



Debtor's Justice in the Settlement of Bad Debts with Repossessed Collateral at Rural Banks

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ABSTRACT

Bad debts are a serious problem in the banking sector, not only harming financial institutions but also impacting the economic conditions of debtors. This study aims to evaluate the implementation of the Repossessed Collateral mechanism in resolving bad debts at Rural banks. The method used is empirical, based on field observations and regulatory analysis, as well as legal literature. The results of the study indicate that the Repossessed Collateral mechanism includes several stages, starting from identifying problem debts, repossessed collateral assets, assessing, selling, to recording in financial statements with settlement within an uncertain deadline. Existing regulations including Financial Services Authority Regulation Number 1 of 2024 concerning the Asset Quality of Rural bank have not clearly provided legal justice to debtors, especially regarding the time period for resolving Repossessed Collateral. Challenges in implementing Repossessed Collateral include unclear regulations, lack of creditor participation in auctions, high legal costs, and minimal education and access to legal assistance for debtors. These obstacles hinder debtors from obtaining justice.

INTRODUCTION

Banking plays a vital role in supporting a nation's economic development (Rio Pambudi Dalimunte et al., 2018). Banks provide a variety of services, one of which is Rural banks that primarily focus on lending money (Ahmad Chaeroni & Latifa Mustafida, 2021). In reality, not every loan proceeds without issues. Situations where debtors are unable to meet their repayment schedules lead to non-performing loans (Yunia Safitri & Abel Tasman, 2021). Non-performing loans pose financial challenges for banks and can also impede overall economic progress (Ade Salamah, 2023). To tackle the issue of non-performing loans, a common approach employed is known as Repossessed Collateral. This method involves the bank seizing the assets pledged as collateral by debtors in an attempt to address defaulted loans (Ismaul Aufa et al., 2022). Nevertheless, the Repossessed Collateral process frequently brings about legal complications, particularly concerning the legal rights of debtors. Debtors often perceive the collateral seizure as unjust or unfair, both in the process and its content (Riska Andriyani & Kamaliah E, 2023).

Legal justice for debtors is a crucial and significant matter that requires attention in the practice of Repossessed Collateral. A lack of clear insight into the rights of the debtor during this process may result in extended legal disputes. Within the framework of Rural Banks, which differ from commercial banks, it's important to explore how Repossessed Collateral is executed and if the rights of the debtor receive sufficient assurance. Unpaid debts frequently place debtors in a financially and legally precarious position. This research aims to determine whether the rights of debtors are properly safeguarded in the Repossessed Collateral process. It is essential to assess if the execution of this method is fair and balanced for both sides, particularly regarding transparency, negotiation, and the overall Repossessed Collateral process. The findings of this study could enhance the transparency and accountability of Rural Banks in managing bad debts. This is vital to bolstering public confidence in financial establishments, especially when dealing with problematic debts while minimizing harm to debtors. The Repossessed Collateral Process often presents opportunities for legal contention between banks and debtors. By gaining a deeper understanding of the appropriate procedures, this study can offer suggestions to help banks reduce conflicts and disputes through kinder processes that align with current legal standards.

Bad debts present a significant challenge for banks as they can negatively impact the bank's own financial stability (Dodi Haryansyah, 2021). This research aims to identify ways to enhance the efficiency of Repossessed Collateral as a method for addressing bad debts, ensuring that problematic loans are resolved in a more prompt and effective manner, all while preserving the rights of debtors. The findings from this research may serve as valuable insights for regulators and policymakers in the banking industry, such as the Financial Services Authority, to develop improved regulations that safeguard the interests of both parties. This can aid in refining policies and rules associated with the resolution of bad loans and ensuring legal clarity for debtors. Therefore, this study is crucial in fostering a better equilibrium between the rights of debtors and the interests of banks,

ultimately offering a more equitable and transparent approach to managing bad debts within the banking sector.

