



## Agreement on Home Loan (KPR) Due to Natural Disaster (Case Study in North Lombok Regency)

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<http://dx.doi.org/10.18415/ijmmu.v6i3.824>

### **Abstract**

The objectives of this research are to analyse the obstacles that occur in the implementation of the agreement on Home Loan (KPR) when natural disaster occurs and to analyse the settlement of bad debt between the bank and the debtor when the physical KPR is severely damaged due to natural disaster especially those that occurred in North Lombok Regency. The research approach used in this study is the statute approach, conceptual approach, sociological approach, and case approach. The settlement of bad debt, between the bank and the debtor when natural disaster occurs in the North Lombok area that causes physical damage to the KPR, is that the bank rescues the bad Home Loan (KPR) by restructuring and giving a grace period in accordance with the Authority Regulation of Financial Services (POJK) No. 45/POJK.03/2017 concerning Special Treatment of Loans or Bank Financing for certain regions in Indonesia that are affected by natural disaster. Then, the debtor, in terms of settling this bad debt, does not make a written request for the rescue efforts offered by the bank. If this rescue effort is unsuccessful, the next solution, carried out by the bank on the physical Home Loan (KPR) which affected severe damage due to the earthquake in the North Lombok area, is to submit to the debtor to write-off the loan agreement.

**Keywords:** Obstacles; Natural Disaster; Loan Agreement; Settlement of the Loan Agreement

### **Introduction**

The purpose of Home Loan (KPR) is to help customers who want to own a house but do not have large amount of money in cash (Alanshari & Marlius, 2018). Bank, in providing this loan, must be very careful because bank, in this case, gives trust to debtors to return money received by banks from people who trust banks by saving their money in banks. Therefore, the bank, in providing loans must conduct an examination of the prospective debtor (Dwianingrum, 2014). Loans, in terms of economics, means that an activity provides the same economic value that will be returned to the creditor (bank) after a certain period of time according to an

agreement that has been approved by the creditor (bank) with the debtor (Aliah, 2010). Benefits for creditors (banks) are receipts of interest payments from debtors.

Many occurrences of bad debt are caused by various reasons; for instance, businesses financed with loans go bankrupt, sales turnover slumps, as well as the result of a natural disaster (Diyanti & Widyarti, 2012). Classification of loan quality, according to the provisions of Article 12 paragraph (3) Bank Indonesia Regulation No. 7/2/PBI/2005 concerning Asset Quality Rating for Commercial Banks, is divided into 5 (five) collectability consisting of:

1. Pass
2. Special-mention
3. Substandard
4. Doubtful
5. Loss

In this case, the object in the loan agreement is the Home Loan (KPR). Moreover, the object loan has been destroyed by an earthquake, which caused the parties including the debtor and the creditor to suffer losses from the incident. In the common agreement, in the event of a coercive situation, it will eliminate the creditor's right to claim the performance, or the risk of loss borne jointly as agreed by both parties or the burden of loss is borne equally (Wulandari et al., 2016). In practice, the debtor has a position that remains weak even though its inability to pay off debts is caused by a forced state of natural disaster. Often, the position of the bank experiences a dilemma. On the one hand, banks must think of their destiny to survive; but on the other hand, banks are required to provide a sense of humanity to customers who experience disasters that are not desired by all parties (Hanum, 2009).

The formulation of the problem in this study includes: a. what are the obstacles faced by the parties in implementing the agreement on Home Loan (KPR) if natural disaster occurs? b. how is the settlement of bad debt between the bank and the debtor if the physical KPR is severely damaged due to the occurrence of natural disaster in North Lombok Regency?

Starting from the formulation of the problem, the objectives of this study are: a. to analyze the obstacles that occur in the implementation of the agreement on Home Loan (KPR) if natural disaster occurs. b. to analyze the settlement of bad debts between banks and debtors in terms of physical KPR that are severely damaged due to the occurrence of natural disaster in North Lombok Regency.

This thesis applies empirical normative legal research and uses a statute approach, conceptual approach, sociological approach, and case approach. The data collection technique used in this study is by conducting direct interviews and document studies by processing qualitative normative analysis data.

