

Overmacht As The Basis of Giving Stimulus To Bank Customers Affected By Covid 19

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ABSTRACT

The Covid 19 pandemic has seriously hurt the global economy both at micro and macro levels. The impact of the Covid 19 pandemic in the form of workers losing their jobs and several business sectors unable to operate again, this causes debtors to be unable to pay off creditors' debts and causes defaults in accordance with agreements agreed upon by banks and debtors. The impact of covid 19 can be categorized as a state of force / overmacht, so that the Government through the Financial Services Authority makes a rule that banks can provide stimulus facilities for bank debtors as. This study aims to determine the limit of the stimulus provided by banks to debtors who are affected by covid 19.

Keywords: Overmacht, Credit, Covid 19

1. INTRODUCTION

Everyone can make an agreement with the bank to request credit assistance which is bound in writing in a credit agreement for a certain amount and time that has been agreed upon. Before giving credit, the bank has made research on the debtor regarding the feasibility of the customer profile and the risks faced by the customer and the bank. Payment of credit installments may experience obstacles in the form of the customer's inability to pay installments.

To avoid a large enough credit risk, the bank asks for certain collateral such as land and buildings bound in an agreement granting a title to the certificate. During the Covid 19 pandemic the debtor had difficulty funding until it was too late to even be unable to pay installments. Reporting from the media [Kontan.co.id](https://www.kontan.co.id) stated that there was a financial phenomenon, namely the rampant debt restructuring affected by the pandemic, which could not completely reduce the ratio of non-performing loans. A number of banks still recorded an increase in the ratio. Based on data from the Financial Services Authority (OJK), as of April 2020, gross non-performing loans (NPL) had been 2.89%, a significant increase compared to December 2019 of 2.53%. This ratio is also higher than the monthly average ratio in 2019 of 2.59%.

The government as the authority that regulates banking provides solutions to debtors who are affected by Covid 19 in the form of stimulus to avoid bad credit which will affect banks and the national economy. The argument for giving the stimulus can be categorized because of a force / overmacht condition that causes the debtor's customer to default on the contents of the agreement. Furthermore, the legal aspects of the overmacht will be examined as a basis for providing



stimulants to bank debtors affected by Covid 19. This legal research will be aimed at bank debtors and other parties as sources in taking steps to request credit stimulus assistance. It is hoped that this legal research will benefit all parties. The formulation of the problems in this study include the Credit Agreement between the Bank and the Debtor Customer in Its Implementation and the Overmacht as the Bank's Foundation in Providing Stimulus to Customers.

2. RESEARCH METHODS

This legal research is a normative legal research meaning normative legal research, which is a process to find legal rules, legal principles, and legal doctrines in order to answer legal issues faced (Peter Mahmud Marzuki, *Legal Research*, 2011). In this study, the problem approach method is used, namely the statutory approach and the conceptual approach. The statutory approach is carried out by examining all laws and regulations relating to the legal issue being handled. The conceptual approach departs from the views and doctrines developed in the science of law. Studying views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issues at hand. In the conceptual approach, new legal knowledge will be found. The formulation of the problem will then be analyzed with the existing concepts and theories. In this study, researchers used primary legal materials which were authoritative legal materials. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions.

Secondary legal materials are in the form of all legal publications that are not official documents. Publications on law include text books, legal dictionaries, legal journals, and commentaries on court decisions. In this research, the secondary legal materials used include books in the field of law, papers, articles, and theses.

3. DISCUSSION

Credit Agreement Between Bank And Debtor Customer In the implementation of the

Agreement according to Article 1313 BW is a legal action of a person or persons who bind themselves to one another. An agreement creates a bond between the parties which in civil law is referred to as an agreement. Basically everyone has the freedom to make agreements in order to fulfill security and legality before the law without any elements of coercion, error, fraud. An agreement to be valid according to applicable law must fulfill the elements of Article 1320 BW including: a. Agree, b. Legal competence, c. A certain thing. d. What is allowed The

Terms of agreement and legal competence are called subjective conditions, because these two conditions relate to the legal subject who entered into an agreement. Meanwhile, the legal requirements of an agreement are in the form of a certain thing and the causes that are allowed are called objective conditions because they are linked to the object being agreed upon. The meaning

of agreeing in Article 1320 the first paragraph relates to the agreement of the parties to make an agreement and results in a reciprocal relationship between the parties. The second condition is the validity of the agreement regarding the ability to make an agreement, in the formulation of Article 1329 BW it is stated that each person has the authority to bind himself to another person, unless he is declared legally incapable for that matter. Several types of agreements have been regulated in BW which are referred to as named or special agreements as listed in Chapter V - Chapter XVIII. Meanwhile, agreements that are regulated outside BW can be referred to as anonymous agreements. One of the anonymous agreements, namely the credit agreement is often used by financial institutions such as banks.

