Credit Rescue: Ensuring Business Continuity and Financial Stability Amidst a Pandemic

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Abstract. This study investigates how Rural Credit Banks changed credit agreements to save credit during the COVID-19 pandemic and the legal protection for debtors and creditors in credit rescue. Using a legislation (statute approach), the study finds that Rural Banks used novation, subrogation, cessie, and other addendum agreements to change credit agreements and save credit. Legal protection for debtors allows them to rearrange their cash flow to repay loans and maintain their businesses. Meanwhile, Rural Banks receive interest income and improve credit collectibility, ensuring the bank's health. The study concludes that written agreements provide legal certainty and protection for both parties during credit rescue.

Keywords: Credit · COVID-19 · Rural Banks · Agreements · Legal Protection

1 Introduction

The spread of Covid 19 in Indonesia has an impact on one of the economic sectors, namely banking. The bank as an intermediary institution connects parties who have excess funds with those who need funds. Parties who need funds will be given loan funds by the bank [1]. The distribution of funds/loans by banks contains risks, namely non-payment of credit by the debtor. Several factors have not paid off credit as a result of Covid 19. The debtor cannot pay credit due to a decrease in income from his business, no income due to termination of employment (PHK), the debtor dies [2]. Debtors do not have the ability to pay or repay credit resulting in decreased bank income. The biggest source of bank income is obtained from loan interest income. The decline in income for banks affects the continuity of the bank's business. In addition, non-payment of credit can affect credit classification based on payment or credit installments. The classification of bank loans consists of current (L), special mention (DPK), substandard (KL), doubtful (D) and loss (M). Loans that are classified as substandard (KL), Doubtful (D), Loss (M) are called *non-performing loans* or problem loans. A bank that is declared healthy if *the non-performing loan* (NPL) is a maximum of 5% (five percent) of the loan

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provided. Based on Indonesian banking statistics, the NPL of Rural Banks in East Java has increased during the Covid 19 period. The NPL in December 2019 before Covid 19 was Rp. 827 billion increased in December 2020 during the Covid 19 period to Rp. 936 billion.

The condition of high NPLs at a macro level has an effect on the rate of economic growth, so to overcome these conditions the Financial Services Authority (OJK) issued policies related to rescue measures and bank credit restructuring as outlined in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/ 2020 dated March 13 2020 concerning National Economic Stimulus as a *Countercyclical* for the Impact of the Spread of Coronavirus Disease 2019 (hereinafter written POJK 11/2020). Credit rescue is a credit settlement step through renegotiation between the Bank and the debtor by easing the terms of credit repayment which aims to enable the debtor to have the ability to complete credit [3]. Measures to save credit or credit restructuring can be carried out by means of: lowering credit interest rates, extending the credit period, reducing credit interest arrears, reducing credit principal arrears, adding credit facilities or converting credit to temporary equity participation [4]. The ways to save credit must be stated in a written agreement. Agreement forms in credit rescue can be set forth in novation, subrogation or cessie agreements. It is possible to make a combination agreement between the three forms mentioned above or accommodated in additional agreements (addendum) based on the principle of freedom of contract. The forms of credit agreements to be selected are adjusted to the substance to be changed. Starting from several forms of credit rescue agreements that can be used, the authors take the title Forms of Credit Rescue Agreements during the Covid 19 period at Rural Credit Banks. The importance of choosing the right forms of credit rescue or restructuring agreements can provide legal certainty and legal protection for both debtors and creditors.

2 Methodology

The type of methodology used in this research is normative juridical with the approach used to solve these problems, namely the statutory approach or *statute approach* [5]. The following steps: take inventory of laws and regulations related to legal issues; collect references that are relevant to legal issues; conduct an analysis of legal issues based on statutory regulations, references so that they can answer legal issues and draw conclusions.

