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LEGAL CONSTRUCTION IN HANDLING BAD LOANS IN DEFAULTING DEBTORS IN INDONESIA

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ABSTRACT

The purpose of this study is to analyze: 1) To what extent are the factors that cause bad loans in debtors? What are the legal remedies in resolving bad credit cases experienced by debtors? This research is a normative legal research, which is the study of legal materials, both primary and secondary legal materials

The results of the study show that: 1) Default is the unfulfilled or negligent performance in carrying out obligations (achievements) as specified in the agreement between the parties. Default can occur due to the debtor's fault (intentionally or negligently); and overmacht. Non-performing *loans* are risks contained in every credit provided by banks to their customers. The risk is in the form of a situation where credit cannot be returned on time (default). Non-performing loans in banking can be caused by several factors, for example, there is intentionality on the part of the parties involved in the credit process, errors in the credit granting procedure, or due to other factors such as macroeconomic factors; 2) The method of settling bad loans that is allowed by law and which it considers the most profitable for the Bank, consists of 3 (three) options, namely: How to resolve court lawsuits (litigation), How to settle through court (*non-litigation alternative to litigation*), and Alternative Dispute *Resolution* (ADR).

Keywords: Construction, Law, Handling, Credit, Traffic, Debtor, Default, Indonesia

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INTRODUCTION

Background

As mentioned in Law Number 10 of 1998 concerning Banking, it is stated that Indonesian Banking aims to support the implementation of national development in order to increase equity, economic growth and national stability towards increasing the number of people.[1] Article 1 of Law of the Republic of Indonesia Number 7 of 1992 jo Law of the Republic of Indonesia Number 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law), a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or in other forms in order to improve the standard of living of many people. Banking institutions help the community's economy through credit facilities. The credit facility provided by the bank plays a role in increasing the business capital of the credit recipient customer (debtor). The existence of additional business capital obtained from credit facilities can help improve the bank's debtor's trade and economic business.

The Indonesian government through the Banking Law stipulates that there are only two types of banks in Indonesia, namely Commercial Banks and People's Credit Banks (BPR). This is explicitly written in Article 5 of the Banking Law which states that banks are divided into two types, namely:

1. Commercial Banks, namely banks that carry out business activities conventionally and/or based on Sharia Principles which in their activities provide services in payment traffic.
2. People's Credit Bank (BPR), which is a bank that carries out business activities conventionally and/or based on Sharia Principles that in its activities do not provide services in payment traffic.[2]

In daily life, both in the city and in the village, the term credit has grown into a familiar general term, which mostly revolves around the meaning of the delay in the repayment of

[1] Malayu, S.P. Hasibuan, 2005, Fundamentals of Banking, Jakarta: PT. Bumi Aksara, 4
[2] Pitono, Weppy Susetiyo, Juridical Review of Bad Credit Settlement at the People's Credit Bank Berkah Pakto Kediri, East Java, Journal of Supremacy, Volume 9, Number 2, September 2019, 50.

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money or achievements that have been given or received at the present time and will be returned at a future time that has been determined together. Credit is a form of fund distribution activity to the community that is useful to help both individuals and business entities who need funds so that credit has become the main function of banks because it is in accordance with the provisions in article 3 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) which states that the main function of Indonesian banking is as a collector and community fund distributors.[3]

Banks are a source of financing for the business world and society through the provision of credit. Credit is the provision of money or bills that are equivalent to that, based on a borrowing agreement between the bank and another party that obliges the borrower to pay off the profit after a certain period of time by providing interest. Credit distribution is one of the most important functions of banks. Banks must also ensure that public funds deposited in them can be managed properly and safely. Therefore, the funds disbursed in the form of credit come from funds collected in the form of customer deposits, so the bank must be able to maintain a balance between the aspect of collecting funds and the aspect of providing credit, so that the disbursement of credit does not result in losses to the bank and depository customers. As a business entity, banks will always try to get the greatest profit from the business they run, and as a financial institution, banks have the basic obligation of stability to maintain the value of money, encourage economic activities to expand employment opportunities. Banks must also believe that the loans they disburse can be returned on time in accordance with credit agreements that include principal and interest loans. However, the credit sector as one of the banking businesses continues to be overwhelmed by various problems due to the jamming of loan returns from debtors to banks.[4]

