THE RELEVANCE OF LEGAL RISK MITIGATION TO THE SETTLEMENT OF NON-PERFORMING / BAD LOANS; STUDY ON STATE SAVINGS BANKS

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ABSTRACT

The purpose of this study is to analyze: 1) To what extent do non-performing loans/bad loans in banks, especially BTN banks, affect and interfere with banking operations? 2) To what extent are available regulations able to provide legal certainty in resolving non-performing loans, especially in BTN banks? 3) How can legal risk mitigation theories help resolve non-performing loans, especially at BTN bank? This research is a type of empirical juridical research, namely understanding problems using the approach of applicable laws and regulations based on conditions or legal implementation in the field

The results of the study show that: 1) The causes of non-performing loans are influenced by several factors, namely internal bank factors and external bank factors. Internal Factors; Weak administrative system by bank officers related to credit, the work of bank officers is not thorough in choosing prospective credit customers so that there are often delays in credit payments, Analysis is not precise, so it is not possible to predict what will happen in the period of time during the credit term; 2) To rescue and resolve non-performing loans, there are two strategies taken. Namely through litigation and non-litigation channels; 3) Legal risk is usually classified as a risk that is difficult to see and can hardly be calculated, especially non-performing loans. This risk can be in the form of the situation of the customer or debtor where the credit cannot be returned on time, and this cannot be avoided by the bank because the provision of credit is a form of banking activity.

Keywords: Relevance, Mitigation, Risk, Legal, Settlement, Credit, Problematic, Stuck Bank, State Savings Bank

INTRODUCTION

Background

Banking is one of the sources of funds, including in the form of credit for individuals, individuals or business entities to meet their consumption needs or to increase production. Needs concern productive needs, for example, to increase and expand business activities. Consumptive interests, for example, to buy a house so that people can take advantage of funding from banks known as Home Ownership Loans (KPR). One of the state-owned banks that has widely provided funding for people to buy houses of various types, and prices is the State Savings Bank (BTN).[1]

The binding of Home Ownership Loans (KPR) is carried out with a written agreement called the State Savings Bank Home Ownership Credit Agreement in the form of a standard agreement or also known as an adhesion agreement (*standard contarct*). A *standard contract* is an agreement in which almost all of its clauses have been standardized by the user and the other party basically does not have the opportunity to negotiate or request changes.

In order to obtain legal certainty and have legal force and fulfillment of rights and obligations, the bank in a credit agreement also asks for a guarantee power of attorney to the debtor. This is regulated in Law No. 4 of 1996 concerning Dependent Rights in Article 6 which reads: "If the debtor defaults on the promise, the first holder of the Dependent Rights has the right to sell the object of the Dependent Rights over his own power through a public auction and take the receivables from the proceeds of the sale."

The binding of the guarantee is carried out by granting power of attorney by the debtor to the creditor. In this case, the State Savings Bank is the holder of the Right of Dependency, where the debtor authorizes the Encumbrance of the Right of Dependency (SKMHT) which is the reason for the holder of the Right of Dependency to submit to the Land Deed Making Officer (PPAT) to the National Land Agency (BPN), which finally the National Land Agency (BPN) will issue a Certificate of Right of Dependency.

A credit agreement occurs at the time of the signing of an agreement between both parties between the creditor and the debtor that has been determined. The granting of credit

[1] Sutarno, 2005, *Legal Aspects of Bank Credit*, Alfabeta: Bandung, p. 1.

by banks has risks for the banks themselves. The risk is the risk of the debtor, because the debtor is unable to pay installments or pay off his credit due to something unexpected that the bank does not want. Therefore, the longer the period or grace period that the bank gives to the debtor to pay or pay off the credit, the greater the risk borne by the bank.[2]

In distributing its credit, banks also conduct research on their lending. Prospective debtors are required to fill out certain forms submitted by the bank as well as meet the requirements that have been determined by the bank. Then the bank will consider several things, including the ability of the prospective debtor to pay back the loan that has been given by the bank. Nonetheless, the problem of bad loans is not an easy problem for banks to avoid. Therefore, an arrangement is needed regarding the protection of banks as creditors for bad credit cases in their credit agreements.

