Efforts to Resolve Breach of Contract in Banking Credit Agreements (A Study of Decision No. 4/Pdt.G.S/2024/PN. Trt)

Joel Fredly Pakpahan[1] Debora[2]
Univesitas HKBP Nommensen, Kota Medan, Provinsi Sumatera Utara, Indonesia[1,2]
Email: joelfredly.pakpahan@student.uhn.ac.id[1] debora@uhn.ac.id[2]

Abstract
The granting of credit by banks to debtors is not solely based on trust but also adheres to the principle of prudence, taking into account the risks and feasibility of the debtor. One crucial step in credit agreements is the application of the 5C principles (Capacity, Capital, Character, Collateral, Condition), aimed at assessing the debtor's ability and suitability to fulfill their obligations. However, in the implementation of credit agreements, defaults or breaches of contract by debtors often occur, whether due to negligence, intentional actions, or force majeure. Defaults may include the debtor's inability to meet their debt obligations as agreed upon. To resolve this issue, two resolution pathways can be taken: litigation through the courts and non-litigation alternatives such as debt restructuring, rescheduling, and payment postponement. In court resolutions, simple lawsuit procedures are one of the methods used to handle default disputes efficiently. The case of default in the credit agreement between PT Bank Rakyat Indonesia and debtors Thamrin Simanjuntak and Riahta Sembiring illustrates the importance of the application of the principle of pacta sunt servanda in contractual agreements, where debtors are obligated to fulfill payment obligations as agreed. In cases of default, debtors are at risk of sanctions in the form of compensation in accordance with applicable legal provisions.
Keywords: Contract in Banking Credit

INTRODUCTION

A bank is a financial institution tasked with collecting and distributing funds to the public. In society, banks play an essential role; however, the participation of both the public and the government is also crucial in supporting equitable and just national development for all. As we know, the primary issue frequently encountered by businesses is the need for funds (capital) to finance their operations. Referring to Article 1 paragraph 11 of Law No. 10 of 1998, amending Law No. 7 of 1992 concerning Banking, "Credit is the provision of money or claims equivalent to it, based on an agreement or loan agreement between a bank and another party, requiring the borrower to repay the debt after a certain period with interest." From an economic perspective, credit is defined as an activity of transferring economic value to be returned to the creditor after a specific period, in accordance with agreed terms. Creditors gain profit through interest paid by debtors as compensation for providing the economic value. In the context of collateral, banks are not legally obligated to require debtors to provide guarantees. However, to prevent default, banks often request collateral that can be executed if the debtor fails to make the agreed-upon payments.

In the event of a credit agreement between creditors and debtors, default occurs if the agreement is not fulfilled as per the agreed terms. Article 1338 paragraph (1) of the Civil Code asserts that all legally executed agreements hold the same legal force as laws for the parties involved. A party suffering losses due to default by the other party may seek legal action to claim their rights, either through litigation or non-litigation channels. Non-litigation methods include mediation, negotiation, consultation, conciliation, and expert evaluation. On the other hand, litigation is processed through the court system, allowing the aggrieved party to file a lawsuit in the event of default. Default is a failure to fulfill a contract, whether due to delays, untimely performance, or non-performance according to the agreed terms. Default is strongly linked to agreements, as any failure by a performing party to meet agreed-upon terms constitutes a breach, as stipulated in Articles 1338 to 1431 of the Civil Code, as well as agreements governed by Articles 1352 to 1380 of the Civil Code, which form the basis of obligations in such contexts.

RESEARCH METHODS

In conducting this research, the researcher employed a normative legal research method, utilizing the statute approach, case approach, and conceptual approach. These approaches were used to analyze the legal materials in this study, which consist of primary and secondary materials. The technique for collecting legal materials in this research involved a literature review of sources such as books, statutory laws, e-journals, and doctrines relevant to the legal issues being examined.

RESEARCH RESULTS AND DISCUSSION

Causes of Default in Banking Credit Agreements

In providing credit, banks do not solely rely on trust in the customer. According to Article 1, point 11 of Law No. 10 of 1998, which amends Law No. 7 of 1992 on Banking, there is no obligation for debtors to provide collateral for banking credit. However, to prevent defaults, banks require collateral that can be executed to cover the debts of defaulting debtors. The 5C principle is a guideline used by banks to analyze the feasibility and risks of granting credit. This principle serves as a tool to assess whether a debtor is eligible to receive credit from the bank. The five main aspects of the 5C principle are:

1. Capacity – the ability of the debtor to repay the loan.
2. Collateral – the assets provided as security.
3. Character – the debtor's reputation and integrity.
4. Capital – the financial stability and resources of the debtor.
5. Condition – the economic and business conditions affecting the debtor.

