

## **Due To Legal Restructuring Of Credit Agreements On Liability Guarantee In Problem Credit Saving Effort (PT. State Savings Bank Banyuwangi Branch Office)**

**Rudi Mulyanto**

Lecturer of the Faculty of Law, University of 17 August 1945 Banyuwangi  
e-mail: rudimulyanto@untag-banyuwangi.ac.id

### **Abstrak**

Dalam pelaksanaan Perjanjian Kredit terkadang muncul faktor-faktor yang menyebabkan pembayaran angsuran yang telah disepakati menjadi tidak lancar. Penelitian ini menggunakan hukum empiris (sosiologis) dengan analisis kualitatif. Hasil penelitian menyimpulkan bahwa: 1) Dengan adanya restrukturisasi dapat mencegah PT Bank Tabungan Negara (Persero) Tbk. sebagai kreditur yang telah meminjamkan dana kepada debitur dari kerugian, karena PT Bank Tabungan Negara (Persero) Tbk. sebagai kreditur harus menjaga kualitas kredit yang telah diberikan kepada debitur. Hal ini akan mempengaruhi kelangsungan usaha dan kesehatan PT Bank Tabungan Negara (Persero) Tbk; 2) Restrukturisasi dapat menghindari penyelesaian kredit melalui lembaga hukum, karena dalam pelaksanaannya penyelesaian kredit melalui lembaga hukum memerlukan biaya dan waktu serta tenaga yang cukup besar, yang hasilnya lebih rendah dibandingkan pinjaman yang dikeluarkan oleh PT Bank Tabungan Negara (Persero) Tbk.

**Kata kunci:** Restrukturisasi, Perjanjian Kredit, Kredit Bermasalah.



### **Abstract**

In the implementation of the Credit Agreement, factors sometimes arise that cause the agreed installment payments to be not smooth. This research uses empirical (sociological) law with qualitative analysis. The results of the study conclude that: 1) With the restructuring can prevent PT Bank Tabungan Negara (Persero) Tbk. as a creditor who has lent funds to debtors from losses, because PT Bank Tabungan Negara (Persero) Tbk. as a creditor must maintain the quality of credit that has been given to debtors. This will affect the business continuity and health of PT Bank Tabungan Negara (Persero) Tbk; 2) Restructuring can avoid credit settlements through legal institutions, because in its implementation credit settlements through legal institutions require significant costs and time and energy, which results are lower than loans issued by PT Bank Tabungan Negara (Persero) Tbk.

**Keywords:** *Restructuring, credit agreements, non-performing loans.*

### **INTRODUCTION**

Banks have a very important function in the financial system of every country. According to Law Number 10 of 1998 concerning Banking, a bank is "a business entity that collects funds from the public in the form of savings and distributes it to the public in the form of credit and or other forms in order to improve the standard of living of the people at large". Banks save funds from the public in the form of savings, deposits or demand deposits. The funds are managed by banks and distributed to the public in the form of credit. The development of the times has increased business activities in society. To start these business activities, the role of the bank will not be separated as a channel of funds for people who will start a business.

The form of credit provided by the bank is not immediately given directly to the public, but there is a Credit Agreement in it which contains an agreement between the bank as creditor and debtor. Indirectly in the credit agreement arises an agreement that binds the parties in the agreement. According to Muhamad Djumhana in (Ucok Parulian, 2017: 2), trust regarding credit distribution is an essential element, meaning that the lender (credit) or the so-called creditor gives confidence to the recipient of the loan (credit) or the so-called debtor, this party can fulfill and be responsible for for all his actions in accordance with the contents of the agreement.

In credit, there is an element of trust in the debtor as a basis. The provision of credit by banks usually requires a guarantee or collateral in the form of movable or immovable objects. According to Article 1 number 23 of Law Number 10 of 1998 concerning Banking explains that a guarantee is a guarantee given by a debtor and a third party to a creditor to guarantee his obligations in an agreement or engagement. Collateral has a very important role in ensuring the smooth running of the debtor to fulfill his obligations, namely to pay installments in accordance with the credit agreement that has been agreed between the creditor and the debtor. With the object of the guarantee, it can protect the rights of the bank as a creditor if at any time the debtor does not carry out its obligations.

