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| RESEARCH ARTICLE

Legal Reconstruction of Loan; Consumer Protection Perspective

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| ABSTRACT
This study aims to analyze the legal reconstruction of bad credit settlements from the perspective of consumer protection. The problem described above is that the debtor is unable to fulfill his obligation to repay the debt as a customer in the credit agreement, which results in bad credit problems. The research method used in this research is empirical juridical law research. The results of the research on the implementation of credit granted by the debtor are not all the fault of the debtor alone, but there are also external causes that cause bad credit so that the debtor is unable to fulfill his obligations to repay his debt to the creditor, causing the occurrence of what is called bad credit. Considering that collateral is an element of guarantee for granting credit, if based on other elements, it can be obtained confidence in the ability of the debtor to develop his debt, the collateral can only be in the form of goods, projects or collection rights financed with the credit in question. Credit provided by banks to debtor customers is based on trust and must be done carefully because loans always contain risks; there are also problems of default (a state of unpaid debt and a state of stopping paying), not carrying out obligations, violating time limits or not carry out the provisions contained in the credit agreement if this happens the bank will experience a loss.

| KEYWORDS

Legal Protection, Bad Credit, Consumer Protection

| ARTICLE INFORMATION

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1. Introduction

A country's economy should be an efficient and supportive mix of real sector activities. At present, it can be said that the provision of various financial services (banking) is a strictly well regulated sector. This happens because banking concerns the interests of a large number of people. The situation in Indonesia is one that is sufficient to illustrate that banking is a highly regulated sector.[1]

In granting credit by banks, there is a risk of non-performing, although various careful analyzes have been carried out on the part of the bank. Talking about bad credit cannot be separated from the collectibility of the debtor itself, namely current credit, substandard credit, doubtful credit and bad credit. If the bank faces the category of substandard credit, doubtful credit and bad credit in the banking world, this is known as a non-performing loan. Non-performing loans are also known in the international banking world, namely problem loans. Non-performing loans describe a situation where the approval of loan repayments runs the risk of failure, even indicating to the bank that it will incur a potential loss.[2] Therefore, the practical approach for banks in managing non-performing loans is based on the premise that the earlier the determination of the problem loan, the more opportunities or

[1] H R M Anton Suyatno and M Sh, *Kepastian Hukum Dalam Penyelesaian Kredit Macet: Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan* (Prenada Media, 2018).
[2] Iswi Hariyani, *Restrukturisasi Dan Penghapusan Kredit Macet* (Elex Media Komputindo, 2010).

alternative corrections and prospects for the prevention of losses for banks. To achieve the above, bank officers or account officers must be able to:[3]

1. Determine the problem loans themselves by identifying the causes of non-performing loans and finding them;
2. Formulate strategies and evaluate various available options and conduct approaches/talks with customers;
3. Identify and manipulate problem loan costs and minimize liability, then implement or implement a problem loan strategy.

The main problem with non-performing loans is the debtor's unwillingness to repay or the inability to obtain sufficient income to pay off the credit as agreed.[4] According to Edward W. Reed and Edward K. Gill, the two problems above are explained as follows:

> "unwillingness to pay up and down with economic luck as a borrower. In good times the desire to repay a loan is greater than in hard times. Unwillingness to repay loans is closely related to economic depression, periods of unemployment, and declining profits. In such conditions, the nature of credit becomes increasingly important. The ruthless nature of lenders pounces on their prey at this difficult time, and it is at this time that the lender, in the borrower's view, should act as a savior. But it seems that the main reason for non-performing loans and possible losses is the borrower's inability to realize normal income and business activities, employment opportunities, or the sale of his property."[5]

In relation to non-performing loans, the things that need to be considered in bank procedures so that they have an effect on loans are:

1. Unsatisfactory credit analysis regarding debtor management capabilities;
2. Inadequate analysis of financial statements;
3. Unfavorable requirements in granting credit;
4. Inadequate review and inspection of mediocre credit;
5. Too much emphasis on bank profits and development;
6. Too lax credit policy on personal friends or friends of directors and executive officers.

In addition to bank procedures that must be improved better, there are also several indicators of non-performing loans, but there is no definite pattern regarding the frequency of events that lead to a point where credit can be declared non-performing but is used as a benchmark for dangerous signs, namely:

1. Late submission of financial reports;
2. Delays in arranging factory visits between bank officers and borrowers; a decline in mutual respect and trust;
3. Decrease in balance and occurrence of overdraft or refusal of checks;
4. Tremendous increase in inventories and accounts payable;
5. Increase in receivables; this may indicate a decline in the quality of the company's products and services, changing terms of sale, or selling to a financially weak company in an attempt to increase sales and revenue;
6. Slow to repay loans to banks;
7. Increase in fixed assets; expansion is carried out through mergers or takeovers, holding merger talks with other companies or selling assets;
8. Changes in management or dismissal of key officials, labor issues, changes in important social behavior;
9. New financial or debt arrangements;
10. Natural disasters such as floods and fires.

