International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 28-01-2021; Accepted: 15-02-2021; Published: 08-03-2021
www.lawjournals.org
Volume 7; Issue 2; 2021; Page No. 77-84

Legal efforts at PT. bank tabungan negara (Persero) sharia Indonesia, Surakarta Branch in overcoming obstacles non performing credit

Candra Wibowo[1], Pujiyono[2], Yudho Taruno Muryanto[2]
[1] Students of the Notary Masters Program, Universitas Sebelas Maret, Jebres, Surakarta, Indonesia
[2] Lecturer, Faculty of Law, Universitas Sebelas Maret Surakarta, Indonesia

Abstract
This study aims to see and analyze the legal efforts taken by PT Bank Tabungan Negara (BTN) Persero Branch Surakarta in overcoming problem loans to customers. This research is a type of empirical research with the research location at the Surakarta Branch Office of the Bank Tabungan Negara (BTN). The results showed that the settlement of non-performing loans carried out by the Surakarta Sharia Bank Tabungan Negara (BTN) Branch Office is non-litigation in nature, namely settlement through the bank's internal organization (restructuring) and settlement through legal channels (carried out by KPKNL). Settlement through the litigation route is rarely even never used because it is considered unfavorable for both the bank and the debtor because the costs for the litigation process are quite high, takes quite a long time, and is preventive for completing files.

Keywords: kredit bermasalah, restrukturasi, upaya hukum

Introduction

One of the goals of the Republic of Indonesia in 1945 is to promote public welfare. To achieve the goal of advancing the general welfare, development in all fields must be carried out by taking into account the harmony, harmony and balance of various elements of development, including development in the economic sector, including micro, small and medium enterprises which also play an important role in economic development because of the absorption rate of labor. relatively high and requires a small investment capital.

Banks as a financial institution have an important role in people's lives. Bank is a business entity that collects public funds in the form of savings and distributes them to the public in the form of credit and or other forms in the context of improving the standard of living of the people. In Article 1 number 2 of Law Number 10 of 1998, amendments to Law Number 7 of 1992 concerning Banking, it is stated that a bank is:

> "Business entities that collect funds from the public in the form of savings, and distribute them to the community in the form of credit and or other forms in order to improve the standard of living of the people at large".

The role of banking in business traffic can be considered as a necessity that is absolutely required by almost all business people, both large and small entrepreneurs. One of the products provided by banks in helping the smooth running of their debtors' business is by providing credit, which is one of the functions of a bank that strongly supports economic growth. The definition of credit according to Article 1 number 11 of Law Number 10 of 1998 concerning Banking is as follows:

> "Credit is the provision of money or an equivalent claim, based on a loan agreement or agreement between a bank and another party which requires the borrower to pay off the debt after a certain period of time with the amount of interest.".

The provision of credit by a bank as a financial institution should be able to provide legal protection for creditors and recipients as well as for related parties to receive protection through a strong guarantee rights institution and can provide legal certainty for all interested parties.

Banks in lending must do so with prudence principles through accurate and in-depth analysis. Proper credit distribution and strict credit supervision, as well as valid credit agreements according to strong collateral binding laws and regular and complete credit administration are intended so that credit extended by the bank to the public can be returned on time and in accordance with the credit agreement. Analysis conducted by banks is to determine and determine whether a person is eligible or not to obtain credit. In general, the banking sector uses an analytical instrument known as the five of credit or 5 C. The definition of 5 C here includes a. character (personality), namely an assessment of the character or character of the prospective debtor, b. capacity (ability), namely the prediction of the debtor's business ability and business performance to pay off his debt, c. capital (capital), namely an assessment of the financial capacity of the debtor who has direct correlation with the creditors' ability to pay, d. condition of economy (economic conditions), namely analysis of the economic conditions of the debtor at micro and macro levels and e. collateral (collateral), namely the assets of the debtor as collateral for repayment of debts if the credit is in bad condition.

In providing credit, the bank requires credit collateral. The definition of Collateral according to article 1 number 23 of Law Number 10 of 1998 concerning Banking is: "Additional guarantees submitted by a Debtor Customer to a bank in the framework of providing credit or financing facilities based on Sharia Principles".

In today's millennial era, it is desirable for a truly reliable competitive strategy, because the current condition of all activities related to society has no more boundaries, all transparency and accountability must be accounted for, both in the field of services, financial institutions and cooperatives. In the context of cooperatives, the form of business has the advantage of being a people's economic movement and has great support from the government because it has enormous potential to develop credit and financing cannot be separated from financial institutions because financial institutions generally provide credit for people who need funds.

Currently there are two financial institutions, namely bank financial institutions and non-bank financial institutions. Bank financial institutions are business entities that collect funds from the public in the form of savings and distribute them 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. Meanwhile, non-bank financial institutions are financial institutions that collect funds from the public through the sale of securities.

