

Credit Dispute Resolution with Mortgage Right Warranties on Conventional Banking

Nur Putri Hidayah^{1*} Isdian Anggraeny¹ Dwi Ratna Indri Hapsari¹

¹*Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia*

**Corresponding author. Email: nurputri@umm.ac.id*

ABSTRACT

Customers who failed to make promises in bank financing have the potential to cause disputes. To solve this, there are already a series of regulations that govern. The problem is that there are still many customers who feel disadvantaged in the dispute resolution process. The purpose of this study was to find out how the procedure for resolving financing disputes with guaranteed mortgage rights at Bank Jatim as well as any obstacles in the dispute resolution process. This study uses empirical research methods with a regulatory approach. The results of the study show that the dispute resolution process in non-litigation has not been maximized and the tendency is to execute the object of collateral. While the constraints are in non-compliance with the process of fostering customers who are injured in the promise, and the auction process that takes a long time.

Keywords: *component, formatting, style, styling, insert*

1. INTRODUCTION

The provision of credit generally occurs because one of the parties (debtor) needs the help of cost and capital to the parties who provide financing facilities (creditors). Bank is one of the parties that provides credit facilities to the public based on Law 10/1998 on banking. In giving credit, the Bank must have confidence based on the deep analysis of the faith and the ability and capacity of debtor customers to pay the debt or return the financing in accordance with the promised [1] and it is in line with article 8 of banking law. Therefore, to guarantee that the debtor will settle the loan/debt given, then the bank requires the debtor to put the guarantee.

In the provision of financing facilities, there will be two agreements that bind the bank as creditors and customers as borrowers, which are principal agreements and additional agreements [2]. The agreement is a financing agreement, while the collateral agreement becomes an additional agreement [2]. The form of guarantee that is often used in financing practices is material security and Mortgage Rights is one of the material guarantee [3].

In the implementation of the credit agreement, not all of these agreements went smoothly. A concrete example in this case is when the debtor does not perform the obligation in the form of payment of credit installments to the bank. In this condition, the material rights that are in the form of debt repayment (guarantee rights) are guaranteed rights attached to the creditor that gives the authority to execute

the objects which are used as collateral if at any time the debtor defaults on an obligation that has been promised, As found in article 20 clause (1) of law No. 4/1996 on the Mortgage Right.

Of course the bank as a creditor is not necessarily able to directly execute the object of the rights of liability which is used as collateral for credit agreement between debtor and creditor for the pledge of the injury Debtor. *First*, The Bank must be presented to the debtor to declare that the debtor has been in the pledge [4], As of article 1238 code civil. However, this article does not determine the number of warnings the creditor should give to the debtor. In practice, this is certainly an uncertainty of the law itself because it can allow the difference in perception between creditors and debtors. *Second*, that the creditor can only carry out the execution of the guarantee, if the creditor holding the guarantee also holds a mortgage right which contains "For justice based on God Almighty" [5], Because based on article 20 paragraph (1) letter (b) of the Law on Right Mortgage, the sentence that gives the power of the executorial to the object that is made guarantee

Third, Any dispute between the debtor and the bank in advance may be resolved through a non-litigation dispute resolution process. The background of this provision is part of a series of protection to the consumer, in this case the debtor who is a bank customer [6]. This provision is in consideration of regulation of the Financial Services Authority (Otoritas Jasa Keuangan/OJK) No. 1/POJK. 07/2014 on Concerning Alternative Institution Of Dispute Resolution In The Financial Services Sector (Lembaga Alternatif Penyelesaian Sengketa/LAPS). The problem is

that LAPS to date is only in Jakarta, and not in other areas [7]. This certainly disadvantage the debtor as a banking consumer to get the best solution for the dispute it is facing. *Fourth*, To date, there are no concrete procedures regarding the credit dispute resolution measures between the customer and the bank, despite In the form of regulations and decisions made by the BI, OJK, Ministry of Finance, government, and the president even products made by the DPR and the president is the law [8].

Then, the fact that is happening in the field, a lot of banking consumers in this case the debtor whose promises feel harmed due to uncertainty about how the dispute resolution process should take place. For example, a customer who suddenly gets an auction notification letter from the state Wealth office and auction Where the letter contains the auction to the object of guarantee of rights, and the customer is directly given the third letter, without the first and second warning letter [9].

There is no legal certainty regarding the regulation of the concrete procedure for resolving credit disputes with the object of mortgage right and the fact that many debtor injury to the pledge that feels harmed due to unclear procedures [10], To cause research on how credit dispute resolution procedures with objects of mortgage rights And any constraints faced in the process of resolving credit disputes with objects of mortgage rights, must be done.

Previous research conducted by Dewi Nurul Musjtari about the reconstruction of dispute resolution institution of Credit agreement with the guarantee of mortgage rights to sharia banking practices after the decision of the Constitutional Court No. 93/Puu-X/2012. Apparently in his research found a fact based on the case studies that have been conducted by researchers That since the existence of the Constitutional Court ruling No. 93/PUU-X/2012 There are 15 cases of credit agreement disputes with guarantees of mortgage right in Sharia banking practices completed through religious judicial (As many as 8 cases) and general judiciary (as many as 7 cases) [11].