Based on the foregoing, it can be said that bad loans are part of non-performing loans. One of the measures of the soundness of a bank is the ratio of non-performing loans or commonly known as the "NPL Ratio. Bad loans, which are part of non-performing loans, can also be caused by internal and external factors. Internal credit factors are expansive credit policies, irregularities in the implementation of credit procedures, bad faith from owners, the management or bank employees, and weak, bad credit information systems. External factors are the failure of the debtor's business, the use of an unhealthy banking competition climate by the debtor, as well as the decline in economic activity and high loan interest rates.[6]

[3] Berny Gomulya, *Problem Solving and Decision Making for Improvement* (Gramedia Pustaka Utama, 2015).
[4] M M Soleh and S E Juliansyah Noor, *Kajian Literatur Perbankan Dan Keuangan Islam*, vol. 1 (La Tansa Mashiro Publisher, 2021).
[5] Johannes Ibrahim, *Cross Default & Cross Collateral Dalam Upaya Penyelesaian Kredit Bermasalah* (Refika Aditama, 2004). Hlm. 109.
[6] Achmad Giffary, "Restrukturisasi Kredit Bank Bermasalah Dan Aspek Hukumnya," *LEX PRIVATUM* 9, no. 1 (2021).

Non-performing loans are actually a common phenomenon in the banking industry. One of the main business risks in the banking business is non-performing loans. However, if the number of non-performing loans exceeds the bank's capacity, it can turn into a disaster. This is because not only will the profitability of the bank be affected, but its liquidity can also be threatened. We all know that banks have liquidity problems. To avoid non-performing loans from causing ongoing problems, banks must always take security measures. Among these actions are allowance for losses, rescue, write-off of bills and write-off of credit collections. [7]

H Budi Untung said that banking is a strictly well regulated sector, but bad loans can still occur, among others, due to: [8]

1. appraisal errors;
2. Financing projects from owners/affiliated;
3. Financing recommended projects by certain forces
4. Macroeconomic impact / unforecasted variable;
5. customer delinquency.

Meanwhile, Siswanto Sutojo said that non-performing loans could arise other than due to causes from the creditor; most of the problem loans arise because of things that happen to the debtor, among others:[9]

1. The decline in the company's business conditions is due to the decline in general economic conditions and/or the business sector in which they operate.
2. There is mismanagement in the management of the company's business, or due to lack of experience in the field of business, they handle.
3. Family problems, such as divorce, death, prolonged illness, or wastage of funds by one or several members of the debtor's family.
4. The failure of the debtor in their other line of business or company.
5. Serious financial liquidity difficulties.
6. The emergence of events beyond the control of the debtor, such as war and natural disasters.
7. Bad character of the debtor (who, from the beginning, had planned not to return the credit).

Most non-performing loans do not appear suddenly. This is because, basically, the case of non-performing loans is a process which is likened to a fire in the husk. Many unfavorable symptoms that lead to non-performing credit cases had actually emerged long before the case itself surfaced. If these symptoms can be detected properly and handled professionally as early as possible, there is hope that the credit concerned can be helped. On the other hand, if the fire burning in the husks is not detected or left alone, the credit transaction will end in disaster, especially for the creditor. Symptoms that appear as a sign of impending non-performing loans are:[10]

1. Deviations from various provisions in the credit agreement,
2. A decline in the company's financial condition,
3. The frequency of changes in leadership and core staff,
4. Incorrect presentation of input materials,
5. Decreased cooperative attitude of debtors,
6. Decreased value of collateral provided,
7. Financial or personal problems.

In the certainty of legal rules for consumer protection in written form, it has become a trade mark, which must be stated in a statutory regulation. The legislation that stipulates consumer rights provides more legal certainty.7 Sidharta said that legal protection for consumers is by means of state intervention to protect consumer rights in the form of legal regulations. Against the weak bargaining position of consumers, he must be protected by law. This is because one of the nature and purposes of the law is to provide protection (protection) to the community.[11]

[7] Ibrahim, *Cross Default & Cross Collateral Dalam Upaya Penyelesaian Kredit Bermasalah*.
[8] Henry Kristian Siburian, "DAMPAK HUKUM WANPRESTASI TERHADAP PENERIMA KREDIT USAHA MIKRO," *Judge: Jurnal Hukum* 3, no. 01 (2022): 9–18.
[9] Bagus Margono, "USAHA PERBANKAN DALAM MENGATASI CREDIT CRUNCH PERBANKAN DI INDONESIA DENGAN MENGIKUTI KEBIJAKAN PEMERINTAH DAN KREDIT SELEKTIF MENGGUNAKAN PRINSIP 5 C," *Fair Value: Jurnal Ilmiah Akuntansi Dan Keuangan* 4, no. 2 (2021): 272–85.
[10] Hariyani, *Restrukturisasi Dan Penghapusan Kredit Macet*.
[11] Abdul Atsar and Rani Apriani, *Buku Ajar Hukum Perlindungan Konsumen* (Deepublish, 2019).

So in 1999, Indonesia responded to this consumer protection problem by ratifying Law No. 8/1999 on Consumer Protection, hereinafter referred to as the Consumer Protection Act. Law No. 8 of 1999 concerning Consumer Protection provides an explanation that the objectives of consumer protection are:[12]

a. increase consumer awareness, ability and independence to protect themselves;
b. elevating the dignity of consumers by preventing them from the negative excesses of using goods and/or services;
c. increasing the empowerment of consumers in choosing, determining and demanding their rights as consumers;
d. create a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information;
e. raise awareness of business actors regarding the importance of consumer protection so as to grow an honest and responsible attitude in doing business;
f. improve the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security, and safety of consumers.

