

# **Analysis Of Banking Law Countercyclical Policy On Economic Sustainability In Covid-19 Pandemic Outbreak**

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## **Abstract**

The COVID-19 pandemic has caused a delay in national economic development, among other factors. Covid-19's global spread has had a direct or indirect impact on debtors' ability and capability to meet their installment or financing obligations to banks, resulting in Non-Performing Loans (NPLs). The purpose of this study was to determine countercyclical banking policy on economic sustainability in the covid-19 pandemic outbreak. This research method uses the Normative Juridical Approach used in this study by analyzing the norms in the legislation to find the truth based on scientific logic from the normative side to find a coherent truth. The results of this study can also be used as an excuse for overmacht credit among credit debtors to delay debtor credit payments to banks until the economy recovers. Several government regulations have stipulated that banks must defer debtor obligations; however, the debtor is still required to make payments to the bank.

**Keywords:** COVID-19, overmacht, Non Performing Loan,

## **1. INTRODUCTION**

At the beginning of 2020, the earth was faced with the latest virus outbreak known to have originated from Wuhan China, which WHO has given the nickname Covid-19 (Liu and Saltman, 2020). Covid 19 spread rapidly throughout the world and turned into a pandemic that threatens the world community, but also threatens the world economy, including Indonesia. The progress of the spread of Covid-19 has had a direct or indirect impact on the ability and capacity of debtors to fulfill their installment or financing roles in the banking system, resulting in Non-Performing Loans (NPL) which is a condition where the debtor is unable to pay off some or all of his obligations to the bank within the specified duration (Mentari and Putri, 2020).

Since banks are part of the financial and payment systems, the public at large has an interest in the health of those systems. Public trust in banks is the most basic element of the existence of a bank so that maintaining public trust in banks is also in the interest of the community at large (Dendhana, 2013). Banks are trust institutions that are very sensitive about everything in forming that trust. In accordance with the provisions of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 Concerning Banking, which defines banking as a business entity that collects funds from the public in the form of deposits and distributes them to related parties in the form of credit and other forms of bank services to improve the standard of living of many people, the provision of credit must be anticipated by the bank that is the source of financing (Fure, 2016).

Banks play an important part in the lives of citizens as financial institutions. In the system of raising people's living standards, a bank gathers citizens' budgets in the form of funds and distributes them to residents in the form of installments and maybe other forms (Miyashita, 2000). Banks are defined as "institutions that collect budgets from citizens in the form of funds and distribute them to residents in the form of installments and or other forms in order to improve the standard of living of the people" in Article 1 value 2 of Law No. 10 of 1998, which replaces Law No. 7 of 1992 concerning Banking (Dreher et al., 2000).

From the credit provider side, the pandemic has increased non-banking and non-banking non-performing loans. Banking law and economic development because it interferes with interest income from the distribution of credit funds, both consumer credit and productive credit (Schumpeter, 2017). Then, swift action must be taken to balance banking law and economic development to prevent further negative impacts on the economic situation.

This task has become the task of the government in dealing with bad economic problems. Responding to these problems, this paper will analyze banking laws and government laws to mitigate the impact of the pandemic on the economy and debtor obligations, one of which is countercyclical policies in bridging debtors who have difficulty fulfilling their credit payments, as well as liaison banks experiencing credit problems.

Based on this problem, banks play a significant role in applying the principles of banking legal consequences to economic development in times of epidemics (Lamoreaux, 1996). Customers who have debts, most of whom are micro and small business actors (traders, MSMEs, Ojol) seem to have lost hope for the future of their business, which is unclear at least for a certain period of time. They are afraid of their ability to pay off monthly installments and the maturity of their debt repayments due to an effort to collect installments through banking services (Weber et al., 2014). The concerns of these customers are increasing along with the fear of confiscation of their collateral/debt collateral by the bank (creditor) as stated in one of the clauses of the contents of their debt agreement with the creditor. It doesn't stop there, they can be considered to have committed

an act that can be classified in legal terms as a default (act of breaking a promise). In fact, for the victims as well as the micro-enterprises, it is not uncommon for the collateral that is used as collateral to be the only valuable asset for them; house documents, land where they do business or vehicles.

Based on the problem, it is interesting to conduct a study through the formulation of problem identification as follows: (1) how the government can formulate banking laws to increase economic development in the midst of a pandemic; and (2) What banking legal instruments and policies can the government use to reduce the impact of the pandemic on the economic situation?

