

# Legal Remedies of Customers Experience Non-Performing Loan Review Form Law Number 10 year 1998 Concerning Amendments Law Number 7 Year 1992 Concerning Banking (Example Case Court Judgment No. 1/Pdt.G/2018/PN Kng)

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## ABSTRACT

Loans provided to the public through financial institutions or banks, are usually used to meet the needs of the community, with all facilities provided by financial institutions or banks in taking credit facilities, not always the customer can pay installments according to the date of payment, causing the customer's credit to become Non-Performing Loan. How legal remedies can be done by customers who experience non-performing loans, in this case the authors do the authors examine the problem using normative legal research methods. The results show that there are several efforts that can be done by customers, namely by restructuring credit agreements. Restructuring is an improvement effort made by the Bank in lending activities to debtors who experience difficulties in fulfilling their obligations. This restructuring policy is regulated in a Bank Indonesia Circular Letter and also in a Bank Indonesia Regulation. Customers who experience Non-Performing loan, you should immediately consult with the bank to make efforts to restructure the credit agreement

**Keywords:** Loan, Non-Performing Loan, Restructure

## 1. INTRODUCTION

The state in quality as an organization has a purpose. Like also for the State of the Republic of Indonesia, the purpose of the Republic of Indonesia is set out in the fourth paragraph of the Preamble of the 1945 Constitution, namely "Protect all Indonesians and all Indonesian blood, promote public welfare, educate the nation, develop national order based on harmony, eternal peace. and social justice ". In the opening indicated that Indonesia as a rule of law state adheres to the conception of the welfare state or the conception of the welfare state[1].

Humans as social creatures (zoon politicon) in carrying out their lives basically cannot run their own lives and really need help from others, of course humans as social beings must be able to interact with others in carrying out their activities. With the establishment of an interaction with others, there is an engagement between them.

The engagement is regulated in Book III of the Civil Code (KUHPER), the engagement is divided into two, namely the general engagement and the engagement that was born from a specific agreement. Agreements are generally agreements that are born from agreements and laws, while agreements that are born from certain agreements are agreements that are born from certain agreements such as buying and selling, borrowing and leasing. Even the provisions regarding the engagement

in general, this also applies as a basic provision whose type of agreement is not regulated in the Civil Code.[2]. The engagement results in a legal relationship between one party and another, one of the legal relationships that occur is between the bank and the customer governed by an "Agreement". This can be concluded, among others, from Article 1 paragraph (5) of Law no. 10 of 1998 which reads: "Deposits are funds entrusted by the public to banks based on the deposit agreement' and in the form of demand deposits, giro, certificates of deposit, savings and or for other such equivalents. " From this provision, it can be seen that the public deposits in the bank are basically an agreement.

The state in creating a prosperous society based on the Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia, must have a national development system which is an important series of community welfare. It also needs cooperation between the community and the government to maximize national development. Indonesian society is a consumptive society, this is evident from the increasing consumption of consumptive behavior in the community. It is the consumptive nature of this society that causes thought to meet every need in the community, and how it can meet consumptive needs while community expeditors are often out of balance with their income. These needs cannot be fulfilled directly, with the small amount of income earned by the

community while the community requires a large amount of funds in terms of meeting their needs, resulting in being able to meet these needs, then the public makes credit loans through financial institutions or bank loans[3].

Banks in their activities are regulated in Act No.10 of 1998 concerning Amendment to Act No. 7 of 1992 concerning Banking. The definition of a bank based on Article 1 number 2 of Law No. 10 of 1998 concerning amendments to Law No. 72 of 1992 concerning Banking "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 ". Apart from the 2 main functions of the bank, the bank also has business activities that are permissible under Article 6 and Article 7 of Act No. 7 of 1992 concerning Banking, such as,) collecting funds from the public in the form of deposits in the form of demand deposits, time deposits, certificates of deposit, savings, giving credit and so on

In addition to business activities permitted by banks, of course banks also have prohibited business activities, as stated in Article 10 of Law No. 7 of 1992 concerning Banking, namely). capital participation, insurance business undertaking, and other activities not regulated in Article 6 and Article 7

With all the facilities provided in using credit facilities provided by banks, but not always credit payments by customers can run smoothly. Many customers have difficulty paying credit because of economic problems experienced by the customer, which causes bank credit settlement to be hampered, so it is commonly referred to as Nonperforming loan.

Banking in providing credit must be thorough, because in this case Banking gives confidence to the debtor. To return money received by banks from people who trust the bank by depositing the money in the bank. Therefore, banks have principles or criteria and apply the principle known as "the five c of credit analysis" or "the 5 C's principle", namely:)

- a. Character Rating;
- b. Capacity Assessment;
- c. Assessment of Capital (Capital);
- d. Collateral appraisal;
- e. Assessment of the Business Prospects of Debtor Customers (Conditon of economy)

The bank also applies the 4P principle, namely:)

- a. Personality
- b. Purpose
- c. Prospect
- d. Payment

Based on data on non-performing loans from the Financial Services Authority (OJK) recorded that until April 2020, gross non-performing loans (NPLs) have been 2.89%, a significant increase compared to December 2019 of 2.53%. The ratio is also higher than the average monthly ratio in 2019 of 2.59%.

