



Restructuring of Banking Credit Problems During the Covid-19 Pandemic

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Abstract

This research aims to break down the information regarding restructuring as a problem-solving alternative to the disbursement of credit loans. For debtors who struggle to meet their payment commitments, credit restructuring is a step in assessing bank credit activity. It is required to conduct research in order to examine different debt restructuring arrangements and implementations in the banking sector during the pandemic and to provide answers to various queries related to the provisions that have been submitted. The findings indicate that the restructuring of bad loans by financial institutions during the Covid-19 pandemic related to legal relations with micro, small, and medium enterprises must be based on good faith contracts by each party concerned, with every action taken must be prioritized by each side equally. Second, regarding settling non-performing loans during the pandemic, the role of government is to issue countercyclical policies.

Keywords: *Credit Loans; Restructuring; Countercyclical Policies; Non-Performing Loans*

Introduction

The Covid-19 pandemic has impacted various changes in various sectors of society (Khalifa et al., 2021). The problems are not only related to health and public policy but also hamper the financial sector (Chaturvedi et al., 2021). The banking sector is one of the most influenced by the pandemic since the flow of funds in society is sourced and located (Wu et al., 2020). Concerning Indonesia, the government has enacted various forms of legislation or other policies, including PP No. 21 of 2020, concerning social restrictions in the context of accelerating the management of the corona virus. The policy aims at establishing and promulgating these regulations to inhibit the level of spread of the Covid-19 virus in society and prevent the skyrocketing number of affected fatalities (Ikmal & Noor, 2021).

However, there are consequences from the implementation of these regulations on the economic sector in society. Statistics Indonesia (BPS, 2020) stated that Covid-19 has also impacted the employment sector, with mass layoffs occurring in many places. As of April 7, 2020, approximately 1.010579 workers in the formal sector were laid off (Indayani & Hartono, 2020). In addition, online motorcycle taxi drivers feel that their income is decreasing and the number of application and service users is getting smaller. Including traditional market traders who complain about a significant decrease in income due to calls for social distancing in the community. There is also a view that traditional markets are places with a high potential for spreading viruses, diverting many traditional market consumers to modern supermarkets (Adhitya et al., 2021).

The impact of the issuance of various regulations and policies related to large-scale social restrictions has made Indonesian economy sluggish during the Covid-19 pandemic. Due to the sluggish economy, the number of debtors who have difficulty paying off credit has increased in the banking sector. The difficulty for debtors to repay credit has disrupted the stability of banking performance, the financial system, and economic development. In order to prevent these undesirable things from happening, the government issued various special economic stimulus policies, one of which included a restructuring policy. This policy is economic stimulus support or allowance and is included as an obligation that banks can implement in response to the spread of Covid-19 pandemic

Meanwhile, credit restructuring is a step in evaluating the bank's credit activities for debtors who find it difficult to fulfill their payment obligations. A preliminary study remarked that credit restructuring is a step in the aspects of the credit business so that debtors can fulfill their obligations again (Agustina, 2021). When applying for credit at the bank, the requirements that the prospective debtor is required to fulfill are: (1) It is difficult for the debtor to pay the principal and/or interest on the loan; (2) The debtor has business prospects that are considered good and can be enabled to fulfill obligations after credit restructuring (Disemadi & Shaleh, 2020). Due to the provisions that have been presented, it is necessary to research to answer various questions and analyze the various arrangements and implementation of bad debt restructuring in the banking sector during the pandemic. Thus, this study aims to investigate the restructuring strategy for banking as a consequence of the Covid-19 pandemic.

Method

The method used in this study is a normative juridical method, namely legal research conducted by examining reference materials or secondary data. Descriptive studies are linked with descriptive analysis of events that are currently being investigated, then analyzed based on facts in the form of secondary data obtained from primary, secondary and tertiary legal materials. The type of data used is secondary data, or data obtained from research and processing of other people, in the form of ordinary books or documents provided in libraries or private property, such as laws and regulations, books, articles, journals, papers, and decisions. relating to restructuring in banking.