## **2. RESEARCH METHOD**

This research is legal research in the realm of doctrinal legal research which is recording to create the basis and teachings under positive law and as an effort to create undercover laws. This research uses a legislative approach to find the basis for the legal and ontological comparison of each part of the law. The type of information in this research is inferior information by accumulating literature on legal material. In the usual way, legal material consists of basic, inferior, and tertiary legal materials (Zakhartsev and Salnikov, 2018). For information gathering, bibliography research was carried out on basic, inferior, and tertiary legal materials. The information obtained after that was analyzed using qualitative analysis.

The use of a normative juridical approach is used in this research because it analyzes the norms in the legislation to find sources of truth based on scientific logic from the normative section to create coherent evidence (Van Hoecke, 2011). The normative judiciary was expanded into descriptive analysis research as a problem-solving procedure to describe the object of research based on the facts that exist in the facts investigated. Then, secondary data is analyzed with the support of primary legal materials to understand the object under study. Finally, qualitative data analysis was carried out, to simplify the findings without using formulas or numbers.

## **3. FINDINGS AND DISCUSSION**

### **a. Bank Credit**

Article 1 point 11 of Law No. 10 of 1998 amending Law No. 7 of 1992 concerning Banking states that installments are the provision of money or claims that can be equated with it, based on an agreement or loan agreement between a bank and another party, requiring the borrower to pay off the debt after a certain period of time by paying interest (Runtukahu, 2021).

The installment starts from the word credere which means sure. This means that the installment donor believes in the installment recipient that the installments distributed will certainly be returned according to the agreement. On the other hand, for the installment

acceptor, it means accepting trust, which in turn has a role to repay the loan in accordance with the time period. Therefore, to make sure the bank that the borrower can really be trusted, until before the installment is submitted, the bank first conducts a credit analysis(Law, 2014).

Bank As a customer trust institution that should carry out bad debts in accordance with regulations with the state of law, for example the function of a bank which is a central part in carrying out its operations properly (Mulyati, 2018). Article 3 of Law no. 7 of 1992, as amended by Law no. 10 of 1998.

Article 3	:	The main function of the Indonesian Banking is to collect and distribute public funds.
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Bank Indonesia in addition to having functions that must be carried out, banks also have a purpose in carrying out their duties and functions as an independent community institution in storing funds in the sense of Believe (Anshori, 2018). Article 4 of Law no. 10 of 1998 gave his mandate in an important edict, namely:

Article 4	:	The goal of Indonesian banking is to assist national development in terms of equity, economic development, and economic stability, as well as national stability in the direction of improving people's welfare.
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Credit contains the notion of "Degree of Risk" which is a certain level of risk, because the release of credit contains a risk, both risk for the creditor and for the credit recipient (Baker and Filbeck, 2014). The basic basis for granting credit to debtors is based on article 8 paragraph (1) and (2) Law Number 10 of 1998 concerning Banking. Basically a credit agreement is made in the form of a written agreement. Credit is the main function of the banking system, where the principle of prudence must be in place to protect banks as creditors from losses as stated in the provisions of Article 2 of Law Number 10 of 1998 on the amendment of Law Number 7 of 1992 concerning Banking (Podung, 2016).

To settle problematic installments or non-performing loans, two methods or strategies can be taken, namely securing installments and credit settlement. As stipulated in the Circular Letter of Bank Indonesia Number 26/4/BPPP, dated May 29, 1993, operationally, in terms of settlement of non-performing loans through credit rescue(Harun, 2014), banks can be carried out by:

1. Rescheduling (Rescheduling)

Changes in credit terms, on the other hand, only affect the payment schedule and the time period, including the grace period, as well as the amount of credit installments. Of course, the bank cannot offer this policy to all creditors, but only to those who demonstrate

good faith and character, as well as a willingness to pay or return credit (willingness to pay) (Littwin, 2007).

2. Reconditioning (Return Requirements)

Namely changes in part or all of the credit terms which are not limited to changes in the payment schedule, time period, interest rate, postponement of payment of part or all of the interest and other terms (Cox et al., 1980). The change in credit terms does not include additional funds or injections and conversion of part or all of the credit into company equity.

3. Restructuring (Rearrangement)

Namely changes to credit terms involving:

- 1) Addition of bank funds, or
- 2) Convert all or part of the interest arrears into a new credit principal, or
- 3) Convert all or part of the credit into bank participation or take other partners to increase participation.