The author in this case takes the case in Majalengka, West Java with Decision No: 1 /Pdt.G / 2018 / PN Kng,

where the debtor customer took a credit facility on December 20, 2013 in the form of a newspaper account credit facility to increase their business capital, subsequently between the debtor and the bank entered into a mutual agreement on 3 October 2014 and 24 November 2015 entered into an amendment agreement, and an extension of the credit agreement entered into by the customer with the bank.

However, as time went by, the debtor experienced problems with credit payments to Bank Danamon. Regarding this incident, the Plaintiff has asked the Defendant to provide an explanation and a solution to the Plaintiff's problem. However, the Defendant did not provide an explanation and solution to the defendant's questioning, but immediately provided a summons to the plaintiff and threatened the plaintiff if he did not make the payment, the pledged object guaranteed by the plaintiff would be auctioned unilaterally by the bank. The plaintiff in a choirative manner asks the bank to postpone the auction of the plaintiff's object of guarantee. But the defendant threatened the plaintiff to vacate the collateral object for auction. The plaintiff does not know about banking law, and does not know how to solve credit problems experienced by the plaintiff. Due to the non-transparency of the defendant, there was no legal certainty to protect customers. So the plaintiff felt disadvantaged because the bank did not restructure the credit agreement.

Based on the description that has been explained before, the writer interested in doing further research on the topic and pour it in the form of a thesis titled " Law effort Cutomers experience Non-Performing Loan review form Law Number 10 year 1998 Concerning Change Over Law Number 7 Year 1992 Concerning Banking (Example case court judgment No. 1/Pdt.G/2018/PN Kng.

## **2. FORMULATION OF THE PROBLEM**

How legal remedies can be done by customers who experience Non-Performing Loan based on Law No.10 of 1998 concerning Amendments to Law No. 7 of 1992 about Banking?

## **3. METHODOLOGY**

This type of research used by the author in writing this thesis is to use normative research methods. [4] This writing is deductive, descriptive [4] and evaluative [4] using secondary materials, especially based on Law No.10 of 1998 concerning Amendments to Law No. 7 of 1992 about Banking, Indonesian Bank Circular, and Indonesian Bank regulation.

## **4. RESULT**

The problem of Non-Performing Loan, starting from the agreement between banks, and the agreement between banks, made in the agreement, the agreement also about the "achievements" in which the parties have supported to take or not take action. In addition, the agreement is also an "agreement" between the parties agreed to achieve certain goals. In order for the parties to obtain or achieve their goals, it is better to draw up an agreement in written form which contains the rights and obligations for each party, prohibitions, and procedures for resolving disputes that might occur

before the specified goal is reached. Besides the existence of an "agreement" it should also be followed by a "good faith" attitude from the parties in carrying out the agreement that was made between them.

Banks in maintaining legal relations with customers, starting from the existence of a trust in customers. Trust in this case is in terms of providing credit to customers, that is, customers can repay loans borrowed to the bank in a timely manner. The principle of bank trust is the beginning before the bank establishes a legal relationship with customers.

after the bank believes in the customer, the bank in establishing a legal relationship with the customer in this case is to provide credit facilities to always be careful. The principle of prudence in lending is important, because if a bank cannot apply the precautionary principle properly, it will have an impact on public confidence in the bank's performance. In Article 2 of the Banking Law it is said that Indonesian banks in conducting their business are based on economic democracy by using the precautionary principle. So that banks should apply the precautionary principle.

Before a bank gives credit, it must first conduct a research and assessment of prospective customers as a form of the Bank's precautionary principle. In conducting research on prospective customers, bank apply the principle known as "the five c of credit analysis" or the 5 C principle, namely:

- a. Character
- b. Capacity
- c. Capital
- d. Collateral
- e. Condition of economy

In addition to applying the 5c bank principle, the bank also applies the 4P principle before giving credit to customers, the 4P principle consists of:

- a. Personality
- b. Purpose
- c. Prospect
- d. Payment

After the customer receives or uses service facilities from the bank, in this case the bank credit facility. The bank will apply a principle known as Know your customer (KYC), the application of this principle by the bank aims to find out the customer's identity, monitor customer transactions including reporting suspicious transactions. The Bank in applying this principle will monitor all customer transaction activities. The application of the KYC principle is the implementation of the precautionary principle after credit facilities are given to customers.

Banks that have provided credit loans to customers can assess whether or not the customer's credit, based on customer compliance in paying the credit installments, this is also called collectability which can be seen from OJK SILK. There are 5 stages or criteria for credit collectability, namely: collectability of one current credit, collectability of two credits under special attention (waiting for installments for 1 (one) to 90

- b. Extension of Credit term

Credit term extension is a form of credit restructuring aimed at easing debtors to fulfill

(Ninety) days), collectability for three substandard loans (customers in arrears for 91 installments (Nine) twenty one) up to 120 (one hundred twenty) days), collectability of four doubtful loans (customers in arrears 121 (one hundred twenty one) up to 180 (one hundred eighty) days), collectability of five bad loans (customers in arrears for more than 180 installments one hundred eighty) days). Negligent customers in meeting the achievements that have been agreed in the credit agreement causes the customer's credit to become bad. Efforts that can be made by customers can be in the form of legal remedies through litigation and non-litigation or administrative settlement. Customers who have been in the collectability category of five or can also be referred to as bad loans have several ways or efforts in order to save the credit guarantee. One of the most commonly used methods is the restructuring of credit agreements.

