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Legal Certainty for Debtors in the Collateral Takeover Mechanism at Rural Banks

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Abstract

Bad loans are a serious problem in the banking sector, not only harming financial institutions but also impacting the economic conditions of debtors. This study aims to evaluate the implementation of the Collateral Takeover mechanism in resolving bad loans at Rural banks. The method used is empirical, based on field observations and regulatory analysis, as well as legal literature. The results of the study indicate that the Collateral Takeover mechanism includes several stages, starting from identifying problem loans, taking over assets, assessing, selling, to recording in financial statements with settlement within an uncertain deadline. Existing regulations including Financial Services Authority Regulation Number 1 of 2024 concerning the Asset Quality of Rural banks have not provided legal certainty to debtors, especially regarding the time period for resolving Collateral Takeover. Challenges in implementing Collateral Takeover include unclear regulations, lack of creditor participation in auctions, high legal costs, and minimal education and access to legal assistance for debtors. These obstacles hinder debtors from obtaining legal certainty.

Keywords: Legal Certainty; Debtors; Collateral Takeover Mechanism; Rural Banks.

Introduction

Banking is one of the important sectors as a supporter of a country's economic growth (Rio Pambudi Dalimunte et al., 2018). Various services are offered by banks, one of the main services, namely the Rural bank, is providing loans (Ahmad Chaeroni & Latifa Mustafida, 2021). In practice, not all loans can run smoothly. Conditions where debtors fail to fulfill their obligations to pay installments on time result in bad loans (Yunia Safitri & Anel Tasman, 2021). Bad loans not only harm banks financially, but also hinder broader economic growth (Ade Salamah, 2023).

To overcome bad loans, one mechanism that is often used is Collateral Takeover. Collateral Takeover is a process in which assets used as collateral by debtors are taken over by the bank as an effort to resolve bad loans (Ismaul Aufa et al., 2022). However, the process of Collateral Takeover often raises legal issues, especially related to legal certainty for debtors. Debtors often feel disadvantaged or experience injustice in the collateral confiscation process, both in terms of procedure and substance (Riska Andriyani & Kamaliah E, 2023).

Legal certainty for debtors is an important and relevant issue that needs to be considered in the practice of Collateral Takeover (Yusmani Laila et al., 2022). The absence of a clear understanding of the debtor's rights in this process can lead to prolonged legal conflicts (Lisnadia Nur Avivah et al., 2022). In the context of Rural Banks, which have different characteristics from commercial banks, it is important to examine how the implementation of Collateral Takeover takes place and whether the debtor's rights receive adequate certainty (Heri Subagyo & I Made Kanthika, 2023). Bad loans often place debtors in an economically and legally vulnerable position (Rahmadi Indra Tektona et al., 2023).

Through this study, it can be identified whether the debtor's rights have been adequately protected in the Collateral Takeover process. It is important to evaluate whether the implementation of the mechanism is balanced and fair for both parties, especially in terms of transparency, negotiation, and the Collateral Takeover process. This research can contribute to increasing transparency and accountability of Rural bankin handling bad loans.

This is important to strengthen public trust in financial institutions, especially in resolving problematic loans without excessively harming debtors. The Collateral Takeover Process often raises the potential for legal disputes between banks and debtors. By understanding more deeply the proper procedures, this research can provide recommendations so that banks can minimize conflicts and disputes through more humane procedures and in accordance with applicable legal regulations.

Bad loans are a serious problem for banks, because they can affect the financial health of the bank itself (Dodi Haryansyah, 2021). This study can help find ways to improve the effectiveness of Collateral Takeover as a mechanism for resolving bad loans, so that problem loans can be handled more quickly and efficiently, without sacrificing the rights of debtors.

The results of this study can provide input to regulators and policy makers in the banking sector, such as the Financial Services Authority, in formulating better regulations to protect both parties. This can contribute to improving policies and regulations related to bad loan settlement mechanisms and legal certainty for debtors. Thus, this study plays an important role in improving the balance between debtor rights and bank interests, while providing a fairer and more transparent solution in handling bad loans in the banking sector.