Results and Discussion

Credit is a form of giving achievements (e.g., goods, money) with a return in the future (Ali, 2019). Credit in economic life is an achievement in the form of money, and it is also a form of cooperation between creditors and debtors (Deville, 2015). The debtor is the party that benefits from credit and bears each party's risk. More broadly, credit is based on trust, risk level, and future economic exchange elements (Ramadhanti et al., 2019). From an economic point of view, credit is defined as a provision of money or bills. In addition, through Article 1 number (12) of Law No. 10 of 1998 as a

transition from Law No. 7 of 1992 concerning banking, credit is defined as a provision of bills or money that is possible similar to it, as an agreement or agreement related to lending and borrowing between a party and the bank, through the charge that the debt given must be repaid by the borrower within the timeframe that has been agreed.

Then through Article 1 point 5 PBI No. 7/2/PBI/2005 concerning asset quality rating for commercial banks, that credit is defined as the definition of the previous legislation, which includes: (1) overdraft, or negative balance in the current account of a customer who cannot be paid off paid at the end of time; (2) takeover of invoices for factoring activities; (3) takeover of purchase on credit from another party. Credit for both in the conventional or sharia banking contains various considerations in channeling these funds (Nugroho et al., 2021), including: (1) licensing and legality—in a form adapted to the business sector and activities of the borrower or debtor customer. several related permits: business license, company registration certificate, land certificate, and limited exporter identification number; (2) character—the personality of the debtor can be known, with several indicators, i.e., profession, social environment, appearance, experience and actions; and behavior in the past.

In addition, (3) debtor's management and experience—whether the debtor is able to make loan payments at the bank; (4) technical capabilities and several factors affecting the technical matters of the customer's business operations, such as the availability of human resources, raw materials, equipment and machinery, and business premises as required. whether or not the availability of human resources that meet the needs and level of mastery of technology is also important to note; (5) Marketing—which affects the business. (6) Social—the business funded by the Bank will have a social impact, so that the Bank needs to be more careful when determining or approving loan or credit applications so as not to violate social norms in general. (7) Finance—the financial health of the business or businesses operated by the debtor. The accuracy of the reading of the financial statements must really be fulfilled by the Bank. (8) Collateral—collateral in the form of goods funded by the Bank, or non-goods used in the business the prospective debtor operates.

The emergence of the work-from-home policy due to physical distancing also certainly affects the debtor's credit debt payment obligations based on the agreed timeframe according to the contract with the creditor. On the one hand, existing policies are made to break the trend of the spread of the Covid-19 virus. Although on the other hand, this policy is burdensome for debtors who owe or creditors as debtors, in the form of late payments for these receivables, which should be obtained on time, following the agreement between the debtor and creditor. It is difficult for debtors to fulfill their debt obligations to creditors by not allowing them to pay debts according to the deadline during the pandemic. Finally, bad credit occurs, which is a condition when the principal and/or interest installments are in arrears for more than 270 days, or the implementation is a loss but is resolved by applying for a new loan and can be based on legal aspects or market conditions, so that collateral cannot be disbursed at fair value.

In the banking sector, business relations are formed between business actors and banks. As a provider of funds, a bank is a party referred to as a creditor, and business actors are referred to as debtor. To run their business, debtors who need funds will apply for loans from banks (Putera & Huda, 2021). Then as a creditor, the bank is also a capital facilitator for debtors in the form of a loan. In general, they had borrowed credit from a bank before the pandemic outbreak (Bella, 2020). The emergence of various policies that oblige people only to do activities at home has resulted in the debtor, as one of those affected, experiencing a decrease in income and ability to pay off his debts to creditors. The reduced demand for goods or services sold by debtors as entrepreneurs also makes it more difficult to fulfill loans or credit to the bank based on the agreed deadline stated in the contract. Thus, it can be stated that the debtor has defaulted or broken a promise.

