

Default Settlement on Unsecured Loans

Kuntri Selvilia Lidya Sari¹, Tutiek Retnowati¹

¹Faculty of Law, Narotama University Surabaya

E-mail: lidyasari60@gmail.com

ABSTRACT

Economic development is the most important part of national development goals, such as the 1945 Constitution (after amendments) in the fourth paragraph, namely: Protecting the entire nation to promote general welfare, educating the nation's life and participating in carrying out world order. The aim is to find out and analyze the legal consequences arising from Default from a credit agreement without collateral and to know and analyze so that the settlement of default from an unsecured credit agreement is carried out by the debtor. The research method used is normative law (normative juridical) and analysis of laws and regulations, jurisprudence, contracts and legal literature. The result of the research is the position of guarantee in providing credit by the Bank as the creditor to the debtor, which is an absolute requirement with the aim of having legal certainty which has been expressly regulated in the credit agreement. Legal remedies that arise if credit is given without any guarantee from the customer (debtor) is that the bank is in its position as a concurrent creditor on a par with other creditors in terms of paying off credit debts, so that they have to compete with other creditors in paying off credit debts. Because it does not

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1. INTRODUCTION

Protecting the entire nation to promote public welfare, educate the nation's life and participate in carrying out world order (Mundy, 1999). From a fragment of the preamble to the 1945 Constitution (after the amendment) it is clear that the goal of National development is one form of achieving a just and prosperous society based on Pancasila and the 1945 Constitution (after the amendment). In order to support and maintain sustainable development, various parties involved in development, both the government and the community as individuals and legal entities, really need financing in very large amounts. One of the means of institutions that have a role in financing or providing capital is banking institutions (Osmańczyk, 2003).

The definition of a bank as stated in the Law on Amendments to the Law on Banking, states that: "In order to maintain the existence of banking institutions in carrying out their business activities, all financial institutions, especially banking institutions, need to understand the principle of prudence in carrying out their business activities (Omarova & Tahyar, 2011). The description of the credit agreement is a consensual agreement between the debtor and the creditor that results in a debt-receivable relationship, where the debtor is obliged to repay the loan that has been given by the creditor based on the terms and conditions that have been agreed upon by the parties (Johnson & Rice, 2008).

Unsecured credit loans must meet the legal requirements of the agreement contained in Article 1320 of the Civil Code, namely (Perwitasari, 2018):

1. Agree for the parties to bind themselves in the agreement



The unsecured credit agreement is based on an agreement between the two parties between the creditor and debtor.

2. Proficient in making agreements

Competence in making agreements or not under supervision or because of the law it is not prohibited to make agreements.

3. A certain thing

in an agreement is the object of agreement achievement. A credit agreement is an agreement between a creditor and a debtor that is carried out in a clear manner, carried out with clear processes and procedures.

4. A lawful cause

The purpose of the agreement from the principle of providing credit can be a credit analysis, in order to be able to create or build a trust from the bank to the customer who will enter into a credit agreement with the bank. However, banks offer various facilities to the public to get credit or loans. In its development, this facility gave birth to products from credit that no longer require collateral as a condition for granting credit. Products issued by banks are commonly referred to as Unsecured Loans (KTA) or in other words called unsecured loans. Unsecured Credit is a banking product that provides loan benefits without any collateral being used as collateral for the loan.

Unsecured loans are loans that are given without being followed by any collateral, both movable and immovable objects and because there is no guarantee given by the debtor, the decision to approve the granting of credit is decided based on the prospect of interpreting the ability of the debtor and the track record of the prospective debtor personally or in other terms, it is based on the ability of the borrower to carry out the agreed-upon maturity payments. With unsecured credit, of course, it will make it easier for debtors to get loan credit but do not have collateral to guarantee. Because the loan is given only based on the ability of the debtor without any collateral in it, interest is given.

