

ALTERNATIVE DISPUTE RESOLUTION IN CREDIT AGREEMENTS IN THE BANKING SECTOR

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Abstract

This research aims to find out the alternative settlement of bad credit disputes over the deed of granting mortgage rights. In principle, someone who wants to borrow money from a bank must have sufficient collateral to guarantee his debt. Mortgage rights on land are given as collateral for one's debt, in the form of encumbrance on land rights and objects that are legally integrated with the land.

Not all loans banks provide borrowers can be repaid fully under the agreement. Poor credit repayment from debtors can be due to carelessness, lack of good faith, or due to their incompetence. To prevent losses for the lending bank so that debtor customers can continue paying their obligations. This study aims to identify alternative methods of resolving conflicts of mortgage rights related to bad credit.

The author uses a normative juridical approach method by referring to the legal standards applicable in Indonesia. In order to analyze the existing problems, normative juridical analysis is the method used.

Bad credit disputes that affect the granting of mortgage rights can be resolved through alternative dispute resolution. Compared to litigation, alternative dispute resolution can result in a significant settlement of bad credit by prioritizing a win-win solution where the parties' free will is maintained.

Keywords: *Alternative Dispute Resolution, Credit Agreement, Banking Sector*

INTRODUCTION

Indonesia's MSME (micro, small and medium enterprises) sector has been promoted and enhanced by implementing various government initiatives. The government and society are people and businesses, participants in the real economy. A lot of money is required to meet these needs through credit lines from state-owned and private banks to build the corporate sector and sustain economic growth. There are time limits on the amount of credit that can be used as business financing. The existence of collateral, usually in the form of land and/or building titles, is one of the requirements for receiving credit from the Bank.

Today's banking industry has experienced satisfactory progress in lending to the general public. One way for banks to generate profits is through lending to debtors. However, banks remain cautious in providing credit to customers and have confidence that the debtor will be able to pay off his obligations as stated in the contract.

The bank submits a request to the debtor to provide collateral for the repayment of the debtor's debt so that its return is guaranteed and it does not become a problematic credit. The application and justification of Article 8 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking is the existence of guarantees in granting credit which states that "credit provided by banks carries risks so that in its implementation banks must pay attention to credit principles". Types of credit guarantees in Indonesia consist of : In Indonesia, there are two types of loan guarantees: (1) individual guarantees, and (2) physical guarantees. One of the guarantees banks are interested in using as loan collateral is the right of responsibility. Creditors (banks) can offer legal protection based on Law No. 4 of 1996 on Mortgage Rights, which regulates the existence of such Mortgage Rights. Because of this, banks feel comfortable returning loans to borrowers as creditors while keeping the collateral.

The explanatory memorandum of Law No.4 of 1996 explains that :

- (1) Gives preference rights to the holder
- (2) Following the secured object, in whomever's hands it is located
- (3) Fulfills the principle of specialty to bind third parties and provide legal certainty
- (4) Easy and certain execution.

Mortgage collateral loans, the most immediate effort made by the bank as a lender to resolve bad credit by selling the Mortgage object at the local District Court, but filing a case to court takes time, so the bank can do it to resolve bad credit in other ways.

Law No. 30/1999 on Arbitration and Alternative Dispute Resolution lists consultation, negotiation, mediation, conciliation, or expert judgment as forms of APS. Law No. 30/1999 does not go into more detail when defining each type of ADR/APS. Instead, Law No. 30/1999 defines arbitration separately from ADR/APS and excludes it from its scope, such as: "*a way of resolving a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute*".

This background motivates the author to change the title: ALTERNATIVE DISPUTE RESOLUTION IN CREDIT AGREEMENTS IN THE BANKING SECTOR.

Based on the context mentioned earlier, the problem formulations are: How is the development of Alternative Dispute Resolution (ADR) in Indonesia? and How is *Alternative Dispute Resolution* (ADR) used to resolve credit agreement problems involving mortgages at banks compared to going through litigation or court channels?