THEORETICAL FRAMEWORK

John Rawls Theory

John Rawls introduced his concepts relating to justice through ideas he termed the "Original Position" and the "Veil of Ignorance." In Rawls' interpretation of the "Original Position," there are fundamental justice principles, such as the equality principle, which claims that every individual deserves the same basic, universal, and compatible freedoms, and the inequality principle, which accepts that disparities in social and economic status occur among people according to their needs. Rawls describes the "Veil of Ignorance" as a situation where individuals do not know anything about their own backgrounds or situations, including their societal status and specific beliefs, which helps eliminate any biases or preconceived ideas regarding the concept of justice being developed. Through his theory referred to as "Justice as Fairness," Rawls seeks to inspire society to attain genuine equality.

M. Isnaeni Theory

M. Isnaeni claims that, fundamentally, legal protection can be divided into two categories according to its origin: "external" legal protection and "internal" legal protection. Internal legal protection indicates that the parties involved create the legal protection when drafting the contract terms. Then, external legal protection involves legal measures established by authorized entities through regulations aimed at protecting the rights of the more vulnerable party, in alignment with legal standards.

METHODS

This study uses an empirical method, data obtained from the field which is the source of this research. The empirical approach was chosen because the purpose of this study is to analyze debtor's justice in the settlement of bad debts with repossessed collateral at rural banks at the Rural bank. The approach used by the researcher to examine and analyze the applicable legal regulations related to the settlement of bad debts and the implementation of the Repossessed Collateral mechanism at the Rural bank. Several legal materials that are the focus of this study include: (1) The results of the author's observations regarding the implementation of Repossessed Collateral at the Rural bank; (2) Financial Services Authority Regulation Number 1 of 2024 concerning the Asset Quality of People's Economic Banks, which regulates asset quality for Rural bank with data analysis carried out using the analytical descriptive method.

RESULTS

The Repossessed Collateral Mechanism utilized by Rural bank represents a strategy that banks implement to manage poor loans or defaults. The rural bank will also be viewed as a creditors. The process for Repossessed Collateral is outlined in the Banking Law, which specifies: Banks have the ability to acquire some or all of the collateral, either through an auction or privately based on

voluntary agreement or the authority to sell the collateral without an auction granted by its owner if the debtor fails to meet their commitments to the bank. It is required that any collateral acquired must be distributed as promptly as possible. The Repossessed Collateral enables banks to seize assets pledged as security for loans when debtors are unable to meet their repayment obligations.

There have been modifications to the rules that regulate the handling of non-performing loans that have collateral that has been taken. One significant change is the elimination of the one-year timeline earlier provided to creditors for resolving or assuming control over collateral. In the former Financial Services Authority rules, creditors were allotted a year to deal with the assets of debtors who could not meet their loan obligations. Nevertheless, in the most recent Financial Services Authority guideline, this timeframe has been abolished, allowing creditors increased freedom to determine when and in what manner to manage repossessed collateral.

Financial Services Authority Regulation Number 1 of 2024 has not specified a definite deadline for creditors to finish the Repossessed Collateral process. This lack of clarity regarding the timeline presents a challenge for debtors, as they cannot predict when the resolution of problematic loans via Repossessed Collateral will be finalized, which may influence their financial strategies. The lack of precise timing guidelines can lead to possible disputes between banks and debtors, particularly if this process is prolonged, thereby diminishing legal clarity for debtors.

Creditors have been given more leeway, yet the guidelines from the Financial Services Authority still mandate that they conduct their activities justly and without discrimination. Debtors should still receive safeguards from rules that oversee collection methods and the confiscation of assets, which need to be executed in a legitimate and clear manner. Creditors are prohibited from engaging in activities that negatively impact debtors unless they follow the proper procedures and take into account the fair value of the confiscated assets.