The 5C principle is crucial for banks as it provides a comprehensive guideline for evaluating creditworthiness and mitigating credit risks. By applying this principle, banks can determine whether a debtor qualifies for credit, the appropriate credit limit, and the suitable form of collateral to minimize potential losses.

1. Factors Leading to Default: Negligence of the Debtor (Customer): This arises when the debtor is either deliberately or negligently unable to fulfill their obligations. Regarding debtor negligence, specific obligations are considered neglected if not performed by the debtor, including:
   - Obligation to deliver an agreed-upon item.
   - Obligation to perform an agreed action.
   - Obligation to refrain from certain actions.
2. Unforeseen Circumstances (Force Majeure): Unforeseen circumstances refer to situations where the debtor is unable to fulfill their obligations due to events beyond their control or prediction at the time the agreement was made. In such cases, the debtor cannot be held liable as the situation arises outside their intentions and capabilities. These obligations may include providing what has been promised, but the inability stems from conditions beyond the debtor's control.

Efforts to Resolve Default in Banking Credit Agreements

Default, also known as breach of contract, refers to the debtor's failure to fulfill their obligations. If the debtor does not fulfill their duties without being affected by external conditions, they are considered to have breached the contract. Default is the failure to perform a promise or agreement as stipulated in a legally binding contract. It occurs when a debtor fails to fulfill the obligations agreed upon in the contract, whether intentionally or due to negligence, or as a result of unforeseen circumstances (force majeure). Default in banking credit agreements arises when a debtor, having previously agreed to the terms of the agreement, breaches the contract or fails to fulfill their obligations, such as not paying, delaying payment, or acting contrary to the agreement. Resolving defaults can be achieved through court proceedings (litigation) or alternative dispute resolution outside the court (non-litigation).

1. Resolution Through Alternative Dispute Resolution (Non-Litigation). In business law, disputes related to default or breach of contract are often resolved through non-litigation channels, which do not involve formal judicial proceedings. The primary goal of non-litigation methods is to achieve quicker, more efficient, and cost-effective resolutions. Several alternative dispute resolution methods governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (ADR) include mediation, negotiation, arbitration, and conciliation. Some common non-litigation methods used by banks to address defaults are:
   a. Debt Restructuring. Debt restructuring refers to measures taken by banks to improve credit conditions for borrowers facing difficulties in fulfilling their obligations. This process is outlined in OJK Regulation No. 11/POJK.03/2015 and BI Regulation No. 14/15/PBI/2012. Through restructuring, debtors are offered more lenient or flexible repayment terms compared to the original terms, ultimately aiming to improve their financial situation.
   b. Rescheduling. Rescheduling involves adjusting the loan terms based on the customer's capacity, such as modifying the loan duration and repayment schedule. This process is conducted after discussions and agreements between the bank and the customer. By rescheduling, customers are granted extended time to fulfill their obligations. For instance, extending a loan term from 6 months to 1 year allows the debtor additional time to repay their loan.
   c. Forbearance (Payment Postponement). Forbearance refers to a solution provided by banks or financial institutions to debtors facing difficulties in meeting their installment payments. This involves granting relief, such as deferring or adjusting the repayment schedule. In banking credit, banks offer debtors temporary payment deferrals or reductions in obligations without losing assets or facing significant negative impacts on their credit status. This agreement enables both parties to negotiate terms that allow the debtor to temporarily postpone payments while ensuring future repayment commitments.
2. Dispute Resolution Through Court Proceedings (Litigation). Litigation is a formal legal process for resolving disputes within the framework of the judiciary. In litigation, judges have the authority to manage the proceedings and deliver final verdicts. Parties involved in the dispute appear in court to assert their rights, and the resulting decision typically produces a win-lose outcome. Litigation is often considered a last resort in resolving disputes, as courts are seen as institutions capable of providing fair decisions for both parties. However, it involves formal legal procedures that can take significant time to complete. The resolution of default cases through simple lawsuit mechanisms generally refers to Article 5 paragraph (2) points (a) to (h) of Supreme Court Regulation (Perma) No.

2 of 2015 concerning Procedures for the Settlement of Simple Lawsuits. These provisions outline the steps for resolving cases, including:

- Registration.
- Examination of document completeness.
- Appointment of judges and substitute clerks.
- Preliminary examination.
- Scheduling hearings and summoning relevant parties.
- Trial examination and reconciliation attempts.
- Evidence presentation.
- Verdict.

The process of filing a default case through a simple lawsuit begins with completing a lawsuit form provided by the court office. The form includes information about the parties involved, a brief description of the dispute, and the plaintiff's claims. The plaintiff is also required to attach relevant supporting documents as evidence for the case.