FOREWORD

Gratitude to God Almighty, who has enabled the author to complete the preparation of a research proposal seminar entitled "Alternative Dispute Resolution of Credit Agreements with Mortgage Rights at Banks".

The research discusses the settlement of legal disputes for creditors, namely the Bank, for losses due to defaults committed by the debtor and the debtor's responsibility in the event of default on the credit agreement made by the creditor. These problems are reviewed from Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law Number 4 of 1996 concerning Mortgage Rights on land and objects related to land.

This final project was written to fulfill one of the requirements for graduating from the Bachelor of Laws program in the Business and Investment Law Study Program, Faculty of Law, Maranatha Christian University Bandung. The author experienced many challenges and difficulties in making this final project. However, assistance from various parties enabled the author to complete this final project on schedule. Therefore, the author would like to thank the honorable ones on this occasion:

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The author made mistakes in compiling this final graduation project. The author is open to comments and criticism if this report has inaccuracies. I will conclude by saying that I hope everyone will benefit from this final graduation project.

RESEARCH METHODS

This study applies the normative juridical legal research method which includes an examination of jurisprudence, legal theories, and laws and regulations. The aim is to answer the legal issues raised, including the legal protection given to creditors when the debtor defaults.

This research uses a conceptual method and a statutory approach. Applicable laws and regulations are included in the legal documentation as primary legal materials, literature references and mass media coverage as secondary data. This method is applied to analyze the legal issues under study.

The author uses qualitative data analysis methods as the main approach. Qualitative methods are applied to understand and explain social phenomena comprehensively by analyzing the root of the problem, not just discussing surface phenomena. This qualitative approach refers to the guidelines described by Nasution in 2023.

The author will discuss mortgage rights as collateral in credit and its consequences in this research. The author emphasizes similar laws and regulations as well as a more in-depth discussion of the impact due to the existence of mortgage rights.

DISCUSSION

Credit Agreement with Mortgage Rights at the Bank

In operational activities, banks usually always compile funds from the public as much as possible, organize them in such a way, and then distribute them to the public in loans or credit.

The agreement between the borrower and the lender, defined as an agreement, serves as the basis for the lending relationship. Oral or written agreements are acceptable forms of agreement. Handwritten deeds make agreements in written contracts, some of which are made in the presence of a notary.

The rights and responsibilities of debtors and creditors are outlined in an agreement. The parties to a credit agreement are expected to fully fulfill all their obligations under the terms of the agreement.

As amended by Law No. 10 of 1998 on Banking, apart from implying the need for collateral, it also reflects the 5Cs, one of which is the requirement for debtors to provide collateral.

1. Material guarantees, or promises that follow the object in question and have "material" properties.
2. Personal guarantees, often known as immaterial guarantees. This guarantee is only supported by a person's property, through the person who supports the fulfillment of the guarantee; this guarantee does not give the right to precedence over certain goods.

Collateral usually refers to property, including land. The most preferred collateral is land because it has a strong and stable value. Therefore, the institution of collateral binding of mortgage rights is significantly used by creditors to serve as collateral in granting credit for creditors to debtors and is regulated in Law Number 4 of 1996 which regulates mortgage rights.

Types of Guarantees include:

a. *Secured loan*: A credit line the creditor provides to guarantee that the debt will be repaid. Bank loans carry risks, so banks must adhere to good credit practices when implementing them. Collateral is required to mitigate this risk when extending credit.

The debtor is a preference creditor in terms of debt payment, or a creditor who has the right to receive payment before other creditors, because the creditor owns the collateral provided by the debtor. An addition to the underlying contract is a mortgage.

Article 10 of the Mortgage Rights Law No. 4 of 1996 regulates the granting or encumbering Mortgage Rights. The Deed of Granting Mortgage Rights (APHT) must be registered before issuing a certificate of Mortgage Rights.

In a credit agreement, because the mortgage right is additional, the mortgage right will be removed upon repayment of the credit. However, this does not apply in other circumstances, therefore the credit will become unsecured if there is an error in the security agreement or ancillary agreement, such as an error in calculating the land rights.

