

Legal Protection for Creditors in Credit Agreements for Collateral Objects If the Debtor Defaults

Julia Susilawati

Faculty of Law, Sultan Agung Islamic University (UNISSULA), Semarang, Indonesia,
E-mail: yuliasusilawati0@gmail.com

Abstract. *Money lending and borrowing activities have been carried out for a long time in people's lives who have known money as a means of payment. In reality, many debtors are unable to pay credit because they cannot run their business, this is caused by several things, including a disaster experienced by the debtor. This research aims to determine and analyze the legal protection of creditors in credit agreements for mortgage objects if the debtor defaults and to analyze obstacles and solutions if the debtor defaults in credit agreements with mortgage rights. The method used in this research uses a sociological juridical approach. In this research the author uses qualitative data analysis. Primary data collects data by observation and interviews, while secondary data uses existing library sources and books. Based on this research, it can be said that to guarantee legal certainty from both parties, the debt agreement must be trademarked and legalized by an authorized official, namely a notary, so that the agreement has legal force that is binding on both parties and the obstacles or barriers faced by creditors in regarding PT Bank Rakyat Indonesia (Persero) Tbk. Balida Branch to handle bad credit collection includes economic, domicile, nature, health and family factors. Apart from that, efforts are being made to resolve bad debts for debtors by executing collateral for debtors' collateral rights.*

Keywords: *Agreement; Creditors; Protection.*

1. Introduction

In order to increase national development that focuses on the economy and business world, it requires quite large capital support. This capital can be obtained from various sources, one of which comes from loan or credit facilities provided by banks. The activity of borrowing and lending money has been carried out for a long time in the lives of people who have known money as a means of payment. Almost all people have made the activity of borrowing and lending money something that is very necessary to support the development of their economic activities and to

improve their standard of living. Seeing this, it can be said that the activity of borrowing and lending money is already a part of people's lives today.

When viewed from the perspective of national and international economic development, it can be seen how big the role is related to the activities of borrowing and lending money at this time. Various financial institutions, especially conventional banks, have helped meet the need for funds for economic activities by providing loans, including in the form of bank credit. Bank credit is one of the conventional bank businesses that has been widely utilized by people who need funds.¹

Borrowing and lending itself is regulated in Book III of the Civil Code, Article 1754, which regulates the following:

"Lending and borrowing is an agreement in which one party gives to another party a certain amount of goods that have become obsolete due to use, on the condition that the latter party will return the same amount of the same kind and condition."

Furthermore, it is explained in Article 1765 of the Civil Code that it is permissible to promise interest on borrowing money or other goods that are used up due to use. From this understanding, the elements of borrowing can be seen as follows:²

- 1) There is an agreement between the borrower and the lender
- 2) There is a certain amount of goods that are used up due to giving loans
- 3) The party receiving the loan will replace the same item
- 4) The borrower is obliged to pay interest if agreed.

In the laws and regulations governing banking law in Indonesia, namely Law Number 10 of 1998, the definition of credit is regulated in Article 1 point 11 which reads as follows:³

"Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with the provision of interest."

In reality, many debtors are unable to pay their credit because they cannot run their business, this is caused by several things, including two years ago Indonesia

¹Bahsan, 2007, Law on Guarantees and Credit Guarantees of Indonesian Banks, Raja Grafindo Persada, Jakarta, 2007, Page 2

²Sentosa Sembiring, 2008, Banking Law, 2nd ed., Mandar Maju, Bandung, p. 67

³Law Number 10 of 1998 concerning credit

was hit by the COVID 19 pandemic so that many businesses from small to large businesses experienced significant losses, leading to bankruptcy. There are also various other factors that can affect the business and financial conditions of debtors, resulting in bad debts, including the phenomenon found in society, the disasters experienced by debtors, such as prolonged dry seasons, fires, earthquakes and so on which can disrupt the productivity of the debtor's business. In addition to debtors, banks also experience obstacles in credit, one of the obstacles often faced by banks is bad debt. Bad debts are credits that occur due to arrears in interest on principal installments, all credits included in the collective level of bilitas are less smooth, doubtful and bad due to certain factors, bad debts are what every bank is very worried about because they will disrupt the bank's financial condition, and can even result in the cessation of bank business activities.