3 Result and Discussion

3.1 Forms of Credit Rescue Agreements During the Covid-19 Period at the People's Credit Bank

Credit comes from the Latin word *credere* which means trust. The granting of credit by banks is set forth in an agreement as referred to in Article 1 number 11 of Law no. 10 of 1998:

"credit is the provision of money or bills that can be equated with it, based on a loan agreement or agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time with the provision of interest" The definition of credit mentioned above.

contains elements:

a. Agreement between the creditor and the debtor. Agree as a condition for the validity of an agreement based on article 1320 of the Civil Code. The agreement is stated in the loan agreement. In banking practice, a loan agreement is common under the name of a credit agreement.
b. The bank is the creditor, while the borrower is the debtor. The position of the parties refers to the skills and authority of each party. Proficiency as a legal condition for agreements based on article 1320 of the Civil Code
c. Credit agreements are reciprocal agreements, meaning that they impose rights and obligations that must be fulfilled by the parties. The creditor is obliged to provide funds or provide loan funds (achievements), while the debtor provides counter-performance in the form of paying off the debt according to the agreed timeframe along with the interest. This element is the object of a credit agreement according to article 1320 of the Civil Code.
d. Banks in providing loans must be guided by the provisions of the law, decency and decency in accordance with the provisions of article 1320 of the Civil Code

The credit agreement (article 1331 of the Civil Code), then if one of the parties does not carry out what has been agreed, the party that does not carry out the agreement is called a default or broken promise.

The credit agreement is the main or principal agreement, namely an agreement that can stand alone and usually stands alone. The main agreement can be attached to other agreements called follow-up agreements or *accessoir* and other addendum agreements.agreements *Accessoir* cannot stand alone, meaning their existence depends on the main agreement. An example of a guarantee agreement [6]. An additional agreement or addendum is an agreement that contains changes related to the terms and conditions of the agreement that has been agreed upon and applies to both parties between the Bank and the debtor [3].

The substance of the credit agreement includes:

a. Identity of the parties
b. Amount of debt
c. Purpose of using credit
d. Type of credit
e. Interest
f. Period of
g. fines or sanctions
h. Collateral/guarantee
i. Method of payment
j. Rights and obligations of the parties
k. Default

l. End
m. of dispute resolution
n. Other provisions [4]

The banking business contains a risk. In granting credit, the bank bears credit risk, namely the credit given cannot be returned according to what was agreed. Credit risk can be interpreted as a debtor failing to pay. Several factors have caused debtors to fail to pay, namely a national disaster event such as the Covid 19 outbreak. The Covid 19 outbreak has had an impact on the debtor's business decline. Covid 19 has an impact on termination of employment (PHK) because employers are unable to pay employee salaries due to decreased production. The impact of covid 19 has an impact on the death of debtors. Default debtors bring losses to banks, namely decreasing credit interest income and decreasing credit collectibility. A decrease in bank income and a decrease in credit collectibility has a direct effect on the continuity of a bank's business. Indirectly can hamper the rate of economic growth of a country. Credit collectibility is a credit classification based on credit quality. According to the provisions of article 12 paragraph (3) of Bank Indonesia Regulation No. 7/2/PBI/2005 concerning Asset Quality Rating for Commercial Banks, credit quality is divided into 5 (five), namely: current, on special mention, substandard, doubtful and loss [7]. The 5 (five) credit qualities are described as follows:

a. Current credit: no arrears of principal and/or interest
b. Special mention loans: if the debtor is in arrears of principal and/or interest installments for less than 90 days (less than 3 months)
c. Substandard credit: if the debtor is in arrears of principal and/or interest installments for more than 90 days (more than 3 months)
d. Doubtful credit: if the debtor is in arrears of principal and/or interest installments for more than 180 days (more than 6 months)
e. Bad credit: if the debtor is in arrears of principal installments and/or interest of more than 270 days (more than 9 months) [7]

Specifically for the classification of credit quality at Rural Banks, among others: current, substandard, doubtful and loss. Loans classified as current and under special mention are called current loans (*performing loans*), while loans classified as substandard, doubtful and loss are called bad loans (*non-performing loans*). If a bank experiences a high number of *non-performing* (NPL) it will affect the performance and soundness of the bank. Banks with high NPLs have disrupted operational activities, such as banks having difficulty meeting their short-term obligations or liquidity difficulties which will be detrimental to depositors, i.e. funds deposited cannot be returned.