According to Article 1 point (5) of the Mortgage Rights Law:

"Deed of Granting Mortgage is a PPAT deed containing the granting of Mortgage Rights to certain creditors as Security for debt repayment."

In order to protect the public interest and provide security to creditors over assets encumbered by mortgage rights, registration is required. Establishing legal regulations governing the implementation of encumbrance in credit agreements is intended to benefit all parties using land and objects related to land as credit collateral.

Issuing a Power of Attorney (SKMHT) that makes the Loan Agreement the Main Contract and imposes Mortgage rights. Understanding the procedure for assigning subordinated rights is essential as SKMHT is governed by Article 15 of Law No. 4 of 1996 on Mortgage Rights, thus enabling the credit agreement to be carried out in accordance with applicable law.

The existence of mortgage laws and bank credit.

In Indonesia, there are legal restrictions on the types of collateral institutions, binding of collateral between debtors and creditors. various forms of collateral, among others:

1. Mortgages that can be placed on immovable property.
2. Credietverband, which can be charged on the property;
3. A fiduciary security lien is a right imposed on movable property. Fiduciaries are created as a result of demands brought about by legal developments.
4. Borgtocht, where a third party takes over the debtor's debt if the debtor cannot fulfill his obligations...

Based on the principle of *lex posterior derogat legi priori*, many more regulations no longer apply even though they are not explicitly stated. These include the previous regulations that implemented Articles 51 and 57 of the UUPA, now regulated in Article 5 of the UUHT.

As a result, the security law field has undergone legislative changes due to the enactment of the UUHT, particularly regarding the use of land as collateral.

The UUHT gives creditors with Mortgage Rights a special place. Hak Tanggungan is described as a strong land security right with the following characteristics in the explanation of UUHT Point 3: Hak Tanggungan gives priority position to the beneficiary of Hak Tanggungan, which is often referred to as "droit de préférence."

Article 1 Number 1 of the UUHT emphasizes this privilege, among others, by stating:

".... for the repayment of certain debts, which gives priority to certain creditors over other creditors"

The following conditions must be met before land rights can be used as debt security when collateralized by a mortgage:

- a. Since the insured debt is in the form of money, it can be evaluated in money.
- b. Contains rights listed in the public register, as it must meet publicity standards.
- c. Transferable because the collateral will be auctioned if the debtor defaults.
- d. Requires a valid appointment.

The purpose of Hak Tanggungan, as stated in Article 4 in conjunction with Article 27 of the UUHT, is in accordance with these requirements:

1. According to the Basic Agrarian Law, Hak Milik, Hak Guna Usaha, and Hak Guna Bangunan are the prescribed subjects of hak tanggungan.
2. According to Law No. 16 of 1985 concerning Flat Houses, the objects of Mortgage Rights are:
Flats that stand on land with Hak Milik, Hak Guna Bangunan, and Hak Pakai; b. Property Rights on Flats Units whose buildings stand on the land.
3. The list of objects of Hak Tanggungan under the UUHT includes usufruct rights over state land, which must be registered and essentially transferable by law.

Mortgages are similar in character to property rights, as is the case with mortgages. The nature of property rights is:

1. Located directly adjacent to or affixed to a specific item which, in connection with the mortgage, belongs to the mortgagee.
2. Defensible or addressed to everyone;

It has the nature of *droit de suite*, which indicates that the right accompanies the goods wherever they are in a person's hands; the older person occupies the higher position; and the right can be transferred to another person.

Article 2 paragraph 1 of the UUHT states that Mortgage Rights cannot be divided.... This rule is based on what is mentioned in Civil Code Article 1163 regarding mortgages. Mortgage cannot be partially disbursed due to its nature.

