Analysis of Legal Protection Against Customers Who Cannot Pay Installments Reviewing from Law No. 10 of 1998 Concerning Banking Law (Sample Case of Decision No. 646K/PDT/2017)

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ABSTRACT
In other countries or in Indonesia, we have often heard the term borrowing or borrowing what we usually call credit. Credit is one of the facilities provided by banks for people who are less able to roll their money back. Based on the contents in this thesis, there are problems, namely how legal protection and good billing procedures are for customers who are unable to pay bank installments in the decision no. 646K/PDT/2017 in terms of Banking Law No. 10 of 1998, then the research objectives in this thesis theoretically, the author hopes that the results of this paper can provide benefits and contribute to knowledge in civil law, especially those related to banking. Practically, the author hopes that the results of this writing can be useful for information and consideration, input to the general public, and officials who apply in general. In addition, it is also hoped that after this research is made, parties who can carry out banking supervision are even better. Based on the research data as follows: That on November 14, 2011, Plaintiff II, namely Mr. Afiat Dwihana Fakhrudhi who resides in Glagaharum hamlet RT/RW 005/002, Dukuharum Village, Megaluh District, Jombang Regency.

Keywords*: Legal Protection, Banking, Default*

1. INTRODUCTION

In other countries or in Indonesia, we have often heard the term borrowing or borrowing what we usually call credit. Credit is one of the facilities provided by banks for people who are less able to roll their money back. In this lending and borrowing activity, of course, banks have high hopes for customers who borrow funds to return the funds that have been borrowed in accordance with the time determined by the bank itself. In fact, in the field, it is not uncommon for us to find customers who are unable to pay bank installments in the middle of the trip for one reason or another. Banking institutions as one of the financial institutions have strategic value in the economic life of a country, these institutions are intended as intermediaries for parties who have problems with lack of funds, thus the banking system will run in activities commonly referred to as credit, and service institutions provided by banks. serve all financing needs as well as launch a payment system mechanism for all sectors in the economy [1]. Article 2 of the regulation has been amended by a new banking law, namely Article 8 of Law Number 10 of 1998 concerning banking, namely: (1) In granting credit or financing based on sharia principles, commercial banks are required to have confidence based on in-depth analysis of the intention and ability and ability of debtor customers to pay off their debts or return the financing in accordance with the agreement, (2)Commercial banks are required to have and apply credit and financing guidelines based on sharia principles, in accordance with those set by Bank Indonesia. [2]

The existence of the banking community has long developed in Indonesia, or in various other countries, until now banking has a very large contribution to the economic journey of society, especially in Indonesia, the relationship between bank customers and the bank that owns the whole fund is a very contractual relationship between debtors and creditors based on various principles and prudence and there are norms to protect each creditor and debtor. Vice versa, the relationship between the bank and the customer must also be good, there needs to be trust between the bank and the customer to carry out the lending and borrowing system offered by the bank. Banks need to know whether the prospective customer who will be loaned money is able to pay the credit or debt. The function of banking institutions is to channel public funds which has been regulated in Article 33 of Law No. 10 of

1998 concerning amendments to Law No. 7 of 1992 concerning banking. There it is regulated that banks have various functions, namely: (1) Credit recipient, (2) Financing, (3) Investment, (4) Deposit recipient.[3]