The growth of community economic activity in various fields has encouraged the growth of the financial services sector industry. Financial services are a form of service provided by financial services business actors to fulfil various consumer needs, both in order to meet the needs of investment, production and consumption as well as a means of managing consumer finances and other financial services. [13]

The growth of Financial Services Institutions is very dynamic, both in terms of the quantity of business actors as well as the products and types of services they offer. Government regulations and policies in the financial services sector are also dynamic in line with changes and developments in society and even tend to facilitate their growth. One of the most developed financial services sectors is banking financial services. Bank financial service institutions have a very important role in the economy of a country. Bank financial institutions act as intermediaries who have excess funds with other parties who need funds.[14]

2. Research Methods

The method used in this research is the empirical juridical approach. Based on Soetandyo Wignjosoebroto's view, empirical legal research is research in the form of empirical studies to find theories regarding the working process of law in society.[15] This method is used considering that the problems to be discussed are related to the legal construction of the settlement of bad loans from the perspective of consumer protection. The empirical juridical approach method is a method used to solve problems by examining secondary data first and then proceeding with conducting research on primary data to find legal reality in the field.[16] This type of research is descriptive and analytical. Analytical description research is research that seeks to describe the current and past conditions/reality of the research conducted, then review and analyze it comprehensively.[17]

3. Results and Discussion

The importance of a country in regulating legal protection for consumers is generally based on considerations of its actuality and urgency. In considering its actuality, legal protection for consumers needs to be enforced in a government based on the formulation of the current and future situation regarding the fate of the consumer community. The expected consumer protection law is a consumer protection law that can be used as an integrating mechanism, namely protecting the interests of individuals or groups proportionally.[18]

1. Rescue by the Bank in the event of Non-performing Loans by the Debtor Customer

In Indonesia, the bank, as an institution that collects and distributes public funds, has a conventional function, namely as an agent of development in order to increase development. As development agents, banks in Indonesia are tasked with, among other things, collecting and distributing funds in the form of a credit to the public as well as participating in maintaining monetary stability together with other financial institutions. Bank credit, at the beginning of its development, directed its function to stimulate both parties to help each other for the purpose of achieving daily needs. The party who gets the credit must be able to show a higher achievement than the progress of the business itself or get the discovery of his needs. For creditors, they must materially obtain

[12]Lihat dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.
[13] S Hi Zulham, *Hukum Perlindungan Konsumen* (Prenada Media, 2017).
[14] Abd Haris Hamid and M H SH, *Hukum Perlindungan Konsumen Indonesia*, vol. 1 (SAH MEDIA, 2017).
[15] M.Hum Dr. Muhaimin, SH., *Metode Penelitian Hukum*, n.d.
[16] Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).
[17] S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).
[18] Suyatno and Sh, *Kepastian Hukum Dalam Penyelesaian Kredit Macet: Melalui Eksekusi Jaminan Hak Tanggungan Tanpa Proses Gugatan Pengadilan*.

profitability based on a fair calculation of the capital used as the object of credit and spiritually get satisfaction by being able to help other parties to achieve their goals.[19] Credit reaches its function socially and economically; both for debtors, creditors, and the community, it has a better influence. Debtors and creditors get benefits and also experience an increase in welfare, while the state experience additional state revenues from taxes, as well as micro and macroeconomic progress. Today, credit in economic life and trade has the following functions: [20]

1. Increasing the usability of money
2. Increasing the circulation and traffic of money
3. Increasing the usability and circulation of goods
4. One of the tools of economic stability
5. Increasing business activities
6. Increasing equity revenue
7. Improving international relations

In Indonesia, in particular, banking law regulation has 3 (three) main functions, namely:

1. The objective of monetary stability given the dominance of banking as a source of investment financing;
2. Supervision functions in order to maintain security and health as well as the overall financial system in order to create banking practices and healthy competition between banks. In addition, to protect customers and maintain monetary stability, encourage an efficient and competitive banking system that is responsive to the public's need for quality financial services at a reasonable cost; and
3. The objective of achieving development programs, in particular, participating in overcoming economic problems. Our banks assume the role of agents of development and are expected to contribute to efforts to increase savings, grow business activities and increase the allocation of economic resources.[21]

The bank is one of the financial institutions whose main function is to collect and distribute public funds. Regarding the function of banking, it can be seen in the provisions of Article 3 of Law Number 10 of 1998 concerning Banking, which states that: "The main function of banking in Indonesia is to collect and distribute public funds." Based on these provisions, it is reflected in the function of the bank as an intermediary for parties who have excess funds (surplus funds) and parties who lack and need funds (lack of funds). Furthermore, in Law Number 21 of 2011 concerning OJK in Article 1 number 4, it is stated that banking is everything related to banks, including institutions, business activities, as well as methods and processes in carrying out conventional and sharia business activities as referred to in the law. - law on banking and law on Islamic banking.[22]

Banking in Indonesia has a strategic objective and is not only economically oriented but also relates to non-economic matters, such as issues of political stability and social stability. This is fully regulated in the provisions of Article 4 of Law Number 10 of 1998 concerning Banking, which reads: "Indonesian banking aims to support the implementation of national development in order to increase equity, economic growth, and national stability towards increasing the welfare of the people at large".[23]

