuring by filling the difficulties encountered and the capacity to make payments each month and what type of restructuring the debtor wants. After that, the bank will analyze and if the application letter is approved, the credit restructuring agreement's addendum will be issued. Such that the addendum is released the month after, the debtor may make payments as he is able and there are no more credit arrears.

The implementation of credit restructuring is possible whether the debtor is sincere and willingness to carry out credit restructuring. The bank can only analyze and evaluate the causes of non-performing loans to debtors, then if they are considered to still have good prospects, then before non-performing loans become bad loans, the bank will offer credit restructuring as an effort to rescue non-performing loans before the settlement of auctioning debtors' guarantees. The implementation of this restructuring is prioritized for good faith debtors who are impacted by covid-19, some important things that must be known are as follows: (Kheriah, 2013)

The debtor is required to submit a restructuring application that includes all the information required by the bank or leasing. This application can be filed online via the bank or leasing's designated email address without having to meet in person.

In particular for leasing, the bank or leasing company will evaluate whether the debtor is directly or indirectly impacted, previous principal and interest payments, and the clarity of vehicle control.

Based on the debtor's profile, the bank/leasing offers restructuring to determine the pattern of restructuring or extension of time, the amount that can be restructured, including whether there is still an ability to pay installments whose value is determined through assessment and/or discussion between the debtor and the bank/leasing. This is computed to take into consideration the income of debtors impacted by covid-19. Information about the bank's or leasing's approval of a restructuring is supplied online or through the appropriate bank's or leasing's website.

Restructuring the debtor's credit is one of the credit rescue measures taken in the hopes that the debtor will be able to easily satisfy its commitments to creditors. Credit rescue can be done, among others, by conducting restructuring, rescheduling or reconditioning efforts which in banking terms are better known as the 3 R's. Determination of steps to be taken in the context of credit rescue efforts, must first be preceded by a thorough research on the causes of a credit problem. In every process of providing credit to debtors always contains risks. In principle, credit rescue measures are actions to handle non-performing loans with the aim of maintaining and continuing relationships with debtors (Susatyo, 2011).

Since this country experienced an economic and monetary crisis, one of them resulted in a slump in the field of business or business. Businesses carried out by large, medium or small entrepreneurs usually utilize credit from banks to strengthen their business ventures. But with the onset of the monetary, economic, business crisis carried out by many entrepreneurs failed and the impact of credit loans could not be returned and in the banking became non-performing loans or non-performing loans which were very large. To overcome non-performing loans and avoid large losses in the banking industry, by letter from the Bank Indonesia Board of Directors number 31/150/KEP/DIR dated November 12, 1998, Bank Indonesia provided guidelines and guidelines on processes for credit rescue by restructuring non-performing loans. In order for debtors to complete their commitments, the bank makes an attempt to restructure its credit operations. So, the purpose of restructuring is:

To avoid losses for banks because banks must uphold the quality of previously granted credit.

With this dryness, to aid in easing the debtor's liabilities. The debtor is required to restart his firm since doing so will generate cash that can be used to pay off some of his obligations and keep his operations going.

Credit settlement through legal channels can be avoided with restructuring since in practice, doing so involves a significant amount of time, money, and effort, and the outcomes are less than the amount of money recovered in receivables.

Facilities or regulations that can be utilized, as determined by the Bank Indonesia Board of Directors, to restructure non-performing loans mentioned above include :[\(Apsaridewi et al., 2023\)](#)

Lowering Lending Rates

Restructuring that lowers credit interest rates is one method of helping debtors so that with a decrease in credit interest, the amount of interest that must be paid by debtors on each payment date becomes small compared to the previously set interest rates. The reduction in interest rates does not change the follow-up agreement, namely the guarantee binding agreement. The reduction in interest rates only changes the loan agreement's terms and conditions. The form of credit agreement addendum can be made by deed under hand, that is, a deed made by the parties. Usually, an amendment to the credit agreement will be prepared by the bank or creditor.

Reduction of Credit Interest Arrears

One sign of problem credit is the arrears of credit interest more than three payments. Credit interest that should be paid every month or within a certain period according to the credit agreement, is not paid so that credit interest arrears gradually become concentrated which amounts to the principal debt. In crisis conditions like today, the debtor's business does not go according to plan and even fails so that business income plummets and as a result is unable to meet the obligation to pay interest to creditors every month. The reduction in interest arrears does not result in a change in the deed of credit agreement because what is reduced is the sum of the arrears of interest due from the debtor. Proof of the deduction of interest arrears, the bank simply issues a letter addressed to the debtor confirming that the amount of interest arrears to be paid is reduced so that it is smaller than the actual calculation under the credit agreement.

Reduction of Principal Arrears

A number of money loans supplied to the debtor by the creditor/bank is called the principal credit. For example, a bank lends money to the debtor in the amount of one billion rupiah and the debtor has withdrawn all of these loans, then these one billion rupiah is called the amount of the debtor's primary obligation to repay the credit according to the time frame stated in the financing agreement. Payment of the principal can be made in part every month along with interest payments or all at once at the end of the credit term. This is according to the agreement stated in the credit agreement. The greatest credit restructuring occurs when primary arrears are reduced. given by the bank to debtors because usually, when the main arrears are reduced, the interest and penalties are completely eliminated. Because the bank's assets, main debt, are not reimbursed and are instead losses that must be borne by the bank, this reduction in principle arrears represents a significant sacrifice made by the bank.