Unsecured credit provided by the bank actually provides convenience for the community because in providing credit it does not require a condition for the existence of a collateral, but on the other hand it raises the problem of providing a very high risk for the bank. Based on the relation regarding the importance of a guarantee by the creditor, that is, the granting of credit is nothing but an effort to minimize the risk that the grace period for repayment and repayment of the credit will arise. The existence of credit guarantees is a requirement in order to minimize unwanted things in providing credit.

If, the investment being financed fails or is not in accordance with the original calculation or interpretation. Then this happens, the bank will be harmed because the costs distributed have the

opportunity to be non-refundable by the debtor and the bank will have difficulty covering losses on the loans distributed That collateral has the following

1. Uses get repayment from (default) i.e. repay the debt at the due date specified in the agreement;
2. Guarantee credit transactions to finance their business, the project can harm oneself or the company can be minimized or at least the possibility of having bad faith can be overcome;
3. Provide encouragement to the debtor to fulfill his promise regarding repayment in accordance with the agreed terms so that the debtor and/or third parties who participate in guaranteeing do not lose their assets that have been pledged to the bank.

Default clause is an important thing to be included in an agreement. As R. Subekti describes the meaning of the word default as follows: "If the debtor (the debtor) does not do what he did, that he is in default, which is caused by negligence or breach of contract. Or he violates the agreement, he should not do it.

2. RESEARCH METHOD

The research method used is normative law (juridical normative) and analysis of laws and regulations, jurisprudence, contracts and legal literature. is a statutory approach. On the other hand, the approach used is a conceptual approach. This study uses the basis of analysis of laws and regulations, court decisions, contracts or several legal documents.

3. RESULTS AND DISCUSSION

Settlement Efforts Made by Creditors Against Unsecured Credit Default Debtors Through Litigation

In applying Unsecured Credit (KTA) there is no match between theory and practice in the field, usually caused by a situation that makes the creditor and the credit recipient commits an act that is not in accordance with the contents of the agreed agreement. Article 1131 of the Civil Code regulates and discusses this issue (Bolton & Oehmke, 2011).

1. If, based on this Article, this Article can provide knowledge to the debtor party who breaks his promise or defaults, so information does not need to be provided from the first time the agreement is made by both parties. The agreement between the parties, the debtor in this case is certainly very disadvantaged. Every violation and non-fulfillment of an achievement in the agreed agreement will definitely result in loss for one party. Therefore, the debtor who violates the agreed agreement or breaks the promise will receive legal consequences which include: The debtor is required to pay compensation suffered by the creditor (Article 1243 of the Civil Code) (Butler, 2007).



2. The cancellation of the agreement is accompanied by payment of compensation (Article 1267 of the Civil Code).
3. The transfer of risk to the debtor from the time the default occurs (Article 1237 Paragraph (2) of the Civil Code).
4. Payment of court fees if brought before a judge (Article 181 paragraph (1) HIR).

If the debtor does not carry out the obligations that should be carried out or does not carry it out at all, it will have legal consequences for him and can be sued before a judge. Apart from legal consequences from the debtor those who do not carry out their obligations can also be sued by the Bank for compensation for losses suffered by them As has been explained in Article 1236 of the Civil Code and Article 1243 of the Civil Code (Ramadhani, 2020). So, it can be said that Unsecured Loans because the creditor cannot decide what the loan is, it can apply provisions regarding the debtor's assets that he owns as collateral for a mandatory loan (debt) paid by him, as stated in Article 1131 of the Civil Code (Gordley, 1994).

If, referring to Law Number 8 of 1999 concerning Consumer Protection, then of course the above problem does not occur, because in in CHAPTER V Article 1 8 of Law Number 8 of 1999, it regulates matters regarding the inclusion of standard clauses. More precisely in Article 18 Paragraph (1) letter g, it states that consumers must obey and be subject to new rules made unilaterally by business actors because of the benefits of the services of the bank. Law Number 8 of 1999 concerning Consumer Protection Article 4 the first part of 1999 Number 42 TLN 382 of the provisions shows that the consumer is harmed.