During the Covid 19 period, the NPL of banks in Indonesia has increased. To overcome these conditions, OJK issued POJK policy 11/2020 which aims to encourage banking performance, especially the intermediation function, maintain financial system stability and support national economic growth (explanation of POJK No. 11/POJK.03/2020 concerning national economic stimulus as a countercyclical policy impact of the spread of the corona virus dies 2019). The policy contains related matters: credit restructuring both that occurred before and after the debtor was affected by Covid-19. Credit restructuring includes:

1. lowering lending rates;
2. extend the credit period;
3. reduce the amount of principal installments;
4. provide credit discounts;
5. providing new credit facilities;
6. changes in credit in the form of temporary equity participation [8]

Credit restructuring results in mandatory changes to the terms or conditions contained in the credit agreement. Credit agreement is the principal agreement. The main agreement is the basic agreement between the creditor/bank and the borrower/debtor at the time of granting credit as required in the provisions of article 1 number 8 of Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 concerning banking). As a basic engagement, a credit agreement can stand alone. While changes to the terms or conditions in the credit agreement can be set forth in an addendum*agreement*. The forms of credit restructuring mentioned above are stated in writing in an agreement. Agreements in credit restructuring or bank credit rescue can be in the form of debt renewal agreements (*novation*), rights replacement agreements (*subrogation*), transfer of receivables (cessie) and additional agreements or addendums. The forms of the restructuring agreement are chosen in accordance with the substance of the credit restructuring agreed upon by both parties.

Efforts to save credit by the Bank which are included in credit restructuring are by means of debt renewal or novation, which is a form of abolishing the agreement which is manifested in the form of the birth of a new agreement [9] The novation arrangement is regulated in Article 1413 of the Civil Code, which states 3 ways to carry out a novation:

1. If a debtor makes a new debt agreement for the creditor to replace the old one which was abolished, it is therefore called an objective novation;
2. If a new debtor is appointed to replace an old debtor who is released from his engagement, it is called passive subjective novation;
3. If as a result of a new agreement, a new creditor is appointed to replace the old creditor against whom the debtor is released from his engagement, it is called active subjective novation [10].

The word "replacing" contains an element of being intentionally deleted which means that the parties want it or in other words that the novatie is always agreed upon, meaning that the novation must fulfill the terms of the agreement stipulated in article 1320 of the Civil Code [6]. The novation agreement in terms of the old agreement that was abolished by him, is a liberatoir agreement, meaning an agreement that frees the other party from an obligation which is one of the reasons for the cancellation of the contract according to Article 1381 of the Civil Code, while in terms of the new agreement that arises as a result of the novation agreement that interpreted as an obligatoir agreement, namely an agreement that imposes rights and obligations on the parties [6].

In People's Credit Banks, novation can occur if there is a change of debtor, namely the old debtor is replaced by a new debtor. During the Covid-19 period, passive subjective novation or debtor transfer was implemented when an old debtor died and was replaced by a new debtor, namely his heirs. This passive subjective novation is carried out by the Bank in order to save credit so that the debt can still be continued/paid in installments or paid by the heirs. The legal consequence of passive subjective novation is that the old agreement is abolished and a new agreement is born, mutatis mutandis applies to the follow-up agreement (accessoir), namely the guarantee agreement is also deleted, so the novation as a new agreement must be followed by changes to the guarantee agreement, so that the creditor/bank remains has a *preferred* or takes precedence in repayment of its receivables in the event of default by a new debtor.