## ***Discussion***

### *1. Constraints in the Agreement on Home Loan (KPR) between the Bank and the Debtor after Natural Disaster Occurs*

The loan must be based on an agreement between the bank as the creditor and the borrowing customer as a debtor called the loan agreement. In providing loans to the community, the bank must feel confident that the funds lent to the community will be returned on time and the interest in accordance with the terms agreed in the loan agreement.

There is no specific arrangement for the bank loan agreement. Even in the Civil Code, there is no provision for a bank loan agreement. Law No. 10 of 1998 concerning Banking also does not contain provisions regarding the bank loan agreement. The term bank loan agreement is only known in the practice of banking. Loan agreement does not have a certain form because it is not determined by the Law. It causes the loan agreement between one bank to another not the same because it is adjusted to the needs of each bank. However, in general, bank loan agreement is made in written form.

In practice, each bank has provided a loan agreement form whose contents have been prepared in advance. The loan applicants are only asked whether they can accept the terms in the form or not. In the form, there are also empty places that have just been filled if there is an agreement between the prospective borrower and the bank. It shows that the loan agreement, in practice, grows as a standard agreement or basic agreement.<sup>1</sup>

Norton Joseph stated that the bank loan agreement contained a series of clauses or covenants which most of these clauses are an attempt to protect creditors in granting loans.<sup>2</sup> The clause is a series of requirements made in the provision of loans in terms of financial and legal aspects. From the financial aspect, the clause protects the creditor in order to be able to sue or withdraw funds that have been given to the debtor customer in a position that is favorable to the creditor if the condition of the debtor customer is not in accordance with the agreement. Meanwhile, from the legal aspect, the clause is a means to enforce the law so that the debtor can comply with the substance agreed in the loan agreement.

According to Ch. Gatot Wardoyo, loan agreement has several functions as follow:<sup>3</sup>

- a. Loan agreement functions as the principal agreement. It means that the loan agreement is something that determines the cancellation or no cancellation of other agreements that follow it; for instance, an agreement on binding guarantees.
- b. Loan agreement serves as a proof of the limitations of rights and obligations between creditor and debtor.
- c. Loan agreement serves as a tool for monitoring loan.

In the loan agreement, the achievement that must be fulfilled by the debtor is to repay the loan, pay interest in accordance with what has been agreed upon, and obey all obligations set by the creditor. If one of the obligations is not fulfilled, the debtor is referred to as default.

Loan agreement is always related to binding guarantee. This is carried out by the creditor so that the creditor gets assurance that the loan that has been given can be used as needed and can return safely. So, the guarantee that is bound in the form of a certain agreement will reduce the risk that might occur if the debtor is default.

Mortgage rights are collateral rights to land for repayment of certain debt, which gives a position to the creditor. In other words, if the debtor is default, the creditor of the holder of the right has the right to sell through the public auction of land that is used as collateral according to the provisions of the applicable legislation to get the debt repaid.<sup>4</sup> The nature of these mortgage

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<sup>1</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019.

<sup>2</sup> Muhamad Djumhana, *Banking Law in Indonesia*, Fourth Print, PT Citra Aditya Bakti, Jakarta, 2003, page 385-392

<sup>3</sup> *Ibid*, page 388-389

<sup>4</sup> Adrian Sutedi, *Mortgage Law*, Sinar Grafika, Jakarta, 2010, page 5

rights is *accessoire*; i.e. following the main loan agreement. Thus, the abolition of mortgages depends on the main agreement; i.e. the loan which repayment is guaranteed.

## 2. *Obstacles Occurred in Settlement of Loan Agreement in the Post Natural Disaster*

The loan provision must be based on an agreement between the bank as the creditor and the borrowing customer as a debtor called the loan agreement. In providing loans to the community, the bank must feel confident that the funds lent to the community will be returned on time and the interest in accordance with the terms agreed in the loan agreement.

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<sup>6</sup> Muhamad Djumhana, *Op. Cit.*, page 385-392

<sup>7</sup> *Ibid*, page 388-389

safely. So, the guarantee that is bound in the form of a certain agreement will reduce the risk that might occur if the debtor is default.