The role of the Bank in spurring regional economic growth is increasingly strategic in order to create a more balanced economic structure. Support for the development of Islamic banking is also demonstrated by the existence of a "dual banking system", whereby conventional banks are allowed to open sharia business units. The Islamic banking system is actually not limited to customers who have religious emotional ties (Muslim community). Sharia banking services can be enjoyed by anyone, regardless of religion, as long as they are willing to follow the ways of doing business that are permitted under sharia. Society needs financial institutions that are strong, transparent, fair and committed to helping improve the economy and customers' businesses.

However, in terms of implementation, it seems that this is not going well enough, to borrow a statement from the Financial Services Authority (OJK) which states that the non-performing finance (NPF) ratio of Islamic banks is still relatively higher than the ratio of non-performing loans (NPL).) Conventional bank. Noted, since the fourth quarter of 2016 to October 2017 the NPF figure of Islamic banks was at 4.12%. This figure far exceeds the NPL of Conventional Banks of 2.96%. The latest data obtained shows that the total non-performing financing (NPF) of Islamic banking is in the position of 3.26% as of June 2019. This ratio has barely moved compared to the previous year's period which touched 3.27%. Compared to the last December 2018 period, "the NPF of Islamic banking is still higher than conventional.

For the world of financial institutions, both conventional and sharia, financing is the main income, but it is the biggest source of operational risk. Most of the cooperative's operational funds are circulated with financing. If this one business activity is successful, their business operation will also be successful. On the other hand, if they get caught in a lot of problematic financing and end up stalling, then they will face enormous difficulties.

In financing analysis, it is important to point out the creditor's trust to assess the debtor's potential to repay all obligations and debts. Due to its uncertain nature, financing analysis is an art in making financing decisions. So, in the analysis of financing, the factors of trust, guarantee, ability to pay, time, and risk are closely attached to one another.

In extending credit, a bank must have confidence in the debtor's ability and ability to pay off his debt as agreed, and must pay attention to sound credit principles because the credit given by the bank contains risks. In granting this credit the bank requires a guarantee or collateral that can be used as a substitute for repayment of the debt if later the debtor is unable to pay his credit to the bank or is in default. The banking business as it is known is not an ordinary business entity like a company engaged in trade and services, but a business entity engaged in financial services.

Although efforts have been made to consider approval in taking credit at Islamic banks, non-performing loans still occur. This is due to the uncertainty of income by customers. Credit risk in Islamic banks is termed the risk of financing that usually occurs when a counterparty fails to meet its obligations (default). Often customers do not meet their obligations on time. Financing through a murâbahah contract is one form of financing where the payment mechanism can be said to be carried out by credit or installments. Because murâbahah financing is a type of contract for sale and purchase of goods by stating the acquisition price and profit (margin) agreed upon by the seller and the buyer, where repayment of loan funds by customers can be made in installments or credit. Loans granted by banks carry risks so that banks are demanded for their ability and effectiveness in managing credit risk and minimizing potential losses so that banks are required to pay attention to sound credit principles.

In the case of non-performing financing, the Bank needs to make a rescue so that it will not cause a loss. The rescue is carried out whether by providing relief in the form of a period of time or installments, especially for financing affected by a disaster or by confiscating funds that are deliberately negligent to pay. For financing that is experiencing congestion, rescue efforts should be made so that the bank does not experience losses.

In an effort to resolve the problem normatively, it can be processed legally, this can include litigation and non-litigation processes. Both of these ways of solving certainly have their own advantages and disadvantages. The settlement process through litigation in court and non-litigation processes are dispute resolution through cooperation (cooperative) outside the court. The litigation process has resulted in an adversarial agreement that has not been able to embrace common interests, tends to cause new problems, is slow to resolve, requires high costs, is not responsive and creates hostility between the parties. On the other hand, through a non-litigation process, it produces a win-win solution, guarantees the confidentiality of disputes of the parties, avoids delays caused by procedural and administrative matters, resolves comprehensively and collectively while maintaining good relations between the parties.

The condition of bank credit that has been distributed to the public in large numbers, it turns out that many debtors do not pay on time according to the agreement. The credit agreements executed by banks include, among others; principal and interest loans where this causes credit to be classified as non-performing loans (hereinafter abbreviated as NPL) or non-performing loans. The existence of non-performing loans causes banks to face credit risk ethnic bank business risks (default risk). Credit risk is the risk due to the inability of the debtor customer to repay the loan received from the bank and its interest according to a predetermined period of time ". Non-performing loans

always exist in bank lending activities, because it is impossible for banks to avoid non-performing loans, banks can only reduce the amount of non-performing loans to a minimum so as not to exceed Bank Indonesia's regulations as banking supervisor.

In the context of Bank BTN Syariah Surakarta, so far the problem of non-performing loans has recorded a fairly high number, where based on the initial interview that the author conducted of the total amount of credit in BTN Syariah Surakarta City, there are around 10.9% non-performing loans, this is a fairly high number . So this writing aims to parse the factors that cause this to happen. In fact, the problem of non-performing loans is a fairly conventional issue, there are many factors that cause this to happen, whether intentional or unintentional, in this case BTN Syariah Surakarta City has policies to solve these problems. So the problem in this study is how the efforts of the Surakarta Branch Sharia State Savings Bank in overcoming problematic credit problems?

