Covid-19 Stimulus: Risk Mitigation in Banking Credit Restructuring

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Abstract

In order to sustain a slowdown in the economic rate due to the Covid-19 pandemic. The government issued a national economic stimulus policy to keep national economic stability under control. One of these policies is the provision of relief in fulfilling debtor obligations to the bank as creditors in the credit restructuring scheme. This paper aims to determine how risk mitigation on credit restructuring in statutory regulations and to find out legal protection for banks from an increase in the number of non-performing loans. This paper was a legal research using a statutory approach and a conceptual approach in the form of legal principles and legal concepts related to the object of the problem. The results show that risk mitigation efforts carried out by banks must be based on the principles of credit granting policies, accommodated risk management based on the Basel System and establish standard operating procedures specifically for credit restructuring during the pandemic as well. Classifying the criteria for debtors, credit schemes and business sustainability. And also to prevent the increase in the number of non-performing loans (NPLs), credit clustering is carried out to reduce asset quality. In order to provide legal protection for banks, it is necessary to regulate the guidelines for implementing relaxation regarding credit with collectability of Non-Performing Loan (NPL). The banking sector also anticipates through the agreement to settle credit problems in order to facilitate the sale of assets in the future.

Keywords: covid-19; risk mitigation; credit restructuring.

INTRODUCTION

The increase of a number of policies that limit the movement of people, people gathering in large number of from outside of area the domicile is considered a preventive and most effective measure to tackle the spread of covid-19(Sheridan et al., 2020). Several countries chose to implement a total closure of their entire territory without exception for office, shopping and education centers and conditional on the operation of shops that serve basic needs, medicines and government offices to fight the spread of covid-19. All sectors are certainly affected by the enactment of such regulations. Countries' income has drastically decreased especially for countries that depend on the tourism sector which the arrival of both local and foreign tourists needed, surely industries or factories closure that employ large numbers of workers and labor (Fernandes, 2020).

In the end, it will have a simultaneous effect on the business activities of financial service institutions such as banks and financial institutions. The effect is a decrease in the repayment capacity of debtors and the possibility of an increase in the number of non-performing loans and liquidity risk due to disruption of cash flow of customers.(Astutik, 2021). The uncertainty over the end of the Covid-19 pandemic continues to create economic instability, even if the recession and crisis is prolonged. This situation has a negative effect on the stability of the national economy (Bidari & Nurviana, 2020). To prevent shocks to banking performance, the government issued a countercyclical policy through Financial Services Authority Regulation (POJK) 11 /POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019 (hereinafter referred to as POJK No.11 / 2020) and Perpu (Regulation) No. 1 of 2020 which has been transformed into Law No. 2 of 2020. One of the provisions in POJK No.11 / 2020 is the policy to lose bank credit. Banks can restructure loans for affected debtors due to the spread of covid-19(Novalina & Rusiadi, 2020).

Credit restructuring until September 2020 has been carried out by 100 banks against debtors that affected by Covid-19. From the data, the implementation of credit restructuring by banks has reached Rp. 904, 3 trillion from 7.5 million debtors (including MSME and non-UMKM debtors (Suara Net: 2020).The implementation of bank credit restructuring also raises concerns regarding the possible risks that will be gotten in the implementation and objectives of this restructuring. It is expected that the misuse of the allocation of funds for national economic recovery in the credit restructuring scheme will not occur and not increase the ratio of non-performing loans to banks. For this reason, the authors need to analyze how statutory regulations help banks to mitigate risks that may occur. Based on this, the aim of writing this article is to find out how to mitigate risks related to credit relaxation carried out in the context of the covid-19 stimulus and to find out banking legal protection from the increase in the number of non-performing loans.

