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SETTLEMENT OF DEFAULT BY THE DEBTOR ON THE CREDIT AGREEMENT

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Abstract

The purpose of this study is to analyze: 1) What is the legal basis of credit agreements? 2) How is the settlement of default by the debtor on the credit agreement? The research method used is normative juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) Based on Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking explained the definition of Credit: "Credit *is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off its debt after a certain period of time with a grant interest*". In the provisions of the article, what is meant by agreement or loan agreement is a form of credit agreement where the agreement must be made in writing. 2) If the debtor remains unwilling or unable to fulfill the credit agreement, then the debtor can be sued by the creditor through the District Court on the basis of default. In certain circumstances, the Bank as a creditor can also carry out Parate Execution, which is the execution of collateral objects without going through the determination of the Chief Justice of the District Court.

Keywords: Settlement, Default, Debtor, Agreement, Credit.

INTRODUCTION

Background

Credit agreement is a means of bank that contains risk. Because credit agreements become intermediaries in the relationship between parties who have excess funds with parties who lack funds and need funds, then in the development of the banking economy, credit agreements are one of the very strategic parts. The term credit agreement is found in the Presidium Cabinet Instruction Number 25/EK/10 dated October 3, 1966 Jo. Bank Negara Indonesia Circular Letter unit 1 No. 2/539/UPK/Pemb dated October 8, 1966 which instructs that "in *providing credit in any form, banks must use credit agreement* contracts". [1]

The term credit is already known by the wider community, traders, farmers and employees, so that the term credit has been known for a long time by them both in rural and urban areas. Credit given by banking institutions as creditors (creditors) is based on the belief that individuals or legal entities as debtors (credit recipients) will return loans in accordance with the period agreed by both parties. gain trust, in this case if the debtor customer obtains credit in essence he has obtained the trust of the bank as a creditor. In article 1 point 11 of Law Number 10 of 1998 it is formulated that "credit *is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between the bank and other parties that*

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requires the borrower to pay off his debt after a certain period of time with flower giving".[2]

The covenant contains the meaning "promise must be kept" or "promise is debt". The agreement is a bridge that will lead the parties to realize what is the purpose of making the agreement, namely achieving protection and justice for the parties. By agreement, it is hoped that each individual will keep the promise and carry it out Reimon[3]. An agreement in the form of an agreement is essentially binding, even in accordance with Article 1338 paragraph (1) of the Civil Code, this agreement has binding force as law for the parties who make it Huala[4]. Making an agreement should take into account important matters, including the terms of validity of the agreement, the principles of the agreement, the rights and obligations of the parties, the structure and anatomy of making contracts, resolving disputes and termination of contracts.[5]

The birth of the credit agreement requires the parties who bind themselves to the credit agreement to comply with the agreed terms both in the form of rights and obligations of both parties as stated in the credit agreement. Binding terms in credit agreements. For the parties and the obligations of the parties to the credit agreement are protected by law if the credit agreement is born in a valid condition, namely the valid process of making and placing it and valid the content or conditions contained in the credit agreement.[6]

In the process of providing credit, it often happens that the creditor is disadvantaged when the debtor defaults, so a legal rule is needed in the implementation of the imposition of Dependent Rights contained in a credit agreement, which aims to provide legal certainty and protection for related parties, especially for creditors if the debtor defaults or does not fulfill its obligations.[7]

Problem Statement

1. What is the legal basis of the credit agreement?
2. How is the resolution of default by the debtor on the credit agreement?

Theoretical Framework

1. Theory of Legal Certainty

Legal certainty is judicial protection against arbitrary actions, which means that a person will be able to obtain something expected under certain circumstances. The community expects legal certainty, because with legal certainty the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order.[8] Adherents of positive legal theory assert "legal certainty" as the goal of law. According to their assumption of order or order, it is impossible to exist without definite lines of life behavior. Order will only exist if there is certainty and for legal certainty to be made in a definite form (written).[9] According to Utrecht, legal certainty contains two understandings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government security because with the existence of general rules individuals can know what can be imposed or done by the state on individuals.[10]

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2. Treaty Theory

Treaties are known as *overeenkomst* in Dutch law; they are translated back into Indonesian with various terms. The Civil Code (KUH Percivil) translation Subekti and R. Tjitrosudibio use the term "consent", as well as Achmad Ichsan in his book "Civil Law IB" and R. Setiawan, in his book "Fundamentals of Binding Law". While some other scholars such as Utrecht in their book "Introduction to Indonesian Law" use the term "Agreement" to translate *Overeenkomst*. This difference is more due to differences in perception and emphasis of meaning between the two.