Land rights are the majority of credit guarantees that are guaranteed by the community in the form of mortgage rights to banks. Because the value of the guarantee on the land rights is considered large and depends on the value of the land to be guaranteed. In addition, credit guarantees with land rights have mortgage rights which will be affixed to proof of ownership of land rights that are guaranteed to the bank. Indirectly it can also protect the rights of creditors if at any time the debtor defaults.

The definition of mortgage right on land and objects related to land, hereinafter referred to as Mortgage Right, is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations, including or not including objects Other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors (Sumarni Alam, 2019: 113).

In the implementation of the Credit Agreement, factors sometimes arise that cause the installment payments that have been agreed upon by the parties to be not smooth which causes a default. In general, the debtor defaults in the form of arrears in installment payments. In this case, PT Bank Tabungan Negara (Persero) Tbk., is one of the financial institutions whose main business is distributing credit to the public. The existence of non-performing loans can make the banking economy less healthy because it is undeniable that the funds in the bank are also funds belonging to customers. This can be regarded as non-performing loans at a bank.

- Before giving credit, PT Bank Tabungan Negara (Persero) Tbk. analyze the character (character), ability (capacity), capital (capital), collateral (collateral) and condition (condition). Not all loans given to debtors provide benefits or profits for PT Bank Tabungan Negara (Persero) Tbk., because some of the loans given become problematic. When there is a non-performing loan, the bank as a creditor will make efforts to handle non-performing loans, so that the funds that have been distributed by the bank can be received back. PT Bank Tabungan Negara (Persero) Tbk. as a creditor will conduct a discussion on the identification of all non-performing loans on a regular basis at least 1 (one) time in 1 (one) month in written form, and focus on identifying the symptoms of problems, determining the location of the problem and determining the most appropriate rescue strategy. Restructuring credit agreements must be supported by adequate analysis and evidence and well documented. In essence, all types of loans can be restructured by taking into account the characteristics and good faith of customers in an effort to rescue non-performing loans.

Based on the background and title to be studied, the authors formulate the formulation of the problem as follows:

1. What is the impact of restructuring on non-performing loan agreements?
2. What are the legal consequences of credit guarantees in the form of mortgages whose credit agreements have been restructured?

## **METHOD**

The type of research used by the author in the preparation is empirical (sociological) legal research. Empirical or sociological legal research includes research on legal identity and research on legal research (Mukti Fajar, 2010:153). The data analysis method used in this study is a qualitative analysis method in which written or oral statements from informants are recorded based on facts in the field.

## **RESULTS AND DISCUSSION**

### **Impact of Restructuring on Troubled Credit Agreements.**

When there is a non-performing loan, the bank as a creditor will make efforts to handle non-performing loans, so that the funds that have been distributed by the bank can be received back. This is because the fundsMost of the funds used by banks in disbursing credit come from public funds that have entrusted their funds to banks. Therefore, in channeling credit, banks must take ways that are not detrimental to the bank as a creditor.

In practice, it is very rare for non-performing loans to be caused by factors from the bank or creditor. However, if this happens, the debtor can sue the bank as a creditor who has defaulted. What happens more is that credit becomes problematic because it is caused by factors that come from the debtor. In addition, it can also occur outside the factors of the parties. If this right occurs, then the bank as the creditor still demands that the debtor fulfill his obligations, whether it is by way of repayment through payment or repayment by selling credit collateral.

PT Bank Tabungan Negara (Persero) Tbk. as a creditor, he will discuss the identification of all non-performing loans on a regular basis at least 1 (one) time in 1 (one) month in written form, and focus on identifying the symptoms of the problem, determining the location of the problem and determining the rescue strategy that is considered the most appropriate. Problem identification results in a diagnosis which is then conveyed to the customer by the bank regarding the pattern of non-performing loans offered in accordance with the projected ability to pay the customer or the debtor.

