

Notary Role in Implementing Acquisition of Assets Debtors (AYDA) To Overcoming Bad Debt Settlement (Case Study at Banking Pati Regency)

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Abstract. The aim of research to determine: (1) Implementation of foreclosed assets by the Bank; (2) The role of the Notary in the Implementation of foreclosed assets; and (3) Obstacles and solutions in the implementation of foreclosed assets by the Bank. The data used in this research is secondary data in the form of primary legal materials, legal materials, secondary, tertiary and data.

Based on the results of data analysis concluded that: (1) Implementation of foreclosed assets is done through voluntary surrender by the debtor, the auction of mortgage, and the legal process; (2) The role of the Notary in the Implementation of foreclosed assets through legal acts compensated by making the Sale and Purchase Agreements; and (3) Obstacles to the implementation of foreclosed assets derived from: (a) the debtor, the debtor does not happen because the credit cooperative in completing the stalled; (B) a third party, in this case mainly the owners of land and buildings pledged by the debtor to the bank as a creditor. Third parties often take the fight at the time of the execution of the collateral to be taken over; and (c) the country through the provision of legislation. Solutions to overcome these obstacles through the effectiveness and efficiency of foreclosed assets.

Keywords: Notary; Foreclosed Assets; Credit Los.

1. Introduction

Notary most important elements in any transaction banking operations, especially in the Making of the Acts of the Credit Agreement / financing as well as the creation of the Acts of the Settlement Credit Agreement. According to Article 1 point 11 of Law No. 10 of 1998 on the Amendment of Act No. 7 of 1992 on Banking, formulate:

"Understanding Credit is the provision of money or bill can be equated with that, based on agreements between the Bank Borrowing another party that requires the borrower to pay off debts after a certain period with the administration of flowers".⁴

Laws regarding the content of the above, is the main activity Lending Bank that contain risks effect on the Health and Survival in the implementation of the Bank so that the Bank should hold fast to the principles of healthy Credit in order to protect and preserve the interests of public confidence.

In Lending, Bank calls for the guarantee or collateral that can be used as a substitute for debt repayment at a later date when the debtor Injury Promise or Default. To guarantee Refund Loans then on assurances given by the debtor held by a juridical binding Formal by the creditor / bank. The binding warranty deed done with Authentic made before Notary.

In case of inability of the debtor / Credit Returns Customer in a timely manner in accordance with the Agreement can be categorized as an act of Default, which is

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⁴ Act No. 10 of 1998 on the Amendment of Act No. 7 of 1992 on Banking.

known as the default og event. Against Default actions performed by the debtor / customer, Bank action Execution Security Rights. One way in which the Bank in Execution Management Rights on the Bad Debt Guarantee ie through sales in the Lower Hand. In addition to sales in the Lower Hands that are considered to overcome the difficulties that arise in Sales in Auctions, specifically for Banks Provisions Act establishes the possibility to buy their own goods Assurance although it is Temporary or takeover of collateral by the bank, known as the Collateral Yang Foreclosed (foreclosed assets).

In practice, Credit Settlement through Acquisition of Assets Debtors (foreclosed assets) is quite difficult for the Bank. This is because various provisions of Law which is still not profitable for the private bank National like period of the Takeover Assets Debtors maximum of one (1) year and the provisions of Article 12 UUHT which states that the object Encumbrance should not be agreed to be owned by the creditor if the debtor Injury Promises ,

Based on the above background, it is the problem in this study, namely: (a) How Bad Debt Settlement Implementation through Acquisition of Assets Debtors (foreclosed assets) by the Bank? (B) What is the Role in the Implementation of Acquisition of Assets Notary Debtors (foreclosed assets) in Banking? and (c) What barriers and solutions in the implementation of Bad Debt Settlement through the Asset Acquisition of debtor (foreclosed assets)?

Research methods

Juridical Empirical Approach method used, namely: a study in addition see Legal Aspects Positive also look at the Implementation or Practices in the Field. This research is descriptive specification Analytical, describes the legislation in force, associated with theories of Law and Law Enforcement Practices Positive, which is concerned with the problems studied.

Data collection was obtained from: (a) primary data obtained from interviews; (B) secondary data obtained from literature study; and the data obtained from the tertiary Law Dictionary, Indonesian Dictionary and Encyclopedia. Data were analyzed by descriptive qualitative.

