



MECHANISM FOR SETTLEMENT OF DEFAULT IN THE MORTGAGE LOAN AGREEMENT AT PT. BPR BKK PURWODADI GROBOGAN

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Abstract:

This study aims to determine the mechanism for settling defaults in the imposition of credit contracts at PT. BPR BKK PURWO-DADI GROBOGAN and to understand the ideal default settlement mechanism in imposing credit contracts at PT. BPR BKK PURWODADI GROBOGAN. This research uses a sociological juridical approach, and the research specification is descriptive-analytical. The data used are primary data, secondary data is data obtained directly from the field using inter-views, and secondary data is library research. The results obtained: 1) If the Customer defaults in fulfilling his obligations in terms of installments or loan repayments, then settle the default against the Debtor, PT. BPR BKK PURWODADI GROBOGAN makes a settlement by conducting an auction at the KPKNL and completing the auction terms and Failure to Settle Dispute in Court 2). If the customer de-faults in fulfilling his obligations in terms of installments or repayments, the ideal default loan settlement mechanism in imposing credit agreements are by Settlement of Banking Disputes Through Mediation Forums, Warning Letters, Refinancing/Refreshing, Personal Guarantees, sale of assets/objects guarantee together.

Keywords: Default; Mortgage; Credit Agreement.

Abstrak:

Penelitian ini bertujuan untuk mengetahui mekanisme penyelesaian wanprestasi dalam pembebanan akad kredit pada PT. BPR BKK PURWODADI GROBOGAN dan memahami mekanisme penyelesaian wanprestasi yang ideal dalam pembebanan akad kredit pada PT. BPR BKK PURWODADI GROBOGAN. Penelitian ini menggunakan pendekatan yuridis sosiologis, spesifikasi penelitian deskriptif analitis. Data yang digunakan adalah data primer dan data sekunder adalah data yang diperoleh langsung dari lapangan dengan menggunakan wawancara, dan data sekunder berupa studi kepustakaan. Hasil yang diperoleh: 1) Apabila Nasabah wanprestasi dalam memenuhi kewajibannya dalam hal cicilan atau pelunasan pinjaman, maka untuk menyelesaikan wanprestasi terhadap Debitur, PT. BPR BKK PURWODADI GROBOGAN melakukan penyelesaian dengan melakukan lelang di KPKNL dengan melengkapi syarat lelang dan Kegagalan Penyelesaian Sengketa di Pengadilan 2). Apabila Nasabah wanprestasi dalam memenuhi kewajibannya dalam hal angsuran atau pelunasan maka mekanisme penyelesaian pinjaman wanprestasi yang ideal dalam pembebanan perjanjian kredit dengan cara: Penyelesaian Sengketa Perbankan Melalui Forum Mediasi, Surat Peringatan, Refinancing/Refresh, Personal Guarantee, penjualan aset/objek jaminan secara bersama-sama.

Kata Kunci: Cidera Janji; Hak Tanggungan; Perjanjian Kredit.

A. Introduction

The Indonesian constitution has regulated matters of control and ownership of natural resource wealth, individual property rights, to the state's role and business activities. The economic system is not only based on Article 33 of the 1945 Constitution, both the original and after the changes, as a paradigm of economic management as understood by many people (Bawazier, 2017) but also in several other articles in the 1945 Constitution which regulates the paradigm of the State's social obligations to the community. (Dhevira Dhiya Nur Aisyah, 2021)

Economic management is regulated in Article 33 of the 1945 Constitution as the Indonesian constitution are: (Rohendi, 2019)

- a) The economy is structured as a joint effort based on the principle of kinship.
- b) Production branches that are important to the State and affect the people's livelihood are controlled by the State.
- c) Earth and water and the wealth contained therein are controlled by the State and used as much as possible for the prosperity of the people.
- d) The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and maintaining a balance of progress and national economic unity.

Article 33 of the 1945 Constitution emphasizes economic politics to achieve people's prosperity. What prosperity means is nothing but the ability to fulfill material or basic needs. The measure to prove the success or failure of the politics of prosperity and the politics of the economy is the mandate of the 1945 Constitution, namely to increase the prosperity of the people as much as possible, not the prosperity of individuals. Because if individual prosperity is prioritized, then the reins of production will fall into the hands of powerful individuals. If this happens, then the people in large numbers will be oppressed. (Hayati, 2019)

In practice, the economic development in Indonesia has a positive impact that shows an increasingly unified direction toward the global, regional and local economy. On the other hand, after the economic crisis, Indonesia experienced a setback in the form of a reduction in national income, a drastic decline in investment, and bankruptcy of the banking sectors. The tremendous damage in big companies, the explosion of unemployment and poverty, and the loss of people's confidence in managing the economy are all complex problems. (Shuib et al., 2020)

For this reason, it is necessary to improve the economic system in determining government policies in the economic sector, including the financial and banking sectors, so that economic improvement can be achieved immediately. One of the government policies in banking includes Law Number 10 of 1998 concerning Banking which is more in line with developments and progress in the economic field because banks are financial institutions with a strategic and important role. (Islahiha et al., 2019) Based on the background description, the problem is formulated as follows: How is the default settlement mechanism in the mortgage loan agreement at PT. BPR BKK Purwodadi Grobogan? What is the ideal default settlement mechanism in the mortgage loan agreement at PT. BPR BKK Purwodadi Grobogan?