If the bank, in the course of providing credit, has seen that the credit has become problematic, the bank concerned must try to save the credit. In this case, the bank concerned seeks to be able to re-launch the credit that has been problematic so that the recipient of the credit has the ability to pay it back, both interest and principal credit. Non-performing loans or non-performing loans are the risks inherent in any lending by banks. This risk is in the form of a situation where credit cannot be returned on time. Bank Indonesia has outlined that the efforts and efforts that can be made in the event of non-performing loans by debtor customers are:[24]

1. Rescue business loans

Efforts to rescue non-performing loans can be carried out as follows:

[19] Hariyani, *Restrukturisasi Dan Penghapusan Kredit Macet*.
[20] Johannes Ibrahim Kosasih and M SH, *Akses Perkreditan Dan Ragam Fasilitas Kredit Dalam Perjanjian Kredit Bank* (Sinar Grafika (Bumi Aksara), 2021).
[21] Sigit Sapto Nugroho, Yuni Purwati S H, and M SH, *Hukum Perbankan Mengenal Prudent Banking Principle* (Penerbit Lakeisha, 2020).
[22] Prima Andreas Siregar et al., *Bank Dan Lembaga Keuangan Lainnya* (Yayasan Kita Menulis, 2021).
[23] Pasal 4 Undang-Undang Nomor 10 Tahun 1998, tentang Perbankan
[24] Hariyani, *Restrukturisasi Dan Penghapusan Kredit Macet*.

a. Rescheduling, which is an effort in the form of changing the terms of the credit agreement with regard to the credit repayment schedule or credit period, including the grace period or grace period, whether or not including changes in the amount of instalments.
b. Reconditioning is an effort in the form of making changes to part or all of the terms of the credit agreement, which is not limited to changes in the instalment schedule or credit period. However, the change is without providing additional credit or without converting all or part of the credit into company equity.
c. Restructuring, namely efforts in the form of changing the terms of the credit agreement in the form of providing additional credit or converting all or part of the credit into company equity with or without rescheduling and or reconditioning

2. Collection of non-performing loans.

If the bank, in its judgment, is of the opinion that it is no longer possible for the non-performing loan to be reverted back to smoothness so that eventually the credit becomes non-performing, then the bank concerned must take action to resolve or collect the bad credit.

3. Elimination of non-performing loans (write off).

In Black's Law Dictionary, write off means to remove (an asset) from books of account a debt which has become worthless. (write off means removing (an asset) from the books due to a debt that has become worthless). In line with this definition, Soedradjad said that bookkeeping is an internal book-entry of bad debts from the balance sheet (on balance sheet) to the administrative account (off balance sheet).

Non-performing loans can be written off as long as the bank has sufficient write-off reserves. This means that banks that already have sufficient reserves can write off their bad loans. In the event that the reserves formed by the bank are not sufficient, the write-off of the bad credit is charged to profit or loss after tax. In other words, if the reserve is insufficient, then the shortage is considered a bank loss. Various good rescue efforts, restructuring, rescheduling, and reconditioning were carried out by creditors in recovering bad loans, but in general, creditors prioritize debt restructuring. Debt restructuring is expected to assist in facilitating efforts to recover banking because banks can channel the funds resulting from the restructuring to debtors in the form of loans, and with the revolving of these funds, debtors can develop their businesses, thereby increasing their productivity and profitability.[25]

In connection with the collection of non-performing loans, it is the settlement or collection of the bad loans which are no longer possible to run smoothly. In the event that the debtor is required to pay off all obligations on his debt to the bank, and if the debtor is unable to repay his debt to the bank, the bank will execute the goods that are collateral for the debtor's debt, either by selling under the hands which are carried out based on the debtor's agreement with the bank or through a public auction.

If the credit rescue and collection of non-performing loans by the bank is not successful, the bank can take further action in the form of settlement of bad loans through the non-performing loan elimination program. The write-off is divided into two stages, namely:

a. write-off or conditional write-off, and
b. write-off or absolute write-off.

Write-offs are carried out by removing all bad debt portfolios from the bank's books, but the bank still collects the debtor, while in the write-off program, the bank no longer collects the debtor. If then the write-off and write-off programs have not succeeded in returning the loans to debtors, then the bank can settle the bad loan portfolio through litigation (judicial process) or non-litigation (outside the judicial process). The write-off and write-off programs are carried out to reduce the ratio of non-performing loans (NPL) so as to improve the health of banks.

2. Reconstruction of Consumer Protection in Banking Dispute Settlement Realizing Legal Certainty with Substantive Justice.

