



Concept and Model of Insolvent Credit Settlement in Banking Legal System According the Demand for Efficiency in the Business World

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Abstract

The concept of non-performing loan settlement as stipulated in the banking legal system in Indonesia, especially settlement through litigation in court, is not in accordance with the demands of efficiency in the business world and the dynamics of national economic development. The concept of bad credit settlement based on German banking law reflects an indication of the level of efficiency in accordance with the demands of the business world. The German Insolvency Act (GIA) Bankruptcy Law provides a model how to efficiently solve problematic loans for the exemption of debtors' debts. The application of "good behavior" (*wohlverhaltensperiode*), will free a person from his debt to the benefit others, and this will bring the debtor back on the path of "right" financial behavior is potentially more beneficial than offering some alternatives to creditors, debtors and the public. The comparison of concept of the bad credit settlement system between Indonesian banking law and German banking law is useful. The settlement of bad credit with Indonesian banking law is very inefficient, requires a long time, labor and costly (often requiring more than 1 decade. In comparison, the German banking system concept can reflect an indication of a high level of efficiency according to the demands of the business world, both in terms of energy efficiency, time and low costs. We hypothesize that the non-performing loan settlement model can be carried out by increasing the function and authority of the State Wealth and Auction Service Office (KPKNL) as the State Representative in arranging and coordinating restructuring process in both management and managerial at the time of non-performing loans. Doing so will be more efficient and effective and gives legal certainty in protecting the privileges of banks as separatist creditors to get a share.

Keywords: *Insolvency; Indonesian Banking System; German Insolvency Law; Indonesian Banking Law*

Introduction

In Indonesia, economic development, including the banking sector, has a very important role in maintaining the stability of state finances. In the Banking System in Indonesia, creditors prioritized the settlement of non-performing loans when the debtor experienced a default turned out to be a complicated process, sometimes up to 7 years (1 decade) in length, with considerable concentration and costs. Improving the system that is not in favor of the good and interests of debtors and creditors in the banking world in Indonesia, the Bad Credit Settlement Model used in Germany is also used in this Dissertation

research as a study material for a comparative approach in the applicable banking legal system. in other countries in search of Non-Performing Loan (NPL) Settlement. The Loan Settlement Model in the Banking Legal System must be adjusted to the Efforts of the Business World that lead to time and cost efficiency. Then, before entering into problem loan settlement we must take into account and master Non-Litigation solutions such as Alternative Dispute Resolution (ADR) and mastering Legal Standing before committing a lawsuit (litigation). Thus, there are 5 (five) theories in ADR, namely: 1) Contending, Yielding, Solving, With Drawing, and Silent viewing conditions (In Action).

Development requires financing and investment. Thus the role of financial institutions is very important and strategic so that the role of the community in financing can be increased, which in the end will be more realized national independence. Talking about development issues means that we cannot escape from the problem of financing, because financing is one of the determining factors for the smooth running of development itself. Development financing can come from various sources, one of which comes from bank credit, be it from government banks, national private banks, or from foreign banks. Lending is one of the bank's businesses, namely by channeling funds collected from the public back to the community. Credit is very much needed by the community for the development of large and small businesses. At the beginning of its development, credit served to stimulate both parties to help each other for the purpose of achieving needs both in the business sector and in daily life. A credit achieves its usefulness if economically both the debtor, creditor and society can bring influence to a better stage, as well as get progress. This progress is felt if one get profits, one experiences an increase in community welfare as well as economic progress that is both micro and macro. The assumption is that current developments tend to ignore the principle of prudence in providing credit facilities to achieve the target loan volume. (Yasid and Ramayanti, 2019)

Research Methodologies

Based on the description of the background of the problem as stated above, the problems can be put forward as follows:

- 1) Is the concept of solving problem loans based on Indonesian banking law in accordance with the demands of efficiency in the business world?;
- 2) Does the concept of non-performing loan settlement based on German banking law reflect an indication of the level of efficiency according to the demands of the business world?; and
- 3) How is the non-performing loan settlement model based on banking law in accordance with the demands of efficiency in the business world?

This research method focuses on normative legal research, namely as a process to find legal rules, legal principles, and legal doctrines in order to address legal issues at hand. The legal resources used in this dissertation research consist of primary and secondary legal materials. The technique of collecting legal materials for primary, secondary and tertiary legal materials is carried out by taking an inventory, studying and recording legal principles and norms that are the object of the problem or which can be used as an analysis tool for this research problem. Analysis of legal materials is carried out descriptively in which the legal materials are subsequently studied and analyzed for their contents, so that the synchronization level, feasibility of norms, and submission of new normative ideas regarding "Concept and Model of Insolvent Credit Settlement in Banking Legal System According the Demand for Efficiency in the Business World"

Discussion

1. Analyses of Cases in Insolvent Credit

In relation to the settlement of non-performing loans in the banking world, actually the option of peaceful settlement through non-litigation is the best choice for creditors and debtors, where creditors in accordance with the credit agreement can directly sell credit guarantees under hand (offsetting), as referred to the provisions of Article 20 paragraph (2) and paragraph (3) UUHT. In the sense that execution by means of an offsetting mechanism, the collateral that is directly held by the creditor can be sold with the involvement and assistance of the debtor, so that the proceeds from the sale of the collateral object can be paid directly to pay off the debtor's debt. This is because what is important for creditors is that the debtor can immediately repay the credit that has been given, with a mechanism that is not complicated, and is efficient in terms of time and costs that must be incurred by creditors. The description of how complicated and inefficient the settlement of non-performing credit legal cases is taken through litigation to court can be described in real terms in empirical cases such as the following description, that looking at the sociological aspect, in Indonesia it can be said that economic development is included in the banking sector that has A Very Important Role In Maintaining State Financial Stability. In the Banking System in Indonesia, Non-Performing Loans Settlement Efforts are Prioritized by Creditors When Debtors Experience Default Turns Out Through a Complicated Process and Takes a Long Time (1 Decade), So It Requires No Small Cost. Then, in the context of the implementation of banking law in Indonesia, as a comparative study it can be shown cases of problem credit settlement which are the focus of this dissertation research.

