

Analysis of the Causes of Problem Home Loan and Alternative Solutions for Development of National Banking Performance

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Abstract—The purpose of this study is to comprehend the meaning of factors which cause problematic home loan (KPR) and alternative solutions for the development of national banking performance. This study used sociolegal (socio juridical) method, with the aim of identifying credit problems and legal rules on making KPR/credit agreements at the Bank Nasional Indonesia and alternative solutions that can be made. The results shows the cause of problem loans is due to the default of debtors for several reasons. Research results shows that factors Causing Problematic KPR in the National Banking are stemmed from business problems so that the ability to pay debtors could decreases. Debtors experience termination of employment, another cause is the character of the debtor is not good enough and not transparent in the implementation of the mortgage agreement, so that the debtor does not understand well the credit risk they faced. Consequently, the debtor defaults on the KPR agreement that has been made and agreed. From the bank side, the Bank's officials are still not aware of credit risk, so that they ignore the precautionary principle in the process of giving KPR to debtors. The application of the principle of prudence and the principle of getting to know customers is one of the key factors in the success of credit management and improving the performance of KPR in national banks.

Keywords—Home Loans, Agreements, Banks, Debtors

I. INTRODUCTION

The purpose of this study is to comprehend the meaning of factors causing problematic home loan (KPR) and alternative solutions for the development of national banking performance. For national banks, good credit management, including KPR, is very strategic, both for health and for the development of the bank.

KPR management in accordance with applicable laws and regulations is needed by national banks. Consumer trust, a bank customer, must be maintained to avoid suspicion or distrust by customers, just like the case of 1997 Indonesian bank crisis. The same thing happened in the United States during the 2008 financial crisis. Brescia and Steinway (2012) stated that The US financial system faces a crisis. Unlike a fiscal crisis, this is one of consumer confidence and trust in American banks [1].

KPR is currently one of the main sources of income in national banks, on the other hand banks are also faced with the risk of non-performing loans including non-performing

loans which have a good effect on the bank's profitability, as well as on the bank's health level [2, 3, 11].

The phenomenon of home loans (KPR) problems that occurs both at national banks and international banks has been previously assessed by [1,2,3,4, 10 & 11]. Previous research was generally focused on the home loans problem itself, as well as efforts to maintain the trust of bank customers. This study wants to examine the factors causing problematic home loans and alternative solutions for the development of national banking performance so that they have a renewal element in the research conducted.

The benefits of Home Loans are huge for home ownership for people in need, but it will be dangerous if used for speculative activities for people or debtors who want to speculate. The occurrence of problem loans can be caused by various factors; it can be caused by the intentions of the bank or the debtor or accidental factors, thus causing the debtor to experience difficulties in fulfilling their obligations [4]. Law No.10 of 1998 provides guidance so banks in carrying out lending activities are always based on the belief that the debtor is able to return the credit obtained at the agreed time. In other words, the credit given is guaranteed return [1,5]. Freedom of contract is granted by law, in Article 1338 of the Civil Code. For this reason, without agreement there is also no bond that gives birth to rights and obligations between the parties. A contract or agreement must fulfill the legality requirements of the agreement, that is, an agreement, skill, certain matters and a halal cause, as determined in Article 1320 of the Civil Code. With the fulfillment of the four conditions for the validity of the agreement, the agreement becomes valid and legally binding for the parties who made it. Home Loans at the National Commercial Bank, allegedly besides the problem of the capacity of the debtors and the character of the debtor, there are also other problems, especially those that cause problematic home loans (KPR) for both customers and the banks.

The research results that factors Causing Problematic KPR in the National Banking, among others, stemmed from business problems so that the ability to pay debtors decreases. Debtors experience termination of employment, another cause is the character of the debtor is not good and not transparent in the implementation of the mortgage agreement, so that the debtor does not understand well the credit risk that must be faced, consequently the debtor defaults on the KPR agreement that has been made and agreed. From the bank side, the Bank's officials are still not aware of credit risk, so

that they ignore the precautionary principle in the process of giving Home Loans to debtors. Alternative solutions in resolving KPR problems for the development of national banking performance, in the KPR process, the Deed of KPR Agreement by the Bank is required to be made notarial, so that the KPR agreement deed becomes an authentic deed, as proof of the agreement between the debtor and the bank. The results of this study also made a positive contribution to the development of national law and to banking practitioners, in efforts to channel bank mortgages, as well as efforts to improve the legal rules of national banking in general.