Research Methods

This research will use an empirical juridical approach, because examining the symptoms that exist in society is intended to explain the problems to be studied from the research results obtained from the legal relationship with the empirical reality that occurs in the credit agreement at BTN Syariah Surakarta City. In carrying out this juridical empirical approach, the method used is qualitative. This qualitative method is used for several considerations, namely first, it is easier to adjust qualitative methods when faced with multiple realities; second, this method directly presents the nature of the relationship between researcher and respondent; and third, this method is more sensitive and more able to adapt to the many sharpening of the joint influence and to the value patterns faced.

Discussion

The Efforts of the Surakarta Branch of the Sharia State Savings Bank in Overcoming Non-Performing Credit Constraints.

As it is known that Bank Indonesia and the Financial Services Authority (OJK) do not provide rules or guidelines / instructions to commercial banks and rural banks regarding policies that need and can be taken by commercial banks and rural banks if their companies face non-performing loans. This means that Bank Indonesia leaves it to each bank manager to determine its own policy in resolving problem loans. In general, it is known that there are several ways / steps that can be taken by bank leaders in solving non-performing loans in accordance with the provisions of laws and regulations.

According to the provisions of Article 3 of Act Number 7 of 1992 concerning Banking, the main function of Indonesian banking is to collect and channel public funds, therefore credit as a productive asset is the main source of income for a bank. If the credit is late in arrears or becomes a non-performing loan, it will affect the income received by the bank. There are several definitions of non-performing credit, namely:

1. Credit which in its implementation has not reached / met the target desired by the bank;
2. Credit which has the possibility of risk arising at a later date for the bank in a broad sense;
3. Experiencing difficulties in settling its obligations, either in the form of repayment of principal and / or payment of interest, late fees and bank fees borne by the customer concerned;
4. Credit where repayment is in jeopardy, especially if the expected repayment sources are not expected to be sufficient to repay the credit, so that it has not reached / met the target desired by the bank;
5. Credit where there is a default in the repayment of the agreement, so that there is arrears, or there is a potential loss in the customer company so that there is the possibility of risk arising in the future for the bank in a broad sense;
6. Experiencing difficulties in settling obligations to the bank, whether in the form of repayment of principal, payment of interest, payment of bank fees borne by the customers concerned;
7. Loans for special attention, substandard, doubtful and non-performing loans as well as current groups that have the potential to be in arrears.

Seeing the huge impact of non-performing loans on bank income and profits, any symptoms that require non-performing loans must be addressed immediately. The following will describe several ways of handling non-performing loans.

1. Credit Restructuring

Non-performing loan restructuring is an effort to save bank credit and also an effort to restore credit customers' finances including the restructuring of bank assets so that the smooth return of credit payments by debtors will create a rescue and health on both sides, namely the bank as the creditor in terms of credit rescue and restructuring bank assets and from the customer side of the credit restructuring the business continuity so that it can run as it should.

It has become an agreement and understanding for the banking industry that the continuity of a bank's business depends, among others, on the ability and effectiveness of banks in managing credit risk and minimizing potential losses. For this reason, in order to manage credit risk and to minimize potential losses, banks are required to maintain asset quality and are required to provide allowance for asset losses, whereby the obligation to establish allowance for asset losses needs to be applied to both earning assets and non-earning assets.

Bank Indonesia as the banking regulator defines Earning Assets as a provision of funds by banks in the form of credit, securities, interbank fund placements, acceptance receivables, claims on securities purchased with a reverse repurchase agreement, derivative claims, participation, administrative account transactions and other forms of provision of funds equivalent to this, with the aim of earning income. Meanwhile, for Non-Earning Assets, Bank Indonesia defines Bank assets other than Earning Assets that have a potential loss, among others in the form of foreclosed assets, abandoned property, inter-office accounts and suspense accounts. In this regard, as an effort to minimize potential losses from problem debtors, banks may conduct credit restructuring of debtors who still have business prospects and the ability to pay.

This restructuring effort is carried out when the business prospect of the borrowing customer is still feasible and promises profit and the borrowing customer is transparent and cooperative, so that the borrowing customer credit

facility should be pursued with credit rescue efforts in the form of restructuring, reconditioning, rescheduling or other credit rescue measures. However, not all debtor borrowing customer loans with problems must always be saved, for the borrower's credit that can no longer be saved, the final effort as a follow-up action that must be carried out immediately or taken by the bank is to make credit settlement efforts.

In practice, the settlement of non-performing loans by bank parties is carried out in two ways, namely negotiation and litigation. However, it is still recognized that the two alternatives are independent of the existence of banks that collect non-performing loans using debt collectors, which are not the authorities to carry out such actions. Settlement by means of negotiations is carried out for debtors whose business is still running even though they are stagnating, are able to pay credit interest even though their capacity has weakened and are unable to pay their installments. Even for debtors whose business is no longer running, negotiations can be carried out.

