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JURIDICAL STUDY OF DEFAULT SETTLEMENT AT RURAL BANKS THROUGH LINKAGE CREDIT SCHEMES

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Abstract

In the Linkage product, the Bank makes it easy for BPR to obtain credit facilities with many facilities for smooth and productive capital for debtors who need it. Apart from that, the collateral used is in the form of asset replacement or nominative performing loan. The nominative list of performing loans provided by the BPR contains a list of the names of the borrowers at the BPR, the personal data of the BPR debtors, including identity number, address, telephone number, the debtor's account number at the BPR, and the credit limit used, thus giving rise to a legal problem if this occurs. Default in the case of loans not accompanied by collateral in the form of valuable assets. This research was conducted in a normative juridical form where the author will conduct an in-depth study of positive legal norms and other literary legal materials. The research objective raised in this study is to analyze the credit agreement process with a Linkage scheme with binding Asset replacement or nominative performing loan and settlement of defaulting debtors with a Linkage scheme with a guarantee of Asset Replacement or Nominative Performing Loan. The research results show that the credit agreement process using the Linkage scheme with the binding of Asset replacement or nominative performing loan is valid in agreement law because it has fulfilled the requirements for the agreement's validity as regulated in Article 1320 of the Civil Code. The settlement process is carried out through a judicial procedure, namely with a lawsuit for breach of contract and accompanied by a request for collateral confiscation of the debtor's assets as regulated in Article 1131 of the Civil Code of the Civil Code.

Key Words: Linkage Kredit, Settlement, Rural banks

1. INTRODUCTION

In general, provisions regarding banking in Indonesia are regulated in Law No. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking in conjunction with Law No. 11 of 2020 concerning Job Creation in conjunction with Government

Regulation instead of Law No. 2 In 2022 concerning job creation in conjunction with Law Number 4 of 2023 concerning strengthening the financial sector, with this the government provides its concentration in banking life in Indonesia (Jazil &

Syakdiyah, 2024). Apart from individuals, banks provide convenience for business actors, MSMEs, and fellow financial sector players. Banks provide credit facilities to general cooperatives, employee cooperatives, service cooperatives, and rural banks (BPR). The credit provided by banks to BPR (rural banks) is a synergy between banks and financial MSMEs, which is starting to strengthen at this time. The program used is the Linkage program. The linkage program is divided into several patterns that constitute productive credit (Rizkiana & Handoko, 2022). In the Linkage product, the Bank makes it easy for BPR to obtain credit facilities with many facilities for smooth and productive capital for debtors. Apart from that, the collateral used is Asset Replacement or Nominative Performing Loan. The nominative list of performing loans provided by BPR contains a list of names of borrowers at BPR, personal data of BPR debtors including identity number, address, telephone number, debtor account number at BPR, and the credit limit used. The amount of asset replacement used is 125% of the linkage credit ceiling approved by the Bank (Parwaty Rany et al., 2020).

In practice, the Bank will provide facilities in the form of loans to BPR, after which the BPR will enter into a debt and receivables agreement directly with the customer, or in simple language, the Bank will provide a loan to a customer, but not directly but using the BPR (Siswanto, 2022). Where the binding of debts and receivables is carried out between the customer directly and the BPR, and the transfer of assets, valuables, and other securities is under the control of the BPR. Only then will the BPR apply for a loan to the Bank through the Linkage product whose collateral is only using Asset replacement or nominative performing loan, where the Asset replacement or nominative performing loan is not a valuable asset or securities that can be executed for confiscation because The customer owns the valuable asset is only authorized by the BPR. After that, there is no guarantee of the assets to the Bank that provides the loan through the Linkage product (Jannah, 2016).