Requirements for making passive subjective novation agreements or transferring debtors include:

1. Agreement/deed of novation/deed of debt renewal agreed between the creditor and the new debtor as a replacement for the old debtor which contains a statement of transfer of debt from the new debtor.
2. A new credit agreement between the creditor and the new debtor containing: the amount of debt, term, credit interest rate, method of repayment of debt, confirmation of collateral back on collateral in the old credit agreement and other conditions Renewal of collateral binding on guarantees provided in the credit
3. agreement which is old [3].

The legal consequences of passive subjective novation are: the old credit agreement between the creditor and the old debtor is deleted and replaced with a new credit agreement between the creditor and the new debtor. All rights and obligations of the old debtor are transferred to the new debtor.

In addition to novation, efforts to save credit in credit restructuring are carried out by means of subrogation, namely the replacement of the debtor's/bank/creditor's rights by a third party, who is willing to pay the debtor's debt to the creditor. So a third party who has paid the debtor's debt by law, his position switches as a new creditor to replace the old creditor. Because the debt has been paid by a third party, the credit agreement is deleted and a new credit agreement is born between the third party as a new creditor and the debtor. Subrogation occurs both because of approval and because of the law regulated in Article 1400 of the Civil Code.

Subrogation according to article 1401 of the Civil Code states that reimbursement occurs with the agreement:

a. If the debtor/creditor, by receiving the payment from a third party, determines that the third party will replace his rights, lawsuits, privileges and mortgages owned (creditor) against the debtor/debtor. This subrogation must be expressly stated and made at the time of payment. This subrogation is based on the creditor's initiative;
b. If the debtor/debtor borrows some money to pay off his debt and stipulates that the person who lent the money (a third party) will replace the rights of the debtor, then for this subrogation to be valid, both the loan agreement and the sign of repayment must be made an authentic deed and in the letter of agreement to borrow money

must explain that the money was borrowed to pay off the debt, while the letter of payment is then made with the money that the new creditor has lent for this purpose. This subrogation is carried out without the help of the creditor or in other words the initiative of the debtor. [11]

c. Subrogation under the law means subrogation occurs without the need for approval between a third party and the old creditor, or between a third party and the debtor [10].

Subrogation in the credit restructuring of Rural Credit Banks during the Covid-19 period can occur if the credit agreement is made responsibly jointly between creditors/banks and several creditors, then subrogation occurs if one debtor pays or pays off the debts of other debtors. It can also occur in the case of a credit agreement where there is a third party who is the guarantor of the debtor's debt as outlined in the coverage agreement or *borgtoght*. In the borrowing agreement it is stated that a third party replaces the debtor's obligations when the debtor defaults. During the Covid-19 era, it was possible for a third party to voluntarily bind himself to pay the debtor's debt.

The substance of the subrogation agreement includes:

1. a subrogation deed made authentically with a notarial deed;
2 a new credit agreement is made between a third party as a new creditor and the debtor which stipulates that the loan money is used to pay off the de.btor's debt;
3. and repayments to creditors are obtained from third party loans. [3]

Cessie as a form of agreement in banking restructuring. Cessie is the transfer or delivery of receivables on behalf of and other intangible objects to other parties, which are set forth in an agreement made in an authentic deed or underhanded [10]. Cessie is regulated in article 613 of the Civil Code. Transfer of receivables from the old creditor to the new creditor in order to have legal consequences, the delivery must be notified to the debtor or in other words the debtor is bound by the notification, so that the debtor pays his debt no longer to the old creditor but pays to the new creditor [10].

During the Covid-19 pandemic, rescuing Rural Bank credit could be done with a cessie, namely a way for creditors to transfer or sell problem loans to third parties. Credit rescue through cessie initiatives comes from creditors. In a cessie agreement, the parties are bound: the old creditor is called *cessus*, the new creditor is called *cessionaris* and the debtor is called *cedent*.

Requirements for saving credit through cessie:

1. deed/agreement of sale and purchase of receivables between the old creditor and new creditor
2. cessie deed which is a deed of submission of receivables transferred to
3. the agreement credit and collateral agreements that have taken place between the old creditor and the debtor are still valid and bind the debtor to the new creditor.

