THE IDEAL CONSTRUCTION OF BANKING BAD CREDIT SETTLEMENT BETWEEN CREDITORS AND DEBTORS IN A FAIR MANNER

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ABSTRACT

The purpose of this study is to analyze: 1) What are the factors that cause bad loans in banks? 2) Has the settlement of bad loans that the banks have been doing so far provided justice to the parties? 3) How is the Ideal Construction of an Alternative Bad Credit Settlement Between Creditors and Debtors That Are Fair?. The research method used is empirical juridical. Empirical juridical is an approach that is carried out based on field research or based on the dynamics of legal developments that occur in society.

The results of the study show that: 1) In practice, the congestion of a credit is caused by the following 2 elements: (1) From the banking side, it means that in conducting the analysis, the analyst is not careful so that what should happen, is not predicted in advance or may be miscalculating. (2) From the customer's side, from the customer's side, credit congestion can be caused by 2 things, namely: first, there is an element of intentionality. In this case, the customer deliberately does not intend to pay his obligations. Second, there is an element of accident. This means that the debtor wants to pay but is unable to afford it. 2) In fact, the history of banking in Indonesia has inherited the most powerful and fast weapon in eradicating bad loans, namely through the execution parade or self-executing/directly (auctioning) collateral without court intervention. 3) Another more efficient and profitable way to resolve bad loans, namely through out-of-court settlement efforts. In the last year, the concept of *Alternative Dispute Resolution* (ADR) has also emerged to resolve civil disputes outside the litigation (judicial) process.

Keywords: Construction, Ideal, Settlement, Credit, Jammed, Banking, Creditors, Debtors, Equitable

INTRODUCTION

Background

Banks are financial intermediary institutions or commonly called *financial intermediaries*. The bank's activities and businesses will always be related to commodities, including: (1) moving money; (2) receive and repay money in bank statements; (3) discounting money orders, order letters and other securities: (4) buying and selling securities; (5) buying and selling checks, money orders, trade papers; (6) to provide bank guarantees.[1] In principle, banks collect funds from the community in the form of deposits and distribute them to the community, with the mission of improving the living standards of many people. Deposit fund products are third-party funds or community funds that are deposited and deposited by banks, whose withdrawals can be made at any time without prior notice to the bank with a certain withdrawal medium.[2]

Banks in Article 1 paragraph (2) of Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning banking are business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit and or other forms in order to improve the standard of living of many people. A bank is a financial institution called *a financial intermediary*. The functions and objectives of Indonesian Banking in articles 3 and 4 of the amended Banking Law state, namely: The main function of Indonesian banking is as a collector and distributor of public funds. Banking Indonesia aims to support the implementation of national development in order to increase equity, economic growth and national stability towards improving the welfare of the people. The main functions of modern banking such as accepting deposits, providing credit and performing financial transfer services, etc. are an integral part of human life.[3]

Banks have a role as intermediaries with excess funds and lack of funds whose main business is to provide credit and services in payment traffic and money distribution. Loans issued by banks can be classified into various types, both according to the nature of use, the

[1] Eskasari Putri and Arief Budhi Dharma, "Analysis of the Difference in Financial Performance Between Conventional Banks and Sharia Banks," *Accounting and Finance Research in Indonesia* 1, no. 2 (2016): 98–107, https://doi.org/10.23917/reaksi.v1i2.2734.
[2] *Ibid*.
[3] Muhammad Shafi'i Antonio, *Sharia Banks From Theory to Practice* (Jakarta: Gema Insani, 2001), p. 10.

period of use, credit needs and credit guarantees. The smooth provision of credit is highly dependent on the role of the bank and the awareness of the customer to settle the credit as agreed.