To uphold the rights of those in debt, it is essential to put in place just and clear strategies that give all debtors an equal chance. Financial institutions must disclose all details about the terms, fees, interest rates, and potential risks related to their products or services. This process provides legal safeguards for debtors by making sure they comprehend their responsibilities and entitlements before entering into loan contracts.

The consequence of eliminating this deadline is the rise of doubt for those in debt. In the absence of a definitive timeline for creditors to handle the acquisition of secured assets, debtors may experience confusion about when their assets will be put up for auction or sold. This scenario can increase mental strain on debtors who are already dealing with financial troubles. Debtors deserve to obtain straightforward details about the steps creditors are taking regarding the assets that have been seized. The lifting of the deadline in the most recent Financial Services Authority regulation should not permit creditors to act independently without giving proper notification to debtors about the procedures involved.

According to researchers, the functions that a notary serves in achieving internal legal protection include the following:

a. Maintaining Equity in Rights and Duties

The notary is responsible for making sure that the terms in the loan contract are balanced, embody the principle of equity, and support the rights and responsibilities of each party.

b. Creating Fair Dispute Resolution Terms

Provisions concerning collateral recovery or resolution of defaults should be written in a way that is equitable, protecting the customer from unjust penalties while also considering the interests of the bank.

c. Neutral Mediation of Bank and Customer Interests

As an impartial entity, the notary facilitates an alignment of the interests of both sides, leading to a credit contract that is just, lawful, and enforceable.

In the context of the Financial Services Authority regulation that removes the deadline for creditors in resolving non-performing loans with repossessed collateral, debtor legal protection must still be upheld despite the increased flexibility for creditors. According to Isnaeni's theory of external legal protection, the state, through institutions like the Financial Services Authority, plays a crucial role in ensuring that, although creditors are granted more freedom, debtors continue to receive adequate protection. This includes ensuring that debtors are not unfairly harmed, providing opportunities for debt restructuring, and ensuring a transparent and fair process for both parties. The removal of the binding deadline should be seen as a step that allows creditors to act more flexibly, but it must still be balanced with strict oversight and regulation from the authorities to protect the interests of debtors, who are often in a weaker position.

Therefore from the viewpoint of John Rawls' concept of justice, it's important to thoroughly assess policies that remove time limits for creditors dealing with defaulted loans involving repossessed collateral that has been seized. Using the principles of the Original Position and the Veil of Ignorance, these policies ought to find a middle ground between offering creditors some leeway and ensuring sufficient safeguards for debtors, who might be at a disadvantage. In this scenario, Rawls would stress the significance of making sure that the policy does not worsen the situation for the most disadvantaged debtors while also permitting creditors to operate in a logical and equitable manner.

In the scenario of dealing with non-performing loans related to Repossessed Collateral, the Original Position represents a theoretical situation where members of society (either debtors or creditors) initiate discussions on the fundamental rules that will dictate their collective existence. In this Original Position, participants are uncertain about whether they will find themselves as the dominant party (creditor) or the subordinate party (debtor) in a financial arrangement. The Original Position denotes a circumstance in which both parties (debtor and creditor) need to settle on the justice principles that will be implemented regarding the non-performing loan issue. In this situation, the involved parties will select equitable principles because they do not know if they

will hold a beneficial or disadvantageous position. This approach aims to guarantee that the regulations or guidelines established not only serve the stronger party (creditor) but also take into account the needs and welfare of the weaker party (debtor).

The decision made by Financial Services Authority to eliminate the deadline, when analyzed using the Veil of Ignorance concept, suggests that we would select regulations that offer equitable protection for all involved, without being aware if we would find ourselves as the struggling debtor or the creditor seeking repayment. Considering the Veil of Ignorance viewpoint, we would prefer measures that grant creditors the ability to respond to their requirements, while also providing adequate assurance and safeguards for debtors to prevent them from being harmed or treated unfairly.