Problems arise in the future if there is a default between the BPR and the Bank. For example, the default is because customers have started to stop paying their credit to the BPR, or it could be because of other problems. For example, the BPR has dissolved or been declared disbanded or had its license revoked, as well as other problems, which ultimately caused the BPR to default on the Bank (Meriyati & Hermanto, 2021). For example, in the case of one of the BPR, "X" is one of the BPR debtors of the Linkage program, which is applying for a facility with the main asset being Asset Replacement as collateral. There were findings by the OJK where after that there were many findings, including the value of the loan submitted by the customer to the BPR, "was not the same as the value of the loan submitted to the Bank, which applied for a loan that was higher than what the customer should have requested, so there were many other findings. Which are deemed to violate the law, the BPR is declared disbanded, or the OJK revokes its establishment and operational permits. This is very detrimental to the Bank, and problems arise if a default like this occurs. What steps can the Bank take? In such circumstances, the Bank usually takes executorial steps to protect their interests, such as selling collateral assets to obtain credit payments. It still needs to be paid. At the same time, the collateral object used in the linkage product is only the customer's identity, not in the form of securities or anything else that can be executed. Based on the description above, this article examines and analyzes the credit agreement process using the Linkage scheme with binding Asset replacement or

nominative performing loans and the settlement process for defaulting debtors.

2. RESEARCH METHOD

The type of research used in this research is normative law, and the approach used is sociological juridical. This research's data sources are primary, secondary, and tertiary data.

3. RESULTS AND DISCUSSION

Generally, the credit agreement process with a linkage scheme involving asset replacement or nominative performing loans differs significantly from other credit agreement processes. Fulfilling the assessment of the Health Level of BPR and BPR using a risk approach is carried out by paying attention to the general principles of assessing the Health Level of BPR and BPR as follows. Namely, the first is risk-oriented. Second, the proportionality of using parameters or components in each factor for assessing the health level of BPR and BPR is carried out by considering the characteristics and complexity of BPR and BPR businesses. Third, significance and materiality. Fourth, it is Comprehensive and Structured. The assessment process was carried out thoroughly and systematically and focused on the main problems of BPR and BPR (Aliefah & Renfiana, 2021).

The linkage credit distribution pattern consists of the first executing pattern: the Bank provides credit to the BPR to continue providing credit to customers. The bookkeeping is recorded in an On Balance Sheet balance sheet, and what is recorded in the Core Banking System is BPR. BPR makes loan agreements with banks. BPR repays bank loans (Nurjannah & Nurhayati, 2017). Second, in the Channeling Pattern, namely the Bank provides credit to customers through the BPR, which acts as credit administration administrator, recording or bookkeeping On the Balance Sheet, which is recorded in the Core Banking System where the customer's name is direct, not in the name of the BPR, which enters into a credit agreement with the Bank and or BPR is a direct customer, the customer is responsible for returning the credit to the Bank—implementation of Linkage credit channeling pattern through cooperation between banks and BPR (Sukirno, 2020). Third, the Joint Financing Pattern, namely the Bank and BPR, provides credit to customers. This is implemented through a cooperation agreement between the Bank and the BPR. The Bank analyzes and verifies the Health Level of BPR through self-assessment using data sources from the Financial Services Authority website (Dewi & Ariyanto, 2018).

The credit application mechanism is that first, the prospective debtor submits a credit application to the BPR by filling out the form provided by the BPR accompanied by complete requirements by bank regulations. Second, BPR submits a recapitulation of applications and credit data for prospective debtors. Third, the Bank then examines and checks the complete data submitted by the BPR. Fourth, after doing the above, the Bank decides on the number and ceiling of prospective Creditors to be financed.

In implementing the credit disbursement process, several conditions and procedures must be fulfilled in order to apply for credit using the li scheme page with binding asset replacement or nominative performing loan above, which, if linked to the legal conditions of the agreement as regulated in Article 1320 of the Civil Code, has fulfilled these legal requirements (Masyita, 2020). First is the element of agreement. In an agreement, the word agreement refers to a meeting or conformity of will between the

parties involved. Individuals are deemed to have given their consent or agreement (Toestemming) if they want the contents of the agreed agreement. Second, Legal Capability: The second condition for the validity of an agreement, as regulated in Article 1320 of the Civil Code, is the ability to agree. At this point, there needs to be clarity in using the terms engagement and agreement. From the use of the word "make" an agreement and agreement, it can be concluded that there is an element of "intention" (deliberately). This can be considered appropriate for legal agreements, mainly because this element is considered an element of the agreement's validity and cannot refer to obligations that arise due to law.