Various problems arising from non-performing loans make banks think about ways to minimize the problem of bad loans. There are various efforts to minimize non-performing loans, one of which is by mitigating credit risk. Credit risk mitigation is an effort to reduce the risk of providing credit to customers. One way to mitigate risk is by implementing a credit application decision support system.[3]

Credit risk needs to be handled appropriately. This is because credit risk is the most popular and most real risk as well as the biggest impact on banks. This credit risk has the potential to make a credit problematic. Based on the above background, Promovendus is interested in conducting research in the form of a Dissertation with the title "The Relevance of Legal Risk Mitigation Theory to the Settlement of Non-Performing Loans; Study on the State Savings Bank"**.**

Problem Formulation

1. To what extent do non-performing loans/bad debts in banks, especially BTN banks, affect and disrupt banking operations?
2. To what extent are the available regulations able to provide legal certainty in resolving non-performing loans, especially for BTN banks?

[2] Hermansyah, 2005, *Indonesian National Banking Law*, Kencana: Jakarta, p. 37.
[3] Teguh Wahyono; Arika Dwika Cahyono. "Credit Risk Mitigation: A Study of Credit Application Decision Support System Models in Savings and Loan Cooperatives". *Journal of Proceedings of Scientific Concerts.* Vol 1 June 2015. p. 53

3. How can legal risk mitigation theories help resolve non-performing loans, especially at BTN bank?

THEORETICAL FRAMEWORK

1. *Grand Theory* of Banking & Credit

Soeharsono argued that a bank is a public financial institution established with the authority to accept public deposits, lend money, and distribute it back to the community.[4] According to Dendawijaya, a bank is a business entity whose main task is as a *financial intermediary*, which distributes funds from idle *fund surplus units* to parties who lack funds or need funds (*deficit units*) at a specified time.[5]

While Credit comes from the Greek word "*credere*" which means belief and the Latin word "*creditum*" which means belief in the truth. The basis of credit is trust. Loans provided by banks are based on trust, so credit is a guarantee of trust to customers. The provision of credit by banks is intended as an effort to obtain profits, so banks may only forward public deposits to their customers in the form of credit if they are really confident that the debtor will return the loan they received in accordance with the term and conditions that have been agreed upon by both parties. This shows that it is necessary to pay attention to the factors of ability and willingness, so that the principle of prudence is concluded by maintaining the element of security and at the same time the element of profit of a credit.[6]

Credit is the delivery of goods, services or money from one party (creditor or lender) on the basis of trust to another party (debtor or debtor) with a promise to pay from the creditee to the lender on a date that has been agreed upon by both parties.[7]

2. Middle Theory of Law Reform

In Hans Kelsen's view,[8] law is a hierarchy of normative relationships, not a causal relationship and its essence lies in "what should be (*ought*)" and "what is (*is*)" (*Sollen und sein*).[9] Therefore, Kelsen's study of law is the *legal norm*, its elements, its

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[4] Soeharsono Sagir. 2009. *Indonesian Economy Kapita Selekta.* Cet. I. Jakarta: Kencana Prenada Media Group. Page 130

[5] Lukman Dendawijaya. 2005. *Banking Management.* 2nd edition. Bogor: Ghalia Indonesia. p. 14

[6] Iswi Hariyani. 2010. *Restructuring & Elimination of Bad Loans.* Jakarta: PT. Elex Media Komputindo. Pages 9-10

[7] Veithzal Rivai. 2013. *Human Resource Management for Companies from Theory to Practice*. Bandung: Rajagrafindo persada. p. 198

[8] Hans Kelsen, *General Theory of Law and State*, New York: Russell & Russell, 1945, p. 124.

[9] *Ibid*, p. 120

interrelationships, the legal order as a whole its structure, the relationship of different legal orders, and the unity of law in a pluralistic positive legal order. Legal reality is a phenomenon that is more designed as "*the positiveness of law*", and in this case Kelsen clearly distinguishes between "*emperical law and transcedental justice by excluding the letter from specific concerns*".[10]

Legal reform, in essence, is a renewal of the main points of thought, often also interpreted as a renewal of basic concepts or ideas, not just replacing the formulation of articles textually.[11] Although the textual exposure cannot be ignored, the basic value behind the textual is its priority importance. This means that in legal reform, the renewal of values is the basic need. Because the substance of the law is value. The law is actually a picture of a value system. The law is not a series of dead and empty words. Therefore, no matter how beautiful and good the textual exposure is, it cannot be given quality as a law, if it does not contain and does not embody a value system.[12]

3. Aplied Theory of Risk Mitigation

Mitigation is actions or a series of efforts/efforts to reduce or minimize/minimize the potential negative impact of a disaster or the potential occurrence of risks and/or the impact of the occurrence of risks.[13] According to Imam Wahyudi, mitigation is a series of efforts to minimize the potential for risks and/or the impact of risk occurrence.[14] Risk mitigation is a type of effort to handle risk by reducing the probability of risk occurring, and/or reducing the negative impact that arises if the risk occurs. These efforts can be through the creation of procedures and internal supervision, training, international socialization, *contingency plans*, provision of fund reserves, improving *public relations,* and so on.[15]

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[10] Hans Kelsen, *Pure Theory of Law*, Berkeley, Los Angeles, London: University of California Press, 1978, pp. xiii - xiv

[11] Barda Nawawi Arief, *Criminal Law Reform in the Perspective of Comparative Studies*, Semarang: Diponegoro University Publishing Board, 2005, p. 4.

