EFFORT AND RELAXATION TO RESOLVE NON-PERFORMING LOANS IN THE ERA OF THE COVID-19 PANDEMIC

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ABSTRACT

The Covid-19 pandemic has caused various economic impacts, especially in the banking sector. In response to these conditions, the government through the Financial Services Authority (OJK) issued a credit relaxation policy. As an effort to overcome the settlement of non-performing loans in the Covid-19 Pandemic Era. The legal issues studied are related to: (a) Considerations of financial institutions in deciding applications for credit relaxation, (b) Legal protection of creditors and debtors' rights in granting credit relaxation by financial institutions, and (c) supervision of the implementation of relaxation by OJK. In the end, the results of this study can provide policy advice to the government related to Relaxation as an Effort to Resolve Problem Loans in the Era of the Covid-19 Pandemic. To achieve these goals or targets, research will be conducted using a juridical-empirical design, where research is conducted on legal norms related to Banking Credit Relaxation. Then proceed with research on primary data in the field.

Keywords: Covid-19, Relaxation, Credit Restructuring

INTRODUCTION

The Corona Virus Disease (Covid-19) pandemic has targeted all countries in any hemisphere, including Indonesia. From January 3, 2020 to July 9, 2021, there were at least 2,455,912 confirmed cases of Covid-19 in Indonesia, with a death rate of 64,631 (WHO, 2021). The Government of Indonesia has responded to the rapid spread of Covid-19 by issuing various restrictions on activities. Including but not limited to political, economic, social, cultural, defense and security activities. Then on March 31, 2020, the Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions was stipulated in the context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) (hereinafter referred to as PP 21/2020). The purpose of issuing PP 21/2020 is to limit certain activities of residents in an area suspected of being infected with COVID-19 in such a way as to prevent the possible spread of COVID-I9. Article 4 of PP 21/2020 stipulates that Large-Scale Social Restrictions (PSBB) include: (a) holidays from schools and workplaces; (b) restrictions on religious activities; and/or (c) limitation of activities in public places or facilities.

After the issuance of PP 21/2021, various terms of activity restriction policies have also emerged, which have been set by both the regional government and the central government. These terms include: Transitional Large-Scale Social Restrictions (PSBBT); micro locks; and the Enforcement of Restrictions on Community Activities (PPKM) (Riana, 2021). Finally, the Implementation of Restrictions on Micro Community Activities (PPKMM) and Enforcement of Restrictions on Emergency Community Activities (PPKMD) (Bramasta, 2021) were also issued.

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Apart from the use of the term restrictions that are always changing, it turns out that these restrictions have a direct impact on various social or economic activities in Indonesia. Based on data from the Central Statistics Agency (BPS), in September 2020, the population living below the poverty line increased by 2.76 million people compared to September 2019 (BPS, 2021). In line with that, the unemployment rate in Indonesia in August 2020 also increased by 2.67 million people compared to August 2019. The unemployment rate (unemployment rate) in August 2020 was 9.77 million people (BPS, 2021). The increase in poverty and unemployment rates is certainly caused by hampered economic activities due to the Covid-19 pandemic.

Besides having a direct impact on the community, the spread of COVID-19 also has an impact on business actors engaged in tourism, transportation, hospitality, agriculture, and mining. It is proven by the number of foreign tourists coming to Indonesia in 2020, which fell drastically by 74.84%. The room occupancy rate in star hotels between 2015–2019 was always above 50.00%, but in 2020 it fell to 34.23%. While the occupancy rate in non-star hotels is always above 30.00%, in 2020 it will decline to 19.62% (BPS, 2021).

When business actors rely on banking institutions as a source of working capital or investment, the decline in income or income will affect their ability to repay loans that have been disbursed by banks. The debtor's inability to pay the credit can be seen from the existing non-performing loan (NPL) number. Based on data from the Financial Services Authority, the increase in NPLs occurred in almost all economic sectors (OJK, 2021). The mining sector's NPL ratio rose significantly from the previous year's 3.66% to 7.51%. The NPL ratio of the manufacturing sector increased from 4.05% to 4.73%. The NPL ratio in the wholesale and retail trade sector increased from 4.01% to 4.52%. The NPL ratio in the transportation, warehousing and communication sectors increased from 2.19% to 2.49%.