The legal consequence of cessie is that all the rights and obligations of the old creditor are transferred to the new creditor.

Apart from novation, subrogation and cessie as forms of credit rescue agreements, other forms of credit rescue agreements can be made with additional agreements or addendums. Additional agreements or addendums are agreements that add to or complement or change the substance or terms of agreements that have been previously made, namely credit agreements. The addendum agreement contains subjective changes related to the subject of the contract as well as objective changes, namely changes regarding the object of the contract. [3]. The form of the addendum agreement is free, made authentically or made privately. The addendum agreement was born on the basis of the principle of freedom of contract. An addendum agreement in credit rescue can be made to change the terms of the credit agreement, such as the credit term extension agreement, principal reduction agreement and changes to the terms and conditions of the previously agreed credit agreement. The addendum agreement is an agreement that binds one unit with the credit agreement as the principal agreement, meaning that the credit agreement remains valid/not deleted and binding.

The substance of the addendum agreement includes:

1. subjective changes, namely changes involving the subject/parties in the contract;
2. objective changes, namely changes concerning the terms and conditions of the rights and obligations of the parties [12]

The addendum agreement in saving Rural Bank credit during the Covid-19 pandemic includes: changes related to rescheduling of debt payments as stipulated in the credit extension agreement, changes related to credit terms and conditions (reconditioning) which involve reducing credit interest, reducing principal and interest, which are stated in the credit agreement change agreement. The legal consequence of having an addendum agreement is that the provisions that are not amended remain valid and binding, so this addendum agreement is an integral part of the credit agreement as the principal agreement. The credit agreement is not deleted.

Any form of legal relationship between the Bank and the customer is a contractual relationship, meaning that the relationship between the bank and the customer is set forth in the agreement. The agreement made between the Bank and the customer must fulfill the legal requirements of article 1320 of the Civil Code, namely the agreement of those who are bound, the ability to make a contract, the object agreed upon, the causa or the reasons that are allowed. The credit agreement functions as:

1. as a means of proof of the legal action of lending and borrowing between the bank and the borrowing customer;
2. as a means of monitoring credit for banks to control credit quality
3. as a principal agreement which is a basic agreement as the basis for the birth of follow-up agreements/accecoirs as well as additional agreements/addendums
4. as proof of acknowledgment of the debtor's debt [3]

In a contractual relationship between a bank and a customer based on the principle of freedom contract (freedom of contract) means that the parties are free to make or draw up a contract as long as it does not conflict with law, decency and decency. The form of contract that is commonly used in banking practice is a standard contract, namely an agreement whose substance or form is regulated unilaterally (the Bank) which is binding and must be fulfilled by the customer. Because it is made unilaterally, the standard contract can conflict with the principle of balance in the contract. In credit restructuring, the Bank is required to provide legal protection for the parties.

4 Conclusion

Credit restructuring during the Covid-19 pandemic at Rural Banks can be carried out to save credit by reducing lending rates, extending the credit period, reducing the number of principal installments, providing credit discounts. Forms of credit rescue are outlined in several forms of agreements such as novation, subrogation, cessie and other addendum agreements. The selection of the forms of the agreement to be used is adjusted to the substance of the changes. Credit rescue is a form of legal protection in a legal relationship based on the principle of proportionality between the parties. Credit rescue for debtors aims to provide opportunities for debtors to reorganize their business in the hope that debtors have the ability to repay their credit. While rescuing credit for the Bank, in addition to getting income back from loans that have been given, will also improve credit quality so that the performance and soundness of the Bank are judged to be healthy. The forms of credit rescue that will be chosen by the Bank should be the terms and conditions that will be changed must provide relief to the debtor on the basis of the consideration that the debtor's business continues and the debtor earns income so that there is the ability of the debtor to repay his credit without a bank must ignore the principles of prudence in restructuring loans or credit disbursed.

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