As the author said at the beginning of the discussion, restructuring is an effort to save credit. This is based on Act Number 7 of 1992 concerning Banking, as amended by Act Number 10 of 1998. Then amended again in Bank Indonesia Regulation Number 2/15 / PBI / 2000 dated June 12, 2000 concerning amendments to the Decree of the Board of Directors. Bank Indonesia Number 31/150 / Kep / Dir dated November 12, 1998 concerning Credit Restructuring Then in 2005 a new regulation was issued by Bank Indonesia, namely PBI Number 7/2 / PBI / 2005 dated January 20, 2005 and Bank Indonesia Circular Letter Number 7/3 / DPNP dated January 31, 2005 concerning Earning Asset Quality, then Bank Indonesia Circular Letter Number 7/190 / DPNP / IDPnP dated April 26, 2005, and Bank Indonesia Circular Letter Number 7/319 / DPNP / IDPnP dated June 27, 2005 concerning Credit Restructuring Policy .

The Credit Restructuring Rules were then updated again in Government Regulation Number 14 of 2005 as amended by Government Regulation Number 3 of 2006 concerning Procedures for Settlement of State / Regional Receivables Banks must pay attention to the provisions concerning what criteria require attention in credit restructuring based on the provisions and regulations - legislation as specified. In addition, in carrying out restructuring, banks are required to comply with Financial Accounting Standards and PAPI (PSAK 31 and 54, PSAK 50/55, PAPI revised 2001), especially the calculation of Present Value and recognition of restructuring losses. In addition, Banks must have written Policies and Guidelines as a guide in conducting credit restructuring.

In 2012 Bank Indonesia issued instructions and guidelines on procedures for credit rescue through credit restructuring, referring to Bank Indonesia Regulation Number 14/15 / PBI / 2012 concerning Asset Quality Assessment for Commercial Banks. Several policies in saving bad debts based on the regulations in Articles 52 and 53 are as follows:

Article 52

Banks can only carry out credit restructuring against debtors who meet the following criteria:

a. Having difficulty paying credit principal and / or interest;
b. The debtor has good business prospects and is able to meet obligations after the credit is restructured.

Article 53

Banks are prohibited from conducting credit restructuring for the sole purpose of:

A. Improve credit quality;
B. Avoiding increasing the formation of PPA without considering the criteria for debtors as referred to in Article 52.

In 2015, OJK saw that there was a weakening economy in the banking sector. So at that time OJK issued OJK Regulation Number 11 / POJK.03 / 2015 concerning Prudential Provisions in the Context of National Economic Stimulus for Commercial Banks. In this regulation, when restructuring only considers one sector, initially three sectors are considered. This sector is the ability to pay by the debtor. Meanwhile, the industrial sector and the company condition sector are not involved in this regulation. However, this regulation is considered to have had little impact on banking conditions. So that this regulation was officially revoked on August 23, 2017, and returned to using the old regulation.

In OJK Regulation Number 42 / POJK. 03/2017 does not directly mention the implementation of credit restructuring. However, it is referred to in Article 3 that the bank's credit policy contains at least and regulates the main matters as stipulated in the Guidelines for Preparation of Bank Credit or Financing Policies as follows:

a. The principle of prudence in lending is in line with prior analysis of debtors prior to restructuring.
b. Credit organization and management, these guidelines are restructured when carrying out a restructuring of problem loans.
c. Credit or financing approval policy.
d. Credit documentation and administration. It has been explained in Chapter III that one of the reasons for credit restructuring is for credit documentation.
e. Credit supervision, this is done to anticipate non-performing loans through debtor behavior.
f. Credit settlement, is a step to solve credit problems. This is done in two ways, namely credit saving and credit termination.

Then in Article 4 it is emphasized that banks are obliged to comply with credit policies that have been formulated in the implementation of credit extension and credit management. As for the sanctions in the event of a violation as stated in Article 7 that violations of the provisions of this OJK Regulation are subject to administrative sanctions which will affect the bank's soundness assessment and other administrative sanctions in accordance with statutory provisions. With regard to the criminal sanctions given if the handling of this credit restructuring is carried out not in accordance with the procedures stated in Article 49 paragraph 1 of Law Number 10 of 1998:

a. Creating or causing false records in the bookkeeping or reporting process, as well as in documents or business activity reports, transaction reports or bank accounts;
b. Omitting or not entering or causing non-recording in books or reports, as well as in documents or business activity reports, transaction reports or bank accounts;
c. Changing, obscuring, hiding, deleting, or eliminating any recordings in the books or reports, as well as in

documents or business activity reports, transaction reports or bank accounts, or deliberately changing, obscuring, eliminating, hiding or destroying the bookkeeping records is threatened with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000 (ten billion rupiah) and a maximum of Rp. 200,000,000,000 (two tarus billion rupiah)".

