

THE POSITION OF DEBT COLLECTORS IN HANDLING BAD LOANS IN BANKING AGREEMENT LAW PERSPECTIVE

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Abstract

This study aims to analyze the certification and guarantee of land rights over abandoned land management rights in credit applications. The research method used is normative juridical. The results show that the many banks often use debt collector services because of the high costs that must be incurred when banks want to choose the civil law route. The high cost of compensation in court is compared to the total arrears of customers, making banks prefer to use debt collector services in debt collection. With debt collector services, banks do not need to spend large costs to force debtors to pay their debts. This legal position and arrangement has the implication that debt collectors have liability obligations to two parties. Debt collectors must be responsible to the bank as a recruiter, then indirectly must also be responsible to Bank Indonesia because various debt collector obligations must be fulfilled later will be reported by the bank to Bank Indonesia. The results of this study conclude that the bank is responsible for everything done by the debt collector in collecting to customers and the debt collector has responsibility to two parties, namely to the recruiting bank and the customer.

Keywords: Position, Debt Collectors, Handling, Bad Loans, Banking, Agreement

A. INTRODUCTION

Credit is the main business activity that must be carried out by banks because the largest income from bank business comes from credit income, namely in the form of interest and loan provision (Iskandar 2013). In terms of national and international economic development, it will be known how big the role associated with credit activities is at this time. Various financial institutions, especially conventional banks, have helped meet the needs of funds for economic activities by providing money loans, among others, in the form of bank credit (Satriya, 2015).

Bank as a form of financial institution that aims at "*financial intermediary*" with the main business of collecting and distributing public funds and providing other services in payment traffic (Haron, 1997). The bank as a business entity gets a large profit from its business. As a financial institution, banks have the main obligation to maintain the stability of the value of money, encourage economic activity, and expand employment opportunities (Batunanggar 2002). Bank Indonesia aims to support the implementation of national development in the context of improvement, equity, and national stability towards improving the welfare of the people, so it is clear that the function of banking in Indonesia in

addition to collecting and distributing public funds has a role to carry out national development (Bank Indonesia, 2000).

The Bank has a function as a financial intermediary in the economic life of the Indonesian people, which has the main activities to save and forward public funds as well as transfer public funds that are surplus spending units to the spending unit deficit (Rivai 2007). The bank's efforts aim at the national development process, increasing economic growth and overall public welfare, and improving a stable country for the realization of a healthy country. (Hermansyah 2009)

The main element of crediting is trust. Trust is the creditor's belief that the credit recipient (debtor) can fulfill everything that has been agreed in the future (Widyadharma 1997). To obtain confidence and trust must arrive at a confidence in the extent to which the concept of credit scoring can be fulfilled properly (Rizki 2019). According to Presidential Regulation Number 9 of 2009 concerning Financing Institutions (hereinafter referred to as Perpres Lembaga Pemfinancing) is a financing activity for the procurement of goods based on consumer needs with payment in installments (Asep, 2011).

Financing Institution is a business entity that carries out financing activities in the form of providing funds or capital goods. A Finance Company is a business entity specifically established to conduct Leasing, Factoring, Consumer Financing, and/or Credit Card business. While *Consumer Finance* is a financing activity for the procurement of goods based on consumer needs with payment in installments. Consumer needs include motor vehicle financing, household appliance financing, electronic goods financing and housing financing (de Haan & Vlahu, 2016).

Banks as financing institutions are obliged to pay attention to prospective debtors by assessing their character, ability, capital, guarantees and conditions. One form of credit security with a guarantee agreement. Guarantee as a legal institution gives birth to legal principles as stipulated in civil law which has an important position in the economic world (Gandapradja, 2004).

The implementation of lending by the Bank begins with a credit agreement between the creditor and the debtor. The credit agreement is a principal agreement (principal) that is real, as a principle agreement, the guarantee agreement is the assessor. Then the existence and expiration of the guarantee agreement depends on the principal agreement. Credit provided by the Bank carries risks, so the Bank must pay attention to sound credit principles. To reduce this risk, a credit guarantee is needed to provide confidence in the debtor's ability and ability to pay off its debt as agreed. For this reason, in providing credit facilities, banks assess customers using the 5C principle based on prudential principles, namely: *character, capacity, capital, conditions of economy, and collateral* (Dewantara, 2014).