Regarding the earthquake on Lombok Island, especially in North Lombok Regency, Bank BTN as the loan distributor has several obstacles to the loan agreement as follows:<sup>8</sup>

*a. Many numbers of damaged KPR units in North Lombok area*

This caused many debtors who were victims of the natural disaster of the earthquake to be absent from their obligation to repay the loan because the object of the loan agreement suffered severe damage. Thus, the bank suffered a large loss due to the incident.

*b. The KPR units were abandoned by the debtors*

When the bank wants to do the billing relating to the agreement on bad debt, the bank finds it difficult to meet the debtor who is in trouble because the address given is not occupied anymore or the KPR units have been abandoned due to the earthquake.

In this study the author visited one of the debtors who had obstacles in completing the loan as follows:<sup>9</sup>

*a. The debtor experiences disaster*

The disaster was a natural disaster that began with a 7.0 SR earthquake that occurred continuously for about 2 months from August 5, 2018. Due to this reason, debtors lost their livelihoods and caused the economy to become unstable from then on. In addition, over time the debtors experienced difficulties to fulfill their daily needs even to pay the remaining loan agreement.

*b. Debtor feels loss*

In this situation, the debtor feels aggrieved because the object of the loan (house) is severely damaged. Thus, the debtors must rebuild the house by still having to pay the obligation on the loan agreement that they have made to the bank. This is the main obstacle in the process of repaying the loan agreement after the earthquake in North Lombok.

*3. Settlement of Bad Debt between Bank and Debtor When Natural Disaster Occurs in North Lombok Regency*

*a. Bad Debt at PT BTN of North Lombok Regency Branch*

In general, PT BTN Tbk states that a quality loan can be seen from:<sup>10</sup>

- 1) Pass, if the payment is made on time, the account development is good, there is no arrears, and runs according to the loan agreement.
- 2) Special-mention, if there are arrears in principal payment and/or interest up to 90 days (3 months).

<sup>8</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019

<sup>9</sup> The results of interviews obtained from several respondents (owners of KPR units in North Lombok)

<sup>10</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019

- 3) Substandard, if there are arrears in principal payment and/or interest up to 90-180 days (6 months).
- 4) Doubtful, if there are arrears in principal payment and/or interest up to 180-270 days (9 months).
- 5) Loss, if there are arrears in principal payment and/or interest up to 270 days (9 months).

In this case, the debtor whose loan agreement has been declared as loss after the earthquake is that the debtor cannot carry out his/her obligations in accordance with the rules set by the bank after the debtor agrees to obtain a grace period. Debtors affected by natural disasters in North Lombok Regency are declared as bad debtors in the Home Loan because of arrears that cannot be carried out on time. Sometimes, the occurrence of natural disasters is used by some debtors to default on payments and not to pay at maturity; for instance, they will remain in arrears because of the grace period. This grace period is given for the procurement of productive fixed assets whose repayments are carried out in installments, paying the principal installments during the grace period, the debtor only pays the interest.<sup>11</sup>

The provision of grace period is not only intended for debtors whose Home Loan (KPR) units suffered severe damage in the North Lombok Regency but this grace period was also given to all residents of Lombok; for instance, in Mataram City that was not too significantly affected by the earthquake. In this case, the bank determines the debtor who is the victim of the earthquake as a bad debtor based on the rules that have been set in general. However, the difference is that if the debtors have been given a grace period and maturity, then PT Bank Tabungan Negara states that the debtor in the agreement on Home Loan (KPR) as default even though the position of the debtor is a victim of natural disaster.<sup>12</sup>

Default in this case is not fulfilling or negligent in carrying out obligations as determined in the agreement made between the creditor and the debtor. In general, the rights and obligations born of the agreement are fulfilled by both debtors and creditors. However, in practice, the debtors sometimes do not obey what are their obligations and vice versa; sometimes, creditors also do not obey what is their duty. Therefore, that is what is called “default”.