Mortgage Certificate Strengthened by Execution:

Strong mortgage rights will be easy and certain to enforce in the event of default by the debtor. The availability of a simpler method of execution than through a lawsuit, such as an ordinary civil lawsuit, shows the ease and certainty of execution. UUHT offers 2 (two) ways of executing this execution, among others:

1. As stipulated in Article 6 of the UUHT, and
2. *Parate Executie*, regulated in Article 224 RIB and Article 258 RRBg, as confirmed in Article 26 UUHT.

The certificate of Mortgage Rights, which is a proof of the existence of Mortgage Rights, has the same executorial power as a court decision that has permanent legal force if it is included with the *irah-irah* "DEMI KEADILY BASED ON THE KINGDOM OF THE MIGHTY ESA" in the context of *parate executie*....

Alternative Dispute Resolution.

Humans as subjects of law already have ways of dealing with conflicts that arise in society. The consensus process is the name given to informal dispute resolution procedures based on the parties' agreement to the dispute. In society, conflict resolution methods have developed and matured. This form puts the focus on creating non-judicial and cooperative dispute resolution techniques. ADR conflict resolution techniques involve "informal procedures" and mutually acceptable and agreeable outcomes.

Alternative Dispute Resolution (ADR) was first conceived as the idea of out-of-court dispute resolution. A "win-win" agreement or settlement of a conflict or dispute is the goal of alternative dispute resolution (ADR), an idea of cooperative out-of-court resolution of conflicts or disputes. In this context, a "win-win" solution refers to an arrangement that considers the requirements or interests of all parties to the conflict (common interest).

Non-litigation Pathway Efforts

Frans Hendra Winarta emphasized that conflict resolution in the business world occurs through courts in industries such as trade, finance, mining, oil and gas, energy, infrastructure, etc. Litigation conflict resolution is the last resort (*Ultimum Remidium*) if *Alternative conflict Resolution* (ADR) does not work and pits the parties in litigation.

Based on this meaning of "alternative", the legal institutions used in ADR offer choices or alternatives to the parties so that they can decide which form is best to resolve their conflict. Not all types and nature of disputes are suited to the legal structures that exist in ADR.

According to Priyatna Abdurrasyid, *Alternative Dispute Resolution* (ADR) shows excellent results compared to the judicial system. There are two reasons, First, different types of disputes require different strategies, and the disputants create unique protocols for peaceful resolution. Second, APS is a type of dispute resolution that is no longer an alternative to arbitration because of mediation.

Wicpto Setiadi emphasized that there are several perspectives on alternative dispute resolution (ADR). ADR is an out-of-court dispute resolution technique. Examples of out-of-court dispute resolution methods include arbitration, negotiation, mediation, conciliation, and other non-judicial procedures. Second, APS provides alternatives to arbitration and courts as forums for resolving disputes. It is intended that there is no third party involved in the ADR process used to resolve the dispute. Instead, judges or arbitrators can resolve disputes in courts or arbitration forums.

Alternative dispute resolution (ADR) is limited to other cooperative dispute resolution methods, including discussion, mediation, and conciliation. ADR in this context also refers to conflict resolution conducted outside of court but regulated by laws and regulations, such as through the Tax Dispute Settlement Body (BPSP), the Business Competition Supervisory Commission (KPPU), and other institutions.

The principles that apply to alternative dispute resolution/ADR are as follows:

1. The idea of justice
2. Contract principle
3. Binding principle.
4. The concept of freedom of contract
5. Principle of confidentiality

Some of the key principles to be considered when choosing or using ADR mechanisms are :

1. This procedure is voluntary.
2. Fast process.

3. Informal assessment.
4. Management oversight by those who best understand the organization's needs.
5. Secret techniques.
6. Problem-solving provisions can be made with much flexibility.
7. Save time.
8. Save on expenses.

If parties wish to resolve disputes through mutually beneficial solutions, some of the alternative dispute resolution concepts listed above should be considered. Other professionals argue that alternative conflict resolution is the main driver of demand.

In mediation, the mediator focuses on bringing the conflicting parties together and reaching an agreement. In this case, the parties must be treated equally in assessing the proceedings. Dispute resolution through mediation is one of the efforts to resolve disputes in the financial services sector through LAPS.