To settle non-performing loans, two ways or strategies can be taken, namely credit rescue and credit settlement. What is meant by credit rescue is a step to resolve non-

[3] AA Gde Putra Arjawa, et al, LEGAL ANALYSIS OF BAD CREDIT SETTLEMENT IN PEOPLE'S BUSINESS CREDIT (KUR), Raad Kertha Journal Vol. 6, No. 1, February 2023-July 2023 Period, 72.
[4] Abdul Hakim, Alternative Settlement of Bad Loans in Banking Institutions (Study on Bri Rantauprapat), Scientific Journal "Advocacy" Vol. 05. No. 01 March 2017, P. 2.

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performing loans through renegotiation between the bank as a creditor and the borrower's customer as a debtor, while credit settlement is a step to resolve a non-performing loan through a legal institution. What is meant by legal institutions in this case is the State Receivables Affairs Committee (PUPN) and the Directorate General of State Receivables and Auctions (DJPLN), through the Judiciary, and through Arbitration or the Alternative Dispute Resolution Agency.[5]

Problem Formulation

1. To what extent are the factors that cause bad loans in debtors?
2. What are the legal remedies in resolving bad credit cases experienced by debtors?

THEORETICAL FRAMEWORK

1. Legal Certainty Theory

One of the ideals of law is legal certainty, through certainty it is hoped that it will be able to bring justice to the ideals of law. Certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Laws without the value of certainty will lose their meaning because they can no longer be used as a guideline of behavior for everyone. Certainty itself is referred to as one of the goals of the law. Community order is closely related to certainty in law, because order is the core of certainty itself. According to Sudikno Mertokusumo[6], legal certainty is a guarantee that the law is carried out, that those who are entitled according to the law can obtain their rights and that the verdict can be implemented.

Legal certainty is the implementation of the law according to its sound, so that the community can ensure that the law is implemented. The creation of legal certainty in laws and regulations requires requirements related to the internal structure of the legal norm itself.[7] Guarantee for citizens to have justice in matters related to the law. Make no difference in the eyes of the law so that law enforcers obey the rules that have been made.[8]

[5] Fakhry Firmanto, Bad Credit Settlement in Indonesia, Jurnal Pahlawan Volume 2 Number 2 of 2019, 30.
[6] Sudikno Mertokusumo, Getting to Know the Law of a Reporter (Yogyakarta: Liberty Press, 2007), p. 150.
[7] Fernando M Manulang, Law in Certainty (Bandung: Prakarsa Media, 2007), p. 95.
[8] Moh. Mahfud MD., "Law Enforcement and Good Governance," *National Seminar "It's Time for Conscience to Speak", January 8, 2009*, 2009.

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2. Treaty Theory

The theory of agreement according to doctrine (old theory), called agreement, is a legal act based on an agreement to cause legal consequences. According to a new theory put forward by Van Dunne, what is defined by an agreement is: "a legal relationship between two or more parties based on an agreement to give rise to legal consequences".

The theory does not only look at the agreement. But it is also necessary to look at the previous deeds or those that preceded them. There are three stages in making a covenant according to the new theory, namely:

1. The *Precontractual* stage is the receipt and offer.
2. The *contractual stage* is the agreement of the statement of will between the parties.
3. The *postcontratual stage* is the implementation of the agreement.

The elements of the agreement according to the old theory, namely:

1. There is a legal act
2. Correspondence of statements of intent from several people
3. The conformity of this will must be publicly stated
4. The legal act occurs because of cooperation between two or more people
5. A statement of the will that things must depend on each other
6. The will is intended to cause legal consequences
7. The legal consequences are for the benefit of one over the burden of another or reciprocity.[9]

3. Law Enforcement Theory

Law enforcement does not solely mean the implementation of laws, although in reality in Indonesia the tendency is so, so the definition of law enforcement is so popular. In addition, there is a strong tendency to interpret law enforcement as the implementation of judges' decisions. It should be noted that this rather narrow opinion has weaknesses, "if the implementation of laws and judges' decisions disturbs the peace in life".[10]