- a) First Case: happened to P.T. Intercon Enterprises for Housing Developers Kebon Jeruk Intercon, Supreme Court Cassation Decision, through Decision No. 020 / K / N / 1999, dated 5 August 1999, that the Bankruptcy of Intercon Enterprises is Revoked. At this level of cassation, the Supreme Court (MA) annulled the decision of the Commercial Court. The Judges of Cassation considered, because the legal relationship between Helena and Intercon was a legal relationship of sale and purchase, because the sale and purchase of lots was not a debt, so the money that had to be returned to the buyer was the price of the land that had been paid, not the principal debt or interest. Thus, the debt element as stipulated in Article 1 (1) of the Bankruptcy Law (UUK) is not fulfilled. Then on October 18, 1999, Decision No.019 / PK / N / 1999 was issued which stated that Intercon was bankrupt. At the Reconsideration (PK) level, Intercon was finally declared bankrupt. The Cassation Council is deemed to have committed a serious error in the application of the debt law as referred to in Article 1 (1) of the UUK. Whereas the debt referred to in this case is any form of obligation to pay a certain amount of money either arising out of an agreement or due to a law;
- b) Second Case: occurred with Decision Number 29 / PID.SUS-TPK / 2018 / PT.DKI., PT. Dipasena Citra Darmadja and PT. Wachyuni Mandira to the Indonesian National Trade Bank (BDNI). This case is the Jakarta Corruption Court with the former Head of the Indonesian Bank Restructuring Agency (IBRA) Syafruddin Arsyad Temenggung. Through Decision Number 29 / PID.SUS-TPK / 2018 / PT.DKI, the Corruption Court at the DKI Jakarta High Court, which investigates and adjudicates criminal cases in the appellate court, has issued a decision as mentioned below, finally deciding that the former Chairman of IBRA Syafruddin Arsyad Temenggung was sentenced to 13 years in prison and a fine of IDR 700,000,000 (Seven Hundred Million Rupiah) and a subsidiary of 3 months imprisonment. Syafruddin was proven to have committed unlawful acts in the case of the issuance of the Bank Indonesia Liquidity Assistance Certificate of Settlement;
- c) Third Case: related to the Bankruptcy of PT Sidobangun Plastik Factory. Decision of the Commercial Court at the Surabaya District Court No. 02 / PLW.Pailit / 2014 / PN-Niaga.Sby. In

the case study of the Bankruptcy of PT. Sidobangun Plastik Factory The verdict of the Commercial Court at the Surabaya District Court No. 02 / PLW.Pailit / 2014 / PN-Niaga.Sby. In this case it can be seen that the list of distribution of bankrupt assets is proven that the Separatist Creditors have not fully obtained their rights in accordance with Law No. 37 of 2004 concerning Bankruptcy and PKPU (Bankruptcy Law) or the provisions of the Guarantee Law. Separatist creditors must fight (share) the proceeds from the sale of the Bankruptcy Boedel with the workers (Concurrent). One of the reasons is by taking into account the provisions of Article 59 paragraph (2) in conjunction with Article 39 of the Bankruptcy Law and Article 95 of Law Number 13 Year 2003 concerning Manpower. In addition, in practice, curators without the help of workers will find it difficult to master the bankruptcy boedel, especially if the debtor is not cooperative, therefore if at the time of repayment of the bankruptcy bill, there will be a very potential for extraordinary labor unrest. if the workers do not get the proceeds from the sale of Bankruptcy Boedel. Based on the case studied, the curator in proposing the distribution list to the Supervisory Judge for the proceeds from the sale of bankruptcy boedels must pay attention to the fate of the workers even though it must contradict Article 55 paragraph (1) of the Bankruptcy Law regarding the rights of Separatist creditors. However, it turns out that this was also approved by the supervisor or strengthened by the Court Decision so that in practice, the separatist creditor as the creditor of the guarantee holder does not fully obtain his rights in accordance with the Bankruptcy Law and the Guarantee Law, in other words, the separatist creditors do not receive their rights protection through the bankruptcy mechanism. In the bankruptcy process, obstacles are often found that obstruct the process of managing and settling bankruptcy assets. These obstacles can cause legal uncertainty because the slow implementation of bankruptcy declaration decisions can cause irregularities in the implementation of bankruptcy;

- d) Fourth Case: Settlement of non-performing loans in the banking system in Germany which can be seen in the Settlement of Towel Factory Problematic Loans in Germany Florex Frottier CmbH., Steinhegen by Unimas Group, as follows, that: Research in the author's dissertation on Settlement of Troubled Credit in Towel Factory Florex Frottier CmbH., Steinhegen, in Germany in 1990 by Unimas Group, a company operating in Indonesia, can provide a good example for us on a Tranche Wather Fall Payment method for solving problem loans that reflects fast time efficiency, does not cost a lot. expensive and there is no conflict between creditors and debtors. It is not less than 1 (one) month since Unimas Group received Liquidity Advertisement from MR curator. R. Brost on: October 6, 1990 s / d. Date: October 24, 1990, the curator was able to complete the auction of non-performing credit items in a very fast time, time efficiency and low cost.