Research Method

This study uses an empirical method, data obtained from the field which is the source of this research. The empirical approach was chosen because the purpose of this study is to analyze legal certainty for debtors in resolving bad loans through the Collateral Takeover mechanism at the Restu Artha Abadi Rural bank. The approach used by the researcher to examine and analyze the applicable legal regulations related to the settlement of bad loans and the implementation of the Collateral Takeover mechanism at the Rural bank. Several legal materials that are the focus of this study include: (1) The results of the author's observations regarding the implementation of Collateral Takeover at the Restu Artha Abadi Rural bank; (2) Financial Services Authority Regulation Number 1 of 2024 concerning the Asset Quality of People's Economic Banks, which regulates asset quality for Rural bankwith data analysis carried out using the analytical descriptive method.

Results and Discussion

Collateral Takeover Mechanism at Rural Banks

The Collateral Takeover Mechanism at Restu Artha Abadi Rural bank is one of the methods used by banks to handle bad loans or defaults. Rural bankwill further be considered as creditors. Regarding Collateral Takeover, it is regulated in Article 12A of the Banking Law which states: Banks can purchase part or all of the collateral, either through auction or outside the auction based on voluntary submission or based on the power to sell outside the auction from the owner of the collateral in the event that the debtor does not fulfill his obligations to the bank, with the provision that the collateral purchased must be disbursed as soon as possible.

Collateral Takeover allows banks to Takeover assets that are used as collateral for loans from debtors who are unable to fulfill their obligations. The following is a general explanation of the Collateral Takeover mechanism: First, identify problematic loans. When a debtor fails to pay his loan installments according to the agreement that has been set, the creditor will identify the loan as a problematic loan. At this stage, the creditor will make various efforts to collect the debtor's obligations, including restructuring the loan if possible. Identification of problem loans is part of risk management that must be carried out proactively by creditors.

The right approach will not only reduce the risk of loss but also ensure the sustainability of bank operations and customer trust. In the process of identifying and handling problem loans, creditors must balance the interests of the bank to minimize losses and the needs of debtors to obtain reasonable relief or solutions and legal certainty. The importance of early identification and proper management of problem loans as a strategic effort in maintaining the financial health of creditors.

The next process is the legal process and asset takeover. If the restructuring efforts are unsuccessful and the debtor is still unable to pay off his debt, the creditor can decide to Takeover the assets used as collateral. This takeover process usually involves a legal process, such as filing a lawsuit in court or through a peace agreement between the bank and the debtor. Asset takeover is a step that needs to be taken by creditors to recover problem loans, but must be carried out carefully, considering both the interests of the bank and the rights of the debtor.

In the Financial Services Authority Regulation Number 1 of 2024 concerning Asset Quality Assessment for creditors, it does not clearly regulate the time period for creditors to carry out Collateral Takeover. Ethics and transparency of time and information in this process are very important to maintain the integrity and reputation of the bank. An effective and efficient legal process is very important in asset takeovers. Creditors must work with experienced legal counsel to ensure that every step is in accordance with applicable law and minimize risks to the bank and protect the rights of debtors in the ongoing process of Collateral Takeover. While asset takeover is a final, often unavoidable step, its implementation must be carefully managed to avoid legal complications and maintain customer and public confidence.

The next process is asset valuation. After the asset is taken over, the creditor will assess the asset to determine its value. This valuation is important because the foreclosed asset will later be sold to cover the losses suffered by the bank due to bad loans. When the creditor participates as an auction participant to buy back the Collateral Takeover, the creditor has the potential to win the auction by buying back the collateral, there is a risk that the collateral valuation does not reflect the actual condition. Asset valuation is a crucial step that affects the entire process of recovering bad loans.

The accuracy of the valuation will determine how well the creditor can recover lost funds and minimize losses. Given the importance of this valuation, the creditor must use an experienced and independent appraiser to ensure that the valuation is carried out objectively and in accordance with applicable standards. The results of the asset valuation must be integrated into the right selling strategy, taking into account market conditions, to maximize the recovery value of the asset. Asset valuation is a process that must be carried out carefully and professionally, because of its significant impact on the creditor's finances and strategic decisions in handling problem loans.

The next process is asset sales. The foreclosed assets will then be sold by the creditor through an auction mechanism or direct sale to a third party. The proceeds from the sale of these assets will be used to cover the remaining debtor's unpaid debt. The sale of foreclosed assets is a process that requires careful planning and transparency of information and time. A well-conducted process can minimize creditor losses and maintain the bank's reputation.

