

Default Settlement On Credit Agreement Imposed By Security Right (Case Study At Pt Bank Danamon Tbk. Dsp Boyolali Branch)

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Abstract :-- The purpose of this study was to describe the process of Default settlement with warranty deed by Danamon Tbk. DSP Company Boyolali Branch in the settlement processes with warranty deed and the way to resolve it. The research method used empiric juridical approach, data sources consist of interview as primary data whereas statutes and scientific books as the secondary data. The data analysis method was qualitative descriptive. The results showed that the settlement processes with warranty deed by exercising preventive and repressive measures, a warning letter and the letter of summons as measurements. Juridical and non juridical are the constraintsuffered by Bank Danamon Tbk. DSP Company Boyolali Branch, the settlement is by exercising periodic examination of the files and documents of the debtor.

Keywords: -Damages, Suit Settlement, Bank, Collateral, Banking Law, Credit Agreement, Default.

1. INTRODUCTION

The main factor on development execution in economy is enormous capital. So, society or enterprise that afford to increase consumption needs or increase its production. They need funding from bank as one of source funding. The funding is in credit form then it enable to meet and support business development. Credit is a providing money or bills that equal according to loan agreement between bank and others in case the borrower party has obligation to repay their debt after certain period with its bank interest that determined. Because of important of credit funding position then creditor and debtor or others that related receive a protection through solid collateral agency, so they get a legal certainty as attempt for preventing a risk that rise up for creditor in future. Credit agreement is substantial agreement or underlying agreement that rules the rights and obligations between creditor and debtor. The creditor has obligation for loan remittance as much of agreed loan and debtor obligates for repay his debt according to period time that stipulated on credit agreement. To assure repay the debt that provided, then credit gives conditions for debtor to provide and give collateral in movable things and unmovable that gives rights and authority to creditor for obtain his payoff with sale/auction the properties as debtor is unable to repay in period time as ruled or in other word debtor is default. Credit agreement process needs collateral. One of most favourit credit collateral by financial agency is material collateral. It is absolut right over certain properties that being collateral object of a debt, that can be reimbursed for payoff the debt as debtor is default/broke the agreement.

The material collateral in form of land or building because they are inseparatable, then as bank receives the land as credit collateral, the properties is in over the land includes as credit collateral. The properties are building, both a house and an office that been used by company that obtained the funding. As stipulated on article 1 verse 1 Law no. 4 of 1996 regarding to security rights states that: "collateral rights imposed on land right according to Law No. 5 of 1960 regarding to Underlying Act of Agrarianism that included or excluded other properties as a unit with the land for paying certain debt, provides central positon to certain creditor againts other creditor". For receiving land as a credit guarantee, the first thing to look at is the type of land rights, given that so many types of land rights exist in this country. The importance of understanding rights over the land to be guaranteed is in order to be able to anticipate the risks that might arise in the future as there is a bad credit that has been granted. The types of land rights that are imposed with mortgage rights include: a) Ownership Rights, b) Cultivation Rights Title, c) Building Rights Title, and d) Use Rights. All types of land rights can be used as security for credit guarantees, when the debtor breach of contract, the bank should only consider accepting Ownership Rights, Cultivation Rights Title, and Building Rights Title as collateral for credit. This is by seeing that only the three types of rights that are explicitly mentioned are likely to be took over and transferred. A debtor is stated to be default as he does not fulfill his promise as he should and he can be considered false. Default (omission or negligence) by debtor can be in four types, he does not do what he promised, executes what he promised, but not conformed as promised, he does his promised but too late, he does something wrong according to the agreement that should not done. Referring to the subject matter specifically so that it is not out of what is the problem in this study, the writer needs to limit the problem to simplify the problem and narrow the scope, which in this case is about how to resolve defaults in the loan agreement with Security Rights in PT. Bank Danamon Tbk. DSP Boyolali Branch.

2. RESEARCH METHODS

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The approach method used in this paper was an empirical juridical approach, which is the procedure used to solve research problems by examining secondary data first and then proceeding with conducting research on primary data in the field. Research location at PT Bank Danamon Tbk. DSP Boyolali Branch. From the results of the study the type of data obtained was primary data that was a direct interview with PT Bank Danamon Tbk. DSP Boyolali Branch and secondary data in the form of documents, books relating to credit agreements with Security Rights. In analyzing the data an interactive analysis consists of data reduction, data presentation, and then finally conclusions, and verification.