Credit Term Extension

A type of loan restructuring called an extension of credit period seeks to relieve debtors to return their debts. By extending the credit period, the debtor's credit quality is classified as a performing loan (not problematic) by extending the time frame and allowing the debtor to carry on with his company. Business revenue that should be used to settle maturing obligations can instead be invested in growing the company, which will eventually enable full repayment of all debts.

Additional Credit Facility

Restructuring decisions with the addition of credit facilities must be made a new credit agreement deed or addendum to the old credit agreement. A new credit agreement or an amendment may need to include extra terms since increased credit facilities may be accompanied by additional conditions. Depending on the item that will serve as the additional collateral, additional collateral must be bonded in the form of collateral binding if the additional credit facility demands it. When property and buildings are used as supplementary collateral, then the binding of the guarantee uses the instrument of liability. If the additional collateral is a movable object, then the binding of the collateral uses fiducia or pawn instruments.

Expropriation of Debtor's Collateral/Assets

The expropriation of the debtor's assets in law can be called compensation or debt encounter. To save credit in this way the bank / creditor takes over credit collateral whose collateral value is compensated by the amount of credit equal to the value of the collateral taken, compensation occurs. In other words, the credit collateral taken over by the bank is paid using delinquent credit. Thus, the credit collat-

eral becomes the property/ asset of the bank and the debtor's obligation is deemed paid. The expropriation of the debtor's assets can also be called set off.

Credit rescue measures, in this case restructuring, rescheduling, or reconditioning (3R) initiatives, will only be employed if credit settlement measures are unsuccessful. Before taking credit settlement actions, many factors must be taken into account, including: (Hak & Manusia, n.d.)

assurance that the granting of credit to debtors complies with the prudential banking concept, which was created based on the Bank Indonesia's instructions for the creation of bank credit policy.

Guarantee that the granting of credit does not contravene the terms of applicable laws and regulations, is still within the parameters of the economic sector, market segment, and within the risk tolerance defined in accordance with current capabilities or constraints.

certainty that the potential debtor has no intention whatsoever of repaying the bank's credit or debt.

assurance that the credit collateral offered as a backup plan is valid, includes preferences, and contains executables.

Assurance that the bank has an adequate network at the time of credit settlement efforts.

Assuring the accuracy and completeness of the legal papers kept by the bank.

assurance that the bank won't have a distinct loss burden as a result of the expenses necessary to conduct credit settlement measures.

Changes in credit agreements through restructuring are the new legal basis for the existence of legal relations between debtor customers and banks as creditors. The new relationship and legal basis itself replaced the old credit agreement. Changes in credit agreements through a credit restructuring is a step taken before the bank determines the final step in the form of execution of the object of credit guarantee. Banks' supply of credit is always followed by a guarantee clause, especially with the object of the right to dependent. This guarantee is basically for the bank, it has avoided the possibility of future losses in the event of bad debt. Munir Fuady explained that collateral as debt security is general and special (Fuady, 2016). What is meant by "general guarantee" is a promise from the debtor that comes into effect "by operation of law" and mandates that all of the debtor's assets, whether they are moveable or immovable, become liable for the obligation to the creditor. Article 1131 of the Civil Code provides the legal foundation.

Legal consequences due to debtor customers defaulting on fulfilling bank credit payment obligations, can befall debtor customers such as the status of the dependent object being auctioned for credit repayment. Execution of the object of liability in the provision of bank credit because it has been clearly and firmly regulated in the clauses of the bank credit agreement, is the last step taken by the bank. Before the execution of the object of the insured, the important step taken is through credit restructuring, which means that there are no legal consequences for the debtor customer, for instance, in the event that the insured item is threatened with execution. Through credit restructuring, the legal relationship between bank customers and banks will be more closely established due to the clause addition of new credit, reduction of arrears and extension of the grace period of the credit concerned.

Conclusion

The stages regarding the credit restructuring implementation process are credit restructuring initiatives which begin with making a call to the debtor concerned in compliance with the health regulations in place during the covid-19 epidemic and submitting warnings and collections three times both verbally and in writing. If from the call for warning and collection the debtor's financial situation is reportedly deteriorating, according to a study, the bank can offer and decide to restructure the credit if necessary. After that, negotiations are carried out by until the debtor accepts, proposing credit restructuring in accordance with the bank's own policies. Then, analysis and evaluation, analysis of the debtor's business and ability is again carried out in accordance with bank regulations, after that the bank will evaluate, there are several stages that will be chosen by the bank, such as changes in interest rates, rescheduling, or even seizing debtor assets in compliance with applicable laws.

The obstacles encountered in the implementation of non-performing credit restructuring at banks

are debtors difficult to work with, debtors with bad intentions (being uncooperative, lying and hiding problems related to financial and company assets, where it is known that the debtor is actually capable of fulfilling its obligations in settling credit to the bank as a creditor, but the debtor purposefully fails to address his credit problems or purposefully postpones paying his debts in accordance with the results of the evaluation and identification carried out by the bank as creditors. In addition, the next obstacle is that debtors experience economic problems, especially during the covid-19 pandemic as currently many people have a slumped economy, and also many business businesses are losing money, where debtors cannot manage their businesses so that they experience failures that cause the debtor to find it difficult to fulfill their obligations to resolve their credit problems a debtor to the bank.

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