[9] Sudikno Mertokusumo, Getting to Know the Law of an Introduction, Liberty Yogyakarta, Yogyakarta, 2007, 160
[10] Soerjono Soekanto, Factors Influencing Law Enforcement, Raja Grafindo Persada, Jakarta, 1983, p. 5

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Another opinion regarding law enforcement was explained by Sudikno Mertokusumo that the law functions as a protection of human interests. In order for human interests to be protected, the law must be implemented. Law enforcement can take place normally, peacefully, but it can also occur due to violations of the law. In this case, the law that has been violated must be enforced, through this law enforcement the law becomes a reality. In enforcing the law there are three elements that must always be considered, namely: legal certainty (*Rechtssichherheit*), usefulness (*Zweckmaasigkeit*) and justice (*Gereichtigkeit*)".[11]

RESEARCH METHODOLOGY

This research is a type of normative legal research, namely the study of legal materials, both primary and secondary legal materials. If a researcher finds a problem to be researched, the next activity is to collect all the information that is related to the problem, then select relevant and essential information, then determine the legal issue, sometimes to determine the legal issue, general information is needed.

This information is intended to help orient this situation, the best way to do it is to be treated as a review of secondary legal materials, through the help of secondary legal materials legal issues can be formulated sharply. In addition, the application of secondary legal materials can identify the necessary legal materials as follows:[12]

The data collection in this study is carried out based on field research and the method of collecting legal materials is carried out by means of library *research*, which is research conducted by researching library materials or what is called secondary legal materials. The secondary legal materials used in writing this dissertation include books, both private collections and from libraries, articles related to the object of research.[13]

[11] Sudikno Mertokusumo, Getting to Know the Law of an Introduction, Liberty Yogyakarta, Yogyakarta, 2007, p. 160
[12] Bahder Johan Nasution, "Legal Research Methods, Second Edition," *Mandar Maju, Bandung*, 2016.
[13]Johan Nasution, *Legal Research Methods,* Bandung: Mandar Maju, 2008, 81.

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This research uses a legislative approach and a comparative approach.[14] Legal research is carried out by researching library materials or secondary data.[15] Statute approach: An approach that is carried out by examining laws and regulations related to the focus of research. Then, the data collection taken in this study uses literature study, namely data collection by tracing, examining and reviewing secondary data.[16]

RESEARCH RESULTS

Factors Causing Bad Loans in Defaulting Debtors

Credit in the banking world can be interpreted as the delivery of goods, services, or money from one party on the basis of trust to the other party with a promise to pay from the credit recipient to the lender on a date that has been agreed upon by both parties.[17] This trust arises because all provisions and requirements for obtaining bank credit by the debtor are fulfilled, including the clarity of the purpose of credit designation, the existence of collateral or collateral, and others.[18]

The definition of credit that is more established for banking activities in Indonesia has been formulated in the Basic Banking Law No. 7 of 1992 which states that the criterion is the provision of money/bills that can be equated with it based on the agreement/lending agreement between the bank and other parties which requires the borrower to carry out with an amount of interest in return. In daily practice, credit loans are expressed in the form of written agreements both under hand and materially. And as a security guarantee, the borrower will fulfill its obligations and submit collateral both material and non-material. Actually, the target of principal credit in the provision of loans is the provision of capital as a tool to carry out its business activities so that the credit (bank funds) provided is no more than

[14] Abdulkadir Muhammad, 2004, *Law and Legal Research,* PT Citra Adiya Bakti: Bandung, 113.
[15] Soerjono Soekanto & Sri Mamudji, *Normative Legal Research A Brief Review,* Jakarta: PT Raja Grafindo Persada, 2009, 13-14.
[16] Yati Nurhayati, Ifrani, & M. Yasir Said, (2021), "Normative and Empirical Methodology in the Perspective of Legal Science", *Indonesian Journal of Law Enforcement*, Vol. 2, No.1, February 2021, 13.
[17] H. Veithzal Rivai, Andria Permata Veithzal, 2006, Credit Management Handbook: Theory, Concept, Procedure, and Application of Practical Guide for Students, Bankers, and Customers, Print I, PT. Rajagrafindo Persada, Jakarta, 4.
[18] Hermansyah, 2007, National Banking Law, Kencana Media Group, Jakarta, 58.