Before the impact of the Covid-19 pandemic grew massively, the Financial Services Authority (OJK) had issued OJK Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019 (POJK 11/2020). The main objective of the issuance of POJK 11/2020 is to encourage the optimization of the banking intermediation function, maintain financial system stability, and support economic growth. An economic stimulus policy is needed as a countercyclical impact of the spread of Covid-19. The important point of POJK 11/2020 is for banks to implement policies that support economic growth stimulus for debtors affected by the spread of Covid-19, including debtors of Small and Medium Enterprises (MSMEs) while still paying attention to the principle of prudence. The stimulus policy in question consists of:

a. Assessment of the quality of credit/financing/providing other funds is only based on the accuracy of payment of principal and/or interest for credit/financing/other fund provision with a ceiling of up to Rp10 billion; and
b. Improved credit/financing quality to be smooth after being restructured during the validity period of the POJK. This restructuring provision can be applied by the Bank regardless of the credit/financing ceiling limit or the type of debtor.

In addition, POJK 11/2020 also regulates how credit/financing restructuring is carried out as stipulated in OJK regulations regarding asset quality assessment, among others by: 1) lowering interest rates; 2) extension of time period; 3) reduction of principal arrears; 4) reduction of interest arrears; 5) additional credit/financing facilities; and/or 6) conversion of credit/financing into Temporary Equity Participation.

On October 22, 2020, OJK confirmed to extend the credit restructuring relaxation policy for a year. This was done as an anticipatory measure to buffer the decline in the quality of

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restructuring debtors. The realization of credit restructuring for the banking sector as of September 28, 2020 amounted to Rp 904.3 trillion for 7.5 million debtors (OJK, 2020). In this regard, on December 3, 2020, POJK 11/2020 was amended by Regulation of the Financial Services Authority of the Republic of Indonesia Number 48/POJK.03/2020 (POJK 48/2020). The presence of POJK 48/2020 is related to the extension of the stimulus period, the assessment mechanism for debtors who are considered to be able to continue to survive by the Bank, as well as policies related to liquidity and Bank capital. With the dominant function of banking institutions, banks are referred to as "financial intermediaries" (Sitompul & Zulkarnain, 2002). Banks as a financial intermediary function have the obligation to maintain stability in the value of money, encourage economic activity, and expand job opportunities (Usman & Rachmadi, 2001).

In carrying out the function of lending, of course the bank does not want the credit disbursed to be problematic. What's more, in the midst of the Covid-19 pandemic, where so many business actors feel the impact? (Park et al., 2021). Based on these conditions, the Bank will make every effort to prevent loans from becoming non-performing. If the credit becomes non-performing or is classified as a Non Performing Loan (NPL). A high NPL ratio is positively correlated with hanging corporate debt, which suppresses investment and delays economic recovery (Aiyar et al., 2015). Based on the results of a study of the dynamics of NPLs in 88 banking crises in 78 countries since 1990, a close relationship was found between NPLs and a large and continuous decline in output during the post-crisis period (Anil et al., 2019).

Based on the description above, several problems arise related to; (1) What are the considerations for financial institutions in deciding applications for credit relaxation; (2) How is the legal protection for creditors and debtors' rights in granting credit relaxation by financial institutions; and (3) How to supervise the implementation of relaxation by OJK.

RESEARCH METHODOLOGY

To answer the three problems stated above, the author uses a juridical-empirical research design (Soekanto & Soerjono, 1984). This design is a research by conducting research first on secondary data, namely legal norms related to Relaxation as an Effort to Resolve Problem Loans in the Era of the Covid-19 Pandemic. Then continued with research on primary data in the field, in this case the location of the Financial Services Authority (OJK) (Soekanto & Soerjono, 1984). Secondary data to be analyzed consists of primary legal materials and secondary legal materials. The secondary data obtained will be presented qualitatively.

RESULT AND DISCUSSION

This chapter will describe the results of research related to the considerations of financial institutions in deciding applications for credit relaxation, legal protection for creditors and debtors' rights in granting credit relaxation by financial institutions and the form of supervision of the implementation of relaxation by the OJK.

Considerations of Financial Institutions in Deciding on Credit Relaxation Applications

To encourage optimization of banking performance, especially the intermediation function, maintain financial system stability, and support economic growth, it is necessary to take an economic stimulus policy, the Government or the Financial Services Authority (“OJK”) issued

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POJK 11/2020. On various occasions, OJK has often stated that POJK 11/2020 is a relaxation policy for credit restructuring (OJK 2020). The problem is that OJK does not further define the word "relaxation". Is relaxation the same as restructuring?