The emergence of non-performing loans is caused by several internal and external factors. Internal factors causing non-performing loans are expensive weapons policies, deviations in the implementation of inventory procedures, bad faith from the owner, bank employee photo managers, weak non-performing loan information systems. While external factors causing non-performing loans include debtor business failures, the use of unhealthy banking competition climates by debtors, and declining economic activities and high credit interest rates. Therefore, there will be negative effects that can be caused by this situation.

2. Research Methods

The method used in the study uses a sociological legal approach, namely in analyzing data based on legal principles and legal comparisons that exist in society. The types and sources of data used are primary and secondary data. Primary data includes observations and interviews while secondary data includes documentation studies and literature studies.

In this research, the author uses qualitative data analysis, namely a research procedure that produces descriptive analytical data, namely what respondents state in writing or verbally and also the real behavior that is researched and studied as a complete goal.⁴

The use of qualitative data analysis is because the data collected is data obtained from the results of observations and interviews in the form of information and respondents which are then connected to existing literature, theories related to the problem, then finding a way to solve the problem by analyzing and finally

⁴Soerjono Soekanto and Sri Pamuji. Normative Legal Research. Jakarta: CV Rajawali. Page 13

drawing conclusions to obtain the results.⁵

3. Results and Discussion

Legal protection is something that is given to legal subjects in the form of legal instruments, both preventive and repressive, and in written and unwritten forms. Legal protection given to creditors in credit agreements with collateral is preventive and repressive. The form of legal protection given to creditors when the debtor defaults in a credit agreement with collateral is initiated by the process of binding the credit agreement with collateral, namely by making a credit agreement with a clause granting collateral where the collateral agreement is an accessory agreement that follows the main agreement.

Related to the law of agreements if the debtor does not do what he promised, then the debtor is said to be in breach of contract. The debtor is negligent or negligent or breaks a promise, or also violates the agreement, if the debtor does or does something that he is not allowed to do. Sometimes it is also not easy to say that someone is negligent or forgetful, because often it is not promised exactly when a party is required to carry out the promised breach of contract.

The consequence of an agreement made by the parties (creditor and debtor), then the rights and obligations as a result of the agreement will be binding on the creditor and debtor, as long as each party fulfills the rights and obligations, the agreement will run smoothly, but when the debtor is reluctant to fulfill his obligations and can be categorized as a debtor in default/broken promise, of course the creditor's interests will be harmed. If this happens, the creditor has the right to demand that the debtor fulfill his obligations and may use coercive power as regulated by law.

Every credit issued by a Bank or similar financial institution always has the possibility of becoming stuck so that it causes losses to the Bank or similar institution, where bad credit is one of the risks that must be faced by creditors, both from the debtor's error factor and natural factors or overmacht. Natural phenomena or non-technical factors often influence every customer or debtor to default in this case, intentionally or unintentionally defaulting on their credit loans that have matured to PT. Bank Rakyat Indonesia (Persero) Tbk. Balida Branch. Similar to the definition of default and various forms of default, in the credit agreement, the customer is considered to be in default when the customer does not pay the loan that has been agreed upon, pays but the amount is not in accordance with what was agreed upon, pays but the time is not in accordance

⁵Ibid. 13

with what was agreed upon so that what is his obligation cannot be fulfilled or is only partially fulfilled which causes the agreement to be violated or not obeyed which results in the loss of the debtor's rights.

In court, the creditor must prove as much as possible that his opponent (debtor) has committed a breach of contract, not force majeure. Likewise with the debtor, the debtor must convince the judge that the fault does not lie with him with defenses such as force majeure, stating that the creditor has waived his rights, and the creditor's negligence. For the negligence or negligence of the debtor (the debtor or debtor as the party obliged to do something), several sanctions or punishments are threatened. There are four types of punishments or consequences received by a negligent debtor, namely⁶:

- a. Paying for losses suffered by creditors or briefly called compensation.
- b. Cancellation of the agreement or also called breaking the agreement.
- c. Risk transfer.
- d. Pay court costs, if the case is brought before a judge.

Law enforcement and justice must use the right line of thought with evidence and evidence to realize legal justice, and the content of the law must be determined by ethnic beliefs, whether a case is fair or not. Legal issues become real if legal apparatuses implement them properly and fulfill and comply with the rules that have been standardized so that there is no deviation from the rules and laws that have been carried out systematically, meaning using legal codification and unification in order to realize legal certainty and legal justice.⁷

One of the most important things about the failure to fulfill the obligation is that the creditor can ask for compensation for the costs, losses and interests suffered. Allowing for the obligation to compensate the debtor, the law determines that the debtor must first be declared to be in a state of negligence. Default is generally due to the debtor's fault, but sometimes the debtor who is accused of being negligent can defend himself because he is not entirely at fault, or in other words the debtor's fault is not entirely due to his fault.

