

Debtor's Efforts for Creditor Defaults in Money Lending Agreements

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ABSTRACT: *The debtor's efforts against the creditor's default in the loan agreement is the main point in the writing of this law. The purpose of the legal research is to find out the debtor's efforts to default on the creditor in the loan agreement and to find out the legal consequences of the creditor default in the loan agreement. The research method used in writing this law is normative legal research using qualitative analysis. An agreement that was born because of a mutual agreement lays down the rights and obligations between the parties and binds them to carry out the agreement. The parties have the same obligations and the same rights. A debtor has the right to get achievements and so does a creditor have the right to get achievements. However, the fact is that creditors often do not fulfil their obligations to excel but instead accuse the debtor of neglecting to excel. In addition, the provisions of creditor default and cancellation of the agreement are often not included in the deed of agreement. The results of research and data analysis that 1). The debtor's effort to default on the creditor in the land loan agreement is to use the principle of exceptionnon-adimpleticontracts, namely a rebuttal which states that the debtor does not carry out the agreement properly precisely because the creditor himself does not carry out the agreement properly. 2). The legal consequence of a loan agreement with a land certificate as collateral for a creditor default is that it can be cancelled where the cancellation must be requested by the court.*

KEYWORDS -Debtor Effort, Agreement, Default.

I. INTRODUCTION

One of the human activities as legal subjects is to build legal relations between each other for the purpose of civil activities made in the form of an agreement. The agreement can appear either in the form of a business agreement or a loan agreement, both guaranteed and unsecured, either by private deed or by a notarial deed. The agreement will give rise to an engagement, namely the rights and obligations that lie with the parties.

In the loan agreement, there are two parties who make the agreement, namely the party who gives the loan and the party who receives the loan. The term that is often used in the agreement, for the party providing the loan is the party who is owed or creditor while the party receiving the loan is called the debtor or debtor. (Gatot Supramono, 2013)

A legal relationship between debtors and creditors is an engagement relationship, so when both parties enter into an agreement with agreement, rights and obligations will arise. It is an undeniable legal fact that in the implementation of the agreement, creditors often do not carry out the agreed agreement or commit acts of default. Default is an event or condition, in which one of the parties does not fulfil the obligations of the engagement performance properly. One form of default is making a promise but not according to the agreement, meaning that one of the parties carries out the obligations but does not comply with the agreement contained in the agreement.

In the case of the agreement document (individual agreement) that the writer examines between the debtor and creditor, an agreement was born, namely, the debtor who requires an amount of Rp. 10,000,000,000 (ten billion rupiah) for the debtor's business capital. The creditors agreed to the funds and were willing to provide a loan of money with a land certificate as collateral in the amount of Rp. 10,000,000,000 (ten billion rupiah). The agreement has been contained in the agreement with the notary deed. As a sign of the seriousness of the debtor, the debtor is willing to provide a land certificate guarantee to the creditor. Against this guarantee, the debtor provides a Power of Attorney to impose a Mortgage issued by a Notary. In the implementation of the agreement, it turns out that the creditor does not carry out the agreement in full and only provides 50% of the loan value agreed in the agreement. The creditor's actions can be categorized as a form of default in which the creditor makes a promise but does not comply with the agreement in the agreement. Creditors actually force the debtor to excel by paying interest.

Article 1266 of the Civil Code is an article (Kitab Undang-Undang Privat law) that should be used by the debtor as an effort to cancel the agreement if the creditor does not carry out the agreement. In Article 1266 of the Civil Code, it is stated that:

"The terms of cancellation are considered to be always included in a mutual agreement if one of the parties does not fulfil its obligations. In such case, the agreement is not null and void, but the cancellation must be requested to the Court."

The fact that happened that Often in the loan agreement between creditors and debtors, the condition for cancelling the agreement is not stated as an effort by the debtor to fend off the creditor's actions, especially if a creditor does not fulfil his obligations (commits default) to achieve first before demanding the debtor to excel.