2. Results and Discussion

2.1. Bad Debt Settlement Implementation through Acquisition of Assets Debtors (foreclosed assets) by the Bank

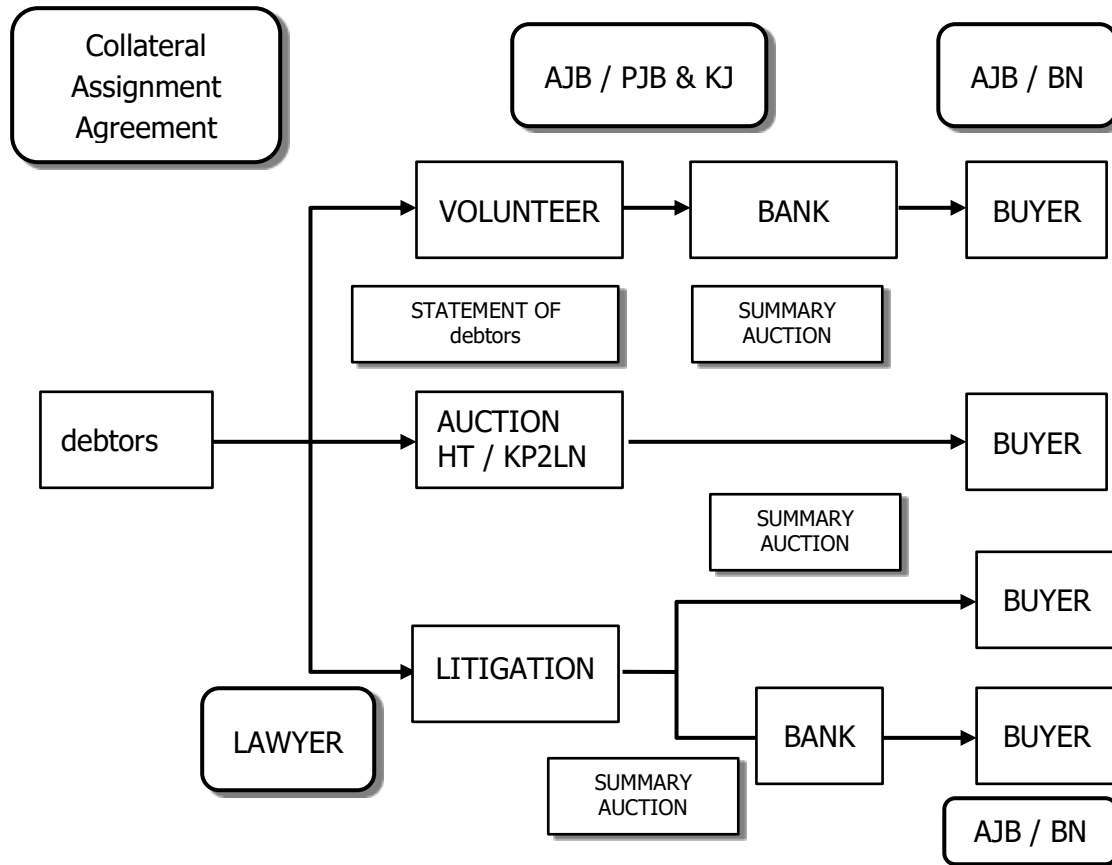
The implementation process loan resolution through the acquisition of assets of the debtor (foreclosed assets) by procedures shown in the schematic below (Figure 1).

Related to the scheme in figure 1, the takeover of debtor assets (foreclosed assets) performed with the following procedures:

- a. voluntary surrender by the debtor, is done by making the Asset Assignment Agreement / Settlement Credit, the Deed of Sale and Purchase or Sale and Purchase Agreement and Power of Sale.
- b. Mortgage auction via KPKNL (Office of the State through the Minutes Auction auction.
- c. Takeover through the process Legal / Litigation / Auction Execution via the District Court through the Minutes of the Auction.

Takeover of collateral / asset debtors or guarantors either through execution or compensation should be made on behalf of the bank. Implementation of foreclosed

assets through the execution can be performed directly on behalf of the bank or by using the deed De Command (Statement that the purchase was made to the other party) and after passing one (1) year must be made under the name of the bank.



Source: PT. Bank Internasional Indonesia Tbk⁵

Figure 1. Schematic takeover process execution debtor assets (foreclosed assets)

2.2. Notary role in the implementation of the Asset Acquisition of debtor (foreclosed assets) by the Bank

The role of the notary related to the implementation of the repossessed assets are: (a) the supply of information for interested parties in terms of making authentic deeds; (B) provide the legal considerations related to a deed and gives an explanation of the Act to the parties concerned⁶, Notaries also act as the official who made the deeds of such Deed and Deed Relaa Partij.