Debtor obligations are not fulfilled due to two possible reasons as follows:<sup>13</sup>

- a. because of the debtor’s mistakes caused by deliberate or negligent and
  - b. because of *force majeure* or beyond the ability of the debtor. So, the debtor is innocent.
4. *Settlement of Bad Debt Due to Natural Disaster at PT BTN of North Lombok Regency Branch*

Law No. 10 of 1998 contains the loan rescue system as stipulated in Article 7 paragraph c as follows:

“Commercial banks can also carry out temporary capital participation activities to overcome the consequences of loan failures of financing based on sharia principles on the condition that they must withdraw their investments by fulfilling the conditions set by Bank Indonesia”.

<sup>11</sup> *Ibid*

<sup>12</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019

<sup>13</sup> Abdulkadir Muhammad, *Indonesian Civil Law*, Fourth Print, PT Raja Grafindo Persada, Jakarta, 2014, page 241

Explanation of the article is described as follows:

- a. Capital participation by banks comes from conversion of loan failures or failure of financing based on sharia principles in the company concerned;
- b. Loan failure requirements or financing failures based on sharia principles are converted into capital participation;
- c. The capital participation must be withdrawn if:
  - I. it has exceeded a maximum period of 5 (five) years, or
  - II. the company has made a profit
- d. The temporary participation must be eliminated from the bank balance sheet, if within a maximum period of 5 (five) years it has not succeeded in withdrawing its participation;
- e. Report to Bank Indonesia regarding temporary capital participation by the bank.

In conducting a bad debt rescue, PT BTN of North Lombok Regency Branch will subsequently conduct a loan restructuring; i.e. the bank will conduct an analysis of bad debt to obtain information about the causes of arrears in payments based on financial statements relating to the debtor's business. At the PT BTN of North Lombok Regency Branch, restructuring can be carried out when loans are given special-mention, substandard and loss. Rescue of loans through loan restructuring requires good faith from the debtor and the debtor is willing to follow the conditions specified by the bank due to loan restructuring using negotiations and solutions offered by the bank.<sup>14</sup>

Provisions given by POJK No. 45/POJK.03/2017, concerning Special Treatment of Loans or Bank Financing for Certain Areas in Indonesia Affected by Natural Disaster, explaining about the debtors who can get the restructuring contained in Article 4 as follows:

The provisions referred to in Article 3 only apply to loans for commercial banks or financing for Sharia Commercial Bank (BUS) and Sharia Unit Business (UUS) and loans for Rural Banks or Financing for Sharia Rural Banks (BPRS) that meet the following requirements:

- a. it is distributed to debtors at project locations or business locations in certain areas affected by natural disaster;
- b. it has been or is expected to experience difficulties in principal payment and/or interest or financing returns due to the impact of natural disasters in certain regions; and
- c. restructured after natural disaster.

In conducting a restructuring, the bank and the debtor will make a new loan agreement that changes the amount of the installment, the period of payment, interest, etc. related to the restructuring pattern. The important thing in conducting loan restructuring is that the bank must understand the business fields, business conditions, and problems faced by the debtor. It is required to determine the appropriate restructuring steps and find solutions to the problems faced by debtors.

Facilities and policies that can be used to restructure bad debt provided by PT BTN of North Lombok Regency Branch include:<sup>15</sup>

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<sup>14</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019

<sup>15</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019

a. Rescheduling

Rescheduling is the first attempt by the bank to save the loan given to the debtor. This method is carried out if the debtor (based on the results of observation and calculation carried out by the bank account officer) turns out to be unable to fulfill obligations in repayment of the principal and loan interest because the debtors experience an earthquake. The rescheduling is carried out by extending the loan term. This loan term extension provides an opportunity for debtors to continue their business.

