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Implementation of Credit Restructuring on Agreements Based on the Principles of Contract Law

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Abstract: This study aims to analyze the implementation of credit restructuring based on the principles of contract law in Indonesia, particularly in the context of economic instability that affects the ability of debtors to fulfill their obligations. Through a doctrinal and normative legal approach, this study examines the restructuring policies implemented by financial institutions by reviewing relevant regulations, legal principles, and their practical implementation. This study finds that although credit restructuring is clearly regulated in regulations such as the "Otoritas Jasa Keuangan" (OJK) Regulation, there are challenges in its implementation related to the principles of freedom of contract, equilibrium, and morality, especially when creditors refuse to grant restructuring even though debtors meet the criteria. This study suggests the need for more equitable and flexible policies, as well as improved understanding among debtors of their rights and obligations under credit agreements. The findings of this study are expected to contribute to the development of more efficient and fair credit restructuring policies for both parties, as well as maintaining the stability of the banking sector in Indonesia.

Keywords: Credit Restructuring, Principles of Contract Law, Civil Law, POJK, Economic Uncertainty

INTRODUCTION

Legal developments in Indonesia show significant dynamics in line with the social and economic conditions of society. Economic instability has directly impacted corporate revenues, reduced consumer spending, and increased layoffs. This situation has left many individuals, particularly borrowers with credit agreements with financial institutions, struggling to meet their obligations. Wage cuts, reduced income, and job losses have left borrowers unable to fulfill their credit repayment obligations. In such circumstances, creditors have the option to provide relief in the form of loan restructuring, as regulated by applicable laws and regulations. However, its implementation is not solely related to economic aspects but is also closely tied to the principles of contract law in the Civil Code (KUHPer). Article 1313 of the Civil Code (KUHPer) defines an agreement as a legal act by which one or more parties bind themselves to another, while Article 1338(1) of the KUHPer states that all agreements are binding as law upon the parties who enter into them. On the other hand, Several legal experts, including Subekti, have criticized the definition in Article 1313 as being too narrow and incomplete and emphasized the importance of understanding that a contract is an event that gives rise to an

obligation between the parties. Therefore, credit restructuring cannot be separated from the study of the legal principles of contracts, as this determines the creation of a balanced and fair legal relationship between the creditor and the debtor.

A more specific issue arises when the creditor refuses to grant restructuring despite the debtor meeting the criteria set forth in the "Otoritas Jasa Keuangan" Regulation (POJK) No. 40/POJK.03/2019 on the Assessment of the Quality of Assets of Commercial Banks. Article 1(25) of this POJK defines credit restructuring as an improvement effort undertaken by a bank toward a debtor facing difficulties in fulfilling their obligations, while Article 53 sets the criteria, namely a debtor experiencing difficulties in paying principal or interest and still having good business prospects. Restructuring may take the form of interest rate reductions, extended repayment periods, reductions in principal or interest arrears, additional credit facilities, or conversion of credit into temporary equity participation. However, in practice, there are cases where borrowers do not receive restructuring despite meeting the criteria. This raises questions about the extent to which the principles of contractual freedom, balance, and morality are considered by creditors in making decisions. This situation highlights the existence of issues that require further study, particularly regarding the implementation of credit restructuring from a contractual law perspective, to achieve justice and legal certainty benefiting both parties.

Previous studies have extensively examined credit restructuring from both legal and economic perspectives. It has been recognized as a practical solution to help debtors continue their payment obligations without closing access to business development (Redha Maulana et al., 2022; Talita Fildzah Nadilah, 2021). The principle of contractual freedom as the foundation of agreements in restructuring (Putra et al., 2023; Utama & Bangun, 2023), while issues of imbalance between the rights and obligations of creditors and debtors when debtors are in default (Firdaus, 2023; Ramadhita & Hasibuan, 2023). The importance of the principle of proportionality in protecting the interests of both parties disputes (Pradigda Al-Qarano, 2021; Prihatin et al., 2023), while emphasizing the need for legal certainty to prevent future disputes (Hardiati et al., 2021). The debtor's lack of understanding of the credit agreement often poses a barrier to the implementation of restructuring (Dakum et al., 2020). From an economic perspective, previous research shows that credit restructuring provides banks with an opportunity to reduce potential losses while also giving debtors room for financial improvement (Maulana et al., 2021; Ramadhan et al., 2024). The need for consistency in the application of legal principles to prevent disputes (Disemadi, 2022), while the importance of the principle of prudence in credit restructuring (Gultom & Reresi, 2020; Savitri, 2024). Although these studies are relevant, there is still a gap in the form of a lack of comprehensive studies examining the implementation of credit restructuring by linking normative aspects of legal principles of agreements and empirical conditions of an unstable economy.