Given market uncertainty, creditors must be prepared to manage risks, including the possibility of temporarily holding assets until market conditions improve to obtain a better selling price. The main objective of asset sales is to recover as much of the funds lost due to bad loans as possible. With the right sales strategy, creditors can achieve maximum recovery and minimize the negative impact on their balance sheet. This analysis shows that asset sales are an important step in the strategy for recovering bad loans, which must be carefully managed to ensure optimal results for creditors.

The final process is recording and reporting. The Collateral Takeover process must be recorded accurately and reported in the creditor's financial statements. The foreclosed assets will also be included in the creditor's balance sheet as part of the bank's assets. In the analysis related to the recording and reporting of Collateral Takeover to creditors, there are three key aspects that need to be considered:

(1) recording of Collateral Takeover, creditors must record foreclosed assets at fair value, classify assets from receivables to fixed assets or property, and apply depreciation or amortization if the assets are stored long term. (2) financial reporting, Collateral Takeover must be displayed transparently in the balance sheet and explained in detail in the financial statement notes, including disclosure of related risks. (3) regulation and compliance, Recording and reporting of Collateral Takeover must comply with accounting standards such as the Statement of Financial Accounting Standards and reported to the Financial Services Authority in accordance with applicable provisions. The importance of accuracy and compliance in the Collateral Takeover process, which has an impact on the transparency and financial health of creditors. Collateral Takeover is an important mechanism for creditors to reduce losses due to bad loans, but this process must be carried out carefully and in accordance with applicable laws and regulations to avoid potential legal problems in the future.

Analysis of Legal Certainty for Debtors in the Collateral Takeover Mechanism at Rural Banks

Identification of non-performing loans is a very important initial step in the Collateral Takeover process. In practice, Restu Artha Abadi Rural Bank participates as an auction participant to buy back Collateral Takeover. Creditors here should maintain integrity in decision-making, including in managing loan risks, and foreclosure of collateral and as an institution that should be neutral so as not to cause a conflict of interest. Creditors must proactively identify loans that show signs of inability to pay by the debtor.

Determination of non-performing loans must be based on a comprehensive analysis that includes the debtor's financial capability, payment history, and economic conditions that affect the debtor's ability to repay the loan. If not done carefully, creditors can take steps that can harm both the bank and the debtor. The assessment of collateral assets that are foreclosed must be carried out by an independent and competent party to ensure that the value reflects actual market conditions.

Financial Services Authority Regulation Number 1 of 2024 concerning Asset Quality for Rural bankrequires the use of independent appraisers registered with the Financial Services Authority to assess assets used as collateral in Collateral Takeover. This assessment must be carried out periodically and in accordance with the assessment standards set by the Financial Services Authority. The debtor has the right to know the ongoing process and results obtained from the Collateral Takeover process carried out by the creditor.

Creditor participation in auctions also has the potential to violate the principle of prudence because it can create a conflict of interest. Creditors who have control over the auction process may not be completely objective in making assessments, which can cause injustice to the debtor or others. Creditors, as institutions that must maintain the integrity of the loan process and its assets, should be more focused on loan recovery efforts.

The involvement of creditors in auctions can be considered a violation of the principle of prudence because it is not in accordance with the objectives of reducing risk and maintaining financial stability. Therefore, transparency of information in this process is a form of legal certainty for debtors, because the deadline for the sale of assets will affect the debtor's rights in the amount of remaining debt that must be paid off.

Proper record keeping and accurate reporting are essential elements in maintaining the integrity of the Foreclosed Assets process. Creditors must ensure that all transactions related to the takeover and sale of assets are properly recorded in their financial statements. These reports should include details of the initial value of the asset, the value after the decline, and the reasons behind the decline. The Financial Services Authority as a regulator has an important role in ensuring that creditors carry out the Foreclosed Assets process in accordance with applicable regulations and established accounting standards.

This supervision aims to protect the interests of customers and maintain the stability of the financial system. Transparency and fairness of information are the main pillars in the legal certainty of debtors, so that the fulfillment of debtor rights can be fulfilled, one of which is the fulfillment of basic rights recognized as human rights, namely the right to certainty of debtor assets.