B. Discussion

Before reviewing the subject matter, the author will explain various works of literature related to the issues raised, one of which is related to default. Default is

something that the debtor must fulfill in every engagement. Default is an object of engagement, so in civil law, the obligation to complete the default is always accompanied by a guarantee of the debtor's assets. (Satiah & Amalia, 2021) Articles 1131 and 1132 of the Civil Code state that the debtor's assets, both movable and immovable, both existing and future, serve as guarantees for the fulfillment of their debts to creditors. However, the general guarantee can be limited by an exceptional guarantee in the form of particular objects specified in the agreement between the parties. (Sutrisni & Sugiarti, 2021)

The achievement is the opposite of the default, where the default comes from the Dutch language, which means terrible performance. Default means not fulfilling the obligations agreed upon in the engagement. Non-fulfillment of obligations by the debtor due to two possible reasons Due to the debtor's fault, either intentionally or negligently, and due to force *majeure* beyond the ability of the debtor so that the debtor is not guilty. To determine whether a debtor is guilty of a default, it is necessary to determine in what circumstances the debtor is said to have intentionally or negligently failed to meet performance. According to Article 1234 of the Civil Code, what is meant by achievement is someone who gives up something, does something, and doesn't do something. (Sjaifurrachman & Fithry, 2021) Default is the absence of achievement in contract law, meaning something that must be carried out as part of an agreement. Perhaps in the Indonesian language, the term implementation of promises for achievement can be used, and the lack of implementation of default contracts.

The study results showed that to settle the default against the debtor, the PT. BPR BKK PURWODADI GROBOGAN carried out the settlement by:

a. Conducting auctions at KPKNL (State Property Service Office and Auction) with the following conditions:

1. A copy of the Credit Agreement. The copy of the credit agreement is a consensual agreement between the debtor and the creditor (in this case, the Bank), which creates a debt and receivable relationship in which the debtor is obliged to repay the loan provided by the creditor based on the terms and conditions agreed upon by the parties.
2. A copy of the Mortgage Certificate and Mortgage Deed. A copy of the Mortgage Certificate contains the data and information collected in the APHT. So this Mortgage Certificate serves as evidence that the object is encumbered by mortgage rights, according to the Mortgage Rights Act. At the same time, a copy of the Mortgage Deed (APHT) is a deed made by a notary whose use is the name listed in the certificate book "has temporarily relinquished its rights" to the Bank because it has credit for a particular time. The Deed of Granting Mortgage (APHT) regulates the requirements and provisions regarding the granting of Mortgage from the debtor to the creditor concerning debts guaranteed by the Mortgage.
3. A copy of the certificate of land rights encumbered with Mortgage Rights Certificate of land rights saddled with Mortgage is one of the special guarantees for the interests of Mortgage holders. Even though the object of the Mortgage has changed hands and becomes the property of another party, the creditor can still exercise his right to execute if the debtor is in breach of contract.
4. A copy of the Debt Details/amount of debtor's obligations that must be

fulfilled. Details of Debt/amount of debtor's obligations that have not been paid from the date/month of the start of the default must be included in the bid submission.

5. A copy of evidence that the debtor is in default, including warning letters. The debtor has gone bankrupt, among others, in the form of a bankruptcy decision and/or insolvency determination (in the case of a Separatist Creditor Auction Application); or the debtor is a Bank in Liquidation, Operational Frozen Bank, Business Activity Frozen Bank, or Ex IBRA.
6. Statement Letter from the creditor as the Bid Applicant, which will be responsible in the event of a civil lawsuit and/or criminal charge.
7. A copy of the notification letter of the auction plan to the debtor by the creditor, which is submitted to the KPKNL before the auction is carried out unless the mortgage debtor is a Bank in Liquidation, Operational Frozen Bank, Business Activity Frozen Bank, or Ex IBRA.
8. A statement letter from the creditor as the applicant for the auction states that the limit value is determined based on the appraisal results by the appraiser by stating the name of the appraiser, the number, and the date of the appraisal report.

b. Default Dispute Resolution in Court

Default has significant consequences, so it must be determined in advance whether the debtor is in default or negligent, and if he denies this, it must be proven before a judge. The submission to the court regarding default begins with a subpoena made by a bailiff from the court, who makes a verbal process about his work, or it is enough with a registered letter or a wire, provided that the debtor does not easily deny it.