Looking at the problematic credit settlement model experienced by the Florex Frottier GmbH Towel Factory, Steinhegen, Germany as described above, (Argadjendra) it can be said that the non-performing loan settlement instrument through the distribution of Tranche Wather Fall Payment in the German state bankruptcy process does not always involve the community and intervention from the judicial authorities. In this case, "court" in legal regulations can be given a broader meaning, which includes a person or entity that is authorized by law to settle bankruptcy proceedings. The jurisdiction arrangement that is applied, which consists of actions and formalities only establishes international jurisdiction, that is, according to the law which, apart from having to comply with the designation of a member state of the court that is in accordance with the provisions of this regulation, they must also be able to open bankruptcy proceedings. Thus, territorial jurisdiction is officially recognized and legally more effective in member countries where bankruptcy proceedings are opened in the member country concerned, and collective bankruptcy proceedings involve divestment of partial or total debtors and the appointment of a liquidator. In general, non-performing loan settlement essentially revolves around the difficulty of disbursing and executing collateral (Sibarani, 2000).

The problem after the execution of collateral that is commonly faced then is the difficulty of selling the collateral object to get cash for repaying the loan. Often the price of the item to be auctioned off is not interested in buying the collateral object or if there is a buyer for the auction item, the auction price value is far below the normal price. Therefore, the low price of the collateral object being auctioned is considered illogical, because the value of the collateral object is actually far above the credit value provided by the bank, so the creditor still has to bear the debt that is the difference between the auction price value and the loan value at the bank. In such a condition, in accordance with the provisions of Article 12a of the Banking Law, the bank often appears as buying collateral to be resold at the sale value according to the normal price. This is even more tragic if the debtor is declared bankrupt, because collateral objects cannot be sold directly through the auction process, but must wait for a stay of 90 days. After that the bank is given the opportunity to sell by auction, provided that if within 60 days have passed and the collateral object has not been sold, the collateral object will be withdrawn by the curator for auction. Then, the proceeds from the sale by auction are first submitted to the curator, and after that it is only paid to the bank as a separatist creditor.

An auction mechanism like this becomes very inefficient and disadvantages the bank as a separatist creditor and may also disadvantage the debtor, because the auction results for collateral are offered at a price below the market price, so that the value of the auction proceeds after being paid to the separatist creditors, there is no remaining to be enjoyed by the debtor or even leaving the debtor's forest to the creditor. Therefore, if the regulatory mechanism as referred to above continues, besides the growth of the business world will be disrupted and the national economic order cannot grow as expected by the government, the banking sector will also not be able to grow and develop properly and healthily as a financial institution which supports national economic growth. The above system is not in line with the guarantee law, for example related to Article 21 of Law Number 4 of 1996 concerning Mortgage Rights (hereinafter referred to as UUHT), which stipulates that: "If the insurer is declared bankrupt, the Mortgage holder is still authorized to do so. all rights which he has obtained according to the provisions of this Law". Thus, if the debtor goes bankrupt, the collateral object can be sold at auction by the bank as a separatist creditor. However, Article 21 of the UUHT is blocked by Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations / PKPU (hereinafter referred to as the Bankruptcy Law). This incident gives a sign that between one law and another, disharmony occurs which results in legal uncertainty and injustice. Thus, the settlement of non-performing loans in Indonesia using existing laws and regulations does not reflect the existence of state objectives in accordance with the 1945 Constitution and Pancasila.

2. Settlement of Non-Performing Loans at the State Property and Auction Service Office (KPKNL)

a. Supreme Court Judgment Number: 020 / K / N / 1999 and Decision No.019 / PK / N / 1999, Bankruptcy Case of PT. Intercon Enterprises (Putusan Kasasi Mahkamah Agung, 1999)

In the provisions of Article 2 paragraph (1) Jo. Article 8 paragraph (4) of the Bankruptcy Law states that in order to file for bankruptcy the following conditions are required:

- 1) There are two or more creditors. This means that creditors are people who have receivables due to agreements or laws that can be collected through litigation in court. The creditors referred to here include both concurrent creditors, separatist creditors and preferred creditors;
- 2) There are debts that are past due and can be collected. That is, the obligation to pay debts that have matured, either because they have been agreed upon, because of the accelerated collection time as agreed, or because of the imposition of sanctions or fines by the competent authority or because of a court, arbitrator, or arbitral tribunal decision; and
- 3) Both of these (the existence of two or

more creditors and the existence of debts that are past due that can be collected) can be proved simply.