II. METHOD

This study aims to examine the factors causing problematic Home Loans (KPR) and alternative solutions for the development of national banking performance. The research method was sociolegal (socio juridical) with the aim of identifying credit problems and legal rules on making credit agreements (PK) at the National Commercial Bank KPR in Indonesia, and alternative solutions that can be made. Socio-legal research is a type of normative legal research. According to Soekanto dan Mamudji, Normative legal research requires primary, secondary and tertiary legal materials [6]. Primary legal materials are mainly obtained from the protection of laws and regulations. The location of the study was at the National Commercial Bank which had problematic KPR debtors, especially at Bank Mandiri, BNI, BRI and BTN in North Sulawesi. For normative juridical analysis, the focus is on the study of credit agreement between debtors and Bank KPR creditors, legal analysis of KPR customers' problematic debtors and alternative legal solutions to solving the performance of the national banking.

III. RESULTS AND DISCUSSION

3.1 Problematic factors of Home loans in national banking in Indonesia

Banks are business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit and or other forms in order to improve the lives of many people. In the law, the relationship between a bank and its debtor is a contractual relationship, that is, between the debtor and the creditor based on the precautionary principle with the aim that the bank that uses the customer's money will be able to repay the public funds deposited to the bank if collected by the depositors.

The purpose of the application of the precautionary principle is that the bank is always in a healthy condition, in other words, it is always in a liquid and solvent state. It is expected that the level of public confidence in banks will remain high, so that people are willing and not hesitant to save their funds in banks. The application of the precautionary principle that must be carried out by the bank is not only because it is connected with the bank's obligations so as not to harm the interests of customers who have entrusted their funds to the public, but also because of the bank's privileged position in the community, namely as part of the monetary system that concerns the interests of all members people who are not just depositors of funds from the bank.

KPR are part of consumption credit for ownership of residential houses in the form of landed houses or flats or

apartments (not including office houses and shop houses) with collateral in the form of houses given by banks to individual debtors with a maximum loan amount based on the value of the collateral [7]. The share of credit for property is quite large, from special banks such as BTN which account for more than 80 percent of the total credit, to banks such as Muamalat or BII where the proportion is almost half of the total loans extended, or Panin, Permata and others which ranges from a dozen to 20 percent.

In its implementation, in the housing ownership process with the KPR system, there will be a variety of problems that need to immediately find a solution to solve it. One problem is the problem of credit guarantees to be provided by banks and the binding procedures. Another problem in the implementation of Home Loans is the potential for debtor defaults. This default has the potential for debtors to do for a variety of reasons, why they have been defaulted. One form of default by the debtor, for example, does not make debt payments or does not want to pay installments on the grounds that the quality of the house received is not in accordance with the specifications offered previously by the developer/ developer in the brochure/ prior to the transaction. For this reason, the debtor then defaults in the form of not paying principal installments and interest on loans.

At the time of signing the Credit Agreement, according to the agreement reached between the debtor and the bank, and stated in the Credit Agreement, each party will obtain their rights and obligations. What is the right of the debtor is an obligation for the bank and what is the obligation of the debtor is the right of the bank Another important thing in this credit agreement is regarding legal choice. The agreement stipulates that the implementation and interpretation of the agreement applies to civil law as set out in the Civil Code and the applicable laws and regulations in Indonesia.

The factors causing Troubled KPR in the National Banking, among others, stemmed from business problems so that the ability to pay debtors declined. Debtors experience termination of employment (PHK), Another cause is the character of the debtor that is not good and not transparent in the implementation of the KPR agreement, so that the debtor does not understand well the credit risks that must be faced, consequently the debtor becomes a default on the KPR agreement that has been made/ agreed.

