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Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia

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Abstract
Credit loans have the risk of not fulfilling payment obligations. There fore it is necessary to bind collateral to get a repayment with collateral. If it cannot be anticipated anymore, then lousy credit will occur and must be resolved immediately, credit settlement usually uses the execution of mortgage rights. However, there are alternative settlements regulated in article 12 an of the law of the Republic of Indonesia number 10 of 1998 concerning banking law, namely foreclosed collateral in practice, there are problems regarding the implementation of foreclosed collateral by verdict number 183/pdt/2020/PT SMG and verdict number 24/pdt.g/2019/PN Pti. This study aimed to analyze the implementation of foreclosed collateral as a way to resolve the problem of bad loans. The research method used is normative, using secondary data obtained from library research, including primary, secondary and tertiary legal sources. Therefore, the implementation of the foreclosed collateral taken over by verdict Number 183/PDT/2020/PT Smg is valid because it is through a voluntary submission mechanism, and verdict Number 24/Pdt.G/2019/PN Pti is invalid because there is no agreement and has an impact on debtors and creditors feel harmed.

Keywords: Non Performing Loan; Mortgage Law; Foreclosed collateral.

Забезпечення стягнення застави як альтернатива врегулювання безнадійних кредитів в Індонезії

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Анотація
Кредитні позики мають ризик невиконання платіжних зобов'язань. Тому, щоб отримати виплату за заставою, потрібно забезпечити її стягнення. Якщо цього неможливо передбачити, виникає безнадійний кредит, і цю проблему необхідно вирішити негайно. Для врегулювання кредиту зазвичай використовується оформлення іпотечних прав. Однак існують й альтернативні способи врегулювання, які передбачено статтею 12ап Закону Республіки Індонезія № 10 від 1998 р. про банківське право, а саме – стягнення застави. На практиці існують певні проблеми з реалізацією стягненої застави за рішенням суду № 183/pdt/2020 / PT SMG та вироку № 24/pdt.g/2019/PN Pti. Метою статті є аналіз застосування стягнення застави як способу вирішення проблеми безнадійних кредитів. У роботі використано нормативний метод і метод збору вторинних даних, отриманих у результаті аналізу нормативних документів, включаючи первинні, вторинні та третинні правові джерела. Так, реалізація стягнення застави, ухваленої вердиктом № 183/PDT/2020/PT Smg, є дійсною, оскільки вона здійснюється через механізм добровільного подання, а вердикт № 24/Pdt.G/2019/PN Pti вважається недійсним, оскільки не має відповідної угоди, що впливає на боржників і кредиторів, які розуміють, що їм завдано шкоду.

Ключові слова: непрацюючий кредит; іпотечне право; заставне майно.

Introduction

Banking is one of the agents of development, and this is due to the primary function of banking itself, namely as an institution that collects funds from the public in the form of savings and distributes them back to the community in the form of financing. This function is commonly referred to as financial intermediation [1].

Following Havrylchyk (2016), Rodnyansky and Darmouni (2016), and Gropp et al. (2018), bank characteristics are chosen to capture asset size (a natural log of assets), profitability (Return on Assets: ROA), loan quality (Loan-at-Risk: LaR), capitalization (Capital Adequacy Ratio: CAR), and liquidity (Deposits/ Assets). We utilize CAR to control banks' resilience against risks. A higher CAR indicates the tendency for banks to reallocate their assets to low-risk ones, which is in line with the literature on asset reallocation (Acharya and Steffen, 2015). The Deposits/Assets controls different funding conditions of the banks. Lastly, for a proxy for credit risk, we use LaR, which is the ratio of the sum of non-performing loans (NPL) and restructured performing loans to the total loan. LaR may be better at depicting the credit risk than NPL because the Indonesian Financial Authority (OJK) allows loan restructuring for debtors affected by the COVID-19 pandemic. Thus, the NPL ratio may underestimate the true credit risks possessed by banks during the pandemic. We also employ the lag of bank-specific characteristics by one month to avoid potential contemporaneousness between the dependent and the explanatory variables [2].