From the provisions as above, it can be understood that it will cause its own problems, namely that more and more people file for bankruptcy with simple requirements as above without considering the impact of a company bankruptcy. This is because the issue of bankruptcy concerns not only the interests of the company, but also the interests of state income and foreign exchange, social and economic interests of labor, including regional development and regional development. Critical assessment of the bankruptcy process of PT. Intercon Enterprises Kebon Jeruk as an example case, it can be seen that the land assets owned by PT. Intercon Enterprises turned out to have been sold 5 years ago to a third party before the company was declared bankrupt. However, the Curator is still included in the bankruptcy bill without any litigation and due diligence from the bankruptcy processors, resulting in resistance in the form of a new lawsuit from the asset owner who feels aggrieved.

In my opinion, things like this can actually be avoided if the KPKNL is functioned optimally by improving the performance according to its authority, especially the KPKNL's authority to verify litigation and due diligence of the material to be included in the bankruptcy board for the curator, then become an Arranger, namely as a takeover. The problematic investment then becomes a similar type of business that experiences insolvency / jamming instead of using the mortgage auction channel through bankruptcy and as a Bankruptcy Curator. Thus, after KPKNL has carried out a thorough verification, the results of the verification are given to the Curator to compile and determine the distribution of the proceeds from the sale of the bankruptcy boedel through an auction process. In addition, the KPKNL can be given the authority to carry out a mediation process (peace) to avoid the increasing number of bankruptcy cases filed at the commercial court, given the resolution of the bankruptcy case of PT. Kebon Jeruk Intercon Enterprises as described above has actually been running for 10 years and until now there has been no clear and complete settlement even though it has undergone 3 replacements of the Curator and there have been overlapping cases of creditors filing claims in the bankruptcy process because of the plots purchased by creditors not in accordance with the contents of the Sale and Purchase Agreement (PJB) housing lots. This matter became increasingly complicated because the settlement process was very slow and new bankruptcy suits from other creditors continued to arise against PT. Intercon Enterprises Kebon Jeruk.

From the description above it can be said that if the authority of the KPKNL can be optimized in accordance with the Law, then the settlement of non-performing credit cases as stated above will not be protracted and have no legal certainty. This is because the KPKNL has the authority to : (Financial Ministry Regulation no 106/PMK.06/2013) Litigation, Mortgage Execution, Appraisal/Auditor / Relaxation, Selling Cassie, Novasi, Acquisition, due diligence and also as an Arranger, namely as takeover of problematic investments, either directly or through the Minister related to similar businesses rather than using the mortgage auction route or the path of execution of bankruptcy decisions, so that the investment climate can be maintained, healthier and continue for national economic growth.

b. Decision Number 29 / PID.SUS-TPK / 2018 / PT.DKI., (Credit Problems PT. Dipasena Citra Darmadja and PT. Wachyuni Mandira against Bank Dagang Nasional Indonesia (BDNI) (Putusan Nomor: 29 / PID.SUS-TPK / 2018 / PT.DKI, 2018)

In the case of non-performing loans, PT. Dipasena Citra Darmadja and PT. Wachyuni Mandira against the Indonesian National Trade Bank (BDNI), Syafruddin Temenggung together with Dorodjatun Kuntjoro-Jakti, former Coordinating Minister for Economic Affairs, Sjamsul Nursalim and his wife Itjih Nursalim were charged with causing financial losses of Rp. 4.58 trillion. By issuing a Bank Indonesia Direct Bangsung Certificate (SKL BLBI), Safruddin Temenggung was declared proven that using his authority had enriched Sjamsul Nursalim by Rp.4.58 trillion.

PT. Dipasena Citra Darmadja and PT. Wahyu Mandira on creditors of Bank Dagang Negara Indonesia like this, according to the author, adds to the long list of problematic credit settlement models in Indonesia that are inefficient and do not favor the interests of recovering state financial losses rather than simply punishing Safruddin Temenggung. By using the settlement route through the Corruption Crime Court like this, the focus of the settlement is not aimed at obtaining repayment of loans disbursed by BDNI to PT. Dipasena Citra Darmadja worth Rp. 4.58 trillion, by confiscating the execution of company assets or, more importantly, recovering state financial losses.

By looking at the decision of the Corruption Court at the DKI Jakarta High Court Number 29 / PID.SUS-TPK/2018 / PT.DKI, it is understandable that in the end difficulties are encountered in returning the assets of the PT. Dipasena Citra Darmadja to the Neptune Consortium from the Charoen Pokphand Group worth Rp. 220 billion. Therefore, PT. Dipasena Citra Darmadja is very inefficient and ineffective for the benefit of BDNI creditors. In my opinion, a better and more effective settlement, if the settlement model is used with a mechanism that falls under the authority of the KPKLN, where the functions and powers and duties of the KPKLN are developed not only as an auctioneer in the case of bankruptcy, but also given the authority related to the auctioneer of rights. dependents, namely the need to strengthen the function and authority of the State Wealth and Auction Service Office (KPKNL) as State Representation as Arranger and Coordinator of Restructuring both Management and Managerial if the debtor has entered into bad collectability (Col.: 5) in Settlement of Non-Performing Loans at state banks. In addition, KPKNL can carry out: Litigation, Mortgage Execution, Appraisal / Auditor / Relaxation, Selling Cassie, Novasi, Acquisition, due diligence and also as an Arranger, namely as takeover of problematic investments, either directly or through the Minister related to similar businesses rather than using the mortgage auction line or the bankruptcy decision execution channel. Thus, if the guarantee of the mortgage that has been handled by the KPKNL can be transferred to the relevant Ministry in charge of social economy for fishpond farmers, then re-function the company's abandoned fishpond areas for fishery nursery centers or lobster nurseries, so as to increase the economy of smallholder farmers, reabsorb them. labor, and state revenues from taxes and levies can be recovered.