3. DISCUSSION

A. Credit Agreement imposed by Security Rights Agreement is something done by the name of one person or more binding himself to one or more people. The agreement has valid legal force as it has fulfilled 4 (four) terms of an agreement, they are:

- 1) Agree to bind.
- 2) Ability to make an agreement
- 3) Certain things.
- 4) Lawful cause.

Agreement cause someone to bind themselves to others, this means that from an agreement is come up an obligation or achievement. If an agreement has been agreed upon, the parties must fulfill the contents of the agreement. If one of the parties does not fulfill their obligations, they will be subject to sanctions for violations made. Because an agreement is made on the basis of trust and good faith from both parties. The agreement has the following elements:

1. Essensialia
Something that must exist is the main thing as a condition that must not be ignored and must be included in an agreement. that in an agreement must contain a provision regarding achievements.
2. Naturalia
The element that is definitely in the agreement. after it is known that there are certain elements of essensialia then after that there is an element of naturalia in the form of an obligation from the seller to be imposed material that does not meet the requirements, for example: defects or damage.
3. Accidentalialia
Part of the agreement which is a condition specifically agreed by the parties. For example: regarding payment methods and delivery of goods.

Credit agreement is one of the most important aspects in granting credit, without credit agreement signed by bank and debtor, there is no credit agreement. Credit agreement is a bond between bank and debtor whose contents determine and regulate the rights and obligations of both parties in connection with the granting or loan (money loans). Credit agreements are usually followed by collateral agreements so credit agreements are the principal or mainly, whereas collateral agreements are a follow-up agreement or accesoir means that there is and termination the collateral agreement depending on the principal agreement (credit agreement). For example if the credit agreement terminates because there is a debt settlement,

collateral agreement will automatically be terminated or finished. But on the contrary if collateral agreement is deleted or terminated, for example, goods that are used as collateral are broken, credit agreement does not terminate. So the credit agreement must precede the guarantee agreement, there can be no collateral without a credit agreement. Collateral that is often used is a material collateral in the form of land and buildings because land and buildings are an inseparable unit, so if the bank will accept the land as a credit guarantee, the objects that are on the land must also be requested as collateral for credit, these objects are usually buildings, both houses and offices that are used by companies that are funded.

B. Default and how to resolve it Based on the results of research conducted by the author at PT. Bank Danamon Indonesia Tbk. DSP Boyolali Branch, by conducting an interview with Mr. Febrian as a credit officer, he explained that to determine the debtor has been declared default if the debtor has passed the credit payment due date, and has received a letter of warning or written warning so that the debtor is declared negligent. According to Mr. Febrian the default or negligence of a debtor can be in four types, they are:

- 1) Debtor does not do what he has to do,
- 2) Debtor executes what he promised, but not conformed as promised
- 3) Debtor does his promised but too late,
- 4) Debtor does something wrong according to the agreement that should not done.

Reasons for debtors to default are due to several factors, as follows: First, debtor has unstable economic condition that causes the debtor's business is no longer running. This is caused by micro and macro factors, while those that affect micro factors include the quality and quantity of debtor businesses that are not running smoothly, poor business management, and business competition. While the macro factor, which is the current unstable state of the country's economy, can be seen from the weakening of the value of the rupiah against foreign currencies, the price of basic necessities is increasing and the people's purchasing power is uncertain, causing debtors' finances to become inflation. Second, debtor has a bad intention since the beginning, so when applying for credit at the bank, the debtor has provided information to the bank to be used as business capital, but when the funds have been disbursed by the bank the funds are not used for business capital but for other things like investment. Third, credit funds are misused by debtors. Debtor uses credit funds that do not meet his needs, for example the debtor buys a car by paying the initial down payment so that the funds for venture capital are reduced and in the end it causes constraints on his business which results in default. Based on the results of the study the authors stated that the default or omission by debtor is in accordance with the theory by Subekti that the default omission or negligence) by debtor can be in four types, as follows: 1) Debtor does not do what he has to do, 2) Debtor executes what he promised, but not conformed as promised, 3) Debtor does his promised but too late, 4) Debtor does something wrong according to the agreement that should not done. Debtors that have been declared defaulted at PT. Bank Danamon

Tbk. DSP Boyolali Branch is in accordance with the theory by Subekti, that there are two ways to determine whether the debtor is breach of contract or omission it, as follows:

- a) It is declared based on a similar order / deed, meant the order is an official warning from the court bailiff. Whereas a similar deed is a written warning, but at this time it is not uncommon for a warning / caution to be made verbally, provided it is sufficiently firm to state the creditor's insistence that the achievement be made immediately or in a very short time.
- b) It is declared omission based on the time limit provisions contained in the agreement, the determination of this deadline is based on the agreement of both parties as outlined in the agreement, if the debtor breach the agreed time limit then he is stated to have been omission.