One of the principles in providing credit is collateral or collateral, the guarantee principle is a form of prudence because collateral is a security in taking credit by the debtor, both material collateral and individual collateral. Before obtaining credit facilities, prospective debtors must meet the requirements of the bank, one of which is credit guarantee, because the function of providing credit guarantees is to give the bank the right and power to get repayment with these collateral items if the debtor is injured or does not pay his debt.[4]Loans that are included in the current category and are in special attention are considered as performing loans, while loans that are in the category of less current, doubtful and bad are considered as non-performing loans. The factors that must be considered in determining credit quality include: 1) Business prospects, 2) Debtor performance, 3) Ability to pay. The existence of bad loans will certainly be a burden on banks because they are factors and indicators that determine the performance of a bank.

In the process of distributing funds (providing credit) to the public, banks must fulfill two main principles of the bank, namely the principle of trust and the principle of prudence. The principle of trust pays attention to the bank's efforts to put the community (debtor customers) in its main position in every banking activity so that the public (creditor customers) always believe in the role of banking as a means of investment. The principle of prudence puts pressure on banks' efforts to treat public funds (customer creditors) carefully and safely in every banking activity. In order for credit not to be stuck, banks in providing credit, must be careful by analyzing and considering all relevant factors. For this reason, it is also necessary to supervise the provision of credit.[5]

The provision of credit gives birth to a legal relationship with all juridical consequences that can cause losses or risks for the bank as a creditor if the basic things are neglected. Risk is the potential loss due to the failure of the customer or another party (debtor) to fulfill its

[4] Thomas Suyatno, *Banking Institutions* (Jakarta: Rajawali Press, 2012), p. 45.
[5] Niniek Wahyuni, "The Application of the 5C Principle in Providing Credit as Bank Protection," *Unitomo Law Journal* 1, no. 1 (2014): 1–25.

obligations to the bank in accordance with the agreed agreement. Failure to pay committed by debtors can be divided into two types of defaults, namely: a) Able (intentional default), and b) Default due to bankruptcy, i.e. unable to repay the debt.[6] In the event of bad credit in the implementation of the agreement, the bank always makes continuous collection efforts and provides warning letters to the bad debtors and always reminds the bank of the obligations that must be completed to avoid customers being blacklisted by the bank.

The format of the credit agreement provided by the bank has been determined by the bank, the debtor only reads it and then signs the agreement if the content of the agreement is approved by the debtor and the bank has usually made a standard agreement format for each type of credit agreement or changed the content of the standard agreement in accordance with the credit terms provided.[7]In the implementation of the contract signing, not all customers of the credit agreement understand the contents of the contract agreement signed with the Bank, so that the rights and obligations as well as clauses related to the credit agreement cannot be understood and understood by the customer so that the legal consequences or legal consequences that can arise from the signing of the contract agreement, In fact, the worst legal consequence that can arise from the credit agreement is the confiscation and auction of the assets used as collateral by the customer to the Bank.

Problem Formulation

1. What are the factors that cause bad loans in banks?
2. Has the settlement of bad loans that has been carried out by banks provided justice to the parties?
3. How is the Ideal Construction of an Alternative Bad Credit Settlement Between Creditors and Debtors That Are Fair?

Theoretical Framework

1. Banking Law Theory

The Grand Theory or the main theory that is the basis of the analytical knife in this study is the Banking Law Theory. The definition of a bank according to Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning banking is a business entity

[6] Bambang Rianto Rustam, *Sharia Banking Risk Management in Indonesia* (Jakarta: Salemba Empat, 2013), p. 30.
[7] Sudaryat, *Legal Officer* (Bandung: Oase Media, 2008), p. 210.

that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people.

2. Legislative Hierarchy Theory

Middle Theory in this study uses the Theory of Legislative Hierarchy. Hans Kelsen in his "General Theory of Law and State" is a translation of the general theory of law[8] and the state described by Jimly Assihiddiqie[9] under the title Hans Kelsen's theory of law among other things, that legal analysis, which reveals the dynamic character of the norm system and the function of basic norms, also reveals a further peculiarity of law.

3. Theory of Treaty Law

The Applied Theory in this study uses the Theory of Covenant Law. In this study, the law of the Agreement as contained in the law of the covenant applies.

