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ANALYSIS BREACH OF CONTRACT ON UNSECURED BANKING CREDIT AGREEMENTS: SETTLEMENT AND LEGAL IMPLICATIONS

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ABSTRACT

A credit agreement is a bond between the customer and the bank which is a legal instrument that binds the promises of the parties, this is binding like the law as the principle of pacta sun servanda in Article 1338 of the Civil Code, in credit agreements there are usually irregularities that result in default. The research method used is legal research using 2 approaches, namely the conceptual approach and the statutory approach, the conceptual approach is used by examining the concept of default in credit agreements while the enforcement of legislation is used using regulations per law that regulate agreements. Unsecured credit (UNSECURED LOANS) is one of the financing products of banking institutions that provide convenience to customers by providing loans without requiring collateral, although basically the Civil Code has regulated general guarantees for the debtor's property in the event of inability to make payments, but it has a higher risk compared to credit with collateral due to the binding of collateral (rights of dependent, fiduciary, and mortgage) grants the right of precedence or the so-called preferential right. Breach of contract on UNSECURED LOANS and credit in general are basically the same, only differ in the existence of an exclusive guarantee that has preferential rights in the event of default.

Keywords: Breach of contract; collateral; credit agreements

1. INTRODUCTION

An agreement is an instrument in civil law that frames a personal relationship with another person who agrees to do something, this is based on the principle of pacta sun servanda which is regulated in Article 1338 of the Civil Code (KUHPercivil) which states that agreements made are legally binding like the law (Suriyadi, 2021). Legal instruments are needed in order to bind the parties in an act of promise to carry out what has been agreed. One of the institutions that really needs agreement legal instruments is financial institutions, especially banking institutions.

The Bank is an intermediary institution, and this can be seen in the Bank's definition in Article 1 and 2 of Law Number 10 of 1998 concerning Banking, a Bank is a business entity that collects funds from the Community in the form of deposits and distributes them to the Community in the form of credit and or other forms in order to improve the standard of living of many people. Banks basically have two main types of products, namely deposits and financing which are then packaged in several banking products. The type of bank financing product or commonly referred to as credit is a type of product that is made into various financing products that are tailored to the needs of the community.

An agreement or contract is a legal relationship between two or more people who bind themselves based on an agreement to cause legal consequences. The legal consequences are in the form of reciprocal rights and obligations between the parties (Noor, 2015). Through contracts, an alliance, or legal relationship is created that gives rise to rights and obligations, for each party who makes the contract. In other words, the parties are bound to abide by the contract they have made (Haryanto, 2010).

Credit agreements are one of the most common forms of engagement in society, especially when it comes to people's economic needs. This agreement is binding between the creditor (bank)/financing service owner and the debtor/individual or a legal entity that requires assistance in allocating funds in a legal relationship that regulates their respective rights and obligations.

Based on the applicable laws in Indonesia, credit agreements are regulated by several laws and regulations, especially in the Civil Code (KUHPerdata) and Law Number 10 of 1998 concerning Banking (Banking Law). According to Article 1313 of the Civil Code, it states that, *"An agreement is an act by which one or more people bind themselves to one or more other people".* A covenant can also be said to be an event where one person promises to another person or two people promise each other to do something. An agreement is a legal instrument that binds the parties so that the parties are bound and can be forced to carry out what has been promised in the agreement, this is regulated in the provisions of Article 1338 of the Civil Code (KUHPerdata) which regulates the principle of "*pacta sun servanda*". That every agreement made legally is binding like a law.

The legal conditions of the agreement are regulated in the provisions of article 1320 of the Civil Code, namely the existence of an agreement between the parties, the competence of the parties, the existence of certain objects that are agreed, and the existence of a halal cause. The agreement of these parties must be manifested in the form of good faith. If one of the parties fails to fulfill its obligations as specified in the agreement, then the party is said to have committed a default (February, 2023).

