

COUNTERCYCLICAL DEBTORS POLICY AS A FORM OF PROTECTION AGAINST BANKING DUE TO THE IMPACT OF CORONAVIRUS DISEASE 2019

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ABSTRACT

Banks have a strategic role as an intermediary institution in collecting and channeling public funds to finance economic sector activities so as to strengthen the structure of the national economy. However, the development of the spread of coronavirus disease 2019 (Covid-19) has had a major impact on the performance and capacity of debtors in their credits. Therefore, the policy is countercyclical and expected to provide solutions for banks to situations that have the potential to disrupt banking performance and financial system stability in supporting economic growth, due to constraints on debtors in carrying out their obligations. This research has an important role to play in examining: (1) whether Covid-19 can be used as an excuse for overmacht repaying by debtors who have difficulty credit; (2) Can the implementation of policies countercyclical protect debtors affected by Covid-19. The normative juridical approach method, descriptive analysis research specifications, and data analysis were carried out qualitatively. Research Results: (1) The pandemic Covid-19 cannot be used as an excuse for overmacht by debtors to avoid credit payment obligations, but only postpone credit payments, provided that if the pandemic conditions Covid-19 have passed the debtor continues to carry out his credit obligations. (2) Through a policy countercyclical, debtors who have difficulty loans due to repaying Covid-19 receive a credit restructuring scheme.

Keywords: *Bank, Credit, Covid-19, Credit failure, Countercyclical*

INTRODUCTION

At the beginning of 2020, the world was faced with the outbreak of a new virus known to have originated from Wuhan China, which was named by the *World Health Organization* as *Coronavirus Disease 2019 (Covid-19)* (Juliana, 2020). *Covid 19* spreads rapidly throughout the world and turned into a pandemic that threatens more than 93 (ninety tiga) countries in the world, which has an impact not only on the health of the world community, but also threatens the world economy including Indonesia. Financial Services Authority (FSA) recorded up to April 2020, *NPL NonPerforming Loan ratio (NPL) gross*, was 2.89% (two point eighty nine percent) increased significantly compared to December 2019 amounted to 2.53%. (two point fifty three percent) This ratio is also higher than the average monthly ratio in 2019 of 2.59% (two point fifty nine percent) (Septiadi, Anggar, 2020).

From the credit provider side, non-performing loans have a major impact on the sustainability of the financing companies, both banks and *non-* banks, because they can interfere with the receipt of interest income from channeling credit funds, both consumer loans and productive loans. Then, the increase in the value of the *Non Performing Loan (NPL)* has a negative impact on the company's performance appraisal in dealing with bad credit problems (Fauzi, Achmad, 2018). In addition, from the perspective of a debtor who has good faith, *Covid-19* has an impact on delays in credit payments including the continuity of business activities.

Responding to this problem, the government has implemented various policies, one of which is a policy *countercyclical* in bridging debtors who are experiencing difficulties in fulfilling

their credit payments, as well as bridging banks experiencing problems increase bad / problem loans. Based on this background, it is interesting to conduct a study through the formulation of problem identification as follows: (1) Can *Covid 19* be used as an excuse for an *overmacht repaying* by debtors who have difficulty credit; and (2) Whether the application of policies *counter cyclical* can protect debtors affected by *Covid-19*.

METHOD

In conducting this research, the approach method used by the author is Juridical Normative, as a study that studies and studies legal principles (Soekanto, and Mamudji, Sri.), but not only limits existing norms in statutory regulations, but also finds the truth based on scientific logic from the normative side, so that the truth of the coherence can be found. The analysis descriptive research specification is a problem-solving procedure that is investigated by describing the object of research based on the existing facts, making descriptions or descriptions systematically, on the facts being investigated (Nazir, M, 1988).

Then, the types and sources of data used in the research are based on secondary data, which are supported by primary legal materials in the form of provisions that are related to the object under study. Furthermore, it is assisted by secondary legal materials and tertiary legal materials. Finally, qualitative data analysis is carried out, which is a method of research that is carried out without using formulas or numbers.