Research Methodology

The research in this dissertation is included in the type of Non-Doctrinal research, where the approach method used is empirical juridical.[10] A law that applies at a certain time and place, which is a written rule and norm that is officially formed and promulgated by the ruler, in addition to a written law that effectively regulates the behavior of members of society.[11] This is because the data taken is sourced from the settlement of bad credit disputes at Bank BRI.

The approach in this study uses an empirical juridical approach The empirical juridical approach is an approach that is carried out based on field research or based on the dynamics of legal developments that occur in society. Then from the primary data, it is analyzed based on the main legal materials by examining theories, concepts, legal principles and laws and

[8] Hans Kelsen, *General Theory of Law and State Translated by Rasul Muttakin* (Bandung: Nusamedia, 2010), p. 179.
[9] Jimly Asshiddiqie, *Hans Kelsen's Theory of Law* (Jakarta: Constitution Press, 2009).
[10] Abdulkadir Muhammad, *Law and Legal Research*, Citra Aditya Bakti, Bandung, 2004, p. 134.
[11] Johan Nasution, *Legal Research Methods,* Bandung: Mandar Maju, 2008), p. 81.

regulations related to this research. This approach is also known as the legislative approach, which is by studying the laws and regulations related to this research.[12]

RESEARCH RESULTS

Factors for Bad Loans in Banking

Credit agreements have differences from loan-borrowing agreements regulated in Chapter XIII Book III of the Civil Code, both in terms of definition, the subject of the lender, the arrangement, the purpose and the guarantee. However, with these differences, it cannot be separated from its root, namely the loan-borrowing agreement, but it has changed according to the times. Judging from the general form of the banking credit agreement, the bank uses the standard *contract*, because in practice the form of the agreement has been provided by the bank as a creditor while the customer as a debtor only studies and understands it well. Such an agreement is commonly referred to as a *standard contract*.[13]

According to Article 1313 of the Civil Code, a contract is an act by which one or more people bind themselves to one or more other people. From this event, a legal relationship arises between two or more people called an alliance in which there are rights and obligations of each party. An agreement is the source of an agreement, an alliance derived from an agreement is desired by two or two parties who make the agreement, while an agreement born from law is made on the basis of a will related to human actions consisting of two aspects.[14]

In mitigating the risk of credit facilities provided by the Bank to the Debtor, the bank must be able to adhere to several principles, namely the Principle of Trust, the Principle of Prudence, Principle 5C (*Character, Capacity, Capital, Conditions of Economy, and Collateral*), the Principle of 5P (Party, Purpose, Payment, Profitability, Protection), and the Principle of 3R (*Returns, Repayment, Risk Bearing Ability*)). There is no doubt that how important the collateral function is in any credit grant. Although the guarantee, for example, is only in the form of billing rights issued from the project financed by the credit concerned. Guarantee is the final source for creditors, where it will be realized/executed if a credit is really in a bad

[12] Johnny Ibrahim, *Normative Legal Research Theory and Methodology* (Malang: Banyumedia Publishing, 2006), p. 299.
[13] ohannes Ibrahim, Cross Default & Cross Collateral in Efforts to Resolve Non-Performing Loans, PT Refika Aditama, Bandung,: 2004, p. 31.
[14] Suharnoko, Covenant Law, Prenada Media, Jakarta: 2004, p. 117.

state.[15]

In practice, the congestion of a credit is caused by the following 2 elements:

1. From the banking side, it means that in conducting the analysis, the analysts are not thorough so that what should have happened was not predicted in advance or may have made the wrong calculation. It can also occur due to collusion between the credit analyst and the debtor so that the analysis is carried out subjectively and arbitrarily.
2. From the customer's side, from the customer's side, credit congestion can be caused by 2 things, namely: first, there is an element of intentionality. In this case, the customer deliberately does not intend to pay his obligations. It can be said that there is an element of unwillingness to pay even though the customer can actually afford it. Second, there is an element of accident. This means that the debtor wants to pay but is unable to afford it. For example, loans financed have experienced disasters such as fires, floods, failures in the field of business, prolonged illness, death, so that the ability to pay credit does not exist.[16]