The criteria referred to, for example, the debtor is experiencing payment difficulties (principal and / or credit interest) due to his declining financial condition, the debtor has good business prospects and is expected to be able to fulfill obligations after the Credit has been restructured, shows good faith and is willing to fulfill credit obligations after restructuring, not intended to avoid a decline in credit quality, increase the formation of PPAP and derecognize interest income on an accrual basis. To be able to conduct a credit restructuring, there are conditions that must be met, these conditions include:

a. The debtor experiences difficulties in paying principal and / or interest, but has a strong willingness to pay.
b. Credit Analyst has re-analyzed the business or financial condition of the debtor and has been approved by the Loan Committee.
c. All administration related to credit on behalf of the debtor must be complete and correct and have been checked by the Legal Officer.
d. The debtor has signed a Credit Restructuring agreement or contract.

After the above conditions have been met, the debtor submits a letter of request for credit restructuring to the party authorized to restructure at the bank. The authority for credit restructuring is the Board of Directors based on an Internal Memo submitted by the Business Manager. The Board of Directors has the authority to give policy on the amount of Credit that must be paid by the Debtor, including the term, interest rate and other matters related to the Credit Restructuring. The development of restructured credit handling must be reported by the Business Manager to the Board of Directors and / or the Board of Commissioners periodically. The rights and obligations of the debtor as well as other requirements in the context of restructuring must be stated in a written amendment (addendum) to the credit agreement.

Before carrying out a credit restructuring, the debtor's financial condition must be ascertained by re-analyzing it in accordance with sound credit principles. The results of this credit analysis must be approved by the Loan Committee. If it has met the requirements for restructuring, the Legal Department submits an internal memo which is also signed by the Business Manager to the Board of Directors. This memo must be accompanied by the analysis results and the Debtor's credit history. Based on the internal memo submitted by the Legal Department together with the Business Manager, the Board of Directors then issues a Credit Restructuring Memo. Then the Credit Administration Staff conducts the Credit Restructuring based on the approved Directors' Memo.

In the context of dispute resolution on non-performing loans at the Sharia State Savings Bank (BTN) Branch Office in Surakarta City, dispute resolution mechanisms are also often used. Based on the results of an interview with bp. Samsul Hadi as the Head of the Sharia State Savings Bank (BTN) Branch in Surakarta City, it is known that the opportunities for restructuring of problem loans usually see the goodwill of the debtor, the level of debtor's cooperation and the chance of repayment can still be predicted, he also stated that there is no limit on the number of times of restructuring of problem loans. can be done, this is the absolute right of the bank.

Based on the results of the interview with Mr. Samsul Hadi, it was also known that the settlement through credit restructuring required the most important conditions, namely the willingness and goodwill of the debtor and willingness to follow the conditions set by the bank. Because in the settlement of credit through restructuring, there are more negotiations and solutions offered by the bank to determine the terms and conditions of credit restructuring. The implementation of the credit restructuring process is carried out in stages, namely credit restructuring initiatives, negotiation with debtors to determine the restructuring scheme, analysis and evaluation, restructuring decisions, restructuring documentation and supervision.

The credit restructuring initiative begins by calling the debtor and submitting warnings and collecting 3 (three) times. After approaching the debtor to an analysis that the debtor's financial condition has decreased incomes, in this case the bank offers and decides to carry out credit rescue. Then negotiations are carried out both before and after the analysis and evaluation of credit restructuring. Loans to be restructured must be analyzed based on the debtor's business and ability to pay according to cash flow projections. Each stage of the analysis must be completely and clearly documented. The results of the analysis are contained in the Credit Restructuring Analysis Memorandum.

Restructuring decisions are made by credit decision officials with an authority level higher than the decision making officials at the time of the last credit extension prior to credit restructuring. Credit restructuring is monitored periodically by line credit officers (initiating officers) with the aim of monitoring the ability or progress of the debtor. This official is required to ensure the ability of the debtor to make repayments in accordance with the terms of the credit restructuring agreement and to report on the progress of the debtor's business.

In the implementation of restructuring, there are several factors that become supporting factors. Supporting factors from internal banks, namely professional bank credit employees who are ready to assist debtors in restructuring and are ready to provide alternatives and better input on problems faced by debtors so that debtors have options in overcoming existing problems. However, this credit restructuring is not without obstacles. The factors inhibiting credit restructuring include:

a. Debtors are difficult to work with. For example, such as when calling and then warning 3 (three) times by the bank which aims to inform the debtor that his credit condition is in bad luck, but the debtor ignores it, meaning in this case the debtor is not in good faith.
b. The debtor's lack of disclosure during negotiations by the bank. In this case, the debtor wants to get the maximum relief while the bank tries to reach the best agreement from the negotiations so as not to harm the bank and the debtor.
c. Banks experience difficulties in approaching debtors due to their uncooperative attitude. It can be seen that

the debtor does not want to be invited to negotiate a credit restructuring.

d. The contents of the restructuring decision that have been mutually agreed between the creditor and the debtor are not executed according to the agreement. Examples such as the obligation to pay installments are not paid according to what has been agreed. This shows the absence of good faith from the debtor, when in fact the contents of the decision help the debtor to save his credit.
e. Credit restructuring is not supported by complete document information about the debtor's business. The data needed in the restructuring process should be in accordance with the facts previously described by the debtor during the restructuring documentation.
f. Banks experience difficulties in directly supervising debtors 'businesses and debtors' financial conditions. Because the bank cannot review and supervise the development of the debtor's business continuously.