In Indonesia bank as a financial institution, based on Article 1 paragraph 2 of the Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (with this abbreviated to the Banking Law), the definition of a Bank is "A business entity that collects funds from the public". In the form of savings and distribute them to the public in the form of credit and or other forms to improve the standard of living of the people at large. The granting of this credit contains risks that can affect the health and business continuity of the Bank, so that in its implementation it must be based on the Bank's confidence in the ability and ability of the Debtor to repay the debt, and must be carried out based on the principle of providing proper credit and the principle of prudence (prudential aspect). To protect and maintain the interests of the Bank, customers and the public. For this reason, before the Bank gives credit, the Bank must conduct an in-depth assessment/analysis of the character, ability of capital and collateral (collateral) as well as the business prospects of prospective Debtors [3].

To ensure that the implementation of the Bank's credit loans is smooth, the Bank usually requires the provision of credit collateral by the Debtor. According to Article 1 number 23 of the Banking Law, collateral is an additional guarantee submitted by a Debtor Customer to a bank in the context of providing credit or financing facilities based on Sharia Principles. This guarantee is intended as an implementation of the main agreement, namely a credit agreement and the nature of this guarantee is an accessoir agreement as an agreement that follows the main agreement. The Bank feels very safe and believes in the existence of a guarantee

from the debtor or customer because if in the future there is a risk of default, the Bank can sell the guarantee as a substitute for the loan that has been given. In connection with the Bank's lending activities regarding debt guarantees, it is called credit guarantee or collateral. Credit guarantees are generally required in a credit grant. From several provisions that apply in the banking sector, it can be concluded that credit guarantees are almost always required for lending by banks, but as far as can be seen, there are no reasons for banks to require (prospective) debtors to submit (give) a credit guarantee. There are provisions of applicable guarantee law, for example, the provisions of Article 1131 of the Civil Code concerning the position of the assets of the debtor as collateral for his debts. Banks may be able to approve lending to debtors without requiring the submission of guarantees as long as they meet the feasibility of various aspects that are assessed [4].

Providing guarantees by debtors in a credit agreement does not always guarantee smooth instalments or repayment of customer debts as debtors to banks as creditors. The fact is that banks often encounter problems with non-performing loans (NPL). According to the agreement, able to repay part or all of the funds borrowed from the bank. The execution of the guarantee that has been tied to the Mortgage is regulated in Article 20 of the Law of the Republic of Indonesia Number 4 of 1996 concerning Dependent Rights on Land and Objects Related to the Land (with this abbreviated to the Dependent Rights Act), which essentially states that if the Debtor is in breach of contract, the Creditor can carry out the sale of the Mortgage object through direct execution without going through court assistance or known as the Execution Parate or execution of the same executorial title. contained in the Mortgage Certificate, the existence of "For the sake of Justice based on God Almighty" on the Mortgage Certificate has executorial power, and finally, the bank can carry out executions through underhand sales upon an agreement between the Debtor and Creditor so that a favourable price can be obtained for all [5].

One of the alternative settlements for non-performing loans is foreclosure of collateral with a takeover mechanism for collateral guaranteed by the debtor. This mechanism is known as Foreclosed Collateral. The legal basis in the understanding of Foreclosed Collateral is contained in Article 12 A of the Banking Law, which explains "Commercial banks may purchase part or all of the collateral, either through public auctions or outside the auction based on voluntary submission by the owner of the collateral or based on the power to sell outside the auction from the owner of the collateral in If the debtor does not fulfil his obligations to the bank, provided that the purchased collateral must be disbursed as soon as possible".

The Foreclosed Collateral mechanism is used as an alternative to resolving bad loans by banks to overcome the high number of net performing loss that can affect the bank's business continuity and performance in Indonesia Financial services authority (OJK) reporting, but in practice credit settlement through Foreclosed Collateral the author finds differences between the 2 cases in which one of the decisions validates the existence of Foreclosed Collateral by one bank and the other decision rejects the existence of Foreclosed Collateral, because of these 2 cases, problems arise in the validity of the Foreclosed Collateral.

One of the decisions that validated the existence of the Foreclosed Collateral mechanism by one of the banks was based on the decision of the verdict Number 183/PDT/2020/PT Smg on legal considerations, the Judge decided that the legal actions by Bank Bukopin Syariah in carrying out the Foreclosed Collateral mechanism based on the Deed of voluntary submission of guarantees as debt repayment and the Deed of power to sell and the Deed of Employment Agreement made before a notary are declared valid and therefore Foreclosed Collateral efforts made by Bank Bukopin Syariah is legal. Meanwhile, the decision that rejected the Foreclosed Collateral was based verdict Number 24/Pdt.G/2019/PN Pti, in legal considerations, the Judge decided that what was done by Bank Mandiri Artha Abadi against the Deed made and signed before a Notary regarding the Deed of Guarantee delivery agreement as Debt Settlement, Power of Attorney to sell, and the Deed of Emptying Agreement causing losses to the plaintiffs because in the process of making the Foreclosed Collateral deed it was not valid and violates the provisions regarding the execution of mortgage rights based on Article 20 number 4 the Dependent Rights Act. Therefore the plaintiff's claim is declared granted.

