Legal Protection Against Violations of Creditors' Rights Through The Collateral Take Over Mechanism

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Abstract. Bad loans is a significant problem in the banking world. This study aims to analyze legal protection for debtors in resolving bad loans through the collateral take over mechanism at Rural Banks using empirical methods, namely the results of the author's observations regarding the implementation of collateral take over and a study of laws and regulations. The results of the study indicate that the collateral take over mechanism is a solution to bad loans and this process includes identification of problem loans, asset takeovers, asset valuations, asset sales, to recording and reporting in financial statements. Legal protection for debtors is contained in the regulations of Law Number 10 of 1998 concerning Banking and the Financial Services Authority Regulation, which has not regulated the protection of basic rights in human rights for debtors in the collateral take over process. Constitutional Court Decision No. 18/PUU-XVII/2019 also confirms that the execution of fiduciary guarantees cannot be carried out unilaterally without the consent of the debtor or a court decision, which strengthens the protection of debtor rights. Some of the main obstacles include, unclear and transparent provisions on collateral take over, creditor participation in the collateral take over process in auctions, high legal costs, lack of education and legal awareness among debtors, and limited access to legal aid. These obstacles can hinder debtors in fighting for their rights and seeking fair solutions.

Keywords: Legal protection, Human rights, Collateral take over.

1 Introduction

Banking is an important sector in supporting a country's economic growth.[1] One of the main services offered by banks, including Rural Banks, is providing loans.[2] However, in practice, not all loans can run smoothly. Conditions where the debtor fails to fulfill his obligation to pay installments on time result in bad loans.[3] Bad debts not only harm banks financially, but also hamper economic growth more broadly.[4] To overcome bad loans, one of the mechanisms that is often used is collateral take over. collateral take over is a process in which assets used as collateral by the debtor are taken over by the bank as an effort to resolve bad loans.[5] However, the process of collateral take over often raises legal issues, especially related to the protection of debtor rights. Debtors often feel disadvantaged or experience injustice in the collateral seizure process, both in terms of procedure and substance.[6]

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Legal protection for debtors is an important and relevant issue that needs to be considered in the practice of collateral take over.[7] The absence of a clear understanding of the debtor's rights in this process can lead to prolonged legal conflicts.[8] In the context of Rural Banks, which have different characteristics from general banks, it is important to examine how the implementation of collateral take over takes place and whether the debtor's rights receive adequate protection.[9] Bad debts often place debtors in an economically and legally vulnerable position.[10] Through this study, it can be identified whether the debtor's rights have been adequately protected in the collateral take over process. It is important to evaluate whether the implementation of the mechanism is balanced and fair for both parties, especially in terms of transparency, negotiation, and the collateral take over process. This study can contribute to increasing the transparency and accountability of Rural Banks in handling bad loans. This is important to strengthen public trust in financial institutions, especially in resolving problematic loans without excessively harming debtors. The collateral take over process often raises the potential for legal disputes between banks and debtors. By understanding more deeply the proper procedures, this study can provide recommendations so that banks can minimize conflicts and disputes through more humane procedures and in accordance with applicable legal regulations.

Bad debt is a serious problem for banks, because it can affect the financial health of the bank itself.[11] This research can help find ways to improve the effectiveness of collateral take over as a mechanism for resolving bad loans, so that bad loans can be handled more quickly and efficiently, without sacrificing the rights of debtors. The results of this study can provide input to regulators and policy makers in the banking sector, such as the Financial Services Authority, in formulating better regulations to protect both parties. This can contribute to improving policies and regulations related to bad loan settlement mechanisms and debtor protection. Thus, this study plays an important role in improving the balance between debtor rights and bank interests, while providing a fairer and more transparent solution in handling bad loans in the banking sector.

This study aims to identify and analyze aspects of legal protection for debtors in resolving bad loans through the collateral take over mechanism at Restu Artha Abadi Rural Credit Bank. This study is expected to provide a deep understanding of how the law protects debtors during the collateral take over process. Based on the description, this study discusses several problem formulations, namely (1) the collateral take over mechanism applied by Rural Banks, (2) analysis of legal protection for debtors in the process of resolving bad loans through the collateral take over mechanism at Rural Banks.

