

The Comparison of Defaults in Credit Agreements by Customers of Conventional Banks and Islamic Banks

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Abstract. *The banking industry has a very important role in the rotation of the economy. Banks as economic drivers with government assistance, provide credit facilities for the community and need each other to carry out the circulation of money in Indonesia, in which banks provide credit to the community, as well as the community is assisted financially in the form of credit capital obtained from banks. However, from the symbiosis of mutualism that exists, there are still many problems between banks and their customers related to defaults on credit agreements in both conventional banks and Islamic banks, especially conventional banks and Islamic banks in the city of Kendari, Southeast Sulawesi Province. This research method uses normative legal research, with a comparative legal approach, and the statutory regulatory approach. The results of this study are Settlement of credit agreement default disputes at conventional banks and Islamic banks consists of two ways, both litigation and non-litigation, in which the settlement of litigation disputes on conventional banks is resolved in the District Court while Islamic banks are resolved in the Religious Courts. Likewise, non-litigation dispute resolution at both conventional banks and Islamic banks has the same method with different applications starting from coaching, rescheduling, reconditioning, restructuring, to confiscating assets which these two banks have different applications.*

Keywords : Agreement; Bank; Credit; Comparison.

1. Introduction

The world banking industry has such a complex role in the wheel of the economy in Indonesia, where almost all aspects of human life cannot be separated from

banks or other microfinance institutions, both in running a business, undertaking, and investing which are important assets offered by banks in fulfilling their needs. financial needs and public finances. In article 1 paragraph 2 of the Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking, hereinafter referred to as the Banking Law.

Banks as drivers of the national economy, with government assistance, provide large amounts of credit facilities for people who have financial constraints at one time to serve as initial capital. The implementation of granting credit facilities from creditors to debtors is generally carried out by entering into agreements, because every credit that has been approved and agreed upon by the credit applicant must be included in the credit agreement. This credit agreement is the main agreement which determines whether or not an agreement is cancelled, then also as proof of the limitations of rights and obligations between creditors and debtors, after that it is also a tool for supervising the settlement of debtors' debts. The credit agreement is often followed by an additional agreement in the form of a guarantee by the debtor to the creditor.¹ In providing credit facilities, of course, the bank has policies, terms and conditions that must be met by prospective customers as debtors. Generally in granting credit, there is something or object that will be pledged as collateral, this collateral then becomes collateral for the certainty of debt repayment.

Borrowing money or what is better known as credit is not only known to urban communities, but also to rural communities. Credit generally functions to expedite a business activity by providing loans to customers, especially for economic activities in Indonesia, this plays a very important role in money circulation activities. funds lent by the bank in providing credit facilities to debtors are funds originating from customer deposits which must be returned in the form of interest in accordance with the agreement agreed upon by the parties. To get certainty of repaying the debtor's loan, the bank usually asks for collateral in the form of land certificates, so that guarantees have an important role for banks in providing credit facilities if one day there are obstacles or broken promises in repaying credit by the debtor. In addition to ensuring smooth loan installments, banks apply certain requirements such as the amount of installments adjusted to the amount of the loan/credit with repayment period, guarantees and identity of the loan applicant. Bank loan applicants must fill out an application, which also includes a deed of credit agreement containing: provisions in the agreement that are binding on both parties. collateral and the

¹Martin Anggiat Maranata Manurung, Jawade Hafidz. 2017. "Legal protection for creditors if the fiduciary collateral object turns out to be lost and the debtor defaults (a case study at PT. People's Credit Bank Dynamics Bangun Arta Salatiga)" AKTA Journal, No. 1, Vol. 4, pg. 1 (<https://garuda.kemdikbud.go.id/documents/detail/2390194>)

identity of the loan applicant. Bank loan applicants must fill out an application, which also includes a deed of credit agreement containing: provisions in the agreement that are binding on both parties. collateral and the identity of the loan applicant. Bank loan applicants must fill out an application, which also includes a deed of credit agreement containing: provisions in the agreement that are binding on both parties.²

Based on the results of the initial survey conducted, it shows that some customers who become debtors fail to fulfill their achievements in credit agreements with banks, indicated by the presence of buildings that become collateral or customer guarantees when entering into credit agreements with banks that will be sold or auctioned off by the bank. BTN Kendari branch office, as shown in the baleho poster. This data was obtained during the pre-research, by observing and asking directly to interested parties and bank staff about it. According to Friso's statement, one of the BTN bank staff at the Kendari branch office, the Recovery Asset Sales section, "the baleho poster containing a list of house collateral that will be sold/auctioned by bank BTN is true because the debtor's customer is in default,

Therefore the researcher raised the title "Comparison of Defaults in Credit Agreements by Customers of Conventional Banks and Islamic Banks". (Study at Bank Syariah Indonesia and the State Savings Bank Kendari branch office).