c. Decision of the Commercial Court at the Surabaya District Court Number 02 / PLW.Pailit / 2014 / PN-Niaga.Sby. (Bankruptcy Case of PT. Sidobangun Plastik Factory) and Model of Settlement Based on Banking Law in Accordance with the Demands of Business Efficiency

Decision of the Commercial Court at the Surabaya District Court Number: 02 / PLW.Pailit / 2014 / PN-Niaga.Sby. has dropped bankruptcy for PT. Sidobangun Plastik Factory. However, the Curator at the execution stage of the court decision and preparing the Bankruptcy Assets Distribution List states that the separatist creditor is not considered a creditor who has the privilege of obtaining the full share of the bankruptcy bill as referred to in the Mortgage Rights Law, so that the portion received is insufficient to pay off the debt. debtor. Separatist creditors have struggled to get a full share of the proceeds from the bankruptcy boedel sale because company employees present themselves as concurrent creditors who are declared entitled to a share of the bankruptcy boedel auction sale. The reason for the curator is to pay attention to the provisions of Article 59 paragraph (2) in conjunction with Article 39 of the Bankruptcy Law and Article 95 of Law Number 13 of 2003 concerning Manpower. In addition, in practice the curator will find it difficult to control the company's assets as a bankruptcy bill without help and openness from company employees, especially if the debtor is not cooperative. Therefore, the curator must be wise in compiling the list of distribution of bankruptcy assets, not only because it is the right of the employees but also to suppress mass actions and resistance of company employees, even though they have to sacrifice the rights of separatist creditors in distributing the debtor's bankruptcy bill.

In my opinion, it will be better and more effective if the role of the KPKNL in accordance with its authority is optimally functioned by improving performance according to its authority, especially the authority of the KPKNL to verify litigation and due diligence on the material to be included in the bankruptcy board for curators. Thus, it will be better and more effective, if a settlement model is used

with a mechanism that is the authority of the KPKNL, where the functions and powers and duties of the KPKLN are developed not only as an auctioneer in the case of bankruptcy, but also given the authority related to the auctioneer of mortgage rights. , that is, it is necessary to strengthen the function and authority of the State Wealth and Auction Service Office (KPKNL) as State Representation as Arranger and Coordinator of Restructuring both Management and Managerial if the debtor has entered into bad collectability (Col.: 5) in Settlement of Non-Performing Loans at state banks. In addition, KPKNL can carry out: Litigation, Mortgage Execution, Appraisal / Auditor / Relaxation, Selling Cassie, Novasi, Acquisition, due diligence and also as an Arranger, namely as takeover of problematic investments, either directly or through the Minister related to similar businesses rather than using the mortgage auction line or the bankruptcy decision execution channel.

Furthermore, the guarantee of mortgage rights that has been handled by the KPKNL can be transferred to the relevant Ministry in charge of social economy for fishpond farmers, then re-functioning the company's abandoned fishpond areas for fishery nursery centers or lobster nurseries, so as to increase the economy of smallholder farmers, re-absorb labor, and state revenues from the tax and retribution sector can be recovered, to avoid the increasing number of bankruptcy cases filing to commercial courts, given that the settlement of bankruptcy cases will take a long time.

In addition, when viewed from the hierarchical aspect of the legislation, both the Mortgage Law and the Bankruptcy Law do not contain provisions that state that separatist creditors are subject to the UUK-PKPU, because the UUK-PKPU, the Mortgage Rights Law have the same position, namely that they are both Constitution. Therefore, to be able to see which law implementation should apply, the principle of preference can be used. The principle of preference is the principle of law which designates which law should take precedence (enforced) if in a legal event several regulations are related or violated. There are several principles of preference as follows (Fuady, 2013):

1. *Lex superiori derogat legi inferiori*, that is, a higher statutory regulation will override a lower statutory regulation;
2. *Lex specialis derogat legi generali*, which is a specific regulation that overrides general regulations or specific regulations that must take precedence;
3. *Lex posteriori derogat legi priori*, namely the new rules override or override the old rules. The three principles of preference mentioned above will be used as a tool to analyze the position of the implementation of the exercise rights of separatist creditors whether it is based on UUK-PKPU, or the Mortgage Law.

Credit Agreement (PK) and APHT Credit Guarantee on behalf of the separatist creditors mentioned above and because of the disruption of the operational management of PT. Sidobangun Plastik Factory, the credit collectability (Kol) from PT. Sidobangun Plastik Factory has reached Col. 5 (Jam). Thus, based on credit quality classifications such as Col. 5 is included in the non-performing loan (NPL), the creditor immediately reports to the OJK that the debtor in the Col. 5 category, therefore, an insolvency and insolvency process must be carried out between the creditor and the debtor so that the debtor is subject to the credit agreement made, in which debtor credit guarantees can be auctioned immediately through the State Wealth and Auction Service Office (KPKNL), so that creditors can more quickly receive repayments of debtor credit debt and the number of non-performing loans (NPL) in the banking sector can be minimized.