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the principal of production alone. From the Dictionary of Economic Law is: "The ability or feasibility of a person or a company to obtain a money loan: the provision of money or bills that can be equated with it based on a borrowing and borrowing agreement between a creditor and a debtor".[19]

Credit is one of the important efforts for banks in providing profits, but various problems in credit distribution must be faced by banks. Lately, there has been a lot of criticism of the performance of national banking carried out by financial practitioners or government institutions. This is in connection with the existence of non-performing loans commonly called *Non-Performance Loans* (NPL) with a significant amount in a number of these banks.

The news of non-performing loans in a number of banks has caused bad implications for the Bank itself. Some good quality debtors start moving to other banks. Allegedly, the debtors who moved were worried that their credit was just waiting for their turn to be revealed in the mass media by the examiners. Non-performing *loans* are risks contained in every credit provided by banks to their customers. The risk is in the form of a situation where credit cannot be returned on time (default). Non-performing loans in banking can be caused by several factors, for example, there is intentionality on the part of the parties involved in the credit process, errors in the credit granting procedure, or due to other factors such as macroeconomic factors.[20]

After the debtor gets credit, he has the right to use it in accordance with the agreed purpose. However, in addition to the rights he has, the debtor is also obliged to return the loan in the agreed amount and time. However, if the debtor does not perform his obligations in accordance with the agreement, he is considered to have committed a default. Default is the non-fulfillment or negligence in carrying out the obligations (achievements) as specified

[19] Komang Indra Apsaridewi, Legal Actions to Rescue Non-Performing Loans in Banks, KERTHA WICAKSANA Communication Facilities for Lecturers and Students Volume 17, Number 1 2023, 62.
[20] Chadijah Rizki Lestari, SETTLEMENT OF BANK BAD LOANS THROUGH EXECUTION PARATE, Kanun Jurnal Jur, Vol. 19, No. 1, (April, 2017), 87.

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in the agreement between the parties.[21] Default can occur due to the debtor's fault (intentionally or negligently); and force (overmacht).[22]

The provision of credit contained in an agreement cannot be separated from the principle of trust, which is often a source of disaster for creditors in relation to bad loans. Various elements such as *safety, soundness, without substantial risk* – also in legislation/regulations need attention, because in reality it is not satisfactory to solve the problem of bad loans.[23]

Loans are categorized as non-performing loans (NPLs) when the quality of the credit is classified at a level of collectibility that is less current, doubtful, or stuck. For non-structural non-structural non-performing loans, in general, it can be overcome by restructuring steps in the form of reducing loan interest rates, extending the term, reducing arrears, reducing arrears of principal interest on loans, credit, adding credit facilities, or converting credit into temporary statements. As for non-performing loans that are structural, they generally cannot be resolved by restructuring like non-structural non-performing loans, but must be given a haircut as determined by Bank Indonesia Regulation No. 7/2/PBI/2005 so that their businesses can resume and their income is able to meet their obligations.

For the implementation of credit provision, there must be an agreement between the bank as a creditor and the customer as a debtor which is named a credit agreement so that it is protected from default. An agreement is a legal relationship regarding property between two parties that promise or are considered to promise to carry out something or not to do something while the other party has the right to demand the implementation of the promise.[24] Default comes from the Dutch language, which means poor achievement.[25] To

[21] Salim HS in A.A.Pradnyaswari, Legal Remedies for Settlement of Default in Vehicle Lease Agreements (Rent a Car)", Advocacy Journal of FH UNMAS, Vol. 3, No. 2, 2013, p. 126.
[22] Abdul Kadir in Pipit Puspita, "Efforts to Resolve Bad Loans by Banking Institutions against Defaulting Debtors (Study at the National Retirement Savings Bank, Pasar Legi Jakarta Branch)", p.3,
[23] Puput Nanda Sari & Ardyan Firdausi Mustoffa, Analysis of Strategies in Resolving Non-Performing Loans at PT. BPR Aswaja Ponorogo, JAPP: Journal of Accounting, Taxation, and Portfolio, 5.
[24] Wirjono Prodjodikoro, 2011, Legal Principles of Agreements, CV. Mandar Maju, Jakarta, 4.
[25] Subekti, 1987, Law of Agreements, PT. Intermasa, Jakarta, p. 45

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determine whether a debtor is guilty of achievement, there are four forms of default, namely:[26]

a. Not fulfilling any achievements at all.
b. Late in fulfilling achievements.
c. Achieving is not as it should be.