Throw back in the case of the 1997 monetary crisis, which at that time the bank experienced extraordinary bankruptcy because in carrying out its activities the bank relied more on providing loans, finally a lot of debtors were unable to pay off their debt installments. The monetary crisis that occurred at that time had an impact on temporary liquidity, as well as structural liquidity difficulties that could not be overcome in meeting the minimum capital requirements. Based on this, BI or also known as Bank Indonesia took one way to help banks to be more selective in choosing their prospective customers who would greatly minimize bad loans or non-performing loans by creating a joint debtor data-based system. With the regulation of Bank Indonesia (PBI) no 7/8/PBI/2005, Bank Indonesia introduced the SID system or the so-called debtor information system. SID or abbreviated as debtor information system is a system that provides all kinds of information regarding individual debtors and business entities which are processed based on reports from distributors or providers of funds received by Bank Indonesia from reporting providers regarding debtors, SID is the realization of government programs in the normalization of the banking industry. contained in the new banking order and is known in the environment as the Indonesian banking architecture (API).[4] The main function of the SID itself is as a national credit based data which is expected to provide all complete and accurate information regarding debtors and prospective debtors which in the end will be able to accelerate the health and strengthening of the industry in the national banking sector, especially in the credit sector.

According to Sutabri, the information requirements are: (1) Timely Information, (2) Relevant Information, (3) Valuable Information, (4) Reliable Information.[5]

Meanwhile, according to Rochim (2002:22), there are differences of opinion regarding the quality of information, according to which the quality of information is divided into five, namely: (1) Accurate, meaning that information must be free from errors and not mislead the recipient of the information, (2) On time, the right information at the right time will have good information value, preferably with information that will reduce the quality of the accuracy of the information, (3) Relevant means that the information produced must have benefits for the recipient, (4) Economical means that the benefits of the information obtained are greater than the costs, (5) Easy information easy to understand and easy to obtain. [6]

The implementation of the SID or debtor information system must be in accordance with procedures, so that it runs smoothly and very effectively so that there are no disturbances or obstacles, so that it can be an effort to prevent bad loans that can occur between debtors and creditors.[7] the fact is that in the field, there are many customers who make omissions that are considered trivial by most debtors, such as debtors not reporting credit repayments, so that it can trigger misunderstandings and differences in reports that will enter the SID system or debtor information system and will be an important consideration in the assessment of prospective debtors who will apply for credit loans to banks. If a problem is found when checking the debtor's history report, the debtor will not be able to apply for a credit loan, for example, a customer is included in the blacklist category, the black list itself is a national black list which is commonly called a blacklist. prevent the circulation of blank checks and bilyet giro. Customers can be categorized as blacklisted if they withdraw 3 (three) or more blank checks or bilyet giro with a nominal value of each below Rp. 500,000,000 (five) hundred million rupiah) at the same bank within a period of six months or withdrawal of 1 (one) blank check & bilyet giro with a nominal value of Rp. 500,000,000,- or more: (1) Provide opportunities for consumers to test or try certain goods or services and provide guarantees or guarantees for traded goods, (2) Provide compensation, compensation and compensation for losses due to the use, use and utilization of traded goods or services.

2. METHOD

The methods used in writing this proposal are as follows: (1) Type of Research: The type of research in this legal research is normative or doctrinal legal research, Doctrinal or normative research is research that provides a systematic explanation of the rules governing a category, (2) Nature of Research: The nature of legal research has a distinctive character, namely its prescriptive nature. which basically legal science is not included in the descriptive science. Rather, it is prescriptive science. Researchers will conduct an assessment of what should be and provide recommendations. Legal research is carried out to meet the law, (3) Data Source: (a) Primary Legal Material: Primary legal materials are materials used consisting of statutory regulations, official records, minutes of making legislation and judges' decisions, (b) Secondary Legal Material: Secondary legal materials are defined as legal materials that provide an explanation of primary legal materials. In this case, it consists of laws, scientific books and research results, (c) Tertiary Law Material: Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study the tertiary legal materials used include dictionaries (laws), encyclopedias, (4) Legal materials collection techniques: The technique of collecting legal materials in this study uses library research, library research is a documentary technique, which is collected from archive studies or library studies. Data collection was carried out by interviewing legal practitioners and legal academics. The purpose of the literature study is to streamline theories and related materials in determining the direction and objectives of research as well as concepts and other theoretical materials in the context of legal issues. (5) Data Analysis Technique: The data analysis used in this study is qualitative data analysis techniques, namely the efforts

made by collecting data, synthesizing, searching and finding important patterns, (6) Research Approach: In legal research, there are several approaches. With this approach, researchers will get information from various aspects regarding the issue that is being tried to find answers to. . There are 2 (two) approaches, namely: (a) statute approach, (b) Case Approach. The approaches used from the above approaches are the statutory approach and the case approach. The statutory approach is an approach taken by reviewing all laws and regulations related to the legal issues being handled. The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force.