Thus, until finally PT. Sidobangun Plastik Factory has undergone a bankruptcy lawsuit process until the bankruptcy statement against PT Sidobangun Plastik Factory has obtained permanent legal force in accordance with the Commercial Court Decision Number: 02 / PLW.Pailit / 2014 / PN-Niaga.Sby. In this case, the Panel of Judges at the Surabaya Commercial Court is of the opinion that the Supervisory Judge Stipulation Number: 31 / Pailit / 2011 / PN-Niaga.Sby, is in accordance with Law Number: 37 of

2004, namely by giving a share to each of the creditors. , both separatist, preferred and concurrent creditors.

Seeing the fact, that with the sale of collateral assets below par value that is detrimental to the State and the People, it is clear that the buyer of the guarantee asset of the creditor of PT Sido Bangun Plastic Factory enjoys direct benefits because the creditor's collateral asset purchased is at a price of Rp. 100,000,000,000, - (one hundred billion rupiah) which is estimated to have a value of Rp. 1.4 Trillion (profit Rp. 1.3 Trillion) which in practice will be managed and financed again by another Red Plate Bank. Thus, the State will experience an opportunity loss, which is a loss condition that comes from the loss of opportunities to gain profits in the future, due to neglect of a certain time or moment of Rp. 1.3 Trillion due to the settlement of PT Sido Bangun Plastic Factory's non-performing loans and as a result, the State and the People suffer losses, because:

- a. Bad investment;
- b. Unsustainable Investment;
- c. Reduced Tax Revenue;
- d. Layoffs occurred;
- e. Economy Wheel Stops / Does Not Spin.

Thus, it is certain that the State and the People will lose because the assets are already owned and will be enjoyed by a third party (the buyer of the collateral for the execution auction).

Better and more efficient settlement of problem loans, namely if a settlement model is used with a mechanism that is the function and authority of the KPKNL, where KPKNL is the State Representation in the Management Restructuring Coordinator, Managerial in the case of bank debtors who have non-performing loans in the range of 100 billion, 500 billion Up to 1 Trillion and as an Arranger, namely the takeover of a problematic investment, either directly or through the Minister related to similar businesses that rather than using the mortgage auction route or the execution channel of bankruptcy decisions such as the case of the Bankruptcy position of PT. Sidobangun Plastik Factory (Decision of the Commercial Court Number: 02 / PLW.Pailit / 2014 / PN-Niaga.Sby.) On the settlement of problem loans in the Bankruptcy case of PT. Sidobangun Plastik Factory from the disbursement of credit from 2 separatist creditors, namely:

- a. Creditors of PT Bank Rakyat Indonesia (Persero) Tbk., Amounting to Rp. 972,000,000,000, - (nine hundred seventy two billion); and
- b. Creditors of PT Bank Mandiri (Persero) Tbk., Amounting to Rp. 473,372,316,259, - (four hundred seventy three billion three hundred seventy-two million three hundred sixteen thousand two hundred and fifty-nine rupiah).

The non-performing loan settlement model based on banking law is in accordance with the demands of efficiency in the business world by increasing the functions and authority of the State Wealth and Auction Service Office (KPKNL) in the Bankruptcy Case of PT. Sidobangun Plastik Factory (Decision of the Commercial Court Number: 02 / PLW.Pailit / 2014 / PN-Niaga.Sby.) Must start from the Stipulation of Submission of Credit Collateral Col. 5 by Creditors to KPKNL Recalling Point 2, that: APHT, Fiduciary, Pawn, Mortgages a / n Creditors Cq. KPKNL since the birth of the Credit Agreement (PK) between PT. Sidobangun Plastik Factory with creditors (banks), so that the Credit Agreement (PK) / BUMN Bank Credit Agreement (Bank Plat Merah) with APHT, Fiduciary, Pawn, a / n Mortgage. Creditors Cq. KPKNL.

When the operational management of PT. Sidobangun Plastik Factory and collectability (Kol) credit from PT. Sidobangun Plastik Factory has reached Col. 5 (Loss), then the creditors (banks) in this case PT Bank Rakyat Indonesia (Persero) Tbk., And PT Bank Mandiri (Persero) Tbk., Must as soon as possible submit collateral assets (share pledge and APHT) to be managed by the Service Office. State Property and Auction (KPKNL) as the State Representation in the Management Restructuring Coordinator, Managerial PT. Sidobangun Plastik Factory, which is experiencing non-performing loans and seeing the fact, that with the sale of collateral assets below par value which is detrimental to the State and the People, it is clear that the buyer of the guarantee assets of the creditors of PT Sido Bangun Plastic Factory enjoys direct benefits because the creditor's collateral assets purchased are at the price of Rp. 100,000,000,000, - (one hundred billion rupiah) which is estimated to have a value of Rp. 1.4 Trillion (profit Rp. 1.3 Trillion) which in practice will be managed and financed again by another Red Plate Bank. And as a result the State and the People are disadvantaged, because: Bad Investment, Unsustainable Investment, Reduced Tax Revenues, Layoffs Occur, the Economic Wheel Stops / Doesn't Spin. Thus, it is certain that the State and the People will lose because the assets are already owned and will be enjoyed by a third party (the buyer of the collateral for the execution auction).