In general, guarantees are divided into two types, namely material guarantees and individual guarantees, material guarantees are guarantees that have a direct relationship with certain objects while individual guarantees are guarantees that only have a direct relationship with the collateral provider, not to certain objects. Regarding the types of material guarantees, first of all what is known by the Civil Code is liens and mortgages and secondly that introduced by jurisprudence is fiduciary (Nouaili et al., 2015).

One of the guarantees for movable goods is a lien as stipulated in the Civil Code. Goods mortgaged according to its rules must be handed over to creditors until the debtor's debt is paid off. This obligation is what causes problems in practice, if the collateralized goods in the form of tools used to seek income are handed over by creditors, then as a result the debtor meets two obstacles, namely not getting income and the debt becomes unrepayable (Rolle et al., 2020).

The problem of bad loans can actually be solved by civil law, but the effectiveness and mechanistic efficiency of such litigative settlements still leaves problems for banks that have large volumes of bad

loans. To overcome this effectiveness problem, *debt collectors* are involved in collecting bad loans.(Khariati 2020)

B. DISCUSSION

The risk that is often posed in credit is a condition where the customer is unable to pay part or all of his obligations to the Bank as agreed. Today in society there are often cases of debt collection against debtors by creditors by using *debt collection (debt collector)* in collecting debts in a way and using violence, In this case the Bank trusts debt collection services which are often called *debt collectors*, *in general the world* of collectors or better known as *debt collectors* in the eyes of the public is known as a collector of bad or problematic loans who are trusted by the Bank to visit customers or debtors who experience bad or problematic credit.(Juniar, Suwandono, and Muchtar 2020)

In practice, the bank will certainly use easy and hassle-free efforts so that it rarely uses legal remedies by filing a lawsuit to the court. It does not rule out the possibility for banks to utilize third-party services in customer debt collection. The bank can use debt collection services in collecting customers to pay off loans provided by the bank to credit card users. Sometimes in debt collection, *debt collectors* commit violence against customers as a fear effect so that customers immediately pay off their debts

Many banks often use *debt collector* services because of the high costs that must be incurred when banks want to choose the civil law route. The high cost of compensation in court is compared to the total arrears of customers, making banks prefer to use *debt collector* services in debt collection. With *debt collector* services, banks do not need to spend large costs to force debtors to pay their debts.(Mayasari and Octarina 2020)

In the process of solving the litigation model (court process) by the bank is avoided because the process is long, convoluted, expensive, and the execution of the decision is often difficult to implement, therefore in practice, the bank often does not take the methods mentioned above, because it is considered too procedural, too complicated and too expensive. This is what then triggers issuing banks to prefer to use shortcuts using the services of outside parties as debt collectors, namely *debt collectors*.(Rahareng 2021)

For example, in the civil lawsuit process, to reach a judge's decision that punishes the debtor, based on the Supreme Court Circular Number 6 of 1992 concerning the settlement of cases in the High Court and the High District Court, at least the parties need 6 (Six) months. Not to mention, the execution of a court decision can only be carried out when the decision has permanent legal force.(Sudikno 2006)

With the habit that the defeated parties will always resort to legal remedies (appeal, cassation to judicial review), then in order for a case to be executed, it takes a relatively long time (years). This of course, in addition to not presenting certainty, is also very tiring and expensive. This condition is exacerbated by the current judicial system, for claims in large amounts of Rp. 1000 or claims above Rp. 1 trillion, the process takes the same time. Even if it has permanent legal force, the process of executing the judgment also takes time and costs.(Meliala 2014)

In relation to *debt collector* services in banking institutions, Bank Indonesia, which has the authority to regulate and supervise banks, issued a policy as outlined through PBI No. 11/11/PBI/2009 concerning the Implementation of Card-Based Payment Instrument Activities. Article 177 paragraph (5) states: Credit card issuers must guarantee that billing for credit card transactions, whether carried out by the credit card issuer itself or using the services of other parties, is carried out in accordance with the provisions applied by Bank Indonesia Circular.(ROHMADINA n.d.)