The results of previous research on credit restructuring, namely by Putu Eka Trisna Dewi (Implementation of Credit Restructuring Provisions for Default Debtors on Banking Credit) in the Journal of Magister Hukum Udayana Volume 4, No. July 2, 2015. This research examines the implementation of the provisions for debt restructuring in the rescue and settlement of non-performing loans on bank loans and the obstacles faced in implementing the provisions for credit restructuring in rescue and settlement of non-performing loans on bank loans. In contrast to the research in the writing of this article which will examine the risk mitigation faced by banks in carrying out credit restructuring due to the Covid-19 national disaster. Second, Binary Sihotang and Elsi Kartika Sari (Restructuring as Rescue of Troubled Loans at Banks), Book 2 Social and Humanities Proceedings of the 2nd National Expert Seminar 2019, this study examines the role of restructuring in non-performing loans can provide benefits for banks and debtors based on applicable regulations . Meanwhile, the writing of this article examines risk mitigation in restructuring carried out by banks based on statutory regulations and legal principles and examines the protection for banks in the face of increasing non-performing loans. Third, Asinta Sekar Bidari and Reky nurviana (Economic Stimulus in the Banking Sector in Facing the 2019 Coronavirus Disease Pandemic in Indonesia), Legal Standing Journal of Legal Studies, Vol. 4 No. 1, the year 2020.(Bidari & Nurviana, 2020). In contrast to the object of study in this paper which examines the risk mitigation carried out by banks in carrying out credit restructuring and to examine legal protection for banks in dealing with an increase in the number of non-performing loans.

The response to the spread of covid-19 with a number of closure regulations and access restrictions has paralyzed the economic sector. Banking sector a financial service institution that is influenced by this situation, the uncertainty on the end of the pandemic also worsens the debtor's economic situation. Default for debtors affected by a pandemic is a legal action that cannot be avoided. However, if it continues, it will increase the number of non-performing loans or NPL ratios of a bank. For that POJK No. 11/2020 is expected to be able to overcome this. This policy provides relaxation for debtors who are in default due to the impact of the pandemic, through credit restructuring. This paper examined related problems, first is to find out how risk mitigation related to credit relaxation is carried out in the context of the covid-19 stimulus in the regulatory framework and legal principles in the banking sector. Second, to know banking protection law on the credit problem.

RESEARCH METHOD

This research is a legal research using a statutory approach and a conceptual approach (statue and conceptual approach). By conducting a literature study tracing primary to tertiary legal materials related to risk mitigation by banks in implementing economic recovery schemes through credit restructuring. The results of the study analyzed qualitatively and presented prescriptively.

RESULT AND ANALYSIS

1) National Economic Stimulus in the Covid-19 Pandemic

The current economic crisis is different from the previous crisis in terms of both its causes and effects. The policies implemented by the government are not only for handling the financial and economic sectors but for the health and humanitarian sectors (Fajar, Researcher CSIS: 2020). Globally, countries are facing health and geopolitical crises which then have a direct impact on the financial sector and economies of countries in the world.(Arner et al., 2020). In the ASEAN scope, the handling of the economic crisis is carried out by issuing policies in the economic sector, such as economic stimulus, monetary and fiscal policies, as well as trade policies in the form of tax incentives for affected businesses, protection for MSMEs in the form of cash assistance, tax incentives, electricity, lower interest rates (Asean, 2020). Banking in Vietnam issued a credit package worth 12.3 billion US dollars for business activities (Kompaspedia: 2020). K-Bank Thailand has realized debtors debt restructuring, especially MSMEs, which have a maximum impact of 100 million Baht with length 6 (six) to 12 (twelve) months (Bangkokpost: 2020).

2) Risk Mitigation on Banking Credit Restructuring

The covid-19 pandemic was officially declared a non-natural national disaster through Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Corona Virus Disease 2019 as a National Disaster. The determination of the disaster status provides certainty for the postponement of the implementation of the agreement and even the defaults of the related parties. Pandemic as a national disaster is a Force major, that the achievement is unfulfilled or fulfilled its obligations according to the agreement due to circumstances that cannot be predicted beforehand and they cannot do anything to prevent it so that the default is not due to negligence. Regarding the force majeure doctrine, the expert's view points out that the nature of force majeure is not always absolute (Subekti, 1998). The Covid-19 pandemic is a condition that is not absolute or relative so that debtors can still be asked to fulfill their achievements. This will depend on whether the implementation barrier is permanent or relative(Berger & Behn, 2020).

In conditions of economic uncertainty and economic activity that affected by Covid-19 will have implications for their obligations to banks as their capital suppliers. The termination of business activities creates the risk of delinquent credit payments during the pandemic and the zoning policy. Through POJK No. 11/2020 the government establishes a special policy in handling credit that can lead to an increase NPL ratio and a decrease in the quality of bank assets, namely through the provision of credit restructuring as a relaxation.