This research addresses that gap by focusing on the application of contractual principles in credit restructuring. The urgency of this study lies in the need to provide legal certainty and justice in creditor-debtor relationships, especially during times of economic turmoil that increase the risk of default. With credit restructuring, creditors can maintain asset quality and reduce the risk of loss, while debtors have the opportunity to improve their financial condition. This study aims to analyze the implementation of credit restructuring from the perspective of the principles of contract law, such as the principle of freedom of contract, the principle of balance, the principle of legal certainty, the principle of justice, and the principle of morality. The results of this study are expected to provide practical benefits for financial institutions in formulating fair restructuring policies, theoretical benefits for the development of contract law, and social benefits for the protection of debtors from being disadvantaged by unbalanced policies. It is hoped that credit restructuring will not only serve as a technical tool for resolving debt issues but also as a means to build healthy, fair, and sustainable legal relationships between creditors and debtors. Thus, this research can make a meaningful contribution to the

development of contract law in Indonesia while strengthening social and economic stability amid global challenges.

METHOD

This study employs a doctrinal (normative) legal research approach, which focuses on the study of legal norms contained in legislation (Efendi & Ibrahim, 2016; Muhaimin, 2020). This method aims to understand the legal basis, principles, and foundations contained in applicable regulations, as well as their application in the issues under study. This research begins with a literature review (library research), which involves collecting data from various sources such as legislation, legal textbooks, scientific journals, and relevant theses and dissertations. These sources will be analyzed to analyze legal theories underpinning credit restructuring and loan agreements, with selective literature selection to ensure the accuracy and relevance of the information. This research will examine legislation from a vertical hierarchy perspective, mapping the relationship between higher and lower regulations and assessing the consistency between laws, government regulations, "Otoritas Jasa Keuangan" (OJK) regulations, and Bank Indonesia (BI) regulations governing credit restructuring. This approach aims to ensure that existing legal norms complement each other and form a cohesive legal system. In addition, this study will use a regulatory harmony approach to examine the relationship between regulations at the same level, such as banking law, civil law, and consumer protection regulations, to see if there are any inconsistencies that could hinder the implementation of fair credit restructuring.

This study will also analyze legal norms and fundamental principles of contract law, such as the principle of freedom of contract, the principle of balance, the principle of legal certainty, and the principle of justice. These principles will be tested to determine how they are applied in credit restructuring and whether the process meets the principle of justice for both parties, both debtors and creditors. To explore the application of credit restructuring in banking practice, this research will also involve a critical analysis of the implementation of credit restructuring policies, focusing on the extent to which these policies create a balance between the rights of creditors and fair opportunities for debtors. An interpretative approach will be used to understand how existing regulations should be adapted to evolving socio-economic conditions, particularly in unstable economic situations that affect debtors' ability to fulfill their obligations. Additionally, this study will compare the legal systems in Indonesia with those of other countries facing similar challenges in credit agreements and credit restructuring. This approach aims to identify best practices that can be applied in Indonesia.

RESULTS AND DISCUSSION

Implementation of Credit Restructuring in Banking Practice

The implementation of credit restructuring by banks in Indonesia, particularly in the context of the impact of the COVID-19 pandemic, has become an essential policy to maintain the stability of the banking sector while helping debtors experiencing financial difficulties. According to research conducted by Sakinah and Suherman, there are policies published by the "Otoritas Jasa Keuangan" (OJK) that regulate credit restructuring through OJK Regulations No. 11/POJK.03/2020 and 14/POJK.05/2020 (Sakinah & Suherman, 2021). These policies are designed to protect borrowers, particularly those directly affected by the pandemic, through loan repayment relief and adjustments to credit terms. A case study on the performance of Bank Rakyat Indonesia (BRI) shows that this institution has implemented a credit restructuring process, including rescheduling payments, which is important to prevent asset seizures that could be detrimental to both parties (Gita Oktafia et al., 2023).