Bad loans or *loan problems* are loans that experience difficulty in repayment due to deliberate factors or elements or due to conditions beyond the debtor's ability.[27] Based on the Decree of the Board of Directors of Bank Indonesia No. 31/147/KEP/DIR dated November 12, 1998, non-performing loans are loans whose principal repayment and interest payments have been delayed for more than one year since maturity according to the agreed schedule. Based on the SE of Bank Indonesia Number: 09/PJ.42/1999, which classifies credit, namely; "Smooth", "Special Attention", "Less Smooth", "Doubtful", and "Congested".

According to Article 8 of Law No. 10 of 1998 concerning Banking, in distributing its credit, bank management must pay attention to the quality of its credit. The arrangement of credit agreements is subject to the Banking Law agreed by both parties to be applied by both the bank and the credit recipient in the event of something undesirable. Banking regulations in Law Number 10 of 1998 are also related to the handling of non-performing and bad loans. This is related to the risk of congestion (problematic) of a credit that is disbursed. This means that the more quality of credit provided, the less risk it will be possible for the credit to be stuck or problematic. In addition to the general rules in Law Number 10 of 1998, banks also apply several basic principles that are the principles in credit agreements. Some things to consider are as follows:

a. Liquidity Principles.
b. Solvency Principle.

[26] Ridwan Syahrani, 2004, The Ins and Outs and Principles of Civil Law, Alumni, Bandung, p. 95
[27] Dahlan Siamat, Commercial Bank Management, Jakarta: Intermedia, 1993, 220.

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c. The principle of resilience.[28]

The following are the prerequisites for a credit to be classified as bad credit:[29]

1. Unable to meet the criteria for current credit, less current credit and dubious credit; or
2. Able to meet the credit criteria is doubtful, but after a period of 21 months since the period of doubtful credit classification, there has been no loan repayment, or credit rescue efforts; or
3. The settlement of the repayment of the loan concerned has been submitted to the district court or the State Receivables Agency (BUPN), or a request for compensation has been submitted to the credit insurance company.

A credit is classified as a "stuck" credit, if it meets the following criteria:

a. There is an arrears of tree and/or flower installments that have exceeded 270 (two hundred and seventy) days;
b. Operational losses are closed with new loans;
c. In terms of law and market conditions, collateral cannot be disbursed at fair value.[30]

Legal Remedies in Resolving Bad Credit Cases Experienced by Debtors

To settle non-performing loans , two ways or strategies can be taken, namely credit rescue and credit settlement. What is meant by credit rescue is a step to resolve non-performing loans through renegotiation between the bank as a creditor and the borrower's customer as a debtor, while credit settlement is a step to resolve a non-performing loan through a legal institution.[31]

[28] Mario Alberto Tinus, PROCESS OF EXECUTION OF BANKING GUARANTEES IN BANKING CREDIT AGREEMENTS, Lex Privatum Vol. IV/No. 8/Oct-Nov/2016, 44.
[29] Siswanto Sutojo, Handling Non-Performing Loans: Concepts, Techniques and Cases, Jakarta: PT. Binaman Pressindo Library, 1997, 331.
[30] SE Bank Indonesia Number: 09/PJ.42/1999.
[31] Yasabari, Nasroen, and Nina Kurnia Dewi, Credit Guarantee Leads SMEs to Access Financing, Publisher of PT. Alumni, Bandung, 2007.

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Not all loans disbursed by banks can be repaid by debtors as agreed. The stagnation of credit payments by debtors can be caused by their negligence, lack of good faith or inability. Because the Bank as a creditor must consider all the ways of resolving bad loans that are allowed by law and that it considers most beneficial for him, which consists of 3 (three) options, namely:

1. How to resolve a court lawsuit (litigation)
2. The method of settlement is through court (*non-litigation alternative to litigation*).
3. Alternative *Dispute Resolution* (ADR)