Based on SEBI No. 11/10/DADP Regarding the Implementation of Payment Instrument Activities Using Cards regulates billing with the services of other parties. There are several conditions that must be met, namely:(Andrianton 2021)

1. If the quality of the credit card bill has entered the collectibility in doubt or is stuck;
2. The billing of the other party is done in a non-unlawful manner;
3. In the cooperation agreement between the issuer & other parties to collect credit card transactions, it must contain a clause about the issuer's responsibility for all legal consequences of other parties' cooperation.

Regarding the use of debt *collector* services that collect non-performing loans for debtors who use credit cards that experience bad credit, refer to SEBI No. 11/10/DADP that collection through debt collection services should be carried out in a way that does not violate the law". Regarding how not to violate the law, it is not clearly formulated about the ways that are said as ways not to violate the law.(ROHMADINA n.d.)

This certainly creates a blurring of legal norms with respect to methods that do not violate the law contained in "Bank Indonesia Circular Letter No. 11/10/DDAP.13 In SEBI No. 11/10/DADP it is also stated that: "In the cooperation agreement between the issuer and other parties to collect credit card transactions, it must contain a clause regarding the issuer's responsibility for all legal consequences arising from the cooperation of other parties".(Andrianton 2021)

Although this method is still allowed by Bank Indonesia, the risk is very large for the bank. Banks that do not carefully use *debt collectors* will be subject to social sanctions. The bank's reputation can be destroyed and abandoned by its customers.(Khariati 2020)

In Indonesia itself there are no laws and regulations that specifically regulate debt collectors. Debt collectors in principle work based on the power given by creditors to collect debts to their debtors. The legal position of debt collectors is regulated in Article 13 of Bank Indonesia Regulation Number 11/11/PBI/2009

Based on the Article, it can be seen that in a cooperative relationship between the bank and the customer, the debt collector acts as a third party. Debt collector is a third party recruited by the bank to carry out the work of collecting customer obligations to the bank. The debt collector's engagement with the bank is not only based on the rules of agreement in civil law, but there are also various obligations.

These obligations include, among others, third parties must report the plan and realization of cooperation with other parties to the recruiting Bank, then the bank will report to Bank Indonesia; must have evidence regarding the reliability and safety of the system used; maintaining the confidentiality of data in Article 13 debt collectors must carry out various obligations to be able to obtain a legal umbrella in a position as a third party. This legal position and arrangement has the implication that debt collectors have liability obligations to two parties.

Debt collectors must be responsible to the bank as a recruiter, then indirectly must also be responsible to Bank Indonesia because various debt collector obligations must be fulfilled later will be reported by the bank to Bank Indonesia. It can be concluded that in Article 17 paragraph (5) the debt collector functions as a third party.

It was also emphasized that regarding credit cards, debt collectors are involved by the bank to carry out collection tasks for customers. The debt collector is in charge of collecting customer obligations to the bank. The attitude that will be shown by debt collectors in collection depends on the attitude

of the customer. Legal Position and Regulation of Debt collector according to Article 1320 of the Civil Code The cooperative relationship between the bank and the debt collector is carried out based on a certain agreement with the agreement of both parties as stipulated in Article 1320 of the Civil Code.

Article 1320 of the Civil Code stipulates the terms of validity of an agreement. It should be noted that previously in terms of agreement between the bank and the customer was an agreement made between two parties only. Everything related to the agreement must be known by both parties. It can be concluded that in Article 17 paragraph (5) the debt collector functions as a third party. It was also emphasized that regarding credit cards, debt collectors are involved by the bank to carry out collection tasks for customers. The debt collector is in charge of collecting customer obligations to the bank. The attitude that will be shown by debt collectors in collection depends on the attitude of the customer.