[12] Sudarto, *Criminal Law Volume I A-B*, Faculty of Law, Diponegoro University, Semarang, 1989, p. 2

[13] Kurnia Azhar Nur, Dina Fitrisia Septiarini. "The Implementation of *Oto Ib Hasanah Financing Risk* Mitigation at Bni Syariah Kcp Gresik". *Journal of Sharia Economics Theory and Application.* Vol. 6 No. 4 April 2019. p. 748

[14] Imam Wahyudi, et al. 2013. *Islamic Bank Risk Management*. Jakarta: Salemba Four. Page 6

[15] Hery. 2015. *Business Risk Management*. Jakarta: PT Grasindo. p. 78

RESEARCH METHODOLOGY

This research is included in the type of non-doctrinal research, where the approach method used is empirical juridical. The empirical juridical approach is to understand the problem using the approach of applicable laws and regulations or laws and regulations based on the conditions or implementation of laws in the field.[16] This research also uses a legislative approach, namely a law that applies at a certain time and place, namely 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 community members.[17]

The approach used in this study is the Sociological Juridical Approach. The Sociological Juridical Approach or Empirical Legal Research is legal research using primary data. This research was conducted by examining the implementation of the secondary data that had been collected. Then the primary data is collected from agencies and parties related to the problem being studied. Sociological juridical law research is complementary to data collection but is not the main focus in this normative research.

This research will be examined on primary data and secondary data, so there are two main activities carried out in carrying out this research, namely: a) Library *research*, which is a method that studies and researches literature on matters related to the regulation and implementation of an integrated assessment system for narcotics users and addicts in Indonesia; b) Field research), in addition to using literature studies, in the research, researchers also use field data to obtain primary data as secondary data support by searching for data at the location or research object and holding questions and answers (interviews) with the National Police Headquarters.

RESEARCH RESULTS

Non-Performing Loans, Bad Loans in Banking and Its Impact on Banking Operations

According to Law Number 10 of 1998 concerning Banking, "a bank is a business entity that collects funds from the community in the form of deposits and distributes them to the

[16] Abdulkadir Muhammad, *Law and Legal Research*, Bandung: Citra Aditya Bakti, 2004, p. 134.
[17] Johan Nasution, *Legal Research Methods,* Bandung: Mandar Maju, 2008, p. 81.

community in the form of credit and/or other forms in order to improve the standard of living of many people".

The definition of a bank according to the Banking Law can be explained more broadly that a bank is a company engaged in the financial sector, meaning that banking activities are always related to the financial sector. Talking about banks is inseparable from financial problems. The main advantage of the banking business is obtained from the difference between the interest on deposits given to depositors and the interest on loans or loans disbursed. The advantage of this interest difference is known as *spread based.*[18]

As a financial intermediary institution, banks will face the emergence of non-performing loans. Non-performing loans are loans with less current, doubtful and bad quality. The standard set by Bank Indonesia is less than 5%, with a ratio below 5%, the Allowance for Write-off of Productive Assets (PPAP) that banks must provide to cover losses incurred by non-current productive assets (in the case of non-performing loans) becomes small. If the amount of non-performing loans exceeds 5%, then it is likely that the profitability will be received by small banks, because non-payment of loans has an impact on decreasing interest income which is the main income of banks. Profits will be affected because practically bank profits will decline because banks lose their source of income and must set aside reserves according to credit collectibility.[19]

The high and low level of non-performing loans of a bank can be seen from the comparison between non-performing loans and the amount of loans disbursed, known as the NPL (*Non-Performing Loan*) ratio.[20] According to Mawardi, NPL is the ratio of non-performing loans to total loans. A good NPL is an NPL that has a value below 5%. NPLs reflect credit risk, the smaller the NPL, the smaller the credit risk borne by the bank. Banks with high NPLs will increase the cost of both the reserve of productive assets and other costs, so that there is potential for bank losses.[21] Mahmoedin stated that the higher the NPL ratio, the worse the

[18] Cashmere. *Op. Cit.*

[19] Nurkhofifah1, Dede Abdul Rozak, Mohamad Apip. "The Effect of Non-Performing Loans on Profitability in Banks Listed on the IDX". *AKUNTAPEDIA Journal.* Vol. 1, No. 1. December 2019. p. 31

[20] Erni Ambarwati, Wildan Syafitri. "Analysis of Non-Performing Loans in Anticipation of the Banking Crisis in Indonesia (Case on BTN Property Loans)". *Scientific Journal*. University of Brawijaya Malang. 2015. p. 3. https://jimfeb.ub.ac.id/index.php/jimfeb/article/view/1452.