FINDINGS AND DISCUSSION

***Covid-19* As a Form of *Overmacht* Relative Delaying Debtor Credit Returns**

For the Indonesian people who are continuing to carry out national development in a gradual and sustainable manner, banks have a strategic role as a vehicle for collecting and channeling public funds effectively and efficiently, which is based on economic democracy to support the implementation of national development in order to increase equitable development and its results. economic growth and national stability towards increasing the standard of living of the people at large as mandated by the Preamble of the 1945 Constitution, aline-4.

Referring to Article 1 number (2) of Law Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, banks function as *financial intermediaries* with the main business of collecting and channeling public funds in the form of credit and providing other services in payment traffic (Fahrial, 2018).

Credit comes from the word *credere*, which means trust, so credit is given to people who have won the trust of creditors. In accordance with Article 1 number 11 of the Banking Law, credit is the provision of money or equivalent claims based on a loan agreement or agreement between the bank and another party which requires the borrower to pay off its debt after a certain period of time by giving interest.

Sutan Remy Sahdeini defines a bank credit agreement as a bank agreement as a creditor with a customer as a debtor regarding the provision of money or an equivalent bill which obliges debtor customers to pay off their debts after a certain period of time with the amount of interest, compensation or profit sharing (Salim HS, 2018).

The Banking Law itself does not recognize the term bank credit agreement, as well as Chapter V Book III of the Civil Code on Engagement (*Van Verbintenissen*) does not provide regulations on bank credit agreements, but only regulates money lending and borrowing agreements. There is a difference between a credit agreement and a loan and loan agreement. First, the debtor can only withdraw credit if it has met the conditions for granting credit. Second, the

debtor can only use credit in accordance with the purposes set out in the credit agreement. Third, bank credit is not always with real delivery, but can use checks and / or transfer orders (Sjahdeini, Remi, Sutan, 2009), (Wastu, Gni, Gde, Bagus, Ida, 2017). The bank credit agreement is included in a reciprocal agreement that sets out the rights and obligations of both parties. The debtor's obligation is to make payments with interest in the time and amount that has been agreed upon. In connection with the difference between the time when credit is received and the time for credit, it creates a risk of bad credit due to conditions previously unpredictable by the parties such as the case *repaying the Movie-19*, which has a wide impact on debtors' constraints in fulfilling their credit obligations.

Based on the provisions of Article 1239 of the Civil Code, that a debtor who does not meet his performance in making credit payments then causes losses to other parties, in this case the bank, the debtor is said to be in default, and the bank can choose one of the legal remedies in accordance with the provisions of Article 1267 of the Civil Code as a sanction for debtor negligence, including requesting achievement in the form of credit payments accompanied by interest.

However, the failure to achieve the intent and purpose of the credit agreement can be caused by *force majeure* or a state of force as a legal concept derived from Roman law (*vis motor cui resisti non-potest*), which is a situation that occurs after a credit agreement is made that prevents the debtor from fulfilling his credit agreement so that the debtor cannot be blamed, do not have to bear losses, and all of this happens before the debtor is negligent (Anonymous, 2009).

This is in accordance with the provisions of Article 1244 of the Civil Code, which states that the debtor must be punished to reimburse costs, losses and interest, if he cannot prove that the engagement was not carried out or the timing was not correct in carrying out the engagement due to something unexpected, which can not be held accountable to him, even though there is no bad faith in him. Likewise, it is strengthened by the provisions of Article 1245 of the Civil Code, that there is no compensation for costs, losses and interest, if due to coercive circumstances or because of something that happens by chance, the debtor is prevented from giving or doing something that is required, or committing an act that is prohibited for him (Rasuh, John, Daryl, 2016).

There are various kinds circumstances, namely: *of compulsive absolute compulsion (absolute onmogelijkheid)*, which is a condition in which the debtor is completely unable to fulfill his submission to the creditor, and the relative force (*relatieve onmogelijkheid*) is a condition that causes the debtor to be able to carry out his achievements. , only the implementation of that achievement must be done by making a big sacrifice that must be faced by the debtor (Elfiani, 2012).