Credit restructuring in the Black's Law Dictionary is contained in the context of the term "bankruptcy", namely, a debts agreement use to negotiated with creditors or creditors out of the court or a financial restructuring of a corporation.(Garner, 2004). Meanwhile, credit restructuring in banking activities is always associated with efforts to handle problem loans by banks. the forms of handling non-performing credit categories can be done in a way (Indonesia, 2019): rescheduling, namely the extension of the loan principal installment schedule by extending the installment or credit period; reconditioning, namely the credit restructuring method by amending several applicable requirements, such as interest capitalization, postponement of interest payments, lowering of credit rates, and exemption of interest arrears and so on; restructuring is a bank action to customers, for example, to provide additional credit. Combination method, which is a combination of rescheduling, reconditioning and restructuring. Lastly, collateral liquidation is also carried out, which is a last resort if the customer does not have good commitment or is able to pay all of their obligations. Types of credit restructuring based on POJK No. 40 of 2019, there are 6 (six) types, namely a reduction in loan interest rates; extension of the credit period; reduction in arrears of loan principal; reduction in arrears on loan interest; additional credit facilities; and / or credit conversion into temporary equity participation.

Legislation regulates credit restructuring, including Bank Indonesia Regulation No. 14/15 / PBI / 2012 concerning Asset Quality Assessment for Commercial Banks; PBI No. 13/9 / PBI / 2011 Amendments to Bank Indonesia Regulation Number 10/18 / PBI / 2008 concerning Restructuring of Financing for Sharia Banks and Sharia Business Units (referred to as PBI No.13 / 2011) and POJK No. 40 / POJK.03 / 2019 concerning Asset Quality Assessment for Commercial Banks, and also based on the Financial Services Authority Regulation No. 42 / Pojk.03/2017 concerning Obligations to Prepare and Implement Credit Policies and POJK No. 18 / POJK.03 / 2016 concerning Implementation of Risk Management for Commercial Banks.

As a business entity, the bank must be consistent as a company that aims to provide added value and profit to shareholders or owners of capital(Indonesia, 2019). On the other side, banking business activities are very vulnerable to various risks that will impact the banks themselves and the national economy. For this reason, banks require the application of risk management to minimize the risks that will be faced from various aspects of their business activities, including the risk of loans they wish to distribute. Regulation and risk management is contained in the explanation section of POJK No. 18/2016 and POJK No. 40 / 2019. The risk management implemented by banks is based on the Basel Principle and has been implemented by Bank Indonesia for banking institutions. Currently the Basel Principle III is being applying. In particular, bank risk management is regulated in PBI No. 5/8 / PBI / 2003 and its amendments to PBI No. 11/25 / PBI / 2009 concerning Application of Risk Management and POJK No. 18 /POJK.03/2016 concerning the Implementation of Risk Management for Commercial Banks (referred to as POJK No.18 / 2016).Basel III contains three main components, namely increasing the ability of banks to absorb shocks that arise from financial and economic pressures, regardless of their source; improve risk management and banking governance; and strengthening transparency and disclosure(Daruri, 2013).Risk management is carried out by banks for eight types of risk, namely credit risk, market risk, operational risk, liquidity risk, compliance risk, legal risk, reputation risk and strategic risk.

Risk management is a series of procedures and methodologies used to identify, measure, mitigate, monitor and control risks arising from all bank business activities. In essence, the application of risk management will provide adequate risk management procedures and methodologies so that business activities can be controlled within acceptable limits. And will provide opportunities for banks to achieve goals for profit because they are able to mitigate calculated risks (POJK No. 18/2016). The Indonesian Banker Association in its book argues that risk management provides an overview of the projected potential risks that banks will face in the future. Thus the decision maker can take the right policy from the assessment of losses that will be received later.

Credit risk management or mitigation is carried out so that the credit risk figure does not exceed the bank's risk appetite standard and risk tolerance. As regulated on the preparation of written policies and procedures as guidelines for granting credit, the implementation of credit restructuring is also required to prepare written guidelines in advance, at least containing the criteria for the debtor who is restructured and the debtor business sector affected by Covid-19 The drafter of the guidelines will determine the requirements, restructuring process, evaluation (controlling), control if the restructuring scenario does not go well, which will be carried out in the post-restructuring stage and then finally following up on the possibility of liquidation of the debtor's assets as a last resort (Wahyuni, A. S., et al., 2020).

Credit risk management process in POJK No. 18/2016 begins with credit risk identification, then measures the amount of risk, and from the measurement results the bank can determine scenarios or steps in risk mitigation through the risk control stage arrived at the bank's risk appetite number.