[21] Mawardi. "Analysis of Factors Affecting the Financial Performance of Indonesian Commercial Banks (Case Study on Commercial Banks with Total Assets of Less than 1 Trillion)". *Journal of Strategic Business*. Vol 14. No 1. 2010. pp. 83-94.

credit quality of the bank concerned because of the larger the number of non-performing loans and also causing a credit crisis.[22]

Non-performing loans are risks contained in every credit provided by banks to their customers. The risk is in the form of a situation where credit cannot be returned on time (*default*). Non-performing loans themselves are loans that customers borrow funds but experience difficulties or problems in the loan repayment period to the bank due to factors or intentional elements involved in the credit process or due to conditions beyond the debtor's ability, errors in credit granting procedures, or due to other factors such as macroeconomic factors.[23]

Banks are financial institutions that function to serve the community by collecting funds from the community in the form of savings or deposits which are then channeled back to the community. Financial institutions function to provide credit or other forms. Ideally, in a credit granting process, banks are more active and play a role starting from the time of preliminary analysis to disbursement. Banks in carrying out their role must be based on a policy to always maintain the right balance between the desire to obtain profits in the form of interest rates with the purpose of liquidation and solvency of the bank. The importance of attention is paid in terms of liquidity regarding the ability of banks to guarantee the payment of debtors' short-term debts, while in terms of solvency it is expected to have the ability to pay off all debts of debtors, both long-term and short-term debts. This needs attention to prevent non-performing loans.

The cause of non-performing loans in banks is of course influenced by several factors, namely internal bank factors and external bank factors. Here's the explanation. Internal factors of the bank occur if the analysis carried out is not precise, so that it cannot predict the credit that will occur in a period of time that cannot be determined. Limited ability and knowledge of the type of business of the debtor and the character of the debtor, so that it is not possible to conduct credit analysis appropriately and accurately. Lack of understanding of the actual financial needs of prospective debtors and the credit benefits provided. Collusion

[22] Mahmoeddin. 2010. *Tracking Non-Performing Loans*. Jakarta: Pustaka Sinar Harapan. Page 67
[23] Frendi Rosyada. "Analysis of Factors Influencing the Occurrence of Non-Performing Loans in Regional Development Banks (BPD) for the Period of 2006-2013 (Comparative Study on BPD West Java and BPD East Java)". Scientific Journal. Faculty of Economics and Business, University of Brawijaya. Page 4. https://jimfeb.ub.ac.id/index.php/jimfeb/article/view/1809/1658.

that occurs between the bank and the prospective debtor, which can affect the bank in providing credit decisions to the prospective debtor. Too much interference from various related parties, for example bank directors or others so that the officer is not independent in deciding the credit. Weaknesses in coaching and monitoring loans that have been disbursed.[24]

External factors of the bank occur due to the fault of incompetent, dishonest debtors. Debtors are expanding too much, so the funds needed are too large as well. The debtor deliberately does not make installment payments to the bank because the debtor does not have the will to fulfill his obligations. Misuse of credit funds that are not in accordance with the purpose of use. An element of inadvertence committed by the debtor. The debtor has the will to pay, but is unable because unwanted things may happen, for example natural disasters, instability of the country's economy. The steps taken to handle non-performing loans, the bank is not allowed to base on the condition of one factor only, but must be based on a combination of the conditions of several factors above. Apart from the factors mentioned above, the initial actions that need to be taken in dealing with non-performing loans include urging debtors to be cooperative, strengthening the collateral position, seeking information about debtors' other businesses, and intensive collection must still be carried out by the bank.[25]

The increase in non-performing loans or *Non-Permoforming Loans* (NPLs) is an accumulation of several problems. There are four problems in non-performing loans, including: [26] *First*, the negative impact of the global financial crisis not only reduces *aggregate demand*, but also forces companies into an increasingly competitive climate. This situation makes it difficult for companies to maintain the market and worsen business prospects. As a consequence, the company's revenue declined and its financial balance sheet deteriorated. This then makes the company experience a decrease in the ability to pay loan installments to banks.