Losses in the Civil Code can be sourced from defaults and acts against the law. Losses due to default is an event in which one of the parties does not carry out a good performance, does not fulfill his performance at all, fulfills the achievement but not as it should, fulfills the achievement but is not on time or fulfills the achievement but does what is prohibited in the agreement.

The parties can choose the dispute resolution to be used. Article 1266 of the Civil Code states that the conditions for cancellation are considered always included in a reciprocal agreement, if one of the parties does not fulfill its obligations (Zulkarnain, 2021). The provisions of the article are very important to remind the parties in this case the creditors and debtors who make an agreement in resolving the problem that the agreement must be carried out consistently by the parties. Article 1851 to Article 1864 of the Civil Code concerning peace, which states that peace is an agreement, therefore a peace agreement is valid if it is made to fulfill the conditions for a valid agreement to be made in writing. Reconciliation can be done inside the Court or outside the Court. Settlement of disputes by non-litigation, peace is made outside the court which is more emphasized, namely how legal disputes can be resolved by way of peace outside the court and that peace has the power to be carried out by both parties to the dispute in this case.

Losses caused by default can be requested for compensation as contained in Article 1243 of the Civil Code, compensation consists of: loss costs and interest. Article 1246 of the Civil Code also mentions compensation consisting of: actual losses suffered and interest or expected profits, while losses due to unlawful acts as in the explanation in Article 1365 of the Civil Code, it is stated that "Every act that violates the law and brings losses on another person, obliges the person who caused it because of his fault to compensate for the loss (Gegen, 2021). In the lawsuit against the law there is no clear regulation regarding the compensation. However, as regulated in Article 1371 paragraph (2) of the Civil Code, it states that: "This compensation is assessed according to the position and ability of both parties and the circumstances". Losses that occur due to hidden defects are losses that are included in default if they are bound by an agreement and if not, the consumer can sue based on an unlawful act.

If, the engagement is born from a reciprocal engagement, the creditor can free himself from his obligation to provide counter-achievements by using article 1266 of the Civil Code. In addition to the debtor having to bear the foregoing, what the creditor can do in dealing with a debtor who is in default there are five possibilities as follows Article 1276 of the Civil Code:

1. Comply with carrying out the agreement.
2. Fulfilling the agreement accompanied by the obligation to pay compensation.
3. Pay compensation.
4. Canceling the agreement, and
5. Canceling the agreement with compensation.

However, in addition to the above, it is also necessary to remember the provisions of Article 1266 of the Civil Code which contains: "The conditions for cancellation are considered to be always included in a reciprocal agreement when one of the parties does not fulfill its obligations. In such case the agreement is not null and void, but the cancellation must be requested from the judge. This request must also be made even though the void conditions regarding non-fulfillment of the agreement are stated in the agreement. If the conditions for cancellation are not requested in the agreement, the judge is free to according to the circumstances at the request of the defendant to give a period of time to still fulfill his obligations, but the period cannot be more than one month. The provisions of the above article are related to consumer protection, therefore it can be seen that the cancellation of the agreement cannot be canceled unilaterally, but a cancellation is requested to the court. Thus we have to sue for default or breaking promises (Grose, 2010).

Settlement Efforts Made by Creditors Against Unsecured Credit Default Debtors Through Litigation and Non-Litigation Pathways

- a. Settlement through the Restructuring Path



if there are non-performing loans, the bank must identify the problem and carry out the strategic analysis needed to determine the appropriate steps in resolving the non-performing loans based on Bank Indonesia Regulations, Financial Services Authority Regulations and bank internal policies. Settlement of non-performing loans can be done in two ways, namely:

b. Credit Restructuring

According to Bank Indonesia Regulation Number 7/2/PBI/2005 concerning Asset Quality Assessment for Commercial Banks, that as an effort to minimize potential losses from non-performing debtors, banks may conduct credit restructuring for debtors who still have business prospects and the ability to repay. Credit restructuring efforts are efforts to save non-performing loans which include efforts (Defryanti Muchlis & Suganda, n.d.):

Rescheduling, which means changing the debtor's payment schedule or time period. Rescheduling is an effort to make changes to several terms of credit agreements relating to the repayment schedule/credit period including grace period, including changes in the amount of installments. If necessary with additional credit.