The agreement that was born due to a mutual agreement lays down the rights and obligations between the parties and binds them to carry out the agreement. The parties have the same obligations and the same rights. A debtor has the right to get achievements and so does a creditor have the right to get achievements. But the fact is that creditors often do not fulfil their obligations to excel but instead demand debtors to excel. In addition, the provisions of creditor default and cancellation of the agreement are not included in the deed of agreement, so the debtor needs to make efforts to ward off the debtor's actions. According to the Big Indonesian Dictionary, the effort is an effort, an effort to achieve a goal, solve a problem, find a way out and so on.

Based on the above background, the researcher is interested in writing this law with the title "Debtor's Efforts on Creditor Defaults in Money Lending Agreements".

II. RESEARCH METHODS

The approach method used in this legal research is a normative juridical approach with primary, secondary and tertiary data sources. This legal writing uses secondary data.

The approach used is a normative legal research approach that focuses on positive legal norms in the form of legislation (primary legal materials) as the main material while books, and expert opinions, (secondary legal materials) as supporting data. The data collection method is carried out by literature study in order to obtain primary legal materials, secondary legal materials and tertiary legal materials by studying various laws and regulations, books, deeds, deeds, legal articles and journals obtained and related to the object of research. The method used is descriptive qualitative with a deductive line of thinking that starts from the legal regulations and is brought into the legal facts that occur. The descriptive method is analyzing data by describing in detail and precisely a certain phenomenon related to the debtor's efforts to default on the creditor in the loan agreement. While qualitative is analyzing the exposure of research results that have been systematized by means obtained from legal theories and positive law to be able to explain legal research problems to be interpreted systematically and logically.

III. DISCUSSION

1. Debtor's Efforts on Creditor Defaults in Money Lending Agreements

The debtor's effort is an attempt to achieve a good goal to solve a problem, find a way out. as a form or process of protecting and defending the rights of the debtor, including protecting himself from the

demands of other parties, in this case the creditor. Based on this, it can be concluded that the debtor's efforts are a way or process of self-defense in which the debtor does not carry out achievements because the creditors themselves also do not carry out achievements as agreed in the agreement. Therefore, the creditor should be legally aware that for the act of breaking his promise, the right to claim compensation or interest as agreed in the agreement is nullified.

A creditor or debtor can be called committing an act of default if it fulfills several elements, including: The creditor or debtor does not do what is agreed to be done as agreed, The creditor and debtor carry out what has been agreed but not as promised in the agreement deed, Creditors and debtors do what has been promised in the agreement but one of the parties is late in carrying out the agreement, The creditor and debtor do something that is prohibited or not allowed by the agreement.

The case study of the loan agreement document between the creditor and the debtor states that the loan agreement document between the creditor and debtor is regulated by several agreements that both parties should carry out the agreement as specified in the agreement. The basic agreements in this loan agreement are that the creditor is willing to provide loans to the debtor for a maximum amount of Rp. 10,000,000,000 (ten billion rupiah), hereinafter referred to as a loan facility. The creditor is aware that the debtor hereby states that the loan facility received from the creditor will be needed for business capital financing rather than a second party. Furthermore, the debtor agrees that the loan provided by the creditor will be subject to an interest rate of .3, 25% every month. Furthermore, the loan received by the debtor provides collateral in the form of a land certificate with a mortgage certificate. The creditor has the right to terminate the loan agreement and request payment of all loan facilities immediately and at the same time in full if the debtor dies. Furthermore, if the debtor is unable to make payment of the loan and or interest either partially or completely solely by the lapse of the specified time or a violation,

The facts that occur in the agreement document (individual agreement) between the debtor and creditor as described in the points of the article above, a legal dispute arises which is very detrimental to the debtor because the creditor demands compensation and interest payments when in fact the agreement was born between the two parties. where the debtor who needs a sum of Rp. 10,000,000,000 (ten billion rupiah) for the debtor's business capital. The creditors agreed to the funds and were willing to provide a loan of money with a land certificate as collateral in the amount of Rp. 10,000,000,000 (ten billion rupiah). The agreement has been contained in the agreement with the notary deed. As a sign of the seriousness of the debtor, the debtor is willing to provide collateral for a land certificate with a building rights certificate to the creditor.