Second, the banking policy of maintaining high lending rates amid unstable economic conditions also contributed to the increase in NPLs. The high lending rate at a time when the

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[24] Silvia Agustina and Ono Tarsono. "Consumer Credit Restructuring Policy in an Effort to Improve the Quality of Home Ownership Loans (Case Study on PT. Bank Tabungan Negara (Persero) Tbk Kelapa Gading Square Branch Office for the 2018-2019 Period)". *Indonesian College of Economics.* 2019/2020. p. 11. http://repository.stei.ac.id/3307/1/Jurnal%20Silvia%20Agustina%20%2811167000513%29%20Indonesia.pdf

[25] Ibid

[26] LIPI (Indonesian Institute of Sciences). Non-Performing Loans, Causes and Impacts. http://lipi.go.id/berita/kreditbermasalah-penyebab-dan-dampaknya-/3997. accessed November 2022

company's revenue and balance sheet are declining, makes the company's loan installment burden to banks, relatively speaking, increase.

Third, the indiscretion of banks in distributing their loans is likely to also encourage the increase in NPLs. When banks maintain high lending rates, indirectly banks are actually playing with the possibility of increasing non-performing loan risks. When credit interest rates remain high, only *risk taker* companies will submit credit requests to banks. In this regard, banks should increase management control more strictly in carrying out the process of selecting and verifying prospective debtors to assess collateral and business prospects, disburse credit, monitor, and collect credit returns.

Fourth, as a monetary authority, BI must also be responsible for the increase in NPLs. Several BI policies to relax the credit disbursement process, such as the type and quality of collateral or the reduction of the minimum reserve requirement (GWM), which are expected to increase the role of banking intermediation, seem to have a detrimental effect on the increase in NPLs.

The occurrence of non-performing loans in banking can have an impact on the profitability of the bank itself.[27] One of the banks that experienced bad credit was Bank Tabungan Negara (BTN). BTN is a State-Owned Enterprise (BUMN) in the form of a limited liability company and engaged in financial services and banking. The ratio of non-performing loans (NPL) at BTN soared high at the end of 2019. As of December 31, 2019, gross NPL was 4.78%, up from 2.81% in the previous period. Meanwhile, the net NPL ratio was 2.96%, up from 1.83% last year. President Director of Bank BTN Pahala N. Mansury explained that the reasons for the surge in non-performing loans last year were because BTN lowered loans with low quality (*loan at risk*), especially in *the high rise* commercial segment or apartments. [28]

Pahala explained that BTN lowered the quality of risky loans in the commercial segment to Rp 1.3 trillion last year. The majority of the loans that were handed down were to *high rise* commercial debtors who had been repeatedly restructured. He said that bad loans in the commercial sector increased to the level of 18% of the sector's total loans of Rp 21.66

[27] Apriani Simatupang, Etyca Rizky Yanti, Nuke Mardila. "*The Credit Management Of Ownership House To Minimize Non Performing Loan On* PT. Bank Tabungan Negara, Tbk.". *AdBispreneur: Journal of Business Administration and Research Thought and Research.* Vol.6, No. 1, April 2021, p. 15

[28] Ilya Ulum Aldin. February 2020. Katadata.co.id. "BTN's Board of Directors Reveals the Cause of the Soaring Non-Performing Credit Ratio". https://katadata.co.id/yuliawati/finansial/5e9a495bc8fda/direksi-btn-beberkan-penyebab-rasio-kredit-bermasalah-melonjak. accessed November 2022

trillion. One of the problematic projects is in the Kalimalang area with a credit ceiling of Rp 650 billion. Meanwhile, non-performing loans in Home Ownership Loans (KPR) and non-subsidized mortgages are much smaller. Non-performing loans on subsidized mortgages are below the level of 1% of total loans of Rp 111.13 trillion. Meanwhile, non-performing loans on non-subsidized mortgages were at the level of 3.7% of the total Rp 80.64 trillion. Pahala said that his party has reduced the credit quality of debtors who have repeatedly restructured debts but have indications that they cannot meet credit payment commitments. In addition, BTN also analyzes the business prospects and development of the debtor's project as a consideration to reduce collectibility.[29]