Disputes must meet the following requirements to be eligible for LAPS-SJK resolution:

1. The complaint is first lodged with the PUJK, which then processes it through Internal Dispute Resolution but does not reach a resolution or is not responded to.
2. The complaint filed is not a complaint being or has been resolved by a court, arbitrator, or other alternative dispute resolution institution.
3. The complaint is civil in nature.

The settlement process at LAPS-SJK is as follows :

Dispute Resolution Request: Parties requesting dispute resolution must complete the LAPSSJK application form. A statement of the dispute, information about the parties, and the reasons for selecting LAPSSJK as the dispute resolution forum must be included in the application...

Eligibility Check: LAPSSJK will examine the request to ensure that the matter is one that can be dealt with by LAPSSJK. The dispute resolution procedure will proceed if it is determined that the request is appropriate.

Third Party Appointment: A neutral and impartial third party will be selected by LAPSSJK to conduct dispute resolution. This third party will typically be a mediator or arbitrator with law or dispute resolution knowledge.

Mediation or Arbitration: Depending on the parties' understanding, arbitration or mediation can be used to resolve disputes. In mediation, a mediator will work voluntarily with the parties to help them reach a mutually beneficial agreement. In arbitration, a neutral arbitrator will listen to both parties' arguments before making a conclusive final decision.

Dispute Resolution: Once the mediation or arbitration is completed, the decision or agreement reached will be put in writing. The decision has the force of law binding on the parties involved in the dispute.

Implementation of the Decision: The parties involved in the dispute are expected to implement the decision that has been made. If either party does not comply with the decision, enforcement measures may be taken in accordance with applicable procedures.

Binding Opinion: In the absence of a dispute, LAPS SJK may accept a request by the Parties to an agreement to provide *binding* opinion on a matter relating to the agreement, for example:

- a. interpretation of unclear provisions;
- b. additions or changes to provisions that relate to the emergence of new circumstances;
- c. and others regarding the specific legal relationship of an agreement.

Forms of Alternative Dispute Resolution (ADR).

- a) Through negotiation, the disputants can reach an agreement without needing a mediator. The conflict resolution process, which is informal and features little discussion of non-judicial issues, is entirely at the parties' disposal.; The parties fully manage the dispute resolution process, which is informal and in which few topics other than law are discussed. In reality, negotiations are held for two (2) reasons: (1) to discover something new that cannot be done alone, such as in a sale and purchase transaction where the seller and buyer must work together to determine the price, in which case there is no dispute; and (2) to resolve disagreements or disputes that may arise between the parties. Thus, in negotiation, dispute resolution is done by the disputing parties, without involving a third party as an intermediary.
- b) Mediation is a process for resolving disputes that requires the assistance of a fair third party who helps the disputing parties to reach an agreement (solution) .

Rochani Urip Salami and Rahadi Wasi Bintoro explained, that the mediation process was conducted:

During mediation, a fair and impartial third person effectively acts as a mediator who helps the disputing parties to reach a fair and favorable agreement. The mediator only acts as a facilitator during the mediation process. The mediator may not make decisions that the parties must abide by. The mediator will help the disputing parties identify the dispute's key points and encourage communication between them and the mediation process.

- c) Conciliation is an out-of-court approach to resolving consumer disputes in which the parties individually negotiate the terms of a settlement with the assistance of BPSK who acts as a mediator to bring the parties together. With the Panel's assistance, the parties to the dispute-consumers and businesses-manage the settlement procedure independently in this dispute resolution technique. The Consumer Dispute Resolution Body works to resolve disputes between parties and explain consumer protection rules and regulations. Equal opportunity is given to consumers and businesses involved in the dispute to defend their position. The decision or agreement to resolve the dispute is left to the disputing parties, and the Tribunal only plays a passive conciliatory role in the dispute resolution process. The willingness of the parties will determine the outcome.
- d) Consulting is a "personal" interaction between the client and the consultant, where the consultant offers advice based on the client's needs.
- e) Expert opinion for a technical matter in accordance with their field of expertise.