For debtors who have been declared defaulted or have been negligent, they will be subject to sanctions in the form of reimbursement of compensation costs provided for in Article 2 number 20 of the Deed of Granting Security Rights of PT. Bank Danamon Tbk. DSP Boyolali Branch. The sanctions in the form of debtors are subject to fines or compensation and the object of Guarantee will be executed. The settlement process if there is a default in the credit agreement with Security Rights at PT. Bank Danamon Tbk. DSP Boyolali Branch, then the first thing done by bank as creditor will make a Preventive and Repressive effort. Preventive efforts has aim to prevent loan problems, at this stage the bank will conduct a careful assessment of various aspects, by conducting credit analysis with applying the five C of credit analysis or the 5 C's principle consisting of,

- A. Character, debtor's character assesment or personality is intended to know honesty and good will of debtor to pay off or return the loan, so it will not complicate the bank in the future. This can be obtained primarily based on the relationship that has existed between bank and (prospective) debtor or information obtained from other parties who know the morals, personalities, and behavior of borrowers in their daily lives.
- B. Capacity, Bank must examine capacity of debtor in their business fields and managerial, so that the bank believes that the business that funded is managed by right people, so that debtor within a certain period of time is able to repay or payoff the loan .
- C. Capital, Bank must conduct a comprehensive analysis of its financial position regarding the past and future, so that the ability of the prospective debtor to capitalize the capital in supporting project financing or the business of prospective debtor concerned.
- D. Collateral, to obligate the payment of bad credit, prospective debtor are generally required to provide collateral in the form of high-quality collateral that is easily disbursed with a minimum value of the amount of credit or financing provided to it. For this reason, banks should be required to request additional collateral for the purpose that if prospective debtor cannot repay their loans, the

additional collateral can be disbursed to cover repayment of the remaining credit or financing.

- E. Conditions of Economy (business prospects assessment of debtor customers), Bank must analyze market conditions at in the country and abroad both past and future, so that the future of marketing from the results of project or business prospective debtor financed by bank can be known.

Repressive efforts has aim to save credit. Credit safe is a step to save problem loans through family negotiations between creditors and debtors, so that at the stage of credit safe this has not yet utilized legal institutions because debtors are still cooperative. Credit settlement through this stage is called settlement through credit restructuring, the settlement step through credit restructuring requires the most important conditions, willingness and good will of debtor and willing to follow the conditions specified by bank because on the settlement through credit restructuring bank has a lot to do negotiations and solutions to determine the terms and conditions of the restructuring. Credit restructuring steps, as follows:

1. Rescheduling,
2. Restructuring,
3. Reconditioning.

Furthermore, when Preventive and Repressive efforts cannot be applied, the next step is bank will take actions, including:

1. Warning Letter The first warning letter is given by creditor to debtor which states that debtor still has loan arrears for 3 (three) consecutive months. In this warning letter there are 3 (three) warning letters, warning letter I, warning letter II, warning letter III, each of which has a maturity period of 30 (thirty) days.
2. Letter of Subpoena If the third warning letter of the debtor has not yet been to fulfill his achievement, then within 30 (thirty) days after the summons letter to debtor that contents the debtor must immediately pay off debt, interest, fines, and compensation in accordance with what was promised at the beginning.
3. Execution Creditor has given 30 (thirty) days and Preventive and Repressive efforts of creditor have been made to debtor to repay his debt, but debtor still has no good will to pay off the credit arrears, debtor is declared defaulted and bank (creditor) will execute debtor collateral items.