Article 1338 of the Civil Code stipulates that the parties' agreement in the form of a contract has binding power to be made equivalent to legislation against each party making and signing the contract. The debtor has achievements that must be fulfilled after the creditor delivers the goods or assets requested. Before the contract is agreed upon, both the debtor and the creditor are aware of their respective responsibilities and the consequences for them. The Covid-19 pandemic has had various impacts on business actors, many of whom are bank debtors in capital procurement contracts through loans or credit. The Covid-19 pandemic has reduced income, not only for debtors but also for business actors in general, due to a number of legal provisions that have been made. The debtor requires more effort in order to fulfill the agreed achievements. For debtors who cannot fulfill their achievements, several methods are carried out, such as compensation for losses (e.g., interest and other costs) and by canceling contracts.

There is a stipulation that when there are irregularities or violations committed on the responsibility of the parties who have agreed, then the contract is null and void and does not have to be asked of the judge. These provisions are conveyed through Article 1266 of the Civil Code. In this context, defaults that occur because the debtor is unable to carry out obligations or is negligent in fulfilling the achievements that have been agreed upon, whether on purpose and/or negligence to carry out their achievements based on the Civil Code, the debtor is obliged to pay compensation for losses (including the accompanying interest) such as submitted through Article 1239 to Article 1242 of the Civil Code. From the basis of unpredictable conditions as impacted by the Covid-19, it has made it difficult for the debtor to fulfill what has been his achievement. This situation can be called a coercive situation, needs to include several elements, namely: (1) appearance of a performance violation; (2) the cause arose not from the fault of the debtor; and (3) unexpected causes arise and cannot be accounted for to the debtor.

When the debtor can prove the three conditions below, it can be categorized as a default from the debtor and not as a deliberate error if the debtor can submit evidence of the following three requirements: (1) the debtor is innocent; (2) the debtor is unable to fulfill any of his/her obligations in another way, and (3) the debtor does not bear the risk. When the debtor is unable to fulfill their obligations or is not in accordance with the time in carrying out their achievements, the parties are first advised to see and use the principle of good faith as an alternative to solving the parties' problems. This is in accordance with what is conveyed through Article 1338 of the Civil Code. It is important for the parties to pay attention to good faith in making or executing contracts so that further disputes do not arise, especially if there are various unforeseen matters, such as the current Covid-19 pandemic.

The impact of pandemic has certainly affected business actors, including creditors or debtors who are listed in the business contract when providing capital through loans or credit. When fulfilling achievement, a situation is found that affects the fulfillment of the achievement, then several alternatives can be performed, namely, the contract is renegotiated, substituted, compensated, or postponed. In an application for renegotiation, it should be carried out for the benefit of each party concerned and intended to fulfill the achievements of each of these parties. Various considerations still need to be considered, including: First, renegotiation in good faith. The principle of good faith is not only during the implementation of the contract but is also required during the pre-contract process, during the contract, and solving problems (dispute settlement). Even though every party is actually affected by the pandemic, good faith must be obligated or at least not trying to prevent the possibility of the risk of not being able to fulfill all obligations according to the agreed contract.

Second, renegotiation is intended to modify and adjust the contract and not to conclude the contract. Indirectly, renegotiation also aborts the obligations of the debtor or other parties involved. As conveyed through Article 1245 of the Civil Code, the exemption is only for the obligation to compensate for losses. The parties concerned, when submitting a request for renegotiation, must already prepare

alternative options for revision of the contract, including in terms of payment deadlines. Third, renegotiation is possible through deliberations to resolve problems. When negotiating to change the contract, each related party can avoid settling through litigation or court, considering that the pandemic conditions could be more conducive. Apart from that, it will also take a longer time and a series of complex stages. Lastly, renegotiation can state a balanced agreement, which means it is not one-sided and can be made possible through joint consultations with consultants or legal practitioners. In practice, contracts are not only related to economic aspects but also legal aspects.

The ongoing contract renegotiation of the parties involved in the credit contract is one of the steps to solving the bad credit problem in the Covid-19 pandemic. In addition, when the debtor defaults or is unable to fulfill his obligations using the Covid-19 pandemic situation as the basis for the reason, then other options can be considered in the form of renegotiation, namely credit restructuring, as stipulated in Law No. 2 of 2020 along with POJK No.11/POJK.03/2020 which discusses policies for banks that support the provision of economic recovery stimulus for debtors affected by the pandemic. Elimination of bad loans and restructuring are efforts that have been common in the scope of the banking business. The aim is to lower the ratio of non-performing loans so that the bank's sound health continues to be maintained. Even so, the program should be carried out based on existing legal regulations in order to avoid moral hazard which results in losses for all parties, both banks, debtors, and society.