Banks, as one of the financial institutions, have a vital role in the community's economy. One of the financing products offered by banks is unsecured credit (UNSECURED LOANS), which is a credit that allows debtors to get a loan without having to include collateral in their terms. The legal basis for unsecured credit facilities is regulated by the Banking Law, especially in Article 8 paragraph (1), which emphasizes that commercial banks are required to have confidence in an in-depth analysis and the ability of the debtor to pay off and return its debts in accordance with the agreement. This unsecured credit facility provides several advantages for debtors, and currently several banking institutions have provided these facilities (Dara, 2025).

The reality of unsecured credit agreements (UNSECURED LOANSs) in banking reflects the complex dynamics between lenders and debtors that are often fraught with challenges. Although UNSECURED LOANS offers easy access to loans without having to provide asset guarantees, the risk of default or failure of the debtor to meet payment obligations is one of the main problems that often occurs.

Based on the above background, the researcher is interested in studying the analysis of Breach of contract in unsecured credit agreements in banking and its settlement and legal implications.

2. METHODS

The research method used in this study is juridical normative legal research using 2 approaches, namely the conceptual approach and the legislative approach. The conceptual approach is an approach that uses the concepts of default and agreement in examining the events being studied, while the statutory approach is used using the provisions of laws and regulations related to banking and agreements (Marzuki, 2015). The data sources used in the research are primary data sources in the form of books, journals, dictionaries, laws and regulations while secondary data sources come from articles and others. Data analysis is used by conducting a study of default events based on concepts known in treaty law and analyzing based on positive laws that apply in Indonesia.

3. RESULTS AND DISCUSSION

The Concept of Default in Indonesian Civil Law

Default is a term used in treaty law as a form of renewal, this term refers to acts or achievements regulated in Article 1234 of the Civil Code which mentions 3 types of achievements, namely to give something, do something and not do something. Default in Indonesia is one of the important issues in the field of civil and banking law. In general, default refers to non-compliance or non-fulfillment of obligations that have been agreed upon in an agreement by one of the parties, both debtors and creditors. According to Article 1234 of the Civil Code (KUHPer), default is:

"*Whoever desires something for a certain cause, then he must fulfill that cause; and if that is not the cause, then he gains nothing.*"

In the context of an agreement, achievement is what must be done by the obligated party, such as paying money, handing over goods, or doing something according to the content of the agreement. The achievement must be in accordance with the content of the agreement and carried out in a timely and appropriate manner. If the achievement is not made, then the obligated party can be considered a default, and the other party has the right to claim his rights based on the provisions of the law.

In other words, a default occurs when one of the parties fails to fulfill its obligations in accordance with the content of the agreement.

The conditions for the validity of an agreement are stated in article 1320 of the Civil Code including the existence of a valid agreement between the parties who are binding, the competence of the parties in an agreement, the existence of certain objects/things that are agreed, and the existence of a halal cause, meaning that the agreement does not violate the law and morals in society. If those conditions are met, the agreement is considered valid and legally binding. These agreements must be enforced/complied with by the parties making them (*pacta sunt servanda),* unless there are legal reasons or grounds justifying the cancellation or amendment of the agreement.

According to article 1239 of the Civil Code, default can be in the form of not doing something that must be done, doing something that must not be done, and/or doing something that is not in accordance with the content of the agreement. In article 1243 of the

Civil Code, there are at least 3 elements of default, namely the existence of an agreement, the existence of a party who breaks the promise or violates the agreement, and has been declared negligent but still does not carry out the content of the agreement.

According to (Subekti, 2005) , a debtor's default (negligence or forgetfulness) can be of four types:

a. Not doing what he is supposed to do;
b. To carry out what it promises, but not as promised;
c. Doing what he promised but it was too late;
d. Doing something that according to the agreement he is not allowed to do.

Against the negligence or forgetfulness of the debtor (as a party who is obliged to do something), it is threatened with several sanctions or punishments. These punishments or consequences include:

a. Paying losses suffered by creditors or simply called compensation;
b. Cancellation of the agreement or also called breach of agreement;
c. Risk shifting;
d. Pay the cost of the case, if it is filed in front of a judge.