The out-of-court settlement method (non-litigation) is a dispute resolution involving official state institutions, including the court, but without the submission of a civil lawsuit to the court. This method of settlement outside the court (non-litigation) is interpreted as "*alternative to litigation*", which is an alternative to the litigation process or dispute resolution mechanism outside the lawsuit process in court, which consists of:

1. Settlement through parate execution.
2. Settlement through PUPN.
3. Settlement by Arbitration.[32]

The existence of bad loans will have a high consequence for all operational activities in banking. The settlement of bad loans can be done in two ways, namely: that in order to complete credit. who have problems by negotiating for the bank that the creditors and customers who borrow hours are considered a debtor.[33]

The settlement of non-litigation loans through non-litigation channels is carried out by banks in the hope that debtors can return to make their credit payments as they should, either through rescheduling, reconditioning or restructuring which in banking terms is better known as the 3 R. Administratively, loans that are settled through non-litigation channels are loans

[32] Abdul Hakim, Alternative Settlement of Bad Loans in Banking Institutions (Study on Bri Rantauprapat), Scientific Journal "Advocacy" Vol. 05. No. 01 March 2017, P. 12.
[33] Farida Idayati, SETTLEMENT OF BAD LOANS AT PT. BANK RAKYAT INDONESIA, Tbk BRANCH UNIT MULYOSARI SURABAYA, JIMBis: Scientific Journal of Management and Business, Volume 1, Number 1, May 2022, 65.

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that were originally classified as less smooth, doubtful or stuck which were then tried to be repaired so that has smooth colability. The action of resolving non-performing loans through the non-litigation channel is in accordance with Bank Indonesia Circular Letter Number 30/16/UPPB dated 27-02-1998 which is commonly taken in the banking world as an effort to save credit or better known as the term 3 R.[34]

The determination of the steps to be taken in the context of credit rescue measures must first be preceded by a thorough study of the causes of a credit problem. In every process of providing credit to debtors, there are always risks. In principle, credit rescue actions are actions to handle non-performing loans, maintain and maintain the purpose of continuing the relationship with the debtor. Administratively, rescued credit is credit that was initially classified as less liquid, doubtful or stuck which is then tried to be improved so that it has smooth collectibility.[35]

The handling of non-performing loans before being resolved judicially is carried out through rescheduling, reconditioning, and restructuring. Handling can be through one of the methods or a combination of the three methods. After being taken in this way and there is still no progress in handling, it is then resolved judicially through the courts, commercial courts, through PUPN, and through the Agency Forced Agency.[36]

Regarding the rescue of non-performing loans, it can be done by referring to Bank Indonesia Circular Letter No. 26/4/BPPP dated May 29, 1993, which in principle regulates the rescue of non-performing loans before it is resolved through legal institutions, namely through alternative handling through rescheduling, reconditioning, and restructuring. In the circular, what is meant by the rescue of non-performing loans through rescheduling, reconditioning, and restructuring is as follows:

[34] Rakhmad Susatyo, LEGAL ASPECTS OF NON-PERFORMING LOANS IN PT. BANK INTERNATIONAL INDONESIA SURABAYA BRANCH, Journal of Law February 2011, Vol. 7, No. 13, 15.
[35] Komang Indra Apsaridewi, Legal Actions to Rescue Non-Performing Loans in Banks, KERTHA WICAKSANA Means of Communication for Lecturers and Students Volume 17, Number 1 2023, 67.
[36] Djumhana, Muhammad, BANKING LAW IN INDONESIA, PT. Citra Aditya Bakti, Bandung, 2003.

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1. Through rescheduling, which is a legal effort to make changes to several terms of credit agreements related to the repayment schedule/credit term, including grace priod, including changes in the number of installments. If necessary, with credit addition.
2. Through reconditioning, which is to make changes to part or all of the terms of the agreement, which are not limited to changes in the installment schedule, or credit term. However, the credit change does not provide additional credit or without converting all or part of the credit into the company's equity.
3. Through restructuring, which is an effort in the form of changing the terms of a credit agreement in the form of granting additional credit, or converting all or part of the credit into a company, which is carried out with or without rescheduling or reconditioning.[37]

The credit rescue effort can only be carried out if based on the results of an in-depth and careful analysis, it is concluded that the debtor's credit can still be saved. On the other hand, if a different conclusion is obtained, then the last step for the bank to rescue credit is to execute the object of the credit guarantee, in this case the land tied to the institution of dependent rights. The execution of the right of dependency is a form of legal protection provided by law to the bank if the debtor defaults. Based on the provisions of Article 6 of the UUHT, it is stated that "if the debtor defaults on the promise, the first holder of the Right of Dependency has the right to sell the object of the Right of Dependency on his own power through a public auction and take the repayment of his receivables from the proceeds of the sale." The sale of one's own power is termed as a parate execution.