The difference between the two decisions above actually stems from the ambiguity of the Foreclosed Collateral mechanism itself. In Article 12 A of the Banking Law, we need to understand the provisions regarding the procedure for buying and disbursing collateral based on Foreclosed Collateral, further regulated in Government Regulations. Until now, Government Regulation does not yet exist. Also, in the implementation of Foreclosed Collateral, there is a dispute over which norms should be carried out between the Dependent Rights Act or with the Banking Law, especially the procedure for disbursing Foreclosed Collateral by banks mandated by the Banking Law does not exist because there is no certainty regarding the Foreclosed Collateral procedure in practice. Usually, the bank will take the initiative to initiate first by asking the debtor to settle through Foreclosed Collateral so is problems in implementing Article 12 of the Banking Law.

The purpose of this study is to analyze how the mechanism for the transfer of foreclosed assets in Indonesia, as well as identify legal certainty in the foreclosure of collateral. Implementation of this collateral acquisition is carried out for the settlement of financing customers who receive financing facilities that are no longer able to fulfill obligations. Islamic banking can take over collateral from customers who receive it financing facility in a condition unable to meet obligations financing. Implementation of this transfer can be done either by way of auction public or outside the auction on condition that there is a voluntary submission of the customer or by granting a power of attorney to sell from the customer to the banks.

Which is the subject of the first discussion, how is implementing foreclosed collateral as an alternative for bad credit settlement in Indonesia, second, what is the legal impact of implementing alternative settlements of bad loans through foreclosed collateral on debtors and creditors

Materials and Methods

In this study, an in-depth examination was carried out on legal facts which are then used in answering legal issues. Legal issues have a central position in research law as the position of the problem in research others, because it is the legal issue that must be resolved internally legal research as the problems to be answered in in non-legal research. This research begins by formulating problem. The problem arises because there are two propositions that have relationship, both functional, causal, and one confirms another.

This type of research is normative legal research Normative legal research is legal research that lays down law as a building system of norms regarding principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). Normative legal research must be seen from a juris viewpoint, who conduct research with the aim of legal problem solving which ultimately has benefits and benefits for society. Study normative law is done to generate arguments, theories, or new concept as a prescriptive in solving problems that faced. The answer expected in legal research is right (correct), appropriate, in-appropriate or wrong, so that the results obtained already contain value. The nature of this research is descriptive analysis, which is a method used to depict a current condition or situation with the aim of providing data.

Object of this research is to explore ideal aspects and analyze them based on legal theories or regulations in effect. The descriptive analysis method is employed to provide an overview of a phenomenon related to the study of the legal act of borrowing a name. For academic research, it is essential to search for the ratio legis and the ontological basis behind the enactment of the law so that

researchers can grasp the philosophical content underlying the law. By doing so, researchers will be able to draw conclusions regarding the existence or absence of philosophical conflicts between the law and the issues at hand.

Approach used in this research is the case approach and the statute approach. The case approach is employed to understand the application of legal norms/ principles in legal practice. It involves examining specific cases to analyze how legal rules are applied and interpreted in real-life situations. On the other hand, the statute approach focuses on studying and analyzing legal statutes and regulations themselves to gain insights into their content, intent, and implications. Both approaches contribute to a comprehensive understanding of the research subject from different angles.

The statute approach is conducted by examining all relevant laws and regulations pertaining to the legal issue being addressed. For research purposes, it involves studying and analyzing the entire body of laws and regulations that are applicable to the subject matter. This approach ensures a comprehensive understanding of the legal framework and provides insights into the specific provisions, requirements, and implications of the laws and regulations related to the research topic. By conducting a thorough analysis of the statutes, researchers can gain a deeper understanding of the legal context surrounding the issue being investigated. Provides a practical method for researchers to explore the consistency and compatibility between different laws, as well as between laws and the constitution or regulations. By examining these relationships, researchers can identify any inconsistencies or discrepancies that may exist. The findings of such an analysis can serve as arguments or evidence to address the issues at hand. It enables researchers to critically evaluate the legal framework, identify potential conflicts or gaps, and propose solutions or recommendations to resolve the legal issues being studied. This approach contributes to the development of a more coherent and effective legal system.