In the court, PT. BPR BKK PURWODADI GROBOGAN/creditors try their best to prove that their customers/debtors have defaulted, not *overmacht*, because if the debtor is not proven to be in default, then PT. BPR BKK PURWODADI GROBOGAN/creditors cannot demand anything from the debtor.

Apart from the above solutions, PT. BPR BKK PURWODADI GROBOGAN always puts forward the ideal solution, namely by soft methods, including:

- a. Banking Dispute Settlement Mechanism Through Banking Mediation Forum. One alternative dispute resolution can be chosen by PT. BPR BKK PURWODADI GROBOGAN is mediation because mediation is a dispute resolution process that involves a mediator to assist the disputing parties in settling in the form of a voluntary agreement on part or all of the disputed issues. However, it should be emphasized here that the mediator does not have the authority to decide a dispute. He can only provide input in the form of alternative solutions for the parties to the dispute. Mediation itself is regulated in PBI No. 8/5/PBI/2006 concerning Banking Mediation, as amended by PBI No. 10/1/PBI/2008. This Banking Mediation is a follow-up effort (phase 2) of efforts to resolve customer complaints (phase 1) that are not resolved internally by the Bank. Thus, before going through the mediation process, the customer must first submit a complaint to the Bank concerned. When he does not receive a decision from the complaint agency on the Bank's inner side, the customer can resolve the dispute with the

Banking Mediation agency, which is currently being run by Bank Indonesia (BI). Below, the author will describe several provisions and mechanisms for dispute resolution through the Banking Mediation Forum as regulated by PBI No. 8/5/PBI/2006. Then the issuance of PBI No. 10/1/PBI/2008 concerning Amendments to PBI No.8/5/PBI/2006 concerning Banking Mediation.

- b. Default settlement mechanism utilizing internal policies. Repressive security measures are carried out by PT. BPR BKK PURWODADI GROBOGAN to settle loans experiencing non-performing due to default debtors. To overcome these things, reprimands are carried out to collect payment arrears, namely by taking actions including:

1. Warning Letter

This warning letter is given to the debtor that the repayment period has passed and the debtor still has loan arrears for three (3) consecutive months. There are three (3) warning letters in this warning letter: I, II, and III. Each has a period of 15 days; the distance between warning letter I to warning letter II is 7 (seven) days and from warning letter II to warning letter III.

2. Subpoena Letter

If the third warning letter arrives, but the debtor still has not made any achievements, then about three (3) weeks after the third warning letter, PT. BPR BKK PURWODADI GROBOGAN will provide a subpoena letter to the debtor stating that the debtor must immediately pay off his debt or make achievements following what was agreed at the beginning. The subpoena letter was given by PT. BPR BKK PURWODADI GROBOGAN to debtors who are in default.

3. Refinancing/Refresh

PT. BPR BKK PURWODADI GROBOGAN will provide solutions, including giving refinancing/RO to debtors who are in default to change loan approvals so that the terms of repayment can follow the current income of the borrower/debtor and his ability to repay. Refinancing usually provides lower interest rates and smaller monthly payments.

4. Personal Guarantee

PT. BPR BKK PUR-WODADI GROBOGAN is looking for a solution utilizing a Personal Guarantee or an individual guarantee that creates a direct relationship with certain people. A personal guarantee is an agreement between the creditor (debt) and a third party that guarantees the fulfillment of the debtor's obligations (the debtor). The agreement between the creditor and a third party (guarantor) can be made with the debtor (the debtor) or even without the debtor's knowledge.

5. Selling assets together.

The advantages of selling collateral assets/objects together compared to sales through auctions include more efficient costs, simpler processes, not published and higher prices

Whereas according to the author, the mechanism for settlement of defaults is carried out by PT. BPR BKK PURWODADI GROBOGAN has been very good because it refers to Gus-tav Radbuch's theory which has three (3) fundamental values where the orientation is to create harmonization between creditors and

debtors. The purpose of the law is to protect humans both actively and passively. Actively intended as an effort to create a human social condition in a process that takes place naturally. While what is meant by passive is to seek the prevention of arbitrary efforts and unfair abuse of rights. Efforts to realize this protection include, among others, realizing order, realizing true peace, realizing justice for the entire community, and realizing the welfare of all people.

However, in practice, sometimes debtors are dissatisfied and even consider that the law does not bring justice to debtors and ironically believe that the law only favors certain groups, namely creditors, who are undoubtedly superior in various ways of resolving defaults. This condition shows that it turns out that the practice of law in this country has not given satisfaction to the people or which is the object of the law itself, which is in complete contradiction with the ideal legal goals.