3. DISCUSSION

3.1 Issue

Based on the introduction provided above, the issues that are intended to be studied are How are legal protections and good collection procedures for customers who are unable to pay bank installments in the decision no 646K/PDT/2017 in terms of Law No. 10 of 1998 concerning banking.

3.2. Legal Protection Efforts Against Bad Credit Customers

In Chapter IV, analyzes the problem of the thesis title, namely Analysis of Legal Protection Against Customers Who Are Unable to Pay Bank Installments Judging from Law No. 10 of 19998 concerning Banking Law (Example Case of Decision No. 646 K/PDT/2017). Based on the position case, the results of interviews in Chapter III and Chapter II in the writing of this thesis, namely in the case of the position of chapter 3 of this author's thesis as follows: bad credit problems often occur in today's era, in the case of this decision, the debtor feels aggrieved because of being terrorized excessively by the bank and feel unsafe. Not only in this case, out there must be many cases of bad credit due to the unstable economic condition of our society, if we also look at the covid-19 pandemic at this time there are also many companies and people who are not least affected by this pandemic. the other is the economic impact so that many people lose their jobs because the company is no longer able to pay the salaries of its employees so to save the company from bankruptcy, the company leader decides to terminate the employment relationship of its employees. The impact of this termination of employment (PHK) causes the community's economy to become unstable, which causes people to become increasingly difficult in the economic field, one example of which is bank credit bills becoming stuck in the middle of the road, so it is often found that debtors are no longer able to pay their credit bills. and creditors in terms of collecting their receivables from debtors are often found using debt collectors to collect their receivables and often acts of violence in collecting their receivables are also found. As in the case example raised in this thesis, the debtor feels aggrieved because the creditor terrorizes his extended family which causes mental disorders in the debtor's family and causes losses because the debtor's parents have to feel in and out of the hospital due to illness and trauma due to terror from the creditor. From here, the author will analyze according to the theory of banking and theory of justice used in compiling this thesis.

In this case, after carrying out the first, second and third negotiations, the debtor asked for relief from the creditor to pay the remaining debt of Rp. 243,000,000 in 7 years in installments with installments of 2 million per month on a continuous basis at the Jombang District Court, the debtor also feels that he is a good and right debtor because he has carried out his obligations by paying the installments that have been running in the amount of Rp. 57,788,853.92. In terms of banking theory, in the analysis of writing this thesis, the debtor is not justified in his activities to only pay the remaining debt and eliminate the interest rate which has become his obligation in conducting credit transactions to the bank, here the creditor cannot just cancel the credit agreement have been made by the creditor and debtor respectively.

In practice, the occurrence of bad loans is caused by 2 elements, namely: (1) By the bank: Which means that in carrying out the analysis, the bank is not careful enough to analyze the prospective creditors who will apply for credit, so that what should happen cannot be predicted properly and correctly beforehand, or may not be careful in doing good calculations. It can also occur due to collusion from the credit analysis party with the debtor which makes the analysis carried out only subjectively, (2) By the customer: (a) There is an element of intentionality, in this case the customer deliberately does not pay his obligations to the bank so that the credit given ends up being bad. It can be said that there is an element of willingness to pay the credit, (b) There is an accidental element, which means that the debtor is willing to pay but cannot afford it. For example, the credit being financed suddenly goes bankrupt which no one expected, or the occurrence of fires, pests, flooding and many other examples.