In the implementation of foreclosed assets Notary deed made a Partij deed, where the deed made by the interested parties before a notary public. In this case the notary is

⁵ Nalia Safitri, 2013, *Peran Notaris dalam Pelaksanaan Pengambilalihan Aset Debitur (AYDA) sebagai Alternatif Penyelesaian Kredit Macet pada Bank*, the Master of Notary, Post Graduate Program, University of Indonesia, Jakarta, p. 87.

⁶ Habib, Adjie, 2011, *Meneropong Khazanah Notaris dan PPAT*, PT. Citra Aditya Bakti, Bandung, p. 50

obliged to pour what the will of the parties regarding the legal actions that they are doing all in an authentic deed. The notarial deed is written evidence in civil cases, as mentioned in Article 1866 of the Civil Code, the evidence consists of: (a) the written evidence; (B) evidence with witnesses; (C) presupposition-foreboding; (D) recognition; and (e) the oath.

To do Takeover or Compensation Collateral Loans, Notarial Acts need to make for the benefit of the Bank and the debtor, namely:⁷

- Deed of Sale and Purchase of the debtor or owner collateral to Bank; If the collateral in the form of land and buildings on it, then the Sale and Purchase Agreements made by the Land Deed Official (PPAT). When Collateral in the form of moving goods, such as cars, motorcycles and other moving objects Deed or Deed in Hands Down. Their affirmation of the Deed of Sale or the receipt of its own that the sale of goods Collateral / guarantee is paid or compensated for by using loans in arrears;
- Sale and Purchase Agreement (SPA) between the debtor by the creditor or the attorney; Feedback Process PPBJ name on the buyer's name has not been implemented, then the seller gives the buyer a full Authorization to perform all actions is both the management and ownership of assets are taken. Seller will assist the buyer if necessary in the process of buying and selling, and behind the name. Seller hereby authorizes the buyer to during the above-mentioned sales have not been carried out, on behalf of the seller do and explain all legal proceedings both acts of management and possession action.
- Discharging agreement between debtor and creditor; To complete its obligations, the debtor gives power of attorney to sell the right to release the collateral taken over to the buyer; The debtor is obliged to vacate the collateral with no exceptions. Handed over to the buyer and / or any other party all the keys on the collateral. If the debtor discharge date has not emptied the assets are expropriated, then the debtor hereby authorize the buyer to clear the collateral, if necessary, ask for the help of the authorities with all the costs borne and paid by the buyer;
- Power of Attorney to Sell / Removing the Rights of the Parties between the Debtors and Creditors; Which is authorized is entitled to make a complete and sign a co-Sale and Purchase Agreements, the Deed of Waiver and / or Transfer of Rights required, receiving money for the sale price and to create, sign and submit kwitansinya and / or sign the payment. Put everything that is sold / released / transferred His rights to those who deserve it, apply to the authorities that have to do with the interests of the Rights of the collateral taken;
- Statement from a debtor; The debt settled by the debtor and / or owners guarantee by way of delivering goods to the Bank Guarantee. The guarantee Goods Delivery performed followed by the Sale and Purchase and Sale and Purchase Authorization from the debtor and / or the Consignor guarantee to the Bank. After the redemption of all liabilities / debts to the handover, the parties stated at once the debtor is entitled to occupy / inhabit these assets are taken over to the group sell the collateral and / or no later than six (6) months from the date of the statement; and
- Debt Settlement Agreement with Warranty Delivery of Goods between the debtor and / or Own Security Bank; This agreement aims to settle obligations to the Bank

⁷ Ni Wayan Anik Parvati, 2009, *Penyelesaian Kredit Macet Melalui Pengambilalihan Asset Debitur (AYDA) Berupa Tanah dan Bangunan Sebagai Alternatif Penyelesaian Kredit Macet Di Bank Century, Tbk di Jakarta*, Notary Master Study Program, Postgraduate Program Diponegoro University, Semarang, p. 87-91.

Debtors arising under the Deed of Credit Agreement. To complete a debtor obligation to the Bank, the debtor and / or owners submit to the Bank Guarantee entire Credit Guarantee. Goods Delivery Guarantee of the debtor and / or owners guarantee to Bank ditinjaulanjuti with the Sale and Purchase Agreement and Authorization Sell or collateral taken. By delivering goods Guarantees of the debtor and / or owners guarantee to the Bank, the Debtor's obligation or debt to the Bank has been completed or settled.