Results and Discussion

Implementing Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia

The Civil Code is one of the forms of agreement grouped in the loan and borrowing agreement as stipulated in Article 1754 of the Civil Code which clearly states that borrowing agreement is an agreement in which one party gives to another party a certain amount goods consumed due to use, provided that the latter party will return the same amount of the same kind and condition as well. According to Marhainis Abdul Hay Sahdeini, the provisions of Article 1754 of the Civil Code on replacement loan agreements, have the same meaning as the

Bank's credit agreement as a logical consequence of this establishment it must be said that the credit agreement is real [6].

A credit agreement is an agreement between two or more parties who use money as the object of the agreement. In this credit agreement, the point of emphasis is the fulfilment of achievements between the parties who use money as an object or something equated with money. Subekti states, "An Alliance is a legal relationship between 2 parties, in which one party has the right to demand something from the other party who is obliged to fulfil that demand". Thus the legal relationship that gives rise to the rights and obligations in the agreement is between two parties. The party entitled to the performance (the active party) is the Creditor or the Creditor. At the same time, the party who is obliged to fulfil the performance (passive party) is the Debtor or the person who owes. Creditors and Debtors are what is called the subject of the alliance [7].

According to Sri Soedawi Masjchoen Sofwan in banking practice, the main agreement in practice is in the form of a credit grant agreement or an agreement to open credit by the bank, with the ability to provide guarantees in the form of liability for a specific object. The form of transfer is in the form of collateral or guarantee as an additional agreement (accesoir) for credit repayment, which according to Hartono Hadisoeprapto means the transfer form of guarantee is something given to the Borrower to create confidence that the Borrower will fulfil obligations that can be assessed with money arising from an agreemen [8].

The guarantee agreement only contains the delivery of the collateral object, or agreement on who is the guarantor, so that only one party burdened with obligations (the debtor), while the creditor's claim rights will be repaid. The debt must be based on the principal agreement (debts). Words, On the other hand, this guarantee agreement is not obligatory, therefore it is an agreement this guarantee does not constitute an engagement. Although it does not result in an engagement, only through this guarantee agreement can one sufficient right be born to give creditors a stronger position. When the guaranteed are objects, then the rights that are born are Property Guarantee Rights. Following the regulation of the Guarantee Law in Indonesia, the Property Guarantee Rights can be in the form of lien rights, mortgage rights, and fiduciary rights.

The Dependent Rights further bind the guarantee in the form of land or building with the making of the Dependent Rights Deed (APHT) by official certifier of title deeds (PPAT), based on the provisions in Article 1 number 5 the Dependent Rights Act, which states, "Dependent Rights Deed is a official certifier of title deeds that contains the grant of Dependent Rights to certain creditors as a guarantee for the repayment of its receivables". The Installation of Liability

Rights is intended to give the relevant Creditors (Preferential Creditors) a preferred position to take amortization of receivables from other Creditors (Concurrent Creditors) when the Debtor or defaults. However, it should be noted that the surrender of collateral in the form of land and buildings by Creditor to install this Liability Rights is only limited to the surrender of collateral related to the guarantee function, not the assignment of land rights related to the transfer of land rights entirely from Debtor to the Creditor. The purpose of collateral related to function is that transfer of collateral to the object does not cause the Creditor to be the owner of the collateral object. Therefore, the object of the guarantee only serves as an object to be executed, while the repayment of the debt cannot be executed as it should be [9].

According to Vitzhal Rivai, bad credit is a condition of financing where there is a deviation (deviation) from the terms of lending agreed in the repayment of the loan so that there is a delay, legal action is required, or there is a possible potential loss. In the financing portfolio, distressed financing is still the main management, because the risk and loss factors on the risk asset will affect health. Before being declared as bad credit based on Indonesia Financial Services Authority (OJK) Regulation Number 40/POJK.03/2019 on Asset Quality Asset of Public Banks, bad credit factors must be considered, among others [10].

1) Business prospects;
2) Debtor Performance;
3) Ability to pay.