The points described above, there is not a single article that mentions the default of creditors if they do not carry out the agreement in accordance with the agreement. However, all of the articles in the agreement document between the creditor and the debtor only regulate the default of the debtor if they do not implement the agreement. If you pay attention to the point of the breach of contract, there is no one that determines the existence of a broken promise from a creditor but there all refer to provisions that only corner the debtor if he does not carry out the obligations as described in the loan agreement between the two parties. It should also be in those articles that it is necessary to specify the breach of contract of a creditor if the agreement is not carried out properly.

The actions of the creditor who do not carry out the agreement in full can be fatal to the debtor's business if the loan is not given as agreed. It could be because the creditor's actions can result in the business of the debtor will not run properly because the capital required is not in accordance with what was agreed upon.

The provisions of this creditor default need to be emphasized in the deed of agreement, with the consideration that the creditor already holds a land certificate guarantee with a mortgage certificate where the guarantee must have a value greater than the loan value. If this is not determined, the creditor will be able to act arbitrarily on the guarantee that has been given by the debtor because of his very special position.

Based on the case in the implementation of the agreement document as described above, the debtor needs to make efforts to prevent arbitrary actions from the debtor in completing the loan as agreed in the

agreement deed. The debtor does not carry out achievements such as payment of interest and fines as demanded by the creditor solely because the creditor himself does not perform. Basically, every agreement made by the parties must fulfill an obligation which reciprocally means that there is an obligation that must be realized, both the first party and the second party are obliged to give rights to achievements as contained in the deed of agreement.

The debtor's effort to default on the creditor in the loan agreement with the land certificate is to use the *Exceptio non adimpleti contractus* principle which is a principle that can be used as a basis for a debtor because he is required to pay a fine or interest or also because the debtor alleges that the debtor was negligent. in the agreement when in fact it is the creditor himself who actually commits negligent acts and breaks promises or it can also be called to commit acts of default.

This principle is connected with an affirmation of legal principles, Sudikno Mertokusumo affirms that a legal principle is not based on concrete legal regulations, but is a general basic thought or can also be called the background of the existence of concrete regulations which are then contained in the legal framework. a legal system and embodied in laws and regulations and or also in judges' decisions which are positive laws and can be found by looking for general characteristics in the concrete regulations. (Sudikno Mertokusumo, 2005)

In the dictionary of basic legal terms *Exceptio non adimpleti contractus* is referred to as a rebuttal that the opposing party is also negligent, thus cannot demand the fulfillment of achievements from a debtor. Whereas in the dictionary of Dutch-Indonesian legal terms, this principle is defined as a reciprocal refutation, then it is stated by one party or one of the parties that in fact the opposing party is also in a state of neglect so that it cannot demand fulfillment of achievements. This effort can be used as a basis for taking firm legal steps by a debtor to retaliate for the actions of the creditor who has previously committed an act of breaking a promise or default. Besides that,

Riduan Syahrani stated that the principle of *exceptio non adimpleti contractus* is a rebuttal in which the debtor cannot carry out the agreement properly or as agreed precisely because the creditor himself did not state or did not implement and could not realize the agreement based on the agreement deed as it should be.¹ Thus, the debtor cannot be held responsible for the act of default if the fact is that the creditor has previously defaulted.

According to Asser-Rutten that *exceptio non adimpleti contractus* This can be submitted because considering that in all reciprocal agreements, the parties have promised to achieve achievements which of course depend on each other. That in buying and selling either by the buyer who wants to buy a house or because the seller also makes an agreement with the sale and purchase price. The agreement on the object to be purchased certainly depends on a price that has been agreed upon or has been agreed upon. This means that an achievement to pay the price rather than buying and selling depends directly on the achievement to deliver the object to be purchased (Har Harlien Budiono, 2010)

2. Legal Consequences of Lending and Borrowing Money Agreements With Land Certificates Guaranteed for Default of Creditors

Legal consequences are all the consequences of legal actions where the act is carried out by legal subjects to legal objects or between legal subjects and other legal subjects. The existence of a legal act is an act in such a way where the consequences must be regulated by law through a collective agreement contained in the deed of agreement, whether the arrangement is carried out by one party or carried out by both parties.

Taking into account the articles that have been described in the agreement document between the creditor and the debtor, in particular the article on breach of contract and applicable law and dispute resolution, there is not a single point that determines the cancellation of the agreement if a creditor does not carry out the agreement as agreed.