Rescheduling is carried out if the debtor is unable to pay off the credit installments that have matured, but from the evaluation results the bank knows that the prospect of the debtor's financial condition in the future is not worrying. The time for extending the due date by rescheduling credit repayment should not be too long. This is due to the extension of the maturity date of credit repayment which is too long by reducing the seriousness of handling non-performing loans.

Restructuring terms mean part or all of the credit terms, which are not limited to changes in payment schedules, terms, and other terms. Provisions for credit restructuring were issued on November 12, 1998, by Decree of Bank Indonesia Number 31/150/KEP/DIR. This Decree was later amended by Bank Indonesia Regulation Number 2/15/PBI/2000 dated June 12, 2000, where the amendment was only in one article, namely Article 12 paragraph (1) letter b. Then the provisions regarding restructuring were confirmed in Bank Indonesia Regulation No. 7/2/PBI/2005 as amended by Bank Indonesia Regulation Number 8/2/PBI/2006 concerning Asset Quality Assessment of Commercial Banks, it is stated that credit restructuring is an effort made by banks in credit business activities so that debtors can fulfill their obligations (Sujana, n.d.).

In addition, Bank Indonesia has stipulated provisions regarding the obligations of commercial banks to own and implement bank credit policies based on the guidelines for formulating bank credit policies in the Decree of the Director of BI Number 27/162/KEP/DIR dated March 31, 1995 (Dianto et al., 2020). Based on the Decree of the Director of Bank Indonesia, Commercial banks are required to have a written credit policy approved by 4 (four) Bank's Board of Commissioners, which at least contains and regulates the following main matters:

1. Prudential principles in credit.
2. Organization and management of credit.
3. Policy on credit approval.
4. Documentation and administration of credit.
5. Credit monitoring.
6. Settlement of non-performing loans.

The said bank credit policy must be submitted to Bank Indonesia. In the implementation of lending and credit management, banks are required to comply with bank credit policies that have been formulated consistently and consistently from these provisions. guidelines for daily credit. Banks are also required to have rules regarding the settlement of non-performing loans and are carried out in accordance with applicable regulations and procedures. One of them is written policies and procedures regarding credit restructuring.

Reconditioning means changes in credit terms involving adding credit facilities and converting all or part of arrears in interest installments into new principal installments, which can be accompanied by rescheduling and/or reconditioning. Reconditioning is an attempt by the bank to save the credit it provides by changing some or all of the conditions (requirements) that were originally agreed upon by the debtor and the bank which are then set forth in the credit agreement. These changes are not limited to changes in the installment schedule and/or credit terms, but changes in credit without providing additional credit or converting all or part of the credit into company equity. The forms of reconditioning can be:

- a. Changes in interest rates.
- b. Changes in the calculation procedure.
- c. Changes in interest arrears relief.
- d. Grant relief of fines.
- e. Granting of fee or fee waivers.
- f. Changes in the customer's company's capital structure.
- g. Banks participate in customer capital.

Restructuring efforts, for example, by extending the credit period, providing a grace period for payment, reducing loan interest rates and so on. Credit restructuring can be granted if the customer has good intentions. Customers with good intentions in resolving non-performing loans can be measured by their willingness and ability to pay from the form of customer behavior, including:

1. The customer is willing to be invited to discuss in order to settle his credit.
2. The customer is willing to provide correct financial data.
3. The customer gives permission to the bank to check the financial statements.



4. The customer is willing to participate in the non-performing loan rescue program and carry out the steps given by the bank.