Bad Credit Settlement Carried Out by Banks

Facilities or policies that can be used to restructure non-performing loans according to the decision of the Board of Directors of Bank Indonesia include:

1. Reduction in Credit Interest Rates, Reduction in credit interest rates is a form of restructuring that aims to provide relief to Debtors so that with a decrease in credit interest the amount of interest that must be paid by the Debtor on each payment date becomes small compared to the previously set interest rate.
2. Reduction of Credit Interest Arrears, To save non-performing loans, credit restructuring can be done by reducing the burden on debtors by reducing credit interest arrears or eliminating all credit interest arrears. The debtor is exempt from the obligation to pay the arrears of credit interest in part or in full. The rescue step by wiping part or all of the arrears of credit interest is expected to have the ability to resume its business so as to generate income that can be used to pay its principal debt which is impossible to be completely written off by the Creditor/Bank.
3. Reduction of Principal Arrears of Credit, the reduction of principal arrears is the

[15] Rachmat Firdaus and Maya Ariyanti, Commercial Bank Credit Management, Alfabeta, Bandung: 2011, p. 83.
[16] Kasmir, Banking Management, (Jakarta: PT Rajawali Pers, 2010), p. 128.

maximum credit restructuring that the Bank provides to the Debtor because the reduction of principal arrears is usually followed by the elimination of interest and penalties entirely. The reduction of the principal arrears is a very large sacrifice of the Bank because the Bank's assets in the form of principal debt do not return and are losses that are the Bank's burden.

4. Extension of Credit Term, Extension of credit term is a form of credit restructuring that aims to encourage the Debtor to return his debt.
5. Addition of Credit Facility, Addition of credit is expected to resume and expand which will generate revenue that can be used to repay old debts and additional new credit. To provide additional credit facilities, a careful, accurate analysis must be carried out and with proper calculations regarding the business prospects, the debtor must be able to generate income that can be used to pay off old debts and additional new loans and still be able to develop the business in the future.
6. To save the credit in this way, the Bank/Creditor takes over the credit collateral whose collateral value is compensated by the amount of credit equal to the value of the collateral taken, then compensation occurs. In other words, the credit collateral taken over by the Bank is paid using the outstanding credit. Thus the credit collateral becomes the Bank's property/assets and the debtor's debt is declared paid off. The takeover of the debtor's assets can also be called a set off.[17]

In fact, the history of banking in Indonesia has inherited the most powerful and fast weapon in eradicating bad loans, namely through parade execution or self-executing/directly (auctioning) collateral without court intervention.[18] If the Debtor has experienced a bad loan and the Bank as the lender has taken steps to rescue the credit but has not been successful, then in accordance with Article 6 of the UUHT, the Bank as a Creditor has the right to make efforts to settle bad loans by directly executing the object of the Right of Dependency (auction of the Right of Dependency). In the event of a non-performing loan or debt that cannot be repaid by the debtor for some reason, the bank as a creditor must resolve it by executing the

[17] Komang Indra Apsaridewi, Legal Action to Rescue Non-Performing Loans in Banks, KERTHA WICAKSANA Lecturer and Student Communication Facilities Volume 17, Number 1 2023, pp. 62-64.
[18] Bachtiar Sibarani, "Parate Execution and Force Agency", Journal of Business Law, Vol.15, September 2001, p. 22

collateral.[19]

The authority to sell the object of the right of dependency must still respect the land control rights owned by the debtor. In the law of protection of creditors is manifested in a promise of the Deed of Granting of Dependent Rights, where in the clause of the agreement it is stated that the debtor promises to give the right to the bank as the holder of the first right of dependency to sell on his own power the object of the right of dependency in the event of default, as in Article 11 paragraph (2) letter e of the UUHT. So that with this promise, the bank as a creditor can immediately sell the object of the dependent's rights through a public auction without the debtor's permission, if the debtor has committed an act of default.[20]