The above phenomenon is the opposite situation between *das sein* (which exists) and *das solen* (supposedly) in society, which will give rise to the erosion of trust in law enforcement in Indonesia. However, this paper will not discuss too much about the dynamics of law enforcement in Indonesia. Still, it will focus more on the understanding of the three (3) fundamental legal values mentioned above so as not to cause a wrong interpretation of the law itself because the law is the law itself, which contains norms or guidelines for human life in acting and behaving which includes recommendations, prohibitions, and sanctions contained therein.

The first fundamental value is legal justice, as stated by Prof. Dr. H. Muchsin, SH, that justice is one of the law's goals apart from legal certainty and legal benefits. At the same time, the meaning of justice itself is still being debated. However, justice is related to the equitable distribution of rights and obligations. Such is the central and dominant position and role of the value of justice for a law that Gustav Radbruch stated, "*rechct ist wille zur gerechtigkeit*" (law is the will for justice). Meanwhile, Soejono K.S defines justice as an inner and outer balance that provides the possibility and protection for the presence and development of truth with a climate of tolerance and freedom. (Glahé, 2022)

Furthermore, the law does not exist for itself and its own needs but for humans, especially for human happiness. Law has no purpose in itself. Law is a tool to enforce justice and create social welfare. Without justice as its ultimate goal, the law will fall into a tool to justify the arbitrariness of the majority of the ruling party against the minority or the controlled party. That is why the primary function of the law is ultimately to uphold justice. (Wiguna, 2021)

Justice is one of the most widely discussed legal goals throughout the history of legal philosophy. The purpose of the law is not only justice but also legal certainty and legal expediency. Ideally, the law must accommodate all three. The judge's decision, for example, is, as far as possible, the resultant of the three. Even so, some still argue that justice is the most important goal of the law, and some even argue that justice is the only goal of the law. In connection with this, Plato (428-348 BC) once stated that the ideal state if it is based on justice, and justice for him is balance and harmony. Harmony means that citizens live in line and in harmony with the state's goals (polis), where each citizen lives a good life according to their nature and social positions.

But on the other hand, critical thinking views justice as nothing but a mirage, like people seeing the sky as if it were visible but never reaching it nor even approaching it. However, it must be acknowledged that there will be arbitrariness

without justice. Actually, justice and truth are the most important virtue values, so these values cannot be exchanged for any value. This ethical theory prioritizes legal justice by reducing the legal certainty and legal benefits, such as a clock pendulum. Prioritizing legal justice alone, it will have an impact on the lack of legal certainty and legal benefits, and vice versa.

C. Closing

1. Conclusion

Suppose the customer defaults in fulfilling his obligations in terms of installments and or repayment of credit. In that case, it will be settled according to the agreed credit agreement, the object of the guarantee will be sold, and the money from the sale will be used to pay off the debtor's debt at the Bank. Conducting auctions at KPKNL and resolving Default Disputes in Court. For a faster and more effective settlement, PT. BPR BKK PURWODADI GROBOGAN took steps by auctioning the object of collateral through the KPKNL. However, the bidding effort was taken due to the handling efforts made by PT. BPR BKK PURWODADI GROBOGAN did not produce any results. At the same time, the settlement of the default dispute in court was taken to seek legal certainty that the debtor had indeed defaulted so that the judge's decision could be the basis for the parties.

If the customer defaults in fulfilling his obligations in terms of installments and credit repayments, then the Bank will provide the ideal solution. To fulfill or resolve, namely utilizing: Warning Letters, Summons, Refinancing/Refreshing, Personal Guarantees, and Selling collateral assets/objects together. The ideal position is with a non-normative approach between the two parties in understanding each other's role to carry out the principles and norms for the settlement of defaults that prioritize the aspects of protecting rights, justice, and expediency in their implementation. Technically the implementation can be through a statement in the form of a statement letter for delayed payment and a request for a postponement of payment—settlement of default by PT. BPR BKK PURWODADI GROBOGAN has been very good because it refers to Gustav Radbuch's theory which has three (3) fundamental values, namely trying to prevent auction efforts.

2. Recommendations

It is hoped that the government should always be objective in disputes between creditors and debtors. Besides, the government must always supervise activities carried out by banks. It is expected that creditors/banks, in providing credit to the broader community, must always prioritize banking principles to avoid default. The Bank must explain all legal sides in the agreement before signing it and resolve defaults against creditors and use a preventive approach. It is also hoped that the public, if they want to apply for credit from the Bank, must read the contents of the agreement more carefully, especially regarding the sanctions given to debtors who have defaulted.

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