BTN formed a new work unit to accelerate the settlement of non-performing loans and centralize its handling to accelerate the sale of non-performing loans. His party will also increase sales through cooperation with Asset Management Companies (PPA) and Sarana *Multigriya Financial*, including taking legal channels. This increase in non-performing loans caused the company's net profit last year to plummet by 92.5% from Rp 2.8 trillion in 2018 to only Rp 209.26 billion. Along with the increase in non-performing loans, BTN also made a provision for impairment losses (CKPN) from IDR 3.29 trillion to IDR 6.16 trillion. With this high reserve, BTN's *coverage ratio*, which was previously at the level of 50% for non-performing loans, became 109.47% in January 2020. The increase is also in line with the implementation of the Financial Accounting Standards Statement (PSAK), where banks must have CKPN reserves above 100%. Because it has made reserves for the increased NPL, this year BTN estimates that it will increase reserves at CKPN by Rp 1.2 trillion. However, BTN Finance Director Nixon Napitupulu said, if it is able to maintain the quality of new loans, this year's CKPN figure can be reduced and make this year's net profit even bigger. [30]

According to Ismail, there are several impacts if credit disbursed by non-performing creditors occurs, namely:

a) Bank Profit/Loss Decreases The decline in profit occurred due to a decrease in credit interest income.
b) *Bad Debt Ratio* becomes larger The productive asset ratio becomes lower.

[29] Ibid
[30] Ibid

c) Banks need to make provisions for larger non-performing loans. The cost of credit write-off will have an effect on the company's profit.

d) ROA (*Return on assets*) and ROE (*Return On Equity*) decline A decrease in profit will have an impact on a decrease in ROA. Because Return decreases, so ROA and ROE decrease.[31]

In addition to banking operations, bad loans are also the economic sector is one of the sectors affected by bad loans because the increase in NPLs will force banks to strengthen their capital structure. For this purpose, it is possible that banks will increase the portion of the allowance for the write-off of productive assets (PPAP). The consequence is that when banks seek to strengthen their capital structure, this will automatically reduce the ability of banks to expand credit (into the real sector). [32]

Reducing the ability of banks to expand credit will have a negative impact on the economy. The argument is that the negative impact of the global crisis has made the role of several sources of capital to support economic growth such as portfolio investment in the capital market, foreign direct investment (FDI), and private sector own capital have decreased.[33]

The impact that will result from the occurrence of bad loans on financial performance is that bad loans can affect the bank's financial condition, namely, the existence of unsmooth cash flow at the bank and will also affect *Non-Performing Loans* (NPL), at a time when high credit interest rates will indirectly cause bad loans and affect the bank's finances or cash. If bad loans increase, it will affect financial performance, namely a decrease in profits (profits).[34]

In addition to banking operations and financial performance, bad loans also have an impact on debtors, namely that the parties affected by bad loans are the first debtors themselves because they will be recorded in BI (Bank Indonesia) which is registered in the black record which results in no longer being able to apply for credit at any bank.

[31] Ismail, *Banking Management: From Theory to Application*, Jakarta: Kencana, 2010, p. 23

[32] LIPI, "Non-Performing Loans, Causes and Impacts", http://lipi.go.id/berita/kredit-bermasalah-penyebab-dan-dampaknya-/3997 on Thursday, November 24, 2022

[33] *Ibid*.

[34] Ren Reskiyani Said, "Bad Credit Settlement Strategy and Impact on Financial Performance at Pt. Bank Sulselbar Makassar Branch", Thesis at the University of Muhammadiyah Makassar, 2021, p. 57

Legal Certainty in Resolving Non-Performing Loans/Bad Debts

In accordance with the clarity of Law No. 7 of 1992 concerning Banking, it is emphasized that "credit provided by banks contains risks, so in its implementation banks must be able to pay attention to the principles of healthy credit". In order for credit provision to be carried out consistently and with sound credit principles, each bank is required to make a written credit policy that can be used as a guideline.[35]

Smooth credit provision will develop and improve a country's economic activities. Because the loans provided by the Bank in the form of credit come from public funds, it has a high risk (*risk asset*), namely not returning the credit on time, which is called *Non-Performing Loan* (NPL). Where the bank's health level is one of them measured by the level of *Non-Performing Loans* or commonly known as the "NPL Ratio". [36] As a result, it can disrupt the Bank's liquidity.