Based on the information and identification results submitted by the creditor or the bank, a rescue strategy is determined for each non-performing loan. The implementation of the strategy must be monitored to see how effective the implementation of the strategy is. The selection of strategic targets consists of 2 (two) options, namely:

1. Continuing the relationship with the customer, if the customer has good faith and is considered cooperative, the bank will take restructuring steps.
2. Terminating the relationship with the customer, if the customer does not have good faith and is considered uncooperative to the bank, the bank will make credit settlements, among others, through the delivery of collateral, execution of collateral objects, settlement through litigation and non-litigation channels.

PT Bank Tabungan Negara (Persero) Tbk. can only restructure credit agreements for customers who meet the following criteria:

1. Customers experience a decrease in payments; and
2. The customer has good business prospects and is considered capable of fulfilling obligations after restructuring.

The concept of restructuring carried out by PT Bank Tabungan Negara (Persero) Tbk. in saving non-performing loans is by:

1. Rescheduling (PUL)

Rescheduling is divided into 2 (two), namely: a) PUSP (Rescheduling of Remaining Principal Loans), given to debtors who experience a decrease in long-term ability; b) PUST (Rescheduling of Remaining Arrears, given to debtors who experience a decrease in short-term ability. Rescheduling Terms and Conditions, namely: a) The debtor submits a written application; b) The maximum additional period of 25 (twenty five) years, or the maximum age of the debtor is 65 (sixty five) years; c) Specifically for SHGB certificates (Certificate of Building Use Rights), if the period after PUL exceeds the certificate period, the debtor is obliged to extend the period of SHGB or be upgraded to

SHM (Certificate of Ownership Rights), processed through the Bank or Notary Partner of the Bank at a fee charged to the debtor; d) Interest arrears must be repaid at the implementation of PUSP; e) Arrears of interest and/or fines can be given relief; f) The provision of PUL can be combined (PUSP and PUST); g) For PUSP must be installed insurance (life and fire); h) If the debtor is not willing to have insurance installed, he is required to attach a statement that he does not participate in life and fire insurance.

2. Payment Delay (Grace Period/GP)

Banks provide relief in the form of delays in payment of principal and/or interest to debtors. After the payment delay period is over, alternatives to the accumulation of installments can be given, namely: Paid at once by the debtor, PUSP is carried out but the accumulated interest must be repaid first, PUST is carried out, and a combination of PUSP and PUST is carried out.

Terms and Conditions for Postponing Payments (Grace Period), namely:

- a. Given to debtors who are sick and require large costs, have been laid off from work agencies, are affected by disasters or in accordance with policies established by the Bank;
  - b. Given to debtors who based on the bank's analysis will immediately regain their source of income in less than 12 (twelve) months;
  - c. Grace Period may be granted for the entire collectibility of credit;
  - d. Grace Period can be given for a maximum period of 12 (twelve) months or can be extended according to the bank's consideration;
3. Interest Arrears Discount Debtors who do not have the ability to pay all arrears in installments. Interest discount is given to debtors who want to pay off all arrears in installments and can be given in combination with other restructuring patterns.

Terms and Conditions for Postponing Payments (Grace Period), namely:

- a. The debtor does not have the ability to pay all arrears in installments;
- b. The debtor pays all arrears in installments and/or fines after being given approval for the relief/discount;
- c. The amount of discount on interest arrears refers to the will and ability matrix;
- d. If the debtor is only given a fine discount, it does not include restructuring;
- e. If according to the Bank's analysis, the debtor can be given a discount exceeding the calculation of the matrix, it can be proposed in accordance with the decision authority of the deciding official.

4. Interest Rate Reduction

Terms and Conditions for Postponing Payments (Grace Period), namely:

- a. There is a recommendation from the Area Collection which is equipped with supporting data in the form of an analysis of the debtor's ability;
- b. Banks can provide a reduction in credit interest rates below the prevailing interest rates;
- c. Given to debtors who are cooperative and have good faith but do not yet have adequate capacity to fulfill their obligations in accordance with the prevailing interest rate.

5. Principal Arrears Discount

Terms and Conditions for Postponing Payments (Grace Period), namely:

- a. There is a recommendation from the Area Collection which is equipped with supporting data in the form of an analysis of the debtor's ability;
- b. Banks may provide a reduction in loan principal arrears;
- c. It is the authority of the Board of Directors and obtains written approval from the Board of Commissioners through the GMS.