In the case of this thesis, it is very clear that the reason the debtor is no longer able to pay his debt is due to an unintentional element on the debtor, namely he was deceived by his own colleague and the result caused bankruptcy to the debtor. In the case of non-performing loans, the bank needs to make a rescue, so that it will not cause losses for the bank itself. The rescue is carried out whether by providing relief in the form of a period or installments that are prioritized, namely for credit affected by problems or by confiscation of various guarantees provided by the debtor in entering into a credit agreement.

Bad credit rescue techniques are:

(a) **Doing rescheduling**

By extending the credit period, in this way the creditor can provide relief in terms of the current credit period, for example, the debtor provides an extension of time from 2 years to 4 years, this method is used so that the debtor still

has longer time to repay the loan. return the money that has been borrowed.
As for another way, namely by extending the installment period, this method is almost the same as the credit period, but in this case the credit installment period is extended for payment. For example, from 50 x to 70 x, of course, the number of installments will be smaller because along with the addition of the number of installments.

(b) **Doing reconditioning**
By changing various existing requirements such as:
Interest capacity, which in other words interest is used as principal debt, and postponement of interest payments until a certain time.
In a case like this, delaying the payment of interest until a certain time means that only interest can be postponed, while the principal of the loan must still be paid as usual. Here the debtor has a fairly broad relief because it only prioritizes paying the amount owed first, and the amount of interest owed is postponed first. The other way is by reducing the interest rate capacity, reducing the interest rate capacity in order to ease the burden on customers, reducing interest rates will affect the number of installments that are getting smaller and smaller, so it is hoped that it can help reduce the burden on customers in paying off their debts.

(c) **Doing restructuring**
In this case, restructuring is an activity carried out by the bank to the debtor by adding customer capital with all considerations of the debtor who does need additional funds and the business being financed is still feasible to operate, this action is by increasing the amount of credit, by adding equity to the party debtor.

(d) **There is a combination**
That is a combination of the three types above (rescheduling, reconditioning, restructuring).

(e) **Guarantee foreclosure**
In this case of bad credit, the efforts mentioned above should be carried out first, but if the efforts that have been given above are not successful and do not produce positive results, then the last method can be done, except for confiscation of collateral by auctioning the collateral. The activity of implementing the confiscation of collateral for collateral is only carried out if the category of credit that really can no longer be helped to be rehabilitated or the business owned by the customer no longer has the possibility to progress and develop, basically the creditor holding the guarantee is to be sold by auction to Executing material guarantees that have been given by customers can be seen from the Civil Code (KUHPer) as well as several laws and regulations as follows: (1) Article 115 of the Criminal Code: the creditor as the recipient of the pledged object has the right to sell the pawned item, after the lapse of the specified period, or after a warning has been issued for the fulfillment of the agreement in the event that there is no provision for an appropriate period of time. (2) Article 15 paragraph JO. Article 29 of Law Number 42 of 1999 concerning fiduciary guarantees: which gives the creditor the right to execute fiduciary collateral objects if the debtor is in default (default). (3) Article 20 of Law Number 4 of 1996 concerning Mortgage on Land and Objects related to land: which gives the creditor the right to execute fiduciary collateral if the debtor is in default (default) If the occurrence of bad credit is due to the debtor not carrying out his promise as made in the credit agreement, then before conducting the auction of collateral goods, the debtor must first be declared to have defaulted because he is no longer able to pay bank installments. Which is done through a court decision. Therefore, the creditor must first sue on the basis of default and if the court's decision has granted the creditor's claim, the creditor can immediately execute the collateral provided by the debtor to the creditor.
If the occurrence of bad credit is due to the debtor not carrying out his promise as made in the credit agreement, then before conducting the auction of collateral goods, the debtor must first be declared to have defaulted because he is no longer able to pay bank installments. Which is done through a court decision. Therefore, the creditor must first sue on the basis of default and if the court's decision has granted the creditor's claim, the creditor can immediately execute the collateral provided by the debtor to the creditor.
Whether or not the collateral is auctioned or executed does not only depend on whether the credit payment period has passed or not, but if the customer has made an inaccuracy in the performance as promised, this is already a form of wrong achievement or not doing as agreed by both sides. This can make the creditor entitled to exercise his right to execute the collateral provided by the debtor. The legal protection provided for customers according to law number 10 of 1998 mandates the establishment of a deposit insurance institution (LPS) requiring every bank that conducts business activities in Indonesia to guarantee public funds deposited in the bank concerned up to a certain amount.
According to my analysis of this dispute, the debtor is often in a weak position due to the existence of standard clauses such as in this case where the agreement between the debtor and creditor is very unbalanced, where the creditor is the one who benefits greatly in this agreement because of the standard clause, the level of line balance measurement are numerical and proportional. If we look at the theory of justice according to Thomas Hobbes, according to him justice is an act that can be said to be fair if it has been based on an agreed agreement. From this statement it can be concluded that justice can be achieved when there is an agreement between the two parties who promise. If we look at this dispute justice is not achieved on both sides because the debtor does not necessarily agree with the contents of the agreement but because the majority of creditor agreements are standard clauses. then the debtor must agree with the contents of the agreement because the nature of the standard clause itself is take it or leave it.
If you look at the credit analysis according to Sutan Remy Sjahdeini, it must be done to find out the customer's