Given the importance of the position of credit funds in the development process, it is only right that credit providers and recipients and other related parties receive protection through a strong guarantee institution that can also provide legal certainty for all interested parties. In distributing credit to the community, banks

⁶ R. Subekti, Civil Code, PT. Arga Printing, Jakarta, 2007, p. 45

⁷Ishaq, 2009, Basics of Legal Science, Jakarta: Sinar Grafika. P. 43.

have their own policies to overcome obstacles or problems that may arise. One of the very big obstacles and a very serious challenge related to the credit banking sector is the problem of bad debts and how to resolve them. In providing credit, the creditor (Bank) and the Debtor are mutually bound to enter into a credit agreement, but sometimes the Debtor defaults so that bad debts occur.

One way to resolve the bad debt, the bank as a creditor in providing credit to the debtor requires collateral from the debtor in order to obtain certainty for the repayment of the loan. The existence of collateral is very necessary because it can provide certainty and legal protection for the bank or creditor and the recipient of the loan or debtor. Collateral is a very important element and has an important role in determining credit analysis.

Collateral generally accepted by banks is land and buildings. This collateral is considered quite good considering the relatively stable and high economic value of land and buildings. The last effort taken by the bank in the event of a bad debt is to carry out an execution auction on the collateral that is the object of the mortgage. The execution auction in the process of resolving bad debts is carried out after other methods have been attempted to resolve the bad debt, but if the debtor still cannot settle his debt, then the object of the mortgage will be subject to an execution auction process in accordance with existing regulations.

The obstacles or barriers faced by creditors in terms of PT Bank Rakyat Indonesia (Persero) Tbk. Balida Branch in handling the collection of bad debts include:

- a. Economic factors of the customer that no longer allow them to make loan payments according to the agreement due to the debtor's business experiencing losses or bankruptcy.
- b. The domicile factor of a debtor who has moved residence or has left his residence without his whereabouts being known, so that the debtor's residence can no longer be known.
- c. Natural factors due to agricultural products from debtors experiencing delays in harvesting so that fulfillment of agreement obligations is also delayed.
- d. Health factors, where there is a family member who is sick and needs a lot of money so that debt payments are delayed.
- e. Family factors, where the debtor has other interests such as marrying off a child or circumcising a child, resulting in late payments.

However, Bank Rakyat Indonesia as a creditor provides an opportunity for debtors to complete their obligations so that both parties do not harm each other, namely by selling the collateral that is guaranteed to the Bank themselves, so that the

proceeds from the sale can be used to pay off the debtor's credit loan, even Bank Rakyat Indonesia helps debtors to find prospective buyers for those interested in buying the debtor's collateral. This is intended to resolve bad debts amicably and the proceeds from the sale received by the debtor are greater if they carry out the auction process, this also aims to avoid many auction procedures that take up a lot of time.

In overcoming bad credit at PT. Bank Rakyat Indonesia (Persero) Tbk. Balida Branch, made efforts to save credit and avoid losses, namely by auctioning assets or collateral that have been pledged by debtors to the Bank. Where the auction institution that has the authority as an intermediary to carry out confiscation and auction of collateral is the State Wealth Service Office and auction institution or what is called KPKNL.

4. Conclusion

Legal Protection for creditors to ensure legal certainty for both parties, the debt agreement must be certified and legalized by an authorized official, namely a notary, so that the agreement has legal force that binds both parties so that they understand their rights and obligations and possible legal efforts that can be made to protect the rights of each party, this is also done to save credit that is feared to be in default and to know how to terminate a credit agreement in accordance with applicable regulations and in accordance with the Civil Code. Obstacles faced by creditors in terms of PT. Bank Rakyat Indonesia (Persero) Tbk. Balida Branch to handle the collection of bad debts include economic factors, domicile, nature, health, and family. In addition, efforts made to resolve bad debts against debtors by executing collateral against the debtor's collateral rights. The form of a credit agreement is important in legal protection for creditors, because in addition to a letter of agreement, there needs to be a report on the implementation of the reading of the credit agreement between the creditor and the debtor when the credit application has been approved.

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