Each alternative dispute resolution (ADR) technique has advantages and disadvantages, depending on which technique is chosen or deemed relevant to the nature and scope of the parties' dispute.

The development of APS/ADR arrangements in the Indonesian legal system:

- a. Government Regulation No. 54 of 2000 on service providers for out-of-court environmental matters,
- b. Law No. 30 of 1999 on arbitration and alternative dispute resolution,
- c. Perma No. 1 of 2008, which replaces Perma No. 2 of 2003 on court mediation procedures;
- d. Perma No. 1 Year 2016, which amends Perma No. 1 Year 2008 that regulates mediation procedures in court.

Disputants choose ADR to resolve their differences through litigation (court procedures) rather than participating in a dispute resolution process. The disputants recognize that commercial conflicts should be resolved in accordance with the business paradigm.

The following are some of the reasons why Indonesia is starting to pay more attention to alternative dispute resolution:

- 1. Economic considerations. Alternative dispute resolution can be a more cost- and time-effective method.
- 2. Regarding scope, alternative conflict resolution can address a more detailed, complete and flexible agenda of issues.
- 3. Positive relationship building component, an alternative dispute resolution method that strongly emphasizes positive human relationships as a means of resolution.

There are winners and losers in litigation or court dispute resolution, but the primary goal of alternative dispute resolution (ADR) is to provide win-win solutions, not win-win. Win-win means that all parties are satisfied, and the participants in the dispute remain on good terms.

Legitimacy at OJK

The question arises whether ADR then has a strong position in OJK. Based on the discussion, ADR has a fairly good position in the OJK. To understand this, we can look at OJK Regulation number Financial Services Authority (OJK) Regulation Number 61/POJK.07/2020, or abbreviated as POJK 61/2020, is a regulation issued by OJK to regulate the Implementation of Dispute Resolution in the Financial Services Sector.

POJK 61/2020 aims to create a clear and effective framework for resolving disputes related to financial services. This regulation applies to parties involved in disputes in the financial services sector, including consumers, financial companies, financial services institutions, and dispute resolution institutions.

Some important points in POJK 61/2020 are as follows:

Scope:

POJK 61/2020 regulates dispute resolution in the financial services sector, including disputes between consumers and financial companies, financial companies, and financial companies and financial services institutions.

Principles of Dispute Resolution:

This regulation sets out the principles to be followed in dispute resolution in the financial services sector, such as speed, fairness, openness, simplicity, and legal certainty.

Dispute Resolution Institutions:

POJK 61/2020 sets out the requirements and procedures for establishing, managing, and operating dispute resolution institutions in the financial services sector. This dispute resolution institution is tasked with facilitating dispute resolution in a neutral, fair and effective manner.

Mediation and Arbitration:

This regulation encourages using mediation and arbitration as dispute resolution methods in the financial services sector. Mediation is a dispute resolution effort involving a neutral third party, while arbitration is a dispute resolution process before an independent arbitrator.

Dispute Resolution with OJK:

POJK 61/2020 also regulates dispute resolution procedures involving OJK as the authorized party. This includes procedures for filing complaints, investigations, mediations and other settlement processes involving OJK.

OJK Regulation Number 61/POJK.07/2020 is an important regulation governing dispute resolution in the financial services sector in Indonesia. With this regulation, dispute resolution in the financial services sector is expected to be carried out effectively, fairly and transparently, and provide legal certainty for all parties involved.

The regulation of Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution (APS) in the Indonesian legal system has experienced important developments. Several regulations and laws have been issued to regulate various forms of ADR/APS.

This regulation emphasizes the importance of ADR/APS in the out-of-court settlement of environmental disputes. This regulation provides a legal basis for parties involved in environmental disputes to use ADR/APS methods, such as mediation or conciliation, to reach a fair and effective settlement.