Credit restructuring efforts are improvement efforts made by banks in credit activities for debtors who have difficulty fulfilling their obligations, which are carried out through:

1. Reducing loan interest rates;
2. Extension of credit period;
3. Reduction of loan interest arrears;
4. Reduction of loan principal arrears;
5. Addition of credit facilities; and/or
6. Credit conversion into temporary equity participation.

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

- a. Improve credit quality; or
- b. Avoid increasing the formation of PPAP, regardless of the debtor's criteria.

Efforts to resolve disputes through non-litigation channels. The Civil Code is divided into several types, namely: arbitration, consultation (negotiation), mediation, and consolidation. Regulations that can be used as legal basis are PBI No.8/5/PBI/2006 concerning Banking Mediation, Law Number 30/1999 concerning Arbitration and Alternative Dispute Resolution, PBI No. 7/7/PBI/2005 concerning Settlement of Customer Complaints.

Legal Protection for Creditors (Banks) and Debtors as Customers

Protection of banks as creditors legal protection in banking transactions is something that should be put forward so that the interests of the parties can be protected. The form of legal protection is basically an effort to enforce the law. Given that the provision of KTA is carried out without collateral (physical collateral), it is very necessary for banks to protect against possible risks, such as bad loans. As mandated in Article 2 of the Bank Indonesia Regulation, that banks are required to apply Know Your Customer Principles, Standard Chartered Bank has implemented this principle with the Know Your Customer (KYC) KYC Checklist form. In addition, SCB also conducts training for sales regarding correct form filling, and its overall application. According to M. Ali Fauzi (Agency Unit Manager at PT. Arya Surya Perdana), the objectives of KYC include:

1. Preventing banks and sales from being involved in money laundering and fraud.
2. To be able to offer products and features that suit their needs.
3. Comply with Bank Indonesia Regulations.
4. Maintain the reputation and good name of SCB.

At SCB there is also a special division related to the application of Know Your Customer Principles, namely the Service Support Unit (SSU) which is in charge of checking and analyzing potential customers, whether or not they are eligible to receive KTA. From the information in the

KYC form, re-verification is carried out to check the correctness of the data from the prospective customer, the Bank also applies the SC principle (in this case the 4C principle) before granting credit, namely:

1. Character (the characteristics of the prospective debtor).
2. Capital (capital).
3. Capacity (ability).
4. Condition of Economy (economic condition).

Collateral requirements are not absolute in the event that the bank already has a credit guarantee, namely the bank's confidence in the debtor's ability to repay the loan in accordance with the agreement. In addition, the 4P principles are also applied which include:

1. Personality (debtor's personality).
2. Purpose (the purpose of using credit).
3. Prospects (future of the debtor's business).
4. Payment (the method of payment).

The KTA agreement also contains a series of clauses, most of which are an effort to protect creditors in granting credit. Clauses are a series of requirements formulated in an effort to provide credit from the financial and legal aspects. From the financial aspect, the clause protects the creditor in order to be able to demand or withdraw funds that have been given to the debtor customer in a favorable position for the creditor if the condition of the debtor customer is not in accordance with the agreement. Meanwhile, from the legal aspect, the clause is a suggestion for law enforcement so that the customer the debtor can comply with the substance that has been agreed in the credit agreement.

Protection of Customers as Debtors

Legal protection for debtor customers in transacting with banks has not yet been given an adequate place. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking does not directly regulate protection for customers. Chapter V regulates the development and supervision of banks. These provisions are:

1. Article 29 Paragraph (1): Bank Indonesia is fostering and supervising banks.
2. Article 29 Paragraph (2): Banks are required to maintain the soundness of banks in accordance with the provisions on capital adequacy, asset quality, management quality, liquidity, profitability, solvency and other aspects related to bank business and are required to conduct business activities in accordance with prudential principles. .
3. Article 29 Paragraph (3): In providing credit or financing based on sharia principles and conducting other business activities, banks are required to take methods that do not harm the bank and the interests of customers who entrust their funds to the bank.