It is also important to separate the duties and functions of the management units in a bank organization to facilitate control over the duties and responsibilities of the unit and its officers. The existence of a credit risk management unit as a forum for the Risk Management Work Unit (SKMR) can assist business units to provide credit support facilities. One of them is providing written policies and procedures for granting credit, a system of authority for credit decision makers, a dual credit termination system between risk management and business units, procedures and credit administration and analysis tools (rating and scoring system), standard procedures for credit analysis and early analysis warning signal (EWS). POJK No. 40/2019 also stipulates that loans to be restructured are required to carry out a feasibility analysis of the business prospects and ability to pay the debtor. In certain circumstances, the analysis can be carried out with the assistance of an independent financial consultant (business license and good reputation). Pre-screening using the applicable "Risk Acceptance Criteria (RAC)" parameter ensures that debtors have the latest trade checking and BI checking from before restructuring (Indonesia, 2019). Principles in carrying out restructuring, namely the bank identifies through analysis and documentation of the evaluation of debtor problems, calculating and determining the given restructuring scheme and consideration of submitting it. Completeness of documents, both legal and non-legal in the implementation of restructuring is also important. This documentation will determine the legality of the given restructuring and the consequences of risks that may occur in the future.

After a restructuring, the bank is required to have procedures for monitoring or monitoring credit, the ability of the debtor to fulfill his obligations. Banks can ask debtors to submit financial reports (business developments, action plans), evaluate debtors' performance in a quarter according to terms that are updated or continued. With the monitoring of debtors after restructuring, banks can determine the next plan to improve if there is a failure by the debtor's business (Explanation Section of POJK Credit Restructuring Guidelines No 40/2019). On the other hand, banks also have obligations in reporting on the implementation of credit restructuring and in the stimulus / restructuring reports to OJK institutions in early April 2020 (after restructuring is carried out) then quarterly until March 2021.

Credit risk identification is carried out starting from customer search, the process of creditworthiness analysis and credit approval process, credit realization and collection of debtor liabilities by banks. The Indonesian Bankers Association states that credit risk assessment needs to pay attention to the debtor's financial condition (ability to pay on time), guarantees or collateral provided as the last safeguard if payments are not fulfilled by the debtor. Assessment of the debtor's feasibility and ability is a starting point that can provide confidence for the business unit (relationship manager). This unit is an informant on the debtor's portfolio, so that the credit officer is able to project the feasibility and ability of the debtor with the application of the "5C value" in repaying credit claims in a given restructuring. The feasibility test phase or analysis of prospective restructuring debtors by the credit officer must be carried out with a professional assessment of the cash flow ability of the debtor's business, the collateral price according to the market value and the physical collateral. There is no underlying conflict of interest between the bank officer and the officer granting the restructuring approval. So that the active supervision system of the board of commissioners, board of directors and internal audit unit can control credit risk that can occur. Supervision system and implementation of good corporate governance structure as a form of good corporate and governance can mitigate credit risk. (Indonesia, 2019).

Risk management or credit risk mitigation is carried out is based on credit policies, so that banks have a basis for conducting credit management, credit policies and procedures should pay attention to completeness in the content of policy settings, content inconsistencies with best practice examples (*best practices*), the lack of coordination between the ranks of the organization needs to understand the policy. If based on POJK No. 42/2019 credit policies and written procedures must contain: prudential principles in credit or financing; credit or financing organization and management; credit or financing approval policy; credit or financing documentation and administration; credit or financing supervision; and finally settlement of non-performing loans or financing credit identification that can receive restructuring in POJK No. 11/2020 regulates the minimum criteria that must be stated in the restructuring guidelines, namely debtors and debtor business sectors that are affected by Covid-19. Including credit segmentation (type), the amount of the ceiling and outstanding whether there is a limit on the specified credit limit, if based on POJK No. 11/2020 The ceiling for determining credit quality is divided into 2 criteria, namely a maximum of 10 (ten) billion and more than 10 billion. The restructuring guidelines also contain identification of credit quality which consists of 5 collectability ; namely Current (L: 1) under special mention (TPF: 2), Substandard (KL: 3), Doubtful (D: 4) and Loss (M: 5).). The determination is made based on three criteria, namely business prospects, customer performance and ability to pay.

The Legal Corporate Bank BNI stated that in restructuring legal protection, it is carried out by regulating and determining the Bank's Internal Policy as a guideline for implementing relaxation in the field which is in line with POJK Stimulus, at least regulates the criteria for affected debtors, affected debtor sector, type of credit that can be given stimulus, duration of the stimulus program, credit limit / maximum credit and debtor segmentation, post-stimulus asset quality assessment (including its parameters), waiver on financial references, bulk restructuring for certain criterias, applicable restructuring schemes, relaxation proposals and portfolio management, proposal form template, and monitoring / reporting according to the provisions.