From the viewpoint of the debtor, eliminating the deadline introduces unpredictability, as they remain unaware of when their assets may be sold or auctioned. This situation can further deteriorate the financial standing of debtors who are already facing difficulties. In the Original Position and under the Veil of Ignorance, individuals are likely to support regulations that minimize uncertainty for debtors, allowing them to plan their debt repayment strategies more effectively. In this scenario, Rawls' principle comes into play, asserting that any inequality in the management of non-performing loans can only be deemed acceptable if it serves to aid the most disadvantaged party (the debtor). If the approach of removing the deadline has a negative impact on debtors who are already in a tough situation, then it is necessary to reevaluate the policy to ensure it aligns with Rawls' notion of social justice.

DISCUSSION

The significance of equilibrium in legal safeguards is found in allowing creditors to recover what they are owed while making certain that debtors do not face unfair treatment. In this regard, while The Financial Services Authority renew regulation offers leeway to creditors, it is essential that debtors are provided sufficient chances to pursue just and unhurried resolutions, like debt restructuring or mutually advantageous agreements that serve both sides.

Proper documentation and precise reporting are crucial for upholding the integrity of the Foreclosed Assets procedure. Creditors must make sure that every transaction linked to the acquisition and sale of assets is accurately reflected in their financial records. These records should display the original worth of the asset, the decreased value, and the factors contributing to that decrease. The Financial Services Authority, as a regulatory body, plays a significant role in making sure that creditors follow the Foreclosed Assets procedure according to relevant regulations and accepted accounting principles. This oversight is intended to safeguard customer interests and uphold the stability of the financial system.

Clarity and fairness in information are fundamental for providing legal assurance to debtors, ensuring that their rights are honored, including a basic human right: the certainty regarding debtor assets. Creditors are obligated to furnish debtors with thorough, clear, and accurate information concerning all

loan-related matters, including the risks associated with payment default. Debtors are entitled to receive ongoing updates about their loan status, including the risk of loans becoming bad and the potential solutions for addressing troubled loans. This also involves explaining how the asset takeover may impact the debtor's outstanding debts.

CONCLUSIONS AND RECOMMENDATION

Based on the analysis of this research, the focus is on examining the legal security for debtors dealing with bad debts via the Repossessed Collateral mechanism at rural banks. It concludes that Repossessed Collateral does not adequately protect the rights of debtors in practice. This mechanism is crucial for rural banks in managing problematic debts. The process involves recognizing troubled debts, seizing assets, evaluating their value, selling them, and documenting these actions in financial reports. The legal security for debtors is hindered by several key issues, including a lack of clear regulations regarding the timeline for the Repossessed Collateral process at rural banks, significant legal expenses, insufficient knowledge and legal understanding among debtors, and restricted access to legal help. The involvement of creditors in the auction process raises concerns about the principle of prudence, as it contradicts the goals of minimizing risk and fostering financial stability. These challenges can impede debtors from asserting their rights and pursuing equitable resolutions. In summary, while Repossessed Collateral is a valid and essential method for addressing bad debts, its execution must be paired with solid legal protection for debtors. Rural banks should ensure that each phase of the Repossessed Collateral is conducted in line with relevant laws, honors and safeguards the rights of debtors, and promotes transparency and fairness to avoid future legal challenges.

The Financial Services Authority must formulate more strictly internal rules and procedures to oversee the management of Repossessed Collateral and safeguard debtor rights. This involves establishing precise directions for auction processes, giving appropriate notifications to debtors, and implementing oversight systems to avert any possible conflicts of interest, particularly when rural banks are involved in auctions. These rules should guarantee that the overall procedure is conducted equitably and openly, offering adequate protection for debtors, thereby preventing grievances and ensuring a fair resolution for all stakeholders concerned.

FURTHER STUDY

That's the research I have done, there is definitely a lot more that needs to be researched regarding debtor's justice in the settlement of bad debts with repossessed collateral in Indonesia, hopefully future researchers who research can develop more.

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