Birth of ideal regulations or laws, actually there are provisions that have been conceptualized by the Experts and the making apparatus should pay attention to and study and take wise steps from these thinkers as stated by Montesquieu in his book "Spirit of Law" in making laws or compiling legislation: "That the law must be concise and easy to understand so that it will be meaningful to anyone who reads it. Unnecessary changes in existing laws, laws that are difficult to enforce, and laws that are completely

[25] Eka Jaya Subadi, *Restrukturisasi Kredit Macet Perbankan* (Nusamedia, 2019).

unnecessary should be avoided, as such laws would weaken the authority of the legal system in general. The legislator's rules on power must be like this: every law must be implemented...."[26]

Legal experts agree that the law must be dynamic, not static and must be able to protect the community. The law must be able to be used as a reformer in the life of the nation and state, which must be formed with a future oriented (for word looking). It should not be built with a past oriented (back world looking) orientation. In the modern view, the law is endeavored to accommodate all new developments; therefore, the law must always be present at the same time as the events that occur. The law does not only function as a justification or legitimacy of everything that happens after society changes, but the law must appear simultaneously with the events that occur and even appear before the events that follow. Law must play an active role as a tool for social engineering (law is a tool of social engineering).[27]

In this form, legal changes must be desired (tended change) and must be planned (planned change) in such a way as expected. Changes in this model are active, meaning that the competent authorities are actively planning and directing so that the concept of legal reform can run effectively. In the framework of thinking about legal reform that is taking place in Indonesia, there are two views that influence each other, namely: First, changes that are carried out dogmatically, namely changes that are carried out as a whole and their implementation is carried out very carefully with very careful research in-depth by involving all relevant elements and people who accept change. This group tends to maintain moral and cultural values in the context of fostering national law.[28]

Second, changes are implemented by first making laws or other regulations that are considered important and urgent according to needs. If the law that has been made is not in accordance with the legal awareness of the community, the law will immediately be revised and adjusted to the legal awareness of the community.

In relation to these laws and regulations, Soetandyo Wignjosoebroto explicitly, in his writing "What and Why: Critical Legal Studies," said that national legislation is built up in at least, First of all, the national legislation consists of norms which are formulated into written articles and verses, clearly and unequivocally in order to ensure objectivity and certainty in its implementation. Second, the law which has been positivized, and has become the national statutory law, is placed in the highest status above any other norms prevailing in society. Third, formal national legislation and the highest status in the hierarchy of norms that exist in society requires the care of educated and trained experts with exclusive authority in professional standards in order to ensure certainty of the validity of the law and for the protection of human rights. citizens for sure. Fourth, as a consequence of the professionalization of legal processes, national laws and regulations also require a back-up of a professional educational institution at the university level.[29]

Legal development has a more comprehensive and basic meaning than the term legal development or legal reform. Legal development refers more to efficiency in the sense of increasing legal efficiency. Legal reform implies compiling a legal system to adapt to changes in society.[30] In an effort to realize the reconstruction of banking consumer protection in dispute resolution so as to have legal certainty with substantive justice, legal reform is carried out by:

a. Strengthening PERMA Number 2 of 2015 (Litigation)

Basically, the settlement of banking disputes, such as civil law disputes, can be carried out through litigation (in court) or non-litigation (outside court). From this research, there are still weaknesses in the legal substance in the settlement of banking disputes, so it does not provide protection due to legal uncertainty that is fair to banking consumers. Weaknesses from the aspect of legal substance, both in the OJK Law, the Consumer Protection Law and the Financial Services Authority (POJK) Regulations. The choice of dispute resolution rests with the disputing parties; if they choose litigation, the civil procedural law process applies so that it is a long process that must be passed from the first instance, appeal and cassation to judicial review. In this case, it is certainly not profitable for the business world, especially for both parties to the dispute, because it takes time, costs and a long process.[31]

Given that the development of legal relations in the economic and civil fields requires a dispute resolution procedure that is simpler, faster and less expensive, the Supreme Court issued PERMA Number 2 of 2015 concerning Procedures for Settlement of

[26] Sabian Utsman, "Peer Review Sabian Utsman-Dasar-Dasar Sosiologi Hukum: Makna Dialog Antara Hukum & Masyarakat, Dilengkapi Proposal Penelitian Hukum (Legal Research)," 2021.
[27] H Abdul Manan and S SH, *Aspek-Aspek Pengubah Hukum* (Prenada Media, 2018).
[28] Joko Widodo, *Analisis Kebijakan Publik: Konsep Dan Aplikasi Analisis Proses Kebijakan Publik* (Media Nusa Creative (MNC Publishing), 2021).
[29] Soetandyo Wignjosoebroto, "Hukum Dalam Masyarakat: Perkembangan Dan Masalah," 2008.
[30] Wignjosoebroto.
[31] Abi Jumroh Harahap, "Tinjauan Hukum Praktik Bisnis Berkeadilan Melalui Peningkatan Aksesibilitas Konsumen," *DE LEGA LATA: Jurnal Ilmu Hukum* 2, no. 1 (2017): 1–22.

Simple Lawsuits so that the administration of justice is carried out on the principle of simple, fast and low cost to open wider access for the community to obtain justice. In Article 1 point 1 PERMA Number 2 of 2015, it is stated that simple lawsuit settlement is defined as the procedure for examining a civil lawsuit with a material claim value of a maximum of Rp 200 million which is settled with simple procedures and evidence. General Provisions and Procedures for Settlement of Simple Lawsuits:[32]

1) General Provisions on Simple Lawsuits.
According to Article 2 of PERMA No. 2 of 2015, simple lawsuits are examined and decided by the court within the scope of the general court. In PERMA No. 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits, the provisions of Article 3 Paragraph (1) "A simple lawsuit is filed against cases of breach of contract and/or acts against the law with a material claim value of a maximum of Rp. 200,000,000.00 (two hundred million rupiahs).)", and Article 3 paragraph (2) Not included in a simple lawsuit are: 1) cases where the dispute resolution is carried out through a special court as regulated in the laws and regulations; or 2) dispute over land rights.[33]

The parties to a simple lawsuit consist of a plaintiff and a defendant, each of which cannot be more than one unless they have the same legal interest. Against a defendant whose place of residence is unknown, a simple lawsuit cannot be filed, so the plaintiff and the defendant must be domiciled in the jurisdiction of the same court. Plaintiffs and defendants are required to attend each trial in person with or without being accompanied by a legal representative.