3.2 Settlement of Home Loans Problems for the Development of National Banking Performance

In the management of national banking loans, non-performing loans must always be calculated as a credit risk, because the Bank is unlikely to avoid the occurrence of problem loans. Banks only try to reduce the minimum amount of non-performing loans so as not to exceed the provisions of Bank Indonesia as banking supervisor. Bank Indonesia through Decree of the Board of Directors of Bank Indonesia No.31/147/KEP/DIR dated November 12, 1998, provides a classification regarding the quality of loans whether the loans provided by the Bank include performing loans (non-performing loans) or non-performing loans. Quality can be classified as follows: a) Current, b) Special Mention, c) Substandard d) Doubtful, and e) Loss.

Loans classified as current and under special attention are considered as performing loans, while loans classified as

substandard, doubtful and loss are considered non-performing loans. To determine the quality of incoming credit, in particular, substandard, doubtful and loss, can be assessed from three aspects, namely: a) business prospect, b) Financial condition with emphasis on cash flow, c) Ability to pay.

The three aspects of the assessment are a unity to assess credit quality, not partially, for example, only from the ability to pay. Although the ability to pay smoothly, but if there are no business prospects, the credit can be assessed as a non-performing loan. But to assess credit quality from business prospects and financial conditions is rather difficult compared to assessing the ability to pay. Although preventive safeguards have been carried out, but not infrequently, the debtor is unable to settle his debt on time according to the loan agreement so that it becomes a problem loan. There are many causes of problem loans, for example because debtors are unable or due to business downturns and business failures that result in reduced income from debtors or indeed debtors deliberately do not want to pay because the debtor's character is not good. The existence of bad loans will be a burden on banks because bad loans are one of the factors and indicators that determine the performance of a bank.

Terms of financing there are debtors who cannot return their financing to the banks that have lent it. As a result of the debtor being late in repaying his loan and not paying off his debt, then there is a stalled and problematic financing. To overcome bad credit or non-performing financing, the bank made a rescue, so that it would not cause losses. Handling problematic financing is an unavoidable part of the Bank's financing process. In the process of handling the financing carried out in accordance with the collectability of credit [8].

Defaults that occur as a result of negligence on the part of the debtor in the form of arrears in payment of credit installments from the debtor and this is the cause of the most default on KPR at the National Commercial Bank. However, based on information from several informants in this research who had been in arrears in paying installments that they were in arrears in installment payments due to financial difficulties due to sudden family needs such as sick family members, and costly fees. In addition, there were indeed some customers who deliberately did not pay credit installments for several months because they felt they had never been reprimanded or warned by the bank for being in arrears. People or bank customers who borrow loans, when they are not able to repay the loans, then they lose their homes and land and as a result become poverty stricken. There are individuals in some areas who become bonded laborers, they work for long hours in return for very little money or no money at all. As a result of which they have extremely less resources to sustain their living [9, 10].

This shows that supervision of the implementation of KPR by the bank is still weak because customers who should not pay installments are immediately warned of delays and sanctions that will be received by the debtor. When viewed from the KPR problem, viewed from the perspective of Consumer Protection Interests, namely: 1) Limitations of Consumers in Choosing a KPR Product; Limitations of consumers as bank debtors, in Choosing a bank KPR

product, because of the Cooperation Agreement (PKS) between the bank and the developer, as a form of bank business expansion to obtain more consumers. 2) Debtor Understanding is Weak due to Lack of Information from Business Actors; The lack of information held by the debtor is the cause of credit problems in the KPR. Cause the debtor does not understand the risks that will be faced.

On the national banking side, internally there are steps taken in order to support the strategy in dealing with problematic KPR financing. These steps include: 1) Appointing Employees to guide customers, 2) Conduct training on problematic financing, 3) Work with auction offices (Office of State Assets and Auction Services). Likewise, the mortgage collateral loans, namely land and buildings, which are the objects of Home Loans by the Bank, are then installed Mortgage Rights to secure the position of creditors in the event of default by the debtor. In this condition, the creditor will legally have the right to obtain payment from the collateral if the debtor is broken, namely not to pay off the principal debt or credit interest that has been mutually agreed upon through a credit agreement that has been made and signed jointly with the bank.