In fact, the takeover of foreclosed assets which is done through the Sale and Purchase Agreement (SPA) and the Power of Sale to the bank without risk to the bank, because the SPA is basically not shift the ownership status of the security to the buyer. Under the provisions of Article 1459 of the Civil Code states "property rights over the goods sold are not transferred to the buyer during the delivery of which has not been done according to the provisions in question".

2.3. Obstacles and solutions in the implementation of Bad Debt Settlement through the Asset Acquisition of debtor (foreclosed assets) by the Bank

2.3.1. Obstacles to Implementation of the Takeover Assets Debtors (AYDA)

Arrangements regarding the implementation period AYDA contained in Article 23 paragraph (2) of Bank Indonesia Regulation Number 13/26 / PBI / 2011 states that "the RB shall conduct remedies against foreclosed properties (foreclosed assets) within a period of one (1) year since the takeover ". This resolution efforts can be done by actively market and sell foreclosed assets. In practice in the field, a lot of collateral by the bank to stop the sales process up to 3 (three) years so that it does not go collateral can be liquidated.⁸It is also influenced by factors that can impede the course of the takeover process of collateral by creditors resulted in the takeover of assets of debtors slow and eventually stalled or stopped. These barriers are:⁹

- Barriers of debtors
Article 1238 of the Civil Code contains the billing means a notice by the creditors to debtors, so that debtors carry out his promise to pay their obligations promptly or at the time mentioned in the notification. However, the constraints are not all borrowers are willing and cooperative in the process AYDA this for many reasons, among others, the object Encumbrance required by the debtor's place of residence or place of business and the takeover process is the longer that it takes a considerable cost, both for the banks as well as debtors.
- Barriers of third parties
The third party in this case mainly the owners of land and buildings pledged by the debtor to the bank as a creditor. In practice, the owners often feel aggrieved guarantee by the debtor so when debtors default, actions that can be performed by the bank under the agreement in the Deed Granting Mortgage (APHT) is sold to another party or take over collateral such as land and building. In the third party is often resistance at the time of the execution of the collateral to be taken over, this

⁸ Dianyendra Hardy, February 20th, 2017, "Perlunya PP Mekanisme Teknis Pelaksanaan AYDA demi Keamanan Praktik Perbankan di Indonesia, <http://www.hukumonline.com/berita/baca/lt58aa7da08e8a2/perlunya-pp-mekanisme-teknis-pelaksanaanayda-demi-keamanan-praktik-perbankan-di-indonesia-oleh--dianyendra-k-hardy--sh..> Accessed on 22 September 2019.

⁹ Ni Wayan Anik Parvati, opcit.

is called a resistance derden verzet or third parties who have an interest because obviously their rights harmed by a decision. The owner of the land in question in this case is the old land owner or owners of land before the land is encumbered Mortgage.

- The resistance of the country through the provision of legislation in this case are various statutory provisions applicable to hamper loan resolution through Acquisition of Assets Debtors (foreclosed assets) by the bank.

Other barriers in the areas of accounting, loan restructuring with the takeover of the collateral / assets and modification of terms is calculated as follows¹⁰:

- Collateral or other assets such as land and buildings taken over and marketable securities are recognized at net realizable value, namely: the fair value of the collateral / assets less estimated costs to sell the collateral assets.
- Credit remaining after deducting the net value of collateral / foreclosed Other assets are restructured loans.

The provision in the accounting field will affect the balance sheet of banks, which in turn also affect the soundness of the bank itself.

The next obstacle is the provisions of the applicable law is the issue of taxation. The imposition of substantial tax debtors assets for the takeover is a considerable burden for both banks and debtors.

In addition to the barriers mentioned above, difficulties in settlement of bad debts through the implementation of foreclosed assets, ie¹¹ :

- To create the right base in the form of a deed of sale of the collateral the lender (buyer) with the debtors (the seller) require purchase costs such as taxes, fees and charges deed under the name of the certificate to the collateral in the form of land and buildings.
- After the mortgage reverts to the bank which is to be The bank's assets, in order to resell the assets in accordance with the provisions of the articles of association of companies usually require a General Meeting of Shareholders (AGM). To obtain the approval of the AGM requires a certain time for the AGM not at any time be held.
- Determination of the Banking Act determines the period of 1 (one) year to immediately resell the collateral which has been taken over too short due to the selling of collateral such as land and buildings is not easy.