After doing the above actions, then execution of Security Rights, some execution contained in PT. Bank Danamon Indonesia Tbk. DSP Boyolali Branch, as follow:

- a) Execution by selling underhand directly Based on results of an interview with Mr. Febrian, he stated that the sale of objects under the hand must go through the following stages:
 - 1) Negotiation between debtor and creditor. In this stage, bank (creditor) with debtor will negotiate that debtor will repay his debt without going through the auction. At this stage an agreement will be reached between the parties, such as:
 - i. Agreement on the price of Security Rights object that will be sold under the hand.

ii. Agreement on the procedure for selling Security Rights.

2) Sale After an agreement is reached between creditor and debtor regarding the price of Security Rights as well as the selling procedure, the next step is the process of selling the Security Rights, which includes:

- i. Debtor sells object of Security Rights.
- ii. Debtor gives a special power of attorney to bank (creditor) to sell object of Security Rights.

3) Transfer of land rights

At this stage, the transfer rights over the land takes place in the office of National Land Agency based on the sale and purchase deed made by the parties.

b) Execution through State Court

The steps for execution through State Court are as follows:

- 1) Execution Auction Applicant (Bank) prepares a special power of attorney from Board of Directors of the company to employee who represents applying for Security Right
- 2) Execution Auction Applicant (Bank) prepares a letter of request for execution of Security Right accompanied by evidence of power of attorney, credit agreement, Deed of Granting Security Rights, Certificate of Security Right, an Account proving the amount of debt and warning letters.
- 3) Execution Auction Applicant (Bank) submits application through the Registrar's Office.
- 4) Court issues an Anmaning Letter (Warning to debtors) 2 (two) times to be given opportunity to repay loans to banks. As Debtor does not carry out his obligations despite being warned (anmaning), then Court seizes collateral confiscated against the auction object and then continues it until auction is conducted by KPKNL as the auction organizer facilitated by Judicial Agency.

c) Execution through Office of State Assets and Auction Services (KPKNL). The bank (creditor) submits a request for execution of Security Right to KPKNL. After receiving the request for auction execution from bank (creditor), KPKNL will examine the documents that become auction requirements submitted by bank (creditor), after auction requirements documents are complete, KPKNL head will issue a written determination in the form of auction schedule to bank as auction applicant.

4. CLOSING

A. Conclusions

As there is a default in the credit agreement imposed by Security Rights at PT. Bank Danamon Tbk. DSP Boyolali Branch, then the first thing done by bank as creditor is the bank (creditor) will make a Preventive and Repressive effort. Preventive efforts aim to prevent credit problems, at this stage bank will conduct a careful assessment of various aspects, by conducting credit analysis and applying the five C of credit analysis or the 5 C's principle consisting of Character, Capacity, Capital, Collateral, and Condition of Economy. Repressive efforts aim to save credit. Credit safe

is a step to save problem loans through family negotiations between creditors and debtors, so that at the stage of credit safe this has not yet utilized legal institutions because debtors are still cooperative. Credit settlement through this stage is called settlement through credit restructuring, the settlement step through credit restructuring requires the most important conditions, willingness and goodwill of Debtor and willing to follow the conditions set by bank because on settlement through credit restructuring, many banks do negotiations and solutions to determine terms and conditions of restructuring. Credit restructuring steps, 1) Rescheduling, 2) Restructuring, 3) Reconditioning. As Preventive and Repressive efforts cannot be applied, next step is bank will take actions, including: 1) Warning Letter, 2) Subpoena Letter, 3) Execution. After going through the process above, next process is process of Security Rights executing. Its execution contained in PT. Bank Danamon Indonesia Tbk. DSP Boyolali Branch: a) Execution by selling under hand directly, b) Execution through the State Court, c) Execution through the Office of State Assets and Auction Services (KPKNL).

B. Suggestions

a. To PT. Bank Danamon Indonesia Tbk. DSP Boyolali Branch, to avoid the occurrence of debtors default in granting loans with Security Rights, bank should continue to conduct a careful assessment of prospective debtors by applying the 5C principle consisting of assessing character, ability, capital, collateral and debtor business prospects. Because in reality, I have met several appraisers / assessors who are not professional in working, such as marking up the price of the building. This is not in accordance with the 5C principles because it will increase the amount of loans received by debtor.

b. To debtor, in using the fund should avoid consumption or personal needs because it will affect repayment of credit loan. Preferably, the loan is prioritized for productive needs such as business capital and business development, which later profits from the business can be used to pay or return credit loans to bank.

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