Talking about banking, it is referred to as a system related to banks, institutions, bank business, and procedures in carrying out business activities. The legal basis for banking in Indonesia is regulated by Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 concerning Banking. If banking is related to systems and institutions, the term bank is different from banking. The definition of a bank is contained in Article 1 (2) of the Banking Law, which is a business entity that carries out activities to collect a number of funds obtained from the public in the form of deposits and then channeled in the form of credit with the aim of improving the people's standard of living. Banks in performing an intermediary function based on the Banking Law and its amendments provide credit to borrowers who need these funds. The credit provided by the bank to debtor customers is stated in the credit agreement with the customer first meeting the terms and conditions given by the bank. Referring to Article 1 (11) of the Banking Law and its amendments, it explains the elements of Credit, including:

- a. bank activities in the form of provision of money or claims
- b. being tied to a credit agreement

Credit is one of the efforts carried out by the bank, in practice between the customer and the customer is bound in a credit agreement which contains the provisions of the debtor's obligation to pay off credit costs with a term and interest and other fees that have been agreed as in the agreement (Hermansyah, *Hukum Indonesian National Banking*, 2009). Before giving credit, banks are required to make an analysis of the debtor who receives credit. Debtor analysis is an action based on the *prudent banking principle*. The definition of the principle of prudence is a legal principle which explains that it is the obligation of a bank to carry out its functions and business activities to be prudent in providing protection for the funds entrusted to it. Following up on the precautionary principle, the results of the assessment by the bank will get an estimate of the level of risk that will be borne if they approve the credit requested. (Siswanto Sutojo, *Commercial Bank Credit Analysis Concepts and Techniques*, Jakarta, 1995).

Reported from Munir Fuady's opinion, that banks make analysis using the 5P method of prospective customers before providing financing or credit, including:



a. Party (Parties)

Credit agreements made by the bank are made in a format that has been made to shorten time. Credit agreements are generally made in writing, in bank practice the form of a credit agreement can be made under hand or made in front of a public official or notary

b. Purpose of lending It is

obligatory for banks to provide an assessment of the target of lending.

c. Payment (payment)

In this case the bank assesses the ability to pay customers against installments

d. Profitability (profitability)

Bank will make a profitability analysis of the debtor's business

e. Protection (protection)

Credit has a high risk so the bank needs a guarantee or certainty for credit by the debtor company. Forms of protection for credit can be in the form of guarantees from holding, or personal guarantees of company owners. The guarantee aims for the bank to be certain about the installment payment. It is expected that customers in paying credit installments will not experience problems with the aim of avoiding bad credit which will affect the country's economy.

Overmacht as the Foundation for the Bank in Providing Stimulus to Customers

Banks in carrying out the intermediation function may experience a risk, one of the risks often experienced by banks in providing credit to customers is the risk of default / late payment. Default in civil law is known as default. The definition of default is a party that does not fulfill the obligations as applied to an agreement or agreement, does not fulfill the obligations in an agreement, can be caused by two things, namely the debtor's fault, whether intentional or due to negligence and due to compelling circumstances (Overmacht / Force Majure). (Djaja S. Meliala. *Bond Law in BW Perspective*, Nuansa Aulia. Bandung, 2012).

Debtors who are affected by Covid 19 can be given credit restructuring facilities under the pretext of forcing / overmacht conditions. According to Rachmat SS Soemadipraja, the specific meaning of overmacht is not explained. There is a theory that an overmacht consists of an objective overmacht and a subjective overmacht. The purpose of the objective overmacht is that everyone cannot do the engagement at all. A subjective overmacht is an unfulfilled achievement due to certain / difficult factors. (Rachmat SS Soemadipraja, *Explanation of Law on Forced Circumstances*, Gramedia, Jakarta, 2010, p. 32). BW regulates the state of force in Articles 1244 and 1245 BW. Formulation of Article 1244 BW.