And vice versa, if it is not agreed in advance, the bank does not have the right to execute the right of dependency based on the provisions of Article 6 of the UUHT but based on the executory title as referred to in Article 20 Paragraph (1) letter of the UUHT:[21]

Auction is: "*Sale of goods that are open to the public with a written and/or verbal quotation that increases or decreases in order to reach the highest price, preceded by an auction announcement". The implementation of auctions based on the provisions of Article 6 of the UUHT is one type of auction that is included in execution auctions.*

The auction process also requires costs that must be borne by the Bank, while the proceeds from the sale of the auctioned goods are often below the market price of the goods, so that collateral as credit collateral is insufficient to cover the bank's losses due to the bad loan. This is even more important with Bank Indonesia's important record of banks in Indonesia that distribute very few of their funds in the form of credit to the public. To overcome this situation, Bank Indonesia has since the beginning of 2007 urged banks in Indonesia to maximize lending to the safe threshold of bank capital.

In the credit agreement, the bank has the right to take repayment from the execution of the collateral object if the debtor is unable to carry out his obligations, that's why, banks prefer material collateral, especially the Right of Dependency, because in addition to there are objects that are specifically set aside as collateral, the object of the Right of Dependency is

[19] Danny Robertus Hidayat, "Legal Protection for Creditors with Guarantees for the Object of Guarantee of the Same Dependent Rights", DiH Journal of Legal Science, Volume 14 Number 27, February 2018, p. 6
[20] Ragga Bimantara, Settlement of the Company's Bad Loans through the Execution of Guarantee of Dependent Rights in Personal Names, Journal of Bina Mulia Hukum Volume 3, Number 2, March 2019, 254.
[21] Arkisman, Juridical Review of the Implementation of Parate Execution of Dependent Rights in Banking Practice, Thesis, Faculty of Law, Gresik University: 2012, p. 42.

land and objects related to land, which have an increasing economic value from time to time. The bank's right to execute the object that is the object of the guarantee of the Dependent Rights will arise if it meets the provisions of Article 13 paragraph (5) of the Constitution. [22]

Article 6 of Law Number 4 of 1996 concerning Dependent Rights regulates the procedure for the execution of dependent rights related to the settlement of non-performing loans in Indonesia. Dependency rights are a mechanism to protect creditors' funds when the debtor defaults or damages promises with the inability to pay in full credit. In the context of the settlement of bad loans, the Law provides a legal basis for creditors to carry out execution of the rights of dependents who are collateral. This execution process involves an auction mechanism for the debtor's guarantee, which is regulated in accordance with the provisions of Article 6 and Article 20 of the Law. The execution of the right of dependency can be carried out by the creditor to get repayment of bad loans at the time of default. This execution process must comply with the legal provisions stipulated in Law Number 4 of 1996, and usually involves an auction process for the debtor's guarantee.[23]

In the Law, the Right of Dependency has the privilege that the holder of the Right of Dependency can carry out the execution or sale directly without the need for permission from the debtor. Parate execution is one of the executions of dependent rights known based on the provisions of Article 6 of the UUHT. In addition, through the execution parate, the bank can take repayment of receivables on its own power through a public auction. The implementation of the auction will be carried out by KPKNL as a government agency appointed to carry out the auction based on the provisions of Article 6 of the UUHT.[24]

However, the problem is that if the value of the credit ceiling is greater than the collateral collateral secured by the debtor, so that if the payment is stuck, then the execution of the auction of the right of dependency of the proceeds of the sale is still not able to cover the debtor's debt to the creditor, then the effort that can be made by the bank as the debtor's oldest creditor is to refer to Article 1131 of the Civil Code of All the debtor's property, Both

[22] Sherhan, "The Power of Execution of Dependent Rights as a Guarantee for the Return of Problematic Financing Debts in the Practice of Pt. Bank Muamalat Indonesia, Tbk Medan Branch", USU Law Journal, Vol.2.No.2, September-2014, p. 97

[23] Ferdinansyah, et al, Legal Protection of Debtors for the Execution of Dependent Rights in the Settlement of Non-Performing Loans, Action Research Literate Vol. 8, No. 4, April 2024, 555.