The bank's internal policy to overcome the above obstacles is if the debtor's attitude is cooperative, then restructuring is carried out. However, if the debtor's attitude is not cooperative, there will be no restructuring, the settlement of bad debts will be carried out directly through legal channels.

2. Credit Guarantee Execution.

Non-performing loans settlement apart from the aforementioned credit restructuring, can also be executed for collateral, either through underhand sales or through auctions. In executing the credit guarantee, it is advisable to make an effort to sell under hand if the debtor is still cooperative, but if underhand sales cannot be achieved, then the execution of the collateral is carried out through an auction.

Likewise, in the case of non-performing loan dispute resolution at the Surakarta Sharia State Savings Bank (BTN) Branch Office, however, through the results of interviews it is the last option and is very rarely done. Apart from being difficult to do, it is also feared because the Surakarta Sharia State Savings Bank (BTN) Branch Office is part of a State-Owned Enterprise (BUMN) where there is a loss of state finance so according to him this has been very rarely done even in the last 1 (one) year until the execution stage in the form of a new auction. The execution of credit guarantees can be done in the following ways:

a. Underhand sales

If the collateral for the credit is land and buildings, then Law Number 4 of 1996 concerning Mortgage Rights to Land and Land-Related Objects, hereinafter referred to as the Mortgage Rights Law according to Article 30, shall apply to banks (creditors).) to settle bad debts through the sale of collateral under hand under the provisions of Article 20 paragraph (2), which reads:

> "With the agreement of the giver and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hand if it will obtain the highest price that benefits all parties.".

Furthermore, the provisions of Article 20 paragraph (3) of the Mortgage Rights Law say as follows:

> "(2) The sale as referred to in paragraph (2) can only be carried out after 1 (one) month has passed since being notified in writing by the giver and / or insurance rights holder to interested parties and announced at least in 2 (two) newspapers in circulation. in the region concerned and / or the local mass media, and neither party has raised an objection".

If we read the terms of sale under hand and their explanation in the law, it can be concluded that the underhand sale is possible if there is an indication that the sale through public auction will not reach the highest price. The advantage of this underhand sale is in addition to accelerating the sale of the object of the mortgage, it is also to reduce costs that may arise in executing collateral. According to Iswi Hariyani, the conditions that must be in place for the under-hand sale of collateral to be carried out are as follows:

1. Must be agreed in advance;
2. Aims to get the highest selling price;
3. Sales can only be made after the grace period of one month from the date of notification in writing to the parties;
4. Must be announced in advance through at least two local newspapers or other print media; and
5. Neither party raised an objection.

However, if the credit collateral is in the form of movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with mortgage rights as referred to in the Mortgage Rights Law, then the applicable regulation is Law Number 42 of 1999 concerning Fiduciary Security. , that underhand sale of fiduciary security is possible because of the provisions in Article 29 paragraph (1) letter c, where underhand sales are made based on the agreement of the Fiduciary Giver and Recipient if in this way the highest price that benefits the parties can be obtained.

The arrangement regarding underhand sales of fiduciary security is no different from the arrangements in the Mortgage Rights Law, where the underhand sale is carried out after 1 (one) month has passed since being notified in writing by the Fiduciary Giver and / or the Fiduciary Receiver to parties who interested and announced in at least 2 (two) newspapers circulating in the region concerned.

b. Credit guarantee auction.

Auction is a sale of goods open to the public with a written and / or oral price bid which increases or decreases to reach the highest price preceded by an auction announcement.54 The regulation regarding this auction is regulated by the Regulation of the Minister of Finance of the Republic of Indonesia No. 40 / PMK.07 / 2006 concerning Guidelines for the Implementation of Auctions, which in the provisions of Article 1 states that there are three types of auctions, namely:

1. Execution Auction is an auction to carry out court decisions / decisions or other documents, which are in accordance with applicable laws and regulations, equated with it, in the framework of assisting law enforcement, including: Execution Auction of the State Receivables Affairs Committee (PUPN) , Court

Execution Auction, Tax Execution Auction, Bankruptcy Execution Auction, Article 6 of the Insurance Rights Law (UUHT), Execution Auction controlled / not controlled by Customs, Execution Auction of Confiscated Goods Article 45 of the Criminal Procedure Code (KUHAP), Seized Goods Execution Auction, Discovered Goods Execution Auction, Fiduciary Execution Auction, Pawn Execution Auction.

2. Mandatory Non-Execution Auction is an auction to carry out the sale of state / regional property as referred to in Law Number 1 of 2004 concerning State Treasury or goods belonging to State / Regional Owned Enterprises (BUMN / D) which are obliged by statutory regulations to be sold. by auction including first hand timber and other forest products.
3. Non-Voluntary Execution Auction is an auction to carry out the sale of goods belonging to individuals, community groups or private entities that are auctioned voluntarily by the owner, including BUMN / D in the form of a Persero.