Referring to the Big Indonesian Dictionary (KBBI), the word relaxation is defined as the relaxation or lengthening of muscles, the ability to control the level of tension, methods to prepare an actor's body before performing, the ability to control the level of tension; method for preparing an actor's body before performing (KBBI Online 2021). Meanwhile in the Black Law Dictionary (Seventh Edition) “relaxation” is defined as “an instrument by which one relinquishes a right or claim to another; a release” (Garner, 1999). Thus the term relaxation is defined as an activity related to physical activity, not a transaction. If OJK interprets the word "relaxation" as a different term from restructuring, then there must be a separate explanation even though it has substantially the same meaning.

Credit restructuring is an effort to save credit that can be done by banks. Based on POJK Number 40 / POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality (POJK 40/2019) it is explained that Credit Restructuring is an improvement effort made by Banks in credit activities for debtors who have difficulty fulfilling their obligations. Credit restructuring is carried out among others through: (a) lowering of loan interest rates; (b) extension of the term of the Credit; (c) reduction of loan interest arrears; (d) reduction of loan principal arrears; (e) additional Credit facilities; and/or (f) conversion of Credit into Temporary Equity Participation.

Article 2 paragraphs (1) and (2) of POJK 48/2020 stipulates that Banks can implement policies that support economic growth stimulus for debtors affected by the spread of Covid-19 including micro, small and medium business debtors. These policies are in the form of asset quality determination policies and credit or financing restructuring policies. The word "can" in the provisions of Article 2 paragraph (1) of POJK 11/2020 shows that the provision is facultative or optional. Thus, banks are not required to implement a credit restructuring policy in order to support the economic growth stimulus due to the impact of Covid-19.

In the event that a bank decides to implement a restructuring policy, then based on Article (2) paragraphs (3) and (4) of POJK 48/2020 the Bank will continue to pay attention to the implementation of risk management as regulated in OJK regulations regarding the implementation of Bank risk management. In granting restructuring there are at least 2 (two) things that must be considered by the bank. First, banks must have guidelines for determining debtors who are affected by the spread of Covid-19. Both the criteria for debtors who are determined to be affected by Covid-19 and the sector affected (Covid-19). Second, the bank assesses debtors who are able to survive the impact of COVID-19) and still have business prospects so that they can be given credit restructuring or financing.

The substance of the regulation in POJK 48/2020, basically there is no difference in the substance of the restructuring arrangement in POJK 40/2019. Based on Article 52 of POJK 40/2019, Credit Restructuring will only be taken by the bank if the bank believes that: (a) the debtor is experiencing difficulties in paying the principal and/or interest on the loan; and (b) the debtor still has good business prospects and is considered capable of fulfilling obligations after the Credit is restructured. If the bank finds that the customer's business prospects or good faith, especially those two things, do not exist, the bank will immediately make efforts to settle credit.

To ensure the implementation of Article 57 of POJK 40/2019, every bank is required to have written policies and procedures regarding Credit Restructuring. Based on Article 57 of POJK 40/2019, the Credit Restructuring policy must be approved by the Board of Commissioners, while the Credit Restructuring procedure must be approved at least by the Board

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of Directors. Furthermore, Article 59 of POJK 40/2019 stipulates that loans to be restructured must be analyzed based on the debtor's business prospects and ability to pay according to cash flow projections. In this regard, each stage in the implementation of Credit Restructuring and the results of the analysis conducted by the Bank on the restructured Credit must be fully and clearly documented.

Thus, the determination or credit restructuring scheme due to Covid-19 can vary and is largely determined by the policies of each bank. The granting of restructuring depends on an assessment of the profile and capacity to pay of the bank's debtors. The provision of restructuring will depend on the guidelines made by each bank in determining debtors who are affected by the spread of Covid-19. Because there is no guarantee for debtors who were previously smooth then their business performance declined as a result of Covid-19 to obtain restructuring. On the other hand, banks also have the potential to take irresponsible actions (moral hazard). For example, the restructuring policy was given to non-performing credit customers before the outbreak of Covid-19, so that their credit status became smooth. Of course this can cause new problems in the future.