During the restructuring process, banks faced various challenges, particularly related to managing borrowers who were difficult to collaborate with. Previous research identified that in the context of Islamic Rural Banks (BPRS), although the restructuring was carried out in accordance with government regulations, banks faced significant obstacles in dealing with

customers (Sa'adah et al., 2022). These include borrowers' reluctance to accept restructuring offers and increased credit risk leading to higher Non-Performing Loans (NPLs) (Ikhwan, 2022). On one hand, evaluations of the effectiveness of credit restructuring indicate that the policy serves as an economic recovery measure for SMEs; however, challenges in determining which borrowers are fairly impacted further complicate implementation. Effective measures taken by banks, such as enhanced monitoring of loan quality, appear to be crucial in addressing existing challenges (Yustisia Utami & Yustiawan, 2021).

Analysis of Legal Principles in Credit Restructuring

Credit restructuring within contract law requires the application of fundamental legal principles to ensure that each party obtains benefits commensurate with their rights and obligations. In applying the principle of freedom of contract, the parties involved, namely the creditor and debtor, should be granted the freedom to renegotiate existing contractual terms. This process reflects the freedom of each party to determine the terms and conditions deemed appropriate for the conditions they face. For example, in the "Otoritas Jasa Keuangan" (OJK) policy through POJK 11/2020 and POJK 14/2020, the provision of flexibility to debtors in choosing the form of restructuring, such as interest rate reductions, extension of the repayment period, and principal debt reduction, demonstrates the application of the principle of freedom of contract in the midst of a crisis such as the COVID-19 pandemic (Sakinah & Suherman, 2021; Tjoanda et al., 2021). However, these regulations must also be understood within the context of the principle of balance, where the relationship between creditors and debtors in the restructuring process must be directed to avoid excessive inequality. In this regard, it is important for creditors not to hold all decision-making authority, but also to give debtors room to actively participate in planning mutually beneficial solutions (Sakinah & Suherman, 2021).

The principle of legal certainty is also an important element in credit restructuring regulations. In every agreement, the parties must have a clear understanding of their rights and obligations after the restructuring is carried out, so that the provisions in the agreement are not ambiguous and can be used as a reference for resolving disputes that may arise in the future (Karunia Fitriadi & Khalimi, 2022). This legal certainty is reinforced by regulations issued by the OJK, which serve to protect both parties while maintaining economic stability (Tjoanda et al., 2021). In addition, fulfilling the principle of fairness in restructuring decisions is crucial, as fair decision-making will ensure that no party is significantly disadvantaged. Research indicates that the logic underlying restructuring decisions must consider a fair ratio between the debtor's ability to pay and the obligations they bear, ensuring that every decision reflects the principle of substantive justice (Prihatin et al., 2023).

Legal Dynamics of Credit Agreements Under Economic Fluctuations

The dynamics of the relationship between creditors and debtors are significantly influenced by economic fluctuations. These fluctuations can include various aspects, including inflation, exchange rates, and changes in general monetary conditions, all of which have a direct impact on the debtor's ability to meet their obligations (Almaya et al., 2021). A decline in the debtor's income as a result of an unstable economic situation often leads to problems in loan repayment, potentially causing default, where the debtor is no longer able to fulfill their financial obligations in accordance with the previously agreed terms (Karunia Fitriadi & Khalimi, 2022). In many cases, this triggers legal challenges such as the enforcement of creditors' rights, and the need for legal protection of both parties to establish a fair balance in debt resolution (Sako et al., 2024). A study conducted by Muzzaki et al. emphasizes that fair legal procedures are essential in supporting debtors under economic pressure, while still respecting the rights of creditors to obtain legitimate payments (Ilham Muzzaki & Aris Machmud, 2023).