2. Research Methods

This study uses comparative law theory, banking theory, engagement theory, as well as an overview of banking, credit, and dispute resolution related to default on credit agreements in conventional banks and Islamic banks. research methods related to this type of research using normative legal research, with a comparative law approach, and a statutory regulation approach. Sources of legal material in this research are credit agreements, financing agreements, laws and regulations, MUI Fatwa, and other regulations, as well as documents, books, manuscripts, research results, legal expert opinions, journals, theses, and others. The collection of materials in this study prioritizes good tracing of laws and regulations, documents, manuscripts, and literature needed by the problems under study. All materials are analyzed,

3. Results and Discussion

3.1. Comparison of Defaults in Credit Agreements by Customers at Conventional Banks and Islamic Banks

²Amalia Chusna and Jawade Hafidz. 2019. "The Role of the Notary in the Credit Agreement with Mortgage Guarantee (Case Study in the State Savings Bank (Persero) Tbk)" AKTA Journal, No. 4, Vol. 6, Pg. 2 (<https://garuda.kemdikbud.go.id/documents/detail/1914291>)

Banking functions as a financial intermediary institution (financial intermediary institution). What keeps the flow of the economy going, where banks collect funds from people who have excess funds (surplus units) and channel them back to people who lack funds (defici units) in the form of credit and provide other banking services (Service).³In the book written by Ismail, the types of banks consist of several sections, including banks in terms of determining prices, namely:⁴

- a. Conventional Banks, in collecting and channeling funds, set interest, namely remuneration for banking activities received by both the bank and the customer, which is a source of profit, for example, BTN, BNI, BRI, and others.
- b. Islamic banks, carrying out their business activities based on sharia principles, according to their types consist of sharia commercial banks and sharia people's financing banks, sharia banks establish a profit sharing system. For example, Bank Syariah Indonesia (BSI).

The differences between Conventional Bank Credit Agreements and Islamic Banks are as follows: ⁵

Comparison	Conventional Banks	Islamic Bank
Bank Functions and Activities	- Intermediation - Financial Services	- Intermediation - Investment Manager - Investors - Social - Financial Services
Mechanisms and Objects	Free	Anti usury and anti maysir
Business		
Basic Principles of Operation	- Value free (principle	- Not value free (principles of Islamic

³Anshori, GA, (2008). History of the Development of Sharia Banking Law in Indonesia and its Practical Implications for National Banking. La_Riba, Journal of Islamic Economics. Vol II, page 2

⁴Mandala manurung and Prathama Raharja, Money, Banking, and Monetary Economics, (Jakarta: Faculty of Economics, University of Indonesia, 2004), page 134

⁵Ascarya. Sharia Bank Contracts and Products. (Jakarta, Raja Grafindo Persada, 2015), p. 33

	materialist) - Money as a commodity - Flower	sharia) - Money as a medium of exchange and not a commodity - Revenue sharing, buying and selling, rent
Service Priority	Personal interests	Public interest
Orientation	Profit (profit)	Socio-economic goals Islam, profit (profitshring)
Bank form	commercial bank	commercial, development bank, bank universal or multi-propose
Customer Evaluation	Certainty of return of principal and interest (creditworthiness and collateral)	Be more careful because of participation in risk
Customer Relations	Limited debtors-creditors	Closely as a business partner
Sources of Short Term Liquidity	Money market, Central Bank	Sharia Money Market, Bank Central
Loans granted	Commercial and non-commercial, oriented	Commercial and non-commercial, profit-oriented and non-profit

	profit	
Settlement Institution Dispute	Court, Arbitration	Court, Arbitration Board National Sharia
Business risk	- Bank risk is not directly related to the debtor, debtor risk is not directly related to the bank - Likely to happen <i>negative spreads</i>	- Faced together between the bank and the customer with the principles of fairness and honesty - Impossible to happen <i>negative spreads</i>
Supervisory Organizational Structure	board of Commissioners	Board of Commissioners, Board Sharia Supervisor, Council National Sharia
Investment	Halal or unlawful	Halal
Environment and Culture	Non-Islamic	Islamic
Work		

3.2. Settlement of Credit Agreement Default Disputes at Conventional Banks and Sharia Banks

In essence, the credit agreement contains a clause regarding dispute resolution. In the legal context, especially contract law, what is meant by a dispute is a dispute that occurs between the parties because of a violation of the agreement that has been stated in a contract (agreement), either in part or in whole. So that in other words there has been a default by the parties or one of the parties, due to non-fulfillment of obligations that must be carried out or fulfilled but lacking

or excessive which ultimately results in the other party being harmed.⁶ Broadly speaking, the form of dispute resolution can be done in two ways, namely litigation (court route) and non-litigation (outside court route). According to Dr. Frans Hendra Winarta, SH, MH in his book entitled *The Law of Dispute Settlement* says that litigation is conventional dispute resolution in the business world, such as in the fields of trade, banking, mining projects, oil and gas, energy, infrastructure, and so on. The litigation process places the parties against each other. In addition, litigation dispute resolution is the final means (*ultimum remedium*) after alternative efforts to resolve disputes have not produced results.⁷