The formulation of the problem of Article 1244 BW regulates that if there is a reason for this, the debtor must be punished with compensation for costs, losses and interest, if he does not

prove that the thing was not implemented or was not carried out at the right time because of an unexpected thing, even cannot be accounted for to him, all of that even if bad faith is not on his part. Meanwhile, Article 1245 BW determines that costs, losses and interest must be replaced, if due to coercive circumstances or due to an accidental situation, the debtor is unable to provide or do something that is required, or because of the same things he has committed an act which forbidden. Based on the causes of force majeure / Overmacht due to natural conditions, namely a forceful situation caused by a natural event that can not be predicted and avoided by everyone because it is natural without an intentional element, for example floods, landslides, earthquakes, storms, mountains erupted, and so on. Overmacht due to an emergency, namely a coercive situation caused by an unreasonable situation or condition, a special situation that is immediate and short-lived, unpredictable, for example wars, blockades, strikes, epidemics, terrorism, explosions, mass riots, including in it there is damage to a tool which causes an engagement to not be fulfilled. Overmacht due to government policies or regulations, namely a compelling situation caused by a situation where there is a change in government policy or the abolition or issuance of new policies, which have an impact on ongoing activities, for example the issuance of a government regulation (central or regional) which causes an object of the agreement / engagement to be impossible to implement.

From the provisions regarding force majeure in BW, it can be seen that a force majeure or overmacht is an unexpected, unintentional event that cannot be accounted for to the debtor and is compelling, in the sense that the debtor is forced to not keep his promise. The debtor is required to prove that the default is due to coercive circumstances. To be able to say it is a force majeure, it is necessary to fulfill the elements as discussed above. A certain event or condition may not be categorized as force majeure if it was foreseen or due to negligence and / or error of one or the parties in the agreement that particular event occurred. Another thing that also arises in connection with force majeure events or conditions is the consequences that follow. The existence of a force majeure event brought consequences or consequences for Lex Privatum, Vol. IV / No. 2 / Feb / 2016 176 law that the creditor cannot demand achievement and the debtor is no longer declared in default. Thus, the debtor is not obliged to pay compensation, and in the reciprocal agreement the creditor cannot demand cancellation because the agreement is considered null and void. So, the discussion about force majeure is related to the impact on the agreement itself and the issue of risk. Based on the jurisprudence and decision of the Supreme Court, the scope of the types of force majeure events includes:

1. The risk of war, loss of the object of the agreement caused by the power of the Most High: struck by lightning, fire, confiscated by the Japanese army during the war.
2. Act of God, administrative actions of the authorities, orders from those in power, decisions, all administrative actions that determine or bind, a sudden event that cannot

be resolved by the parties to the agreement

3. Government regulations. Both PN and PT stated that what was stated by the defendant Super Radio Company NV could not be used as an excuse for force majeure because if the defendant could not get an AJS motorbike from NV Danau due to the issuance of government regulations (KPU) on the prohibition of importing more than one brand motorbike, in order to fulfill his obligations to the plaintiff, he must try / try to get the motorcycle from NV Ratadjasa or by other means, as long as it does not violate the law. Both PN and PT stated that the defendant Super Radio Company NV had neglected their obligations.
4. Accidents at sea, for example a ship sinking because a big wave hits the hull of the ship
5. An emergency. Completely unpredictable and / or highly compelling situations or circumstances that occur outside the control of the party that has to perform. (Rachmat SS Soemadipradja: In: Decision MA RI Reg. No. 15 K / Sip / 1957; No. 24 K / Sip / 1958; No. 558 K / Sip / 1971; No. 409 K / Sip / 1983; No. 3389 K / Sip / 1984; No. 409 K / Sip / 1983; 21 / Pailit / 2004 / PN.Niaga.Jkt.Pst. In the journal of Force Majeure Law Studies According to Article 1244 and Article 1245 of the Book of Law Civil Law By Daryl John Rasuh, Lex Privatum, Vol. IV / No. 2 / Feb / 2016)14/15

Credit restructuring is regulated in Bank Indonesia Regulation number/ PBI / 2012 concerning Asset Quality Assessment for Commercial Banks, Article 52 states that Banks may only perform Debt Restructuring against debtors who meet the following criteria:

- a. debtors experiencing difficulties in paying Credit principal and / or interest; and
- b. The debtor still has good business prospects and is considered capable of meeting obligations after the credit restructuring.