The definition of covenant in general is an event where one person promises to another or where two people promise each other to do something. From that event, a relationship arose between the two people called an engagement. In its form, a covenant is a series of words containing promises or undertakings that are spoken or written. While the definition of an engagement is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill that demand.[11]Gives an overview that basically all agreements can be made and held by everyone. Only agreements containing achievements or obligations on one of the parties that violate laws, decency and public order are prohibited.

RESEARCH METHODOLOGY

The type of research carried out is applied normative *(applied law research*), which is legal research on the enactment or implementation of normative legal provisions (codification, laws, or contracts) in-action on *each* particular legal event that occurs in society. The *in-action* implementation is an empirical fact and is useful for achieving the objectives set by the parties to the contract, which is expected to take place perfectly if the formulation of normative legal provisions is clear, firm and complete.[12] Applied normative law research uses *applied legal case studies*, for example examining the implementation of bank credit agreements.[13] In accordance with Soerjono Soekanto's opinion[14], normative legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer legal problems or issues to be studied. Normative legal research examines legal rules or regulations as a system building related to a legal event. This research was conducted with the intention of providing legal argumentation as a basis for determining whether an event has been true or false according to law.[15]

The problem approach used in this research is an applied normative approach, which is an approach that is carried out by first formulating problems and research objectives. This study used secondary data derived from books. In addition to using data from books, this study collected data and information from the parties. The data collection taken in this study uses library *research*, namely data collection by searching, examining and reviewing secondary data.In this research, a [16]document study will be carried out as a means of collecting data related to the problems raised, namely literature studies / document studies *(documentary study),* sourced from laws and regulations, books, official documents, publications and research results.[17]

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RESEARCH RESULTS

Legal Basis of Credit Agreement

The word "credit" comes from the Roman language, namely *"credere*" which means belief.[18]The term credit comes from the Greek *Credere* which means trust. Thus, the basis of providing credit is trust and confidence that the debtor will pay off his debt as agreed or on time.[19] The term credit actually has various meanings. The understanding of this term in accounting may not be one hundred percent the same as that understood by ordinary people. The term credit in question is the provision of loan facilities (not based on sharia principles) to customers, both in the form of cash loan facilities and non-cash *loans*. Cash loans are credit facilities provided by banks to their customers that do not require special conditions in withdrawals.[20]

Based on Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the definition of Credit is explained: "Credit *is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off its debt after a certain period of time with interest*". In the provisions of the article, what is meant by agreement or loan agreement is a form of credit agreement where the agreement must be made in writing.[21]

The agreement in the Banking Credit Agreement must be made in written form. This provision is contained in the Explanation to Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which requires banks as credit providers to make written agreements. The requirement for banking agreements to be in written form has been stipulated in the main banking regulations by Bank Indonesia as referred to in Article 8 paragraph (2) of the Banking Law. According to Badriyah Harun, the main provisions stipulated by Bank Indonesia are:[22]

1. The provision of credit or financing based on sharia principles is made in the form of a written agreement;
2. The Bank must have confidence in the ability and ability of the debtor customer which among others is obtained from a careful assessment of the character, ability, capital, collateral, and business prospects of the debtor customer.
3. The obligation of banks to develop and implement procedures for providing credit or financing based on sharia principles;
4. The obligation of banks to provide clear information regarding credit or financing procedures and requirements based on sharia principles;
5. Prohibition of banks from providing credit or financing based on sharia principles with different requirements to customers, debtors and/or affiliated parties;
6. Dispute resolution.