Basically, the settlement of disputes between the Bank and the debtor or customer as contained in the credit agreement, both at Conventional Banks and Islamic Banks, is already included in the credit agreement (Conventional Bank) or credit contract (Sharia Bank), which is a different court that adjudicates the case, if the default case is occurs in conventional banks, the lawsuit for default is filed with the District Court, while in cases of default with Islamic banks, the lawsuit is filed with the Religious Court. However, before taking the litigation route related to default problems in both conventional banks and Islamic banks, banks usually carry out non-litigation channels to resolve these problems.

According to Rachmadi Usman, SH, MH said that apart from litigation (court), dispute resolution can also be resolved through non-litigation (outside court), which is usually called Alternative Dispute Resolution (ADR) in America, in Indonesia it is usually called Alternative Dispute Resolution (hereinafter referred to as APS).⁸ There are several alternatives to non-litigation dispute resolution such as Consultation, Negotiation, Mediation and Arbitration.

The way to resolve default disputes at conventional banks is of course different from Islamic banks. In conventional banks starting from 1) Coaching, related to consulting the debtor regarding the reasons why the debtor does not fulfill his obligations to the bank. After finding the reason, the bank negotiates with the debtor so that the debtor can fulfill his obligations. 2) *Rescheduling* or rescheduling, related to the extension of the credit period. debtors are given relief in terms of credit terms so that debtors still have time to pay off their installments. 3) Reconditioning or re-conditioning, related to the requirements for returning credit that has been given by changing various existing conditions such as the interest capitalization that is used as the principal debt, reducing

⁶Nurnaningsih Amriani, *Alternative Mediation for Civil Dispute Resolution in Court*. (Jakarta, Publisher: PT. Raja Grafindo Persada, 2012). p. 13

⁷Frans Hendra Winarta, *Indonesian and International National Arbitration Dispute Settlement Law*. (Jakarta. Publisher: Sinar Graphic. 2012), pg. 1 and 2.

⁸Rachmadi Usmani. *Mediation in Courts: In Theory and Practice*. (Jakarta. Publisher: Sinar Graphic. 2012). Matter. 8.

interest rates which aim to further ease the debtor's burden, as well as waiving interest on the consideration that the debtor will be able to repay the loan until it is paid off. 4) *Restructuring*, related repair efforts made by the bank in lending activities to debtors who have difficulty fulfilling their obligations, which are carried out by the bank and 5) Collateral Confiscation, taking assets in the form of collateral, this is the last resort if the debtor really does not have good faith and has no longer able to pay all his debts.

The method for resolving default disputes at Islamic banks is:

- a. *Rescheduling*, is Rescheduling can be done for customers who have good faith but do not have the ability to pay principal installments or margin installments with the promised schedule based on the Fatwa of the National Sharia Council Number 47/DSN-MUI/II/2005 concerning Rescheduling
- b. *Reconditioning*, is a bank's attempt to save financing by changing all or part of the agreement that has been made by the bank with the customer based on the fatwa of the National Sharia Council No.49/DSN-MUI/II/2005 concerning Murabahah in terms of reconditioning
- c. LKS leases ex-murabahah objects has been purchased to exmurabahah customers by referring to the DSN fatwa No.27/DSN-MUI/III/2002 concerning Ijarah Al-Muntakiyah Bi Al-Tamlik.
- d. Closing provisions if one party does not fulfill its obligations or if there is a dispute between the related parties, then the settlement is carried out through the National Sharia Arbitration Board after no agreement is reached through deliberation. Basic Rules for Mudharabah by referring to DSN-MUI Fatwa No.7/DSN-MUI/IV/2000 concerning mudharabah financing, and Musyarakah by referring to DSN-MUI Fatwa No.8/DSN-Mui/IV/2000 concerning musyarakah financing.

4. Conclusion

Comparison of defaults on credit agreements by customers at conventional banks and Islamic banks is different starting from the terms and elements of comparison in both conventional banks and Islamic banks such as differences in terms of agreements and contracts, debtor parties and customers, as well as the legal system and its legal sources that distinguish between the western legal system which refers more to written laws and regulations and the Islamic legal system which originates from the Al-Quran, hadith, and Ijma as well as other comparative elements. Settlement of credit agreement default disputes at conventional banks and Islamic banks consists of two ways, both litigation and non-litigation, where the settlement of litigation disputes in conventional banks is resolved in the District Court while in Islamic banks it is resolved in the

Religious Courts. Likewise, non-litigation dispute resolution at both conventional banks and Islamic banks has the same method with different applications starting from coaching, resheduling, reconditioning, restructuring, to confiscating assets which these two banks have different applications.

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