Of the three types of auctions, the one that will be discussed in this paper is the Execution Auction because the auction is used by banks to carry out credit guarantees execution, this is in line with the provisions stipulated in the Mortgage Rights Law and the Fiduciary Guarantee Law. Furthermore, in this Regulation of the Minister of Finance, there are conditions that must be met before the auction takes place, as well as things that must be done by the bank (creditor) as the auction applicant to conduct an auction for credit guarantees:

1. The conditions for the validity of an auction

a. There is an obligation that every auction implementation must be carried out by and / or in front of the auction official unless otherwise stipulated by laws and regulations (Article 2).
b. There is a minimum number of participants for the implementation of an auction, in which at least 2 (two) auction participants must participate in the first auction, while the re-auction can be carried out with 1 (one) auction participant participating (Article 4).
c. There is a provision regarding security deposits in the auction, where in order to become a participant in the auction, each participant must deposit the bid security deposit (Article 15 paragraph 1).
d. Announcement of auction for the auction for execution of immovable property or immovable property sold together with movable property (Article 21 paragraph 1) shall be made with the following conditions: First, the announcement is made twice after 15 (fifteen) days; Second, the first announcement is permitted by means of a post that is easy to read by the public, and can be added via electronic media, however, if desired by the seller the first announcement can be made in a daily newspaper; and Third, the second announcement must be made in a daily newspaper and made 14 (fourteen) days apart before the auction is held.
e. Announcement of auction for the auction for execution of movable property is made 1 (one) time through a daily newspaper 6 (six) days before the auction, except for objects that are quickly damaged or which are dangerous or if the cost of storing said objects is too high, it can be done. less than 6 (six) days but not less than 2 (two) working days, and especially for fish and the like, it should not be less than 1 (one) working day (Article 21 paragraph 2).
f. In an auction with an auction bid that is carried out in person, all valid auction participants or their proxies at the time of placing the bid must be present at the auction venue.
g. There is the imposition of auction fees and poor money from each existing auction.
h. With regard to each auction, the auction official shall prepare minutes of the auction (Article 53). This is the principle of accountability in the auction, in which the auction can be accounted for because the minutes of the auction fulfill the characteristics of an authentic deed as mentioned in the provisions of Article 1868 of the Civil Code so that it has absolute proof power..

2. The bank's obligations in the auction as the auction applicant

1. The seller who intends to make the sale by auction submits a written bid application letter to the Head of KP2LN or the Head of the Auction Hall accompanied by a document of auction requirements (Article 6 paragraph 1).
2. The seller / owner of goods is obliged to show or submit the original document of ownership to the auction official no later than 1 (one) working day before the auction, except for the execution auction which according to the laws and regulations can still be carried out even though the original document of ownership is not controlled by the seller (Article 9 paragraph 1)
3. The auction of land or land and buildings must be completed with a Land Certificate (SKT) from the local Land Office (Article 12 paragraph 1).
4. Sales by auction must be preceded by an auction announcement made by the seller (Article 18), which in principle, the auction announcement is carried out through a daily newspaper published where the goods are to be auctioned (Article 19 paragraph 1). This is a manifestation of the principle of transparency / publicity in the auction.
5. At each auction, the Seller is obliged to set a Limit Price based on an accountable assessment approach, except for the implementation of the Non-Voluntary Execution of movable goods, the Seller / Owner of the Goods may not require a Limit Price (Article 29 paragraph 1).

The provisions of Article 6 of the Mortgage Rights Law and the provisions of Article 29 of the Fiduciary Security Act give the first Mortgage holder and the fiduciary the right to execute both the object of the mortgage and the object of the fiduciary guarantee if the debtor is in default (default). Execution which is carried out by means of a parate executie, in which the mortgage holder or the fiduciary recipient does not require prior approval from the guarantor of the mortgage or fiduciary, and does not require an appointment from the Chairman of the District Court...

The provisions regarding the settlement of problem loans at the Surakarta Sharia State Savings Bank (BTN) Branch Office as previously described are in line with Siswanto Sutojo's view that the settlement of problem loans can be done through:

a. Bank's internal organization

b. Litigation proceedings
c. Out of court proceedings (Non Litigation)
d. Billing
e. State Property and Auction Service Office (KPKNL)
f. Lawyers services

However, in the context of the Surakarta Sharia State Savings Bank (BTN) Branch Office as described above, the handling of non-performing loans is carried out first by carrying out credit rescue through restructuring, then if through restructuring it does not produce optimal settlement, it is carried out by carrying out credit settlement through amicable settlement or settlement through legal channels carried out by the State Property Services and Auction Office (KPKNL).