4. Article 29 Paragraph (4): For the interest of customers, banks are required to provide information regarding the possibility of risk of loss in connection with customer transactions conducted through the bank.

Legal protection for debtor customers is also contained in Law Number 8 of 1999 concerning Consumer Protection, considering that customers are final consumers. In Article 18 Paragraph (1) of this Law, it is regulated regarding the prohibition of the inclusion of standard clauses in every document and/or agreement if:

1. the transfer of responsibility of the Business Actor (Article 18 Paragraph (1) letter (a).

Declare from consumers to business actors either directly or indirectly to take unilateral actions related to goods purchased by consumers in installments (Article 18 Paragraph (1) letter d)

. attorney, continuation and/or follow-up changes made unilaterally by business actors when consumers use the services they buy

Business actors are prohibited from including standard clauses whose location and shape are difficult to see or cannot be read clearly, or whose disclosures are difficult to understand 36 Any standard clauses that has been determined by the business actor in the document or agreement that meets the provisions as referred to in Paragraph (1) and Paragraph (2) is declared null and void." Business actors are required to adjust standard clauses that are contrary to Law Number 8 of 1999 concerning Consumer Protection. Bank Indonesia also issued regulations concerning legal protection for debtor customers, including:

1. Bank Indonesia Regulation Number 7/6/PBI/2005 concerning Transparency of Bank Product Information and Personal Use of Customers.

2. Decree of the Board of Directors of Bank Indonesia Number 27/1120 KEP/DIR dated January 25, 1995 concerning Procedures for Exchanging Information Between Banks.

3. Decision of the Board of Directors of Bank Indonesia Number 28/37 KEP/DIR Dated July 10, 1995 concerning Information on Commercial Bank Debtors.

In the implementation of this regulation, prospective consumers (customers) should use the rights as regulated in Law Number 8 of 1999 concerning Consumer Protection, so that they can better protect themselves as well as from losses due to ambiguity and incomplete information. In relation to the principle of freedom of contract in the making of a KTA agreement, restrictions are also regulated, including:

1. Restrictions from the government and statutory regulations.

2. Restriction of decency and public order.

3. Restriction of defects in will.

In the Draft Law on Banking Credit, there are efforts to provide protection for debtor customers, including:



1. Prohibition for banks from including clauses in credit agreements that require credit applicants or debtors to comply with conditions that will be determined later, except for the following: -Things that are expressly stated in the Act.
2. The obligation for the creditor to notify the debtor in writing if the creditor for certain reasons must increase the agreed interest rate.
3. The obligation of the creditor to periodically provide information to the debtor regarding the mutation of the credit account, either with or without the request of the debtor.

4. CONCLUSION

The position of guarantee in granting credit by the Bank as creditor to the debtor, which is an absolute requirement with the aim of providing legal certainty which has been expressly regulated in the credit agreement. This is because the guarantee is very important for the bank to ward off the risks that may arise in the future as a result of providing credit by the bank to the debtor. The legal consequences for the bank as creditor if the credit is given without collateral contains a greater risk so that the legal consequences apply that all debtor's assets, both movable and immovable, that already exist or will exist in the future, all become guarantees for the fulfillment of debt payments.

Legal remedies that arise when credit is given without any guarantee from the customer (debtor) is that the bank is in its position as a concurrent creditor on a par with other creditors in terms of repaying credit debts, so that they must compete with other creditors in paying off credit debts. Because they do not have preference rights, credit debt can occur. Because they do not have preference rights, it can happen that credit debts are not paid in full to the bank, because the bank has to share with other creditors in terms of paying off debts from customers (debtors). Upaya penyelesaiannya yang dilaksanakan melalui non litigasi yaitu: melalui jalur mediasi, konsiliasi, konsiliasi, arbitrase dan penyelesaian secara penjadwalan kembali (rescheduling), persyaratan kembali (reconditioning) dan penataan kembali (restructuring).

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