The concept of default, according to Ahmadi Miru, mentions forms of acts such as: not doing achievements at all, the implementation of achievements that are not complete, being late in carrying out achievements or doing acts that are prohibited in the agreement(Bubble, 2018). Factors that can cause default in the community are usually influenced by unstable economic conditions in the community, lack of financial literacy in the community, poor financial management, internal factors of the debtor such as illness/accident that can cause delays/hinder the debtor's ability to fulfill his obligations, external factors of the debtor such as natural disasters or *Force Majeure*, as well as the lack of supervision and control from the creditor/bank on monitoring the debtor's financial condition so that it can increase the risk of default.

In the banking world, an act of default is classified as an act where the debtor has been given a warning, but the warning does not make the debtor do or carry out his achievements so that the creditor takes rescue steps so that the debtor carries out his obligations (Salim, 2014). The binding power of the agreement based on Article 1338 of the Civil Code is binding like a law which means that the contracting parties can independently regulate the pattern of legal relations between them, the power of this agreement has the same power as the laws made by legislators and therefore must be obeyed by the parties even if it is deemed necessary to be carried out by force with the help of means of law enforcement through a judge or bailiff (Harnoko & Ratnawati, 2015).

Consequences of Default in Banking Unsecured Credit Agreements

Unsecured credit is a type of credit provided by financial institutions (such as banks or financing companies) to customers without the need for collateral in the form of certain objects or assets as collateral. In other words, the debtor does not have to give up the right to certain goods or property as a condition for obtaining the credit. This certainly provides convenience and a breath of fresh air for debtors because there is no need to bind certain assets as collateral and disbursement of the proposed credit becomes easier and faster. Default in unsecured credit (UNSECURED LOANS) refers to the inability or failure of the customer to meet payment obligations in accordance with the agreed credit agreement. The Breach of contract include:

a. Late payment/late due date;
b. Not making any payment at all against the credit provided;
c. The use of credit provided is not in accordance with the content of the credit agreement.

This certainly has an impact on both the creditor (debtor) and the creditor (creditor), including the imposition of fines/penalties, a decrease in the debtor's credit score/reputation, and even the taking of legal action by creditors such as collection to filing a lawsuit in court.

Collateral or guarantee in law basically departs from the law of guarantee that a material right can be a guarantor of an achievement, this is regulated in such a way in Book II of the Civil Code. Material guarantees in the Civil Code are classified into several types, namely: dependency rights for immovable property guarantees, fiduciaries for movable property guarantees, mortgages for guarantees in the form of ships and aircraft, and mortgages for material guarantees in the form of certain loans. Credit agreements in banking usually use the form of material collateral in the form of dependents, mortgages and fiduciaries. The presence of this material guarantee is in order to provide protection to banking institutions against a condition of the debtor's inability to carry out its achievements so that objects that have been pledged or tied with legal instruments of guarantee will become a tool to carry out the debtor's achievements.

In the banking world, collateral is defined broadly to include collateral and insurance, both individual and Company guarantees. When viewed from a narrow meaning, collateral only refers to collateral which includes movable or immovable objects, while principal collateral is goods, projects or billing rights that are financed with credit facilities and additional collateral is other tangible objects that are not financed by credit facilities (Fitriani, 2017).

The binding of collateral (collateral) in a banking credit agreement is based on the principle of prudence, this is a legal order, this is to ensure the health of banking institutions against the risks of bad loans or what is called *Non-Performing Loan* (NPL). With the application of the principle of prudence, it is hoped that the level of public trust in banking will remain high so that the public is willing and not hesitant to place their funds in the bank (Hielmy, 2020). Under certain conditions of a banking belief, banking institutions can provide financing without asking for guarantees or collateral because basically collateral is not something mandatory or mandatory, but is a recommendation to minimize the risk of default.

The question that arises then is that unsecured credit is a high-risk financing product, why is it still offered in banking institutions? To answer this, it can be seen from the business side that collateral requirements in credit are requirements that for some people are a little complicated and add costs because the bond binding is made separately from the principal agreement (credit agreement) even though it is a unit. Credit agreements do not have to be made by a notary even though it should be recommended through a notary, while guarantee agreements must go through a notary so that credit with collateral costs more than credit without collateral. Convenience in UNSECURED LOANS is also a banking market strategy to attract customers, but with greater risks compared to loans that include collateral.