**b. Systemic impact pandemic effect**

The pandemic has created a problematic public borrowing effect. To mitigate risk, banks must collect their Deposit Insurance Corporation (DPC) in and pay third-party deposits as reserve funds. The DPC's main objective is to maintain the balance of disbursement of bank assets and if the funds are insufficient, the costs incurred by the DPC will be used to cover the payment of third party deposits (Dewi, 2015).

The DPC forces the controlling shareholders of the bank, namely shareholders who have more than 20% stake in the bank, and if a non-systemic failed bank is to be rescued by the DPC, there must be an estimate of the estimated cost of securing the bank much smaller than the estimated cost does not protect the bank concerned. After the requirements are met, the GMS will grant all rights and powers to the DPC. DPC has the right to understand, manage, and take over assets owned or which are the rights and roles of the bank. The action against a failed bank with a systemic impact is a series of activities to keep a bank afloat systemic which is notified by the OJK to the DPC with or without involving shareholders (Ashari and Nugrahanti, 2021).

The BSA notified the DPC that the responsibility for regulating and supervising financial services in the banking sector had been legally shifted from the BI to the OJK, including a problematic bank that is presently undergoing restructuring (Siregar et al., 2021). If OJK claims that the distressed bank is irrecoverable under its jurisdiction, till the troubled bank becomes a failing bank. If a bank fails, the Coordination Committee, which consists of OJK, DPC, and the Ministry of Finance, is said to have systemic effects (Siregar et al., 2021).

BI and DPC will manage failed banks after receiving the handover from the Coordinating Committee. To carry out this obligation, the authorities have issued a

regulation of Law No. 6 of 2009 concerning the Determination of Ruling Regulations in Lieu of Law No. 2 of 2008 concerning the Second Amendment to Law No. 23 of 1999 concerning the Bank Indonesia Law. This law regulates the requirements for the granting of a Short Term Funding Facility (STFF) by BI. This matter aims to make it easier for banks with liquidity difficulties to use STFF as stipulated in Law No. 7 of 2009. This law aims to increase public confidence in banking factories by increasing the amount of customer funds determined by the DPC. The goal is that banks and non-bank financial institutions that have systemic effects receive assistance from the authorities when facing financial difficulties (Wijaya, 2013).

### **c. Conventional Banking Law Regarding Delaying Debtor Credit Repayments**

Covid-19 as a condition that can be used as an excuse for overmacht. From conventional banking laws, there are no special regulations to mitigate the impact of the pandemic on banking debtors. However, we can start from the most frequently used rules and laws related to Debt Repayment Delays. Referring to Article 1 number (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, banks function as financial intermediary institutions with the main activities of collecting and distributing public funds in the form of credit and providing other services in the form of loanspayment traffic (Usman, 2001). When Indonesia experiences the Covid-19 pandemic, banks must run their business in a sustainable manner; they must strike a balance between crisis and economic growth towards national stability.

According to Article 1 number 11 of the Banking Law, credit is the distribution of money or analogous claims based on a contract or loan arrangement between a bank and a third party that obligates the borrower to return his debt by paying interest after a specified period of time (Runtutahu, 2021).

The pandemic crisis makes it difficult for debtor customers to pay off their debts after a certain period of time. Such a situation is caused by three reasons. First, the debtor can only withdraw credit if it has met the conditions for granting credit (Permatasari, 2021).

Second, the debtor can only use credit in accordance with the purposes set out in the credit agreement. Third, bank credit is not always with real delivery, but can use checks and/or transfer orders. The debtor's obligation is to make payments with interest within the agreed time and amount (Putri, 2020). The pandemic crisis has reduced the health of its business and poses the risk of bad credit due to unforeseen conditions that have a broad impact on debtors' obstacles in fulfilling their credit obligations.

Thus, the failure to achieve the goals and objectives of the credit agreement caused by the pandemic has resulted in a systemic crisis where the debtor is unable to fulfill his credit agreement. In accordance with the provisions of Article 1244 of the Civil Code it is stated that the debtor must be punished to compensate for costs, losses, and interest, but the law also has the principle of justice that due to something unexpected, the debtor cannot be

held responsible for the cause of the loss problem (Pulungan, 2018). Therefore, the debtor cannot be blamed or must bear the loss, and all of this happens before the debtor is negligent.