Changes in economic conditions often result in changes to the terms of credit agreements. When the economy declines, many debtors struggle to meet their payment obligations, which can lead to renegotiation of agreements. On the other hand, creditors seeking to protect their investments may seek to enforce their rights more strictly, potentially exacerbating tensions between the two parties (Siregar & Mekka Putra, 2022). Legal protection for creditors in the face of debtor default also requires attention, as uncertainty in debt repayment can affect the financial stability of creditors, especially for smaller financial institutions (Mustafa et al., 2023). Thus, the role of law in creating a balance between the rights of distressed debtors and the rights of creditors to obtain payment is crucial to maintaining the integrity of the banking system and healthy financial relations amid ongoing economic uncertainty (Gede Nira Wicitra Yudha et al., 2022).

Eligibility Criteria for Debtors in Credit Restructuring

In analyzing the criteria for debtors eligible for credit restructuring, it is important to first understand the provisions set forth in "Peraturan Otoritas Jasa Keuangan" (POJK) No. 40/POJK.03/2019. The POJK establishes several criteria that must be met by borrowers to qualify for credit restructuring, including evidence of payment difficulties caused by external conditions, such as a pandemic or natural disaster, and the submission of an application accompanied by valid supporting documents. Additionally, the borrower must demonstrate good faith in previous payments and have a clear request for restructuring for the future. Research indicates that the implementation of credit restructuring is crucial in supporting economic recovery, particularly for the small and medium-sized enterprise (SME) sector affected by the pandemic (Sa'adah et al., 2022; Satradinata & Muljono, 2020).

Despite meeting these criteria, there are also studies showing that not all eligible debtors receive restructuring. This is due to internal considerations by creditors that may not be apparent from the existing criteria. For example, field analysis shows that there are factors related to the internal policies of each financial institution that influence restructuring decisions, such as the risks faced by banks and perceptions of debtors' ability to meet their obligations in the future (Diana & R. Shauki, 2023; Sakinah & Suherman, 2021). Another reason put forward by banks is the lack of cooperation from debtors in providing the information needed to accurately assess their financial situation, which could potentially cause uncertainty in the evaluation process (Yudha et al., 2024).

Thus, an in-depth analysis of the criteria for debtors eligible for restructuring and the reasons behind the rejection can provide valuable insights into the comprehensive application of the law in the context of credit restructuring. While the criteria are intended to protect debtors who are genuinely experiencing difficulties, it is also important to consider the policy aspects and decisions made by creditors, given their position in maintaining the liquidity and operational sustainability of the bank itself (Hutauruk et al., 2022).

Analysis of Weaknesses and Shortcomings in the Credit Restructuring Process

Credit restructuring is a very important aspect of the banking sector, where there are many obstacles in its implementation that often lead to weaknesses. One of the main weaknesses in the implementation of credit restructuring is economic uncertainty, which has a major influence on restructuring decisions. Economic crises, such as those seen during the COVID-19 pandemic, have forced many borrowers to request credit restructuring, but on the other hand, banks have often become more stringent in granting new loans. This is exacerbated by increased credit risk in financial institutions, which can cause banks to disregard the principles of obligations and rights in the relationship between debtors and creditors. Research by Bilgin et al. shows that when economic uncertainty increases, credit growth tends to decline significantly, especially in conventional banks that lack the same flexibility as Islamic banks in dealing with uncertainty (Bilgin et al., 2020).

Additionally, imbalances between the rights and obligations of debtors and creditors can also arise from a lack of understanding and clarity in the restructuring process itself. In many cases, debtors feel pressured to agree to new terms offered by banks without understanding their long-term implications, as revealed in research conducted by Indramawan on credit risk in restructuring in Indonesia (Indramawan, 2021). This study highlights how a lack of understanding can lead debtors to face further difficulties after restructuring, and their rights are sometimes overlooked in banks' efforts to protect their loan portfolios. Furthermore, ongoing uncertainty in economic policies can cause turbulence in restructuring plans, where companies that need to restructure their loans face difficulties in predicting the long-term outcomes of such decisions, leading to a lack of trust among stakeholders (Saputra & Hendri, 2024).