2 Method

This study uses an empirical method, where data obtained from the field is the source of this study. An empirical approach was chosen because the purpose of this study is to analyze legal protection for debtors in resolving bad loans through the collateral take over mechanism at Bank Perkreditan Rakyat Restu Artha Abadi. The approach used by the researcher to examine and analyze the applicable legal regulations related to the settlement of bad loans and the implementation of the collateral take over mechanism at Bank Perkreditan Rakyat. Several legal materials that are the focus of this study include: (1) The results of the author's observations regarding the implementation of collateral take over at Bank Perkreditan Rakyat Restu Artha Abadi; (2) Law No. 10 of 1998 concerning Banking, which regulates the functions and business activities of banking, including the settlement of problematic loans; (3) Financial Services Authority Regulation Number 1 of 2024, which regulates asset quality for Bank Perkreditan Rakyat. This study uses primary and secondary data which include: (1) Primary Legal Materials, namely the results of the author's observations and experiences related to the implementation of collateral take over at Bank Perkreditan Rakyat Restu Artha Abadi; (2) Secondary Legal Materials, such as laws, including laws, government regulations, Financial Services Authority regulations relevant to the research topic; and (3) Tertiary Legal Materials, such as legal literature, books, scientific journals, legal articles, legal dictionaries and other reference materials that help understand legal concepts and support legal analysis. Data analysis is carried out using the analytical descriptive method, which involves: Description, namely outlining the author's observations and experiences, applicable laws and regulations and legal concepts; Analysis, especially in the context of resolving bad loans through collateral take over, as well as identifying legal issues that arise in the implementation of the collateral take over mechanism and protection of debtor rights; and Evaluation, namely providing recommendations for legal improvements to strengthen debtor protection in the practice of collateral take over.

3 Results And Discussion

Collateral take over Mechanism at Rural Banks

The collateral take over Mechanism at Restu Artha Abadi Rural Credit Bank is one of the methods used by banks to handle bad loans or defaults. Rural Banks will further be considered as creditors. Regarding collateral take over, it is regulated in Article 12A of the Banking Law which states: Banks can purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission or based on the power to sell outside the auction from the owner of the collateral in the event that the debtor does not fulfill his obligations to the bank, with the provision that the collateral purchased must be disbursed as soon as possible. collateral take over allows banks to take over assets that are used as collateral for loans from debtors who are unable to fulfill their obligations. The following is a general explanation of the collateral take over mechanism: First, identify problematic loans. When a debtor fails to pay his credit installments according to the agreement that has been set, the creditor will identify the loan as a problematic loan. At this stage, the creditor will make various efforts to collect the debtor's obligations, including restructuring the loan if possible. Identification of problem loans is part of risk management that must be carried out proactively by creditors. The right approach will not only reduce the risk of loss but also ensure the sustainability of bank operations and customer trust. In the process of identifying and handling problem loans, creditors must balance the interests of the bank to minimize losses and the needs of debtors to obtain reasonable relief or solutions and legal certainty. The importance of early identification and proper management of problem loans as a strategic effort in maintaining the financial health of creditors.

Second, legal process and asset take over. If the restructuring efforts are unsuccessful and the debtor is still unable to pay off his debt, the creditor can decide to take over the assets used as collateral. This take over process usually involves a legal process, such as filing a lawsuit in court or through a peace agreement between the bank and the debtor. Asset take over is a step that needs to be taken by creditors to recover problem loans, but must be carried out carefully, considering both the interests of the bank and the rights of the debtor. In the Financial Services Authority Regulation No. 1 of 2024 concerning Asset Quality Assessment for creditors, it does not clearly regulate the time period for creditors to carry out collateral take over. Ethics and transparency of time and information in this process are very important to maintain the integrity and reputation of the bank. An effective and efficient legal process is very important in asset takeovers. Creditors must work with experienced legal counsel to ensure that every step is in accordance with applicable law and minimize risks to the bank and protect the rights of debtors in the ongoing process of collateral take over. While asset take over is a final, often unavoidable step, its implementation must be carefully managed to avoid legal complications and maintain customer and public confidence.