In this regard, OJK must issue clear and concrete rules regarding the criteria for debtors and sectors affected by the spread of Covid-19. It is not solely up to the bank to determine the guidelines for determining debtors who are affected by the spread of Covid-19. At least OJK has the authority to examine or correct the guidelines that have been prepared by the bank. In this case, OJK can ensure that the restructuring is really given to debtors affected by Covid-19. On the other hand, if the debtor who should be entitled to a restructuring is not approved by the bank, then he can file an objection to the bank or submit a complaint to the OJK.

Legal Protection against Creditors and Debtors' Rights in Providing Credit Relaxation

Based on OJK data, the trend of restructuring loans increased significantly at the beginning of the pandemic until the 3rd quarter of 2020. The trend then sloped and there was a downward trend in the following months. Outstanding credit is restructuring and the number of bank restructuring debtors due to Covid-19 on May 10, 2021 showed a downward trend compared to the position in December 2020. The total credit restructuring as of May 10, 2021 was IDR 778.2 Trillion, out of 5.34 million debtors including 3.9 million debtors. Micro, Small and Medium Enterprises (“MSMEs”). The total restructured MSME loans amounted to Rp 303.7 trillion.

The restructuring policy has an impact on increasing the Allowance for Impairment Losses (CKPN) by banks as a way to deal with potential credit defaults in credit restructuring. One of the factors that indicate that the restructuring policy affects bank solvency is the Capital Adequacy Ratio (CAR) or the capital adequacy ratio. CAR is a capital adequacy ratio that shows the ability of banks to provide funds that are used to overcome possible risk of loss. The higher the CAR value, the better the banking ability to deal with the possible risk of loss. Based on OJK data, banking CAR in April 2021 remained high at 24.26%. Meanwhile, the ratio of non-performing loans (NPLs) was maintained at 3.22% (gross) and 1.06% (net).

Although the restructuring trend is declining, banking CAR is high, and NPL is maintained, there are still risks that continue to increase with the increase in outstanding loan restructuring as a result of Covid-19. The potential for an increase in credit risk needs to be watched carefully considering that there is an increase in the Loan at Risk (LAR) ratio in banking amid the Covid-19 pandemic. In this regard, there must still be protection provided by law to banks as creditors and debtors in providing credit relaxation.

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Protection for banks is regulated in Article 6A of POJK 48/2020 which requires banks to conduct an assessment of the ability to survive debtors affected by Covid-19. In the event that the Bank has assessed that the debtor affected by Covid-19 cannot survive, the Bank shall conduct a restructured Credit Quality Assessment in accordance with POJK regarding asset quality assessment. The credit quality assessment mechanism must be listed in the Bank's internal guidelines as an integral part of the guidelines for determining debtors affected by the spread (Covid-19).

Article 12 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 40 /POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality ("POJK 40/2019") stipulates that Credit quality is determined to be: a. Fluent; b. In Special Mention; c. Not that smooth; d. Doubtful; or e. Congested. When a loan is of bad quality and is no longer possible to be saved, the bank must make a last resort called credit collection. Various efforts can be taken by banks in credit collection as described below:

a. Execution of Collateral Rights in the form of Mortgage execution in accordance with the provisions of Law Number 4 of 1996 concerning Mortgage Rights, execution of Mortgage and Pawn objects as regulated in the Civil Code, or execution of Fiduciary Guarantee objects as regulated in Law no. 42 of 1999 concerning Fiduciary Guarantee.
b. Sales of assets (which are not encumbered with Guarantee Rights) from debtor customers voluntarily (outside the bankruptcy process), as a realization of the provisions of Article 1131 of the Civil Code.
c. Filing a lawsuit through the local district court in accordance with the provisions of the Civil Procedure Code (HIR).
d. The submission of a petition for a declaration of bankruptcy against a debtor to the Commercial Court as regulated in Law no. 37 of 2004 concerning Bankruptcy.

Thus, the form of protection provided by law to banks as creditors is to make a last resort called credit collection. POJK 48/2020 does not regulate special matters related to legal protection for creditors in providing credit relaxation. It can be concluded that the form of legal protection for banks as creditors during the Covid-19 period is not much different from the period before the spread of Covid-19.