However, the authority to sell the object of the dependent right must still respect the land tenure rights owned by the debtor. Legally, this form of respect is manifested by including one of the promises in the Deed of Grant of Dependent Rights clause that the debtor promises to give the bank the right as the first holder of the right of dependency to sell on its own power the object of the right of dependency if the debtor defaults.[38]

[37] Suyatno, Thomas, Fundamentals of Credit, Third Edition, Gramedia Publishers, Jakarta 1990.
[38] Remy Sjahdeini, Dependent Rights, Principles, Principal Provisions and Problems Faced by Banking, (A Study on the Law on Dependent Rights), Alumni, Bandung, 1999, p. 164

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The occurrence of a breach of promise or default in this credit agreement is very likely, considering that not all debtors are able to manage their loan funds properly even though they have pledged a certain number of collateral to creditors. It is undeniable that there are often frauds from bank officers who deliberately do not provide information or warning letters to customers regarding the maturity of loan interest payments and credit installments, and ultimately cause the object of the customer's guarantee to be executed. In line with this, the role of law, especially the law of guarantees, is very important to regulate the position of rights and obligations of both creditors and debtors, as well as collateral in a credit agreement that is carried out.

According to Article 1 Paragraph (11) of Law No. 10 of 1998 concerning Banking, collateral is an additional collateral, both in the form of movable and immovable objects submitted by the collateral owner to the bank to guarantee the payment of the obligations of the customer receiving the credit facility. Based on this understanding, in the process of executing a guarantee in the event of a default by the debtor to the banking credit agreement that has been agreed, the so-called direct execution or parate executie is specifically regulated in Article 6 of Law No. 4 of 1996 concerning Dependent Rights, and Article 29 Paragraph (1) of Law No. 42 of 1999 concerning Fiduciary Guarantees. Therefore, it is necessary to conduct a study on the implementation of the execution of banking guarantees in banking credit agreements.

In principle, the execution of bad loans is carried out because the debtor commits a default, the execution is carried out by auction. Article 1 *of the Vendu Reglement*, the term sale in public is used. Public sale is: "Auction and sale of goods, which is held in public with an increasing bid, with decreasing approval or by registration of prices, or where persons invited or have been previously notified of the auction or sale or the opportunity given to persons who are auctioning or who are buying to bid for a price, agree on a price or register".[39]

If the settlement as mentioned above is not successfully implemented, in general, the efforts made by the bank are carried out through legal procedures. In this regard, in

[39] H. Salim HS, Development of Guarantee Law in Indonesia, PT. RajaGrafmdo Persada, Jakarta, 2004, 237.

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accordance with the applicable laws and regulations, there are several institutions and various legal means that can be used to accelerate the resolution of the problem of bad loans in banks.

In Indonesia, the method of resolving bad credit disputes through civil lawsuits to the court is carried out by complying with litigation procedures based on the civil procedure law in the Court. Civil procedure law is still not collected in a codification, but is the largest in various laws and regulations, both the colonial heritage of the Dutch East Indies and national legal products after Indonesia's independence, including HIR/RBg.

The court will first investigate whether a legal relationship on which the lawsuit is based actually exists or not, and the plaintiff is obliged to prove that the legal relationship does indeed exist. The court makes a decision based on the facts proven in the trial, the most important in a bad credit case is an order to the debtor to pay off his debt and the confiscation of collateral placed on the debtor's collateral or property if the debtor does not comply with the court decision. The judge can impose the confiscation of conservatoir (*conservatoir beslag*), which is the confiscation of collateral on the debtor's property, both movable and immovable, which can no longer be transferred, traded or transferred to another party.