It is further bolstered by the finding of Article 1245 of the Civil Code, which stipulates that if there is no exchange of fees, losses, or interest, and if the debtor is prevented from completing his duties owing to concurrent compelling circumstances (Sihombing, 2018). Some experts have differing opinions on the role of debtors after their firm was exposed to Covid-19 as a provision that can be used as an *overmacht* alibi.

Referring to this type of *overmacht*, the author is of the view that Covid-19 can be used as a reason for bank debtor *overmacht*, in the form of delaying credit payment obligations to banks, and when the Covid-19 situation is corrected, the debtor is still obliged to make payments to the bank, if later the debtor does not meet the requirements obligations, the debtor is said to be in default. Countercyclical Policies in Place to Protect Bank Debtors Affected by Covid-19 The global spread of Covid-19 has had a direct or indirect impact on debtors' ability to meet their credit or financing obligations to banks, resulting in Non-Performing Loans (NPLs), which are defined as a situation in which a debtor is unable to pay part or all of his obligations to the bank within a predetermined period of time (Wahyudi and Arbay, 2021).

#### **d. New banking law supporting National Economic Stimulus**

The linkage of the COVID-19 outbreak has resulted in a worsening of the financial system as indicated by the shrinking of various domestic economic activities, as a result KSSK needs to jointly implement mitigation in order to protect the stability of the financial zone.

There are three factors that cause non-performing loans such as bank perspective, debtor perspective and force majeure such as Covid-19. The bank's perspective is the bank's lack of caution in conducting credit analysis (Kokkinis and Miglionico, 2020). The debtor's internal factor is the debtor's inability to fluctuate business income. The influence of external force majeure factors, such as the Covid-19, is the main cause that must receive a lot of attention because it has caused a decline in economic conditions (Wijayanti and Yunita, 2020).

In terms of the variables that create non-performing loans, Covid-19 is one of the external factors that makes it harder for debtors to meet their credit obligations. This was reinforced with the publication of Presidential Regulation Number 11 of 2020 on the Determination of a Covid-19 Public Health Emergency, as well as Presidential Regulation Number 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating the Handling of Covid-19 (Wijayanti and Yunita, 2020). Due to the spread of Covid-19, the two rules serve as references for the issue of POJK No. 11 or POJK. 03 or 2020 addressing the Push for National Economic Stimulus as a Countercyclical Policy (Florentina et al.,

2020). The existence of Social Segregation of Great Value in the Covid-19 Acceleration Chart (PPSBB) resulted in the delay of debtor activities which resulted in bad installments.

The two provisions above are a continuation of Article 1238 of the Civil Code known as *ingebrekestelling* as a permissive postponement of debtor obligations to creditors when the creditor (bank) requests payment fulfillment. Responding to bad loans due to the Covid-19 pandemic, banks have a financial and economic role in maintaining political stability and national stability (Mahbub, 2019).

Therefore, as a strong legal basis for the Government and related agencies to continue measures in order to overcome the threat of Covid-19 transmission to health, social and economic threats, on March 13, 2020, the Regulation of the Financial Services Authority of the Republic of Indonesia passed Regulation No. 11 /POJK.03/2020 Regarding National Economic Stimulus as a Policy on the Countercyclical Impact of the Spread of Covid-19 (Agtha and Novera, 2020).

Countercyclical policy is a government strategy for dealing with an economic downturn that uses fiscal and monetary measures to boost banking performance, particularly the intermediation function, maintain financial system stability, and support economic growth by giving special treatment to bank loans or financing over a certain amount, and credit or financing by restructuring debtors affected by the spread of Covid-19.

#### **e. Implementing policies against the pandemic cycle**

However, the use of countercyclical policies must be carried out with the principle of prudence with a monitoring mechanism to prevent abuse (moral hazard). It is necessary to pay attention to good governance with transparent and accountable reporting mechanisms.

The Regulation of the Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical policy requires banks to carry out strict monitoring and evaluation of their debtors by determining the quality of assets, credit or financing restructuring (Agtha and Novera, 2020).

Furthermore, reliable reporting is required for the provision of additional funds in order to offer stimulus with a short validity period. According to Article 5, credit or financing restructuring can be carried out by credit or financing provided before or after the debtor is affected by the spread of Covid-19, including micro debtors, small and medium enterprises with a ceiling of Rp. 10,000,000,000.00, and small and medium enterprises with a ceiling of Rp. 10,000,000,000.00. (ten billion rupiah).