Analysis of Decision No. 4/Pdt.G.S/2024/PN Trt

The Decision of the Tarutung District Court No. 4/Pdt.G.S/2024/PN Trt, which has become legally binding, serves as the focus of this analysis. This breach of contract case originated from a lawsuit filed by PT Bank Rakyat Indonesia (Persero) as the plaintiff against Thamrin Simanjuntak and Riahta Sembiring as the defendants. In the credit agreement entered into, the plaintiff acted as the creditor, while the defendants served as the debtors. The agreement, dated July 26, 2023, was based on the Debt Acknowledgment Letter No. 104772354/5394/07/23. The approved credit was in the form of a Rural General Credit Facility (KUPEDES) amounting to IDR 200,000,000 (two hundred million rupiah) with a flat interest system. However, the defendants failed to fulfill their obligations, causing the loan to default. The credit period was agreed upon for 60 (sixty) months with an interest rate of 19.8% per annum, effective from the date of the agreement, July 26, 2023. Payments were to be made periodically, covering both the principal and interest. The main issue in this case is the breach of contract committed by Defendants I and II concerning the loan of IDR 200,000,000. According to records, the outstanding installments owed by the defendants are as follows:
Principal: IDR 189,760,430
Interest: IDR 18,700,474

Total: IDR 208,460,904 (two hundred eight million four hundred sixty thousand nine hundred four rupiah). The delay in payment led the plaintiff to allocate a provision for productive asset reserves, resulting in a loss equivalent to the total arrears of IDR 208,460,904. The plaintiff had taken various collection measures against the defendants, including direct visits to their residence as recorded in the Customer Visit Report (LKN), and sending collection letters and warnings. Based on the analysis, the defendants were deemed to have breached the agreed-upon credit agreement. In contract law, the principle of pacta sunt servanda applies, stipulating that agreements have the binding power of law for the parties involved. The defendants' negligence in fulfilling their payment obligations, as regulated in Book III of the Indonesian Civil Code (KUHPerdata), particularly Articles 1243 to 1252, renders them liable for damages. Under the agreement, the debtors are obligated to repay the loan amount along with the agreed-upon interest. This underscores that credit is a structured financial commitment, with interest being an integral part of the credit agreement.

CONCLUSION

The causes of breach of contract (wanprestasi) in banking credit agreements are generally due to the debtor's negligence in fulfilling agreed-upon obligations or the occurrence of force majeure circumstances that prevent the debtor from meeting their obligations. In this case, the debtor's negligence, such as failure to make installment payments or violation of other terms in the agreement, can be the primary cause of the breach. Therefore, banks apply the 5C principles to assess the feasibility of granting credit, thereby reducing the risk of default.

BIBLIOGRAPHY

Baneftar, F. A. (2020). "Wanprestasi dalam Perjanjian Kredit Perbankan dengan Jaminan Sertifikat Tanah Ditinjau dari Undang-Undang Nomor 4 Tahun 1996". Jurnal Ilmu Hukum Kyadiren, 1(2), 139–156.

Edison, E., Wijayati, R. A., & Napitupulu, D. R. W. (2023). "Strategi Penyelesaian Kredit selama Pandemi COVID-19". Jurnal Cahaya Mandalika, 3(2), 1464–1478.

Fuady, M. (2011). Pengantar Hukum Bisnis: Menata Bisnis Modern di Era Global.

Kamsir, B., & Lainnya, L. K. (2002). Edisi Keenam. PT Raja Grafindo Persada, Jakarta.

Khairunisa, M., & Musrifah, M. (2020). "Penyelesaian Pembiayaan Bermasalah pada Bank Syariah". Islamic Business and Finance, 1(1).

Marzuki, P. M. (2013). Penelitian Hukum.

Muhammad, S. (2012). Hukum Kontrak (Segi Pengayaan Hukum Perikatan).

Priyanto, M. A., & Ubaidillah, L. (2024). "Tinjauan Yuridis Gugatan Wanprestasi dalam Perjanjian Kredit (Studi Putusan PN Bondowoso Nomor: 3/Pdt.GS/2021/PN.Bdw)". Indonesian Journal of Law and Justice, 2(1), 7.

Rianti, R., Utari, Y. D., Safitri, R., & Nisa, N. (2024). "Analisis Efektivitas Mekanisme Penyelesaian Sengketa Hukum Bisnis (Litigasi dan Nonlitigasi) dalam Menjaga Kelangsungan dan Pertumbuhan Usaha". Causa: Jurnal Hukum dan Kewarganegaraan, 3(12), 11–24.

Salim, S., & Sili, E. B. (2022). "Analisis Yuridis Wanprestasi dalam Perjanjian Kredit (Studi Putusan Nomor 10/Pdt.GS/2020/PN.Bjw)". Commerce Law, 2(2).

Usman, R. (2001). Aspek-Aspek Hukum Perbankan di Indonesia. Gramedia Pustaka Utama.

Yahman, S. H. (2017). Karakteristik Wanprestasi & Tindak Pidana Penipuan. Prenada Media