Settlement of bad credit according to Indonesia Financial Services Authority (OJK) Regulation Number 40/POJK.03/2019 on Asset the quality of General Bank Assets, rescue efforts are required so that the bank does not suffer losses due to bad credit, then restructuring is done in the following ways:

1) Rescheduling;
2) Resconditioning;
3) Restructuring.

If the Debtor is declared in default or breach of promise, then the bank can implement the settlement of bad credit through collateral, but before the implementation of the settlement of bad credit, the Creditor first notifies the late payment through a warning letter or summons 3 times, as stipulated in Article 1238 of the Civil Code which explains “The debtor is negligent if he by a warrant or by a similar deed has been declared negligent, or for the sake of his alliance, is if this stipulates, that the debtor must be deemed negligent with the time specified”.

In practice, creditors often experience bad loans caused by various factors. Bad credit or non-performing loan is a risk that is contained in any lending by the Bank. The risk is in the form of a situation where the credit does not back just in time. Non-performing loans or non-performing loans in banking can be caused by various factors, for example, there is intentional involvement in the credit process, procedural errors in granting credit, or caused by other factors such as macroeconomic factors. If bad credit occurs because the debtor does not carry out his achievements as stated in the credit agreement, before the creditor executes the collateral, the debtor must first be declared in default, which is done through a court decision. For this reason, the creditor must sue the debtor based on default. But before suing the debtor, the creditor must first subpoena the contents so that the debtor fulfills its performance. If the debtor does not also fulfill his achievements, then the creditor can sue the debtor based on default, in which case the court decides that the debtor has defaulted, then the creditor can execute the collateral provided by the Debtor. Furthermore, after the Debtor is declared a breach promise, Bank has right to foreclose as a form of bad credit settlement. In general, Bank can use Article 20 the Dependent Rights Act as a reference in settling bad credit belonging to the Debtor [11].

In addition to the execution of Liability under Article 20 the Dependent Rights Act above, there is a possibility that bank can take alternative steps to resolve bad credit through Article 12 A of the Banking Law where the General Bank can disburse the debtor's collateral or out -of -auction-based on voluntary submission from the collateral owner or out -of -suction power of sale from the collateral owner if the debtor does not fulfil his obligations to the bank. Furthermore, in the implementing regulations outlined in Article 1 paragraph 15 of Indonesia Financial Services Authority (OJK) Regulation Number 40/ POJK.03/2019 on Asset quality assessment of Public Bank Assets which states "Collateral taken over which is from now on abbreviated as Foreclosed Collateral is Assets acquired by the Bank, either through auction or outside auction based on voluntary submission by the collateral owner or based on the authority to sell out of auction from the collateral owner in case the Borrower does not fulfil its obligations to the bank".

According to author, because the bank prefers to settle bad credit with Foreclosed Collateral than to execute the Right of Liability is due to various reasons as follows:

1) There are obstacles in the execution of Dependent Rights as specified in article 20 of the Dependent Rights Act such as a convoluted process and a long period of time so that the execution of Dependents cannot be done efficiently.

2) Solving bad credit with Foreclosed Collateral does not require complicated and time consuming procedures.
3) Usually in the sale of bank collateral does not involve the auction office because the process is long.
4) The collateral taken over is only marketable collateral and can provide a profit to the bank.
5) The collateral price is compensated with the remaining debt of the Borrower. (Usually the value of collateral definitely exceeds the value of the Debtor's debt).
6) The difference between the excess resale proceeds can fully benefit the bank.

Foreclosed Collateral procedures in the form of land and buildings based on the provisions of Article 12 A of the Banking Law and Indonesia Financial Services Authority (OJK) Regulation Number 40/POJK.03/2019 on Asset quality assessment of General Bank Assets, Foreclosed Collateral mechanism with the following ways (see Figure 1):
1) By way of auction, or
2) By way of outside the auction through the voluntary surrender of collateral or based on selling power.