While the study of Lutfi Walidani and Habib Adjie in *Judicata Res Journal* regarding the protection of the creditor on the execution of Mortgage Rights who also quoted the opinion of M. Yahya Harahap, in his book *The scope of execution of the civil field* Said the process of settlement of disputes with the object of the Mortgage Rights Of civil Liability (positive law) in the implementation of the execution of parate subject to article 224 HIR, Article 258RBg when not promised power selling itself, auction sales(executoriale verkoop) Then must be requested to the head of the state court and such request on the grounds of an appointment or injury injury [12]. Meanwhile, according to J. Satrio, the right to sell on the power of its own rights, if the debtor injury Implementation of simplified execution

rights[13], Which is now provided by its own laws to the creditors of the first mortgage right holder. In the sense that the exercise of such rights does not go through the court and no need to use the event legal procedur, because the implementation is only hung on the condition of "debtor injury" when the creditor itself is new need if the debtor injury.

Both of the above studies have not conducted any research on 1) How the credit dispute resolution procedure with an object in the form of mortgage rights to conventional banks in city of Batu, serta 2) Constraints encountered in the process of settlement of credit disputes with objects of morgange rights to conventional banks in the city of Batu.

2. METHOD

The research method used is empirical research to be conducted on conventional banks in Batu city [14]. To preserve the privacy of respondents, names of respondents and conventional banks, not mentioned in this study. To answer the problem of existing problems used statute approach. Data will be presented in qualitative form. Reviewed from its nature, this research is a descriptive study in question to give data on the procedures and constraints faced in resolving credit disputes with a mortgage rights object at the bank Conventional in City of Batu.

3. RESULT AND DISCUSSION

A. Procedure of Settlement of Credit Dispute with Guarantee of Mortgage Right at The Batu Conventional Bank

Basically, the dispute is initiated since the injury of the pledge made by the debtor. Settlement of disputes is based on standard operational procedures (SOP) owned by the bank. The SOP document becomes the confidentiality of the bank, so the bank will not open the CREDIT dispute resolution SOP to the researcher. The legal norm used in the settlement of credit disputes with the guarantee of dependents is Article 6 of Law on Mortgage Right.

In the dispute resolution process, the initial step of the Bank is to provide a warning letter to the debtor. In general, a letter of warning can be interpreted as somation letter. Uniquely, for the bank, somation letter interpreted differently with the warning letter. For Bank, warnings are routine correspondence, While somation letter is done if the bank takes a litigation settlement path. As for the current period given, in the provision of a warning letter is based on "the principle of compliance" because there is no legal basis in the positive laws governing the grace during the letter of

warning/Somasi. Bank will give debts time 7-10 days for each letter of warning (no warning letter 1, warning letter 2 and warning letter).

After the warning letter given, the debtor's response to the warning letter is the liquid determinant of how the dispute is resolved. If there is no response at all to the given warning letter, the bank will auction execute the object of the rights. The basis used by the bank is Article 6 of Law on Mortgage Right and because the bank holds the certificate of liability for the security object. But not all warranties are the form of liability. Some in the form of power of attorney put a right of responsibility (SKMHT). Against the SKMHT, the same treatment is applied as the certificate of liability. However, the legal force between the SKMHT and the certificate of the right of the hand is different.

The bank can only execute without customer's consent only if the bank has a certificate of liability for the object of guarantee, as of article 20 paragraph (1) letter (c) of Law on Mortgage Right. However, if the bank only owns the SKMHT, the bank's auction without the customer's consent is null and void, as in article 20 (4).

If the debts responds to a bank-provided warning letter, then the next step is negotiating. Negotiation is a method of alternative dispute resolution, which two parties who dispute each other meet and counsel to resolve the dispute [15]. The advantage of negotiations is the result of the agreement, both sides benefit. However, the results of the agreement have no legal force to obey.

In the negotiation process, the Bank and the customer will meet. If when negotiations strike a deal, it will result in some possible agreements:

- a. Restructuring of the agreements, with two possibilities:
 - 1) period of renewed agreement, 2) interest reduced.
- b. No restructuring of the agreement is made, the customer pays arrears and interest. Regarding arrears interest, based on the agreement, the amount can be reduced.
- c. Customer does not have the ability to pay, it will be executed against the object of rights.

However, if the negotiation process fails, the bank will auction against the object of the rights. Other things, both the customer and the bank may proceed to the litigation process or settle the dispute in court.

Based on the process, it can be concluded that the non-litigation dispute settlement step made by the bank and the customer is limited to the negotiation method only. No other methods, such as mediation, adjudication or arbitration. In fact, according to POJK No. 1/POJK. 07/2014 on alternative institution of dispute resolution in the financial services sector (POJKLapsi). Jika negosiasi gagal, The bank or the customer may continue to resolve the dispute through mediation, adjudication or arbitration. In addition to LAPS, OJK has the authority to receive complaints from the community and assist the completion process, as contained in article 29 of Law on OJK.