2) Procedure for Settlement of Simple
Claims Simple lawsuits are examined and decided by a Judge appointed by the Chief Justice of the Court. The stages of completing a simple lawsuit include 1) Registration; 2) Checking the completeness of a simple lawsuit; 3) Determination of judges and appointment of substitute clerks; 4) Preliminary examination; 5) Determination of the trial day and the summons of the parties; 6) Trial examination and reconciliation; 7) Evidence; and 8) Judgment.[34]

The priority in this PERMA is the settlement of a simple lawsuit no later than 25 (twenty five) days from the day of the first trial. Then in the examination stage, the plaintiff registers his lawsuit with the court clerk. In this case, the Plaintiff can register a lawsuit by filling out the claim form provided at the Registrar's Office. The claim form contains information regarding a. The identity of the plaintiff and the defendant; b. A brief explanation of the case; and c. Plaintiff's Claim.[35]

The plaintiff must attach a legalized proof of the letter at the time of registering a simple lawsuit. The next stage is the completion of the completeness of a simple lawsuit. The Registrar shall examine the requirements for registering a simple lawsuit based on the provisions of Articles 3 and 4 of this regulation. The clerk returns the claim that does not meet the requirements as referred to in paragraph (1), and then the registration of a simple lawsuit is recorded in a special register book for a simple lawsuit. Then the Chairperson of the Court determines the down-payment of court fees. The plaintiff is obliged to pay the down-payment of court fees, but if the plaintiff is unable to file an application for trial, free of charge or free of charge.[36]

The next stage is the determination of judges and the appointment of a substitute clerk. The head of the court appoints a judge to examine a simple lawsuit. The Registrar appoints a substitute clerk to assist the Judge in examining a simple lawsuit. 289 The whole process of registering a simple lawsuit, determining the judge and appointing a substitute clerk shall be carried out no later than 2 (two) days. In the Preliminary Examination, the Judge examines the material of a simple lawsuit based on the conditions as referred to in the provisions of Article 3 and Article 4 of this regulation. The judge judges whether the evidence is simple or not. If during the examination, the Judge is of the opinion that the lawsuit is not included in a simple lawsuit, then the Judge issues a ruling stating that the lawsuit is not a simple lawsuit, deletes it from the case register and orders the return of the remaining court costs to the plaintiff.[37]

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[32] Sherly Ayuna Putri, "Penyelesaian Sengketa Perdata Melalui Gugatan Sederhana Berdasarkan Perma No. 2 Tahun 2015," *Jurnal Pengabdian Kepada Masyarakat* 2, no. 12 (2018): 1047–50.
[33] Lihat Pasal 2 PERMA No.2 Tahun 2015, Gugatan
[34] Efraim Kristya Netanyahu, "Penyelesaian Perkara Perdata Melalui Gugatan Sederhana Menurut Perma No. 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana," *LEX PRIVATUM* 5, no. 7 (2017).
[35] Nevey Varida Ariani, "Gugatan Sederhana Dalam Sistem Peradilan Di Indonesia," *Jurnal Penelitian Hukum P-ISSN* 1410 (2018): 5632.
[36] Netanyahu, "Penyelesaian Perkara Perdata Melalui Gugatan Sederhana Menurut Perma No. 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana."
[37] Hairul Maksum, "PROSEDUR MELAKUKAN GUGATAN DAN UPAYA HUKUM TERHADAP GUGATAN SEDERHANA (SMALL CLAIM COURT) DALAM PERSPEKTIF PERMA NOMOR 4 TAHUN 2019 TENTANG PERUBAHAN ATAS PERMA NOMOR 2 TAHUN 2015," *Journal Ilmiah Rinjani: Media Informasi Ilmiah Universitas Gunung Rinjani* 9, no. 1 (2021): 64–75.

Against the determination referred to above, no legal action can be taken. If the Judge is of the opinion that the lawsuit filed by the plaintiff is a simple lawsuit, the Judge shall determine the day of the first trial. If the plaintiff is not present on the day of the first trial without a valid reason, then the lawsuit is declared void. If the Defendant is not present at the first hearing, a second summons shall be properly made. In the event that the defendant is not present without a valid reason, then the lawsuit is examined and decided on a contradictory basis. Against a decision where the defendant is not present on the second trial day, then the judge decides on the case, and the defendant can file an objection.[38]

To settle a simple lawsuit, the Judge must play an active role in doing the following things: a. Provide an explanation of the procedure for a simple lawsuit in a balanced manner to the parties; b. Strive for a peaceful settlement of cases, including suggesting to the parties to make peace outside the trial; c. Guiding the parties in evidence, and D. Explain the legal remedies that can be taken by the parties. The active role, as mentioned above, must be carried out in a trial attended by the parties. Examination of the trial and reconciliation, on the day of the first trial, the Judge is obliged to seek reconciliation by taking into account the time limit as referred to in Article 5 paragraph (3) PERMA No. 2 of 2015. The reconciliation effort in this Perma excludes the provisions stipulated in the Supreme Court's provisions regarding mediation procedures.[39]

In the event that peace is reached, the Judge makes a Decision on the Deed of Peace, which is binding on the parties. Against the Decision on the Peace Deed, no legal remedies can be submitted. In the event that a settlement is reached outside the trial and the reconciliation is not reported to the judge, the judge is not bound by the reconciliation. If peace is not reached on the day of the first trial, the trial will continue with the reading of the lawsuit and the defendant's answer.