In addition, requests for credit restructuring can be submitted through a renegotiation process or renegotiating the contents of the contract again. Credit restructuring is also possible as a step in overcoming bad loans as a result of a decrease in debtor income due to the Covid-19 pandemic. A prior study argued that there are several ways to carry out credit restructuring (Disemadi & Shaleh, 2020): (1) Reschedule Payables; (2) Delaying paying credit; (3) Transferring debts to new creditors; (4) Reducing arrears of interest and/or objects; (5) Taking over the assets of the debtor; (6) Reducing loan interest rates; (7) Reducing credit principal arrears. On the other hand, in POJK No. 11/POJK.03/2020 states that there will be various possible ways to do credit restructuring, including: (1) Lowering interest rates; (2) Extending maturity; (3) Reducing principal arrears; (4) Reducing interest arrears; (5) Adding credit facilities; and (6) Converting credit as a statement of temporary capital.

Problems related to civil activities are not spared from the emergence of disputes when in business, the resolution of disputes related to bad credit problems at the National Bank is possible through several channels. For convenience reason, what is taken is not through court or non-litigation. Completion of this path is possible through the execution of guarantees. In a credit agreement, collateral is a way to acquire a refund. Several options are taken in resolving disputes without going through a court which generally includes mediation, conciliation, and negotiation. Also conveyed through Article 1 paragraph (10) of Law No. 30 of 1999 concerning arbitration and alternative dispute resolution that institutions or channels resolve disputes or differences of opinion through a mechanism that has been agreed upon by each party, namely by not going through a court, through a mechanism of mediation, consultation, consolidation, negotiation, or with expert judgment.

PBI No. 10/1/PBI/2008 as a transition from PBI No. 8/5/PBI/2006 concerning banking mediation, stipulates that mediation, consultation, negotiation, or consolidation can be used as an option in resolving disputes which are classified as simple, fast, and inexpensive in terms of problems with borrowers or debtors with the bank as the creditor. Mediation that takes place in banking is a form of agreement between the bank and the borrower's customer, which is quite effective. It is because it will maintain the bank's reputation and also the interests of its customers. Credit contract restructuring is one of the efforts when the parties take a non-litigation route. This effort is part of the steps that are most likely to be carried out if the debtor or creditor agrees. At this time, one possible alternative to dealing with bad loans is renegotiation through contract restructuring. Restructuring can be done as long as the debtor still has

good faith to repay the debt. Initiatives for restructuring come from debtors, the same as initiatives for applying for credit loans.

Through a contract renegotiation request by way of credit contract restructuring to the Bank, as a creditor with the right to measure and reconsider the ability level of the debtor in making payments or other considerations. These considerations are commercial in nature and are part of the business of the Bank regarding whether or not the debt restructuring carried out by the debtor can be fulfilled. In order to resolve defaults on business contracts in banking, especially settlement of bad loans through renegotiation with debt restructuring, the Bank needs to conduct a thorough analysis. Thus, when the restructuring is carried out, the debtor can comply with the applicable provisions. In addition, the solution to the problem of bad credit can be seen from the government's efforts. There are two policies that the government will generally adopt when facing economic problems, namely fiscal policy and monetary policy. The fiscal policy is a step taken by the government in creating various changes to the taxation system or related to state spending which has the aim of overcoming current economic problems. Meanwhile monetary policy is a policy formed by Bank Indonesia as the central bank in order to maintain state financial stability (Juhro et al., 2022).