Third, asset valuation. After the asset is taken over, the creditor will assess the asset to determine its value. This valuation is important because the foreclosed asset will later be sold to cover the losses suffered by the bank due to bad loans. When the creditor participates as an auction participant to buy back the collateral take over, the creditor has the potential to win the auction by buying back the collateral, there is a risk that the collateral valuation does not reflect the actual condition. Asset valuation is a crucial step that affects the entire process of recovering bad loans. The accuracy of the valuation will determine how well the creditor can recover lost funds and minimize losses. Given the importance of this valuation, the creditor must use an experienced and independent appraiser to ensure that the valuation is carried out objectively and in accordance with applicable standards. The results of the asset valuation must be integrated into the right selling strategy, taking into account market conditions, to maximize the recovery value of the asset. Asset valuation is a process that must be carried out carefully and professionally, because of its significant impact on the creditor's finances and strategic decisions in handling problem loans.

Fourth, asset sales. The foreclosed assets will then be sold by the creditor through an auction mechanism or direct sale to a third party. The proceeds from the sale of these assets will be used to cover the remaining outstanding debts of the debtor. The sale of foreclosed assets is a process that requires careful planning and transparency of information and time. A well-conducted process can minimize creditor losses and maintain the bank's reputation. Given market uncertainty, creditors must be prepared to manage risks, including the possibility of temporarily holding assets until market conditions improve in order to obtain a better selling price. The main objective of asset sales is to recover as much of the funds lost due to bad loans as possible. With the right sales strategy, creditors can achieve maximum recovery and minimize the negative impact on their balance sheets. This analysis shows that asset sales are an important step in the strategy for recovering bad loans, which must be carefully managed to ensure optimal results for creditors.

Fifth, recording and reporting. The collateral take over process must be recorded accurately and reported in the creditor's financial statements. The foreclosed assets will also be included in the creditor's balance sheet as part of the bank's assets. In the analysis related to the recording and reporting of collateral take over to creditors, there are three key aspects that need to be considered: (1) recording of collateral take over, creditors must record foreclosed assets at fair value, classify assets from receivables to fixed assets or property, and apply depreciation or amortization if the assets are stored long term. (2) financial reporting, collateral take over must be displayed transparently in the balance sheet and explained in detail in the financial statement notes, including disclosure of related risks. (3) regulation and compliance, Recording and reporting of collateral take over must comply with accounting standards such as the Statement of Financial Accounting Standards and reported to the Financial Services Authority in accordance with applicable provisions. The importance of accuracy and compliance in the collateral take over process, which has an impact on the transparency and financial health of creditors. collateral take over is an important mechanism for creditors to reduce losses due to bad loans, but this process must be carried out carefully and in accordance with applicable laws and regulations to avoid potential legal problems in the future.

Analysis of Legal Protection of Debtors Based on the Collateral take over Mechanism.

Legal protection for debtors in resolving bad loans through collateral take over is regulated in various laws and regulations, including: Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Law Number 10 of 1998 introduced significant changes in the Indonesian banking sector, in response to the need to strengthen regulation and supervision of banks in Indonesia. These changes are important to increase the stability of the financial system and improve banking governance, especially in the context of the economic crisis that occurred in the late 1990s. Article 36B emphasizes that every creditor and debtor has the right to legal certainty in managing loans. Debtor protection in Law Number 10 of 1998 provides rules on information disclosure and transparency, fairness in agreements, and a clearer and more structured complaint mechanism. Article 29 of Law Number 10 of 1998 regulates the obligation of banks to provide clear and transparent information to customers including debtors. The regulation supports the recognition of basic human rights in cases of protection against bad loans, where often the assets pledged by the debtor become the object of execution through confiscation and auction. In order to avoid violations of the debtor's rights, the process must be carried out fairly and transparently, by giving the debtor an equal opportunity. Banks must provide complete information regarding the requirements, costs, interest rates, and risks associated with the products or services offered. This provides legal protection to debtors by ensuring that they have a clear understanding of their obligations and rights before signing a loan agreement. Article 29 also stipulates that banks may not take unilateral actions that are detrimental to the debtor. For example, if a loan is bad, the bank cannot immediately take action such as seizing collateral without going through the applicable legal procedures. The bank must provide time for the problem to be resolved before taking further action.