Thus, by strengthening the function and authority of KPKNL as State Representation in Management Restructuring Coordinator, Managerial PT. Sidobangun Plastik Factory, which is experiencing non-performing loans, is restructuring the collateral assets (shares and land) that were handed over by a / n. Creditors Cq. KPKNL and carry out its function as arranger for Management Restructuring of Management & Shareholders Composition in the Company, as well as finance / funding of PT. Sidobangun Plastik Factory, namely:

- a. Management Composition: Professionals appointed by KPNKL & Old Shareholders of PT. Sidobangun Plastik Factory;
- b. Shareholders:
 - 1) Minority: Old Shareholders of PT. Sidobangun Plastik Factory
 - 2) Majority: KPKNL / State.
- c. Financial Restructuring of PT. Sidobangun Plastik Factory for operational continuity by, namely:
 - 1) Debt restructuring (lowering interest rates, extending the term);
 - 2) Issuance of Bonds
 - 3) Sale of Shares to the People & UKM.

With a non-performing loan settlement model mechanism based on banking law in accordance with the demands of efficiency in the business world by increasing the function and authority of the State Wealth and Auction Service Office (KPKNL), the Bankruptcy Case of PT. Sidobangun Plastik Factory (Decision of the Commercial Court Number: 02 / PLW.Pailit / 2014 / PN-Niaga.Sby.), Creditors can more quickly receive repayments of debtor credit debt and the number of non-performing loans (NPL) in the banking sector can be minimized than using the litigation line to determine the execution of credit guarantee to the Court. In addition, the KPKNL as one of the Work Units at the Directorate General of State Assets, Ministry of Finance of the Republic of Indonesia. When the Private Auction Center acts as a Facilitator for the implementation of the Auction, it already has a very clear legal basis, namely Article 14 of Law Number 4 of 1996 concerning Mortgage Rights, which requires that the implementation of the mortgage auction has the same executorial power as the court's legal decision. which has permanent legal force (inkracht van gewijsde). In the sense that through KPKNL, direct and clear auction can be carried out for collateral for default debtors, because the bank has executory rights and the auction for debtor asset collateral is very clear which is regulated in statutory regulations.

In this connection, it seems to me that the KPKNL regulation can actually provide guarantees for settling credit settlement that occurs in the banking sector in Indonesia (Regulation of the Minister of Finance of the Republic of Indonesia Number: 106 / Pmk.06 / 2013 concerning Amendments to the Regulation of the Minister of Finance Number 93 / Pmk.06 / 2010 concerning Guidelines for Auction Implementation.), in accordance with the direction to realize Indonesia as a Welfare State I, namely: "a form of government in which the state assumes responsibility for a minimum standards of living for every person "(a form of government in which the state is held responsible for ensuring a minimum standard of living for every citizen). Therefore, in my opinion there is a need for the presence of the government to address the settlement of problem loans in the banking sector, by placing the functions and powers of the KPKNL under the Coordinating Minister for Finance cq. The Minister of Finance and related Ministries, so that the banking system in Indonesia can guarantee accountability in the settlement of non-performing loans which leads to a social justice system, especially in the event of a conventional bankruptcy process which has an impact on the value of collateral decreases, government tax bills are reduced, labor rights are not protected because during the bankruptcy process, they do not receive wages, and it is increasingly difficult for workers to find new jobs.

By giving the KPKNL function and authority as the State Representation in the Management Restructuring Coordinator, the Manager for the settlement of PT. Sidobangun Plastik Factory for APHT, Fiduciary, Pawn, Mortgage a / n. Creditors Cq. KPKNL, then the credit guarantee function is basically (Usman, 2013):

- a. Can give rights and powers to creditors (banks), in this case PT Bank Rakyat Indonesia (Persero) Tbk., And PT Bank Mandiri (Persero) Tbk., To get repayment of collateral if the debtor commits a breach of promise, namely to pay his debt back to the time specified in the Credit Agreement (PK);
- b. Can ensure that the debtor participates in transactions to finance his business, so that the possibility of leaving his business or project at the expense of himself or his company can be prevented or at least the possibility of doing so can be minimized;
- c. Can provide encouragement to debtors to fulfill their promises, especially regarding repayment in accordance with agreed terms so that debtors and / or third parties who participate in guaranteeing not to lose their pledged assets to banks, especially government banks such as PT Bank Rakyat Indonesia (Persero) Tbk., And PT Bank Mandiri (Persero) Tbk. in the settlement of non-performing loans PT. Sidobangun Plastik Factory.

In the settlement of non-performing bank loans, a legal framework is needed regarding that the collateral (credit guarantee) for the bank functions to guarantee the repayment of debtor debt if the debtor fails to promise or goes bankrupt. Collateral will provide legal certainty guarantees to the bank that the credit will be returned by executing the collateral. To protect the money disbursed through credit from the risk of loss, the banking sector creates a "security fence". This is because in the best conditions or with the best possible analysis, the risk of problem loans cannot be avoided. The security fence that is made is usually in the form of collateral that must be provided by the debtor. Meanwhile, the purpose of this collateral is to protect credit from the risk of loss, whether intentional or unintentional. More than that, the collateral submitted by the customer is a burden so that the customer is serious about repaying the credit he took. Therefore, it can be said that the collateral serves to provide security for the banking sector, especially in the event of non-performing loans, the collateral can be executed to cover the debtor's debt.