Third, The validity of an agreement is the existence of a sure thing. According to Article 1333 of the Civil Code, an agreement must have a core or object in the form of an object whose type can at least be identified. Therefore, an agreement must have a specific object. This criterion emphasizes that an agreement must be explicit regarding a particular matter (certainty of terms) so that what is promised, namely the rights and obligations of both parties, can be identified. The goods discussed in the agreement must at least be identifiable by type. So, achievement is defined as the debtor's obligations and the creditor's rights (Dian et al., 2018)—fourth, halal causes. The fourth requirement for the validity of an agreement is the existence of halal legal causes. The term "causa," which comes from the word "oorzaak" (Dutch) or "causa" (Latin), does not refer to something that triggers someone to make an agreement but rather refers to the substance and purpose of the agreement itself. According to Subekti, for an agreement to be considered valid by the law, an oorzaak or causa is required. Oorzaak or causa can be interpreted as cause, but according to the context, the term refers to the purpose of the agreement, namely the intention desired by both parties involved.

If it is linked between the terms of the validity of the agreement as regulated in Article 1320 of the Civil Code with procedures or schemes and credit agreement processes with linkage schemes with bindings asset replacement or nominative performing loan in this research, which has been described above, has fulfilled the legal requirements of the agreement This becomes legitimate where the agreement with the credit agreement process with a linkage scheme with binding asset replacement or nominative performing loans in this research, which has been described above, has fulfilled the legal requirements of the agreement, which can be said to be valid and legally binding

The credit agreement process of the linkage scheme with binding asset replacement or nominative performing loan in this research has been fulfilled. Therefore, if this legally valid agreement is linked to the principle of pacta sunt servanda, each party must obey and submit to the agreement where its binding force is the same as law, or the agreement applies as law for each party binding themselves to it. Resolving lousy credit in a family manner involves cooperative efforts between credit providers and borrowers to find mutually beneficial solutions and prevent negative impacts within the family. In dealing with bad credit, it is essential for the parties involved to prioritize open dialogue and empathy in order to achieve a fair and sustainable resolution.

In many cases, bad credit is triggered by various financial challenges borrowers and their families face. Therefore, the first step in resolving lousy credit in a friendly manner is to thoroughly evaluate the financial condition and seek a mutual understanding of the root of the problem. In this way, the parties involved can jointly

identify appropriate solutions. Joint efforts between credit providers and borrowers involve negotiations regarding credit restructuring. Credit providers can provide payment alternatives that are more appropriate to the borrower's financial capabilities, such as extending the term or reducing interest rates. In this case, effective communication is the key to reaching an agreement that can provide concessions without compromising the interests of the credit provider. Apart from credit restructuring, the family approach also includes providing financial guidance. Credit providers can provide advice or references to borrowers to get help from financial counselors or experts who can guide them in planning better financial management. Empathy and understanding from the credit provider are essential in resolving lousy credit in a friendly manner. Credit providers need to understand that difficult financial situations can affect the psychological condition of borrowers and their families. Therefore, an empathetic attitude and respect for the borrower's dignity are essential to achieving an effective solution.

It is essential to emphasize the importance of long-term financial planning in resolving lousy credit. Together, credit providers and borrowers can design realistic and sustainable financial plans, which can help prevent similar problems from occurring. In some cases, credit providers may offer financial training programs for borrowers who are experiencing difficulties. This program aims to increase borrowers' understanding of financial management and help them develop the skills necessary to manage credit wisely.