Procedure for Settlement of Bad Loans through collateral take over in the practice of settling bad loans, follows the procedures stipulated in the Financial Services Authority Regulation and the Banking Law. The process includes several stages: first, initial negotiation and restructuring of creditors' loans are required to provide loan rescue efforts to debtors experiencing financial difficulties, in accordance with the provisions of Financial Services Authority Regulation No. 1 of 2024 concerning the Asset Quality of Rural Banks. One form of this rescue is loan restructuring, where creditors can offer payment rescheduling or changes to loan terms. Although the regulations in Financial Services Authority Regulation No. 1 of 2024 do not directly address debtor protection, several aspects have indirect implications that can affect debtor protection. Financial Services Authority Regulation No. 1 of 2024 requires banks to conduct stricter and more accurate assessments of the quality of loans provided to debtors. With better assessments, banks are expected to be able to identify problems earlier, allowing banks to work with debtors to find solutions before the loan situation worsens. This could be in the form of loan restructuring or a more responsive problem loan handling program. Then the bank is required to form a Reserve for Impairment Losses to anticipate the possibility of a loan decline. Although the Reserve for Impairment Losses is basically a protective measure for the bank, it also means that the bank must be more vigilant in evaluating debtors to pay their debts. The bank's proactivity in managing the Reserve for Impairment Losses can open up opportunities for debtors to renegotiate the terms of the loan, especially when the debtor is facing financial difficulties. Then this regulation encourages banks to be more transparent in managing loans, including in terms of notification to debtors regarding the debtor's loan status. Transparency of information provides an opportunity for debtors to better understand their position and take the steps required to improve their credit quality. Financial Services Authority Regulation No. 1 of 2024 requires banks to have clear and structured policies in handling problem loans. This provides a basis for debtors to get fair treatment when dealing with loan problems, for example through restructuring options, interest rate renegotiations, or tenor extensions. With regular assessments and the formation of adequate reserves, banks can avoid extreme actions such as sudden seizure or auction of debtor collateral assets. This provides space for debtors to seek alternative payment solutions before legal steps are taken by the bank.

Failed restructuring then the creditor reassesses the debtor's collateral. Reassessment ensures that the collateral value is in accordance with the current market price. Through the principle of prudence, creditors are required to act carefully and wisely in every decision-making process, including in managing loan risks, assessing debtor assets, and taking over collateral through collateral take over. Protection includes transparency of time and openness of information, fairness in the implementation of contracts, protection from abuse of bank power, and fair procedures in handling problematic financing. In addition, debtors are also protected through a fair dispute resolution mechanism and supervision by the Financial Services Authority, which plays an important role in ensuring compliance with this regulation. If rescue efforts are unsuccessful, creditors can take over collateral through the collateral take over mechanism, in accordance with Financial Services Authority Regulation No. 1 of 2024 concerning the Asset Quality of Rural Banks. Collateral take over is carried out if the collateral value is sufficient to pay off all or part of the debtor's bad loans. Legal protection for debtors through the principle of prudence in providing loans, better risk management, and transparency of information and time in the sustainability of collateral take over, as well as stronger supervision by the Financial Services Authority. Maintaining stability, and providing fair services to debtors. Debtor protection is also supported by the bank's obligation to comply with other regulations related to customer rights, including transparency of information and time in handling problem loans.