6. Restructuring

The Restructuring is carried out after 4 (four) payment periods, and the Second Restructuring can be carried out after 12 (twelve) months of Restructuring. Restructuring Requirements, namely:

- a. In the post-restructuring period, the debtor has made installment payments;

- b. The reasons/financial conditions submitted for the Restructuring process must be different from the reasons at the time of the previous restructuring proposal, unless it can be supported by appropriate data.

The restructuring has an impact on the credit quality of the debtor not to be categorized as bad loans and has an impact on the assessment of the quality of bank assets. So that the bank does not suffer losses and the bank's health level becomes better.

### **Legal Consequences on Credit Guarantees with Credit Agreements has been restructured.**

In rescuing non-performing loans, the bank as the creditor will make efforts to restructure the terms and conditions contained in the credit agreement. For changes to the terms and conditions in the credit agreement that has been signed by the creditor and debtor, a method called an "addendum" is needed.

Physically the addendum is separated from the main agreement, but legally an addendum is attached and becomes an inseparable part of the original/main agreement. In an agreement, the term addendum generally contains provisions that amend, improve or further detail the contents of an agreement or as an additional clause of the main agreement. Therefore, the addendum is a very appropriate step, especially when the bank as the creditor rescues non-performing loans.

From the results of the author's interview with Mr. Kris Triadi Purnomo as Deputy Service Manager at PT Bank Tabungan Negara (Persero) Tbk. Banyuwangi Branch Office, addendum to the credit agreement can be made as follows:

1. The addendum deed can be made by hand letter or by notarial deed
2. The articles in the addendum deed regulate changes to the articles in the initial credit agreement which were agreed to be changed based on the results of the restructuring of the bank. Meanwhile, articles or other conditions that have not been changed are still stated to be maintained and valid as long as they are not changed or contradict the addendum.
3. Comparison filling in the addendum deed must be done correctly, carefully and thoroughly from the legal aspect, such as when making a credit agreement at the beginning.
4. With the addendum to the credit agreement, it is necessary to notify the parties related to the credit agreement, for example, to be notified to the guarantor of the debt (borg).
5. Addendum can take the form:
  - a. Attachments or additions that are an integral and inseparable part of the initial credit agreement. This can be done if the changes are not too many and only change a small part of the contents of the agreement.
  - b. Amend the entire initial credit agreement. This happens if the change involves all or most of the contents of the original agreement. A comprehensive change from the initial credit agreement also needs to be considered from the accompanying agreement, namely the guarantee binding agreement whose existence is based on the initial credit agreement.

The guarantee is the policy of PT Bank Tabungan Negara (Persero) Tbk. to manage risk control management in lending. Thus, the possibility of investment losses or failures can be minimized and ultimately able to attract public interest and trust to invest their capital in PT Bank Tabungan Negara (Persero) Tbk.

PT Bank Tabungan Negara (Persero) Tbk. In channeling funds, it is obligatory to evaluate prospective debtors using the principle of "The Five C's of Credit", namely character, capacity, capital, collateral and condition. From this it is clear that collateral is something that must exist in the requirements for obtaining credit facilities from banks.

To get credit, the debtor must be able to provide guarantees because the existence of collateral in a credit is an absolute thing. The value of the guarantee that must be provided by the debtor is 125% of the amount of credit to be submitted. The bank will immediately bind the guarantee in the form of a guarantee agreement if the object of the guarantee is submitted by the debtor and has been approved by the bank.

In general, the guarantee institution used in loading objects as collateral objects at PT Bank Tabungan Negara (Persero) Tbk. is to use the Mortgage Guarantee Agency. In the provisions of Article 1 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights provides the meaning of Mortgage as follows:

Mortgage on land along with objects related to land, hereinafter referred to as Mortgage Right, is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, as follows or not including other objects which are an integral part of the land, for certain settlements, which are given positions to certain creditors against other creditors."

The characteristics of the Mortgage are contained in the General Elucidation number 3 of Law Number 4 of 1996, which are as follows:

1. Giving priority or prior position to the holder (*droit de preference*);
2. Always follow the object that is guaranteed in the hands of whoever the object is (*droit de suite*);
3. Meets the principles of speciality and publicity, so that it can bind third parties and provide legal certainty to interested parties (Article 11 paragraph 1 and Article 13 UUHT)
4. Easy and sure execution of the implementation.