Law No. 30 Year 1999 on arbitration and alternative dispute resolution:

The Act is an important legal foundation for ADR/APS in general. It provides more comprehensive regulation of arbitration and other forms of ADR/APS, such as negotiation, mediation, conciliation, and expert judgment. It regulates the requirements, procedures, and implementation of ADR/APS and gives legal force to the outcomes achieved through these mechanisms.

Perma No. 1 Year 2016:

This regulation is a revision of Perma No. 1 Year 2008 which regulates mediation procedures in court. This regulation aims to improve and enhance the implementation of mediation in the courts. This revision regulates the stages of mediation, the role of the mediator, the obligations of mediation participants, and the procedures for resolving disputes through mediation in court.

With the development of regulations as mentioned above, ADR/APS has become an important part of the Indonesian legal system. These arrangements provide a strong legal basis for using ADR/APS in dispute resolution in various fields, including credit agreement issues involving mortgages at banks. ADR/APS offers a faster, more flexible and affordable alternative to litigation or court proceedings, thus providing an efficient and effective solution for the parties involved. Disputants choose ADR to resolve their differences through litigation (court procedures) rather than participating in the dispute resolution process. The disputants recognize that commercial conflicts should be resolved in accordance with the business paradigm.

The following are some of the reasons why Indonesia is starting to pay more attention to alternative dispute resolution:

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There are winners and losers in litigation or court dispute resolution, but the primary goal of alternative dispute resolution (ADR) is to provide win-win solutions, not win-win. Win-win means that all parties are satisfied, and the participants in the dispute remain on good terms.

Alternative Dispute Resolution of Credit Agreements in the Banking Sector.

Banks may take several actions against non-performing debtors to improve credit quality and operational performance. These actions are based on the results of the bank's investigation which show that the debtor still has prospects for the commercial business it is running and can fulfill its financial commitments.

a. Bank Loan Rescue

Banks can rescue loans in the following ways:

- 1) *Rescheduling*, which is a change in credit terms that only affects the term and/or payment schedule,
- 2) *Reconditioning* is a change in part or all of the credit terms, including but not limited to changes in the maximum credit balance, payment schedule, time period, and/or other restrictions.
- 3) *Restructuring*, also known as changing the terms of the credit agreement, includes additional bank funds, changing all or only part of the loan principal into new loan principal, changing all or only part of the loan principal into company shares, and the possibility of rescheduling the credit period.

One alternative is to impose a mortgage right at the beginning of the credit agreement. This mortgage right is based on Law No. 4 of 1996 concerning Mortgage Rights. A mortgage can encumber a plot of land, building and other assets. The purpose of this encumbrance is to provide security to the creditor and to show the debtor's good faith. The basic articles that are worth noting are.

A power of attorney imposing a mortgage (SKMHT) cannot impose another power of attorney in addition to the mortgage, according to Section 15(1) of the UUHT. In this situation, any additional action that does not comply with Section 15 Paragraph 1 UUHT requirements will be considered unlawful and may result in criminal penalties.

The SKMHT contract also requires important additional explanations. Clarity regarding the pledged goods and the value of those goods is one such explanation. In this regard, it is very important to have a clear understanding as failure to do so may result in future disputes which must be avoided.

Therefore, the parties to the SKMHT must adhere to the guidelines set out in Article 15 of the UUHT and include all important reasons in the SKMHT contract, including a description of the collateral object and its value. By doing this, the parties hope to resolve their differences in the future amicably.

For information, SKMHT was raised as part of a temporary solution because APHT could not be used. However, Article 17 stipulates that SKMHT is mandatory and legal to be converted into APHT. This is to help provide legal certainty for creditors .

Settlement of Non-Performing Loans:

If the bank's efforts to stabilize the credit market fail, the bank may take additional action by conducting a bad debt write-off program. Bad debt write-off can be done in two steps, such as:

- a. Write-off, or also known as conditional write-off, and
- b. Write-off, also known as absolute write-off.

Banks are trying to continue to collect debtors while removing bad loan portfolios from their books. In the meantime, banks can no longer collect receivables from program participants. If the depreciation and write-off program cannot settle the loan payments made to the debtor, the bank may collect the irrecoverable debt in court (litigation) or out of court (non-litigation).