Furthermore, by strengthening the function and authority of KPKNL as State Representation in Management Restructuring Coordinator, Managerial PT. Sidobangun Plastik Factory, which is experiencing non-performing loans, is restructuring the collateral assets (shares and land) that were handed over by a / n. Creditors Cq. KPKNL and carry out its functions and authorities as arranger for

Management and Managerial Restructuring of Management & Shareholders Composition in the Company, as well as finance / funding of PT. Sidobangun Plastik Factory, the State and the People are not directly harmed, because the guaranteed assets of creditors are in State Management, in this case the KPKNLN and for the successful management of collateral assets by KPKNL involving various State and People agencies, the State and the People will get profitability on the continuity of management of the collateral assets. With no sale of Assets Col.5. Through the Determination of the Court Execution Auction which can take a long time (1 decade) and the costs are not cheap, the State and the People will not be immediately harmed but can enjoy the profitability of the collateral asset management of Col.5 which conducted by KPKNL as the State Representation to become the arranger in the coordination of the Management and Managerial restructuring of PT. Sidobangun Plastik Factory, because:

- a. Profitability for the successful management of the collateral assets by KPKNL;
- b. Many employees who were not laid off due to PT. Sidobangun Plastik Factory;
- c. Collateral assets that are auctioned by the Curator which originally only amounted to a total income of Rp. 100,000,000,000, - (one hundred billion rupiah) of the appraisal value at a price of Rp. 72,870,288,000, - (seventy-two billion eight hundred seventy million two hundred and eighty eight thousand rupiah) to increase;
- d. Can reduce the burden of Payment of Tax Expenditures and Auction Fees Total of Rp. 7,000,000,000, - (seven billion rupiah);
- e. Can reduce the burden of Fees for Curator Services and Total Sales of Rp. 9,500,000,000, - (nine billion five hundred million rupiah);
- f. Can reduce the Total Bankruptcy costs of Rp. 1,615,052,957, - (one billion six hundred fifteen million fifty-two thousand nine hundred and fifty-seven rupiah), and
- g. Can reduce the cost of the Reserve by Rp. 3,892,418,669, - (three billion eight hundred ninety-two million four hundred eighteen thousand six hundred and sixty nine rupiah).

By implementing a non-performing loan settlement model based on banking law that is in line with the demands of efficiency in the business world by increasing the function and authority of the State Wealth and Auction Service Office (KPKNL) as State Representation in the Management Restructuring Coordinator, Managerial towards the settlement of related non-performing loans in the case of banking debtors who are having non-performing loans in the range of 100 billion, 500 billion to 1 trillion and as takeover of problematic investments, either directly or through the Minister related to similar businesses rather than using the mortgage auction route or the execution route for bankruptcy decision.

The State Wealth and Auction Service Office (KPKNL) with the functions and powers granted by the Law on State Wealth and Finance can actually also be played and appointed as "State Representation" in the process of solving non-performing loans in the banking sector to represent the Financial Services Authority (OJK), specifically for state-owned banks that are facing non-performing loans, in order to save state wealth and finances. This can be analogous to the legal position (legal standing) and the role of the State Attorney General if the government faces a civil suit at the District Court (PN) or a state administration lawsuit at the state administrative court (PTUN) for the government's interest in carrying out government affairs. (Presidential Regulation of the Republic of Indonesia Number 38, 2010) This is as in the provisions of Article 5 of the Presidential Regulation of the Republic of Indonesia Number: 38 of 2010 concerning the Organization and Work Procedure of the Republic of Indonesia Public Prosecutor's Office.

Conclusion

Efforts to maintain the stability of the country's economy and protection of state finances managed by state banks as state-owned enterprises (BUMN), the legal standing of the KPKNL under the Ministry of Finance can be played as a legal instrument to prevent state financial losses or save state

finances from problems non-performing loans accompanied by credit collaterals with mortgage rights within state banks. In my opinion, with its function and authority, the KPKNL can represent for and on behalf of state-owned banks in the settlement of non-performing loans that hinder bank performance, and in this case the right of responsibility becomes Cq. KPKNL. Thus, however, because state banks that are already open (Tbk.) According to the Limited Liability Company Law, are not allowed to write off the principal loan because there is an element of state-owned capital participation. This is different from private banks which are allowed to write off their principal loans. Therefore, if KPKNL is in accordance with the functions and authorities it has in the settlement of problem loans in banking, then crucial problems in the non-performing loan settlement process can be anticipated and can be resolved immediately more efficiently and with legal certainty, so that state banks do not experience financial distress assets. can inhibit national economic growth.

This dissertation research is intended to understand more critically and academically in-depth cases of non-performing credit settlement at state banks, which are resolved through litigation in district courts, through fiat execution of decisions and critical sections regarding the proper distribution of proceeds from auction sales to separatist creditors. receive a prorata parte or a fully proportional share because of the privileges as regulated in Law Number 10 of 1998 concerning Banking, Law Number 4 of 1999 concerning Mortgage Rights and Law Number 42 of 1999 concerning Fiduciary Guarantee.

Thus, the novelty of knowledge obtained in my dissertation research is that it can contribute optimally to a non-performing loan settlement model based on banking law that is in accordance with the demands of efficiency in the business world by increasing the function and authority of the State Wealth and Auction Service Office (KPKNL). Because by increasing the KPKNL function and authority, the process of resolving non-performing credit cases in national banking can be carried out more efficiently and effectively and with legal certainty in protecting the privileges of the bank as a separatist creditor to get a share of the proceeds from the sale of the bankruptcy debtor auction. parte, so that the financial sustainability of the bank as an intermediary institution is maintained and guaranteed for further distribution to the business community who need bank services.

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