The characteristics contained in the Mortgage are as follows:

1. Mortgage cannot be divided (*ondeelbaar*);
2. Additional or follow-up agreements (*accessoir*);
3. The imposition of the Mortgage onjek more than once;
4. Ease of execution (*prate execution*).

So, when PT Bank Tabungan Negara (Persero) Tbk. provide facilities to the debtor and the debtor guarantees his land rights to the bank, then the bank immediately charges the land rights with the mortgage guarantee institution. With the existence of a mortgage guarantee institution, the bank gets certainty for repayment of its credit and has a priority position over other banks/creditors.

From the description above, the author concludes, the debtor as a party that requires funds from the bank as a creditor and the bank as a party providing credit facilities to debtors, should receive legal protection through the guarantee institution in order to provide legal certainty to interested parties. When the bank and the debtor agree to restructure the credit agreement as an effort to save non-performing loans, automatically the collateral object that has been burdened by the mortgage guarantee institution will follow the initial credit agreement until it is repaid. this is because the guarantee institution cannot stand alone because the guarantee agreement is *accessoir*. Additions or follow-ups whose existence depends on the existence or deletion of the main agreement. With a guarantee,

## CONCLUSION

Based on the results of research and discussion in previous chapters, the following conclusions can be drawn: 1) The impact of restructuring on non-performing loan agreements are: a) With the restructuring, it can help ease the debtor's debt so that the debtor can use this relief to recover his credit and business where part of his income can be used to pay off debts and partly for his business activities. So that the credit is not categorized as bad credit which has an impact on the good name of the debtor; b) With the restructuring can prevent PT Bank Tabungan Negara (Persero) Tbk. as a creditor who has lent funds to debtors from losses, because PT Bank Tabungan Negara (Persero) Tbk. as a creditor must maintain the quality of the credit that has been given to the debtor. This will affect the business continuity and soundness of PT Bank Tabungan Negara (Persero) Tbk; c) With restructuring, it is possible to avoid credit settlements through legal institutions, because in practice credit settlements through legal institutions require significant costs as well as time and energy whose results are lower than the loans issued by PT Bank Tabungan Negara (Persero) Tbk; 2) The legal consequences of collateral whose credit agreements have been restructured are: a) The position of the guarantee whose credit agreement has been restructured through an addendum deed is that the guarantee remains

valid because the object of the guarantee is by PT Bank Tabungan Negara (Persero) Tbk. has been charged to a guarantee institution in the form of mortgage or fiduciary rights which have the nature of always following the object guaranteed in the hands of whoever the object is (droit de suite); b) For the initial credit agreement that has been restructured through an addendum, it is still applied as a binding condition between legal subjects in their legal relationship and the addendum cannot be separated from the original credit agreement.

## REFERENCES

- Good luck, Buddy. (2005). *Banking Credit in Indonesia*. Yogyakarta: Andi.
- Husni Hasbullah, Frieda. (2002). *Civil Material Law: Rights That Give Enjoyment (Volume I)*. Jakarta:Ind-Hill.Co.
- Jusuf, Jopie. (2001). *Accurate Criteria for Obtaining Bank Credit*. Jakarta: PT Elex Media Komputindo.
- Nature, Sumarni. 2019. *Settlement of Bad Loans in a Credit Agreement with Guaranteed Mortgage on Land*.1(2):113.
- R. Subekti. (1979). *Loan Law*, Jakarta: Pradnya Paramita.
- Sjahdeni, Sutan Remy. (1997). *Syndicated Credit Formation Process and Legal Aspects*. Jakarta: Main Library of Graffiti.
- Sutarno. (2003). *Legal Aspects of Credit in Banks*. Bandung: Alfabeta CV.
- Usman, Rachmadi. (2001). *Legal Aspects of Banking in Indonesia*. Jakarta: PT Gramedia Pustaka Utama.

## Legislation:

- 1945 Constitution.
- Code of Civil law.
- Law Number 10 of 1998 concerning Banking.
- Law Number 4 of 1996 concerning Mortgage Rights.