willingness to repay the credit provided by the bank to determine the customer's ability to return the money given by the bank. In banking circles, this is known as measuring the willingness to repay and ability to repay customers, which means that banks or creditors in providing credit to customers/debtors must follow the principles put forward by Sutan Remy Sjahdeini because banks should not only take profits without seeing the ability of the debtor. in terms of paying debts because not all debtors have strong finances, there are many who are unable to pay in the middle of the road so that when creditors collect debtors sometimes make collections that are not in accordance with the law. The government through the Financial Services Authority in this case must be firm in making rules such as In this regard, the Banking Law and the Protection Act need to be revised and reaffirmed immediately.

Based on the explanation of the OJK Law that financial services authorities carry out their duties and authorities based on the principle of the public interest, namely the principle of defending and protecting the interests of consumers and society and promoting the general welfare. Based on the above provisions, the parties who will sign an agreement, especially a credit agreement, need to carefully study the rights and obligations that must be fulfilled if the agreement is important, considering that the credit agreement is full of clauses. This means that there are a number of requirements that must be complied with by the debtor. If it is not obeyed, disputes like this will often arise, to avoid disputes like this there must be openness from each party, namely from the debtor and creditor.

4. CONCLUSION

The conclusion of the thesis entitled Analysis of Legal Protection Against Customers Who Are Unable to Pay Bad Loans Judging from Law Number 10 of 1998 concerning Banking Law (Example Case of Decision Number 646 K/PDT/2016): 1. Pursuant to the provisions of Article 29 of Act number 10 of 1998 concerning banking, namely basically the supervision carried out by the bank is carried out by Bank Indonesia. So from here we draw the conclusion that in accordance with the regulated regulations. The confiscation of the debtor's assets is only carried out if the credit category for which there is really no way out, in other words, according to the creditor, the debtor is no longer able to pay his debts in various ways. the way that has been attempted, from here too the creditor has seen that the business owned by the debtor is no longer possible to develop again.

The author's advice on the analysis of legal protection for customers who are unable to pay bad loans in terms of Law Number 10 of 1998 concerning Banking Law (Example of Decision Case Number 646 K/PDT/2016): (1) For the debtor or borrower, it is better before deciding to make a credit transaction with the bank to think carefully and carefully for the future, in order to avoid all problems such as in this case, namely bad credit. (2) Customers or debtors in the future to be more obedient and follow all the regulations given by the creditor, such as paying installments on time to avoid default problems. And in order to create a sense of security and comfort for the debtor and creditor. (3) The customer should not go through this problem through legal channels, because it will take more time and cost much more.

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