The Surakarta Sharia State Savings Bank (BTN) Branch Office always strives for a bad credit to be resolved by first carrying out credit rescue through restructuring because this is considered more profitable for the bank than other forms of settlement. With a successful restructuring, it will be able to improve the collectibility of a loan and that means it will reduce the percentage of NPL (Non-performing Loans). When the NPL (Non-performing Loan) is formed, the bank must collect a special reserve fee in the form of PPAP (Allowance for Earning Asset Losses) to anticipate potential bank losses and when the NPL (Non-performing Loan) turns into credit with better collectibility PPAP fees are reduced and bank profits increase.

Conclusion

The settlement of non-performing loans carried out by the Surakarta Sharia State Savings Bank (BTN) Branch Office is non-litigation in nature, namely settlement through the bank's internal organization (restructuring) and settlement through legal channels (carried out by KPKNL). Settlement through the litigation route is rarely even never used because it is considered unfavorable for both the bank and the debtor because the costs for the litigation process are quite high, takes quite a long time, and is preventive for completing files.

References

1. Hikmah, Pelaksanaan Penyelesaian Kredit Macet Secara Non Litigasi (Studi di PT. BPR Hasa Mitra), Jurnal Cahaya Keadilan 3(1).
2. Bekti Krestiantoro. Pelaksanaan Penyelesaian Kredit Bermasalah Dengan Jaminan Hak Tanggungan Di Pt Bank Rakyat Indonesia (PERSERO) Tbk Cabang Semarang, Tesis, Magister Kenotariatan Universitas Diponegoro 2006.
3. Munir, Fuady. Hukum Perkreditan Kontemporer. PT Citra Aditya Bakti. Bandung 2006.
4. Supriyadi. Desain Penyelesaian Kredit Macet Pembiayaan Murâbahah Bmt Bina Ummat Sejahtera Melalui Pendekatan Socio Legal Research. Al-'Adalah 2016 XIII(2),
5. Lina Maulidiana. Penerapan Prinsip-prinsip Murâbahah dalam Perjanjian Islam (Kajian Operasional Bank Syariah dalam Modernisasi Hukum), Jurnal Sains dan Informasi 2011;I:7
6. https://keuangan.kontan.co.id/news/npf-masih-tinggi-perbankan-syariah-siapkan-strategi?page=all, diakses pada tanggal 02 Februari 2021
7. Hikmah, Pelaksanaan Penyelesaian Kredit Macet Secara Non Litigasi (Studi di PT. BPR Hasa Mitra), Jurnal Cahaya Keadilan 3, 1.
8. Rohmadi Usman, Pilihan Penyelesaian Sengketa di Luar Pengadilan, Bandung: Citra Aditya Bhakti 2009,
9. Abdulkadir Muhammad, Rilda Murniati. Lembaga Keuangan dan Pembiayaan. Bandung: PT Citra Aditya Bakti 2005.
10. Interview with Bp. Samsul Hadi, Head of the Surakarta City Sharia Bank tabungan Negara (BTN) Branch, on, 2021.
11. Lexy J. Moleong, Metodologi Penelitian Kualitatif, Bandung: PT. Remaja Rosdakarya 1995
12. Agung Wijaya. Penyelesaian Kredit Bermasalah Pada PT. Bank Perkreditan Rakyat XYZ di Depok, Tesis, Magister Kenotariatan Fakultas Hukum Universitas Indonesia. hlm 2011, 38
13. Veithzal Riva Credit Management Handbook: Teori, Konsep, Prosedur, dan Aplikasi Panduan Praktis Mahasiswa, Bankir, dan Nasabah, Cetakan I, (Jakarta: PT. Rajagrafindo Persada 2006,
14. Johannes Ibrahim, Aneka Jenis Perjanjian Kredit Perbankan, Surabaya: Mitra Ilmu 2010.
15. Hasanuddin Rahman, Aspek-aspek Pemberian Kredit Perbankan di Indonesia Bandung: Citra Aditya Bakti, 1998
16. Destian Hendri Suwarjoko, OJK Anjurkan Restrukturisasi,,Antara. https://www.antaranews.com/berita/ojk-anjurkan-restrukturisasi-kredit-akibat-perlambatanekonomi diakses pada tanggal 17 Februari 2021
17. Rizal Mahmudin, Kendala Restrukturisasi, Ekonomi Akurat. http://ekonomi.akurat.co/id/-read-empat-kendala-restrukturisasi-kredit-kumkm diakses pada 10 2021
18. Iswi Hariyani, Restrukturisasi dan Penghapusan Kredit Macet, Cetakan ke1, Jakarta: PT. Elex Media Komputindo 2010,
19. Subekti R, Tjitrosudibio R. Kitab Undang-undang Hukum Perdata, Cetakan ke-36, Jakarta: Pradnya Paramita 2005,
20. Rita Rosmilia, Pelaksanaan Penyelesaian Kredit Bermasalah (Studi di PT. Bank Rakyat Indonesia (Persero) Tbk. Cabang Semarang Pattimura), Tesis, Program Studi Magister Kenotariatan Program Pasca Sarjana Universitas Diponegoro Semarang.