Credit risk has increased as a result of the Covid-19 pandemic because debtors have decreased their ability, capacity, and performance to be able to fulfill all of their obligations in paying debts or credit. This will then have a very high chance of disrupting banking performance and financial system stability, which will also affect economic growth. Attempts to form good policies were carried out by the Indonesian government during the Covid-19 pandemic, namely through countercyclical policies in dealing with quite extreme economic cycle situations. It has been submitted through POJK No. 11/POJK.03/2020 concerning National Economic Stimulus is a form of Countercyclical policy that can be taken by Banks to implement policies to support economic growth stimulus for debtors affected by the pandemic situation. The objective of the countercyclical policy is to support the performance of the banking system, especially in its function related to intermediation, as well as to maintain the financial system to remain stable and continue to encourage economic growth (Soepriyanto et al., 2022).

The countercyclical policy aims to provide special treatment in terms of bank loans in a certain amount (Disemadi & Shaleh, 2020) This policy is also a way to restructure credit for debtors affected by the Covid-19 pandemic. Affected debtors, such as SMEs debtors whose business focus is generally in the fields of tourism, hotels, trade, mining, agriculture, transportation, and processing, who are being hampered in fulfilling their obligations to the Bank are some of the debtors assisted by this policy. Through regulations established by the Indonesian Financial Services Authority, the government seeks to provide every form of authority to restructure or relax the payment process for debtors affected by the pandemic (Astutik, 2020). This regulation becomes the basis for debtors to apply for relaxation of credit payments or credit contract restructuring to help the possibility of fulfilling debtor achievements or obligations.

On the other hand, Bank Indonesia has issued a credit card relaxation policy starting June 1, 2020, to lower the maximum interest rate limit, which was originally 2.5 to 2 percent per month. In addition, there was also a temporary decrease in the minimum payment value from 10 to 5 percent. Then there is also a temporary reduction policy for the number of late fines. The government has also drawn up various economic policies by issuing Coordinating Ministerial Regulation for Economic Affairs No. 8 of 2020 concerning Amendments to Coordinating Ministerial Regulation for Economic Affairs No. 6 of 2020 concerning Special Treatment for people's business credit. It is stated in Article 6 paragraph (1) that recipients of people's business loans affected by the pandemic may obtain special provisions for tangible people's business loans: (1) Provision of a postponement of the principal installments of people's business loans for a maximum of six months based on the assessment of people's business credit distributors

which is valid from April 1 2020, to a maximum of December 31, 2020; (2) Relaxation of provisions on people's business credit restructuring in the form of the addition of the people's business credit period, adding the people's business credit ceiling limit, and delaying in fulfilling credit payments

Conclusion

As discussed in the previous section, the following conclusions can be drawn. First, restructuring of bad loans by financial institutions, namely banks, when the COVID-19 pandemic occurs related to legal relations with micro, small, and medium enterprises must be based on good faith contracts by each party concerned, with every action taken must prioritize each party in balance. The creditor is expected to be able to provide space for the debtor to resolve any difficulties in paying the installments by submitting a renegotiation or review of the contract. This is a form of good faith during the pandemic related to business contracts that both parties agreed on beforehand by relaxing the debtor in fulfilling his/her achievements or debt payment obligations, especially for the principal debt. Renegotiation also allows extending the maturity date for debt payments or permitting the debtor to make debt payments using an installment mechanism. Second, regarding the settlement of bad loans during the pandemic, the government's role is to issue countercyclical policies.

This has been successfully fulfilled, one of which is through POJK No. 11/POJK.03/2020 concerning National Economic Stimulus, to support banking performance, especially in its function related to intermediation, as well as maintaining the financial system to remain stable and continue to strive for economic growth. One form of Countercyclical policy is through special treatment for debtors in a bank credit agreement in a certain amount. The Countercyclical's policy form also includes restructuring for debtors affected by economic difficulties due to the pandemic. The POJK is also a form of policy issued by the government that can be used as a basis for all banks in order to provide a process of restructuring or relaxing the obligation to pay credit or loans by debtors affected by the pandemic. The Indonesian government has also attempted to resolve defaults by debtors who are unable to fulfill their achievements with a series of monetary policies implemented by Bank Indonesia since June 1, 2020, namely issuing credit relaxation provisions in the form of lowering the maximum interest rate limit.

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