The process of examining a lawsuit is simple; no claims for provisions, exceptions, conventions, interventions, replicas, duplications, or conclusions can be filed. The process of proving a claim that is acknowledged/or not denied does not need to be proven. Against the claim that is denied, the judge examines the evidence based on the applicable procedural law. Then the judge reads the verdict in a trial open to the public. The judge is obliged to notify the rights of the parties to file an objection. Decisions consist of: a. The head of the decision with instructions that read "For the sake of Justice Based on the One Godhead"; b. Identity of the parties; c. A brief description of the matter; d. Legal considerations; and e. The verdict. In the event that the parties are not present, the bailiff delivers notification of the decision no later than 2 (two) days after the decision is pronounced. At the request of the parties, a copy of the decision is given no later than 2 (two) days after the decision is pronounced. The substitute clerk shall record the proceedings in the Minutes of Trial signed by the Judge and the substitute clerk.[40]

3) Legal Efforts in Simple Lawsuit Cases Legal

Remedies against simple lawsuit decisions, as referred to in this provision, are to file an objection. The application for objection is submitted no later than 7 (seven) days after the decision is pronounced or after notification of the decision. The objection request is submitted to the Chief Justice of the Court by filling out the objection request form provided at the Registrar's Office. (2) An application for an objection that is submitted beyond the time limit for submission, as referred to in paragraph (1), shall be declared inadmissible by the stipulation of the chairman of the court based on a certificate from the clerk.[41]

The Registrar's Office receives and examines the completeness of the objection application file, which is accompanied by a memorandum of objection. The counter memorandum of objection can be submitted to the Chief Justice of the Court by filling in the blank provided at the Registrar's Office. The notice of objection, along with the memorandum of the objection, shall be submitted to the objected party within 3 (three) days from the date of receipt of the petition by the court. The counter memorandum of objection is submitted to the court no later than 3 (three) days after the notification of the objection.[42]

In the process of examining objections, the Head of the Court determines the Panel of Judges to examine and decide on the objection application no later than 1 (one) day after the 293 applications are declared complete. The examination of objections is carried out by a senior judge appointed by the Chief Justice. Immediately after the stipulation of the Panel of Judges, an examination of objections is carried out. Examination of Objections is carried out only on the basis of: a. Decisions and simple

[38] Salman Alfarasi, "Kajian Yuridis Terhadap Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana," *Jurnal Komunikasi Hukum (JKH)* 4, no. 2 (2018): 196–210.

[39] Farahdinny Siswajanthy, "GUGATAN SEDERHANA DALAM PENYELESAIAN SENGKETA EKONOMI SYARIAH DI INDONESIA," *PAKUAN LAW REVIEW* 7, no. 2 (2021): 147–59.

[40] Muhammad Noor, "Penyelesaian Gugatan Sederhana Di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 11, no. 1 (2020): 53–66.

[41] SEKRETARIS MAHKAMAH AGUNG, "Republik Indonesia," *Laporan Tahunan*, 2018.

[42] Jeims Ronald Topa, "Peranan Pengadilan Dalam Penyelesaian Gugatan Sederhana Di Pengadilan Negeri," *Lex Administratum* 5, no. 4 (2017).

lawsuit files; b. Application for objection and memorandum of objection; and c. Cons memory objections. In the examination of objections, no additional examination is carried out.[43]

The decision on the appeal is pronounced no later than 7 days after the date of the stipulation of the Panel of Judges. Provisions regarding the content of the decision as referred to in Article 20 paragraph (1) PERMA No. 2 of 2015 applies mutatis mutandis to the content of the objection decision. The notification of the objection decision is submitted to the parties no later than 3 (three) days after it is pronounced. The objection decision is legally binding as of the date of the notification. The objection decision is the final decision for which there is no appeal, cassation or judicial review.[44]

Against the decision, as referred to in Article 20, which is not submitted for objection as referred to in Article 22 paragraph (1) PERMA No. 2 of 2015, then the decision has permanent legal force. Decisions that are legally binding are still implemented voluntarily. In the event that the above provisions are not complied with, the decision shall be executed based on the provisions of the applicable civil procedural law. The simple court referred to in PERMA generally resembles the Small Claim Court or the Claim Tribunal found in countries that have a common law legal tradition background, as mentioned in the previous description.[45]

Thus, it is necessary to strengthen PERMA to immediately make a law; this is because PERMA is only temporary and not binding. However, while waiting for changes to the law, this PERMA can be implemented to settle civil lawsuits, especially if there is a banking dispute with a loss limit of 200 million. This also sees the success of Common Law countries that use Small Claims Courts in resolving consumer disputes.[46]

b. Revision of POJK No.1/POJK.07/2014 (Non-Litigation)