Debtor protection is also supported by the bank's obligation to comply with other regulations related to customer rights, including transparency of information and time and handling of problematic loans in the ongoing process of collateral take over. One important aspect in this regard is how the fiduciary guarantee execution mechanism is regulated and implemented in practice. In this context, the Constitutional Court Decision No. 18/PUU-XVII/2019 becomes very relevant. This decision is an important milestone related to the execution mechanism in fiduciary guarantee agreements, especially in the context of bad loans. The Constitutional Court in its decision emphasized that fiduciary creditors cannot carry out unilateral execution of collateral objects, such as motor vehicles, without first obtaining a court decision or an agreement with the debtor. Constitutional Court Decision No. 18/PUU-XVII/2019 is an important decision related to the execution mechanism in fiduciary guarantee agreements, especially in the context of bad loans. The Constitutional Court in its decision emphasized that fiduciary creditors cannot carry out unilateral execution of collateral objects, such as motor vehicles, without first obtaining a court decision or an agreement with the debtor. This decision is an important milestone in protecting the rights of debtors from potential unilateral actions that can be taken by creditors. Prior to this decision, Article 15 paragraph (2) and (3) of Law No. 42 of 1999 concerning Fiduciary Guarantees allowed creditors to carry out direct execution of the collateral object without court intervention, which often harms the debtor. However, with this Constitutional Court decision, any unilateral execution of fiduciary guarantees without a court decision or the debtor's consent is considered to violate the debtor's constitutional rights and therefore cannot be continued. From a human rights perspective, this decision strengthens the principle of justice in the legal process by ensuring that the debtor's rights receive equal protection in the contractual relationship with the creditor. The Constitutional Court, in this decision, emphasized the importance of fair and balanced legal procedures in the execution of fiduciary guarantees, where not only the interests of the creditor are considered but also the debtor's rights must be protected.

With clear legal protection, debtors are assured that their rights will be protected in the collateral take over process. This includes the right to be given complete and transparent information regarding the collateral take over procedure including time and transparency of information and the right to be involved in the negotiation or settlement process. Legal protection prevents unilateral actions by creditors that can harm debtors, such as taking over assets without sufficient notice or without giving debtors the opportunity to complete their obligations. This gives debtors room to respond and seek alternative solutions before their assets are taken over. This protection also limits the power of creditors to take actions that may not be in line with the principle of justice. For example, creditors must go through a court process or negotiation before executing the collateral take over, ensuring that every step taken is in accordance with applicable legal procedures.

4 Discussion

Identification of non-performing loans is a very important initial step in the collateral take over process. In practice, Rural Credit Bank Restu Artha Abadi participates as an auction participant to buy back collateral take over. Creditors here should maintain integrity in decision-making, including in managing loan risks, and foreclosure of collateral and as an institution that should be neutral so as not to cause a conflict of interest. Creditors must proactively identify loans that show signs of inability to pay by the debtor. Determination of non-performing loans must be based on a comprehensive analysis that includes the debtor's financial capability, payment history, and economic conditions that affect the debtor's ability to repay the loan. If not done carefully, creditors can take steps that can harm both the bank and the debtor. The assessment of collateral assets that are foreclosed must be carried out by an independent and competent party to ensure that the value reflects actual market conditions. Financial Services Authority Regulation No. 1 of 2024 concerning Asset Quality for Rural Banks requires the use of independent appraisers registered with the Financial Services Authority to assess assets used as collateral in collateral take over. This assessment must be carried out periodically and in accordance with the assessment standards set by the Financial Services Authority. The debtor has the right to know the ongoing process and results obtained from the collateral take over process carried out by the creditor. Creditor participation in participating in the auction also has the potential to violate the principle of prudence because it can create a conflict of interest. Creditors who have control over the auction process may not be completely objective in making assessments, which can cause injustice to the debtor or others. Creditors, as institutions that must maintain the integrity of the loan process and their assets, should focus more on loan recovery efforts. The involvement of creditors in the auction can be considered a violation of the principle of prudence because it is not in accordance with the objectives of reducing risk and maintaining financial stability. Therefore, transparency of information in this process is a form of legal protection for debtors, because the deadline for the sale of assets will affect the debtor's rights in the amount of remaining debt that must be paid off.