Based on the results of interviews, Sduring is both the bank and the consumer has never filed a banking dispute settlement application to LAPS. If the dispute resolution process is too complicated, then both parties tend to take steps to resolve the dispute through a litigation line or to

court. This can be understandably considering the existence of LAPS only exist in Jakarta, so that public access to there, limited.

As for the complaint to the OJK, it is still very rare by the customer. In fact, customers who feel harmed by the bank, should be able to make complaints to the OJK and then facilitated and assisted resolution of the problem. Moreover, OJK has the authority to give action to the bank that performs adverse practices to the customer. The action can be done by OJK to the bank which proved to harm the customer in the Article 9 letter H OJK ACT is from the giving of enforcement until the sanctions revocation of business license [16].

Fore, the role of LAPS and OJK must be further improved, given the fact that the existence of both institutions is to provide protection to customers as customers of the bank. LAPS currently only exist in Jakarta, should be present at the regional level of kabupate/city, or at least at the provincial level. While the OJK, actually, the OJK has been left to the district/city. But indeed for most of the community, the existence of OJK is still not known function and authority and its role in the Indonesian banking sector. The last attempt of dispute settlement between the customer and the bank is through a court. The Court of Justice is a district court. This step is usually more traveled by customers than banks. The customer usually proposes to the court, regarding the execution of the object of guarantee of rights by the Bank.

2. Constraints encountered in the process of settlement of credit disputes with objects of morgange rights to conventional banks in the city of Batu.

Basically the bank does not consider that the debtor's reluctance to have a good faith resolve the dispute through the peaceful path as an issue. Even the resistance by debtor in the process of executing the guarantee object is no longer a difficult obstacle because the condition must occur at any execution. This is because the bank is very accustomed to face the character of such debtors. Precisely that is the problem, in the process of auction object assurance.

From the interview, there are 2 (two) obstacles faced by the bank in resolving the credit dispute with the object of guarantee of liability. The first constraint, on the customer who cannot be built. The intent of the customer cannot be constructed this is the customer who previously had problems, But then with the bank reached the Agreement for restructuring the Treaty. At the time of restructuring of the Treaty, the customer again repeated his mistake by not making the payment as promised. Against the customer, the bank will take the final dispute resolution, a litigation dispute settlement in the District Court.

This step is taken by the bank given that the litigation settlement has a certain advantage that the judge's judgment is binding and the ecolutorial, although in the proceedings of the defendant was not present at the court. The strength of the ruling judge that binding and ecolutorial will certainly benefit the plaintiff. But it should be remembered that

because there is no time limit on the length of litigation in the courts, coupled with the remedies of the ordinary remedies i.e. appeal and the case, and extraordinary, i.e. reconsideration, litigation dispute resolution could potentially take a very long time until the legal force remains.

Second constraint, often happens to the difficulty of selling a guarantee object of the rights in the auction. Auctions are performed at the state Wealth office and auction. The bank often finds difficulties in the collateral object auction process. Usually warranty objects are difficult to sell due to external factors such as difficult road access, unstrategic location, and others.

For this constraint, the bank is in the way: A. Expanding Network Marketing to contact third parties. B. Offer the customer to sell under the hand.

Researchers have thought that the length of the auction process will make the loan interest increase? And the bank replied not. In the case of customer injury, there are 2 (two) kinds of interest imposed. The first flower is a conventional interest which is the interest of the deal to the loan magnitude and the length of time. The Second interest is moratoir interest charged when the customer is late making payment. In case the warranty object is already determined to be auctioned, then the Moratoir interest accrual period stops. That is, the length of the auction process will not make moratoir interest more.

Regarding the object of guarantee that does not sell or take a long time in the process of the money-making, for researchers, should this be prevented from the beginning if the bank as a creditor conducted a careful survey in advance before the credit agreement was executed. This step is the wrong way to know the ability of prospective customers as article 8 of Law on banking, before conducting credit distribution to customers. If the maximum step is done by the bank, there should be minimal object warranties sell or need the old process in the slope, because the debtor's feasibility assessment has been maximized.

4. CONCLUSION

1. Prosedur Credit dispute settlement with objects in the form of rights to conventional banks in the Stone city is still centered on negotiating efforts and litigation resolution in court. If negotiations fail, the bank will normally execute the execution of the object of Liability Assurance. If the debts objected to the move, the customer may submit a lawsuit to court. If the negotiation fails, there is another attempt to do that is mediation, adjudication and arbitration which is authorized by LAPS, or the customer may file a complaint to the OJK. But the role of LAPS and OJK is still minimal in dispute resolution between conventional banks and customers in Batu City. In fact, one of the two functions of this institution is to assist the customer as the position of the lower bid to obtain justice in the process of dispute resolution encountered.
2. Obstacles faced in the process of settlement of credit disputes with objects in the form of rights of liabilities to conventional banks in the city of Batu There are two, namely: a. Difficulty of coaching to customers who do not show the goodwill in the process of fulfilling obligations to the Bank. If this happens, the bank will usually go straight to court litigation.b. Warranty objects that do not sell or require a long process in the auction. The Bank will take steps in requesting assistance to third parties to assist with the sales process. During the auction process, no additions of moratoir interest will be.

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