Credit providers also need to consider reducing or writing off part of the debt as part of a family solution. Decisions like these can help ease borrowers' financial burdens and provide them new opportunities to build financial stability. The process of resolving bad credit in a friendly manner can involve the role of a mediator or legal advisor to facilitate dialogue between credit providers and borrowers. Having a neutral third party allows the negotiation process to run more fairly and transparently.

Resolving bad debts in a friendly manner not only includes actions in terms of credit restructuring but also the formation of a joint commitment to prevent the recurrence of financial problems in the future. With good cooperation between credit providers and borrowers, resolving lousy credit can be a momentum to build better relationships and support each other. Resolving credit problems that experience difficulties before reaching the judicial stage is done through rescheduling, adjusting requirements, and restructuring. Treatment can use a single method or a combination of the three. If these efforts do not produce significant developments, the final resolution will be carried out through a judicial process in court.

According to Subekti, debtors can carry out four types of default criteria. First, the debtor does not fulfill the obligations he has promised to carry out. Secondly, the debtor takes actions he should not do according to the agreement. The first and second defaults are considered total defaults. Furthermore, the third default occurs when the debtor fulfills his obligations but with a delay. Fourth, the debtor carries out what he promised but not according to what was promised. A significant impact of not fulfilling obligations is that creditors can demand compensation for the costs, losses, and interest they experience.

Default is regulated in several articles in the Civil Code, namely Articles 1238, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, and 1251. Article 1238 of the Civil Code states that "The debtor is

declared in default by a warrant, or by a similar deed. That, or based on the strength of the agreement itself, namely if this agreement results in the debtor being deemed to be in default after the specified time has passed."

This article shows that a person has been declared negligent if there has been a written order or similar document that regulates this matter. Documents such as warrants or statements are generally known as summons. Subpoena, in this context, refers to an official notification from the creditor to the debtor containing the requirement that the creditor request the fulfillment of obligations immediately or within a specific time limit as described in the notification.

Creditors must file a civil lawsuit in the local district court to recover their legal certainty that in a formal legal manner, it will be declared before the court that the debtor has defaulted if the debtor in his credit loan does not provide collateral in the form of valuable assets. The creditor must be asked to confiscate collateral for the debtor's assets so that the court decision is not in vain or illusion later. This is regulated in Article 1131 of the Civil Code, which explains that Collateral Confiscation is all movable and immovable property belonging to the defendant, both existing and future, as collateral for the defendant's obligations. If the judicial process has been completed, the creditor has received a decision that genuinely states that the debtor has committed an act of default, where the decision has also been granted regarding the request for confiscation of collateral for the debtor's assets. The following process that the creditor can carry out is to apply for execution.

The execution process can be done via PEgo to court directly and through the State Property and Auction Services Office (KPKNL), where ultimately, the debtor's arrears will be paid using the proceeds from the auction sale of the debtor's assets which have been used as confiscated collateral in the court decision. This mechanism may take longer than a default case at a bank equipped with collateral that has a mortgage attached, where if the collateral has a mortgage attached, the creditor can carry out an execution or auction without having to go through a lawsuit in court as described above.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusion

The credit agreement process with a linkage scheme with binding asset replacement or nominative performing loans fulfills the agreement's legal requirements, including subjective requirements: legal competence, agreement, and objective requirements: halal causes and a particular object, so that this becomes the legitimacy of the agreement. The credit agreement process with a linkage scheme with binding asset replacement or nominative performing loans in this research, described above, has fulfilled the legal requirements for the agreement; it can be said to be a valid and legally binding agreement. The settlement process for defaulting debtors using a linkage scheme with collateral for asset replacement or nominative performing loans cannot be resolved using mechanisms such as credit loans as usual, which are equipped with collateral that has mortgage rights attached but must use a lawsuit mechanism in court to declare that the debtor The person has committed an act of breach of contract and at the same time requested that the panel of judges place a collateral confiscation of the debtor's assets, explaining that the collateral confiscation is all movable and immovable property belonging to

the defendant, both existing and future, as collateral for individual obligations.

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