On the other hand, POJK 48/2020 jo. POJK 11/2020 also does not stipulate special protection for debtors undergoing a restructuring process due to Covid-19. In the event that the debtor is harmed by the restructuring policy, the efforts that can be submitted are limited to filing a lawsuit through the local district court in accordance with the provisions of the Civil Procedure Code. Therefore, the form of legal protection for debtors during the Covid-19 period is not much different from the period before the spread of Covid-19.

Supervision of Credit Relaxation Implementation by OJK

Based on Article 8 of POJK 48/2020, OJK's supervision of restructuring banks is in the form of receiving Credit Stimulus Reports and Credit Stimulus Recapitulation Reports. Banks report loans or financing restructured by the Financial Information Service System (SLIK) by adding the statement "COVID-19". Thus, the supervision carried out by OJK is limited to supervision related to the health and performance of banks.

POJK 48/2020 has not shown that OJK also has the authority to provide protection to consumers. Whereas the purpose of establishing OJK based on Article 4 Number 21 of 2011 (OJK Law) is so that all activities in the financial services sector are able to protect the interests of consumers and the public. The OJK should have opened a consumer and/or public complaint service in the financial services sector during the Covid-19 pandemic. The consumer service is

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carried out with due regard to the Financial Services Authority Regulation Number 31 / POJK.07/2020 concerning the Implementation of Consumer and Community Services in the Financial Services Sector by the Financial Services Authority. This is done with the aim of preventing greater losses for debtors as consumers due to restructuring in the future.

CONCLUSION

Relaxation is an effort made by OJK in providing legal certainty for Micro, Small and Medium Enterprises (MSMEs) to obtain credit restructuring for those affected by the Covid-19 pandemic. Therefore, banks as creditors must follow the POJK related to credit relaxation and as much as possible avoid actions that have the potential to harm the debtor (moral hazard). On the other hand, legal protection for the rights of banks as creditors is not much different from the previous period, namely through efforts to collect credit in the form of execution of collateral rights, sale of assets, filing of lawsuits or filing applications for bankruptcy statements. For this reason, OJK, which has the authority in the financial sector, must increase its supervision of banks that carry out credit restructuring due to the Covid-19 pandemic in the form of receiving Credit Stimulus Reports and Credit Stimulus Recapitulation Reports. For this reason, OJK must issue rules so that credit relaxation or restructuring can provide protection, both to debtors and creditors by issuing clear and concrete rules related to the criteria for debtors and creditors during the Covid-19 pandemic.

REFERENCES

Aiyar, S.,W. Bergthaler, J. Garrido, A. Ilyina, A. Jobst, K. Kang, D. Kovtun, and D Y. Liu. (2015). "A strategy for resolving Europe’s problem loans." IMF Staff Discussion Note No. 15/19.

Anil, A.,S. Chen, and L. Ratnovski. (2019). "The dynamics of non-performing loansduring banking crises: A new database." IMF Working Papers 19/272 Washignton DC.

BPS. (2021). Statistik Indonesia dalam Info Grafis. Catalog, Jakarta: Badan Pusat Statistik.

Bramasta, Dandy Bayu. 2021. Kompas.com.

Garner, Bryan A. (1999). Blackk's Law Dictionary. USA: West Publishing Co.

KBBI Daring. (2021). KBBI Kemendikbud.

OJK. (2021). Laporan Profile Industri Perbankan Triwulan I 2021. Report OJK, Jakarta: Otoritas Jasa Keuangan.

Park, Cyn-Young, and Kwanho Shin. 2021. "COVID-19, nonperforming loans, and cross-border bank lending." Journal of Banking and Finance 1.

Riana, Friski. (2021). Tempo.com. Maret 2. Accessed 7 12, 2021. https://nasional.tempo.co/read/1437725/setahun-pandemi-covid-19-ini-aneka-kebijakan-pemerintah-dan-kritiknya/full&view=ok.

Sitompul, Zulkarnain. (2002). Perlindungan Dana Nasabah: Suatu Gagasan tentang Pendirian Lembaga Penjamin SImpanan di Indonesia. Jakarta: Universitas Indonesia.

Soekanto, Soerjono. (1984). Pengantar Penelitian Hukum. Jakarta: UI-Press.

Usman, Rachmadi. (2001). Aspek-Aspek Hukum Perbankan di Indonesia. Jakarta: Gramedia Pustaka Utama.

WHO. (2021). World Health Organization.

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