The Importance of Moral Principles in Credit Restructuring

Credit restructuring is an important instrument in the financial system, especially in overcoming liquidity problems experienced by debtors affected by crises, as seen during the COVID-19 pandemic. In this context, moral principles play a very significant role. This approach is not only about compliance with legal procedures but also about fairness and empathy toward the situation faced by borrowers. The implementation of moral principles in credit restructuring policies is crucial to ensure that the process is not evaluated solely from an economic perspective but also considers the social impacts of such policies. According to Sakinah and Suherman, the restructuring policy issued by the “Otoritas Jasa Keuangan” (OJK) has prioritized a more humane approach by considering the conditions faced by debtors, thereby providing opportunities for debtors to continue their businesses and preventing further losses for financial institutions and the general public (Sakinah & Suherman, 2021).

Legal Certainty in the Implementation of Credit Restructuring

Legal certainty in the implementation of credit restructuring is a crucial aspect that influences the interaction between creditors and debtors, as well as its impact on overall banking performance. Various regulations have been issued by the “Otoritas Jasa Keuangan” (OJK) to establish a clear legal framework, such as OJK Regulation Number 11/POJK.03/2020 and Number 14/POJK.05/2020, which provide stimulus in the context of national economic recovery due to the impact of the COVID-19 pandemic (Sakinah & Suherman, 2021). These regulations create a framework that distinguishes between banks and non-bank institutions and define the procedures and requirements for implementing credit restructuring. This is important so that debtors who are forced to apply for restructuring can do so with certainty regarding their rights and obligations, as well as adequate legal protection. The restructuring mechanism requires banks to implement strict risk management, including borrower assessment and capital reserves to anticipate potential credit quality deterioration (Abubakar & Handayani, 2021). The uncertainty that may arise from the implementation of this policy may encourage banks to be more cautious and conservative, which could ultimately limit borrowers' access to more flexible restructuring.

The impact of legal uncertainty on debtors seeking restructuring is often seen in their difficulty in understanding the applicable terms and conditions, which can influence their decision to apply for restructuring. Legal uncertainty can worsen the financial situation of debtors who are already in difficulty, where the potential for survival is lower if they do not receive appropriate support from creditors (Karim, 2021). On the other hand, legal protections enshrined in various regulations aim to create a balance between the interests of debtors and creditors. For example, restructuring policies not only offer interest rate reductions and extended repayment periods but also strive to ensure that creditors manage the risks associated with restructured loans more effectively (Rimbawan, 2022). Therefore, it is important to reiterate that synergy between legal certainty in existing regulations and clear understanding by

all parties will strengthen the implementation of credit restructuring and support banking sector stability during these difficult times (Alfonso, 2023; Kholiq & Rahmawati, 2020).

Research Implications

This study makes an important contribution to understanding the application of credit restructuring in the Indonesian legal agreement system, particularly in the context of economic crises and pandemics. The implication of this study is the importance of a deep understanding of the legal principles of agreements in decision-making related to credit restructuring, which will create a more balanced relationship between creditors and debtors. Additionally, the findings of this study are expected to provide guidance for financial institutions and regulators in formulating fairer, more transparent, and efficient policies for implementing credit restructuring, especially in addressing economic and social uncertainties. Proper restructuring practices can accelerate economic recovery, particularly for the SME sector that has been affected, and maintain the stability of the banking sector in Indonesia.

Research Limitations

This study has several limitations, particularly in terms of the scope of data used. This study only covers an analysis of credit restructuring practices carried out by certain financial institutions in Indonesia, so the results of the study may not fully represent the entire banking sector or other financial institutions. In addition, data limitations are also related to variables that can influence restructuring decisions, such as macroeconomic conditions, government policies, and debtors' responses to restructuring. This study also does not discuss in depth the psychological aspects or behavior of debtors in accepting restructuring offers, which can be an important factor in the success or failure of credit restructuring.

CONCLUSION

The conclusion of this study is that the implementation of credit restructuring in Indonesia, despite being regulated by various regulations, still faces major challenges in maintaining a balance between the rights and obligations of creditors and debtors, especially in an unstable economic situation. This study highlights the need to apply legal principles of contract such as freedom of contract, balance, legal certainty, and fairness in credit restructuring to achieve fair and mutually beneficial results. Recommendations include the need to enhance awareness and understanding of credit restructuring policies among debtors, as well as stricter oversight of the application of legal principles in restructuring policies. Additionally, more flexible policies are required to respond to rapid changes in economic conditions.

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