Default in a credit agreement is not limited to the debtor's inability to pay, but includes the obligations of creditors and debtors that have been set out in the credit agreement. In the credit agreement, it is not always the debtor who Breach of contract, but in some cases there are creditors who commit Breach of contract, such as creditors who do not provide a certificate of ownership in a mortgage agreement that has been paid off. Default in a credit agreement includes all forms of denial of the content of the credit agreement so that it is not always necessary to be the debtor who Breach of contract but can also be committed by creditors, although in general those who commit Breach of contract on credit agreements are debtors in the form of late payment or default.

The UNSECURED LOANS which in the agreement is not included in the guarantee agreement does not mean that there is no material guarantee in the event of NPL, this is because in Indonesian civil law it is known that the general guarantee regulated in Article 1131 of the Civil Code is that "all movable and immovable objects belonging to the debtor, both existing and future, are collateral for the debtor's individual engagements". The provisions of the article provide provisions regarding general guarantees even though they are not agreed even though the status of general guarantees for the debtor's property is general so as to make the bank a concurrent creditor. The status of concurrent creditors in caste hierarchy becomes the second caste because the first caste is owned by the preferred creditor unless there are no other creditors or other creditors are also concurrent.

Guarantees in credit such as having a function as guarantors or guaranteeing the implementation of the debtor's achievements so that this guarantee is an instrument that will replace the debtor in carrying out his achievements (execution). The execution of collateral is not necessarily carried out when the debtor Breach of contract in the event of late payment, but it can be executed after certain mechanisms stipulated in the credit agreement such as notices or warnings to order the debtor to immediately carry out his achievements. In general, banks use 3 warnings in the form of a notification letter or warning letter sent to the debtor (SP), this SP is also classified as a form of summons from creditors.

Debtors who do not carry out their achievements pay installments within a certain period of time and with a predetermined mechanism, the process can be carried out in the form of credit restructuring. In the event that credit restructuring is still unable to make the debtor carry out his achievements, then the execution step is the last resort by conducting an auction of collateral. The question that arises then what about UNSECURED LOANS which does not have a binding material guarantee? to answer this as stated at the beginning that based on Article 1131 of the Civil Code, property belonging to the debtor can be used as material collateral in general, by of course submitting to the court to apply for the execution of the debtor's property on a default lawsuit. Credit holders who have material guarantees with UNSECURED LOANS do have differences in risk and handling that the credit agreement with the guarantee agreement gives the right of execution to the creditor in the event of default and has fulfilled the required provisions, while UNSECURED LOANS for its handling is usually longer than the debtor's property becomes a general guarantee.

4. CONCLUSIONS AND SUGGESTIONS

Summary

Default in an unsecured credit agreement is basically the same as a credit agreement in general, the difference is that in a credit agreement with collateral it has advantages because there is a material guarantee for the performance of the achievement so that the object that is encumbered with collateral will be executed if the defaulting debtor is unable to carry out its performance at all while in an unsecured credit agreement if there is a default in the event of insolvency, then the guarantee Material ownership of the debtor's property is concurrent in contrast to credit with collateral that has preferential rights or precedence rights.

Implication

Unsecured credit is a banking strategy in attracting the interest of the public, but it is better that in the unsecured credit agreement, special conditions are given for material guarantees for the debtor's inability to carry out their achievements, besides that it is also expected that banking institutions are more careful in providing financing to customers on UNSECURED LOANS products in terms of terms and loan nominals in order to minimize the occurrence of default or non-payment Performing Loan (NPL).

Author Contribution

This article is the result of collaboration between the three authors with complementary roles and responsibilities as follows:

Chandra Yuliantoro: As the main researcher, responsible for designing the research, conducting data collection and analysis, and compiling a comprehensive draft of the article.

Suriyadi: verified the analytical methods and contributed to the final version of the manuscript.

Mutmainnah: Associate researcher responsible for collecting legal materials and conducting legal research.

Ari Maulana: Associate researcher responsible for collecting legal materials and conducting legal research.

The coordinated and synergistic contributions of the three authors ensure that this article can provide useful new insights into the Banking product in Indonesia form legal aspect

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