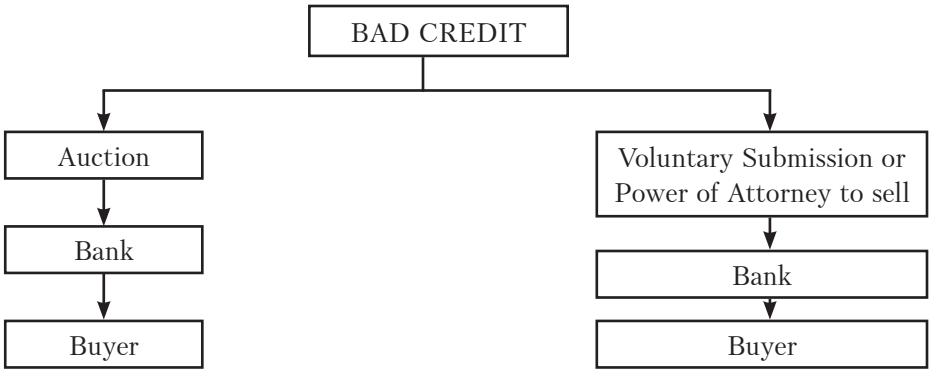

Fig. 1. Mechanism of Implementation Foreclosed Collateral as an Alternative for Bad Credit Settlement in Indonesia

At this stage of credit, rescue has not taken advantage of legal entities because the debtors are still cooperative and from the business, prospects are still feasible. Foreclosed Collateral is said to be a credit rescue because the Foreclosed Collateral process can be done to debtors whose credit facilities have the potential to move from a smooth group to a group in particular attention. If Foreclosed Collateral is done against a debtor who is in such a situation, then

it can be said that he has done credit rescue Verdict Number Number 183/ Pdt/2020 Smg, the implementation of Foreclosed Collateral is considered valid because in the implementation process it is based on the existence of voluntary submission by the collateral owner in if the debtor does not fulfill the obligations to the creditor further based on the agreement between the Borrower and the Creditor, then a deed of voluntary delivery of collateral is made in accordance with the provisions in Article 12 A of the Banking Law and Indonesia Financial Services Authority (OJK) Regulation Number 40/POJK.03/2019 on Asset Quality Assets of Public Bank.

Furthermore in verdict Number 24/Pdt.G/2019/PN Pti as one example of a decision that rejects the implementation of Foreclosed Collateral, Foreclosed Collateral implementation in the example of the case is not valid because the Borrower has not declared a breach of promise or default, that default is negligence or forgetfulness that can take the form of 4 kinds, namely:
1) Not doing what he has been committed to do;
2) Carry out what has been promised, but not as promised;
3) Do what is promised but too late;
4) Doing an act that according to the agreement cannot be done.

Debtor is not able or not at all to perform its obligations, so the bank issued a summons for the Debtor to be declared negligent of the jurisdiction of the Supreme Court Number 852/K/Sip/1972, which has a rule of law that in essence to declare a person has defaulted must first be formally charged by an interpreter. Based on the judge's consideration Verdict Number Number 183/Pdt/2020 Smg , the Foreclosed Collateral Deeds there are no elements that invalidate the deeds in the form of threats (dwang), errors/misleadings (dwaling), and fraud (bedrog), or violations of the terms of the validity of the agreement as regulated in the provisions of Article 1320 of the Civil Code so that the judge's decision determines that the Foreclosed Collateral deeds are valid and have legal force, reviewed in the provisions of Article 1338 paragraphs (1) and (2) of the Civil Code which stipulates that:
1) All agreements made by the law apply as law to those who make them.
2) The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law.

Based on the explanation of Article 1338 of the Civil Code, in essence an agreement is made for the mutual benefit of the parties. Good faith at the time of starting the contract proves that the agreement was made at the will of the parties. The agreement entered into and agreed upon by the parties will be effective when the agreement is made, so that the parties have their respective

obligations to fulfill the achievements. Article 1338 of the Civil Code will take effect automatically if the agreement has been made and agreed upon. There is no other reason for not being able to fulfill the contents of an agreement that has been mutually agreed upon by the parties or is commonly referred to as the application of the principle of pacta sunt servanda. The parties must fulfill the agreement as mutually regulated. The principle of pacta sunt servanda is considered a law for the parties who carry out the agreement. That, in essence, achievements must be achieved by both parties so that nothing is loss.

Legal impact of implementing alternative settlements of bad loans through foreclosed collateral on Debtors and Creditors

The purpose of the law itself cannot be separated from the universal nature of law but is still aware of the characteristics of each society or nation so that the purpose of law itself has characteristics or specificities due to the influence of philosophy, which is transformed into the ideology of the community or nation and state which simultaneously functions, as a legal ideal. The purpose of the law, in general, is solely for justice, expediency and legal certainty. The purpose of this law is a sequence that is a requirement or basis for the next goal. Legal goals will not achieve before be realized [12].