The institutions that function to solve the problem of bad loans include:[40]

a. District Court

Based on the 1945 Constitution and article 10 of Law No. 14 of 1970, the judiciary is a legal institution and has the authority to resolve disputes. As a follow-up to Law No. 14 of 1970, various laws and regulations were stipulated that determined the jurisdiction limits for each judicial body. Especially with regard to credit disputes, its jurisdiction includes the authority of the general judicial environment, so that the judicial body officially in charge of resolving bad loans when in dispute is the District Court. The settlement of bad credit disputes of private banks can be resolved through the District Court in 2 (two) ways:

[40] Fakhry Firmanto, SETTLEMENT OF BAD LOANS IN INDONESIA, Jurnal Pahlawan Volume 2 Number 2 of 2019, 33.

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1. The bank sued the customer for defaulting on the agreed credit agreement. Banks can sue debtors who commit default by not paying principal or interest to the District Court. The District Court in this case will process the lawsuit by considering the evidence and rebuttals submitted by both parties. If the examination process is completed, the District Court will issue a decision. The decision was carried out by confiscation of the execution of the collateral given for the purpose of repaying the credit.
2. The bank requested the determination of the execution confiscation of the debtor's collateral that had been perfectly tied. For collateral that has been perfectly tied, such as by way of mortgage (now Dependent Rights) or credietverband, the bank can directly apply for a determination of the seizure of the execution of the collateral to be able to obtain the repayment of its receivables without having to go through the usual lawsuit process in Court.

b. State Receivables Affairs Committee (PUPN)

With Law No. 49 Prp. of 1960, the State Receivables Affairs Committee (PUPN) is tasked with settling state receivables that have been submitted to it by government agencies or state agencies. Thus, for state-owned banks, the resolution of the problem of bad loans must be done through the State Receivables Affairs Committee (PUPN), where with the submission of bad debts to the body, legally the authority to control the right to collect is transferred to it.

The management of state receivables is carried out by making a Joint Statement between PUPN and the debtor about the amount of debt and the debtor's ability to settle it. The Joint Statement has the force of implementation like a judge's decision in a civil case that has definite force, so that the statement has an executory title. If the debtor refuses to make a Joint Statement, then the Chairman of PUPN can determine the amount of debt itself. In the event that the Joint Statement is not fulfilled by the debtor, PUPN can force the debtor to pay a certain amount of debt with a compulsory letter, so that subsequently the confiscation and auction are equated with the collection of state taxes (article 11 of Law No. 49 of 1960). Thus, the collection of state receivables is carried out in accordance

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with the execution parate. The Compulsory Letter is issued in the form of a decision of the Chairman of PUPN with an executory title that has the same force as the grosse of a judge's decision in a civil case that cannot be appealed again.

c. Prosecutors

Based on Law No. 5 of 1991 and Presidential Decree No. 55 of 1991, the Prosecutor's Office with special powers can act inside and outside the court for and on behalf of the state or government. Therefore, the role of the Prosecutor's Office in the field of civil law can be paralleled with the Government's Law Office or State Advocates/Lawyers. Thus, the Prosecutor's Office can represent state-owned banks in resolving legal problems, including legal problems arising from the credit relationship between the bank and the debtor if the debtor does not fulfill its obligations (default) to the bank.

CONCLUSION

The results of the study show that;

1. Default is the non-fulfillment or negligence in carrying out the obligations (achievements) as specified in the agreement between the parties.[41] Default can occur due to the debtor's fault (intentionally or negligently); and force (overmacht). Non-performing *loans* are risks contained in every credit provided by banks to their customers. The risk is in the form of a situation where credit cannot be returned on time (default). Non-performing loans in banking can be caused by several factors, for example, there is intentionality on the part of the parties involved in the credit process, errors in the credit granting procedure, or due to other factors such as macroeconomic factors.
2. The method of resolving bad loans that is allowed by law and which it considers the most beneficial for the Bank, consists of 3 (three) options, namely: How to settle a lawsuit in court (litigation), How to settle it in court (*non-litigation alternative to litigation*), and Alternative Dispute *Resolution* (ADR).

[41] Salim HS in A.A.Pradnyaswari, Legal Remedies for Settlement of Default in Vehicle Lease Agreements (Rent a Car)", Advocacy Journal of FH UNMAS, Vol. 3, No. 2, 2013, p. 126.

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