Proper record keeping and accurate reporting are essential elements in maintaining the integrity of the Foreclosed Assets process. Creditors must ensure that all transactions related to the take over and sale of assets are properly recorded in their financial statements. These reports must include details of the initial value of the asset, the value after impairment, and the reasons behind the impairment. The Financial Services Authority as a regulator has an important role in ensuring that creditors carry out the Foreclosed Assets process in accordance with applicable regulations and established accounting standards. This supervision aims to protect the interests of customers and maintain the stability of the financial system. Transparency and fairness of information are the main pillars in the legal protection of debtors, so that the fulfillment of debtor rights can be fulfilled, one of which is the fulfillment of basic rights recognized as human rights, namely the right to protection of debtor assets. Creditors are required to provide complete, clear, and correct information to debtors regarding all aspects related to the loan, including the risks that may arise from payment failure. Debtors have the right to receive regular information regarding their credit status, including the potential risk of bad loans and the options available to resolve problem loans.[12] This includes an explanation of the impact of the asset take over and how it will affect the debtor's remaining debts.

Fair legal procedures in the implementation of collateral take over are key to maintaining public trust in the banking system. Asset takeovers without fair procedures can be considered arbitrary actions that violate the rights of debtors. Constitutional Court Decision No. 18/PUU-XVII/2019 strengthens the principle that asset takeovers by creditors must go through a legitimate legal process. This includes the requirement to obtain court approval or reach an agreement with the debtor before execution is carried out. Legal certainty in the collateral take over process not only protects debtors, but also provides clarity for creditors in running their businesses. By following the correct legal procedures, creditors can avoid legal disputes in the future that can damage the bank's reputation and disrupt operations. One of the main obstacles to legal protection for debtors is the slow legal process in court, especially in handling cases of bad loans and collateral execution.[13] This slow process can have various negative consequences, both for debtors and creditors. A protracted process can worsen the financial condition of debtors, increase psychological burdens, and prolong the period of uncertainty. In many cases, debtors who face a long legal process tend to lose motivation to defend their rights and choose to give up. For creditors, the slow legal process can cause a decrease in the value of seized assets, increase legal costs, and reduce liquidity. In addition, delays in resolving bad loans can also have a negative impact on the bank's financial ratio, which in turn affects investor and customer confidence.

5 Conclusion

Based on the results and discussion of this study, it aims to analyze legal protection for debtors in resolving bad loans through the collateral take over mechanism at Rural Banks, it can be concluded that collateral take over as a solution to bad loans has not been able to fulfill the rights of debtors in its implementation. Collateral take over is an important mechanism used by Rural Banks to handle bad loans. This process includes identifying problem loans, taking over assets, assessing assets, selling assets, to recording and reporting in financial statements. Legal protection for debtors is contained in the regulation of Law Number 10 of 1998 concerning Banking and the Financial Services Authority Regulation has not regulated legal protection for debtors that is clear and transparent in the collateral take over process that is carried out including transparency of time and information. Therefore, a clearer legal protection framework is needed to keep this process fair, both through strict auction regulations and objection mechanisms for debtors if there are irregularities in the process, so that the fulfillment of debtor rights can be fulfilled including basic rights recognized by human rights. Constitutional Court Decision No. 18/PUU-XVII/2019 emphasizes that the execution of fiduciary guarantees cannot be carried out unilaterally without the consent of the debtor or a court decision, which strengthens the protection of debtor rights. Although the regulation provides protection, debtors still face various obstacles in obtaining effective legal protection. Some of the main obstacles include the absence of clear provisions regarding the deadline for the implementation of collateral take over by Rural Banks, high legal costs, lack of education and legal awareness among debtors, and limited access to legal assistance. Creditor participation in auctions can be considered a violation of the principle of prudence because it is not in accordance with the objectives of reducing risk and maintaining financial stability. These obstacles can hinder debtors from fighting for their rights and seeking fair solutions. Overall, although collateral take over is a legitimate and important mechanism in handling bad loans, its implementation must be accompanied by strong legal protection for debtors. Rural Banks need to ensure that every step in the collateral take over process is carried out in accordance with applicable regulations, respects and protects the rights of debtors, and maintains transparency and fairness to prevent potential legal problems in the future.

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