Not all loans can be restructured, in Article 53 of the PBI asset quality assessment for commercial banks, that banks are prohibited from conducting credit restructuring with the aim of improving credit quality or avoiding increasing the formation of ppa, without paying attention to the criteria for debtors as referred to in Article 52. Then in Article 54 PBI Asset Quality Assessment for Commercial Banks, it is stated that Banks are required to apply the Credit Restructuring accounting treatment in accordance with the applicable financial accounting standards.

To provide credit restructuring services, banks are required to have Credit Restructuring Policies and Procedures in accordance with Article 55 PBI Asset Quality Assessment for Commercial Banks. The Covid 19 virus has had a direct or indirect impact on the performance and capacity of debtors in fulfilling credit or financing payment obligations, this has an impact on the performance and capacity of debtors which will increase credit risk which has the potential to affect banking performance and financial system stability so that it affects economic growth.

To maintain the stability of the banking financial system and support economic growth, it is necessary to take economic stimulus policies as a countercyclical impact of the spread of coronavirus disease 2019 (COVID-19), the Republic of Indonesia Financial Services Authority Regulation Number 11 / Pojk.03/2020 concerning National Economic Stimulus as a Countercyclical Policy has been stipulated. Impact of Coronavirus Disease 2019. Article 2 POJK Number 11 / Pojk.03/2020 provides a legal basis for Banks to be able to implement policies that support economic growth stimulus for debtors affected by the spread of coronavirus disease 2019 (COVID-19) including micro, small business debtors , and medium. Policies that support the stimulus for economic growth include:

- A. policies for determining asset quality; and
- B. credit or financing restructuring policies.

In implementing policies that support the stimulus of economic growth, banks are required to pay attention to the implementation of risk management as stipulated in legislation. In the event that the Bank implements a supportive policy. In POJK Number 11 / Pojk.03/2020 there is a standard guideline for determining debtors who are affected by the spread of COVID-19 which at least includes:

1. criteria for debtors who are determined to be affected by the coronavirus disease 2019 (COVID-19); and
2. sectors affected by COVID-19

Article 5 POJK Number 11 / Pojk.03/2020 states that the quality of restructured credit or financing is determined to be smooth since the restructuring can be carried out on credit or financing given before or after the debtor is affected by the spread of coronavirus disease 2019 (COVID-19), including business debtors. micro, small, and medium. Credit for a BPR or financing for a restructured BPRS is exempted from the application of the accounting treatment for credit or financing restructuring. Based on Article 6 POJK Number 11 / Pojk.03/2020, it is required that restructuring be given to debtors who are affected by the spread of coronavirus disease 2019 (COVID-19) including micro, small and medium business debtors and be restructured after the debtor is affected by the spread of coronavirus disease 2019 (COVID-19) includes micro, small and medium business debtors.

Apart from restructuring, other stimulants provided to debtor customers can be in the form of credit or other new funding to debtors affected by Covid 19 based on Article 7 POJK Number 11 / Pojk.03/2020 that Banks can provide credit or financing and / or provision. Other new funds for debtors affected by the spread of coronavirus disease 2019 (COVID-19), including micro, small and medium business debtors. Determination of the quality of credit or financing and / or other new provision of funds is carried out separately from the quality of credit or financing and / or other provision of funds previously granted. Determination of the quality of credit or financing and

/ or other new provision of funds is determined as follows:

- A. for credit or financing and / or other new provision of funds with a maximum ceiling of Rp.10,000,000,000.00 (ten billion rupiah), quality determination credit or financing and / or other provision of funds as referred to in Article 3 paragraph (1) or Article 4 paragraph (1); or
- B. for credit or financing and / or other new provision of funds with a ceiling of more than Rp.10,000,000,000.00 (ten billion rupiah), determination of the quality of credit or financing and / or other provision of funds in accordance with the provisions of the Financial Services Authority regulations. regarding asset quality assessment.

4. CONCLUSION

Covid 19 can be categorized as a state emergency, in civil law it can be included in a state of force or referred to as an overmacht and to improve economic stability and banking performance, OJK has provided solutions for debtors affected by COVID 19 in the form of credit restructuring and new funding. It is hoped that through this program, debtors can pay installments and reduce bad credit.

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