Several scholars have different views about *Covid-19* as a condition that can be used as an excuse for an *overmacht*. Referring to these kinds of *overmachten* , the author has the view that *Covid-19* can be used as a bank debtor as a reason *overmacht*, but it is relative, namely only delaying or delaying the implementation of debtor credit payments to banks, and when the situation *Covid-19* is "finished", the debtor still obliged to make payments to the bank, if later the debtor does not fulfill his obligations, then the debtor is said to be in default.

Implementation of Policy Countercyclical in Protecting Bank Debtors Affected by Covid-19

The development of the spread of *Coronavirus Disease 2019 (Covid-19)* globally has had a direct or indirect impact on the performance and capacity of debtors in fulfilling their credit or financing obligations to banks, resulting in *Non-Performing Loans (NPL)* , which is a situation where debtors is unable to pay part or all of its obligations to the bank within a predetermined period of time (Wahyuni, AL, & Fithrah, Shah, S., 2018). The factors causing non-performing loans can be grouped into 3 (three) groups, namely: (1) bank internal factors, such as a bank's inadvertence in conducting credit analysis; (2) Debtor internal factors, such as the incapacity

originating from the debtor so that his / her income remains disturbed; and (3) The influence of external factors, such as the existence of *Covid-19* which has caused a decline in economic conditions (Sjafitri, H., 2012).

Referring to the factors that cause non-performing loans above, *Covid-19* is one of the external factors that causes debtors to have difficulty fulfilling their credit. This was also strengthened by the issuance of Presidential Decree No. 11 of 2020 concerning the Determination of the Public Health Emergency *CoronaVirus Disease 2019 (Covid-19)*, as well as Presidential Decree No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of *CoronaVirus Disease 2019 (Covid-19)*. The two regulations serve as a reference for the issuance of the Financial Services Authority Regulation (POJK) No. 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Policy *Countercyclical Impact of the Spread of Coronavirus Disease 2019 (Covid-19)* (Susanti, Ochtorina, Dyah, 2019).

The existence of Large-Scale Social Restrictions in the Context of the Acceleration of *CoronaVirus Disease 2019 (Covid-19)* (PPPSBB) has an impact on the obstruction of public activities including debtor activities in carrying out their business activities, decreased economic performance, disrupted consumption, stunted investment, contracted export imports, and economic growth decreases, and one of the effects is on the smoothness of debtors in making credit payments, so that it becomes non-performing loans (bad credit) (Hasan, Fadhil, M., 2020). In general, the steps taken by banks for non-performing loans are warning / summons as regulated in Article 1238 of the Civil Code, known as *ingebrekestelling* as a message from – creditors to debtors, when at the latest the creditor (bank) requests the fulfillment of payment from the debtor. The next step, if until the specified time the debtor still neglects his obligations, then the creditor will then make settlement through confiscation, then an auction is conducted to take the debtor's debts to the bank.

Responding to bad credit due to the Pandemic *Covid-19*, the important role of banks as financial institutions is not only economically oriented to get back credit funds that have been distributed to the public, but banks also have a strategic role in maintaining political stability and national stability. Therefore, as a strong legal foundation for the Government and related institutions to continue steps in order to overcome the threat of *taking covid-19* in the health, social and economic threats, on March 13, 2020, the Republic of Indonesia's Financial Services Authority Regulation was passed. Indonesia Number 11 /POJK.03/2020 Concerning National Economic Stimulus as a Policy on the *Countercyclical Impact of the Spread of Coronavirus Disease 2019*. The Policy *countercyclical* is a strategy undertaken by the government to face economic recession through fiscal and monetary measures with the goal is to encourage banking performance, especially the intermediation function, maintain financial system stability, and support economic growth by providing special treatment for bank credit or financing with a certain amount and credit or financing by providing restructuring to debtors affected by the spread of *Coronavirus Disease 2019 (Covid-19)*) including micro, small and medium business debtors which are valid until March 31, 2021.