Creditors are required to provide complete, clear, and correct information to debtors regarding all aspects related to the loan, including the risks that may arise from payment failure. Debtors have the right to receive regular information regarding the status of their loans, including the potential risk of bad loans and the options available to resolve problem loans (Dahris Siregar, 2024). This includes an explanation of the impact of the asset takeover and how it will affect the debtor's remaining debts.

Fair legal procedures in the implementation of Collateral Takeover are key to maintaining public trust in the banking system. Asset takeovers without fair procedures can be considered arbitrary actions that violate the rights of debtors. Legal certainty in the Collateral Takeover process not only protects debtors but also provides clarity for creditors in running their businesses. By following the correct legal procedures, creditors can avoid legal disputes in the future that can damage the reputation and disrupt bank operations. One of the main obstacles to legal certainty for debtors is the slow legal process in court, especially in handling cases of bad loans and collateral execution (Julian Schumacher, et al., 2023).

This slow process can have various negative consequences, both for debtors and creditors. A protracted process can worsen the debtor's financial condition, increase psychological burdens, and extend the period of uncertainty. In many cases, debtors who face a long legal process tend to lose motivation to defend their rights and choose to give up. For creditors, the slow legal process can lead to a decrease in the value of foreclosed assets, increase legal costs, and reduce liquidity. In addition, delays in resolving bad loans can also have a negative impact on the bank's financial ratios, which in turn affects investor and customer confidence. Important aspects of the Collateral Takeover mechanism include:

1. Unclear Collateral Takeover Deadline

   Financial Services Authority Regulation Number 1 of 2024 has not provided a clear deadline for creditors to complete the Collateral Takeover process. The uncertainty of this deadline is an obstacle for debtors because there is no certainty about when the process of resolving bad loans through Collateral Takeover will be completed, which can affect their financial planning. The absence of clear time rules creates potential conflicts between banks and debtors, especially if this process takes too long, thus reducing legal certainty for debtors.

2. Risk of Delay in the Asset Acquisition and Sale Process

   Delays in the asset takeover process can worsen the debtor's position because the value of the collateral assets may decrease during the delay period, resulting in unfairness for the debtor. This uncertainty can be detrimental to the debtor in fulfilling their obligations fairly and on time. As a result, the debtor not only loses assets but also potentially faces a disproportionate additional debt burden.

3. The Need for Transparency and Supervision by the Financial Services Authority

   To improve legal certainty, the Financial Services Authority needs to evaluate the regulation of Financial Services Authority Regulation Number 1 of 2024 by setting clear time standards in the Collateral Takeover process. This step will reduce the risk of arbitrary actions by creditors and provide better legal protection for debtors. The absence of a time limit in the current regulation creates concerns for debtors about their rights and opportunities to settle debt obligations fairly.

4. Debtors' Interest in Transparent Information

   In the current situation, debtors have the right to receive clear information regarding the stages of Collateral Takeover, especially regarding the settlement period and the status of their collateral assets. This transparency is important to fulfill the basic rights of debtors as a form of legal protection that encourages a balance between the rights of creditors and debtors.

Conclusion

Based on the results and discussion of this study, which aims to analyze the legal certainty for debtors in resolving bad loans through the Collateral Takeover mechanism at Rural banks, it can be concluded that Collateral Takeover as a solution to bad loans has not been able to fulfill the rights of debtors in its implementation.

Collateral Takeover is an important mechanism used by Rural banks to handle bad loans. This process includes identifying problem loans, taking over assets, assessing assets, selling assets, to recording and reporting in financial statements.

The legal certainty of debtors is hampered by the main obstacles the absence of clear provisions regarding the deadline for the implementation of Collateral Takeover by Rural banks, high legal costs, lack of education and legal awareness among debtors, and limited access to legal assistance. Creditor participation in the auction can be considered a violation of the principle of prudence because it is not in accordance with the objectives of reducing risk and maintaining financial stability. These obstacles can hinder debtors in fighting for their rights and seeking fair solutions.

Overall, although Collateral Takeover is a legitimate and important mechanism in handling bad loans, its implementation must be accompanied by strong legal certainty for debtors. Rural Banks need to ensure that every step in the Collateral Takeover process is carried out in accordance with applicable regulations, respects and protects the rights of debtors, and maintains transparency and fairness to prevent potential legal problems in the future.

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