¹Riduan Syahrani, 2004, *The Intricacies and Principles of Civil Law*, Alumni., Bandung, p. 242

It is the legal actions carried out by the parties that give rise to the legal relationship of the agreement, so that the parties agree that one party is given the right by the other party to obtain the achievements of the other party to be burdened with the "obligation" to fulfill the achievement. So one party gets the "right/recht" and the other party bears the "obligation/plicht" to deliver/fulfill the achievement (M. Yahya Harahap, 1986). Taking into account the provisions of Article 1267 of the Civil Code which expressly confirms that the party to which the engagement is not fulfilled, may choose to force the other party to fulfill the agreement, if it can still be done, or demand the cancellation of the agreement, with reimbursement of costs, losses and damages. Cancellation of the agreement due to an act of default, the act of default can be in the form of four types, namely the parties in the agreement do not do what they are able to do in accordance with what was agreed upon, carry out the agreement but in its implementation it is not as promised, the agreement is carried out but its implementation is late, and Doing something that is based on the agreement should not be done (Subekti, 2005).

The cancellation or cancellation of the agreement is basically a condition that results in an engagement legal relationship originating from the agreement which is considered to never exist. With the cancellation of the agreement, the existence of the agreement automatically ends or is canceled. The cancellation of an agreement or also referred to as a cancellation is basically a condition that gives rise to a legal relationship of engagement originating from the agreement is considered never existed with the cancellation of the agreement then the existence of the agreement automatically ends or is canceled.

A cancellation starts from the word cancel which means invalid, invalid, not carried out or also often referred to as postponement, unsuccessful or failed. While cancellation is a process, method, act of canceling or also often referred to as a void statement, while cancellation means being void. Therefore, the legal consequences of cancellation or cancellation that terminate or erase the existence of an agreement will always be considered retroactive at the beginning of the agreement by the parties (Muhammad Syaifuddin, 2016)

In the context of the occurrence of a creditor default, there needs to be a legal effort from a debtor to make an effort to file a default lawsuit in court, namely by asking for the cancellation of the agreement. This cancellation is the legal consequence of not implementing the agreement as agreed. Canceling an agreement must be done by filing a lawsuit to the court and not submitting an application, so that the court will issue a decision that has permanent legal force. Article 1266 and Article 1267 of the Civil Code which expressly stipulates the existence of a void condition if one of the parties does not carry out its obligations. An annulment must be requested from the judge through a process that goes on in court.

IV. CONCLUSION

The debtor's effort to deal with the creditor's default in the loan agreement is to use the *exceptio non adimpleti contractus* principle. The principle of *exceptio non adimpleti contractus* is a fundamental principle, namely a rebuttal which states that the debtor does not carry out the agreement properly because the creditor himself does not carry out the agreement properly. This effort can be used in a reciprocal agreement, which is stated by one party that the other party is also in a state of negligence and thus cannot demand fulfillment of achievements. If this defense can be proven, it can free the debtor to pay compensation or interest. *Exceptio non adimpleti contractus* can be used as a basis for retaliating against the actions of a creditor who has previously defaulted or to reduce the risk that must be borne by a party when he becomes a creditor due to another party as a debtor. Thus, *exceptio non adimpleti contractus* is an attempt by the debtor who is accused of negligence and is required to pay compensation by the creditor by proposing before a judge or in a judicial process that the creditor himself also does not keep his promise, so that he has previously committed negligence (default).

The legal consequences of a loan agreement with a land certificate as collateral for a creditor default is regulated in Article 1267 which expressly states that the party to which the engagement is not fulfilled, can choose to force the other party to fulfill the agreement, if it can still be done, or demand cancellation. agreement (agreement), with reimbursement of costs, losses and interest. Judging from article 1267 of the Civil Code, it expressly states that the terms are void if one of the parties does not fulfill their obligations. The cancellation must be requested in court.

V. SUGGESTION

For the parties, both creditors and debtors, it is recommended that they better understand their respective rights and obligations as parties bound in the agreement.

For debtors, in making an agreement in the agreement, it is obligatory to state and emphasize the principle of Exceptio non adimpleti contractus and cancellation of the agreement which is the basis for efforts for the debtor to sue the creditor's default act.

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