Other barriers in the settlement of bad debts through the acquisition of assets of this debtor is the presence of insecurity certificates as collateral for¹² :

- The possibility of such certificate no land book.
- Rights over land that have a term like Broking, leasehold and Right to Use.

The entire constraints mentioned above is a good challenge for banks as creditors, debtors or third parties in order to find a solution for all these obstacles.

2.3.2. *Solutions to Overcome Obstacles to Implementation AYDA*

Efforts are being made to overcome these barriers is through the implementation of efficiency and effectiveness in the implementation of the takeover of debtor assets (foreclosed assets). Things that need attention and need to be observed in order to

¹⁰ Firdaus, Rachmat and Maya Ariyanti, 2003, *Manajemen Perkreditan Bank Umum, Teori, Masalah, Kebijakan dan Aplikasinya Lengkap dengan Analisis Kredit*, Alfabeta, Jakarta, p. 170

¹¹ Interview with credit officer

¹² Eddy Ruchiyat, 2013, *Politik Pertanahan Nasional Sampai Orde Reformasi*, Alumni Bandung, p. 132.

loan resolution through the acquisition of debtor assets (foreclosed assets) can be done effectively and efficiently, including¹³:

- Land status, it greatly affects the process of taking over assets. Broadly speaking, the status of the land can be a state land and land rights, namely the right to property, right to build, right to cultivate, land use rights and ownership of the apartment units.
- The status of the subjects, whether individuals or legal entities. If an individual, if they are taken over joint property, it shall require the approval of her husband and the wife or partner status also seen. Do not let the transfer of the assets cause the application of Article 21 (1) BAL that could result in changes Hak be HGB / HGU / Right of Use. If a legal entity, it must be observed first that the assets are largely or mostly small and assets of the legal entity, because if the majority must obtain the AGM, if not quite with the approval of the directors or commissioners.
- Locations Land. This needs to be known for their land located in a specific area and can only be transferred by certain parties, such as industrial zones, the area of tourism and so on. It also lands that are managed and controlled by Right Management (HPL) of course there are limits and HPL holders in order to transfer the land assets that are in the HPL environment.
- Allotment of land. Broadly speaking, the two designation: Farmland including plantations; and Land nonagricultural. Lodging on the farms, the switchover should be conducted in the presence of a special PPAT;
- License-Permit relating to land use and land use. This relates to the spatial plan where the land is located. Which should be observed are the permits relating to the allocation and use of land, namely: (1) permit the location and the release of land rights, (2) a special Jakarta, if any, Permit Allocation and Land Use (SIPPT) and a number of conditions other, (3) whether there AMDAL and (4) whether there are other licenses they have, such as: IMB permits Nuisance Act and others;
- Whether there is a dispute over land. It should be checked in the court that has jurisdiction over the location of the land or legal domicile and debtors.

3. Closing

3.1. Conclusion

- Procedures for implementing the loan resolution through AYDA by: (1) The voluntary settlement by debtors to make surrender agreement with the Act of the Asset Sale and Purchase or Sale and Purchase Agreement; (2) Auction Encumbrance via KPKNL through Proceedings of the auction; (3) Acquisition of due process of law / litigation / auction execution via Courts through the Minutes of the Auction.
- Notary role in the implementation of foreclosed assets by creating Authentic Acts, is a legitimate right base as a legal basis the shift of a bank guarantee to the debtor owned legally.
- Barriers loan resolution through internal foreclosed assets sourced from namely: bank (creditor). External resistance comes from: the debtor, the third party and the country through the provision of Regulations issued in the field of accounting, restructuring and tax credits. Solutions to overcome these obstacles by observing:

¹³Hutagalung, Arie Sukanti, 2015, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, Institute for Legal Empowerment of Indonesia, Jakarta, p. 319-321.

(1) the status of the land as collateral the bank; (2) the status of the subject; (3) The location of the land; (4) the allotment of land (agricultural land, plantation or non-agricultural land); (5) License-Permit relating to land use and land use; and (6) Presence or absence of a dispute over land as collateral.

3.2. Suggestion

- For Java, preferably in lending bank must pay attention to the principles of prudence and supervision of targeted and continually lending.
- For Notary, should be more thorough and more careful in checking the completeness of the files in to make the deeds relating to the implementation of foreclosed assets, thus minimizing the possibility of error that cause harm to the parties in the deed.
- For Society (debtor) is expected to pay off the debt in accordance with the agreements with creditors.

4. References

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- [7] Act No. 10 of 1998 on the Amendment of Act No. 7 of 1992 on Banking.