[24] Chadijah Rizki Lestari, "The Settlement of Non-Performing Loans Through Parate Execution", Canun Jurnal Ilmu Hukum, Vol. 19, No. 1, April, 2017, pp. 81-96, p. 94

the moving and the immovable, both existing and new ones that will exist in the future, become dependents for all individual engagements. This is called a general guarantee. Later, the creditor can demand the repayment of the debt by seizing and executing the debtor's assets (which of course must go through a court process). The general guarantee provides a concurrent position to the creditor. The general guarantee gives each creditor the same right to get debt repayment from the debtor. In addition to general guarantees, there are also special guarantees. A special guarantee is a guarantee born of an agreement. In order for a creditor to have a better position than a concurrent creditor, the creditor's debt can be tied with a special guarantee right, so that the creditor has preferential rights in the repayment of his receivables.[25]

In settlement, the bank can ask for a special guarantee for the company or the company's organs, the special guarantee can be in the form of material guarantees or individual guarantees. Special guarantees have several benefits. First, the position of creditors with collateral over the position of other unsecured creditors in terms of debt repayment (preferential position). Later, the creditor can execute the collateral himself with the provision that it is only for repayment, not to have collateral. Second, with a special guarantee, in the event of a default, of course repayment can be done quickly through the sale of collateral because it has been authorized for it (executorial). So, it should no longer be necessary to go through the lawsuit process to court. Third, the special (tangible) guarantee continues even if the object changes hands. Fourth, special guarantees can also be used as a control so that the debtor carries out his obligations according to the agreement. In essence, collateral here gives creditors the right to pay off their repayment first.[26]

By imposing Personal *Guarantee* on company organs that still have debts to the bank, it can be a security effort by the bank, if the debtor's debt has not been completed and no longer has assets in the company's name. Banks can demand more from the company's organs even though the company's assets have been exhausted. In Article 1831 of the Civil Code, the insurer is a "reserve" in the event that the debtor's property is insufficient to pay off his debt,

[25] Rachmadi Usman, Civil Guarantee Law, Sinar Grafika, Jakarta: 2008, p. 75.
[26] RM Sayid Wrahaji Surya Kusuma, "Personal Dynamics and Corporate Guarantee in the World of Banking in Indonesia", Repertorium, Volume 1, No. 2, November 2014.

or in the event that the debtor does not have any property that can be confiscated at all.[27]

The Ideal Construction of an Alternative to Bad Credit Settlement Between Creditors and Debtors That Are Fair

In Indonesia, the legal rules governing debtors and creditors for bad loans in a credit agreement include various rules and provisions issued by the government and the competent legal authorities. Some of the relevant legal rules in the context of bad loans in Indonesia are as follows: Law Number 8 of 1999 concerning Consumer Protection. Legal protection for debtors who feel aggrieved is regulated in Law Number 8 of 1999 concerning Consumer Protection in Indonesia. This law provides a wide range of protections for consumers, including debtors, in various aspects of economic transactions. One form of protection provided by Law Number 8 of 1999 concerning Consumer Protection is related to credit agreements. In the context of unsecured credit, legal protection for debtors is contained in Article 18 of Law Number 8 of 1999 concerning Consumer Protection regarding the Inclusion of Standard Clauses. This clause must be clear and understandable to the consumer, and must not be detrimental to the consumer.[28]

Not all loans distributed by banks can be repaid by debtors as agreed. The default in credit payments by the debtor can be due to their negligence, lack of good faith or due to their inability. The Bank as a creditor must consider all ways of resolving bad loans that are allowed by law and that it considers most profitable for them, which consist of 3 (three) options, namely:

1. How to settle through a lawsuit (litigation)
2. Out-of-court settlement (non-litigation or alternative to litigation).
3. Alternative Dispute Resolution (ADR).