In order to improve the soundness of banks, write-offs and charge-offs are used to lower the non-performing loan (NPL) ratio. This justification leads us to conclude that reducing principal arrears through write-off programs and recovering non-performing loans through loan restructuring programs (rescheduling, re-planning, and re-structuring) are complementary strategies. Subprime loan portfolios may be included in write-off and write-off programs if loan restructuring efforts are unsuccessful.

Alternative Dispute Resolution:

Article 1 point 10 of Law No. 30 Year 1999 defines "Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, mediation, conciliation, or expert judgment".

Alternative dispute resolution (ADR) is an out-of-court method of conflict resolution; it is entirely up to the parties to decide how it will be implemented. It expresses the full intent of the parties. The ability to choose between resolving disputes out of court and through the courts, depending on the type of resolution.

Alternative Dispute Resolution (ADR), an out-of-court dispute resolution, is increasingly popular today. Out-of-court dispute resolution is only used here to refer to alternative dispute resolution processes.

The public's dissatisfaction with the judiciary underscores the importance of using alternative dispute resolution (ADR) to resolve disputes. Alternative Dispute Resolution (ADR) is a method of resolving conflicts without going to court that is seen as a more efficient, fast, cost-effective, and *win-win* option.

Alternatives to litigation and adjudication are common definitions for alternative dispute resolution (ADR). Choosing between these two definitions has various consequences. All out-of-court dispute resolution procedures, including arbitration, fall under the ADR umbrella if the first definition (Alternative to Litigation) is used as a guide. As an alternative to adjudication, ADR refers to dispute resolution processes that are consensual or collaborative in nature such as negotiation, mediation, and conciliation...

This statement allows the author to conclude that alternative dispute resolution is an out-of-court dispute resolution mechanism in which the parties choose the settlement method, such as consultation, negotiation, mediation, mediation, consultation of experts, etc. The free will of the parties is evident in their activities. This possibility of choosing a settlement distinguishes out-of-court dispute resolution from dispute resolution by the courts.

The following guidelines generally apply to alternative conflict resolution:

The parties' desire to decide how the conflict they face will be resolved is known as the "principle of good faith" in this regard.

b. There is a written agreement setting out the dispute resolution process, which is the basis of the contract, The parties are obliged to abide by the terms of the agreement, known as the binding principle.

d. The concept of freedom of contract states that parties are free to determine what they want to regulate in an agreement as long as it does not violate decency and the law. This also includes determining the place and manner of dispute resolution.

e. The principle of confidentiality means that others cannot witness the dispute settlement because only the parties to the dispute can attend the examination of a dispute.

Conclusion:

The industry at risk is banking. As a result, the banking industry is highly regulated. A country's economy can be paralyzed if its financial system collapses. In many cases, the health of the banks in the system causes the collapse of the banking system.

The level of credit risk that is high enough to disrupt the general health level of the bank is one factor that contributes to the bank's unhealthiness. Non-performing loans (NPLs) are one of the factors that can cause banks to experience problems. If the NPL ratio is high, a sizable provision for loan losses will be required. A large provision can reduce the bank's losses or profits. The bank's capital will eventually be impaired, which, if not corrected, will impair its soundness...

Given their impact, non-performing loans need to be managed and repaired as soon as possible. In reality, banks in Indonesia generally resort to restructuring and litigation/execution through the courts. The application of alternative non-performing loan *resolution*, such as through the *Alternative Dispute Resolution* (ADR) approach with arbitration as one of its mechanisms, must be explored further to deepen our understanding of non-performing loan dispute resolution.

By using hak tanggungan, these problems can be avoided in various ways. Since Indonesian law regulates Hak Tanggungan, a more reasonable settlement can be made. When disputes or legal problems occur, they can be resolved more practically and easily by using Hak Tanggungan. A clear explanation of the collateral, or types of solutions, that can be used to overcome the problem has been done as a result of this research.

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External links:

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