3). Legal Protection for Banks on Non-Performing Loans

The implementation of restructuring may cause various risks to the fulfillment of debtor obligations after the restructuring is carried out. For this reason, through credit risk mitigation that has been carried out during pre and post restructuring, banks can monitor if the risk of non-performing loans appears. This is the case if the debtor's financial condition and business prospects are no longer sufficient to meet performance. Monitoring is a form of monitoring and supervision of the granting of restructuring by banks to creditors. Credit restructuring failure can be prevented through compliance with risk management. Monitoring and maintenance is also carried out at BRI , as stated by credit analysts that each credit segmentation has policies and procedures for credit structuring. Technical arrangements are made by the Head Office Operations Division as a general guide for carrying out restructuring. The provisions also stipulate the structuring scheme being implemented, such as for Unsecured Loans, a restructuring scheme is stipulated if it is done collectively only for the “extension of period” scheme and for the implementation of restructuring each work unit is required to carry out maintenance and monitoring of the credit, including: maintenance of the due date, date of the contract, principal arrears, interest relief and / or special penalties if the credit is categorized as doubtful collectability and loss. The company is also required to monitor the restructured installment amount and monitor the installment date after restructuring and maintenance of credit collectability.

In terms of legal and legality aspects, comprehensive documentation will provide certainty for the protection of creditors' interests. Completeness of legal documents related to restructuring is also important to be documented as evidence of the restructuring process. In practice, each bank has different policies and strategies to provide legal protection so that non-performing loans do not increase. Regarding NPL collectability, the restructuring approach and scheme will depend on the debtor's portfolio and the business. Regarding credit accompanied by collateral, banks establish various scenarios to protect their interests, such as analyzing the value of the collateral object, the type of guarantee, and the importance of re-binding collateral (or a new guarantee agreement) such as binding mortgage, fiduciary, pawn, abolition of Roya or extension and renewal of land rights for a period of time. On the other hand, the legal protection lies in the legality of the credit restructuring application and the restructuring contract that is made. Restructuring often intersects with debt renewal if it is as stipulated by Novasi in 1413 Burgelijk Wetboek. Due to the practice of banks, there are those that do with a new contract or with an addendum to the initial agreement. In essence, an addendum is made when changes to the credit structure are only a small part, for example, the time period (rescheduling), the requirements for returning (reconditioning). In this way, it becomes an integral part of the original agreement. For this reason, it does not require a new contract "credit restructuring agreement".(Shietra SH, 2016).

In the condition of Covid-19, restrictions on face-to-face or direct interaction also become an obstacle to the implementation of debtor pre-screening and efforts to identify restructuring and risks. This obstacle was then resolved by submitting an application electronically and asking the nearest Bank work unit to carry out a process of identification, field review and collateral related to the debtor who wanted to receive the restructuring facility. BNI through a seminar on the Association of Land Deed Making Officials in August, 2020 stated that as an important protection to carry out: completeness and legality of supporting documentation of feasibility of restructuring, then conduct a thorough analysis (3 pillars) of the condition of the debtor while still considering risk management, rechecking all documents completeness or pending credit requirements, monitoring closely after and during the restructuring period, and Reporting to the Authority regarding reporting that must be fulfilled.

CONCLUSION

Risk mitigation of credit restructuring by banks is carried out by establishing restructured credit risk management through a policy and written guidelines for granting restructuring as a guide and control for restructuring executors. Risk management is carried out in the pre- and post-restructuring stages to identify risks at an early stage, debtor and credit pre-screening by bank officers or special officers appointed as credit processors. Conducting a feasibility analysis of the criteria for debtors and the affected business sector, history of interest and principal income (debtor payments) before March 2020, determine the type of restructuring that provided and possibilty business improvement opportunities and sources of debtor credit payments. Determination and separation of processing staff and credit restructuring approvals are also part of maintaining transparency and accountability of credit to be processed (avoiding moral hazard). The board of directors, board of commissioners and internal audit organs have an important role to play in ensuring the implementation of restructuring in accordance with the provisions of government regulations and restructuring guidelines. In the post-restructuring stage, bank monitoring of restructured debtors must be carried out as an evaluation and an early warning for the bank in order to determine solutions to problems.

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