3. Discussion

With regard to the resolution of problem loans, the Bank shows that in resolving its debtor credit problems, it has taken several steps, such as: 1) giving verbal and written reprimands to its debtors, 2) restructuring the financing including by conducting Rescheduling, Reconditioning, and Restructuring as well as write off or write off or write off KPR loans and among the several methods, the method considered to be able to settle problem loans so that the debtor can finally pay back his obligations, namely the Rescheduling, Reconditioning and Restructuring methods. This result is in accordance with research from Khorunnisa (2018) which states that in resolving problematic Home Loans, the Rescheduling, Reconditioning, and Restructuring method can be an effective way because of the nature that does not force the situation of the debtor and the implementation is in accordance with the request of the troubled debtor itself without coercion from the bank [11].

Regarding bad loans, various efforts have been taken by the government to overcome bad loans. The government once formed a Government Bank Credit Supervision Team. Although a special team was formed, the government bank's bad credit figures never receded from trillions of rupiah. After various efforts were taken and apparently did not bring results, then the banking community glanced at the court in resolving the problem of bad credit. If examined closely, civil law and banking law have provided adequate protection in handling the problem of bad credit. Preventive, banks are prohibited from selling funds or being "generous" to customers. Credit distribution must be accompanied by collateral (collateral) complete with an agreement to sell collateral goods under the authority of the creditor (*beding van Eigen matige verkoop*).

Whereas certificates that have been installed under mortgage, no longer require a request for seizure of guarantee in advance to the local District Court (*conservatoir beslag*), but in the sale stage it is still carried out through auctions and with the help of the local Auction Office

(*parate executie* because there is already a power clause to sell itself in the Deed of Granting Mortgage), other than because in the Mortgage Certificate issued by the land office, the clause “For Justice Based on Almighty God” has been included, so that the Mortgage Certificate already has an executive power such as a judge's decision that has legal force permanent.

Grosse deed is the first copy of an authentic deed which is also an authentic deed, or the first copy of the original deed which is also called minuta (which is always kept by a notary and not issued to the parties). For example: Grosse Deed of Mortgage, Grosse Deed of Installing Mortgage is an authentic copy, where the original deed is the Mortgage Deed and the minutes are kept by the Notary-PPAT. Grosse deed also has the commandment “For the sake of justice based on the Almighty God”, so it has an executive power.

Settlement of bad loans through the courts is the last resort usually taken by the bank, if the deliberation settlement does not bring results. If a court decision has the legal force to be implemented, but the debtor still does not repay the debt, the implementation of the decision is carried out on the basis of an order and is chaired by the Chair of the District Court who examines his claim at the first level, according to the provisions of Article 195 HIR and beyond. Then, on the orders of the Chair of the District Court, confiscation of the debtor's assets is then auctioned by the Auction Office. From the results of this auction the Bank will get the payment of its receivables.

The research results also prove that there are constructive efforts from national banking management, so that the KPR that has been distributed is healthy and can be returned on time by the debtor, so as to improve the performance of national banks in Indonesia. The results of this study are in line with Isanzu's research (2017) which states that the need for control of credit risk is crucial for banks' financial performance of Chinese commercial banks [12].

IV. CONCLUSION

Factors Causing Problematic KPR in the National Banking stemmed from business problems so that the ability to pay debtors decreases. Debtors experience termination of employment, another cause is the character of the debtor is not good and not transparent in the implementation of the mortgage agreement, so that the debtor does not understand well the credit risk that must be faced, consequently the debtor defaults on the KPR agreement that has been made or agreed. However, from the bank side, the Bank's officials are still not aware of credit risk, so that they ignore the precautionary principle in the process of giving Home Loans to debtors. Alternative solutions in resolving KPR problems for the development of national banking performance, in the KPR process, the Deed of KPR Agreement by the Bank is required to be made notarial, so that the KPR agreement deed becomes an authentic deed, as proof of the agreement between the debtor and the bank. The methods for handling problematic Home Loans consist of litigation and non-litigation handling.

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