In Indonesia, the way to resolve bad credit disputes through a civil lawsuit to the court is carried out by complying with litigation procedures based on the civil procedure law in the Court. Civil procedural law is still not collected in a codification, but is the largest in various laws and regulations, both the colonial legacy of the Dutch East Indies and national legal

[27] Ragga Bimantara, Settlement of the Company's Bad Loans through the Execution of Guarantee of Dependent Rights in Personal Name, Journal of Bina Mulia Hukum Volume 3, Number 2, March 2019, 253.
[28] Tania Puji Andriani, et al, Juridical Analysis of Legal Protection for Debtors and Creditors for Bad Loans in a Credit Agreement (Research Study at BPSK Batam City), ERUMI: Journal of Education Religion Humanities and Multidiciplinary, Vol. 1 No. 2 December 2023, p. 342.

products after Indonesia's independence, including HIR/RBg.

The court will first investigate whether or not a legal relationship on which the lawsuit is based actually exists, and the plaintiff is obliged to prove that the legal relationship does exist. The court makes a decision based on the facts proven in the trial, the most important thing in a bad credit case is an order to the debtor to pay off his debt and confiscate the collateral placed on the collateral or property belonging to the debtor if the debtor does not comply with the court decision. The judge can impose a conservatoir confiscation, which is the confiscation of security against the debtor's property, whether movable or immovable, which can no longer be transferred, traded or transferred to another party.

Based on Article 28 paragraph (1) letter c of Law No. 14 of 1985 concerning the Supreme Court, the parties can submit a "review" legal remedy to the Supreme Court against court decisions that have permanent legal force. However, according to Article 66 paragraph (2) of Law No. 14 of 1985, the application for review does not suspend or stop the implementation of the Court's decision.

The method of settlement outside the court (non-litigation) is the settlement of disputes involving official state institutions, including the court, but without the filing of a civil lawsuit with the court. This method of settlement outside the court (non-litigation) is defined as "*alternative to litigation*", which is an alternative to the litigation process or a dispute resolution mechanism outside the lawsuit process in court, which consists of:

1. Settlement through execution parate.
2. Settlement through PUPN.
3. Settlement by Arbitration.

These three qualifications are considered more advantageous for banks than litigation settlements, because bad credit settlement can be carried out more quickly and the costs incurred are relatively less.[29]

Many parties are trying to find other ways that are more efficient and profitable in resolving bad loans, namely through out-of-court settlement efforts. In the last year, the concept of *Alternative Dispute Resolution* (ADR) has also emerged to resolve civil disputes outside the litigation (judicial) process. ADR can be used to avoid the weakness of settlement

[29] Abdul Hakim, Alternative Settlement of Bad Loans in Banking Institutions (Study on BRI Rantauprapat), Scientific Journal "Advocacy" Vol. 05. No. 01 March 2017, pp. 11-12.

through the courts and at the same time obtain an efficient settlement in private matters. With regard to bad loans in the banking world, ADR can be a better and mutually beneficial alternative for interested parties. The alternatives to settlement mentioned above certainly have their own pros and cons in order to obtain the greatest benefits for the settlement of bad loans in banking institutions.[30]

CONCLUSION

The results of the study show that;

a. In practice, the congestion of a credit is caused by the following 2 elements: (1) From the banking side, it means that in conducting the analysis, the analyst is not thorough so that what should happen, was not predicted in advance or may have made the wrong calculation. (2) From the customer's side, from the customer's side, credit congestion can be caused by 2 things, namely: first, there is an element of intentionality. In this case, the customer deliberately does not intend to pay his obligations. Second, there is an element of accident. This means that the debtor wants to pay but is unable to afford it.
b. In fact, the history of banking in Indonesia has inherited the most powerful and fast weapon in eradicating bad loans, namely through parade execution or self-executing/directly (auctioning) collateral without court intervention.
c. Another more efficient and profitable way to resolve bad loans is through out-of-court settlement efforts. In the last year, the concept of *Alternative Dispute Resolution* (ADR) has also emerged to resolve civil disputes outside the litigation (judicial) process.

[30] Ibid.

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