Out-of-court dispute resolution through Alternative Dispute Resolution Institutions is not absolute. It is still possible for consumers to choose other out-of-court settlements as long as there is an agreement between the two parties and the dispute resolution institution understands the characteristics of the financial industry. This is because long before LAPS was formed, there were already consumer dispute resolution institutions, such as the Consumer Dispute Settlement Agency (BPSK), which was still authorized through Article 23 of Law Number 8 of 1999 concerning Consumer Protection to resolve disputes.[47]

According to the OJK's Deputy for Consumer Protection, if BPSK resolves a banking dispute, the approval of both parties must be obtained or see the clause in the agreement. Currently, many banking institutions have complained about the conditions where there is still the possibility of disputes being resolved through BPSK. This is because BPSK's decisions often exceed their authority, such as canceling credit agreements, canceling auctions, and asking consumers not to pay to Bank Financial Services Businesses; also, BPSK often decides on consumer disputes that are not based on the agreement of the parties, between consumers and banks. This then became a problem, so the Banking Institution filed an objection to the BPSK decision.[48]

This is also what a number of Banking Financial Services Business Actors have complained about and have complained to the OJK so that the existence of LAPS is confirmed as the choice of forum for dispute resolution in the financial industry. Although Article 45 paragraph (2) of the Consumer Protection Law states that the settlement of consumer disputes can be pursued either through court or out of court based on the voluntary choice of the disputing parties, BPSK often decides disputes that are not attended and agreed upon by the Banking Financial Services Business so that this is detrimental to the Banking Financial Services Business Actors then the Banking Institution submits an objection to the BPSK decision and is canceled by the Supreme Court.[49]

So at this time, the OJK is drafting a regulation which, in essence, will emphasize the existence of LAPSPI as a way that must be taken when a financial dispute arises. The trick is to make a policy of including a dispute resolution clause through LAPS in every agreement or contract between consumers and Financial Services Businesses. OJK said that the "standard clause" is allowed as long as it does not conflict with the freedom of contract, the legal terms of the agreement, an equal position and does not abuse the situation.[50]

[43] Siswajanthy, "GUGATAN SEDERHANA DALAM PENYELESAIAN SENGKETA EKONOMI SYARIAH DI INDONESIA."

[44] Pasal 20 ayat (1) PERMA No. 2 Tahun 2015

[45] Pasal 22 ayat (1) PERMA No. 2 Tahun 2015,

[46] Noor, "Penyelesaian Gugatan Sederhana Di Pengadilan (Small Claim Court) Berdasarkan Peraturan Mahkamah Agung Nomor 2 Tahun 2015."

[47] Syarifah Baagil, Renny Supriyatni, and Helza Nova Lita, "EKSISTENSI LEMBAGA ALTERNATIF PRNYELESAIAN SENGKETA PERBANKAN INDONESIA," *Jurnal Poros Hukum Padjadjaran* 2, no. 2 (2021): 218–36.

[48] Himawan Dayi, "Perlindungan Hukum Bagi Pemegang Uang Elektronik Ditinjau Dari POJK Nomor 1/POJK. 07/2013 Tentang Perlindungan Konsumen Sektor Jasa Keuangan (Studi Tentang Klaim Ganti-Rugi Kartu Rusak)," 2018.

[49] Pasal 45 ayat (2) Undang-Undang Perlindungan Konsumen

[50] Dayi, "Perlindungan Hukum Bagi Pemegang Uang Elektronik Ditinjau Dari POJK Nomor 1/POJK. 07/2013 Tentang Perlindungan Konsumen Sektor Jasa Keuangan (Studi Tentang Klaim Ganti-Rugi Kartu Rusak)."

However, according to the researcher, this requires an in-depth academic study, and the OJK also needs to receive input from various parties, especially experts in the banking sector outside the OJK as well as experts in the consumer sector, so that the POJK revision really creates a balance, not only from the service business side banking finance but also does not ignore the rights of consumers in seeking legal protection and justice in terms of banking dispute resolution.

Therefore, in order to provide legal protection in the settlement of disputes between Consumers and Banking Financial Services Institutions in a fair and balanced manner, according to researchers, OJK should revise POJK 01/07/2014 by applying the principles of Justice and Balance for both parties. According to the researcher's study, it is also necessary to emphasize the legal norms of banking disputes, which are the domain of LAPS and BPSK, so that there is no legal uncertainty as currently occurs, many BPSK decisions are canceled because, according to the Supreme Court, it is not the authority of BPSK.[51]

4. Conclusion

For the occurrence of bad credit experienced by a consumer, business actors are obliged to provide correct, honest and non-discriminatory treatment and not commit acts against the law. As stated in Article 7 of the Consumer Protection Act, The existence of this Consumer Protection Law becomes the basis for consumers to obtain protection against consumer disputes they experience, in accordance with consumer rights in Article 4 letter e, which reads, "The right to obtain advocacy, protection and appropriate dispute resolution efforts". Preventive legal protection through rescheduling, reconditioning, and restructuring. Handling can be done in one way or a combination of the three methods. After being taken in this way and there is still no progress in handling, then the debtor can take judicial repression through the District Court and through the Consumer Dispute Settlement Agency to obtain justice and legal certainty.

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