Banks may also give additional credit, financing, and/or other money to debtors affected by the spread of Coronavirus Disease 2019 in compliance with the provisions of the Financial Services Authority regulations for asset quality assessment, pursuant to Chapter IV Article 7. Furthermore, under Article 8, banks that determine the quality of credit or financing and/or other forms of fund provision, as well as credit or financing



restructuring, must file a report. In accordance with Article 10, the implementation of policies that support economic growth stimulus for debtors affected by the spread of Corona Virus Disease 2019 (Covid-19), including micro, small and medium business debtors, is valid until March 31, 2021 (Bidari and Nurviana, 2020).

Regulation No. 11/POJK.03/2020 of the Financial Services Authority of the Republic of Indonesia on National Economic Stimulus as a Countercyclical Policy pertaining to debtors' ability to pay their obligations after the restructuring period has ended. The regulation empowers the Financial Services Authority to oversee banks that grant credit relief to help small businesses stay afloat (Agtha and Novera, 2020).

In the general explanation of the Banking Bill, it is stated that "In an effort to realize a sound, credible and professional banking institution in carrying out its business, it is necessary to have good banking supervision and management". Given that management is tied to the supervisory function, the management of credit relaxation is microprudential, including the imposition of sanctions on debtors who do not comply with the laws and regulations. Meanwhile, the principle of micro-prudence remains the property of Bank Indonesia, so that the debtor's obligation is to fulfill his debts determined not only by the Financial Services Authority but also by Bank Indonesia (Abubakar and Handayani, 2017). From the above provisions, it can be observed that the credit relaxation based on the Constitution to Bank Indonesia as mandated by Article 29 of Law Number 10 of 1998 becomes a provision of the Banking Law in Article 31 giving the authority for supervision and management to the Financial Services Authority (Warjiyo, 2017). The intention of the legislators is to create banking institutions that are sound and have credibility and professionalism in running their business while at the same time providing credit relaxation to debtors affected by COVID-19.

In the author's opinion, the principle of sustainable finance through modification of banking laws during the pandemic implicitly requires government intervention. The implementation of countercyclical policy interventions must be seen as a strategic effort to increase economic development because it helps many SME debtors to also run their business and management during the pandemic. This will reduce NPLs among SMEs while maintaining the reputation, performance and image of the bank in the eyes of stakeholders.

In the beginning, the implementation of sustainable banking would reduce bank earnings, but banks will not lose money in the long run because regulations have determined that debtors only get credit relief if they delay their commitments for a limited period of time. All banking activities must adhere to the principle of prudence, which means they must follow all applicable bank rules, including the bank's standard operating procedures. This precautionary approach requires banks to do in-depth examination before giving loans or financing restructuring.

#### **4. CONCLUSION**

Covid-19 has had a very bad impact on the banking industry because debtors have difficulty repaying their capital loans. The pandemic can also be used as an excuse for overmaching among credit debtors to delay debtor credit payments to banks until the economy recovers. Several government regulations have stipulated that banks must defer debtor obligations; however, the debtor is still required to make payments to the bank.

Countercyclical policy is one of the pro-people policies as a strategy taken by the government to balance the financial crisis situation, banking systemic default, and economic growth through fiscal and monetary measures with the aim of improving banking performance and economic stability. The presidency and the regulations of the Financial Services Authority (OJK) function to maintain financial system stability, and to support economic growth by providing special treatment for credit or bank financing with a certain amount and restructuring of credit or financing to debtors affected by the spread of the Corona virus. Disease 2019 (COVID 19) to help SME business debtors in a limited time offer until March 31, 2021.

The government needs to pay attention to and think about the potential risks that may occur after the end of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy related to the ability of debtors to pay their obligations after the restructuring period ends. Therefore, the government needs to think of other options if the time limit for restructuring has ended, but the MSME business has not been able to run normally so it has not been able to fulfill its obligations to banks.

The explanation above provides an understanding that the factor of protecting national interests is a priority to consider given the importance of banking institutions in supporting the national economy with the Financial Services Authority having the authority to stipulate and amend banking laws to mitigate this impact. Covid-19 on the banking industry and economic development. The urgency of protecting national interests is stated in the Banking Law.

For further research, the explanation of Article 8 of the Banking Law regarding credit or financing based on sharia principles can be studied further, especially the risks and potential of banking to support economic growth and development. Credit relaxation based on sharia principles is a good idea to find out which is better to help SME businesses deal with the impact of the pandemic for banks in implementing sound credit or financing principles.

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