Legal Position and Regulation of Debt collector according to Article 1320 of the Civil Code The cooperative relationship between the bank and the debt collector is carried out based on a certain agreement with the agreement of both parties as stipulated in Article 1320 of the Civil Code. Article 1320 of the Civil Code stipulates the terms of validity of an agreement. It should be noted that previously in terms of agreement between the bank and the customer was an agreement made between two parties only. Everything related to the agreement must be known by both parties. The State of Indonesia is a state based on law not based on power, as affirmed in the Constitution of the Republic of Indonesia Year 1945.

In a state of law requires that the law be enforced, meaning that the law must be respected and obeyed by anyone without exception both by all citizens and by the state ruler, so that all actions must be based on the law 'Indonesia as a state of law will always give equal position to every legal subject.this can be known from the provisions in article 27 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 which contains states, "All citizens have equal standing in law and government and are obliged to uphold that law and government with no exception".

The existence of the two articles above can mean that Indonesia as a state of law is always able to provide legal protection guarantees for all its citizens. In the cooperation agreement between the issuer and other parties to collect credit card transactions, it must meet the clause regarding the issuer's responsibility for all legal consequences arising from cooperation with the other party.

In accordance with the law of agreement, the cooperation agreement for the provision of employment services between a third-party debt collector company and a company (bank) in carrying out debt collection work placed and working at an outsourcing company, where the employee has entered into a work agreement with the outsourcing company as an employment relationship, where in one of the clauses that the employee will be placed and work in the outsourcing company as debt collector.

Therefore, if the debt collector does unlawful work in carrying out his duties to collect arrears of debt to credit card customers, it remains the responsibility of the bank as the party who gives orders to him as a subordinate as stipulated in article 1365 of the Civil Code, namely: "Every unlawful act that brings harm to another person, oblige the person who by mistake published the damage, to indemnify it". There are also no detailed rules governing the limits of collection using Debt Collectors. There is no legal norm that governs/prohibits banks that use debt collector services in collecting debts to their customers.

So the legal implication is that the bank is responsible for everything done by third parties/debt collectors in accordance with rule 35/POJK.05/2018 article 48 paragraph 4 which reads "The Finance Company must be fully responsible for all impacts arising from cooperation with other parties as referred to in paragraph (1)" and in article 48 paragraph 5 it is explained that "The Finance Company must periodically evaluate cooperation with other parties as referred to in paragraph (1)".

C. CONCLUSION

The legal position of debt collectors in Indonesia is regulated in Article 13 of Bank Indonesia Regulation Number 11/11/PBI/2009 Based on this Article it can be seen that in a cooperative relationship between the bank and customers, debt collectors act as third parties. Debt collector is a third party recruited by the bank to carry out the work of collecting customer obligations to the bank. The debt collector's engagement with the bank is not only based on the rules of agreement in civil law, but there are also various obligations. These obligations include, among others, third parties must report the plan and realization of cooperation with other parties to the recruiting Bank, then the bank will report to Bank Indonesia; must have evidence regarding the reliability and safety of the system used; Maintaining Data Confidentiality

In Article 13, debt collectors must carry out various obligations to be able to obtain a legal umbrella in a position as a third party. This legal position and arrangement has the implication that debt collectors have liability obligations to two parties. Debt collectors must be responsible to the bank as a recruiter, then indirectly must also be responsible to Bank Indonesia because various debt collector obligations must be fulfilled later which will be reported by the bank to Bank Indonesia.

The responsibility in collection to debtors in article 27 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 which states, "all citizens simultaneously have a position in law and government must uphold the law and government with no exception". The provision has stated the existence of legal protection provided by the State of Indonesia to all its citizens.

In article 28D paragraph (1) of the Law of the Republic of Indonesia Year 1945 which states, "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law". The existence of the two articles above can mean that Indonesia as a state of law is always able to provide legal protection guarantees for all its citizens. Referring to the applicable regulations, namely Bank Indonesia Circular Letter Number 18/33/DKSP of 2016 stipulates that banks are fully responsible for all consequences caused by debt collection services. If the debt collection service makes a mistake in performing its duties intentionally or unintentionally outside of the agreement agreed between the bank and the debt collection service provider, the debt collection service is responsible for its actions.

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