Legal certainty is defined as a condition where the law is particular because of the concrete power of the law in question. The existence of the principle of legal certainty is a form of protection for justice (seeking justice) against arbitrary actions, which means that a person will and can obtain something that is expected under certain circumstances. This statement aligns with what Van Apeldoorn said that legal certainty has two aspects: the law can be determined in concrete terms and legal security. The party seeking justice wants to know the law in a particular matter before starting a case protecting justice seekers. Furthermore, regarding legal certainty, Lord Lloyd said that: "...law seems to require a certain minimum degree of regularity and certainty, for without that it would be impossible to assert that what was operating in a given territory amounted to a legal system". From this point of view, it can be understood that people do not know what to do without legal certainty. In the end, there will be uncertainty which will eventually lead to violence (chaos) due to the indecision of the legal system. Thus, legal certainty refers to applying a clear, permanent and consistent law where its implementation cannot be influenced by subjective conditions [13].

The principle of justice in law is often a gap for the community to ask for fair treatment from the state as law enforcer and government implementer. Justice is often transformed in wrong interpretation, resulting in a negative effect with

poor learning on other communities. Hart argues that the general principle of justice in law is equality and inequality. This means that similar things are treated in the same way, while different things are treated in different ways. This view provides the perception that equality of individuals must be treated the same as other individuals, being relative if equality is different from what is done to the way it is treated, as well as the treatment of similar things in a similar way.

The existence of the Mortgage Law for the Civil Law system, especially the Guarantee Law, is in order to provide balanced legal certainty in the field of binding collateral for objects related to land as for Creditors, Debtors and Mortgage providers and related third parties. Mortgage as the only institution for land security rights for the settlement of certain debts has 4 (four) principles, namely as follows:

1) Droit de preference principle
2) Droit de suite principle
3) The principle of speciality and publicity
4) Easy and Sure.

In verdict Number 183/PDT/2020/PT Smg regarding the implementation of Foreclosed Collateral which was granted by the Judge, according to the author, the Judge should have paid attention to the concept of applying the guarantee that has been approved by the Judge. Under the Mortgage Rights, it is clear that the mechanism for binding collateral in the form of land and buildings using Mortgage Rights is aimed at giving the creditor the right to obtain a settlement of receivables through the sale of the Mortgage object, so that in the execution of the Mortgage Execution, the expectation of arising a solution so that the execution of the Mortgage can later be carried out fairly, not placing one of the interested parties in a position that allows arbitrary action against the execution of the Mortgage. For the Debtor as of the provider of Mortgage, one of the most important is the ease and justice regarding the settlement of debts.

Legal certaintly everyone can be realized with the stipulation of law in the event of a concrete event. The applicable law is not allowed to deviate, this is also known as fiat Justitia et al pereat mundus (even though this world is collapsing the law must be enforced). That is what legal certainty wants. Legal certainty is justifiable protection against arbitrary actions, which means that someone will be able to get something that is expected under certain circumstances. The community expects legal certainty because with legal certainty the community will be more orderly. Law is tasked with creating legal certainty because it aims at public order. On the other hand, the community expects benefits in

implementing or enforcing the law. The law is for humans, so the implementation of the law or law enforcement must provide benefits or uses for the community. Law is not synonymous with justice [14].

According the author said that the theory of legal utility can be seen as a tool for society to create order and order. Therefore it works by providing instructions about behavior and in the form of norms (rules of law). Basically, legal regulations that bring benefits or legal uses are for the creation of order and peace in people's lives, because of the law of order (rechtsorde). The theory of this benefit when associated with the implementation of Foreclosed Collateral according to the author, the use of the law in the provisions of the Banking Law is only limited to providing benefits and/or benefits to creditors, from the implementation of Foreclosed Collateral as if the bank can avoid bad loans in practice the making of deeds. authentic deed as contained verdict Number 183/ PDT/2020/PT Smg and verdict Number 24/Pdt.G/2019/PN Pti, actually banks take advantage of The weakness of the Debtor as a party that is economically depressed, it needs to be understood that in the implementation of the takeover of the collateral it can actually cause losses to the Debtor, this is because it is related to the Banking Law which mandates the procedures and disbursement of Foreclosed Collateral to be further regulated in a Government Regulation which has not yet been issued by the Debtor. Government, this is actually being used n by the Creditor as a strong party to act arbitrarily to the collateral owned by the Debtor, while the bank ignores the benefits provided by Depanding Rights Act as one of the settlements of bad loans.