NPL (*Non-Performing Loan*) in conventional banks and NPF (*Non-performing Financing*) in Islamic banks or what can be called non-performing loans are one of the indicators of banking health. Based on Bank Indonesia Circular Letter No.31/10/UPPB, banks with good performance must have a maximum NPL of 5%. The higher the NPL level, the greater the credit risk borne by the bank. [37] Mehmood et al., stated that each bank has different tools and ways of managing credit risk even though they have the same goal, which is to reduce NPLs. NPLs have an influence on the bank's financial condition, because when a bank experiences an increase in the NPL ratio, the bank fails or decreases profits/revenues.[38]

In order to obtain legal certainty and have legal force and fulfillment of rights and obligations, the bank in a credit agreement also asks for a guarantee power of attorney to the

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[35] Baiya, Jhon Fernos, "Analysis of Factors Causing Bad Loans at Bank Nagari Siteba Branch", *Journal of the Academy of Finance and Banking 'Development'*, p. 3

[36] Iswi Hariyani, *Delete Books & Delete Bills*, Surabaya: PT. Bina Ilmu Offset, 2008, p. 66

[37] Nurul Fitria, & Raina Linda Sari, "Analysis of Credit Provision Policy and the Influence *of Non-Performing Loans* on *Loan To Deposit Ratio* at PT. Bank Rakyat Indonesia (Persero), Tbk Regional Branch, Aceh Tamiang (Period 2007-2011)", *Journal of Economics and Finance*, Vol.1, No.1, 2012, p. 4

[38] Arnanda Reza Pramadani & Dewita Puspawati, "Factors Causing Non-Performing Loans Reviewed from the Internal Perspective of Debtors in the Association of State-Owned Banks (Himbara) Surakarta Branch for the 2017-2019 Period", Proceedings of the National Seminar and Call For Paper, Faculty of Economics, UNIBA Surakarta, p. 77

debtor. This is regulated in Law No. 4 of 1996 concerning Dependent Rights in Article 6 which reads: "If the debtor defaults on the promise, the first holder of the Dependent Rights has the right to sell the object of the Dependent Rights over his own power through a public auction and take the receivables from the proceeds of the sale."

The binding of the guarantee is carried out by granting power of attorney by the debtor to the creditor. In this case, the State Savings Bank is the holder of the Right of Dependency, where the debtor authorizes the Encumbrance of the Right of Dependency (SKMHT) which is the reason for the holder of the Right of Dependency to submit to the Land Deed Making Officer (PPAT) to the National Land Agency (BPN), which finally the National Land Agency (BPN) will issue a Certificate of Right of Dependency.

The Power of Attorney for Charging Dependent Rights (SKMHT) is given to guarantee the repayment of small business loans as referred to in the Letter of the Ministry of Directors of Bank Indonesia No.26/24/KEP/Dir dated May 29, 1993, which is hereinafter valid until the expiration of the validity period of house ownership granted for housing procurement, namely:

1. Credits are given for financing the ownership of a core house, simple house, or flat with a maximum land area of 200 m2 and a building area of not more than 70 m2.
2. The credit given is for the Ready to Build Kapling (KSB) with a land area of 54 m2 to 72 m2 and the credit given to finance the building.
3. Credits given for repair/restoration of the house as referred to in letters a and b.

In the matter of the Power of Attorney for Granting Dependent Rights (SKMHT) which in Article 15 paragraph 3 of the Law on Dependent Rights is determined that the Power of Attorney for Burdening Dependent Rights (SKMHT) regarding "registered land rights" must be followed by the preparation of a Deed of Grant of Dependent Rights (APHT) no later than 1 (one) month after it is granted. As is known, banks basically want the Right of Dependency to be charged immediately when the credit agreement is realized to ensure the interests and security of the lending bank in accordance with the principle of banking prudence.

Legal Risk Mitigation in Settlement of Non-Performing Loans

The longer the period or grace period that the bank gives to the debtor to pay or pay off the credit, the greater the risk borne by the bank.[39] However, the circulation of money through credit is not always smooth. There are times when the money stalls to go back to the bank. In other words, the debtor has difficulty repaying his loan or debt to the bank. In this condition, what is called bad credit is created.

In banks, bad loans will not only harm the owners/shareholders of the bank, but will also harm the owners of funds, most of whom are members of the community, and even damage the joints of a country's economy. It can be imagined that if there is a large enough bad loan, the bank will be paralyzed and even threatened with not being able to meet all its financial obligations because the company is liquidated (*insolvable*) and unable to fulfill its financial obligations, especially its short-term liabilities (*illiquid*), because most of the public funds entrusted to the bank, are held in the hands of bank debtors.[40] Therefore, an arrangement is needed regarding the protection of banks as creditors for bad credit cases in their credit agreements.