The Policy has *countercyclical* not only been implemented by the Indonesian government, but has also been carried out by the United States, which is facing a recession due to the *subprime mortgage crisis*, as well as Japan, known as *Abenomics*. However, the use of policies *countercyclical* must be carried out with due observance of the precautionary principle accompanied by a monitoring mechanism to prevent abuse in the application of provisions (*moral hazard*), pay attention to good governance, and implement a transparent and accountable reporting mechanism on the use of state finances.

Regulation of the Financial Services Authority of the Republic of Indonesia Number 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Policy on the *Countercyclical Impact of the Spread of Coronavirus Disease 2019*, explains several things, namely: (1) General provisions; (2) Determination of asset quality; (3) Credit or financing restructuring; (4) Provision of new funds; (5) Reporting; (6) The validity period of providing the stimulus; and (7) closing

provisions. Reviewing certain articles of these provisions, that according to Article 5, credit or financing restructuring can be carried out on credit or financing provided before or after the debtor is affected by the spread of *Coronavirus Disease 2019 (Covid-19)* including debtors of micro, small and medium enterprises with ceiling of Rp. 10,000,000,000.00 (ten billion rupiah).

In addition to credit restructuring, according to Chapter IV Article 7 that Banks can also provide new credit or financing and / or other provision of funds to debtors affected by the spread of *Coronavirus Disease 2019 (Covid-19)* including micro, small and medium business debtors, with provisions: (1) for credit or financing and / or other new provision of funds with a maximum ceiling of Rp.10,000,000,000.00 (ten billion rupiah), and (2) for credit or financing and / or other new provision of funds with a ceiling of more than Rp.10,000,000,000.00 (ten billion rupiah), the determination of the quality of credit or financing and / or other provision of funds is in accordance with the provisions of the Financial Services Authority regulations regarding asset quality assessment. Furthermore, in accordance with Article 8, a Bank which determines the quality of credit or financing and / or other provision of funds, as well as restructuring credit or financing is required to prepare a report. Finally, according to Article 10, the implementation of policies that support economic growth stimulus for debtors affected by the spread of *Coronavirus Disease 2019 (Covid-19)* including micro, small and medium business debtors is valid until March 31, 2021.

Through the policy *Countercyclical*, the state is here to help and protect the interests of the community (customers) affected by *Covid-19*, so that through this policy the government provides space for the real and informal sectors to survive a pandemic *Covid-19* through relaxation of credit / financing restructuring. In addition, it provides relaxation for banks so that they do not need to add to the cost of reserves for bad credit losses due to the impact of *Covid-19* which can suppress capital / reduce *cash flow* bank-bank.

CONCLUSION

Covid-19 can be used as a bank debtor as a reason for an *overmacht*, which is relative in nature, namely only to postpone or postpone the payment of debtors' credit to banks, provided that when the situation *Covid-19* is "finished", the debtor is still required to make payments to the bank.

The Policy *countercyclical* is one of the pro-people policies as a strategy carried out by the government to face economic recession through fiscal and monetary measures the objective is to boost the performance of the banking intermediary function in maintaining financial system stability, and to support economic growth by providing special treatment for bank credit or financing with a certain amount and restructured credit or financing to borrowers are affected by the spread of *Coronavirus Disease 2019 (COVID 19)* including micro, small, and medium business debtors whose time is limited to March 31, 2021. The government needs to pay attention to and think about potential risks to the possibilities that occur after the expiration of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 11 /POJK.03/2020 concerning National Economic Stimulus as a Policy *Countercyclical* Impact of the Spread of *Coronavirus Disease 2019*, relating to the ability to pay debts after the restructuring period ended especially in the UMKM segment.

Therefore, the government needs to think about other options if the time limit for restructuring is expired, but the MSME business has not been able to run normally so that it has not been able to fulfill its obligations to the bank.

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