Administrative settlement of bad credit has been arranged through Bank Indonesia Circular Letter Number 26/4 / BPPP dated May 29, 1993 expressly stipulates that in the case of saving bad loans to bank customers, banks can do so through policies:

- a. Rescheduling
- b. Reconditioning
- c. Restructuring

Besides based on Bank Indonesia Circular Number 26/4 / BPPP dated May 29, 1993, banks can also help customers' bad loans based on Article 1 number 26 PBI.14 / 15/2012 Jo. PBI 7/2005 or more commonly referred to as Restructuring which is an improvement effort undertaken by the Bank in lending activities to debtors who experience difficulties in fulfilling their obligations, carried out among others through:

- a. Decrease in loan interest rates;
- b. Extension of credit term;
- c. Reducing loan interest arrears;
- d. Reducing of principal credit arrears;
- e. Adding credit facilities;
- f. Conversion of temporary equity participation credit.

The explanation of each of the 6 (six) ways above is:

- a. Decrease in loan interest rates  
Decrease in interest rates is a form of restructuring aimed at providing relief to debtors so that with a decrease in loan interest, the amount of interest to be paid by debtors is smaller than the interest rates previously set. Therefore, income from the debtor's business can be allocated to pay a portion of the principal and other parts to continue and develop the business. Deed that needs to be made and renewed in connection with a decline in interest rates is amending the credit agreement.

their obligations. With the extension of the time period to provide an opportunity for

debtors to continue their business. Business income that should be used to pay debts that are due can be used to strengthen the business and within a certain period is able to pay off all debt

- c. Reducing loan interest arrears  
Loan interest is the biggest income from total income. Interest can be interpreted as a price to be paid by the bank and / or paid as a reply 15 Credit rescue that is difficult to do with credit can be done by easing the debtor's burden by reducing credit arrears or facilitating arrears on loan interest. Partial or whole credit interest. The step of salvage by using a large portion of the arrears of credit interest is expected that the debtor has greater support needed to be used for payments in accordance with the creditor.
- d. Reducing of principal credit arrears  
Reducing of principal loan arrears is the maximum credit restructuring given by creditors to debtors because the reduction in principal is usually followed by the elimination of interest and penalties entirely. Reduction of credit principal is a huge sacrifice of the bank because the bank assets in the form of principal debt do not return and are a loss that is the burden on the bank
- e. Adding credit facilities  
The addition of credit is done in the hope that the debtor's business will run again and develop so that it can generate income that can be used to return old debts and add new credit. To provide additional credit facilities, a careful, accurate and accurate analysis of the business prospects of the debtor must be done because the debtor bears old and new debts. The debtor business must be able to generate income that can be used to pay off old debts and add new credit and still be able to develop the business going forward.<sup>19</sup> Adding credit facilities is followed by additional conditions so that additional conditions must be formulated in the new credit agreement. If the addition of the new facility requires additional collateral, an additional collateral must be made, the form of collateral binding, depending on the object for additional collateral.
- f. Conversion of temporary equity participation credit.  
Converting credit into capital in a debtor company is a form of credit restructuring. Conversion of credit into capital means that a number of credit values are converted into shares in a debtor company called debt equity swap. Regarding how much the value of shares derived from loan conversions depends on the agreement between the creditor and debtor. Thus, the bank has a

number of shares in the debtor's company and the debtor's debt is paid off. The number of shares owned by the bank depends on the results of the valuation of the agreed value of the shares

In conducting the loan agreement restructuring process, there are several ways that can be done by customers, namely



There are 3 (three) ways to restructure debts owned by customers who experience a non performing loan:

- a. Pay off debt  
In the process of paying debts, customers can use 2 ways, namely:
  - (1) Asset swap  
Asset swap to debt can also be referred to as the sale of assets owned by a customer to pay off debt to the bank
  - (2) Equity Swap  
Equity swap to debt can also be referred to as an exchange between debt and shares or turning debt into equity participation.
- b. Restructuring requirement  
This modification is more often used by customers who are experiencing bad credit, because this mechanism does not change or does not affect the total assets owned by the customer.
- c. Combination of pay off debt and restructuring requirement  
The method of payment is a combination, namely the combination of payment methods for swap to debt assets or Equity swap to debt by modifying the terms of the loan agreement owned by the customer.

## 5. CONCLUSION

Based on the results of the conducted by the Author, it can be states that the legal remedie that can be given to the customers, based on Bank Indonesia Circular Number 26/4 / BPPP dated May 29 year 1993 and based on PBI.14 / 15/2012 Jo. PBI 7/2005 Article 1 number 26 or more commonly referred to as Restructuring, which is an improvement effort undertaken by the Bank in credit activities for debtors

who experience difficulties in fulfilling their obligations.

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