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The elements of the credit agreement are as follows:

a. There is an agreement or agreement between the creditor and the debtor, which is called and set forth with a credit agreement.
b. The existence of parties, namely creditors as parties who provide loans, such as banks. And the debtor who is the party who needs borrowed money or goods or services.
c. There is an element of trust from the creditor that the debtor will and is able to pay the credit.
d. There is a willingness and promise to pay debts from the debtor to the creditor.
e. There is a provision of a sum of money/goods/services by the creditor to the debtor.
f. There is a repayment of a sum of money/goods/services by the debtor to the creditor, accompanied by the provision of compensation or interest or profit sharing.
g. There is a time difference between the provision of credit by the creditor and the return of credit by the debtor.
h. There are certain risks caused by the time difference, the farther the return grace period, the greater the risk of non-repayment of a credit.[23]

Based on the Explanation of Article 10 of Law Number 4 of 1996, it is explained that agreements that give rise to debt-receivable relationships that are guaranteed repayment can be made in 2 (two) forms, namely both in the form of underhand deeds and authentic deeds, depending on the legal provisions governing the material of the agreement. The form of legal protection provided to creditors according to the provisions in this Law on Dependent Rights is in the form of the credit agreement itself. This credit agreement serves as evidence and provides limitations on the rights and obligations of each party. In order for a credit agreement to guarantee the repayment of creditor debts, a process must be carried out to bind the guarantee with a grant clause.[24]

Based on the Explanation of Article 10 of Law Number 4 of 1996, it is explained that agreements that give rise to debt-receivable relationships that are guaranteed repayment can be made in 2 (two) forms, namely both in the form of underhand deeds and authentic deeds, depending on the legal provisions governing the material of the agreement. The form of legal protection provided to creditors according to the provisions in this Law on Dependent Rights is in the form of the credit agreement itself. This credit agreement serves as evidence and provides limitations on the rights and obligations of each party.[25]

The legal relationship that arises between the Debtor and the Creditor comes from two agreements, namely the main agreement in the form of a loan and loan agreement and the Right to Cover agreement as an assessor agreement or additional agreement. Therefore, the liability of the Debtor also consists of responsibilities derived from the two types of agreements mentioned above. Responsibility according to Indonesian dictionary is, the state of being obliged to bear everything. Obliged to bear, bear responsibility, bear everything, or give responsibility and bear the consequences.[26]

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The responsibility of the Debtor for his debts in the Civil Code is regulated in Article 1131 of the Civil Code, that all assets of the debtor are determined as collateral for his performance obligations. This means that all debtor assets, both movable and immovable, both existing and new ones that will exist in the future, all become collateral for their debt obligations. Collateral that is directed over all debtors' assets and given to all creditors is referred to as general security rights[27]

Settlement of Default by the Debtor on the Credit Agreement

According to the legal dictionary, default means negligence, negligence, default, non-fulfillment of its obligations in the agreement. As for what is meant by default is a condition that due to negligence or error, the debtor cannot fulfill the performance as specified in the agreement and not in a force state while stating that default is not fulfilling or neglecting to carry out obligations as specified in the agreement made between the creditor and the debtor. According to Wirjono Prodjodikoro, default is the absence of an achievement in the law of agreement, meaning something that must be carried out as the content of an agreement which in Indonesian can be used the term "*implementation of promises for performance and absence of implementation of promises for default*".[28]

In the agreement, if the debtor cannot carry out its performance to pay off the debt, then the collateral submitted by the debtor when implementing the agreement can be an alternative to repay the debtor's debt. Based on the provisions of Article 1131 and Article 1132 of the Civil Code, that if the debtor at the time of execution of the agreed agreement cannot fulfill its performance to pay off its debts to the creditor, then the creditor has the right to take the collateral.[29]

Based on the provisions of article 1238 of the Civil Code, which reads:

> *"The debtor is negligent if by warrant or by a deed of the kind it has been declared negligent or by his own engagement is if this provides, that the debtor shall be deemed negligent by the lapse of the time specified."*[30]

R. Subekti suggests that default is negligence or negligence which can be in the form of 4 types, namely:

1. Not doing what he was willing to do.
2. Carry out what he has promised, but not as he promised.
3. Did as promised but too late.
4. Do an act that according to the agreement cannot be done[31]

In the case of non-performing credits, the debtor has been deemed to have reneged on a promise to pay installments/interest that has matured so that there is a delay in payment or no payment at all, thus it can be said that non-performing loans include bad loans, although not all problematic loans are bad loans.