Credit risk mitigation is an effort to reduce the risk of providing credit to customers. One way to mitigate risk is by implementing a credit application decision support system.[41]Decision Support System (SPK) is a system designed to assist decision-makers in determining a policy by utilizing the help of computers; or SPK is a system that is able to provide both problem-solving skills and communication skills for semi-structured problems. In particular, SPK is defined as a system that supports the work of a manager or a group in solving semi-structured problems by providing information or proposals towards certain decisions.[42]

Credit risk needs to be handled appropriately. This is because credit risk is the most popular and most real risk as well as the biggest impact on banks. This credit risk has the potential to make a credit problematic. However, this risk can be minimized. The distribution

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[39] Hermansyah, 2005, *Indonesian National Banking Law*, Kencana: Jakarta, p. 37.
[40] A.S. Mahmoeddin, 1995, *100 Causes of Bad Loans*, Pustaka Sinar Harapan : Jakarta, p. 54
[41] Teguh Wahyono; Arika Dwika Cahyono. "Credit Risk Mitigation: A Study of Credit Application Decision Support System Models in Savings and Loan Cooperatives". *Journal of Proceedings of Scientific Concerts.* Vol 1 June 2015. p. 53
[42] Silviaa M. Manusiwa. 2013. "Design and Build a Decision Support System for Loan Applications at Banks Using the CRS Method". *National Seminar on Computing Science and Applications (SENSAKOM).* FTI UKSW Salatiga

of credit to the community, both to individuals and business entities, is of course carried out carefully, carefully and meticulously. Before granting credit, the Bank as a creditor should conduct an in-depth analysis. To prevent the occurrence of non-performing loans in the future, a bank's assessment to give approval to a credit application is carried out based on the analysis of the 4P principles (*Personality, Prospect, purpose, payment*); and 5C (*Character, Capacity, Capital, Collateral, Condition*); and 3R (*Return, Repayment, Risk Bearing Ability*)[43]

Comprehensive credit risk management is carried out continuously starting from the initial screening of credit applications, data validation, risk analysis, monitoring to collection. Comprehensive and integrated monitoring of debtors at all stages of loans is an effective form of risk mitigation in an effort to maintain a healthy credit portfolio and prevent the occurrence of non-performing loans.

To avoid losses due to non-performing loans, Banks/Financial Institutions prepare security measures and prepare appropriate strategies, so that the possibility of greater losses can be avoided. In the context of handling non-performing loans, there are 2 (two) main activities that can be carried out, namely:[44]

1) Making an agreement with the parties to make the best possible settlement for both parties between creditors and debtors if there is an indication that the credit will experience problems with the arrears of achievements that must be fulfilled by the debtor.

2) Troubled credit rescue. This aims to save bank funds embedded in the form of non-performing loans by paying attention to the business conditions of debtors who still have good prospects. With this rescue, it is hoped that it can improve the quality of credit from "stuck" to "doubtful" from "doubtful" to "less smooth", and from "less smooth" to "smooth". There are several credit rescue strategies, including: a) Rescheduling; b) Reconditioning *requirements*; and c) Restructuring.

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[43] Fitriani Jamaluddin. "Mitigation of Banking Credit Risk". *AL Amwal Journal.* Vol 3 No 1. March 2018. p. 91

[44] Muhammad Yasid, and Risha Ramayanti. "Efforts to Resolve Non-Performing Loans in Banking Institutions". *Darma Agung Journal.* Vol XXVII, No3. December 2019. p. 1205.

CONCLUSION

The results of the study show that;

1. The cause of non-performing loans is influenced by several factors, namely internal bank factors and external bank factors. Internal Factors; Weak administrative system by bank officers related to credit, the work of bank officers is not thorough in choosing prospective credit customers so that there are often delays in credit payments, analysis is not precise, so it is not possible to predict what will happen in the period of time during the credit term. For example, in applying for credit, it is mentioned that credit for investment, it turns out that in practice after the credit funds are disbursed, it is used for Home Ownership Loans (KPR). The debtor wants to carry out the obligations according to the agreement, but the company's ability is very limited, so it cannot pay the installments; His company could not compete with the market, so the sales volume decreased and the company lost money; Changes in government policies and regulations that have an impact on debtors' businesses; Natural disasters that can cause debtor losses. Non-performing loans in banks can have an impact on the profitability of the bank itself.
2. To rescue and resolve non-performing loans, there are two strategies taken. Namely through litigation and non-litigation channels.
3. Legal risks are usually classified as risks that are difficult to see and can hardly be calculated, especially non-performing loans. This risk can be in the form of the situation of the customer or debtor where the credit cannot be returned on time, and this cannot be avoided by the bank because the provision of credit is a form of banking activity.

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