However, the debtors affected by natural disaster is unlikely to continue their business because their properties are lost after the natural disaster. Thus, it makes it difficult for the debtors to repay their obligations even though a restructuring in the form of rescheduling has been provided.<sup>16</sup>

b. Decrease in loan interest rate

It is a change or decrease in loan interest rates which is smaller than the current interest rate. Changes in interest rates are used for the calculation of installment interest adjusted to the ability of the debtor to which payments can be made monthly or paid/ scheduled later (deferred). If based on the results of the analysis of the cashflow of the debtor unable to pay the current interest, the debtor can be exempted from current interest provided that the current interest rate is a profitable alternative compared to alternative loan settlement through the sale of collateral.

c. Granting of waiver of interest arrears and/or fines

It is the granting of waiver of interest arrears and/or a fine of a maximum of interest arrears and/or fines that have not been paid by the debtor; i.e. payment of the remaining liabilities in installments or repayments at once. To run this way of settlement, the loan official has chosen an alternative calculation that is profitable for the bank.

d. Adding loan facilities

Through the addition of loan facilities, the debtor business is expected to run and develop again, which will generate income that can be used to repay debt. To provide additional loan facilities, careful, accurate and accurate analysis of the debtor's business prospects must be carried out because the debtor bears the old and new debts.

e. Postponement of loan obligation payment (grace period)

It is a delay in payment of a number of loan obligations for a certain period of time, according to the results of the analysis of the debtor's ability. The debtor in this case has difficulty meeting obligations to the bank due to *force majeure*.

To conduct this restructuring, the bank and debtor make an addendum related to the restructuring of the loan agreement. The results of the authors' research that took place in the field were that the debtors were reluctant to repay the Home Loan and that the bank party found difficulties in finding customers affected by the earthquake that occurred in Lombok, especially in the North Lombok Regency. The results of interviews with the bank found that if the restructuring efforts were unsuccessful, PT BTN of North Lombok Regency Branch saw the completion of a bad debt in the post-earthquake from the impact of damage to the KPR units. If the damage to the unit is very significant, in the settlement of this bad debt, the bank recommends the debtor to do a write-off.<sup>17</sup>

<sup>16</sup> The results of interviews obtained from several respondents (owners of KPR units in North Lombok)

<sup>17</sup> Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019



## **Conclusion**

Based on the above description that the author has described the following conclusions can be taken:

The obstacles that occur in the agreement on Home Loan (KPR) after the earthquake in PT Bank Tabungan Negara in North Lombok Regency are caused by several factors from the debtor and external factors. The debtor cannot re-implement its obligations to the bank and the bank has difficulty finding the borrower's billing address for the loan agreement because the debtor has moved the address without giving information to the bank first. In general, the factors that caused the obstacles in the loan agreement after natural disaster were caused by the debtor.

The settlement of bad debt, which is carried out by banks and debtors in the event of a natural disaster in North Lombok Regency, is that the bank provides special treatment in an effort to deal with the bad debt. This is carried out in accordance with the Financial Services of Authority Regulation (POJK) No. 45/POJK.03/2017 concerning Special Treatment of Loans or Bank Financing Institutions for Certain Areas in Indonesia Affected by Natural Disaster; i.e. in the form of loan restructuring. However, the debtor was reluctant to make a proposal in the form of a restructuring of the agreement on Home Loan (KPR) that had been attempted by the bank because the object of the loan agreement (in the form of a house) had been destroyed by the earthquake. Regarding homes that suffered significant damage, the bank made a bad debt settlement by encouraging the debtor to write-off.

## **Suggestion**

In general, the obstacles that occur in the agreement on Home Loan (KPR) after the occurrence of natural disasters in North Lombok Regency are caused by debtor factor. Therefore, the debtor in this case should be willing to inform the bank in advance about its existence and not make it difficult for banks, especially PT Bank Tabungan Negara, to find the existence of the debtor. Thus, this can minimize the existence of obstacles in loan agreement after natural disaster occurs.

Bank loan, especially Home Loan (KPR), as part of the bank's business, of course, cannot be separated from the risk of bad debt, including due to natural disaster. In completing this bad debt, the bank and the debtor are expected to work well together so that the special treatment that has been given can run effectively. In addition, it is intended that the debtor does not blame the situation and conditions after the natural disaster.

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#### *Interview*

Interview with Lalu Muhammad Fahri (skip trace coordinator of PT Bank Tabungan Negara), on April 17, 2019.

The results of interviews obtained from several respondents (owners of KPR units in North Lombok).

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