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If related to bad debts, there are three types of actions classified as defaults, namely;

1. The debtor cannot pay the credit installments and interest at all;
2. The debtor pays part of the credit installment along with the interest;
3. The debtor pays the credit in full along with the interest after the agreed period ends. This does not include the debtor paying in full after the extension of the credit period that has been approved by the creditor at the debtor's request.[32]

If the debtor does not fulfill his promise (default) then the creditor can ask for his rights in the form of:

1. The right demands the fulfillment of the agreement (*nokomen*).
2. The right to demand termination of the agreement if the agreement is reciprocal, demanding the cancellation of the agreement (*ontbinding*).
3. The right to claim damages (*schade vergoeding*).
4. The right to demand the fulfillment of the agreement with indemnity.
5. demand termination or cancellation of the engagement with damages.

Non-fulfillment of obligations or defaults in an agreement can be caused by two things, namely:

a. Due to the debtor's fault either intentionally or through negligence; and
b. Due to force majeure (*overmacht/forcemajeur*)

There are four default circumstances:

1. No, live up to achievements.
2. Late to meet achievements.
3. Perform poorly.
4. Do something that according to the agreement he is not allowed to do.[33]

The legal consequences imposed on debtors who are considered and proven to have committed default are in the form of penalties and sanctions such as: According to Article 1234 of the Civil Code which applies to all engagements, debtors must provide compensation suffered by creditors. Based on article 1234, there are two ways to determine the starting point for calculating compensation by the debtor, namely: First, if in the agreed terms and agreements there is a period of time, the debtor pays compensation starting from the moment the debtor is declared negligent but still implements. Secondly, if in the agreed terms and agreements there is a certain period of time, then the debtor pays compensation starting from the specified period of time exceeded. Payment of compensation by the debtor which is explained to arise due to the debtor defaulting, according to Article 1267 of the Civil Code creditors can claim as follows: First Termination of performance with compensation or Fulfillment of performance with compensation. Second, Termination of achievement or Fulfillment of achievement.[34]

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If the debtor remains unwilling or unable to fulfill the credit agreement, then the debtor can be sued by the creditor through the District Court on the basis of default. In certain circumstances, the Bank as a creditor can also carry out Parate Execution, which is the execution of collateral objects without going through the determination of the Chief Justice of the District Court. In order for the Parate Execution to run smoothly, when making a guarantee agreement, it must be accompanied by a clause in the form of a "promise" from the debtor to the creditor which states that the debtor will not object to the implementation of the Parate Execution in the event of bad credit or default. The rules regarding Parate Execution in the field of Fiduciary Guarantee are regulated in article 15 of Law Number 42 of 1999 concerning Fiduciary Guarantee. So, in a credit agreement with a fiduciary guarantee, if the debtor defaults and experiences bad credit, then in article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantee, the creditor can execute the object that is the object of fiduciary guarantee by exercising the executory title as referred to in article 15 paragraph (2) by the fiduciary recipient or creditor.[35]

CONCLUSION

The results showed that;

a. Based on Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the definition of Credit is explained: "Credit *is the provision of money or bills that can be likened to it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off its debt after a certain period of time with interest*". In the provisions of the article, what is meant by agreement or loan agreement is a form of credit agreement where the agreement must be made in writing.

b. If the debtor remains unwilling or unable to fulfill the credit agreement, then the debtor can be sued by the creditor through the District Court on the basis of default. In certain circumstances, the Bank as a creditor can also carry out Parate Execution, which is the execution of collateral objects without going through the determination of the Chief Justice of the District Court.

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