Verdict Number 24/Pdt.G/2019/PN Pti which rejected the Foreclosed Collateral effort which stated according to law that the sale of the object of credit guarantee (object of dispute) was carried out by Defendant I without going through the procedure specified in Article 20 paragraph (2) and paragraph (3) Depanding Rights Act is null and void. According to the author, credit settlement through Foreclosed Collateral is basically followed by the agreement of the parties to resolve the problem of a bad credit, and still refers to the legal terms of the agreement as regulated in Article 1320 of the Civil Code, when reviewed from Article 1338 paragraph (1) of the Civil Code which states that all legally made contractual agreements apply as law for those who make them, so that the parties are indeed given the freedom to make an agreement with anyone as long as it does not violate order and morality or better known with the principle of freedom of contract.

However, during the COVID-19 pandemic, accessing capital through debt financing has become difficult. At the same time, many governments, in

collaboration with their central banks, responded proactively to this crisis with a package of macroeconomic and financial measures to attempt to support the banking industry's resilience. For example, the moral hazard issues notwithstanding, policy instrument was used as an alternative policy because of its effectiveness in terms cost by many governments in response to mitigate the negative impact of COVID-19. Particularly, debt servicing, amortization relief, debt restructuring, and debt refinancing measures have been put into place by governments in some most affected countries and are considered similar to demand and supply stimulus measures by increasing disposable income for NFCs. Yet, the lockdown measures and consequences have created increased concern for the financial system stability leading to the credit shock supply. In addition, empirical evidence also suggested that government macroeconomic and financial measures for economic recovery during a crisis are not associated with improving corporate liquidity capability [15].

According the author banks as creditors choose to settle bad loans through AYDA because they are considered the best solution or a win-win solution in terms of minimizing the risk of bank losses and/or optimizing benefits and profits by taking into account the terms and conditions that accelerate the settlement of problem loans to obtain optimal recovery. , so it will avoid reporting bad performance to the OJK, with the Foreclosed Collateral it also provides benefits for banks in controlling collateral as fixed assets. Therefore, banks can determine the selling value of a collateral that has been taken and the remainder of the excess sales proceeds becomes fully the bank's profit, this of course can be detrimental to the debtor who wants the settlement of the bad credit to be resolved immediately.

Conclusions

The Foreclosed Collateral mechanism can be implemented if there is an agreement and approval from each party to settle bad loans through the Foreclosed Collateral, which then the Foreclosed Collateral mechanism can be implemented by the bank as a Creditor through auction or based on voluntary submission of collateral or with the power to sell, the mechanism refers to the provisions of Law Number 10 of 1998 concerning Banking and its implementing regulations, namely OJK Regulation Number 40/POJK.3/2019 concerning assessing the quality of commercial bank assets, based on a case example of a legal Foreclosed Collateral mechanism based on District Court Decision Number 32/ Pdt. G/2019/PN Pml in the Appellate Level Decision Number 183/PDT/2020/ PT Smg before implementing the Foreclosed Collateral mechanism on bad loans, a restructuring of the Debtor's credit must be carried out, and a subpoena or

warning letter must be carried out 3 (three) times so that the Debtor is declared default and if a subpoena is not carried out, the Foreclosed Collateral mechanism is considered invalid, as is the case in the District Court Decision Number 24/ Pdt G/2019/PN Pti.

The impact of the implementation of foreclosed collateral if it is not in accordance with a legal mechanism, it will have implications for each party, for the creditor it will provide uncertainty and benefits for the collateral that has been taken over and subsequently has an impact on the bank's balance sheet which is not healthy because the collateral is difficult to recover. disbursed, for the Debtor there is no transparency in the sale of the collateral object so that the proceeds of the sale only benefit the bank, a lawsuit will arise and the impact on other parties who have good intentions to buy it becomes a loss for him as stated in the verdict number 24/Pti.G/2019/PN. Pti.

Recommendations

Need for control and supervision of the implementation of Foreclosed Collateral in the form of a Government Regulation as mandated by Law Number 10 of 1998 concerning Banking, with the existence of this Government Regulation aiming not to cause different interpretations of Foreclosed Collateral.

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